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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRANDON SUMMERS, an individual,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, in its official capacity;
CLARK COUNTY, a political subdivision
of the State of Nevada; SHERIFF JOSEPH
LOMBARDO, an individual; SERGEANT
MARK CIRKOSZ, an individual; OFFICER
JAKE FREEMAN, an individual; OFFICER
BLAKE VERNON, an individual; and
OFFICER GERARDO REYES, an
individual,

Defendants.

Case. No.: 2:20-cv-01815-APG-EJY

FIRST AMENDED COMPLAINT

[JURY TRIAL DEMANDED]

Plaintiff Brandon Summers, by and through his counsel of record, hereby files this First Amended 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



1 of Nevada pursuant to the supplemental jurisdiction provided for by 28 U.S.C. § 1367(a).

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

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

9 5. Because Defendants are not arms of the State, this suit is not barred by the
10 Eleventh Amendment to the United States Constitution. *See Eason v. Clark Cty. Sch. Dist.*,
11 303 F.3d 1137, 1147 (9th Cir. 2002); *Culinary Workers Union v. Del Papa*, 200 F.3d 614,
12 619 (9th Cir. 1999).

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

17 **PARTIES**

18 7. Plaintiff Brandon Summers is, and at all relevant times herein was, a
19 musician and street performer who resides in Clark County, Nevada.

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

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

27 10. In Mr. Summers' view, the Code does not criminalize street performances
28 such as Mr. Summers' in and around the Las Vegas Resort District. However, on information

1 and belief, Defendant Metro and its officers take the position that Mr. Summers has violated
2 the Code. Defendant Metro relies on the Code to bar Mr. Summers from engaging in his
3 violin performances in public forums. To the extent that said code does criminalize Mr.
4 Summers' street performances, it is facially unconstitutional.

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

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

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

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

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

24 16. Upon information and belief, Defendant Sergeant Mark J. Cirkosz ("Sgt.
25 Cirkosz") was at all relevant times herein a Sergeant employed by Metro.

26 17. Upon information and belief, Officer Jake Freeman ("Officer Freeman")
27 was at all relevant times herein an officer employed by Metro.

28 18. Upon information and belief, Officer Blake Vernon ("Officer Vernon")

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

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

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

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

9 **STANDING**

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

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

16 **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

17 ***Plaintiff Brandon Summers***

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

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

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

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

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

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

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

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

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

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

20 33. For “[t]ime out of mind public streets and sidewalks have been used for
21 public assembly and debate, the hallmarks of a traditional public forum.” *Frisby v. Schultz*,
22 487 U.S. 474, 480 (1988) (quotation omitted). They are the “archetype” of a traditional public
23 forum. *Id.* As the United States Court of Appeals for the Ninth Circuit has explained, “[t]he
24 protections afforded by the First Amendment are nowhere stronger than in streets and parks,
25 both categorized for First Amendment purposes as traditional public fora.” *Berger v. City of*
26 *Seattle*, 569 F.3d 1029, 1035–36 (9th Cir. 2009) (citations omitted). Public sidewalks are
27 also a traditional public forum and are open to the public for expressive activities. *United*
28 *States v. Grace*, 461 U.S. 171, 179 (1983).

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

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

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

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

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

27 39. Pedestrian bridges/raised walkways that allow pedestrians to cross over
28 streets also meet the definition of public sidewalks and are traditional public fora. They are

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

13 40. Further, in *S.O.C., Inc. v. Mirage Casino-Hotel* (23 P.3d 243, 249 (Nev.
14 2001)), the Nevada Supreme Court examined the Michigan Court of Appeals’ decision in
15 *Commodities Export Co. v. City of Detroit* (321 N.W.2d 842 (Mich. Ct. App. 1982)). “In that
16 case, a private business enterprise attempted to distribute commercial handbills on a
17 privately-owned bridge and surrounding property of its closest competitor. The owner of the
18 bridge attempted to exclude the handbillers who, in turn, sued alleging that they had a First
19 Amendment right to distribute their advertisements on the property because it was held open
20 to the general public. The court of appeals, after analyzing the United States Supreme Court’s
21 cases in this area, concluded that the rights surrounding private property ownership cannot
22 be extinguished because the property is held open to the public.” *S.O.C., Inc.*, 23 P.3d 243,
23 249. Thus, even if the raised walkways are considered privately-owned, because they are
24 held open to the public, they constitute traditional public fora.

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

26 41. Metro and its officers have been parties to a number of lawsuits regarding
27 infringement of free speech rights in the Las Vegas Resort District. For example, on July 9,
28 2009, two street performers filed suit in federal court alleging constitutional violations after

1 Metro officers cited them for storing materials or obstructing the sidewalks on the Las Vegas
 2 Strip. See *Banasik et al. v. Clark Cty., et al.*, U.S. Dist. Ct. Case No. 2:09-cv-01242-LDG-
 3 GWF (“*Banasik*”). *Banasik* was resolved pursuant to a settlement agreement between the
 4 parties.

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

18 43. An ongoing civil rights matter involving Metro’s infringement of street
 19 performers’ free speech rights is *Taylor v. LVMPD, et al.*, Case No. 2:19-cv-00995-JCM-
 20 NJK, in the U.S. District Court of Nevada. Mr. Taylor is a street performer with a congenital
 21 disease that affects the development and mobility of the joints in his arms and legs, requiring
 22 him to use a wheelchair. Mr. Taylor “live draws” by using his mouth to draw artwork for
 23 passersby on the Las Vegas Strip. He uses a small portable table while drawing. Beginning
 24 in April 2017, Mr. Taylor was repeatedly harassed and cited by Metro officers for obstructing
 25 the use of a public walkway, in purported violation of CCC § 16.11.070. Judge Mahan
 26 granted Mr. Taylor a temporary restraining order against Metro, explaining that “[t]he plain
 27 language of chapter 16 of the CCC is entirely consistent with [Mr. Taylor’s] First
 28 Amendment rights” because “[Mr. Taylor] engages in live drawing—which is expressive

1 activity protected by the First Amendment—in a public forum.” *Id.*, ECF No. 84 at 14, 17.
2 Judge Mahan held that CCC § 16.11.070 is facially constitutional because it provides a carve-
3 out for First Amendment activities (by permitting First Amendment speech as long as it is
4 not actually obstructive of a walkway), but noted that “there is a serious question that goes
5 to the merits of the claim” regarding the code as-applied to Mr. Taylor. *Id.* at 15.

6 ***Clark County Code § 16.11.070***

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

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

14 CCC § 16.11.070.

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

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

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

1 obstructive”).

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

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

21 ***Clark County Code § 6.04.130***

22 50. Section 6.04.130 of the Clark County Code provides:

23 It is unlawful for any person to sell, peddle, offer to sell or solicit for sale
 24 by offering or displaying any merchandise, goods, items, wares, or services
 25 on any improved or unimproved portion of a public right-of-way, including
 26 private property upon which a limited easement of public access has been
 27 granted, in the unincorporated area of Clark County except that which is
 28 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

1 encourage commercial transactions at licensed business locations.

2 CCC § 6.04.130.

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

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

17 ***History of the Clark County Code***

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

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

24 55. In the course of the litigation, the parties—which included Metro and
25 individual Metro officers as defendants—entered into a Memorandum of Understanding
26 (“MOU”) in which the parties agreed that street performing is expressive speech or conduct
27 protected by the First Amendment and that street performing was not a violation of, inter
28 alia, the provisions of Chapter 16.11 of the Clark County Code of Ordinances. As part of the

1 MOU, the parties agreed to pursue various provisions of the Clark County Code, including
2 CCC § 16.11.070.

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

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

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

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

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

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

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

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

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

25 63. At approximately 6:00 PM, while Mr. Summers was taking a break from
26 performing, Sgt. Cirkosz approached Mr. Summers on the pedestrian bridge. Sergeant
27 Cirkosz was wearing a body camera (“body cam”). Subsequent to these events, Mr. Summers
28 requested and obtained Sergeant Cirkosz’s body cam footage from their encounter on

1 September 30, 2018.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 opportunities.

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

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

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

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

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

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

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

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

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

25 90. Prior to his citation’s dismissal, on October 12, 2018, Mr. Summers filed a
26 complaint with Metro, explaining what happened during the September 30, 2018 incident
27 and expressing his belief that Sgt. Cirkosz arrested him out of retaliation.

28 91. On November 25, 2018, Mr. Summers also filed a similar complaint with

1 the Citizen Review Board (CRB) (an independent civilian oversight agency for Metro Police
2 and Corrections Officers).

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

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

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

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

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

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

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

24 98. Officer Vernon explained to Mr. Summers that he could play his violin
25 while moving/walking, but that it became illegal once he stopped and was stationary. Officer
26 Freeman explained the same to the passerby.

27 99. Officer Freeman asked Mr. Summers if he had been cited and/or arrested

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¹ It appears that Officer Reyes was being trained by Officer Freeman during this encounter.

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

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

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

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

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

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

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

26 106. On the Declaration of Arrest Form, Officer Freeman wrote that Mr.
27 Summers was “[s]toring his case and standing in one spot on the pedestrian bridge between
28 MGM and The Tropicana. Summers began to draw a crowd and between the crowd and the

1 stored materials, it caused an obstruction and lowered the level of service the sidewalk
2 provides.”

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

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

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

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

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

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

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

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

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

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

25 116. Mr. Summers appeared at Community Court on the specified date, but the
26 court had no record of the citation. Mr. Summers also confirmed this with Metro records
27 through email exchanges with Officer Reyes.

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

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

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

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

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

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

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

21 123. As a result of this citation, Mr. Summers was required to appear in Las
22 Vegas Township Justice Court, Case No. 20T00883.

23 124. Mr. Summers retained counsel to file a Motion to Dismiss and a Supplement
24 to said motion in Case No. 20T00883.

25 125. On September 30, 2020, the Las Vegas Township Justice Court dismissed
26 the State’s case against Mr. Summers.

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1 e. **Other Incidents**

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

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

6 127. At approximately 12:00 AM, an officer with the badge number 13657
7 approached Mr. Summers and issued him a citation.

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

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

12 ii. **April 5, 2013 Citation**

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

16 131. At approximately 10:45 PM, two officers with the badge numbers 6087 and
17 8902 approached Mr. Summers and issued him a citation.

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

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

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

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1 **iii. July 14, 2013 Arrest**

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

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

7 137. Mr. Summers video recorded the encounter with the officers on his cell
8 phone.

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

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

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

17 **iv. March 24, 2015 Citation**

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

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

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

1 street performance and seizure of Mr. Summers' violin violated his rights to freedom of
2 speech and expression as guaranteed by the First and Fourteenth Amendments to the United
3 States Constitution.

4 153. Defendant Officers Freeman, Vernon, and Reyes' actions of citing Mr.
5 Summers on June 29, 2019 for obstructive use of a public sidewalk while he was engaged in
6 his street performance violated his rights to freedom of speech and expression as guaranteed
7 by the First and Fourteenth Amendments to the United States Constitution.

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

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

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

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

1 the First and Fourteenth Amendments to the United States Constitution.

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

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

16 168. As evidenced by the fact that Defendant Metro and its officers routinely
17 decline to issue citations to those who stop on sidewalks and overpasses without engaging in
18 expressive activity, Defendant Metro's (and its officers') motivation in citing and harassing
19 Mr. Summers—and therefore chilling his speech—was based on his engaging in expressive
20 activity.

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

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

28 171. Mr. Summers intends to continue engaging in his street performance in the

1 future. Mr. Summers relies on his street performances to provide an outlet for his artistic
2 expression, and relies on the tips he receives for performances to supplement his income.

3 172. Based on previous harassment, citations, and prosecution for engaging in
4 his street performance, Mr. Summers fears that if he engages in his street performance he
5 will be prosecuted. Although Mr. Summers would like to engage in his street performance,
6 he fears that Metro officers will cite him, arrest him, and seize his property.

7 173. Defendants' actions of repeatedly harassing and citing Mr. Summers have
8 restricted, chilled, and inhibited the speech and expression of Mr. Summers and other non-
9 party individuals. While Mr. Summers would like to continue engaging in his chosen street
10 performance, he is constantly fearful that he will be unlawfully harassed and cited by Metro
11 officers, and has declined to engage in street performances due to this fear.

12 174. Further, Clark County is liable because the First Amendment "carve-outs"
13 of CCC § 16.11.020(e) are not sufficient to prevent repeated violations and chilling of Mr.
14 Summers' First Amendment rights, rendering it facially unconstitutional.

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

18 176. Mr. Summers is entitled to monetary, compensatory, and punitive damages
19 from Defendants.

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

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

27 178. Mr. Summers repeats and realleges Paragraphs 1 through 177 as though
28 fully set forth herein.

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

4 180. Defendants acted under color of law and violated Mr. Summers’ right to be
5 free from unlawful searches and seizures as guaranteed by the Fourth and Fourteenth
6 Amendments to the United States Constitution. Defendant Sgt. Cirkosz unlawfully seized
7 Mr. Summers’ person without reasonable suspicion or probable cause that he committed a
8 crime.

9 181. Defendant Metro is liable because at all relevant times it was responsible
10 for making and enforcing policies with respect the Officer Defendants’ seizures of persons
11 and ensuring that such seizures are conducted within the parameters of the law, and
12 Defendant Metro failed to do so.

13 182. As evidenced by the repeated unconstitutional citations of Mr. Summers for
14 engaging in constitutionally protected expressive activities on the Las Vegas Strip, as well
15 as the numerous cases brought against it regarding its repeated, unlawful citation and
16 detention of plaintiffs engaged in expressive activities on the Las Vegas Strip, Defendant
17 Metro’s failure to enforce these policies and train and supervise its officers with respect to
18 unconstitutional seizures of persons constituted deliberate indifference to the Fourth
19 Amendment rights of those whom Defendant Metro’s officers are likely to come into contact.

20 183. Had Defendant Metro adequately trained its officers, Mr. Summers’
21 constitutional injury—the unreasonable seizure of his person—would have been avoided.

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

27 185. As a direct and proximate result of Defendants’ violations of the Fourth and
28 Fourteenth Amendments, Mr. Summers has suffered, is suffering, and will continue to suffer

1 damages in an amount subject to proof.

2 186. Mr. Summers is entitled to monetary, compensatory, and punitive damages
3 from Defendants.

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

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

11 188. Mr. Summers repeats and realleges Paragraphs 1 through 187 as though
12 fully set forth herein.

13 189. Mr. Summers’ rights to speech and expressive conduct are impermissibly
14 restricted, chilled, deterred and inhibited by the actions of Defendants.

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

18 191. Defendants’ actions, as alleged herein, constitute violations of Mr.
19 Summers’ rights under the Constitution of the State of Nevada, Art. 1, § 9.

20 192. Clark County is liable because the First Amendment “carve-outs” of CCC
21 § 16.11.020(e) are not sufficient to prevent repeated violations of Mr. Summers’ First
22 Amendment rights, rendering it facially unconstitutional.

23 193. As a direct and proximate result of Defendants’ violations of the Nevada
24 Constitution, Mr. Summers has suffered, is suffering, and will continue to suffer damages in
25 an amount subject to proof.

26 194. Mr. Summers is entitled to monetary, compensatory, and punitive damages
27 from Defendants.

28 195. 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

1 interest.

2 **FIFTH CAUSE OF ACTION**
3 **MALICIOUS PROSECUTION**

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

5 196. Mr. Summers repeats and realleges Paragraphs 1 through 195 as though
6 fully set forth herein.

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

10 198. Officer Defendants lacked probable cause to commence these criminal
11 actions.

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

15 200. All criminal actions pertaining to these citations and arrests have been
16 terminated in Mr. Summers' favor.

17 201. 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.

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

24 203. Mr. Summers is entitled to monetary, compensatory, and punitive damages
25 from Defendants.

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

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PRAAYER 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 24th day of November, 2020.

/s/ Alina M. Shell

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