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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LARIME TAYLOR, an individual,
Plaintiff,
vs.

Case. No.:

COMPLAINT

[JURY TRIAL DEMANDED]

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, in its official capacity;
SHERIFF JOSEPH LOMBARDO, in his
official capacity as Sheriff of the Las Vegas
Metropolitan Police Department; OFFICER
YOUNG, as an individual and in his capacity
as a Las Vegas Metropolitan Police
Department Officer; OFFICER KRAVITZ,
as an individual and in his capacity as a Las
Vegas Metropolitan Police Department
Officer; OFFICER DARRELL LEE
DAVIES, as an individual and in his official
capacity as a Las Vegas Metropolitan Police
Department Officer; OFFICER WESTON
FERGUSON, as an individual and in his
official capacity as a Las Vegas Metropolitan
Police Department Officer; OFFICER
THOMAS ALBRIGHT, as an individual and
in his official capacity as a Las Vegas
Metropolitan Police Department; OFFICER
JANETTE GUTIERREZ, as an individual
and in her official capacity as a Las Vegas
Metropolitan Police Department Officer;
OFFICER CLINT OWENSBY, as an
individual and in his official capacity as a
Las Vegas Metropolitan Police Department;
OFFICER R. THORNE, as an individual and

1 in his official capacity as a Las Vegas
2 Metropolitan Police Department Officer,

3 Defendants.

4 Plaintiff Larime Taylor, by and through his counsel of record, hereby files this
5 Complaint for damages pursuant to 42 U.S.C. § 1983 (civil action for deprivation of rights),
6 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1367(a) (supplemental
7 jurisdiction), and 28 U.S.C. § 2201 (creation of remedy).

8 **NATURE OF THE ACTION**

9 Plaintiff Larime Taylor is an artist and street performer. For the past seven years,
10 Mr. Taylor, who was born with a congenital condition which limits the use of his arms and
11 legs, has made his living as a street performer, working in front of the Bellagio Hotel and
12 Casino on the Las Vegas Strip (in the Las Vegas Resort District), drawing images of his own
13 imaginings using his mouth, a small portable table which he uses as an easel, and a limited
14 number of art supplies..

15 Mr. Taylor carefully engaged in his street performance to avoid blocking or
16 impeding the flow of pedestrian traffic in front of the Bellagio fountains. The Clark County,
17 Nevada, Code of Ordinances (the “Clark County Code” or “CCC”) permits his conduct, and
18 the First Amendment of the United States Constitution protects Mr. Taylor’s right to engage
19 in free expression on the Strip—as the Las Vegas Metropolitan Police Department (“Metro”)
20 well knows. Despite these facts, starting in or around April 2017, Metro officers began
21 harassing Mr. Taylor and violating his First Amendment rights, citing him several times for
22 obstructive use of a public sidewalk pursuant to CCC § 16.11.070, leading to multiple
23 criminal matters against him—each of which has been resolved in his favor.

24 This is an action under 42 U.S.C. § 1983 seeking to address (1) the
25 unconstitutionality of the Code as applied to Mr. Taylor; (2) the unconstitutional overbreadth
26 and vagueness of the Code; (3) Defendant Metro’s, Officer Young’s, Officer Kravitz’s,
27 Officer Darrell Lee Davies’s, Officer Weston Ferguson’s, Officer Thomas Albright’s,
28 Officer Janette Gutierrez’s, Officer Clint Owensby’s, and Officer R. Thorne’s violations of
Mr. Taylor’s rights under the First, Fourth, and Fourteenth Amendments to the United States

1 Constitution, including his right to equal protection under the laws; (4) Defendants'
 2 violations of Mr. Taylor's statutory rights under the Americans with Disabilities Act; and,
 3 (5) Defendant Metro's unlawful policy and practice of permitting its officers to harass, cite,
 4 and seize property from Mr. Taylor for engaging in protected street performance which
 5 violated Mr. Taylor's rights to free speech, free expression, and to be free from unlawful
 6 seizures under the United States and Nevada Constitutions.

7 This action also seeks to address Mr. Taylor's state tort claims against Defendants
 8 for negligent training and supervision, as well as conversion. This Court has supplemental
 9 jurisdiction over the state law claims.

10 Mr. Taylor also seeks a permanent injunction and declaratory relief to redress
 11 Defendants' willful, deliberate, and clear constitutional violations, and the harm—which is
 12 ongoing and irreparable—that he has suffered as a result. Furthermore, Mr. Taylor is entitled
 13 to damages, costs, attorney's fees, punitive damages, and any other relief this Court deems
 14 appropriate as a victim of civil rights violations and as a victim of tort damages.

15 **JURISDICTION AND VENUE**

16 1. Jurisdiction is conferred on this Court by U.S.C. § 1331 *et seq.* for civil
 17 rights claims arising under the Constitution and laws of the United States. Pursuant to § 1331,
 18 this Court has original subject matter jurisdiction over Mr. Taylor's claims brought under 42
 19 U.S.C. § 1983.

20 2. This Court has jurisdiction over claims arising under the laws of the State
 21 of Nevada pursuant to the supplemental jurisdiction provided for by 28 U.S.C. § 1367(a).

22 3. The prayer for relief is predicated on 28 U.S.C. § 2201 and Fed. R. Civ. P.
 23 38. This Court has jurisdiction to award Mr. Taylor damages pursuant to 42 U.S.C. § 1983
 24 and Nev. Rev. Stat. § 41.130. Authorization for the request of attorney's fees and costs is
 25 conferred by 42 U.S.C. § 1988(b).

26 4. The Defendants acted, purported to act, and/or pretended to act in the
 27 performance of their official duties, and thus Defendants acted under color of law and are
 28 subject to liability as state actors pursuant to 42 U.S.C. § 1983.

6. The acts or omissions giving rise to Mr. Taylor's claims all occurred in Clark County, Nevada, and all parties reside or operate in Clark County, Nevada. Thus, pursuant to 28 U.S.C. § 1391(b)(2) and (c), venue is proper in the United States District Court for the District of Nevada.

7. During all relevant times herein, Plaintiff Larime Taylor was and is an artist and street performer who resides in Clark County, Nevada.

8. Defendant Metro is the law enforcement agency for Clark County and the City of Las Vegas. Defendant Metro is sued in its official capacity.

9. Upon information and belief, Defendant Metro is aware of and has either explicitly or implicitly condoned or created a policy and practice of allowing Metro officers to enforce Clark County Code (“Clark County Code” or “CCC”) § 16.11.090 arbitrarily and/or intentionally to chill constitutionally protected street performances in and around the Las Vegas Resort District.

10. The Code does not criminalize street performances in and around the Las Vegas Resort District.

11. Upon information and belief, Defendant Metro has a policy and practice of allowing its officers to violate the law with impunity and has created or failed to address a culture at Metro that its officers are above the law.

12. Upon information and belief, Defendant Metro has failed to adequately train its officers to refrain from engaging in police misconduct, abusing their position of power, and improperly citing individuals engaged in constitutionally protected street performances.

13. Defendant Joseph Lombardo (“Sheriff Lombardo”) is the Sheriff of Metro, and was the Sheriff of Metro at all relevant times herein. Sheriff Lombardo and all Metro

1 police officers are vested with the authority to enforce both Nevada statutory law and the
2 Clark County Code. Sheriff Lombardo has final policymaking authority for Metro internal
3 policies and is vested with supervisory authority over all Metro officers.

4 14. On information and belief, Sheriff Lombardo is aware of, and has either
5 explicitly or implicitly condoned or created a policy and practice of deliberate indifference
6 toward the constitutional rights of persons engaging in free speech activities, such as artistic
7 performances, on public forum sidewalks.

8 15. On information and belief, despite clearly-established law indicating that
9 the sidewalks on public thoroughfares are public forums, Sheriff Lombardo has failed to
10 implement policies safeguarding citizens' First Amendment rights in these forums and has
11 failed to adequately train his officers to protect citizens' First Amendment rights in these
12 forums.

13 16. Upon information and belief, Defendant Officer Darrell Lee Davies
14 ("Officer Davies") is an officer at Metro.

15 17. Upon information and belief, Officer Young is an officer at Metro.

16 18. Upon information and belief, Officer Kravitz is an officer at Metro.

17 19. Upon information and belief, Officer Weston Ferguson ("Officer
18 Ferguson") is an officer at Metro.

19 20. Upon information and belief, Officer Thomas Albright ("Officer Albright")
20 is an officer at Metro.

21 21. Upon information and belief, Officer Janette Gutierrez ("Officer
22 Gutierrez") is an officer at Metro.

23 22. Upon information and belief, Officer Clint Owensby ("Officer Owensby")
24 is an officer at Metro.

25 23. Upon information and belief, Officer R. Thorne ("Officer Thorne") is an
26 officer at Metro.

27 24. The naming of defendants herein is based upon information and belief. Mr.
28 Taylor reserves his right to name additional defendants and modify his allegations

1 concerning defendants named herein.

2 **STANDING**

3 25. Mr. Taylor is and continues to be directly affected by Defendants' practices
4 and policies of violating the constitutional rights of individuals based upon their exercise of
5 constitutional rights, as set forth more fully herein, and/or other abuses by Defendants acting
6 under color of law.

7 26. An actual case and controversy exists between Mr. Taylor and Defendants
8 concerning their respective rights, privileges, and obligations.

9 **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

10 ***Plaintiff Larime Taylor***

11 27. Mr. Taylor is a street artist who was born with Arthrogryposis multiplex
12 congenita (AMC), a congenital disease that affects the development and mobility of the joints
13 in his arms and legs.

14 28. Because of his disability, Mr. Taylor relies on a wheelchair for mobility.

15 29. Because of his disability, Mr. Taylor has limited use of his arms and hands,
16 and thus draws art using his mouth.

17 30. For the past seven years, Mr. Taylor has been a street performer in the Las
18 Vegas strip, drawing art of his own imaginings using his mouth, a small portable table, and
19 a limited number of art supplies. Mr. Taylor accepts tips and donations, but never charges a
20 fee for the original pieces he creates.

21 31. Mr. Taylor has always set up at the same location: the large sidewalks
22 outside the Bellagio fountains.

23 32. The sidewalk has a guardrail separating pedestrians from vehicle traffic on
24 Las Vegas Boulevard.

25 33. Mr. Taylor positions himself with the back of his wheelchair to the guardrail
26 so that he does not impede the flow of pedestrian traffic on the sidewalk while he is engaged
27 in his performance.

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1 ***History of Litigation Concerning the Las Vegas Resort District***

2 34. For “[t]ime out of mind public streets and sidewalks have been used for
3 public assembly and debate, the hallmarks of a traditional public forum.” *Frisby v. Schultz*,
4 487 U.S. 474, 480 (1988) (quotation omitted). They are the “archetype” of a traditional
5 public forum. *Id.* As the United State Court of Appeals for the Ninth Circuit has explained,
6 “[t]he protections afforded by the First Amendment are nowhere stronger than in streets and
7 parks, both categorized for First Amendment purposes as traditional public fora.” *Berger v.*
8 *City of Seattle*, 569 F.3d 1029, 1035–36 (9th Cir. 2009) (citations omitted). Public sidewalks
9 are also a traditional public forum and are open to the public for expressive activities. *United*
10 *States v. Grace*, 461 U.S. 171, 179 (1983).

11 35. The United States Court of Appeals for the Ninth Circuit has repeatedly
12 specifically found that the sidewalks located within the Las Vegas Resort District are public
13 fora.

14 36. The Ninth Circuit issued its first decision pertaining to the public nature of
15 the sidewalks in the Las Vegas in 1998 in *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136 (9th
16 Cir. 1998.) In that case, the Circuit held that a Clark County Ordinance which prohibited
17 canvassers from distributing leaflets on the sidewalks in the Las Vegas Resort District was
18 facially overbroad and thus unconstitutional on its face. *Id.* at 1140. In so holding, the Circuit
19 noted that there was “no dispute that the Ordinance regulates activities occurring in a public
20 forum.” *Id.* at 1144.

21 37. Three years later, the Ninth Circuit issued another opinion finding that the
22 streets and sidewalks in the Las Vegas Resort District are public fora. *Venetian Casino*
23 *Resort, LLC v. Local Joint Executive Board of Las Vegas*, 257 F.3d 937 (9th Cir. 2001).

24 ***Metro’s Involvement In Litigation Concerning the Strip***

25 38. According to clearly established case law, when a sidewalk performs an
26 essential public function, it is a traditional public forum and its private owner does not have
27 the right to exclude individuals from the sidewalk based upon permissible First Amendment
28 activity. *Perez-Morciglio v. Las Vegas Metropolitan Police Dept.*, 820 F. Supp. 2d 1100,

1 1110 (D. Nev. 2011) (citing *Venetian Casino Resort, L.L.C. v. Local Joint Executive Board*
 2 *of Las Vegas*, 45 F. Supp. 2d 1027, 1036 (D. Nev. 1999)).

3 39. According to clearly established case law, “a thoroughfare sidewalk,
 4 seamlessly connected to public sidewalks at either end and intended for general public use”
 5 is “a public sidewalk, and consequently, a traditional public forum from which [the
 6 sidewalk’s private owners] have no right to exclude members of the public.” *Perez-Morciglio*
 7 *v. Las Vegas Metropolitan Police Dept.*, 820 F. Supp. 2d 1100, 1111 (D. Nev. 2011) (citing
 8 *Venetian Casino Resort, L.L.C. v. Local Joint Executive Board of Las Vegas*, 45 F. Supp. 2d
 9 1027, 1036 (D. Nev. 1999)).

10 40. Metro and its officers have been parties to a number of lawsuits regarding
 11 infringement of free speech rights in the Las Vegas Resort District. For example, on July 9,
 12 2009, two street performers filed suit in federal court alleging constitutional violations after
 13 Metro officers cited them for storing materials or obstructing the sidewalks on the Las Vegas
 14 Strip. *See Banasik et al. v. Clark County et al.*, U.S. Dist. Ct. Case No. 2:09-cv-01242-LDG-
 15 GWF (“*Banasik*”). *Banasik* was resolved pursuant to a settlement agreement between the
 16 parties.

17 41. Just a few years ago, in *Santopietro v. Howell*, 857 F.3d 980 (9th Cir. 2017),
 18 the Ninth Circuit addressed free speech in the Las Vegas Resort District. In that case, the
 19 plaintiff was a street performer who performed as a “sexy cop” on the sidewalks in the Las
 20 Vegas Resort District and was cited by Metro officers for allegedly conducting a business
 21 without a license, a violation of Clark County Code § 6.56.030. The officers’ citation for a
 22 violation of Clark County Code § 6.56.030 was predicated on the fact that the plaintiff
 23 solicited tips in exchange for posing for pictures. *Id.* at 984. In its opinion reversing summary
 24 judgment, the Ninth Circuit reiterated that the sidewalks in the Las Vegas Resort District are
 25 public fora, *id.* at 988, and that performances on public sidewalks are protected under the
 26 First Amendment as expressive activity. *Id.* at 987 (citing *Berger*, 569 F.3d at 1035-36). The
 27 Ninth Circuit also reiterated that the solicitation of tips is “entitled to the same constitutional
 28 protections as traditional speech.” *Id.* at 988 (quoting *ACLU of Nev. v. City of Las Vegas*,

1 466 F.3d 784, 792 (9th Cir. 2006)).

2 ***Clark County Code § 16.11.070***

3 42. The Clark County Code limits individuals' ability to store property on the
4 sidewalks in and around the Las Vegas Resort District. It provides as follows:

5 No equipment, materials, parcels, containers, packages, bundles or other
6 property may be stored, placed or abandoned in or on the public sidewalk.
7 This provision shall not apply to materials or property held or stored in a
8 carry bag or pack which is actually carried by a pedestrian or items such as
9 a musical instrument case or a backpack which is temporarily placed next
10 to a street performer for that street performer's use unless said musical
11 instrument actually obstructs the sidewalk in violation of this chapter.

12 CCC § 16.11.070.

13 43. Thus, the Clark County Code prohibits the storage of materials on a public
14 sidewalk unless the materials are temporarily placed there by a street performer or the street
15 performers' materials are actually obstructing the sidewalk.

16 44. "Street performer" is defined as a member of the general public who
17 engages in any performing act or the playing of any musical instrument, singing or
18 vocalizing, with or without musical accompaniment, and whose performance is not an
19 official part of a sponsored event." CCC § 16.11.020(i).

20 45. Publicly painting is a "performing act" and the First Amendment mandates
21 that street painters be afforded the same rights as performers who sing, dance, or wear
22 costumes and play characters. CCC § 16.11.020(i).

23 46. Maintaining a table, chair, or other "structure" on the sidewalk that does not
24 actually obstruct the sidewalk and is connected to First Amendment activity is expressly
25 excluded from the definition of "obstructive use." CCC § 16.11.020(e)(1) (defining
26 "obstructive use" as "[p]lacing, erecting or maintaining an unpermitted table, chair, booth or
27 other structure upon the public sidewalk, if the placing, erecting, or maintaining of the table,
28 chair, or booth is not protected by the First Amendment or if the placing, erecting, or
maintaining of the table, chair, or booth is protected by the First Amendment but is actually
obstructive").

1 ***History of the Clark County Code***

2 47. The current version of the Clark County Code is the result of civil rights
3 litigation addressing issues very similar to the ones presented in the instant Complaint.

4 48. As noted above, on July 9, 2009, two street performers filed suit in federal
5 court alleging constitutional violations after Metro officers cited them for storing materials
6 or obstructing the sidewalks on the Las Vegas Strip. *See Banasik et al. v. Clark County et*
7 *al.*, U.S. Dist. Ct. Case No. 2:09-cv-01242-LDG-GWF.

8 49. In the course of the litigation, the parties—which included Metro and
9 individual Metro officers as defendants—entered into a Memorandum of Understanding
10 (“MOU”) (attached hereto as **Exhibit (“Exh.”) 1**) in which the parties agreed that street
11 performing is expressive speech or conduct protected by the First Amendment and that street
12 performing was not a violation of, *inter alia*, the provisions of Chapter 16.11 of the Clark
13 County Code of Ordinances. (**Exh. 1** at p. 2, ¶¶ 3-4.)

14 50. As part of the MOU, the parties agreed to pursue various provisions of the
15 Clark County Code, including CCC § 16.11.070. (**Exh. 1**, p. 3 ¶ 1.)

16 51. On November 16, 2010, the Clark County Board of County Commissioners
17 voted to amend Chapter 16.11 of the Clark County Code to include the definition of “street
18 performer” and to clarify that materials can be placed on public sidewalks. (**Exh. 2** (Bill No.
19 11-3-10-4); *see also Exh. 3* (summary of Final Action 2010.11.16) at p. 19.)

20 ***Metro Officers Repeatedly and Improperly Cite Mr. Taylor for Violating the Code***

21 52. Between approximately 2012 and April, 2017, Mr. Taylor was able to create
22 art for pedestrians in exchange for tips in his customary position on the sidewalk outside the
23 Bellagio fountains without incident.

24 53. On information and belief, in or around April 2017, Metro officers began
25 harassing and citing street performers in the Las Vegas Resort District, including Mr. Taylor.

26 54. On information and belief, Metro officers told Mr. Taylor that he needed a
27 permit to engage in his street performance and special dispensation to use the small portable
28 table he relies on to create his art.

1 **a. June 11, 2017 Citation**

2 55. On the evening of June 10 into the early morning of June 11, 2017, Mr.
3 Taylor was engaged in street performance in his customary spot on the sidewalk outside the
4 Bellagio fountains. As is his custom, Mr. Taylor was positioned against the guardrail
5 separating the sidewalk from Las Vegas Boulevard. Mr. Taylor was accompanied by his
6 wife.

7 56. At approximately 1:15 a.m., Metro Officers Young and Kravitz walked over
8 to the area where Mr. Taylor was creating his art.

9 57. The officers issued Mr. Taylor a citation for obstructive use of the sidewalk
10 in violation of CCC § 16.11.090, and conducting business on a public right-of-way in
11 violation of CCC § 6.04.130.

12 58. During the June 11, 2017 encounter, Officer Young behaved in an
13 aggressive manner towards Mr. Taylor, and threatened to call the Internal Revenue Service.

14 59. Additionally, Officer Young seized the small portable table Mr. Taylor
15 relies on to help him in his street performance.

16 60. The citation issued by Officer Young and Officer Kravitz issued to Mr.
17 Taylor required him to appear in Las Vegas Justice Court on July 13, 2017.

18 61. Mr. Taylor was required to retain counsel to represent him at the July 13,
19 2017 hearing.

20 62. At the July 13, 2017 hearing, the Clark County District Attorney notified
21 the court that it would not be proceeding with the citation, and the court dismissed the
22 citation.

23 **b. June 29, 2017 Citation**

24 63. On June 29, 2017 at approximately 10:55 p.m., Mr. Taylor was again at his
25 customary spot on the sidewalk outside the Bellagio fountain engaging in his street
26 performance.

27 64. As Mr. Taylor was engaged in his street performance, he was approached
28 by Metro Officer Darrell Lee Davies.

65. Officer Davies issued Mr. Taylor a citation for obstructive use of the sidewalk in violation of CCC § 16.11.090.

66. As with the June 11, 2017 citation, the citation Officer Davies issued Mr. Taylor instructed him to appear in Las Vegas Justice Court on July 13, 2017.

67. At the July 13, 2017 hearing in Las Vegas Justice Court, the Clark County District Attorney notified that it would not be proceeding with the citation, and the court dismissed the citation.

c. July 26, 2017 Citation

68. At approximately 9:18 p.m., Mr. Taylor was in his usual location in front of the Bellagio fountains, engaging in his customary street performance. As usual, Mr. Taylor had positioned his wheelchair against the guardrail running along the sidewalk, and had his small portable table and limited art supplies in front of his wheelchair. (*See Exh. 4.*)

69. Officer Davies—the same Metro officer who had issued Mr. Taylor a citation on June 29, 2017—approached Mr. Taylor and issued him a citation for obstructive use pursuant to CCC § 16.11.090, citing violations of CCC § 16.11.035 (engaging in obstructive use) and CCC § 16.11.070 (storage of materials on public sidewalk).

70. Mr. Taylor was again required to retain counsel to represent him in challenging the June 29, 2017 citation.

71. Mr. Taylor opted to proceed to a bench trial on his citation, which was conducted on January 22, 2018 in Las Vegas Justice Court.

72. The justice pro tem presiding over the January 22, 2018 bench trial found Mr. Taylor guilty of obstructive use of a public sidewalk.

73. Mr. Taylor timely appealed his conviction to the Eighth Judicial District Court.

74. On December 21, 2018, the district court presiding over Mr. Taylor's appeal entered an order affirming the appeal and remanding the matter to the Las Vegas Justice Court. (*See Exh. 5* (December 21, 2018 Order).)

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75. In its December 21, 2018 order, the district court held that Mr. Taylor's conviction could not stand because the justice pro tem presiding over the bench trial was not provided with sufficient evidence that Mr. Taylor's street performance and use of a small portable table actually obstructed the flow of pedestrian traffic. (**Exh. 5**, ¶ 16.)

76. The district court further held that CCC § 16.11.070 was unconstitutional as applied to him because it was not narrowly tailored as applied to Mr. Taylor, and did not leave open ample alternative channels for him to engage in his street performance. (*Id.*, ¶¶ 22-23.)

77. Mr. Taylor's disability was critical to the district court's determination; in holding that the Code was unconstitutional as applied to him, the district court noted that Mr. Taylor needed his small portable table to engage in his street performance, and CCC § 16.11.070 unconstitutionally penalized him for using the table. (*Id.*, ¶ 21.)

78. On January 3, 2019, the Las Vegas Justice Court dismissed Mr. Taylor's case.

d. September 7, 2017 Citation

79. At approximately 11:55 p.m. on September 7, 2017, Mr. Taylor was again in his customary spot against the sidewalk guardrail outside the Bellagio fountains engaged in his street performance.

80. As he was engaged in his street performance, Mr. Taylor was approached by Metro Officers Weston Ferguson and Thomas Albright, both of whom were equipped with body-worn cameras.

81. Although the body cameras worn by Officer Ferguson and Officer Albright revealed that Mr. Taylor was positioned by the guardrail (and thus away from the flow of pedestrian traffic), the officers nevertheless issued Mr. Taylor a citation for obstructive use of a public sidewalk in violation of CCC § 16.11.070.

82. In addition to issuing Mr. Taylor a citation, Officers Ferguson and Albright seized Mr. Taylor's small portable table.

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1 83. Mr. Taylor was yet again required to retain counsel to challenge his citation.

2 84. On May 17, 2018, Mr. Taylor filed a motion to dismiss the citation with the
3 Las Vegas Justice Court.

4 85. The Clark County District Attorney did not oppose Mr. Taylor's motion to
5 dismiss.

6 86. On June 7, 2018, the Las Vegas Justice Court dismissed the September 7,
7 2017 citation.

8 **e. February 16, 2018 Citation**

9 87. On February 16, 2018, at approximately 8:58 p.m., Mr. Taylor was again in
10 his customary spot against the sidewalk guardrail outside the Bellagio fountains engaged in
11 his street performance.

12 88. While he was engaged in his street performance, Mr. Taylor was
13 approached by Metro Officer Janette Gutierrez.

14 89. Officer Gutierrez then issued a citation to Mr. Taylor for obstructive use of
15 a sidewalk in violation of CCC § 16.11.090.

16 90. Once again, Mr. Taylor was required to retain counsel to represent him in
17 challenging the citation.

18 91. On May 30, 2018, Mr. Taylor filed a motion to dismiss with the Las Vegas
19 Justice Court.

20 92. The Clark County District Attorney did not oppose Mr. Taylor's motion to
21 dismiss.

22 93. On June 13, 2018, the Las Vegas Justice Court dismissed Mr. Taylor's case.

23 **f. May 3, 2018 Citation**

24 94. On May 3, 2018, at approximately 8:30 p.m., Mr. Taylor was again in his
25 customary spot against the sidewalk guardrail outside the Bellagio fountains engaged in his
26 street performance.

27 95. As he was engaged in his performance, Mr. Taylor was approached by
28 Metro Officer Clint Owensby.

1 96. Officer Owensby issued Mr. Taylor a citation for obstructive use of a
2 sidewalk pursuant to CCC § 16.11.090.

3 97. Mr. Taylor was again required to retain counsel to represent him in
4 challenging his citation.

5 98. On August 30, 2018, Mr. Taylor filed a motion to dismiss with the Las
6 Vegas Justice Court.

7 99. The Clark County District Attorney did not oppose Mr. Taylor's motion to
8 dismiss.

9 100. On September 28, 2018, the Las Vegas Justice Court dismissed Mr.
10 Taylor's citation.

11 **g. July 28, 2018 Citation**

12 101. On July 28, 2018, at approximately 9:24 p.m., Mr. Taylor was again in his
13 customary spot against the sidewalk guardrail outside the Bellagio fountains engaged in his
14 street performance.

15 102. As he was engaged in his street performance, Mr. Taylor was approached
16 by Officer R. Thorne.

17 103. Officer Thorne issued Mr. Taylor a citation for obstructive use of a sidewalk
18 pursuant to CCC § 16.11.090.

19 104. Mr. Taylor represented himself in this case at the Las Vegas Justice Court
20 on September 6, 2018.

21 105. When Mr. Taylor appeared at the Las Vegas Justice Court pursuant to the
22 citation, the Clark County District Attorney's Office dropped the charges.

23 **h. Additional Harassment and Threats**

24 106. On information and belief, in addition to the multiple citations described
25 above, Metro officers have on numerous occasions threatened to cite and/or arrest Mr. Taylor
26 for engaging in his street performance.

27 107. On information and belief, these threats have repeatedly caused Mr. Taylor
28 to stop his street performance.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS

TO THE CONSTITUTION OF THE UNITED STATES

PURSUANT TO 42 U.S.C. § 1983

(CCC § 16.11.070 IS UNCONSTITUTIONAL AS APPLIED TO MR. TAYLOR)

(AGAINST ALL DEFENDANTS)

108. Mr. Taylor repeats and realleges Paragraphs 1 through 107 as though fully set forth herein

109. The First Amendment to the United States Constitution, as applied to state governments through the Fourteenth Amendment, prohibits a state from “abridging the freedom of speech.” U.S. Const. Amend. I.

110. The First Amendment prohibits “restrict[ing] expression because of [expression’s] message, its ideas, its subject matter, or its content.” *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002).

111. Although a municipality may place reasonable time, place, and manner restrictions on speech in public fora, those restrictions must be content neutral and narrowly tailored to serve a significant government interest. *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784, 792 (9th Cir. 2006).

112. Defendants, acting under color of law, have caused and will cause Mr. Taylor to be deprived of his constitutional rights in violation of 42 U.S.C. § 1983.

113. “An as-applied challenge contends that [a] law is unconstitutional as applied to [a] litigant’s particular speech activity, even though the law may be capable of valid application to others.” *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir.1998). Thus, a successful “as-applied” challenge does not invalidate the law itself, but only the particular application of that law. *Id.*

114. While CCC § 16.11.070’s prohibition against storing materials may be capable of valid application to other street performers, it is not valid as applied to Mr. Taylor because of his physical disability.

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115. On every occasion that Mr. Taylor has been cited by Defendants for violating the Code, he was engaging in a protected street performance.

116. Because Mr. Taylor is disabled and has limited use of his hands, he must use a wheelchair and can only create art using his mouth. Thus, the use of a small portable table is a necessary and indispensable part of his street performance.

117. Because his street performance is protected speech, any ordinance which has the effect of preventing him from engaging in street performance is an improper restriction on his First Amendment rights.

118. Without a declaratory judgment from this Court stating that CCC § 16.11.070 is unconstitutional as applied to Mr. Taylor under the First and Fourteenth Amendments to the United States Constitution, Mr. Taylor faces a real and serious threat of prosecution if he continues to engage in his protected street performances.

SECOND CAUSE OF ACTION

VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12101 *ET SEQ* (CCC § 16.11.070 AS APPLIED TO MR. TAYLOR VIOLATES THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12101 *ET SEQ.*) (AGAINST ALL DEFENDANTS)

119. Mr. Taylor repeats and realleges Paragraphs 1 through 118 as though fully set forth herein.

120. At all times material hereto, Mr. Taylor is a qualified individual with a disability within the meaning of 42 U.S.C. § 12131(2).

121. In adopting the Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the “ADA”), Congress found that “physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society,” but that many people with disabilities “have been precluded from doing so because of discrimination.” 42 U.S.C. § 12101(a)(1). To correct that discrimination, Congress adopted the ADA to, among other things, “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and “provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1) and (2).

122. One of the standards codified by the ADA is that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

123. The Ninth Circuit has held that city sidewalks are a service, program, or activity of a city within the meaning of the ADA, and thus “[m]aintaining their accessibility for individuals with disabilities” falls within the scope of the ADA. *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002).

124. Clark County has a duty to maintain the accessibility of the sidewalks along Las Vegas Boulevard for all persons with disabilities, including disabled street performers like Mr. Taylor.

125. Because he has limited use of his arms and legs, Mr. Taylor must use a wheelchair, and must also rely on a small portable table to engage in his chosen performance—creating artwork by drawing with his mouth.

126. As applied to Mr. Taylor, CCC § 16.11.070 violates the ADA because it criminalizes his reliance on the tools he needs to engage in his chosen form of protected artistic expression.

127. Without a declaratory judgment from this Court stating that CCC § 16.11.070 as applied to Mr. Taylor violates the ADA, Mr. Taylor faces a real and serious threat of prosecution if he continues to engage in his constitutionally-protected street performances.

THIRD CAUSE OF ACTION

VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

PURSUANT TO 42 U.S.C. § 1983

(CCC § 16.11.070 AS APPLIED TO MR. TAYLOR VIOLATES EQUAL PROTECTION)

(AGAINST ALL DEFENDANTS)

128. Mr. Taylor repeats and realleges Paragraphs 1 through 127 as though fully set forth herein.

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129. The Equal Protection Clause of the Fourteenth Amendment provides that “[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 2.

130. Because Mr. Taylor requires the use of a table due to his physical disabilities, CCC § 16.11.070 as applied to him creates a situation wherein despite his right to engage in his chosen artistic expression, engaging in that expression subjects him to citations and harassment from law enforcement that a street performer with full use of his or her limbs would not experience.

131. Without a declaratory judgment from this Court stating that CCC § 16.11.070 as applied to Mr. Taylor violates the Equal Protection Clause of the Fourteenth Amendment, Mr. Taylor faces a real and serious threat of prosecution if he continues to engage in his protected street performances.

FOURTH CAUSE OF ACTION
VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS
TO THE CONSTITUTION OF THE UNITED STATES
PURSUANT TO 42 U.S.C. § 1983
(CCC § 16.11.070 IS UNCONSTITUTIONALLY OVERBROAD)
(AGAINST ALL DEFENDANTS)

132. Mr. Taylor repeats and realleges Paragraphs 1 through 131 as though fully set forth herein.

133. A law is overbroad if it “does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in normal circumstances constitute an exercise of freedom of speech.” *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940); accord *Klein v. San Diego County*, 463 F.3d 1029, 1038 (9th Cir. 2006); see also *Clark v. City of Los Angeles*, 650 F.2d 1033, 1039 (9th Cir. 1981) (a “law is void on its face if it sweeps within its ambit not solely activity that is subject to governmental control, but also includes within its prohibition the practice of a protected constitutional right”).

134. CCC § 16.11.070 is also unconstitutionally overbroad because it chills protected conduct—namely, Mr. Taylor’s constitutional right to engage his street performance.

135. Despite the fact that street performance is constitutionally protected expressive conduct, Mr. Taylor has been repeatedly cited for performing.

136. Although Clark County may have a legitimate interest in ensuring the unimpeded flow of pedestrian traffic, the Code is substantially overbroad in relation to this interest because it prevents Mr. Taylor from engaging in his street performance.

137. Without a declaratory judgment from this Court stating that CCC § 16.11.070 is overbroad, Mr. Taylor faces a real and serious threat of prosecution if he continues to engage in his protected street performances.

FIFTH CAUSE OF ACTION
VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS
TO THE CONSTITUTION OF THE UNITED STATES
PURSUANT TO 42 U.S.C. § 1983
(CCC § 16.11.070 IS UNCONSTITUTIONALLY VAGUE)
(AGAINST ALL DEFENDANTS)

138. Mr. Taylor repeats and realleges Paragraphs 1 through 137 as though fully set forth herein.

139. The vagueness doctrine “requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (internal citations omitted).

140. In a facial vagueness challenge, the ordinance need not be vague in all applications if it reaches a “substantial amount of constitutionally protected conduct.” *Kolender*, 461 U.S. at 359, n.8 (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982)).

141. The need for definiteness is greater when the ordinance imposes criminal penalties on individual behavior or implicates constitutionally protected rights than when it regulates the economic behavior of businesses. *Hoffman Estates*, 455 U.S. at 498–99.

142. CCC § 16.11.070 is unconstitutionally vague both because it fails to provide street performers like Mr. Taylor with adequate notice of prohibited conduct, and because it does not provide adequate law enforcement guidelines.

143. CCC § 16.11.070 prohibits storing “equipment, materials, parcels, containers, coolers, packages, bundles or other property” on sidewalks on the Las Vegas Strip, but specifically provides that street performers may temporarily place those items on the sidewalk during their performance unless they are actually obstructive.

144. A person of ordinary intelligence reviewing the Code would not understand that the nonobstructive use of a small table that is integral to a street performance would violate the Code.

145. CCC § 16.11.070 is also unconstitutionally vague because it does not provide law enforcement adequate guidelines to prevent arbitrary enforcement.

146. Without these adequate guidelines, the Code risks arbitrary and discriminatory enforcement—a fact that is evident here where, despite Mr. Taylor’s efforts to conform to the requirements of the Code, officers still cite him for violating it.

147. Without a declaratory judgment from this Court stating that CCC § 16.11.070 is unconstitutionally vague, Mr. Taylor faces a real and serious threat of prosecution if he continues to engage in his protected street performances.

SIXTH CAUSE OF ACTION
VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS
TO THE CONSTITUTION OF THE UNITED STATES
PURSUANT TO 42 U.S.C. § 1983
(RIGHT TO FREE SPEECH AND EXPRESSION)
(AGAINST ALL DEFENDANTS)

148. Mr. Taylor repeats and realleges Paragraphs 1 through 147 as though fully set forth herein.

149. Defendants acted under color of law, and their actions violated Mr. Taylor’s rights to freedom of speech and free expression as guaranteed by the First and Fourteenth Amendments of the United States Constitution.

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1 150. CCC § 16.11.070 only prohibits street performers from temporarily storing
2 items on the sidewalk if those items “actually obstruct[]” the sidewalk.

3 151. CCC § 16.11.070 contains a specific exemption for “materials or property
4 held or stored in a carry bag or pack which is actually carried by a pedestrian or items such
5 as a musical instrument case or a backpack which is temporarily placed next to a street
6 performer for that street performer’s use unless said musical instrument actually obstructs
7 the sidewalk.”

8 152. Mr. Taylor’s temporary placement of a table in front of his wheelchair falls
9 within this exemption because the table Mr. Taylor uses for his street performance is a small
10 portable folding table, and necessary to perform his art in light of his physical limitations.

11 153. Mr. Taylor’s use of the small portable table as part of his performance does
12 not obstruct pedestrian traffic because Mr. Taylor’s table is very small and Mr. Taylor
13 intentionally positions his wheelchair against the sidewalk guardrail to allow pedestrians to
14 pass by without hindrance.

15 154. Defendant Officers Young and Kravitz’s actions of citing Mr. Taylor on
16 June 11, 2017 for obstructive use of a public sidewalk while he was engaged in his street
17 performance and their seizure of the table that he needs to engage in his protected street
18 performance violated his rights to freedom of speech and expression as guaranteed by the
19 First and Fourteenth Amendments to the United States Constitution.

20 155. Defendant Officer Davies’ actions of citing Mr. Taylor on June 29, 2017
21 and July 26, 2017 for obstructive use of a public sidewalk while he was engaged in his street
22 performance violated his rights to freedom of speech and expression as guaranteed by the
23 First and Fourteenth Amendments to the United States Constitution.

24 156. Defendant Officers Ferguson and Albright’s actions of citing Mr. Taylor on
25 September 7, 2017 for obstructive use of a public sidewalk while he was engaged in his street
26 performance and their seizure of the table that he needs to engage in his protected street
27 performance violated his rights to freedom of speech and expression as guaranteed by the
28 First and Fourteenth Amendments to the United States Constitution.

1 157. Defendant Officer Gutierrez's actions of citing Mr. Taylor on February 16,
2 2018 for obstructive use of a public sidewalk while he was engaged in his street performance
3 violated his rights to freedom of speech and expression as guaranteed by the First and
4 Fourteenth Amendments to the United States Constitution.

5 158. Defendant Officer Owensby's actions of citing Mr. Taylor on May 3, 2018
6 for obstructive use of a public sidewalk while he was engaged in his street performance
7 violated his rights to freedom of speech and expression as guaranteed by the First and
8 Fourteenth Amendments to the United States Constitution.

9 159. Defendant Officer Thorne's actions of citing Mr. Taylor on July 28, 2018
10 for obstructive use of a public sidewalk while he was engaged in his street performance
11 violated his rights to freedom of speech and expression as guaranteed by the First and
12 Fourteenth Amendments to the United States Constitution.

13 160. Defendant Metro is liable for its employees' actions because at all relevant
14 times it was responsible for making and enforcing policies with respect to Metro officer
15 interactions with citizens and ensuring that officers uniformly enforce laws and do not cite
16 or harass persons exercising their constitutional rights.

17 161. Further, Defendant Metro failed to make and enforce constitutional policies
18 with respect to Metro officers' interactions with citizens. Defendant Metro failed to do so by
19 harassing and citing Mr. Taylor on multiple occasions for engaging in constitutionally
20 protected street performance. As evidenced by these repeated interactions with Mr. Taylor
21 and the history of litigation concerning speakers' First Amendment rights on the Las Vegas
22 Strip, Defendant Metro's policies were not narrowly tailored to fulfill a compelling
23 government interest, and constituted deliberate indifference to the constitutional rights of
24 street performers Metro officers are likely to encounter. Therefore, Defendant Metro's
25 policies and actions violated the First and Fourteenth Amendments.

26 162. Defendant Sheriff Lombardo is liable because at all relevant times, he was
27 aware of the extensive history of litigation regarding Metro's citing and detaining individuals
28 engaged on constitutionally protected speech activities on the Las Vegas Strip, and from this

1 history drew the inference that Metro's policies caused a substantial risk of violations of
2 citizens' First Amendment rights.

3 163. As a direct and proximate result of Defendants' violations of the First and
4 Fourteenth Amendments, Mr. Taylor has suffered, is suffering, and will continue to suffer
5 damages in an amount subject to proof.

6 164. Mr. Taylor is entitled to monetary, compensatory, and punitive damages
7 from Defendants.

8 165. It has been necessary for Mr. Taylor to retain the services of attorneys to
9 pursue this matter, and Mr. Taylor is entitled to attorney's fees, costs, and prejudgment
10 interest.

11 **SEVENTH CAUSE OF ACTION**
12 **VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS**
13 **TO THE CONSTITUTION OF THE UNITED STATES**
14 **PURSUANT TO 42 U.S.C. § 1983**
15 **(RIGHT TO FREE SPEECH AND EXPRESSION – CHILLING EFFECT)**
16 **(AGAINST ALL DEFENDANTS)**

17 166. Mr. Taylor repeats and realleges Paragraphs 1 through 165 as though fully
18 set forth herein.

19 167. Defendants acted under color of law, and their actions violated Mr. Taylor's
20 rights to freedom of speech and expression as guaranteed by the First and Fourteenth
21 Amendments to the United States Constitution.

22 168. Defendant Metro's actions of harassing and citing citizens engaged in
23 protected street performance in and around the Las Vegas Resort District improperly
24 restrained and chilled Mr. Taylor's rights to free speech and expression as guaranteed by the
25 First and Fourteenth Amendments to the United States Constitution.

26 169. Defendant Metro is liable because at all relevant times Defendant Metro
27 was responsible for making and enforcing policies with respect to officer interactions with
28 citizens and ensuring, via adequate training and supervision that officers were aware of
relevant law with respect to free speech and expression, and Defendant Metro failed to do so
by permitting its officers to regulate, harass, and cite citizens for engaging in protected street

1 performances.

2 170. As evidenced by the repeated unconstitutional citations of Mr. Taylor for
3 engaging in constitutionally protected expressive activities on the Las Vegas Strip, as well
4 as the numerous cases brought against it regarding its repeated, unlawful citation and
5 detention of plaintiffs engaged in expressive activities on the Las Vegas Strip, Defendant
6 Metro's failure to enforce these policies and train and supervise its officers with respect to
7 those engaging in expressive activities in public for a constitutes deliberate indifference to
8 the First Amendment rights of those whom Defendant Metro's officers are likely to come
9 into contact.

10 171. Had Defendant Metro adequately trained its officers, Mr. Taylor's
11 constitutional injury—violation of his right to free speech—would have been avoided.

12 172. Defendant Sheriff Lombardo is liable because at all relevant times, he was
13 aware of the extensive history of litigation regarding Metro's citing and detaining individuals
14 engaged on constitutionally protected speech activities on the Las Vegas Strip, and from this
15 history drew the inference that Metro's policies caused a substantial risk of violations of
16 citizens' First Amendment rights.

17 173. Mr. Taylor continues and intends to continue engaging in his street
18 performance in the future. Mr. Taylor relies on his street performances to provide an outlet
19 for his artistic expression, and relies on the tips he receives in exchange for his original works
20 of art to supplement his income.

21 174. Based on previous harassment, citations, and prosecution for engaging in
22 his street performance, Mr. Taylor fears that if he engages in his street performance in the
23 only way he is physically capable of doing—*i.e.*, using a small portable table so that he can
24 draw images of his own devising with his mouth—he will be prosecuted. Mr. Taylor
25 continues to engage in his street performance, but fears that Metro officers will cite him and
26 seize his property.

27 175. Defendants' actions of harassing and citing Mr. Taylor have restricted,
28 chilled, and inhibited the speech and expression of Mr. Taylor and other non-party

1 individuals. While Mr. Taylor continues to and will continue to engage in his chosen street
 2 performance, he is constantly fearful that he will be unlawfully harassed and cited by Metro
 3 officers.

4 176. As a direct and proximate result of Defendants' violations of the First and
 5 Fourteenth Amendments, Mr. Taylor has suffered, is suffering, and will continue to suffer
 6 damages in an amount subject to proof.

7 177. Mr. Taylor is entitled to monetary, compensatory, and punitive damages
 8 from Defendants.

9 178. It has been necessary for Mr. Taylor to retain the services of attorneys to
 10 pursue this matter, and Mr. Taylor is entitled to attorney's fees, costs, and prejudgment
 11 interest.

12 **EIGHTH CAUSE OF ACTION**
 13 **VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS**
 14 **TO THE CONSTITUTION OF THE UNITED STATES**
 15 **PURSUANT TO 42 U.S.C. § 1983**
 16 **(RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES)**
 17 **(AGAINST DEFENDANTS YOUNG, FERGUSON, ALBRIGHT, AND METRO)**

18 179. Mr. Taylor repeats and realleges Paragraphs 1 through 178 as though fully
 19 set forth herein.

20 180. The Fourth Amendment to the United States Constitution provides that he
 21 "right of the people to be secure in their persons, houses, papers and effects, against
 22 unreasonable searches and seizures, shall not be violated...." U.S. Const. Amend. IV.

23 181. Defendants acted under color of law, and violated Mr. Taylor's right to be
 24 free from unlawful searches and seizures as guaranteed by the Fourth and Fourteenth
 25 Amendments to the United States Constitution. Defendant Officers Young, Ferguson, and
 26 Albright unlawfully seized Mr. Taylor's portable table—which Mr. Taylor needs to engage
 27 in his street performance because of his disability—without reasonable suspicion that he
 28 committed a crime.

182. Defendant Metro is liable because at all relevant times it was responsible
 for making and enforcing policies with respect the Officer Defendants' seizures of property

1 and ensuring that such seizures are conducted within the parameters of the law, and
2 Defendant Metro failed to do so.

3 183. As evidenced by the repeated unconstitutional citations of Mr. Taylor for
4 engaging in constitutionally protected expressive activities on the Las Vegas Strip, as well
5 as the numerous cases brought against it regarding its repeated, unlawful citation and
6 detention of plaintiffs engaged in expressive activities on the Las Vegas Strip, Defendant
7 Metro's failure to enforce these policies and train and supervise its officers with respect to
8 unconstitutional seizures of property constituted deliberate indifference to the Fourth
9 Amendment rights of those whom Defendant Metro's officers are likely to come into contact.

10 184. Had Defendant Metro adequately trained its officers, Mr. Taylor's
11 constitutional injury—the unreasonable seizure of his property—would have been avoided.

12 185. Defendant Sheriff Lombardo is liable because at all relevant times, he was
13 aware of the extensive history of litigation regarding Metro's citing, detaining, and seizing
14 the property of individuals engaged on constitutionally protected speech activities on the Las
15 Vegas Strip, and from this history drew the inference that Metro's policies caused a
16 substantial risk of violations of citizens' Fourth and Fourteenth Amendment rights.

17 186. As a direct and proximate result of Defendants' violations of the Fourth and
18 Fourteenth Amendments, Mr. Taylor has suffered, is suffering, and will continue to suffer
19 damages in an amount subject to proof.

20 187. Mr. Taylor is entitled to monetary, compensatory, and punitive damages
21 from Defendants.

22 188. It has been necessary for Mr. Taylor to retain the services of attorneys to
23 pursue this matter, and Mr. Taylor is entitled to attorney's fees, costs, and prejudgment
24 interest.

25 189. As a direct and proximate result of Defendants' violations of the First and
26 Fourteenth Amendments, Mr. Taylor has suffered, is suffering, and will continue to suffer
27 damages in an amount subject to proof.

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NINTH CAUSE OF ACTION
VIOLATION OF THE CONSTITUTION OF THE STATE OF NEVADA – FREE SPEECH
PROTECTIONS
(AGAINST ALL DEFENDANTS)

190. Mr. Taylor repeats and realleges Paragraphs 1 through 189 as though fully set forth herein.

191. Mr. Taylor’s rights to speech and expressive conduct are impermissibly restricted, chilled, deterred and inhibited by the actions of Defendants.

192. Art 1, § 9 of the Constitution of the State of Nevada provides “[e]very citizen may freely speak, write, and publish his sentiments on all subjects . . . and no law shall be passed to restrain or abridge the liberty of speech”

193. Defendants’ actions, as alleged herein, constitute violations of Mr. Taylor’s rights under the Constitution of the State of Nevada, Art. 1, § 9.

194. Mr. Taylor is entitled to monetary, compensatory, and punitive damages from Defendants.

195. It has been necessary for Mr. Taylor to retain the services of attorneys to pursue this matter, and Mr. Taylor is entitled to attorney’s fees, costs, and prejudgment interest.

196. As a direct and proximate result of Defendants’ violations of the First and Fourteenth Amendments, Mr. Taylor has suffered, is suffering, and will continue to suffer damages in an amount subject to proof.

TENTH CAUSE OF ACTION
NEGLIGENT TRAINING, SUPERVISION, AND RETENTION
UNDER NEV. REV. STAT. § 41.130
(AGAINST DEFENDANT METRO)

197. Mr. Taylor repeats and re-alleges Paragraphs 1 through 196 as though fully set forth herein.

198. Defendant Metro owed a duty to persons such as the Mr. Taylor to use reasonable care in the training, supervision, and retention of their employees to make sure that their employees are fit for their positions by implementing policies and procedures designed to prevent wrongful acts by their employees, such as those committed by Defendant

1 Officers Young, Kravitz, Davies, Ferguson, Albright, Gutierrez, Owensby, and Thorne.

2 199. Defendant Metro breached this duty by failing to train its officers regarding
3 the First Amendment free speech rights of individuals to engage in expressive conduct such
4 as street performances in and around the Las Vegas Resort District, thereby creating a
5 situation where its officers improperly enforce CCC § 16.11.070.

6 200. Moreover, Defendant Metro has breached this duty by failing to train its
7 officers regarding the MOU Defendant Metro entered into in *Banasik et al. v. Clark County*
8 *et al.*, U.S. Dist. Ct. Case No. 2:09-cv-01242-LDG-GWF, in which the parties agreed that
9 street performing is expressive speech or conduct protected by the First Amendment and that
10 street performing was not a violation of, *inter alia*, the provisions of Chapter 16.11 of the
11 Clark County Code, thereby creating a situation where its officers are enforcing CCC §
12 16.11.070 in violation of the terms of the MOU.

13 201. Defendant Metro is not entitled to discretionary immunity because its lack
14 of adequate training and supervision regarding the rights of individuals to engage in free
15 speech and expressive conduct such as street performances violated—and continues to
16 violate—Mr. Taylor’s constitutional rights.

17 202. Defendant Metro is liable because at all relevant times, the officers were in
18 the employ of Metro and Metro is responsible for Metro’s officers’ conduct. Defendant
19 Metro’s officers were not acting independently, committed the wrongful acts during the
20 course of their official duties as police officers, and such actions were reasonably foreseeable
21 considering the nature and scope of their employment as police officers.

22 203. As a direct and proximate result of Defendant Metro’s failure to adequately
23 train its officers, Mr. Taylor has suffered, is suffering, and will continue to suffer damages
24 in an amount subject to proof.

25 204. Mr. Taylor is entitled to monetary, compensatory, and punitive damages
26 from Defendants.

27 205. It has been necessary for Mr. Taylor to retain the services of attorneys to
28 pursue this matter, and Mr. Taylor is entitled to attorney’s fees, costs, and prejudgment

1 interest.

2 **ELEVENTH CAUSE OF ACTION**

3 **CONVERSION**

4 **(AGAINST DEFENDANTS YOUNG, FERGUSON, ALBRIGHT AND METRO)**

5 206. Mr. Taylor repeats and realleges Paragraphs 1 through 205 as though fully
6 set forth herein.

7 207. Defendant Young exercised wrongful dominion over Mr. Taylor's property,
8 his small portable table that he needs to engage in his street performance, when he seized
9 Mr. Taylor's table on June 11, 2017. That table has never been returned to Mr. Taylor.

10 208. Defendants Ferguson and Albright exercised wrongful dominion over Mr.
11 Taylor's property, his small portable table that he needs to engage in his street performance,
12 when they seized Mr. Taylor's table on September 7, 2017. That table has never been
13 returned to Mr. Taylor.

14 209. Defendant Metro is liable because at all relevant times it was responsible
15 for making and enforcing policies with respect the Officer Defendants' seizures of property
16 and ensuring that such seizures are conducted within the parameters of the law, and
17 Defendant Metro failed to do so.

18 210. As set forth in Paragraphs 1 through 209, Defendants have engaged in
19 tortious or unlawful conduct that cannot be justified or excused in law.

20 211. As a result of these breaches, Mr. Taylor has suffered, is suffering, and will
21 continue to suffer damages in an amount subject to proof, and Plaintiff is entitled to
22 declaratory relief against Defendants; attorneys' fees and costs from Defendants; and
23 monetary, compensatory, and punitive damages from Defendants.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Mr. Taylor respectfully prays as follows:

26 a. A declaration that CCC § 16.11.070 is unconstitutional as applied to Mr.
27 Taylor;

28 b. A declaration that CCC § 16.11.070 as applied to Mr. Taylor violates the
Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*;

1 c. A declaration that CCC § 16.11.070 as applied to Mr. Taylor violates his
2 right to Equal Protection as guaranteed by the Fourteenth Amendment to the United States
3 Constitution;

4 d. A declaration that CCC § 16.11.070 is unconstitutionally overbroad;

5 e. A declaration that CCC § 16.11.070 is unconstitutionally vague;

6 f. A permanent injunction preventing Defendant Metro and its officers from
7 violating the constitutional rights of individuals by improperly citing street performers for
8 obstructive use of public sidewalk;

9 g. An award requiring all Defendants to pay monetary and compensatory
10 damages in an amount to be determined at trial;

11 h. An award against the individual Defendants for punitive damages in an
12 amount to be determined at trial;

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

14 j. Any further relief the Court deems appropriate.

15
16 DATED this 11th day of June, 2019.

17
18 /s/ Alina M. Shell

19 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

20 ALINA M. SHELL, Nevada Bar No. 11711

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