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12 UNITED STATES DISTRICT COURT

13 DISTRICT OF NEVADA

14 Jason A. Perez-Morciglio and Sebastian Perez-Morciglio,

15 Plaintiffs,

16 v.

17 Las Vegas Metropolitan Police Department;  
18 Sheriff Douglas Gillespie (individually and in  
19 his official capacity as Sheriff of the Las Vegas  
20 Metropolitan Police Department); Las Vegas  
21 Metropolitan Police Department Officers T.  
22 Scott and S. Schaier (in their individual  
23 capacities); Las Vegas Sands Corporation, a Las  
24 Vegas Corporation; and Venetian Security  
25 Guards 1-6,

26 Defendants.

Case No.

**COMPLAINT UNDER 42 U.S.C. §  
1983 FOR INJUNCTIVE RELIEF,  
DECLARATORY RELIEF, AND  
DAMAGES**

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**JURY TRIAL DEMANDED**

27 Come now Plaintiffs Jason A. Perez-Morciglio and Sebastian Perez-Morciglio, by and  
28 through the undersigned attorneys, and file this Complaint for injunctive relief, declaratory relief  
and damages, pursuant to 42 U.S.C. § 1983 (civil action for deprivation of rights), 28 U.S.C. §

1 1331 (federal question jurisdiction), 28 U.S.C. § 1367(a) (supplemental jurisdiction), and 28  
2 U.S.C. § 2201 (creation of remedy).

3 This is an action under 42 U.S.C. § 1983 seeking to address: (1) Defendants' violations of  
4 Plaintiffs' rights under the First, Fourth and Fourteenth Amendments to the U.S. Constitution;  
5 (2) the unconstitutional policies and practices of The Las Vegas Sands Corporation, doing  
6 business as The Venetian Resort Hotel and Casino (the "Venetian"), under which Venetian  
7 security personnel falsely claim that the public forum sidewalk abutting Las Vegas Boulevard  
8 ("the Strip") and in front of the Venetian Hotel is not a public forum, and detain, search, and  
9 arrest citizens on that property in violation of those individuals' constitutional rights of free  
10 speech, rights to be free from unlawful arrests and unreasonable searches and seizures, rights to  
11 be free from unlawful detainer, and substantive and procedural due process rights; (3) the  
12 unlawful policies and practices of Las Vegas Metropolitan Police Department ("Metro"), under  
13 which Metro officers validate and encourage Venetian Hotel's false claims that the public forum  
14 sidewalk is not a public forum, and additionally, by arresting, searching, and citing of people on  
15 that property in violation of those individuals' constitutional rights of free speech, rights to be  
16 free from unlawful arrests and unreasonable searches and seizures, and substantive and  
17 procedural due process rights; and (4) the civil conspiracy between Defendants to violate civil  
18 rights of individuals using the public forum sidewalk abutting the Strip and in front of the  
19 Venetian Hotel by falsely claiming it is not a public forum and wrongfully ejecting individuals  
20 from that sidewalk.

21 This action also seeks to address Plaintiffs' several state tort claims against Defendants  
22 for false imprisonment, battery, intentional infliction of emotional distress, negligent infliction of  
23 emotional distress, and intentional infliction of emotional distress.

1 emotional distress, and negligent training, supervision and retention. This court has  
2 supplemental jurisdiction over the state law claims.

3  
4 Based upon the clear constitutional violations, Defendants' willful and deliberate  
5 violations of the law, the harm suffered by Plaintiffs, which is ongoing and irreparable, Plaintiffs  
6 seek a permanent injunction and declaratory relief. Furthermore, Plaintiffs are entitled to  
7 damages, costs and attorney's fees, punitive damages, and any other relief as victims of civil  
8 rights violations and as victims of tort.

### 9 10 NATURE OF THE ACTION

11 On January 15, 2010, Plaintiffs were on the public sidewalk in front of the Venetian  
12 Hotel. As detailed below, Jason and his brother Sebastian occasionally dress as Zorro and Darth  
13 Vader and perform on the Strip. They were standing on the sidewalk, not obstructing pedestrian  
14 traffic. On January 15, 2010, Jason was dressed as Zorro. His brother Sebastian was not in  
15 costume. Without any provocation, Venetian security personnel confronted the brothers when  
16 Jason was throwing away trash in a receptacle on the public sidewalk in front of the Venetian.  
17 They then kidnapped the brothers, forced them into a small room inside the Venetian Hotel and  
18 detained them. These security guards handcuffed the brothers, searched their persons and  
19 belongings, demanded identification, and photographed them. Each of the brothers was strapped  
20 to a chair and kept by the security guards for over an hour. The guards then summoned two  
21 Metro officers who handcuffed and searched the brothers before directing them to sign  
22 misdemeanor trespass warnings. Thereafter, the brothers were escorted from the premises to the  
23 parking lot in the back of Harrah's Las Vegas Casino by the security guards and were warned not  
24 to "trespass" on the sidewalk in front of the Venetian Hotel again or else face arrest.  
25  
26  
27  
28

1 Plaintiffs allege that Venetian security guards' actions of arresting, handcuffing,  
2 detaining, searching, and citing Plaintiffs based upon Plaintiffs' speech and expression on the  
3 public forum sidewalk in front of the Venetian Hotel, and their false assertions that this public  
4 forum sidewalk is not a public forum, violate Plaintiffs' rights under the United States and  
5 Nevada Constitutions and laws and amounted to unconstitutional restraints on Plaintiffs' rights to  
6 speech and expression, unconstitutional arrests and searches, as well as violations of Plaintiffs'  
7 substantive and procedural due process rights.  
8

9  
10 Upon information and belief, Plaintiffs further allege that the Venetian's policies and  
11 practices of falsely claiming that the public forum sidewalk in front of the Venetian Hotel is not  
12 a public forum and harassing, arresting, detaining, searching, ejecting, and excluding individuals  
13 from the public forum sidewalk, and Metro's policies and practices of validating and enforcing  
14 the Venetian's claims that the public forum sidewalk in front of the Venetian Hotel is not a  
15 public forum and validating and affirming the Venetian's actions, as well as Metro's  
16 handcuffing, detaining, searching, and citing or issuing warnings to individuals engaged in  
17 protected speech on that public forum sidewalk, all violate the United States and Nevada  
18 Constitutions and amount to unconstitutional restraints on speech and expression, violations of  
19 Plaintiffs' rights to liberty and free movement, violations of Plaintiffs' due process rights, and  
20 constitute a conspiracy to deprive individuals using the public forum sidewalk in front of the  
21 Venetian Hotel of these protected civil rights.  
22

23  
24 Finally, Plaintiffs allege that Venetian security guards harassed, seized, unlawfully  
25 detained, and searched Plaintiffs, and thereby falsely imprisoned, battered, and intentionally  
26 and/or negligently inflicted emotional distress, and inflicted injury upon Plaintiffs.  
27

28 Plaintiffs allege as follows:

1 **I. JURISDICTION**

2 1. Pursuant to 28 U.S.C. § 1331 this Court has original subject matter jurisdiction  
3 over Plaintiffs' claims brought under 42 U.S.C. § 1983. This Court has jurisdiction over  
4 Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a). This Court has jurisdiction to issue  
5 injunctive and declaratory relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201. This Court  
6 has jurisdiction to award Plaintiffs damages pursuant to 42 U.S.C. § 1983 and N.R.S. 41.130.  
7 This Court has jurisdiction to award Plaintiffs attorney's fees and expenses pursuant to 42 U.S.C.  
8 § 1988(b).

9  
10 2. Each of the Defendants acted under color of law and are subject to liability as  
11 state actors pursuant to 42 U.S.C. § 1983.

12  
13 3. Because Defendants are not arms of the State this suit is not barred by the  
14 Eleventh Amendment to the U.S. Constitution. *See Eason v. Clark County School District*, 303  
15 F.3d 1137, 1145 (9th Cir. 2002); *Culinary Workers Union v. Del Papa*, 200 F.3d 614, 619 (9th  
16 Cir. 1999).

17  
18 4. Venue is proper in the District Court of Nevada pursuant to 28 U.S.C. § 1391. All  
19 parties reside in Nevada, and all actions pertinent to this Complaint occurred in Clark County,  
20 Nevada. The Las Vegas Sands Corporation, doing business as the Venetian Resort Hotel and  
21 Casino, engages in routine business in Clark County, Nevada, and is subject to the jurisdiction of  
22 this Court pursuant to 28 U.S.C. § 1391(c).

23  
24 **II. PARTIES**

25 5. Plaintiff Jason A. Perez-Morciglio ("Jason") is a resident of Clark County,  
26 Nevada. He is a street performer who dresses and performs as Zorro in public. He considers  
27 himself an actor and loves to perform. He performs two to three times each weekend on  
28

1 sidewalks along the Strip. Jason has been performing on sidewalks along the Strip since early  
2 January, 2010, and performed on the Hollywood Boulevard for over seven years.

3  
4 6. When Jason performs on the Strip, he does not approach people. Rather, people  
5 approach him and ask to take pictures with him. He does not carry a camera with him when he  
6 performs. Jason does not ask for money. He does accept tips when offered. Jason carries plastic  
7 swords and plastic knives with him while performing, so that he can do play sword fights in front  
8 of people visiting the Strip. However, Jason does not sell anything while performing on the  
9 Strip.

10  
11 7. Certain sidewalks abutting the Strip and adjacent to certain Strip properties on  
12 which Jason performs, which are located above land owned by private corporations (hereinafter  
13 “public forum sidewalks”), have been repeatedly declared by the federal courts to be a public  
14 forum and the First Amendment fully applies to all expressive activity on those sidewalks.

15  
16 8. Plaintiff Sebastian Perez Morciglio (“Sebastian”) is a resident of Clark County,  
17 Nevada, who, on occasion, accompanies his brother Jason on street performances. Sebastian is  
18 also an actor and sometimes dresses as Darth Vader and performs on the Strip.

19  
20 9. Defendant Las Vegas Metropolitan Police Department (“Metro”) is a law  
21 enforcement agency for Clark County and the City of Las Vegas, with jurisdiction over the  
22 unincorporated parts of Clark County and is tasked with enforcing both Nevada statutory law and  
23 Clark County Codes. Upon information and belief, Metro has engaged and/or engages in a  
24 policy and practice of deliberate indifference to the constitutional rights of persons engaging in  
25 free speech activities on the Strip, and a policy and practice of deference to casinos on the Strip  
26 and their security personnel employees with respect to the constitutional rights of persons  
27 engaging in free speech activities on the Strip. Furthermore, despite law clearly establishing that  
28



1 the sidewalk in front of the Venetian Hotel is a public forum, *Venetian Casino Resort, L.L.C. v.*  
2 *Local Joint Executive Board of Las Vegas*, 45 F. Supp. 2d 1027, 1036 (D. Nev. 1999), *aff'd*, 257  
3 F.3d 937 (9th Cir. 2001), *cert denied*, 535 U.S. 905 (2002), Metro has failed to train its officers  
4 to recognize public forum space on the Strip, adequately protect constitutional rights, and  
5 prevent continuing constitutional violations. Metro also, upon information and belief, has a  
6 policy and practice of encouraging and assisting the Venetian and its employees in falsely  
7 asserting that they can regulate free speech activity on the public forum sidewalk, and violating  
8 the constitutional rights of persons engaging in free speech activities on that sidewalk.  
9

10  
11 10. Defendant Douglas Gillespie is a Sheriff of Metro ("Sheriff Gillespie").  
12 Defendant Sheriff Gillespie and all Metro police officers are vested with authority to enforce  
13 both Nevada statutory law and Clark County Codes. Defendant Sheriff Gillespie has final  
14 policymaking authority for Metro internal polices and is vested with supervisory authority over  
15 all Metro officers.  
16

17 11. Upon information and belief, Defendant Sheriff Gillespie is aware of, and has  
18 either explicitly or implicitly condoned or created a policy and practice of deliberate indifference  
19 towards the constitutional rights of persons engaging in free speech activities on the public forum  
20 sidewalks. Furthermore, upon information and belief, despite law clearly establishing that the  
21 sidewalks abutting the Strip are a public forum, Defendant Sheriff Gillespie has failed to train his  
22 officers to adequately protect constitutional rights on the Strip. Additionally, upon information  
23 and belief, Defendant Sheriff Gillespie is aware of, and has either explicitly or implicitly  
24 condoned or created a policy and practice of encouraging and validating claims by casinos on the  
25 Strip and their employees that they may regulate free speech activity on public forum sidewalks  
26  
27  
28

1 and condoning, assisting, validating, and encouraging casinos on the Strip and their employees in  
2 their arrests, detentions, and searches of persons engaged in free speech activities on the Strip.

3  
4 12. "Defendants Metro Officers" S. Schaier and T. Scott are vested with authority to  
5 enforce both Nevada statutory law and Clark County codes, and are each sued in their individual  
6 capacities.

7  
8 13. Defendant Las Vegas Sands Corporation, a Nevada Corporation, owns, operates  
9 and does business as the Venetian Resort Hotel and Casino (the "Venetian"), a Casino and Hotel  
10 located at 3355 Las Vegas Boulevard, South, Las Vegas, Nevada, within an unincorporated part  
11 of Clark County.

12  
13 14. Upon information and belief, the Venetian is aware of, and either explicitly or  
14 implicitly condoned or created the policy and practice of its employees and/or agents falsely  
15 asserting that the public forum sidewalk in front of the Venetian is not a public forum, regulating  
16 free speech on public forum sidewalks adjacent to the Venetian, as well as the policy and  
17 practice of Venetian employees arresting, detaining, searching, ejecting, and excluding  
18 individuals from the public forum sidewalk in front of the Venetian. Upon information and  
19 belief, the Venetian and its employees and agents have sought the assistance, validation, and  
20 cooperation of Metro in engaging in these policies and practices.

21  
22 15. "Defendant Security Guards" are employed by the Venetian as security personnel  
23 and are charged with enforcing certain Nevada laws on casino property. Upon information and  
24 belief, six security guards were involved in the incident giving rise to this lawsuit. Upon  
25 information and belief, five of the guards' names are "Lovegren," "Linda," "Kevin," "Eli," and  
26 "Paul." The sixth guard's name is unknown. Defendant Security Guards each harassed,  
27 arrested, detained, and searched Plaintiffs under color of law, claiming that the public forum  
28



1 sidewalk in front of the Venetian is not a public forum, and solicited and received Metro's  
2 assistance, encouragement, and validation in doing so. Defendant Security Guards are each sued  
3 as individuals.

4  
5 16. Defendant Security Guards also intentionally falsely imprisoned and battered  
6 Plaintiffs, and also inflicted emotional distress, either negligently or intentionally, upon  
7 Plaintiffs.

8  
9 17. The naming of defendants herein is based upon information and belief. Plaintiffs  
10 reserve their rights to name additional defendants and modify their allegations concerning  
11 defendants named herein.

### 12 **III. STANDING**

13 18. Plaintiffs were both directly affected by Defendants' practices and policies of  
14 violating the constitutional rights of persons engaged in free speech activities on the public  
15 forum sidewalk in front of the Venetian. Both Plaintiffs were harmed by Defendants' wrongful  
16 arrests and unreasonable searches and seizures. Plaintiffs' substantive due process rights were  
17 violated by Defendants' arbitrary and conscience-shocking seizure of Plaintiffs and subsequent  
18 banning of Plaintiffs from the public forum sidewalk, and the issuance of a criminal trespass  
19 warning to Sebastian regarding his use of the sidewalk. As a result, Plaintiffs were and will  
20 continue to be chilled in the exercise of their First Amendment rights to free speech and  
21 expression and are afraid to go to the sidewalk in front of the Venetian, even though it is a  
22 public forum.

23  
24  
25 19. Plaintiffs were harmed by Defendant Security Guards' false imprisonment,  
26 battery and infliction of either negligent or intentional emotional distress of Plaintiffs.  
27  
28

1           20. Plaintiffs were harmed by Defendants' conspiracy to eject individuals from the  
2 public forum sidewalk abutting the Strip and in front of the Venetian Hotel. Through the  
3 conspiracy, Plaintiffs were denied of their civil rights to free speech, freedom of movement,  
4 freedom from unreasonable searches and seizures, and freedom from unlawful arrest and  
5 detention.  
6

7           21. An actual case and controversy exists between Plaintiffs and Defendants  
8 concerning their respective rights, privileges, and obligations.  
9

#### 10 IV. FACTS

11           22. The Venetian Hotel is located at 3355 Las Vegas Boulevard, South, Las Vegas,  
12 Nevada, on an area known as the Las Vegas Strip, within an unincorporated part of Clark  
13 County.  
14

15           23. The sidewalk abutting the Strip and in front of the Venetian Hotel is a public  
16 forum according to the United State District Court for the District of Nevada, *Venetian Casino  
17 Resort L.L.C. v. Local Joint Executive Board of Las Vegas*, 45 F. Supp. 2d 1027, 1036 (D. Nev.  
18 1999).  
19

20           24. According to established case law, the Venetian does not have the right to exclude  
21 individuals from the sidewalk nor the right to regulate protected expression based upon the  
22 permissible exercise of those individuals' First Amendment rights. *Venetian Casino Resort  
23 L.L.C. v. Local Joint Executive Board of Las Vegas*, 45 F. Supp. 2d 1027, 1036 (D. Nev. 1999).  
24

25           25. According to the Ninth Circuit Court of Appeals, the State of Nevada possesses a  
26 property interest in a portion of the Venetian's land, the sidewalk abutting the Strip, to guarantee  
27 unrestricted public passage along Las Vegas Boulevard. *Venetian Casino Resort, L.L.C. v. Local  
28 Joint Executive Board of Las Vegas*, 257 F.3d 937, 946 (9th Cir. 2001).

1           26. Under the law, including clearly established case law from the Ninth Circuit  
2 Court of Appeals, members of the public have “the recorded right to pass across the Venetian  
3 property along Las Vegas Boulevard and to express themselves as they do so with the same  
4 freedom as on any public sidewalk.” *Venetian Casino Resort, L.L.C. v. Local Joint Executive*  
5 *Board of Las Vegas*, 257 F.3d 937, 948 (9th Cir. 2001).

7           27. According to established case law, by owning and maintaining the sidewalk  
8 abutting the Strip and in front of the Venetian Hotel, the Venetian is performing a “public  
9 function.” *Venetian Casino Resort L.L.C. v. Local Joint Executive Board of Las Vegas*, 45 F.  
10 Supp. 2d 1027, 1035 (D. Nev. 1999).

12           28. Upon information and belief, Metro is a law enforcement agency which has  
13 engaged in a policy and practice of affirming the Venetian’s false assertions that the sidewalk  
14 abutting the Strip and in front of the Venetian Hotel is not a public forum, and wrongfully  
15 affirming that the Venetian has the right to regulate protected expression on public forum  
16 sidewalks.

18           29. Jason is a street performer who dresses as Zorro, and performs on the sidewalks  
19 abutting the Strip.

21           30. Jason takes pictures with individuals and tourists upon request. He does not  
22 solicit any money, but he does accept tips. He also carries plastic knives and swords to play fight  
23 in front of people visiting the Strip.

25           31. On Friday, January 15, 2010, around 6:20 p.m., Jason was dressed as Zorro and  
26 walking in front of the Venetian on the sidewalk along a fence bordering the Strip.

28           32. Sebastian was accompanying his brother at that time, and was walking  
approximately five to seven feet in front of him as they passed the Venetian.

1           33. Sebastian then stopped to watch the Mirage Hotel and Casino Volcano show,  
2 which is visible from the Strip.

3           34. As he passed the entrance to the Venetian, Jason threw a piece of garbage in the  
4 receptacle located on the sidewalk along a fence bordering the Strip, and while standing on the  
5 public sidewalk, he was approached by a security guard.

6           35. Upon information and belief, that security guard's name is "Lovegren."

7           36. Security Guard Lovegren told Jason that he was not allowed on the sidewalk  
8 because it was private property, and that Jason should leave.

9           37. Sebastian, who had been watching the Volcano show, turned and saw Security  
10 Guard Lovegren speaking with Jason.

11           38. Security Guard Lovegren began reading rules off a piece of paper to Jason  
12 regarding conduct on private property.

13           39. Jason then told Security Guard Lovegren that the sidewalk was not private  
14 property and that if he was trespassing the guard should call the police.

15           40. Plaintiffs then saw Security Guard Lovegren speak into his walkie-talkie.

16           41. Thereafter, five more security guards arrived and the six guards surrounded Jason.

17           42. Defendant Security Guards told Jason to leave or else they would arrest him.

18           43. Jason again told them to call the police if he was, in fact, trespassing.

19           44. Defendant Security Guards then grabbed Jason and a Defendant Security Guard  
20 put him in handcuffs.

21           45. One of the Defendant Security Guards then left.

22           46. Jason then began to yell for someone to call the police.

1           47. Sebastian walked over to the five guards and addressed one of the Defendant  
2 Security Guards, a female.

3           48. Upon information and belief, one of the Defendant Security Guards, the female  
4 security guard addressed by Sebastian at this time, is named "Linda" (hereinafter "Security  
5 Guard Linda").  
6

7           49. Sebastian asked Security Guard Linda what his brother had done wrong.

8           50. Security Guard Linda began to yell at Sebastian, telling him to go away or else  
9 they would arrest him.  
10

11           51. Sebastian told Security Guard Linda that he was doing nothing wrong.

12           52. Security Guard Linda then took the Coke soda bottle from Sebastian's hand and  
13 threw it on the ground.

14           53. Then, Security Guard Linda and another security guard grabbed Sebastian and  
15 handcuffed him.  
16

17           54. Upon information and belief, the Defendant Security Guard who assisted Security  
18 Guard Linda with handcuffing Sebastian is named "Kevin."

19           55. The handcuffs covered Sebastian's wrist watch and pressed it into his skin.

20           56. Defendant Security Guards then removed Jason's props, which were plastic  
21 knives and swords, from his person.  
22

23           57. Defendant Security Guards then took Plaintiffs into the Venetian Hotel and into a  
24 security office.

25           58. At that time, one Defendant Security Guard told another to remove Jason's hat  
26 and mask, and that Defendant Security Guard did so.  
27  
28

1           59. Throughout this, Jason continued to tell Defendant Security Guards that he had  
2 done nothing wrong and stated that he had constitutional rights.

3           60. One Defendant Security Guard told another Defendant Security Guard that the  
4 handcuffs on Sebastian had been placed on him incorrectly.

5           61. Defendant Security Guards then searched Plaintiffs, pulling possessions out of  
6 Jason's bag, asking Plaintiffs for identification, and taking personal effects from their pockets.  
7

8           62. At this time, Sebastian asked a Defendant Security Guard to remove his wrist  
9 watch, and the guard did so.

10           63. Sebastian had a deep mark on his wrist where the watch had been pressed into the  
11 skin.  
12

13           64. In response to the requests by Defendant Security Guards that he provide  
14 identification, Jason refused to provide identification and demanded to see a police officer and an  
15 attorney.  
16

17           65. In response to the requests by Defendant Security Guards that he provide  
18 identification, Sebastian provided his temporary driver's license.

19           66. Defendant Security Guards then moved Plaintiffs into a small room with a video  
20 camera and a sound recorder.

21           67. Defendant Security Guards then stood Plaintiffs in front of a wall and took their  
22 pictures.  
23

24           68. At this point, Jason remained handcuffed.

25           69. Defendant Security Guards then sat Plaintiffs in chairs and strapped them to the  
26 chairs with seatbelts.  
27  
28



1           70. Sebastian was strapped to the chair for approximately ten minutes before being  
2 moved by Defendant Security Guards to another room.

3           71. Sebastian was left in the second room for approximately thirty to forty minutes.  
4

5           72. Jason was kept handcuffed, strapped to a chair, in a room for approximately one  
6 hour.

7           73. Throughout this time, Defendant Security Guards continued to tell Plaintiffs that  
8 they were trespassing.

9           74. When Sebastian requested his temporary driver's license be returned, a Defendant  
10 Security Guard told him that it was not a valid identification and asked him for his social security  
11 number.  
12

13           75. A Defendant Security Guard began reading something to Sebastian and he asked  
14 them to read slowly, informing them that he did not understand English very well. The  
15 Defendant Security Guard continued to read, only more slowly, and it sounded like "law" to  
16 Sebastian.  
17

18           76. Approximately an hour after Defendant Security Guards arrested Plaintiffs, two  
19 Metro officers arrived.  
20

21           77. Upon information and belief, Defendants Metro Officers are named "T. Scott"  
22 and "S. Schaier."

23           78. Officer Schaier asked Sebastian to stand up and then patted down his clothes,  
24 telling him not to move.

25           79. Officer Schaier then removed the security handcuffs from Sebastian and placed  
26 his own handcuffs on him. Officer Schaier also removed the security handcuffs from Jason and  
27 placed his own on him.  
28

1           80.     Officer Schaier then asked Sebastian if he had any scars or tattoos, and asked for  
2 his name and social security number.

3           81.     Sebastian then responded that he does not speak English very well, so Officer  
4 Schaier asked the questions more slowly.

5           82.     Jason heard a Defendant Security Guard tell Defendant Metro Officers that Jason  
6 was acting aggressively.

7           83.     Jason denied this to the officers and explained what had happened.

8           84.     Officer Scott then told Jason that they were not arresting Plaintiffs, but that  
9 because Plaintiffs had trespassed on private property they were going to give them a "warning."

10          85.     Officer Schaier asked Jason if he could search him.

11          86.     Jason consented to the search but told Officer Schaier that the Security Guards  
12 had searched him without asking for consent.

13          87.     Officer Schaier told Jason that the Security Guards could do whatever they  
14 wanted because Plaintiffs were on private property.

15          88.     Defendant Metro Officers then presented Sebastian with a misdemeanor trespass  
16 warning and told him that it is was not a ticket and that he had to sign it.

17          89.     Jason was at that time in another room, but saw the piece of paper presented to his  
18 brother, Sebastian.

19          90.     Jason began yelling from the other room for his brother not to sign the piece of  
20 paper.

21          91.     After approximately five minutes, Sebastian signed the misdemeanor trespass  
22 warning.

1           92. Defendant Metro Officers then attempted to have Jason sign a misdemeanor  
2 warning.

3           93. Jason refused to sign the document, explaining that he did not want to sign it  
4 because he had not been trespassing.  
5

6           94. Officer Schaier then told Jason that if he didn't sign the document they would  
7 take him to jail and he would have to talk to a judge.

8           95. Officer Scott then summoned Officer Schaier away from Jason and they spoke  
9 privately.  
10

11           96. When Defendant Metro Officers returned, they removed the handcuffs from Jason  
12 and told him to put his hands on his head.

13           97. Plaintiffs were then given back their seized property.

14           98. Three Defendant Security Guards then walked Plaintiffs out the back of Harrah's  
15 Casino.  
16

17           99. Upon information and belief, these three Defendant Security Guards were named  
18 "Kevin," "Eli," and "Paul."

19           100. Defendant Security Guards informed Plaintiffs that if they passed in front of the  
20 Venetian again they would arrest them.  
21

22           101. Plaintiffs asked if they could use the sidewalks to pass.

23           102. The security guards then said that Plaintiffs could use the sidewalk to leave, but  
24 they must leave quickly, and told them that the security guards would arrest them if they stopped.  
25

26           103. Jason has back and shoulder problems.

27           104. After having been handcuffed with his hands behind his back for over an hour,  
28 Jason's right shoulder hurt and he could not use his right arm for three days.

1           105. Jason's back was also hurt from the experience of sitting handcuffed and strapped  
2 to a chair for an hour.

3           106. An hour after the removal of his wrist watch from under the handcuffs, Sebastian  
4 still had marks on his wrist where the watch was pressed into the skin.

5           107. Plaintiffs were both traumatized by the incident.

6           108. Plaintiffs both experienced emotional distress injuries from the incident.

7           109. Plaintiffs are both afraid to go back to the sidewalk in front of the Venetian and  
8 perform.

9           110. Upon information and belief, at that time, neither Defendant Metro Officer  
10 attempted to confirm whether Plaintiffs had in fact committed a misdemeanor trespass.

11           111. Upon information and belief, at that time, neither Defendant Metro Officer made  
12 a probable cause determination as to whether Plaintiffs had committed a crime.

13           112. Defendant Security Guards sought assistance and affirmation, and cooperated  
14 with Defendant Metro Officers in the detention and search of Plaintiffs.

15           113. Upon information and belief, Venetian security personnel have a policy and  
16 practice of asserting that the sidewalk in front of the Venetian is not a public forum and that the  
17 Venetian and its employees may detain individuals engaged in protected expression on the public  
18 forum sidewalks.

19           114. Upon information and belief, Venetian security personnel have a policy and  
20 practice of arresting, detaining, searching, ejecting, and excluding individuals from the  
21 public forum sidewalk in front of the Venetian.

22           115. Upon information and belief, Venetian security personnel have a policy and  
23 practice of soliciting the approval and assistance of Metro in both asserting that the sidewalk in  
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front of the Venetian is not a public forum and in affirming their practice of arresting, detaining, searching, ejecting, and excluding people from the public forum sidewalk in front of the Venetian.

116. Upon information and belief, Metro has a policy and practice of encouraging and assisting the Venetian in its false claims that the sidewalk in front of the Venetian is not a public forum, and that it can detain individuals engaged in protected expression on the public forum sidewalks.

117. Upon information and belief, Metro has a policy and practice of accepting the assertions of casino security personnel with respect to alleged trespassers, without making independent determinations as to whether a crime has, in fact, been committed.

118. Upon information and belief, Defendant Sheriff Gillespie has failed to instruct or implement policies designed to protect against constitutional violations by officers, such as those committed by Defendants Metro Officers Scott and Schaier against Plaintiffs.

119. Upon information and belief, Defendant the Venetian has failed to implement policies and procedures designed to prevent wrongful acts by its employees such as those committed by Defendant Security Guards against Plaintiffs.

## **V. CAUSES OF ACTION**

FIRST CAUSE OF ACTION  
VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE  
CONSTITUTION OF THE UNITED STATES  
UNDER 42 U.S.C. § 1983  
(RIGHT TO FREE SPEECH AND EXPRESSION)  
(Against All Defendants)

120. Plaintiffs incorporate paragraphs 1 through 119 of this Complaint as if fully set forth in this section.

1           121. Defendants acted under color of law, and their actions violated Plaintiffs' rights to  
2 freedom of speech and expression as guaranteed by the First and Fourteenth Amendments of the  
3 U.S. Constitution. Defendants falsely asserted that the sidewalk in front of the Venetian is not a  
4 public forum and subjected Plaintiffs to private property rules of conduct and laws governing  
5 private property, despite the fact that the sidewalks abutting the Strip and in front of the Venetian  
6 Hotel are a public forum.  
7

8           122. Defendants' actions of detaining and citing Plaintiffs violated Plaintiffs' rights to  
9 freedom of speech and expression as guaranteed by the First and Fourteenth Amendments of the  
10 U.S. Constitution.  
11

12           123. Defendants Metro and Sheriff Gillespie are liable because at all relevant times  
13 they were responsible for making and enforcing policies with respect to officer interactions with  
14 casino security personnel, and ensuring that officers were aware of the relevant law with respect  
15 to public and private property, and Defendants Metro and Sheriff Gillespie failed to do so.  
16

17           124. Defendant the Venetian is liable because at all relevant times it was responsible  
18 for making and enforcing policies with respect to the actions of Venetian security guards and  
19 personnel and for making them aware of the actual boundaries of their authority and the legal  
20 status of the Venetian's property, and Defendant the Venetian failed to do so.  
21

22           125. As a direct and proximate result of Defendants' violations of the First  
23 Amendment, Plaintiffs have suffered, are suffering, and will continue to suffer damages in an  
24 amount subject to proof, and Plaintiffs are entitled to: injunctive and declaratory relief against  
25 Defendant Metro and Defendant the Venetian, as well as their employees and agents; attorney's  
26 fees and costs from Defendants, and monetary, compensatory, and punitive damages from  
27 Defendants.  
28



127. Defendants acted under color of law, and their actions violated Plaintiffs' rights to be free from unlawful arrest as guaranteed by the Fourth and Fourteenth Amendments of the U.S. Constitution. Plaintiffs were wrongfully arrested and detained by Defendant Security Guards who claimed legal authority to do so, as well as sought and received approval and assistance from Defendant Metro in doing so. Further, Defendant Metro Officers arrested, detained, and cited Plaintiffs for trespass on private property, when Plaintiffs were on a public forum sidewalk, while Plaintiff Jason was engaged in protected expression.

129. Defendant the Venetian is liable because at all relevant times it was responsible for making and enforcing policies with respect to the actions of Venetian security guards and personnel and for making them aware of the actual boundaries of their authority and the legal status of the Venetian's property, as well as their authority to detain individuals, and Defendant the Venetian failed to make and enforce such policies.

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1 Defendant Metro and Defendant the Venetian, as well as their employees and agents; attorney's  
2 fees and costs from Defendants, and monetary, compensatory, and punitive damages from  
3 Defendants.  
4

5 THIRD CAUSE OF ACTION  
6 VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE  
7 CONSTITUTION OF THE UNITED STATES  
8 UNDER 42 U.S.C. § 1983  
9 (RIGHT TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE)  
10 (Against All Defendants)

11 131. Plaintiffs incorporate paragraphs 1 through 130 of this Complaint as if fully set  
12 forth in this section.

13 132. Defendants acted under color of law, and violated Plaintiffs' rights to be free from  
14 unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments of  
15 the U.S. Constitution. Defendant Security Guards searched the persons and possessions of  
16 Plaintiffs claiming legal authority to do so, and sought and received the approval and assistance  
17 of Defendant Metro in doing so. Defendant Metro Officers frisked and patted down Plaintiffs  
18 without reasonable belief that Plaintiffs committed a crime.

19 133. Defendants Metro and Sheriff Gillespie are liable because at all relevant times  
20 they were responsible for making and enforcing policies with respect to requests for assistance  
21 by casino security personnel and ensuring that officers only aid or affirm actions of casino  
22 security personnel when they act legally, and Defendants Metro and Sheriff Gillespie failed to  
23 make and enforce such policies. Moreover, Defendants Metro and Sheriff Gillespie are liable  
24 because at all relevant times they were responsible for making and enforcing policies with  
25 respect to Defendant Metro Officers' execution of frisks and searches and ensuring that such  
26 searches are conducted within the parameters of the law, and Defendants Metro and Gillespie  
27 failed to do so.  
28

1        134. Defendant the Venetian is liable because at all relevant times it was responsible  
2 for making and enforcing policies with respect to the actions of Venetian security guards and  
3 personnel and for making them aware of the actual boundaries of their authority and the legal  
4 status of the Venetian's property, as well as their authority to search individuals and seize  
5 individuals' property, and Defendant the Venetian failed to do so.

7        135. As a direct and proximate result of Defendants' violations of the Fourth  
8 Amendment, Plaintiffs have suffered, are suffering, and will continue to suffer damages in an  
9 amount subject to proof, and Plaintiffs are entitled to: injunctive and declaratory relief against  
10 Defendant Metro and Defendant the Venetian, as well as their employees and agents; attorney's  
11 fees and costs from Defendants, and monetary, compensatory, and punitive damages from  
12 Defendants.  
13

14  
15                                FOURTH CAUSE OF ACTION  
16                                VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE  
17                                CONSTITUTION OF THE UNITED STATES  
18                                UNDER 42 U.S.C. § 1983  
19                                (RIGHT TO BE FREE FROM UNLAWFUL DETENTION)  
20                                (Against the Venetian and Defendant  
21                                Security Guards, as Individuals)

22        136. Plaintiffs incorporate paragraphs 1 through 135 of this Complaint as if fully set  
23 forth in this section.

24        137. Defendant the Venetian and Defendant Security Guards acted under color of law,  
25 and violated Plaintiffs' rights to be free from unlawful detention as guaranteed by the Fourth and  
26 Fourteenth Amendments of the U.S. Constitution. Defendant Security Guards seized and  
27 subsequently detained Plaintiffs for several hours claiming legal authority to do so, and sought  
28 and received the approval and assistance of Metro in doing so.

1           138. Defendant Security Guards' actions in detaining Plaintiffs were unreasonable and  
2 violated their rights to be free from unlawful detention as guaranteed by the Fourth and  
3 Fourteenth Amendments of the U.S. Constitution.  
4

5           139. Defendant the Venetian is liable because at all relevant times it was responsible  
6 for making and enforcing policies with respect to the actions of Venetian security guards and  
7 personnel and for making them aware of the actual boundaries of their authority and the legal  
8 status of the Venetian's property, as well as their authority to seize and detain individuals, and  
9 Defendant the Venetian failed to do so.  
10

11           140. As a direct and proximate result of Defendants' violations of the Fourth  
12 Amendment, Plaintiffs have suffered, are suffering, and will continue to suffer damages in an  
13 amount subject to proof, and Plaintiffs are entitled to: injunctive and declaratory relief against  
14 Defendant the Venetian and their employees and agents; attorney's fees and costs from  
15 Defendant Security Guards and Defendant the Venetian, and monetary, compensatory and  
16 punitive damages from these defendants.  
17

18                                   FIFTH CAUSE OF ACTION  
19                           CIVIL CONSPIRACY TO VIOLATE PLAINTIFFS' CIVIL RIGHTS  
20                                   UNDER 42 U.S.C. § 1983  
  (Against All Defendants)

21           141. Plaintiffs incorporate paragraphs 1 through 140 of this Complaint as if fully set  
22 forth in this section.  
23

24           142. Defendants acted under color of law, and Defendants engaged in a civil  
25 conspiracy to violate Plaintiffs' civil rights to freedom of speech, movement, and rights to be  
26 free from unlawful arrest and unreasonable search and seizure, as well as to violate Plaintiffs'  
27 due process rights.  
28

1           143. Upon information and belief, Defendant Metro routinely responds to calls from  
2 private security forces employed by Defendant the Venetian, and routinely fails to make an  
3 independent determination of probable cause to arrest. Upon information and belief, Defendants  
4 Metro and the Venetian have an understanding and meeting of the minds that the Venetian  
5 security personnel may regulate free speech activity on public forum sidewalks contrary to law  
6 and otherwise unlawfully expel individuals from sidewalks designated as a public forum for  
7 freedom of expression purposes, and that Metro will respond by arresting or citing those  
8 individuals detained by the Venetian security officers, without making an independent  
9 determination of probable cause, which deprives individuals of their constitutional rights.  
10

11           144. Defendants Metro and Sheriff Gillespie are liable because they have instituted  
12 policies, practices, or customs that permit the Venetian and its employees to unlawfully expel or  
13 detain individuals engaged in protected activity on public forum sidewalks, and that require or  
14 permit its officers to respond with arrest or citation pursuant to such detention. Furthermore,  
15 Defendants Metro and Sheriff Gillespie at all relevant times were responsible for making and  
16 enforcing policies ensuring that Defendant Metro Officers make an independent determination of  
17 probable cause prior to arrest or citation. However, upon information and belief, Defendants  
18 engaged in an understanding that such independent determination was not required pursuant to a  
19 detention by security personnel for the Venetian, which deprived individuals of their  
20 constitutional rights.  
21

22           145. Defendant the Venetian is liable because, contrary to federal court decisions by  
23 which it is bound, it has instituted practices, policies or procedures that require or permit its  
24 security personnel to unlawfully expel or detain individuals engaged in protected activity on  
25 public forum sidewalks. Defendant the Venetian, upon information and belief, has engaged in an  
26  
27  
28

1 understanding or meeting of the minds with Defendants Metro that the Venetian security  
2 personnel may regulate free speech activity on public forum sidewalks contrary to law and  
3 otherwise unlawfully expel individuals from sidewalks designated as a public forum for freedom  
4 of expression purposes, and that Metro will respond by arresting or citing those individuals  
5 detained by the Venetian security, without making an independent determination of probable  
6 cause, which deprive individuals of their constitutional rights.

8 146. As a direct and proximate result of Defendants' civil conspiracy to violate  
9 Plaintiffs' civil rights, Plaintiffs have suffered, are suffering, and will continue to suffer damages  
10 in an amount subject to proof, and Plaintiffs are entitled to: injunctive and declaratory relief  
11 against Defendant Metro and Defendant the Venetian, as well as their employees and agents;  
12 attorney's fees and costs from Defendants, and monetary, compensatory, and punitive damages  
13 from Defendants.

15  
16 SIXTH CAUSE OF ACTION  
17 VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE  
18 UNITED STATES  
19 UNDER 42 U.S.C. § 1983  
20 (SUBSTANTIVE DUE PROCESS)  
21 (Against All Defendants)

22 147. Plaintiffs incorporate paragraphs 1 through 146 of this Complaint as if fully set  
23 forth in this section.

24 148. Defendants acted under color of law, and violated Plaintiffs' substantive due  
25 process rights to liberty and free movement as guaranteed by the Fourteenth Amendment of the  
26 U.S. Constitution. Defendant Security Guards' detention of Plaintiffs with the assistance and  
27 approval of Defendant Metro, and Metro's continued detention of Plaintiffs violated their rights  
28 to liberty and freedom of movement and locomotion.



1           149. Defendants' actions were in violation and flagrant disregard of established law as  
2 set out in Nevada District Court and Ninth Circuit Appellate Court decisions, in which the same  
3 defendants were even named parties, which is outrageous and shocks the conscience.

4  
5           150. Defendants Metro and Sheriff Gillespie are liable because at all relevant times  
6 they were responsible for making and enforcing policies with respect to requests for assistance  
7 by casino security personnel, and ensuring that officers only aid or affirm actions of casino  
8 security personnel when they act legally. Furthermore, Defendants Metro and Sheriff Gillespie  
9 at all times relevant were responsible for making and enforcing policies ensuring that Defendant  
10 Metro Officers do not violate the substantive due process rights of individuals. Defendants  
11 Metro and Sheriff Gillespie failed to make and enforce such policies.

12  
13           151. Defendant the Venetian is liable because at all relevant times it was responsible  
14 for making and enforcing policies with respect to the actions of Venetian security guards and  
15 personnel and for making them aware of the actual boundaries of their authority and the legal  
16 status of the Venetian's property, as well as their authority to deprive individuals of their liberty  
17 and freedom of movement, and Defendant the Venetian failed to do so.

18  
19           152. As a direct and proximate result of Defendants' violations of the Fourteenth  
20 Amendment, Plaintiffs have suffered, are suffering, and will continue to suffer damages in an  
21 amount subject to proof, and Plaintiffs are entitled to: injunctive and declaratory relief against  
22 Defendant Metro and Defendant the Venetian, as well as their employees and agents; attorney's  
23 fees and costs from Defendants, and monetary, compensatory, and punitive damages from  
24 Defendants.  
25  
26  
27  
28

1                                    SEVENTH CAUSE OF ACTION  
2                                    VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTIONS OF THE  
3                                    UNITED STATES  
4                                    UNDER 42 U.S.C. § 1983  
5                                    (PROCEDURAL DUE PROCESS)  
6                                    (Against Metro, Sheriff Gillespie and  
7                                    Defendant Metro Officers)

8            153.    Plaintiffs incorporate paragraphs 1 through 152 of this Complaint as if fully set  
9            forth in this section.

10           154.    Defendants Metro and Metro Officers acted under color of law, and violated  
11           Plaintiffs' rights to be free from deprivation of their rights under the U.S. Constitution without  
12           due process of law. Defendant Metro Officers impinged on Plaintiffs' interests in moving freely  
13           on public forum sidewalks without the threat of criminal trespass citations by issuing  
14           misdemeanor citation warnings for use of public forum sidewalks and improperly enforcing the  
15           Venetian's claims of privilege to evict people from public forum sidewalks, and in doing so  
16           Defendants Metro and Metro Officers deprived Plaintiffs of their procedural due process rights  
17           ensured by the Fourteenth Amendment to the U.S. Constitution.

18           155.    Defendant Metro's policy and practice of enforcing claims by casinos on the Strip  
19           against individuals, such as Plaintiffs, risks, and does cause, wrongful deprivation of individuals'  
20           liberty interests in using the public forum sidewalks on the Strip.

21           156.    Defendants Metro and Sheriff Gillespie are liable because at all relevant times  
22           they were responsible for making and enforcing policies with respect to requests for assistance  
23           by casino security personnel and ensuring that officers only aid or affirm actions of casino  
24           security personnel when they act legally, and Defendants Metro and Sheriff Gillespie failed to  
25           make and enforce such policies. Further, Defendants Metro and Sheriff Gillespie are liable  
26           because at all relevant times they were responsible for making and enforcing policies ensuring  
27             
28

1 that Defendant Metro Officers do not issue misdemeanor citations where they have no legal basis  
2 for doing so.

3 157. As a direct and proximate result of Defendant Metro, Defendant Sheriff Gillespie,  
4 and Defendants Metro Officers' violations of the Fourth Amendment, Plaintiffs have suffered,  
5 are suffering, and will continue to suffer damages in an amount subject to proof, and Plaintiffs  
6 are entitled to: injunctive and declaratory relief against Defendant Metro; attorney's fees and  
7 costs from these defendants, and monetary, compensatory, and punitive damages from these  
8 defendants.  
9

10  
11 EIGHT CAUSE OF ACTION  
12 FALSE IMPRISONMENT UNDER N.R.S. 41.130  
13 (Against the Venetian and Defendant  
14 Security Guards, as Individuals)

15 158. Plaintiffs incorporate paragraphs 1 through 157 of this Complaint as if fully set  
16 forth in this section.

17 159. Defendant Security Guards each intended to and confined Plaintiffs within the  
18 Venetian Hotel, their actions resulted in Plaintiffs being so detained, and Plaintiffs were both  
19 aware of and harmed by the confinement.

20 160. Defendant the Venetian is liable because Defendant Security Guards were at all  
21 relevant times in the employ of the Venetian and the Venetian is responsible for Defendant  
22 Security Guards' conduct. Defendant Security Guards were not acting independently, committed  
23 the wrongful acts during the course of their official duties as security guards, and such actions  
24 were reasonably foreseeable where the Venetian maintained a policy that its employees could  
25 detain individuals engaged in lawful, protected activity on public forum sidewalks.  
26

27 161. As a direct and proximate result of Defendants' false imprisonment of Plaintiffs,  
28 Plaintiffs have suffered, are suffering, and will continue to suffer damages in an amount subject

1 to proof and, pursuant to N.R.S. 41.140, Plaintiffs are entitled to: actual and foreseeable  
2 monetary damages from Defendant Security Guards and Defendant the Venetian; and attorney's  
3 fees and costs from these defendants.

4  
5 NINTH CAUSE OF ACTION  
6 BATTERY UNDER N.R.S. 41.130  
7 (Against the Venetian and Defendant  
8 Security Guards, as Individuals)

9 162. Plaintiffs incorporate paragraphs 1 through 161 of this Complaint as if fully set  
10 forth in this section.

11 163. Defendant Security Guards each intentionally used physical force upon Plaintiffs  
12 by grabbing, handcuffing, physically moving, and strapping Plaintiffs to chairs. Defendant  
13 Security Guards did so in a harmful and offensive manner, all without the consent and against  
14 the will of Plaintiffs.

15 164. Those Defendant Security Guards who did not actually use physical force on  
16 Plaintiffs are liable for encouraging, aiding and abetting other Security Guards in their battery of  
17 Plaintiffs.

18 165. Defendant the Venetian is liable because Defendant Security Guards were at all  
19 relevant times in the employ of the Venetian and the Venetian is responsible for Defendant  
20 Security Guards' conduct. Defendant Security Guards were not acting independently, committed  
21 the wrongful acts during the course of their official duties as security guards, and such actions  
22 were reasonably foreseeable where the Venetian maintained a policy that public forum sidewalks  
23 were not a public forum.

24 166. As a direct and proximate result of Defendants' battery of Plaintiffs, Plaintiffs  
25 have suffered, are suffering, and will continue to suffer damages in an amount subject to proof  
26 and, pursuant to N.R.S. 41.130, Plaintiffs are entitled to compensatory damages from Defendant  
27  
28

1 Security Guards and Defendant the Venetian; and attorney's fees and costs from these  
2 defendants.

3  
4 TENTH CAUSE OF ACTION  
5 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
6 UNDER N.R.S. 41.130  
7 (Against the Venetian and Defendant  
8 Security Guards, as Individuals)

9  
10 167. Plaintiffs incorporate paragraphs 1 through 166 of this Complaint as if fully set  
11 forth in this section.

12 168. Defendant Security Guards intentionally caused Plaintiffs to suffer severe  
13 emotional distress by their outrageous conduct of harassing, detaining, searching, and threatening  
14 Plaintiffs. Defendant Security Guards conducted themselves with reckless disregard for  
15 inflicting emotional distress on Plaintiffs.

16 169. Defendant the Venetian is liable because Defendant Security Guards were at all  
17 relevant times in the employ of the Venetian and the Venetian is responsible for Defendant  
18 Security Guards' conduct. Defendant Security Guards were not acting independently, committed  
19 the wrongful acts during the course of their official duties as security guards, and such actions  
20 were reasonably foreseeable where the Venetian maintained a policy that public forum sidewalks  
21 were not a public forum.

22 170. As a direct and proximate result of Defendants' infliction of emotional distress  
23 upon Plaintiffs, Plaintiffs have suffered, are suffering, and will continue to suffer damages in an  
24 amount subject to proof and, pursuant to N.R.S. 41.130, Plaintiffs are entitled to compensatory  
25 damages from Defendant Security Guards and Defendant the Venetian; and attorney's fees and  
26 costs from these defendants.  
27  
28

ELEVENTH CAUSE OF ACTION  
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS  
UNDER N.R.S. 41.130  
(Against the Venetian and Defendant  
Security Guards, as Individuals)

171. Plaintiffs incorporate paragraphs 1 through 170 of this Complaint as if fully set forth in this section.

172. Defendants owed Plaintiffs a duty not to detain, assault, batter, or unlawfully imprison them, as individuals engaged in lawful, protected activity on property owned by Defendant the Venetian, and breached same.

173. Defendants' breach of this duty inflicted severe emotional distress upon Plaintiffs.

174. Defendants' breach of this duty inflicted physical injury upon Plaintiffs.

175. Defendant the Venetian is liable because Defendant Security Guards were at all relevant times in the employ of the Venetian and the Venetian is responsible for Defendant Security Guards' conduct. Defendant Security Guards were not acting independently, committed the wrongful acts during the course of their official duties as security guards, and such actions were reasonably foreseeable where the Venetian maintained a policy that public forum sidewalks were not a public forum.

176. As a direct and proximate result of Defendants' infliction of emotional distress upon Plaintiffs, Plaintiffs have suffered, are suffering, and will continue to suffer damages in an amount subject to proof and, pursuant to N.R.S. 41.130, Plaintiffs are entitled to compensatory damages from Defendant Security Guards and Defendant the Venetian; and attorney's fees and costs from these defendants.



TWELFTH CAUSE OF ACTION  
NEGLIGENT TRAINING, SUPERVISION, AND RETENTION  
UNDER N.R.S. 41.130  
(Against the Venetian Only)

177. Plaintiffs incorporate paragraphs 1 through 176 of this Complaint as if fully set forth in this section.

178. Defendant the Venetian owed Plaintiffs a duty to use reasonable care in the training, supervision, and retention of their employees to make sure that the employees are fit for their positions by implementing policies and procedures designed to prevent wrongful acts by its employees, such as those committed by Defendant Security Guards against Plaintiffs, and breached the same.

179. Defendant the Venetian's breach of this duty caused Plaintiffs to suffer severe emotional distress.

180. Defendant the Venetian's breach of this duty caused Plaintiffs to suffer physical injury.

181. Defendant the Venetian is liable because Defendant Security Guards were at all relevant times in the employ of the Venetian and the Venetian is responsible for Defendant Security Guards' conduct. Defendant Security Guards were not acting independently, committed the wrongful acts during the course of their official duties as security guards, and such actions were reasonably foreseeable considering the nature and scope of their employment as security personnel where the Venetian maintained a policy that public forum sidewalks were not a public forum.

182. As a direct and proximate result of Defendant the Venetian's negligent training, supervision and retention of Defendant Security Guards, Plaintiffs have suffered, are suffering, and will continue to suffer damages in an amount subject to proof and, pursuant to N.R.S.

1 41.130, Plaintiffs are entitled to compensatory damages from Defendant the Venetian; and  
2 attorney's fees and costs from this defendant.

3  
4 **VI. PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiffs seek judgment as follows:

6 a. A declaration that Defendant the Venetian's policies and practices of regulating,  
7 ejecting, or detaining individuals engaged in lawful, protected activity on public forum sidewalks  
8 is unlawful and that the harassment, arrest, detainment, search, and other unlawful treatment of  
9 Plaintiffs based upon their being on public forum sidewalks violated their rights to free speech  
10 and expression under the free speech clause of the First Amendment to the U.S. Constitution,  
11 right to be free from unlawful arrest under the Fourth Amendment to the U.S. Constitution, rights  
12 to be free from unreasonable searches and seizures under the Fourth Amendment to the U.S.  
13 Constitution, right to be free from unlawful detention under the Fourth Amendment of the U.S.  
14 Constitution, substantive due process rights to freedom of movement and liberty under the  
15 Fourteenth Amendment to the U.S. Constitution;  
16  
17

18 b. A declaration that Defendant Metro and Defendant Sheriff Gillespie's failure to  
19 make or enforce policies and practices with respect to wrongful actions of Defendant the  
20 Venetian and personnel in regulating, ejecting or detaining individuals engaged in lawful,  
21 protected activity on public forum sidewalks is unlawful and that the harassment, arrest,  
22 detainment, search, and other unlawful treatment of Plaintiffs, including issuance of, and  
23 attempts to issue, misdemeanor citations based upon their being on public forum sidewalks  
24 violated their rights to free speech and expression under the free speech clause of the First  
25 Amendment to the U.S. Constitution, right to be free from unlawful arrest under the Fourth  
26 Amendment to the U.S. Constitution, rights to be free from unreasonable searches and seizures  
27  
28

1 under the Fourth Amendment to the U.S. Constitution, substantive due process rights to freedom  
2 of movement and liberty under the Fourteenth Amendment to the U.S. Constitution, and  
3 procedural due process rights under the Fourteenth Amendment to the U.S. Constitution;  
4

5 c. A permanent injunction preventing Defendants and their employees and agents  
6 from violating the constitutional civil rights of individuals based upon the false assertion that  
7 Defendants may regulate, eject, detain, cite, arrest, or otherwise interfere with individuals  
8 engaged in lawful, protected activity on public forum sidewalks;  
9

10 d. A permanent injunction preventing Defendant Metro from further engaging in a  
11 policy and practice of issuing citations and making arrests based on the mere assertions of casino  
12 security personnel;

13 e. Damages and punitive damages to be determined at the time of trial;

14 f. An award of attorney's fees and expenses under 42 U.S.C. § 1988(b); and,

15 g. Any further relief the Court deems appropriate.  
16

17 **VII. DEMAND FOR JURY TRIAL**

18 Plaintiffs hereby demand a jury trial on all causes of action.

19 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of June, 2010.  
20

21  
22 /s/ Margaret A. McLetchie  
23 Margaret McLetchie, Esq.  
24 Staff Attorney, ACLU of Nevada  
25 Nev. Bar. No. 10931  
26 732 So. Sixth Street, Suite 200A  
27 Las Vegas, Nevada 89101  
28

Attorney for Plaintiffs

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Jason A. Perez-Morciglio and Sebastian Perez-Morciglio,

(b) County of Residence of First Listed Plaintiff Clark

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

ACLU of Nevada, 732 S. 6th St., Ste. 200A, Las Vegas Nevada  
89101;702-366-9109**DEFENDANTS**

Las Vegas Metropolitan Police Department; Sheriff Douglas Gillespie (individually and in his official capacity as Sheriff of +

County of Residence of First Listed Defendant Clark

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. Sect. 1983Brief description of cause:  
Violation of Plaintiff's rights under the First, Fourth and Fourteenth Amendment**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/10/2010

SIGNATURE OF ATTORNEY OF RECORD

/s/ Margaret A. McLetchie

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_