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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

CHRISSEY ISRAEL MAZZEO,)
)
Plaintiff,)
)
vs.)
)
JAMES ARTHUR "JIM" GIBBONS;)
SIGMUND "SIG" ROGICH; LAS VEGAS)
METROPOLITAN POLICE DEPARTMENT;)
BILL YOUNG; DONALD J. CAMPBELL;)
PENNIE MOSSETT-PUHEK; DOES 1-20,)
)
Defendants.)
_____)

Case No.: 2:08-cv-01387-RLH-PAL

ORDER

(Motion to Dismiss-#13;
Motion to Dismiss-#15;
Motion to Dismiss-#16;
Motion to Dismiss-#17;
Motion to Dismiss-#35;
Motion to Amend-#44)

In this Order, the Court considers five motions to dismiss filed by Defendant James Arthur Gibbons (#13), Defendants Las Vegas Metropolitan Police Department ("Metro") and Bill Young (#15), Defendant Pennie Mossett-Puhek (#16), Defendant Donald Campbell (#17), and Defendant Sigmund Rogich (#35). The Court also considers Plaintiff Chrissy Israel Mazzeo's Motion to Amend (#44). In considering these motions, the Court has reviewed the oppositions, replies, joinders, and exhibits submitted by the parties. (See Dkt. ##18, 34, 36, 47, 49, 50-53, 55, 57-60, 63, 65, 69, 70, & 73.)

//

1 **BACKGROUND**

2 **I. The Incident**

3 On a rainy Friday the 13th in October 2006, Chrissy Israel Mazzeo met up with her
4 friend Pennie Mossett-Puhek to enjoy happy hour at McCormick & Schmick’s Seafood Restaurant
5 in Las Vegas. A few hours later, at about 7:45 p.m., Puhek spotted Jim Gibbons in the restaurant.
6 At that time, Gibbons was a United States Congressman and a candidate in the upcoming
7 gubernatorial election. Gibbons was seated at a nearby booth with his campaign manager, Sig
8 Rogich, and two women, Michelle Diegel and Georganne Bradley. Puhek sent Gibbons’s table a
9 round of drinks, asking the waitress to tell them it was from her husband Dr. Puhek. Gibbons then
10 invited Puhek and Mazzeo to join them at their table. The two friends agreed and took their seats
11 at the end of Gibbons’s table, with Mazzeo seated by Gibbons and Puhek by Rogich.

12 Mazzeo alleges that Gibbons immediately began making unwelcome advances
13 towards her. She claims that over the course of the next two hours, while everyone in the party
14 drank, Gibbons repeatedly touched her thigh with his hand and wrapped his leg around hers. He
15 purportedly told her how beautiful she was and how bored he was with his marriage. He also
16 allegedly invited her to his hotel room. According to Mazzeo, she tried to move away from
17 Gibbons to avoid his advances without being overtly rude or making a scene. At one point, she
18 complained to Puhek. Puhek told Rogich, and Rogich purportedly told Gibbons to calm down
19 because people were watching his inappropriate behavior.

20 After a couple of hours in which everyone drank heavily, Mazzeo took out her keys
21 and put them on the table in preparation for leaving. Gibbons went to the restroom, and when he
22 returned, he allegedly shook hands with everyone and handed Mazzeo his business card. Mazzeo
23 then went to the restroom, during which time she alleges Gibbons took her keys from off the table
24 and left the restaurant. When she returned from the restroom, she stayed with the group for another
25 fifteen or twenty minutes before leaving the restaurant.

26

1 Mazzeo claims that when she stepped outside the restaurant, she began searching in
2 her purse for her keys. While she stood there, Gibbons purportedly approached her and asked if
3 she was looking for him. She told him she was not, but was looking for her keys. Gibbons
4 allegedly offered to take her to her car and told her not to worry about her keys. Mazzeo then
5 followed Gibbons into a nearby parking garage.

6 According to Mazzeo, as they were walking past the elevator on the first floor of
7 the parking garage, Gibbons suddenly grabbed her by the arms, holding her tightly by her biceps,
8 and shoved her back ten feet until she was pinned with her back against the wall. Frightened,
9 Mazzeo asked Gibbons what he was doing. Gibbons purportedly squeezed her arms tighter and
10 told her he was going to rape her. He then allegedly told her she could try to run away or let it
11 happen. Mazzeo claims she pled with Gibbons to let her go, but he would not. At that moment,
12 three teenagers ran through the parking garage and Gibbons looked towards them. While Gibbons
13 was distracted, Mazzeo claims she kicked him in the shin, freed herself from his grasp, and ran
14 from the scene.

15 Mazzeo ran to a nearby hotel and called 911 from her cell phone. She then waited
16 in the lobby for the police to arrive. While waiting, she also called Puhek and told her what
17 happened. Puhek purportedly told her not to call the police, but Mazzeo said she already had.
18 Puhek told her to undo the call because she did not understand the trouble she was getting herself
19 into.

20 After they hung up, Puhek allegedly told Gibbons, who had returned to the
21 restaurant, what hotel Mazzeo was at. Gibbons purportedly drove to the hotel where Mazzeo was
22 waiting, got out of his car, and approached the door to the lobby. When Mazzeo saw him looking
23 at her through the door, she took off running and tried to run past him. Gibbons grabbed her and
24 told her she would be sorry for calling 911. She freed herself from his grip and ran to a nearby
25 Starbucks. Inside, she called 911 a second time to tell the police her new location. She then took
26 refuge in the women's bathroom.

1 The 911 operator told her to wait outside for the police to come, so she eventually
2 left the bathroom and went outside. She sat down on a bench in front of Starbucks even though it
3 was raining. According to Mazzeo, she was wet and disheveled by this point, having run several
4 blocks through the rain, and people began to stare at her as she sat there. She decided to move to
5 the nearby Gordon Biersch Brewing Company to get out of the rain and blend in with the crowd.
6 When she arrived at the brewery, Mazzeo first went to the women's bathroom where she tidied her
7 appearance. After that, she called her sister and then called 911 for the third time. The brewery was
8 extremely noisy and by that time it had stopped raining, so she went outside again, sat on a
9 concrete bench, and told the 911 operator her new location. Officers from the Las Vegas
10 Metropolitan Police Department arrived shortly thereafter.

11 The police took Mazzeo back to McCormick & Schmick's. On the way over,
12 Mazzeo again called her sister. Once Mazzeo and the police arrived at the restaurant, Mazzeo told
13 the police what had happened, and the police purportedly told her that they had to question
14 everybody. Later, Mazzeo's sister arrived and Mazzeo went and waited in her sister's truck.

15 About an hour later, Officer Ortega allegedly told Mazzeo that Metro had obtained
16 the parking structure surveillance videos and that the videos proved she was telling the truth. He
17 also purportedly told her, however, that they would have to wait to arrest Gibbons. As part of their
18 investigation, Metro officers allegedly photographed two small scratches on Mazzeo's shoulder
19 and back. Mazzeo also claims she had bruises on her upper arms where Gibbons had grabbed her.

20 **II. The Coverup**

21 Rogich allegedly learned of this incident from Puhek shortly after Puhek spoke with
22 Mazzeo on the phone. He in turn allegedly contacted Bill Young, who at the time was the Sheriff
23 of Metro. Young had publicly endorsed Gibbons in the gubernatorial election, and both he and
24 Gibbons employed Rogich as their campaign manager. Rogich and Young purportedly had
25 numerous conversations that night about the incident while the police investigation was ongoing.
26 Mazzeo also alleges that Young contacted Gibbons that night to talk about the investigation.

1 During the night and into the next day, Puhek allegedly called Mazzeo four times to
2 relay threats from Rogich. Mazzeo claims Puhek told her to drop the charges or she and her baby
3 would be killed. Puhek instructed her to tell the police she did not want to be involved in a three-
4 ring circus. She also told her not to tell the police about their conversation. Initially, Mazzeo
5 refused. But Puhek then allegedly told her to reconsider because she did not understand who she
6 was dealing with.

7 By Saturday afternoon, Mazzeo told the police she did not want to go forward with
8 the charges. She told them it would become a three-ring circus and she did not want to hurt
9 Gibbons's political career.

10 Following her conversation with the police, Mazzeo purportedly called Puhek and
11 told her what she had told the police. Puhek then allegedly spoke with Rogich, after which she
12 called Mazzeo back in a panic. She told Mazzeo that she had said the wrong thing to the police.
13 Puhek told her that she needed to tell the police that the whole thing was a misunderstanding and
14 that alcohol was involved. Puhek had her write down with pen and paper exactly what she needed
15 to tell the police.

16 Puhek also allegedly told Mazzeo that Gibbons's lawyer was drafting a silence form
17 and that he wanted to go over her witness statement with her. She purportedly told Mazzeo that
18 they needed to meet with Gibbons's people. Puhek also admitted that she had been talking to
19 Diegel, one of the women at the table with them in McCormick & Schmick's, and that Diegel was
20 relaying their conversations to Rogich. Gibbons's attorney allegedly drafted witness statements for
21 Puhek, Diegel, and the third woman, Bradley, which they all acknowledged or signed.

22 Later, when the story hit the news, Puhek again called Mazzeo. Mazzeo claims
23 Puhek told her she needed to sign the silence form or they would cut her arms off. She also told
24 Mazzeo that Gibbons's people needed to go over her witness statement with her and that as soon
25 as she signed it, they would give both of them money. Mazzeo claims she told Puhek that what
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1 Gibbons was trying to do was extortion and bribery and that she refused to go along with it. Puhek
2 then purportedly told her she was naive and that it was all about the money.

3 Mazzeo was next contacted by Gibbons's private investigator, David Groover.
4 Groover allegedly told her that he needed to go over her statement with her. He explained that the
5 media was aware of the story now and that they would not drop it unless she met with him because
6 her statement did not match Gibbons's statement. Mazzeo claims she told Groover that the
7 statements did not match because Gibbons was lying.

8 Following her conversation with Groover, Mazzeo contacted Harold Collins, a
9 California attorney. Collins contacted Groover. Groover purportedly explained to Collins that the
10 police report was going to be released to the press and he needed to speak with Mazzeo because
11 there were conflicts between Mazzeo's and Gibbons's statements. He also told Collins that her
12 name would be released with the report and that there was not a lot of time to fix the discrepancies
13 in their statements. After his conversation with Groover, Collins referred Mazzeo to Las Vegas
14 attorney Richard Wright.

15 On October 28, 2006, Puhek called Mazzeo for the last time. She allegedly told her
16 again that they needed to make sure her statement matched Gibbons's. Mazzeo again claims she
17 refused to lie. Puhek allegedly again told Mazzeo that if she did not sign the statement, her arms
18 would be cut off.

19 Mazzeo alleges that throughout Metro's investigation, Young provided Rogich and
20 Gibbons information regarding the evidence as it came in. Young purportedly did this even though
21 Metro, as a general rule, does not allow potential criminal defendants to view the evidence against
22 them until after charges are filed and the defendant is arraigned.

23 Mazzeo also alleges that Young, Gibbons, Rogich, and Donald
24 Campbell—Gibbons's attorney—destroyed the surveillance videos that recorded the incident. She
25 claims Young allowed Campbell to view the surveillance videos Metro recovered from the parking
26 garage and restaurant, but he would not permit her attorney to see them. She also claims that Metro

1 only released to the press videos cleared by Young and Campbell. These released videos
2 purportedly showed nothing and were from a day other than the day of the incident. According to
3 Mazzeo, this is evident from the videos themselves, because even though it was raining that night,
4 there were no wet tire marks in the parking garage. Moreover, the police investigation purportedly
5 found that the cameras that would have recorded the incident were inactive that night.

6 Lastly, Mazzeo claims that when she accompanied Metro detectives to the scene of
7 the crime to reenact the incident, the detectives intentionally confused and humiliated her in order
8 to discredit her story. She claims that while she was attempting to walk them through what
9 happened, the detectives berated her, asked her questions intended to confuse her, and accused her
10 of being too drunk at the time to remember, of hallucinating, or of intentionally making up the
11 incident to hurt Gibbons's political career.

12 **III. The Fallout**

13 Mazzeo claims that as a result of the incident and its coverup, Gibbons was never
14 prosecuted even though she reinstated her charges. Further, she claims Gibbons, Puhek, Rogich,
15 Young, and Campbell conspired and made comments to the press that were intended to portray her
16 as a criminal, an opportunist, and a liar.

17 In addition, Mazzeo claims that as a result of the threats communicated to her
18 through Puhek, she feared for her life. Mazzeo alleges that the keys to her truck were never found,
19 and that shortly after the incident, the garage door opener was stolen from her truck. She
20 purportedly called the police about the missing keys and garage door opener, but they failed to
21 make a report of it. According to Mazzeo, because of the threats made against her and her baby
22 and the missing garage door opener, she was forced to break her lease and move into an apartment.

23 Mazzeo also alleges that because she maintained her charges against Gibbons, she
24 was blacklisted from working in Las Vegas. According to Mazzeo, she was a successful cocktail
25 waitress before this incident, but after bringing charges against Gibbons, no casino would hire her
26 and she was forced to move to California in order to find employment.

1 **IV. This Lawsuit**

2 Mazzeo filed this lawsuit on October 14, 2008. The next day she filed her First
3 Amended Complaint. The First Amended Complaint asserts seven claims for: (1) deprivation of
4 due process and equal protection pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment
5 against all Defendants; (2) conspiracy to interfere with civil rights pursuant to 42 U.S.C. § 1985
6 against all Defendants; (3) attorney fees pursuant to 42 U.S.C. § 1988 against all Defendants; (4)
7 battery against Gibbons; (5) false imprisonment against Gibbons; (6) negligence per se against all
8 Defendants; and (7) defamation against Gibbons and Puhek. After Defendants filed their Motions
9 to Dismiss, Mazzeo moved for leave to amend and attached her proposed Second Amended
10 Complaint. In the proposed Second Amended Complaint, Mazzeo expands her first claim to
11 include a deprivation of her First Amendment right to free speech and press, and to petition the
12 government for redress of her grievances; broadens her seventh claim for defamation to include
13 Rogich, Young, and Campbell; and adds an eighth claim for intentional infliction of emotional
14 distress against Gibbons, Puhek, Young, Rogich, and Campbell. For the reasons discussed below,
15 the Court grants in part and denies in part Defendants’ Motions to Dismiss, and grants Plaintiff’s
16 Motion to Amend subject to the directives of this Order.

17 **DISCUSSION**

18 **I. Motion to Amend**

19 Under Rule 15 of the Federal Rules of Civil Procedure, after a party has amended
20 its pleading once as a matter of course, it may only amend its complaint with the opposing party’s
21 written consent or the court’s leave. Fed. R. Civ. P. 15(a)(1)–(2). The court has discretion to give
22 leave and should do so freely “when justice so requires.” *Allen v. City of Beverly Hills*, 911 F.2d
23 367, 373 (9th Cir. 1990) (quoting Fed. R. Civ. P. 15(a)). In exercising its discretion, a court may
24 deny leave if (1) the amendment will cause undue delay or (2) undue prejudice to the opposing
25 party, (3) the request is made in bad faith, (4) the party has repeatedly failed to cure deficiencies,
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1 or (5) the amendment would be futile. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532
2 (9th Cir. 2008).

3 Here, the Court concludes that justice requires it to grant leave to amend. The Court
4 finds none of the factors identified by the Ninth Circuit in *Leadsinger* are present in this case.
5 First, permitting the amendment will not unduly delay the case because none of the Defendants
6 have filed an answer and the Court limited significant aspects of discovery until after it ruled on
7 Defendants' Motions to Dismiss. (*See* Dkt. #75, Order of Magistrate Judge Leen.) Second,
8 allowing the amendment would not unduly prejudice Defendants: Defendants responded to the
9 amended allegations in their Replies to Plaintiff's Opposition to the Motions to Dismiss. Third, the
10 Court finds no indication that the request to amend is in bad faith. Fourth, even though this is
11 Plaintiff's second amendment, the Court never ruled that the prior complaints were deficient;
12 instead, Plaintiff submitted the Amended Complaint on her own initiative. Lastly, as the Court
13 discusses below, Plaintiff's proposed amendments are not futile because they add claims that are
14 sufficient to survive Defendants' Motions to Dismiss. Nevertheless, as the Court discusses below,
15 the Second Amended Complaint contains substantial objectionable material and several deficient
16 legal theories. Accordingly, the Court grants Plaintiff's Motion to Amend and directs Plaintiff to
17 file her Second Amended Complaint. However, it also orders Plaintiff to revise the Second
18 Amended Complaint to comport with the directives of this Order.

19 **II. Motions to Dismiss**

20 "A pleading that states a claim for relief must contain ... a short and plain statement
21 of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), in order to "give
22 the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests,"
23 *Conley v. Gibson*, 355 U.S. 41, 47 (1957), *abrogated on other grounds by Bell Atl. Corp. v.*
24 *Twombly*, 550 U.S. 544 (2007). While a pleading generally need not contain detailed allegations, it
25 must allege sufficient facts "to raise a right to relief above the speculative level." *Twombly*, 550
26 U.S. at 555. A party may challenge the sufficiency of a pleading by motion under Rule 12(b)(6). In

1 ruling on a 12(b)(6) motion, a court assumes all factual allegations are true and construes them in
2 the light most favorable to the nonmoving party. *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140
3 (9th Cir. 1996). However, a court does not assume the truth of legal conclusions merely because
4 the plaintiff casts them in the form of factual allegations. *Warren v. Fox Family Worldwide, Inc.*,
5 328 F.3d 1136, 1139 (9th Cir. 2003). A court should dismiss a claim if it lacks a cognizable legal
6 theory or if there are insufficient facts alleged under a cognizable legal theory. *Johnson v.*
7 *Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1122 (9th Cir. 2008). Although this burden is not
8 onerous, *id.*, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter,
9 accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129
10 S.Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility
11 when the plaintiff pleads factual content that allows the court to draw the reasonable inference that
12 the defendant is liable for the misconduct alleged.” *Id.*

13 **A. Deprivation of Constitutional Rights Under 42 U.S.C. § 1983**
14 **Against All Defendants**

15 In order to state a claim under 42 U.S.C. § 1983, Mazzeo must allege Defendants
16 deprived her of a federal right while acting under color of state law. *Gomez v. Toledo*, 446 U.S.
17 635, 640 (1980). In her Second Amended Complaint, Mazzeo alleges Defendants deprived her of
18 her rights under the First Amendment, Fourteenth Amendment, and 18 U.S.C. §§ 241 and 245(b).
19 The Court first analyzes whether Defendants acted under color of state law and then examines
20 Mazzeo’s constitutional and statutory theories.

21 **1. State-Action Requirement**

22 “The ultimate issue in determining whether a person is subject to suit under § 1983
23 is the same question posed in cases arising under the Fourteenth Amendment: is the alleged
24 infringement of federal rights ‘fairly attributable to the State?’” *Rendell-Baker v. Kohn*, 457 U.S.
25 830, 838 (1982) (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982)). “The
26 traditional definition of acting under color of state law requires that the defendant in a § 1983

1 action have exercised power ‘possessed by virtue of state law and made possible only because the
2 wrongdoer is clothed with the authority of state law.’” *West v. Atkins*, 487 U.S. 42, 49 (1988)
3 (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). Within this umbrellian formulation,
4 courts have articulated four separate tests, any of which is sufficient to establish state action: (1)
5 the public function test; (2) the joint action test; (3) the government compulsion test; and (4) the
6 governmental nexus test. *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003). Because the joint
7 action test is the most applicable theory under the facts Mazzeo alleges, the Court now discusses
8 that test.

9 Under the joint action test, a private party acts under color of law if she is a willful
10 participant in a joint action with the state or its agents. *Dietrich v. John Ascuaga’s Nugget*, 548
11 F.3d 892, 899–900 (9th Cir. 2008). A private party is a willful participant if her actions are
12 inextricably intertwined with those of the government, or she has conspired with the state to
13 violate another’s constitutional rights. *Brunette v. Humane Soc’y of Ventura County*, 294 F.3d
14 1205, 1211 (9th Cir. 2002). “‘To be liable, each participant in the conspiracy need not know the
15 exact details of the plan, but each participant must at least share the common objective of the
16 conspiracy.’” *Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002) (quoting *United Steelworkers of*
17 *Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540–41 (9th Cir. 1989)).

18 The Court concludes Mazzeo has sufficiently alleged Defendants were all state
19 actors and are therefore subject to § 1983 liability. First, it is undisputed that Metro and Young, in
20 his former capacity as the Sheriff of Metro, are state actors. Second, as to the remaining
21 Defendants, Mazzeo has sufficiently alleged that they conspired with Young and Metro to violate
22 Mazzeo’s constitutional rights. The Court discusses the sufficiency of Mazzeo’s allegations of
23 constitutional deprivations below. It simply notes here that Mazzeo alleges that the remaining
24 Defendants acted in concert with Young and Metro with the objective to coverup the events
25 surrounding Gibbons’s attempted sexual assault of Mazzeo. Assuming as it must that these
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1 allegations are true, the Court concludes that Mazzeo has adequately alleged a joint action between
2 the private-party Defendants and the state actors, Young and Metro.¹

3 **2. Qualified Immunity**

4 Defendants Young and Metro argue they are immune from suit under the doctrine
5 of qualified immunity. State officials are entitled to qualified or “good faith” immunity from suits
6 for money damages “insofar as their conduct does not violate clearly established statutory or
7 constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457
8 U.S. 800, 806, 815 (1982). Qualified immunity is “an immunity from suit rather than a mere
9 defense to liability.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). When evaluating qualified
10 immunity defenses, Courts look to see (1) whether the official’s conduct, taken in the light most
11 favorable to the party asserting the injury, violated a constitutional right; and (2) whether the right
12 was clearly established. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). A right is clearly established if
13 it would be clear to a reasonable officer that his conduct was unlawful. *Millender v. County of Los*
14 *Angeles*, 564 F.3d 1143, 1148 (9th Cir. 2009). If both questions are answered in the affirmative,
15 the state official is not entitled to qualified immunity. *Id.* Courts are given “sound discretion in
16 deciding which of the two prongs of the qualified immunity analysis should be addressed first.”
17 *Pearson v. Callahan*, 129 S.Ct. 808, 818 (2009).

18 The Court first considers which of Mazzeo’s legal theories state plausible
19 constitutional claims. For each theory that survives, the Court then analyzes whether that right was
20 clearly established for purposes of qualified immunity.

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23 ¹ Mazzeo also alleges Gibbons was a state actor because he was sworn in as governor of Nevada on
24 January 1, 2006—prior to the events in this case. The Court ignores this allegation in its state-action analysis,
25 however, because it is clearly incorrect. The Court takes judicial notice that Gibbons was not elected governor
26 until November 7, 2006. See 2006 Official Statewide General Election Results, <http://sos.state.nv.us/elections/results/2006StateWideGeneral/ElectionSummary.asp>. As such, it need not accept
as true Mazzeo’s allegation. See *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (“The
court need not ... accept as true allegations that contradict matters properly subject to judicial notice.”).

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a. § 1983 Claim Based on the First Amendment

Mazzeo asserts two theories under the First Amendment. She first claims Defendants deliberately retaliated against her for exercising her First Amendment right to petition the government for a redress of her grievances. She also claims Defendants interfered with her First Amendment right of access to the courts by destroying and fabricating evidence.

i. Retaliation

Mazzeo argues Defendants defamed her and caused her to suffer severe emotional distress in retaliation for filing a police report claiming Gibbons attempted to rape her. Deliberate retaliation by state actors against an individual’s exercise of her First Amendment right to petition the government for redress of grievances is actionable under § 1983. *Soranno’s Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989). To demonstrate retaliation in violation of the First Amendment, a plaintiff must prove: (1) a defendant took action that would chill a person of ordinary firmness from future First Amendment activities, and (2) the defendant would not have taken the action but for the defendant’s desire to chill plaintiff’s speech. *Skoog v. County of Clackamas*, 469 F.3d 1221, 1232 (9th Cir. 2006).² Further, “[f]iling a police report may implicate speech that is protected under the Petition Clause of the First Amendment.” *Doe v. San Mateo County*, 2009 WL 735149, *5 (N.D. Cal. Mar. 19, 2009); *see also Foraker v. Chaffinch*, 501 F.3d 231, 236 (3rd Cir. 2007).

The Court concludes Plaintiff has sufficiently stated a retaliation claim under the First Amendment. Mazzeo alleges that after she called the police and filed a police report,

² In First Amendment retaliation cases involving public-employee speech, a plaintiff must also show that her speech concerned an issue of public concern. *See Connick v. Myers*, 461 U.S. 138 (1983). In this context, however, the Court concludes that Plaintiff need not demonstrate her speech concerned an issue of public concern. First, the Ninth Circuit has held that the public concern requirement does not apply to all First Amendment retaliation claims. *CarePartners, LLC v. Lashway*, 545 F.3d 867, 881 (9th Cir. 2008). Second, Plaintiff’s claim arises under the Petition Clause and not the Free Speech Clause. This distinction is significant because Plaintiff’s petition is not directed to the public, but to the government for redress of a personal grievance, and thus, unlike free speech, it need not involve a matter of public concern. *Foraker v. Chaffinch*, 501 F.3d 231, 236 (3rd Cir. 2007).

1 Defendants acted in concert to smear her character and dissuade her from filing charges. She
2 alleges that Gibbons, Rogich, and Puhek agreed to lie about the events of October 13, 2006, and to
3 threaten Mazzeo and her family. Moreover, she alleges that Young, in agreement with Gibbons,
4 Rogich, and Puhek, used his position as sheriff to taint the police investigation. Mazzeo alleges
5 that rather than investigate the truth of her accusations and protect her as a potential sexual assault
6 victim, Metro used their investigation to cover up Gibbons's, Rogich's, and Puhek's lies, and to
7 portray her to the public as a liar, a drunk, an opportunist, and a criminal. Mazzeo also alleges that
8 Young used his position to cause the police to disregard the threats she was receiving from Puhek,
9 Rogich, and Gibbons. Finally, Mazzeo alleges that Campbell met with Young to view the
10 surveillance videos, and that only videos Campbell cleared were released to the public, which
11 further damaged her credibility. She also claims Campbell helped destroy the videos that showed
12 Gibbons assaulting her. In the Court's view, this is sufficient to deter a person of ordinary firmness
13 from future First Amendment activity. Furthermore, Mazzeo has adequately alleged that her filing
14 a police report was the but-for cause of Defendant's concerted action to destroy her reputation and
15 thus chill her from future speech.

16 The Court also concludes that Young and Metro are not entitled to qualified
17 immunity. A reasonable officer would know that he was violating Mazzeo's constitutional rights
18 by using his investigation to coverup a crime. Consequently, the Court finds that Mazzeo has
19 adequately stated a claim for First Amendment retaliation.

20 **ii. Evidence Destruction and Fabrication**

21 Mazzeo also claims Defendants violated her First Amendment right of access to the
22 courts by fabricating and destroying evidence and thereby avoiding criminal prosecution for their
23 misdeeds.³ The Supreme Court has categorized right-of-access claims as either forward-looking or

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25 ³ Mazzeo asserts her right-of-access claim under the First Amendment's Petition Clause. Courts have
26 also grounded this claim in the Article IV Privileges and Immunities Clause, the Fifth Amendment Due Process
Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses. *Christopher v. Harbury*, 536
U.S. 403, 415 n.12 (2002) (collecting cases).

1 backward-looking. In the forward-looking category “are claims that systemic official action
2 frustrates a plaintiff or plaintiff class in preparing and filing suits at the present time.” *Christopher*
3 *v. Harbury*, 536 U.S. 403, 413 (2002). “In cases of this sort, ... official action is presently denying
4 an opportunity to litigate ... [and] the object of the denial-of-access suit, and the justification for
5 recognizing the claim, is to place the plaintiff in a position to pursue a separate claim for relief
6 once the frustrating condition has been removed.” *Id.* Backward-looking right of access claims, on
7 the other hand, “covers claims not in aid of a class of suits yet to be litigated, but of specific cases
8 that cannot now be tried (or tried with all material evidence), no matter what official action may be
9 in the future.” *Id.* at 413–14. Mazzeo’s claim clearly falls within this second category because she
10 alleges Defendants cannot now be criminally prosecuted because they have destroyed the
11 inculpatory evidence, namely the surveillance videos.⁴

12 In order to state a backward-looking denial-of-access claim, Mazzeo must allege (1)
13 the loss of a nonfrivolous underlying claim, (2) official acts that frustrate the litigation, and (3) a
14 remedy that may be awarded but that is otherwise not available in a future suit. *Nev. Dep’t of Corr.*
15 *v. Cohen*, 581 F. Supp. 2d 1085, 1091 (D. Nev. 2008) (quoting *Phillips v. Hust*, 477 F.3d 1070,
16 1076 (9th Cir. 2007), *vacated on other grounds by Pearson v. Callahan*, 129 S.Ct. 808 (2009)).
17 With regard to the first element, the Supreme Court has stressed that the right of access to the
18 courts is “ancillary to the underlying claim, without which a plaintiff cannot have suffered injury
19 by being shut out of court.” *Christopher*, 536 U.S. at 415.

20 Here, Mazzeo’s right-of-access claim fails because she has no underlying claim for
21 the failure of Defendants to be criminally prosecuted. This is because “a private citizen lacks a

22
23 ⁴ Mazzeo does not allege that Defendants’ destruction and fabrication of evidence has affected her ability
24 to bring civil claims. To the contrary, all of her allegations involve criminal prosecution. (See Dkt. #44, Pl.’s Mot.
25 to Amend Ex. B (“Proposed 2nd Am. Compl.”) ¶¶ 87 (“because of the Metro police coverup and a host of lies
26 stated by others due to Rogich’s meddling, no charges were ever brought against Gibbons by the Clark County
District Attorney’s Offices”), 106 (“Rogich, Young and Campbell conspired together and acted to willfully
destroy the videos ... to prevent the production thereof before the Clark County District Attorney”), and 112
 (“depriving Mazzeo of her ability to have criminal charges brought against Gibbons”).)

1 judicially cognizable interest in the prosecution or nonprosecution of another.” *Linda R.S. v.*
2 *Richard D.*, 410 U.S. 614, 619 (1973). Without an underlying claim, Mazzeo cannot, as a matter of
3 law, state a backward-looking claim for the denial of her right of access to the courts. Her claim is
4 therefore dismissed.

5 **b. Section 1983 Claim Based on the Fourteenth Amendment**

6 Mazzeo asserts numerous theories under the Fourteenth Amendment’s Due Process
7 and Equal Protection Clauses, which provide that no State shall “deprive any person of life,
8 liberty, or property, without due process of law; nor deny to any person within its jurisdiction the
9 equal protection of the laws.” U.S. Const. amend. XIV, § 1. The Court examines each of Mazzeo’s
10 due process and equal protection theories in turn.

11 **i. Due Process: Unbiased Tribunal**

12 “A fair trial in a fair tribunal is a basic requirement of due process.” *In re*
13 *Murchison*, 349 U.S. 133, 136 (1955). Mazzeo argues that Defendants’ destruction and fabrication
14 of evidence deprived her of the right to testify in an unbiased criminal trial against Gibbons. She
15 claims that Young prejudiced her case by announcing publicly that the whole incident was a
16 misunderstanding and that Mazzeo was drunk at the time, and that he prejudged her case by
17 submitting it to the district attorney without a recommendation to prosecute.

18 To state a due process claim, substantive or procedural, Mazzeo must allege the
19 government deprived her of her life, liberty, or property. *See Brittain v. Hansen*, 451 F.3d 982, 991
20 (9th Cir. 2006) (substantive); *Thomas v. City of St. Helens*, 425 F.3d 1158, 1164 (9th Cir. 2005)
21 (procedural). Here, Mazzeo has failed to allege a protectible interest in life, liberty, or property. As
22 discussed previously, Mazzeo has no judicially cognizable interest in Gibbons’s prosecution. *See*
23 *Linda R.S.*, 410 U.S. at 619. Without an interest in Gibbons’s prosecution, Mazzeo has no right to
24 have Metro recommend he be prosecuted and she has no right to testify against Gibbons in an
25 unbiased tribunal. The Court therefore dismisses Mazzeo’s due process claim under this theory.
26

1 not alleged to have acted in agreement with the named Defendants. As the Supreme Court
2 explained in *Siegert v. Gilley*:

3 Most defamation plaintiffs attempt to show some sort of special damage and out-of-
4 pocket loss which flows from the injury to their reputation. But so long as such
5 damage flows from injury caused by the defendant to plaintiff's reputation, it may
6 be recoverable under state tort law but it is not recoverable in a [§ 1983] action.

7 500 U.S. at 234. Accordingly, Mazzeo's stigma-plus claim is dismissed.

8 **iii. Due Process: Arbitrary, Wrongful Government Action**

9 The Due Process Clause protects individuals against arbitrary government action.
10 *County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998). It guarantees more than just fair
11 process; it also protects individual liberty against wrongful government action regardless of the
12 fairness of the procedures used to implement it. *Collins v. City of Harker Heights, Tex.*, 503 U.S.
13 115, 125 (1992). Nevertheless, only the most egregious governmental conduct is arbitrary in the
14 constitutional sense. *Lewis*, 523 U.S. at 846. To this end, to violate the substantive component of
15 due process, “government conduct must be so grossly shocking and so outrageous as to violate the
16 universal sense of justice.” *United States v. King*, 200 F.3d 1207, 1213 (9th Cir. 1999) (internal
17 quotations omitted). Further, the plaintiff must provide a careful description of the asserted
18 fundamental liberty interest. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *see also Nunez*
v. City of Los Angeles, 147 F.3d 867, 871 (9th Cir. 1998).

19 Here, Mazzeo fails to state a substantive due process claim because she does not
20 clearly articulate the fundamental liberty interest at issue. In her Opposition, Mazzeo recognizes
21 the necessity of articulating her liberty interest, but she still fails to do so. (*See* Dkt. #44, Pl.'s Mot.
22 to Amend 32–33.) Instead, she simply asserts “[s]he was deprived of constitutionally protected
23 interests as previously described.” (*Id.* at 33.) The Court can only understand this to mean the
24 liberty interests identified in her other constitutional theories because Mazzeo never identifies any
25 other liberty interest. But the Court has already analyzed her interests under the specific
26 constitutional provisions protecting those interests. And “[w]here a particular Amendment

1 provides an explicit textual source of constitutional protection against a particular sort of
2 government behavior, that Amendment, not the more generalized notion of substantive due
3 process, must be the guide for analyzing these claims.” *Lewis*, 523 U.S. 842 (quoting *Albright v.*
4 *Oliver*, 510 U.S. 266, 273 (1994) (plurality opinion)). Accordingly, Mazzeo’s claim under
5 substantive due process is dismissed.

6 **iv. Equal Protection**

7 The Equal Protection Clause mandates that all persons similarly situated be treated
8 alike. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). It “protects not
9 only groups, but individuals who would constitute a ‘class of one.’” *Squaw Valley Dev. Co. v.*
10 *Goldberg*, 375 F.3d 936, 944 (9th Cir. 2004), *overruled on other grounds by Lingle v. Chevron*
11 *U.S.A. Inc.*, 544 U.S. 528 (2005). Where state action does not implicate a fundamental right or a
12 suspect classification, a plaintiff can maintain a class-of-one claim by showing that she was
13 intentionally treated differently from others similarly situated and that there is no rational basis for
14 the difference in treatment. *Id.*; *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

15 Based on her allegations, Mazzeo has adequately stated a claim under the Equal
16 Protection Clause of the Fourteenth Amendment. Mazzeo claims Young and Metro intentionally
17 treated her differently from other women who filed sexual assault claims because, rather than
18 investigate a potential crime, Young used the police investigation to smear Mazzeo and to clear
19 Gibbons’s name prior to the gubernatorial election. Assuming Mazzeo’s allegations are true, the
20 Court concludes this a “paradigmatic class-of-one case ... in which a public official, for some
21 improper motive, ‘comes down hard on a hapless private citizen.’” *Engquist v. Or. Dep’t of Agric.*,
22 478 F.3d 985, 995 (9th Cir. 2007) (quoting *Lauth v. McCollum*, 424 F.3d 631, 633 (7th Cir.
23 2005)). Furthermore, Metro and Young are not entitled to qualified immunity on this claim
24 because a reasonable officer would recognize that this type of conduct is unlawful. The Court also
25 concludes, however, that Mazzeo has failed to state a class-of-one equal protection claim against
26

1 the other Defendants, who are not public officials. Accordingly, Mazzeo’s equal protection claim
2 survives as to Young and Metro, but is dismissed as to all other Defendants.

3 **c. Section 1983 Based on 18 U.S.C. §§ 241 and 245(b)**

4 In addition to her constitutional claims, Mazzeo also asserts a § 1983 claim based
5 on Defendants’ alleged violation of federal criminal statutes 18 U.S.C. §§ 241 and 245(b). These
6 criminal statutes, however, provide no basis for civil liability. *Aldabe v. Aldabe*, 616 F.2d 1089,
7 1092 (9th Cir. 1980); *Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006).
8 Consequently, Mazzeo’s § 1983 claim is dismissed as it pertains to 18 U.S.C. §§ 241 and 245(b).

9 **B. Conspiracy to Interfere with Civil Rights Under 42 U.S.C. § 1985(2)**
10 **Against All Defendants**

11 Mazzeo asserts her second claim for conspiracy to interfere with civil rights under
12 the second clause of 42 U.S.C. § 1985(2). The second clause of subsection (2) creates a cause of
13 action “if two or more persons conspire for the purpose of impeding, hindering, obstructing, or
14 defeating, in any manner, the due course of justice in any State ... with intent to deny any citizen
15 the equal protection of the laws.” 42 U.S.C. § 1985(2). In order to state a claim under the second
16 part of § 1985(2), a plaintiff must allege class-based animus—i.e., that she is a member of a class
17 that suffers from invidious discrimination and that the defendant’s acts were motivated by animus
18 towards her class. *Deleo v. Rudin*, 328 F. Supp. 2d 1106, 1112 (D. Nev. 2004) (citing *Bretz v.*
19 *Kelman*, 773 F.2d 1026, 1028 (9th Cir. 1985)).

20 Mazzeo admits in her Opposition that she has not alleged class-based animus. But
21 she argues that the Supreme Court has not specifically held that part two of § 1985(2) requires a
22 showing of class-based animus, and she presents several arguments why there should be no such
23 requirement. Mazzeo is correct that the Supreme Court has not specifically ruled on this issue.
24 Nevertheless, the Ninth Circuit clearly has, *see Bretz*, 773 F.2d at 1028, and this Court is obligated
25 to follow Ninth Circuit precedent unless and until it is changed or overruled. Accordingly,
26 Mazzeo’s second claim under § 1985(2) is dismissed.

1 **C. Attorney Fees Under 42 U.S.C. § 1988 Against All Defendants**

2 Mazzeo’s third claim is for attorney fees pursuant to 42 U.S.C. § 1988(b).

3 “Recovery of attorney fees under section 1988 is premised on the existence of a prevailing claim
4 under section 1983 or 1985. Section 1988 does not support an independent cause of action.”
5 *Brower v. Inyo County*, 817 F.2d 540, 546 (9th Cir. 1987), *reversed on other grounds* 489 U.S.
6 593 (1989); *see also N.C. Dep’t of Transp. v. Crest St. Cmty. Council, Inc.*, 479 U.S. 6, 12 (1986).
7 Because § 1988 does not support a separate cause of action, the Court dismisses Mazzeo’s third
8 claim. However in doing so, the Court makes clear that if Mazzeo ultimately prevails on her §
9 1983 claim, nothing in this Order will preclude her from seeking attorney fees under § 1988.

10 **D. Battery & False Imprisonment Against Gibbons**

11 In Defendant Gibbons’s Motion to Dismiss, he asks the Court to decline to exercise
12 supplemental jurisdiction over all of Mazzeo’s state-law claims—including these two—because,
13 he argues, Mazzeo has failed to state a valid federal claim. Because the Court does not dismiss all
14 of Mazzeo’s federal claims, it declines Gibbons’s request.

15 **E. Negligence Per Se Against All Defendants**

16 Mazzeo alleges Gibbons committed the crimes of battery, Nev. Rev. Stat. (“NRS”)
17 200.481(1)(a) & (2)(a), false imprisonment, NRS 200.460(1) & (2), kidnapping, NRS 200.310(2),
18 and conspiracy, NRS 199.480(3)(a) & (g). She also alleges Gibbons, Young, Campbell, Rogich,
19 and Puhek prevented or dissuaded a person from testifying in violation of NRS 199.230, prevented
20 or dissuaded a person from commencing prosecution or causing arrest in violation of NRS
21 199.305(1) and (2), conspired to commit the two previous crimes in violation of NRS
22 199.480(3)(a) and (g), attempted to suborn perjury in violation of NRS 199.150, conspired against
23 rights in violation of 18 U.S.C. § 241, and conspired to prevent participation in a federally
24 protected activity in violation of 18 U.S.C. § 245. In addition, she claims Young and Metro
25 committed the crimes of disclosure of information to a subject of investigation, NRS 199.520; *see*
26 *also* NRS 193.019(2) & 280.080, and disclosure of the identity of the victim of sexual assault,

1 NRS 200.3773. Lastly, she claims Rogich, Young, and Campbell committed the crimes of
2 destroying evidence, NRS 199.220, and conspiring to destroy evidence, NRS 199.480(3)(a) & (g).
3 She argues that the violation of these criminal statutes constitutes negligence per se.

4 Whether a particular statute establishes a standard of care in a negligence action is a
5 question of law. *Vega v. E. Courtyard Assocs.*, 24 P.3d 219, 221 (Nev. 2001). In general, “[a]
6 statutory violation is negligence per se if the injured party belongs to the class of persons whom
7 the statute was intended to protect, and the injury suffered is of the type the statute was intended to
8 prevent.” *Atkinson v. MGM Grand Hotel, Inc.*, 98 P.3d 678, 680 (Nev. 2004). However, while a
9 criminal statute can form the basis of a claim for negligence per se, *S. Pac. Co. v. Watkins*, 435
10 P.2d 498, 511 (Nev. 1967), “in the absence of legislative intent to impose civil liability, a violation
11 of a penal statute is not negligence per se.” *Hinegardner v. Marcor Resorts, L.P.V.*, 844 P.2d 800,
12 803 (Nev. 1992).

13 Here, with only one exception, none of the statutes Mazzeo cites contemplate civil
14 liability. The Court has previously discussed in this Order the two federal statutes, 18 U.S.C. §§
15 241 and 245, and concluded that those sections cannot form the basis of civil liability. Further, all
16 of the Nevada criminal statutes Mazzeo cites are found in Chapter 15 of the Nevada Revised
17 Statutes, which makes clear that it has no affect on any civil right or remedy. *See* NRS 193.080 &
18 193.090. This is not to say that Nevada law provides no civil remedies for the wrongs
19 encompassed by the criminal statutes Mazzeo cites—in fact, it does provide remedies, some of
20 which Mazzeo avails herself of in this case (e.g., battery and false imprisonment). But the criminal
21 statutes she cites do not provide a basis for claims for negligence per se. This is especially true
22 given that the crimes she alleges Defendants committed are all intentional in nature and do not
23 lend themselves well to a negligence theory of recovery. The lone exception to civil liability is
24 NRS 200.3773, which prohibits the disclosure of the identity of victims of sexual assault. Nevada
25 Revised Statutes 200.3773 expressly contemplates civil liability and codifies a civil remedy at
26 NRS 41.1398. However, because Mazzeo has an express statutory remedy, the Court dismisses her

1 claim for negligence per se in its entirety and will allow Mazzeo to restate this claim against
2 Young and Metro pursuant to NRS 41.1398.

3 **F. Defamation Against Gibbons, Puhek, Rogich, Young, and Campbell**

4 In her seventh claim, Mazzeo alleges Gibbons lied about what occurred in the
5 parking garage, which had the effect of defaming her as a lying opportunist, the filer of a false
6 police report, and as having committed the crime of malicious prosecution. She further contends
7 that Gibbons, Puhek, and Rogich lied about what occurred at McCormick & Schmick’s restaurant,
8 and that these lies resulted in similar defamatory effects. Lastly, she contends Young and
9 Campbell conspired with Gibbons, Puhek, and Rogich to defame her because they knew
10 Gibbons’s, Rogich’s, and Puhek’s statements would be published.

11 “It is generally accepted that for both libel and slander it is a question of law and,
12 therefore, within the province of the court, to determine if a statement is capable of defamatory
13 construction.” *Branda v. Sanford*, 637 P.2d 1223, 1225 (Nev. 1981). “To create liability for
14 defamation there must be: (a) a false and defamatory statement concerning another; (b) an
15 unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of
16 the publisher; and (d) either actionability of the statement irrespective of special harm, or the
17 existence of special harm caused by the publication.” *Lubin v. Kunin*, 17 P.3d 422, 425 (Nev.
18 2001). A statement is absolutely privileged if it was made in the course of judicial or quasi-judicial
19 proceedings. *Knox v. Dick*, 665 P.2d 267, 270 (Nev. 1983) (statements made to police are
20 absolutely privileged).

21 Based on its review of Mazzeo’s allegations, the Court concludes that Mazzeo has
22 failed to state a plausible claim for defamation. The only statements that Mazzeo specifically
23 identifies in her pleadings as defamatory are those that Gibbons, Puhek, and Rogich made to the
24 police about what occurred at the restaurant and in the parking garage on the night in question. As
25 a matter of law, these statements are absolutely privileged because they were made in the course of
26

1 a quasi-judicial proceeding and thus cannot form the basis of a defamation claim. Accordingly,
2 Mazzeo's seventh claim is dismissed.

3 **G. Intentional Infliction of Emotional Distress**
4 **Against Gibbons, Puhek, Rogich, Young, and Campbell**

5 To state a claim for intentional infliction of emotional distress, a plaintiff must
6 show: (1) defendant acted in an extreme and outrageous manner, (2) defendant intended to or
7 recklessly disregarded the probability that his conduct would cause plaintiff emotional distress, (3)
8 plaintiff actually suffered extreme or severe emotional distress, and (4) defendant's conduct caused
9 plaintiff's distress. *Miller v. Jones*, 970 P.2d 571, 577 (Nev. 1998). A claim for intentional
10 infliction of emotional distress operates on a continuum: the less extreme the outrage, the greater
11 the need for evidence of physical injury or illness from the emotional distress. *Chowdry v. NLVH,*
12 *Inc.*, 851 P.2d 459, 483 (Nev. 1993) (quoting *Nelson v. City of Las Vegas*, 665 P.2d 1141, 1145
13 (Nev. 1983)). At the ends of this spectrum, conduct is extreme or outrageous if it is atrocious,
14 beyond all possible bounds of decency, and utterly intolerable, *Churchill v. Barach*, 863 F. Supp.
15 1266, 1275 (D. Nev. 1994), and emotional distress is severe if it is so intense that no reasonable
16 person could be expected to endure it, *Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 911 (D. Nev.
17 1993).

18 In this case, Mazzeo's allegations are sufficient to sustain a claim for intentional
19 infliction of emotional distress against Gibbons and Puhek, but insufficient as to Rogich, Young,
20 and Campbell. Mazzeo alleges that Gibbons forcefully pinned her against a wall and told her he
21 was going to rape her. Mazzeo also alleges that Puhek made death threats against her and her child
22 that caused her to move out of her home and fear for her and her child's safety. The Court
23 concludes that these allegations are sufficient to survive Defendants' Motions to Dismiss.

24 **III. Motion to Strike**

25 Under Rule 12(f) a "court may strike from a pleading ... any redundant, immaterial,
26 impertinent, or scandalous matter." Matter is "immaterial" if it has no bearing on the controversy

1 before the court. *In re 2TheMart.com, Inc Sec. Litig.*, 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000).
2 Allegations are “impertinent” if they are not responsive to the issues that arise in the action and
3 that are admissible as evidence. *Id.* “Scandalous” matter is that which casts a cruelly derogatory
4 light on a party or other person. *Id.* A court need not wait for a motion from the parties; it may act
5 on its own to strike matter from a pleading. Fed. R. Civ. P. 12(f)(1).

6 In this rare instance, the Court feels compelled to *sua sponte* strike certain portions
7 of the Complaint. Mazzeo’s pleading includes inappropriate commentary and dramatic flourishes,
8 deviating from the directive that she need provide only “a short and plain statement of” her claims.
9 *See* Fed. R. Civ. P. 8(a)(2). In the Court’s view, a significant portion of the Complaint appears
10 calculated to cast Defendants in a derogatory light and is full of wholly irrelevant material.
11 Accordingly, the Court strikes the portions of the Complaint that it describes below. It further
12 directs Mazzeo, that in filing her Second Amended Complaint, she not include the matters that the
13 Court strikes with this Order. If she fails to comply with this directive, the Court will consider
14 appropriate sanctions.

15 *Matters to Be Stricken from the Second Amended Complaint* (Dkt. #44 Ex. B):

- 16 • 3:16–18, “Gibbons was sworn in ... as Nevada’s chief executive officer.”
- 17 • 5:8–10, “Mazzeo also has received ... in July, 2007.”
- 18 • 5:17–25 in its entirety.
- 19 • 7:14–19 in its entirety.
- 20 • 8:1–4, “*See*, attached Exhibit 1 ... vindicatemazzeo.com.”
- 21 • 8:14, “*See*, Exhibit 1, Plaintiff’s Exhibit 99.”
- 22 • 8:22–23, “*See*, Exhibit 1, Plaintiff’s Exhibit 100.”
- 23 • 9:7–8, “although slightly further ... Exhibits 83-84, 94-95.”
- 24 • 9:13–14, “like a well-deserved, public slap in the face.”
- 25 • 9:17–21 in its entirety.
- 26 • 10:11–12, “*See*, Exhibit 1, Plaintiff’s Exhibit 9-10.”

- 1 • 10:22, “play his game and.”
- 2 • 10:24, “*See*, Exhibit 1, Plaintiff’s Exhibits 10-16.”
- 3 • 10:26, “*See*, Exhibit 1, Plaintiff’s Exhibits 18-20.”
- 4 • 11:5, “and in response to ... sexual lust.”
- 5 • 11:21, “*See*, Exhibit 1, Plaintiff’s Exhibits 31-38.”
- 6 • 12:6–7, “*See*, Exhibit 1, Plaintiff’s Exhibits 86A-93.”
- 7 • 12:20, “*See*, Exhibit 1, Plaintiff’s Exhibits 39-44F.”
- 8 • 12:25, “faster than a pancake flipped by a short-order cook.”
- 9 • 13:15–16, “*See*, Exhibit 1, Plaintiff’s Exhibits 45-57.”
- 10 • 14:10, “*See*, Exhibit 1, Plaintiff’s Exhibits 58-69.”
- 11 • 14:16, “*See*, Exhibit 1, Plaintiff’s Exhibit 70.”
- 12 • 14:26–15:4, “*See*, Exhibit 1... Hughes center parking garage.”
- 13 • 16:6–25, “His only mention ... any mention of Officer Ortega.”
- 14 • 17:3–7 in its entirety.
- 15 • 17:13, “*See*, Exhibit 1, Plaintiff’s Exhibits 116-125.”
- 16 • 21:17, “*See*, Exhibit 1, Plaintiff’s Exhibits 101-114.”
- 17 • 22:9, “(see, Exhibit 1, Plaintiff’s Exhibits 96-97B).”
- 18 • 22:14–26 in its entirety.
- 19 • 23:1–26 in its entirety.
- 20 • 24:4–22, “for the commission ... crime has been committed.”
- 21 • 24:26–25:10, “for the crimes ... gross misdemeanor.”
- 22 • 25:13–26:3, “and, therefore, Gibbons ... county in this state...”
- 23 • 26:5–6, “for the crimes of battery, false imprisonment and kidnapping.”
- 24 • 26:10–18, “and Young so notified ... gross misdemeanor.”
- 25 • 26:21–22, “committing the felonies ... Gibbons victim.”
- 26 • 26:23–27:12, “and, therefore, Rogich ... guilty of a misdemeanor.”

- 1 • 27:15–22, “and Young, Metro officers ... years, or both...”
- 2 • 28:2–15, “in violation of 18 U.S.C. § 241 ... year, or both...”
- 3 • 29:1–2, “and by depriving ... committed upon her..”
- 4 • 29:6–14, “committing the crimes ... guilty of a misdemeanor.”
- 5 • 33:17–34:13 in its entirety.
- 6 • Exhibit 1 in its entirety.

7 **CONCLUSION**

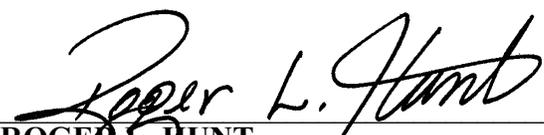
8 Accordingly, and for good cause appearing,

9 IT IS HEREBY ORDERED that Defendants’ Motions to Dismiss (##13, 15, 16, 17,
10 & 35) are GRANTED in part and DENIED as follows:

- 11 • Mazzeo’s first claim under § 1983 is dismissed as to all but her First
12 Amendment retaliation claim against all Defendants, and her Fourteenth
13 Amendment class-of-one equal protection claim against Young and Metro.
- 14 • Mazzeo’s second claim under § 1985(2), third claim under § 1988, sixth
15 claim for negligence per se, and seventh claim for defamation are dismissed
16 in their entirety.
- 17 • Mazzeo’s eighth claim for intentional infliction of emotional distress is
18 dismissed except as to Puhok and Gibbons.

19 IT IS FURTHER ORDERED that Plaintiff’s Motion to Amend (#44) is GRANTED
20 subject to the directives of this Order. Plaintiff is ordered to file her Second Amended Complaint
21 within ten days. The Second Amended Complaint shall reflect the provisions of this Order, and
22 Plaintiff shall strike the objectionable passages and remove the dismissed claims.

23 Dated: June 29, 2009.

24 
25 **ROGER L. HUNT**
26 **Chief United States District Judge**