

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931  
ALINA M. SHELL, Nevada Bar No. 11711  
LEO S. WOLPERT, Nevada Bar No. 12658  
MCLEATCHIE LAW  
701 East Bridger Avenue, Suite 520  
Las Vegas, NV 89101  
Telephone: (702) 728-5300  
Fax: (702) 425-8220  
Email: maggie@nvlitigation.com  
*Counsel for Plaintiff Brandon Summers*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

BRANDON SUMMERS, an individual,  
  
Plaintiff,  
  
vs.

**Case. No.: 2:20-cv-01815**

**COMPLAINT**

**[JURY TRIAL DEMANDED]**

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, in its official capacity;  
CLARK COUNTY, a political subdivision  
of the State of Nevada; SHERIFF JOSEPH  
LOMBARDO, in his official capacity as  
Sheriff of the Las Vegas Metropolitan Police  
Department; SERGEANT MARK  
CIRKOSZ, as an individual and in his  
capacity as a Las Vegas Metropolitan Police  
Department Officer; OFFICER JAKE  
FREEMAN, as an individual and in his  
capacity as a Las Vegas Metropolitan Police  
Department Officer; OFFICER BLAKE  
VERNON, as an individual and in his  
capacity as a Las Vegas Metropolitan Police  
Department Officer; and OFFICER  
GERARDO REYES, as an individual and in  
his capacity as a Las Vegas Metropolitan  
Police Department Officer,  
  
Defendants.

Plaintiff Brandon Summers, by and through his counsel of record, hereby files this  
Complaint for damages pursuant to 42 U.S.C. § 1983 (civil action for deprivation of rights),

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

### **NATURE OF THE ACTION**

Plaintiff Brandon Summers is an accomplished violinist who, since 2009, has shared his musical gifts with Las Vegas by performing on the Strip’s public forum sidewalks and pedestrian bridges. Mr. Summers carefully keeps himself (and his violin case) near the sidewalks’ edges and bridges’ guard rails to avoid interfering with the flow of pedestrian traffic during his performances. The Clark County, Nevada, Code of Ordinances (the “Clark County Code” or “CCC”) permits his conduct, and the First Amendment of the United States Constitution protects Mr. Summers’ right to engage in artistic expression.

The Las Vegas Metropolitan Police Department (“Metro”) is—or should be—familiar with the rights of musicians (and other artists) to perform on the Strip’s public forum sidewalks and pedestrian bridges. Indeed, Metro has been subjected to litigation regarding street performers’ rights over and over. Despite these facts, Mr. Summers has repeatedly been harassed by Metro officers for doing nothing more than playing his violin in public. Metro officers violated Mr. Summers’ constitutional rights by citing him for obstructive use of a public sidewalk under CCC § 16.11.070, arresting him, and seizing his property.

This is an action under 42 U.S.C. § 1983 seeking to address violations of Mr. Summers’ rights under the First, Fourth, and Fourteenth Amendment to the United States Constitution. This action also seeks to address Mr. Summers’ state tort claims against Defendants for violating his rights under the Nevada Constitution, negligent training and supervision, conversion, and malicious prosecution. This Court has supplemental jurisdiction over the state law claims.

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

**JURISDICTION AND VENUE**

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

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

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

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

5. Because Defendants are not arms of the State, this suit is not barred by the Eleventh Amendment to the United States Constitution. *See Eason v. Clark Cty. Sch. Dist.*, 303 F.3d 1137, 1147 (9th Cir. 2002); *Culinary Workers Union v. Del Papa*, 200 F.3d 614, 619 (9th Cir. 1999).

6. The acts or omissions giving rise to Mr. Summers' claims all occurred in Clark County, Nevada, and, on information and belief, nearly 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.

**PARTIES**

7. Plaintiff Brandon Summers is, and at all relevant times herein was, a musician 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

1 explicitly or implicitly condoned or created a policy and practice of allowing Metro officers  
2 to enforce Clark County Code (“Clark County Code” or “CCC”) § 16.11.090 arbitrarily  
3 and/or intentionally to chill constitutionally protected street performances in and around the  
4 Las Vegas Resort District.

5 10. The Code does not criminalize street performances such as Mr. Summers’  
6 in and around the Las Vegas Resort District.

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

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

13 13. Defendant Joseph Lombardo (“Sheriff Lombardo”) is the Sheriff of Metro,  
14 and was the Sheriff of Metro at all relevant times herein. Sheriff Lombardo and all Metro  
15 police officers are vested with the authority to enforce both Nevada statutory law and the  
16 Clark County Code. Sheriff Lombardo has final policymaking authority for Metro internal  
17 policies and is vested with supervisory authority over all Metro officers.

18 14. Upon information and belief, Sheriff Lombardo is aware of, and has either  
19 explicitly or implicitly condoned or created a policy and practice of deliberate indifference  
20 toward the constitutional rights of persons engaging in free speech activities, such as musical  
21 performances, on public forum sidewalks.

22 15. Upon information and belief, despite clearly-established law indicating that  
23 the sidewalks on public thoroughfares are public fora, Sheriff Lombardo has failed to  
24 implement policies safeguarding citizens’ First Amendment rights in these fora and has failed  
25 to adequately train his officers to protect citizens’ First Amendment rights in these fora.

26 16. Upon information and belief, Defendant Sergeant Mark J. Cirkosz (“Sgt.  
27 Cirkosz”) was at all relevant times herein a Sergeant employed by Metro.

28 17. Upon information and belief, Officer Jake Freeman (“Officer Freeman”)

was at all relevant times herein an officer employed by Metro.

18. Upon information and belief, Officer Blake Vernon (“Officer Vernon”) was at all relevant times herein an officer employed by Metro.

19. Upon information and belief, Officer Gerardo Reyes (“Officer Reyes”) was at all relevant times herein an officer employed by Metro.

20. Sgt. Cirkosz, Officer Freeman, Officer Vernon, and Officer Reyes may be referred to herein as the “Officer Defendants.”

21. The naming of defendants herein is based upon information and belief. Mr. Summers reserves his right to name additional defendants and modify his allegations concerning defendants named herein.

### **STANDING**

22. Mr. Summers has been and continues to be directly affected by Defendants’ violations of his rights, as well as Defendants’ practices and policies of violating the constitutional rights of individuals based upon their exercise of constitutional rights, as set forth more fully herein, and/or other abuses by Defendants acting under color of law.

23. An actual case and controversy exists between Mr. Summers and Defendants concerning their respective rights, privileges, and obligations.

### **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

#### ***Plaintiff Brandon Summers***

24. Mr. Summers is a violinist and Clark County School District (CCSD) substitute teacher. He attended Fort Valley State University, where he received a bachelor’s degree in Liberal Studies on a mathematics scholarship.

25. Mr. Summers started playing the violin at age six. After graduating from college, he started playing his violin as a street performer on the Las Vegas Strip, sharing his music with passersby.

26. Mr. Summers has engaged in street performance on the Las Vegas Strip since 2009. Mr. Summers accepts tips and donations, but never charges a fee for the songs he plays.

27. Mr. Summers has a unique style as a violinist and often plays renditions of pop, hip-hop, and contemporary music, rather than performing only classical pieces.

28. From approximately 2010 to 2012, Mr. Summers played his violin on the Strip's sidewalks and used a car battery to power his sound equipment.

29. In recent years, Mr. Summers has typically played his violin on the Strip's raised pedestrian bridges/walkways, which allow pedestrians to cross the streets without entering the traffic below. Performing on the raised pedestrian bridges provides better sound amplification of Mr. Summers' performances.

30. The three raised walkways where Mr. Summers usually performs are located between Bally's and The Cromwell, between MGM Grand and The Tropicana, and between Fashion Show Mall and the Wynn.

31. Mr. Summers positions himself close to one of the walkways' guardrails so that he does not impede the flow of pedestrian traffic while he is engaged in his performances. His back is typically right up against the wall behind him, and he condenses his belongings—namely his amplifier and backpack—to be as compact as possible to avoid blocking the flow of pedestrian traffic.

32. Because of his unique musical talent—showcased for the public free of charge at his street performances—Mr. Summers has been hired to perform at private functions, including for Netflix, Ciroc Vodka, Hudson Jeans, Nordstrom, JBL/Harman, and Fossil, among others.

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

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

1 also a traditional public forum and are open to the public for expressive activities. *United*  
2 *States v. Grace*, 461 U.S. 171, 179 (1983).

3 34. The United States Court of Appeals for the Ninth Circuit has repeatedly  
4 specifically found that the sidewalks located within the Las Vegas Resort District are public  
5 fora.

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

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

16 37. According to clearly established case law, when a sidewalk performs an  
17 essential public function, it is a traditional public forum and its private owner does not have  
18 the right to exclude individuals from the sidewalk based upon permissible First Amendment  
19 activity. *Perez-Morciglio v. Las Vegas Metro. Police Dept.*, 820 F. Supp. 2d 1100, 1110 (D.  
20 Nev. 2011) (citing *Venetian Casino Resort, LLC v. Local Joint Exec. Board of Las Vegas*,  
21 45 F. Supp. 2d 1027, 1036 (D. Nev. 1999)).

22 38. According to clearly established case law, “a thoroughfare sidewalk,  
23 seamlessly connected to public sidewalks at either end and intended for general public use”  
24 is “a public sidewalk, and consequently, a traditional public forum from which [the  
25 sidewalk’s private owners] have no right to exclude members of the public.” *Perez-Morciglio*  
26 *v. Las Vegas Metropolitan Police Dept.*, 820 F. Supp. 2d 1100, 1111 (D. Nev. 2011) (citing  
27 *Venetian Casino Resort, L.L.C. v. Local Joint Executive Board of Las Vegas*, 45 F. Supp. 2d  
28 1027, 1036 (D. Nev. 1999)).



39. Pedestrian bridges/raised walkways that allow pedestrians to cross over streets also meet the definition of public sidewalks and are traditional public fora. They are connected to public sidewalks at either end by stairs, escalators, and/or elevators, and they are intended for general public use to ease pedestrian congestion on streets themselves. Just as the Ninth Circuit considered Fremont Street—an area primary consisting of pedestrian traffic—a traditional public forum, so too should this court construe the pedestrian bridges/raised walkways in this matter as traditional public fora. *See ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1102 (9th Cir. 2003) (“The use and purpose of the Fremont Street Experience support the conclusion that it is a traditional public forum. Despite its expensive make-over, the Fremont Street Experience remains a public thoroughfare. Although cars are no longer permitted to drive down the length of the Fremont Street Experience, the agreement between [Fremont Street Experience, LLC] and the City requires that a route for pedestrians remain open at all times, limiting [Fremont Street LLC]’s discretion to manipulate the landscape.”).

40. Further, in *S.O.C., Inc. v. Mirage Casino-Hotel* (23 P.3d 243, 249 (Nev. 2001)), the Nevada Supreme Court examined the Michigan Court of Appeals’ decision in *Commodities Export Co. v. City of Detroit* (321 N.W.2d 842 (Mich. Ct. App. 1982)). “In that case, a private business enterprise attempted to distribute commercial handbills on a privately-owned bridge and surrounding property of its closest competitor. The owner of the bridge attempted to exclude the handbillers who, in turn, sued alleging that they had a First Amendment right to distribute their advertisements on the property because it was held open to the general public. The court of appeals, after analyzing the United States Supreme Court’s cases in this area, concluded that the rights surrounding private property ownership cannot be extinguished because the property is held open to the public.” *S.O.C., Inc.*, 23 P.3d 243, 249. Thus, even if the raised walkways are considered privately-owned, because they are held open to the public, they constitute traditional public fora.

***Metro’s Involvement in Litigation Concerning the Strip***

41. Metro and its officers have been parties to a number of lawsuits regarding



1 infringement of free speech rights in the Las Vegas Resort District. For example, on July 9,  
 2 2009, two street performers filed suit in federal court alleging constitutional violations after  
 3 Metro officers cited them for storing materials or obstructing the sidewalks on the Las Vegas  
 4 Strip. *See Banasik et al. v. Clark Cty., et al.*, U.S. Dist. Ct. Case No. 2:09-cv-01242-LDG-  
 5 GWF (“*Banasik*”). *Banasik* was resolved pursuant to a settlement agreement between the  
 6 parties.

7 42. Just a few years ago, in *Santopietro v. Howell*, 857 F.3d 980 (9th Cir. 2017),  
 8 the Ninth Circuit addressed free speech in the Las Vegas Resort District. In that case, the  
 9 plaintiff was a street performer who performed as a “sexy cop” on the sidewalks in the Las  
 10 Vegas Resort District and was cited by Metro officers for allegedly conducting a business  
 11 without a license, a violation of Clark County Code § 6.56.030. The officers’ citation for a  
 12 violation of Clark County Code § 6.56.030 was predicated on the fact that the plaintiff  
 13 solicited tips in exchange for posing for pictures. *Id.* at 984. In its opinion reversing summary  
 14 judgment, the Ninth Circuit reiterated that the sidewalks in the Las Vegas Resort District are  
 15 public fora, *id.* at 988, and that performances on public sidewalks are protected under the  
 16 First Amendment as expressive activity. *Id.* at 987 (citing *Berger*, 569 F.3d at 1035–36). The  
 17 Ninth Circuit also reiterated that the solicitation of tips is “entitled to the same constitutional  
 18 protections as traditional speech.” *Id.* at 988 (quoting *ACLU of Nev. v. City of Las Vegas*,  
 19 466 F.3d 784, 792 (9th Cir. 2006)).

20 43. An ongoing civil rights matter involving Metro’s infringement of street  
 21 performers’ free speech rights is *Taylor v. LVMPD, et al.*, Case No. 2:19-cv-00995-JCM-  
 22 NJK, in the U.S. District Court of Nevada. Mr. Taylor is a street performer with a congenital  
 23 disease that affects the development and mobility of the joints in his arms and legs, requiring  
 24 him to use a wheelchair. Mr. Taylor “live draws” by using his mouth to draw artwork for  
 25 passersby on the Las Vegas Strip. He uses a small portable table while drawing. Beginning  
 26 in April 2017, Mr. Taylor was repeatedly harassed and cited by Metro officers for obstructing  
 27 the use of a public walkway, in purported violation of CCC § 16.11.070. Judge Mahan  
 28 granted Mr. Taylor a temporary restraining order against Metro, explaining that “[t]he plain

language of chapter 16 of the CCC is entirely consistent with [Mr. Taylor’s] First Amendment rights” because “[Mr. Taylor] engages in live drawing—which is expressive activity protected by the First Amendment—in a public forum.” *Id.*, ECF No. 84 at 14, 17. Judge Mahan held that CCC § 16.11.070 is facially constitutional because it provides a carve-out for First Amendment activities (by permitting First Amendment speech as long as it is not actually obstructive of a walkway), but noted that “there is a serious question that goes to the merits of the claim” regarding the code as-applied to Mr. Taylor. *Id.* at 15.

***Clark County Code § 16.11.070***

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

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

CCC § 16.11.070.

45. Thus, the Clark County Code prohibits storage of materials on a public sidewalk unless the materials are temporarily placed there by a street performer or the street performers’ materials are actually obstructing the sidewalk.

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

47. Maintaining a table, chair, booth or other structure on the sidewalk that does not actually obstruct the sidewalk and is connected to First Amendment activity is expressly excluded from the definition of “obstructive use.” CCC § 16.11.020(e)(1) (defining “obstructive use” as “[p]lacing, erecting or maintaining an unpermitted table, chair, booth or other structure upon the public sidewalk, if the placing, erecting, or maintaining of the table,

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”).

48. CCC § 16.11.020(e) defines eight meanings of “obstructive use,” including the following catch-all in § 16.11.020(e)(8): “[o]bstructive use’ means . . . any use of the public sidewalk that causes the [level of service] for the public sidewalk to decline below [level of service] C.” CCC § 16.11.020(f) defines level of service (LOS) C as “a pedestrian flow on a sidewalk of less than or equal to ten pedestrians per minute per foot as specified and defined in the Highway Capacity Manual, Special Report 209, a copy of which is filed with the office of the county clerk.” Thus, as long as at least eleven pedestrians per minute per foot can walk on a sidewalk, the LOS of the sidewalk would exceed level C and would not meet the definition of obstructive use.

49. While the placing of items on the sidewalk are *per se* obstructions pursuant to CCC § 16.11.070 (“No equipment, materials, parcels, containers, packages, bundles or other property may be stored, placed or abandoned in or on the public sidewalk”), in addition to the definition regarding obstructive use, the following language in CCC § 16.11.070 should exempt Mr. Summers from citation: “This provision shall not apply to . . . items *such as a musical instrument case or a backpack which is temporarily placed next to a street performer for that street performer’s use* unless said musical instrument actually obstructs the sidewalk in violation of this chapter.” CCC § 16.11.070 (emphasis added). Thus, when materials placed on a sidewalk by a street performer do not cause obstruction, there is no violation.

***Clark County Code § 6.04.130***

50. Section 6.04.130 of the Clark County Code provides:

It is unlawful for any person to sell, peddle, offer to sell or solicit for sale by offering or displaying any merchandise, goods, items, wares, or services on any improved or unimproved portion of a public right-of-way, including private property upon which a limited easement of public access has been granted, in the unincorporated area of Clark County except that which is otherwise expressly permitted by this code or state statute. This prohibition

restricts only sales actually occurring or proposed to occur on the  
aforementioned public right-of-way, and does not prohibit any person from  
distributing advertisements or other promotional materials designed to  
encourage commercial transactions at licensed business locations.

CCC § 6.04.130.

51. In *Santopietro*, the Ninth Circuit discussed solicitation of tips, stating that “[m]unicipalities accordingly may not ban either ‘passive’ solicitation of tips for street performance (e.g., putting a hat out or saying ‘thank you’), or ‘active’ solicitation (e.g., encouraging a tip orally or by tipping a hat).” *Santopietro*, 857 F.3d at 988 (citing *Berger v. City of Seattle*, 569 F.3d 1029, 1052 (9th Cir. 2009)). Under *Santopietro*, the solicitation of tips (whether passive or active) is permitted in public fora, as long as no fee is charged for the good or service being provided.

52. Metro even acknowledged that such solicitation is permitted in its 2010 Memorandum of Understanding (“MOU”), further discussed below: “As a content-based regulation of speech in a public forum, such a ban [on active solicitation of tips] is subject to strict scrutiny, a standard not met by a distinction between active and passive solicitation of voluntary tips. Metro’s 2010 MOU appears to incorporate that holding, by recognizing that ‘non-coercive solicitation of tips[ ] is not a per se violation’ of the County Code’s business licensing provisions.” *Id.*

### ***History of the Clark County Code***

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

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

55. In the course of the litigation, the parties—which included Metro and individual Metro officers as defendants—entered into a Memorandum of Understanding (“MOU”) in which the parties agreed that street performing is expressive speech or conduct

protected by the First Amendment and that street performing was not a violation of, inter alia, the provisions of Chapter 16.11 of the Clark County Code of Ordinances. As part of the MOU, the parties agreed to pursue various provisions of the Clark County Code, including CCC § 16.11.070.

56. On November 16, 2010, the Clark County Board of County Commissioners voted to amend Chapter 16.11 of the Clark County Code to include the definition of “street performer” and to clarify that materials can be placed on public sidewalks.

57. Metro’s ongoing practices reflect that it has not honored its agreements in the 2010 MOU and that its violations of Mr. Summers’ rights are bad faith acts intended to violate the Constitution.

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

58. Between 2011 and 2019, Metro officers cited Mr. Summers eight times for street performing. In two of those instances, Metro officers arrested him.

59. Six of the eight citations were for obstructive use of a public sidewalk; one was for conducting business on a public right-of-way; and one was for stopping, standing, or parking prohibited in specified places.

60. On information and belief, Metro officers told Mr. Summers that in order to comply with the CCC, he could only play his violin while walking, but not while stationary.

61. On information and belief, Metro officers told Mr. Summers that raised walkways/pedestrian bridges are legally equivalent to crosswalks and are not the same as sidewalks.

**a. September 30, 2018 Citation and Arrest**

62. On the evening of September 30, 2018, Mr. Summers was engaged in street performance on the pedestrian bridge between Bally’s and The Cromwell. He was standing next to the side of the bridge, with his back to the guardrail.

63. At approximately 6:00 PM, while Mr. Summers was taking a break from performing, Sgt. Cirkosz approached Mr. Summers on the pedestrian bridge. Sergeant

1 Cirkosz was wearing a body camera (“body cam”). Subsequent to these events, Mr. Summers  
2 requested and obtained Sergeant Cirkosz’s body cam footage from their encounter on  
3 September 30, 2018.

4 64. Throughout the encounter on the pedestrian bridge, a steady flow of  
5 pedestrians can be seen walking past Mr. Summers and Sergeant Cirkosz without being  
6 obstructed.

7 65. Sgt. Cirkosz told Mr. Summers he was giving him a warning to pack up his  
8 violin and leave the pedestrian bridge. Sgt. Cirkosz told Mr. Summers that if he did not pack  
9 up his violin and leave, he would be arrested and cited for obstructing the sidewalk and  
10 storing materials on a public walkway. Sgt. Cirkosz also told Mr. Summers that his  
11 belongings would be impounded.

12 66. Sgt. Cirkosz told Mr. Summers that he could perform on the street below,  
13 but not on the pedestrian bridge.

14 67. Mr. Summers initially declined to leave the bridge, but after the threats of  
15 arrest and violin impoundment, he obeyed Sgt. Cirkosz’s request. Mr. Summers packed up  
16 his belongings and left the pedestrian bridge.

17 68. Approximately twenty minutes after the encounter, Mr. Summers was  
18 walking on the street near the pedestrian bridge (while carrying his violin and amplifier)  
19 when he saw Sgt. Cirkosz talking with an alleged water vendor named James Clark Williams  
20 near a bus stop.

21 69. Mr. Summers positioned himself away from Sgt. Cirkosz and Williams. Mr.  
22 Summers then used his cell phone and his iPod to video record the encounter between Sgt.  
23 Cirkosz and Mr. Williams.

24 70. Throughout the encounter on the street level, a steady flow of pedestrians  
25 can be seen walking past Mr. Summers, Mr. Williams, and Sgt. Cirkosz without being  
26 obstructed.

27 71. Sgt. Cirkosz subsequently handcuffed Mr. Williams and placed him under  
28 arrest for allegedly selling bottles of water.

1           72. Partway through the arrest, Sgt. Cirkosz asked Mr. Summers to move  
2 further away. Mr. Summers obeyed and took a few steps back.

3           73. Sgt. Cirkosz called for backup from additional officers. Once they arrived,  
4 Sgt. Cirkosz explained why he was arresting Mr. Williams and also said he planned to arrest  
5 Mr. Summers for obstructing the walkway earlier on the pedestrian bridge. Sgt. Cirkosz also  
6 explained that Mr. Summers had been video recording, so he said he planned to impound his  
7 phone.

8           74. Sgt. Cirkosz then approached Mr. Summers and asked him to stop video  
9 recording. Sgt. Cirkosz told Mr. Summers that he has a right to record.

10          75. Sgt. Cirkosz then informed Mr. Summers that he was arresting him for  
11 obstructing the walkway earlier on the pedestrian bridge. Sgt. Cirkosz also told Mr. Summers  
12 that he had been “riling up” Mr. Williams by video recording the arrest.

13          76. When Mr. Summers expressed his discontent for being arrested even though  
14 he had packed up his belongings and left the pedestrian bridge, Sgt. Cirkosz told Mr.  
15 Summers that he has “a year and a day” to arrest Mr. Summers for obstructing a public  
16 walkway.

17          77. At the time of the arrest, Sgt. Cirkosz seized and impounded Mr. Summers’  
18 violin, amplifier, cell phone, and iPod.

19          78. Despite Mr. Summers’ repeated efforts to request that his belongings be  
20 released to him, Metro held the items for approximately two and a half months. Metro  
21 released the cell phone and iPod to Mr. Summers on December 7, 2018. Metro released Mr.  
22 Summers’ violin and amplifier to him on December 21, 2018, nearly three months after his  
23 arrest.

24          79. Because his primary instrument was impounded, Mr. Summers was forced  
25 to use a backup violin that he owned, which was of lower quality than the one that was  
26 impounded. Mr. Summers had to purchase another violin for use at the private functions  
27 where he had been hired to perform. Mr. Summers would not have purchased this additional  
28 violin if Metro had not impounded his primary instrument.



1           80. Because his cell phone was impounded, Mr. Summers lost contact with  
2 potential clients with whom he had been communicating about potential paid performance  
3 opportunities.

4           81. After Mr. Summers had been handcuffed and placed in a Metro vehicle, Sgt.  
5 Cirkosz asked him whether he wanted a “full booking” or a “Class 2,” explaining that a Class  
6 2 is shorter but would still involve receiving a citation and going to jail.

7           82. Mr. Summers opted for the Class 2 booking and was held at the Clark  
8 County Detention Center (CCDC) for approximately four hours before being released.

9           83. Despite the fact that Mr. Summers moved his belongings from the  
10 pedestrian bridge and was on street level with his belongings when he was arrested, on the  
11 Declaration of Arrest Form, Sgt. Cirkosz wrote, “Subject did not move his items until asked  
12 multiple times and kept talking to another person.”

13           84. The citation issued by Sgt. Cirkosz was for obstructive use of the public  
14 sidewalk in violation of CCC § 16.11.070.

15           85. The citation required Mr. Summers to appear at the Las Vegas Township  
16 Community Impact Center (“Community Court”) on November 8, 2018. Mr. Summers  
17 appeared on that date, but the matter was continued to November 15, 2018, due to the court  
18 being dark.

19           86. Mr. Summers and Mr. Williams both made sworn affidavits providing their  
20 testimony about the September 30 incident. Mr. Summers filed both affidavits with the court.

21           87. On November 15, 2018, Mr. Summers was given the option to participate  
22 in Community Court, but he declined. A tentative trial date was set.

23           88. In December 2018, the state notified the court of its intent to dismiss the  
24 citation and vacate the upcoming trial.

25           89. On January 3, 2019, the court held a status check hearing, during which the  
26 citation was dismissed at the state’s request.

27           90. Prior to his citation’s dismissal, on October 12, 2018, Mr. Summers filed a  
28 complaint with Metro, explaining what happened during the September 30, 2018 incident

1 and expressing his belief that Sgt. Cirkosz arrested him out of retaliation.

2 91. On November 25, 2018, Mr. Summers also filed a similar complaint with  
3 the Citizen Review Board (CRB) (an independent civilian oversight agency for Metro Police  
4 and Corrections Officers).

5 92. The CRB's findings, dated March 18, 2019, reflect that it that "agrees with  
6 the investigation and conclusions reached by [Metro Internal Affairs] finding the evidence  
7 proved the officer(s) [Sgt. Cirkosz] did commit the alleged acts of misconduct." This finding  
8 implies that Metro Internal Affairs also found that Sgt. Cirkosz engaged in misconduct.

9 **b. June 29, 2019 Citation**

10 93. On the evening of June 29, 2019, Mr. Summers was engaged in street  
11 performance on the pedestrian bridge between MGM Grand and The Tropicana. He was  
12 standing next to the side of the bridge, with his back to the guardrail.

13 94. At approximately 11:15 PM, Metro Officers Freeman, Vernon, and Reyes  
14 approached Mr. Summers by bicycle on the pedestrian bridge.<sup>1</sup> Officers Freeman and Reyes  
15 were wearing functioning body cams, but Officer Vernon's was broken.

16 95. Subsequent to these events, Mr. Summers requested and obtained Officer  
17 Freeman's body cam footage from their encounter on June 29, 2019.

18 96. Throughout the encounter, a steady flow of pedestrians can be seen walking  
19 past Mr. Summers and the officers without being obstructed.

20 97. Officer Vernon explained to Mr. Summers that pedestrian bridges are the  
21 same as crosswalks and that just as Mr. Summers would not stop and play his violin in the  
22 middle of a crosswalk, he cannot do so on a pedestrian bridge. Officer Freeman explained  
23 the same to an inquiring passerby, stating "it's not illegal to street perform." When the  
24 passerby asked where the best place to street perform is, Officer Freeman recommended  
25 Fremont Street "because they have their own areas where you can get the permits."

26 98. Officer Vernon explained to Mr. Summers that he could play his violin  
27 while moving/walking, but that it became illegal once he stopped and was stationary. Officer  
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<sup>1</sup> It appears that Officer Reyes was being trained by Officer Freeman during this encounter.

1 Freeman explained the same to the passerby.

2 99. Officer Freeman asked Mr. Summers if he had been cited and/or arrested  
3 before for obstructing a public walkway, and Mr. Summers declined to answer. Once Officer  
4 Freeman looked up Mr. Summers in the Metro system and found that Mr. Summers had been  
5 cited previously, Officer Freeman indicated that he planned to cite Mr. Summers, stating that  
6 his “reasoning is just . . . because of his priors.”

7 100. Officer Vernon explained to Mr. Summers that Metro officers are trained  
8 on Clark County Codes; Nevada Revised Statutes; and city codes, if applicable.

9 101. Mr. Summers asked the officers about CCC § 16.11.090, the code under  
10 which they were citing him, and explained that an exception exists for street performers’  
11 musical instrument cases and backpacks to be stored next to them while performing. Mr.  
12 Summers also mentioned the level of service (LOS). Officer Freeman responded that the  
13 obstruction part of the code still prevents objects from being kept on a walkway because “the  
14 level of service that the sidewalk provides has been degraded.”

15 102. Officer Vernon told Mr. Summers that “no other cop” would have given  
16 him the tip about performing while moving and that other officers “actually want to give you  
17 more citations.”

18 103. Officer Vernon said that by Mr. Summers performing there, he was  
19 degrading the level of service the walkway provides because people would have to walk  
20 around him.

21 104. Officer Freeman said that it was refreshing to talk to someone like Mr.  
22 Summers who has researched the law and compared Mr. Summers to other individuals who  
23 Metro cites frequently for obstructing public walkways.

24 105. Officer Freeman explained to Officer Reyes about Community Court and  
25 said, “There’s no fine associated with this . . . they’re meant to help them be aware. However,  
26 if you don’t show up to your court date, they are very strict on it . . . if you don’t show up on  
27 the date that’s written on here . . . a bench warrant will be issued that afternoon, 100%.”

28 106. On the Declaration of Arrest Form, Officer Freeman wrote that Mr.

1 Summers was “[s]toring his case and standing in one spot on the pedestrian bridge between  
2 MGM and The Tropicana. Summers began to draw a crowd and between the crowd and the  
3 stored materials, it caused an obstruction and lowered the level of service the sidewalk  
4 provides.”

5 107. The citation issued by Officer Freeman reflects citation number 105803667.  
6 The citation was for obstructive use of the sidewalk in violation of CCC § 16.11.090.

7 108. The citation required Mr. Summers to appear at Community Court on  
8 August 1, 2019. Mr. Summers retained counsel to represent him at this appearance.

9 109. On August 1, 2019, Mr. Summers was given the option to participate in  
10 Community Court, but he declined. He entered a plea of not guilty. A bench trial was set for  
11 September 30, 2019.

12 110. At the trial on September 30, 2019, the citation was dismissed.

13 **c. October 5, 2019 Citation**

14 111. On the afternoon of October 5, 2019, Mr. Summers was engaged in street  
15 performance on the pedestrian bridge between MGM Grand and The Tropicana. He was  
16 standing next to the side of the bridge, with his back to the guardrail.

17 112. At approximately 4:20 PM, Officers Vernon and Reyes approached Mr.  
18 Summers by bicycle on the pedestrian bridge. Mr. Summers wore his own body cam and  
19 recorded portions of the encounter.

20 113. Throughout the encounter, a steady flow of pedestrians can be seen walking  
21 past Mr. Summers, the officers, and their bicycles without being obstructed.

22 114. The citation issued by Officer Reyes reflects citation number 105874805.  
23 The citation was for conducting business on the public right-of-way in violation of CCC  
24 § 6.04.130.

25 115. The citation required Mr. Summers to appear at Community Court on  
26 November 7, 2019.

27 116. Mr. Summers appeared at Community Court on the specified date, but the  
28 court had no record of the citation. Mr. Summers also confirmed this with Metro records

1 through email exchanges with Officer Reyes.

2 **d. November 24, 2019 Citation**

3 117. On the evening of November 24, 2019, Mr. Summers was engaged in street  
4 performance on the pedestrian bridge between Fashion Show Mall and the Wynn. He was  
5 standing next to the side of the bridge, with his back to the guardrail.

6 118. At approximately 6:20 PM, Officers Vernon and Reyes approached Mr.  
7 Summers by bicycle on the pedestrian bridge. Mr. Summers wore his own body cam and  
8 recorded portions of the encounter. Officer Vernon is audible for a portion of the recording,  
9 but he is not visible.

10 119. Throughout the encounter, a steady flow of pedestrians can be seen walking  
11 past Mr. Summers, Officer Reyes, and his bicycle without being obstructed.

12 120. Officer Reyes followed up with Mr. Summers about the incident from  
13 October 5, 2019, asking if Mr. Summers had been able to sort out the seemingly missing  
14 citation or appear in court. Mr. Summers told Officer Reyes that he had gone to court on the  
15 specified date, but that the court had no record of the citation. Officer Reyes said he received  
16 an email about the citation and said that “they were backed up,” but it is unclear to whom he  
17 was referring.

18 121. Officer Reyes told Mr. Summers he needed to leave the pedestrian bridge,  
19 and Mr. Summers said he would take a citation.

20 122. The citation issued by Officer Reyes reflects citation number 105874810.  
21 The citation was for obstructive use of the public sidewalk in violation of CCC § 16.11.070.

22 **e. Other Incidents**

23 **i. July 3, 2011 Citation**

24 123. Early in the morning on July 3, 2011, Mr. Summers was engaged in street  
25 performance on a temporary sidewalk adjacent to the roadway near the intersection of Las  
26 Vegas Boulevard and the Planet Hollywood north entrance.

27 124. At approximately 12:00 AM, an officer with the badge number 13657  
28 approached Mr. Summers and issued him a citation.

125. The citation reflects citation number 104768218A. The citation was for obstructive use of the public sidewalk in violation of CCC § 16.11.020.

126. The citation required Mr. Summers to appear at Las Vegas Justice Court on August 15, 2011. The citation was dismissed.

**ii. April 5, 2013 Citation**

127. On the evening of April 5, 2013, Mr. Summers was engaged in street performance on a sidewalk near a Regional Transportation Commission (RTC) bus stop, south of the Bellagio fountains and north of the Cosmopolitan entrance.

128. At approximately 10:45 PM, two officers with the badge numbers 6087 and 8902 approached Mr. Summers and issued him a citation.

129. Mr. Summers described the officers as aggressive and said they threatened to arrest him if he did not comply.

130. The citation reflects citation number 105089319. The citation was for (1) dangerous objects prohibited in violation of CCC § 14.40.030 (because of the device Mr. Summers was using to power his equipment) and (2) obstructive use of the public sidewalk in violation of CCC § 16.11.090.

131. The citation required Mr. Summers to appear at Las Vegas Justice Court on June 13, 2013. The citation was dismissed.

**iii. July 14, 2013 Arrest**

132. Early in the morning of July 14, 2013, Mr. Summers had just finished packing up after a performance and was sitting on a raised planter on a sidewalk adjacent to Harmon Road West, near the intersection with Las Vegas Boulevard.

133. At approximately 12:10 AM, Officers Smith (badge number 9643) and Dennett (badge number 12944) approached Mr. Summers.

134. Mr. Summers video recorded the encounter with the officers on his cell phone.

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135. The officers arrested Mr. Summers based on an outstanding bench warrant from the April 5, 2013, incident. Mr. Summers believes he was arrested out of retaliation for filming the officers.

136. Mr. Summers then spent approximately twelve hours in CCDC before being bailed out for \$3,000.

137. The arrest was for obstructive use of the public sidewalk in violation of CCC § 16.11.090. Mr. Summers subsequently received notice that the Clark County District Attorney decided not to file formal charges against him.

**iv. March 24, 2015 Citation**

138. On the evening of March 24, 2015, Mr. Summers had not yet begun performing but was sitting near a raised planter on a sidewalk adjacent to Harmon Road West, near the intersection with Las Vegas Boulevard.

139. At approximately 11:38 PM, Officer Ries (badge number 14078) approached Mr. Summers.

140. Officer Ries told Mr. Summers that he intended to cite him but could not identify the specific code Mr. Summers was allegedly violating. Officer Ries tried to find the code on his phone and asked Mr. Summers to accompany him to his police vehicle so he could write the citation. Mr. Summers declined to go, and Officer Ries placed Mr. Summers in handcuffs for approximately forty-five minutes until a supervisor arrived and told Mr. Summers he could leave.

141. Officer Ries cited Mr. Summers for violating CCC § 14.40.030, which prohibits stopping, standing, or parking in specified places.

142. The citation reflects citation number 105311369. The citation required Mr. Summers to appear at Las Vegas Justice Court on June 10, 2015. The citation was dismissed.

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**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  
(RIGHT TO FREE SPEECH AND EXPRESSION)  
(AGAINST ALL DEFENDANTS)**

143. Mr. Summers repeats and realleges Paragraphs 1 through 142 as though fully set forth herein.

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

145. CCC § 16.11.070 only prohibits street performers from temporarily storing items on the sidewalk if those items "actually obstruct[]" the sidewalk.

146. CCC § 16.11.070 contains a specific exemption for "materials or property held or stored in a carry bag or pack which is actually carried by a pedestrian or items such as a musical instrument case or a backpack which is temporarily placed next to a street performer for that street performer's use unless said musical instrument actually obstructs the sidewalk."

147. Mr. Summers' temporary placement of his violin case next to him while he performs falls within this exemption.

148. Mr. Summers' performance—including the placement of his violin case—does not obstruct pedestrian traffic because Mr. Summers intentionally positions himself against the walkway guardrail to allow pedestrians to pass by without hindrance.

149. Defendant Sgt. Cirkosz's actions of citing and arresting Mr. Summers on September 30, 2018 for obstructive use of a public sidewalk while he was engaged in his street performance and seizure of Mr. Summers' violin violated his rights to freedom of speech and expression as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

150. Defendant Officers Freeman, Vernon, and Reyes' actions of citing Mr.

1 Summers on June 29, 2019 for obstructive use of a public sidewalk while he was engaged in  
2 his street performance violated his rights to freedom of speech and expression as guaranteed  
3 by the First and Fourteenth Amendments to the United States Constitution.

4 151. Defendant Officers Vernon and Reyes' actions of citing Mr. Summers on  
5 October 5, 2019 for obstructive use of a public sidewalk while he was engaged in his street  
6 performance violated his rights to freedom of speech and expression as guaranteed by the  
7 First and Fourteenth Amendments to the United States Constitution.

8 152. Defendant Officers Vernon and Reyes' actions of citing Mr. Summers on  
9 November 24, 2019 for obstructive use of a public sidewalk while he was engaged in his  
10 street performance violated his rights to freedom of speech and expression as guaranteed by  
11 the First and Fourteenth Amendments to the United States Constitution.

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

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

25 155. Defendant Sheriff Lombardo is liable because at all relevant times, he was  
26 aware of the extensive history of litigation regarding Metro's citing and detaining individuals  
27 engaged on constitutionally protected speech activities on the Las Vegas Strip, and from this  
28 history drew the inference that Metro's policies caused a substantial risk of violations of

1 citizens' First Amendment rights.

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

5 157. Mr. Summers is entitled to monetary, compensatory, and punitive damages  
6 from Defendants.

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

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

16 159. Mr. Summers repeats and realleges Paragraphs 1 through 158 as though  
17 fully set forth herein.

18 160. Defendants acted under color of law, and their actions—including arrest and  
19 citation—violated Mr. Summers' rights to freedom of speech and expression as guaranteed  
20 by the First and Fourteenth Amendments to the United States Constitution.

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

25 162. Defendant Metro is liable because at all relevant times Defendant Metro  
26 was responsible for making and enforcing policies with respect to officer interactions with  
27 citizens and ensuring, via adequate training and supervision that officers were aware of  
28 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  
performances.

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

9           164. Had Defendant Metro adequately trained its officers, Mr. Summers'  
10 constitutional injury—violation of his right to free speech—would have been avoided.

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

16           166. Mr. Summers continues and intends to continue engaging in his street  
17 performance in the future. Mr. Summers relies on his street performances to provide an outlet  
18 for his artistic expression, and relies on the tips he receives for performances to supplement  
19 his income.

20           167. Based on previous harassment, citations, and prosecution for engaging in  
21 his street performance, Mr. Summers fears that if he engages in his street performance he  
22 will be prosecuted. Mr. Summers continues to engage in his street performance, but fears  
23 that Metro officers will cite him, arrest him, and seize his property.

24           168. Defendants' actions of harassing and citing Mr. Summers have restricted,  
25 chilled, and inhibited the speech and expression of Mr. Summers and other non-party  
26 individuals. While Mr. Summers continues to and will continue to engage in his chosen street  
27 performance, he is constantly fearful that he will be unlawfully harassed and cited by Metro  
28 officers.

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

170. Mr. Summers is entitled to monetary, compensatory, and punitive damages from Defendants.

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

**THIRD CAUSE OF ACTION**  
**VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS**  
**TO THE CONSTITUTION OF THE UNITED STATES**  
**PURSUANT TO 42 U.S.C. § 1983**  
**(RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES)**  
**(AGAINST METRO, SHERIFF LOMBARDO, AND SERGEANT CIRKOSZ)**

172. Mr. Summers repeats and realleges Paragraphs 1 through 171 as though fully set forth herein.

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

174. Defendants acted under color of law and violated Mr. Summers' right to be free from unlawful searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution. Defendant Sgt. Cirkosz unlawfully seized Mr. Summers' property—which Mr. Summers needs to engage in his street performance—and Mr. Summers' person without reasonable suspicion or probable cause that he committed a crime.

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

176. As evidenced by the repeated unconstitutional citations of Mr. Summers for

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

177. Had Defendant Metro adequately trained its officers, Mr. Summers' constitutional injury—the unreasonable seizure of his property and person—would have been avoided.

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

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

180. Mr. Summers is entitled to monetary, compensatory, and punitive damages from Defendants.

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

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

182. Mr. Summers repeats and realleges Paragraphs 1 through 181 as though fully set forth herein.

183. Mr. Summers' rights to speech and expressive conduct are impermissibly

1 restricted, chilled, deterred and inhibited by the actions of Defendants.

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

5 185. Defendants’ actions, as alleged herein, constitute violations of Mr.  
6 Summers’ rights under the Constitution of the State of Nevada, Art. 1, § 9.

7 186. As a direct and proximate result of Defendants’ violations of the Nevada  
8 Constitution, Mr. Summers has suffered, is suffering, and will continue to suffer damages in  
9 an amount subject to proof.

10 187. Mr. Summers is entitled to monetary, compensatory, and punitive damages  
11 from Defendants.

12 188. It has been necessary for Mr. Summers to retain the services of attorneys to  
13 pursue this matter, and Mr. Summers is entitled to attorney’s fees, costs, and prejudgment  
14 interest.

15 **FIFTH CAUSE OF ACTION**  
16 **NEGLIGENT TRAINING, SUPERVISION, AND RETENTION**  
17 **UNDER NEV. REV. STAT. § 41.130**  
18 **(AGAINST DEFENDANT METRO)**

19 189. Mr. Summers repeats and re-alleges Paragraphs 1 through 188 as though  
20 fully set forth herein.

21 190. Defendant Metro owed a duty to persons such as Mr. Summers to use  
22 reasonable care in the training, supervision, and retention of their employees to make sure  
23 that their employees are fit for their positions by implementing policies and procedures  
24 designed to prevent wrongful acts by their employees, such as those committed by the Officer  
25 Defendants.

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



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

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

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

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

196. Mr. Summers is entitled to monetary, compensatory, and punitive damages from Defendants.

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

#### **SIXTH CAUSE OF ACTION**

##### **CONVERSION**

##### **(AGAINST DEFENDANTS SERGEANT CIRKOSZ AND METRO)**

198. Mr. Summers repeats and realleges Paragraphs 1 through 197 as though fully set forth herein.

199. Sgt. Cirkosz exercised wrongful dominion over Mr. Summers' property when he seized Mr. Summers' property on September 30, 2018.

200. Defendant Metro is liable because at all relevant times it was responsible for making and enforcing policies with respect to Sgt. Cirkosz's seizures of property and ensuring that such seizures are conducted within the parameters of the law, and Defendant Metro failed to do so.

201. As set forth above, Defendants have engaged in tortious or unlawful conduct that cannot be justified or excused in law.

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

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

**SEVENTH CAUSE OF ACTION**  
**MALICIOUS PROSECUTION**

**(AGAINST DEFENDANTS METRO AND OFFICER DEFENDANTS)**

204. Mr. Summers repeats and realleges Paragraphs 1 through 203 as though fully set forth herein.

205. Officer Defendants and Metro caused criminal actions to be filed against Mr. Summers due to their citations and/or arrests of Mr. Summers on September 30, 2018, June 29, 2019, October 5, 2019, and November 24, 2019.

206. Officer Defendants lacked probable cause to commence these criminal actions.

207. Officer Defendants acted with malice in commencing these criminal actions, as under any reasonable interpretation of the Clark County Code, Mr. Summers was not engaging in any unlawful activity.

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1           208. All criminal actions pertaining to these citations and arrests have been  
2 terminated in Mr. Summers' favor.

3           209. Defendant Metro is liable because at all relevant times, the officers were in  
4 the employ of Metro and Metro is responsible for Metro's officers' conduct. Defendant  
5 Metro's officers were not acting independently, committed the wrongful acts during the  
6 course of their official duties as police officers, and such actions were reasonably foreseeable  
7 considering the nature and scope of their employment as police officers.

8           210. As a direct and proximate result of this malicious prosecution, Mr. Summers  
9 has suffered, is suffering, and will continue to suffer damages in an amount subject to proof.

10           211. Mr. Summers is entitled to monetary, compensatory, and punitive damages  
11 from Defendants.

12           212. It has been necessary for Mr. Summers to retain the services of attorneys to  
13 pursue this matter, and Mr. Summers is entitled to attorney's fees, costs, and prejudgment  
14 interest.

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**PRAYER FOR RELIEF**

WHEREFORE, Mr. Summers respectfully prays as follows:

- a. A permanent injunction preventing Defendant Metro and its officers from violating the constitutional rights of individuals by improperly citing street performers for obstructive use of public sidewalk;
- b. An award requiring all Defendants to pay monetary and compensatory damages in an amount to be determined at trial;
- c. An award against the individual Defendants for punitive damages in an amount to be determined at trial;
- d. An award of attorney's fees and expenses under 42 U.S.C. § 1988(b); and
- e. Any further relief the Court deems appropriate.

DATED this 29<sup>th</sup> day of September, 2020.

/s/ Margaret A. McLetchie

MARGARET A. MCLETCHIE, Nevada Bar No. 10931  
ALINA M. SHELL, Nevada Bar No. 11711  
LEO S. WOLPERT, Nevada Bar No. 12658  
MCLETCHIE LAW  
701 East Bridger Avenue, Suite 520  
Las Vegas, NV 89101  
Telephone: (702) 728-5300  
Email: maggie@nvlitigation.com  
*Counsel for Plaintiff Brandon Summers*