

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRISTINA PAULOS,

Appellant,

vs.

FCH1, LLC, a Nevada limited liability company; LAS VEGAS METROPOLITAN POLICE DEPARTMENT, a government entity; JEANNIE HOUSTON; an individual; and AARON BACA, an individual,

Respondents.

No 74912

Electronically Filed
Feb 27 2018 09:23 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District County Eighth Department 15
County Clark Judge Rob Bare
District Ct. Case No. A-15-716850-C

2. Attorney filing this docketing statement:

Attorney Daniel F. Polsenberg and Abraham G. Smith Telephone 702-949-8200

Firm LEWIS ROCA ROTHGERBER CHRISTIE LLP

Address 3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Attorney Elliot S. Blut Telephone 702-384-1050

Firm BLUT LAW GROUP

Address 300 South Fourth Street, Suite 701
Las Vegas, Nevada 89101

Client(s) Cristina Paulos

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Justin W. Smerber Telephone (702) 384-8424

Firm MORAN BRANDON BENDAVID MORAN

Address 630 South Fourth Street
Las Vegas, Nevada 89101

Client(s) FCH1, LLC and Jeannie Houston

Attorney Craig R. Anderson Telephone (702) 942-2136

Firm MARQUIS AURBACH COFFING

Address 10001 Park Run Drive
Las Vegas, Nevada 89145

Client(s) Las Vegas Metropolitan Police Department and Aaron Baca

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify) Order
Granting Motion to Reconsider |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Modification |
| | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following? No.

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Paulos v. FCH1, LLC, et al., U.S. District Court case no. 2:13-CV-1546-JCM-PAL—final disposition May 18, 2017

Paulos v. FCH1, LLC, et al., Ninth Circuit case no. 15-15728—final disposition May 18, 2017

The underlying action here, *Paulos v. FCH1, LLC, et al.*, Eighth Judicial Court case no. A-12-666754-C, was removed to federal court on August 28, 2013 and docketed as U.S. District Court case no. 2:13-CV-1546-JCM-PAL. The federal case was formally disposed on May 18, 2017 with the order on mandate of the Ninth Circuit’s affirmance of the judgment (Case No. 15-15728). Following remand to state court, the district judge entered summary judgment, from which this appeal follows.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is a negligence and false imprisonment action arising out of plaintiff-appellant’s arrest. Defendants-respondents handcuffed and detained plaintiff-appellant on hot asphalt that resulted in severe burns to her body. The LVMPD defendants moved to reconsider an order denying their motion to dismiss. In federal court, the federal district court had granted summary judgment based on qualified immunity, both because the force used was not excessive and because the constitutional right had not been clearly established. The Ninth Circuit affirmed solely on the ground that the constitutional right was not clearly established. On remand, the state district court granted the motion to reconsider on grounds of issue preclusion. Plaintiff appeals from the findings of fact and conclusions of law granting summary judgment in favor of the LVMPD defendants and dismissing FCH1, LLC and Jeannie Houston from the action.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. When a district court’s decision rests on alternative grounds and an appellate court affirms on just one ground, is the district court’s decision preclusive for the alternative ground not relied upon?

2. For issue preclusion, is the “reasonableness” of a seizure under the Fourth Amendment of the United States Constitution the same issue as the exercise of “reasonable care” for a negligence claim under state common law?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

The question of what preclusive effect to give an appellate decision that affirms just one of two alternative bases in the district court is an important issue of first impression.

The question of whether a common-law negligence claim requires a predicate finding of excessive force under the federal constitution is also a substantial issue of first impression.

13. Assignment to the Court of Appeals or Retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court

should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(10).

14. Trial. If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 11/14/17
(Exhibit A)

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 12/14/17
(Exhibit A)

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

N/A

(c) Date written notice of entry of order resolving tolling motion was served

N/A

Was service by: N/A

☐ Delivery

☐ Mail/Electronic/Fax

19. Date notice of appeal filed 1/12/18 (Exhibit B)

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

The time limit for filing the notice of appeal from an order granting summary judgment and dismissal is governed by NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal from an order granting summary judgment and dismissing the defendants, which resolves all the claims, and is considered the final “judgment” under NRAP 3A(b)(1).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Cristina Paulos
FCH1, LLC
Las Vegas Metropolitan Police Department
Jeannie Houston
Aaron Baca

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party’s separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff filed her amended complaint for negligence and false imprisonment on April 15, 2015 (Exhibit C).

The claims are resolved by the December 14, 2017 “Findings of Fact and Conclusions of Law” (Exhibit A).

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered “No” to question 23, complete the following: N/A

(a) Specify the claims remaining pending below:

- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
- ☐ Yes
- ☐ No
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?
- ☐ Yes
- ☐ No

26. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)): N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Cristina Paulos

Name of appellant

Abraham G. Smith

Name of counsel of record

February 26, 2018

Date

/s/ Abraham G. Smith

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that this “Docketing Statement” was filed electronically with the Nevada Supreme Court on the 26th day of February, 2018. Electronic service of the foregoing “Docketing Statement” shall be made in accordance with the Master Service List as follows:

CRAIG R. ANDERSON
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145

JUSTIN W. SMERBER
MORAN BRANDON BENDAVID MORAN
630 South Fourth Street
Las Vegas, Nevada 89101

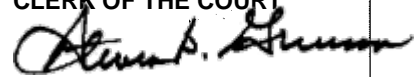
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

PAUL M. HAIRE
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

Dated this 26th day of February, 2018.

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A TO DOCKETING STATEMENT



1 **Marquis Aurbach Coffing**
 2 Craig R. Anderson, Esq.
 3 Nevada Bar No. 6882
 4 10001 Park Run Drive
 5 Las Vegas, Nevada 89145
 6 Telephone: (702) 382-0711
 7 Facsimile: (702) 382-5816
 8 canderson@maclaw.com

9 Attorneys for Defendants LVMPD and Officer Baca

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 CRISTINA PAULOS,

13 Plaintiff,

Case No.: A-15-716850-C
 Dept. No. XXXII

14 vs.

DEFENDANTS LVMPD AND OFFICER
BACA'S NOTICE OF ENTRY OF
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

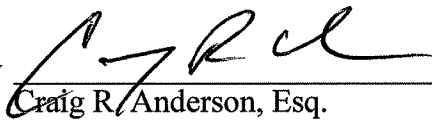
15 FCH1, LLC, a Nevada limited liability company;
 16 LAS VEGAS METROPOLITAN POLICE
 17 DEPARTMENT, a government entity;
 18 AARON BACA, an individual
 19 and DOES 1 through 10,

20 Defendants.

21 PLEASE TAKE NOTICE that on November 17, 2017, Defendants LVMPD and Ofc.
 22 Baca filed their Findings of Fact and Conclusions of Law in the above-referenced matter. A
 23 copy of said findings of fact and conclusions of law is attached hereto for reference.

24 Dated this 3 day of December, 2017.

25 MARQUIS AURBACH COFFING

26 By 
 27 Craig R. Anderson, Esq.
 28 Nevada Bar No. 6882
 10001 Park Run Drive
 Las Vegas, Nevada 89145
 Attorney for LVMPD Defendants

CERTIFICATE OF SERVICE

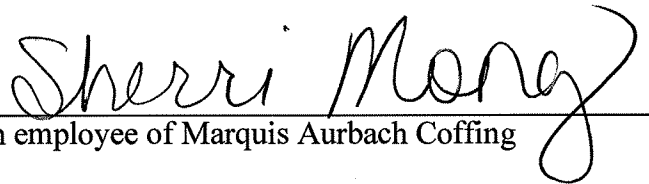
I hereby certify that the foregoing **DEFENDANTS LVMPD AND OFC. BACA'S**
NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW was
submitted electronically for filing and/or service with the Eighth Judicial District Court on the
19th day of December, 2017. Electronic service of the foregoing document shall be made in
accordance with the E-Service List as follows:¹

Elliot S. Blut, Esq.
Attorney for Plaintiff
eblut@blutlaw.com
paralegal@blutlaw.com

Justin W. Smerber, Esq.
Lew Brandon, Esq.
Attorneys for Defendant FCH1, LLC
d.nocedal@moranlawfirm.com
l.brandon@moranlawfirm.com

I further certify that I served a copy of this document by mailing a true and correct copy
thereof, postage prepaid, addressed to:

n/a


an employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
consents to electronic service in accordance with NRCP 5(b)(2)(D).

 ORIGINAL



1 **Marquis Aurbach Coffing**
2 Craig R. Anderson, Esq.
3 Nevada Bar No. 6882
4 10001 Park Run Drive
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6 Telephone: (702) 382-0711
7 Facsimile: (702) 382-5816
8 canderson@maclaw.com
9 Attorneys for Defendants LVMPD and
10 Baca

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 CRISTINA PAULOS,

14 Plaintiff,

Case No.: A-15-716850-C
Dept. No.: XXXII

15 vs.

16 FCH1, LLC, a Nevada limited liability company;
17 LAS VEGAS METROPOLITAN POLICE
18 DEPARTMENT, a government entity; JEANNIE
19 HOUSTON, an individual; AARON BACA, an
20 individual and DOES 1 through 10,

Date: 10/19/17
Time: 10:30 a.m.

21 Defendants.

22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23 Defendants Las Vegas Metropolitan Police Department and Officer Aaron Baca's
24 ("LVMPD Defendants") Motion for Reconsideration on Motion to Dismiss and FCH1, LLC's
25 Joinder having come on for hearing before this Honorable Court on October 19, 2017, with Craig
26 R. Anderson, Esq., of Marquis Aurbach Coffing, appearing on behalf of the LVMPD
27 Defendants; Justin W. Smerber, Esq., of Moran Brandon Bendavid Moran, appearing on behalf
28 of Defendants FCH1, LLC and Jeannie Houston; and Elliot S. Blut, Esq., of Blut Law Group,
APC, appearing on behalf of Plaintiff Cristina Paulos ("Plaintiff"); with the Court having
considered the pleadings and papers on file herein, and the argument of counsel made at the
hearing, the Court HEREBY FINDS AS FOLLOWS:

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1 **I. FINDINGS OF FACT**

2 **A. FACTUAL BACKGROUND**

3 1. On August 7, 2011, Plaintiff was involved in two separate car accidents in front of
4 the Palms Hotel & Casino.

5 2. Video shows Plaintiff's westbound vehicle jump a median on Flamingo and enter
6 the intersection of Flamingo and Wynn Road against a red light causing a head-on collision.
7 Plaintiff then turned left into the Palms exit lane and struck a second vehicle owned by Brian
8 Larson ("Larson").

9 3. After the accidents, Plaintiff exited her vehicle and left the scene for about one
10 minute.

11 4. When Plaintiff returned to the scene, she entered Larson's vehicle, causing Larson
12 to reach across the Plaintiff and take his keys out of the ignition.

13 5. As this was occurring, Officer Baca was completing his regular shift as a Las
14 Vegas Metropolitan Police Department officer.

15 6. Officer Baca happened to be traveling eastbound on Flamingo and coincidentally
16 "rolled up" on the vehicle accidents caused by Plaintiff.

17 7. After exiting his patrol vehicle, witnesses directed Officer Baca to Plaintiff.

18 8. When Officer Baca initially approached Plaintiff, she walked away from him.

19 9. Officer Baca ordered Plaintiff to stop. In response, Plaintiff turned towards
20 Officer Baca and started screaming. Plaintiff then lunged at Officer Baca and reached towards
21 his waist area.

22 10. When Plaintiff reached at Officer Baca's waist area, he created distance from her
23 by pushing her away. He then attempted to take her into custody from a standing position.

24 11. Plaintiff resisted Officer Baca's attempts to handcuff her from a standing position.

25 12. Eventually, Officer Baca took Plaintiff to the ground.

26 13. Plaintiff was taken to the ground 13 seconds after Officer Baca first made contact
27 with her.

28

14. Once on the ground, Plaintiff continued to resist Officer Baca causing him to summon the assistance of Palms Security officer, Defendant Jeannie Houston.

15. Defendant Houston responded and also went hands-on with Plaintiff.

16. Plaintiff fought with Officer Baca and Defendant Houston for about two minutes on the ground.

17. Eventually, Officer Baca successfully put handcuffs on Plaintiff. After Plaintiff was handcuffed, Officer Baca updated dispatch, called for medical assistance, and began to survey the area to make sure no other suspects existed.

18. After handcuffing, Defendant Houston had no further contact with Plaintiff.

19. On the ground, Plaintiff never specifically complained of any injury or informed Officer Baca that she was in pain or discomfort.

20. It is unknown how long Officer Baca specifically left Plaintiff on the ground after her handcuffing was complete. Taking the facts in the light most favorable to the Plaintiff, she remained on the ground for a total of two minutes and 40 seconds after handcuffing.

21. Eventually, Plaintiff was taken off the ground and seated in a grassy area while officers completed the investigation. Plaintiff was eventually issued a citation for driving while intoxicated.

22. It was eventually determined that Plaintiff suffered second and third degree burns as a result of her contact with the pavement.

B. PROCEDURAL HISTORY

1. On August 14, 2012, Plaintiff filed a complaint in Nevada's Eighth Judicial District Court. *See Paulos v. FCHI*, A-12-666754-C.

2. In August 2013, Plaintiff amended her complaint to include new parties and 42 U.S.C. §1983 claims.

3. On August 27, 2013, the LVMPD Defendants removed the case to the Nevada federal court. *See Paulos v. FCHI*, No. 2:13-cv-1456-JCM (PAL).

1 4. The parties conducted complete discovery in the federal litigation. When
2 discovery closed, the LVMPD Defendants and FCH1 Defendants filed motions for summary
3 judgment.

4 5. On March 12, 2015, federal district court Judge James C. Mahan issued his
5 summary judgment order. *See Paulos v. FCH1, LLC*, 2015 WL 1110072 (D. Nev. March 12,
6 2015).

7 6. Judge Mahan dismissed all of Plaintiff's federal law claims against the LVMPD
8 Defendants. Specifically, Judge Mahan, using the *Graham*¹ factors found that Ofc. Baca acted
9 reasonably under the circumstances and that he did not use excessive force. In the alternative,
10 Judge Mahan also found that even if Officer Baca used excessive force, he was entitled to
11 qualified immunity because no "clearly established" law would have put Officer Baca on notice
12 of the unconstitutional nature of his actions.

13 7. After dismissing the federal law claims against the LVMPD Defendants, Judge
14 Mahan "decline[d] to exercise supplemental jurisdiction over the state law claim [] against
15 LVMPD defendants' negligence (and Palms' negligence) and false imprisonment and dismiss
16 them without prejudice."

17 8. After receiving the federal court order, Plaintiff appealed the granting of summary
18 judgment to the Ninth Circuit Court of Appeals and re-filed her state law claims against the
19 LVMPD Defendants, FCH1 and Houston in Nevada's state court.

20 9. On May 19, 2015, the LVMPD Defendants filed a Motion to Dismiss, or in the
21 Alternative, Motion for Summary Judgment. In the motion, the LVMPD Defendants argued that
22 Plaintiff's negligence claim was precluded because Judge Mahan had already found that Ofc.
23 Baca had acted reasonably.

24 10. On August 11, 2015, this Court entertained oral argument on the LVMPD
25 Defendants' motion.

26
27
28 ¹ *Graham v. Connor*, 490 U.S. 386 (1989).

11. On September 14, 2015, this Court issued an order dismissing Plaintiff's negligent hiring, training, and supervision claim against the LVMPD Defendants, but denied dismissal of Plaintiff's negligence claim against the LVMPD Defendants.

12. After receiving the Court's order, the LVMPD Defendants timely filed a Motion for Reconsideration on November 13, 2015.

13. After the Motion for Reconsideration was fully briefed by the parties, the parties agreed to stay the case pending the Ninth Circuit appeal on the federal claims.

14. On March 28, 2017, the Ninth Circuit Court of Appeals upheld Judge Mahan's order dismissing the federal law claims against the LVMPD Defendants.

15. After the Ninth Circuit's decision, the stay in the subject case was lifted and the LVMPD Defendants' Motion for Reconsideration was placed back on calendar.

16. On October 19, 2017, this Court entertained oral argument on the LVMPD Defendants' Motion for Reconsideration regarding the LVMPD Defendants' Motion to Dismiss.

II. CONCLUSIONS OF LAW

1. Eighth Judicial District Court Rule 2.24(a) allows a party to seek reconsideration of a ruling of the Court. "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *See Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741 (1997) (citing *Little Earth of United Tribes v. Dept. of Housing*, 807 F.2d 1433, 1441 (Eight Cir. 1986)). A prior decision may be erroneous on the basis that "[a]lthough the facts and law [are] unchanged," the court is "more familiar with the case by the time the second motion [is] heard." *See Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217-18 (1980).

2. In order to establish issue preclusion, a litigant must establish: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and must have become final; (3) the party against whom judgment is asserted must have been a party or in privity with a party with a prior litigation; and (4) the issue was actually and necessarily litigated. *See Five Star Corp. v. Ruby*,

1 124 Nev. 1048, 1055 (2008) (holding modified by *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350
2 P.3d 80 (2015)).

3 3. One of the issues litigated in the federal court case was whether Officer Baca's
4 use of force against the Plaintiff was reasonable. In analyzing the reasonable force standard set
5 forth in *Graham v. Connor*, 490 U.S. 386 (1989), Judge Mahan found that Officer Baca's actions
6 were reasonable. This Court finds that the issue litigated in the federal court case is identical to
7 Plaintiff's negligence claim against the LVMPD Defendants in this case.

8 4. This Court finds that Judge Mahan's ruling that Officer Baca acted reasonably
9 under the circumstances was on the merits and has become final.

10 5. This Court finds that the current parties are identical to the parties involved in the
11 federal lawsuit.

12 6. Finally, this Court finds that the issue of reasonableness was actually and
13 necessarily litigated in the federal court case.

14 7. This Court finds that its November 5, 2015 order denying the LVMPD
15 Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment was
16 "clearly erroneous" and that issue preclusion applies.

17 8. Based upon the above, this Court reconsiders its November 5, 2015 Order
18 denying the LVMPD Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary
19 Judgment and hereby grants the LVMPD Defendants' Motion to Dismiss, or in the Alternative,
20 Motion for Summary Judgment.

21 9. The Court also hereby finds that FCH1, LLC's Joinder to the LVMPD
22 Defendants' Motion is granted.

23 ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that:

24 1. Plaintiff's remaining negligence claim against the LVMPD Defendants is
25 dismissed with prejudice as the LVMPD Defendants' Motion to Dismiss, or in the Alternative,
26 Motion for Summary Judgment is GRANTED; and
27
28

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 2. Defendants FCH1, LLC and Houston's Joinder to the LVMPD Defendants'
2 Motion is GRANTED and therefore, Defendants FCH1, LLC and Houston are hereby dismissed
3 with prejudice from the lawsuit.

4 IT IS ORDERED this _____ day of October, 2017.

5

6

District Court Judge

7

8

Submitted By:

9

MARQUIS AURBACH COFFING

10

By: 

11

Craig R. Anderson, Esq.

12

Nevada Bar No. 6882

13

10001 Park Run Drive

14

Las Vegas, Nevada 89145

15

Attorney for Defendants LVMPD and Baca

16

APPROVED AS TO FORM AND CONTENT:

17

BLUT LAW GROUP APC

18

MORAN BRANDON BENDAVID MORAN

19

By: _____

20

Elliot S. Blut, Esq.

21

Nevada Bar No. 6570

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300 South Fourth Street, Ste. 701

23

Las Vegas, NV 89101

24

Attorney for Plaintiff

25

26

27

28

By: 

Justin W. Smerber, Esq.

Nevada Bar No. 10761

630 S. Fourth Street

Las Vegas, NV 89101

Attorney for Defendants FCH1, LLC and Houston

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10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 2. Defendants FCH1, LLC and Houston's Joinder to the LVMPD Defendants'
2 Motion is GRANTED and therefore, Defendants FCH1, LLC and Houston are hereby dismissed
3 with prejudice from the lawsuit.

4 IT IS ORDERED this 16 day of Nov October, 2017.

5
6
7 District Court Judge

ROB BARE

JUDGE, DISTRICT COURT, DEPARTMENT 32

8 Submitted By:

9 MARQUIS AURBACH COFFING

10 By:

11 Craig R. Anderson, Esq.
12 Nevada Bar No. 6882
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145
15 Attorney for Defendants LVMPD and Baca

16 APPROVED AS TO FORM AND CONTENT:

17 BLUT LAW GROUP APC

MORAN BRANDON BENDAVID MORAN

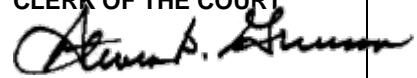
18 By:

19 Elliot S. Blut, Esq.
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22 Las Vegas, NV 89101
23 Attorney for Plaintiff

By:

24 Justin W. Smerber, Esq.
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27 Las Vegas, NV 89101
28 Attorney for Defendants FCH1, LLC and Houston

EXHIBIT B TO
DOCKETING
STATEMENT



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16 CPotter@PotterLawOffices.com

13 *Attorneys for Plaintiff*
14 *Cristina Paulos*

DISTRICT COURT
CLARK COUNTY, NEVADA

16 CRISTINA PAULOS,

17 Plaintiff,

18 *vs.*

19 FCH1, LLC, a Nevada limited liability
20 company; LAS VEGAS METROPOLITAN
21 POLICE DEPARTMENT, a government
22 entity; JEANNIE HOUSTON, an individual;
23 AARON BACA, an individual; and DOES 1
24 through 10,

25 Defendants.

Case No. A-15-716850-C

Dept. No. XXXII

NOTICE OF APPEAL

24 Please take notice that plaintiff Cristina Paulos hereby appeals to the
25 Supreme Court of Nevada from:

- 26 1. All judgments and orders in this case;

1 2. “Findings of Fact and Conclusions of Law,” entered on November
2 17, 2017, notice of entry of which was served electronically on December 14,
3 2017 (Exhibit 1); and

4 3. All ruling and interlocutory orders made appealable by any of the
5 foregoing.

6 Dated this 12th day of January, 2018.

7 LEWIS ROCA ROTHGERBER CHRISTIE LLP

8 By /s/ Abraham G. Smith

9 DANIEL F. POLSENBERG (SBN 2376)
10 ABRAHAM G. SMITH (SBN 13,250)
11 3993 Howard Hughes Parkway, Suite 600
12 Las Vegas, Nevada 89169
13 (702) 949-8200

14 *Attorneys for Plaintiff*

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 12th day of January, 2018, I served the
3 foregoing "Notice of Appeal" on counsel by the Court's electronic filing system
4 and by courtesy email to the persons and addresses listed below:

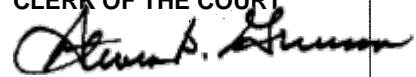
5 CRAIG R. ANDERSON
6 MARQUIS AURBACH COFFING
7 10001 Park Run Drive
8 Las Vegas, Nevada 89145
9 CAnderson@MACLaw.com

JUSTIN W. SMERBER
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630 South Fourth Street
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J.Smerber@MoranLawFirm.com

10
11 /s/ Jessie M. Helm
12 An Employee of Lewis Roca Rothgerber Christie LLP
13
14
15
16
17
18
19
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21
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23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1



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 4 10001 Park Run Drive
 5 Las Vegas, Nevada 89145
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 8 canderson@maclaw.com

9 Attorneys for Defendants LVMPD and Officer Baca

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 CRISTINA PAULOS,

13 Plaintiff,

Case No.: A-15-716850-C
 Dept. No. XXXII

14 vs.

DEFENDANTS LVMPD AND OFFICER
BACA'S NOTICE OF ENTRY OF
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

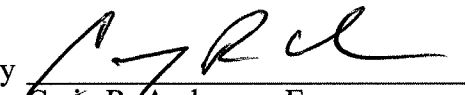
15 FCH1, LLC, a Nevada limited liability company;
 16 LAS VEGAS METROPOLITAN POLICE
 17 DEPARTMENT, a government entity;
 18 AARON BACA, an individual
 19 and DOES 1 through 10,

20 Defendants.

21 PLEASE TAKE NOTICE that on November 17, 2017, Defendants LVMPD and Ofc.
 22 Baca filed their Findings of Fact and Conclusions of Law in the above-referenced matter. A
 23 copy of said findings of fact and conclusions of law is attached hereto for reference.

24 Dated this 3 day of December, 2017.

25 MARQUIS AURBACH COFFING

26 By 
 27 Craig R. Anderson, Esq.
 28 Nevada Bar No. 6882
 10001 Park Run Drive
 Las Vegas, Nevada 89145
 Attorney for LVMPD Defendants

CERTIFICATE OF SERVICE

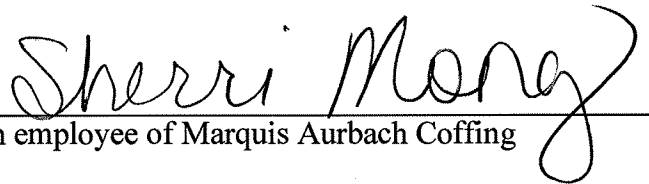
I hereby certify that the foregoing **DEFENDANTS LVMPD AND OFC. BACA'S**
NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW was
submitted electronically for filing and/or service with the Eighth Judicial District Court on the
19th day of December, 2017. Electronic service of the foregoing document shall be made in
accordance with the E-Service List as follows:¹

Elliot S. Blut, Esq.
Attorney for Plaintiff
eblut@blutlaw.com
paralegal@blutlaw.com

Justin W. Smerber, Esq.
Lew Brandon, Esq.
Attorneys for Defendant FCH1, LLC
d.nocedal@moranlawfirm.com
l.brandon@moranlawfirm.com

I further certify that I served a copy of this document by mailing a true and correct copy
thereof, postage prepaid, addressed to:

n/a


an employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
consents to electronic service in accordance with NRCP 5(b)(2)(D).

 ORIGINAL



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8 canderson@maclaw.com
9 Attorneys for Defendants LVMPD and
10 Baca

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 CRISTINA PAULOS,

14 Plaintiff,

Case No.: A-15-716850-C
Dept. No.: XXXII

15 vs.

16 FCH1, LLC, a Nevada limited liability company;
17 LAS VEGAS METROPOLITAN POLICE
18 DEPARTMENT, a government entity; JEANNIE
19 HOUSTON, an individual; AARON BACA, an
20 individual and DOES 1 through 10,

Date: 10/19/17
Time: 10:30 a.m.

21 Defendants.

22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23 Defendants Las Vegas Metropolitan Police Department and Officer Aaron Baca's
24 ("LVMPD Defendants") Motion for Reconsideration on Motion to Dismiss and FCH1, LLC's
25 Joinder having come on for hearing before this Honorable Court on October 19, 2017, with Craig
26 R. Anderson, Esq., of Marquis Aurbach Coffing, appearing on behalf of the LVMPD
27 Defendants; Justin W. Smerber, Esq., of Moran Brandon Bendavid Moran, appearing on behalf
28 of Defendants FCH1, LLC and Jeannie Houston; and Elliot S. Blut, Esq., of Blut Law Group,
APC, appearing on behalf of Plaintiff Cristina Paulos ("Plaintiff"); with the Court having
considered the pleadings and papers on file herein, and the argument of counsel made at the
hearing, the Court HEREBY FINDS AS FOLLOWS:

///

///

///

1 **I. FINDINGS OF FACT**

2 **A. FACTUAL BACKGROUND**

3 1. On August 7, 2011, Plaintiff was involved in two separate car accidents in front of
4 the Palms Hotel & Casino.

5 2. Video shows Plaintiff's westbound vehicle jump a median on Flamingo and enter
6 the intersection of Flamingo and Wynn Road against a red light causing a head-on collision.
7 Plaintiff then turned left into the Palms exit lane and struck a second vehicle owned by Brian
8 Larson ("Larson").

9 3. After the accidents, Plaintiff exited her vehicle and left the scene for about one
10 minute.

11 4. When Plaintiff returned to the scene, she entered Larson's vehicle, causing Larson
12 to reach across the Plaintiff and take his keys out of the ignition.

13 5. As this was occurring, Officer Baca was completing his regular shift as a Las
14 Vegas Metropolitan Police Department officer.

15 6. Officer Baca happened to be traveling eastbound on Flamingo and coincidentally
16 "rolled up" on the vehicle accidents caused by Plaintiff.

17 7. After exiting his patrol vehicle, witnesses directed Officer Baca to Plaintiff.

18 8. When Officer Baca initially approached Plaintiff, she walked away from him.

19 9. Officer Baca ordered Plaintiff to stop. In response, Plaintiff turned towards
20 Officer Baca and started screaming. Plaintiff then lunged at Officer Baca and reached towards
21 his waist area.

22 10. When Plaintiff reached at Officer Baca's waist area, he created distance from her
23 by pushing her away. He then attempted to take her into custody from a standing position.

24 11. Plaintiff resisted Officer Baca's attempts to handcuff her from a standing position.

25 12. Eventually, Officer Baca took Plaintiff to the ground.

26 13. Plaintiff was taken to the ground 13 seconds after Officer Baca first made contact
27 with her.

28

14. Once on the ground, Plaintiff continued to resist Officer Baca causing him to summon the assistance of Palms Security officer, Defendant Jeannie Houston.

15. Defendant Houston responded and also went hands-on with Plaintiff.

16. Plaintiff fought with Officer Baca and Defendant Houston for about two minutes on the ground.

17. Eventually, Officer Baca successfully put handcuffs on Plaintiff. After Plaintiff was handcuffed, Officer Baca updated dispatch, called for medical assistance, and began to survey the area to make sure no other suspects existed.

18. After handcuffing, Defendant Houston had no further contact with Plaintiff.

19. On the ground, Plaintiff never specifically complained of any injury or informed Officer Baca that she was in pain or discomfort.

20. It is unknown how long Officer Baca specifically left Plaintiff on the ground after her handcuffing was complete. Taking the facts in the light most favorable to the Plaintiff, she remained on the ground for a total of two minutes and 40 seconds after handcuffing.

21. Eventually, Plaintiff was taken off the ground and seated in a grassy area while officers completed the investigation. Plaintiff was eventually issued a citation for driving while intoxicated.

22. It was eventually determined that Plaintiff suffered second and third degree burns as a result of her contact with the pavement.

B. PROCEDURAL HISTORY

1. On August 14, 2012, Plaintiff filed a complaint in Nevada's Eighth Judicial District Court. *See Paulos v. FCHI*, A-12-666754-C.

2. In August 2013, Plaintiff amended her complaint to include new parties and 42 U.S.C. §1983 claims.

3. On August 27, 2013, the LVMPD Defendants removed the case to the Nevada federal court. *See Paulos v. FCHI*, No. 2:13-cv-1456-JCM (PAL).

1 4. The parties conducted complete discovery in the federal litigation. When
2 discovery closed, the LVMPD Defendants and FCH1 Defendants filed motions for summary
3 judgment.

4 5. On March 12, 2015, federal district court Judge James C. Mahan issued his
5 summary judgment order. *See Paulos v. FCH1, LLC*, 2015 WL 1110072 (D. Nev. March 12,
6 2015).

7 6. Judge Mahan dismissed all of Plaintiff's federal law claims against the LVMPD
8 Defendants. Specifically, Judge Mahan, using the *Graham*¹ factors found that Ofc. Baca acted
9 reasonably under the circumstances and that he did not use excessive force. In the alternative,
10 Judge Mahan also found that even if Officer Baca used excessive force, he was entitled to
11 qualified immunity because no "clearly established" law would have put Officer Baca on notice
12 of the unconstitutional nature of his actions.

13 7. After dismissing the federal law claims against the LVMPD Defendants, Judge
14 Mahan "decline[d] to exercise supplemental jurisdiction over the state law claim [] against
15 LVMPD defendants' negligence (and Palms' negligence) and false imprisonment and dismiss
16 them without prejudice."

17 8. After receiving the federal court order, Plaintiff appealed the granting of summary
18 judgment to the Ninth Circuit Court of Appeals and re-filed her state law claims against the
19 LVMPD Defendants, FCH1 and Houston in Nevada's state court.

20 9. On May 19, 2015, the LVMPD Defendants filed a Motion to Dismiss, or in the
21 Alternative, Motion for Summary Judgment. In the motion, the LVMPD Defendants argued that
22 Plaintiff's negligence claim was precluded because Judge Mahan had already found that Ofc.
23 Baca had acted reasonably.

24 10. On August 11, 2015, this Court entertained oral argument on the LVMPD
25 Defendants' motion.

26
27
28 ¹ *Graham v. Connor*, 490 U.S. 386 (1989).

11. On September 14, 2015, this Court issued an order dismissing Plaintiff's negligent hiring, training, and supervision claim against the LVMPD Defendants, but denied dismissal of Plaintiff's negligence claim against the LVMPD Defendants.

12. After receiving the Court's order, the LVMPD Defendants timely filed a Motion for Reconsideration on November 13, 2015.

13. After the Motion for Reconsideration was fully briefed by the parties, the parties agreed to stay the case pending the Ninth Circuit appeal on the federal claims.

14. On March 28, 2017, the Ninth Circuit Court of Appeals upheld Judge Mahan's order dismissing the federal law claims against the LVMPD Defendants.

15. After the Ninth Circuit's decision, the stay in the subject case was lifted and the LVMPD Defendants' Motion for Reconsideration was placed back on calendar.

16. On October 19, 2017, this Court entertained oral argument on the LVMPD Defendants' Motion for Reconsideration regarding the LVMPD Defendants' Motion to Dismiss.

II. CONCLUSIONS OF LAW

1. Eighth Judicial District Court Rule 2.24(a) allows a party to seek reconsideration of a ruling of the Court. "A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *See Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741 (1997) (citing *Little Earth of United Tribes v. Dept. of Housing*, 807 F.2d 1433, 1441 (Eight Cir. 1986)). A prior decision may be erroneous on the basis that "[a]lthough the facts and law [are] unchanged," the court is "more familiar with the case by the time the second motion [is] heard." *See Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217-18 (1980).

2. In order to establish issue preclusion, a litigant must establish: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and must have become final; (3) the party against whom judgment is asserted must have been a party or in privity with a party with a prior litigation; and (4) the issue was actually and necessarily litigated. *See Five Star Corp. v. Ruby*,

1 124 Nev. 1048, 1055 (2008) (holding modified by *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350
2 P.3d 80 (2015)).

3 3. One of the issues litigated in the federal court case was whether Officer Baca's
4 use of force against the Plaintiff was reasonable. In analyzing the reasonable force standard set
5 forth in *Graham v. Connor*, 490 U.S. 386 (1989), Judge Mahan found that Officer Baca's actions
6 were reasonable. This Court finds that the issue litigated in the federal court case is identical to
7 Plaintiff's negligence claim against the LVMPD Defendants in this case.

8 4. This Court finds that Judge Mahan's ruling that Officer Baca acted reasonably
9 under the circumstances was on the merits and has become final.

10 5. This Court finds that the current parties are identical to the parties involved in the
11 federal lawsuit.

12 6. Finally, this Court finds that the issue of reasonableness was actually and
13 necessarily litigated in the federal court case.

14 7. This Court finds that its November 5, 2015 order denying the LVMPD
15 Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment was
16 "clearly erroneous" and that issue preclusion applies.

17 8. Based upon the above, this Court reconsiders its November 5, 2015 Order
18 denying the LVMPD Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary
19 Judgment and hereby grants the LVMPD Defendants' Motion to Dismiss, or in the Alternative,
20 Motion for Summary Judgment.

21 9. The Court also hereby finds that FCH1, LLC's Joinder to the LVMPD
22 Defendants' Motion is granted.

23 ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that:

24 1. Plaintiff's remaining negligence claim against the LVMPD Defendants is
25 dismissed with prejudice as the LVMPD Defendants' Motion to Dismiss, or in the Alternative,
26 Motion for Summary Judgment is GRANTED; and
27
28

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Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 2. Defendants FCH1, LLC and Houston's Joinder to the LVMPD Defendants'
2 Motion is GRANTED and therefore, Defendants FCH1, LLC and Houston are hereby dismissed
3 with prejudice from the lawsuit.

4 IT IS ORDERED this _____ day of October, 2017.

5

6

District Court Judge

7

8

Submitted By:

9

MARQUIS AURBACH COFFING

10

By: 

11

Craig R. Anderson, Esq.

12

Nevada Bar No. 6882

13

10001 Park Run Drive

14

Las Vegas, Nevada 89145

15

Attorney for Defendants LVMPD and Baca

16

APPROVED AS TO FORM AND CONTENT:

17

BLUT LAW GROUP APC

18

MORAN BRANDON BENDAVID MORAN

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By: _____

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Elliot S. Blut, Esq.

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Attorney for Plaintiff

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1 2. Defendants FCH1, LLC and Houston's Joinder to the LVMPD Defendants'
2 Motion is GRANTED and therefore, Defendants FCH1, LLC and Houston are hereby dismissed
3 with prejudice from the lawsuit.

4 IT IS ORDERED this 16 day of Nov October, 2017.

5
6
7 District Court Judge

ROB BARE

JUDGE, DISTRICT COURT, DEPARTMENT 32

8 Submitted By:

9 MARQUIS AURBACH COFFING

10 By:

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15 Attorney for Defendants LVMPD and Baca

16 APPROVED AS TO FORM AND CONTENT:

17 BLUT LAW GROUP, APC

MORAN BRANDON BENDAVID MORAN

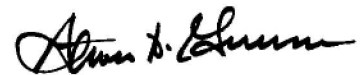
18 By:

19 Elliot S. Blut, Esq.
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23 Attorney for Plaintiff

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EXHIBIT C TO
DOCKETING
STATEMENT



CLERK OF THE COURT

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Attorneys for Plaintiff, CRISTINA PAULOS

DISTRICT COURT
CLARK COUNTY, NEVADA

CRISTINA PAULOS, an individual,
Plaintiff,
v.
FCH1, LLC, a Nevada limited liability
company; LAS VEGAS METROPOLITAN
POLICE DEPARTMENT, a government
entity; JEANNIE HOUSTON, an individual;
AARON BACA, an individual; and DOES 1
through 10,
Defendants.

CASE NO.: A-15-716850-C
DEPT. NO.: XXXII

FIRST AMENDED COMPLAINT FOR:

- (1) NEGLIGENCE
- (2) NEGLIGENCE
- (3) FALSE IMPRISONMENT

COMES NOW Plaintiff CRISTINA PAULOS, an individual, who hereby complains and
alleges as follows:

THE PARTIES

1. Plaintiff CRISTINA PAULOS ("Plaintiff"), an individual, is, and at all times
herein mentioned was, an individual residing in the State of Nevada.

1 2. Plaintiff is informed and believes and based thereon alleges that Defendant FCH1,
2 LLC, (hereinafter "FCH1") is, and at all times herein mentioned, a limited liability company
3 formed and existing under the laws of Nevada, with its principal place of business in Clark
4 County, Nevada and is the controlling entity of the Palms Casino Resort (hereinafter, "Palms"),
5 located at 4321 W. Flamingo Road, Las Vegas, Nevada, 89103.

6 3. Plaintiff is informed and believes and based thereon alleges that Defendant LAS
7 VEGAS METROPOLITAN POLICE DEPARTMENT (hereinafter "LVMPD"), is, and at all
8 times herein mentioned, a government entity formed and operated pursuant to the Nevada
9 Revised Statutes, located and operating in Clark County, Nevada, and at all times relevant herein,
10 employed Defendant Police Officer BACA.

11 4. Plaintiff is informed and believes and, based thereon alleges that Defendant
12 JEANNIE HOUSTON ("HOUSTON") is and was at all times relevant to this Complaint, a
13 citizen of the United States of America, and a resident of the State of Nevada. She is sued in
14 both her capacity as a security guard formerly employed by FCH1 as well as in her individual
15 capacity.

16 5. Plaintiff is informed and believes and, based thereon alleges that Defendant Police
17 Officer BACA ("BACA") is and was at all times relevant to this Complaint, a citizen of the
18 United States of America, and a resident of the State of Nevada. He is sued in both his capacity
19 as a police officer with the LVMPD as well as in his individual capacity.

20 6. Plaintiff is informed and believes and based thereon alleges that DOE Defendants
21 1 through 5, and at all times herein mentioned, are employees of Defendant FCH1. The true
22 names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES
23 1 through 5, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such
24 fictitious names. Each of the defendants designated herein as a DOE is deliberately, intentionally,
25 negligently or otherwise legally responsible in some manner for the events and happenings herein
26 referred to and caused injuries and damages proximately thereby to Plaintiff, as herein alleged.
27 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.

28 7. Plaintiff is informed and believes and based thereon alleges that DOE Defendants

1 6 through 10, and at all times herein mentioned, are employees of Defendant LVMPD. The true
2 names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES
3 6 through 10, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such
4 fictitious names. Each of the defendants designated herein as a DOE is deliberately, intentionally,
5 negligently or otherwise legally responsible in some manner for the events and happenings herein
6 referred to and caused injuries and damages proximately thereby to PLAINTIFF, as herein
7 alleged. Plaintiff will amend this Complaint to allege their true names and capacities when
8 ascertained.

9 8. Plaintiff is informed and believes and based thereon allege that Defendants,
10 and each of them, including those alleged herein fictitiously, are the agents, co-venturers, joint
11 venturers, co-conspirators, employees or representatives of the other Defendants, and in acting in
12 the manner alleged herein did so with the knowledge, ratification and consent of the other
13 Defendants, and acted in concert with them. Plaintiff is further informed and believes that each
14 of the Defendants named herein engaged in wrongful conduct that is a cause of Plaintiff's
15 damages.

16 17 JURISDICTION

18 9. The events and circumstances which are the subject of this lawsuit occurred
19 within the County of Clark, State of Nevada.

20 COMMON ALLEGATIONS

21 10. On August 7, 2011, Plaintiff was involved in an automobile accident at the
22 entrance to the Palms Casino Resort parking lot at Flamingo and Palms Winners Way.

23 11. Following the accident, Plaintiff was restrained by the Palms security officers,
24 including HOUSTON ("Security Personnel") and LVMPD officers including BACA, (the
25 "LVMPD Officers") (hereinafter, the Palms security officer and LVMPD officers will be referred
26 to collectively as "Defendants"), and detained on the property and placed on the asphalt for an
27 extended period of time.

28 12. During this time, Defendants kept Plaintiff down on the ground for an extended

1 period of time. As a result of high temperatures that afternoon, the concrete was excessively hot
2 causing severe burns to Plaintiff's body.

3 13. In committing the aforementioned acts, Defendants used excessive force in
4 conscious disregard for Plaintiff's health and well being.

5 14. Based upon information and belief, HOUSTON was an employee of Defendant
6 FCH1 and in committing the acts alleged herein, acted within the course and scope of her
7 employment. Based upon further information and belief, members of FCH1's Security Personnel
8 have previously demonstrated a propensity for violence in that they have been involved in other
9 prior incidents where excessive force was used against guests and invitees of the Premises.
10 Defendant was aware of these other prior incidents and notwithstanding these other prior
11 incidents and these individuals' propensity for violence, these individuals were allowed to remain
12 employed by Defendant in their capacity as security personnel. As a result, Defendant FCH1
13 ratified HOUSTON's conduct.

14 15. Based on information and belief, the LVMPD Officers were acting in the course
15 and scope of their employment

16 16. As a proximate and direct cause of Defendants' actions and the actions of the Doe
17 Defendants, Plaintiff sustained severe injuries.

18 19 **FIRST CAUSE OF ACTION**

20 **(Negligence - against FCH1, LLC, HOUSTON, and DOE Defendants 1 through 5)**

21 17. Plaintiff repeats, realleges and incorporates herein by reference the allegations
22 of Paragraphs 1 through 16, inclusive, as though set forth at length.

23 18. Based upon information and belief, the Security Personnel, including HOUSTON
24 were employees of Defendant FCH1 and in committing the acts alleged herein, acted within the
25 course and scope of their employment.

26 19. Defendant FCH1 owed Plaintiff a duty to use ordinary care and/or skill in
27 operating and maintaining the Premises in a safe condition and in the management of
28 Defendant's property and persons so as not to cause Plaintiff to suffer emotional and physical

1 injuries.

2 20. Defendant FCH1 also owed Plaintiff a duty to use ordinary care and/or skill in the
3 hiring, training, supervision and retention of their employees so as not to cause, or allow their
4 employees to cause Plaintiff to suffer emotional and physical injuries.

5 21. In committing the acts alleged hereinabove, and negligently permitting its
6 employees and agents, including but not limited to the Security Personnel, to commit these acts,
7 Defendants breached their duties owed to Plaintiff.

8 22. As a direct and proximate result of the Security Personnel's negligent actions,
9 Plaintiff has been injured in mind and body and sustained severe burn injuries, all to Plaintiffs'
10 damage in an amount to be determined according to proof.

11 23. At all relevant times, Defendant FCH1 and its Security Personnel, including
12 HOUSTON, knew or should have known that negligence, or reckless disregard in operating and
13 maintaining the Premises, and in managing Defendant FCH1's property was dangerous and could
14 lead to serious physical injuries.

15 24. As a further proximate result of the aforementioned acts, Plaintiff was required to
16 and did employ physicians to examine, treat, and care for her, and incurred additional medical
17 expenses for surgery to her left leg, rehabilitation, prescription drugs and other incidental medical
18 expenses and sundries reasonably required in the treatment and relief of the injuries herein
19 alleged in an amount to be determined according to proof but in excess of \$10,000.00. Plaintiff is
20 informed and believes and thereon alleges that she will incur additional medical expenses, the
21 exact amount of which is yet unknown.

22 **SECOND CAUSE OF ACTION**

23 **(Negligence - against LVMPD, BACA and DOE Defendants 6 through 10)**

24 25. Plaintiff repeats, realleges and incorporates herein by reference the allegations of
25 Paragraphs 1 through 24, inclusive, as though set forth at length.

26 26. Defendant LVMPD owed Plaintiff a duty to use ordinary care and/or skill in
27 performing police practices so as not to cause Plaintiff to suffer emotional and physical injuries.

28 27. Defendant LVMPD also owed Plaintiff a duty to use ordinary care and/or skill in

1 the hiring, training, supervision and retention of their employees so as not to cause, or allow their
2 employees to cause Plaintiff to suffer emotional and physical injuries.

3 28. The LVMPD Officers had a duty to use reasonable care in restraining Plaintiff and
4 to avoid causing injuries, to wit, severe burns to her body.

5 29. The LVMPD Officers breached that duty by acting in a negligent manner and/or
6 with reckless disregard for the rights and safety of Plaintiff. The LVMPD Officers failed to use
7 reasonable care in restraining Plaintiff by keeping her lying down on the concrete for a prolonged
8 period of time while the concrete was excessively hot in over 100 degree weather.

9 30. Defendant LVMPD and the LVMPD Officers knew or should have known that
10 reckless disregard for the rights and safety of Plaintiff could lead to serious and life threatening
11 injuries. NRS 41.035 provides immunity for acts or omissions by a police officer that occur while
12 acting within the scope of his public duties or employment only. The LVMPD Officers' behavior
13 was negligent, or, in the alternative, so grossly reckless, that such immunity does not apply.

14 31. As a direct and proximate result of the LVMPD Officers' actions, Plaintiff
15 suffered severe bodily injury. Plaintiff has been injured in mind and body, and sustained severe
16 burn injuries, all to Plaintiffs' damage in an amount to be determined according to proof.

17 32. As a further proximate result of the aforementioned acts, Plaintiff was required to
18 and did employ physicians to examine, treat, and care for her, and incurred additional medical
19 expenses for surgery to her left leg, rehabilitation, prescription drugs and other incidental medical
20 expenses and sundries reasonably required in the treatment and relief of the injuries herein
21 alleged in an amount to be determined according to proof but in excess of Ten Thousand Dollars
22 (\$10,000.00). Plaintiff is informed and believes and thereon alleges that she will incur additional
23 medical expenses, the exact amount of which is yet unknown.

24 **THIRD CAUSE OF ACTION**

25 **(False Imprisonment- against FCH1, LLC, HOUSTON, and DOE Defendants 1 through 5)**

26 33. Plaintiff repeats, realleges and incorporates herein by reference the allegations
27 of Paragraphs 1 through 32, inclusive, as though set forth at length.

28 34. The Security Personnel unlawfully detained Plaintiff by confining and detaining

1 Plaintiff without sufficient legal authority. The Security Personnel kept Plaintiff on the concrete
2 for an extended period of time while it was excessively hot in over 100 degree weather.

3 35. Such confinement and detainment of Plaintiff by the Security Personnel was
4 without sufficient cause therefor.

5 36. As a further proximate result of the aforementioned acts, Plaintiff was required to
6 and did employ physicians to examine, treat, and care for her, and incurred additional medical
7 expenses for surgery to her left leg, rehabilitation, prescription drugs and other incidental medical
8 expenses and sundries reasonably required in the treatment and relief of the injuries herein
9 alleged in an amount to be determined according to proof but in excess of Ten Thousand Dollars
10 (\$10,000.00). Plaintiff is informed and believes and thereon alleges that she will incur additional
11 medical expenses, the exact amount of which is yet unknown.

12 37. The conduct of Defendants as described herein was malicious, oppressive, and
13 fraudulent, and done without justification or privilege, thus entitling Plaintiff to an award of
14 punitive and exemplary damages in an amount appropriate to punish said Defendant and to make
15 an example to the community.

16 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

17 AS TO EACH AND EVERY CAUSE OF ACTION

- 18 1. For general damages in an amount in excess of \$10,000.00;
- 19 2. For past and future medical and treatment expenses according to proof at the time
20 of trial;
- 21 3. For past and future wage loss according to proof at the time of trial;
- 22 4. For reasonable attorneys' fees, costs and interest thereon as permitted by law;
- 23 5. For exemplary and punitive damages in an amount deemed adequate to punish
24 and make example of Defendants, to be determined at time of trial; and

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1 6. For such other and further relief as the Court may deem just and proper.

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3 DATED this 29th day of April, 2015

BLUT LAW GROUP, APC

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5 By: 

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