IN THE SUPREME COURT OF THE STATE OF NEVADA

AVERY EDWARDS, a minor, by and through her guardian, MARK EDWARDS, *et al.*,

Appellants,

vs.

THE CITY OF SPARKS, a political subdivision, *et al.*,

Respondents,

Supreme Court Case No.: 86256

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District Court Case No. CV22-00282

APPELLANTS' APPENDIX, VOLUME 1 OF 2

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Docket 86256 Document 2024-15711

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AVERY EDWARDS, a minor by and through her guardian MARK EDWARDS; THE ESTATE OF JACOB EDWARDS by and through KASHIF SHANKLE, Special Administrator of the Estate of Jacob Edwards, Deceased, Plaintiffs, vs. THE CITY OF SPARKS; a political subdivision; THE POLICE DEPARTMENT OF THE CITY OF SPARKS, a law enforcement agency of the State of Nevada; PATRICK B. MCNEELY, an Individual; MIKE MCCREARY, an Individual; JOHN P. PATTON, an Individual; EDIK DOMINGUEZ, an Individual; NICHOLAS CHAMBERS, an Individual; ANGEL GUILLEN, an Individual; DAN SNOW, an Individual; JASON STONE, an Individual; JAY EGAMI, an Individual; BRIAN SULLIVAN, an Individual; ROBERT CANTERBURY, an Individual; KIMBERLY HODGE, an Individual; PETER LOESCHNER, an Individual; RACHEL ARULANATHAM, an Individual; CHRIS BROCE, an Individual; DOE SPARKS POLICE OFFICERS 1 through 10, inclusive; DOE INDIVIDUALS 11 through 20,	CASE NO.: DEPT NO.: **COMPLAINT**

inclusive; ROE CORPORATIONS 21 through 30, inclusive; and ABC LIMITED LIABILITY COMPANIES 31 through 40, inclusive,

Defendants,

Plaintiffs, AVERY EDWARDS and THE ESTATE OF JACOB EDWARDS (hereinafter "Plaintiffs"), by and through their counsel, Brian D. Nettles, Esq., Christian M. Morris, Esq., and Alexandra B. M^{c}Leod, Esq. of NETTLES | MORRIS, and for their causes of action against Defendants above captioned, and each of them, hereby complains and alleges as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The Second Judicial District Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Washoe County, Nevada and the amount in controversy exceeds $15,000.00.

PARTIES

2. JACOB EDWARDS (hereinafter, "Decedent") was, at all times relevant hereto, a resident of Washoe County, Nevada.

3. KASHIF SHANKLE was appointed the Special Administrator of the ESTATE OF JACOB EDWARDS for purposes of administering the estate in accordance with and as permitted by Nevada statutes pursuant to the Order Appointing Special Administrator entered in Case No. PR21-00642 on November 4, 2021.

4. At all times relevant hereto, Plaintiff AVERY OLSEN-EDWARDS is the sole heir, the surviving natural daughter of Decedent and, is a resident of the State of Florida.

5. MARK EDWARDS is the grandfather and has been appointed co-guardian of the property of Plaintiff AVERY EDWARDS, with full power to exercise all delegable legal rights and power of AVERY EDWARDS pursuant to the Letters of Guardianship of the Property of Minor entered in the Circuit Court for Duval County, Florida, Probate Division, Case No.: 2020 GA 2602 on November 2, 2020.

6. Upon information and belief, Defendant CITY OF SPARKS ('SPARKS"), is, and at all relevant times was, a political subdivision of the State of Nevada. THE POLICE DEPARTMENT OF THE CITY OF SPARKS ("SPARKS PD") is a law enforcement agency in

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the City of Sparks, Nevada. SPARKS PD is responsible for the training, hiring, control, and supervision of all its officers, which include lieutenants, as well as the implementation and maintenance of official and unofficial policies. SPARKS PD employed the named Defendants below.

7. Upon information and belief, at all times relevant hereto, MIKE MCCREARY ("MCCREARY") was an individual residing in the State of Nevada and was employed as a Sergeant with SPARKS PD, acting within the course and scope of his employment and under color of state law.

8. Upon information and belief, at all times relevant hereto, JOHN P. PATTON ("PATTON") was an individual residing in the State of Nevada and was employed as a Lieutenant with SPARKS PD, acting within the course and scope of his employment and under color of state law.

9. Upon information and belief, at all times relevant hereto, EDIK DOMINGUEZ ("DOMINGUEZ") was an individual residing in the State of Nevada and was employed as an Officer with SPARKS PD, acting within the course and scope of his employment and under color of state law.

10. Upon information and belief, at all times relevant hereto, NICHOLAS CHAMBERS ("CHAMBERS") was an individual residing in the State of Nevada and was employed as an Officer with SPARKS PD, acting within the course and scope of his employment and under color of state law.

11. Upon information and belief, at all times relevant hereto, ANGEL GUILLEN ("GUILLEN") was an individual residing in the State of Nevada and was employed as an Officer with SPARKS PD, acting within the course and scope of his employment and under color of state law.

12. Upon information and belief, at all times relevant hereto, DAN SNOW ("SNOW") was an individual residing in the State of Nevada and was employed as an Officer with SPARKS PD, acting within the course and scope of his employment and under color of state law.

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13. Upon information and belief, at all times relevant hereto, JASON STONE ("STONE") was an individual residing in the State of Nevada and was employed as an Officer with SPARKS PD, acting within the course and scope of his employment and under color of state law.

14. Upon information and belief, at all times relevant hereto, KIMBERLY HODGE ("HODGE") was an individual residing in the State of Nevada and was employed as an Officer with SPARKS PD, acting within the course and scope of her employment and under color of state law.

15. Upon information and belief, at all times relevant hereto, PETER LOESCHNER ("LOESCHNER") was an individual residing in the State of Nevada and was employed as an Officer with SPARKS PD, acting within the course and scope of his employment and under color of state law.

16. Upon information and belief, at all times relevant hereto, RACHEL ARULANATHAM ("ARULANATHAM") was an individual residing in the State of Nevada and was employed as an Officer with SPARKS PD, acting within the course and scope of her employment and under color of state law.

17. Upon information and belief, at all times relevant hereto, JAY EGAMI ("EGAMI") was an individual residing in the State of Nevada and was employed as an Officer with SPARKS PD, acting within the course and scope of his employment and under color of state law.

18. Upon information and belief, at all times relevant hereto, ROBERT CANTERBURY ("CANTERBURY") was an individual residing in the State of Nevada and was employed as an Officer with SPARKS PD, acting within the course and scope of his employment and under color of state law.

19. Upon information and belief, at all times relevant hereto, BRIAN SULLIVAN ("SULLIVAN") was an individual residing in the State of Nevada and was employed as a Field Training Officer with SPARKS PD, acting within the course and scope of his employment and under color of state law.

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20. Upon information and belief, at all times relevant hereto, PATRICK B. MCNEELY ("MCNEELY") was an individual residing in the State of Nevada and was employed as a Patrol Sergeant with SPARKS PD, acting within the course and scope of his employment and under color of state law.

21. Upon information and belief, at all times relevant hereto, CHRIS BROCE ("BROCE") was an individual residing in the State of Nevada and was employed as a Patrol Sergeant with SPARKS PD, acting within the course and scope of his employment and under color of state law.

22. Upon information and belief, DOE SPARKS POLICE OFFICERS 1 through 10 were police officers employed by SPARKS PD on February 22, 2020.

23. The true names and capacities, whether individual, corporate, associate, governmental or otherwise, of defendants DOE SPARKS POLICE OFFICERS 1 through 10, DOE INDIVIDUALS 11 through 20, ROE CORPORATIONS 21 through 30, and ABC LIMITED LIABILITY COMPANIES 31 through 40 ("Doe/Roe/ABC"), inclusive, are unknown to Plaintiffs at this time, whom therefore sue said defendants by such fictitious names. When the true names and capacities of said defendants have been ascertained, Plaintiffs will amend this Complaint accordingly.

24. Upon information and belief, Doe/Roe/ABC are responsible in some manner for the events and happenings referred to and, in some manner, caused the injuries and damages arising proximately from the subject incident described further herein. Upon information and belief, one or more of these defendants, held an ownership interest in the vehicles operated by Doe Sparks Police Officers 1 through 10 at the time of the subject incident. Doe/Roe/ABC held a duty to Plaintiffs to ensure that the vehicle they owned would not be operated by individuals they knew or had reason to know was unfit to perform that function. Doe/Roe/ABC breached that duty by entrusting their vehicle to Doe/Roe/ABC who then, in turn, carelessly pursued a vehicle allegedly involved in a crime and caused the collision with Decedent and the harms as described herein. Doe/Roe/ABC also owed a duty of care to Plaintiffs to ensure the vehicles operated by Doe/Roe/ABC were suitably serviced and maintained in order to operate safely upon

the public roadways. Doe/Roe/ABC breached that duty by failing to maintain the vehicles operated by Doe/Roe/ABC, resulting in the collision with Decedent. Plaintiffs will seek leave to amend this Complaint as the true identities of Doe/Roe/ABC become known.

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

25. Upon information and belief, at all times relevant hereto, MCNEELY, MCCREARY, PATTON, DOMINGUEZ, CHAMBERS, GUILLEN, SNOW, STONE, EGAMI, SULLIVAN, CANTERBURY, HODGE, LOESCHNER, ARULANATHAM and BROCE (hereinafter collectively "SPARKS PD OFFICERS") were acting in the course and scope of their employment with SPARKS PD and under color of state law and the liability of SPARKS PD OFFICERS for Plaintiff's injuries as described herein, is fully and wholly imputed to Defendant SPARKS PD by virtue of its employment of Defendants SPARKS PD OFFICERS pursuant to the doctrine of *respondeat superior* and NRS 41.0307.

26. Upon information and belief, Doe/Roe/ABC are responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Decedent as hereinafter alleged.

27. Upon information and belief, DOE INDIVIDUALS 11 through 20 were supervisors employed by SPARKS PD to supervise and/or monitor DOE SPARKS POLICE OFFICERS 1 through 10 on February 22, 2020.

28. Upon information and belief, Doe Sparks Police Officers 1 through 10 were acting under color of law and in the course of their employment as SPARKS PD police officers when they engaged in the conduct complained of as set forth below.

29. Upon information and belief, Doe Individuals 11 through 20 were acting under color of law and in the course of their employment as individuals employed by SPARKS PD to supervise and/or monitor DOE SPARKS POLICE OFFICERS 1 through 10 when they engaged in the conduct complained of herein.

30. Upon information and belief, on or about February 22, 2020, multiple SPARKS PD units responded to Bob and Lucy's located at 1515 Oddie Blvd. in response to reports of a female suspect who flashed a gun at a patron identified as Steve Sims, who was her old roommate,

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and accused him of stealing her son's Xbox.

31. On or about the same date, MCNEELY advised over radio for all units to rally on Commerce Street. GUILLEN, ARULANANTHAM and MCNEELY, met at Merchant Street before making contact.

32. MCNEELY made contact with a female, who when Sims saw her "started yelling that it was her to who had a gun."

33. MCNEELY placed the female in handcuffs; she identified herself as Adriana Norman ("Norman") and told MCNEELY that she went to Bob and Lucy's with Ryan Williams ("Williams") and Zane Kelly ("Kelly").

34. Norman told MCNEELY that Williams' gun was not real.

35. At this point, a reasonable officer in MCNEELY's shoes would have understood they had the suspect who allegedly committed the crime of brandishing a firearm in custody, and there was no reason to pursue Williams or Kelly.

36. Despite having the suspect, Norman, in custody, and being provided with information by Norman that Williams and Kelly were not armed, MCNEELY advised SPARKS PD OFFICERS that the suspects in the vehicle were armed.

37. At the same time, SPARKS PD officers identified a white Chevrolet pickup truck being Nevada license plate "181LMJ" (hereinafter the Suspect's Vehicle) in the parking lot.

38. Upon information and belief Ryan Williams was in the driver's seat.

39. On or about February 22, 2020 at about 6:26 am, CHAMBERS was advised by SPARKS PD Dispatch that the Suspect's Vehicle was parked in front of Bob and Lucy's. CHAMBERS pulled up behind the Suspect's Vehicle, deployed his rifle and yelled numerous commands at the Suspect's Vehicle.

40. At the same date and time GUILLEN observed the Suspect's Vehicle parked in front of Bob and Lucy's and deployed his AR rifle. GUILLEN observed the Suspect's Vehicle speed off, and began pursuit.

41. At the same date and time LOESCHNER and HODGE engaged in the pursuit of the Suspect's Vehicle.

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42. Upon information and belief, LOESCHNER's vehicle's emergency equipment was malfunctioning, and he did not have lights or sirens.

43. Despite knowing that his lights and siren were not working, LOESCHNER drove over the curb at Bob and Lucy's to engage in the pursuit of the Suspect's Vehicle.

44. Upon information and belief, CHAMBERS, GUILLEN, HODGE, EGAMI and STONE along with multiple other SPARKS PD OFFICERS engaged in pursuit of the Suspect's Vehicle.

45. Upon information and belief, CHAMBERS was the first vehicle in line and STONE was fifth in a line of multiple vehicles in pursuit of the Suspect's Vehicle, exceeding department policy for the number of police vehicles to engage in a pursuit, and in violation of Nevada Department of Pubic Safety policy 309.4 which limits pursuit units to three vehicles (two units and a supervisor).

46. On or about February 22, 2020 at about 6:26 am, SPARKS PD Sgt. Brian P. Orr had just secured his patrol vehicle for the end of his shift when he heard officers in pursuit of the Suspect's Vehicle and gave his patrol vehicle to MCCREARY.

47. On or about the same date and time ARULANANTHAM responded to Bob and Lucy's to meet up with GUILLEN and CHAMBERS, and witnesses the Suspect's Vehicle reverse and drive south around the east side of Bob and Lucy's, then continue South on Rock Boulevard with patrol vehicles in pursuit.

48. The Suspect's Vehicle turned eastbound on Hymer Avenue where it continuing to the dead end. ARULANANTHAM joined in the line of multiple vehicles in pursuit of the Suspect's Vehicle and turned her patrol vehicle to drive westbound on Hymer Avenue. On or about the same time, LOESCHNER turned his patrol vehicle in front of ARULANANTHAM's patrol vehicle, she failed to stop, and the two patrol vehicles crashed. ARULANANTHAM sustained injuries in this crash.

49. On or about the same date and time, Sgt. Orr listened to the pursuit on the radio as PATTON directed officers to attempt to use a vehicle disabling maneuver which failed to disable the Suspect's Vehicle.

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50. On or about 6:35 am, DOMINGUEZ, joined in the line of multiple vehicles already in active pursuit of the Suspect's Vehicle and caught up to the pursuit near the intersection of Victorian Avenue and Stanford Way.

51. Upon information and belief, CHAMBERS, HODGE, GUILLEN, STONE and DOMINGUEZ along with other SPARKS PD officers involved in the pursuit of the Suspect's Vehicle witnessed the Suspect's Vehicle traveling at a high rate of speed including, but not limited to, traveling approximately 65 mph in a 30 mph zone on Rock Boulevard, and run the red light at Rock Boulevard and Victorian Avenue as well as the red light at Rock Boulevard and I-80.

52. GUILLEN observed the Suspect's Vehicle travel at high speeds in a residential area and run the red light at Victorian Avenue and Rock Boulevard, and run a second red light at Rock Boulevard.

53. On or about the same date and time CHAMBERS took over the lead position in the pursuit of the Suspect's Vehicle.

54. While in the lead position, CHAMBERS pursued the Suspect's Vehicle on Hymer Avenue going westbound, turning southbound onto South 15th Street, and witnessed the Suspect's Vehicle run the stop sign a located at 15th Street and Pittman Avenue and reach speeds of approximately 70 mph in a posted 25 mph zone.

55. On or about 6:37 am, SPARKS PD OFFICERS continued pursuit of the Suspect's Vehicle and observed the Suspect's Vehicle run the red light at Glendale Ave. and McCarran Blvd., while traveling approximately 94 mph.

56. As Suspect's Vehicle turned eastbound on Glendale Avenue, CHAMBERS and HODGE continued pursuit and observed the Suspect's Vehicle reach speeds of 81 mph in a posted 45 mph zone.

57. EGAMI saw the Suspect's Vehicle traveling at a high rate of speed at the intersection of N. McCarran Blvd. and E. Glendale Ave. and engaged pursuit in the line of multiple patrol vehicles.

58. At the same time, CANTERBURY and SULLIVAN reached the intersection of Glendale and McCarran, saw the Suspect's Vehicle followed by multiple other officers, made a

U-turn and became the second unit in the line of pursuit.

59. GUILLEN was informed by SPARKS PD dispatch that the Suspect's Vehicle was travelling 81 mph eastbound on Glendale.

60. CHAMBERS and HODGE continued pursuit and observed the Suspect's Vehicle fail to stop or even slow down for a solid red light at McCarran Boulevard, traveling at speeds of approximately 80 -90 mph.

61. CANTERBURY and SULLIVAN continued pursuit and observed the Suspect's Vehicle run the red lights at both intersections of Nugget Ave. and McCarran as well as the I-80 underpass at McCarran Blvd.

62. CHAMBERS continued pursuit of the Suspect's Vehicle eastbound on Glendale Avenue from McCarran Boulevard reaching speeds of 90 mph.

63. At the same time, CANTERBURY and SULLIVAN continued pursuit traveling at 55 mph and increasing their speeds as the Suspect's Vehicle continued to accelerate.

64. CANTERBURY and SULLIVAN continued pursuit and observed the Suspect's Vehicle enter the intersection of McCarran and Nichols, and swerve into the south-bound travel lanes of McCarran driving against the flow of traffic and into oncoming traffic.

65. On or about 6:40 am, SPARKS PD OFFICERS intentionally continued the reckless and unreasonable pursuit of the Suspect's Vehicle having observed the Suspect's Vehicle drive at speeds of 75 to 95 mph, including in 25 mph residential zones, and drive into oncoming traffic.

66. Despite the unreasonable risk of danger and reckless disregard to innocent bystanders and the motoring public, CANTERBURY and SULLIVAN continued pursuit and even though they observed the Suspect's Vehicle slam on its breaks to avoid crashing into stopped traffic in the south bound lanes of McCarran.

67. HODGE continued pursuit and observed he Suspect's Vehicle driving through a parking lot at speeds of 50 mph.

68. EGAMI continued pursuit eastbound on E. Glendale, turned right heading south on Meredith Way, then west on Kleppe Lane.

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69. EGAMI continued pursuit and observed the Suspect's Vehicle head south on Kleppe Lane driving through the parking lot of 960 E. Greg Street, make U-turn out of the parking lot onto Kleppe Lane and travel north on Kleppe Lane.

70. At the same time, CHAMBERS continued pursuit and observed the Suspect's Vehicle drive through several business parking lots, endangering the innocent bystanders, motorists and the general public, before exiting onto Kleppe Lane going northbound, and driving around a marked patrol unit that stopped in front of the Suspect's Vehicle, and turning westbound on Glendale Avenue at speeds of 90 mph.

71. CHAMBERS continued pursuit and observed the Suspect's Vehicle continue traveling northbound on McCarran Boulevard at a dangerously high rate of speed and run another solid red light.

72. As the Suspect's Vehicle continued northbound on McCarran Boulevard, CHAMBERS continued pursuit and attempted to catch up and perform a "pursuit intervention technique" or "pursuit immobilization technique" ("PIT") but the Suspect's Vehicle accelerated, ran the red light at northbound McCarran Boulevard and Nugget Avenue, and drove into oncoming traffic by driving northbound in the southbound lanes on McCarran Boulevard between Nichols Boulevard Lincoln Way.

73. HODGE continued pursuit and observed the Suspect's Vehicle run the red light at McCarran and Nugget, and again at McCarran and I-80 at speeds of approximately 80 mph.

74. CHAMBERS and HODGE continued pursuit and observed the Suspect's Vehicle turn westbound onto E. Lincoln Way. and continue onto East Lincoln Way, reaching speeds of 64 mph, and run the red light at E. Lincoln.

75. SULLIVAN and CANTERBURY observed the Suspect's Vehicle run the stop sign at E. Lincoln Ave and Stanford St., and again run the stop sign at the intersection of Stanford St. and Victorian Ave.

76. CHAMBERS continued pursuit and observed the Suspect's Vehicle turned southbound onto Stanford Street, reaching speeds up to approximately 67mph.

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77. CHAMBERS continued pursuit and as the Suspect's Vehicle approached Victorian Avenue and attempted to make a westbound turn onto Victorian Avenue, CHAMBERS accelerated his patrol vehicle causing the right front driver side of CHAMBER'S patrol vehicle to collide with the rear passenger side of the Suspect's Vehicle as part of the "PIT," which caused he Suspect's Vehicle to spin and continue eastbound on Victorian Avenue.

78. As DOMINGUEZ was stopped east of the intersection, he observed CHAMBERS perform the failed PIT on the Suspect's Vehicle, which causing the Suspect's Vehicle to spin approximately 180 degrees, failing to immobilize it and allowing the Suspect's Vehicle to continue to flee east on Victorian Avenue.

79. The failed and deadly force PIT caused CHAMBERS to travel southbound across both lanes of traffic on Victorian Avenue, up over the curb and into the chain linked fence located on the southside of the Victorian Avenue resulting in damage to the font driver side of CHAMBER'S patrol vehicle and resulting in the front driver side tire being blown out.

80. CHAMBERS conducted the PIT in violation of known policies and procedures because a PIT as non-deadly force, may be used to apprehend violators at speeds of 40 mph and below. Whereas, a PIT at a speed of over 40 mph is as deadly force.

81. In conducting the deadly force PIT at over 40 mph, CHAMBERS demonstrated an intent to cause harm unrelated to the legitimate object of arrest.

82. After the failed PIT, GUILLEN observed the Suspect's Vehicle traveling eastbound on Victorian Avenue at a high rate of speed; GUILLEN made a U-turn and made himself secondary in the pursuit as he observed the Suspect's Vehicle approach Victorian and McCarran Blvd. and continue eastbound onto the I-80 westbound into oncoming traffic. GUILLEN pursued the Suspect's Vehicle onto the I-80 by using the travel lane on the off ramp to enter the I-80.

83. At the same date and time, STONE and EGAMI observed the Suspect Vehicle's travel eastbound on Victorian Avenue, vehicle cross McCarran Boulevard and go up the offramp onto 1-80 West driving eastbound. STONE and EGAMI continued their pursuit and followed the Suspect's Vehicle onto the I-80 East on the eastbound side.

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84. On or about the same time, SULLIVAN AND CANTERBURY were the third unit in pursuit and observed the Suspect's Vehicle drive through the intersection of McCarran Blvd. and Victorian and drive up the offramp to I-80, driving the wrong way.

85. At the same date and time, following the PIT, SNOW took the lead in the pursuit followed by several SPARKS PD units.

86. Upon information and belief GUILLEN and SNOW were traveling at approximately 60 mph when they entered the I-80 using the off-ramp into oncoming traffic.

87. At the same date and time SNOW engaged in pursuit of the Suspect's Vehicle, observed the Suspect's Vehicle utilize a designated bike lane as a travel lane heading eastbound. SNOW maneuvered his vehicle next to the Suspect's Vehicle utilizing a travel lane as both vehicles approached Victorian and the westbound I-80 off ramp. SNOW continued pursuit into oncoming traffic and entered the I-80 using the freeway shoulder.

88. Despite the inherent danger to the public, SNOW pursued the Suspect's Vehicle on the I-80 against oncoming traffic at speeds of approximately 60 mph.

89. GUILLEN observed SNOW travel onto the north shoulder of I-80 westbound less than a quarter mile from his patrol vehicle.

90. Sgt. Orr heard that the Suspect's Vehicle entered the I-80 into oncoming traffic, traveling Eastbound onto the Westbound lanes of travel.

91. DOMINGUEZ continued pursuit of the Suspect's Vehicle as it crossed N. McCarran Blvd. and traveled up the westbound I-80 offramp going eastbound into oncoming traffic.

92. At the same date and time, Jacob Edwards, was driving a grey colored Jeep, bearing Nevada license plate 88C308, traveling westbound on the I-80.

93. At approximately 6:47 am, the Suspect's Vehicle crashed into Jacob Edward's vehicle, head on, in a violent and forceful manner.

94. GUILLEN and SNOW saw the Suspect's Vehicle crash violently into Jacob Edward's vehicle as a result of the police pursuit.

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95. GUILLEN used his knife to cut Mark Edward's seatbelt, took him out and advised others on scene to perform CPR.

96. SPARKS PD officers attempted to perform CPR on Jacob Edwards.

97. GUILLEN observed Mark Edwards have agonal gasps.

98. STONE observed that Mark Edwards' skin was pale and assisted GUILLEN in carrying Mark Edwards out of his vehicle.

99. Jacob Edwards was pronounced dead at the scene of the crash at around 6:48 am.

100. At all times relevant hereto, PATTON, the Dayshift Patrol Lieutenant on duty was at the main station monitoring the unfolding events.

101. Upon information and belief, PATTON knew that SPARKS PD OFFICERS were pursuing the Suspect's Vehicle, and heard SPARKS PD OFFICERS state over the radio that they were driving at speeds of 70-100 mph.

102. Upon information and belief PATTON knew that the reckless, unnecessary police pursuit involving multiple SPARKS PD units was predicated upon an allegation of brandishing a firearm and that the suspect who was alleged to have shown the gun to the alleged victim was already in SPARKS PD custody.

103. Upon information and belief, a SPARKS PD sergeant told SPARKS PD OFFICERS over the radio to cease the pursuit, but the SPARKS PD OFFICERS ignored the command.

104. SPARKS PD OFFICERS as alleged herein conducted a needless and reckless pursuit through residential neighborhoods at unreasonably unsafe speeds for approximately twenty (20) minutes, during which three SPARKS PD patrol vehicles were involved in collisions, ARULANANTHAM was injured, and SPARKS PD OFFICERS observed the Suspect's Vehicle run multiple red lights, run stop signs, drive into oncoming traffic on multiple occasions, and nearly collide with innocent bystanders and other vehicles.

105. At all times relevant hereto, SPARKS PD OFFICERS had sufficient information to reasonably inform them that continuing the pursuit would place police officers and innocent bystanders alike at risk of serious injury or death, and that the parties being pursued had little to

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no culpability it the alleged brandishing crime committed by Norman, who was already in police custody.

106. At all times relevant hereto, there was no justifiable governmental interest in continuing the pursuit because Norman was already in custody, SPARKS PD OFFICERS had the license plate to the vehicle and could apprehend the suspects at a later time.

107. Based on the Suspect's Vehicle's actions during the needless and reckless pursuit, the multiple collisions between SPARKS PD patrol vehicles, the failed PIT, the injury to ARULANANTHAM, and the command to cease the pursuit, it was reasonably foreseeable to all but the plainly incompetent that the ongoing pursuit of the Suspect's Vehicle posed a great danger of serious injury or death to police officers, innocent bystanders and the motoring public.

108. In light of the Suspect's Vehicle's actions during the needless and reckless pursuit, the multiple collisions between SPARKS PD patrol vehicles, the failed PIT, the injury to ARULANANTHAM, and the command to cease the pursuit, it would be clear to a reasonable officer that continuing the pursuit was unlawful based on the situation the SPARKS PD OFFICERS confronted.

109. In light of the Suspect's Vehicle's actions during the needless and reckless pursuit, the multiple collisions between SPARKS PD patrol vehicles, the failed PIT, the injury to ARULANANTHAM, and the command to cease the pursuit, a reasonable official in the SPARKS PD OFFICERS' shoes would have understood that continuing in the pursuit was a violation of clearly established law and the SPARKS PD OFFICERS were violating it.

110. The SPARKS PD OFFICERS' conduct in engaging in the long, needless, reckless and unreasonably dangerous pursuit of the Suspect's Vehicle when the perpetrator of the alleged crime was already in police custody, the Suspect's Vehicle was observed by multiple SPARKS PD OFFICERS driving at speeds of 70-100 mph while running various red lights and stop signs, three SPARKS PD patrol vehicles were involved in collisions with at least one officer sustaining injuries, the failed PIT maneuver, and the command to cease the pursuit, as alleged herein, was unreasonable in light of clearly established law and demonstrated a purpose to cause harm unrelated to the legitimate object of arrest.

111. The SPARKS PD OFFICERS' demonstrated an intent to harm the suspects physically and/or worsen their legal plight, by engaging in the pursuit as alleged herein, and failing to discontinue the pursuit.

112. At all times relevant hereto, SPARKS PD OFFICERS, had multiple opportunities to discontinue the pursuit of the Suspect's Vehicle and willingly refused to do so.

113. At all times relevant hereto, SPARKS PD OFFICERS knew that the pursuit should have been discontinued because the risks of continuing the pursuit reasonably appeared to outweigh the risks resulting from the suspect's escape.

114. At all times relevant hereto, SPARKS PD OFFICERS failed to consider that the pursuit speeds had become unsafe for the surrounding conditions, the pursuit speeds exceeded the driving abilities of the SPARKS PD OFFICERS, and the pursuit speeds were beyond the capabilities of the pursuit vehicles thus making the operation unsafe.

115. At all times relevant hereto, SPARKS PD OFFICERS violated Nevada Department of Public Safety Policy 309.4.5(d), which states that officers shall not follow a vehicle driving the wrong way on a roadway, highway or freeway.

116. At all times relevant hereto, SPARKS PD OFFICERS failed to request aircraft assistance in violation of Nevada Department of Public Safety Policy 309.4.8.

117. At all times relevant hereto, SPARKS PD OFFICERS failed to use proper self-discipline and sound professional judgment.

118. At all times relevant hereto, SPARKS PD OFFICERS operated their vehicles at speeds in excess of 20 mph over the posted speed limit, in violation of standard pursuit policies in the State of Nevada.

119. At all times relevant hereto, SPARKS PD OFFICERS failed to consider the initiation and evaluation factors of whether the need for immediate apprehension of the suspects outweighed the dangers created by the pursuit, the suspects were known and could have been apprehended at a later time, what the vehicular and pedestrian traffic and road conditions where, what alternatives were available to pursuit, and the nature of the residential and commercial areas in which the pursuit was taking place.

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120. At all times relevant hereto, SPARKS PD OFFICERS failed to consider or utilize other means of apprehension.

121. At all times relevant hereto, SPARKS PD OFFICERS acted with conscious disregard for the life and safety of innocent bystanders and the public, such as Jacob Edwards, when they knew of the probable harmful consequences of their wrongful act and willfully and deliberately failed to act to avoid those consequences.

122. At all times relevant hereto SPARKS PD OFFICERS acted with malice, express or implied because their conduct was intended to injure and/or they engaged in despicable conduct with a conscious disregard of the rights or safety of others.

123. At all times relevant hereto, SPARKS PD failed to have the appropriate supervisor monitor and continually assess the situation to ensure the pursuit was conducted within the guidelines and requirements of the Nevada Department of Public Safety Policy and State of Nevada policies for police pursuits.

124. At all times relevant hereto, SPARKS PD failed to use, adopt, train, or institute police pursuit policies such as the Nevada Department of Public Safety Policy, and/or adhere to such pursuit policies which were the standard in the State of Nevada.

125. Upon information and belief, SPARKS PD knew or reasonably should have known that its pursuit policy, or lack thereof, including but not limited to training on pursuits, and officer discipline was below state and national levels.

126. Upon information and belief, SPARKS PD knew that in the time period between January 1, 2015 and December 31, 2018, its officers engaged in 59 police pursuits.

127. Upon information and belief, SPARKS PD knew that in the time period between January 1, 2015 and December 31, 2018, its officers engaged 35 pursuits for suspected traffic violations, and an additional 17 pursuits for misdemeanor and non-violent crimes in violation of Nevada Department of Public Safety policy 309.3.1, yet failed to train or discipline its officers regarding these needless and reckless police pursuits.

128. Upon information and belief, SPARKS PD and SPARKS PD OFFICERS knew that in the time period between January 1, 2015 and December 31, 2018, 12% of its pursuits ended

in a collision.

129. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Jacob Edwards was killed, and Plaintiffs have suffered substantial physical and psychological injuries, harms and losses all to Plaintiff's damage in a sum in excess of $15,000.00.

130. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have been limited in certain occupational and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiff's damage in an amount in excess of $15,000.00.

131. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

FIRST CAUSE OF ACTION
(Negligence against SPARKS PD OFFICERS)

132. Plaintiffs repeat and re-allege each and every allegation contained in the preceding paragraphs as though fully set forth herein.

133. MCNEELY, MCCREARY, PATTON, DOMINGUEZ, CHAMBERS, GUILLEN, SNOW, STONE, EGAMI, SULLIVAN, CANTERBURY, HODGE, LOESCHNER, ARULANATHAM and BROCE (collectively "SPARKS PD OFFICERS"), and each of them, owed a duty to Jacob Edwards to drive owed a non-delegable duty of care to the motoring public and Jacob Edwards while operating their patrol vehicles in the course and scope of their duties for the SPARKS PD in a police pursuit.

134. SPARKS PD OFFICERS, and each of them, had a non-delegable duty to use reasonable care when performing in their capacity as police officers.

135. SPARKS PD OFFICERS, and each of them, breached their duties of care as alleged herein including, but not limited to, by engaging in a needless, reckless, and unreasonably dangerous pursuit, by failing to discontinue the pursuit, and by pursuing the Suspect's Vehicle up

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the I-80 offramp into oncoming traffic.

136. The negligence of the SPARKS PD OFFICERS, and each of them, as set forth herein, directly and proximately caused the death of Jacob Edwards and the injuries and other damages to Plaintiffs.

137. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Jacob Edwards was killed, and Plaintiffs have suffered substantial physical and psychological injuries, harms and losses all to Plaintiff's damage in a sum in excess of $15,000.00.

138. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have been limited in certain occupational and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiff's damage in an amount in excess of $15,000.00.

139. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

SECOND CAUSE OF ACTION
(Negligent Hiring, Training, Retention against SPARKS PD)

140. Plaintiffs repeat and re-allege each and every allegation contained in the preceding paragraphs as though fully set forth herein.

141. Defendant SPARKS PD owed Plaintiffs a non-delegable duty to exercise due care in the training, oversight, direction, hiring, retention, and control of its employees and officers.

142. Defendant SPARKS PD breached this non-delegable duty by hiring and retaining employees and officers that it knew or reasonably should have known were unfit for the duties they were to perform, and/or by failing to provide proper oversight, training, direction, hiring, retention, and control of or to its employees/agents/contractors responsible for performing these duties.

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143. Breach of these duties by Defendant SPARKS PD was the legal and proximate cause of Jacob Edwards' death and Plaintiffs' injuries as alleged herein.

144. Defendant SPARKS PD knew or should have known of the risks posed to others in employing SPARKS PD OFFICERS, but disregarded such knowledge with reckless, willful, and/or conscious disregard for the rights and safety of others, including Jacob Edwards. Such actions were ratified, ordered, and/or approved by SPARKS PD.

145. Defendant SPARKS PD intentionally acted to cover up a culture that ratified and failed to disciple its officers' conduct made in violation of State of Nevada policies for police officers and police pursuits, as alleged herein.

146. Defendant SPARKS PD had advance knowledge that SPARKS PD OFFICERS were unfit for the purposes of their employment yet employed said SPARKS PD OFFICERS with a conscious disregard of the rights or safety of others, including Jacob Edwards and Plaintiffs.

147. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Jacob Edwards was killed, and Plaintiffs have suffered substantial physical and psychological injuries, harms and losses all to Plaintiff's damage in a sum in excess of $15,000.00.

148. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have been limited in certain occupational and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiff's damage in an amount in excess of $15,000.00.

149. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

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THIRD CAUSE OF ACTION
(Wrongful Death pursuant to NRS § 41.085 against all Defendants)

150. Plaintiffs repeat and re-allege each and every allegation contained in the preceding paragraphs as though fully set forth herein.

151. Defendants' SPARKS PD and SPARKS PD OFFICERS, and each of their wrongful and/or negligent conduct was the legal and proximate cause of Jacob Edwards' death.

152. Plaintiffs have sustained damages for their grief, loss of companionship, society, comfort, and consortium as a result of Jacob Edwards' death in an amount in excess of $15,000.00 to be determined at trial.

153. Plaintiffs may recover any special damages Decedent incurred before his untimely death.

154. Plaintiffs may also recover damages for Jacob Edwards' pain, suffering, and disfigurement that he suffered prior to his death.

155. Plaintiffs have been damaged by Defendants' SPARKS PD and SPARKS PD OFFICERS, and each of their negligence, in an amount in excess of $15,000.00 to be determined at trial.

156. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Jacob Edwards was killed, and Plaintiffs have suffered substantial physical and psychological injuries, harms and losses all to Plaintiff's damage in a sum in excess of $15,000.00.

157. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have been limited in certain occupational and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiff's damage in an amount in excess of $15,000.00.

158. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

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FOURTH CAUSE OF ACTION
(Violation of 42 U.S.C. § 1983)

159. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as though fully set forth herein.

160. Defendants, and each of them, at all times relevant to this action, were acting under color of state law.

161. 42 U.S.C. § 1983 provides in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory subjects, or causes to be subjected, any person of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit at equity or other proper proceeding for redress.

162. At all times relevant hereto Jacob Edwards was a citizen of the United States and the Defendants, and each of them, are persons for the purposes for 42 U.S.C. § 1983.

163. Defendants, and each of them, violated Jacob Edwards' Fourth Amendment rights by engaging in a needless, reckless, unjustified and unreasonably dangerous high-speed automobile chase and causing the deadly crash as alleged herein, resulting in an unconstitutional seizure by terminating Jacob Edwards' freedom of movement through means intentionally applied.

164. That the needless, reckless, unjustified and unreasonably dangerous high-speed automobile chase was objectively unreasonable and constituted deadly force because it had the substantial likelihood of causing death or serious bodily injury, and did cause Jacob Edwards' death.

165. That the needless, reckless, unjustified and unreasonably dangerous high-speed automobile chase was objectively unreasonable because the suspects did not pose any immediate threat of serious physical harm to officers or others, absent the police chase initiated by Defendants.

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166. Defendants, and each of them, violated Jacob Edwards' Fourth Amendment rights when they failed to balance the needless, reckless, unjustified, dangerous and objectively unreasonable high-speed automobile chase in light of the alleged threat to the public that Defendants were trying to eliminate when they initiated the pursuit, considering that the alleged suspect was already in police custody and Defendants had the vehicle's information and could have apprehended the alleged suspects at a later date.

167. Defendants, and each of them, violated Jacob Edwards' Fourth Amendment rights when they failed to taken into account the number of lives at risk by initiating and continuing the needless, reckless, unjustified, dangerous and objectively unreasonable high-speed automobile chase, relative to the suspect's culpability in the alleged brandishing crime committed by Norman, who was already in police custody.

168. Defendant SPARKS PD's failure to adopt clear policies and their failure to properly train SPARKS PD OFFICERS and employees, were a direct and proximate cause of the constitutional deprivation Jacob Edwards suffered.

169. Jacob Edwards and Plaintiffs' rights are clearly established under the Fourth Amendment. As a direct and proximate result of Defendant's conduct, Jacob Edwards deprived of his life and was denied due process of law by Defendants' conduct in engaging and failing to discontinue the needless, reckless, unjustified, dangerous and objectively unreasonable high-speed automobile chase as alleged herein. The Defendants' conduct was offensive to the concept of fundamental fairness.

170. That, as a proximate result of the Defendants wrongful acts as alleged herein, Jacob Edwards was killed.

171. That the wrongful and unlawful acts perpetrated by the Defendants, and each of them, in intentionally disregarding Jacob Edwards' constitutional rights were willful, oppressive, and performed with a disregard for Jacob Edwards' established and constitutionally protected rights.

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172. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Jacob Edwards was killed, and Plaintiffs have suffered substantial physical and psychological injuries, harms and losses all to Plaintiff's damage in a sum in excess of $15,000.00.

173. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have been limited in certain occupational and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiff's damage in an amount in excess of $15,000.00.

174. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

FIFTH CAUSE OF ACTION
(Violation of Civil Rights - *Monell* Liability for Failure to Train)

175. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as though fully set forth herein.

176. While acting under the color of state law and within the course and scope of their duties and obligations as law enforcement agency of the State of Nevada and their employment as employees and police officers for SPARKS PD, failed and refused to train Defendant SPARKS PD OFFICERS to properly assess when police pursuits were necessary, even though SPARKS PD has a history of engaging in police pursuits that are in violation of policy.

177. The training policies of SPARKS PD were not adequate to train its police officers with regard to assessing when it's necessary and appropriate to engage in a police pursuit and when to withdraw from a police pursuit.

178. As a result, Defendant SPARKS PD OFFICERS were not able to handle a situation in which a police pursuit became unnecessary and should have been withdrawn from, such as the police pursuit they engaged in with regard to Jacob Edwards.

179. These inadequate training policies existed prior to the date of this incident and continue to this day. SPARKS PD was deliberately indifferent to the known or obvious consequences of their failure to train their officers adequately with regard to assessing when to engage and when to withdraw in a police pursuit.

180. SPARKS PD was aware that failure to implement some sort of training with regard to their police officers ability to properly assess when to engage in a police pursuit and withdraw from a police pursuit, such as the one with Jason Edwards, could result in severe injury to the individual they are pursuing.

181. The failure of SPARKS PD to provide adequate training with the regard to the assessment of when to engage and when to withdraw in a police pursuit, resulted in the death of Jacob Edwards.

182. There is a direct causal link between SPARKS PD'S violation of policies or customs and the loss of Jacob Edwards life as alleged herein, which said violation of the policies were the moving force behind said death of Jacob Edwards.

183. SPARKS PD'S failure to train as alleged herein amounted to deliberate indifference to the life of persons with whom the SPARKS PD OFFICERS came into contact with, including Jacob Edwards as alleged herein.

184. SPARKS PD and SPARKS PD OFFICERS made a deliberate choice to follow the courses of action as described herein, including but not limited to, engaging in an unnecessary police pursuit, in violation of policy, and said choice to follow this course of action was made from among various alternatives by SPARKS PD and SPARKS PD OFFICERS.

185. SPARKS PD'S duties assigned to specific officers, including but not limited to Defendant SPARKS PD OFFICERS, and the need for more or different training was so obvious to SPARKS PD, and the inadequacy so likely to result in the violation of policy, that resulted in harm to another individual, such as Jacob Edwards, that the SPARKS PD and SPARKS PD OFFICERS can reasonably be said to have been deliberately indifferent to Jacob Edwards' life.

186. The deficiencies in SPARKS PD'S training programs are closely related to and caused Jacob Edwards death, as set forth herein.

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187. By failing to provide adequate training to Defendant SPARKS PD OFFICERS, SPARKS PD, acted with an intentional, reckless, and callous disregard for Jacob Edwards' safety, well-being, and life.

188. The actions of Defendants, and each of them, were willful, oppressive, fraudulent, and extremely offensive and unconscionable to any person of normal sensibilities.

189. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Jacob Edwards was killed, and Plaintiffs have suffered substantial physical and psychological injuries, harms and losses all to Plaintiff's damage in a sum in excess of $15,000.00.

190. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have been limited in certain occupational and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiff's damage in an amount in excess of $15,000.00.

191. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

SIXTH CAUSE OF ACTION
(Violation of Civil Rights - *Monell* Liability for Unconstitutional Custom or Policy)

192. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as though fully set forth herein.

193. Defendants, and each of them, at all times relevant to this action, were acting under color of state law.

194. The decisions, policies, and practices of SPARKS PD's lawmakers and policy making officials as described herein as so pervasive, persistent, and widespread as to have the force of law.

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195. SPARKS PD had a policy of inaction in which it expressly and/or impliedly promoted and/or condoned its police officers' actions in engaging in unnecessary police pursuits, knowing they were in violation of policy.

196. SPARKS PD had a policy of inaction which it failed to discipline or train police officers that engaged in unnecessary police pursuits, such as with Jacob Edwards.

197. At all times relevant herein, SPARKS PD and SPARKS PD OFFICERS, deprived Jacob Edwards of the rights and liberties secured to him by the Fourth and Eighth Amendments to the United States Constitution. Specifically, SPARKS PD and SPARKS PD OFFICERS, acted with gross negligence and with reckless and deliberate indifference to the rights and liberties of the public in general, and of Jacob Edwards, and of persons in his class, situation, and comparable position in particular, knowingly maintained, enforced and applied an official recognized custom, policy, and practice of:

- Employing and retaining as police officers they knew or reasonably should have known had dangerous propensities for abusing their authority; for mistreating citizens; and for failing to follow police pursuit policies of SPARKS PD;
- Inadequately supervising, training, controlling, assigning, and disciplining Police Officers who SPARKS PD knew or in the exercise of reasonable care should have known were engaged in reckless and dangerous police pursuits in violation of policy;
- By failing to adequately train officers, and failing to institute appropriate policies, regarding engaging and withdrawing in police pursuits;
- Having and maintaining an unconstitutional policy, custom, and practice of allowing unnecessary police pursuits in violation of policy;
- By ratifying the conduct of its police officers engaging in unnecessary police pursuits, in violation of policy;
- The policies, customs, and practices of SPARKS PD, were done with a deliberate indifference to safety and rights of Jacob Edwards and other members of the public;

198. By reason of the aforementioned policies and practice of SPARKS PD, Jacob Edwards died as alleged herein. SPARKS PD had actual or constructive knowledge of the deficient policies, practices, and customs alleged in the paragraphs above.

199. Despite having knowledge as stated above, SPARKS PD condoned, tolerated and through actions and inactions thereby ratified such policies.

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200. SPARKS PD acted with deliberate indifference to the foreseeable effects and consequences of these policies with respect to Jacob Edwards life, and other individuals similarly situated.

201. By perpetrating, sanctioning, tolerating, and ratifying the outrageous conduct and other wrongful acts, SPARKS PD acted with an intentional, reckless, and callous disregard for Jacob Edwards life.

202. SPARKS PD acted with willful, oppressive, fraudulent, and extremely offensive and unconscionable to any person of normal sensibilities.

203. By reason of the aforementioned acts or omissions of SPARKS PD and SPARKS PD OFFICERS, Jacob Edwards lost his life.

204. There is a direct causal link between SPARKS PD's violation of policies or customs and the death of Jacob Edwards, as alleged herein.

205. SPARKS PD'S failure to train, discipline, and their decisions, policies, and practices, including, but not limited to, their policy of inaction as alleged herein amounted to deliberate indifference to the life of persons with whom SPARKS PD OFFICERS came into contact with, including Jacob Edwards as alleged herein.

206. SPARKS PD and SPARKS PD OFFICERS made a deliberate choice to follow the courses of action as described herein, including but not limited to, adopting said decisions, policies, and practices including, but not limited to, engaging in unnecessary police pursuits and not withdrawing from dangerous police pursuits, and said choice to follow this course of action was made from among various alternatives by SPARKS PD.

207. SPARKS PD'S duties assigned to its police officers, including but not limited to SPARKS PD OFFICERS, and the need for different decisions, policies, and practices was so obvious to SPARKS PD, and the inadequacy so likely to result in unnecessary police pursuits, such as Jacob Edwards, that SPARKS PD can reasonably be said to have been deliberately indifferent to Jacob Edwards' life.

208. The deficiencies in SPARKS PD'S training programs and policies are closely related to and caused Jacob Edwards' death, as set forth herein.

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209. Accordingly, SPARKS PD is liable for compensatory damages under 42 U.S.C. § 1983.

210. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Jacob Edwards was killed, and Plaintiffs have suffered substantial physical and psychological injuries, harms and losses all to Plaintiff's damage in a sum in excess of $15,000.00.

211. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have been limited in certain occupational and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiff's damage in an amount in excess of $15,000.00.

212. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

SEVENTH CAUSE OF ACTION

(Violation of the Constitution of the State of Nevada against all Defendants)

213. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as though fully set forth herein.

214. At all times relevant hereto, THE CITYOF SPARKS is a political subdivision of the State of Nevada within the meaning of NRS 354.474.

215. At all times relevant hereto, SPARKS PD is a law enforcement agency of the State of Nevada within the meaning of NRS 202.873.

216. At all times relevant hereto, SPARKS PD OFFICERS were employees of SPARKS PD within the meaning of NRS 41.0307.

217. The State of Nevada, its political subdivisions, and law enforcement agencies, have waived their immunity from liability and consented to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations.

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218. The laws of the State of Nevada allow for action for injury, wrongful death or other damage resulting from the deprivation of any rights, privileges or immunities secured by the Constitution of the State of Nevada.

219. At all times relevant hereto, Jacob Edwards was a citizen of the State of Nevada who was entitled to the protections of Nev. Const. Art. 1, § 8(2) and Nev. Const. Art. 1, § 18, as protected under the Nevada Constitution.

220. Pursuant to Nev. Const. Art. I, § 2 the "[g]overnment is instituted for the protection, security and benefit of the people. . . ."

221. Nev. Const. art. I, § 8(2) states that no person shall be deprived of life, liberty, or property, without due process of law.

222. Nev. Const. art. I, § 16 states that the right of the people to be secure in their persons against unreasonable seizures shall not be violated.

223. Nev. Const. Art. XV, § 2 states that members of the legislature, and all officers, executive, judicial and ministerial shall be required to take and subscribe to the oath as prescribed in the aforementioned article and section of the Constitution of the State of Nevada.

224. That the oath prescribed in Nev. Const. art. XV, § 2 states, *inter alia*, that all officers, among others, shall support, protect, and defend the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and will well and faithfully perform all the duties of the office of which one is about to enter.

225. The Due Process Clauses of the Nevada Constitutions protects individuals from state actions that deprive them of life, liberty, or property without due process of law.[1]

226. The Due Process Clause under the Nev. Const. Art. 1, § 6, requires that the procedures by which laws are applied be fundamentally fair, so that individuals are not subjected to the arbitrary exercise of government power. The appropriate framework for assessing procedural rules requires a determination as to whether the procedures are offensive to the

[1] See also *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev. 28, 30, 388 P.3d 970, 972 (2017).

concept of fundamental fairness.

227. Jacob Edwards has a right, clearly established and enforceable, as protected under the Nevada Constitution, to be free from deprivation of life and from unreasonable seizures by Defendants.

228. At all times relevant hereto, Defendants SPARKS PD and SPARKS PD OFFICERS, violated the Constitution of the State of Nevada by causing Jacob Edwards to be deprived of the rights, privileges and/or immunities secured in the Constitution of the State of Nevada, as alleged herein, and by failing to adhere to their oath of office.

229. Defendants, and each of them, violated Jacob Edwards' rights guaranteed by the Nevada Constitution when each deliberately and with conscious disregard for the life and safety of the motoring public and innocent bystanders, engaged in a needless, reckless, unjustified and unreasonably dangerous high-speed automobile chase that caused the deadly crash as alleged herein.

230. Defendants, and each of them, violated Jacob Edwards' rights guaranteed by the Nevada Constitution when each deliberately and with conscious disregard for the life and safety of the motoring public and innocent bystanders, failed to discontinue the pursuit despite having knowledge that that alleged suspect was already in custody and that the Suspect's Vehicle exhibited dangerous propensities likely to result in severe injury or death, as alleged herein.

231. As a direct and proximate result of Defendant's conduct, and each of them, Jacob Edwards was denied due process of law as protected under the Nevada Constitution, by Defendants' unreasonable seizure. The Defendants' conduct, and each of them, was offensive to the concept of fundamental fairness, protected under the Nevada Constitution.

232. That the wrongful and unlawful acts perpetrated by the Defendants, and each of them, in intentionally disregarding the Nevada constitutional rights of Jacob Edwards were willful and performed with a disregard for the established and constitutionally protected rights of Jacob Edwards.

233. Jacob Edwards was subjected to physical injury and pain and suffering by the acts of Defendants, and each of them, entitling Plaintiffs to compensatory damages and attorneys'

NETTLES | MORRIS
1389 Galleria Drive, Suite 200
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(702) 434-8282 / (702) 434-1488 (fax)

fees.

234. At all times relevant hereto, Defendants SPARKS PD OFFICERS and were acting within the course and scope of their employment and pursuant to the doctrine of *respondeat superior*, SPARKS PD is liable to Plaintiffs for the injuries and damages caused by Defendants' wrongful acts, as alleged herein.

235. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Jacob Edwards was killed, and Plaintiffs have suffered substantial physical and psychological injuries, harms and losses all to Plaintiff's damage in a sum in excess of $15,000.00.

236. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have been limited in certain occupational and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiff's damage in an amount in excess of $15,000.00.

237. As a direct, legal and proximate result of the acts and omissions of Defendants, and each of them, as alleged herein, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

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NETTLES | MORRIS
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WHEREFORE, Plaintiffs expressly reserving the right to amend this complaint prior to or at the time of trial of this action, to insert those items of damage not yet fully ascertainable, prays for judgment against the Defendants, and each of them, as follows:

1. For general damages in excess of $15,000.00;
2. For special damages in excess of $15,000.00;
3. For pecuniary damages in an amount in excess of $15,000.00;
4. For equitable relief that Defendant SPARKS PD be required to adopt policies to prevent further incidents such as complained of herein;
5. For equitable relief that Defendants SPARKS PD and its SPARKS PD OFFICERS be required to comply with training requirements to prevent further incidents such as complained of herein;
6. For equitable relief that Defendants SPARKS PD OFFICERS be investigated and disciplined including, but not limited to, termination of employment;
7. For any and all pre- and post-judgment interest as permitted by law;
8. For reasonable attorney's fees and costs of suit; and
9. For such other and further relief as the court deems just and proper.

DATED this 18th day of February, 2022.

NETTLES | MORRIS



BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. MCLEOD, ESQ.
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AFFIRMATION

PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document, **COMPLAINT**, **DOES NOT** contain the social security number of any person.

DATED this 18th day of February, 2022.

NETTLES | MORRIS



BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
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Brian D. Nettles, Esq.
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Attorney(s) for: Plaintiff(s)

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Alicia L. Lerud
Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Edwards et al.
vs ***Plaintiff(s)***
The City of Sparks; a political subdivision; et al.
Defendant(s)

Case No.: **CV22-00282**
Dept. No.:
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Taylor Jae Diem**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to The City of Sparks; Complaint** on the **2nd** day of **June**, **2022** and served the same on the **2nd** day of **June**, **2022** at **1:02 PM** by serving the **Defendant**, **The City of Sparks; a political subdivision** by personally delivering and leaving a copy at **431 Prater Way, Sparks, NV 89431** with **Nick Joyce, City Clerk** pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 2nd day of June, 2022.

Taylor Jae Diem # R-2022-01492
Legal Process Service License # 604
WorkOrderNo **2204217**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

AFFT
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State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al.
Plaintiff(s)

vs

The City of Sparks; a political subdivision; et al.
Defendant(s)

Case No.: **CV22-00282**
Dept. No.:
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Taylor Jae Diem**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to The Police Department of the City of Sparks; Complaint** on the **2nd** day of **June**, **2022** and served the same on the **2nd** day of **June**, **2022** at **12:39 PM** by serving the **Defendant**, **The Police Department of the City of Sparks, a law enforcement agency of the State of Nevada** by personally delivering and leaving a copy at **1701 E. Prater Way, Sparks, NV 89434** with **Carlos Solorio, Police Assistant** pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 2nd day of June, 2022.

Taylor Jae Diem # R-2022-01492
Legal Process Service License # 604
WorkOrderNo **2204218**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1067
Nettles Morris
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1389 Galleria Dr., #200
Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
vs ***Plaintiff(s)***
The City of Sparks; a political subdivision; et; al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **8**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Edik Dominquez; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **5th** day of **June**, **2022** at **9:46 AM** by serving to **Defendant**, **Edik Dominguez, an individual** by personally delivering and leaving a copy with **Ann (Caucasian female, 27-35 yrs, 5'4"-5'7", 120-125 lbs, brown hair)**, a person of suitable age and discretion residing at the **Defendant**'s usual place of abode located at **3181 Myles Dr., Sparks, NV 89434**. Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 6th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204262**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1067
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1389 Galleria Dr., #200
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State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Clerk of the Court
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SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
vs ***Plaintiff(s)***
The City of Sparks; a political subdivision; et; al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **8**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Mike McCreary; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **4th** day of **June**, **2022** at **3:56 PM** by delivering and leaving a copy with the **Defendant**, **Mike McCreary, an individual** at **1721 Harte Rd., Reno, NV 89521**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 6th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204266**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1067
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State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
vs ***Plaintiff(s)***
The City of Sparks; a political subdivision; et al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **8**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **4th** day of **June**, **2022** at **7:56 PM** by delivering and leaving a copy with the **Defendant**, **Patrick B. McNeely** at **6177 Red Stable Rd. Sparks Nevada 89436**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 6th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204267**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1067
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Brian D. Nettles, Esq.
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Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
Plaintiff(s)
vs
The City of Sparks; a political subdivision; et; al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **I**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to John Patton; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **5th** day of **June**, **2022** at **1:45 PM** by delivering and leaving a copy with the **Defendant**, **John P. Patton** at **4105 Big Bang Ct., Sparks, NV 89436**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 6th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204258**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1067
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State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
vs ***Plaintiff(s)***
The City of Sparks; a political subdivision; et; al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **I**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Robert Canterbury; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **3rd** day of **June**, **2022** at **8:05 pm** by delivering and leaving a copy with the **Defendant**, **Robert Canterbury, an individual** at **6675 Dorchester Dr. Sparks NV 89436**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 6th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204253**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1067
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Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
vs ***Plaintiff(s)***
The City of Sparks; a political subdivision; et; al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **I**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Peter Loeschner; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **4th** day of **June**, **2022** at **7:12 PM** by delivering and leaving a copy with the **Defendant**, **Peter Loeschner, an individual** at **7728 Rhythm Cir., Sparks, NV 89436**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 6th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204254**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1067
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Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
Plaintiff(s)

vs

The City of Sparks; a political subdivision; et; al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **I**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Jay Egami; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **4th** day of **June**, **2022** at **4:45 PM** by delivering and leaving a copy with the **Defendant**, **Jay Egami, an individual** at **9782 Quartette Dr. Reno NV 89521**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 6th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204256**

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State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
Plaintiff(s)

vs

The City of Sparks; a political subdivision; et; al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **I**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Dan Snow; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **4th** day of **June**, **2022** at **6:58 PM** by delivering and leaving a copy with the **Defendant**, **Dan Snow, an individual** at **20 Miranda Ct., Sparks, NV 89441**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 6th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204257**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1067
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Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Alicia L. Lerud
Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
Plaintiff(s)

vs

The City of Sparks; a political subdivision; et al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **I**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Brian Sullivan; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **4th** day of **June**, **2022** at **8:25 PM** by delivering and leaving a copy with the **Defendant**, **Brian Sullivan, an individual** at **4187 Talladega Dr., Sparks, NV 89436**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 6th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204263**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1067
Nettles Morris
Brian D. Nettles, Esq.
1389 Galleria Dr., #200
Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Alicia L. Lerud
Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
Plaintiff(s)

vs

The City of Sparks; a political subdivision; et al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **I**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Chris Broce; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **4th** day of **June**, **2022** at **4:26 PM** by serving to **Defendant**, **Chris Broce, an individual** by personally delivering and leaving a copy with **Tiffany Broce**, a person of suitable age and discretion residing at the **Defendant**'s usual place of abode located at **10854 Oakhaven Dr. Reno NV 89521**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 6th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204265**

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1067
Nettles Morris
Brian D. Nettles, Esq.
1389 Galleria Dr., #200
Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

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Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
Plaintiff(s)

vs

The City of Sparks; a political subdivision; et; al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **8**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Kathryn Jean Marie Gifford**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Nicholas Chambers; Complaint** on the **7th** day of **June**, **2022** and served the same on the **7th** day of **June**, **2022** at **12:10 PM** by delivering and leaving a copy with the **Defendant**, **Nicholas Chambers, an individual** at **Sparks Police Department, 1701 E Prater Way, Sparks NV 89434**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 7th day of June, 2022.

Kathryn Jean Marie Gifford # R-102400
Legal Process Service License # 604
WorkOrderNo **2204260**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1075

Nettles Morris
Brian D. Nettles, Esq.
1389 Galleria Dr., #200
Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Case No.: **CV22-00282**

Avery Edwards, a minor by and through her guardian Mark Edwards; et al ***Plaintiff(s)***

vs

The City of Sparks; a political subdivision; et al ***Defendant(s)***

Dept. No.: **8**

Date:

Time:

AFFIDAVIT OF ATTEMPTED SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That Affiant is and was on the day when she attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within **Summons to Nicholas Chambers; Complaint** on the **3rd** day of **June**, **2022** and attempted to effect service on **Nicholas Chambers** at **6975 Morgan Hill Ct., Reno NV 89523** as follows:

Date	Time	Address	Outcome
6/4/2022	**5:40 PM**	**As above.**	**Address corresponds to a single story residence. No answer at the door, no visual movement or audible noise from within. An Amazon package with the name Monica was on the porch.**
6/5/2022	**2:30 PM**	**As above.**	**No answer at the door, no visual movement or audible noise from within. A LPS delivery notice was left. The package from the previous visit was no longer on porch.**
	3:13 PM		**Nicholas Chambers made contact via phone number 702-271 -4433, Nicholas indicated he was busy and could accept service the following day after 7:00 PM**
6/6/2022	**8:43 PM**	**As above.**	**No answer at the door, no visual movement or audible noise. When leaving the residence Nicholas made contact via phone, he stated that we no longer needed to serve him as he was served through his department.**

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 7th day of June, 2022.

Dawn Marie Sheldon #:**R-2020-17360**
Legal Process Service License # 604

WorkOrderNo **2204260**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1067
Nettles Morris
Brian D. Nettles, Esq.
1389 Galleria Dr., #200
Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

F I L E D
Electronically
CV22-00282
2022-06-08 01:51:16 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
vs ***Plaintiff(s)***
The City of Sparks; a political subdivision; et al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **I**
Date:
Time:

AFFIDAVIT OF SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the: **Summons to Rachel Arulanatham; Complaint** on the **3rd** day of **June**, **2022** and served the same on the **6th** day of **June**, **2022** at **8:27 PM** by delivering and leaving a copy with the **Defendant**, **Rachel Arulanatham, an individual** at **2201 Almond Creek Dr., Reno, NV 89523**.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 7th day of June, 2022.

Dawn Marie Sheldon # R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204255**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1075
Nettles Morris
Brian D. Nettles, Esq.
1389 Galleria Dr., #200
Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

F I L E D
Electronically
CV22-00282
2022-06-08 01:51:16 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
vs ***Plaintiff(s)***
The City of Sparks; a political subdivision; et al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **I**
Date:
Time:

AFFIDAVIT OF ATTEMPTED SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That Affiant is and was on the day when she attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within **Summons to Jason Stone; Complaint** on the **3rd** day of **June**, **2022** and attempted to effect service on **Jason Stone** at **815 Kiley Pkwy., Unit 1205, Sparks, NV 89436** as follows:

Date	Time	Address	Outcome
6/4/2022	**8:11 PM**	**As above.**	**Address corresponds to Water Stone at Kiely Ranch/Green Leaf Waterstone, an apartment complex. No answer at the door, no visual movement or audible noise.**
6/5/2022	**8:30 AM**	**As above.**	**Current female resident, identified herself as Jason's ex wife. She stated that Jason no longer resides at the residence. She provide a new address of 9455 Sky Vista Pkwy., Apt. 34H, Reno, NV 89506**

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 7th day of June, 2022.

Dawn Marie Sheldon #:**R-2020-17360**
Legal Process Service License # 604
WorkOrderNo **2204259**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1075
Nettles Morris
Brian D. Nettles, Esq.
1389 Galleria Dr., #200
Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

F I L E D
Electronically
CV22-00282
2022-06-08 01:51:16 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
vs ***Plaintiff(s)***
The City of Sparks; a political subdivision; et; al
Defendant(s)

Case No.: **CV22-00282**
Dept. No.: **I**
Date:
Time:

AFFIDAVIT OF ATTEMPTED SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That Affiant is and was on the day when she attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within **Summons to Kimberly Hodge; Complaint** on the **3rd** day of **June**, **2022** and attempted to effect service on **Kimberly Hodge, an individual** at **2190 Lenticular Dr., Sparks, NV 89441** as follows:

Date	Time	Address	Outcome
6/4/2022	**6:44 PM**	**As above.**	**Address corresponds to a single story residence. No answer at the door, no visual movement or audible noise from within. A LPS delivery notice was left at the door.**
6/5/2022	**8:39 AM**	**As above.**	**No changes from previous visit.**
6/6/2022	**9:20 PM**	**As above.**	**No changes from previous visits.**

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 7th day of June, 2022.

Dawn Marie Sheldon #:R-2020-17360
Legal Process Service License # 604
WorkOrderNo **2204261**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

1075
Nettles Morris
Brian D. Nettles, Esq.
1389 Galleria Dr., #200
Henderson , NV 89014
State Bar No.: 7462
Attorney(s) for: Plaintiff(s)

F I L E D
Electronically
CV22-00282
2022-06-08 01:51:16 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9089680

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY NEVADA

Avery Edwards, a minor by and through her guardian Mark Edwards; et al
vs ***Plaintiff(s)***
The City of Sparks; a political subdivision; et; al
Defendant(s)

Case No.: **CV22-00282**

Dept. No.: **8**

Date:
Time:

AFFIDAVIT OF ATTEMPTED SERVICE

I, **Dawn Marie Sheldon**, being duly sworn deposes and says: That Affiant is and was on the day when she attempted to serve the within action, a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in, the within action. Pursuant to NRS 239B.030 this document does not contain the social security number of any person. That the affiant received the within **Summons to Angel Guillen; Complaint** on the **3rd** day of **June**, **2022** and attempted to effect service on **Angel Guillen** at **7111 Eldridge St. Sparks, NV 89436** as follows:

Date	Time	Address	Outcome
6/4/2022	**7:47 PM**	**As above.**	**Address corresponds to a single story residence. No answer at the door, no visual movement or audible noise, dogs good be heard barking form within. A black Toyota FJ Cruizer, NV Lic. Plate No. 962M18, and a Gray Toyota Rav4 NV Lic. Plate No. 1390 were in the driveway.**
6/5/2022	**9:15 AM**	**As above.**	**No changes from previous visit. A LPS delivery notice was left.**
6/6/2022	**9:40 PM**	**As above.**	**No changes from previous visits.**

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. Executed on this 7th day of June, 2022.

Dawn Marie Sheldon #:**R-2020-17360**
Legal Process Service License # 604
WorkOrderNo **2204264**

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255

F I L E D
Electronically
CV22-00282
2022-06-16 04:59:45 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9104930

1005

BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. M^{c}LEOD, ESQ.
Nevada Bar No. 8185
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
brian@nettlesmorris.com
christian@nettlesmorris.com
alexandra@nettlesmorris.com
Attorneys for Plaintiffs

NETTLES | MORRIS
1389 Galleria Dr. Suite 200
Henderson, NV 89014
702-434-8282 / 702-434-1488 (fax)

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AVERY EDWARDS, a minor by and through her guardian MARK EDWARDS; THE ESTATE OF JACOB EDWARDS by and through KASHIF SHANKLE, Special Administrator of the Estate of Jacob Edwards, Deceased,

Plaintiffs,

vs.

THE CITY OF SPARKS; a political subdivision; THE POLICE DEPARTMENT OF THE CITY OF SPARKS, a law enforcement agency of the State of Nevada; PATRICK B. MCNEELY, an Individual; MIKE MCCREARY, an Individual; JOHN P. PATTON, an Individual; EDIK DOMINGUEZ, an Individual; NICHOLAS CHAMBERS, an Individual; ANGEL GUILLEN, an Individual; DAN SNOW, an Individual; JASON STONE, an Individual; JAY EGAMI, an Individual; BRIAN SULLIVAN, an Individual; ROBERT CANTERBURY, an Individual; KIMBERLY HODGE, an Individual; PETER LOESCHNER, an Individual; RACHEL ARULANATHAM, an Individual; CHRIS BROCE, an Individual; DOE SPARKS POLICE OFFICERS 1 through 10, inclusive; DOE

CASE NO.: CV22-00282
DEPT NO.: 8

ACCEPTANCE OF SERVICE FOR DEFENDANTS ANGEL GUILLEN AND KIMBERLY HODGE

INDIVIDUALS 11 through 20, inclusive; ROE CORPORATIONS 21 through 30, inclusive; and ABC LIMITED LIABILITY COMPANIES 31 through 40, inclusive,

Defendants,

I, Barrack Potter, Senior Assistant City Attorney with the City of Sparks, with clear and direct authority, hereby accept service of process of the SUMMONS and COMPLAINT on behalf of Defendants, ANGEL GUILLEN and KIMBERLY HODGE, in the above-referenced matter on this 13th day of June, 2022. However, I do not accept service of process of the SUMMONS and COMPLAINT on behalf of Defendant Jason Stone as Officer Stone is currently on military orders, is outside the jurisdiction, and has not given authority to the Sparks City Attorney's Office to represent him in this action.

WESLEY K. DUNCAN
Sparks City Attorney



BARRACK POTTER
Senior Assistant City Attorney
Attorneys for Defendants

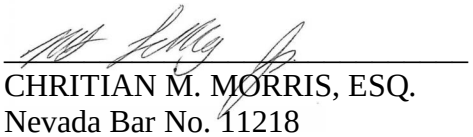
NETTLES | MORRIS
1389 Galleria Dr. Suite 200
Henderson, NV 89014
702-434-8282 / 702-434-1488 (fax)

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document **DOES NOT** contain the social security number of any person.

DATED this 16th day of June, 2022.

NETTLES | MORRIS



CHRITIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. McLEOD, ESQ.
Nevada Bar No. 8185
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Attorneys for Plaintiffs

F I L E D
Electronically
CV22-00282
2022-06-29 03:51:18 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9125265

1005

BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. McLEOD, ESQ.
Nevada Bar No. 8185
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
brian@nettlesmorris.com
christian@nettlesmorris.com
alexandra@nettlesmorris.com
Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AVERY EDWARDS, a minor by and through her guardian MARK EDWARDS; THE ESTATE OF JACOB EDWARDS by and through KASHIF SHANKLE, Special Administrator of the Estate of Jacob Edwards, Deceased,

Plaintiffs,

vs.

THE CITY OF SPARKS; a political subdivision; THE POLICE DEPARTMENT OF THE CITY OF SPARKS, a law enforcement agency of the State of Nevada; PATRICK B. MCNEELY, an Individual; MIKE MCCREARY, an Individual; JOHN P. PATTON, an Individual; EDIK DOMINGUEZ, an Individual; NICHOLAS CHAMBERS, an Individual; ANGEL GUILLEN, an Individual; DAN SNOW, an Individual; JASON STONE, an Individual; JAY EGAMI, an Individual; BRIAN SULLIVAN, an Individual; ROBERT CANTERBURY, an Individual; KIMBERLY HODGE, an Individual; PETER LOESCHNER, an Individual; RACHEL ARULANATHAM, an Individual; CHRIS BROCE, an Individual; DOE SPARKS POLICE OFFICERS 1 through 10, inclusive; DOE

CASE NO.: CV22-00282
DEPT NO.: 8

ACCEPTANCE OF SERVICE ON BEHALF OF BRIAN SULLIVAN

NETTLES | MORRIS
1389 Galleria Dr. Suite 200
Henderson, NV 89014
702-434-8282 / 702-434-1488 (fax)

INDIVIDUALS 11 through 20, inclusive; ROE CORPORATIONS 21 through 30, inclusive; and ABC LIMITED LIABILITY COMPANIES 31 through 40, inclusive,

Defendants,

I, Barrack T. Potter, Esq., of the Sparks City Attorney's Office, with clear and direct authority, hereby accept service of process of the SUMMONS and COMPLAINT on behalf of Defendant BRIAN SULLIVAN in the above-referenced matter on this 29th day of June, 2022.

/s/ Barrack T. Potter, Esq.

BARRACK T. POTTER, ESQ.
Nevada Bar No. 14105
Sparks City Attorney's Office
431 Prater Way,
Sparks, NV 89431
Attorneys for Defendants

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document **DOES NOT** contain the social security number of any person.

DATED this 26th day of June, 2022.

NETTLES | MORRIS

CHRITIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
ALEXANDRA B. McLEOD, ESQ.
Nevada Bar No. 8185
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014
Attorneys for Plaintiffs

NETTLES | MORRIS
1389 Galleria Dr. Suite 200
Henderson, NV 89014
702-434-8282 / 702-434-1488 (fax)

Thalia Gomez

From: Potter, Barrack <bpotter@cityofsparks.us>
Sent: Wednesday, June 29, 2022 3:41 PM
To: Thalia Gomez
Cc: Wesley LeMay; Doyle, Roxanne; Northington, Mariah
Subject: RE: Edwards et al. v. City of Sparks et al. - Service to Brian Sullivan

You can use my e-signature. Please fix my name in the signature block first though. Thank you.

Barrack Potter
Senior Assistant City Attorney
Sparks City Attorney's Office
431 Prater Way
Sparks, NV 89431
(775) 353-2320
bpotter@cityofsparks.us



From: Thalia Gomez <thalia@nettlesmorris.com>
Sent: Wednesday, June 29, 2022 3:34 PM
To: Potter, Barrack <bpotter@cityofsparks.us>
Cc: Wesley LeMay <Wesley@nettlesmorris.com>; Doyle, Roxanne <rdoyle@cityofsparks.us>; Northington, Mariah <mnorthington@cityofsparks.us>
Subject: RE: Edwards et al. v. City of Sparks et al. - Service to Brian Sullivan

This Message Is From an External Sender

[NOTICE: This message came from outside City of Sparks -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Perfect,

See attached.

Thank you once again for your professional courtesy!

Best,

Thalia Gomez
Litigation Paralegal
NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
P. (702) 434-8282 ext. 243
F. (702) 434-1488

From: Potter, Barrack <bpotter@cityofsparks.us>
Sent: Wednesday, June 29, 2022 3:20 PM
To: Thalia Gomez <thalia@nettlesmorris.com>
Cc: Wesley LeMay <Wesley@nettlesmorris.com>; Doyle, Roxanne <rdoyle@cityofsparks.us>; Northington, Mariah <mnorthington@cityofsparks.us>
Subject: RE: Edwards et al. v. City of Sparks et al. - Service to Brian Sullivan

Ms. Gomez,

We have no issue accepting service for Brian Sullivan. I have already appeared on his behalf.

Barrack Potter
Senior Assistant City Attorney
Sparks City Attorney's Office
431 Prater Way
Sparks, NV 89431
(775) 353-2320
bpotter@cityofsparks.us

From: Thalia Gomez <thalia@nettlesmorris.com>
Sent: Wednesday, June 29, 2022 2:46 PM
To: Potter, Barrack <bpotter@cityofsparks.us>
Cc: Wesley LeMay <Wesley@nettlesmorris.com>; Doyle, Roxanne <rdoyle@cityofsparks.us>
Subject: Edwards et al. v. City of Sparks et al. - Service to Brian Sullivan

This Message Is From an External Sender

[NOTICE: This message came from outside City of Sparks -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Good afternoon Mr. Potter,

It appears that a different Brian Sullivan accepted service on this matter – see attached.

Would you be amenable to accept service for Officer Sullivan as well?

Kindly advise, thank you!

Best,
Thalia Gomez
Litigation Paralegal
NETTLES | MORRIS
1389 Galleria Drive, Suite 200
Henderson, NV 89014
P. (702) 434-8282 ext. 243

FILED
Electronically
CV22-00282
2022-09-15 02:24:21 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9262410

1005

BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRISTIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Telephone: (702) 434-8282
Facsimile: (702) 434-1488
brian@nettlesmorris.com
christian@nettlesmorris.com
alexandra@nettlesmorris.com
Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AVERY EDWARDS, a minor by and through her guardian MARK EDWARDS; THE ESTATE OF JACOB EDWARDS by and through KASHIF SHANKLE, Special Administrator of the Estate of Jacob Edwards, Deceased,

Plaintiffs,

vs.

THE CITY OF SPARKS; a political subdivision; THE POLICE DEPARTMENT OF THE CITY OF SPARKS, a law enforcement agency of the State of Nevada; PATRICK B. MCNEELY, an Individual; MIKE MCCREARY, an Individual; JOHN P. PATTON, an Individual; EDIK DOMINGUEZ, an Individual; NICHOLAS CHAMBERS, an Individual; ANGEL GUILLEN, an Individual; DAN SNOW, an Individual; JASON STONE, an Individual; JAY EGAMI, an Individual; BRIAN SULLIVAN, an Individual; ROBERT CANTERBURY, an Individual; KIMBERLY HODGE, an Individual; PETER LOESCHNER, an Individual; RACHEL ARULANATHAM, an Individual; CHRIS BROCE, an Individual; DOE SPARKS POLICE OFFICERS 1 through 10, inclusive; DOE

CASE NO.: CV22-00282
DEPT NO.: 8

ACCEPTANCE OF SERVICE ON BEHALF OF JASON STONE

NETTLES | MORRIS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702-434-8282 / 702-434-1488 (fax)

INDIVIDUALS 11 through 20, inclusive; ROE CORPORATIONS 21 through 30, inclusive; and ABC LIMITED LIABILITY COMPANIES 31 through 40, inclusive,

Defendants,

I, Barrack T. Potter, Esq., of the Sparks City Attorney's Office, with clear and direct authority, hereby accept service of process of the SUMMONS and COMPLAINT on behalf of Defendant JASON STONE in the above-referenced matter on this 14th day of September, 2022.

/s/ Barrack T. Potter, Esq.

BARRACK T. POTTER, ESQ.
Nevada Bar No. 14105
Sparks City Attorney's Office
431 Prater Way,
Sparks, NV 89431
Attorneys for Defendants

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document **DOES NOT** contain the social security number of any person.

DATED this 15th day of September, 2022.

NETTLES | MORRIS

BRIAN D. NETTLES, ESQ.
Nevada Bar No. 7462
CHRITIAN M. MORRIS, ESQ.
Nevada Bar No. 11218
WESLEY H. LEMAY, JR., ESQ.
Nevada Bar No. 14907
2250 Corporate Circle, Suite 390
Henderson, Nevada 89074
Attorneys for Plaintiffs

NETTLES | MORRIS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
702-434-8282 / 702-434-1488 (fax)

Thalia Gomez

From: Potter, Barrack <bpotter@cityofsparks.us>
Sent: Wednesday, September 14, 2022 4:19 PM
To: Thalia Gomez
Cc: Doyle, Roxanne; Duncan, Wes; Northington, Mariah; Wesley LeMay
Subject: Re: Edwards et al. v. City of Sparks et al. - Acceptance of Service (Defendant Stone)

Good afternoon,

You can use my e-signature. Thank you.

Barrack Potter
Senior Assistant City Attorney
Sparks City Attorney's Office
431 Prater Way
Sparks, NV 89431
(775) 353-2320
bpotter@cityofsparks.us
Sent from iPhone



From: Thalia Gomez <thalia@nettlesmorris.com>
Sent: Wednesday, September 14, 2022 4:15 PM
To: Potter, Barrack <bpotter@cityofsparks.us>
Cc: Doyle, Roxanne <rdoyle@cityofsparks.us>; Duncan, Wes <wduncan@cityofsparks.us>; Northington, Mariah <mnorthington@cityofsparks.us>; Wesley LeMay <Wesley@nettlesmorris.com>
Subject: Edwards et al. v. City of Sparks et al. - Acceptance of Service (Defendant Stone)

This Message Is From an External Sender

[NOTICE: This message came from outside City of Sparks -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Good afternoon counsel,

Following up on this matter. Could you kindly execute the attached so that we may it filed into the case?

The current deadline to serve Officer Stone per the SAO is tomorrow …

Thank you in advance!

Best,
Thalia Gomez
Litigation Paralegal
NETTLES | MORRIS

2250 Corporate Circle, Suite 390
Henderson, NV 89074
P. (702) 434-8282 ext. 243
F. (702) 434-1488

From: Thalia Gomez
Sent: Monday, September 12, 2022 4:44 PM
To: Potter, Barrack <bpotter@cityofsparks.us>
Cc: Doyle, Roxanne <rdoyle@cityofsparks.us>; Duncan, Wes <wduncan@cityofsparks.us>; Northington, Mariah <mnorthington@cityofsparks.us>; Wesley LeMay <Wesley@nettlesmorris.com>; Christian Morris <Christian@nettlesmorris.com>
Subject: RE: Edwards et al. v. City of Sparks et al. - Acceptance of Service (Defendant Stone)

Hello Mr. Potter,

See enclosed Acceptance of Service for your review and signature.

Attaching a copy of the Summons and Complaint for your records.

Let us know if you have any proposed changes or if you have any other questions, thank you!

Best,
Thalia Gomez
Litigation Paralegal
NETTLES | MORRIS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
P. (702) 434-8282 ext. 243
F. (702) 434-1488

From: Potter, Barrack <bpotter@cityofsparks.us>
Sent: Thursday, September 8, 2022 10:34 AM
To: Thalia Gomez <thalia@nettlesmorris.com>
Cc: Doyle, Roxanne <rdoyle@cityofsparks.us>; Duncan, Wes <wduncan@cityofsparks.us>; Northington, Mariah <mnorthington@cityofsparks.us>; Wesley LeMay <Wesley@nettlesmorris.com>; Christian Morris <Christian@nettlesmorris.com>
Subject: RE: Edwards et al. v. City of Sparks et al. - Acceptance of Service (Defendant Stone)

Good morning,

I was able to meet with Officer Stone this morning and he has requested representation by my office. Please send over the proposed document. Thank you.

Barrack Potter
Senior Assistant City Attorney
Sparks City Attorney's Office
431 Prater Way
Sparks, NV 89431
(775) 353-2320
bpotter@cityofsparks.us

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Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AVERY EDWARDS, a minor by and through her guardian MARK EDWARDS; THE ESTATE OF JACOB EDWARDS by and through KASHIF SHANKLE, Special administrator of the Estate of Jacob, Deceased

Plaintiffs,

vs.

THE CITY OF SPARKS; a political subdivision, THE POLICE DEPARTMENT OF THE CITY OF SPARKS, a law enforcement agency of the State of Nevada; PATRICK B. MCNEELY, an Individual; MIKE MCCREARY, an Individual; JOHN P. PATTON, an Individual; EDIK DOMINGUEZ, an Individual; NICHOLAS CHAMBERS, an Individual; ANGEL GUILLEN, an Individual; DAN SNOW, an Individual; JASON STONE, an Individual; JAY EGAMI, an Individual; BRIAN SULLIVAN, an Individual; ROBERT CANTERBURY, an Individual; KIMBERLY HODGE, an Individual; PETER LOESCHNER, an Individual; RACHEL ARULANANTHAM, an Individual; CHRIS BOCE, an Individual; DOE SPARKS POLICE OFFICERS 1 through 10, inclusive; DOE INDIVIDUALS 11 through 20, inclusive; ROE CORPORATIONS 21 through 30, inclusive, and ABC LIMITED LIABILITY COMPANIES 31 – 40, inclusive,

Defendants.

CASE NO.: CV22-00282

DEPT. NO.: 8

ANSWER TO COMPLAINT

COMES NOW Defendants CITY OF SPARKS, THE POLICE DEPARTMENT OF THE CITY OF SPARKS, PATRICK B. MCNEELY, MIKE MCCREARY, JOHN P. PATTON, EDIK DOMINGUEZ, NICHOLAS CHAMBERS, ANGEL GUILLEN, DAN SNOW, JASON STONE, JAY EGAMI, BRIAN SULLIVAN, ROBERT CANTERBURY, KIMBERLY HODGE, PETER LOESCHNER, RACHEL ARULANANTHAM, CHRIS BOCE, (hereinafter "Defendants") by and through counsel Wesley K. Duncan, Sparks City Attorney, Barrack Potter, Senior Assistant City Attorney, and Mariah Northington, Senor Assistant City Attorney, and in Answer to Plaintiff's Complaint, filed in this matter on February 18, 2022, admit, deny, and aver as follow.

STATEMENT OF JURISIDICATION AND VENUE

1. The allegations in paragraph 1 of the Complaint state legal conclusions that do not require a response from Defendants.

PARTIES

2. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and on that basis, deny same.

3. The allegations in Paragraph 3 state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and on that basis, deny same.

4. The allegations in Paragraph 4 state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and on that basis, deny same.

5. The allegations in Paragraph 5 state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and on that basis, deny same.

6. Defendants admit the City of Sparks (hereinafter "City") is a political subdivision of the State of Nevada and the Police Department of the City of Sparks (hereinafter "SPD") is a law

enforcement agency located in the City of Sparks, Nevada. Defendants deny the remaining allegations in Paragraph 6 as the City of Sparks is a municipal corporation, organized and existing under the laws of the State of Nevada through a charter approved by the Legislature and the Sparks Police Department was created by an ordinance in the City of Sparks.

7. Defendants admit Defendant Mike McCreary (hereinafter "McCreary") is an individual that resides in the State of Nevada and was employed by the City as a Sergeant with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

8. Defendants admit Defendant John P. Patton (hereinafter "Patton") is an individual that resides in the State of Nevada and was employed by the City as a Lieutenant with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

9. Defendants admit Defendant Edik Dominguez (hereinafter "Dominguez") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

10. Defendants admit Defendant Nicholas Chambers (hereinafter "Chambers") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

11. Defendants admit Defendant Angel Guillen (hereinafter "Guillen") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

12. Defendants admit Defendant Dan Snow (hereinafter "Snow") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

13. Defendants admit Defendant Jason Stone (hereinafter "Stone") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

14. Defendants admit Defendant Kimberly Hodge (hereinafter "Hodge") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

15. Defendants admit Defendant Peter Loeschner (hereinafter "Loeschner") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

16. Defendants admit Defendant Rachel Arulanantham (hereinafter "Arulanantham") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

17. Defendants admit Defendant Jay Egami (hereinafter "Egami") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

18. Defendants admit Defendant Robert Canterbury (hereinafter "Canterbury") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

19. Defendants admit Defendant Brian Sullivan (hereinafter "Sullivan") is an individual that resides in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

20. Defendants admit Defendant Patrick B. McNeely (hereinafter "McNeely") is an individual that resides in the State of Nevada and was employed as a Patrol Sergeant with SPD during the time frame alleged in Plaintiff's Complaint. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

21. Defendants admit Defendant Chris Broce (hereinafter "Broce") is an individual that resided in the State of Nevada and was employed by the City as an Officer with SPD during the time frame alleged in Plaintiff's Complaint. Broce denies that he was a Patrol Sergeant employed by the City with SPD. The remaining section of this Paragraph states a legal conclusion that does not require a response from Defendants.

22. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and therefore deny same.

23. The allegations in Paragraph 23 state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 and on that basis, deny same.

24. The allegations in Paragraph 24 state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and on that basis, deny same.

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

25. The allegations in Paragraph 25 state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and on that basis, deny same.

26. The allegations in Paragraph 26 state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and on that basis, deny same.

27. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 and therefore deny same.

28. The allegations in Paragraph 28 state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and on that basis, deny same.

29. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and therefore deny same.

30. Defendants admit that SPD Officers responded to a call for service at Bob & Lucy's Tavern, located at 1515 Oddie Blvd., on or about February 22, 2020. Defendants deny the other allegations in this paragraph as the 911 calls, CAD Notes, and videos speak for themselves.

31. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and therefore deny same.

32. Defendants deny that MCNEELY made contact with a female, who when Sims saw her "started yelling that it was her to who had a gun."

33. Defendants admit that MCNEELY placed the female in handcuffs; she identified herself as Adriana Norman ("Norman") and told MCNEELY that she went to Bob and Lucy's with Ryan Williams ("Williams") and Zane Kelly ("Kelly").

34. Defendants admit that Norman told MCNEELY she did not even think the gun was real.

35. The allegations in Paragraph 35, state legal conclusions that do not require a response from Defendants. To the extend a response is required, Defendants deny.

36. The allegations in Paragraph 36, state legal conclusions that do not require a response from Defendants. To the extend a response is required, Defendants deny.

37. Defendants deny the allegations in Paragraph 37.

38. Defendants admit that Ryan Williams was in the driver's seat.

39. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 and therefore deny same.

40. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 and therefore deny same.

41. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 and therefore deny same.

42. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 and therefore deny same.

43. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 and therefore deny same.

44. Defendants admit the allegations in Paragraph 44 as the videos and audio recordings speak for themselves.

45. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 and therefore deny same.

46. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 and therefore deny same.

47. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and therefore deny same.

48. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 and therefore deny same.

49. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 and therefore deny same.

50. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 and therefore deny same.

51. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 and therefore deny same.

52. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 and therefore deny same.

53. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 and therefore deny same.

54. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 and therefore deny same.

55. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 and therefore deny same.

56. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 and therefore deny same.

57. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and therefore deny same.

58. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 and therefore deny same.

59. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 and therefore deny same.

60. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 and therefore deny same.

61. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 and therefore deny same.

62. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 and therefore deny same.

63. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63 and therefore deny same.

64. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 and therefore deny same.

65. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65 and therefore deny same.

66. The allegations in paragraph 66 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66 and therefore deny same.

67. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 and therefore deny same.

68. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 and therefore deny same.

69. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 and therefore deny same.

70. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70 and therefore deny same.

71. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 and therefore deny same.

72. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72 and therefore deny same.

73. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73 and therefore deny same.

74. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74 and therefore deny same.

75. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 75 and therefore deny same.

76. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76 and therefore deny same.

77. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77 and therefore deny same.

78. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 78 and therefore deny same.

79. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79 and therefore deny same.

80. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 80 and therefore deny same.

81. The allegations in paragraph 81 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 81 and therefore deny same.

82. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82 and therefore deny same.

83. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 83 and therefore deny same.

84. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 84 and therefore deny same.

85. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 85 and therefore deny same.

86. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 86 and therefore deny same.

87. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 87 and therefore deny same.

88. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 88 and therefore deny same.

89. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 89 and therefore deny same.

90. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 90 and therefore deny same.

91. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 91 and therefore deny same.

92. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 92 and therefore deny same.

93. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 93 and therefore deny same.

94. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94 and therefore deny same.

95. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 95 and therefore deny same.

96. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 96 and therefore deny same.

97. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 97 and therefore deny same.

98. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 98 and therefore deny same.

99. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 99 and therefore deny same.

100. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 100 and therefore deny same.

101. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 101 and therefore deny same.

102. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 102 and therefore deny same.

103. Defendants deny the allegations in Paragraph 103.

104. The allegations in paragraph 104 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 104 and therefore deny same.

105. The allegations in paragraph 105 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 105 and therefore deny same.

106. The allegations in paragraph 106 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 106 and therefore deny same.

107. The allegations in paragraph 107 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 107 and therefore deny same.

108. The allegations in paragraph 108 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 108 and therefore deny same.

109. The allegations in paragraph 109 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 109 and therefore deny same.

110. The allegations in paragraph 110 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 110 and therefore deny same.

111. The allegations in paragraph 111 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 111 and therefore deny same.

112. The allegations in paragraph 112 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 112 and therefore deny same.

113. The allegations in paragraph 113 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 113 and therefore deny same.

114. The allegations in paragraph 114 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 114 and therefore deny same.

115. The allegations in paragraph 115 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny that Public Safety Policies apply to Police Officers employed by the City of Sparks.

116. The allegations in paragraph 116 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny that Public Safety Policies apply to Police Officers employed by the City of Sparks.

117. The allegations in paragraph 117 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny.

118. The allegations in paragraph 118 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny.

119. The allegations in paragraph 119 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny.

120. The allegations in paragraph 120 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny.

121. The allegations in paragraph 121 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny.

122. The allegations in paragraph 122 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny.

123. The allegations in paragraph 123 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny.

124. The allegations in paragraph 124 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny.

125. The allegations in paragraph 125 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants deny.

126. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 126 and therefore deny same.

127. The allegations in paragraph 127 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 127 and therefore deny same.

128. The allegations in paragraph 128 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 128 and therefore deny same.

129. The allegations in paragraph 129 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 129 and therefore deny same.

130. The allegations in paragraph 130 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 130 and therefore deny same.

131. The allegations in paragraph 131 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 131 and therefore deny same.

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FIRST CAUSE OF ACTION
(Negligence against Sparks PD Officers)

132. In response to Paragraph 132, Defendants repeat each and every admission and denial stated in Paragraph 1 through 132, inclusive of this Answer as if fully set forth in this Paragraph.

133. The allegations in paragraph 133 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 133 and therefore deny same.

134. The allegations in paragraph 134 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 134 and therefore deny same.

135. The allegations in paragraph 135 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 135 and therefore deny same.

136. The allegations in paragraph 136 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 136 and therefore deny same.

137. The allegations in paragraph 137 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 137 and therefore deny same.

138. The allegations in paragraph 138 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 138 and therefore deny same.

139. The allegations in paragraph 139 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 139 and therefore deny same.

SECOND CAUSE OF ACTION
(Negligent Hiring, Training, Retention against Sparks PD)

140. In response to Paragraph 140, Defendants repeat each and every admission and denial stated in Paragraph 1 through 140, inclusive of this Answer as if fully set forth in this Paragraph.

141. The allegations in paragraph 141 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 141 and therefore deny same.

142. The allegations in paragraph 142 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 142 and therefore deny same.

143. The allegations in paragraph 143 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 143 and therefore deny same.

144. The allegations in paragraph 144 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 144 and therefore deny same.

145. The allegations in paragraph 145 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 145 and therefore deny same.

146. The allegations in paragraph 146 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 146 and therefore deny same.

147. The allegations in paragraph 147 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 147 and therefore deny same.

148. The allegations in paragraph 148 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 148 and therefore deny same.

149. The allegations in paragraph 149 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 149 and therefore deny same.

THIRD CAUSE OF ACTION
(Wrongful Death pursuant to NRS § 41.085 against all Defendants)

150. In response to Paragraph 150, Defendants repeat each and every admission and denial stated in Paragraph 1 through 150, inclusive of this Answer as if fully set forth in this Paragraph.

151. The allegations in paragraph 151 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 151 and therefore deny same.

152. The allegations in paragraph 152 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 152 and therefore deny same.

153. The allegations in paragraph 153 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 153 and therefore deny same.

154. The allegations in paragraph 154 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 154 and therefore deny same.

155. The allegations in paragraph 155 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 155 and therefore deny same.

156. The allegations in paragraph 156 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 156 and therefore deny same.

157. The allegations in paragraph 157 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 157 and therefore deny same.

158. The allegations in paragraph 158 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 158 and therefore deny same.

FOURTH CAUSE OF ACTION
(Violation of 42 U.S.C. § 1983)

159. The Court dismissed the fourth cause of action of the Complaint, and therefore Defendants are not required to respond to paragraphs 159 – 174 of the Complaint. *See* February 3,

2023 Order Granting Motion to Dismiss in Part. Additionally, the allegations in paragraph 159 – 174 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 159 – 174 and therefore deny same.

FIFTH CAUSE OF ACTION
(Violation of Civil Rights – *Monell* Liability for Failure to Train)

160. The Court dismissed the fifth cause of action of the Complaint, and therefore Defendants are not required to respond to paragraphs 175 – 191 of the Complaint. *See* February 3, 2023 Order Granting Motion to Dismiss in Part. Additionally, the allegations in Paragraphs 175 – 191 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 175 – 191 and therefore deny same.

SIXTH CAUSE OF ACTION
(Violation of Civil Rights – *Monell* Liability for Unconstitutional Custom or Policy)

161. The Court dismissed the sixth cause of action of the Complaint, and therefore Defendants are not required to respond to paragraphs 192 – 212 of the Complaint. *See* February 3, 2023 Order Granting Motion to Dismiss in Part. Additionally, the allegations in Paragraphs 192 – 212 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 192 – 212 and therefore deny same.

SEVENTH CAUSE OF ACTION
(Violation of the Constitution of the State of Nevada against all Defendants)

162. The Court dismissed the seventh cause of action of the Complaint, and therefore Defendants are not required to respond to paragraphs 213 – 237 of the Complaint. *See* February 3, 2023 Order Granting Motion to Dismiss in Part. Additionally, the allegations in Paragraphs 213 – 237 of the Complaint state legal conclusions that do not require a response from Defendants. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 213 – 237 and therefore deny same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted against Defendants.

SECOND AFFIRMATIVE DEFENSE

The damages incurred by Plaintiffs, if any, are not attributable to any acts, conduct, or omissions of Defendants.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs failed to exercise ordinary care, caution, or prudence to avoid the injuries and damages alleged, and the same were directly and proximately contributed to or caused by the negligence, misconduct, and fault of Defendants.

FOURTH AFFIRMATIVE DEFENSE

The negligence of Plaintiffs caused or contributed to any injuries or damages that Plaintiffs may have sustained; and the negligence of Plaintiffs, in comparison with the alleged negligence of Defendants, if any, requires the damages sought by Plaintiffs be denied or diminished in proportion to the amount of negligence attributable to Plaintiffs according to law.

FIFTH AFFIRMATIVE DEFENSE

Any injuries alleged by Plaintiffs were caused by and arose out of the risk that Plaintiffs had knowledge of and assumed.

SIXTH AFFIRMATIVE DEFENSE

No special or fiduciary relationship exists between Plaintiffs and Defendants.

SEVENTH AFFIRMATIVE DEFENSE

Defendants have no duty to Plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

Any alleged losses or damages suffered by Plaintiffs, the existence of which are denied, were not the direct or proximate result of Defendants' actions or inactions.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate any losses or damages, and recovery, if any, must therefore be denied or diminished.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' acts and conduct after the time the alleged injuries allegedly occurred caused those alleged injuries to be aggravated and Plaintiffs thereby increased the severity of those alleged injuries, if any, and his recovery, if any, must therefore be denied or diminished.

ELEVENTH AFFIRMATIVE DEFENSE

The injuries and damages sustained by Plaintiffs, if any, were caused by or attributable to the acts or conduct of third parties who were not and are not employees or agents of the City.

TWELFTH AFFIRMATIVE DEFENSE

The allegations in the Complaint are based upon the exercise or performance of, or failure to exercise or perform, discretionary functions or duties on the part of the City and/or its officers, agents or employees, for which Defendants are entitled to immunity from suit under NRS 41.032.

THIRTEENTH AFFIRMATIVE DEFENSE

The allegations in the Complaint are based upon a failure to inspect or failure to discover a hazard, deficiency, or defect, for which Defendants are entitled to immunity from suit under NRS 41.033.

FOURTEENTH AFFIRMATIVE DEFENSE

At all relevant times and places alleged herein, Defendants acted in good faith and without notice or knowledge of any dangerous condition, use, structure, or activity.

FIFTEENTH AFFIRMATIVE DEFENSE

As a political subdivision of the State of Nevada, the City is protected from suit and liability by sovereign immunity.

SIXTEENTH AFFIRMATIVE DEFENSE

In the event the City or any of its agents or employees are ultimately found to be liable for damages incurred by Plaintiffs, any award of said damages against the City may not exceed the statutory limitation of damages pursuant to NRS 41.035, and said award may not include any amount as exemplary or punitive damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 15, all possible affirmative defenses may not have been alleged herein

insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer, and therefore, the Defendants reserve the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. That PLAINTIFFS prayer for relief be denied, PLAINTIFFS take nothing by way of his Complaint, and this action be dismissed with prejudice;

2. That DEFENDANTS be awarded costs of litigation, including reasonable attorney fees; and,

3. That the Court grant DEFENDANTS such further relief as is appropriate under the circumstances.

AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 17th day of February, 2023.

WESLEY K. DUNCAN
Sparks City Attorney

By: /s/ Barrack Potter
BARRACK POTTER
Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Sparks City Attorney's Office, Sparks, Nevada, and that on this date I served the foregoing document(s) entitled **ANSWER TO COMPLAINT** on the persons set forth below by Case Management/Electronic Case Filing (CM/ECF) addressed as follows:

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DATED this 17th day of February, 2023.

/s/ Roxanne Doyle
Roxanne Doyle

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK EDWARDS, et al.,

Plaintiffs,

vs.

CITY OF SPARKS, et al.,

Defendants.

CASE NO.: CV22-00282

DEPT. NO.: 8

DEFENDANTS' MOTION TO DISMISS

Defendants[1], City of Sparks, Sparks Police Department, Patrick McNeely, Mike McCreary, John Patton, Edik Dominguez, Nicholas Chambers, Angel Guillen, Dan Snow, Jay Egami, Brian Sullivan, Robert Canterbury, Kimberly Hodge, Peter Loeschner, Rachel Arulanantham, and Chris Broce, by and through counsel Wesley K. Duncan, Sparks City Attorney, Barrack Potter, Senior Assistant City Attorney, and Mariah Northington, Assistant City Attorney, hereby submit this Motion to Dismiss. This Motion is based upon NRCP 12(b)(5), the following Memorandum of Points and Authorities, and the pleading on file.

[1] Defendant Jason Stone is currently on military orders, is outside the jurisdiction and has not yet had the opportunity to give authority to the Sparks City Attorney's Office to represent him in this action.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

On February 18, 2022, Plaintiffs, Avery Edwards, a minor by and through her guardian Mark Edwards, and the Estate of Jacob Edwards by and through Kashif Shankle, Special Administrator of the Estate of Jacob Edwards ("Plaintiffs"), filed a complaint in this case against the City of Sparks ("City"), Sparks Police Department ("SPD"), and Sparks Police Department officers Patrick McNeely, Mike McCreary, John Patton, Edik Dominguez, Nicholas Chambers, Angel Guillen, Dan Snow, Jason Stone, Jay Egami, Brian Sullivan, Robert Canterbury, Kimberly Hodge, Peter Loeschner, Rachel Arulanantham, and Chris Broce ("SPD Officers") alleging the following seven total causes of action: (1) Negligence against SPD Officers; (2) Negligent Hiring, Training, Retention against SPD; (3) Wrongful Death NRS 41.085 against all Defendants; (4) Violation of 42 U.S.C. § 1983 against all Defendants; (5) Monell Liability for Failure to Train against SPD; (6) Monell Liability for Unconstitutional Custom or Policy against SPD; and (7) Violation of the Constitution of the State of Nevada against all Defendants. *See* Compl.

Plaintiffs allege the following facts in the Complaint to support the claims against Defendants, which must be taken as true, even if they are not, for purposes of a motion to dismiss:

"[O]n or about February 22, 2020, multiple SPARKS PD units responded to Bob and Lucy's located at 1515 Oddie Blvd. in response to reports of a female suspect who flashed a gun at a patron identified as Steve Sims, who was her old roommate, and accused him of stealing her son's Xbox." Compl. at ¶30. Officer McNeely arrived at the scene and "placed the female in handcuffs; she identified herself as Adriana Norman ('Norman') and told McNeely that she went to Bob and Lucy's with Ryan Williams ('Williams') and Zane Kelly ('Kelly')." *Id*. at ¶33. "Norman told McNeely that Williams' gun was not real." *Id*. at ¶34. "Despite having the suspect, Norman, in custody, and being provided with information by Norman that Williams and Kelly were not armed, McNeely advised SPARKS PD OFFICERS that the suspects in the vehicle were armed." *Id*. at ¶36.

"At that same time, SPARKS PD officers identified a white Chevrolet pickup truck being [sic] Nevada License plate '181LMJ' (hereafter the Suspect's Vehicle) in the parking lot." *Id*. at ¶37. "Ryan Williams was in the driver's seat" of the Suspect's Vehicle. *Id*. at ¶38. "[A]t about 6:26 am,

[Officer] CHAMBERS was advised by SPARKS PD Dispatch that the Suspect's Vehicle was parked in front of Bob and Lucy's. [Officer] CHAMBERS pulled up behind the Suspect's Vehicle, deployed his rifle and yelled numerous commands at the Suspect's Vehicle." *Id*. at ¶39. "At the same date and time [Officer] GUILLEN observed the Suspect's Vehicle parked in front of Bob and Lucy's and deployed his AR rifle. [Officer] Guillen observed the Suspect's Vehicle speed off, and began pursuit." *Id*. at ¶40. Officers "CHAMBERS, GUILLEN, HODGE, EGAMI and STONE along with multiple other SPARKS PD OFFICERS engaged in pursuit of the Suspect's Vehicle." *Id*. at ¶44.

Officer "CHAMBERS was the first vehicle in line and STONE was fifth in a line of multiple vehicles in pursuit of the Suspect's Vehicle, exceeding department policy for the number of police vehicles to engage in a pursuit, and in violation of Nevada Department of Public Safety[2] policy 309.4 which limits pursuit to three vehicles (two units and a supervisor)." *Id*. at ¶45. "SPARKS PD officers involved in the pursuit of the Suspect's Vehicle witnessed the Suspect's Vehicle traveling at a high rate of speed including, but not limited to, traveling approximately 65 mph in a 30 mph zone on Rock Boulevard, and run the red light at Rock Boulevard and Victorian Avenue as well as the red light at Rock Boulevard and I-80." *Id*. at ¶51. Officer "GUILLEN observed the Suspect's Vehicle travel at high speed in a residential area and run the red light at Victorian Avenue and Rock Boulevard, and run a second red light at Rock Boulevard." *Id.* at ¶52.

Officer "CHAMBERS pursued the Suspect's Vehicle on Hymer Avenue going westbound, turning southbound onto South 15th Street, and witnessed the Suspect's Vehicle run the stop sign a [sic] located at 15th Street and Pittman Avenue and reach speeds of approximately 70 mph in a posted 25 mph zone." *Id*. at ¶54. "SPARKS PD OFFICERS continued pursuit of the Suspect's Vehicle and observed the Suspect's Vehicle run the red light at Glendale Ave. and McCarran Blvd., while

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[2] Plaintiffs erroneously allege that Sparks Police Department is required to follow the Department of Public Safety's internal policies; however, the Department of Public Safety is a state agency that is comprised of multiple divisions, which does not include the Sparks Police Department. *See* NRS 480.010; NRS 480.100; NRS 480.110; NRS 480.120; NRS 480.130. Sparks Police Department is recognized by the laws of Nevada as a local law enforcement agency. *See* NRS 480.610(4)(c)(3); NRS Chapter 470.

traveling approximately 94 mph." *Id*. at ¶55. "As Suspect's Vehicle turned eastbound on Glendale Avenue, CHAMBERS and HODGE continued pursuit and observed the Suspect's Vehicle reach speeds of 81 mph in a posted 45 mph zone." *Id*. at ¶56. Officer "GUILLEN was informed by SPARKS PD dispatch that the Suspect's Vehicle was traveling 81 mph eastbound on Glendale." *Id*. at ¶59.

Officers "CHAMBERS and HODGE continued pursuit and observed the Suspect's Vehicle fail to stop or even slow down for a solid red light at McCarran Boulevard, traveling at speeds of approximately 80 – 90 mph." *Id*. at ¶60. Officers "CANTERBURY and SULLIVAN continued pursuit and observed the Suspect's Vehicle run the red lights at both intersections of Nugget Ave. and McCarran as well as the I-80 underpass at McCarran Blvd." *Id*. at ¶61. Officer "CHAMBERS continued pursuit of the Suspect's Vehicle eastbound on Glendale Avenue from McCarran Boulevard reaching speeds of 90 mph." *Id*. at ¶62. Officers "CANTERBURY and SULLIVAN continued pursuit traveling at 55 mph and increasing their speeds as the Suspect's Vehicle continued to accelerate." *Id*. at ¶63. Officers "CANTERBURY and SULLIVAN continued pursuit and observed the Suspect's Vehicle enter the intersection of McCarran and Nichols, and swerve into the south-bound travel lanes of McCarran driving against the flow of traffic and into oncoming traffic." *Id*. at ¶64.

Officer "CHAMBERS continued pursuit and observed the Suspect's Vehicle continue traveling northbound on McCarran Boulevard at a dangerously high rate of speed and run another solid red light." *Id*. at ¶71. "As the Suspect's Vehicle continued northbound on McCarran Boulevard, CHAMBERS continued pursuit and attempting to catch up and perform a … PIT but the Suspect's Vehicle accelerated, ran the red light at northbound McCarran Boulevard and Nugget Avenue, and drove into oncoming traffic by driving northbound in the southbound lanes on McCarran Boulevard between Nichols Boulevard [and] Lincoln Way." *Id*. at ¶72. "HODGE continued pursuit and observed the Suspect's Vehicle run the red light at McCarran and Nugget, and again at McCarran and I-80 at speeds of approximately 80 mph." *Id*. at ¶73. Officers "SULLIVAN and CANTERBURY observed the Suspect's Vehicle run the stop sign at E. Lincoln Ave and Stanford St., and again run the stop sign at the intersection of Stanford St. and Victorian Ave." *Id*. at ¶75. Officer "CHAMBERS continued pursuit and observed the Suspect's Vehicle turned southbound onto Stanford Street, reaching speeds up to approximately 67 mph." *Id*. at ¶76.

Officer "CHAMBERS continued pursuit and as the Suspect's Vehicle approached Victorian Avenue and attempted to make a westbound turn onto Victorian Avenue[.]" *Id*. at ¶77. Officer "CHAMBERS accelerated his patrol vehicle causing the right front driver side of [Officer] CHAMBER'S patrol vehicle to collide with the rear passenger side of the Suspect's Vehicle as part of the 'PIT,' which caused he [sic] Suspect's Vehicle to spin and continue eastbound on Victorian Avenue." *Id*. "The failed and deadly force PIT caused [Officer] CHAMBERS to travel southbound across both lanes of traffic on Victorian Avenue, up over the curb and into the chain linked fence located on the southside of the Victorian Avenue resulting in damage to the front driver side of [Officer] CHAMBER'S patrol vehicle and resulting in the front driver side tire being blown out." *Id*. at ¶79. Officer "CHAMBERS conducted the PIT in violation of known policies and procedures because a PIT as non-deadly force, may be used to apprehend violators at speeds of 40 mph and below. Whereas, a PIT at a speed of over 40 mph is as [sic] deadly force." *Id*. at ¶80. "In conducting the deadly force PIT at over 40 mph, [Officer] CHAMBERS demonstrated an intent to cause harm unrelated to the legitimate object of arrest. *Id*. at ¶81. "After the failed PIT, [Officer] GUILLEN observed the Suspect's Vehicle traveling eastbound on Victorian Avenue at a high rate of speed[.]" *Id*. at ¶82. Officer "GUILLEN made a U-turn and … observed the Suspect's Vehicle approach Victorian and McCarran Blvd. and continue eastbound onto the I-80 westbound into oncoming traffic." *Id*. Officer "GUILLEN pursued the Suspect's Vehicle onto the I-80 by using the travel lane on the off ramp to enter the I-80." *Id*.

Officer "STONE and EGAMI observed the Suspect Vehicle's travel eastbound on Victorian Avenue, vehicle [sic] cross McCarran Boulevard and go up the offramp onto 1-80 West driving eastbound. STONE and EGAMI continued their pursuit and followed the Suspect's Vehicle onto the I-80 East on the eastbound side." *Id*. at ¶83. "On or about the same time, [Officers] SULLIVAN AND CANTERBURY were the third unit in pursuit and observed the Suspect's Vehicle drive through the intersection of McCarran Blvd. and Victorian and drive up the offramp to I-80, driving the wrong way." *Id*. at ¶84. Officer "SNOW engaged in pursuit of the Suspect's Vehicle, observed the Suspect's Vehicle utilize a designated bike lane as a travel lane heading eastbound." *Id*. at ¶87. Officer "SNOW maneuvered his vehicle next to the Suspect's Vehicle utilizing a travel lane as both vehicles

approached Victorian and the westbound I-80 off ramp." *Id*. Officer "SNOW continued pursuit into oncoming traffic and entered the I-80 using the freeway shoulder." *Id*. Officer "DOMINGUEZ continued pursuit of the Suspect's Vehicle as it crossed N. McCarran Blvd. and traveled up the westbound I-80 offramp going eastbound into oncoming traffic." *Id*. at ¶91.

"At the same date and time, Jacob Edwards, was driving … westbound on the I-80." *Id*. at ¶92. "At approximately 6:47 am, the Suspect's Vehicle crashed into Jacob Edward's [sic] vehicle, head on, in a violent and forceful manner." *Id*. at ¶93. Officers "GUILLEN and SNOW saw the Suspect's Vehicle crash violently into Jacob Edward's vehicle[.]" *Id*. at ¶94. Officer "GUILLEN used his knife to cut Mark Edward's [sic] seatbelt, took him out and advised others on scene to perform CPR." *Id*. at ¶95. "SPARKS PD officers attempted to perform CPR on Jacob Edwards." *Id*. at ¶96. "Jacob Edwards was pronounced dead at the scene of the crash at around 6:48 am." *Id*. at ¶99.

II. LEGAL STANDARD

NRCP 8(a) provides:

> A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief; and (2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

A plaintiff's complaint is composed of one or more legal claims, as actionable against one or more defendants. The State of Nevada follows a notice pleading standard as to Rule 8(a) and the sufficiency of the complaint. *See Crucil v. Carson City*, 95 Nev. 583, 585, 600 P.2d 216, 217 (1979) ("[T]he pleading of [a] conclusion, either of law or fact, is sufficient so long as the pleading gives fair notice of the nature and basis of the claim."). Nevertheless, even under the notice pleading standard, "[a] complaint must set forth sufficient facts to establish all necessary elements of a claim for relief . . . so that the adverse party has adequate notice of the nature of the claim and relief sought." *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (internal citations omitted).

NRCP 12(b)(5) provides that a defendant may move to dismiss a claim in any pleading for "failure to state a claim upon which relief can be granted[.]" In reviewing such a motion, "[a]ll factual allegations of the complaint must be accepted as true." *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). "A complaint will not be dismissed for failure to state a claim unless it appears

beyond a doubt that plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief." *Id*.

III. ARGUMENT

1. Plaintiffs' claims for wrongful death and negligence fail pursuant to the public duty doctrine and must be dismissed

"It is well established that to prevail on a negligence claim, a plaintiff must establish four elements: (1) the existence of a duty of care, (2) breach of that duty, (3) legal causation, and (4) damages." *Reid v. Phillips*, 2021 WL 4930317, at *5 (D. Nev. Oct. 21, 2021) (citing *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009)). "[T]he question of whether the defendant owes the plaintiff a duty of care is a question of law[.]" *Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 296, 255 P.3d 238, 244 (2011) (citing *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 584, 216 P.3d 793, 798 (2009)).

The public duty doctrine, as codified in NRS 41.0336, states in relevant part that a "law enforcement agency is not liable for the negligent acts or omissions of its ... officers or any other persons called to assist it, nor are the individual officers." NRS 41.0336. The Nevada Supreme Court has repeatedly held that "when a governmental duty runs to the public, no private cause of action is created by a breach of such duty." *Scott v. Dep't of Com*., 104 Nev. 580, 585, 763 P.2d 341, 344 (1988) (citing *Whalen v. County of Clark*, 96 Nev. 559, 613 P.2d 407 (1980); *Bruttomesso v. Las Vegas Met. Police*, 95 Nev. 151, 591 P.2d 254 (1979)). The Nevada Supreme Court has stated that:

> [I]t is generally true that government is not liable for failing to prevent the unlawful acts of others. The duty of government, in this instance the Police Department, runs to all citizens and is to protect the safety and well-being of the public at large. Consequently, government is not liable … without a showing of a special relationship or duty to the particular individual.

Bruttomesso, 95 Nev. at 153, 591 P.2d at 255 (citations omitted).

NRS 41.0336 provides for two exceptions: (1) when an "officer or other person made a specific promise or representation to a natural person who relied upon the promise or representation to the person's detriment" or (2) the "conduct of the [] officer or other person affirmatively caused the harm." *Id.* The rationale behind the public duty doctrine permits public entities to carry out their

duty to the public without fear of financial loss or reprisal. *See Scott*, 104 Nev. at 585-86, 763 P.2d at 344 ("[T]he public interest is better served by a government which can aggressively seek to identify and meet the current needs of the citizenry, uninhibited by the threat of financial loss should its good faith efforts provide less than optimal—or even desirable-results.") (citation omitted).

"The phrase 'affirmatively caused the harm' is not defined in NRS 41.0336." *Coty v. Washoe Cty.*, 108 Nev. 757, 760, 839 P.2d 97, 99 (1992). The Nevada Supreme Court has concluded that "'affirmatively caused the harm,' as used in NRS 41.0336(2), means that a public officer must actively create a situation which leads directly to the damaging result." *Coty*, 108 Nev. at 760–61, 839 P.2d at 99; *see also Porchia v. City of Las Vegas*, 138 Nev. Adv. Op. 4, 504 P.3d 515, 519 (2022). Nevada recognizes two ways in which a special duty may be established: (1) if a statute or ordinance sets forth "mandatory acts clearly for the protection" of an individual "rather than the public as a whole," *Id*. at 761 n. 6, 839 P.2d at 99 n. 6 (internal quotation omitted); or (2) if a public official, "acting within the scope of official conduct, assumes a special duty by creating specific reliance on the part of certain individuals." *Id*. at 760, 839 P.2d at 99.

"Although we have previously held that statutes and ordinances can create a special duty exception to the public duty doctrine, **we have never held that a special duty may be created by internal procedures**." *Id.* at 761 n. 6, 839 P.2d at 99 n. 6 (emphasis added); *see also J.D.H. v. Las Vegas Metro. Police Dep't*, 2015 WL 3657179, at *3 n. 1 (D. Nev. June 12, 2015) ("The *Coty* court reached this conclusion even though the deputy violated the sheriff department's internal procedures requiring the deputy to arrest drivers who fail field sobriety tests because it declined to adopt a minority view that internal procedures, as opposed to statutes or ordinances, could create a special duty.") (citation omitted). Additionally, "internal procedures do not approach the level of statutes or ordinances, which must set forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole in order to create a special duty." *Coty*, 108 Nev. at 761 n. 6, 839 P.2d at 99 n. 6 (internal quotation marks and citation omitted). The duty of "police departments is one owed to the public, but not to individuals." *Id*. at 760, 839 P.2d at 98–99. "Thus, the issue is whether the facts demonstrate that [the officer] was the active and direct cause of the harm to the [plaintiff]." *Id*. at 761, 839 P.2d at 99.

In this case, Plaintiffs claim that SPD Officers "owed a duty to Jacob Edwards to drive owed [sic] a non-delegable duty of care to the motoring public and Jacob Edwards while operating their patrol vehicles in the course and scope of their duties for the SPARKS PD in a police pursuit." Compl. at ¶133. Plaintiffs further claim that SPD Officers "had a non-delegable duty to use reasonable care when performing in the capacity as police officers." *Id*. at ¶134. Plaintiffs additionally claim that SPD Officers "breached their duties of care as alleged herein including, but not limited to, by engaging in a needless, reckless, and unreasonably dangerous pursuit, by failing to discontinue the pursuit, and by pursuing the Suspect's Vehicle up the I-80 offramp into oncoming traffic." *Id*. at ¶135.

Defendants agree that officers have a duty to drive with care, which is legally required pursuant to NRS 484B.700(4). However, NRS 484B.700 creates a duty for officers to drive with due care, not ensure suspected criminals drive with due care. NRS 484B.700 states in relevant part:

> The driver of an authorized emergency vehicle … when in pursuit of an actual or suspected violator of the law … may (a) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation[;] (b) Exceed any speed limits so long as the driver does not endanger life or property, except that a vehicle escorting a funeral procession may not exceed the speed limit by more than 15 miles per hour to overtake the procession and direct traffic at the next intersection[; and] (c) Disregard regulations governing direction of movement or turning in specified directions. The driver of a vehicle escorting a funeral procession may direct the movements of the vehicles in the procession in a similar manner and may direct the movements of other vehicles…. **The provisions of this section do not relieve the driver from the duty to drive with due regard for the safety of all persons and do not protect the driver from the consequences of the driver's reckless disregard for the safety of others**.

(emphasis added). "NRS 484B.700(4) imposes an ordinary negligence standard of liability." *Glover-Armont v. Cargile*, 134 Nev. 361, 373, 426 P.3d 45, 55 (Nev. App. 2018). Plaintiffs do not allege that an officer drove on the wrong side of the freeway and hit Jacob Edwards' vehicle. Instead, Plaintiffs allege the police somehow have a duty to control the criminal conduct of a third party, which is not contemplated in the plain language of NRS 484B.700. Thus, NRS 484B.700 does not apply to the alleged facts and does not create a duty here.

Plaintiffs did not allege a statute or ordinance that creates a special duty. Plaintiffs seem to allege that an internal policy created a special duty; however, the Nevada Supreme Court has specifically held that "internal procedures do not approach the level of statutes or ordinances, which

must set forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole in order to create a special duty." *Coty*, 108 Nev. at 761 n. 6, 839 P.2d at 99 n. 6 (internal quotation marks and citation omitted). Additionally, Plaintiffs do not allege that any of the SPD Officers made a specific promise or representation to Jacob Edwards and that Jacob Edwards relied on that promise or representation to his detriment. Thus, Plaintiffs have failed to allege a special duty exists to defeat the public duty doctrine.

To meet the second exception to NRS 41.0336, Plaintiffs must allege the "conduct of [SPD Officers] affirmatively caused the harm." NRS 41.0336. The Nevada Supreme Court has concluded that "'affirmatively caused the harm,' as used in NRS 41.0336(2), means that a public officer must actively create a situation which leads directly to the damaging result." *Coty*, 108 Nev. at 760–61, 839 P.2d at 99. Plaintiffs "must have alleged facts that, when taken as true, demonstrate that [SPD Officers] created a situation that led directly to [Jacob Edward's] alleged harm and that their actions 'actively and continuously' operated to bring about his harm." *Porchia*, 138 Nev. Adv. Op. 4, 504 P.3d at 519.

In this case, Plaintiffs seem to be alleging Defendants affirmatively caused the harm "by engaging in a needless, reckless, and unreasonably dangerous pursuit, by failing to discontinue the pursuit, and by pursuing the Suspect's Vehicle up the I-80 offramp into oncoming traffic." Compl. at ¶135. Plaintiffs also admit that Officer "CHAMBERS pulled up behind the Suspect's Vehicle, deployed his rifle and yelled numerous commands at the Suspect's Vehicle." Compl. at ¶39. Plaintiffs further admit that "[a]t the same date and time GUILLEN observed the Suspect's Vehicle parked in front of Bob and Lucy's and deployed his AR rifle. GUILLEN observed the Suspect's Vehicle speed off, and began pursuit." *Id*. at ¶40. By Williams disobeying the officers' lawful commands, Williams violated multiple laws separate and apart from his alleged "brandishing" in the complaint. *See* Sparks Municipal Code, Section 9.03.020 ("A person obstructs a public officer if he … Intentionally hinders or delays a public officer by disobeying an order to stop given by such officer for the purpose of making a temporary detention of a person suspected of criminal behavior[.]"); NRS 199.280 (a person commits the crime of resisting public officer when a person "willfully resists, delays or obstructs a public officer in discharging or attempting to discharge any legal duty of his or her office[.]");

Gonzalez v. Las Vegas Metro. Police Dep't, 2014 WL 1091012, at *14 (D. Nev. Mar. 18, 2014) ("In Nevada, every citizen has a duty to peacefully submit to an arresting officer, or face punishment by fine and imprisonment.").

Furthermore, by Williams fleeing in his vehicle, he committed another crime in the officers' presence. *See* NRS 484B.550(1) ("[T]he driver of a motor vehicle on a highway or premises to which the public has access who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a peace officer in a readily identifiable vehicle of any police department or regulatory agency, when given a signal to bring the vehicle to a stop is guilty of a misdemeanor."). By Williams' refusal to bring his vehicle to a stop while fleeing officers and operating "the motor vehicle in a manner which endanger[ed] or [was] likely to endanger any other person or the property of any other person," Williams committed a category B felony. NRS 484B.550(3)(b). The Nevada Supreme Court has addressed a case similar to this case and specifically stated that "**because the driver ignored the police officer's order to park his car on the side of the road, the police officer was not the active and direct cause of the harm. Thus, the public duty doctrine precluded the wrongful death action.**" *Porchia*, 138 Nev. Adv. Op. 4, 504 P.3d at 520 (citing *Coty*, 108 Nev. at 762, 839 P.2d at 100) (emphasis added).

2. <u>Plaintiffs' claims for wrongful death and negligence fail as Defendants had no duty to control the dangerous conduct of another or to warn others of the dangerous conduct</u>

"With regard to the duty element, under common-law principles, no duty is owed to control the dangerous conduct of another or to warn others of the dangerous conduct." *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009) (citing *Mangeris v. Gordon*, 94 Nev. 400, 402, 580 P.2d 481, 483 (1978)). "Generally, no duty is owed to control the dangerous conduct of another. However, Nevada recognizes an exception to the general rule, and a duty of care arises when (1) a special relationship exists between the parties, and (2) the harm created by the defendant's conduct is foreseeable." *Sparks*, 127 Nev. at 296–97, 255 P.3d at 244 (cleaned up). The existence of a special relationship is premised on the notion that "the ability of one of the parties to provide for his own protection has been limited in some way by his submission to the control of another." *Id. at* 287, 255 P.3d at 245 (citing *Scialabba v. Brandise Constr. Co*., 112 Nev. 965, 969,

921 P.2d 928, 930 (1996)). "In the absence of this degree of control, there is no special relationship giving rise to a duty of reasonable care." *Sparks*, 127 Nev. at 297, 255 P.3d at 245 (quoting *Grand Aerie Fraternal Order v. Carneyhan*, 169 S.W.3d 840, 853 (Ky. 2005)) (internal quotation marks omitted). Here, there are no allegations in the Complaint alleging a special relationship between Defendants and Jacob Edwards. Therefore, Plaintiffs' claims for wrongful death and negligence fail as no special relationship was alleged or existed.

3. Plaintiffs' claims for wrongful death and negligence fail due to discretionary-function immunity under NRS 41.032, which applies and shields Defendants from suit

"Nevada jurisprudence provides a two-part test for determining whether discretionary-function immunity under NRS 41.032 applies to shield a defendant from liability." *Clark Cty. Sch. Dist. v. Payo*, 133 Nev. 626, 631, 403 P.3d 1270, 1275–76 (2017); *see also Martinez v. Maruszczak*, 123 Nev. 433, 445, 168 P.3d 720, 728 (2007) ("Under this test, referred to as the *Berkovitz–Gaubert* test, acts are entitled to discretionary-function immunity if they meet two criteria.") (emphasis in original). "Under the two-part test, a government defendant is not liable for an allegedly negligent decision if the decision (1) involves an 'element of individual judgment or choice,' and (2) is 'based on considerations of social, economic, or political policy.'" *Payo*, 133 Nev. at 631–32, 403 P.3d at 1276 (citing *Martinez*, 123 Nev. at 436–37, 168 P.3d at 729). "Under that test, decisions that occur at all levels of government, including frequent or routine decisions, may be shielded by NRS 41.032(2) discretionary-act immunity, provided the decisions involved government policy concerns." *Ransdell v. Clark Cty.*, 124 Nev. 847, 855, 192 P.3d 756, 762 (2008). For a law enforcement agency "to come within the discretionary function exception, the challenged decision need not actually be grounded in policy considerations so long as it is, by its nature, susceptible to a policy analysis." *Paulos v. FCH1, LLC*, 136 Nev. 18, 26, 456 P.3d 589, 595 (2020) (citing *Vickers v. United States*, 228 F.3d 944, 950-51 (9th Cir. 2000); *United States v. Gaubert*, 499 U.S. 315, 325 (1991) ("The focus of the inquiry is not on the agent's subjective intent in exercising the discretion conferred by statute or regulation, but on the nature of the actions taken and on whether they are susceptible to policy analysis.")).

"We have emphasized that 'before turning to *Berkovitz*'s two-step inquiry, we must first identify Plaintiffs' 'specific allegations of agency wrongdoing.'" *Armstrong v. Reynolds*, 22 F.4th

1058, 1082 (9th Cir. 2022) (citing *Young v. United States*, 769 F.3d 1047, 1053 (9th Cir. 2014) (citing *Berkovitz*, 486 U.S. at 540, 108 S.Ct. 1954)) (emphasis in original); *see also Glover-Armont v. Cargile*, 134 Nev. 361, 367, 426 P.3d 45, 51 (Nev. App. 2018) ("A critical preliminary step in the discretionary-act immunity analysis is identifying the specific government action challenged before turning to the *Berkovitz-Gaubert* test.") (citations omitted). "[T]he precise action the government took or failed to take (that is, how it is alleged to have been negligent) is a necessary predicate to determining whether the government had discretion to take that action." *Armstrong*, 22 F.4th at 1082 (citing *Young*, 769 F.3d at 1054).

In this case, Plaintiffs claim that SPD Officers "breached their duties of care as alleged herein including, but not limited to, by engaging in a needless, reckless, and unreasonably dangerous pursuit, by failing to discontinue the pursuit, and by pursuing the Suspect's Vehicle up the I-80 offramp into oncoming traffic." Compl. at ¶135. However, the decision of a peace officer to arrest a person for committing a crime involves an element of individual judgment or choice. *See* NRS 171.104 ("An arrest is the taking of a person into custody, in a case and in the manner authorized by law. **An arrest may be made by a peace officer** or by a private person.") (emphasis added); NRS 171.124 ("[A] peace officer … **may make an arrest** in obedience to a warrant delivered to him or her, or may, without a warrant, arrest a person: (a) For a public offense committed or attempted in the officer's presence. (b) When a person arrested has committed a felony or gross misdemeanor, although not in the officer's presence….") (emphasis added).

Furthermore, "[o]fficers' decisions as to how to accomplish a particular seizure or search are generally considered discretionary determinations under Nevada law, and officers are therefore immune from suit as to state law claims arising therefrom in most cases." *Sandoval v. Las Vegas Metro. Police Dep't*, 756 F.3d 1154, 1168 (9th Cir. 2014) (cleaned up). The United States Supreme Court has recognized that pursuits of suspects involve an officer's individual judgment or choice. *See Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 853 (1998) ("A police officer deciding whether to give chase must balance on one hand the need to stop a suspect and show that flight from the law is no way to freedom, and, on the other, the high-speed threat to all those within stopping range, be they suspects, their passengers, other drivers, or bystanders.").

Additionally, the decision to seize, attempt to seize, or arrest Williams was based on considerations of social, economic, or political policy as the government has an overwhelming interest in arresting suspects committing crimes. *See United States v. Salerno*, 481 U.S. 739, 740, 107 S. Ct. 2095, 2098, 95 L. Ed. 2d 697 (1987) (recognizing the government's interest in community safety and overwhelming interest in stopping crimes by arrestees); *Valdez-Jimenez v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 136 Nev. 155, 165, 460 P.3d 976, 986 (2020) (recognizing the government's overwhelming interest in crime prevention and community safety); *Sherman v. United States*, 356 U.S. 369, 372 (1958) ("The function of law enforcement is the prevention of crime and the apprehension of criminals."). Plaintiffs cannot even argue that the decision for a peace officer to detain, attempt to detain, or arrest a person suspected of committing a crime is not "susceptible to a policy analysis." *See Paulos*, 136 Nev. at 26, 456 P.3d at 595; *Vickers*, 228 F.3d at 950-51; *Gaubert*, 499 U.S. at 325. "Once a suspect flees, the Supreme Court has made it clear that the officer has a legitimate law enforcement objective in continuing pursuit until the suspect is apprehended." *Suit v. City of Folsom*, 2016 WL 4192437, at *4 (E.D. Cal. Aug. 8, 2016) (citing *Scott v. Harris*, 550 U.S. 372, 385 (2007)).

Therefore, even taking the allegations in Plaintiffs' Complaint as true, Defendants are "'not liable for an allegedly negligent decision [because] the decision (1) involve[d] an 'element of individual judgment or choice,' and (2) [wa]s 'based on considerations of social, economic, or political policy.'" *Payo*, 133 Nev. at 631–32, 403 P.3d at 1276 (citing *Martinez*, 123 Nev. at 436–37, 168 P.3d at 729).

4. <u>Plaintiffs' claim for negligent hiring, training, and retention against SPD fails as SPD is entitled to discretionary-act immunity</u>

"In determining whether [a police department] is entitled to discretionary-act immunity from negligent hiring, training, and supervision claims, we look to federal analogues." *Paulos*, 136 Nev. at 26, 456 P.3d at 595 (citing *Martinez*, 123 Nev. at 444, 168 P.3d at 727). "The Ninth Circuit and other federal courts 'have held that decisions relating to the hiring, training, and supervision of employees usually involve policy judgments of the type Congress intended the discretionary function exception to shield.'" *Paulos*, 136 Nev. at 26, 456 P.3d at 595 (citing *Vickers*, 228 F.3d at 950). "To the extent

that Plaintiffs seek recovery for [the police department's] alleged negligent hiring, training, or supervision of the Officers, [the police department] is entitled to discretionary-function immunity." *Barnard*, 2010 WL 11575609, at *7 (citing *Neal–Lomax v. Las Vegas Metro. Police Dep't*, 574 F. Supp. 2d 1170, 1192 (D. Nev. 2008) (holding a police department's training and supervision acts are entitled to discretionary-function immunity)). In *Paulos*, the Nevada Supreme Court applied the *Berkovitz-Gaubert* test to the facts of that case. *Paulos*, 136 Nev. at 26, 456 P.3d at 596. The Nevada Supreme Court found the police department's "decision to hire and train [the officer] involved an element of choice under prong one of the *Berkovitz-Gaubert* test." *Id*. In applying the second prong, the Nevada Supreme Court found "a decision on whether to train officers about getting suspects off the hot asphalt during summer months once it is reasonably safe to do so is subject to policy analysis, thus meeting prong two of the test." *Id*.

In this case, Plaintiffs claim SPD "breached this non-delegable duty by hiring and retaining employees and officers that it knew or reasonably should have known were unfit for the duties they were to perform, and/or by failing to provide proper oversight, training, direction, hiring, retention, and control of … its [officers] responsible for performing these duties." Compl. at ¶142. Just like in *Paulos*, SPD's "decision to hire and train [the officers] involved an element of choice under prong one of the *Berkovitz-Gaubert* test." *Paulos*, 136 Nev. at 26, 456 P.3d at 596. Additionally, the "decision on whether to train officers [on when to initiate and maintain a vehicular pursuit] is subject to policy analysis, thus meeting prong two of the test." *Id*. Thus, SPD is entitled to discretionary-act immunity from the negligent hiring, training, and retention claim and this claim must be dismissed.

5. <u>Another Court in this jurisdiction recently came to the same conclusion related to similar facts as this case, which should be persuasive in dismissing this case</u>

The Honorable Scott Freeman recently issued an order granting the City of Sparks' Motion to Dismiss in a similar case on April 15, 2022. *See La'Shae Northington v. Jesse Allen Bennett*, *et al*., case number CV21-02128. In *Northington*, officers were attempting to arrest a suspect when the suspect fled during the attempted traffic stop, which resulted in a high-speed pursuit. The suspect failed to obey a red traffic signal and collided with a vehicle, killing one of the occupants and injuring the other. The plaintiff alleged the following claims against the City of Sparks: wrongful death;

negligence; vicarious liability; and negligent hiring, training, and supervision. Judge Freeman dismissed the City of Sparks from the case holding that all the alleged actions by the officers for Sparks were protected by the public duty doctrine, Sparks owed no duty to the plaintiff to control the actions of the fleeing suspect, and the claims against Sparks failed as a matter of law due to discretionary-act and discretionary-function immunity. Judge Freeman also denied the plaintiff's request to amend the complaint finding that the amendment would be futile as a matter of law and that discretionary immunity requires immunity from suit, not just immunity from liability. Judge Freeman's order can serve as persuasive authority for this Court in making its decision.

6. <u>Plaintiffs' claim for violation of 42 U.S.C. § 1983 (seizure) pursuant to the Fourth Amendment is not supported by law and must be dismissed as no seizure occurred</u>

"To establish a claim under § 1983, the plaintiff must prove that the conduct complained of: (1) was committed by a person acting under color of state law, and (2) deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States." *State v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark (Anzalone)*, 118 Nev. 140, 153, 42 P.3d 233, 241 (2002) (citation omitted). The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "The Fourth Amendment covers only 'searches and seizures.'" *Gardner v. Las Vegas Metro. Police Dep't*, 2018 WL 1091977, at *4 (D. Nev. Feb. 28, 2018) (quoting *Lewis*, 523 U.S. at 843). "The threshold inquiry in a § 1983 claim is whether the plaintiff has identified a right cognizable under the statute." *Anzalone*, 118 Nev. at 153, 42 P.3d at 242.

"Further, a 'seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement (the innocent passerby) ... but only when there is a governmental termination of freedom of movement through means intentionally applied.'" *Gardner*, 2018 WL 1091977, at *4 (D. Nev. Feb. 28, 2018) (quoting *Lewis*, 523 U.S. at 844) (quoting *Brower v. County of Inyo*, 489 U.S. 593, 597 (1989)). "**A seizure requires the use of force with intent to restrain. Accidental force will not qualify.**" *Torres v. Madrid*, 141 S. Ct. 989, 998 (2021) (citing *Lewis*, 523 U.S. at 844) (emphasis added). "Moreover, the appropriate inquiry is whether the challenged conduct objectively manifests an intent to restrain, for we rarely probe the subjective motivations of police

officers in the Fourth Amendment context." *Torres*, 141 S. Ct. at 998. "In sum, the Fourth Amendment addresses misuse of power, not the accidental effects of otherwise lawful government conduct." *Brower*, 489 U.S. at 596 (internal citation and quotation marks omitted).

Here, Plaintiffs claim "Defendants, and each of them, violated Jacob Edwards' Fourth Amendment rights by engaging in a needless, reckless, unjustified and unreasonably dangerous high-speed automobile chase and causing the deadly crash as alleged herein, resulting in an unconstitutional seizure by terminating Jacob Edwards' freedom of movement through means intentionally applied." Compl. at ¶163. Plaintiffs fail to allege that officers used force against Jacob Edwards with the intent to restrain. At best, Plaintiffs' allegations would amount to the accidental effects of otherwise lawful government conduct. Therefore, Plaintiffs' claim for violation of 42 U.S.C. § 1983 (seizure) pursuant to the Fourth Amendment fails as a matter of law and must be dismissed as no seizure occurred.

7. Plaintiffs' claim for violation of 42 U.S.C. § 1983 (due process) pursuant to the Fourteenth Amendment is not supported by law and must be dismissed

The Due Process Clause of the Fourteenth Amendment provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. The United States Supreme Court has specifically held "that the **Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.**" *Daniels v. Williams*, 474 U.S. 327, 328 (1986) (emphasis added). The United States Supreme Court has further stated they "have accordingly rejected the lowest common denominator of customary tort liability as any mark of sufficiently shocking conduct, and have held that the Constitution does not guarantee due care on the part of state officials; **liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process**." *Lewis*, 523 U.S. at 848–49 (citing *Daniels*, 474 U.S. at 327) (emphasis added). The United States Supreme Court has specifically recognized "due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property." *Daniels*, 474 U.S. at 331.

In *Lewis*, the United States Supreme Court held that a police officer does not "violate[ ] the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate

or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender." *Lewis*, 523 U.S. at 836. Rather, "in such circumstances only **a purpose to cause harm unrelated to the legitimate object of arrest** will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." *Id.* (emphasis added). The Court went on to further explain that "in a due process challenge to executive action, the threshold question is whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience" *Id*. at 847, n. 8. "This Court has said that the 'shock the conscience' standard is satisfied where the conduct was 'intended to injure in some way unjustifiable by any government interest,' or in some circumstances if it resulted from deliberate indifference." *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1906 (2018) (citing *Lewis*, 523 U.S. at 849-850). The Ninth Circuit has interpreted the *Lewis* decision and specifically stated, "As we read the Court's opinion, if a police officer is justified in giving chase, that justification insulates the officer from constitutional attack, irrespective of who might be harmed or killed as a consequence of the chase." *Onossian v. Block*, 175 F.3d 1169, 1171 (9th Cir. 1999). The United States Supreme Court has held:

> **[W]e are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness.** Instead, we lay down a more sensible rule: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.

Scott v. Harris, 550 U.S. 372, 385–86 (2007) (emphasis added).

In this case, Plaintiffs claim that "[a]s a direct and proximate result of Defendant's conduct, Jacob Edwards [sic] deprived of his life and was denied due process of law by Defendants' conduct in engaging and failing to discontinue the needless, reckless, unjustified, dangerous and objectively unreasonable high-speed automobile chase as alleged herein." Compl. at ¶169. Plaintiffs further claim that "[t]he Defendants' conduct was offensive to the concept of fundamental fairness." *Id*. Plaintiffs further allege that "[i]n conducting the deadly force PIT at over 40 mph, [Officer] CHAMBERS

demonstrated an intent to cause harm unrelated to the legitimate object of arrest." *Id*. at ¶81. Plaintiffs also allege that "SPARKS PD OFFICERS' [sic] demonstrated an intent to harm the suspects physically and/or worsen their legal plight, by engaging in the pursuit as alleged herein, and failing to discontinue the pursuit." *Id*. at ¶111.

Plaintiffs attempt to morph a negligence allegation into a constitutional violation; however, these claims are not supported by the binding United States Supreme Court precedent of *Lewis* and *Scott* as the officers' decision to pursue Williams, to execute a PIT maneuver on William's vehicle, and the decision to continue the pursuit were all related to the legitimate object of arrest. Plaintiffs would have this Court ignore the decision in *Scott* to have criminals in Washoe County "know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights." *Scott*, 550 U.S. at 385. Luckily for the residents of Washoe County, "[t]he Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness." *Id*. at 385-386. Thus, Plaintiffs' claim for violation of 42 U.S.C. § 1983 (due process) is not supported by law and must be dismissed.

8. <u>Even if this Court finds that Plaintiffs alleged a constitutional violation, Defendants are entitled to qualified immunity and the claim must be dismissed</u>

The United States Supreme Court has extensively set out the standard for qualified immunity and specifically held:

> Under our precedents, officers are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time. Clearly established means that, at the time of the officer's conduct, the law was that every reasonable official would understand that what he is doing is unlawful. In other words, existing law must have placed the constitutionality of the officer's conduct beyond debate. This demanding standard protects all but the plainly incompetent or those who knowingly violate the law. To be clearly established, a legal principle must have a sufficiently clear foundation in then-existing precedent. The rule must be settled law, which means it is dictated by controlling authority or a robust consensus of cases of persuasive authority. It is not enough that the rule is suggested by then-existing precedent. The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply. Otherwise, the rule is not one that every reasonable official would know.

D.C. v. Wesby, 138 S. Ct. 577, 589–90 (2018) (cleaned up).

Additionally, the United States Supreme Court and Nevada Supreme Court have recognized that "[q]ualified immunity is an immunity from suit rather than a mere defense to liability." *Pearson v. Callahan*, 555 U.S. 223, 237 (2009) (citation and quotation marks omitted); *see also Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 458, 168 P.3d 1055, 1061 (2007) ("Qualified immunity under federal law is not merely a defense to liability; it is an entitlement not to stand trial or face the other burdens of litigation.") (internal quotation marks and citations omitted). The Nevada Supreme Court has further recognized that "a defense of qualified immunity should be resolved at the earliest possible stage in litigation[.]" *Bayer*, 123 Nev. at 458, 168 P.3d at 1061. The Ninth Circuit has also held that "police officers involved in all high-speed chases are entitled to qualified immunity under 42 U.S.C. § 1983 unless the plaintiff can prove that the officer acted with a deliberate intent to harm." *Bingue v. Prunchak*, 512 F.3d 1169, 1170–71 (9th Cir. 2008).

Here, Plaintiffs will not be able to point to "existing precedent [that has] placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011); *see also Shafer v. Cty. of Santa Barbara*, 868 F.3d 1110, 1118 (9th Cir. 2017) ("It is the plaintiff who bears the burden of showing that the rights allegedly violated were clearly established."). Plaintiffs cannot establish the alleged unlawfulness of the officers' conduct was clearly established at the time as the binding United States Supreme Court case law actually holds the complete opposite of their allegations for a constitutional violation. *See Mullenix v. Luna*, 577 U.S. 7, 15, 136 S. Ct. 305, 310, 193 L. Ed. 2d 255 (2015) ("The Court has thus never found the use of deadly force in connection with a dangerous car chase to violate the Fourth Amendment, let alone to be a basis for denying qualified immunity."); *Scott*, 550 U.S. at 385–86 ("[W]e are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people's lives in danger … The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness."); *Torres*, 141 S. Ct. at 998 ("A seizure requires the use of force with intent to restrain. Accidental force will not qualify.") (citing *Lewis*, 523 U.S. at 844); *Lewis*, 523 U.S. at 836 ("[O]nly a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation."). Thus, Defendants are entitled to qualified immunity and the claim alleging constitutional violations must be dismissed.

9. Plaintiffs' *Monell* Liability claims fail as there is no constitutional violation

"In *Monell*, the Court held that Congress intended municipalities and other local government entities to be included among those persons to whom § 1983 applies." *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120–21 (1992) (citing *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978). "To establish *Monell* liability, Plaintiffs must show a constitutional violation caused by (1) an employee acting under an expressly adopted official policy; (2) an employee acting under a longstanding practice or custom that amounts to an official policy; or (3) an employee acting as a final policymaker." *Doe v. Equipo Acad.*, 2021 WL 2768849, at *3 (D. Nev. Mar. 8, 2021) (citing *Webb v. Sloan*, 330 F.3d 1158, 1164 (9th Cir. 2003)). The United States Supreme Court has held that "inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989).

"At the same time, the Court made it clear that municipalities may not be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort." *Collins*, 503 U.S. at 120–21 (citing *Monell*, 436 U.S. at 691. The United States Supreme Court further stated that "*Monell's* rule that a city is not liable under § 1983 unless a municipal policy causes a constitutional deprivation will not be satisfied by merely alleging that the existing training program for a class of employees, such as police officers, represents a policy for which the city is responsible." *Harris*, 489 U.S. at 389; *see also City of L.A. v. Heller*, 475 U.S. 796, 799 (1986) ("If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have authorized the use of constitutionally excessive force is quite beside the point."). The Nevada Supreme Court has recognized that "[i]n accordance with 42 U.S.C. § 1983 (1988), a litigant has a federal cause of action for damages when an official acting under the color of state law infringes upon a protected constitutional right." *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 245, 871 P.2d 320, 324 (1994). However, the Court has also recognized that "absent any constitutional infringement, a § 1983 claim fails." *Id*.

In this case, Plaintiffs' claim that "SPARKS PD and SPARKS PD OFFICERS, deprived Jacob Edwards of the rights and liberties secured to him by the Fourth and Eighth Amendments to the United

States Constitution." Compl. at ¶197. Plaintiffs' claim that Jacob Edwards' rights pursuant to the Eighth Amendment were violated are not supported by law. *See Ingraham v. Wright*, 430 U.S. 651, 671, n. 40 (1977) ("Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions"); *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001) ("The Eighth Amendment's prohibition of cruel and unusual punishments applies only after conviction and sentence." (citations and internal quotation marks omitted)). Additionally, Plaintiffs' *Monell* claims must be dismissed as Plaintiffs' constitutional claims pursuant to the Fourth and Fourteenth Amendments of unreasonable seizure and due process violation are not supported by law. Plaintiffs cannot allege a *Monell* claim without an underlying claim of a constitutional violation. *See Cinnamon Hills Assocs.*, 110 Nev. at 245, 871 P.2d at 324. Thus, Plaintiffs' *Monell* claims must be dismissed.

10. Plaintiffs' claim for violation of the Constitution of the State of Nevada fails for the same reason their constitutional claims fail pursuant to the United States Constitution

Plaintiffs' claim of a violation of Article 1, Section 18 of the Nevada Constitution fails for the same reasons their claim pursuant to the Fourth Amendment fails. "Article 1, Section 18 of the Nevada Constitution uses almost the same words as the Fourth Amendment does to prohibit unreasonable searches and seizures." *Cortes v. State*, 127 Nev. 505, 514, 260 P.3d 184, 190–91 (2011). "The Nevada Constitution employs slightly different punctuation and capitalization conventions … [but i]t is hard to ascribe substantive significance to these minor variations." *Id*. at 514 n. 6, 260 P.3d at 191 n. 6 (2011). The Nevada Supreme Court has recognized that "[i]t has also long drawn on Fourth Amendment jurisprudence in interpreting Article 1, Section 18 of the Nevada Constitution." *Id.* at 515 n. 7, 260 P.3d at 191 n. 7 (2011). "Nevada has historically followed the United States Supreme Court on most, if not all, of its interpretations and applications of the law governing searches and seizures." *State v. Lloyd*, 129 Nev. 739, 745, 312 P.3d 467, 471 (2013) (citation and internal quotation marks omitted).

Nevada federal courts have also recognized that "Article 1, Section 18 of the Nevada Constitution is nearly identical to the Fourth Amendment, and Nevada courts have not recognized any meaningful distinctions between the two." *Meisler v. Chrzanowski*, 2015 WL 6123225, at *1 n.

2 (D. Nev. Oct. 16, 2015) (citing *Cortes*, 260 P.3d at 190–91, n. 6). The United States District Court, District of Nevada, has recognized that if a person's Fourth Amendment rights were not violated, then that person's rights under Article 1, Section 18 of the Nevada Constitution were not violated. *See Meisler*, 2015 WL 6123225, at *1 n. 2 (holding that "a decision that [Plaintiff's] Fourth Amendment rights were not violated includes the corollary that his Nevada State Constitutional rights were not violated."); *Harel Plumbing & Heating, Inc. v. Clark Cnty.*, 2021 WL 3932252, at *5 (D. Nev. Sept. 2, 2021) ("Because the state constitutional claims mirror the federal constitutional claims, and the federal constitutional claims fail, the state claims fail as well."). The United States Supreme Court has been clear that "[a] seizure requires the use of force with intent to restrain. Accidental force will not qualify." *Torres*, 141 S. Ct.at 998 (citing *Lewis*, 523 U.S. at 844) (emphasis added). Thus, Plaintiffs' claim for violation of Article 1, Section 18 of the Nevada Constitution fails as well.

Plaintiffs' claim of a violation of the Due Process Clause pursuant to Article 1, Section 8 of the Nevada Constitution fails for the same reasons their claim pursuant to the Fourteenth Amendment fails. The Nevada Supreme Court has stated that "the similarities between the due process clauses contained in the United States and Nevada Constitutions, permit us to look to federal precedent for guidance[.]" *Hernandez v. Bennett-Haron*, 128 Nev. 580, 587, 287 P.3d 305, 310 (2012) (internal quotation marks and citation omitted). The Nevada Supreme Court has recognized that "[t]he language in Article 1, Section 8(5) of the Nevada Constitution mirrors the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution[.]" *Rodriguez v. Dist. Ct.*, 120 Nev. 798, 808 n. 22, 102 P.3d 41, 48 n. 22 (2004); *see also Reinkemeyer v. Safeco Ins. Co. of Am.*, 117 Nev. 44, 50, 16 P.3d 1069, 1072 (2001) (recognizing the Due Process Clause of the Nevada Constitution virtually mirrors the language in the United States Constitution and stating the Court looks to federal caselaw for guidance).

Citing to *Reinkemeyer*, *supra*, the United States District Court of Nevada stated, "Because the Due Process Clause of the Nevada Constitution virtually mirrors the language in the United States Constitution, Nevada courts look to federal caselaw for guidance in interpreting the Due Process Clause of the Nevada Constitution. Thus, the court analyzes Plaintiff's due process claims arising under the Nevada Constitution and United States Constitution under the same standard." *Cinque v.*

Ward, 2010 WL 3312608, at *3 (D. Nev. July 28, 2010) (cleaned up). In *Lewis*, the United States Supreme Court held that a police officer does not "violate[ ] the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender." *Lewis*, 523 U.S. at 836. Rather, "in such circumstances only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." *Id.* (emphasis added). Plaintiffs would have this Court ignore the decision in *Scott* and make up a constitutional right pursuant to the Constitution of the State of Nevada to have criminals in Washoe County "know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights." *Scott*, 550 U.S. at 385. Luckily for the residents of Washoe County, the United States Supreme Court has recognized "[t]he Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness." *Id*. at 385-386. Plaintiffs cannot allege in good faith that Defendant had "a purpose to cause harm unrelated to the legitimate object of arrest" while pursuing Williams. *Lewis*, 523 U.S. at 836. Therefore, Plaintiffs' claim for violation of Article 1, Section 8 of the Nevada Constitution fails as well.

IV. CONCLUSION

Based on the foregoing, Plaintiffs' claims for wrongful death and negligence fail pursuant to the public duty doctrine, fail as Defendants had no duty to control the dangerous conduct of another or to warn others of the dangerous conduct of another, and fail due to discretionary-function immunity under NRS 41.032, which applies and shields Defendants not just from liability, but from suit. Additionally, Plaintiffs' claim for negligent hiring, training, and retention against SPD fails as SPD is entitled to discretionary-act immunity. Furthermore, Plaintiffs' claim for violation of 42 U.S.C. § 1983 (seizure) pursuant to the Fourth Amendment and violation of 42 U.S.C. § 1983 (due process) pursuant to the Fourteenth Amendment is not supported by law and must be dismissed. Moreover, even if this Court finds that Plaintiffs alleged a constitutional violation, Defendants are entitled to qualified immunity and the claim must be dismissed. Likewise, Plaintiffs' *Monell* Liability claims fail as there is no underlying constitutional violation. Lastly, Plaintiffs' claim for violation of the

Constitution of the State of Nevada fails for the same reason their constitutional claims fail pursuant to the United States Constitution. Accordingly, Defendants are entitled to judgment as a matter of law as the Complaint fails to state any claims upon which relief can be granted and this lawsuit must be dismissed against Defendants in its entirety.

AFFIRMATION

The undersigned does hereby confirm the preceding document does not contain the social security number of any person.

Respectfully submitted this 15th day of June, 2022.

WESLEY K. DUNCAN
Sparks City Attorney

By: /s/ Barrack Potter
BARRACK POTTER
Senior Assistant City Attorney
Attorney for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Sparks City Attorney's Office, Sparks, Nevada, and that on this date I served the foregoing document(s) entitled **DEFENDANTS' MOTION TO DISMISS** on the persons set forth below by:

✓ Case Management/Electronic Case Filing (CM/ECF) and/or;

___ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Sparks, Nevada, postage prepaid, following ordinary business practices, and/or;

___ Personal Delivery, and/or;

___ Facsimile (FAX), and/or;

___ Federal Express or other overnight delivery, and/or;

___ Reno/Carson Messenger Service.

If physically delivered, each is addressed as follows:

Brian D. Nettles, Esq.
brian@nettlesmorris.com
Christian M. Morris, Esq.
christian@nettlesmoris.com
Alexandra B. McLeod, Esq.
alexandra@nettlesmorris.com
NETTLES MORRIS
1389 Galleria Drive, Suite 200
Henderson, Nevada 89014

DATED this 15th day of June, 2022.

/s/ Roxanne Doyle
Roxanne Doyle

F I L E D
Electronically
CV22-00282
2022-07-06 10:18:22 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 9133336

EXHIBIT 1

FILED
Electronically
CR20-0630A
2020-06-19 02:27:18 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7934741 : caguilar

DA #20-2455

SPD 20-001640

CODE 1800
Christopher J. Hicks
#7747
One South Sierra Street
Reno, NV 89501
districtattorney@da.washoecounty.us
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No.: CR20-0630

Dept. No.: D01

RYAN WILLIAMS (B)
and
ADRIANNA MARIE NORMAN (A),

Defendants.

_____/

INFORMATION

CHRISTOPHER J. HICKS, District Attorney within and for the County of Washoe, State of Nevada, in the name and by the authority of the State of Nevada, informs the above entitled Court that, the defendants above-named, ADRIANNA MARIE NORMAN and RYAN WILLIAMS, have committed the crime(s) of:

COUNT I. ROBBERY WITH THE USE OF A DEADLY WEAPON, a violation of NRS 200.380, NRS 193.165, and NRS 195.020, a category B felony, (50138) in the manner following:

That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE NORMAN, on or about February 22, 2020, within the County of Washoe,

State of Nevada, did willfully and unlawfully take personal property, to wit: a gaming cash-out voucher and/or a wallet, from the person and/or in the presence of STEVEN SIMS, at Bob & Lucy's located at 1515 Oddie Boulevard, Sparks, Washoe County, Nevada, against his will, and by means of force or violence or fear of immediate or future injury to his person, and with the use of a deadly weapon, which was a silver-colored handgun, which the said defendants displayed and/or brandished to STEVEN SIMS during the offense; or

The said defendants RYAN WILLIAMS and ADRIANNA MARIE NORMAN did willfully and unlawfully aid and abet each other and act as conspirators with each other in committing the aforementioned acts, in that the defendants did directly or indirectly counsel, encourage, induce, and conspire and agree with each other to rob, coerce, and/or kidnap STEVEN SIMS, and in furtherance thereof, the defendants, encouraging each other by their presence and concerted action, approached SIMS where he was gambling inside Bob & Lucy's and ADRIANNA MARIE NORMAN did display her handgun to SIMS in order to facilitate the robbery while confronting SIMS about money or value allegedly owed to NORMAN by SIMS, and defendant WILLIAMS menaced SIMS and the the defendants ordered SIMS to leave with them, and thereafter defendant WILLIAMS cashed out the gaming machine SIMS was playing and took SIMS' cash-out ticket reflecting the value of SIMS' money on the machine.

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COUNT II. ATTEMPTED ROBBERY WITH THE USE OF A DEADLY WEAPON, a violation of NRS 193.330, being an attempt to violate NRS 200.380, NRS 193.165, and NRS 195.020, a category B felony, (50145) in the manner following:

That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE NORMAN, on or about February 22, 2020, within the County of Washoe, State of Nevada, did willfully and unlawfully attempt to take personal property, to wit: money, from the person and/or in the presence of STEVEN SIMS, at Bob & Lucy's located at 1515 Oddie Boulevard, Sparks, Washoe County, Nevada, against his will, and by means of force or violence or fear of immediate or future injury to his person, and with the use of a deadly weapon, which was a silver-colored handgun that defendant NORMAN displayed and/or brandished to STEVEN SIMS; or

The said defendants RYAN WILLIAMS and ADRIANNA MARIE NORMAN did willfully and unlawfully aid and abet each other and act as conspirators with each other in committing the aforementioned acts, in that the defendants did directly or indirectly counsel, encourage, induce, and conspire and agree with each other to rob, coerce, and/or kidnap STEVEN SIMS, and in furtherance thereof, the defendants, encouraging each other by their presence and concerted action, approached SIMS where he was gambling inside Bob & Lucy's and ADRIANNA MARIE NORMAN did display her handgun to SIMS while confronting SIMS about property allegedly taken by SIMS in the past, and then the defendants intimidated and ordered SIMS to leave with them, and while on the way to the door of the casino, SIMS did offer to obtain money

and provide it to the defendants in order to try to avoid leaving with them, which the defendants accepted as a condition of allowing SIMS to remain in the casino.

COUNT III. BURGLARY WITH POSSESSION OF A FIREARM OR DEADLY WEAPON, a violation of NRS 205.060.1-.2 and NRS 205.060.4, a category B felony, (50426) in the manner following:

That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE NORMAN, on or about February 22, 2020, within the County of Washoe, State of Nevada, acting in concert as conspirators and aiders and abettors as alleged in Count I (which is incorporated by reference herein), did willfully enter a certain business, which was Bob & Lucy's located at 1515 Oddie Boulevard, Sparks, Washoe County, Nevada, with the intent then and there to commit robbery, larceny, assault, battery, kidnapping, and/or felony coercion therein, and the defendants did each have in their possession, or did each gain possession of, a firearm or deadly weapon at any time during the commission of the crime or at any time before leaving the structure, in that defendant NORMAN was armed with a silver-colored handgun.

COUNT IV. MURDER WITH USE OF A DEADLY WEAPON, a violation of NRS 200.010, 200.030, and NRS 195.020, a category A felony, (50001) in the manner following:

That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE NORMAN, on or about February 22, 2020, within the County of Washoe, State of Nevada, did willfully, unlawfully, and with malice aforethought, deliberation, and premeditation, kill and murder JACOB EDWARDS, a human being, by means of defendant WILLIAMS driving a

Chevrolet Silverado truck, which under the circumstances in which it was used was readily capable of causing substantial bodily harm or death and thus constituted a deadly weapon, head-on into the vehicle driven by JACOB EDWARDS while defendant WILLIAMS was fleeing from the police and driving the wrong way against traffic at a high rate of speed on Interstate 80 in Sparks in Washoe County, Nevada, thereby inflicting mortal injuries upon JACOB EDWARDS from which he died on or about February 22, 2020; or

The defendants did willfully and unlawfully kill JACOB EDWARDS in the perpetration or attempted perpetration of a burglary, robbery, and/or kidnapping, in that defendants RYAN WILLIAMS and ADRIANNA MARIE NORMAN, acting in concert as conspirators and aiders and abettors as alleged in Counts I, II and III (which are incorporated by reference herein), entered Bob & Lucy's located at 1515 Oddie Boulevard in Sparks, in order to commit assault and/or battery upon STEVEN SIMS, to commit larceny from and robbery upon SIMS, to kidnap Simms, and/or to commit felony coercion upon SIMS, and the defendants thereafter approached SIMS and displayed a silver-colored handgun to SIMS in an attempt to rob him and force him to leave the establishment against his will under threat of physical force, did steal from him and rob him by taking his cash-out ticket, did detain and threaten him to leave the establishment with the defendants, which threat SIMS began complying with, and when the police responded to the area of Bob & Lucy's while defendant NORMAN was still inside the business conducting SIMS and defendant WILLIAMS was waiting outside for them in a white Chevrolet Silverado truck,

defendant RYAN WILLIAMS did flee from the police in the truck, and while being pursued by the police and in an effort to avoid or prevent being apprehended and lawfully arrested by a peace officer for the aforementioned crimes attempted and committed by NORMAN and WILLIAMS at Bob and Lucy's, defendant Williams did drive the wrong way on Interstate 80 and did kill JACOB EDWARDS by crashing his truck head-on into the vehicle being driven by EDWARDS, thereby using his truck as a deadly weapon and inflicting mortal injuries upon EDWARDS from which he died on or about February 22, 2020.

COUNT V. CAUSING THE DEATH OF ANOTHER BY DRIVING A VEHICLE WHILE UNDER THE INFLUENCE OF METHAMPHETAMINE, a violation of NRS 484C.110 and 484C.430, a category B felony, (53908) in the manner following:

That the said defendant, RYAN WILLIAMS, on or about February 22, 2020, within the County of Washoe, State of Nevada, did unlawfully drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access while under the influence of a controlled substance and/or with an amount of methamphetamine in his blood that was equal to or greater than 100 nanograms per milliliter, and while driving or in actual physical control of the vehicle, the defendant did any act, or neglected any duty imposed by law, that proximately caused the death of or substantial bodily harm to another person;

In that the defendant, while under the influence of methamphetamine and/or with an amount of methamphetamine in his blood that was in excess of 500 nanograms per milliliter, did drive a white

Chevrolet truck on Interstate 80 near Victorian Avenue and McCarran Boulevard in Washoe County, Nevada, entering Interstate 80 driving eastbound against oncoming traffic in the westbound travel lanes in order to escape the police, and, failing to exercise due care, continued to drive at a high rate of speed against oncoming freeway traffic, and thereby did crash his truck head-on into the vehicle being driven in the correct direction by JACOB EDWARDS, which proximately caused EDWARDS' death.

COUNT VI. ELUDING OR FLIGHT FROM A POLICE OFFICER RESULTING IN DEATH, a violation of NRS 484B.550, a category B felony, (55674) in the manner following:

That the said defendant, RYAN WILLIAMS, on or about February 22, 2020, within the County of Washoe, State of Nevada, while driving a motor vehicle on a highway or premises to which the public has access, did willfully fail or refuse to bring the vehicle to a stop, or did otherwise flee or attempt to elude a peace officer in a readily identifiable vehicle, when given a signal, by flashing red lamp and siren, to bring the vehicle to a stop, and while doing so did operate the vehicle in a manner which endangered or was likely to endanger any other person or the property of any other person and proximately caused death or bodily harm to another person;

In that the defendant did flee from the police beginning Bob & Lucy's located at 1515 Oddie Boulevard in Sparks, driving a white Chevrolet truck, and while being pursued by multiple police officers in marked police vehicles, including Sparks Police Officers Nicholas Chambers, Angel Guillen, Jason Stone, Jay Egami, Brian

Sullivan, and Daniel Snow, each of whom were signaling the defendant to stop by flashing red lamp and siren, the defendant did fail and refuse to stop his truck, and did flee and attempt to elude the officers while driving at high rates of speed (including driving in excess of 60 miles per hour in a posted 25 miles-per-hour zone and in a posted 30 miles-per-hour zone, and in excess of 70 miles per hour in a posted 45 miles-per-hour zone) and disregarding traffic signals (including running a red lights at Rock Boulevard and Victorian Avenue, at Rock Boulevard and I-80, and at Glendale Avenue and McCarran Boulevard; and running a stop signs at 15th Street and Pittman Avenue) through areas of Sparks including Rock Boulevard, Victorian Avenue, Hymer Avenue, South 15th Street, Glendale Avenue, McCarran Boulevard, Kleppe Lane, East Lincoln Way, and Stanford Street, and while still being pursued by police, the defendant continued his flight by entering Interstate 80 and driving eastbound in the westbound travel lanes at high rates of speed against oncoming traffic, and thereby did crash his truck head-on into the vehicle being driven in the correct direction by JACOB EDWARDS, which proximately caused EDWARDS' death.

COUNT VII. RECKLESS DRIVING, a violation of 484B.653(1)(a) and 484B.653(9), a category B felony, (53896) in the manner following:

That the said defendant, RYAN WILLIAMS, on or about February 22, 2020, within the County of Washoe, State of Nevada, did unlawfully do any act or neglect any duty imposed by law while driving a vehicle on a highway or on premises to which the public has access in willful or wanton disregard of the safety of persons or

property, and such act or neglect of duty did proximately cause the death or substantial bodily harm to another person,

In that the defendant did drive a white Chevrolet truck on Interstate 80 near Victorian Avenue and McCarran Boulevard in Washoe County, Nevada, entering Interstate 80 driving eastbound against oncoming traffic in the westbound travel lanes, and, failing to exercise due care and failing to drive at a rate of speed reasonable for the traffic and highway conditions and so as to avoid endangering the life, limb, or property of any person, continued to drive at a high rate of speed against oncoming freeway traffic, and thereby did crash his truck head-on into the vehicle being driven in the correct direction by JACOB EDWARDS, which proximately caused EDWARDS' death.

All of which is contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Nevada.

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By:/s/ Luke Prengaman_____
LUKE J. PRENGAMAN
6094
CHIEF DEPUTY District Attorney

The following are the names of such witnesses as are known to me at the time of the filing of the within Information:

LINDA BROWN
NATHAN COATS
KEVIN L. DACH
ADAM HARRIS
KIMBERLY HODGE
DANNY R. JAMES
PATRICK MCNEELY
BRYAN ORR
JOHN PATTON
MONICA SIEWERTSEN
DANIEL SNOW
RACHELLE (SPEAR) WOODARD
JOSE ZENDEJAS
STEVEN M SIMS
RACHEL ARULANANTHAM
EDIK DOMINGUEZ
NICHOLAS CHAMBERS
ANGEL GUILLEN
BRITT BROWN
JASON STONE
JAY EGAMI
BRIAN SULLIVAN
ROBERT CANTERBURY
MATTHEW GALLAGHER
RANDALL RAY WILLIAMS
CHRISTOPHER BROCE
CHRISTOPHER BALLESTEROS
JOHN "JJ" STALLINGS
MAUREEN DYETTE
PETER LOESCHNER
ALEC ALLEN
DANIEL ROBERT MORIARTY
BLAKE MILLER
MONICA TEVES
MARC PETERSON
MAX DAVIS
CUSTODIAN OF RECORDS - REMSA
RENOWN HEALTH
SPARKS FIRE DEPARTMENT
WASHOE COUNTY VITAL STATISTICS
RENOWN HEALTH
JAMES DAVIS
GINA GOMEZ

SAYER DION-SMYCZEK
AIMEE CHESEBROUGH
KEITH KILLIAN
JACOB EDWARDS
DAVID COLE
CLIFF WEBSTER
MELISSA PAREDES
DIANNE WILLIAMS
MARK EDWARDS
AARON MARTINI
GREGORY WOOLSEY
ROBERT MEAD
MICHELLE RAMIREZ
MIKE SLATTERY
JAMES RHOADES
MATT CALDWELL
MATT ALDER
JARROD STEWART
DR. HENRY A MCNETT
BAYLEE BELZ

AFFIRMATION PURSUANT TO NRS 239B.030

The party executing this document hereby affirms that this document submitted for recording does not contain the social security number of any person or persons pursuant to NRS 239B.030.

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By:/s/ Luke Prengaman
LUKE J. PRENGAMAN
6094
CHIEF DEPUTY District Attorney

PCN SPPD0069279C-NORMAN SPPD0069280C-WILLIAMS

F I L E D
Electronically
CV22-00282
2022-07-06 10:18:22 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 9133336

EXHIBIT 2

F I L E D
Electronically
CR20-0630A
2021-06-22 03:03:41 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 8507520

CODE 1850

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs. **Case No. CR20-0630A**

ADRIANNA MARIE NORMAN, **Dept. No. 1**

Defendant.

_____/

JUDGMENT OF CONVICTION

The Defendant having been found Guilty by a Jury on Count III, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against her, the Court rendered judgment as follows:

1. That Adrianna Marie Norman is guilty of the crime of: Burglary With Possession of a Firearm or Deadly Weapon, a violation of NRS 205.060.1-.2 and NRS 205.060.4, a category B felony, as charged in Count III of the Information.

2. **That Adrianna Marie Norman be punished by imprisonment in the Nevada Department of Corrections for a minimum term of 48 months to a maximum term of 120 months, with credit for time served in the amount of 486 days.**

3. It is further ordered that Adrianna Marie Norman shall pay an administrative assessment fee of $25.00, the $3.00 administrative assessment for obtaining a biological specimen and conducting a genetic marker analysis, and reimburse the County of Washoe

the sum of $1,000.00 for legal representation to the Clerk of the Second Judicial District Court.

4. Adrianna Marie Norman is hereby advised that:

Any fine, fee administrative assessment or restitution imposed today (as reflected in this Judgment) constitutes a lien, as defined in Nevada Revised Statute NRS 176.275. Should the Defendant not pay these fines, fees, or assessments, collection efforts may be undertaken against you.

Dated this 21st day of June 2021.

KATHLEEN M. DRAKULICH
DISTRICT JUDGE

F I L E D
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2022-07-06 10:18:22 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 9133336

EXHIBIT 3

FILED
Electronically
CR20-0630B
2020-06-19 02:30:49 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7934755 : shigginb

DA #20-2455

SPD 20-001640

CODE 1800
Christopher J. Hicks
#7747
One South Sierra Street
Reno, NV 89501
districtattorney@da.washoecounty.us
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No.: CR20-0630

Dept. No.: D01

RYAN WILLIAMS (B)
and
ADRIANNA MARIE NORMAN (A),

Defendants.

_____/

INFORMATION

CHRISTOPHER J. HICKS, District Attorney within and for the County of Washoe, State of Nevada, in the name and by the authority of the State of Nevada, informs the above entitled Court that, the defendants above-named, ADRIANNA MARIE NORMAN and RYAN WILLIAMS, have committed the crime(s) of:

COUNT I. ROBBERY WITH THE USE OF A DEADLY WEAPON, a violation of NRS 200.380, NRS 193.165, and NRS 195.020, a category B felony, (50138) in the manner following:

That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE NORMAN, on or about February 22, 2020, within the County of Washoe,

State of Nevada, did willfully and unlawfully take personal property, to wit: a gaming cash-out voucher and/or a wallet, from the person and/or in the presence of STEVEN SIMS, at Bob & Lucy's located at 1515 Oddie Boulevard, Sparks, Washoe County, Nevada, against his will, and by means of force or violence or fear of immediate or future injury to his person, and with the use of a deadly weapon, which was a silver-colored handgun, which the said defendants displayed and/or brandished to STEVEN SIMS during the offense; or

The said defendants RYAN WILLIAMS and ADRIANNA MARIE NORMAN did willfully and unlawfully aid and abet each other and act as conspirators with each other in committing the aforementioned acts, in that the defendants did directly or indirectly counsel, encourage, induce, and conspire and agree with each other to rob, coerce, and/or kidnap STEVEN SIMS, and in furtherance thereof, the defendants, encouraging each other by their presence and concerted action, approached SIMS where he was gambling inside Bob & Lucy's and ADRIANNA MARIE NORMAN did display her handgun to SIMS in order to facilitate the robbery while confronting SIMS about money or value allegedly owed to NORMAN by SIMS, and defendant WILLIAMS menaced SIMS and the the defendants ordered SIMS to leave with them, and thereafter defendant WILLIAMS cashed out the gaming machine SIMS was playing and took SIMS' cash-out ticket reflecting the value of SIMS' money on the machine.

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COUNT II. ATTEMPTED ROBBERY WITH THE USE OF A DEADLY WEAPON, a violation of NRS 193.330, being an attempt to violate NRS 200.380, NRS 193.165, and NRS 195.020, a category B felony, (50145) in the manner following:

That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE NORMAN, on or about February 22, 2020, within the County of Washoe, State of Nevada, did willfully and unlawfully attempt to take personal property, to wit: money, from the person and/or in the presence of STEVEN SIMS, at Bob & Lucy's located at 1515 Oddie Boulevard, Sparks, Washoe County, Nevada, against his will, and by means of force or violence or fear of immediate or future injury to his person, and with the use of a deadly weapon, which was a silver-colored handgun that defendant NORMAN displayed and/or brandished to STEVEN SIMS; or

The said defendants RYAN WILLIAMS and ADRIANNA MARIE NORMAN did willfully and unlawfully aid and abet each other and act as conspirators with each other in committing the aforementioned acts, in that the defendants did directly or indirectly counsel, encourage, induce, and conspire and agree with each other to rob, coerce, and/or kidnap STEVEN SIMS, and in furtherance thereof, the defendants, encouraging each other by their presence and concerted action, approached SIMS where he was gambling inside Bob & Lucy's and ADRIANNA MARIE NORMAN did display her handgun to SIMS while confronting SIMS about property allegedly taken by SIMS in the past, and then the defendants intimidated and ordered SIMS to leave with them, and while on the way to the door of the casino, SIMS did offer to obtain money

and provide it to the defendants in order to try to avoid leaving with them, which the defendants accepted as a condition of allowing SIMS to remain in the casino.

COUNT III. BURGLARY WITH POSSESSION OF A FIREARM OR DEADLY WEAPON, a violation of NRS 205.060.1-.2 and NRS 205.060.4, a category B felony, (50426) in the manner following:

That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE NORMAN, on or about February 22, 2020, within the County of Washoe, State of Nevada, acting in concert as conspirators and aiders and abettors as alleged in Count I (which is incorporated by reference herein), did willfully enter a certain business, which was Bob & Lucy's located at 1515 Oddie Boulevard, Sparks, Washoe County, Nevada, with the intent then and there to commit robbery, larceny, assault, battery, kidnapping, and/or felony coercion therein, and the defendants did each have in their possession, or did each gain possession of, a firearm or deadly weapon at any time during the commission of the crime or at any time before leaving the structure, in that defendant NORMAN was armed with a silver-colored handgun.

COUNT IV. MURDER WITH USE OF A DEADLY WEAPON, a violation of NRS 200.010, 200.030, and NRS 195.020, a category A felony, (50001) in the manner following:

That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE NORMAN, on or about February 22, 2020, within the County of Washoe, State of Nevada, did willfully, unlawfully, and with malice aforethought, deliberation, and premeditation, kill and murder JACOB EDWARDS, a human being, by means of defendant WILLIAMS driving a

Chevrolet Silverado truck, which under the circumstances in which it was used was readily capable of causing substantial bodily harm or death and thus constituted a deadly weapon, head-on into the vehicle driven by JACOB EDWARDS while defendant WILLIAMS was fleeing from the police and driving the wrong way against traffic at a high rate of speed on Interstate 80 in Sparks in Washoe County, Nevada, thereby inflicting mortal injuries upon JACOB EDWARDS from which he died on or about February 22, 2020; or

The defendants did willfully and unlawfully kill JACOB EDWARDS in the perpetration or attempted perpetration of a burglary, robbery, and/or kidnapping, in that defendants RYAN WILLIAMS and ADRIANNA MARIE NORMAN, acting in concert as conspirators and aiders and abettors as alleged in Counts I, II and III (which are incorporated by reference herein), entered Bob & Lucy's located at 1515 Oddie Boulevard in Sparks, in order to commit assault and/or battery upon STEVEN SIMS, to commit larceny from and robbery upon SIMS, to kidnap Simms, and/or to commit felony coercion upon SIMS, and the defendants thereafter approached SIMS and displayed a silver-colored handgun to SIMS in an attempt to rob him and force him to leave the establishment against his will under threat of physical force, did steal from him and rob him by taking his cash-out ticket, did detain and threaten him to leave the establishment with the defendants, which threat SIMS began complying with, and when the police responded to the area of Bob & Lucy's while defendant NORMAN was still inside the business conducting SIMS and defendant WILLIAMS was waiting outside for them in a white Chevrolet Silverado truck,

defendant RYAN WILLIAMS did flee from the police in the truck, and while being pursued by the police and in an effort to avoid or prevent being apprehended and lawfully arrested by a peace officer for the aforementioned crimes attempted and committed by NORMAN and WILLIAMS at Bob and Lucy's, defendant Williams did drive the wrong way on Interstate 80 and did kill JACOB EDWARDS by crashing his truck head-on into the vehicle being driven by EDWARDS, thereby using his truck as a deadly weapon and inflicting mortal injuries upon EDWARDS from which he died on or about February 22, 2020.

COUNT V. CAUSING THE DEATH OF ANOTHER BY DRIVING A VEHICLE WHILE UNDER THE INFLUENCE OF METHAMPHETAMINE, a violation of NRS 484C.110 and 484C.430, a category B felony, (53908) in the manner following:

That the said defendant, RYAN WILLIAMS, on or about February 22, 2020, within the County of Washoe, State of Nevada, did unlawfully drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access while under the influence of a controlled substance and/or with an amount of methamphetamine in his blood that was equal to or greater than 100 nanograms per milliliter, and while driving or in actual physical control of the vehicle, the defendant did any act, or neglected any duty imposed by law, that proximately caused the death of or substantial bodily harm to another person;

In that the defendant, while under the influence of methamphetamine and/or with an amount of methamphetamine in his blood that was in excess of 500 nanograms per milliliter, did drive a white

Chevrolet truck on Interstate 80 near Victorian Avenue and McCarran Boulevard in Washoe County, Nevada, entering Interstate 80 driving eastbound against oncoming traffic in the westbound travel lanes in order to escape the police, and, failing to exercise due care, continued to drive at a high rate of speed against oncoming freeway traffic, and thereby did crash his truck head-on into the vehicle being driven in the correct direction by JACOB EDWARDS, which proximately caused EDWARDS' death.

COUNT VI. ELUDING OR FLIGHT FROM A POLICE OFFICER RESULTING IN DEATH, a violation of NRS 484B.550, a category B felony, (55674) in the manner following:

That the said defendant, RYAN WILLIAMS, on or about February 22, 2020, within the County of Washoe, State of Nevada, while driving a motor vehicle on a highway or premises to which the public has access, did willfully fail or refuse to bring the vehicle to a stop, or did otherwise flee or attempt to elude a peace officer in a readily identifiable vehicle, when given a signal, by flashing red lamp and siren, to bring the vehicle to a stop, and while doing so did operate the vehicle in a manner which endangered or was likely to endanger any other person or the property of any other person and proximately caused death or bodily harm to another person;

In that the defendant did flee from the police beginning Bob & Lucy's located at 1515 Oddie Boulevard in Sparks, driving a white Chevrolet truck, and while being pursued by multiple police officers in marked police vehicles, including Sparks Police Officers Nicholas Chambers, Angel Guillen, Jason Stone, Jay Egami, Brian

Sullivan, and Daniel Snow, each of whom were signaling the defendant to stop by flashing red lamp and siren, the defendant did fail and refuse to stop his truck, and did flee and attempt to elude the officers while driving at high rates of speed (including driving in excess of 60 miles per hour in a posted 25 miles-per-hour zone and in a posted 30 miles-per-hour zone, and in excess of 70 miles per hour in a posted 45 miles-per-hour zone) and disregarding traffic signals (including running a red lights at Rock Boulevard and Victorian Avenue, at Rock Boulevard and I-80, and at Glendale Avenue and McCarran Boulevard; and running a stop signs at 15th Street and Pittman Avenue) through areas of Sparks including Rock Boulevard, Victorian Avenue, Hymer Avenue, South 15th Street, Glendale Avenue, McCarran Boulevard, Kleppe Lane, East Lincoln Way, and Stanford Street, and while still being pursued by police, the defendant continued his flight by entering Interstate 80 and driving eastbound in the westbound travel lanes at high rates of speed against oncoming traffic, and thereby did crash his truck head-on into the vehicle being driven in the correct direction by JACOB EDWARDS, which proximately caused EDWARDS' death.

COUNT VII. RECKLESS DRIVING, a violation of 484B.653(1)(a) and 484B.653(9), a category B felony, (53896) in the manner following:

That the said defendant, RYAN WILLIAMS, on or about February 22, 2020, within the County of Washoe, State of Nevada, did unlawfully do any act or neglect any duty imposed by law while driving a vehicle on a highway or on premises to which the public has access in willful or wanton disregard of the safety of persons or

property, and such act or neglect of duty did proximately cause the death or substantial bodily harm to another person,

In that the defendant did drive a white Chevrolet truck on Interstate 80 near Victorian Avenue and McCarran Boulevard in Washoe County, Nevada, entering Interstate 80 driving eastbound against oncoming traffic in the westbound travel lanes, and, failing to exercise due care and failing to drive at a rate of speed reasonable for the traffic and highway conditions and so as to avoid endangering the life, limb, or property of any person, continued to drive at a high rate of speed against oncoming freeway traffic, and thereby did crash his truck head-on into the vehicle being driven in the correct direction by JACOB EDWARDS, which proximately caused EDWARDS' death.

All of which is contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Nevada.

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By:/s/ Luke Prengaman_____
LUKE J. PRENGAMAN
6094
CHIEF DEPUTY District Attorney

The following are the names of such witnesses as are known to me at the time of the filing of the within Information:

LINDA BROWN
NATHAN COATS
KEVIN L. DACH
ADAM HARRIS
KIMBERLY HODGE
DANNY R. JAMES
PATRICK MCNEELY
BRYAN ORR
JOHN PATTON
MONICA SIEWERTSEN
DANIEL SNOW
RACHELLE (SPEAR) WOODARD
JOSE ZENDEJAS
STEVEN M SIMS
RACHEL ARULANANTHAM
EDIK DOMINGUEZ
NICHOLAS CHAMBERS
ANGEL GUILLEN
BRITT BROWN
JASON STONE
JAY EGAMI
BRIAN SULLIVAN
ROBERT CANTERBURY
MATTHEW GALLAGHER
RANDALL RAY WILLIAMS
CHRISTOPHER BROCE
CHRISTOPHER BALLESTEROS
JOHN "JJ" STALLINGS
MAUREEN DYETTE
PETER LOESCHNER
ALEC ALLEN
DANIEL ROBERT MORIARTY
BLAKE MILLER
MONICA TEVES
MARC PETERSON
MAX DAVIS
CUSTODIAN OF RECORDS - REMSA
RENOWN HEALTH
SPARKS FIRE DEPARTMENT
WASHOE COUNTY VITAL STATISTICS
RENOWN HEALTH
JAMES DAVIS
GINA GOMEZ

SAYER DION-SMYCZEK
AIMEE CHESEBROUGH
KEITH KILLIAN
JACOB EDWARDS
DAVID COLE
CLIFF WEBSTER
MELISSA PAREDES
DIANNE WILLIAMS
MARK EDWARDS
AARON MARTINI
GREGORY WOOLSEY
ROBERT MEAD
MICHELLE RAMIREZ
MIKE SLATTERY
JAMES RHOADES
MATT CALDWELL
MATT ALDER
JARROD STEWART
DR. HENRY A MCNETT
BAYLEE BELZ

AFFIRMATION PURSUANT TO NRS 239B.030

The party executing this document hereby affirms that this document submitted for recording does not contain the social security number of any person or persons pursuant to NRS 239B.030.

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By:/s/ Luke Prengaman
LUKE J. PRENGAMAN
6094
CHIEF DEPUTY District Attorney

PCN SPPD0069279C-NORMAN SPPD0069280C-WILLIAMS

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Alicia L. Lerud
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EXHIBIT 4

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Clerk of the Court
Transaction # 9122526

CODE 1850

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs. **Case No. CR20-0630B**

RYAN WILLIAMS, **Dept. No. 1**

Defendant.

_____/

***CORRECTED* JUDGMENT OF CONVICTION**[1]

The Defendant having been found Guilty by a Jury and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against Ryan Williams, the Court rendered judgment as follows:

1. That Ryan Williams is guilty of the crime of Robbery, a violation of NRS 200.380, and NRS 195.020, a category B felony.

2. **That Ryan Williams be punished by imprisonment in the Nevada Department of Corrections for a minimum term of 60 months to a maximum term of 180 months, with credit for time served in the amount of 514 days.**

3. That Ryan Williams is guilty of the crime of Burglary With Possession of a Firearm or Deadly Weapon, a violation of NRS 205.060.1-.2 and NRS 205.060.4, a category B felony, as charged in Count III of the Information.

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[1] *See Order Affirming in Part and Reversing in Part with a Limited Remand to Correct the Judgment of Conviction.*

4. **That Ryan Williams be punished by imprisonment in the Nevada Department of Corrections for a minimum term of 60 months to a maximum term of 180 months, to be served concurrent with the sentence imposed in Count I.**

5. That Ryan Williams is guilty of the crime of Causing the Death of Another by Driving a Vehicle While Under the Influence of Methamphetamine, a violation of NRS 484C.110 and NRS 484C.430 a category B felony, as charged in Count V of the Information.

6. **That Ryan Williams be punished by imprisonment in the Nevada Department of Corrections for a minimum term of 48 months to a maximum term of 180 months, to be served consecutive to the sentence imposed in Count III, and by payment of a fine in the amount of $2,000.00.**

7. That Ryan Williams is guilty of the crime of Eluding or Flight From a Police Officer Resulting in Death, a violation of NRS 484B.550, a category B felony, as charged in Count VI of the Information.

8. **That Ryan Williams be punished by imprisonment in the Nevada Department of Corrections for a minimum term of 96 months to a maximum term of 240 months, to be served consecutive to the sentence imposed in Count V.**

9. **It is further ordered that the aggregate sentence imposed is a minimum of 17 years with a maximum of 50 years.**

10. It is further ordered that Ryan Williams shall pay an administrative assessment fee of $25.00 and the $3.00 administrative assessment for obtaining a biological specimen and conducting a genetic marker analysis and reimburse the County of Washoe the sum of $1,000.00 for legal representation to the Clerk of the Second Judicial District Court. In addition, the Defendant is ordered to pay restitution in the amount of $10,000.00, to Victim VC2279343 and $5,000.00, to Victim VC2108500. All monetary payments, money and property collected from the Defendant shall be first applied to pay the amount ordered as restitution to the Victims.

11. Ryan Williams is hereby advised that:

Any fine, fee administrative assessment or restitution imposed today (as reflected in this Judgment) constitutes a lien, as defined in Nevada Revised Statute NRS 176.275. Should the Defendant not pay these fines, fees, or assessments, collection efforts may be undertaken against you.

Dated this 28th day of June 2022.
NUNC PRO TUNC to the 26th day of July 2021.

KATHLEEN M. DRAKULICH
DISTRICT JUDGE

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Clerk of the Court
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AVERY EDWARDS, a minor by and through her guardian MARK EDWARDS; THE ESTATE OF JACOB EDWARDS by and through KASHIF SHANKLE, Special Administrator of the Estate of Jacob Edwards, Deceased,

Plaintiffs,

vs.

THE CITY OF SPARKS; a political subdivision; THE POLICE DEPARTMENT OF THE CITY OF SPARKS, a law enforcement agency of the State of Nevada; PATRICK B. MCNEELY, an Individual; MIKE MCCREARY, an Individual; JOHN P. PATTON, an Individual; EDIK DOMINGUEZ, an Individual; NICHOLAS CHAMBERS, an Individual; ANGEL GUILLEN, an Individual; DAN SNOW, an Individual; JASON STONE, an Individual; JAY EGAMI, an Individual; BRIAN SULLIVAN, an Individual; ROBERT CANTERBURY, an Individual; KIMBERLY HODGE, an Individual; PETER LOESCHNER, an Individual; RACHEL ARULANATHAM, an Individual; CHRIS BROCE, an Individual; DOE SPARKS POLICE OFFICERS 1 through 10, inclusive; DOE INDIVIDUALS 11 through 20, inclusive; ROE CORPORATIONS 21 through 30, inclusive; and ABC LIMITED LIABILITY COMPANIES 31 through 40, inclusive,

Defendants,

CASE NO.: CV22-00282
DEPT NO.: 8

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

COME NOW Plaintiffs, AVERY EDWARDS and THE ESTATE OF JACOB EDWARDS (collectively, "Plaintiffs"), by and through their counsel Christian M. Morris, Esq., Alexandra B. M^{c}leod, Esq., and Wesley H. LeMay, Jr., Esq. of the law firm NETTLES | MORRIS, and hereby submits Plaintiffs' Opposition To Defendants' Motion To Dismiss ("Opposition").

This Opposition is based on the following points and authorities, the pleadings and papers on file herein, and any oral argument of counsel heard at the time of hearing.

DATED this 29th day of June, 2022.

NETTLES | MORRIS



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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiffs' claims arise from the acts and/or omissions of multiple police officers employed by The Police Department of the City of Sparks ("Sparks PD") when police officers initiated a high-speed pursuit of unarmed suspects who were not directly related to the reason for the police response to Bob and Lucy's, an establishment located in Sparks, Nevada. Specifically, police response was requested because a female brandished a firearm while inside the establishment. ***See Plaintiff's Complaint,*** **filed on February 18, 2022, attached hereto as Exhibit 1, at ¶ 30**. After police officers apprehended the female, they discovered the firearm was not real. *Id*. at ¶¶ 33-34. After further questioning of the female, police officers were informed that the female received the fake firearm from unarmed individuals who were waiting inside a pickup truck located in the parking lot outside of the establishment. *Id*. at ¶¶ 33-36.

Despite being informed the individuals inside the pickup truck ("fleeing individuals") were unarmed and having the pickup truck's license plate, police officers made the decision to pursue the fleeing individuals. *Id*. at ¶¶ 37-41. In the process, police officers violated Nevada Department of Public Safety policies, used deadly force during a pursuit of unarmed individuals, and disregarded an order to cease the pursuit of the fleeing individuals. *Id*. at ¶¶ 45, 80, 81, 103, 115, and 116. Consequently, the fleeing suspects entered I-80 in the wrong way of travel and crashed into Jacob Edwards's ("Decedent") vehicle.

Plaintiffs' Complaint alleged sufficient facts to maintain their causes of action against the Sparks PD police officers and Sparks PD (collectively "Defendants"). The facts alleged in Plaintiffs' Complaint must be accepted as true when considering a motion to dismiss and, in that light, Defendants should not be able to avail any immunity brought up in their Motion to Dismiss. Therefore, Defendants' Motion to Dismiss should be denied in its entirety.

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II.

LEGAL ARGUMENT

A. Legal Standard For Dismissal

A complaint, or portions thereof, may be dismissed where "it appears beyond doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief." *See Edgar v. Wagner*, 101, Nev. 226, 228, 699 P.2d 110, 112 (1985) (*citing Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In assessing a motion to dismiss, this Court must construe the pleadings liberally and draw every reasonable inference in favor of the non-moving party. *Lubin v. Kunin*, 117 Nev. 107, 110 n. 1, 17 P.3d 422, 425 (2001) (citations omitted). All factual allegations of the complaint must be accepted as true. *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (*citing Capital Mortgage Holding v. Hahn*, 101 Nev. 314 315, 705 P.2d 126, 126 (1985)). A complaint must not be dismissed for insufficiency, for failure to state a cause of action, unless it appears to a certainty that plaintiff is entitled to no relief under any set of facts which, if accepted by the trier of fact, would entitle him to relief. *Simpson v. Mars Inc.*, 113 Nev. 188, 929 P.2d 966 (1997).

"A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for the relief sought. . . ." NRCP 8(a). "The test for determining whether the allegations of a cause are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of the claim and relief requested." *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984) (citations omitted). Because Nevada is a notice-pleading jurisdiction, our courts liberally construe pleadings to place into issue matters, which are fairly noticed to the adverse party. *Hay v. Hay*, 100 Nev. 196, 198 678 P.2d 672, 674 (1984) (*citing* NRCP 8(a)). A "pleading of conclusions, either of law or fact, is sufficient so long as the pleading gives fair notice of the nature and basis of the claim." *Crucil v. Carson City*, 95 Nev. 583, 585, 600 P.2d 216, 217 (1979).

Under the standard of review for motions brought pursuant to NRCP 12(b)(5), Plaintiff has a very low burden to meet. In contrast, Defendants have a very high bar to overcome under

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Lubin. Defendants must show that Plaintiffs cannot prove *beyond a doubt* Plaintiffs' alleged facts entitling them to relief as set forth in their Complaint. Plaintiffs provided more than just short and plain statements as required by NRCP 8(a). Plaintiffs' Complaint contains statements which identify: (1) the relevant facts to the subject incident, (2) causes of action and their elements, (3) damages suffered by Plaintiffs, and (4) relief Plaintiffs are seeking.

Under NRCP 12(d), it is inappropriate to consider facts outside the complaint or to generally assume certain facts in a motion brought under 12(b)(5) as this would convert the motion to dismiss into a motion for summary judgment. When adhering to the factual allegations in Plaintiffs' Complaint, Defendants violated Decedent's rights guaranteed under the United States and Nevada Constitution as well as several Nevada Department of Public Safety policies to pursue the fleeing individuals all while there was no justifiable governmental interest in continuing the pursuit.

B. The Public Duty Doctrine Does Not Apply Because the Conduct Of Sparks PD Police Officers Affirmatively Caused Decedent's Harm

While NRS 41.0336 (Nevada's Public Duty Doctrine) generally shields law enforcement agencies from liability arising from negligence, there are two exceptions to NRS 41.0336:

> A fire department or law enforcement agency is not liable for the negligent acts or omissions of its firefighters or officers or any other persons called to assist it, nor are the individual officers, employees or volunteers thereof, unless:
> 1. The firefighter, officer or other person made a specific promise or representation to a natural person who relied upon the promise or representation to the person's detriment; or
> 2. The conduct of the firefighter, officer or other person affirmatively caused the harm.

NRS 41.0336.

Here, the second exception applies. Plaintiffs alleged Sparks PD police officers made a conscious decision to pursue the fleeing individuals despite the fact there was no justifiable governmental interest in the pursuit. *See Exhibit 1* at ¶ 106. Specifically, Sparks PD police officers had the license plate of the fleeing individuals' truck and could apprehend them at a later time without the need for a high-speed pursuit. *Id*. The fleeing individuals were reported to be unarmed so there was no threat to the general public. *Id*. at ¶ 36. The primary reason for the need

for police response was already resolved when the female reported to have brandished a weapon was apprehended by Sparks PD police officers. *Id*. at ¶¶ 34-35.

Despite having no need to engage in a high-speed pursuit, Sparks PD police engaged in a pursuit anyway, which violated Nevada Department of Public Safety Policy 309.4, which limits pursuits to three vehicles. *Id*. at ¶45. Furthermore, Plaintiffs alleged police officers violated a policy that stated officers shall not follow a vehicle driving the wrong way on a roadway, highway or freeway. *Id*. at ¶115. Additionally, Officers failed to request aircraft assistance during the wrong way pursuit, also in violation of policy. *Id*. at ¶ 116. At one point in the pursuit, a Sparks PD sergeant ordered Sparks PD police officers to cease the pursuit, but the Sparks PD police officers disobeyed that order. *Id*. at ¶103.

Accordingly, the conduct of the Sparks PD police officers who initiated and continued pursuit of the fleeing individuals prompted the fleeing individuals to enter I-80 in the wrong way of travel and crash into Decedent's vehicle. Defendants' Motion to Dismiss focuses on the conduct of the fleeing individuals as the cause of Decedent's harm. *See* Motion to Dismiss at pp. 9-11. Although it was the fleeing individuals who crashed into Decedent's vehicle, the driving force behind the pursuit was the Sparks PD police officers' decisions to initiate and continue a high-speed pursuit that did need to occur because there was no threat to the general public prior to the pursuit and the Sparks PD police officers had the information they needed in order to make an arrest of the fleeing individuals.

Defendants rely on the application of the Public Duty Doctrine in *Porchia v. City of Las Vegas* to support their contention that they too should be shielded from liability. However, the facts in *Porchia* are dissimilar to the case at bar. In *Porchia*, the Nevada Supreme Court analyzed whether paramedics have a duty to transport patients who in their medical opinion do not require further medical attention. *Porchia v. City of Las Vegas*, 138 Nev. Adv. Op. 4, 504 P.3d 515, 519 (2022). The initial paramedics who responded to Porchia's request for help misdiagnosed him and, consequently, did not transport him to the hospital. *Id.* at 521. However, the Nevada Supreme Court did not find that the misdiagnosis rose to the level of affirmative action required to place liability upon the paramedics. *Id*. at 522.

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In the instant case, unlike the paramedics in *Porchia*, Sparks PD police officers were given information necessary to make a later arrest but nonetheless decided to pursue the fleeing individuals despite the high likelihood of known harm. Indeed, a Sparks PD sergeant presumably recognized the risk of harm associated with unnecessary pursuit and ordered police officers to stop the pursuit. However, Sparks PD police officers made the conscious decision to continue chasing the fleeing individuals down the wrong way of travel on I-80 making thereby making their affirmative action the reason the fleeing individuals crashed into Decedent's vehicle.

Thus, Defendants' conduct affirmatively caused Decedent's harm and Defendants are unable to avail of the immunity set forth in NRS 41.0336.

C. Plaintiffs' Complaint Is Based On The Conduct Of Sparks PD Police Officers, Not The Conduct Of The Fleeing Individuals

As Defendants recognize in their Motion to Dismiss, Plaintiff's Complaint does not allege a special relationship between the fleeing individuals and Sparks PD police officers or Sparks PD. The allegation of a special relationship is not required here because, as discussed *supra B,* Plaintiff's Complaint is based on the conduct of the Sparks PD police officers who initiated and continued the high-speed pursuit. The crash with Decedent's vehicle would not have occurred but for the decision of Sparks PD police officers to engage in an unnecessary high-speed pursuit.

D. Defendants Do Not Have Discretionary Immunity In This Case

The Nevada Supreme Court explained in *Martinez v. Maruszczak,* that the purpose of Nevada's waiver of sovereign immunity is to "compensate victims of government negligence in circumstances like those in which victims of private negligence would be compensated." *Martinez v. Maruszczak,* 168 P.3d 720, 727 (Nev. 2007). Under *Martinez,* the Nevada Supreme Court held the decisions of state actors are entitled to discretionary immunity under a two-prong test, if the decision (1) involves an element of individual judgment or choice and (2) is based on considerations of social, economic, or political policy. *Id*. The Nevada Supreme Court clarified that "decisions at all levels of government, including frequent or routine decisions, may be protected by discretionary-act immunity, if the decisions require analysis of government policy

concerns." *Id.* at 729. The Nevada Supreme Court cautioned that "discretionary decisions that fail to meet the second criterion of this test remain unprotected by NRS 41.032(2)'s discretionary-act immunity." *Id.*

The first Prong of the *Martinez* test is not at issue in this case. It is clear the Sparks PD police officers made choices and/or judgments in their decisions to initiate and engage in an unnecessary high-speed pursuit of the fleeing individuals who crashed into Decedent's vehicle. The second prong of the test however is at issue and Defendants' actions fail to qualify for protection. Plaintiffs alleged that there was no justifiable governmental interest in continuing the pursuit because the suspect who was believed to be armed, later discovered to be fake, was already in police custody. Additionally, police officers had the license plate of the fleeing suspects and could have apprehended the vehicle and suspects at a later time. *See* Complaint at ¶106.

Accordingly, the decision to engage in and continue a high-speed pursuit could not have been based on considerations of social, economic, or political policy. There was no immediate threat to the general public because the police officers had all of the information required to initiate arrests at a later time without instigating a high-speed chase.

Moreover, the cases cited to in Defendant's Motion to Dismiss discuss the prevention of crime. Here, Plaintiffs alleged there was no crime to prevent because the reason for the police response was already addressed when Sparks PD police officers apprehended the female who brandished a weapon and notified police officers of the identity of fleeing individuals who were unarmed.

Because allegations made in Plaintiffs' Complaint must be accepted as true when considering a motion to dismiss, the Court must deny Defendants' Motion because Plaintiffs made an allegation that the Sparks PD police officer's decisions were not based on considerations of social, economic, or political policy thereby disqualifying Defendants from discretionary-act immunity.

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E. Discretionary Immunity Does Not Protect Sparks PD From Plaintiffs' Negligent Hiring, Training, Retention, And/Or Supervision Claims Arising Out Of Sparks PD's Failure To Take Corrective Action

Operational decisions implementing policy are not true "policy decisions" entitled to immunity, such as Sparks PD's decision to continue to retain the Sparks PD police officers involved in the high-speed chase at issue. The *Martinez* court referenced *Nguyen v. State*, 1990 OK 21, 788 P.2d 962, 964-65 (Okla. 1990) which noted "the majority of states utilizing the FTCA immunity framework provide discretionary-act immunity for initial policy and planning decisions, but not for 'operational level decisions made in the performance of policy.'" *Id*., 123 Nev. at 444 n.32, 168 P.3d at 728 n.32. Furthermore, "certain acts, although discretionary, do not fall within the discretionary-function exception's ambit because they involve negligence unrelated to any plausible policy objectives." *Martinez* at 729 (internal quotations omitted).

The Martinez court went on to use an apt analogy, "a government employee who falls asleep while driving her car on official duty is not protected by the exception because her negligent judgment in falling asleep cannot be said to be based on the purposes that the regulatory regime seeks to accomplish." *Id*. The purpose of the qualified immunity is to "prevent judicial second guessing of decisions grounded in social, economic and political policy through the medium of an action in tort." *Id*. Only "if the imposition of liability might jeopardize the quality of the governmental process, or if the legislative or executive branch's power or responsibility would be usurped," will immunity attach under the second prong of the two-part test. *Id*.

Here, Plaintiffs allege that Sparks PD negligently hired, trained, retained, and/or supervised Sparks PD police officers. Plaintiffs make no allegations about whether Sparks PD had any discretion to hire the Sparks PD police officers or whether any decision to hire, train, retain, or supervise them was based on a public policy consideration. Plaintiffs' negligent hiring, training, retaining and supervising allegations state Sparks PD owed a non-delegable duty to Plaintiffs to exercise due care in the selection, training, oversight, direction, retention, and control of Sparks PD police officers. *See Exhibit 1* at ¶ 141. Sparks PD breached the non-

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delegable duty to Plaintiffs by failing to properly select, train, oversee, direct, retain, control, and supervise Sparks PD police officers. *Id*. at ¶ 142.

Again, factual allegations in a complaint must be taken as true when evaluating a motion to dismiss. Accordingly, the Court must accept as true that Sparks PD owed Plaintiffs a duty to reasonably hire, train, retain, and supervise its police officers and that Sparks PD breached its duty to Plaintiffs.

While Defendants may allege that their hiring and training practices are policy-based decisions and thus they meet the second prong of the test, Sparks PD's Motion lacks the foundation to make these assertions. Based upon the allegations of the Complaint, Plaintiffs have alleged that the Sparks PD negligently hired, trained, supervised its police officers. Plaintiffs made no allegations regarding the specifics of Sparks PD hiring or training policies, therefore there is no basis on these pleadings to assert that Sparks PD's hiring and training policies are made "based upon considerations of public policy." The fact is, it is currently unknown how Defendant Sparks PD came to the decision to hire/train/supervise its police officers

Contrary to Defendant Sparks PD's assertions, *Paulos v. FCH1* does not support dismissing Plaintiffs' claim against it. 136 Nev. Adv. Rep. 2, 456 P.3d 589 (2020). In *Paulos*, the Nevada Supreme Court considered a specific LVMPD policy about training officers to move arrestees from hot pavement and found that the decision was subject to a policy analysis. *Id*, at 596. Here, it is unknown what training, if any, is provided with regard to the facts specific to this incident or whether that training is subject to a policy analysis. In *Paulos*, the main issue was also whether a prior case involving all the same parties and facts brought in a different court of jurisdiction had a preclusive effect on the outcome of the *Paulos* case. Thus, the court in that instance had the benefit of a factual foundation when making its assessment about LVMPD's hiring, training, and supervision of the specific officers involved in that case. Here, there is no factual foundation whatsoever for this Court to assess the same.

A motion to dismiss must be assessed by accepting all the allegations in the Complaint as true—no allegations were made as to how Sparks PD came to its decisions to hire, train, supervise, etc., its police officers. This is an important distinction. A motion to dismiss must only

be granted if no set of facts pled in the Complaint could entitle the Plaintiffs to relief. However, on the facts plead here, the Court has no way to assess whether the hiring, training, supervising, etc., of Sparks PD police officers was an "act that involves elements of judgment or choice" or whether "the act was based on considerations of public policy." There are simply no facts in the record to rely upon to make that determination. As such, dismissing Plaintiffs' cause of action at this extraordinarily early stage without any discovery whatsoever would be rash and highly prejudicial to Plaintiffs. A dismissal at this early stage would functionally dismiss Defendant Sparks PD with prejudice as the statute of limitations has run on Plaintiffs' claim against Defendants.

Therefore, Defendants' motion to dismiss is premature and should be DENIED.

F. The Court's Decision in *La'Shae Northington V. Jesse Allen Bennett, Et Al.,* Case Number CV21-02128 is Not Binding On This Court and They Did Not Analyze The Factual Intricacies In The Instant Case When Forming Their Decision

Although there are general similarities between *La'Shae Northington v. Jesse Allen Bennett* and the case at bar as described in Defendants' Motion to Dismiss, there are undoubtedly factual intricacies in the instant case that the Court did not have to consider in *Northington*. Specifically, the initial reason for police response in this case was already addressed with the apprehension of the female who brandished a weapon. The fleeing suspects' vehicle and license plate was known to police officers, eliminating the need for a high-speed pursuit in this case. Also, it is unknown whether an order was issued to stop the pursuit of the suspect in *Northington*, as one was given here by a Sparks PD sergeant to the officers who continued the pursuit. As such, *Northington* is unreliable even for persuasive value because of factual dissimilarities.

G. Plaintiffs Made Sufficient Allegations To Support Their Claims Arising Under The United States Constitution And Nevada Constitution

The Due Process Clause of the Fourteenth Amendment provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. The United States Supreme Court has specifically held "that the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to

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life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 328 (1986). Here, as discussed above, Defendants' acts were not only negligent, but intentional. Plaintiffs allege the police officers intended to cause harm for multiple reasons.

First, a pursuit immobilization technique (PIT) performed at a speed over 40 mph constitutes deadly force. *See Exhibit 1* at ¶¶80-81. Second, Sparks PD police officers violated Nevada Department of Public Safety Policy 309.4, which limits pursuits to three vehicles. *Id*. at ¶45 Third, Plaintiffs alleged police officers violated a policy that stated officers shall not follow a vehicle driving the wrong way on a roadway, highway or freeway. *Id*. at ¶115 Fourth, Officers failed to request aircraft assistance during the wrong way pursuit, also in violation of policy. *Id*. at ¶ 116. And fifth, a Sparks PD sergeant told Sparks PD police officers over the radio to cease the pursuit, but Sparks PD officers ignored the command and pursued unarmed suspects for approximately 20 minutes. *Id*. at ¶ 103.

As such, these allegations manifest conduct that was intentional because Defendants actively engaged in and continued the pursuit of the fleeing individuals despite the policies in place that should have terminated the pursuit. There was also an order to stop the pursuit which was not followed. Importantly, Plaintiffs alleged there was no justifiable governmental interest in continuing the pursuit because the fleeing suspects were not armed and the police officers identified the license plate, which could lead to later apprehension of the suspects. *Id,* at ¶106. The suspect believed to be armed—later discovered to have a fake weapon—was already in police custody and did not present any threat.

The aforementioned factual allegations coincide with specific constitutional allegations wherein "Defendants, and each of them, violated Jacob Edwards' Fourth Amendment rights by engaging in a needless, reckless, unjustified and unreasonably dangerous high-speed automobile chase and causing the deadly crash as alleged herein, resulting in an unconstitutional seizure by terminating Jacob Edwards' freedom of movement through means intentionally applied." Id. at ¶163.

Although the United States Supreme Court held that a police officer does not "violate[] the Fourteenth Amendment's guarantee of substantive due process by causing death through

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deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender", it left open for interpretation circumstances in which police officers may be held to violate due process. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 836 (1998). Notably, the United States Supreme Court stated "in such circumstances only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." *Id.*

Defendant's comparison of the instant case to *Scott v. Harris* exaggerates Plaintiffs' position to an absurd degree. 550 U.S. 372 (2007). Plaintiffs are not claiming that all the fleeing suspects had to do was to accelerate "to 90 miles per hour, [cross] the double-yellow line a few times, and [run] a few red lights." *Id*, at 385-86. Plaintiffs main point is that there was no reason to pursue the fleeing individuals because they did not pose an immediate threat to the general public. The license plate of the vehicle was known, and the suspects could be apprehended at a later time instead of being involved in a lengthy and dangerous high-speed pursuit.

Sparks PD police officers knew there was no threat because the female they apprehended in response to the request for police presence advised the responding officers that the fleeing individuals were unarmed. Furthermore, Sparks PD police officers knew of the fleeing individuals' identities and the license plate number of the truck they were driving, so a later arrest could have been made under safer circumstances. All the pursuit accomplished was Decedent's untimely and tragic death. Indeed, Sparks PD police officers were ordered to cease their pursuit, but they continued despite that order. Such intentional conduct surely is within the province of arbitrary conduct shocking to the conscience, necessary for a due process violation as contemplated by the United States Supreme Court in *Lewis*.

H. Defendants Are Liable Because They Have A Policy Or Custom Of Violating The Constitutional Rights Of Citizens

In *Monell v. Dept. of Social Services of the City of N.Y.*, the Supreme Court held that municipalities are persons subject to liability under § 1983 where "action pursuant to official municipal policy of some nature cause[s] a constitutional tort." *Monell v. Dept. of Social Services of the City of N.Y.*, 436 U.S. 658, 98 S. Ct. 2018, 56 (1977). A plaintiff can establish municipal

liability under 42 U.S.C. § 1983 in one of three ways. *Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir. 1992). "First, the plaintiff may prove that a city employee committed the alleged constitutional violation pursuant to a formal government policy or a long standing practice or custom which constitutes the standard operating procedure of the local government entity." *Id*.

"Second, the plaintiff may establish that the individual who committed the constitutional tort was an official with 'final policy-making authority' and that the challenged action itself thus constituted an act of official governmental policy." *Id*. "Third, the plaintiff may prove that an official with final policy-making authority ratified a subordinate's unconstitutional decision or cation and basis for it. *Id*. Here, Plaintiffs asserted liability upon the existence of municipal policies that caused constitutional harm and Defendants' ratification of the Sparks PD police officers who continued the pursuit of the fleeing individuals.

a. Policy or Custom

For the purposes of proving a *Monell* claim, a custom or practice can be supported by evidence of repeated constitutional violations which went uninvestigated and for which the errant municipal officers went unpunished. *Hunter v. County of Sacramento*, 652 F.3d 1225, 1236 (9th Cir. 2011).

Here, there is simply not enough information available to the parties at this early stage in litigation. Plaintiffs have alleged that Defendant SPARKS PD knew or should have known of the risks posed to others in employing SPARKS PD OFFICERS, but disregarded such knowledge with reckless, willful, and/or conscious disregard for the rights and safety of others, including Jacob Edwards. Such actions were ratified, ordered, and/or approved by SPARKS PD. *See Exhibit 1* at ¶ 144. Moreover, the fact that Defendants cite to *La'Shae Northington v. Jesse Allen Bennett,* a similar case before this Court involving a high-speed police chase involving a fatality of a third-party, seemingly indicates a pattern of conduct involving a dangerous Sparks PD policy involving police pursuits. As such, Plaintiffs should be given the opportunity to investigate Sparks PD's policies and the conduct of its police officers during discovery to prove up their claims.

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b. Ratification

"Ordinarily, ratification is a question for the jury." *Christie v. Iopa*, 176 F.3d 1231, 1238-39 (9th Cir. 1999). A single decision that ratifies unconstitutional conduct may be sufficient to trigger section 1983 liability if that official has "final policy making authority." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481-83 (1986). Here, Plaintiffs alleged a Sparks PD lieutenant at the main station monitored the unfolding events involving a high-speed pursuit, which was initiated because of a call based on a woman brandishing a firearm who was already in police custody. *See Exhibit 1* at ¶¶100 -102. Such action or inaction with merely monitoring the events unfold may constitute ratification necessary to hold Defendants liable. However, more information would be needed to determine whether the lieutenant or anyone at the police station had final policy making authority. Such information can only be ascertained through discovery.

Thus, Defendants' Motion to Dismiss should be denied.

I. Plaintiffs Are Entitled To Discovery On The Foregoing Allegations And Issues At A Bare Minimum

At this early stage, Plaintiffs would be greatly prejudiced by the dismissal of these claims as the Statute of Limitations has passed on the claims related to the subject incident. Plaintiffs, at a minimum, should be allowed to conduct discovery to prove up their claims prior to their dismissal.

III.

CONCLUSION

Based upon the foregoing, Plaintiffs respectfully requests this Court issue an Order **DENYING** Defendants' Motion to Dismiss.

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AFFIRMATION

The undersigned does hereby confirm the preceding document does not contain the social security number of any person.

DATED this 29th day of June, 2022.

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I hereby certify that on the 29th day of June, 2022 a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** was served to the following parties by electronic transmission through the Case Management/Electronic Case Filing (CM/ECF):

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MARK EDWARDS, et al.,

Plaintiffs,

vs.

CITY OF SPARKS, et al.,

Defendants.

CASE NO.: CV22-00282

DEPT. NO.: 8

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

Defendants[1], City of Sparks, Sparks Police Department, Patrick McNeely, Mike McCreary, John Patton, Edik Dominguez, Nicholas Chambers, Angel Guillen, Dan Snow, Jay Egami, Brian Sullivan, Robert Canterbury, Kimberly Hodge, Peter Loeschner, Rachel Arulanantham, and Chris Broce, by and through counsel Wesley K. Duncan, Sparks City Attorney, Barrack Potter, Senior Assistant City Attorney, and Mariah Northington, Assistant City Attorney, hereby submit this Reply in Support of its Motion to Dismiss. This Reply is based upon NRCP 12(b)(5), the following Memorandum of Points and Authorities, and the pleadings on file.

///

[1] Defendant Jason Stone is currently on military orders, is outside the jurisdiction and has not yet had the opportunity to give authority to the Sparks City Attorney's Office to represent him in this action.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs allege that the initial female criminal suspect, Adrianna Norman, told Officer McNeely "that Williams' gun was not real." Compl. at ¶34. Plaintiffs allege that because of the female criminal suspect's statement, "there was no reason to pursue Williams or Kelly." *Id*. at ¶35. However, Plaintiffs then allege that the officers deployed rifles and yelled numerous commands at the suspect's vehicle, and the vehicle sped off, causing the subject pursuit. *Id*. at ¶39-40.

Plaintiffs allege that "SPARKS PD officers identified a white Chevrolet pickup truck being [sic] Nevada License plate '181LMJ' (hereafter the Suspect's Vehicle) in the parking lot." *Id*. at ¶37. However, Plaintiffs do not allege whether that was a valid license plate or whether it was fictitious, nor do they allege whether Ryan Williams was the registered owner of the vehicle or not.

Plaintiffs allege that "SPARKS PD OFFICERS had sufficient information…that the parties being pursued had little to no culpability i[n] the alleged brandishing crime committed by Norman," and "there was no justifiable government interest in continuing the pursuit because Norman was already in custody, SPARKS PD OFFICERS had the license plate to the vehicle and could apprehend the suspects at a later time." *Id*. at ¶105-106. However, as evidenced by the June 22, 2021 Judgment of Conviction in CR20-0630A, Adrianna Norman was convicted of Burglary With Possession of a Firearm or Deadly Weapon, a Category B felony, for the subject incident – not brandishing as alleged, which is a misdemeanor crime.[2] [3] *See* Exhibits 1 & 2. Further, as evidenced by the June 28, 2022

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[2] Courts may take judicial notice. *See* NRS 47.130(2) ("A judicially noticed fact must be: (a) Generally known within the territorial jurisdiction of the trial court; or (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute."); *Lemel v. Smith*, 64 Nev. 545, 566 (1947) ("Judicial notice takes the place of proof, and is of equal force. As a means of establish facts, it is therefore superior to evidence.").

Consideration of judicially noticed materials does not convert this subject Motion to Dismiss to a Motion for Summary Judgment. "A court may, however, consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *see also Occhiuto v. Occhiuto*, 97 Nev. 143, 145 (1981); *Bank of Am., N.A. v. Mesa Homeowners' Ass'n*, 446 F. Supp. 3d 692, 696 (D. Nev. 2020).

[3] *See* NRS 202.320, titled Drawing Deadly Weapon in Threatening Manner.

Corrected Judgment of Conviction in CR20-0630B, Ryan Williams was convicted of: (1) Robbery, a Category B felony, (2) Burglary, a Category B felony, (3) Burglary With Possession of a Firearm or Deadly Weapon, a Category B felony, (4) Causing the Death of Another by Driving a Vehicle While Under the Influence of Methamphetamine, a Category B felony, and (5) Eluding or Flight from Police Officer Resulting in Death, a Category B felony, for the subject incident. *See* Exhibits 3 & 4. In short, and as explained in more detail below, Plaintiffs' claim that the officers had no justifiable government interest in pursuing Williams is directly contradicted by Williams' Judgment of Conviction stemming from the underlying incident and is a legal conclusion that is not entitled to a presumption of truth.

II. ARGUMENT

A. Defendants are entitled to Qualified Immunity

Plaintiffs' Opposition does not even address Defendants' invocation of qualified immunity, nor does it provide any "answering points and authorities" as required by Rules of Practice for the Second Judicial District Court, Rule 12 (2). This failure should be construed as an admission that Defendants are entitled to qualified immunity.

Even if the Court were to still consider Defendants' invocation of qualified immunity on its merits, Plaintiffs have failed in their Opposition to meet their burden of "showing that the rights allegedly violated were clearly established." *Shafer v. Cty. of Santa Barbara*, 868 F.3d 1110, 1118 (9th Cir. 2017). "[T]o show a violation of clearly established law, [the plaintiff] must identify a case that put [the officer] on notice that his specific conduct was unlawful," and this inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 8 (2021) (internal citations omitted). Plaintiffs have failed to meet this threshold burden, have failed to rebut Defendants' invocation of qualified immunity, and therefore Defendants are entitled to qualified immunity.

Additionally, the United States Supreme Court and Nevada Supreme Court have recognized that "**[q]ualified immunity is an immunity from suit rather than a mere defense to liability**." *Pearson v. Callahan*, 555 U.S. 223, 237 (2009) (citation and quotation marks omitted) (emphasis added); *see also Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 458, 168 P.3d 1055, 1061 (2007) ("Qualified immunity under federal law is not merely a defense to liability; it is an entitlement not to

stand trial or face the other burdens of litigation.") (internal quotation marks and citations omitted). The Nevada Supreme Court has further recognized that "a defense of qualified immunity **should be resolved at the earliest possible stage in litigation[.]**" *Bayer*, 123 Nev. at 458, 168 P.3d at 1061 (emphasis added). Thus, Defendants are entitled to a finding of qualified immunity at this stage of the litigation.

B. Plaintiffs' claims for Wrongful Death and Negligence fail pursuant to the Public Duty Doctrine and must be dismissed

Defendants argued in their Motion that neither exception to the public duty doctrine applies in this case because there was no special relationship between the Plaintiff and the Sparks Police Officers, and because the Sparks Police Officers did not affirmatively cause the harm. In their Opposition, Plaintiffs concede that the first exception does not apply in this case.

Plaintiffs argue that the second exception, that the police affirmatively caused the harm, applies because "Sparks PD police officers made a conscious decision to pursue the fleeing individuals despite the fact that there was no justifiable governmental interest in the pursuit," and "[t]he fleeing individuals were reported to be unarmed so there was no threat to the general public." *See* Opp. at 5:23-28. Plaintiffs argue that the Sparks Police Officers' act of pursuing fleeing felons caused said fleeing felons to cause the crash, and that constitutes affirmative causation of the harm on the part of the Officers upon Jacob Edwards. Thus, it is Plaintiffs' belief that the Sparks Police Officers should have allowed the other suspects in this Robbery and Burglary with Possession of a Firearm case to flee the scene, based on the word of a co-defendant that the fleeing suspects may be unarmed and on the fact that the Officers had the license plate number of the unknown registered owner of the vehicle. This is a ridiculous proposition.

Further, Plaintiffs' position is based in part upon their continued erroneous assertion that the Sparks Police Officers are somehow subject to the Nevada Department of Public Safety internal policies. As set forth clearly in Defendants' Motion, and ignored by Plaintiffs in their Opposition, these policies do not apply to the Sparks Police. The Nevada Department of Public Safety is a separate law enforcement agency – a completely different police department. *See* NRS Chapters 470, 480. The internal policies of a different police department have no effect on the Sparks Police and

absolutely no relevance to this case. Furthermore, Plaintiffs' reliance upon nonapplicable policies is also irrelevant because a violation of an internal policy does not create a duty. The Nevada Supreme Court has expressly rejected this argument, as already explained in the Defendants' Motion. *Coty v. Washoe Cnty.*, 108 Nev. 757, 761, n. 6 (1992).

The Sparks Police Officers did not affirmatively cause the harm to Jacob Edwards; Ryan Williams did. "We conclude that 'affirmatively caused the harm,' as used in NRS 41.0336(2), means that a public officer **must actively create a situation** which leads directly to the damaging result." *Coty*, 108 Nev. at 760–61 (emphasis added). The Sparks Police Officers were not 'actively' doing anything – they were reacting to the conduct of Ryan Williams, the suspect of multiple crimes. Their conduct was all in response to the conduct of Ryan Williams, who was disobeying the orders of the Officers, just like the driver was disobeying the Sheriff's Deputy's orders in *Coty*, wherein the Nevada Supreme Court found that the Deputy did not affirmatively cause the harm because the driver disobeyed his orders and therefore the Deputy and Washoe County were shielded by the public duty doctrine. This is further evidenced by the fact that Ryan Williams was driving while under the influence of methamphetamine, for which he was convicted. *See* Exhibit 3 & 4.

Plaintiffs are misinterpreting or misapplying the definition of affirmative causation. Contrary to Plaintiffs' belief, it is not a 'but for' analysis, it is an affirmative causation analysis. *See* Opp. at 7:16-18. The correct inquiry is: did the Sparks Police Officers actively and directly create the situation, i.e. did they crash into Jacob Edwards; or was it another party that actively and directly created the situation, i.e. Ryan Williams fleeing the scene of multiple felonies in an effort to evade police and crashing into Jacob Edwards, while disobeying lawful orders to pull over and while under the influence of a controlled substance. This distinction is clearly set forth in *Coty*, as reaffirmed by the Nevada Supreme Court in *Porchia v. City of Las Vegas*, 138 Nev. Adv. Op. 4, 504 P.3d 515, 520 (2022) ("this court concluded that because the driver ignored the police officer's order to park his car on the side of the road, the police officer was not the active and direct cause of the harm.").

Additionally, although not even addressed by Plaintiffs in their Opposition, "no duty is owed to control the dangerous conduct of another." *Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 296, 255 P.3d 238, 244 (2011) (internal citation omitted).

As a matter of law, there is no duty owed by the Sparks Police to Jacob Edwards, and the Wrongful Death and Negligence claims fail as a matter of law pursuant to the Public Duty Doctrine.

C. Plaintiffs' claims for Wrongful Death and Negligence fail pursuant to Discretionary-Function Immunity and must be dismissed

Plaintiffs concede that the conduct of the Sparks Police Officers meets the first prong of the discretionary immunity test, in that the decisions involved elements of individual judgment or choice. However, Plaintiffs argue that the second prong of the test, whether the decisions of the officers were based on considerations of social, economic, or political policy, is at issue. Plaintiffs' argument in Opposition is based entirely upon: (1) their erroneous legal conclusion that there was no justifiable governmental interest in pursuing the fleeing felons, and (2) "because Plaintiffs made an allegation that the Sparks PD police officer's decisions were not based on considerations of social, economic, or political policy thereby disqualifying Defendants from discretionary-act immunity." *See* Opp. at 8:4-26.

As to their second argument, while Plaintiffs are correct that in ruling on a motion to dismiss, courts must take all of the **factual** allegations in the complaint as true, Plaintiffs seem to be disregarding the plethora of case law which states that courts should not "assume the truth of **legal conclusions** merely because they are cast in the form of factual allegations." *W. Min. Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) (emphasis added); *see also Wood v. Moss*, 572 U.S. 744, 755 (2014); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "**Conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim**." *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996) (internal citation omitted) (emphasis added). Plaintiffs' "allegation" that the responding officers' decisions were not based on considerations of social, economic, or political policy is simply not a factual allegation that is entitled to a presumption of truth. It is a legal conclusion. Therefore, their position that their legal conclusion allegations somehow automatically precludes the application of the Discretionary-Function Immunity is absurd.

As to their first argument, Plaintiffs' position is that the second prong of the Discretionary-Function Immunity analysis fails because the Sparks Police Officers' decision to pursue these fleeing

felons was somehow not justifiable. Again, this position is based upon the ridiculous and incorrect proposition that the Sparks Police Officers should have allowed – and in fact were somehow required to allow – the other suspects in this Robbery and Burglary with Possession of a Firearm case to flee the scene once Williams disobeyed lawful orders to stop, based on the word of a co-defendant that the fleeing suspects may be unarmed and on the fact that the Officers had the license plate number of the unknown registered owner of the vehicle. Plaintiffs' position is that this somehow renders the decision of whether to pursue a fleeing criminal suspect incapable of being based on considerations of social, economic, or political policy – though Plaintiffs do not expand upon that bald and confusing assertion. Even if Plaintiffs' position was correct, the Defendant is unaware how this would automatically mean that the decision was not made based upon policy considerations.

As set forth in Defendants' Motion, the decision to arrest or seize or search an individual and the decision as to how to effectuate that seizure is one of discretion, and is one that has been recognized to be a decision that is based upon policy considerations that render them immune from suit. *See Sandoval v. Las Vegas Metro. Police Dep't*, 756 F.3d 1154, 1168 (9th Cir. 2014) ("Officers' decisions 'as to how to accomplish a particular seizure or search [are] generally considered ... discretionary determination[s] under Nevada law, and officers are therefore immune from suit as to state law claims arising therefrom in most cases.'"). The only argument Plaintiffs have against a finding of the Sparks Police Officer's decision(s) being based upon policy considerations is their own belief as to what the officers should have done. Plaintiffs' opinions on police tactics and decision-making do not negate the fact that the decision of whether and how to seize and the method to effectuate that seizure has been recognized to be based upon considerations of policy.

Plaintiffs have failed to establish that the Sparks Police Officers' conduct does not warrant discretionary-act immunity pursuant to NRS 41.032(2), and therefore their Wrongful Death and Negligence claims fail as a matter of law.

D. Plaintiffs claim for Negligent Hiring, Training and Retention fails pursuant to Discretionary-Function Immunity and must be dismissed

The Nevada Supreme Court, the Ninth Circuit, and the United States District Court District of Nevada have all explicitly recognized that "decisions relating to the hiring, training, and

supervision of employees usually involve policy judgments of the type Congress intended the discretionary function exception to shield." *Paulos v. FCH1, LLC*, 136 Nev. 18, 26, 456 P.3d 589, 595 (2020); *see also Vickers v. United States*, 228 F.3d 944, 950 (9th Cir. 2000) (citing decisions from the First, Eighth, Ninth, Tenth, and D.C. Circuit Courts of Appeals); *Barnard v. Las Vegas Metro. Police Dep't*, 2010 WL 11575609, at *7 (D. Nev. Jan. 26, 2010); *Neal–Lomax v. Las Vegas Metro. Police Dep't*, 574 F. Supp. 2d 1170, 1192 (D. Nev. 2008). Further, "to come within the discretionary function exception, **the challenged decision need not actually be grounded in policy considerations so long as it is, by its nature, susceptible to a policy analysis**." *Paulos*, 136 Nev. at 26, 456 P.3d at 595 (internal citation omitted) (emphasis added). Thus, so long as the decision is prone to policy analysis, as is any law enforcement decision to seize, it satisfies the second prong of the discretionary function test. Instead of addressing this on-point precedent, and instead of utilizing said Nevada case law, Plaintiffs rely primarily upon a 1990 Oklahoma case in their Opposition to argue that this Court should ignore the precedent outlined in the Defendants' Motion. Plaintiffs simply cannot reasonably argue that the decision-making in this case is not susceptible to policy analysis.

Plaintiffs argument relies primarily upon their erroneous belief that the legal conclusions asserted in the Complaint preclude the application of legal analysis regarding the sufficiency of their Complaint. Again, courts do not accept as true alleged legal conclusions in determining motions to dismiss, and conclusory allegations of law "are insufficient to defeat a motion to dismiss." *W. Min. Council*, 643 F.2d at 624; *In re Stac Elecs. Sec. Litig.*, 89 F.3d at 1403.

Plaintiffs also seem to argue that a lack of allegations in their Complaint as to how Sparks Police made its decisions to hire, train, and supervise, somehow precludes application of this doctrine to their Complaint. Plaintiffs cite to no legal authority for this argument and seem to be attempting to manipulate the dismissal standard to utilize the factual deficiencies in their Complaint in an attempt to avoid dismissal. The standard is not whether a plaintiff asserts allegations that are legal conclusions, or whether a complaint does not have allegations of certain facts the plaintiff does not like; the standard is whether the Complaint, as pled, fails to state claims upon which relief can be granted. *See* NRCP 12(b)(5). That is the case here – Plaintiffs have blankly alleged that the Sparks

Police Department failed to exercise due care in the training, oversight, direction, hiring, retention, and control of its employees or by hiring or retaining employees it should have known were unfit to perform their duties or failed to properly oversee or train its employees. These alleged deficiencies are clear "decisions relating to the hiring, training, and supervision of employees [which] usually involve policy judgments of the type Congress intended the discretionary function exception to shield." *Paulos*, 136 Nev. at 26, 456 P.3d at 595. Therefore, Discretionary-Function Immunity applies to this claim and it must be dismissed.

E. Plaintiffs Constitutional claims under the United States and Nevada Constitutions are not supported by law and must be dismissed

As to Plaintiffs' claim for Violation of 42 U.S.C. § 1983, Defendants are unsure under what particular Constitutional Amendments Plaintiffs are bringing this claim. In the Complaint, Plaintiffs allege a Fourth Amendment seizure, as well as a deprivation of life and denial of due process of law. Compl. at ¶163, 169. Based upon the allegations, Defendants assumed the claim was under both the Fourth and Fourteenth Amendments; therefore, Defendants addressed both theories in their Motion. Specifically, Defendants set forth the legal precedent in their Motion that a Fourth Amendment seizure did not occur in this case, because a seizure requires "termination of freedom of movement through means intentionally applied." *Gardner v. Las Vegas Metro. Police Dep't*, 2018 WL 1091977, at *4 (D. Nev. Feb. 28, 2018) (internal citation omitted). Further, Defendants articulated that the United States Supreme Court has held, for a potential Fourteenth Amendment violation, "conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 848–49 (1998) (internal citations omitted).

However, in their Opposition, Plaintiffs do not even address the Fourth Amendment or the concept of seizure. Therefore, Plaintiffs have conceded that this is either not a theory of their claim, or it should be dismissed.

As to the Fourteenth Amendment, the United States Supreme Court has specifically held "that the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 328 (1986). Further,

the United States Supreme Court has held that a police officer does not "violate[ ] the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender." *Lewis*, 523 U.S. at 836.

Again, Plaintiffs erroneously rely upon the internal policies of a separate State-level law enforcement agency to argue that the Sparks Police Officers were in violation of policy. And again, Plaintiffs ridiculously rely upon their own belief that the pursuit was "unjustified" because, according to Plaintiffs, the officers should have relied solely upon the word of a co-defendant that the other Robbery and Burglary suspects were unarmed, so the officers simply should have allowed them to flee the scene in violation of lawful orders, and that the officers should have relied upon the unverified license plate number which may or may not have been registered to the parties involved to maybe arrest them at a later time. These allegations are illogical and insufficient to establish that the pursuit was unjustified. There are no relevant allegations that establish that the Sparks Police Officers conduct would 'shock the conscience,' meaning they intended to injure a bystander while engaging in unjustified conduct, or they had a deliberate indifference to the life of bystanders. *See Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1906 (2018) (citing *Lewis*, 523 U.S. at 849-850).

Plaintiffs would like this Court to hold the exact opposite of the United States Supreme Court and to completely ignore that the United States Supreme Court has expressly stated that "[t]he Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness." *Scott v. Harris*, 550 U.S. 372, 385 (2007)). Further, the failure of this claim is supported by the Plaintiffs' own Complaint, given that they have brought a Negligence claim as well as this Due Process claim, despite the United States Supreme Court's dictate that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *Lewis*, 523 U.S. at 848–49.

F. Plaintiffs' *Monell* liability claims fail as there are no Constitutional violations[4]

[4] Plaintiffs have erroneously asserted more than one *Monell* claim. They have asserted one Cause of Action based on the theory of Failure to Train, and another Cause of Action based on the theory of Unconstitutional Custom or Policy. However, it would appropriately be pled as one Cause of Action containing multiple alternative theories of potential liability.

"[A]bsent any constitutional infringement, a § 1983 claim fails." *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 245, 871 P.2d 320, 324 (1994). The only argument provided in opposition to the Defendants' legal arguments as to the *Monell* claim(s) is that "Plaintiffs should be given the opportunity to investigate Sparks PD's policies and the conduct of its police officers during discovery to prove up their claims." *See* Opp. at 14:25-28. Not only does this sparse opposition ignore the plethora of case law in Defendants' Motion, it also completely ignores the doctrine of qualified immunity. As a matter of law, Plaintiffs' *Monell* claims fail, and no amount of discovery will change that.

III. CONCLUSION

Based on the foregoing, Defendants respectfully submit that none of Plaintiffs' claims state a claim upon which relief can be granted, and this lawsuit must be dismissed against Defendants in its entirety. Further, Defendants are entitled to qualified immunity, which was not disputed by Plaintiffs in their Opposition.

AFFIRMATION

The undersigned does hereby confirm the preceding document does not contain the social security number of any person.

Respectfully submitted this 6th day of July, 2022.

WESLEY K. DUNCAN
Sparks City Attorney

By: /s/ Mariah Northington
MARIAH NORTHINGTON
Assistant City Attorney
Attorney for Defendants

Municipalities may be held liable under Section 1983 for constitutional violations. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978). There are three theories of municipal liability in order to establish deliberate indifference, referred to as (1) commission, (2) omission, and (3) ratification. *Herndon v. City of Henderson*, 2021 WL 4268441, at *6 (D. Nev. Sept. 20, 2021); *see also Clouthier v. Cty. of Contra Costa*, 591 F.3d 1232, 1249–50 (9th Cir. 2010), *overruled on other grounds by Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). Plaintiffs recognize this in their Opposition. *See* Opp. at 13:28 ("A plaintiff can establish municipal liability under 42 U.S.C. § 1983 in one of three ways.").

INDEX OF EXHIBITS

CR20-0630A Information ……...…….. Exhibit 1
CR20-0630A Judgment of Conviction ……...…….. Exhibit 2
CR20-0630B Information ……...…….. Exhibit 3
CR20-0630B Judgment of Conviction ……...…….. Exhibit 4

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Sparks City Attorney's Office, Sparks, Nevada, and that on this date I served the foregoing document(s) entitled **DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS** on the persons set forth below by:

✓ Case Management/Electronic Case Filing (CM/ECF) and/or;

___ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Sparks, Nevada, postage prepaid, following ordinary business practices, and/or;

___ Personal Delivery, and/or;

___ Facsimile (FAX), and/or;

___ Federal Express or other overnight delivery, and/or;

___ Reno/Carson Messenger Service.

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DATED this 6th day of July, 2022.

/s/ Roxanne Doyle
Roxanne Doyle

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AVERY EDWARDS, a minor by and through her guardian MARK EDWARDS; THE ESTATE OF JACOB EDWARDS by and through KASHIF SHANKLE, Special administrator of the Estate of Jacob, Deceased

Plaintiffs,

vs.

CITY OF SPARKS, et al.

Defendants.

CASE NO.: CV22-00282

DEPT. NO.: 8

DEFENDANT JASON STONE'S JOINDER TO DEFENDANTS' MOTION TO DISMISS

DEFENDANT, Jason Stone, by and through counsel Wesley K. Duncan, Sparks City Attorney, Barrack Potter, Senior City Attorney, and Mariah Northington, Senior City Attorney, hereby joins DEFENDANTS City of Sparks, Sparks Police Department, Patrick McNeely, Mike McCreary, John Patton, Edik Dominguez, Nicholas Chambers, Angel Guillen, Dan Snow, Jay Egami, Brian Sullivan, Robert Canterbury, Kimberly Hodge, Peter Loeschner, Rachel Arulanantham, and Chris Broce's Motion to Dismiss filed with this court on June 15, 2022 and Defendants' Reply in Support of Motion to Dismiss filed with this court on July 6, 2022.

This Joinder incorporates and asserts all of the legal arguments and legal authorities contained in Defendants' Motion to Dismiss and Reply in Support of Defendants' Motion to Dismiss as set forth herein.

The undersigned does hereby affirm that this document does not contain the social security number of any person.

Respectfully submitted this 19th day of September, 2022.

WESLEY K. DUNCAN
Sparks City Attorney

By: /s/ Barrack Potter
BARRACK POTTER
Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Sparks City Attorney's Office, Sparks, Nevada, and that on this date I served the foregoing document(s) entitled **DEFENDANT JASON STONE'S JOINDER TO DEFENDANTS' MOTION TO DISMISS** on the persons set forth below by:

✓ Case Management/Electronic Case Filing (CM/ECF) and/or;

___ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Sparks, Nevada, postage prepaid, following ordinary business practices, and/or;

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Henderson, Nevada 89074

DATED this 19th day of September, 2022.

/s/ Roxanne Doyle
Roxanne Doyle

Code 4185

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE BARRY L. BRESLOW, DISTRICT JUDGE

AVERY EDWARDS, a minor by and through her guardian MARK EDWARDS; THE ESTATE OF JACOB EDWARDS by and through KASHIF SHANKLE, Special Administrator of the Estate of Jacob Edwards, Deceased, Plaintiffs, vs. THE CITY OF SPARKS; a political subdivision; THE POLICE DEPARTMENT OF THE CITY OF SPARKS, a law enforcement agency of the State of Nevada; et al, Defendants.	CASE NO.: CV22-00282 DEPT. NO.: 8

TRANSCRIPT OF PROCEEDINGS

ZOOM HEARING ON MOTION TO DISMISS

Thursday, December 1, 2022

REPORTER BY: EVELYN J. STUBBS, CCR # 356

A P P E A R A N C E S

For the Plaintiffs:

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RENO, NEVADA; TUESDAY, DECEMBER 1, 2022; 1:30 P.M.

--o0o--

THE COURT: All right. Good afternoon, everyone. We are on the record in what I'm calling the Edwards versus City of Sparks case, recognizing there are several other parties. The case number is CV22-00282.

I'm Judge Breslow appearing remotely. Let me explain our a-little-bit-unusual setup here. We were in court for in-person hearings most of the day, but for convenience and expense and logistics the Court set this matter for hearing on the motion to dismiss filed by the defendants remotely. I think originally it may have been set in person. I don't remember exactly, but it's set for remote hearing today.

I'm in chambers. The reason the court clerk is in the courtroom is because the court reporter/court clerks are still here as the result of the in-person calendar we had a short while ago. So hopefully that explains that. So here we are.

I also am aware -- Ms. Allen, good afternoon. Mr. Potter, good afternoon to you.

I'm aware as well, maybe other members of respective plaintiff firm or members of the City of Sparks attorney's office that would like to observe. But let me start with you Mr. Potter, is there anybody else that you would like brought in

to this hearing in the event they are out there?

MR. POTTER: No, Your Honor. I'll be the only one arguing today.

THE COURT: Thank you very much.

Ms. Allen, how about from plaintiff counsel?

MS. ALLEN: Nobody else from our office. It will just be me. Thank you.

THE COURT: Thank you. All right.

Let me tell you what we've done in anticipation of this hearing: Reviewed, of course, the complaint, motion, opposition, response. Taken a look at the case that has been referenced as a different City of Sparks matter in Department 9, Judge Freeman. I'm aware of his decision, the initial appeal, and then the remand back, because as I understand, it wasn't right because there's still the City of Reno out there.

Reviewed the case authority, considered the jurisprudence from outside Nevada, reviewed, of course, federal statutes on civil rights, and set this for hearing.

I realize the action was brought a while ago. The motion was filed and fully briefed and submitted months ago, and that it's taken this long to get into court. I'm sorry, I wish I had a better explanation, but I don't. It's a product of busy on other things, and the Court generally should have been, but wasn't aware that this motion to dismiss, the resolution of which

is sort of holding everything up, because if it goes the defense way, case over, unless I grant leave to amend on the claims. If the motion is denied in total, off it goes. And if it's denied in part and granted in part, then the question is which parts that are the motion is granted should be allowed to amend or would the Court deem those futile as a matter of law.

So sorry for the delay. And if your clients, respective clients want to know why did it take five months for this fully briefed motion to be heard, you can truthfully say Judge Breslow advised that he has no good answer for that, human error. We would much liked to have you in sooner. We did have multiple trials, but that's not an excuse. So my apologies.

All right. Mr. Potter, you go first. It's your burden. You filed this motion to dismiss. We're aware of the juris prudence that the Court generally must accept as true. Well pled factual allegations. We're aware as well that the newly amended Nevada Rules of Civil Procedure, as well as court cases in Nevada, suggest that absent futility if the Court is inclined to grant a motion to dismiss, it should strongly consider leave to amend.

Why do you think the motion should be granted as to all counts and should, if the Court agrees, should leave to amend be granted for all, some, or none?

Go ahead, Mr. Potter.

MR. POTTER: Thank you, Your Honor.

So I'll start with the constitutional claims in this case. The defendants believe they are entitled to qualified immunity on both prongs one and two. The first prong is whether a constitutional right was actually violated. So if you look at the case law, the defendants believe that no constitutional right was violated because there could not have been a seizure, because the person that actually hit and killed Mr. Edwards was the defendant in the criminal case, it was not one of the police officers, and that crash was not due to the fact that an officer exercised a pit maneuver or some other kind of driving technique that actually caused the defendant in the criminal case to actually hit and kill Mr. Edwards. So for that reason, there's no seizure.

If you look at the case law as it relates to the due process in my brief, it specifically says that negligence does not rise to the level of a constitutional claim. And there's a bunch of cases that specifically discuss police engaging in pursuits where one of the people are driving and they either are killed as a passenger or they would kill someone else. And so there's no constitutional claim whatsoever here.

The bigger part of this issue, though, is in the motion to dismiss the defendants exercised the qualified immunity defense, and it was completely ignored as to the second prong.

There were no cases cited that specifically puts the officers' conduct as a constitutional claim and put the officers on notice that that was a violation. So for that reason alone, we are entitled to qualified immunity.

As to the constitutional claims and leave to amend, as the Court has seen from the case law, qualified immunity is immunity from suit, not "we allow a little bit of discovery." It's looking at the complaint, taking all of those allegations as true, was there a constitutional violation and is there law that sets it on notice for all of the officers that it was a constitutional violation. So based on that, I feel qualified immunity should be granted.

As to --

THE COURT: Pause right there. So remind me, are we talking claims -- hold on a second.

Ms. DeGayner, is there any way to stop the camera from moving during the hearing?

THE CLERK: Yes, Your Honor. If I mute the courtroom the camera should stop moving. I'll do that now.

THE COURT: All right. Please do. Thank you.

Mr. Potter, does that -- are we talking about Claims 4 through 7?

MR. POTTER: That would be Claim 4. The Monell claims are right along with that, I was going to argue, but if there's

no constitutional violation, you can't have a Monell claim. That's essentially the whole argument as to Monell.

THE COURT: Okay. Let's go back then for a moment. The very first thing you talked about was there was no -- the analogy was if the police officer had attempted a vehicle maneuver to disable a fleeing car and did so in a way that put others in harm's way, that's not what we have here, in your view, we have a different driver causing the impact causing death. Is that the distinction you draw?

MR. POTTER: Yes. But even if that was the case, where an officer had exercised a pit maneuver, the case law is very specific as to there must be an intent to seize that person. So if we had attempted to exercise a pit maneuver and used some kind of force on the fleeing criminal defendant, there was no intent for us to seize Mr. Edwards.

So even if that was the case, which is not here, I believe there would still not be a constitutional violation. There may have been one if we intended to hit Mr. Edwards' vehicle and then we hit this vehicle. But based on the case law, other circumstances, especially the ones alleged here, do not rise to the constitutional level.

THE COURT: All right. So if you had intended to hit Mr. Edwards' vehicle in an effort to stop the defendant who was fleeing and did so in a way that injured Mr. Edwards, different

story in your view?

MR. POTTER: Maybe. I believe they would have to actually intend to stop Mr. Edwards, which is not the case. He was just an innocent bystander that tragically died from the criminal conduct of somebody.

THE COURT: Okay. Fair enough. Please continue.

MR. POTTER: As to Claim 7, the Constitution of Nevada, essentially the case law says the analysis would be the exact same. So that argument would then be the same.

As to the negligence, the negligent hiring and the wrongful death, the defendants believe they're entitled to immunity. You look at the two-part test, right? So for discretionary function immunity it's does it involve the individual judgment or choice. And I mean the case law is very clear that it's up to a law enforcement officer to engage in a pursuit.

And so the plaintiffs in this case essentially want this Court to serve as a police oversight committee and to second-guess the decisions of an officer and whether there was reasonable suspicion to detain the criminal defendant, Mr. Williams, when he was in his vehicle and the officers arrived at the scene and pointed their guns at him.

So as I've laid out in the briefs, there are multiple crimes that they could have stopped him for. To seize somebody

only needs reasonable suspicion, which is set out by statute, but the standard is essentially very low, right?

So they had a call about the criminal conduct that occurred. Essentially assault with a deadly weapon, some kind of brandishing of a firearm. So crimes of violence are occurring. They get there. And the plaintiffs want you to believe that because they had detained and stopped one of the suspects, and allegedly she told the police that the gun wasn't real, that that somehow negates reasonable suspicion to detain Mr. Williams. It does not.

So they want the Court to tell police that they should believe a criminal suspect when they give them information. And that's not the standard. There's no case law that has said that.

Also the next, plaintiff wants you to believe that a person can just flee from police, and as long as there's a license plate, the police should not be involved in a pursuit, which is also not the case. There's no case law to support that, and if anything, there's the contrary. I mean, the Supreme Court set out the opinion in Scott v. Edwards and essentially said they're not going to set up a rule that allows people to just flee and drive recklessly and endanger the public for a pursuit to stop so that they can get away. That would be a terrible public policy.

So as to the second prong, is it susceptible to a

policy based on considerations of social, economic or political policy? And the answer to that is yes. Arresting criminals is the very function of the police department. People engaged in criminal activity, especially violent criminal activity, should be arrested, because they're a danger to the community. I set out the case law specific to Nevada and specific with the United States Supreme Court.

So based on that, I believe that they should have immunity.

Also, I believe the public duty doctrine would shield us from liability. So with the public duty doctrine, they're arguing that the police affirmatively caused the harm. Well, how is that the case? We did not force Mr. Williams to commit criminal conduct and then flee from us and then continue to drive recklessly and then jump on the wrong side of the freeway and run into Mr. Edwards while he was attempting to flee.

So how can the Court really hold that, especially based on the Cody decision, where in that case they said that the defendant, the one that actually caused the accident and killed someone, he ignored the officer to pull over and park his vehicle.

I mean, we have how many officers chasing Mr. Williams in this case with lights and sirens going for him to stop, and he disregarded it for how long, driving recklessly and getting on

the wrong side of the freeway?

THE COURT: Let me pause there also.

So you say, Judge, even if you were to accept factually that a sergeant notified, you know, the pursuing officers to call it off and they didn't, even assuming there was a policy, City of Sparks policy, maybe Sparks Police Department policy, maybe Nevada Transportation, I don't know, NDOT policy, limiting or recommending a finite number of pursuing vehicles, or even if there's a policy/procedure internal to one of those entities with respect to avoiding pursuit on a freeway, even if such things exist, and even if the Court accepts as true that those things were not adhered to, your legal position is still a legal so what, or does that change anything?

MR. POTTER: No, Your Honor. If you look at Cody and the subsequent case Porchia that discusses that, it specifically says that internal policies do not create a special duty to a person.

So essentially for this case the internal policies are irrelevant, because if you look at the statute it allows specifically for officers to drive on the other side of the road. And so the only standard that's really set up is that the officer has to drive with due care.

And that's the case that the Court of Appeals for Nevada talked about, the Glover case, where an officer was

chasing someone and that vehicle hit and hurt someone and they sued. And you said you can't claim immunity based on that, because those are your actions. But in this case it's the actions of another person, not of any of the officers. So the officers cannot force someone else to drive with due care.

THE COURT: Okay. I understand you. Thank you for your response. Please continue.

MR. POTTER: Unless the Court has any other questions, I think I've covered pretty much everything in the brief.

THE COURT: All right. Thank you. I likely will, particularly after I hear from Ms. Allen.

Ms. Allen, I'm going to assume you have a different view. You can respond in the same order that Mr. Potter took them, starting with the constitutional claims, or you can proceed any other way you want. You heard some of the Court's questions though, but feel free to tell the Court anything you'd like the Court to consider.

MS. ALLEN: Absolutely.

And I think you hit the nail on the head with discussing what the standard is here for a motion to dismiss. We have to look at the complaint and what the allegations are.

Our complaint is pretty thorough. And, you know, I went through --

THE COURT: I have it right here.

MS. ALLEN: It's not often we have a 34-page complaint. And I think it's important for this case because of the allegations that are being made that what happened is very crucial in the order in which it happened. I actually wanted to start with the public duty doctrine, since we were just touching on that.

THE COURT: Sure.

MS. ALLEN: And I actually disagree. I think the Cody and Porchia cases are actually right on track for our side.

THE COURT: Reason?

MS. ALLEN: I'm sorry. What was that?

THE COURT: Why do you say that?

MS. ALLEN: So Cody says an action -- and to be clear, we're not alleging the special relationship. We're alleging the second exception, the affirmative cause.

THE COURT: Yes.

MS. ALLEN: Cody says it will look at affirmative cause as somebody actively and continuously operating to bring about the harm to another. It doesn't restrict it to personally causing the harm by hitting them. It's are their actions continuously and actively causing the harm?

And Cody is very distinguishable from this case, because in Cody we have an officer pulling over a drunk driver, citing them, telling them to sleep it off, pointing them to a,

you know, parking lot, and then leaving. And then 30 minutes later that drunk driver gets into a crash with an individual.

That's completely different from happened in this case where you have officers actively pursuing a suspect, getting on the wrong way. We are alleging in our complaint that there are policies against getting on the wrong way into oncoming traffic, there's policies against more than three vehicles pursuing a driver. And we have an allegation that a sergeant, after the officer got onto the highway going the wrong way, after that point a sergeant told them to call off the pursuit, and they continued for another approximately 20 minutes. So it's completely contrary to what Cody is saying what happened in Cody.

And likewise in Porchia, Porchia actually dealt with -- ultimately resulted in the motion to dismiss being overturned, because the facts of the case were it was erroneous to grant a dismissal on all counts. Porchia dealt with an EMT failing to treat an individual because -- and the allegations were either he was homeless or he was misdiagnosed. And the Court ultimately said, well, the misdiagnosis aspect, yeah, maybe that might be public duty, but the homelessness, that's not. That doesn't fall under the public duty doctrine.

And there's some language that's fantastic in Porchia that I think is very, very useful, and I cite it as persuasive. It's from the Faucheaux case or Faucheaux. I'm not sure how to

pronounce it. It's a Utah case. And they define affirmative cause as the difference between active and passive actions.

Affirmative acts include active misconduct working positive injury to others, while omissions are defined as passive inaction; i.e., a failure to take positive steps to benefit others or to protect them from harm. The negligent affirmative act leaves the plaintiff positively worse off as a result of the wrongful act, whereas in cases of negligent omission, the plaintiff's situation is unchanged. She is merely deprived the protection which, had it been afforded, would have benefited her. And that's what we have here, we have an active failure.

This isn't they just -- and let's say if we were to look at it as an omission, if they had let Mr. Williams drive the wrong way, crash into Mr. Edwards' vehicle, and then we sued, that would be an omission, that would be something that Cody and Porchia might preclude. But Porchia says, no, no, no. This is an affirmative action. These officers from Sparks Police Department were actively pursuing this individual, including violating policies, regulations, and a direct order of a sergeant.

THE COURT: I understand.

MS. ALLEN: Looking at the discretionary immunity argument, the discretionary immunity is pretty clear that ministerial decisions, so some things may involve choice, but

certain aspects might not involve choice. Essentially if they leave no room for choice, it's the performance of a duty where the officer left no choice of their own under the Martinez case. That's a ministerial duty. That's something that won't pass the first prong of the test.

And so when we have again, things where there is a violation of a pursuit policy, where they failed to call off a pursuit when they get onto the wrong way going on the highway, they failed to have fewer than three vehicles pursuing the suspect, and again they failed to call off a pursuit when they get a direct order from a superior.

THE COURT: And these are the allegations, right, not a summary judgment motion the Court has to make based on the strength of the evidence; this is what you've alleged you understand or you can prove occurred?

MS. ALLEN: 100 percent. We have paragraph 103 is where we allege that the sergeants told them to call off the -- cease the pursuit, but they ignored it. Paragraph 115 is where we say that they failed to -- that they failed to follow the policy that states an officer should not pursue a vehicle going the wrong way.

THE COURT: Okay. Stop right there, please.

What if they didn't have a policy? What if they didn't have a policy they utilized they had and they didn't adhere to

and you believe but for their adhering to it we might not be here right now?

I mean, if I accept that as a legal basis not to dismiss that claim, aren't I discouraging police departments from having policies if they're going to be used as a sword against them in a case like this?

MS. ALLEN: Not necessarily. And so a couple of reasons. One, it would go outside the bounds. I mean, that would be a summary judgment decision. But additionally, the -- you still have the fact that there was a direct order from a superior saying, "Call off this pursuit." That's not necessarily a policy, that's an order.

That's again something that's not a -- or that is a ministerial decision where it's either you continue the pursuit or you violate the -- you call off the pursuit or you violate the direct order of a superior. That has nothing to do with policies created by the department or any other government agency.

THE COURT: Got it.

MS. ALLEN: And then again, even going -- if we move on to the second prong of the discretionary immunity clause -- or discretionary immunity, you still have the fact that there's no policy-making decision. Martinez is pretty clear about what the policy-making aspect of that prong is, whether there's -- it's integral to the government policy making or planning if it might

jeopardize the quality of the governmental process or essentially if the legislative or executive branch's power would be usurped by liability, and you don't have that here.

Again, you have a situation where there was a direct order to call off a pursuit, you have policies saying this is for the safety of others and to violate them goes against the policies.

And there's -- with respect, again, with respect to the negligent hiring, training and supervision, ultimately we don't know what their hiring practices were. We don't know what their training/supervision/retention policies were. That's something that would be absolutely appropriate if we were at the summary judgment phase, but we're not. We just don't have facts.

THE COURT: Let me stop you there. This lawsuit was filed toward the end of the statute of limitations for some or all of these claims; is that right?

MS. ALLEN: I believe so. I'm not sure off the top of my head.

THE COURT: All right. So the reason I'm asking is because it was my understanding when I looked at that issue a while ago, on the one hand I understand where a lawsuit is filed, claim is raised with the information that in good faith the alleger believes can be supported or else it should not be in there. And then if you're hit with some type of a dispositive

motion, oftentimes, Judge, we believe this happened, but we need to flush it out.

On the other hand, sometimes the concern is that you can't use a complaint as a placeholder. You can't use a claim as a placeholder for I'll identify exactly what the claim is and what the basis for it is later after I take a closer look.

Any teeth to the concern there, Ms. Allen, that that might be what's happening here on some of these claims?

MS. ALLEN: I think, again, going back to the extent to which we've pled this particular complaint, we have pled as much information as we can. We have a certain amount of information that we get, and while I respect the police very much, there are certain things that we're just not going to get until we actually file suit.

If there is a basis for dismissal for those causes, that's something defense counsel absolutely can bring up at a later point, but I think we have done everything needed in a notice pleading state to meet that, not just frivolously filing claims, but absolutely saying, hey, listen, we don't know what their hiring policies were, we don't know what their retention policies were.

We've alleged in our complaint that there was a culture of failing to discipline, failing to train, failing to hire sufficient employees in violation of hiring practices. And

that -- that's the extent. We can only allege what we can. We put as much information in as we can, and I think it's pretty thorough to that extent.

THE COURT: Okay. What else would you like the Court to know?

MS. ALLEN: With respect to the constitutional law claim, the fact is you have an intentional act. The argument that there's negligence, it's a negligence claim, and negligence never applies. Again, our allegations are this was an intentional act. Our compliant is ripe with language that this was intentional. I can list a number of paragraphs, 65, 145, 171, 187, 201, all have language -- there is more. I don't want to list it all for you, but it all indicates this is an intentional act. These were not just officers willy-nilly chasing through. They were violating policies and procedures, they were violating a direct order, and they were violating public safety. It's not mere negligence. It was intentional recklessness.

And so to that extent the constitutional law claim should stand based on the allegations made in the complaint. Qualified immunity doesn't apply. And the violation of the constitutional claim, the argument was we want the Court to basically become an oversight committee and that, you know, as long as there's, you know, they know the license plate and who

the person is, we don't want them to follow them. That's not what our allegation is. Our allegation from the complaint is very clear. We want them to follow their rules, we want them to follow the law, and we want them to listen to the orders of a superior who is saying, hey, this is becoming unsafe, the public and in particular drivers on the road like Mr. Edwards are at risk by your actions.

And so it's not just creating an oversight committee with this language, it's a clear and specific constitutional violation of Mr. Edwards' rights.

I think --

THE COURT: Mr. --

MS. ALLEN: I think that's all I have, unless you have --

THE COURT: No, no. Thank you.

Mr. Potter, a response, please.

MR. POTTER: Thank you, Your Honor.

So what's interesting is in that whole argument we did not hear one case that sets up this conduct as a constitutional violation. Not one. So the standard is it must be beyond debate, put all the officers on notice that there is a constitutional violation. We have no case. No case has been cited. The opposition just completely ignored it, so how can the Court then say, oh, yes, it's beyond debate, even though the plaintiff has not met their burden, which the Ninth Circuit has

specifically said is the plaintiffs' burden.

So even taking all these allegations as true, the plaintiffs would still have to support a constitutional violation with some kind of cases to put the officers on notice.

So a policy is not a constitutional violation. There's tons of case law that says that. So just because there's a policy, that somehow does not create a constitutional violation. And so what's interesting that plaintiffs keep hitting on this policy. The polity is for NHP and other state agencies. That is a fact. That's not in dispute, as there are statutes and laws that we cited to that specifically state that.

Sparks Police Department, pursuant to statute and case law, is not a part of this Department of Public Safety which is a state agency. So the policy that they're alleging is not even applicable.

The other thing that they brought up was active misconduct when they were talking about the Utah case. What's the misconduct here? As the Supreme Court has already said that you can chase after suspected criminals, and you do not have to stop chasing them because they drive recklessly. There's some good language from the Scott case that specifically says they will not create a rule that gives impunity earned by recklessness. So to set up a policy that allows someone to commit a violent crime and then endanger the public by driving

ridiculously and then getting on the wrong side of the freeway somehow lets them get away. And so there's no rule to say that. There's no case to say that. Okay.

And then also with the sergeant saying to stop the pursuit, okay, it talks about an individual officer, an officer's decision. Okay, so an individual officer. There are statutes in Nevada that specifically set out that an officer may arrest someone when they believe they've comitted a crime. So there's tons of law, also cases that say that that were cited in the briefs.

So the officer completely had the decision whether or not to chase someone, whether or not to arrest them, whether or not to stop the chase. And then that goes into the second prong with the policy. Okay. So with the policy the standard is lower than it may sound. If you look at Paulos, it specifically says that the challenged decision need not actually be grounded in policy considerations so long as it is by its nature susceptible to a policy analysis.

So even if the Court would just disregard all of the case law that talks about the police have a policy of arresting people and taking dangerous people off the streets to protect the public, even if you were to ignore that, it would be hard to say that arresting someone who the police believe just committed a violent felony is not susceptible to a policy analysis.

As to the discovery and potential motion to amend, all of those defenses are immunity defenses. And there's Nevada Supreme Court and U.S. Supreme Court case law that specifically says that these are immunity from suit. These are not immunity where it kind of works, and a plaintiff can file it and then wait for discovery and then try to fix what they've claimed to try to defeat it. It specifically talks about discovery being a burden of litigation. And part of the qualified immunity rule is to avoid that wording by taking all of the facts in the plaintiffs' complaints as true, which is what we're asking the Court to do.

However, even taking all of the allegations as true, the defendants are still entitled to immunity based on all of the arguments.

THE COURT: Thank you.

Well briefed; well argued. Matter's under submission. Court will do its best to have a decision out by the end of this month. Court does start a trial Monday. It's going to take quite a bit of the Court's attention. I'm aware this case has been pending, as I said earlier, for quite a while. And the Court will do its best to make a decision, put it in writing, and file it as soon as it can.

Just curious, what's the status of the Department 9 case? I realize that Nevada Supreme Court indicated the appeal -- I mean, they thought it was premature, and then so the

case goes forward, what? As to City of Reno? Does anyone -- well, Ms. Allen, you know. Please, what's the status of that case?

MS. ALLEN: You know, I actually am not a hundred percent sure off the top of my head. I believe it's -- I believe it's all still pending. I think they are still trying to sort some things out. We're not actually handling that particular case, Your Honor, but --

MR. POTTER: I believe she froze.

THE COURT: Yes.

MR. POTTER: So I am working that case. So the motion to dismiss --

THE COURT: Hold on one second. I want to make sure she can hear us too before you respond.

We were so close to the end of the hearing without any technical issues.

Ms. DeGayner, would you please send Ms. Allen an e-mail, ask her to, perhaps, log off and log back on.

THE CLERK: Yes, Your Honor.

THE COURT: I heard Ms. DeGayner. She said -- she's behind me, she said yes, even though the microphone is muted in the courtroom.

MR. POTTER: Are we off the record right now, Your Honor?

THE COURT: Well, we can be, if we're just going to talk about the weather or something like that.

Let's go off the record.

(Discussion held off the record.)

THE COURT: Okay. Let's go back on the record.

We just had some general discussion about virtual advocacy versus in-person advocacy. Ms. Morris can fill you in, if she was listening. Nothing substantive with respect to the case. Fine.

So the Court's question -- we're back on the record.

The Court's question was: Do either of you have an update on what is happening in the Department 9 case? I asked Ms. Allen first. I thought she might be apprised. But then you reminded the Court that that's not your firm's case.

So let me turn to Mr. Potter and then back to Ms. Allen, if you have any thoughts you'd like to share. And, you know, I'll just make sure everyone is aware that we all know that another district judge's case with other parties, with other facts, is not dispositive on this case, may or may not be informative. You know, we generally like to know what's going on, but that doesn't mean the Court is wedded to any particular approach or decision, but sometimes we just like to keep apprised. So that was the basis of the Court's question.

Mr. Potter, do you have any information on that? I

think your office is defending City of Sparks, is it not?

MR. POTTER: That is correct, Your Honor. The remitter was just sent back down by the Supreme Court. Judge Freeman did enter a stay pending the appeal. He has not lifted the stay. When he does, the City of Reno's motion to dismiss based on the same arguments as the City of Sparks is pending, so he will make a decision on that. And then I believe they have already defaulted the criminal defendant from that case. So I believe it then would be ripe for appeal after he makes a decision on that case, if he does the same thing as he did with the City of Sparks.

THE COURT: Got it. Thank you very much.

All right. Ms. Allen, anything to add with respect to that?

MS. ALLEN: Nothing, Your Honor.

THE COURT: Anything else for the good of the order before we end this hearing?

Let me start with you, Ms. Allen.

MS. ALLEN: Nothing at this point, Your Honor. Thank you.

THE COURT: Okay. Thank you.

Mr. Potter, anything else?

MR. POTTER: No, Your Honor. Thank you.

THE COURT: All right. The matter is under submission.

I'll double down on what I said, well briefed, well argued, excellent attorneys, appreciate the professionalism you've shown for each other before the Court.

With that, have a great rest of the afternoon. I wish everyone a pleasant holiday season. Court will be in recess.

(Proceedings Concluded)

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STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

I, EVELYN J. STUBBS, official reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That as such reporter I was present in Department No. 8 of the above court on Thursday, December 1, 2022, at the hour of 1:30 p.m. of said day, and I then and there took stenotype notes of the proceedings had and testimony given therein upon the HEARING ON MOTION TO DISMISS of the case of AVERY EDWARDS, ET AL, Plaintiffs, vs. THE CITY OF SPARKS, ET AL, Defendants, Case No. CV22-00282.

That the foregoing transcript, consisting of pages numbered 1 to 29, inclusive, is a full, true and correct transcript of my said stenotype notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given therein upon the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 8th day of May, 2023.

/s/ Evelyn J. Stubbs
EVELYN J. STUBBS, CCR #356

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May, 2024, I caused service of a true and correct copy of the foregoing, **APPELLANTS' APPENDIX, VOLUME 1 OF 2**, to be made by this Court's e-Flex electronic filing and service system, upon the following:

Wesley K. Duncan
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/s/ Jasmine Salado

An employee of CHRISTIAN MORRIS TRIAL ATTORNEYS