



1 **COMJD**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 LEO S. WOLPERT, Nevada Bar No. 12658

4 **MCLEATCHIE LAW**

5 602 South Tenth Street

6 Las Vegas, NV 89101

7 Telephone: (702) 728-5300

8 Fax: (702) 425-8220

9 Email: maggie@nvlitigation.com

10 *Counsel for Plaintiff Travis Nutsch*

CASE NO: A-23-872055-C

Department 29

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 TRAVIS NUTSCH, an individual,

Case No.:

11 Plaintiff,

Dept. No.:

12 vs.

COMPLAINT

13 LAS VEGAS METROPOLITAN POLICE
14 DEPARTMENT, a Municipal Corporation;
15 OFFICER TIMOTHY NYE, an individual;
16 OFFICER GEORGE AJAM, an individual;
17 OFFICER GENE WOLFANGER, an
individual; DOE OFFICERS I-VII,
individuals.

[JURY TRIAL DEMANDED]

EXEMPT FROM ARBITRATION:

- Significant Issues of Public Policy;
- Declaratory and Injunctive Relief Sought;
- Amount in Excess of \$50,000.

18 Defendants.

19 Plaintiff Travis Nutsch, by and through his counsel of record, hereby files this
20 Complaint for damages pursuant to 42 U.S.C. § 1983 (civil action for deprivation of rights),
21 the Nevada Constitution, and Nevada statute.

22 **NATURE OF THE ACTION**

23 Plaintiff Travis Nutsch is a musician and street performer. He has performed
24 numerous times on the raised pedestrian walkways above the Las Vegas Strip (in the Las
25 Vegas Resort District), playing cello to the delight of passers-by. Mr. Nutsch carefully set up
26 and engaged in his performances to avoid blocking or impeding the flow of pedestrian traffic
27 on the pedestrian bridges. The Clark County, Nevada, Code of Ordinances (the "Clark
28 County Code" or "CCC") permits his conduct, the First Amendment of the United States
Constitution, and Article 1, Section 9 of the Nevada Constitution protect Mr. Nutsch's right

1 to engage in free expression on the Strip—as the Las Vegas Metropolitan Police Department
2 (“Metro”) well knows. Despite these facts, from May through June of 2022, Metro officers
3 harassed Mr. Nutsch and violated his First Amendment rights, citing him multiple times for
4 alleged violations of storage of materials on a public sidewalk pursuant to CCC § 16.11.070.

5 This is an action under 42 U.S.C. § 1983 and the Nevada Constitution seeking to
6 address the unconstitutionality of the Code as applied to Mr. Nutsch, the violations of Mr.
7 Nutsch’s First and Fourth Amendment rights (and their Nevada constitutional analogues) by
8 Metro and its individual officers, and Metro’s negligent training and supervision which led
9 to these constitutional harms. Mr. Nutsch also seeks a permanent injunction and declaratory
10 relief to redress Defendants’ willful, deliberate, and clear constitutional violations, and the
11 harm—which is ongoing and irreparable—that he has suffered as a result.

12 Over the past decades, courts have repeatedly vindicated musicians’ and other
13 artists’ rights to perform on the public sidewalks of the Las Vegas Resort District. The
14 Federal District Court has repeatedly made clear that Metro cannot use the Code as a pretext
15 to shut down musical and artistic performances that do not actually obstruct pedestrian
16 traffic. Yet, despite consistent rebukes from this Court, Metro continues to engage in the
17 same constitutionally violative conduct. Enough is enough.

18 **JURISDICTION AND VENUE**

19 1. This Court has jurisdiction to award Plaintiff damages pursuant to 42 U.S.C.
20 § 1983, the Nevada Constitution, and Nev. Rev. Stat. § 41.130.

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

24 3. The acts or omissions giving rise to Plaintiff’s claims all occurred in Clark
25 County, Nevada. Thus, venue is proper in the Eighth Judicial District Court of the State of
26 Nevada.

27 **PARTIES**

28 4. During all relevant times herein, Plaintiff Travis Nutsch (“Mr. Nutsch”) is

1 a musician and street performer who resides in Clark County, Nevada.

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

4 6. Upon information and belief, Defendant Metro is aware of and has either
5 explicitly or implicitly condoned or created a policy and practice of allowing Metro officers
6 to enforce Clark County Code (“Clark County Code” or “CCC”) § 16.11.070 arbitrarily
7 and/or intentionally to chill constitutionally protected street performances in and around the
8 Las Vegas Resort District.

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

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

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

17 10. Upon information and belief, Defendant Officer Timothy Nye, was at all
18 relevant times herein employed by Metro.

19 11. Upon information and belief, Defendant Officer George Ajam was at all
20 relevant times herein employed by Metro.

21 12. Upon information and belief, Defendant Officer Gene Wolfanger was at
22 all relevant times herein employed by Metro.

23 13. Upon information and belief, Defendant Doe Officers I-VII were at all
24 relevant times herein employed by Metro.

25 14. The naming of defendants herein is based upon information and belief. Mr.
26 Nutsch reserves his right to name additional defendants and modify his allegations
27 concerning defendants named herein.
28

STANDING

15. Mr. Nutsch is and continues to be directly affected by 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.

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

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

Plaintiff Travis Nutsch

17. Mr. Nutsch is a musician and artist who specializes in playing the cello.

18. Mr. Nutsch has performed on the pedestrian bridges above the streets of the Las Vegas Resort Corridor, colloquially known as the “Las Vegas Strip,” which allow pedestrians to cross the streets without entering the traffic below and provide enhanced acoustics for Mr. Nutsch’s performances.

19. Mr. Nutsch sets up his cello, amplifier, cords, stool, and other necessary items immediately alongside the walls of the pedestrian bridges, to ensure that his performance does not impede the flow of pedestrian traffic.

20. Mr. Nutsch accepts tips and donations, but never charges a fee for the songs he plays.

21. Mr. Nutsch performs with his back to the wall of the pedestrian bridge, as far out of the way of the flow of pedestrian traffic as possible, and condenses his belongings to be as compact as possible to avoid blocking the flow of pedestrian traffic.

History of Litigation Concerning the Las Vegas Resort District

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

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

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

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

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

27. According to clearly established case law, “a thoroughfare sidewalk, seamlessly connected to public sidewalks at either end and intended for general public use” is “a public sidewalk, and consequently, a traditional public forum from which [the sidewalk’s private owners] have no right to exclude members of the public.” *Perez-Morciglio v. Las Vegas Metropolitan Police Dept.*, 820 F. Supp. 2d 1100, 1111 (D. Nev. 2011) (citing

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

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

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

Metro's Involvement in Litigation Concerning the Strip

30. Metro and its officers have been parties to a number of lawsuits regarding infringement of free speech rights in the Las Vegas Resort District. For example, 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 Cty., et al.*, U.S. Dist. Ct. Case No. 2:09-cv-01242-LDG-GWF (“*Banasik*”). *Banasik* was resolved pursuant to a settlement agreement between the parties.

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

32. A more recent civil rights matter involving Metro’s infringement of street performers’ free speech rights is *Taylor v. LVMPD, et al.*, Case No. 2:19-cv-00995-JCM-NJK, in the U.S. District Court of Nevada. Mr. Taylor is a street performer with a congenital disease that affects the development and mobility of the joints in his arms and legs, requiring him to use a wheelchair. Mr. Taylor “live draws” by using his mouth to draw artwork for passersby on the Las Vegas Strip. He uses a small portable table while drawing. Beginning in April 2017, Mr. Taylor was repeatedly harassed and cited by Metro officers for obstructing

the use of a public walkway, in purported violation of CCC § 16.11.070. Judge Mahan 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. This matter eventually settled.

Clark County Code § 16.11.070

33. 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.¹ 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.

34. 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.

35. “Street performer” is defined as a member of the general public who

¹ “Public Sidewalk” is defined as any “portion of a highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians, and shall also include crosswalks, medians and traffic islands. For the purposes of this chapter, ‘public sidewalk’ shall include private property upon which a limited easement of public access has been granted.” CCC § 16.11.020(d). This includes pedestrian bridges over the Strip. *See Taylor*, Case No. 2:19-cv-00995-JCM-NJK, ECF No. 84 at 13–14 (considering pedestrian bridges as part of CCC § 16.11.070’s use of “sidewalk.”).

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).

36. 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”).

37. 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.

38. 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. Nutsch 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

39. 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.

40. 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.

41. 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

42. 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.

43. 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.

44. 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.

45. 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.

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

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

a. May 2-3, 2022

47. Around midnight on May 2, 2022, into the early morning hours of May 3, 2022, Mr. Nutsch was performing on the sidewalk next to Bally’s (which has since been rebranded as the Horseshoe Casino). As part of his performance, Mr. Nutsch was holding his cello and sitting on a stool with his cello case, speaker, cords, and other necessary items on either side of him.

48. Mr. Nutsch was not interfering with pedestrian traffic in any way.

49. On information and belief, Mr. Nutsch was approached by Metro Doe Officers I and II, who told him that he was in violation of CCC § 16.11.070 (storage of

materials).

50. On information and belief, Mr. Nutsch was told to pack up his equipment and leave the area under threat of arrest or citation.

51. On information and belief, when this incident occurred, the sidewalk on which this incident occurred was not designated as a “no obstruction zone” by Clark County pursuant to CCC § 16.11.050.

52. On information and belief, when this incident occurred, the sidewalk on which this incident occurred was not clearly designated as a “no obstruction zone” by pavement markings, signs, plaques, monuments, or medallions pursuant to CCC § 16.11.040 and CCC § 16.11.050(a).

b. May 3-4, 2022

53. Around midnight on May 3, 2022, into the early morning hours of May 4, 2022, Mr. Nutsch was performing on a sidewalk next to Bally’s (which has since been rebranded as the Horseshoe Casino). As part of his performance, Mr. Nutsch was holding his cello and sitting on a stool with his cello case, speaker, cords, and other necessary items on either side of him.

54. Mr. Nutsch was not interfering with pedestrian traffic in any way.

55. On information and belief, Mr. Nutsch was approached by Metro Doe Officers III and IV who told him that he was in violation of CCC § 6.56.030 (operating without a license).

56. On information and belief, Mr. Nutsch was told to pack up his equipment and leave the area under threat of arrest or citation.

57. On information and belief, when this incident occurred, the sidewalk on which this incident occurred was not designated as a “no obstruction zone” by Clark County pursuant to CCC § 16.11.050.

58. On information and belief, when this incident occurred, the sidewalk on which this incident occurred was not clearly designated as a “no obstruction zone” by pavement markings, signs, plaques, monuments, or medallions pursuant to CCC § 16.11.040

1 and CCC § 16.11.050(a).

2 **c. May 13, 2022, Citation**

3 59. On the night of May 13, 2022, Mr. Nutsch was performing on the sidewalk
4 next to the base of the pedestrian bridge connected to Bally's (which has since been
5 rebranded as the Horseshoe Casino). As part of his performance, Mr. Nutsch was holding his
6 cello and sitting on a stool with his cello case, speaker, cords, and other necessary items on
7 either side of him.

8 60. Mr. Nutsch was not interfering with pedestrian traffic in any way.

9 61. On information and belief, Mr. Nutsch was approached by Metro Officer
10 Wolfanger and Doe Officer V, who told him he was taking up too much space with his
11 belongings.

12 62. On information and belief, Mr. Nutsch was told to pack up his equipment
13 and follow the officers to Officer Wolfanger's squad car. There, Mr. Nutsch was cited by
14 Officer Wolfanger for an alleged violation of CCC § 16.11.070. While Mr. Nutsch was
15 perfectly cooperative, he conveyed his disagreement with the Officer's actions to them. On
16 information and belief, Mr. Nutsch was warned by Officer Wolfanger to not continue playing
17 or he would be arrested. As a result, Mr. Nutsch took his belongings and left the area.

18 63. On July 19, 2022, the State decided not to proceed with prosecuting the
19 citation and dismissed Case No. 22-CR-025633.

20 64. On information and belief, when this incident occurred, the sidewalk on
21 which this incident occurred was not designated as a "no obstruction zone" by Clark County
22 pursuant to CCC § 16.11.050.

23 65. On information and belief, when this incident occurred, the sidewalk on
24 which this incident occurred was not clearly designated as a "no obstruction zone" by
25 pavement markings, signs, plaques, monuments, or medallions pursuant to CCC § 16.11.040
26 and CCC § 16.11.050(a).

27 **d. June 2, 2022**

28 66. On the night of June 2, 2022, Mr. Nutsch was performing on the pedestrian

1 bridge connecting to MGM Park. As part of his performance, Mr. Nutsch was holding his
2 cello and sitting on a stool with his cello case, speaker, cords, and other necessary items on
3 either side of him. Mr. Nutsch was also performing with a fellow musician and cello player,
4 Jordan Polovina.

5 67. Mr. Nutsch and Mr. Polovina were not interfering with pedestrian traffic in
6 any way.

7 68. On information and belief, Mr. Nutsch and Mr. Polovina were approached
8 by Metro Doe Officers VI-VII, who told him they were taking up too much space with their
9 belongings.

10 69. On information and belief, Mr. Nutsch and Mr. Polovina were told to pack
11 up their equipment and leave the area under threat of arrest or citation. As a result, Mr. Nutsch
12 took his belongings and left the area.

13 70. On information and belief, when this incident occurred, the sidewalk on
14 which this incident occurred was not designated as a “no obstruction zone” by Clark County
15 pursuant to CCC § 16.11.050.

16 71. On information and belief, when this incident occurred, the sidewalk on
17 which this incident occurred was not clearly designated as a “no obstruction zone” by
18 pavement markings, signs, plaques, monuments, or medallions pursuant to CCC § 16.11.040
19 and CCC § 16.11.050(a).

20 **e. June 8, 2022, Citation**

21 72. On the night of June 8, 2022, Mr. Nutsch was engaged in street performance
22 on the pedestrian bridge crossing East Harmon Avenue next to the Sugar Factory. Mr. Nutsch
23 was positioned against the glass at the edge of the bridge holding his cello and sitting on a
24 stool, with his cello case, speaker, cords, and other necessary items on either side of him.

25 73. Mr. Nutsch was not interfering with pedestrian traffic in any way.

26 74. Nearing midnight on June 8, 2022, Defendant Officers Nye and Ajam
27 approached Mr. Nutsch in the area where he was performing.

28 75. The officers issued Mr. Nutsch a citation for storing materials on a public

sidewalk in an alleged violation of CCC § 16.11.070.

76. During the June 8, 2022, encounter, Mr. Nutsch tried to explain that he was storing his materials on the bridge in accordance with the requirements of the Clark County Code.

77. The officers unlawfully seized many of Mr. Nutsch's belongings such as his speaker, wagon, stool, looper, preamp, cords, and other items necessary for his street performance. Mr. Nutsch was left only his cello, battery, and tip bucket.

78. The officers behaved in a hostile manner towards Mr. Nutsch, and after issuing the citation and confiscating his personal belongings demanded he leave or they would arrest him. As a result, Mr. Nutsch left the area.

79. The State designated the Case No. 22-CR-030930 but subsequently dismissed it on or about January 23, 2023, based on their decision to not proceed pursuant to NRS 174.085.

80. Mr. Nutsch has yet to receive his seized property back from Metro despite the citation's dismissal.

81. On information and belief, when this incident occurred, the pedestrian bridge on which this incident occurred was not designated as a "no obstruction zone" by Clark County pursuant to CCC § 16.11.050.

82. On information and belief, when this incident occurred, the pedestrian bridge on which this incident occurred was not clearly designated as a "no obstruction zone" by pavement markings, signs, plaques, monuments, or medallions pursuant to CCC § 16.11.040 and CCC § 16.11.050(a).

83. Indeed, CCC § 16.11.050(c) unambiguously states that "No person shall be in violation of this chapter for obstructive use of a no obstruction zone *if the no obstruction zone is not designated.*" (emphasis added).

///

///

///

CAUSES OF ACTION

FEDERAL CLAIMS

FIRST CAUSE OF ACTION

**VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS
TO THE CONSTITUTION OF THE UNITED STATES
PURSUANT TO 42 U.S.C. § 1983**

**(CCC § 16.11.070 IS UNCONSTITUTIONAL AS APPLIED TO MR. NUTSCH)
(AGAINST ALL DEFENDANTS)**

84. Mr. Nutsch repeats and realleges Paragraphs 1 through 83 as though fully set forth herein.

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

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

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

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

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

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

91. Because his street performance is protected speech, any ordinance which

1 has the effect of preventing him from engaging in street performance is an improper
2 restriction on his First Amendment rights.

3 92. Without a declaratory judgment from this Court stating that CCC §
4 16.11.070 is unconstitutional as applied to Mr. Nutsch under the First and Fourteenth
5 Amendments to the United States Constitution, Mr. Nutsch faces a real and serious threat of
6 prosecution if he continues to engage in his protected street performances.

7 93. Without injunctive relief from this court prohibiting Defendants from
8 enforcing CCC § 16.11.070 against Mr. Nutsch in this unconstitutional manner, Mr. Nutsch
9 faces a real and serious threat of prosecution if he continues to engage in his protected street
10 performances.

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

17 94. Mr. Nutsch repeats and realleges Paragraphs 1 through 93 as though fully
18 set forth herein.

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

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

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

98. Mr. Nutsch's temporary placement of his equipment falls within this
exemption because the equipment Mr. Nutsch uses for his street performance is necessary to

1 perform and does not obstruct pedestrian traffic.

2 99. Defendant Officers' actions of citing and threatening arrest of Mr. Nutsch
3 for obstructive use of a public sidewalk while he was engaged in his street performance and
4 their seizure of his property violated his rights to freedom of speech and expression as
5 guaranteed by the First and Fourteenth Amendments to the United States Constitution.

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

10 101. Further, Defendant Metro failed to make and enforce constitutional policies
11 with respect to Metro officers' interactions with citizens. Defendant Metro failed to do so by
12 harassing and citing Mr. Nutsch on multiple occasions for engaging in constitutionally
13 protected street performance. As evidenced by these repeated interactions with Mr. Nutsch
14 and the history of litigation concerning speakers' First Amendment rights on the Las Vegas
15 Strip, Defendant, Metro's policies were not narrowly tailored to fulfill a compelling
16 government interest, and constituted deliberate indifference to the constitutional rights of
17 street performers Metro officers are likely to encounter.

18 102. Therefore, because Defendant Metro's policies and actions constituted
19 deliberate indifference to Mr. Nutsch's First and Fourteenth Amendment rights and were the
20 moving force behind its officers' violations of those rights, Defendant Metro is liable for Mr.
21 Nutsch's injuries.

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

25 104. Mr. Nutsch is entitled to monetary, compensatory, and punitive damages
26 from Defendants.

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

1 interest.

2 **THIRD CAUSE OF ACTION**
3 **VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS**
4 **TO THE CONSTITUTION OF THE UNITED STATES**
5 **PURSUANT TO 42 U.S.C. § 1983**

6 **(RIGHT TO FREE SPEECH AND EXPRESSION – CHILLING EFFECT)**
7 **(AGAINST ALL DEFENDANTS)**

8 106. Mr. Nutsch repeats and realleges Paragraphs 1 through 105 as though fully
9 set forth herein.

10 107. Defendants acted under color of law, and their actions violated Mr. Nutsch's
11 rights to freedom of speech and expression as guaranteed by the First and Fourteenth
12 Amendments to the United States Constitution.

13 108. Defendant Metro's actions of harassing and citing citizens engaged in
14 protected street performance in and around the Las Vegas Resort District improperly
15 restrained and chilled Mr. Nutsch's rights to free speech and expression as guaranteed by the
16 First and Fourteenth Amendments to the United States Constitution.

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

23 110. As evidenced by the repeated unconstitutional citations and threats of arrest
24 of Mr. Nutsch for engaging in constitutionally protected expressive activities on the Las
25 Vegas Strip, as well as the numerous cases brought against it regarding its repeated, unlawful
26 citation and detention of plaintiffs engaged in expressive activities on the Las Vegas Strip,
27 Defendant Metro's failure to enforce these policies and train and supervise its officers with
28 respect to those engaging in expressive activities in public for a constitutes deliberate
indifference to the First Amendment rights of those whom Defendant Metro's officers are
likely to come into contact.

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

112. Mr. Nutsch intends to continue engaging in his street performance in the future. Mr. Nutsch relies on his street performances to provide an outlet for his artistic expression, and relies on the tips he receives in exchange for his original works of art to supplement his income.

113. Based on previous harassment, citations, and prosecution for engaging in his street performance, Mr. Nutsch fears that if he engages in his street performance in the only way he is capable of doing—*i.e.*, bringing his cello, a case for his cello, a stool, speaker and other necessary items—he will be prosecuted.

114. Defendants' actions of harassing and citing Mr. Nutsch have restricted, chilled, and inhibited the speech and expression of Mr. Nutsch and other non-party individuals. While Mr. Nutsch wishes to engage in future street performances, he is constantly fearful that he will be unlawfully harassed and cited by Metro officers.

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

116. Mr. Nutsch is entitled to monetary, compensatory, and punitive damages from Defendants.

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

FOURTH CAUSE OF ACTION
VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS
TO THE CONSTITUTION OF THE UNITED STATES
PURSUANT TO 42 U.S.C. § 1983

(UNREASONABLE SEARCH AND SEIZURE)
(AGAINST DEFENDANT METRO, DEFENDANT NYE, DEFENDANT AJAM)

118. Mr. Nutsch repeats and realleges Paragraphs 1 through 117 as though fully set forth herein.

1 119. The Fourth Amendment to the United States Constitution provides that the
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.

4 120. Defendants acted under color of law, and violated Mr. Nutsch’s 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 Officer Nye and Defendant
7 Officer Ajam unlawfully seized Mr. Nutsch’s speaker, wagon, stool, looper, preamp, cords,
8 and other necessary items—which Mr. Nutsch needs to engage in his street performance—
9 without probable cause that he committed a crime. The officers left Mr. Nutsch with only his
10 cello, battery, and tip bucket. Furthermore, despite the State’s dismissal of the case, Metro
11 have yet to return Mr. Nutsch’s property.

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

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

23 123. Had Defendant Metro adequately trained its officers, Mr. Nutsch’s
24 constitutional injury—the unreasonable seizure of his property—would have been avoided.

25 124. Mr. Nutsch is entitled to monetary, compensatory, and punitive damages
26 from Defendants.

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

1 interest.

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

5 **FIFTH CAUSE OF ACTION**
6 **VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE**
7 **CONSTITUTION OF THE UNITED STATES**
8 **PURSUANT TO 42 U.S.C. § 1983**
9 **(MALICIOUS PROSECUTION)**
10 **(AGAINST DEFENDANT METRO, DEFENDANT NYE, DEFENDANT AJAM, DEFENDANT**
11 **WOLFANGER, DEFENDANT DOE OFFICER V)**

12 127. Mr. Nutsch repeats and realleges Paragraphs 1 through 126 as though fully
13 set forth herein.

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

17 129. The Fourth Amendment prohibits prosecution where the suit was "instituted
18 without probable cause," and the "prosecution ended without a conviction." *Thompson v.*
19 *Clark*, 142 S. Ct. 1332, 1336 (2022) (citations and internal quotations omitted).

20 130. All criminal actions pertaining to Mr. Nutsch's citations have been
21 terminated in Mr. Nutsch's favor.

22 131. As a direct and proximate result of Defendants' constitutional violations,
23 Mr. Nutsch has suffered, is suffering, and will continue to suffer damages in an amount
24 subject to proof.

25 132. As evidenced by the repeated unconstitutional citations of Mr. Nutsch for
26 engaging in constitutionally protected expressive activities on the Las Vegas Strip, as well
27 as the numerous cases brought against it regarding its repeated, unlawful citation and
28 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 citations constituted deliberate indifference to the Fourth Amendment rights

of those whom Defendant Metro’s officers are likely to come into contact.

133. Had Defendant Metro adequately trained its officers, Mr. Nutsch’s constitutional injuries—the unreasonable prosecutions initiated against him by way of citation—would have been avoided.

134. Indeed, Defendants’ failure to follow the plain language of CCC § 16.11.050(c), which unambiguously forbids application of this chapter to undesignated “no obstruction zones” indicates that Metro has failed to train its officers regarding the contours of the law, and that said failure to do so was the “moving force” behind the constitutional violations suffered by Mr. Nutsch.

135. Mr. Nutsch is entitled to monetary, compensatory, and punitive damages from Defendants.

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

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

Nevada Constitutional Claims

SIXTH CAUSE OF ACTION

VIOLATION OF THE CONSTITUTION OF THE STATE OF NEVADA

(FREE SPEECH PROTECTIONS)

(AGAINST ALL DEFENDANTS)

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

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

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

141. Defendants' actions, as alleged herein, constitute violations of Mr. Nutsch's rights under Article 1, Section 9 of the Constitution of the State of Nevada.

142. Mr. Nutsch is entitled to monetary, compensatory, and punitive damages from Defendants.

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

144. As a direct and proximate result of Defendants' violations of the Nevada Constitution, Mr. Nutsch has suffered, is suffering, and will continue to suffer damages in an amount subject to proof.

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

145. Mr. Nutsch repeats and realleges Paragraphs 1 through 144 as though fully set forth herein.

146. The free speech protections of Article 1, Section 9 of the Constitution of the State of Nevada are "coextensive to, but no greater than, that of the First Amendment to the United States Constitution." *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 415, 23 P.3d 243, 251 (2001) (citations omitted).

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

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

performances.

149. As evidenced by the repeated unconstitutional citations of Mr. Nutsch 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 those engaging in expressive activities in public for a constitutes deliberate indifference to the First Amendment rights of those whom Defendant Metro's officers are likely to come into contact.

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

151. Mr. Nutsch intends to continue engaging in his street performance in the future. Mr. Nutsch relies on his street performances to provide an outlet for his artistic expression, and relies on the tips he receives in exchange for his original works of art to supplement his income.

152. Based on previous harassment, citations, and prosecution for engaging in his street performance, Mr. Nutsch fears that if he engages in his street performance in the only way he is capable of doing—*i.e.*, bringing his cello, battery, speaker, and other necessary items—he will be prosecuted. Mr. Nutsch fears that if he continues to engage in street performance that Metro officers will cite him and seize his property yet again.

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

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

155. Mr. Nutsch is entitled to monetary, compensatory, and punitive damages

1 from Defendants.

2 156. It has been necessary for Mr. Nutsch to retain the services of attorneys to
3 pursue this matter, and Mr. Nutsch is entitled to attorney’s fees, costs, and prejudgment
4 interest.

5 **EIGHTH CAUSE OF ACTION**
6 **VIOLATION OF THE CONSTITUTION OF THE STATE OF NEVADA**
7 **(FREE SPEECH PROTECTIONS—CCC § 16.11.070**
8 **IS UNCONSTITUTIONAL AS APPLIED TO MR. NUTSCH)**
9 **(AGAINST ALL DEFENDANTS)**

10 157. Mr. Nutsch repeats and realleges Paragraphs 1 through 156 as though fully
11 set forth herein.

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

15 159. The free speech protections of Article 1, Section 9 of the Constitution of the
16 State of Nevada are “coextensive to, but no greater than, that of the First Amendment to the
17 United States Constitution.” *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 415, 23 P.3d
18 243, 251 (2001) (citations omitted).

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

22 161. Although a municipality may place reasonable time, place, and manner
23 restrictions on speech in public fora, those restrictions must be content neutral and narrowly
24 tailored to serve a significant government interest. *A.C.L.U. of Nevada v. City of Las Vegas*,
25 466 F.3d 784, 792 (9th Cir. 2006).

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

1 application of that law. *Id.*

2 163. On every occasion that Mr. Nutsch has been harassed or cited by Defendants
3 for violating the Code, he was engaging in a protected street performance.

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

7 165. Without a declaratory judgment from this Court stating that CCC §
8 16.11.070 is unconstitutional as applied to Mr. Nutsch under Article 1, Section 9 of the
9 Nevada Constitution, Mr. Nutsch faces a real and serious threat of prosecution if he continues
10 to engage in his protected street performances.

11 166. Without injunctive relief from this court prohibiting Defendants from
12 enforcing CCC § 16.11.070 against Mr. Nutsch in this unconstitutional manner, Mr. Nutsch
13 faces a real and serious threat of prosecution if he continues to engage in his protected street
14 performances.

15 **NINTH CAUSE OF ACTION**
16 **VIOLATION OF THE CONSTITUTION OF NEVADA**

17 **(UNREASONABLE SEARCH AND SEIZURE)**
18 **(AGAINST DEFENDANT METRO, DEFENDANT NYE, DEFENDANT AJAM)**

19 167. Mr. Nutsch repeats and realleges Paragraphs 1 through 166 as though fully
20 set forth herein.

21 168. Article 1, Section 18 of the Nevada Constitution provides that the “right of
22 the people to be secure in their persons, houses, papers and effects, against unreasonable
23 searches and seizures, shall not be violated...” Nev. Const. art. I, § 18.

24 169. Defendants violated Mr. Nutsch’s right to be free from unlawful searches
25 and seizures as guaranteed by Article I, Section 18 to the Nevada Constitution. Defendant
26 Officers Nye and Ajam seized many of Mr. Nutsch’s belongings such as his speaker, wagon,
27 stool, looper, preamp, cords, and other items—which Mr. Nutsch needs to engage in his
street performance—without probable cause that he committed a crime.

28 170. As a direct and proximate result of Defendants’ violations of the Nevada

1 Constitution, Mr. Nutsch has suffered, is suffering, and will continue to suffer damages in an
2 amount subject to proof.

3 171. Mr. Nutsch is entitled to monetary, compensatory, and punitive damages
4 from Defendants.

5 172. It has been necessary for Mr. Nutsch to retain the services of attorneys to
6 pursue this matter, and Mr. Nutsch is entitled to attorney's fees, costs, and prejudgment
7 interest.

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

11 **Nevada Tort Claims**

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

16 174. Mr. Nutsch repeats and re-alleges Paragraphs 1 through 173 as though fully
17 set forth herein.

18 175. Defendant Metro owed a duty to persons such as the Mr. Nutsch to use
19 reasonable care in the training, supervision, and retention of their employees to make sure
20 that their employees are fit for their positions by implementing policies and procedures
21 designed to prevent wrongful acts by their employees, such as those committed by individual
22 defendant officers.

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

27 177. Moreover, Defendant Metro has breached this duty by failing to train its
28 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

1 street performing is expressive speech or conduct protected by the First Amendment and that
2 street performing was not a violation of, *inter alia*, the provisions of Chapter 16.11 of the
3 Clark County Code, thereby creating a situation where its officers are enforcing CCC §
4 16.11.070 in violation of the terms of the MOU.

5 178. Furthermore, Defendants’ failure to follow the plain language of CCC §
6 16.11.050(c), which unambiguously forbids application of this chapter to undesignated “no
7 obstruction zones,” indicates that Metro negligently trained, supervised, or retained its
8 officers regarding the contours of the law.

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

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

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

21 182. Mr. Nutsch is entitled to monetary, compensatory, and punitive damages
22 from Defendants.

23 183. It has been necessary for Mr. Nutsch to retain the services of attorneys to
24 pursue this matter, and Mr. Nutsch is entitled to attorney’s fees, costs, and prejudgment
25 interest.

26 ///

27 ///

28 ///

ELEVENTH CAUSE OF ACTION
MALICIOUS PROSECUTION
UNDER NEV. REV. STAT. § 41.130
(AGAINST DEFENDANT METRO, DEFENDANT NYE, DEFENDANT AJAM, DEFENDANT
WOLFANGER, DEFENDANT DOE OFFICER V)

184. Mr. Nutsch repeats and re-alleges Paragraphs 1 through 183 as though fully set forth herein.

185. Malicious Prosecution exists when there is ““(1) want of probable cause to initiate the prior criminal proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4) damage.”” *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) (quoting *Jordan v. Bailey*, 113 Nev. 1038, 1047, 944 P.2d 828, 834 (1997)).

186. Defendant Officers Wolfanger and Doe Officer V initiated a criminal proceeding against Mr. Nutsch when they issued him a citation on May 13, 2022, without probable cause that a crime was being committed. Defendant Officers Nye and Ajam similarly initiated a criminal proceeding against Mr. Nutsch when they issued him a citation on June 8, 2022, without probable cause that a crime was being committed.

187. All criminal proceedings pertaining to Mr. Nutsch stemming from the events alleged herein have been terminated in his favor.

188. As a direct and proximate result of Defendants’ unlawful citations, Mr. Nutsch has suffered, is suffering, and will continue to suffer damages in an amount subject to proof.

189. Mr. Nutsch is entitled to monetary, compensatory, and punitive damages from Defendants.

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

TWELFTH CAUSE OF ACTION
CONVERSION
(AGAINST DEFENDANT METRO, DEFENDANT NYE, DEFENDANT AJAM)

191. Mr. Nutsch repeats and realleges Paragraphs 1 through 190 as though fully set forth herein.

1 192. Defendants Nye and Ajam exercised wrongful dominion over Mr. Nutsch's
2 property, his speaker, wagon, stool, looper, preamp, cords, and other items necessary for his
3 street performance, when they seized those items on June 8, 2022. The seized items have
4 never been returned to Mr. Nutsch.

5 193. Defendant Metro is liable because at all relevant times it was responsible
6 for making and enforcing policies with respect to the Officer Defendants' seizure of property
7 and ensuring that such seizures are conducted within the parameters of the law, and
8 Defendant Metro failed to do so.

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

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

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays as follows:

- a. A declaration that CCC § 16.11.070 is unconstitutional as applied to Mr. Nutsch;
- b. 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;
- c. An award in excess of \$50,000 requiring all Defendants to pay monetary and compensatory damages in an amount to be determined at trial;
- d. An award in excess of \$50,000 against the individual Defendants for punitive damages in an amount to be determined at trial;
- e. An award of attorney's fees and costs; and,
- f. Any further relief the Court deems appropriate.

DATED this 8th day of June, 2023.

/s/ Leo S. Wolpert

MARGARET A. MCLETSCHIE, Nevada Bar No. 10931

LEO S. WOLPERT, Nevada Bar No. 12658

MCLETSCHIE LAW

602 South Tenth Street

Las Vegas, NV 89101

Telephone: (702) 728-5300; Fax: (702) 425-8220

Email: maggie@nvlitigation.com

Counsel for Plaintiff Travis Nutsch