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8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**

10 BRIAN BALLENTINE, an individual;  
 11 CATALINO DAZO, an individual; KELLY  
 12 PATTERSON, an individual; and GAIL  
 13 SACCO, an individual,

Case Number:  
 2:14-cv-01584-APG-EJY

**JOINT PRE-TRIAL ORDER**

Plaintiffs,

vs.

14 LAS VEGAS METROPOLITAN POLICE  
 15 DEPARTMENT, in its official capacity;  
 16 DETECTIVE CHRISTOPHER T. TUCKER,  
 17 as an individual and in his official capacity as  
 18 a Las Vegas Metropolitan Police Department  
 19 Detective; SERGEANT MIKE WALLACE,  
 20 as an individual and in his official capacity as  
 21 a Las Vegas Metropolitan Police Department  
 22 Sergeant; and LIEUTENANT JOHN  
 23 LIBERTY, as an individual and in his official  
 24 capacity as a Las Vegas Metropolitan Police  
 25 Department Lieutenant,

Defendants.

26 **I. NATURE OF THE ACTION**

27 **A. BACKGROUND**

28 This is a 42 U.S.C. §1983 First Amendment retaliatory arrest lawsuit. The only remaining claim for trial is whether LVMPD Detective Christopher Tucker (“Detective Tucker”) violated the Plaintiffs’ First Amendment rights when he obtained arrest warrants for the Plaintiffs’ arrests for chalking anti-police messages on the sidewalk. An issue of fact remains as to whether Detective Tucker obtained the arrest warrants in retaliation for the

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1 Plaintiffs involvement in anti-police groups and for chalking anti-police messages. *See*  
2 *Ballentine v. Tucker*, 28 F. 4<sup>th</sup> 54 (9<sup>th</sup> Cir. 2022).

3 **B. PROCEDURAL HISTORY**

4 Plaintiffs filed their original complaint on September 26, 2014. (ECF No. 1) On  
5 November 4, 2014, Defendants moved for dismissal of a number of plaintiffs' claims and for  
6 qualified immunity. In its order on defendants' motion to dismiss, this court found probable  
7 cause existed for the plaintiffs' citations and arrests and/or qualified immunity protected the  
8 officers because a reasonable officer could believe using chalk on a public sidewalk  
9 constituted defacement under NRS 206.330. (ECF No. 36 at 9-11.) The first order dismissed  
10 a number of causes of action including plaintiffs' Fourth Amendment claim (fifth cause of  
11 action), false imprisonment claim (eleventh cause of action), unlawful detention claim  
12 (seventh cause of action), substantive and procedural due process claims (sixth and eighth  
13 causes of action) and negligence claims (tenth cause of action). (*Id.* at 16-17) Further, the  
14 court dismissed the official capacity claims against the defendants. (*Id.*)

15 On December 9, 2016, after the close of discovery, the defendants moved for summary  
16 judgment on all remaining claims and again raised the affirmative defense of qualified  
17 immunity. On August 21, 2017, this court granted in part and denied in part defendants'  
18 motion for summary judgment. (ECF No. 207) Specifically, this court entered summary  
19 judgment in favor of defendants Wallace, Liberty and LVMPD finding there was no evidence  
20 to support any of the alleged claims against those defendants. (*Id.* at 8-10.) However, this  
21 court denied summary judgment to defendant Detective Tucker on plaintiffs' First  
22 Amendment retaliation/chilling claim finding that the case of *Ford v. City of Yakima*, 706 F.3d  
23 1188 (9th Cir. 2013), clearly established that it is unconstitutional to arrest an individual for  
24 retaliatory motive, even if probable cause exists.

25 Detective Tucker appealed to the Ninth Circuit. After the appeal was fully briefed, the  
26 Supreme Court issued its decision in *Nieves v. Bartlett*, 587 U.S. \_\_\_, 139 S.Ct. 1715 (2019).  
27 The Ninth Circuit vacated and remanded the appeal back to this Court in light of *Nieves*. After  
28 another round of briefing, this Court, on August 20, 2020, held that Detective Tucker was

1 entitled to qualified immunity because the law governing First Amendment retaliation claims  
2 was not clearly established. (ECF No. 237.)

3 Plaintiffs then appealed the Court’s second summary judgment order (ECF No. 237)  
4 to the Ninth Circuit. After briefing and oral argument, the Ninth Circuit, in a published  
5 opinion, affirmed in part, reversed in part, and remanded. *See Ballentine v. Tucker*, 28 F. 4<sup>th</sup>  
6 54 (9<sup>th</sup> Cir. 2022). The Ninth Circuit held that a reasonable factfinder could conclude that  
7 Detective Tucker violated the Plaintiffs’ First Amendment rights and that it was “clearly  
8 established” that an arrest supported by probable cause, but made in retaliation for protected  
9 speech violates the First Amendment.  
10

11 **C. REMAINING ISSUES FOR TRIAL**

12 **1. Remaining claims/issues for trial**

13 The only remaining claim/issue for trial is whether the Plaintiffs’ First Amendment  
14 rights were violated when Detective Tucker arrested the Plaintiffs in retaliation for their  
15 chalked messages and/or their involvement in anti-police organizations.  
16

17 **2. Dismissed claims and parties**

- 18 1. Plaintiffs’ Fourth Amendment claim has been dismissed. (ECF No. 36.)  
19 2. Plaintiffs’ false imprisonment claim has been dismissed. (*Id.*)  
20 3. Plaintiffs’ unlawful detention claim has been dismissed. (*Id.*)  
21 4. Plaintiffs’ substantive and procedural due process claim has been dismissed.  
22 (*Id.*)  
23 5. Defendant Wallace has been dismissed from the lawsuit. (ECF No. 207.)  
24 6. Defendant Liberty has been dismissed from the lawsuit. (*Id.*)  
25 7. Plaintiff’s *Monell* claim against LVMPD has been dismissed. (*Id.*)  
26 8. Defendant LVMPD has been dismissed from the lawsuit. (*Id.*)  
27 9. Plaintiffs’ negligent hiring, training and supervision claim has been dismissed  
28 (*Id.*)

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1           10.     Plaintiffs’ Intentional Infliction of Emotional Distress and Negligent Infliction  
2 of Emotional Distress claims have been dismissed. (*Id.*)

3           11.     Plaintiff Gail Sacco is no longer a Plaintiff due to death. (ECF No. 228.)

4 **II.     STATEMENT OF JURISDICTION**

5           This Court has jurisdiction over this lawsuit because Plaintiffs’ remaining claim  
6 brought pursuant to 42 U.S.C. §1983.

7 **III.    STATEMENT OF ADMITTED/UNCONTESTED FACTS**

8           1.     Detective Tucker was acting in the course and scope of his employment as an  
9 LVMPD detective at all times relevant to this lawsuit.

10          2.     Plaintiffs were members of the Sunset Activist Collective, a local activist  
11 group, and are associated with CopBlock, an activist group critical of law enforcement.

12          3.     Since 2011, Plaintiffs have conducted protests by using chalk to write anti-  
13 police messages on the sidewalks in Las Vegas, Nevada.

14          4.     On June 8, 2013, Plaintiffs chalked anti-police messages in front of LVMPD  
15 headquarters. Sgt. Wallace issued citations to each Plaintiff for violation of Nevada’s graffiti  
16 statute - NRS § 206.330. Plaintiff Patterson asked to speak with Sgt. Wallace’s supervisor,  
17 Lieutenant Liberty. After arrival, Lt. Liberty told the Plaintiffs that chalking was illegal but  
18 they would not be cited if they cleaned the sidewalk. Plaintiffs disagreed that chalking was  
19 illegal, refused to clean the sidewalk, and were issued citations.

20          5.     Detective Tucker was assigned to investigate the citations.

21          6.     Detective Tucker researched Plaintiffs’ messages and monitored their social  
22 media. In doing so, he learned that Plaintiffs were affiliated with anti-police organizations.

23          7.     On July 13, 2013, Plaintiffs Ballentine and Patterson chalked anti-police  
24 messages outside LVMPD’s headquarters. Although LVMPD officers witnessed the chalking,  
25 the Plaintiffs were not cited or talked to.

26          8.     On July 18, 2013, Plaintiffs chalked anti-police messages at the Regional  
27 Justice Center. The chalking spanned approximately 1,000 square feet. Detective Tucker  
28

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1 witnessed and photographed the messages. He discussed the messages with Plaintiff  
2 Ballentine, but he did not stop or cite the Plaintiffs.

3 9. On August 9, 2013, Detective Tucker drafted warrants for Plaintiffs' arrests.  
4 Detective Tucker's warrant outlined the Plaintiffs' prior alleged chalking activities, described  
5 the messages being chalked, and the surfaces to which chalk was applied.

6 10. The District Attorney accepted the warrants and submitted them to a Justice of  
7 the Peace who approved arrest warrants for each Plaintiff.

8 11. On August 10, 2013, Plaintiffs were arrested.

9 12. The District Attorney ultimately dropped all charges.

10 **IV. STATEMENT OF UNCONTESTED FACTS**

11 The following facts, although not admitted, will not be contested at trial by evidence  
12 to the contrary:

13 1. The Plaintiffs' anti-police messages are protected speech under the First  
14 Amendment.

15 **V. STATEMENT OF CONTESTED ISSUES OF FACT**

16 The following are issues of fact to be tried and determined at trial.

17 1. Whether Detective Tucker had probable cause to obtain the arrest warrants.

18 2. Whether the "loss" due to chalking was over \$250.00 regarding the incidents  
19 for which the Plaintiffs were arrested and incarcerated.

20 3. Whether, in response to increased chalking activity and incurred cleaning  
21 costs, the City of Las Vegas indicated to LVMPD that it was willing to prosecute if LVMPD  
22 observed someone chalking the sidewalks.

23 4. Whether Detective Tucker's arrest warrants were obtained by Detective  
24 Tucker in retaliation for the Plaintiffs' chalking of anti-police messages and/or due to  
25 Plaintiffs' lawful involvement in anti-police organizations (*i.e.*, Detective Tucker's subjective  
26 intent for obtaining the arrest warrants).

27 5. Whether the Plaintiffs suffered damages and, if so, the amount of Plaintiffs'  
28 damages.

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1 6. Whether Detective Tucker’s actions were the proximate cause of Plaintiffs’  
2 claimed damages.

3 **VI. STATEMENT OF CONTESTED ISSUES OF LAW**

4 The following are issues of law to be tried and determined at trial.

5 1. Whether Detective Tucker is protected by qualified immunity.

6 2. Whether Detective Tucker acted unconstitutionally by including the Plaintiffs’  
7 chalked anti-police messages in Declaration of Arrest used to obtain the arrest warrants.

8 3. Whether Detective Tucker acted unconstitutionally by failing to include  
9 sufficient or accurate facts related to the elements of the alleged offense including: the amount  
10 of actual loss, whether or not the chalking was without permission and how the chalk defaced  
11 the property at issue.

12 4. Whether a neutral magistrate’s independent determination of probable cause  
13 insulates Detective Tucker from liability from a retaliatory arrest claim.

14 5. Whether it is unlawful to have drawn chalk on a sidewalk owned and  
15 maintained by the City of Las Vegas in 2013.

16 6. Whether Plaintiffs can meet their burden to introduce medical records and  
17 medical testimony regarding their claimed damages.

18 **VII. EXHIBITS**

19 **A. THE FOLLOWING EXHIBITS ARE STIPULATED INTO EVIDENCE**  
20 **IN THIS CASE AND BE SO MARKED BY THE CLERK**

21 **1. Joint Exhibits**

22 1. Booking Voucher (Bates No. LVMPD 00001);

23 2. Declaration of Arrest - Ballentine (Bates No. LVMPD 000002);

24 3. Incident Recall for 7/18/13 (Bates No. LVMPD 000004-000005);

25 4. Justice Court Disposition Notice – Kelly Patterson (Bates No. LVMPD  
26 000007);

27 5. Property Report Kelly Patterson (Bates No. LVMPD 000009);

28 6. Temporary Custody Record – Ballentine (Bates No. LVMPD 000011);

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- 1           7.     Unit Log for 7/18/13 (Bates No. LVMPD 000013);
- 2           8.     Witness List (Bates No. LVMPD 000014-000015);
- 3           9.     Brian Ballentine Arrest Records:
- 4                 a.    Inmate Assessments (Bates No. LVMPD 000016)
- 5                 b.    Temporary Custody Record (Bates No. LVMPD 000017)
- 6                 c.    Justice Court – Notice of Bond Acceptance (Bates No. LVMPD 000018)
- 7                 d.    Agreement to Appear in Court and to Waive Extradition After Admissions
- 8                 to Bail (Bates No. LVMPD 000019)
- 9                 e.    CCDC Arrest Warrant Abstract (Bates No. LVMPD 000020)
- 10                f.    Inventory of Personal Property (Bates No. LVMPD 000021)
- 11                g.    Bulk Property Tag (Bates No. LVMPD 000022)
- 12                h.    Housing Locations by Inmate (Bates No. LVMPD 000023)
- 13                i.    Inmate Demographics (Bates No. LVMPD 000024)
- 14                j.    NaphCare Mental Health Evaluation (Bates Nos. LVMPD 000025-
- 15                000059)
- 16                k.    Booking Funds (Bates No. LVMPD 000060)
- 17           10.    Kelly Patterson Arrest Records:
- 18                 a.    Inmate Assessments (Bates No. LVMPD 000061)
- 19                 b.    Temporary Custody Record (Bates No. LVMPD 000062)
- 20                 c.    Clark County Pretrial Services Release Agreement (Bates No. LVMPD
- 21                 000063)
- 22                 d.    CCDC Arrest Warrant Abstract (Bates No. LVMPD 000064)
- 23                 e.    Inventory of Personal Property (Bates No. LVMPD 000065)
- 24                 f.    Bulk Property Tag (Bates No. LVMPD 000066)
- 25                 g.    Housing Locations by Inmate (Bates No. LVMPD 000067)
- 26                 h.    Inmate Demographics (Bates No. LVMPD 000068)
- 27                 i.    NaphCare Mental Health Evaluation (Bates Nos. LVMPD 000069-
- 28                 000076)

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- 1 j. Booking Funds (Bates No. LVMPD 000077)
- 2 11. Photographs (Bates Nos. LVMPD 000081-000322);
- 3 12. 7/18/13:
- 4 a. Case Report (Bates Nos. LVMPD 000366-000376);
- 5 b. Property Report (Patterson) (Bates No. LVMPD 000377);
- 6 c. City of Las Vegas Official Damage Estimate (Bates No. LVMPD 000378);
- 7 d. City of Las Vegas Official Damage Estimate with Photos (Bates Nos.
- 8 LVMPD 000379-000408);
- 9 e. Thumbnail photos for Event #LLV130608002756 (Bates Nos. LVMPD
- 10 000409-000415);
- 11 f. Declaration of Warrant/Summons (Patterson) for 7/13/13, 7/16/13, 7/18/13
- 12 (Bates Nos. LVMPD 000416-000420);
- 13 13. 7/31/13:
- 14 a. Patterson Justice Court Disposition Notice for 7/31/13 Warrant (Bates No.
- 15 LVMPD 000421);
- 16 14. 8/1/2013:
- 17 b. Dazo Justice Court Disposition Notice for 8/1/13 Warrant (Bates No.
- 18 LVMPD 000422);
- 19 15. Arrest Warrant (Dazo) (Bates Nos. LVMPD 000423-000426);
- 20 16. Temporary Custody Record (Dazo) (Bates Nos. LVMPD 000427);
- 21 17. Hand-written note (Bates No. LVMPD 000428);
- 22 18. Arrest Warrant (Patterson) (Bates Nos. LVMPD 000429-000430);
- 23 19. Arrest Warrant (Ballentine) (Bates Nos. LVMPD 000431-000432);
- 24 20. Temporary Custody Record (Patterson) (Bates No. LVMPD 000433);
- 25 21. Declaration of Arrest (Patterson) (Bates No. LVMPD 000434);
- 26 22. Temporary Custody Record (Ballentine) (Bates No. LVMPD 000435);
- 27 23. Declaration of Arrest (Ballentine) (Bates No. LVMPD 000436);
- 28 24. Property Report (Patterson) (Bates No. LVMPD 000437);



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- 1 25. ID Card (Dazo) (Bates Nos. LVMPD 000438-000439);
- 2 26. LVMPD Witness List (Bates Nos. LVMPD 000440-000441);
- 3 27. Gangs/Graffiti Crime Unit File (Bates Nos. LVMPD 000462-000667);
- 4 28. Andrew Burnett Emails (Bates Nos. LVMPD 000668-000788);
- 5 29. Christopher Tucker Emails (Bates Nos. LVMPD 000789-000805); *(see also*
- 6 00484-000500; 000625);
- 7 30. PCA Cleaning Concrete Article (Bates Nos. LVMPD 000836-000837);
- 8 31. LVMPD Department Manual Parts 4-7 (7-26-13) (Bates Nos. LVMPD
- 9 001195-001363);<sup>1</sup>
- 10 32. Graffiti Pamphlet (Bates Nos. LVMPD 001364-001365);
- 11 33. Graffiti Investigations Pamphlet (Bates Nos. LVMPD 001366-001367);
- 12 34. Graffiti Investigations PowerPoint and Quiz (Bates Nos. LVMPD 001368-
- 13 001406);
- 14 35. General Response to Graffiti Calls – Pamphlet (Bates Nos. LVMPD 001407-
- 15 001408);
- 16 36. LVMPD Photographs – 7/18/2013 (LVMPD 002239-002307);

**B. AS TO THE FOLLOWING ADDITIONAL EXHIBITS, THE PARTIES HAVE REACHED THE FOLLOWING STIPULATIONS.**

**1. Plaintiff's Exhibits**

n/a

**2. Defendants' Exhibits**

n/a

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<sup>1</sup> See Fourth Supplemental Privilege Log regarding redactions.

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**C. AS TO THE FOLLOWING EXHIBITS, THE PARTY AGAINST WHOM THE SAME WILL BE OFFERED OBJECTS TO THEIR ADMISSIONS UPON THE GROUNDS STATED.**

**1. Plaintiff's Exhibits**

1. Emails between Detective Scott Black, Assistant Deputy City Attorney Ben Little, and Sergeant Drew Burnett in June and July 2013. (LVMPD 00498-00500);

**2. Defendants' Exhibits**

1. Lt. Liberty Documents: Hand-Written Notes of Lt. Liberty (redacted – see privilege log) (Bates Nos. LVMPD 000078-000080).

2. 10/22/12:

a. Case Report (Bates Nos. LVMPD 000323-000337)

b. Field Interview (Bates Nos. LVMPD 000338-000340)

3. Criminal History Printout (Patterson) 7/17/13 (Bates Nos. LVMPD 000442-000443) (CONFIDENTIAL);

4. 6/8/13:

a. Case Report (Bates Nos. LVMPD 000341-000349);

b. Patterson Citation Voided (Bates No. LVMPD 000350);

c. Ballentine Citation (Bates Nos. LVMPD 000351-000352);

d. Ballentine Citation Voided (Bates Nos. LVMPD 000353-000354);

e. Dazo Citation (Bates Nos. LVMPD 000355-000356);

f. Dazo Citation Voided (Bates No. LVMPD 000357);

g. Case Report (Bates Nos. LVMPD 000358-000365);

5. ID Card (Ballentine) 7/17/13 (Bates Nos. LVMPD 000446-000447) (CONFIDENTIAL);

6. DMV Query (Patterson) 7/17/13 (Bates Nos. LVMPD 000448-000450) (CONFIDENTIAL);

7. NCJIS Inquiry (Patterson) 7/17/13 (Bates No. LVMPD 000451) (CONFIDENTIAL);

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- 1 8. NCIC Inquiry (Patterson) 7/17/13 (Bates No. LVMPD 000452)
- 2 (CONFIDENTIAL);
- 3 9. Person Base Record (Ballentine) 7/17/13 (Bates No. LVMPD 000453)
- 4 (CONFIDENTIAL);
- 5 10. DMV Query (Ballentine) 7/17/13 (Bates No. LVMPD 000454)
- 6 (CONFIDENTIAL);
- 7 11. NCIC Inquiry (Ballentine) 7/17/13 (Bates No. LVMPD 000455)
- 8 (CONFIDENTIAL);
- 9 12. NCJIS Inquiry (Ballentine) 7/17/13 (Bates No. LVMPD 000456)
- 10 (CONFIDENTIAL);
- 11 13. NCIC/NCJIS Inquiry (Dazo) 7/17/13 (Bates Nos. LVMPD 000457-000459)
- 12 (CONFIDENTIAL);
- 13 14. ID Card (Dazo) 7/18/13 (Bates Nos. LVMPD 000460-000461)
- 14 (CONFIDENTIAL);
- 15 15. Det. Scott Black Emails (Bates Nos. LVMPD 000806-000835);
- 16 16. Employment File for Tucker (Bates Nos. LVMPD 000838-000865)
- 17 (CONFIDENTIAL);
- 18 17. Employment File for Liberty (Bates Nos. LVMPD 000866-000995)
- 19 (CONFIDENTIAL);
- 20 18. Employment File for Wallace (Bates Nos. LVMPD 000996-001135)
- 21 (CONFIDENTIAL);
- 22 19. Training History for Tucker (Bates Nos. LVMPD 001136-001149);
- 23 20. Training History for Liberty (Bates Nos. LVMPD 001150 -001167);
- 24 21. Training History for Wallace (Bates Nos. LVMPD 001168-001183);
- 25 22. LVMPD Policy - Department Response to Criminal Street Gang (Bates Nos.
- 26 LVMPD 001184-001188);
- 27 23. Printout: Officer Complaint History for Liberty (REDACTED) (Bates Nos.
- 28 LVMPD 001189-001191) (CONFIDENTIAL);

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- 1           24.     Printout: Officer Complaint History for Wallace (REDACTED) (Bates No.  
2 LVMPD 001192) (CONFIDENTIAL);
- 3           25.     Printout: Officer Complaint History for Tucker (Bates No. LVMPD 001193)  
4 (CONFIDENTIAL);
- 5           26.     Printout: Brady Findings for Tucker, Wallace and Liberty (Bates No. LVMPD  
6 001194) (CONFIDENTIAL);
- 7           27.     Graffiti Calls – PowerPoint (Bates Nos. LVMPD 001409-001439); and
- 8           28.     CAD Reports referring Chalk (REDACTED) (Bates Nos. LVMPD 001440-  
9 001443);<sup>2</sup>
- 10          29.     Citation and Property Report (LVMPD 001444-001446);
- 11          30.     Photographs regarding Digital Evidence for Event #LLV140813003835  
12 (LVMPD 001447-001452);
- 13          31.     CAD Report for Event #LL140813003835 (LVMPD 001453-001455);
- 14          32.     Gail Sacco’s Facebook post dated July 19, 2013 (LVMPD 001456);
- 15          33.     Naphcare Contract and Amendments (LVMPD 001457-001525);
- 16          34.     4/105.11 Records Maintenance and Retention Policy (LVMPD 001526);
- 17          35.     Retention Destruction Schedule Policy (LVMPD 001527-001575);
- 18          36.     Incident Recall for 06/08/2013 (LVMPD 001576-001577);
- 19          37.     Email exchange between LVMPD counsel and Andrew Burnett (LVMPD  
20 000759);
- 21          38.     Documents obtained from LVMPD Internal Affairs (LVMPD 001578-001785)  
22 (CONFIDENTIAL);
- 23                 a.     Wallace IA records (previously produced on 12/10/15: LVMPD  
24 001748-1760; 001772-1781; 001782-001784 – with redactions per Court Order at ECF No.  
25 107).
- 26          39.     DVD of July 18, 2013 Regional Justice Center Video (LVMPD 001786);
- 27

28 <sup>2</sup> See Fifth Supplement to Privilege Log.

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- 1           40. Eldora Medical Associates/Dr. Peprah Medical Records (LVMPD 001787-
- 2 001829) (CONFIDENTIAL);
- 3           41. Valley View Health Center/Dawn Lantz, APN Medical Records (LVMPD
- 4 001830-001853) (CONFIDENTIAL);
- 5           42. The Olympia Free Clinic Medical Records (LVMPD 001854-001863)
- 6 (CONFIDENTIAL);
- 7           43. 2013 First Friday Permits (LVMPD 001864-001899);
- 8           44. Clark County School District Records (LVMPD 001900-002052);
- 9           45. LVMPD Detective Report for Event #LLV140813003835 (LVMPD 002053-
- 10 002055);
- 11           46. Behavioral Health Resources – Medical Records (LVMPD 002056-002085);
- 12           47. Incident Recall – 10/22/12 (LVMPD 002086-002089);
- 13           48. Incident Recall – 7/14/13 (LVMPD 002090);
- 14           49. CSI Report - 10/22/12 (LVMPD 002091);
- 15           50. LVMPD Photographs – 10/22/12 (LVMPD 002092-002160);
- 16           51. LVMPD Photographs – 6/08/2013 (LVMPD 002161-002207);
- 17           52. John Liberty Email (LVMPD 002208-002213);
- 18           53. Documents produced by D.A. Office pursuant to Plaintiffs’ November 18,
- 19 2015 Subpoena Duces Tecum;
- 20           54. 2013 First Friday Permits;
- 21           55. Michael Wallace Email (LVMPD 002214-002234);
- 22           56. Gang Activity Reports (LVMPD 002235-002238);
- 23           57. LVMPD Policy: Demonstrations/Activities (LVMPD 002308); and
- 24           58. Henkel Photograph (LVMPD 002309).

25 Plaintiffs object to the above exhibits on relevance, foundation, and hearsay.

26 **VIII. DEPOSITIONS**

27 The parties will offer the depositions for witnesses who are unavailable at the time of  
28 trial or for impeachment purposes.

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1 **IX. OBJECTIONS TO DEPOSITIONS**

2 The parties do not object to the use of depositions for impeachment purposes.

3 **X. WITNESSES**

4 **A. PLAINTIFF**

5 The Plaintiff anticipates calling the following witnesses at trial:

6 1. Brian Ballentine, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada

7 89101

8 2. Catalino Dazo, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada

9 89101

10 3. Kelly Patterson, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada

11 89101.

12 4. Detective Christopher Tucker, c/o Marquis Aurbach, 10001 Park Run Drive,

13 Las Vegas, Nevada 89145

14 5. Bernard G. Little, 5381 Painted Mirage, Las Vegas, Nevada 89149.

15 The Plaintiff does not anticipate calling the following witnesses but, reserves the right  
16 to do so should the need arise.

17 1. Dave Schissler, City of Las Vegas, Graffiti Abatement Departments, 400

18 Stewart Avenue, 2nd Floor, Las Vegas, Nevada 89101.

19 The Plaintiff reserves the right to call any witness identified by the defendant as a  
20 witness or potential witness as listed below.

21 **B. DEFENDANTS**

22 The defendants anticipate calling the following witnesses at trial:

23 1. Detective Christopher Tucker, c/o Marquis Aurbach, 10001 Park Run Drive,

24 Las Vegas, Nevada 89145

25 2. Lieutenant Michael Wallace (Ret.), c/o Marquis Aurbach, 10001 Park Run

26 Drive, Las Vegas, Nevada 89145

27 3. Lieutenant John Liberty, c/o Marquis Aurbach, 10001 Park Run Drive, Las

28 Vegas, Nevada 89145

MARQUIS AURBACH

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

1 4. Brian Ballentine, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada  
2 89101

3 5. Catalino Dazo, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada  
4 89101

5 6. Kelly Patterson, c/o McLetchie Law, 602 S. Tenth Street, Las Vegas, Nevada  
6 89101

7 7. Christopher J. Lalli, Esq., Assistant District Attorney, Office of the District  
8 Attorney, 200 Lewis Avenue, Las Vegas, Nevada 89101, (702) 671-2501

9 8. Scott Mitchell, Esq., (address treated as confidential for privacy/safety  
10 purposes)

11 9. Jack Ryan, Expert Witness.

12 The defendants do not anticipate calling the following witnesses but, reserve the right  
13 to do so should the need arise.

14 1. Robert Brown (P#9307), Las Vegas Metropolitan Police Dept., 400 S. Martin  
15 Luther King, Las Vegas, Nevada 89106, (702) 828-3111

16 2. Det. P. Scott Black (P#5479), Las Vegas Metropolitan Police Dept., 400 S.  
17 Martin Luther King, Las Vegas, Nevada 89106, (702) 828-3309]

18 3. Lisa Cologna, Deputy Marshal, Eighth Judicial District, Regional Justice  
19 Center, 200 Lewis Avenue, Las Vegas, Nevada, (702) 671-4571,  
20 colognal@clarkcountycourts.us

21 4. Jothan Peterson (P#7377), Clark County Detention Center, c/o Las Vegas  
22 Metropolitan Police Dept., 400 S. Martin Luther King, Las Vegas, Nevada 89106, (702) 828-  
23 3309

24 5. Levi Hancock (P#7083), Las Vegas Metropolitan Police Dept., 400 S. Martin  
25 Luther King, Las Vegas, Nevada 89106, (702) 828-3111

26 6. Dave Schissler, City of Las Vegas, Graffiti Abatement Departments, 400  
27 Stewart Avenue, 2nd Floor, Las Vegas, Nevada 89101

28

MARQUIS AURBACH

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

- 1           7.       Captain William Teel, Las Vegas Metropolitan Police Department, 400 S.
- 2 Martin Luther King, Las Vegas, Nevada 89106, (702) 828-3111
- 3           8.       Chance McClish, Las Vegas Metropolitan Police Department., 400 S. Martin
- 4 Luther King, Las Vegas, Nevada 89106, (702) 828-3111,
- 5           9.       Andrew Keller (P#8796), Las Vegas Metropolitan Police Department, 400 S.
- 6 Martin Luther King, Las Vegas, Nevada 89106, (702) 828-3111
- 7           10.      Jeffrey L. McNeil (P#13340), Las Vegas Metropolitan Police Dept., 400 S.
- 8 Martin Luther King, Las Vegas, Nevada 89106, (702) 828-3111
- 9           11.      David W. Larrington, Las Vegas Metropolitan Police Dept., 400 S. Martin
- 10 Luther King, Las Vegas, Nevada 89106, (702) 828-3111
- 11          12.      Dody Bateson, Public Works Administrator, City of Las Vegas, 333 N.
- 12 Rancho, Las Vegas, Nevada 89106, (702) 229-6737
- 13          13.      Joseph M. Talamanates, Painter, Department Operations and Maintenance,
- 14 City of Las Vegas, 333 N. Rancho Drive, Las Vegas, Nevada 89106, (702) 229-1030
- 15          14.      Jesse Hill, Rapid Response Team Member, Graffiti Abatement Program,
- 16 Department Operations and Maintenance, City of Las Vegas, 333 N. Rancho Drive, Las
- 17 Vegas, Nevada 89106, (702) 229-1030
- 18          15.      Jerry Walker, City of Las Vegas, Director of Department of Operations and
- 19 Maintenance, 333 N. Rancho Drive, Las Vegas, Nevada 89106, (702) 229-1030
- 20          16.      Captain Brett Primas, Las Vegas Metropolitan Police Dept., 400 S. Martin
- 21 Luther King, Las Vegas, Nevada 89106, (702) 828-3111
- 22          17.      Dan Phillips, Somerset Academy Charter Schools, 4650 Losee Road, North
- 23 Las Vegas, NV 89081
- 24          18.      David M. Nixon, MSW, LSWAIC, MHP, Behavioral Health Resources, 3857
- 25 Martin Way E., Olympia, WA 98506, (360) 704-7170

26 **XI.   TRIAL DATES**

27           Counsel for both parties have met and submit the following two trial dates:

- 28           1.       April 2023.



1 2. June 2023.

2 It is expressly understood by the undersigned that the Court will set the trial of this  
3 matter on one (1) of the agreed-upon dates if possible, if not, the trial will be set at the  
4 convenience of the court's calendar.

5 APPROVED AS TO FORM AND CONTENT this 5th day of August, 2022.

6 MARQUIS AURBACH

MCLETCHIE LAW

7  
8 By: /s/ Craig R. Anderson  
9 Craig R. Anderson, Esq.  
10 Nevada Bar No. 6882  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorney for Defendants

By: /s/ Margaret A. McLetchie  
Margaret A. McLetchie, Esq.  
Nevada Bar No. 10931  
602 South Tenth Street  
Las Vegas, Nevada 89101  
Attorney for Plaintiffs

11 **XII. TRIAL**


12 It is estimated that the trial herein will take a total of 5 days.

13 **XIII. ACTION BY THE COURT**

14 This case is set down for jury trial on the stacked calendar on April 10, 2023, at 9:00  
15 a.m. in Las Vegas Courtroom 6C. Calendar Call shall be held on April 4, 2023, at 9:00 a.m.  
16 in Las Vegas Courtroom 6C.

17 IT IS SO ORDERED:

18 Dated: August 8, 2022

19   
20 \_\_\_\_\_  
21 ANDREW P. GORDON  
22 UNITED STATES DISTRICT JUDGE

23 NOTICE: Due to the unusually large number of complex criminal cases set for lengthy trials before  
24 this Court, civil trials may possibly be held in a trailing status for months or be assigned to another  
25 District Court Judge for trial. Therefore, the Court strongly urges the parties to consider their option  
26 to proceed before a Magistrate Judge pursuant to Local Rule IB 2-2, in accordance with 28 USC  
27 Section 636 and FRCP 73.

28 The Clerk shall provide the parties with a link to AO 85 Notice of Availability, Consent and Order of  
Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge form on the Courts website.

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