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8 *Attorneys for Defendants*  
9 *Department of Health and Human Services*  
*Division of Public and Behavioral Health,*  
*Cody Phinney and Jo Malay*

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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 TROY MELNEK,  
14 Plaintiff,

15 vs.

16 LAS VEGAS METROPOLITAN POLICE  
17 DEPARTMENT, JOSEPH LOMBARDO,  
18 DIVISION OF PUBLIC AND  
19 BEHAVIORAL HEALTH, DEPARTMENT  
20 OF HEALTH AND HUMAN SERVICES,  
21 CODY PHINNEY, JO MALAY, and DOES I  
22 – V, and ROE CORPORATIONS I – V,  
23 inclusive,

24 Defendants.

25 Case No.: 2:23-cv-01303-GMN-MDC

26 **STIPULATION AND ORDER OF  
27 DISMISSAL OF THE DIVISION OF  
28 PUBLIC AND BEHAVIORAL HEALTH  
(DPBH), AND CODY PHINNEY AND  
JO MALAY, IN THEIR OFFICIAL  
CAPACITIES, WITH PREJUDICE**

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30 THE FOLLOWING IS HEREBY STIPULATED by and between Defendant  
31 DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND  
32 BEHAVIORAL HEALTH (“DPBH”), a political subdivision of the State of Nevada, CODY  
33 PHINNEY (“PHINNEY”), in her official capacity as Administrator of DPBH, and JO  
34 MALAY (“MALAY”) in her official capacity as Deputy Administrator of DPBH (collectively  
35

1 referred to as “STATE DEFENDANTS”) and Plaintiff, TROY MELNEK (“MELNEK”), by  
2 and through their respective attorneys of record.

- 3 1. In MELNEK’S Second Amended Complaint, filed on February 5, 2025, against  
4 State Defendants, MELNEK brought four causes of action against STATE  
5 DEFENDANTS: (1) a Due Process violation pursuant to the Fourteenth  
6 Amendment and the Nevada Constitution for failure to make a bed available, (2)  
7 a Cruel And Unusual Punishment violation, (3) a Due Process violation pursuant  
8 to the Fourteenth Amendment and the Nevada Constitution for failure to convey  
9 MELNEK for treatment; and (4) an Equal Protection violation pursuant to the  
10 Fourteenth Amendment and the Nevada Constitution.
- 11 2. In the Court’s order of May 10, 2024, the Court found MELNEK’S Complaint  
12 against DPBH, a Nevada State agency, immune from suit for money damages  
13 pursuant to the Eleventh Amendment; and as such, when MELNEK realleged  
14 DPBH again in its Amended Complaint on January 15, 2025, the Court dismissed  
15 MELNEK’S 42 U.S.C. §1983 claim against DPBH, with prejudice. ECF 69 5:17-  
16 21. For those reasons, the parties agree to dismiss the constitutional violations  
17 brought in MELNEK’S Second Amended Complaint against DPBH with  
18 prejudice.
- 19 3. On January 15, 2025, the Court dismissed PHINNEY and MALAY in their  
20 official capacities, with prejudice, finding MELNEK’S Amended Complaint,  
21 “lump[ed] together... multiple defendants in one broad allegation failing to  
22 satisfy the notice requirement of Rule 8(a)(2). “ECF 69 6:10-17; (citing *Gen-Probe,  
23 Inc. v. Amoco Corp., Inc.*, 926 F. Supp. 948, 961 (S.D. Cal. 1996) (also citing  
24 *Gauvin v. Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988). The Court found  
25 MELNEK’S Amended Complaint contained only one allegation specific to  
26 PHINNEY and MALAY – an allegation stating their job titles at DPBH – and did  
27 not specifically identify “what action each Defendant took that caused Plaintiff’s  
28

1 harm, without resorting to generalized allegations against Defendants as a  
2 whole." ECF 69, 6: 17-23 (citing *In re iPhone Application Litig.*, No. 11-MD-02250-  
3 LHK, 2011 WL 4403963, at \*3 (N.D. Cal. Sept. 20, 2011).

4 4. On January 15, 2025, the Court also found MELNEK'S Amended Complaint  
5 lumped all STATE DEFENDANTS in his causes of action for cruel and unusual  
6 punishment and equal protection violations. Therefore, the parties agree to  
7 dismiss the constitutional violations brought in MELNEK'S Second Amended  
8 Complaint against PHINNEY and MALAY, in their official capacities, with  
9 prejudice.

10 IT IS HEREBY STIPULATED by and between the parties, hereto, by their  
11 respective attorneys of records as follows:

- 12 1. MELNEK agrees, based on the Court's prior orders, that all claims for money  
13 recovery against DPBH as set forth in the Second Amended Complaint be  
14 dismissed.
- 15 2. MELNEK agrees, based on the Court's prior orders, that all claims for money  
16 recovery against PHINNEY and MALAY in their official capacities, as set forth  
17 in the Second Amended Complaint, be dismissed.
- 18 3. MELNEK agrees to file a motion to amend the caption to reflect the proper  
19 STATE DEFENDANTS remaining in the case.
- 20 4. MELNEK'S state law claims breach of contract, negligent infliction of emotional  
21 distress, and intentional infliction of emotional distress are not addressed in this  
22 Stipulation.

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5. MELNEK's claims against PHINNEY and MALAY in their individual capacities are not addressed in this Stipulation.

DATED this 11th day of March 2025.

DATED this 11th day of March 2025.

AARON D. FORD  
Attorney General

## LAW OFFICE OF DAVID SAMPSON

By: /s/ Courtney E. Leverty  
COURTNEY E. LEVERTY

By: /s/ David F. Sampson  
DAVID F. SAMPSON, ESQ.

## ORDER

**IT IS SO ORDERED:** MELNEK'S 42 U.S.C. §1983 claim against DPBH is DISMISSED, with prejudice. The 42 U.S.C. §1983 claim against Phinney and Malay in their official capacities is DISMISSED, with prejudice.

DATED this 11 day of March 2025.

GLORIA M. NAVARRO, District Judge  
UNITED STATES DISTRICT COURT

## **CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 11th day of March 2025, I filed the foregoing **STIPULATION AND ORDER OF DISMISSAL OF THE DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (DPBH), AND CODY PHINNEY AND JO MALAY, IN THEIR OFFICIAL CAPACITIES, WITH PREJUDICE** and served via this Court's Electronic Filing System to the following interested parties:

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/s/ Gina Hinds  
AG Legal Secretary