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## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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LORRE and GREG KANTZ,

Plaintiffs,

Case No. 3:16-cv-00352-LRH-VPC

ORDER

v.

MITCH BRANTINGHAM; ALVIN MCNEIL;  
and LYON COUNTY,

Defendants.

15 Before the court is defendants Mitch Brantingham, Alvin McNeil, and Lyon County's  
16 (collectively "Defendants") motion for summary judgment. ECF No. 22. Plaintiffs Lorre and  
17 Greg Kantz (the "Kantzs") filed an opposition (ECF No. 26) to which Defendants replied  
18 (ECF No. 29).

19 **I. Background**

20 This is a Section 1983 action arising from the allegedly unlawful arrest of plaintiff Lorre  
21 Kantz ("Mrs. Kantz") by defendant Deputy Mitch Brantingham ("Deputy Brantingham") of the  
22 Lyon County Sheriff's Department. Mrs. Kantz, along with her husband Greg Kantz  
23 ("Mr. Kantz"), have brought suit against Deputy Brantingham; Sheriff Alvin McNeil  
24 ("Sheriff McNeil"), Sheriff of the Lyon County Sheriff's Department; and Lyon County.

25 The allegedly unlawful arrest at issue occurred on May 26, 2015, in the town of  
26 Stagecoach in Lyon County, Nevada, after Deputy Brantingham and non-party Deputy Erick  
27 Kusmerz ("Deputy Kusmerz") responded to a 9-1-1 call made by non-parties the DeFord family,  
28 who alleged that Mr. Kantz and another unidentified person were standing on the edge of the

1 DeFord's property pointing rifles at them. ECF No. 26. When Deputy Kusmerz and Deputy  
2 Brantingham arrived at the DeFord's property they noticed a vehicle driving away. Id. The  
3 deputies followed the vehicle and initiated a traffic stop, at which point the Kantzs pulled over,  
4 stepped out of their car, and greeted the deputies. Because the 9-1-1 call involved a reported  
5 firearm, Deputy Kusmerz initiated a pat-down of Mrs. Kantz while Deputy Brantingham did the  
6 same to Mr. Kantz. Neither of the Kantzs had any weapons on their person. Id. Deputy Kusmerz  
7 then looked through the windows of the Kantzs' car and saw no visible weapons. Id.

8 Deputy Kusmerz took control of the scene as the investigating deputy<sup>1</sup> and left for the  
9 DeFords' property to collect photos and witness statements. Deputy Brantingham stayed with the  
10 Kantzs and acted as a cover officer.<sup>2</sup> Id. After Deputy Kusmerz left, the Kantzs asked Deputy  
11 Brantingham why they had been stopped and he explained the nature of the DeFords' 9-1-1 call.  
12 The Kantzs then described their long history with the DeFords to Deputy Brantingham,  
13 explaining that the DeFords frequently called the Sheriff's department to place meritless  
14 complaints against the Kantzs due to a long-standing feud between the two families. Id. Non-  
15 party Deputy Julie Redmond ("Deputy Redmond") then arrived on scene to assist Deputy  
16 Brantingham. Once Deputy Redmond arrived, Mrs. Kantz began to video record the interaction  
17 on her cell phone.<sup>3</sup>

18 After listing off many of the various complaints that the DeFords had made over the  
19 years, Mrs. Kantz mentioned to Deputy Brantingham that she planned to make a civil standby  
20 call<sup>4</sup> for the following day while she posted "No Trespassing" signs on her commercial property  
21 located across the road from the DeFords. ECF No. 8. Deputy Brantingham told Mrs. Kantz that  
22 no deputy would respond to such a call because she did not need a deputy present to set up the  
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24 <sup>1</sup> An investigating deputy is the deputy who leads the investigation and directs the actions of other deputies present  
25 on the scene. ECF No. 26-3 at 10.

26 <sup>2</sup> A cover officer's duty is limited to keeping an eye on suspects and interested parties and ensuring the safety of  
27 everyone on the scene. ECF No. 26-5 at 7.

28 <sup>3</sup> A copy of the cell phone video is attached as Exhibit 2 to Defendants' motion for summary judgment. See  
ECF No. 22, Ex. 2. Because Mrs. Kantz pointed the phone camera to the ground, only the parties' feet and their  
general movements are visible in the video. However, there is clear audio of the entire interaction between Deputy  
Brantingham and Mrs. Kantz from this point forward to her alleged unlawful arrest. As such, the evidence of the  
parties' interaction is largely undisputed.

<sup>4</sup> A civil standby call is a situation where a law enforcement officer is called to be present to keep the peace.

1 signs. Mrs. Kantz then asked how her previous civil standby call<sup>5</sup> and this new proposed call  
2 differed. ECF No. 26.

3 While discussing this unrelated issue, Deputy Brantingham ordered Mrs. Kantz to stop  
4 interrupting him or he would arrest her for obstruction. The Kantzs asked Deputy Brantingham  
5 what Mrs. Kantz could be obstructing and Deputy Brantingham responded that the interruptions  
6 were preventing him from asking any questions.<sup>6</sup> ECF No. 22; Ex. 2. Mrs. Kantz began to state  
7 that Deputy Brantingham could ask her any questions he wanted, but then shifted mid-sentence  
8 and requested an attorney. Id. Deputy Brantingham responded “okay,” and ordered Mrs. Kantz to  
9 go sit on the back of her car. Id. Mrs. Kantz reiterated that she wanted an attorney, and Deputy  
10 Brantingham replied that she did not “have a right to one right now” and to “go sit down.” Id.  
11 Mrs. Kantz asked why she had to go sit down, and Deputy Brantingham replied, “because I told  
12 you so.” Id. Although initially turning towards their vehicle, Mrs. Kantz turned back to the face  
13 Deputy Brantingham, stating “I have to make sure I can still record.” Id. Mrs. Kantz then walked  
14 towards her car, but stops to partially turn back to face Deputy Brantingham and say, “I take  
15 great offense to this; we’re not second class citizens.” Id. Mrs. Kantz then continued walking  
16 towards the back of her car.

17 Before she makes it to the car, Deputy Brantingham orders her to place her hands behind  
18 her back. Deputy Brantingham then conducted another search of Mrs. Kantz’s person, despite  
19 witnessing Deputy Kusmerz perform the same search earlier. Id. Once again, no weapons were  
20 found on Mrs. Kantz’s person. Mrs. Kantz then asked Deputy Brantingham why she was being  
21 arrested and he responded that she was not being arrested, but merely detained, at which point he  
22 handcuffed Mrs. Kantz and placed her in the back seat of his patrol car with the windows rolled  
23 up and all of the doors closed. ECF No. 26. After several minutes in the back of the car,  
24 Mrs. Kantz complained of trouble breathing. Deputy Brantingham called for medics who arrived  
25 at the scene and counseled that Mrs. Kantz had experienced an anxiety induced panic attack. Id.

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<sup>5</sup> Deputy Brantingham was previously called out to the Kantzs’ strip mall on “civil stand-by” to deal with the  
eviction of a tenant.

28 <sup>6</sup> Deputy Brantingham later admitted that he never asked Mrs. Kantz any questions, nor did he direct her to answer  
any, and that she had never refused to answer any questions posed to her. ECF No. 26, Ex.4 at 9; Id. Ex. 9 at 2.

1 Mrs. Kantz eventually recovered and Deputy Brantingham began transporting her to Lyon  
2 County jail. ECF No. 22. During the transportation, Mrs. Kantz again complained of trouble  
3 breathing and requested medical attention. ECF No. 26. Deputy Brantingham again called the  
4 medics and released Mrs. Kantz from custody, allowing the medics to transport her to a hospital  
5 where she was treated and eventually released. ECF No. 26. Subsequently, the Kantzs initiated  
6 the present action against Defendants. ECF No. 1. Thereafter, Defendants filed the present  
7 motion for summary judgment. ECF No. 22.

## 8 **II. Legal Standard**

9 Rule 56 of the Federal Rules of Civil Procedure provide that a court shall grant summary  
10 judgment if the factual record, including depositions, interrogatories, admissions, and affidavits,  
11 “show that there are no genuine issues as to any material facts and that the moving party is  
12 entitled to judgment as a matter of law.” A “genuine” issue of material fact exists if there is  
13 sufficient evidence for a reasonable jury to find for the non-movant. *Anderson v. Liberty Lobby,*  
14 *Inc.*, 477 U.S. 242, 248 (1986). If the non-movant can show some clear dispute of fact, then  
15 summary judgment is inappropriate. The court is required to view the facts and draw all  
16 inferences in the light most favorable to the non-movant. *United States v. Diebold Inc.*, 369 U.S.  
17 654, 655 (1962). However, the non-movant must show more than merely a slight metaphysical  
18 doubt of the facts. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586  
19 (1986).

20 To satisfy their burden on summary judgment, the Defendants, as movants, must show:  
21 (1) affirmative, non-contradicted evidence that negates an essential element of the Plaintiff’s  
22 claims, or (2) demonstration that the Plaintiff’s evidence is insufficient to support an essential  
23 element of their claim. *Celotex Crop. v. Catrett*, 477 U.S. 317, 323 (1986); *Adickes v. S.H. Kress*  
24 *& Co.*, 398 U.S. 144, 157 (1970). Once the movant has made a showing of either of the above,  
25 the burden shifts to the non-movant to show “specific facts showing that there is a genuine issue  
26 for trial.” *Celotex*, 477 U.S. at 323.

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1 **III. Discussion**

2 In their complaint, the Kantzs allege five separate claims for relief. Their principal claim  
3 is a Fourth Amendment violation based upon Deputy Brantingham’s unlawful arrest of Mrs.  
4 Kantz. See ECF No. 1. The Kantzs also allege several Nevada state-law claims against  
5 Defendants arising from the alleged unlawful arrest, including claims for false imprisonment,  
6 intentional infliction of emotional distress, and battery. See ECF No. 1. The court considers each  
7 of the Kantzs’ claims below.

8 **A. Fourth Amendment Claim**

9 **1. Unreasonable Seizure under the Fourth Amendment**

10 The Fourth Amendment guarantees individuals the right to be secure in their persons  
11 against unreasonable seizures. U.S. Const. amend. IV. An arrest without a warrant or probable  
12 cause violates the Fourth Amendment as a matter of law because it constitutes an unreasonable  
13 seizure. *Dubner v. City & County of S.F.*, 266 F.3d 959, 964 (9th Cir. 2001). 42 U.S.C. § 1983  
14 creates liability for any person who, under color of law, “subjects, or causes to be subjected, any  
15 citizen of the United States or other person within the jurisdiction thereof to the deprivation of  
16 any rights, privileges, or immunities secured by the Constitution and laws.” Essentially, Section  
17 1983 provides for tort liability against government actors who violate an individual’s  
18 constitutional or legal rights. *Manuel v. City of Kolin, Ill.*, 127 S. Ct. 911, 916 (2017).

19 In their complaint, the Kantzs allege that Deputy Brantingham unlawfully and  
20 unconstitutionally arrested Mrs. Kantz without probable cause, thereby performing an  
21 unreasonable seizure in violation of her Fourth Amendment rights. See ECF No. 1. The court has  
22 reviewed the pleadings and documents on file in this matter and finds that Deputy Brantingham’s  
23 actions constituted an arrest of Mrs. Kantz. In determining whether a person was placed under  
24 arrest, “the only relevant inquiry is how a reasonable [person] in the [given scenario] would have  
25 understood [their] situation,” *Berkemer v. McCarty*, 468 U.S. 420, 421 (1984), and whether a  
26 “reasonable person would have concluded that he or she was free to leave,” *U.S. v. Foster*, 70  
27 Fed. Appx. 415, 417 (2003). Here, the undisputed record establishes that Deputy Brantingham  
28 placed Mrs. Kantz in handcuffs, locked her in the back of his car with the windows rolled up,

1 and at one point began to drive her to Lyon County Jail. Despite his statements to the contrary,  
2 Deputy Brantingham's actions went far beyond mere detention. Under the circumstances, no  
3 reasonable person would have concluded that they were free to leave; especially after Deputy  
4 Brantingham began to transport Mrs. Kantz to the county jail. Therefore, the court finds that  
5 Deputy Brantingham's actions constituted an arrest of Mrs. Kantz.

6 The question now turns to whether Deputy Brantingham had probable cause to arrest  
7 Mrs. Kantz. To make a lawful arrest, officers must have either probable cause or a warrant. See  
8 generally *Beck v. Ohio*, 379 U.S. 89 (1964) (discussing when a police officer can and cannot  
9 lawfully arrest and search a person). Probable cause to arrest a person exists "when there is a fair  
10 probability or substantial chance of criminal activity." *United States v. Patayan Soriano*, 361  
11 F.3d 494, 505 (9th Cir. 2004). In their motion, Defendants contend that Deputy Brantingham had  
12 probable cause to arrest Mrs. Kantz because she violated NRS 199.280 while in his presence.  
13 NRS 199.280 charges anyone who "willfully resist[s], delay[s] or obstruct[s] a public officer in  
14 discharging or attempting to discharge any legal duty of his or her office" with a misdemeanor.  
15 Deputy Brantingham asserts that when Mrs. Kantz continued to interrupt, verbally disagree,  
16 express disapproval, challenge his orders, and then take approximately 30 seconds to go to the  
17 bumper of her car, that she was necessarily delaying and obstructing his legal duty, thereby  
18 violating NRS 199.280. ECF No. 29 at 3. Because she allegedly committed this misdemeanor in  
19 his presence, Deputy Brantingham argues that he had probable cause to arrest Mrs. Kantz  
20 pursuant to NRS 171.136. NRS 171.136 permits the arrest of any person who commits a  
21 misdemeanor in the presence of the arresting officer.

22 However, Ninth Circuit case law does not support Defendants' interpretation of NRS  
23 199.280. In two cases analyzing Cal. Penal Code § 148, which is materially identical to NRS  
24 199.280, the Ninth Circuit held that citizens have "the right [to] verbally challenge the police"  
25 and that "verbal protests [cannot] support an arrest under § 148." *Velazquez v. City of Long*  
26 *Beach*, 793 F.3d 1010, 1019 (9th Cir. 2015) (quoting *Mackinney v. Nielsen*, 69 F.3d 1002, 1007  
27 (9th Cir. 1995)). Similarly, the Ninth Circuit has held that police officers may not retaliate  
28 against individuals merely because of their expressed disagreement with the officer's actions,

1 because such retaliation “would constitute a serious First Amendment violation.” *Duran v. City*  
2 of Douglas, 904 F.2d 1372, 1377-8 (9th Cir. 1974). While police may become aggravated by  
3 citizens verbally challenging them or expressing their disagreement, “they may not exercise the  
4 awesome power at their disposal to punish individuals for conduct that is not merely lawful, but  
5 protected by the First Amendment.” *Id.* at 1378.

6 The court recognizes that the parties characterize the events leading to Mrs. Kantz’s  
7 arrest differently. However, because of the recording, there is no genuine dispute of fact  
8 regarding what was said between the parties. Even assuming Defendants’ characterization of the  
9 events that Mrs. Kantz was overly argumentative, her behavior is insufficient as a matter of law  
10 to constitute a violation of NRS 199.280 under similar Ninth Circuit precedent. While it is  
11 undisputed that Mrs. Kantz questioned Deputy Brantingham’s orders and challenged his  
12 authority to give them, there is no evidence that she ever refused to comply with his limited  
13 requests or to answer any questions. See ECF No. 26, Ex. 4 Brantingham’s Depo. (“Q: Was  
14 [Mrs. Kantz] refusing to answer any questions by you or deputy Redmond? A: No, not that I  
15 remember.”); Ex. 9 Defendants’ Responses to Requests for Admission at 2 (“Q: Admit that you  
16 never told Lorre to answer any questions. A: Admit.”). Deputy Redmond’s testimony supports  
17 the court’s finding that Mrs. Kantz never refused to answer any questions. See ECF No. 26, Ex. 5  
18 Redmond’s Depo. (“Q: Did you ever hear [Mrs. Kantz] refuse to answer questions posed by  
19 Deputy Brantingham? A: Do you mean like tell him, ‘No, I’m not answering that’? I never heard  
20 her refuse.”). Further, while Mrs. Kantz argued with Deputy Brantingham about an unrelated  
21 matter, this argument did not directly interfere with Deputy Brantingham’s duty as a cover  
22 officer to secure the scene as Mrs. Kantz never attempted to leave or interfere with his duties.  
23 Thus, the court finds that Mrs. Kantz’s conduct was not a violation of NRS 199.280. As such,  
24 Deputy Brantingham did not have probable cause to support Mrs. Kantz’s arrest. Accordingly,  
25 Defendants are not entitled to summary judgment on the Kantzs’ Fourth Amendment claim.

## 26 2. Qualified Immunity

27 Alternatively, Deputy Brantingham argues that, regardless of whether he had probable  
28 cause to arrest Mrs. Kantz, he is entitled to qualified immunity for his conduct. Qualified

1 immunity protects government officials, including law enforcement officers, from tort liability  
2 when: (1) the officer did not violate a plaintiff's constitutional rights; or (2) when the officer's  
3 conduct did not violate clearly established constitutional rights of which a reasonable officer  
4 would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). As addressed above, the  
5 court finds that the Kantz have sufficiently established a violation of Mrs. Kantz's Fourth  
6 Amendment rights. Thus, the court shall focus on the "clearly established" factor.

7 Addressing the second requirement for qualified immunity, the court finds that it was  
8 clearly established in May 2015 that Deputy Brantingham did not have probable cause to arrest  
9 Mrs. Kantz simply for her verbal disagreement with his actions. Specifically, the Ninth Circuit  
10 held back in 1995 that "[a]ny reasonable officer would have known that [the police] needed more  
11 than [plaintiff's] hesitation to arrest [them]" under a similar obstruction statute. *Mackinney*,  
12 69 F.3d at 1004 (holding that slow compliance with an officer's orders cannot be grounds for  
13 violation of § 148). Even before *Mackinney*, the Ninth Circuit held in 1987 that it is "[n]o less  
14 well established . . . that . . . police officers . . . , may not exercise their authority for personal  
15 motives, particularly in response to real or perceived slights to their dignity. Surely anyone who  
16 takes an oath of office knows – or should know – that much." *Duran*, 904 F.3d at 1378 (citing  
17 *Houstin v. Hill*, 482 U.S. 451, 462 (1987)). Ninth Circuit precedent since that time has been  
18 consistent. See *Johnson v. Bay Area Rapid Transit Dist.*, 724 F.3d 1159, 1174 (9th Cir. 2013)  
19 (denying police officers qualified immunity and holding that cursing and making obscene  
20 gestures at police officers does not create probable cause supporting an arrest under § 148 and  
21 therefore the subsequent arrest of plaintiff was unlawful and violated his Fourth Amendment  
22 rights); *People v. Wetzel*, 520 P.2d 416, 419-20 (Cal. 1974) (denying police officers qualified  
23 immunity and holding that they did not have a legal duty to move and arrest defendant under  
24 § 148 when she blocked the doorway of her home and refused to let officers in without a  
25 warrant). Therefore, because the Ninth Circuit has repeatedly and routinely held, prior to May  
26 2015, that arresting an individual for their disagreements with officer conduct does not constitute  
27 obstruction and is a clear constitutional violation, the court finds that Deputy Brantingham is not  
28 entitled to qualified immunity.



1                                   **3.       Liability of Sheriff McNeil and Lyon County under Monell**

2                   The framework governing municipal and supervisory liability for Section 1983 claims  
3 was established in *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). Monell provides that  
4 municipal and supervisory liability must be based on the enforcement of a specific policy or  
5 custom, rather than simple vicarious liability. *Id.* at 691. To meet this standard, the Kantzs must  
6 establish that some official policy or custom enforced by Sheriff McNeil and Lyon County led to  
7 the underlying constitutional violation. *See Bd. Of County Comm'rs v. Brown*, 520 U.S. 397, 405  
8 (1997).

9                   A plaintiff can establish a policy or custom by demonstrating that the alleged  
10 constitutional violation was caused by a failure to properly train government employees. *City of*  
11 *Canton, Ohio v. Harris*, 489 U.S. 378, 388-91 (1989). This showing requires three elements:  
12 (1) the inadequacy of the training program “in relation to the tasks the particular officers must  
13 perform” and the alleged constitutional violation, (2) the relevant officials must have been  
14 deliberately indifferent to the rights of persons that the employees have contact with, and (3) the  
15 inadequacy of the training must have actually caused the violation. *Merritt v. County of Los*  
16 *Angeles*, 875 F.2d 765, 770 (9th Cir. 1989) (internal citations omitted). “Deliberate indifference”  
17 requires proof that a municipal actor or the municipality disregarded a known or obvious  
18 consequence of their failure to properly train employees. *Connick v. Thompson*, 563 U.S. 51, 52  
19 (2011).

20                   In their motion, Lyon County and Sheriff McNeil assert that even assuming Deputy  
21 Brantingham committed a constitutional violation against Mrs. Kantz, they cannot be separately  
22 liable for that violation under Monell because a single constitutional violation is insufficient to  
23 establish the existence of an office or countywide policy or custom. *See Christie v. Iopa*, 176  
24 F.3d 1231, 1235 (9th Cir. 1999) (holding that Monell liability of a government employer was  
25 improper when the alleged events were isolated or sporadic acts done by a single employee).  
26 Although generally true, a plaintiff may still establish liability under Monell without showing a  
27 pattern of constitutional violations where “a violation of federal rights may be a highly  
28 predictable consequence of a failure to equip law enforcement officers with specific tools to

1 handle recurring situations.” Long, 442 F.3d at 1186 (quoting *Bd. Of County Comm ’rs*, 520 U.S.  
2 at 409). If a plaintiff can show that future constitutional violations are highly likely because of an  
3 alleged failure to train, then they can make a facially plausible claim for liability under Monell.  
4 Id.

5 Here, the Kantzs argue that it is foreseeable that the deputies of Lyon County will  
6 encounter individuals in the future who express disagreement with officer actions, and challenge  
7 their authority, such that the situation that led to Mrs. Kantz’s unlawful arrest is likely to re-  
8 occur. The Kantzs claim that the underlying constitutional violation occurred in this case because  
9 Sheriff McNeil and Lyon County “fail[ed] to enact a policy or train deputies regarding the  
10 exercise of First Amendment rights during encounters with deputies.” ECF No. 26 at 15. In  
11 support of this claim, the Kantzs have pointed to the absence of any official policy from either  
12 the Sheriff’s department or Lyon County regarding the procedures that deputies must follow  
13 when confronted with individuals who choose to criticize or even insult officers.<sup>7</sup> ECF No. 26.  
14 Further, Deputy Redmond, who supervises and trains junior deputies, testified in her deposition  
15 that “some [deputies] get very defensive if someone is interrupting them or being defiant . . .”  
16 and that the department has no policies regarding de-escalation of confrontations between  
17 civilians and deputies. Id. Ex. 5 at 21 (“Q: Is de-escalation something that you are trained to do?  
18 A: Not formally. It’s just something that you kind of learn as you go.”). Her testimony directly  
19 supports the Kantz’s failure to train theory and there are facts sufficient to show a causal  
20 connection between this lack of training and the violation of Mrs. Kantz’s Fourth Amendment  
21 rights. As such, the court finds that the Kantzs have raised a disputed issue of fact as to whether  
22 the current procedures of the Lyon County Sheriff’s Department would lead to future Fourth  
23 Amendment violations. Accordingly, the court shall deny Defendants’ motion for summary  
24 judgment on this issue.

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27 <sup>7</sup> Additionally, the Kantzs point to the existence of a policy enacted by the Lyon County Sheriff’s department of  
28 prohibiting cross-gender pat downs if a deputy of the same gender is on the scene and capable of performing the pat  
down. However, this policy was enacted after the May 26, 2015 incident. ECF No. 29 Ex. 3 at 6.

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**B. The State Law Claims**


Finally, Defendants argue that Deputy Brantingham is entitled to discretionary act immunity under NRS 41.032 from the Kantzs’ state law claims. The court disagrees. NRS 41.032 provides immunity to officers in the performance or non-performance of discretionary acts “whether or not the discretion involved is abused.” However, discretionary acts are not the same as acts of bad faith. Government officials and officers do not have immunity for actions that constitute intentional torts because such bad-faith conduct is “unrelated to any plausible policy objective and . . . do[es] not involve the kind of judgment that should be shielded from judicial second-guessing.” Franchise Tax Bd. v. Hyatt, 335 P.3d 125, 139 (Nev. 2014) (internal quotation marks omitted) overruled on other grounds by 136 S. Ct. 1277 (2016). Viewing the facts in the light most favorable to the Kantzs, Deputy Brantingham’s actions could constitute intentional acts, rather than discretionary acts, and are therefore unprotected by NRS 41.032. Thus, the court concludes that Deputy Brantingham is not entitled to discretionary act immunity. Accordingly, the court shall deny the Defendants’ motion for summary judgment on these claims.

IT IS THEREFORE ORDERED that Defendants’ motion for summary judgment (ECF No. 22) is DENIED.

IT IS FURTHER ORDERED that the parties shall file a joint proposed pretrial order pursuant to Local Rules 16-3 and 16-4 within forty-five (45) days of the entry of this order.

IT IS SO ORDERED.

DATED this 19th day of July 2017.

  
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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE