

CRISTINA PAULOS 3/25/2013

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1 Q Okay.

2 A But I mean, I also know that certain

3 videos will show certain things. And I know that

4 certain videos will show other things. And that --

5 I would if -- I would like to see all the footage as

6 I don't really know -- I don't know.

7 Q And you have said today that you have not

8 seen surveillance videos --

9 A No, I never saw any of the videos.

10 Q Do you have any understanding as to why

11 Palms security became involved in this incident?

12 MR. BLUT: Object to the form.

13 THE WITNESS: My understanding is that

14 it's private property. And that's -- it -- by

15 it being on their property alone, that gives

16 them responsibility of what occurs on their

17 property.

18 BY MR. SMERBER:

19 Q Do you know who approached you first,

20 whether it was someone from Las Vegas Metropolitan

21 Police Department or from the Palms?

22 A I do not know.

23 Q Do you know who was the first to arrive to

24 the scene of the accident that you had?

25 A I do not know.

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1 am I agreeing or what am I not agreeing to?

2 BY MR. SMERBER:

3 Q What I'm saying is that you cannot agree

4 or disagree because you don't remember; is that

5 right?

6 A Yeah. Yeah, I can't -- I can't say yes or

7 no.

8 Q Right. Do you know if you struck your

9 head in your car accident?

10 A I know the air bag hit me pretty hard. I

11 don't know if it struck my head, but I remember the

12 air bag really was forceful.

13 Q You said that at some point you remember

14 being placed into an ambulance; is that right?

15 A Yes.

16 Q Do you recall all of the events that

17 occurred after you being placed in the ambulance or

18 do you still have a spotty recollection of what

19 happened?

20 MR. BLUT: Object to the form.

21 BY MR. SMERBER:

22 Q Do you understand what I'm saying? It is

23 not a great question. You told me that from the

24 time you got into your accident until the time that

25 you were placed on the curb, you have bits and

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1 Q There was a statement written by a Palms'

2 security officer regarding this incident. And the

3 statement written by the Palms' security officer

4 indicates that metro was in the process of engaging

5 you, and metro requested the Palms' security officer

6 to assist. Do you have any recollection of that

7 happening?

8 A No, I have never seen the report.

9 Q No, what I'm asking you is: During the

10 events that occurred involving you, you have

11 described several things happening. You said that a

12 police officer approached you. You said that you

13 were pushed to the ground. You said that you were

14 placed in restraints. These are all the things that

15 you have told me today, correct?

16 A Correct.

17 Q At any time during these events, do you

18 recall the person who is doing this to you asking

19 the Palms' security to assist them?

20 A I don't remember what happened, so I don't

21 remember.

22 Q So you don't have any reason to agree or

23 disagree with that? You just don't remember?

24 MR. BLUT: Object to the form.

25 THE WITNESS: I'm not agreeing to -- what

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1 pieces of memory, right?

2 A Right.

3 Q What I want to know is, from the time that

4 you were placed in the ambulance, from then on, do

5 you only have bits and pieces of memory or do you

6 have a good recollection of everything that

7 occurred?

8 A I have bits and pieces. It's not -- I --

9 I remember being put in the vehicle. And I remember

10 waking up in the hospital. I remember parts of it,

11 like, being -- like, getting X-rays and stuff like

12 that. They freaked me out. But I don't really

13 remember -- I don't have a clear -- I don't have a

14 clear -- I don't clearly remember.

15 Q As a result of this incident, did you

16 begin treating with some sort of mental health care

17 professional?

18 A No.

19 Q Have you ever treated with a mental

20 healthcare professional?

21 A As of today? Yes.

22 Q When did you first treat with a mental

23 healthcare professional?

24 A When I was like a teenager, I had like

25 night terrors, which were -- which I believe were

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1 caused by the Northridge earthquake. So -- because
2 I started seeing night terrors. I was probably 15
3 when I first got night terrors. And then I went to
4 go to a neurologists. I think he referred me to a
5 psychiatrist. I've only -- did I occur -- I stopped
6 seeing both those treatments because the night
7 terrors disappeared when I was probably like 18
8 or -- like college time. That was the first time I
9 went to mental health facility was for night
10 terrors.

11 Q Were you taking any prescription
12 medications from those doctors?

13 A When I was 19, 15?

14 Q At any time when you were treating with
15 them.

16 A Yes.

17 Q What medications were you taking?

18 A I don't remember. It was so long ago.

19 Q What was the name of the psychiatrist that
20 you treated with?

21 A I don't remember his name. It was so long
22 ago. I was a kid.

23 Q What was the name of neurologist that you
24 saw?

25 A I think his name was -- no. I don't

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1 Q How long did that last for?

2 A My night terrors?

3 Q Yes.

4 A Probably 15 to like my early 20s.

5 Q Okay?

6 A I might have also gotten night terrors,
7 you know, before but I just don't remember, you
8 know, because I don't remember when I have them.

9 Q Do you know when the last time you had one
10 of these night terror episodes was?

11 A I don't remember.

12 Q Now, a minute ago I asked you if you have
13 ever treated with a psychiatrist or mental health
14 person in Nevada and you said that you have,
15 correct?

16 A As of today, yes.

17 Q Who have you -- what type of mental
18 healthcare -- give me the name of the mental
19 healthcare professional that you have treated with
20 here in Nevada.

21 A I'm seeing a therapist here. And his name
22 is Mark Premseelaar.

23 Q Can you spell his last?

24 A No can I look it up? P-R-E-M-S-E-L-A-A-R.

25 Q How long view been treating with him?

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1 remember. I don't remember his name. It was so
2 long ago.

3 Q Did you treat with any psychiatrist here
4 in Las Vegas?

5 A As of today? Yes.

6 Q When you were treating for your night
7 terrors, did you treat with any doctors in Nevada?

8 A No. I was living in Los Angeles at the
9 time.

10 Q Did you ever fill any prescriptions in
11 Nevada?

12 A During the time for the night terrors?

13 Q Yes.

14 A No. No one in Las Vegas.

15 Q When you were having the night terrors,
16 what were your symptoms?

17 A Well, it's your basic night terror. I
18 would wake up, scream, and run out of the room.

19 Q In the morning or whenever you woke up or
20 whatever, did you have a recollection of doing that?

21 A No.

22 Q So later someone would tell you, hey, last
23 night you woke up, you were screaming and running
24 around, and you would have no recollection of that?

25 A Right.

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1 A Since August of 2011.

2 Q Who referred you to that doctor?

3 A I found him through my Discount Ameriplan
4 I have.

5 Q What is Discount Ameriplan?

6 A It is not a health -- it's not -- it's not
7 an insurance. It's just called a discount plan,
8 it's called Ameriplan.

9 Q So you buy a plan and then you can go to
10 various providers who participate with that plan for
11 a discounted rate?

12 A Yeah.

13 Q And does Dr. Premseelaar prescribe you
14 medication?

15 A No. He's not a doctor. He's a therapist.

16 Q How often do you treat with him?

17 A I go to see him every two weeks.

18 Q Have you treated with any other mental
19 healthcare professionals in Nevada since this
20 incident occurred?

21 A Yes.

22 Q Who else have you treated with?

23 A Dr. Waits, who works at the state. So
24 it's the Southern Nevada Adult Mental Health
25 Services. He prescribes me medication.

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1 Q What medication is he prescribing for you?
 2 A I'm currently on Respinol.
 3 Q What is your dosage?
 4 A 1 milligrams, 1mm -- something. M
 5 something.
 6 Q MG?
 7 A Yeah. I think that is what it is, MG.
 8 Q How often do you take that?
 9 A Every day before I go to bed.
 10 Q Do you know what that medication is
 11 supposed to do for you?
 12 A It's an antipsychotic.
 13 Q How long have you been taking that
 14 medication?
 15 A Since March last year -- oh, wait. Wait.
 16 What year are we in now?
 17 Q We're in 2013 --
 18 A We past March, so -- yeah. March of last
 19 year. So 2012.
 20 Q Do you take any other medications?
 21 A No. Oh, I have an inhaler. An inhaler.
 22 I think that is considered medication.
 23 Q How often do you go sigh Dr. Waits?
 24 A Every like two to three months.
 25 Q What type of treatment does Dr. Waits give
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1 Q What kind of questions does he ask you?
 2 A Your basic questions that you ask any
 3 mental health patient.
 4 Q Which would be what?
 5 A Like, do you feel suicidal today? Do you
 6 feel like harming anybody today? I don't know.
 7 Your basic questions that you ask.
 8 Q Have you had to do any inpatient treatment
 9 for your mental healthcare?
 10 A Yes -- well, inpatient meaning? I had to
 11 go to a hospital, yes.
 12 Q When did you go to the hospital?
 13 A March 2012. It might have been also -- it
 14 might have been also early -- late February. Like,
 15 I'm not sure the time period, but it was like
 16 between late -- late February -- the last week of
 17 February and the first week -- the first week of
 18 March. That time period.
 19 Q And what hospital did you go to?
 20 A I went to Rawson Neal Psychiatric
 21 Hospital.
 22 Q Do you know how to spell that?
 23 A I can look it up on Google.
 24 Q Who sent you there?
 25 A Saint Rose Hospital.
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1 you?
 2 A He just prescribes me medication. You
 3 don't get the best services through the state.
 4 Q Did Dr. Waits perform any tests on you or
 5 anything like that?
 6 A No.
 7 Q So tell me what was -- what did your first
 8 meeting with Dr. Waits consist of?
 9 A He just asked me a bunch of questions, and
 10 then wrote a prescription.
 11 Q Did he have you fill out any paperwork?
 12 A No.
 13 Q And then you followed up with him several
 14 times, because you see him every two to three
 15 months, right?
 16 A Right.
 17 Q So you have probably seen him about six --
 18 fix, six times since your initial visit, right?
 19 A It doesn't feel like that many times, but
 20 maybe I did see him that long. But it doesn't feel
 21 like I've seen him that many times.
 22 Q In your follow-up visits with Dr. Waits
 23 what do you guys do?
 24 A He just asks me questions and fills out
 25 his pad.
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1 Q How long did you stay in that facility?
 2 A Over -- less than two weeks.
 3 Q And what type of treatment did you receive
 4 in that facility?
 5 A They just -- they just treat -- I don't
 6 know what is considered treatment. I just kind
 7 of -- it felt like I was at a baby sitting. Like a
 8 nursery. I don't know. It's just -- I don't know
 9 what kind of treatment you would call it. It is
 10 probably your basic treatment that they supply
 11 anyone who is sent there. They feed you. They give
 12 you medication. They have group therapy sessions
 13 that you are free to go, but you don't have to go if
 14 you don't want to go. They have a gym. Those are
 15 the facilities they give you. You sleep there.
 16 Q Do you know what Jordanica, Inc. is?
 17 A Yeah that is -- Mark Premseelaar's company.
 18 That is what he calls his company, where he bills
 19 you from.
 20 Q And you said that you went into the
 21 inpatient facility for mental healthcare in March of
 22 2012, right?
 23 A Correct.
 24 Q And you were referred there by Saint Rose?
 25 A Yes.
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<p>CRISTINA PAULOS 3/25/2013</p> <p style="text-align: right;">101</p> <p>1 Q Who at St. Rose referred you?</p> <p>2 A I don't know. It is just from St. Rose,</p> <p>3 they sent me there.</p> <p>4 Q Did you go to the St. Rose ER or</p> <p>5 something?</p> <p>6 A Yeah.</p> <p>7 Q For what?</p> <p>8 A I had a mania episode.</p> <p>9 Q And that was in --</p> <p>10 A In --</p> <p>11 Q March or February --</p> <p>12 A Yeah.</p> <p>13 Q -- of 2012?</p> <p>14 A Mm-hmm.</p> <p>15 Q That is a yes?</p> <p>16 A Yes.</p> <p>17 Q Prior to February of 2012, have you ever</p> <p>18 had a mania episode?</p> <p>19 A I really -- I realized that the -- that I</p> <p>20 had a mania episode during the car accident. That</p> <p>21 is what I -- but I didn't at that time know that it</p> <p>22 was a mania episode.</p> <p>23 Q Okay.</p> <p>24 A Until I was diagnosed with bipolar in</p> <p>25 March -- March 2012 time, around March 2012 time. I</p> <p>PHONE: 702-430-5003 FAX: 702-974-0125</p> <p>www.lawyersolutionsgroup.com</p>	<p>CRISTINA PAULOS 3/25/2013</p> <p style="text-align: right;">103</p> <p>1 A No, they don't do that.</p> <p>2 Q What doctor told you that the incident</p> <p>3 that you had at the Palms was a mania episode?</p> <p>4 A My therapist told my, Mark Premseelaar.</p> <p>5 And when I was -- yeah. He's the only one who told</p> <p>6 me.</p> <p>7 Q What about Dr. Waits, has Dr. Waits ever</p> <p>8 commented on that?</p> <p>9 A Dr. Waits doesn't say much, so no.</p> <p>10 Q Okay.</p> <p>11 A He just gives me drugs. That's his job.</p> <p>12 Q So in terms of mental health care that you</p> <p>13 have received since this incident, we discussed the</p> <p>14 inpatient treatment that you had at Rawson Neal, the</p> <p>15 treatment that you had with Mark Premseelaar, and the</p> <p>16 treatment that you get from Dr. Waits. Is there any</p> <p>17 other mental healthcare providers that have you</p> <p>18 treated with after this incident?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 A There was another doctor I saw at USC.</p> <p>22 And her name was Kiomi (PHONETIC). I don't remember</p> <p>23 her name. I only saw her for like a month. I</p> <p>24 forget her last name.</p> <p>25 Q What time period was that --</p> <p>PHONE: 702-430-5003 FAX: 702-974-0125</p> <p>www.lawyersolutionsgroup.com</p>
<p>CRISTINA PAULOS 3/25/2013</p> <p style="text-align: right;">102</p> <p>1 was diagnosed with bipolar. So then the doctors can</p> <p>2 now tell me that what I experienced from the car</p> <p>3 accident was actually a mania episode. That is from</p> <p>4 bipolar. Bipolar 1.</p> <p>5 Q You just give me a lot of information, so</p> <p>6 I want to go through it to make sure I understand</p> <p>7 it. Your doctors at this point have told you that</p> <p>8 the episode that you had at the Palms was a mania</p> <p>9 episode, correct?</p> <p>10 A Yes.</p> <p>11 Q And they told you that you had that</p> <p>12 episode because of the car accident that you were in</p> <p>13 and because you are bipolar?</p> <p>14 A They didn't say because of the car</p> <p>15 accident. They didn't say any of that stuff. All</p> <p>16 they said was what I experienced that day was a</p> <p>17 mania episode.</p> <p>18 Q Okay.</p> <p>19 A Yeah. They don't know what causes it.</p> <p>20 Your -- so I don't know.</p> <p>21 Q Okay. Did they tell you -- I don't know</p> <p>22 if they can do this. You told me that you were</p> <p>23 diagnosed as being bipolar in March of 2012, did</p> <p>24 they review your history and determine how long you</p> <p>25 have been bipolar?</p> <p>PHONE: 702-430-5003 FAX: 702-974-0125</p> <p>www.lawyersolutionsgroup.com</p>	<p>CRISTINA PAULOS 3/25/2013</p> <p style="text-align: right;">104</p> <p>1 A I think it was Cohen. Yeah, it was</p> <p>2 Dr. Cohen. That was summer, last year.</p> <p>3 Q Summer of 2012?</p> <p>4 A Yeah.</p> <p>5 Q Do you know if Cohen is spelled C-O-H-E-N?</p> <p>6 A I believe that's correct, yeah.</p> <p>7 Q What did Dr. Cohen do for you?</p> <p>8 A She gave me -- she changed the</p> <p>9 prescription of my medication -- not she -- I was</p> <p>10 still on Respinol, but I was trying a different mood</p> <p>11 stabilizer. And I forgot what medication she put me</p> <p>12 on. And I no longer take the mood stabilizer.</p> <p>13 Q Okay. How many times do you think you met</p> <p>14 with Dr. Cohen?</p> <p>15 A Probably twice or three times.</p> <p>16 Q So we can add Dr. Cohen to the list of</p> <p>17 mental healthcare providers that you have treated</p> <p>18 with since this incident. Has there been any</p> <p>19 additional providers that we haven't discussed yet?</p> <p>20 A There was doctors -- there was several --</p> <p>21 there is a team of doctors at Rawson Neal Hospital.</p> <p>22 I don't remember their names, but there was a team</p> <p>23 of them. We didn't talk about them, but they were</p> <p>24 at Rawson Neal.</p> <p>25 Q Now, before this incident you treated with</p> <p>PHONE: 702-430-5003 FAX: 702-974-0125</p> <p>www.lawyersolutionsgroup.com</p>

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1 a psychiatrist in Los Angeles for your night
2 terrors, correct?
3 A Yes.
4 Q And you also treated with a neurologist in
5 California for your night terrors, correct?
6 A Yes.
7 Q But you don't remember either of their
8 names?
9 A No.
10 Q Is there anything in your possession,
11 maybe at home or at your parents' house or something
12 that would have those people's names?
13 A Yes. Medical records.
14 Q So you have medical records from your
15 treatment with those doctors, correct?
16 A Not -- I don't know if it is all of the
17 records. Again, it was -- it was '90s and it was a
18 while ago so I -- I do have medical records. I'm
19 not sure if that was from all the doctors I saw, but
20 there is some doctors.
21 Q I'm going to ask, because they have been
22 requested, I'm going to ask that you produce those
23 to your counsel. Okay?
24 A Yeah, I have turned them in.
25 Q Okay.

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1 health care providers that you treated with prior to
2 the incident at the Palms?
3 A No, I don't remember.
4 Q Do you know if there were other mental
5 healthcare providers besides that one psychiatrist
6 and that one neurologist?
7 A There was a therapist I was seeing. Her
8 name Lisa, but I don't remember her last name.
9 Q Okay.
10 A She was -- and I was seeing her when I was
11 in high school. And I was not seeing her during
12 college at all. I only saw her during the time I
13 was in high school, because I was having problems in
14 high school with my grades. My grades dropped and
15 stuff, like that, so my parents put me to see a
16 therapist.
17 Q Was that in Los Angeles?
18 A Yes.
19 Q Have we discussed all the mental health
20 care treatment that you received?
21 A Yes.
22 Q Let's talk about the medical treatment
23 that you received as a result of this incident. You
24 told me that during this incident you sustained
25 burns to your body, correct?

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1 MR. BLUT: I'm not sure if they fall in
2 the date and time span, but I can take a look
3 at them.
4 THE WITNESS: They're in the '90s.
5 BY MR. SMERBER:
6 Q Well, it's my understanding that you
7 treated up to through your early 20s, correct?
8 A Yeah, I guess. Yeah.
9 Q That's what you told me earlier.
10 A Yeah. Like, college. Before college.
11 Precollege.
12 Q How old are you right now?
13 A Thirty-three.
14 Q So this incident would have happened in
15 2011 when you were 31, right?
16 A Yes.
17 Q So ten years prior to that, you would have
18 been 21, right?
19 A Yeah.
20 Q That would be in your early 20s, right?
21 A Yes.
22 Q The psychiatrist -- I'm going back to my
23 line of questioning -- you don't know the name of
24 the psychiatrist or the neurologist that you treated
25 with. Do you know the names of any other mental

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1 A Correct.
2 Q Tell me what parts of your body received
3 burns as a result of this incident.
4 A I have left thigh, left leg. So the leg
5 and the thigh. And on the left side, I have the --
6 head burns. And then I had skin graft surgery. And
7 then I have a burn from my butt. And I also had
8 burns on my face that scarred -- the left side of my
9 cheek, kind of. I still have a scar from it on my
10 face.
11 Q Okay. Let me go through. I have got left
12 leg and thigh, right?
13 A Yes.
14 Q And then you said on your head. Is it on
15 the left or right side of your head?
16 A My cheek.
17 Q So your left cheek?
18 A Cheek and chin. Right here. You can see
19 it. Like right here (indicating). I cover it with
20 make up. Like right here (indicating).
21 Q Okay. And then you said you have a scar
22 on your butt or you got burned on your butt?
23 A Yeah.
24 Q On what side?
25 A It's on my -- it's on my -- it is on the

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1 right side of my cheek of my butt. It's kind of
 2 close to the leg part of the butt. I guess.
 3 Q So let me go through the list again. I
 4 have left thigh leg, right?
 5 A Thigh and leg, yes.
 6 Q I have the right side of your butt?
 7 A Yeah. Well, it's small though. It's like
 8 the cheek, the butt cheek. It's not like the whole
 9 butt or anything.
 10 Q I will go over the size and everything
 11 else in a minute. I just want to make sure I have
 12 all the parts.
 13 A Mm-hmm.
 14 Q And then I have left cheek/chin?
 15 A Mm-hmm.
 16 Q Is that right?
 17 A Yes.
 18 Q Let's talk about your left leg and thigh.
 19 How big is the burn that you have on your left leg
 20 and thigh?
 21 A It's very large. It -- I mean, I can
 22 measure. I don't have a ruler, but...
 23 MR. BLUT: She can show it to you.
 24 THE WITNESS: You want to see it? I can
 25 show it to you.

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1 Q We have a little bit.
 2 A I can go put it on.
 3 (Off the record.)
 4 BY MR. SMERBER:
 5 Q We're going back on the. Ma'am we have
 6 had a chance to take a lunch break. You're still
 7 under oath and all the admonishments that I
 8 previously gave you still apply. Do you understand?
 9 A I understand.
 10 Q Before we went on the break, we had just
 11 started talking about your injuries in this matter,
 12 and you had just shown me the scar to your left leg
 13 and left thigh, correct?
 14 A Correct.
 15 Q You also said that you had a burn injury
 16 to your right buttocks; is that correct?
 17 A Right.
 18 Q How large is that? Did that result in a
 19 scar?
 20 A Yes.
 21 Q How large is that scar?
 22 A It's probably like a quarter size.
 23 Q So the size of a quarter? You're talking
 24 about the U.S. currency, of course?
 25 A Yes.

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1 MR. SMERBER: Yeah. Let's take a look and
 2 see what it looks like.
 3 THE WITNESS: It goes all the way up there
 4 to there (indicating).
 5 BY MR. SMERBER:
 6 Q With regards to the item, it looks like
 7 you have a compression sleeve or something on your
 8 leg; is that right?
 9 A Yeah. It's a compression stocking. It
 10 covers the -- the burn.
 11 Q What does that do?
 12 A It -- it helps with the circulation and it
 13 pushes the skin down so that your burn will -- the
 14 scarring will be like smoother, like skin instead of
 15 being like a keloid, which it is. So it's helping
 16 the scar tissue. And it helps circulation.
 17 Q How often do you wear that?
 18 A I wear it every day. And I take it off
 19 when I sleep, because it's uncomfortable.
 20 Q Do you want to take a break to put it back
 21 on?
 22 A Yeah, I can just put it back on.
 23 Q We can take a break and you can go to the
 24 bathroom and put it on?
 25 A Well, how many more questions do we have?

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1 Q And in terms of coloration and
 2 discoloration, what does it look like?
 3 A It looks like a bruise and a little keloid
 4 growth on it.
 5 Q You showed us your leg. Is it the same
 6 color as your leg?
 7 A No. It's -- it's more like a bruise
 8 color. Like it's darker -- well, actually, you know
 9 what, it is probably a little darker than what you
 10 saw, scar. It's -- because there is no compression
 11 on it, it's really raised cause there is no
 12 compression that can be used for that.
 13 Q And you told me that you, I think earlier
 14 you told me that you had skin graft procedures for
 15 your leg, correct?
 16 A Correct.
 17 Q Have you had any skin graft procedures for
 18 the scar on your right butt cheek?
 19 A No.
 20 Q And then the final area where you were
 21 burned was the left side of your face on your cheek
 22 and your chin, correct?
 23 A Correct.
 24 Q Have you had any skin graft procedures on
 25 that area of your body?

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<p>CRISTINA PAULOS 3/25/2013</p> <p style="text-align: right;">113</p> <p>1 A Not on my face.</p> <p>2 Q With regards to the burns that you had on</p> <p>3 your right buttocks and your chin and cheek, what</p> <p>4 type of treatment did you receive?</p> <p>5 A None. I have just been putting creams on</p> <p>6 it.</p> <p>7 Q Okay.</p> <p>8 A They just told me to put creams on it and</p> <p>9 massage it.</p> <p>10 Q Now with regards to your leg, you have</p> <p>11 been receiving medical treatment or you have</p> <p>12 received medical treatment in the past, correct?</p> <p>13 A Correct.</p> <p>14 Q It's my understanding that that treatment</p> <p>15 started the day of your incident; is that right?</p> <p>16 A Correct.</p> <p>17 Q And you told me you were taken by</p> <p>18 ambulance to the hospital, right?</p> <p>19 A Yes.</p> <p>20 Q Do you know what hospital you were taken</p> <p>21 to?</p> <p>22 A UMC.</p> <p>23 Q And you told me that at UMC, I think you</p> <p>24 said they took some X-rays of you; is that right?</p> <p>25 A The emergency room, yeah.</p> <p>PHONE: 702-430-5003 FAX: 702-974-0125</p> <p>www.lawyersolutionsgroup.com</p>	<p>CRISTINA PAULOS 3/25/2013</p> <p style="text-align: right;">115</p> <p>1 Q What type of treatment did they give you</p> <p>2 during that three day period?</p> <p>3 A I had somebody in the room with me. So --</p> <p>4 and they would wake me up. I didn't really remember</p> <p>5 they do -- I know they didn't do anything for my</p> <p>6 leg. I don't -- I don't recall what they did. I</p> <p>7 had a whole bunch of stuff strapped to me. That's</p> <p>8 about all I remember.</p> <p>9 Q So I want to kind of narrow that down so I</p> <p>10 make sure I understand what you are saying. Are you</p> <p>11 saying that you just remember them kind of</p> <p>12 monitoring you during that time?</p> <p>13 A That's what I understand or believe,</p> <p>14 because I remember talking to a different doctors --</p> <p>15 I don't know if they were doctors, but people coming</p> <p>16 in and out of my room.</p> <p>17 Q Okay.</p> <p>18 A Again, I was awake and I would sleep. I</p> <p>19 slept most of the time I was there.</p> <p>20 Q Did they perform any surgeries or</p> <p>21 procedures on you at that time?</p> <p>22 A No.</p> <p>23 Q And then when they discharged you from the</p> <p>24 hospital, did they give you any instruction to</p> <p>25 follow up with another doctor or did they tell you</p> <p>PHONE: 702-430-5003 FAX: 702-974-0125</p> <p>www.lawyersolutionsgroup.com</p>
<p>CRISTINA PAULOS 3/25/2013</p> <p style="text-align: right;">114</p> <p>1 Q Do you know what parts of the body they</p> <p>2 did X-rays on?</p> <p>3 A I don't know.</p> <p>4 Q Besides X-rays, do you know anything else</p> <p>5 that they did for you in terms of treatment?</p> <p>6 A When I first was in the emergency room? I</p> <p>7 don't recall -- remember.</p> <p>8 Q Did they admit you into the hospital and</p> <p>9 keep you there?</p> <p>10 A Yeah, I was there for around three days</p> <p>11 after the accident.</p> <p>12 Q So you were initially taken to the</p> <p>13 emergency room, you received some treatment, but is</p> <p>14 that part of your memory that you have just bits and</p> <p>15 pieces?</p> <p>16 A Yeah, I was in and out. Like I would wake</p> <p>17 up and I would be in a different room, and then I</p> <p>18 would wake up again and they moved me around the</p> <p>19 hospital for a little bit.</p> <p>20 Q And then you finally woke up and you were</p> <p>21 still in the hospital; is that right?</p> <p>22 A Yes.</p> <p>23 Q And you said they kept you for three days?</p> <p>24 A Around three day. I'm not sure of the</p> <p>25 exact days, but it was around three days.</p> <p>PHONE: 702-430-5003 FAX: 702-974-0125</p> <p>www.lawyersolutionsgroup.com</p>	<p>CRISTINA PAULOS 3/25/2013</p> <p style="text-align: right;">116</p> <p>1 what to do?</p> <p>2 A Yes. I had to go to the burn clinic every</p> <p>3 day after I was released. And they would apply</p> <p>4 creams and clean the blistering, because it was all</p> <p>5 blistered. So I would go every day after that to go</p> <p>6 to see to the burn center.</p> <p>7 Q Did they tell you when you were in the</p> <p>8 hospital at UMC, did they tell you what type of</p> <p>9 burns you had?</p> <p>10 A No, because I didn't see a specialist</p> <p>11 until a couple of weeks after the accident. There</p> <p>12 wasn't anyone who was a specialist there to look at</p> <p>13 my burns. So...</p> <p>14 Q How long again was it until you saw a</p> <p>15 specialist?</p> <p>16 A It was more than a week. It was -- I</p> <p>17 don't know how long exactly, but I know it was more</p> <p>18 than a week. It was a while, because the nurses</p> <p>19 kept calling me to see a specialist but there was no</p> <p>20 doctors there. So I remember there was a big ordeal</p> <p>21 about trying to even get a doctor to look at my</p> <p>22 burns because the head burn nurse was like these are</p> <p>23 really severe burns, we really have to get you in.</p> <p>24 So it was -- but it was a big delay because the</p> <p>25 service -- there was just enough doctors at the UMC.</p> <p>PHONE: 702-430-5003 FAX: 702-974-0125</p> <p>www.lawyersolutionsgroup.com</p>

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1 Q The burns that you had, you said that they
2 were blistering, correct?
3 A They blistered first, yeah.
4 Q Okay.
5 A They were all like -- the skin was all --
6 all -- I didn't know the severe -- no one knew the
7 severity of the injury until later when the skin
8 just was ripping off and there was layers and layers
9 of skin that was removed.
10 Q So you went to the burn center every day.
11 How long did you do that for?
12 A Over a month. I don't really remember,
13 but it was a while.
14 Q Why did you eventually stop going to the
15 burn center?
16 A I was released -- I think the last day of
17 my burn -- when I stopped going to see the burns was
18 like the next year. I think it was like January or
19 something.
20 Q Is that --
21 A I don't remember when they stopped seeing
22 me.
23 Q Let me clarify that a little bit. You
24 started going to the burn center when you were
25 discharged from UMC, right?

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1 A Okay.
2 Q It was the next day --
3 A The next day --
4 Q And then you said -- what prompted my
5 question was you said you treated with the burn
6 center for a little over a month, right?
7 A Oh, it was -- it was more than a month. I
8 was treated for the burn center. That was like a
9 season I was at the burn center.
10 Q So when say you say, "a season" -- I think
11 I'm going to go, and what caused my confusion is,
12 first you said it was a month. And then you said
13 you got done the next year. That would have been,
14 because this was in August --
15 A Mm-hmm.
16 Q -- and then January of next year. That
17 would have been like four or five months --
18 A Yeah.
19 Q -- does that sound more accurate?
20 A Yeah. Yeah.
21 Q So you treated with the burn center for
22 four or five months?
23 A Yeah.
24 Q How long after your discharge from UMC did
25 you go to the burn specialist?

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1 A Yeah.
2 Q Do you know how long after you were
3 discharged from UMC?
4 A The first time? So I was at the UMC for
5 like around three days.
6 Q And then you got discharged. And how many
7 days was it before you went to the burn center?
8 A Oh, no. I was -- I went to the burn
9 center the very next day.
10 Q Okay.
11 A Yeah. I would go -- I would go see them
12 every day.
13 Q So --
14 A And it wasn't until mid August where they
15 were like your burns are really bad. You need to
16 see the surgeon. And then I went to go see the
17 surgeon and the surgeon is like, he okayed me the
18 skin grafts pretty soon because there was a delay.
19 When I should have had skin graft surgery, I should
20 have had it like earlier but there was no doctors.
21 So it was really confusing. I don't know what you
22 asked. What did you ask me?
23 Q You answered my question. I just want to
24 know how many days there was in between you leaving
25 UMC and going to the burn center.

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1 A Specialist? You mean a doctor? Like a
2 surgeon to see my burns?
3 Q Well, yeah. You said you were treating
4 with the burn center for a while. And finally they
5 said you need to go see a burn specialist, right?
6 A Well, a specialist meaning a surgeon.
7 Q Okay.
8 A Yeah.
9 Q So how long was it after you were
10 discharged from UMC that you went to see the
11 surgeon?
12 A Probably like a week or a bit more than a
13 week.
14 Q Okay.
15 A I didn't get to see the specialist for a
16 while.
17 Q Then do you know the name of the surgeon
18 that you saw?
19 A Yeah. Nathan Ozobia.
20 Q I'm looking for that doctor's name, so I
21 could spell it for the record. It's O-Z-O-B-I-A.
22 So about a week after you were discharged from UMC
23 you went to or you were sent to Dr. Ozobia who is a
24 surgeon, right?
25 A Mm-hmm.

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1 MR. BLUT: Yes?

2 BY MR. SMERBER:

3 Q Is that a yes?

4 A Yes. I'm sorry.

5 Q That's okay. What did Dr. Ozobia do for

6 you?

7 A He told me I had to get skin graft

8 surgery. So he scheduled me to get surgery the end

9 of August time. I went to get skin graft surgery.

10 Q Did Dr. Ozobia perform that surgery?

11 A Yes.

12 Q Is that an outpatient procedure?

13 A What do you mean outpatient?

14 Q Did you go into the hospital where you had

15 the surgery done and come out the same day?

16 A Oh, no, no. I was there for a couple of

17 days.

18 Q Okay.

19 A Yeah. It was about a week I was in the

20 hospital after the surgery.

21 Q How many times have you had the skin graft

22 procedure performed?

23 A One time.

24 Q And that was the one time in August of

25 2011?

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1 MR. BLUT: You have to wait. You answered

2 three times before he finished.

3 THE WITNESS: Sorry. Okay.

4 BY MR. SMERBER:

5 Q So my question was: At this point you

6 have about a year left before you go in to see what

7 the results of the compression stocking is, right?

8 A It's been about two years, so yeah,

9 another year.

10 Q Did any of your doctors, Dr. Ozobia or any

11 of the other doctors that you treated with tell you

12 that your scar or your injury to your left leg was a

13 result of an infection or anything like that?

14 A No. It's a burn.

15 Q Did you have any complications with your

16 burn or your treatment?

17 A No. Everything went accordingly.

18 Q You said earlier that you should have

19 gotten skin grafts earlier than you did --

20 A Mm-hmm.

21 Q -- but there was no doctors to do it. Did

22 Dr. Ozobia or anyone else say what impact, if any,

23 that had on your healing?

24 A The doctor said no -- nothing, but the

25 nurses were really concerned. The nurses were

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1 A Yeah. It was around the end of August.

2 Q Have you discussed with Dr. Ozobia or any

3 other doctors the potential for additional skin

4 graft procedures?

5 A No. It took about 75 percent so that is a

6 good result.

7 Q So what did they tell you is going to

8 happen with regards to the scar on your leg?

9 A They said to wear the compression stocking

10 for three years. And then I asked about plastic

11 surgery, and then most of them didn't know about it.

12 They just said -- you don't -- like wait three years

13 and you see how the scarring comes out, I guess.

14 But I guess there is a time period you wait between

15 the scar heals so -- cause I went to go see a

16 plastic surgeon, and he didn't have any -- he didn't

17 give me much feedback. He just like, wear the

18 compression stocking for three years and then you

19 could, you know, see if there is anything else they

20 can do.

21 Q So you have about a year before you go

22 back to see how the results --

23 A Yeah --

24 Q -- of the compression stocking are --

25 A Yeah.

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1 like -- they were like, you really need to see a

2 doctor right now. And then they were trying to put

3 like pig skin on me. And they were like -- they

4 just were a big mess at the UMC during the whole

5 time of the treatment. They don't know what they're

6 doing really. They were very confused.

7 Q Is Dr. Ozobia at UMC?

8 A Yes.

9 Q Did Dr. Ozobia seem like he didn't know

10 what he was doing?

11 A He knew what he was doing. It's just

12 the -- the -- he -- the only -- the only thing I'm

13 complaining about is the time period it took for me

14 to see a specialist was longer than I should have.

15 Q When is the last time you treated with

16 Dr. Ozobia?

17 A Was probably -- I don't really remember.

18 Q Okay.

19 A Probably last year at the end of the

20 year -- I mean, early last year probably.

21 Q So some time, let's say, in the first

22 three months of 2012?

23 A That's what I'm -- yeah. That's what I'm

24 assuming.

25 Q Have you treated with any other medical

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1 providers besides UMC and Dr. Ozobia in the burn
2 center?

3 A For my burn injuries?

4 Q Yes.

5 A That's it.

6 Q Okay. And then the other medical
7 providers that you would have treated with would
8 have been for your mental health?

9 A Correct.

10 Q In terms of your burns, did they give you
11 any pain medications for that?

12 A Yes.

13 Q Who gave you pain medications for your
14 burns?

15 A Dr. Ozobia.

16 Q And what medications did he give you?

17 A Like Percocet and something else. I think
18 for like infection or something. I was on a lot of
19 creams. They gave me a lot of creams. Those were
20 prescriptions as well. And I don't remember what
21 those creams were.

22 Q How often would you take the pain
23 medication?

24 A As directed. So probably like twice a
25 day, maybe three times a day.

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1 was little by little, it was less and less.

2 Q With regards to your changing your
3 bandages, did you change your bandages two times a
4 day as you were prescribed?

5 A I did exactly as I was directed by the
6 doctors.

7 Q And you said that your mother and your
8 sister would help you with that, right?

9 A Yeah. And sometimes it was the -- the
10 ex-boyfriend. But I don't know how long it was.
11 But they were the ones who helped me during the
12 time that I couldn't dress myself or put on the
13 dressings.

14 Q When was the last time that you took any
15 pain medication as a result of this incident?

16 A Probably the winter of 2011.

17 Q So within a couple of months of your
18 incident occurring?

19 A Yeah. That whole season from the new year
20 up, I was on the medication.

21 Q So by the time the 2012 came, you stopped
22 your medication?

23 A I -- I am not sure. I think. I'm not
24 sure, but it was...

25 Q Let me ask you this way: We're well into
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1 Q And then with regards to your burns, you
2 had to put creams on them?

3 A Mm-hmm, yes.

4 Q How often did you have to do that?

5 A Every couple of hours.

6 Q So would -- was your leg in a dressing?

7 Was it wrapped up?

8 A Yeah. I would have to go to the burn
9 center and they would dress my wound. And then I
10 would have to change the wound. And I had my sister
11 and my mom redress me, the wounds. Cause I couldn't
12 apply the creams myself because of where the injury
13 was.

14 Q How many times a day did you have to
15 change your bandages?

16 A Probably like twice a day.

17 Q And then you would also go to the burn
18 center once a day, correct?

19 A As -- as time went by, it was -- it
20 started once a day, and then as it was healing, they
21 slowly changed it to like every other day, every --
22 from there, every -- every three days. Until one
23 week. And then it would just progress. And I don't
24 remember the time period of when that occurred.
25 Like it was just -- it was every day, and then it

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1 March of 2013 right now. Is it fair to say that
2 it's been almost a year since you have taken pain
3 medication?

4 A Yes. But I do take medication like -- I
5 don't know if this counts. It's over the counter.
6 But I -- when it flares up, the burn flares up,
7 like, I take -- I take allergy medicine constantly
8 when the burn flares up, because like when the
9 seasons change and stuff, like when it's really hot
10 the leg gets really, really itchy. So I take a lot
11 of the allergy medicine, which is what the doctor
12 told me to do when that happens, to take allergy
13 medicine. Because when I -- I was prescribed the
14 painkillers, I was really, really cautious about
15 taking the painkillers a lot because a girlfriend of
16 mine told me her friend got addicted to painkillers
17 so I was like -- I didn't -- I know I didn't take it
18 that much because I was scared of the addiction and
19 stuff that people were telling me about.

20 Q Currently are you treating for your
21 injuries at all?

22 A The burns?

23 Q Yes.

24 A Currently just the compression stocking
25 which I get replaced every so often.

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1 Q I know that you're supposed to wait three
2 years before you go back to see the results of the
3 compression stocking. Do you have an appointment
4 scheduled with Dr. Ozobia or somebody to go back and
5 have the results of that reviewed?

6 A No.

7 Q So as you sit here today, you're not
8 scheduled for any future medical treatment, correct?

9 A Correct.

10 Q And because your skin graft -- I think you
11 said 75 percent of it took; is that right?

12 A Yeah, something like that.

13 Q And so that was considered a success?

14 A Yeah.

15 Q And because of that success, you're not
16 going to be scheduled for future skin grafts; is
17 that your understanding?

18 A It's my understanding.

19 Q Did you have follow-up visits with
20 Dr. Ozobia after your skin graft?

21 A Yes.

22 Q And did he tell you that you're going to
23 need future skin grafts?

24 A No.

25 Q Do you know who Dr. Silver is?

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1 medications that day?

2 A No.

3 Q In the 24 hours prior to your incident had
4 you consumed any medications?

5 A No.

6 Q Were you under the care of any type of
7 healthcare provider for any reason during that time?

8 A No.

9 Q Did you have a general care practitioner?

10 A Yes.

11 Q What was the name of your general care
12 practitioner?

13 A Rita Chong.

14 Q C-H-O-N-G?

15 A I think so. It sounds right.

16 Q In the 24 hours prior to your incident,
17 had you consumed any illegal drugs?

18 A No.

19 Q Had you consumed, in the 24 hours prior to
20 your incident, over the counter medications?

21 A No.

22 Q We talked about this earlier. Your mental
23 healthcare providers told you that during the
24 incident that occurred at the Palms you were having
25 a mania episode, correct?

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1 A Yeah. He was the assistant to Ozobia. Or
2 that's how I understood it. And he was always with
3 Ozobia so I assumed he was his assistant.

4 Q At the burn center, did they do
5 debridement of your leg?

6 A What does that mean?

7 Q That is where they scrape your leg, pull
8 all the dead skin off. Did they do that?

9 A Yeah.

10 Q Did they do that to any other part of your
11 body or just your leg?

12 A They did it to my breast.

13 Q And I believe you told me earlier the
14 injury to your breast was a result of the car
15 seat -- the seatbelt?

16 A Yeah.

17 Q And that is from the automobile accident?

18 A Right. They also did wrappings on my
19 butt. I don't know if they pulled the skin out, but
20 they did apply the creams and they were also able to
21 do the butt area too.

22 Q On the date of this incident before it
23 occurred had you consumed any alcoholic beverages?

24 A No.

25 Q Had you consumed any prescription

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1 A That is what I was told, yes.

2 Q And I think you also told me that they
3 don't know why you had that; is that right?

4 A They don't know why. I mean, they just
5 said I'm bipolar. That's what they said.

6 Q Have they described to you what a mania
7 episode consists of? What is it?

8 A Yeah.

9 Q What is it?

10 A It's like a -- well, I don't know the
11 terms. I -- actually, I don't know. I mean, they
12 told it to me before. I just don't remember like
13 the text book of a mania episode. But it's like you
14 hallucinate. And it's caused by extreme stressful
15 situations cause it. That is all I'm told. Like
16 the text book will say like a death in your family
17 or like, you know, change in, you know, job or, you
18 know, things will cause it if someone is bipolar.

19 Q Did you tell your doctor about the events
20 that led up to the incident at the Palms?

21 A I told -- yeah. I told -- I started
22 seeing a therapist and he is aware, well aware of
23 all that stuff.

24 Q Did your doctor ever indicate to you
25 whether or not he believed that the altercation you

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1 had with your boyfriend, you deciding to move out
2 contributed to your mania episode?

3 A I don't know exactly what his words were.
4 I don't remember.

5 Q How about the car accident that you were
6 in?

7 A I don't know. I don't remember. I don't
8 know which -- I don't really -- I don't know. I
9 mean, I just -- it's just -- like I just discovered
10 I was bipolar like a year ago. So now it's just
11 kind of trying to figure out what everything means.
12 So I'm kind of confused about that, because it's a
13 lot of stuff for me to deal with.

14 Q Have any of your doctors told you that you
15 became bipolar as result of the event that occurred
16 at the Palms after your automobile accident?

17 A No.

18 Q If I understand correctly, your -- the
19 events that occurred at the Palms after your
20 automobile accident was a result of your having a
21 mania episode, correct?

22 MR. BLUT: Object to the form.

23 BY MR. SMERBER:

24 Q Is that your understanding?

25 A My understanding is that what I had that
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1 she doesn't understand it.

2 THE WITNESS: What does it mean?

3 BY MR. SMERBER:

4 Q The mental health care treatment that you
5 received, that's for your condition as being bipolar
6 and for your having mania episodes, correct?

7 MR. BLUT: Object to form --

8 THE WITNESS: No. And also I have a lot
9 of anxiety of what occurred.

10 MR. SMERBER: Okay.

11 THE WITNESS: So it's also dealing with a
12 lot of stuff that occurred that day.

13 BY MR. SMERBER:

14 Q Okay. So as a result of the things that
15 occurred that day, you have anxiety?

16 A I started seeing the doctor because of the
17 anxiety I had after the accident. That's the prior
18 reason. And then months later, I discovered I was
19 bipolar, you know, in March. So the reason I first
20 went to go see the therapist was because of what
21 happened on that day. I did not know I was bipolar
22 and all that -- whatever that means. Bipolar stuff.
23 I went to go see a therapist because of what
24 occurred that day.

25 Q What type of anxiety were you having
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1 day was a mania episode.

2 Q So the way that you were acting during
3 those events was a result of your having a mania
4 episode; is that fair to say?

5 MR. BLUT: Object to the form.

6 THE WITNESS: Yes. That I was having a
7 mania episode.

8 BY MR. SMERBER:

9 Q No one has ever told you that because you
10 were detained or allegedly detained after your
11 automobile accident now you're bipolar? No one has
12 ever said that?

13 A No one has ever said that.

14 Q And no one ever said that because you were
15 allegedly detained after you were in an automobile
16 accident that is what caused you to have a mania
17 episode? No one has ever said that either, right?

18 A No one has said those words.

19 Q Is it your understanding that the mental
20 healthcare treatment that you received is a result
21 of a condition that existed prior to your incident
22 at the Palms?

23 MR. BLUT: Can I have the question back --

24 THE WITNESS: Can you ask it -- yeah.

25 MR. BLUT: Then I don't need it back since

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1 because of what occurred that day?

2 A Like, I'm nervous about going out in
3 public and stuff. I just kind of shut myself up in
4 the room and didn't talk to nobody.

5 Q Do you think that your automobile accident
6 has anything to do with that?

7 A I don't know which, you know, I think
8 everything kind of -- everything together.

9 Q Do you think that the altercation you had
10 with your boyfriend has anything to do with that?

11 A I don't know.

12 Q Do you think --

13 A I mean, it's -- a lot of things causes it.
14 You know, it's a lot of different things.

15 Q Do you think that the altercation you had
16 with your sister that day causes that anxiety?

17 A No, because I fight with her all the time.

18 Q That's pretty normal?

19 A Yeah.

20 Q So if I understand what you're saying, you
21 had anxiety after this incident but you're not sure
22 if it came from maybe one thing or a conglomeration
23 of all the things --

24 A I think it's from all of them. I mean,
25 yeah, definitely. I mean, a life changing event. I

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1 mean, I have scars but I have a lot of problems that
2 I'm dealing with. So I mean, I mainly came because
3 of the scars because they just -- they just really
4 bothered me. The pain I was in and, like, just
5 looking different really bothered me. So -- but I
6 didn't know I was bipolar. So I did -- I assumed
7 what occurred was like a panic attack, because, you
8 know, I had like night terrors and things like that
9 and panic attack type deals so I just assumed it was
10 a panic attack that I was just really, really
11 confused of what happened that day. And I went to
12 see a counselor because I couldn't deal with it in
13 my head of what occurred that day.

14 Q With regards to the doctors that you
15 treated as a result of this incident were you honest
16 and candid with them regarding your injuries?

17 A Yeah.

18 Q Were you honest and candid with them
19 regarding your treatment and your progress?

20 A Yeah.

21 Q Have you ever had an incident like this in
22 your past?

23 A No.

24 Q Have you ever any subsequent incidents
25 like this where you had mania episodes?

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1 A They don't know what caused it -- no one
2 knows what causes. They just say it's something
3 stressful.

4 Q Was there some sort of stressful event
5 that occurred in March of 2012 that you believe
6 caused that?

7 A The only thing that was different is that
8 I was in L.A. promoting an art show that I was in.
9 And that was the only event that occurred.

10 Q Cristina, have you understood all the
11 questions that I have asked you here today?

12 A To the best of my knowledge.

13 Q For all the questions that you didn't
14 understand that you let me know, did I rephrase them
15 so you could understand them and answer them?

16 A Yes.

17 Q Do you want to change any of your
18 response?

19 MR. BLUT: Object to the form.

20 THE WITNESS: I would like to get reviewed
21 what I said before I agree on that question.

22 So like, if I have a chance to like read back
23 what was said.

24 BY MR. SMERBER:

25 Q Okay. As you sit here today, do you know
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1 A No. Not a mania episode, no.

2 Q What about in March of 2012, what happened
3 then when you had to go to Saint Rose?

4 A That's -- oh, okay. Is that what you're
5 saying? You are saying prior, right? I answer the
6 questions like you're asking me. Like, before
7 August 2011, did you have a mania episode and I said
8 no. That's what I'm answering.

9 Q And so now I want to know subsequent?

10 A After?

11 Q After.

12 A Yeah.

13 Q After the incident at the Palms, have you
14 had any other similar episodes --

15 A Yes, I did.

16 Q How many?

17 A Just one. In -- it was the end of
18 February.

19 Q We talked about that a little bit, but I
20 didn't ask you, do you know what caused that
21 incident to occur?

22 A No, I don't know.

23 Q Did your doctors ever give you any
24 indications as to what they believed caused it to
25 occur?

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1 of any changes that you want to make?

2 A Of what I just told you?

3 Q Right.

4 A As of now, no.

5 Q Is there anything that you told me today
6 that was untruthful or inaccurate?

7 A I told the truth.

8 MR. SMERBER: All right. Then I will pass
9 the witness.

10 MR. BLUT: Can we take a short break.

11 MR. SMERBER: Sure.

12 EXAMINATION

13 BY MR. ANDERSON:

14 Q Ms. Paulos, my name is Craig Anderson. I
15 represent the cops. Okay?

16 A Okay.

17 Q You understand that?

18 A I understand.

19 Q You still understand that you're under
20 oath?

21 A Understand.

22 Q This is not going to take very long. This
23 is not going to take very long. He has covered most
24 everything. I just want to fill in a couple of
25 holes. Okay.

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1 A I understand.
 2 Q So I'm going to be going back and then
 3 working my way forward again.
 4 A Understand.
 5 Q And some of these questions are very
 6 simple background questions again. Have you ever
 7 received any training in security work?

8 A No.
 9 Q Have you received any police officer
 10 training?

11 A No.

12 Q Prior to August 2011, had you ever been
 13 arrested?

14 MR. BLUT: Object to the form.

15 THE WITNESS: No.

16 BY MR. ANDERSON:

17 Q Outside of traffic tickets, basic traffic
 18 stops, have you ever had any prior contact with Las
 19 Vegas Metropolitan Police Department?

20 MR. BLUT: Object to the form.

21 THE WITNESS: Yes.

22 BY MR. ANDERSON:

23 Q In what type of a capacity?

24 MR. BLUT: Same objection.

25 THE WITNESS: I got into a car accident in

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1 Q On that date, whichever date that was, why
 2 did you meet your sister at the Palms?

3 A My girlfriend, Sarah, was in town and we
 4 were going to go meet her at the Palms' pool.

5 Q Now, prior to getting in the fight with
 6 why your sister and leaving and driving around, how
 7 were you feeling that day?

8 A I guess I was upset.

9 Q Understanding that you were upset, you had
 10 been in a dispute with your boyfriend, were you
 11 feeling like drunk or out of it or any of those
 12 types of feelings?

13 A No. I just felt caffeinated because I had
 14 coffee.

15 Q So when you feel caffeinated, how do you
 16 feel? Hyper?

17 A Yeah, I guess hyper, a little.

18 Q Did you have any type of pre-incident
 19 feelings that a manic episode was going to come on?
 20 Anything different that day?

21 A No.

22 Q So when you got in your care, prior to
 23 3:00 o'clock, you felt fine to drive?

24 A Yes.

25 Q You didn't notice anything unusual about

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1 2002.

2 BY MR. ANDERSON:

3 Q And so was it just traffic officers that
 4 came out?

5 A I believe so.

6 Q But it wasn't like they were investigation
 7 you for a crime besides a traffic accident?

8 A Right.

9 Q Okay. Had you ever filed an internal
 10 affairs complaint against any police officer prior
 11 to August 2011?

12 A No.

13 Q Now, with respect to the accident that
 14 occurred on August 2011, have either of the other
 15 vehicle owners sued you?

16 A I had -- I have auto insurance, so I
 17 wouldn't know if they sued me.

18 Q But you never had to give like a
 19 deposition like this --

20 A Oh. No.

21 Q Okay.

22 A Sorry.

23 Q It's okay. Now, on August 7th, is that
 24 right, 2011? Is that the right date?

25 A I think it was August 7th or 8th.

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1 yourself from the way that you were driving?

2 A Not at that time. no.

3 Q And your memory ends at the time that you
 4 were in the first accident, correct?

5 A Yes.

6 Q Do you remember the impact or does the
 7 memory end prior to the impact?

8 A I remember getting hit really hard, and
 9 just that. Yeah.

10 Q So you have a memory of that first
 11 accident?

12 A Yes.

13 Q Now, what is your very first next memory?

14 A The air bag.

15 Q From the first accident?

16 A Was there more than one accident?

17 Q Was your vehicle involved in more than one
 18 accident, to your knowledge?

19 A No. I -- I was under the incident --
 20 understanding that there was only one accident.

21 Q So as you sit here today, it's your belief
 22 that you were only involved in one accident?

23 A Yes.

24 Q So now let's go to the part to where you
 25 have contact with the other individuals, okay, the

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1 police officer and the security guards. Okay?

2 A (Witness nodded head).

3 Q What is your first memory at that point?

4 A I just remember being on the ground and

5 the zip ties being zip tied by somebody who looked

6 like they were in a uniform.

7 Q And you don't know how long you were kept

8 on the ground, correct?

9 A I don't know the time period, no.

10 Q Do you recall being lifted up and escorted

11 to the sidewalk?

12 A No.

13 Q Do you recall -- so there is a difference.

14 There is a time that you were laying on the ground,

15 correct, and the time where you were seated on the

16 curb that you are suffering burns, correct?

17 A Yeah. I -- I remember -- I don't remember

18 getting to the sidewalk, but I remember being on the

19 sidewalk.

20 Q So with respect to the time period where

21 you're lying down on your left side, okay?

22 A Mm-hmm.

23 Q Are you on the ground at any point where

24 the zip ties are secured?

25 A I don't remember.

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1 person?

2 A No.

3 Q Do you recall how you ended up on the

4 ground?

5 A No.

6 Q And then on the ground, you were lifting

7 up your head to get your face off the ground and you

8 were screaming, correct?

9 A Yes.

10 Q But you don't recall any specific

11 conversations were had?

12 A No.

13 Q Now, is it possible that you were picked

14 up off the ground as soon as the zip ties were

15 secured?

16 A I don't recall. I don't know.

17 Q Now, we talked about a nurse who told you

18 that it was her estimate that you were on the ground

19 for somewhere between 20 to 30 minutes, correct?

20 A Yes.

21 Q Have you ever talked to any witnesses who

22 were present that day?

23 A No.

24 Q Has anyone ever contacted you?

25 A No.

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1 Q Do you remember struggling while you were

2 on the ground with anybody?

3 A I don't remember.

4 Q While you were on the ground, do you

5 recall, as you sit here today, you remember having

6 sensations in your leg, in your left leg and the

7 left side of your face, correct?

8 A Yes. Well, they kept pushing my face

9 down. I remember that. Because I kept putting my

10 face up and the person kept pushing it back down.

11 whoever it was. And that is how the face got

12 burned, because I kept trying to raise my head

13 because it was burning my face.

14 Q And when that was occurring was your hands

15 zip tied --

16 A Yes.

17 Q Were they all they way zip tied, were they

18 being zip tied or were they not zip tied, if you

19 know?

20 A I didn't have access to my hands.

21 Q Besides trying to lift up your head and

22 face, were you moving any other part of your body?

23 A No, I couldn't move.

24 Q Do you have any memory prior to going to

25 the ground of any interaction with the uniformed

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1 Q And I think you were asked this, but the

2 nurse is the only person that has given you an

3 opinion as to how long were you on the ground,

4 correct?

5 A Correct.

6 Q Now, you mentioned today that you have not

7 viewed the video; is that correct?

8 A Correct.

9 Q Is there any reason why you haven't viewed

10 the video?

11 A Never got access to it.

12 Q Is it anything that you would be

13 interested in viewing?

14 A Yes.

15 Q Now, after you were detained, you

16 mentioned that you just wanted to speak to a woman,

17 you didn't want to speak to the men around you,

18 correct?

19 A Yes.

20 Q You said you felt threatened; is that

21 correct?

22 A Yes.

23 Q Why did you feel threatened?

24 A Because my experiences in the past with

25 people in uniforms have always been negative.

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- 1 Q What other negative experiences have you
2 had with men in uniform?
3 A I had -- I was -- I -- like when I was 21,
4 I got in a car accident and I had a panic attack and
5 the cops, like, wrestled with me and ripped my skirt
6 off. And I had to go to the -- I never had a
7 criminal record at all from this. It was all
8 dropped, but I had to go to the police station and
9 stuff like that in my underwear.
10 Q Where did that occur?
11 A On Las Vegas near Venetian behind by the
12 convention center.
13 Q So it was Las Vegas Metropolitan Police
14 Department officers?
15 A Yes.
16 Q Is this the accident that we talked about
17 briefly about five minutes ago?
18 A The one I said that occurred when I was
19 like 21, yes, it was that one.
20 Q Do you recall what year that was?
21 A 2002, I believe.
22 Q And were you arrested?
23 A No.
24 Q But you were taken to the police station?
25 A Yes.

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- 1 A I stopped breathing, and I couldn't
2 breath, and I was hyperventilating.
3 Q So how did it evolve into a physical
4 altercation with the police officers?
5 A I don't know.
6 Q Did they handcuff you?
7 A Yeah.
8 Q Did they take you in a police car to
9 wherever they took you?
10 A Yeah.
11 Q And then they just let you go?
12 A Well, I was at a police station for quite
13 a while with -- there was -- there was two young
14 cops that restrained me and then the older cop let
15 me go.
16 Q Were you actually arrested?
17 A No.
18 Q So let's -- did you have any other
19 negative events with men in uniform?
20 A Just that was the first that I ever had
21 and I had it with the second incident.
22 Q The one we're here to talk about today?
23 A Mm-hmm.
24 Q Is that a yes?
25 A Yes.

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- 1 Q Now were you taken to the jail or a police
2 station?
3 A I don't know which is the difference. I
4 just was taken to some bench and they handcuffed me
5 to a bench. And I was in my underwear.
6 Q So you had an accident that caused you to
7 suffer a panic take?
8 A Mm-hmm.
9 Q Is that a yes?
10 A Yes.
11 Q Do you have a memory of that event?
12 A It was a long time ago.
13 Q What I'm trying to figure out is, is it
14 the same as the manic attack that you had on August
15 of 2011 or is it one where you have a memory of?
16 A They were different.
17 Q But you ended up wrestling with the cops,
18 is that what you said, wrestling with the cops?
19 A When was this?
20 Q Sorry. In the 2002 incident.
21 A I don't -- I wasn't really wrestling with
22 them. I don't -- I don't really remember. It was
23 so long ago.
24 Q When you said you had a panic attack, what
25 did you do that you remember --

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- 1 Q Anything between 2002 and 2011?
2 A No.
3 Q So on August 7, 2011, you were -- that's
4 why you were threatened by the male presence around
5 you?
6 A I just don't talk to male cops.
7 Q To your recollection did any of the male
8 cops on August 7, 2011 mistreat you verbally?
9 A I don't recall.
10 Q Physically. Did any of them --
11 A I don't recall -- oh, but I mean, the --
12 obviously being -- when the burns and stuff, that is
13 mistreated. So take -- take that part off because
14 that question is too vague to answer.
15 Q Okay.
16 MR. BLUT: Wait till he finishes the whole
17 question --
18 THE WITNESS: Sorry --
19 MR. BLUT: Then you will know if it's
20 vague or not.
21 THE WITNESS: Sorry.
22 BY MR. ANDERSON:
23 Q So with excepting the time that you were
24 on the ground after you were placed on the curb, did
25 any male officers to your recollection mistreat you

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1 dispatch, controlled the scene and otherwise waited for his backup to arrive. Once backup
 2 arrived, Paulos remained on the pavement for an additional 2 minutes and 40 seconds.
 3 Paulos was then moved to a shaded grassy area on the Palms' property until she was
 4 transported to University Medical Center ("UMC"). While on the Palms' property, Paulos
 5 never complained of any injury and/or burns.

6 As a result of the detention, Paulos claims to have suffered second and third degree burns
 7 to her left leg, buttocks, and left cheek. Paulos claims that Ofc. Baca caused her injuries because
 8 Ofc. Baca "had a duty to use reasonable care in restraining Plaintiff and to void causing injuries,
 9 to wit, severe burns to her body." First Amended Complaint ("FAC") at ¶28. Further, the FAC
 10 alleges that Ofc. Baca "breached that duty by acting in a negligent manner - - [by] fail[ing] to use
 11 reasonable care in restraining Plaintiff by keeping her lying on the concrete for a prolonged
 12 period of time while the concrete was excessively hot in over 100 degree weather." *Id.* at ¶129.

13 The LVMPD defendants now request summary judgment on Paulos' negligence
 14 claim. First, a federal court has already addressed this very issue and found that Ofc. Baca
 15 acted reasonably. As such, Paulos' negligence claim is barred by the doctrine of issue
 16 preclusion. Second, Paulos has generated no evidence that Ofc. Baca acted unreasonably.
 17 Third, Ofc. Baca is protected by Nevada's discretionary immunity statute – NRS 41.032.
 18 Fourth, and finally, all of Paulos' claims fail because she cannot establish causation of her
 19 injuries.

20 **II. FACTUAL BACKGROUND**

21 **A. THE PARTIES**

22 **1. Plaintiff Cristina Paulos**

23 On August 7, 2011, Paulos was a 32-year-old female residing in Las Vegas, Nevada.
 24 **Exhibit A** at p. 11.¹ She was living with her (now ex) boyfriend Terry Woltman ("Woltman").
 25 *Id.* at pp. 13- 14. Throughout this litigation, Paulos has emphasized the fact that she suffers from
 26 bipolar disorder and allegedly was having a "mania" episode on August 7, 2011. However, on

27 ¹ All exhibits are properly authenticated in the Declaration of Craig R. Anderson, Esq., attached at the
 28 front of the exhibits. In addition, an "Index of Exhibits" is attached to the Declaration.

August 7, 2011, Paulos had never been diagnosed with any mental disorders and was not under any doctor's care or taking any medication. Id. at p. 135. Seven months after the subject incident, Paulos was diagnosed as bipolar. The diagnosis was reached after Paulos was hospitalized for attacking her parents with a potted plant. Id. at pp. 101-102 and 160-62. In short, there is no evidence or expert testimony that Paulos was bi-polar on the date in question.

2. The LVMPD Defendants and the Palms Defendants

LVMPD is a municipality in Clark County, Nevada. It is the employer of Ofc. Baca. **Exhibit B** at pp. 10-31. Ofc. Baca is the officer who contacted and detained Paulos.

The Palms is a hotel and casino located at 4321 West Flamingo in Las Vegas, Nevada. At the time of the incident, Houston was a security guard for the Palms. **Exhibit C** at p. 26.

B. THE SUBJECT INCIDENT

August 7, 2011 was a bad day for Paulos. In the morning, Paulos fought with her boyfriend, Woltman, at their apartment. Ex. A at pp. 36-37. Paulos made the decision to break-up with Woltman, packed a suitcase of clothes, and left the apartment. Id. at pp. 36 and 54-55. She drove to the Palms to meet up with her sister, Jennifer Rosario. Id. at p. 38. At the Palms, Paulos fought with Rosario about Woltman and "stormed off." Id. at pp. 40-41. Paulos left the Palms in her car. Id. After aimlessly driving around, the "upset" Paulos, decided to return to the Palms at around 3:00 p.m. to revisit the situation with her sister. Id.

1. Paulos Causes Two Separate Car Accidents

As Paulos approached the Palms' entrance, traveling westbound on Flamingo, she recalls nothing unusual about her mental status. Id. at pp. 143-44. The last thing she recalls is that "I got in a car accident" and being hit "really hard." Id. at pp. 44 and 144. After the initial accident, her memory of the event essentially ends. Id. at p. 144. Paulos believes she was only involved in one accident. Id.

Beginning at 3:13 p.m., the Palms' video surveillance captures what Paulos cannot recall. **Exhibit D.**² At 3:13:30 p.m., Paulos' westbound vehicle jumped a median on Flamingo and

² Two different surveillance cameras captured portions of this incident. Both camera angles are on the CD attached as Exhibit D. The first camera is identified as "0515" in the lower left hand corner of the

1 entered the intersection at Flamingo and Wynn Road against a red light causing a head-on
 2 collision. Id. at A 15:13:30-32. Paulos then turned left into the Palms' exit lane and struck a
 3 second vehicle (owned by Brian Larson ("Larson")) head-on. Id. at A 15:13:34. After causing
 4 the second accident, Paulos exited her vehicle, threw her suitcase of clothes on the ground, and
 5 began to pace. Eventually, Paulos fled the scene on foot towards the Palms' entrance. Id. at A
 6 15:14:32. After about one minute, Paulos returned to the scene. After returning, she attempted
 7 to steal Larson's vehicle. Id. at B 15:16:32. At 3:16:49 p.m., Paulos exited Larson's vehicle and
 8 encountered Ofc. Baca. Id. at B 15:16:49.

9 **2. Officer Baca Takes Paulos Into Custody**

10 On August 7, 2011, Ofc. Baca was completing his regular shift. Ofc. Baca just happened
 11 to be traveling eastbound on Flamingo near the Palms when he "rolled up" on the vehicle
 12 accidents caused by Paulos. Ex. B at pp. 10 and 50-51. He had no prior knowledge of the
 13 accidents, how they occurred, or of Paulos' prior behavior. Id. at pp. 10 and 49. Ofc. Baca only
 14 knew that a multiple vehicle accident had occurred and, naturally, he stopped to help. Id. at p.
 15 11. After exiting his vehicle, witnesses directed Ofc. Baca to Paulos. Ofc. Baca had no intention
 16 of taking Paulos into custody as he only wanted to see if she was okay with respect to the car
 17 accidents. Id. at p. 88. As he approached Paulos, Larson told Ofc. Baca that Paulos was "trying
 18 to steal my car." Id. at pp. 10-11 and 61. Thus, when Ofc. Baca came into contact with Paulos,
 19 all he knew was that: (1) a multiple vehicle accident had occurred; (2) witnesses identified
 20 Paulos as the cause; and (3) a citizen reported that Paulos had tried to steal his vehicle. Id. at pp.
 21 10-11 and 61. Ofc. Baca was not provided any information that Paulos was mentally ill, acting
 22 strangely, or behaving erratically. In other words, when he first approached Paulos he had no
 23 reason to believe or assume she was mentally ill.

24 Ofc. Baca contacted Paulos to see if she was "okay" and "find out what was going on."
 25 Id. at pp. 14 and 88. When Ofc. Baca spoke to Paulos, she initially walked away from him. Id.
 26 video. This video is in black and white. In this motion, this camera is referred to as "A." The letter is
 27 followed by the time stamp (i.e., "Ex. D at A 00:00:00"). The second camera is identified as "0513" in
 28 the lower left hand corner and recorded in color. References to this camera refer to the camera as "B"
 followed by the time stamp (i.e., "Ex. D at B 00:00:00").

1 at pp. 13-14; Ex. D at B 15:16:48-54. Ofc. Baca ordered Paulos to stop. In response she turned
 2 towards him and started screaming. Ex. B at p. 15. Without warning, Paulos lunged at Ofc.
 3 Baca and “reached for [his] firearm.” Ex. B at pp. 15, 48, and 88; Ex. D at B 15:16:52; Ex. C at
 4 p. 50. When Paulos lunged at Ofc. Baca and reached for his firearm, she was committing a
 5 battery upon a police officer – a felony under NRS § 200.481. [It is important to note, that less
 6 than six seconds passed from the time Ofc. Baca first made contact with Paulos until the time she
 7 lunged at him. Ex. B at p. 54; Ex. D at B at 15:16:48 – 15:16:54.]

8 After Paulos reached for Ofc. Baca’s firearm, he “created distance from her” by pushing
 9 her away. Ex. D at B 15:16:57; Ex. B at p. 15. Ofc. Baca then began issuing Paulos the order to
 10 “stop resisting” and attempted to take her into custody. Ex. B at pp. 88-89. He had no intention
 11 of taking Paulos to the pavement and attempted to handcuff her from a standing position. Ex. B
 12 at p. 89; Ex. D at B 15:16:58. Paulos responded by “yelling” incoherently. Ex. B at pp. 15-16.
 13 Due to Paulos’ non-compliance and physical resistance, Ofc. Baca decided to take her to the
 14 ground. According to the LVMPD Defendants’ expert, Jack Ryan, officers are trained that it is
 15 safer to handcuff a resisting and physically combative individual on the ground as opposed to
 16 standing up. **Exhibit E** at pp. 17-18 ¶¶59-61; Ex. B at pp. 88-89. Because Paulos was
 17 physically and violently resisting, Ofc. Baca could have used his taser, pepper spray or police
 18 baton against Paulos. Ex. B at pp. 88-89. However, in an attempt to use the least amount of
 19 force necessary, Ofc. Baca took her down with what is known as an empty hand technique.
 20 Paulos was taken to the ground at 3:17:02 p.m. – 13 seconds after she first made contact with
 21 Ofc. Baca. Ex. D at B 15:17:02. Once on the ground, Paulos continued to violently resist Ofc.
 22 Baca and refused to surrender her arms/wrists for handcuffing. Id. at B 15:17:04-28. Due to the
 23 resistance, Ofc. Baca summoned Palms security officer Houston for assistance. He summoned
 24 her for his safety and Paulos’ safety. Id. at B 15:17:28; Ex. B at p. 20; Ex. C at pp. 34-35.
 25 Houston responded and also went hands on with Paulos. Ex. D at B 15:17:38. Paulos
 26 aggressively resisted Ofc. Baca and Houston the entire time. Ex. C at p. 39. Finally, at 3:18:35
 27 p.m., Paulos was handcuffed. Id. at B 15:18:35; Ex. C at p. 39.

During this entire encounter, Ofc. Baca was the only LVMPD officer on scene. After fighting with Paulos for almost two minutes, Ofc. Baca was exhausted. Ex. B at p. 90. Once Ofc. Baca handcuffed Paulos, he immediately updated dispatch, called for medical assistance, and began to survey the area to make sure no other suspects existed and visually secure the area.³ Id. at pp. 90-91. On the ground, Paulos continued to scream in the same manner she screamed prior to being taken to the ground. Id. at p. 91. Paulos never complained of any injury and Ofc. Baca never saw physical injuries on Paulos' body. Id. at pp. 90-91. Ofc. Baca does not recall exactly how long Paulos remained on the ground. It is his recollection she was immediately taken to a shaded grassy area once it was safe to do so (i.e., once his backup arrived). Id. at pp. 26-28. Houston testified that Ofc. Baca never pushed Paulos to the ground and immediately got her up when it was safe. Ex. C at pp. 56.57.

Paulos testified to a vague recollection as to what occurred. She recalls after exiting her vehicle, she was "pushed on the floor" by "someone in uniform." Ex. A at p. 46. According to Paulos, she believed "the devil was after me." Id. at pp. 162-63. She disagrees that she was resisting Ofc. Baca. Id. at pp. 48 and 68. Her opinion is based upon her "knowledge of myself." Id. at p. 68. Paulos does recall that she was "screaming." She claims she was screaming because "I was scared." Id. at p. 47. Once on the ground, Paulos claims she recalls the following:

I also remember being pushed in the hot pavement, really hard and my face burning. I remember the sensation on my face. And I remember the sensation on my leg. And I was screaming. I remember being pushed hard. I remember the zip ties, how they felt. I remember the feeling of being tied and pushed. I remember not being able to get up. I remember being burnt on the - - on the sidewalk because I wasn't allowed to stand up. I remember wanting to stand up and not being able to stand up. I asked to stand up, and I remember people telling me, no, you can't stand up or - - I wasn't allowed to stand up so I had more burns on my ass - - sorry. Excuse me. My butt.

Id. at p. 76. Paulos never told anyone she was being burned or specifically complained of any injuries. Id. at pp. 79 and 83.

³ Up to this point, Ofc. Baca had no opportunity to investigate what was occurring. Hence, he did not know how the car accidents happened, whether other suspects existed, or whether other people were involved.

3. Post-Handcuffing Events

At 3:19:50 p.m., fellow LVMPD officers arrived at Ofc. Baca's location and began to assist him. Ex. D at B 15:19:50.⁴ Because a utility pole obstructs the Palms' camera, it is unclear exactly when Paulos was raised to her feet. At 3:22:30 p.m., LVMPD officers are seen talking to a standing Paulos. Id. at A 15:22:30. At 3:22:42 p.m., the officers escorted Paulos towards a grassy area a short distance away. Id. at A 15:22:42. Thus, at the very latest, Paulos was brought to her feet at 3:22:30 p.m. – likely earlier. Houston testified Paulos stated “it was fast” in referring to the time that Paulos was lifted to her feet. Ex. C at p. 57.

After the scene was secured and Paulos was seated on the grassy area, LVMPD investigated both the traffic accidents and Paulos' behavior. Ofc. Baca's immediate supervisor, Sergeant Jason Harney (“Sgt. Harney”), arrived on scene and interviewed Paulos. Sgt. Harney noted that Paulos had no visible injuries to her face or legs and that she never reported any injuries or discomfort. It was Sgt. Harney's opinion that Paulos needed medical attention to evaluate her mental behavior – and not to address any physical injuries or burns. **Exhibit F** at ¶ 8. Around this same time, Ofc. Jake Von Goldberg arrived on scene and personally observed Paulos sitting in the shaded area, yelling and screaming at the officers around her. Ofc. Von Goldberg personally viewed Paulos' legs and face and did not see any signs of physical injury or burns. Ex. G at pp. 26-27. He never heard Paulos complain of injury or burns. Id. Due to Paulos' angry rant, he chose not to engage her and just walked away. Ofc. Von Goldberg was eventually assigned to inventory Paulos' vehicle. Id. at 15. After Paulos was secured on the grassy area, Ofc. Jeffrey Swan arrived to investigate the traffic accidents caused by Paulos and tend to her victims. Ex. H at pp. 16-17. When Ofc. Swan encountered Paulos she never complained of injuries. Id. He noted that her demeanor fluctuated between combative and lucid. Id. at pp. 19-20. When he asked Paulos if she would consent to a blood draw, Paulos told him to “fuck [himself].” Id. at 25. Ofc. Swan eventually issued Paulos a citation for DWI. Id. at 23. Ex. I.

⁴ Surveillance from Palms' camera 0513 (referred to as camera “B” in this motion) ceases at this point.

Not a single witness testified to seeing any burns or physical injuries to Paulos during the entire time she was at the Palms. Ex. B at pp. 90-91; Ex. C at p. 58; Ex. G at pp. 26-27; Ex. H at pp. 16-17; and Ex F at ¶¶ 6-12. Even Paulos admits she never told anyone she was injured, burned or in pain. Ex. A at pp. 79 and 83. She admits to screaming but was screaming prior to being taken to the ground. Ex. B at p. 9.

C. PAULOS' CLAIMED INJURIES

During discovery Paulos produced graphic photographs depicting her burns. **Exhibit I.** Ignoring the facts that Paulos has little memory of August 7, 2011, and cannot identify who took the photographs or when, she claims (via "information and belief") that the graphic photographs were taken on August 7, 2011. **Exhibit K.** Thus, Paulos has implied that the numerous officers who testified to seeing no injuries are not credible.

Paulos claims the burns resulted from her being held down on the hot pavement for between 20-30 minutes. Ex. A at pp. 50 and 81; **Exhibit L** at Rog. No. 6. According to Paulos, "a nurse" who told her "that to have the burns I had I would have been on the ground for like 30 minutes." Ex. A at p. 50. [As an aside, Paulos has posted the same burn pictures on her personal website and set up an online "gofundme" account seeking to raise money for her medical care. On these two websites she claims that the burns occurred as a result of a "chemical" accident. **Exhibit M** and **Exhibit N.** Paulos' expert and treating physician agreed there is absolutely no chemical component to her burns. Thus, Paulos solicited funds from individuals via an intentional lie. Ex. N.]

The video surveillance and Paulos' own medical expert witnesses disagree with the majority of her factual representations and actually support the LVMPD officers. First, with respect to her claim that she was on the pavement for 20-30 minutes, the video surveillance defeats this claim. The video clearly shows Paulos on her feet being escorted to the grassy area less than five minutes after being taken to the ground. Ex. B at B 15:22:30. Second, both Paulos' medical expert, Matt Young, M.D., and her treating physician, Andrew Silver, M.D., testify that her burns occurred within ten seconds to one minute of her coming into contact with the pavement. **Exhibit O** at pp. 14-15; **Exhibit P** at p. 18. Third, both Dr. Young and Dr. Silver

1 agree that Paulos' burns were likely not visible on August 7, 2011, because such burns take
 2 several days to develop. In fact, Dr. Young testified it was "not unusual" that all of the lay
 3 witnesses (i.e., LVMPD officers) reported seeing no injuries on August 7, 2011. Ex. O at pp. 18-
 4 19. Dr. Silver agrees that the appearance of a burn will initially not appear as serious as the burn
 5 actually is. According to Dr. Silver, if the injuries depicted in Paulos' photos were actually
 6 present on August 7, 2011, the UMC Burn Unit would have been called on that date— it was not.
 7 Ex. P at p. 29. Thus, Paulos' representations are contradicted by her own experts and doctors.

8 In short, there is not one witness who testified that Paulos' burns were visible to lay
 9 individuals on August 7, 2011 or that they should have been visible. All of the admissible
 10 evidence supports the several officers who have testified to seeing no physical injuries or burns.

11 **D. PAULOS' LIABILITY EXPERT WITNESS' OPINIONS**

12 Paulos identified Steve Baker ("Baker") as her security expert witness. Baker produced
 13 an expert report and gave deposition testimony. It is Baker's opinion that Ofc. Baca "was
 14 justified in his arrest of [Paulos]" but failed to remove her from the hot pavement after "[she]
 15 was under control and restrained . . ." **Exhibit Q** at p. 3. At deposition, Baker testified that he
 16 agrees with Ofc. Baca's decision to take Paulos to the ground and to handcuff her. **Exhibit R** at
 17 pp. 50-51. Further, and most important, he agrees it was reasonable for Ofc. Baca to keep Paulos
 18 on the pavement until his backup arrived. *Id.* at p. 52. Thus, it is Baker's testimony that Ofc.
 19 Baca's actions were reasonable from the time he took Paulos to the pavement at 3:17:02 p.m.,
 20 until his backup arrived at 3:19:50 p.m. – a time period of 2 minutes and 48 seconds. Ex. B at A
 21 15:17:02 – 15:19:50. Baker is only critical of the 2 minutes and 40 seconds that Paulos remained
 22 on the ground after Ofc. Baca's backup arrived. *Id.* at A 15:19:50 – 15:22:30.

23 **E. PROCEDURAL HISTORY**

24 **1. Paulos' First Lawsuit**

25 On August 14, 2012, Paulos filed a complaint in Nevada's Eighth Judicial District. *See*
 26 Paulos v. FCH1 A-12-666754-C. After the filing of an amended complaint, the parties
 27 participated in discovery. In or around August 2013, the parties stipulated to allow Paulos to file
 28 a second amended complaint ("SAC"). The SAC was filed on August 5, 2013. The amendments

1 to SAC included the naming of three LVMPD officers and adding federal 42 U.S.C. § 1983
2 claims against the LVMPD defendants. Id.

3 On August 27, 2013, the LVMPD defendants removed the case to United States Federal
4 District, District of Nevada. The removal divested the Nevada state court of jurisdiction. The
5 parties then actively litigated this case in Paulos v. FCH1, case No. 2:13-CV-1456 JCM (PAL).
6 After discovery closed, the LVMPD defendants filed a motion for summary judgment on all
7 claims against them. Paulos opposed the motion and the LVMPD defendants filed a reply.

8 On March 12, 2015, Federal District Court Judge James C. Mahan issued his summary
9 judgment order. See Paulos v. FCH1, LLC, 2:13-CV-1546 JCM (PAL), 2015 WL 1110072 (D.
10 Nev. March 12, 2015). The federal court addressed Paulos' federal law claims against the
11 LVMPD defendants. The court found that summary judgment was appropriate on all federal
12 claims because Paulos failed to create a genuine issue of material fact as to whether the LVMPD
13 officers acted unreasonably. Of importance, the federal court made the following findings of fact
14 and conclusions of law:

- 15 • That Ofc. Baca acted reasonably in detaining Paulos, taking her to the ground, and
16 in keeping her on the ground. Id. at pp. 9-12.
- 17 • That “[w]hile it is unfortunate that Paulos incurred such severe burns as a result of
18 her arrest in this incident, the court finds that officer Baca’s use of minimal force
19 in restraining her was appropriate considering the objective threat she posed and
20 her undeniable attempt to resist arrest. In light of this assessment, and the lack of
any genuine issue of disputed material fact, the court finds that officer Baca did
not use excessive force in arresting Paulos.” Id. at p. 13.

21 After dismissing the federal law claims against the LVMPD defendants, the federal court
22 “decline[d] to exercise supplemental jurisdiction over the state law claim[] against LVMPD
23 defendants (negligence) and Palms (negligence and false imprisonment) and dismiss them
24 without prejudice.” Id. After receiving the federal court order, Paulos appealed the granting of
25 summary judgment to the Ninth Circuit Court of Appeals. The appeal is briefed and pending.

26 **2. Current Litigation**

27 After Paulos filed her appeal, she filed her current lawsuit. The complaint names FCH1,
28 LLC; LVMPD; Ofc. Baca; and Palms’ security guard Jeannie Houston. See Amend. Compl.

1 With respect to LVMPD and Ofc. Baca, the complaint only alleges negligence. Amend. Compl.
2 at Second Cause of Action. The second cause of action alleges in pertinent part:

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

5 27. Defendant LVMPD also owed plaintiff a duty to use ordinary care and/or
6 skill in the hiring, training, supervision and retention of their employees so as not
7 to cause, or allow their employees to cause Plaintiff to suffer emotional and
physical injuries.

8 28. That LVMPD Officers had a duty to use reasonable care in restraining
Plaintiff to avoid causing injuries, to wit, see burns to her body.

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

12 Amend. Compl. at 26-29.

13 On May 19, 2015, the LVMPD defendants filed a Motion to Dismiss, or in the
14 Alternative, Motion for Summary Judgment. In the motion, the LVMPD defendants argued that
15 Paulos' negligence claim was precluded because the Honorable Judge Mahan of the Nevada
16 Federal District Court had already found that Ofc. Baca acted reasonable. Paulos v. FCH1, LLC,
17 Case No. 2:13-cv-1546-JCM (PAL), 2015 WL 1119972 (D. Nev. March 12, 2015). On August
18 11, 2015, this court entertained oral argument on the LVMPD defendants' motion. On
19 September 14, 2015, the court issued its order dismissing Paulos' negligent hiring, training, and
20 supervision claim but denying dismissal of Paulos' negligence claim. After receiving this court's
21 order, the LVMPD defendants filed a motion for reconsideration which is currently scheduled to
22 be heard on January 21, 2016 at 9:00 a.m.

23 **III. SUMMARY JUDGMENT STANDARDS**

24 Summary judgment is proper "if the pleadings . . . show that there is no genuine issue as
25 to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP
26 56(c). Nevada has adopted the federal summary judgment standard. See Wood v. Safeway, Inc.,
27 121 Nev. 724 (2005). According to that standard, a slight doubt or arguments built on "gossamer
28 threats of whimsy, speculation and conjecture will not defeat summary judgment." Id. at 731.

The non-moving party is entitled to have all evidence and reasonable inferences that are viewed in his favor. Id. However, to defeat summary judgment, the non-moving party must “set forth specific facts demonstrating the existence of a genuine factual issue.” Id. and NRCP 56.

In 2007, the United States Supreme Court held that in considering a motion for summary judgment, video surveillance can be relied upon even if it contradicts the non-moving party’s version of events. Scott v. Harris, 550 U.S. 372 (2007).

IV. LEGAL ARGUMENT

The only remaining claim is whether Ofc. Baca acted reasonably with respect to the manner in which he detained Paulos. As set forth below, Paulos’ negligence claim fails for several reasons. First, it is barred by the doctrine of issue preclusion. Second, the undisputed evidence shows that Ofc. Baca acted reasonably. Third, Ofc. Baca’s actions were in good faith and protected by NRS 41.032. Fourth, Paulos cannot establish causation.

A. ARGUMENT NO. 1: PAULOS’ NEGLIGENCE CLAIM IS BARRED BY THE DOCTRINE OF ISSUE AND PRECLUSION

The LVMPD defendants, after receiving Paulos’ FAC, filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment arguing that Judge Mahan’s order precluded Paulos from pursuing her current negligence claim. This court denied the LVMPD defendants’ motion. The LVMPD defendants’ motion for reconsideration is currently pending. As such, the LVMPD defendants incorporate those arguments into this motion.

B. ARGUMENT NO. 2: PAULOS’ NEGLIGENCE CLAIM FAILS ON THE MERITS AS OFC. BACA ACTED REASONABLY

1. Relevant Law

Paulos’ only remaining state law claim against the LVMPD defendants is that Ofc. Baca used unreasonable in detaining her. FAC at ¶¶29-31. In order to prevail in her negligence claim, Paulos must establish: (1) duty, (2) breach, (3) causation; and (4) damages. Smith v. Mahoney’s Silver Nugget, 127 Nev. at - - -, 265 P.3d 688, 690 (2011).

Law enforcement officers “are privileged to use that amount of force which reasonably appears necessary,” and are liable only to the extent they use more force than is reasonably necessary. See Yada v. Simpson, 112 Nev. 254, 255 (1996) superseded by statute on other

grounds as recognized by RTTC Commc'n, LLC v. Saratoga Flier, Inc., 112 Nev. 34 (2005); Ramirez v. City of Reno, 925 F.Supp. 681, 691 (D.Nev. 1996); see also NRS §171.122(1) (providing that individuals “must not be subjected to any more restraint than necessary.”) Here, it is not disputed that Ofc. Baca had the lawful right to detain Paulos to investigate the automobile accidents and her attempt to steal Larson’s vehicle. Thus, the only issue is whether the force was used was reasonable.

It is well established that an officer’s breach of a duty in a negligence case is analyzed under the reasonableness standard of the Fourth Amendment. See Belch v. Las Vegas Metro. Police Dep’t., 2012 WL 4610803, *11 (D. Nev. 2012); (citing Knappas v. City of Oakland, 647 F.Supp. 2d 1129, 1164 (N.D. Cal. 2009)); see also Luchtel v. Hagemann, 623 F.3d 975, 984 (9th Cir. 2010). The general framework is outlined by the Supreme Court in Graham v. Connor, 490 U.S. 386 (1989). See Smith v. City of Hemet, 394 F.3d 689, 700 (9th Cir. 2005). The Supreme Court has declared that the “reasonableness” inquiry is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them. Graham, 490 U.S. at 397. A court applies Graham by first considering the nature and quality of the alleged intrusion, and then considering the governmental interest at stake by looking at: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. Mattos v. Agarono, 661 F.3d 433, 441 (9th Cir. 2011). The court’s consideration of reasonableness, however, is not limited to these three factors as a court must consider the totality of the circumstances and weigh the gravity of the intrusion against the government’s interest to determine whether the force employed was constitutionally reasonable. See Mattos, 661 F.3d at 441 (“[i]n assessing the governmental interest at stake under Graham, we are free to consider issues outside the three enumerated [factors] . . . when additional facts are necessary to account for the totality of circumstances in a given case.”).

Reasonableness “must be judged from the perspective of a reasonable officer, on the scene, rather than with the 20/20 vision of hindsight.” Graham, 490 U.S. at 396; Drummond v. City of Anaheim, 343 F.3d 1052, 1058 (9th Cir. 2003). “The calculus of reasonableness must

1 embody allowance for the fact that police officers are often forced to make split-second
 2 judgments - - in circumstances that are tense, uncertain and rapidly evolving - - about the amount
 3 of force that is necessary in a particular situation.” Graham, 490 U.S. at 396-397; see also
 4 Mattos, 661 F.3d at 442. Because “[n]ot every push or shove, even if it may seem unnecessary
 5 in the peace of the judge’s chambers . . . violates the Fourth Amendment.” Graham, 490 U.S.
 6 396. “Force is excessive when it is greater than is reasonable under the circumstances.” Santos
 7 v. Gates, 287 F.3d 846, 854 (9th Cir. 2002). “Officers . . . need not avail themselves of the least
 8 intrusive means of responding to an exigent situation, they need only act within that range of
 9 conduct we identify as reasonable.” Scott v. Henrich, 39 F.3d 912, 915 (9th Cir. 1994).

10 With respect to the mentally ill, the Ninth Circuit has refused “to adopt a per se rule
 11 establishing two different classifications of suspects: mentally disabled persons and serious
 12 criminals.” Drummond v. City of Anaheim, 343 F.3d 1052, 1058 (9th Cir. 2003) quoting Deorle
 13 v. Rutherford, 272 F.3d 1272, 1282-83 (9th Cir. 2001). Rather, when “*it is apparent or should*
 14 *be apparent* to the officers that the individual involved is emotionally disturbed, that is a factor
 15 that must be considered in determining, under Graham, the reasonableness of the force
 16 employed.” Id. (emphasis added).

17 With respect to hot pavement cases, several courts have addressed the issue. In Price v.
 18 County of San Diego, 990 F.Supp. 1230 (S.D. Cal. 1998), Daniel Price inspected a house that
 19 was for sale. Price had a history of chronic methamphetamine abuse. Id. at 1234. At the time he
 20 inspected the house, he was wearing only shoes, socks, and shorts. Id. During this visit to the
 21 house, Price acted strangely drawing the attention of several people. As he left the house, he
 22 attempted to open a gate to a nearby house. The owner of the home called 911 out of concern.
 23 After the 911 call was made, Price got into his truck and drove away where he was eventually
 24 stopped. After being stopped, Price was asked to exit the truck. Id. He refused to comply and a
 25 violent scuffle ensued. Witnesses testified that Price was “resisting totally” and shouting at the
 26 deputies as they tried to calm him. One witness described Price as “going crazy.” Id. at 1234-
 27 35. The witnesses believed that Price was under the influence of drugs. Importantly, Price
 28 knocked a deputy’s eyeglasses from his face and the deputies testified that they believed that

Price “was trying to grab their guns.” Eventually, Price was sprayed with pepper spray, placed face down on the ground, and handcuffed with his hands behind him. When he continued to struggle, the officers “hog tied” Price. Id. at 1235. The deputies then left Price lying shirtless on the hot asphalt for several minutes, despite the fact that a nearby shaded area existed. Id. The asphalt temperature was approximately 133.9 degrees Fahrenheit. Although a deputy remained near Price as he was hog tied, the deputies did not monitor Price closely. Eventually, Price died at the scene. Id. Price’s family then sued the involved officers and the County of San Diego alleging excessive force. Part of the family’s lawsuit asserted that leaving Price “on the hot asphalt” constituted excessive force. Id. at 1241.

The district court addressed all of the force that was used against Price. With respect to the hot asphalt issue, the court found no constitutional violation. Specifically, the court stated:

Although the court does not suggest that leaving him lying on hot asphalt was ideal, ***the court cannot find that this action was unreasonable.*** The struggle with Price had tired the deputies, which would have made it somewhat difficult to move a hefty, belligerent person. Moreover, the deputies had to perform other tasks, such as calling for medical assistance, controlling on lookers, sundry and other tasks that law enforcement work involves. The fact that the deputies did not move Price immediately is therefore understandable.

Id. (emphasis added). This appears to be the only case in the Ninth Circuit that directly addresses the issue of placing a suspect on hot pavement.

The Eleventh Circuit recently addressed a hot pavement case in an unpublished order. In Rubio v. Lopez, 445 Fed.Appx. 170 (11th Cir. 2011), the plaintiff, Lorenzo Rubio (“Rubio”), filed a §1983 action alleging that a county sheriff, Howard Lopez (“Lopez”), violated Rubio’s Fourth Amendment rights by using excessive force. Specifically, Rubio alleged that Lopez had “hobble-tied” him on hot black asphalt pavement on a hot Florida July afternoon. Id. at 172-73. The detention occurred after Rubio arrived drunk at the law office of his girlfriend’s attorney with the intent to locate a firearm so that he could kill himself. Id. at 172. Rubio was “out of his mind” and got into a physical altercation which “violently resisted arrest and attempted to reach for the officer’s gun.” Id. The officer arrested Rubio and placed him in his police car on a “hot July afternoon in Tampa, Florida, with temperatures exceeding 90 degrees Fahrenheit.” Id.

1 Rubio complained that the police car was too hot and he began kicking the windows multiple
2 times. In response, Lopez hobble-tied Rubio to get him to quit kicking, and pulled him out of the
3 car on to the pavement. While on the pavement, Rubio screamed that his skin was burning. Id.
4 at 173. Lopez continued to force Rubio's chest and face against the pavement. As a result,
5 Rubio suffered second degree burns. Id. at 172-73.

6 The Eleventh Circuit did not address whether Rubio's constitutional rights were violated.
7 Rather, the court found that qualified immunity protected the officer. Id. at 173. Specifically,
8 the court stated that Rubio could not "demonstrate the law was so clearly established as to give
9 Lopez fair warning that the force used under these circumstances would have violated the Fourth
10 Amendment." Id. The court noted that the "force in this case involves a rather novel
11 combination of pushing the plaintiff's skin against the hot pavement during a tie-down
12 procedure." Id. at 173-74. The court held that:

13 We could conclude that not every reasonable officer would have known that the
14 pavement was so hot that it would burn someone's skin. While it is common
15 knowledge that black pavement gets hot, especially during a Florida summer
16 afternoon, it is not common knowledge that the pavement will be injuriously hot: the
17 temperature of the pavement can vary based on many factors, such as surrounding
18 shade, recent weather, or the composition of the surface. Second, even if every
19 reasonable officer would have known the pavement in this case was burning hot, it is
20 not clearly established that the Fourth Amendment requires an officer to stop
21 restraining a suicidal arrestee on the hot pavement when he complains of being
22 burned and resume the restraining process on a cooler process. If the Fourth
23 Amendment imposes such a requirement, we can see how a reasonable officer would
24 not know about it. We therefore conclude that no broad principal in our case clearly
25 establishes that Lopez' use of force violates the Fourth Amendment.

26 Id. at 174.

27 Finally, in Howard v. Kansas City Police Dept., 570 F.3d 984 (8th Cir. 2009), the Eighth
28 Circuit evaluated the detention of a non-suspect gunshot wound victim on hot pavement. On
July 27, 2002, the temperature in Kansas City, Missouri exceeded 100 degrees Fahrenheit. Id. at
986. At approximately 4:45 p.m., Eddie Howard was shot in his upper left arm by an unknown
assailant. Id. at 987. Howard chased the shooter in his car at a high rate of speed. He eventually
stopped his vehicle and attempted to chase his assailant on foot. Id. Howard soon gave up the
chase and encountered two police officers with their weapons drawn. The officers pushed

Howard, who was shirtless, onto the asphalt street. Id. The officers then began administering first aid and questioning Howard about the shooting. After two or three minutes, Howard began complaining that the asphalt was burning his exposed skin. Id. The officers ignored his complaints and did not move him. After about 7-8 minutes, one of the officers finally retrieved a yellow blanket from a police cruiser and placed it under Howard. Id. As a result of his long exposure to the asphalt, Howard suffered second degree burns on his arms, back, shoulders, neck and upper buttocks.

Howard sued the officers and police department claiming they used excessive force in violation of the Fourth Amendment. The officers countered that they did not move Howard off the asphalt because they feared doing so could cause further injury. They testified that policy required that injured individuals not be moved until professional medical people arrived on scene. Id. at 989-990. The Eighth Circuit held that the officers' use of force with respect to Howard was objectively unreasonable. The court found that the officers were justified in drawing their weapons and forcing Howard to the ground upon arriving on scene. However, once they ascertained Howard *was a victim* and not a suspect, the officers should have treated Howard differently. Id. at 989-90. The court pointed out that he was unarmed and that he was not attempting to flee, resist, or harm the officers. Further, the court noted Howard made "persistent, specific complaints."

2. Analysis of Ofc. Baca's Actions

When analyzing Ofc. Baca's actions under the Graham factors and hot pavement cases, it is clear that he did not use unreasonable force. A court applies Graham by first considering the nature and quality of the alleged intrusion, and then considering the governmental interest at stake by looking at: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. Mattos, 661 F.3d at 441.

Severity of the Crime

Paulos' crimes were serious. First, she caused two major head-on car collisions. Second, she fled the scene of the accident in violation of NRS § 484E.010. Third, she attempted to steal

1 Brian Larson's vehicle. Fourth, and most importantly, when Ofc. Baca attempted to make sure
2 she was okay, she lunged at his firearm and committed a felonious assault on a police officer in
3 violation of NRS § 200.471(2)(d). Thus, this first prong easily weighs in Ofc. Baca's favor.

4 ***Immediate Threat to Safety of Self and Others***

5 The next and most important Graham factor is whether "the suspect posed an immediate
6 threat to the safety of the officers or others." Deorle, 272 F.3d at 1280 (internal quotation marks
7 omitted). It is undeniable that Paulos presented an immediate threat to both herself and to
8 everyone around her. Paulos had smashed into two vehicles, fled the scene, attempted to steal a
9 victim's car, and attempted to gain access to Ofc. Baca's firearm. Paulos was clearly
10 demonstrating a complete disregard for the safety of herself and those around her and she needed
11 to be controlled. This second prong is easily resolved in Ofc. Baca's favor.

12 ***Actively Resisting or Evading Arrest***

13 The third enumerated governmental interest factor is whether Paulos was actively
14 resisting arrest or attempting to evade arrest by flight. Deorle, 272 F.3d at 1280. Again, this
15 prong clearly weighs in Ofc. Baca's favor. When Ofc. Baca confronted Paulos she actively
16 lunged for his firearm and assaulted his person. Further, when Ofc. Baca attempted to take
17 Paulos into custody from a standing position, she violently resisted and refused to comply with
18 his lawful verbal instructions to put her hands behind her back. Due to Paulos' active resistance
19 and refusal to comply with lawful orders, Ofc. Baca had no choice but to take her to the ground.
20 Even on the ground, the video clearly shows Paulos still resisting and refusing to comply,
21 requiring Ofc. Baca to obtain the assistance of the Palms' security guard. The third prong also
22 resolves in Ofc. Baca's favor.

23 ***Other Factors***

24 Finally, the court may consider any additional specific factors relevant to the totality of
25 the circumstances. See Mattos, 661 F.3d at 450 (citations omitted). It is undeniable that Ofc.
26 Baca did not violate the Constitution in taking Paulos to the ground. Indeed, Paulos' own expert
27 agrees that Ofc. Baca acted appropriately in taking her to the ground. Ex. R at pp. 50-51.
28 According to Paulos' expert, it was also reasonable for Ofc. Baca to leave Paulos on the ground

1 until his backup officers arrived and the scene was secured. Id. at p. 52. The relevant timeline is
2 as follows: (1) Ofc. Baca completes the handcuffing of Paulos at 3:18:35; (2) at 3:19:50 LVMPD
3 backup officers arrive; and (3) at 3:22:32 the video shows Paulos on her feet. Ex. D at B
4 15:18:35 – 15:19:50 and A at 15:22:32. Thus, accepting Paulos' expert's opinion as true, the
5 only issue is whether it was unreasonable for Paulos to remain on the ground from 15:19:50 until
6 15:22:32 – a period of 2 minutes and 40 seconds.

7 Paulos never complained to the officers or notified them she was in pain. According to
8 Ofc. Baca, she continued to yell and scream at him in the same manner that she had screamed
9 and yelled at him while on her feet. Not one witness (including Paulos) testified that Paulos
10 complained that she was physically uncomfortable or being burned. Ex. A at pp. 78-83; Ex. B at
11 pp. 90-91; Ex. C at p. 58; Ex. G at pp. 15 and 26-27; Ex. H at pp. 16-17; and Ex. F at ¶7.
12 Further, every witness has testified that Paulos had no visible injuries or burns while at the
13 Palms. Id. Her medical expert agrees that her injuries would not be visible to lay individuals.
14 Ex. O at pp. 18-19.

15 Finally, it is anticipated that Paulos will argue that she required special treatment due to
16 the fact that months later she was diagnosed as mentally ill. However, an officer is only required
17 to consider a suspect's mental illness when it is apparent that the individual is mentally
18 disturbed. Drummond, 343 F.3d at 1058. Here, Ofc. Baca had six seconds to evaluate Paulos
19 before she turned and lunged for his firearm. Ofc. Baca is not a doctor. Paulos had never been
20 diagnosed with a mental disorder, and no expert has stated she was bi-polar on the date in
21 question. Ex. A at pp. 149-150. It is simply disingenuous for Paulos to suggest that in the six
22 seconds prior to her lunging at Ofc. Baca and attempting to take his firearm, that he should have
23 psychoanalyzed her and diagnosed her unknown medical disorder.

24 This case is very similar to the Price case where the Southern California District Court
25 found leaving a hog tied individual on 133.9 degree asphalt for several minutes was not
26 unreasonable. Price, 990 F.Supp. at 1241. Further, this case involved a dynamic scene and the
27 arriving officers had a multitude of responsibilities to perform including calling medical,
28 ensuring the health of the two traffic accident victims, securing the scene, controlling the

1 onlookers, etc. . . . Id. Finally, although LVMPD officers are trained to get suspects off the
 2 ground as soon as it is safe to do so, it is not common knowledge as to when hot pavement
 3 becomes a burn risk. See Rubio, 445 Fed.Appx. at 174. In short, it certainly was not
 4 unreasonable to keep Paulos on the ground for the 2 minutes and 40 second period after Ofc.
 5 Baca's backup arrived and her negligence claim fails on the merits.

6 **C. ARGUMENT NO. 3: OFC. BACA IS ENTITLED TO DISCRETIONARY**
 7 **IMMUNITY**

8 If the court concludes that an issue of fact exists on the negligence claim, the LVMPD
 9 defendants are still immune from this state law claim pursuant to NRS 41.032. In 2007, the
 10 Ninth Circuit analyzed Nevada's immunity statute in a police excessive force case. See Davis v.
 11 City of Las Vegas, 478 F.3d 1048, 1069 (9th Cir. 2007). The Davis Court noted that as a general
 12 matter, under the statute "'no action may be brought' against any public officer based upon 'the
 13 failure to exercise or perform a discretionary function . . . whether or not the discretion involved
 14 is abused'." Davis v. City of Las Vegas, 478 F.3d 1048, 1059 (9th Cir. 2007) (quoting Maturi v.
 15 LVMPD, 110 Nev. 307 (1994)). A police officer exercises discretion and is thus generally
 16 immune from suit where the act at issue requires "personal deliberation, decision and judgment,"
 17 rather than "obedience to orders, or the performance of a duty in which the officer is left no
 18 choice but his own." Davis, 478 F.3d at 1059 (quoting Maturi, 110 Nev. at 309). An officer's
 19 decision as to how to accomplish a particular seizure or search is generally considered a
 20 discretionary determination under Nevada law, and officers are therefore immune from suit as to
 21 state law claims arising therefrom in most cases. Id. (citing Ortega v. Reyna, 114 Nev. 55, 62
 22 (1998)). However, where an officer's actions are "attributable to bad faith, immunity does not
 23 apply whether an act is discretionary or not." Falline v. GNLV Corp., 107 Nev. 1004, 1009
 24 (1991). Thus, no officer's use of force is discretionary. To avoid immunity, a plaintiff must
 25 generate evidence of bad faith.

26 Even assessing the facts at issue in the light most favorable to the plaintiffs, a reasonable
 27 jury could not conclude that "[Ofc. Baca's] decisions in this case constituted a deliberate and
 28 willful disregard for the law, or malicious conduct motivated by [Ofc. Baca's] animosity toward

[Paulos] on account of [her] refusal [to be taken peacefully into custody].” Davis, 478 F.3d at 1059. There is simply no evidence that any of Ofc. Baca’s actions were brought in bad faith. The evidence shows that Ofc. Baca was only responding to Paulos’ violent and combative behavior. As such, the LVMPD defendants are entitled to discretionary immunity with respect to Paulos’ negligence claims.

D. ARGUMENT NO. 4: PAULOS CANNOT ESTABLISH CAUSATION

Assuming *arguendo* that the court holds that issue(s) of fact prevent the granting of summary judgment on Paulos’ negligence, summary judgment is still appropriate on all claims as Paulos cannot establish that Ofc. Baca’s actions were unreasonable or caused her injuries.

Under both federal law and Nevada law, Paulos is required to provide admissible evidence that her claim of unreasonable force caused her to suffer the injuries she is alleging. See e.g., Harper v. City of Los Angeles, 553 F.3d 1010, 1026 (9th Cir. 2008)(causation is a required element of a §1983 action); Williams v. Eighth Judicial District Court, --- Nev. ---, 262 P.3d 360, 366 (2011)(medical expert testimony regarding causation must be “made to a reasonable degree of medical probability.”) Thus, in order to prevail on both her negligence claim, Paulos must offer expert testimony that her second and third degree burns were caused by Ofc. Baca’s unconstitutional and unreasonable actions.

As discussed at length above, Paulos’ security expert testified: (1) Ofc. Baca acted reasonably in taking Paulos to the ground at 3:17:02 p.m.; Ex. D at B 15:17:02 – 15:19:50; Ex. R at pp. 50-52 and (2) it was reasonable to keep Paulos on the ground until backup arrived at 3:19:50 p.m. Thus, Paulos’ expert agrees it was reasonable to keep Paulos on the ground for almost three minutes. Paulos’ medical expert and her treating physician agree that Paulos incurred her burns within ten seconds to one minute of being on the ground. Ex. O at p. 14; Ex. P at p. 39.

Comparing Paulos’ liability expert’s testimony to her medical expert’s testimony reveals that her injuries occurred during the time period that Paulos concedes was reasonable for Ofc. Baca to keep her on the ground. Because the burns occurred during the time deemed reasonable,

1 Paulos cannot establish her injuries were caused during an unconstitutional or unreasonable act.
2 Because Paulos cannot establish causation, all of her claims fail.

3 **V. CONCLUSION**

4 Based upon the above, the LVMPD Defendants request summary judgment on all claims.

5 Dated this 6 day of January, 2016.

6 MARQUIS AURBACH COFFING

7
8 By 

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

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28

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS LVMPD AND OFC. BACA'S MOTION FOR SUMMARY JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 6th day of January, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁵

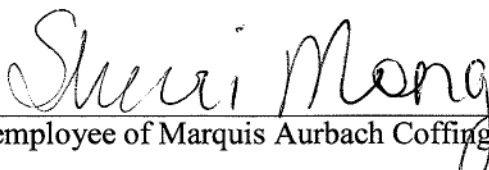
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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

n/a


an employee of Marquis Aurbach Coffing

⁵ 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).

**DECLARATION OF CRAIG R. ANDERSON, ESQ., IN SUPPORT OF LVMPD
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Craig R. Anderson, Esq., hereby declare:

1. I am an attorney with law firm of Marquis Aurbach Coffing, counsel for Defendants Las Vegas Metropolitan Police Department and Officer Aaron Baca ("LVMPD Defendants"), in this litigation. This declaration is brought in support of the LVMPD Defendants' Motion for Summary Judgment and authenticates the attached exhibits.

2. **Exhibit A** is the deposition transcript of Cristina Paulos. It is authenticated by the court reporter's certificate and title page.¹

3. **Exhibit B** is the deposition transcript of Aaron Baca. It is authenticated by the court reporter's certificate and title page.

4. **Exhibit C** is the deposition transcript of Jeannine Houston. It is authenticated by the court reporter's certificate and title page.

5. **Exhibit D** is Palms' video surveillance of the subject incident. The events depicted in the video were authenticated by Cristina Paulos (Ex. A at pp. 65-67) and Aaron Baca (Ex. B at pp. 12-17) during their depositions. During discovery, none of the parties contested the authenticity of the surveillance video.

6. **Exhibit E** is the LVMPD Defendants' police practices expert report created by Jack Ryan. It is authenticated by the Declaration of Jack Ryan attached to the front of the report.

7. **Exhibit F** is the Declaration of LVMPD Sgt. Jason Harney. It is authenticated by his signature on page 2.

8. **Exhibit G** is the deposition transcript of Jake Von Goldberg. It is authenticated by the court reporter's certificate and title page.

9. **Exhibit H** is the deposition transcript of Jeffrey Swan. It is authenticated by the court reporter's certificate and title page.

¹ The LVMPD Defendants have attached complete mini transcripts of all depositions to cut down on page length.

1 10. **Exhibit I** is the DWI citation issued by Jeffrey Swan to Cristina Paulos on August
2 7, 2011. It is authenticated by Jeffrey Swan in Exhibit H at p. 23.

3 11. **Exhibit J** are undated photographs of Cristina Paulos' injuries. The photographs
4 were produced by Paulos during discovery. However, Paulos admits she does not know the
5 date the photographs were taken.

6 12. **Exhibit K** is Cristina Paulos' Answers to LVMPD's Second Set of
7 Interrogatories. The exhibit is authenticated by the verification page at the back of the
8 interrogatories.

9 13. **Exhibit L** is Cristina Paulos' Answers to LVMPD's First Set of Interrogatories.
10 The exhibit is authenticated by the verification attached to the last page of the interrogatories.

11 14. **Exhibit M** are screen print outs of Cristina Paulos' "gofundme" account and
12 personal website. The exhibits are authenticated by Paulos' answers to LVMPD's Third Set of
13 Interrogatories attached as Exhibit N.

14 15. **Exhibit N** is Cristina Paulos' answers to LVMPD's Requests for Admissions.
15 These answers were served during discovery.

16 16. **Exhibit O** is the deposition transcript of Matt Young, M.D. It is authenticated by
17 the court reporter's certificate and title page.

18 17. **Exhibit P** is the deposition transcript of Andrew Silver, M.D. It is authenticated
19 by the court reporter's certificate and title page.

20 18. **Exhibit Q** is the expert report of Cristina Paulos' security expert, Steve Baker. It
21 is authenticated by his deposition testimony attached as Exhibit R at p. 7.

22 19. **Exhibit R** is the deposition transcript of Steve Baker. It is authenticated by the
23 court reporter's certificate and title page.

24 ///

26 ///

28 ///

1 20. I declare under penalty of perjury, and the laws of the State of Nevada (NRS
2 53.045), that the foregoing is true and correct.

3
4 Dated this 6 day of January, 2016.

5
6
7
8 By 

Craig R. Anderson, Esq.

1311001131
MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
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001131

Exhibit A

CRISTINA PAULOS 3/25/2013

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
) ss:
 3 COUNTY OF CLARK)

4 I, Yvette Rodriguez, a duly commissioned
 5 Notary Public, Clark County, State of Nevada,
 6 do hereby certify:

7 That I reported the deposition
 8 of CRISTINA PAULOS, commencing on March 25, 2013 at
 9 2:45 p.m.

10 That prior to being deposed, the witness
 11 was duly sworn by me to testify to the truth;
 12 that I thereafter transcribed my said shorthand
 13 notes into typewriting; and that the
 14 typewritten transcript is a complete, true, and
 15 accurate transcription of my said shorthand
 16 notes.

17 I further certify that I am not a relative
 18 or employee of counsel or any of the parties,
 19 nor a relative or employee of the parties
 20 involved in said action, nor a person
 21 financially interested in the action.

22 IN WITNESS WHEREOF, I have set my hand
 23 in my office in the County of Clark, State of
 24 Nevada, this 11th day of April, 2013.
 25 /s/YVETTE RODRIGUEZ

CRISTINA PAULOS 3/25/2013

1

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 CRISTINA PAULOS, an individual)
5 Plaintiff,)Case No. A12-666754-C
6 vs.)Dept No. XXVI
7 FCHI, LLC, a Nevada limited)
8 liability company; LAS VEGAS)
9 METROPOLITAN POLICE DEPARTMENT)
10 a government entity; DOES 1)
11 through 10,)
12 Defendants.)
13 -----)

14
15
16 DEPOSITION OF CRISTINA PAULOS
17 Taken on March 25, 2013
18 At 9:02 a.m.
19 At Moran Law Firm
20 630 S. Fourth Street
21 Las Vegas, Nevada

22
23
24
25 Reported by: Yvette Rodriguez, CCR NO. 860
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www.lawyersolutionsgroup.com

CRISTINA PAULOS 3/25/2013

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CRISTINA PAULOS 3/25/2013

2

1 APPEARANCES:
2 For the Plaintiff:
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6 For the Defendants:
7
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CRISTINA PAULOS 3/25/2013

4

1 LAS VEGAS, NEVADA, MARCH 25, 2013
2 9:02 A.M.
3 -oOo-
4 (In an off-the-record discussion
5 held prior to the commencement
6 of the deposition proceedings,
7 counsel agreed to waive the
8 court reporter requirements
9 under Rule 30(b)(4) of the
10 Nevada Rules of Civil
11 Procedure.)
12 -oOo-

13 Whereupon,
14 CRISTINA PAULOS,
15 having been first duly sworn to testify to the
16 truth, the whole truth and nothing but the truth,
17 was examined and testified as follows:
18 -oOo-
19 EXAMINATION
20 BY MR. SMERBER:
21 Q Could you please state your name for the
22 record.
23 A Cristina Paulos.
24 Q Have you ever had your deposition taken
25 before?

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5

1 A No.

2 Q Because it's kind of a weird process, I'm
3 going to go over the ground rules of a deposition.
4 That way you know exactly what I'm going to expect
5 from you today and what you can expect from me.
6 Okay?

7 A Okay.

8 Q The first thing is, is the oath that you
9 just took is the same oath that you would take in a
10 court of law. So you're subject to the same
11 penalties of perjury as if you're testifying in a
12 courtroom. Do you understand?

13 A Understand.

14 Q The next important thing to remember is
15 that the gal sitting to my left and your right is a
16 court reporter. And she's taking down a verbatim
17 transcript of everything that is being said today.
18 Do you understand that?

19 A Understand.

20 Q Because she's doing that, we have to
21 observe certain formalities that we wouldn't
22 otherwise if it was just you and I having a
23 conversation. The first thing is that I need you to
24 verbalize all of your responses. Do you understand?
25 A Understand.

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CRISTINA PAULOS 3/25/2013

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1 over each other and she can't type down everything
2 that is being said. So if you could just be patient
3 with me and get my entire question out, then give
4 your response, that will help us out a lot. Okay?

5 A Okay.

6 Q I will do the same for you, I will try not
7 to speak over you. During your deposition today, I
8 might ask you a question that you don't understand.
9 That is fine. Just tell me. Again, my name is
10 Justin. I introduced myself out in the lobby. Just
11 say, Justin, I don't understand what you're asking.
12 Okay?

13 A Okay.

14 Q If I ask you a question and you give me a
15 response, then I'm going to assume that you
16 understood what I was asking; is that fair?

17 A Yes.

18 Q Okay. Again, if you need any
19 clarification, just let me know. Okay?

20 A Okay.

21 Q During your deposition today, we're not
22 here for an endurance contest. We're going to be
23 here a little while. So if at any point you need to
24 take a break, you want to stretch your legs, you
25 want to go to the bathroom or whatever you want to

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CRISTINA PAULOS 3/25/2013

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1 Q So things such as nodding or head shaking
2 or things like big (indicating), none of that will
3 come out on the record. If you give a response of
4 that nature, myself or perhaps other counsel might
5 say, Cristina, is that a yes or a no or can you tell
6 us that measurement. We're not trying to be rude.
7 It's just that we're trying to make a clear records.
8 Okay? Do you understand?

9 A Understand.

10 Q All right. Terms such as uh-huh, huh-huh,
11 nah, yeah, mm-hmm, mm-mmm, none of that comes out
12 clearly on the record either. So if you give us a
13 response of that nature, again, one of us might say,
14 you know, Cristina, is that a yes or a no. We're
15 not trying to be rude. We're just trying to make a
16 clear records. Okay?

17 A Okay.

18 Q Another important thing is that our court
19 reporter can only type down one person talking at a
20 time. You will have a tendency today to maybe
21 understand some of the questions I'm asking you or
22 where I'm going with some of the questions I'm
23 asking you. You might want to give your response in
24 the middle of my question. That makes it difficult
25 for our court reporter because then we are talking

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CRISTINA PAULOS 3/25/2013

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1 do, that is fine. Just let me know that you want to
2 take a break. Okay?

3 A Okay.

4 Q The only exception to that is that, if I
5 have a question pending to you, you will have to
6 answer my question before you take your break. Do
7 you understand?

8 A Understand.

9 Q From time to time, during the deposition
10 today, you are represented by counsel, and he may
11 have an objection to a question that I ask. If he
12 has an objection, what we're going to do, we're
13 going to pause and we're going to allow him to state
14 his objection on the record. And then when he's
15 done, you will answer my question. Okay?

16 A Okay.

17 Q The only exception to that is if your
18 counsel tells you, listen Cristina, don't answer
19 that question. Then go ahead and follow the
20 recommendation of your counsel. Okay?

21 A Understand.

22 Q It is always kind of weird when that
23 happens because you and I are going to have this
24 dialogue going and then someone will object to
25 something and then everybody is kind of looking

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1 around like nobody knows what to do. Once they're
2 done, then go ahead and answer the question. Okay?

3 A Okay.

4 Q During your deposition I might ask you to
5 give me your best estimate of things.

6 A Okay.

7 Q And I'm entitled to your best estimate of
8 things, but I don't want you to guess. The
9 difference between a guess and an estimate that
10 every attorney uses basically is if I was to say,
11 Cristina, can you give me an estimate of the length
12 of this table. And you can look at this conference
13 table and say it's probably about 14 feet long.

14 That is an estimate. Now, your counsel might think
15 it's a different length. Whatever his estimate is.
16 If I was to ask you, Cristina, what is the length of
17 my our conference room table upstairs and you said
18 oh, that one is about 7 feet long. Well, that will
19 be just a pure guess. You've never seen that table.
20 You don't know what it looks like. You're just
21 throwing a number out there. Do you understand the
22 difference between a guess and an estimate?

23 A I do.

24 Q In two weeks or something like that, maybe
25 longer, you will get a copy of your deposition

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CRISTINA PAULOS 3/25/2013

11

1 follow-up questions. Okay?

2 A Understood.

3 Q At the end of your deposition, I'm going
4 to tell you, Cristina, is there any changes to any
5 of the answers that you want to make. And if you
6 have any changes, by all means let me know today,
7 that way I can address any follow-up questions that
8 I need and we don't have to go over that credibility
9 issue later. Okay?

10 A Understand.

11 Q With all of that being said, let's get
12 started. Have you been known by any other names
13 besides Cristina Paulos?

14 A No.

15 Q And what is your date of birth?

16 A 8/21/79.

17 Q Where were you born?

18 A Tarzana, California.

19 Q Are you married?

20 A No.

21 Q Have you ever been married?

22 A No.

23 Q Do you have children?

24 A No.

25 Q What are the last four digits of your

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10

1 transcript. You will have the ability to review it
2 for accuracy and you can even make changes to it if
3 you would like. However, I want to warn you. If
4 you change anything important, anything of
5 substance, either myself or one of the attorneys in
6 this matter can comment upon those changes at the
7 time of trial in order to attack your credibility.

8 Do you understand that?

9 A Understand.

10 Q And let me just explain to you what will
11 happen. You will testify under oath today and if
12 you review your transcript later and you change
13 something of substance, something important, myself
14 or other counsel will stay, Cristina, during your
15 deposition you testified under oath as to this and
16 then you changed it later. So we have two different
17 versions of the same thing. We will attack your
18 credibility in that fashion. Do you understand?

19 A Understand.

20 Q I just want to make sure that that is very
21 well understood, because I'm not trying to trick
22 you. And if during your deposition today, as we go
23 on, you want to change an answer or clarify
24 something, please let me know and I will allow you
25 to do that because I need to ask appropriate

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CRISTINA PAULOS 3/25/2013

12

1 Social Security number?

2 A 0480.

3 Q What is your current address?

4 A I moved recently.

5 Q Okay.

6 A So I'm going to guess this is correct.

7 It's 2600 Flowering Cactus Avenue, Henderson 89052.

8 Q Now, with regards to the guessing that
9 you're doing, are you guessing on the street?

10 A No. The address. The 2600, it might be
11 like an extra number. I can check my license. I
12 always proof it.

13 Q Okay.

14 A Because I just moved. I moved in, like,
15 November sometime, something like that.

16 Q Okay. So we're sure that you live on
17 Flowering Cactus Avenue?

18 A Yes.

19 Q And you moved there in November of 2012?

20 A Around that time.

21 Q What is your address prior to that?

22 A I'm forgetting the address. It's Via
23 Meridiana, Henderson, Nevada. I think it's 2800 Via
24 Meridiana. It's Henderson, Nevada 89052.

25 Q How long did you live at the Via Meridiana

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CRISTINA PAULOS 3/25/2013

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1 address?
 2 A Like off and on, like 2002 to -- then I
 3 went to school and stuff. So that's -- so 2002 to
 4 2012.
 5 Q Okay?
 6 A But I was moving around too. I wasn't
 7 always there 'cause I was I lived in other place
 8 too.
 9 Q Other places within the State of Nevada?
 10 A No. In 2008 and '09, I lived in New York.
 11 And then 2004 through 2006, I was living in a dorm
 12 in CalArts where I was going to college.
 13 Q Where were you living in August of 2011?
 14 A I was living in -- with my boyfriend at
 15 the time. That was a different address. I don't
 16 remember where it was. We were only there since
 17 March. So that was -- the street name was Quail
 18 Cactus. And I was living with him March through
 19 February. So it was like 2011, March. And then the
 20 next 2012 was February.
 21 Q Okay.
 22 A Cause I -- we broke up, so...
 23 Q Okay. Quail Cactus, what city is that in?
 24 A Henderson, Nevada.
 25 Q And your boyfriend at the time, what was
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CRISTINA PAULOS 3/25/2013

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1 Q Did you graduate?
 2 A Yes.
 3 Q What year did you graduate?
 4 A I believe 2008 -- '98 -- not 2000. Sorry.
 5 1998. It has been a while, so...
 6 Q It's okay. Do you have any education
 7 after high school?
 8 A Yes.
 9 Q What type of education --
 10 A I have a BFA, Bachelors in Fine Arts from
 11 California Institute of the Arts.
 12 Q When did you obtain that?
 13 A 2006.
 14 Q Any education aside from the Bachelor of
 15 Fine Arts?
 16 A No.
 17 Q Do you hold any type of professional
 18 licenses?
 19 A No.
 20 Q Do you hold any type of certifications?
 21 A No.
 22 Q You understand that we're here to discuss
 23 a lawsuit that you filed against my client, which is
 24 the Palms Resort and Casino, correct?
 25 A Yes.
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CRISTINA PAULOS 3/25/2013

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1 his name?
 2 A Terry Woltman.
 3 Q Can you spell his last name.
 4 A W-O-L-T-M-A-N.
 5 Q Does anyone currently reside with you at
 6 your address on Flowering Cactus Avenue?
 7 A Yes, I live with my parents.
 8 Q What are your parents' names?
 9 A Aiko, A-I-K-O. And Leroy, L-E-R-O-Y.
 10 Q So Leroy is your dad and Aiko is your
 11 mother --
 12 A Aiko is my mother.
 13 Q And is there last name Paulos?
 14 A Yes.
 15 Q What is a current telephone number for
 16 you?
 17 A (702)577-7208t.
 18 Q Ma'am, have you ever been convicted of a
 19 felony?
 20 A No.
 21 Q Have you ever been convicted of a crime
 22 involving dishonesty?
 23 A No.
 24 Q Where did you go to high school, ma'am?
 25 A I went to Los Angeles County High School.
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CRISTINA PAULOS 3/25/2013

16

1 Q We're also here to discuss the same
 2 lawsuit that you filed against Las Vegas
 3 Metropolitan Police Department. Do you understand
 4 that?
 5 A Yes.
 6 Q It's my understanding that you are not
 7 asserting a claim for loss wages in this matter; is
 8 that correct?
 9 A Yes.
 10 Q And you're not also asserting a claim for
 11 future loss income, correct?
 12 A I guess, yes.
 13 **MR. SMERBER: I will even let you consult**
 14 **with your counsel just this one time.**
 15 **(Off the record.)**
 16 **BY MR. SMERBER:**
 17 Q You have had a chance to confer with your
 18 counsel. And I will tell you, the wage loss
 19 assertion claim is the only time I'm going to let
 20 you confer with counsel just cause counsel has an
 21 input on what claims you're pursuing.
 22 My question was you are not asserting
 23 a claim for future lost income, correct?
 24 A I'm -- because of the injuries, I can't
 25 apply to certain jobs because I can't stand for long
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1 periods of time because what happens with my leg, I
 2 get these pins and needles sensations when I'm
 3 standing. So it changes what I can do. So
 4 basically I cannot apply to jobs where you're
 5 constantly have to stands.
 6 Q Okay.
 7 A So that changes my future of what I can
 8 apply to.
 9 Q Are you currently employed?
 10 A Yes.
 11 Q What is your current employment --
 12 A I'm an artist and I'm an art teacher.
 13 Q Where are you an art teacher?
 14 A I'm starting to teach at the North Vegas
 15 rec centers to teach senior citizens painting.
 16 Q Have you applied for any other teaching
 17 jobs?
 18 A No.
 19 Q Have you ever held any other teaching
 20 jobs?
 21 A Yes.
 22 Q So currently you're employed as an artist
 23 and an art teacher are and you're an art teacher at
 24 the North Vegas Rec Center, correct?
 25 A Yeah. But I haven't started it yet. I'm
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CRISTINA PAULOS 3/25/2013

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1 Q Do you have any other teaching degrees?
 2 A No.
 3 Q Do you have a teaching license?
 4 A No.
 5 Q Are you pursuing an education where you
 6 will be able to get a teaching degree?
 7 A Not currently.
 8 Q Have you ever in your life been pursuing a
 9 teaching degree?
 10 A No.
 11 Q As an artist do you work for yourself or
 12 do you work for some other gallery or something like
 13 that?
 14 A I work for myself.
 15 Q Do you have a company or are you just a
 16 sole proprietor, you work under your own name?
 17 A Under my own name.
 18 Q Do you have a business license?
 19 A No, not currently.
 20 Q Have you ever?
 21 A Yes.
 22 Q When was the last time you had a business
 23 license.
 24 A 2000 -- like 2010, 2011.
 25 Q Did you have a business license for your
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1 like -- I just -- I'm right now, we're scheduling
 2 the classes, so -- I guess I maybe shouldn't have
 3 mentioned it if I wasn't -- I haven't started it
 4 yet.
 5 Q That's fine. But you're going to be
 6 starting in a position as a teacher with the North
 7 Vegas Rec Center --
 8 A Yeah. With the Senior citizen program
 9 there.
 10 Q Are you actively pursuing any other
 11 employment currently?
 12 A No. And that's only twice -- two times --
 13 twice a week.
 14 MR. BLUT: He'll ask. He knows what to
 15 ask?
 16 THE WITNESS: Okay. Never mind then.
 17 BY MR. SMERBER:
 18 Q That's okay. Do you know how many hours
 19 you will be working as a teacher at the North Vegas
 20 Rec Center?
 21 A Between like five to six a week.
 22 Q What is your rate of compensation?
 23 A 8.15 an hour.
 24 Q You receive any benefits?
 25 A No.
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CRISTINA PAULOS 3/25/2013

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1 company in August of 2011?
 2 A I was going to say, because what I think
 3 is a business license, I don't if it's the right --
 4 but I had to get a license with Henderson to teach
 5 at Henderson Rec Center which I taught in 2011 and
 6 '10. '10 to '11. And I believe that was a business
 7 license because I needed to get something through
 8 the state. But I'm not sure if that is called the
 9 same business license we're thinking of.
 10 Q Okay.
 11 A But I had to get a license to teach.
 12 Q What kind of art do you do?
 13 A I do painting and I do commercial graphic
 14 design. So basic art, I guess. Art, painting,
 15 illustration. That's the commercial arts, so...
 16 Q When you're doing your painting and
 17 illustration, do you sit or do you stand?
 18 A I sit.
 19 Q Have you ever undergone any type of
 20 vocational assessment?
 21 A No.
 22 Q Do you understand what I mean by
 23 vocational assessment?
 24 A I believe it is when people help you find
 25 jobs.
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1 Q Right. You sit down with a counselor and
2 you will go over your abilities and your talents and
3 things of that nature and your physical
4 capabilities. And then they will tell you jobs that
5 you would be appropriate for or less appropriate
6 for. Do you understand?

7 A Yes.

8 Q And you have never done that, right?

9 A Yes. But I'm interested to look into that
10 too.

11 Q Okay. Is there any reason why you haven't
12 done it?

13 A I've -- I called for information and I
14 missed the days. Like, when I can go into there.

15 Q Who did you call?

16 A I called the -- the Southern Nevada Mental
17 Health facility, and I also called disability. And
18 the days that they had, I couldn't come in 'cause
19 they only do it like once a month, I believe or --
20 but I found out recently about it last month.

21 Q Okay. Do you know the date of the
22 accident that -- or the date of the incident which
23 forms the basis for this lawsuit?

24 A I believe the date was -- it was -- it was
25 August 8, 2011.

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1 then I have just been scatter brain and forgetful to
2 go back in and stuff.

3 Q You live with your parents, correct?

4 A Yeah.

5 Q Do your parents have driver's licenses?

6 A Yes, but they couldn't drive me that day.

7 Q Okay. So you made one attempt to get
8 vocational counseling and you missed your
9 appointment and you have not made any other
10 attempts; correct?

11 A Yeah.

12 Q Do you like what you do?

13 A Yes.

14 Q You like being an artist and a teacher?

15 A Yes.

16 Q You're not looking to change your field of
17 employment or your occupation; are you?

18 A Currently, no.

19 Q In fact, you went to school to be an
20 artist, correct?

21 A Animator.

22 Q Okay?

23 A I went to school for animation?

24 Q What did that consist of? How long was
25 the program?

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1 Q So we're in --

2 A I mean, not August. I'm sorry --

3 Q You're okay.

4 A Oh, wait. It was August. Yeah, it was
5 August. Sorry. The date of the accident. Yeah.

6 Q Today's date is, we're in March of 2013,
7 correct?

8 A Yes.

9 Q It's the 25th of March, 2013. So we're a
10 little over a year and a half after your accident,
11 correct?

12 A Mm-hmm.

13 Q Yes?

14 A Yes.

15 Q And up until last month, you have made no
16 attempt to do any type of vocational counseling,
17 correct?

18 A Will I did look, research before. And --
19 before, but I never made it there 'cause I couldn't
20 drive.

21 Q Okay.

22 A And that was -- that was like last year in
23 Henderson. They had an appointment, but I couldn't
24 get there because I didn't have a car to drive
25 there. So I missed the -- I just missed it. And

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1 A It was for four years. In -- you're in
2 film and video. And you -- I am not sure how many
3 credits. It's been a while. But I had to get
4 general requirements, like general. You know math
5 and English. And the rest were all the programs
6 through animation and film and video.

7 Q Now, when you do animation, that is a job
8 that requires you to sit while you work, correct?

9 A Yes.

10 Q So I guess if you were going to change
11 your job or your occupation, it would be to go into
12 animation; is that what you're saying?

13 A Why would I change? I don't understand
14 what you're asking me.

15 Q Well, I asked you if you had any
16 current -- or if you were going to change your job
17 or if you wanted to change your occupation. You
18 said not currently. So I was asking you what you
19 went to school for, and you said, I actually went to
20 school to do animation. So I'm asking you, because
21 you qualified your response. You said I'm not
22 currently looking to change my job. Is that because
23 you might want to do animation which is what you
24 have your background in?

25 A No. I'm not going to go back to -- I

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CRISTINA PAULOS 3/25/2013

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1 don't understand what you're saying because art and
2 animation are so similar to me. So it's not like
3 it's any different.

4 Q Okay.

5 A So I'm not quite understanding why you're
6 saying a change because it's exactly the same,
7 animation and art. If you hold a bachelors degree,
8 when you get a bachelors in art, they generalize any
9 type of art as fine arts. In the school I went to,
10 which is CalArts. So if I studied jazz, if I
11 studied theater, it will still be a bachelors in
12 fine art.

13 Q As far you're concerned animation and art
14 are the same thing?

15 A Yeah. It's the same degree I hold as
16 bachelors in fine arts.

17 Q Okay. But currently you don't do
18 animation, right?

19 A Well, I do -- I do -- I guess -- no, I
20 don't do it currently, so no.

21 Q How many hours a week do you work as an
22 artist?

23 A Probably like 35 hours a week or
24 something. 30, 35.

25 Q Do you have a studio or do you work out of
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1 there?

2 A No.

3 Q It doesn't matter, day and night,
4 whenever?

5 A When I'm in the area, I usually.

6 Q You don't have any current inability to
7 perform as an artist, correct?

8 A As an artist, no.

9 Q You're able to perform as an artist and
10 you're able to perform as an art teacher without any
11 restriction, correct?

12 A Yeah. 'Cause I could sit down when I
13 teach art. But I only teach -- I also take into
14 consideration that I'm only teaching six to five
15 hours a week. So I don't know if that was going to
16 be more hours, if that would change.

17 Q Have you put any applications for jobs
18 that would require you to teach more hours?

19 A Not currently.

20 Q So it would be pure speculation to say
21 that you will be working more hours in the future
22 because you have no basis upon which to make that
23 statement, correct?

24 MR. BLUT: Object to the form.

25 You can answer, if you understand what
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1 your home?

2 A I work -- I work from home and I work --
3 sometimes I work in my friend's studio.

4 Q Where is your friend's studio located?

5 A On Commerce Street.

6 Q Do you know the address?

7 A I don't know the address, but it's called
8 Blackbird Studios.

9 Q Can you spell it for the record?

10 A Black, B-L-A-C-K. Bird, B-I-R-D.

11 Q And that is located on Commerce?

12 A Yeah. It's on Commerce and Wyoming.

13 Q In Las Vegas?

14 A Yes.

15 Q How often do you go there?

16 A Probably like two to three times a week.

17 Q Do you have any set time, like you have to
18 purchase studio time?

19 A No.

20 Q So you just go when you want --

21 A I go when it's available. So I like call
22 ahead and see if there is something available.

23 Q Do they have sign-in sheets?

24 A No.

25 Q Do you have regular hours when you will go

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1 he's asking.

2 MR. SMERBER: Don't coach her. Don't tell
3 her, if you understand.

4 MR. BLUT: No --

5 MR. SMERBER: Just make your statement.

6 MR. BLUT: You have admonished her for 20
7 minutes and insulted her --

8 MR. SMERBER: How did I insult her?

9 MR. BLUT: -- and are arguing with her.

10 So you ask the questions, I'll make the
11 objections --

12 MR. SMERBER: We can get the discovery
13 commissioner on the phone right now. You will
14 not tell her that she can answer if she
15 understands. There is a well established
16 opinion from Federal Judge Payton (PHONETIC)
17 that says you cannot object and instruct the
18 witness that they can answer if they
19 understand. It is coaching. You can object to
20 form. You can object to foundation, but you
21 cannot coach your witness.

22 MR. BLUT: You're not going to tell me how
23 to object. Ask your next question. She will
24 give you your next answer. Obviously, she can
25 answer that question. There is no -- there is

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1 no privilege answer on that.
 2 MR. SMERBER: I'm just going to warn you,
 3 if you make another objection of that fashion,
 4 we'll stop this deposition, we will get the
 5 discovery commissioner on the phone or we will
 6 suspend it and go in front of her and have her
 7 address the issue. Okay?

8 MR. BLUT: You will do whatever you're
 9 going to do.

10 BY MR. SMERBER:

11 Q Okay. So go ahead.

12 A Can you ask the question.

13 MR. SMERBER: I will have her read it
 14 back.

15 (Record read.)

16 THE WITNESS: I did not understand the
 17 question. Can you rewrite it?

18 MR. SMERBER: I will rephrase it for you.

19 BY MR. SMERBER:

20 Q Right now you're working five to six hours
 21 a week, right?

22 A Yes.

23 Q As a teacher?

24 A Correct.

25 Q And you're not applying for any jobs that

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CRISTINA PAULOS 3/25/2013

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1 Q When was the last group show that you did?

2 A I did one in February. Just one. And it
 3 didn't sell. The piece didn't sell.

4 Q You did one in February of this year?

5 A Yeah. Just -- that was the only one I did
 6 for a long time. And that piece didn't sell.

7 Q When was the last time you did a group

8 show prior to February -- I'm sorry. I said 2012.

9 You did a show in February of 2013?

10 A Yes.

11 Q When was the last time you did a showing
 12 prior to February of 2013?

13 A Spring -- or was it summer? I don't
 14 remember if it was spring or summer, but it was warm
 15 time. So it was last year. So 2012.

16 Q Okay.

17 A I believe it was in, like, April. So

18 I'm -- yeah. That is spring; isn't it? So

19 April 2012.

20 Q How many shows did you do total in 2012?

21 A One.

22 Q So far in 2013, how many shows have you
 23 done?

24 A One.

25 Q How many shows did you do in 2011?

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CRISTINA PAULOS 3/25/2013

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1 will require you to work more hours as a teacher,
 2 correct?

3 A Not currently.

4 Q Okay. So you don't have any perspective
 5 employers or job positions that will require you to
 6 work more hours as a teacher currently --

7 A Currently --

8 Q -- correct?

9 Okay. With regards to your

10 employment as an artist, explain to me how are you
 11 compensated? You sell art and then you collect
 12 income or do you sell through a gallery? How does
 13 that work?

14 A I sell when I have shows.

15 Q Okay.

16 A Gallery shows.

17 Q All right. How often do you do gallery
 18 shows?

19 A Well, up to like -- before, I was doing at
 20 least like one solo show and a group show once a
 21 month as of -- that was in 2011. And I haven't done
 22 that at all so -- and so, like as of now, I don't do
 23 any group shows once a month anymore. And I have a
 24 group -- a gallery solo show in July. So that's the
 25 next time I will.

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CRISTINA PAULOS 3/25/2013

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1 A Around five.

2 Q Can you tell me when you did your last
 3 show in 2011?

4 A I believe it was July.

5 Q Do you know how much income you generated
 6 from your art in 2010?

7 A I don't know. Can I -- I have a question.

8 Can I ask questions back?

9 MR. BLUT: No.

10 THE WITNESS: Oh, I can't. Okay.

11 MR. BLUT: If you need to ask me a
 12 question. Answer his question first, and then
 13 we can take a break.

14 THE WITNESS: Okay.

15 MR. BLUT: You to want to ask me something
 16 and take a break?

17 THE WITNESS: Yeah. I have a question
 18 too.

19 BY MR. SMERBER:

20 Q I want to make sure that I understand.

21 Your response to my question of what was your income
 22 from art in 2010 is that you do not know, correct?

23 A Correct.

24 MR. SMERBER: Okay. Take a break.

25 (Off the record.)

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1 BY MR. SMERBER:
 2 Q We're going back on the record. Do you
 3 understand that all the admonishments I gave you
 4 before we went on break, they still apply. Do you
 5 understand?
 6 A Understand.
 7 Q Okay. We were getting into some questions
 8 about your income. With regards to 2011, do you
 9 know what your income was in 2011?
 10 A I do not know.
 11 Q Do you know what your income was in 2012?
 12 A I do not know.
 13 Q Did you file tax returns for any of those
 14 years? And the years I'm referring to are 2010, '22
 15 and '12?
 16 A No.
 17 Q When was the last time that you filed an
 18 income tax return?
 19 A I believe it was 2009, 2010.
 20 Q Do you know what your income was in 2009?
 21 A I do not know.
 22 Q Do you know, are you currently eligible
 23 for Medicare?
 24 A I do not know because I have not -- I
 25 never -- I never applied for Medicare or Medicaid.
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CRISTINA PAULOS 3/25/2013

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1 A I have a website and I use Facebook.
 2 Q What is the name of your website?
 3 A It's my name. Cristinapaulos.com.
 4 Q Is it case sensitive or anything?
 5 A No.
 6 Q I don't use Facebook. So if I was going
 7 to go onto Facebook to find you. How would I
 8 find --
 9 A You put the artwork of Cristina Paulos.
 10 Q You just type that in --
 11 A Yeah. Artwork of Cristina Paulos.
 12 Q Let's talk about the incident that forms
 13 the basis for this lawsuit. Do you recall that
 14 incident?
 15 A Yes.
 16 Q And I believe you told me that that
 17 incident occurred on/or about August 8, 2011,
 18 correct?
 19 A Correct.
 20 Q Okay. Do you know about the time of day
 21 that it occurred?
 22 A I believe it was -- it was like 3:00 or
 23 4:00 o'clock.
 24 Q 3:00 or 4:00 p.m.?
 25 A It was day, yeah.
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1 Q Medicare?
 2 A Medicare, I never applied for it so I
 3 wouldn't know.
 4 Q So you have never applied for it and
 5 you're not receiving any benefits from Medicare?
 6 A No.
 7 Q How about Social Security Disability, are
 8 you on Social Security Disability?
 9 A No.
 10 Q Are you receiving any type of assistance
 11 from the state or federal government?
 12 A No.
 13 Q Okay.
 14 A I get -- oh, I get food stamps.
 15 Q Okay.
 16 A That's it.
 17 Q Have you ever served in the military,
 18 ma'am?
 19 A No.
 20 Q Going back one second. With regards to
 21 your career as an artist, do you have any type of
 22 business address or anything like that?
 23 A No.
 24 Q Do you have -- how do you advertise your
 25 art? Do you have a website or?
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CRISTINA PAULOS 3/25/2013

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1 Q What had you been doing that day prior to
 2 your incident occurring?
 3 A I was -- I was meeting my girlfriends at
 4 the pool. That is what I was going to do -- oh, you
 5 want to know what I did before?
 6 Q Yeah. Take --
 7 A I had coffee. I don't know -- I was.
 8 Q Let me do it this way. That morning you
 9 woke up, right?
 10 A Right.
 11 Q Did you wake up that morning at your home?
 12 A No -- well, yeah it was my home.
 13 Q Where was that?
 14 A Quail Crest -- I mean, well yeah. Quail
 15 Crest.
 16 Q So you woke up at your home on Quail
 17 Crest. That is where you lived with your boyfriend,
 18 Tony, right -- or Terry?
 19 A His name was Terry, yes.
 20 Q Okay. Did you see Terry at all before you
 21 left the house that day?
 22 A Yes.
 23 Q Did you and Terry have any type of
 24 altercation or confrontation that morning?
 25 A We had a fight.
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1 Q What were you and Terry fighting over?
 2 A He said I was ignoring him.
 3 Q Was it a physical confrontation or just
 4 verbal?
 5 A Verbal.
 6 Q And then at what point did you leave your
 7 residence? About what time?
 8 A I am not sure.
 9 Q Okay. Was it still morning?
 10 A Well, it was the daytime, yes.
 11 Q Okay. When you left your residence did
 12 Terry go with you?
 13 A No, he did not.
 14 Q Did you leave the residence as a result of
 15 the confrontation?
 16 A Yes.
 17 Q Did you go directly from your residence to
 18 the Palms or did you make stops in between?
 19 A No, I just went to the Palms.
 20 Q So you arrived at the Palms by yourself,
 21 correct?
 22 A Yes.
 23 Q Did your incident occur when you were
 24 first going to the Palms or had you been to the
 25 Palms for a while before your incident occurred?
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1 as you. 3037 Scenic Valley Way --
 2 A Yes --
 3 Q Henderson, Nevada --
 4 A Yes.
 5 Q Cristina, if you could let me get my
 6 entire question out.
 7 A Oh.
 8 Q I'm sorry --
 9 A Sorry about that.
 10 Q It's okay. It just makes our court
 11 reporter's job a little easier. Okay?
 12 A Okay.
 13 Q So the address that I have on Scenic
 14 Valley Way, that is the correct and current address
 15 for your sister?
 16 A Yes.
 17 MR. BLUT: If you want to depose her, let
 18 me know. We can call her.
 19 MR. SMERBER: Okay. Thank you.
 20 MR. BLUT: You got it.
 21 BY MR. SMERBER:
 22 Q So you met your sister. Did you meet
 23 anyone else at the Palms that morning?
 24 A No.
 25 Q So how long were you at the Palms before
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1 A I had been in the Palms -- I was at the
 2 Palms before the incident.
 3 Q Okay. So you arrived at the Palms. Do
 4 you remember approximately at what time you first
 5 arrived at the Palms?
 6 A I do not recall.
 7 Q But it would have been -- before
 8 3:00 o'clock?
 9 A Yes.
 10 Q What did you do when you first arrived at
 11 the Palms?
 12 A I went to meet my sister.
 13 Q What is your sister's name?
 14 A Jennifer Rosario.
 15 Q Do you have a current telephone number for
 16 her?
 17 A I would have to look it up.
 18 MR. BLUT: It's in the interrogatory
 19 answers. If you pull 16.1 I saw that over the
 20 weekend. We put her in the interrogatories,
 21 but didn't update the 16.1.
 22 THE WITNESS: (702)235-5377. You want her
 23 address? I have the address written down.
 24 MR. SMERBER: I have the address written
 25 down. Just tell me if what I have is the same
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1 you left the first time?
 2 A I don't know.
 3 Q Can you tell me what you did during that
 4 time period when you were at the Palms before you
 5 left the first time?
 6 A I met with my sister.
 7 Q What part of the hotel did you go to?
 8 A We were walking around, probably the main
 9 floor.
 10 Q Did you do anything particular during that
 11 time? What I mean is, did you maybe go to the
 12 restaurant or visit the pool or gamble or anything
 13 like that?
 14 A No.
 15 Q With regards to your sister, did you and
 16 your sister, Jennifer, have any type of
 17 confrontation or problem that morning at the Palms?
 18 A Yeah. We got into an argument.
 19 Q What did you and your sister get into an
 20 argument over?
 21 A I don't recall. I think it was over --
 22 because I was upset with the boyfriend. So we were
 23 talking about that, I believe.
 24 Q And this caused you and your sister to get
 25 in an argument?
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1 A I believe so.
 2 Q Okay. How did that argument end?
 3 A I stormed off.
 4 Q Did that argument, was it verbal or
 5 physical or both?
 6 A No. It was just verbal. And it wasn't
 7 really like an argument. Like, it wasn't -- like,
 8 it wasn't very angry. Like, it wasn't like angry
 9 argument. It was just, like, I was just upset.
 10 Like, just upset.
 11 Q And when you stormed off, did you then
 12 leave the premises?
 13 A Yes.
 14 Q How did you leave the premises, on foot or
 15 on a vehicle?
 16 A In a vehicle.
 17 Q Where did you go?
 18 A I just drove around until I -- I went to
 19 go find my sister again to go talk to her.
 20 Q Were you still upset at that point when
 21 you decided to go back and find your sister?
 22 A I guess I was upset.
 23 Q When you went to go find your sister,
 24 where did you go? Where were you looking for her?
 25 A I went to go back to the Palms. That is
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1 Q Do you have any contact information for
 2 Sarah?
 3 A Not with me.
 4 Q Somewhere in your possession, perhaps in
 5 your phone or your address book, somewhere like
 6 that, do you have any information for Sarah?
 7 A Let's see if I have any contact for her.
 8 I have her phone number.
 9 Q Okay.
 10 A (323)309-3504.
 11 Q Do you know if Sarah still lives here in
 12 town?
 13 A She doesn't live here.
 14 Q Where does Sarah live?
 15 A In L.A.
 16 Q Do you have Sarah's address anywhere?
 17 A No.
 18 Q Have you seen Sarah at all since this
 19 incident occurred?
 20 A I saw her, yes.
 21 Q Have you spoke to Sarah at all on the
 22 phone or in other form since this incident occurred?
 23 A Yes.
 24 Q Have you spoke to her regarding this
 25 incident?
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1 where she was.
 2 Q Do you know if she was there with anyone
 3 else at the Palms that day besides you?
 4 A No, I do not know.
 5 Q I thought that I had reviewed in some of
 6 answer that maybe you met a girlfriend at some point
 7 during these events. Do you have any idea what I'm
 8 talking about?
 9 A I do.
 10 Q Okay.
 11 A But I never met my girlfriend. The reason
 12 me and my sister were at the Palms was to meet my
 13 girlfriend.
 14 Q And you never ended up meeting up with her
 15 that day?
 16 A Yeah, we never met up with her.
 17 Q What was the name of the girlfriend that
 18 you were supposed to meet?
 19 A Sarah.
 20 Q What is Sarah's last name?
 21 A Yuki (PHONETIC).
 22 Q Can you spell it for the record, please.
 23 A I'm not sure how to spell it.
 24 Q It's Yuki?
 25 A Yeah.
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1 A No.
 2 Q So going back to the day of the incident,
 3 you had told me that you had left the Palms and then
 4 you had decided to return to the Palms to look for
 5 your sister, correct?
 6 A Correct.
 7 Q Did you make it back to the Palms?
 8 A Yes.
 9 Q Okay. What happened when you arrived back
 10 to the Palms?
 11 A I got in a car accident.
 12 Q Can you tell me how that car accident
 13 occurred?
 14 A No.
 15 Q Do you know where that car accident
 16 occurred?
 17 A No.
 18 Q Can you tell me what you were driving when
 19 that car accident occurred?
 20 A A Toyota Corolla.
 21 Q What kind of a vehicle was that?
 22 A It's a hatchback.
 23 Q What color is it?
 24 A Blue-green.
 25 Q Was that your vehicle?
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- 1 A Yes. Actually, it was under my parents'
2 name. So it wasn't my vehicle. I was just using
3 it. I just like to call it mine just because, you
4 know, I was driving it.
- 5 Q Okay. Do you -- can you tell me the type
6 of accident that you had. Did it involve just your
7 vehicle or did it involve multiple vehicles?
- 8 A It involved multiple vehicles.
- 9 Q How many?
- 10 A I believe three.
- 11 Q Do you know who caused the accident?
- 12 A No.
- 13 Q Do you know if you sustained any injuries
14 in that accidents?
- 15 A Yes.
- 16 Q What injuries did you sustain in that
17 accident?
- 18 A The seat belt teared my skin off my
19 breast.
- 20 Q What breast, your right or your left?
- 21 A My left.
- 22 Q Did your air bag deploy?
- 23 A Yes.
- 24 Q Do you know if you sustained any injuries
25 or burns as a result of the air bag deploying?

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- 1 question.
- 2 BY MR. SMERBER:
- 3 Q Was it one person who pushed you on the
4 floor or multiple people?
- 5 A I'm not sure.
- 6 Q Did this person say anything to you prior
7 to pushing you on the floor?
- 8 A No, not that I recall.
- 9 Q Did you say anything to this person prior
10 to pushing you -- prior to them pushing you on the
11 floor?
- 12 A Just screamed.
- 13 Q What did you scream? Anything verbal or
14 just actual screams?
- 15 A Just screaming.
- 16 Q Do you know why you were screaming?
- 17 A Cause I was scared.
- 18 Q And you said that you were pushed on the
19 floor and you continued to scream, correct?
- 20 A Yes.
- 21 Q And you're just screaming out screams, no
22 verbal words, correct?
- 23 A Not that I can recall.
- 24 Q And then you were placed in zip ties?
- 25 A No, I was in zip ties when they pushed me
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- 1 A No.
- 2 Q Besides the seatbelt tearing the skin off
3 of your left breast, did you sustain any other
4 injury in that accident?
- 5 A No.
- 6 Q Can you tell me what you did immediately
7 after the accident occurred?
- 8 A No.
- 9 Q Do you have any recollection of the event
10 that occurred immediately after your accident?
- 11 A Some.
- 12 Q Tell me what you do remember occurring
13 after your accident.
- 14 A I remember being pushed on the floor and
15 screaming and being obtained in zip ties.
- 16 Q Who pushed you on the floor?
- 17 A I'm not sure. Somebody in a uniform.
- 18 Q What did the uniform look like?
- 19 A I'm not sure. Just a general uniform.
- 20 Q What color was the uniform?
- 21 A I don't remember.
- 22 Q Was the person a male or female --
- 23 A Male.
- 24 MR. BLUT: You have to wait till he
25 finishes, even though you can anticipate his

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- 1 on the floor.
- 2 Q Okay.
- 3 A They restrained my -- they restrained me
4 so I was restrained. On the floor, it -- they
5 restrained me.
- 6 Q Were you restrained with the zip ties
7 before you were placed on the ground?
- 8 A No.
- 9 Q So you were put on the ground and then you
10 were put in zip ties, correct?
- 11 A I don't remember.
- 12 Q Were you resisting this person in the
13 uniform?
- 14 A No.
- 15 Q Were you complying with their requests?
- 16 A There was no request made. Not that I
17 remember.
- 18 Q Okay.
- 19 A I don't remember the person saying
20 anything to me.
- 21 Q So your recollection as you sit here today
22 is that this person approached you, without saying
23 anything to you, and pushed you on the ground, and
24 at some point, put zip ties on you?
- 25 MR. BLUT: Object to the form.

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1 THE WITNESS: I don't understand.
 2 BY MR. SMERBER:
 3 Q You told me that a person in a uniform
 4 approached you; is that right?
 5 A Yes.
 6 Q You told me that a person in a uniform
 7 pushed you on the floor; is that right?
 8 A Yes.
 9 Q You told me that a person in a uniform put
 10 zip ties on you?
 11 A Yes.
 12 Q And you also told me that you don't recall
 13 this person in the uniform saying anything to you
 14 during these events; is that correct?
 15 A I don't remember what anyone was telling
 16 me. Yes, I don't know.
 17 Q There is a bit of a distinction. I don't
 18 mean to be nitpicky. But were people saying things
 19 to you and you just don't recall what they were or
 20 was no one saying anything to you?
 21 A I don't remember. Yeah.
 22 Q Okay.
 23 A Yeah, I don't know what was going on.
 24 Q Okay. And as you said you were on the
 25 ground, correct?

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1 any of the events that occurred that we have been
 2 discussing, right?
 3 A Right. She just was looking at injuries.
 4 Q Do you know the name of this nurse?
 5 A I do not know.
 6 Q Do you know what hospital or doctor's
 7 office she was from?
 8 A Yes.
 9 Q Where was she from?
 10 A UMC.
 11 Q And do you recall about when the date when
 12 this conversation took place?
 13 A It -- I don't know the date for sure.
 14 Q Was it -- was it within a week of your
 15 incident?
 16 A I'm not sure.
 17 Q Has anyone besides this nurse told you
 18 that based upon your burns you would have had to
 19 have been on the asphalt for 30 minutes?
 20 A No. No one said anything besides this
 21 nurse.
 22 Q Okay. Aside from the statement from this
 23 nurse, do we have -- or do you have any other
 24 evidence or knowledge as to how long you were on the
 25 ground or the asphalt?

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1 A Yes.
 2 Q Do you know --
 3 A Asphalt.
 4 Q Okay. The asphalt. And you were
 5 screaming while you were on the asphalt, correct?
 6 A Yes.
 7 Q Do you know how long you were on the
 8 asphalt?
 9 A I was told by a burn nurse that to have
 10 the burns I had I would have been on the ground for
 11 like 30 minutes. So I felt comfortable after
 12 hearing what my nurse told me that I was there for
 13 at least 20 minutes. I felt comfortable saying
 14 that.
 15 Q Okay. So let me ask you a couple of
 16 follow-up questions on that. Do you have any
 17 independent recollection of being on the ground for
 18 20 minutes?
 19 A I don't know how long I was on the ground.
 20 Q Okay. This nurse that told you that you
 21 would have had to have been on the ground for 30
 22 minutes. This is a nurse that you treated with
 23 after the incident, correct?
 24 A Yes.
 25 Q And this nurse was not present to observe

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1 A No.
 2 Q Okay.
 3 A Other than you could look at the video and
 4 count the minutes, but I have never seen the video.
 5 Q Do you know where -- 'cause you said that
 6 you were held down on asphalt -- do you know where
 7 on the defendant's premises you were being held down
 8 on the asphalt?
 9 A I believe it was in front of the Palms.
 10 Q Why do you believe that?
 11 A Because there was a grassy area. And
 12 there's grass in the front of the Palms.
 13 Q So part of your recollection of this event
 14 is that there was grass in the area where this
 15 occurred?
 16 A Yes.
 17 Q You said that you believe the video would
 18 show what occurred but you have never seen the
 19 video, correct?
 20 A Correct.
 21 Q I'm going to show you some photographs
 22 that were taken from the video that has been
 23 produced in this matter. Okay?
 24 Now, I understand that you have never
 25 seen the video, but I want you to take a look at

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1 this picture that was taken from the video, okay. I
2 want you to take a look at it and I want you to tell
3 me whether or not you recognize any of the items in
4 that photograph.

5 A Are you asking me to recognize the car?
6 That is my car -- or it was not my car. It was
7 my -- I'm going to call it my car even though it is
8 not my car. Okay.

9 Q That's fine. I understand. So in this
10 video -- in this picture where there is a date and a
11 time at the bottom. It shows the date of August 7,
12 2011 and a time of 15:16:27, which would be about
13 3:16 p.m. You see your vehicle that you were
14 driving that day; is that correct?

15 A Correct.

16 Q And that is the blue-green hatchback that
17 we were talking about?

18 A Yes.

19 MR. SMERBER: We're going to mark that as
20 Exhibit A.

21 (Exhibit A marked for
22 identification.)

23 BY MR. SMERBER:

24 Q In Exhibit A where it shows your car, it
25 appears to me that the rear passenger door is open.

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1 boyfriend I was living with.

2 Q Okay. So you had decided to move out of
3 the your home that day; is that correct?

4 A Yes.

5 Q I'm going to show you another photograph.
6 This is kind of -- this is another one that came
7 from the video. Again, it has the same date on it
8 of August 7th of 2011. And if you like at the very
9 center of that photograph, do you see your vehicle
10 again?

11 A Yes.

12 Q As you look at the photograph to the left,
13 approximately 2 inches is another vehicle. It is
14 like -- I don't know -- like a silver looking car.

15 Do you see that?

16 A Yes.

17 Q Do you know who that vehicle belongs to?

18 A No.

19 Q That vehicle appears to have some damage
20 to the front of it. Does that refresh your
21 recollection at all as to how this accident
22 occurred?

23 A Yes.

24 Q How does that refresh your recollection?

25 A Well, the picture. So it looks like I hit

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1 Do you see that?

2 A Yes.

3 Q Do you know why the rear passenger door in
4 your vehicle was open after your incident?

5 A No.

6 Q Was there anyone with you inside your
7 vehicle when this occurred?

8 A No.

9 Q There is a, I believe, there is a suitcase
10 with clothing next to your car. Do you recognize
11 that item?

12 A Yes.

13 Q Do you know who that belongs to?

14 A Yes.

15 Q Who does that belong to?

16 A To me.

17 Q Do you know why your suitcase was on the
18 ground outside of your vehicle after your car --
19 after your incident?

20 A I don't know.

21 Q Do you know why you had a suitcase full of
22 clothing with you that day?

23 A Yes.

24 Q Why?

25 A 'Cause I got in an argument with the

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1 a vehicle.

2 Q So as you look at this picture, does that
3 remind you that you probably ran into that other
4 car; is that what you're saying?

5 A I'm not sure what you're asking --

6 MR. BLUT: Maybe -- I think the two of you
7 may not be pointing to the same silver car.

8 THE WITNESS: This one, right?

9 MR. BLUT: She is pointing to the one in
10 the middle. And just so the record is clear --

11 MR. SMERBER: Okay.

12 MR. BLUT: -- and I was following
13 something else.

14 BY MR. SMERBER:

15 Q Ma'am, what I meant -- and I appreciate
16 that, Counsel -- so as you look at the picture in
17 front you, if you look to the left. So that would
18 be this way (indicating).

19 A Oh, this one?

20 Q Yeah. Do you see that vehicle?

21 A Oh, yeah. I see that vehicle.

22 Q And do you see where there is some damage
23 to the front of that vehicle?

24 A Okay.

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1 Q Do you see what I'm referencing?
 2 A This one here (indicating)?
 3 Q Yes.
 4 MR. BLUT: Just for the record, that this
 5 one is on the left border.
 6 THE WITNESS: I don't know.
 7 BY MR. SMERBER:
 8 Q Here is what I want you to do. I want you
 9 to circle it for me. I am going to give you a pen.
 10 I want you to circle the silver vehicle that we're
 11 talking about.
 12 A This one?
 13 Q That one (indicating). Okay.
 14 As you look at that vehicle with the
 15 damage to the front of it, does that refresh your
 16 recollection as to how this incident occurred?
 17 A No, I don't know.
 18 Q Okay. Now, there is another vehicle.
 19 Again, yours is the blue -- it looks to me like kind
 20 of a minivan in the middle --
 21 A I don't have a minivan. It's a hatchback.
 22 Q Okay. I'm good with hatchback. So the
 23 blue hatchback right in the middle of the photograph
 24 is your car?
 25 A Yes.

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1 photograph. And in that photograph, this is another
 2 still taken from the surveillance video. This one is
 3 at 16 5:16:42. This shows a female sitting in a
 4 vehicle. Do you recognize who that female is?
 5 A Yes.
 6 Q Who is that?
 7 A Me.
 8 Q That is not your vehicle, correct?
 9 A Correct.
 10 Q There is a gentleman standing directly
 11 next to you in this photograph. Do you know who
 12 that gentleman is?
 13 A No.
 14 MR. BLUT: Just for the record, I'm not
 15 sure if it means anything but I know that there
 16 is multiple videos. And I'm not sure if this
 17 is one that was produced before. But I'm sure
 18 at some point we will have all of them. So it
 19 is what it is.
 20 MR. SMERBER: This is from the video that
 21 we produced that is in our production. And it
 22 is camera, I believe, the number on the bottom
 23 left hand corner signifies Camera No. 513. So
 24 if you want to cross reference it. I think
 25 that is how you would do it.

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1 Q Directly in front of it is another
 2 vehicle. It's like -- I guess, it's like a silver
 3 gray color as well.
 4 A Okay.
 5 Q Do you see that vehicle?
 6 A Yes.
 7 Q Seeing that vehicle right in front of your
 8 vehicle, does that refresh your recollection at all
 9 as to how this accident occurred?
 10 A No.
 11 Q Do you know who owns either of those
 12 vehicles?
 13 A No.
 14 MR. SMERBER: We're going to mark that
 15 picture as Exhibit B.
 16 (Exhibit B marked for
 17 identification.)
 18 BY MR. SMERBER:
 19 MR. SMERBER: I'm going to show another
 20 paragraph. I'm going to mark this as Exhibit C
 21 just so we know what we're talking about.
 22 (Exhibit C marked for
 23 identification.)
 24 BY MR. SMERBER:
 25 Q I want you to take a look at that

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1 MR. BLUT: Thank you. I know there are
 2 multiple. I'm not sure internally -- and since
 3 she hadn't been deposed, I understand how the
 4 production flows.
 5 BY MR. SMERBER:
 6 Q And again, I might have asked you this
 7 question and I apologize if I'm being redundant.
 8 The vehicle that you're sitting in at this point,
 9 that is not your vehicle, correct?
 10 A Correct.
 11 Q Do you know why you're in that vehicle?
 12 A No.
 13 Q Do you remember going into somebody else's
 14 vehicle after the incident occurred?
 15 A No.
 16 Q Do you know if that person offered to
 17 allow you into their vehicle?
 18 A No.
 19 Q If this gentleman in this photograph were
 20 to say that he did not allow you in his vehicle, do
 21 you have any reason to dispute that?
 22 MR. BLUT: Object to the form.
 23 THE WITNESS: Can you ask me again what
 24 you're asking me.
 25

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1 BY MR. SMERBER:

2 Q Yes. It is my understanding -- and this
3 is all subject to later proof -- but in my point, it
4 is my understanding that this gentleman in the
5 photograph that you're looking at, that that was his
6 car, okay. If that gentleman were to say that he
7 did not give you permission to get in his vehicle,
8 do you have any reason to dispute that?

9 MR. BLUT: Object to the form. You can
10 answer.

11 THE WITNESS: I guess.

12 BY MR. SMERBER:

13 Q You do?

14 A Well, like he -- he's saying he didn't let
15 me in his vehicle, then that is his word. So I
16 don't have an opinion. I just -- I'm just repeating
17 what you're telling me. Because I really don't have
18 an opinion.

19 Q What I'm asking you --

20 A What you're telling me --

21 Q -- what I'm asking you is: Do you have
22 any reason to believe that that person did allow you
23 into his vehicle?

24 A I don't have any opinion.

25 Q Let me ask you this way: As you sit here
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1 Q Do you have any recollection of any
2 interaction that you had with that man?

3 A No.

4 Q Do you recall having any physical contact
5 with that man?

6 A No.

7 Q I have seen in certain documents an
8 allegation, and I'm not saying whether or not it is
9 true, I don't know at this point, but I have seen an
10 allegation that you bit that man. Do you have any
11 recollection of that?

12 A No.

13 MR. BLUT: Belatedly object to the form.

14 THE WITNESS: I -- what was the question?

15 MR. SMERBER: No problem.

16 THE WITNESS: I'm confused.

17 BY MR. SMERBER:

18 Q Do you have any recollection as to whether
19 or not you bit that man?

20 A I did not bite that man.

21 Q Okay. So you do recall the intersections
22 that you had with that man to some extent because
23 you're telling me affirmatively that you did not
24 bite him, correct?

25 A I don't remember anything. But I know my
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1 today, is there any reason why you would think that
2 this person allowed you to get inside of their
3 vehicle?

4 A No.

5 MR. SMERBER: I'm going to show you
6 another photograph. We will mark this as
7 Exhibit D.

8 (Exhibit D marked for
9 identification.)

10 BY MR. SMERBER:

11 Q Again, in the center of this photograph
12 there is a female woman. Can you identify that
13 person?

14 A Yeah.

15 Q Who is that?

16 A That's me.

17 Q What are you wearing in this photograph
18 for the record?

19 A A brown sun dress.

20 Q And the same male individual is shown in
21 this photograph. He appears to be sticking his hand
22 out as if you guys are talking or he's saying
23 something to you. Do you recall what if anything he
24 said to you?

25 A No.

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1 nature, and a I would never bite anybody.

2 Q And ma'am, I'm not trying to be tedious.
3 I just have to get these things on the record, okay.
4 If I understand what you're saying, you don't
5 remember any of the intersections that you had with
6 this man, correct?

7 A Correct.

8 Q So because you cannot remember any of the
9 intersections that you had with him, you cannot tell
10 me affirmatively whether or not you bit him; is
11 that --

12 A I know I wouldn't bite anybody.

13 Q Okay. So you're telling me that based
14 upon your knowledge of yourself and how you would
15 act, you would not bite him?

16 A Yeah, I wouldn't bite people.

17 MR. BLUT: Let me know when is a good
18 break time. Whatever works.

19 MR. SMERBER: I just have a couple more
20 pictures.

21 MR. BLUT: Okay.

22 MR. SMERBER: I'm going to show you
23 another photograph. We are going to mark this
24 as Exhibit E.

25 (Exhibit E marked for

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1 identification.)
 2 **BY MR. SMERBER:**
 3 **Q** I want you to take a look at this
 4 photograph. In the very center right of the
 5 photograph, I believe you are shown wearing the same
 6 brown sun dress, correct?
 7 **A** Correct.
 8 **Q** There is a man standing behind you. Do
 9 you see him?
 10 **A** Yes.
 11 **Q** Is that the man that you contend
 12 restrained you?
 13 **A** I don't know.
 14 **Q** Do you have any recollection of a man in a
 15 uniform like that restraining you?
 16 **A** I don't know who restrained me.
 17 **Q** Okay.
 18 **A** I know it was someone in a uniform.
 19 **Q** How many --
 20 **A** I don't know if that is the person.
 21 **Q** Okay. Based upon that photograph, what do
 22 you think is happening at that point?
 23 **A** I don't know. People are watching
 24 something occur. I'm not sure what is going on. It
 25 looks like I'm -- I don't know what is going on in
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1 **MR. SMERBER:** I'm going to show you
 2 another picture. We're going to mark it as F.
 3 **(Exhibit F marked for**
 4 **identification.)**
 5 **BY MR. SMERBER:**
 6 **Q** I want you to keep E in front of you,
 7 though. Okay. Taking a look at that picture, in
 8 the very center of this picture, there is two
 9 tree -- I don't know what you call that. There is
 10 two trees there. Do you see those two trees?
 11 **A** Yes.
 12 **Q** Directly in between those two trees, there
 13 is a woman in a brown dress. Is that you?
 14 **A** Yes.
 15 **Q** Okay. And then there also appears to be
 16 that same officer in the uniform. Do you see him?
 17 **A** I guess you can make out there is somebody
 18 there.
 19 **Q** Okay. You can see that your arms and this
 20 other person's arms are touching each other,
 21 correct?
 22 **A** I guess I can see it, kind of.
 23 **Q** Okay.
 24 **A** I don't know what is going on.
 25 **Q** Do you remember having any physical
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1 that picture.
 2 **Q** What are you doing in that picture?
 3 **A** I don't know what I'm doing.
 4 **Q** How many people are touching you at that
 5 point?
 6 **A** It looks like one person.
 7 **Q** Do you recall at any point any one else
 8 touching you besides that person shown in the
 9 photograph?
 10 **A** I don't know. There's -- in this picture,
 11 it only looks like one person is there next to me.
 12 **Q** Do you remember at any point any
 13 additional people coming?
 14 **A** I remember more people, yes.
 15 **Q** How many more people?
 16 **A** Like a group of people, which --
 17 **Q** Were they all wearing uniforms like this?
 18 **A** No. They were wearing different outfits.
 19 **Q** What did the other outfits look like?
 20 **A** Like a blue shirt or -- I think -- I think
 21 were shirts. I don't know. I don't remember.
 22 **Q** Does this picture refresh your
 23 recollection at all as to the events that occurred
 24 on the date of your incident?
 25 **A** No.
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1 interaction like this with a police officer after
 2 your incident occurred?
 3 **A** No.
 4 **Q** Do you remember having any type of
 5 physical contact with the police officer during the
 6 events of your incident?
 7 **A** I don't know who I had contact with, but I
 8 had contact with somebody.
 9 **Q** Okay. I have read in this case
 10 allegations that you were wrestling with the police
 11 officer and resisting him. Do you dispute that?
 12 **MR. BLUT: Object to the form.**
 13 **THE WITNESS: I -- I -- I don't agree upon**
 14 **that.**
 15 **BY MR. SMERBER:**
 16 **Q** Okay. So it would be your contention that
 17 you were not wrestling or resisting an officer?
 18 **A** I don't -- I wouldn't resist an officer.
 19 **Q** Again, is that based upon your
 20 recollection from this date or is that just based
 21 upon your knowledge of yourself?
 22 **A** My knowledge of myself.
 23 **Q** Okay.
 24 **A** I don't remember what happened.
 25 **Q** So again, if I understand what you're
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1 saying, you cannot tell me whether or not you were
2 resisting a police officer because you don't
3 remember, but you think based upon your knowledge of
4 yourself that you wouldn't act that way?

5 A Yeah.

6 Q Do you have any reason to believe that on
7 the date of this incident you were acting out of
8 character for yourself?

9 A I don't know.

10 Q Do you believe that because you had been
11 in a fight with your boyfriend and decided to move
12 out of your home, and then got in a fight with your
13 sister, that maybe you were acting out of character
14 for yourself?

15 A Yeah, probably.

16 Q You would agree with me that if you were
17 shown on surveillance video struggling with this
18 officer, that that would be out of character for
19 you, correct?

20 MR. BLUT: Object to the form.

21 THE WITNESS: What was that again?

22 BY MR. SMERBER:

23 Q Would you agree with me that if you were
24 shown on surveillance video struggling with this
25 police officer, that that would be out of character

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1 A Right.

2 Q Okay. I'm just saying if I were to show
3 you a video of yourself, struggling with this police
4 officer then you would agree with me that that is
5 you acting out of character, correct?

6 MR. BLUT: Object to the form.

7 THE WITNESS: Yeah, I guess.

8 BY MR. SMERBER:

9 Q Okay. As you look in Exhibits D, E, and
10 F, are you able to identify anyone who works for the
11 Palms?

12 A I wouldn't know. I do recognize that as
13 Palms' property. Cause there is the sign right
14 here. That's the Palms' sign; isn't it?

15 Q Okay.

16 MR. BLUT: You cannot ask him questions.

17 THE WITNESS: Oh, I can't ask him
18 questions.

19 (Off the record.)

20 BY MR. SMERBER:

21 Q Ma'am, we're going back on the record.
22 You had a break and an opportunity to speak with
23 your counsel. You understand that all of the
24 admonishments that I previously gave you, they still
25 apply. You understand?

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1 for you?

2 MR. BLUT: Same objection.

3 THE WITNESS: I have never been shown a
4 video.

5 BY MR. SMERBER:

6 Q I'm not asking what your review of the
7 video is. I'm saying if you were shown a video and
8 it did show you struggling with this officer, that
9 that would be out of character for you, correct?

10 MR. BLUT: Same objection.

11 THE WITNESS: So you're saying if someone
12 were to show me a video that I'm wrestling with
13 an officer, that I would be surprised?

14 BY MR. SMERBER:

15 Q Yes. Do you think that that would be
16 something that you would do?

17 A But you're showing me a video. So -- what
18 are you asking me? I'm not quite sure. What --
19 what do you want to ask me? I don't quite
20 understand what you're getting at.

21 Q Okay. Let me break it down. You're
22 saying that you did not resist and struggle with
23 this officer. And you're saying that your basis for
24 that is that that is simply out of character for
25 you, you would not do that, right?

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1 A Understand.

2 Q Okay. So let's go back to the incident
3 that you had at the Palms. Can you tell me any
4 interaction that you had, physical or verbal, with
5 anyone from the Palms?

6 A I only would talk to a woman. That's all
7 I remember. And she worked for the Palms.

8 Q So you spoke to a woman from the Palms.
9 Was this during your incident or after?

10 A After.

11 Q So after your incident you spoke to a
12 woman, and do you know her name?

13 A No.

14 Q What did you and this woman speak to you
15 after your incident occurred?

16 A I don't remember. But I remember I
17 wouldn't talk to anybody. Any of the men. I wanted
18 to talk to a woman. I felt threatened. So I felt
19 like, that the only person I could talk to was a
20 woman.

21 Q So you requested to speak to a woman?

22 A That's -- I only would talk to the woman.
23 That's all I remember. There was -- there was only
24 one woman there, if I remember.

25 Q So there was a woman there, and you would

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1 only speak to her?

2 A Yeah.

3 Q Do you remember, did you have to -- did

4 you have to call out to this woman for her to come

5 talk to you?

6 A No, I don't remember any of that. I just

7 remember being able -- being able to talk to a

8 woman. That is the only thing I remember of the

9 whole incident. How I felt threatened, and I would

10 only talk to a woman.

11 Q So speaking to this woman made you feel

12 less threatened?

13 A Yes, because I was really threatened. And

14 another thing I should state is, I don't know if she

15 was from the Palms. I just know there was a woman

16 there. I assumed she was from the Palms.

17 Q Okay.

18 A But I'm not sure. And the reason I'm

19 assuming she worked for the Palms, it seemed like

20 she had some sort of an outfit that made me think

21 that.

22 Q What did her outfit looked like?

23 A I believe she was wearing a shirt. Like,

24 a -- like, a collared -- like a work shirt or

25 something. Like a -- not like a golf shirt, but it

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1 THE WITNESS: I don't know. I don't know.

2 I don't know.

3 BY MR. SMERBER:

4 Q Do you remember this woman --

5 A There is a whole period of I don't know.

6 Who is the ones that did that. There is a whole

7 blank period that I don't know what occurred.

8 Q What is the last thing that you do

9 remember --

10 A Um --

11 Q -- what is the last thing that you do

12 remember before the blank period again?

13 A Ask me that question again.

14 Q Okay. Let me put it in context. You told

15 me that you were driving back to the Palms to find

16 your sister, correct?

17 A Yes.

18 Q Then at some point you have what starts as

19 a blank period, right?

20 A Yes.

21 Q What is the last thing you remember before

22 that blank period starts?

23 A The last thing I remember? I remember

24 getting hit really hard by vehicle.

25 Q And then your memory goes blank for a

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1 looked like a golf shirt.

2 Q Okay. Let me see if I can help. Did the

3 uniform that this woman was wearing look different

4 from the uniform of the people that put you in the

5 restraints and pushed you on the ground?

6 A I don't know. I cannot answer that.

7 Q Okay.

8 A I don't know who put me on restraints.

9 Q So the only person that you even suspected

10 being with the Palms is a woman that you spoke to

11 after your incident occurred; is that fair?

12 A No. Because the people who were there

13 were all in uniform are surrounding me. I don't

14 know what they were, where they worked but they all

15 worked -- they were men of service, like people. I

16 thought they were fireman, to tell you the truth.

17 But I don't if they were firemen. I don't know what

18 they were. So actually I have no recollection. I

19 don't really know what happened. I just know that I

20 spoke to a woman because she was the only woman

21 there after the whole thing occurred.

22 Q Did this woman threaten you in any way?

23 A No.

24 Q Did this woman harm you in any way?

25 MR. BLUT: Object to form --

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1 period of time. And then what is the next thing

2 that you remember?

3 A I remember little bits and pieces. I

4 don't know what occurred first, what could have

5 occurred second. That is all fuzzy. I remember

6 talking to a woman. And I remember being pushed in

7 the ambulance type of thing where -- I also remember

8 being pushed in the hot pavement, really hard and my

9 face burning. I remember the sensation on my face.

10 And I remember the sensation on my leg. And I was

11 screaming. I remember being pushed hard. I

12 remember the zip ties, how that felt. I remember

13 the feeling of being tied and pushed. I remember

14 not being able to get up. I remember being burnt on

15 the -- on the sidewalk because I wasn't allowed to

16 stand up. I remember wanting to stand up and not

17 being able to stand up. I asked to stand up, and I

18 remember people telling me, no, you can't stand up

19 or -- I wasn't allowed to stand up so I had more

20 burns on my ass -- sorry. Excuse me. My butt.

21 Sorry about my language.

22 Q It's okay.

23 A It's upsetting, the whole thing so I get a

24 little frazzled by how I speak.

25 Q It's okay.

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1 A But I got burns on my butt because I
2 remember all the pain. That's what I remember the
3 most, is how much it hurt and how I wanted to stand
4 up and nobody let me stand up. And that really was
5 painful.

6 Q Who told you that you could not stand up?

7 A I don't know who told me I could not stand
8 up, but I know I wasn't allowed to stand up.
9 Because every time -- I just remember a crowd of
10 people. There were a crowd of people around me.
11 And I don't know who these people were.

12 Q Can you give me a physical description of
13 the people who told you, you could not stand up?

14 A No.

15 Q Could you tell me if they're male or
16 female?

17 A Male.

18 Q Could you tell me what they were wearing?

19 A No.

20 Q So you specifically remember that you were
21 not permitted to stand up; however, you can't tell
22 me anything about who told you, you can't stand up;
23 is that correct?

24 A All I know is that they were men.

25 Q Okay. A?

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1 And that's all I remember.

2 Q Do you remember ever telling anybody that
3 you were burning as you were sitting on the ground?

4 A I just remember screaming.

5 Q Okay. So screaming, but you're not
6 telling anybody that you were injured, you weren't
7 telling anybody that you were burning, you were just
8 screaming, correct?

9 A Yeah, because it hurt so much.

10 Q Okay.

11 A Like if you have ever been burned, you
12 would understand that you're just screaming.

13 Q But you were also just screaming before
14 you were ever placed on the ground, correct?

15 A Was I? I don't recall.

16 Q Well, that is what you told me about 20
17 minutes ago. You told me that when this officer
18 approached you, you remember screaming.

19 A I don't remember screaming. So if I did
20 state that, then I misunderstood your question
21 because I don't remember screaming. I remember
22 screaming on the ground, but I do not remember
23 screaming, just to scream.

24 Q So before you were placed on the ground,
25 you are saying you were not screaming at all?

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1 A And the time periods are going to be
2 fuzzy. I don't know how long things were there and
3 occurred. I know I was on the floor for quite a
4 while and I was not allow to get --
5 (Off the record.)

6 BY MR. SMERBER:

7 Q To get up, is that what you're going to
8 say?

9 A Probably.

10 Q Well, let me go back and we'll ask a
11 couple of follow-up questions. You said that you
12 remember being pushed. Who do you remember pushing
13 you?

14 A I don't know who did. I don't know.

15 Q Okay.

16 A I don't know.

17 Q You said that you remember that there was
18 a woman there speaking to you afterwards. Do you
19 have any recollection of this woman participating in
20 any of these events that you just described?

21 A I don't know. I don't know any of that.

22 Again, I don't remember. I don't know who was the
23 ones who were holding me down. I don't know any of
24 these things. I do know there was -- when I have a
25 memory, I remember a group of people surrounding me.

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1 A I don't know what occurred before I was
2 placed on the ground.

3 Q How about when you were placed on the
4 sidewalk, you said that you were placed on the
5 sidewalk at some point?

6 A Yes.

7 Q And you said that your butt was burning
8 because you were sitting on the sidewalk?

9 A Yeah. Yeah, I couldn't stand up. They
10 wouldn't let me stand up.

11 Q At that point did you tell anyone, hey,
12 I'm burning, I need to stand up?

13 A I don't remember what I told them, but I
14 remember just wanting to stand up. Like just keep
15 telling them I need to stand up. I just remember
16 that.

17 Q So --

18 A Like wanting to stand up. And every time
19 I tried to stand up, I was pushed back down.

20 Q Give me a physical description of the
21 person that pushed you back down when you were
22 trying to stand up.

23 A I don't know. It was a male. Probably
24 Caucasian.

25 Q Caucasian male --

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1 A I don't -- actually, you know what, I
2 don't know the race. So I don't know what they
3 were, but I know it was a male.
4 Q What were they wearing?
5 A I don't know.
6 Q And they would physically push you back
7 down to the ground, is what you're saying?
8 A Yeah. Every time I tried to go back up
9 'cause I was trying to stand up and I they wouldn't
10 let me stand up.
11 Q And it's your estimate, based upon this
12 nurse, that this went on for 30 minutes; is that
13 right?
14 A No. You have different instance.
15 Q Okay.
16 A We were talking about two different
17 things.
18 Q When were you on the ground for 30
19 minutes?
20 A I was on the ground on my left side of the
21 ground -- so like my whole left side, including my
22 face was on the ground.
23 Q Okay.
24 A And during this period of time, I believe
25 that was 20 minutes.

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1 Q Then during this time that you were on the
2 curb, however long that may have been, you never
3 told anyone that you were being injured while
4 sitting on the curb or that you were burning while
5 you were sitting on the curb, correct?
6 A I don't remember what I was saying.
7 Q Let me put it this way: As you sit here
8 today you have no recollection of ever telling
9 anyone that as you were sitting on the curb you were
10 being injured?
11 A I'm going to re -- resay what you're
12 saying, what I believe you're saying.
13 Q Okay.
14 A I do not remember what I said to anyone.
15 Q Okay.
16 A So it doesn't say that -- did I say
17 please, get me off the curb? I could have said
18 that. Easily I could have said that. I do not
19 remember anything I said.
20 Q Do you remember what anyone said to you?
21 A I do not remember anyone.
22 Q So as you are sitting on the curb you
23 don't remember what anyone said to you. When you
24 were on the asphalt for that 20 minute period, do
25 you remember what anyone said to you?

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1 Q Okay.
2 A I was in two instances held down.
3 Q Okay.
4 A So after they got me off the ground, I was
5 allowed to sit on the curb. And during that sitting
6 on the curb is when I wanted to stand up because my
7 butt kept burning.
8 Q So you were on the -- let's distinguish it
9 this way. One of the grounds that we're talking is
10 asphalt --
11 A Asphalt, yes.
12 Q -- the other one is a curb?
13 A Yes.
14 Q During the 20 minute period that you were
15 on the asphalt, did you ever tell anyone that you
16 were burning and you needed to be let up?
17 A I remember just screaming.
18 Q Now, how long were you sitting on the
19 curb?
20 A That, I don't know.
21 Q You have no idea how long were on this
22 curb?
23 A No.
24 Q Okay.
25 A I don't remember.

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1 A I remember I think someone was giving me
2 my rights. But I don't really remember. Like it
3 was so -- I don't know what was going on. So I
4 guess -- I don't know is better 'cause I don't know.
5 I don't know.
6 Q The lady that you were discussing a minute
7 ago, do you know what she looked like physically?
8 Let me clear that up a little bit. You said that
9 the only person that you would speak to after this
10 incident was a woman, correct?
11 A Yes.
12 Q Can you give me a physical description of
13 her?
14 A She was a woman and she had dark hair.
15 That's all I remember.
16 Q Do you remember if she was a larger woman
17 or a smaller woman?
18 A Probably average.
19 Q And you said that you would only speak to
20 this woman because you felt threatened by all the
21 men that were around, correct?
22 A Yes.
23 Q Did this woman offer you any type of aid?
24 A I don't remember.
25 Q But you did tell me that you don't

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1 remember being threatened by this woman at all,
2 right?

3 A I don't remember anything. I just
4 remember in my head I was afraid and there was only
5 one woman there. And that is the only person I
6 spoke to. That's all I remember. Do I remember
7 what she told me? No, I don't remember what she
8 told me. I don't remember if she offered me aid. I
9 don't remember if she threatened me. I do not
10 recall any of this. I only remember I would just
11 only speak to a woman. That's the only thing.

12 Q Well, can you tell me what if any
13 involvement my client had in your incident?

14 MR. BLUT: Object to the form.

15 THE WITNESS: It was on private property.
16 I do not recall who was the people that was
17 surrounding me. I do not recall who held me
18 down on the ground. I do not who -- recall who
19 told me I couldn't stand up or who let me sit
20 on the sidewalk to burn. I do not know who --
21 I do not recall who -- who was the people who
22 held me on the ground. I cannot answer your
23 question.

24 BY MR. SMERBER:

25 Q Do you know how hot the asphalt was on the
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1 information other than anything that we
2 discussed, he is entitled to know that.

3 THE WITNESS: I don't understand.

4 BY MR. SMERBER:

5 Q Can you tell me the names of any of the
6 Palms' security officers involved in your incident?

7 A No.

8 Q Can you give me a physical description of
9 any of the Palms' security officers involved in your
10 incident?

11 A No.

12 Q Can you tell me the specific actions taken
13 by any of the Palms' security officers involved in
14 your incident?

15 MR. BLUT: Object to the extent it calls
16 for attorney-client privilege.

17 If I told you something, not showed you
18 something, if I told you something, he is not
19 entitled to know that.

20 THE WITNESS: Wait. Say that again.

21 MR. SMERBER: Can you read the question
22 back.

23 THE WITNESS: What you told me. What did
24 you say?

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1 date of your incident?

2 A I do not know how hot, what the
3 temperature of the asphalt was.

4 Q I think I understand your previous
5 statement, that you cannot tell me what involvement
6 Palms' security had in this incident because you
7 don't know who did what; is that fair?

8 A Can you say the -- the question again.

9 Q Well, I'm trying to figure out because you
10 sued my client and you said that our security has
11 done something. And you're saying that you don't
12 know who committed what act or who did what to you,
13 right? You just know that it happened; is that
14 fair?

15 A And it was on the Palms' property.

16 Q So in terms of the prior history of any of
17 the Palms' security officers that were involved in
18 this incident, you don't know anything about that,
19 right?

20 MR. BLUT: Object to the extent it --

21 THE WITNESS: I can't --

22 MR. BLUT: If it is something I -- hold on
23 one second -- if it is something that I told
24 you, he is not entitled to that. That would be
25 attorney-client privilege. If you have any

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CRISTINA PAULOS 3/25/2013

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1 BY MR. SMERBER:

2 Q He is protecting his attorney-client
3 privilege. He is saying -- and I'm not entitled to
4 know anything that you and your counsel spoke about?

5 A Okay.

6 Q And if you reviewed something, if you
7 looked at something or you remember from the date of
8 your incident what happened cause you were there,
9 then you need to answer my question --

10 A Oh, I don't remember. So no, I don't
11 know.

12 Q Just to clarify, because we had a little
13 dialogue in between. You can't tell me what actions
14 any of the Palms' security officers took in these
15 events because you don't remember, right?

16 A I don't remember anything. You have to
17 look at the video cause I don't remember what
18 happened.

19 Q So you would go with whatever is on the
20 video, right?

21 MR. BLUT: Object to the form.

22 BY MR. SMERBER:

23 Q Is that correct?

24 A I don't have a choice. I don't remember
25 what occurred.

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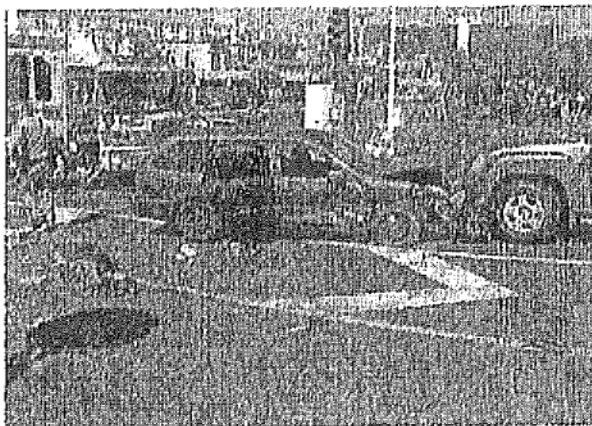
Incident File Full Report

Incident File #IN20110002284

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August 7, 2011 19:35

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August 7, 2011 19:35

2284 008.jpg



Reporting Party:

Supervisor:

Printed: November 18, 2011 9:16

Page 4 of 5

PAULOS000019

Incident File Full Report

Incident File #IN20110002204

Reporting Party:

Supervisor:

Printed: November 18, 2011 9:16

Page 5 of 5

PAULOS000020

EXHIBIT "C"

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EXHIBIT "C"



MORAN BRANDON
BENDAUID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

Page 1 of 1LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENTEvent # 110807-2714

Specific Crime <u>VEHICLE ACCIDENT</u>	Date Occurred <u>8-7-11</u>	Time Occurred <u>1515</u>
Location of Occurrence <u>FLAMINGO/PALMS WINNERS WAY, LV, NV 89103</u>		<input type="checkbox"/> City <input checked="" type="checkbox"/> County

Your Name (Last / First / Middle) <u>ROBERTO TORRES</u>						Date of Birth <u></u>		Social Security # <u></u>	
Race <u></u>	Sex <u></u>	Height <u></u>	Weight <u></u>	Hair <u></u>	Eyes <u></u>	Work Schol. (Hours) <u></u>	(Days Off) <u></u>	Business / School <u></u>	
Residence Address: (Number & Street) <u></u>				Bldg./Apt. # City <u></u>		State Zip Code <u></u>		Res. Phone: <u></u>	
Bus. (Local) Address: (Number & Street) <u></u>				Bldg./Apt. # City <u></u>		State Zip Code <u></u>		Bus. Phone: <u></u>	
Best place to contact you during the day <u></u>								Best time to contact you during the day <u></u>	
								Occupation <u>SECURITY</u>	
								Depart Date (if visitor) <u></u>	
								Can You Identify the Suspect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

DETAILS AT APPROXIMATELY 3:20 PM ON AUG 7, 2011, I
SECURITY OFFICER. TRAFFIC ACCIDENT WAS CALLED TO THE
FRONT MAIN ROAD FOR ACCIDENT. WHEN I ARRIVED
NOTED CAR JUST ARRIVED ON IS
I PARKED THE TRUCK TO ROAD EXIT GOING OUT
WHEN I NOTED A FEMALE TRYING TO LEAVE THE
ACCIDENT. OFFICER BOSS TOLD HER TO STOP WHEN
SHE TRIED TO HIT HIM, SHE THEN TRIED TO REACH
FOR HIS GUN. OFFICER BOSS TOOK HER DOWN
TO THE GROUND AND RAN FOR ASSISTANCE
FROM ME. I HELPED KEEP HER DOWN TILL
MORE POLICE SHOWED UP AT ACCIDENT

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS
 COMPLETED AT (LOCATION) FLAMINGO/PALMS WINNERS WAY, LV, NV
 ON THE 7 DAY OF AUGUST AT 1600 (AM/PM) 2011

Witness/Officer: [Signature]

(SIGNATURE)

ON

[Signature]

LVMPD 0010

EXHIBIT "D"

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EXHIBIT "D"



MORAN BRANDON
BENDAUID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 CRISTINA PAULOS, an individual,) CASE NO.:
5) 2:13-cv-01546-JCM-PAL
6 Plaintiff,)
7)
8 v.)
9)
10 FCH1, LLC, a Nevada limited)
11 liability company; LAS VEGAS)
12 METROPOLITAN POLICE DEPARTMENT,)
13 a government entity; JAKE VON)
14 GOLDBERG, an individual;)
15 JEFFREY B. SWAN, an individual;)
16 JEANNIE HOUSTON, an individual;)
17 AARON BACA, an individual; and)
18 DOES 1 through 10,)
19 Defendants.)
20 _____)

21 DEPOSITION OF OFFICER AARON BACA

22 Taken on Friday, February 28, 2014

23 at 1:07 p.m.

24 at 630 South Fourth Street

25 Las Vegas, Nevada

Reported by: Gina J. Mendez, CCR No. 787

1 first arrived?

2 A. I saw two, three vehicles that appeared to be
3 involved in an accident.

4 Q. Do you know who Cristina Paulos is?

5 A. I do now.

6 Q. Do you recall coming in contact with Ms. Paulos
7 on the date of the incident?

8 A. Yes.

9 Q. Can you kind of give me a general description of
10 what you recall in terms of your interaction with
11 Ms. Paulos that day?

12 A. I tried to contact her to see if she was okay as
13 far as the accident after she was pointed out by some
14 people that apparently she had crashed into. One male
15 stated to me, She's trying to steal my car. I saw the
16 female in the -- like inside the vehicle, I think it was
17 a green SUV type vehicle.

18 When I made contact with her she wasn't listening
19 to me, she kept walking away from me and trying to turn
20 around and finally when she did make contact with me she
21 started screaming and I felt that she was reaching for
22 my firearm.

23 Q. Here's what I want to do. I have some
24 surveillance video that's been produced in this case. I
25 want to have you take a look at it, it's only three or

1 better shot. Again, it's the back of you, but can you
2 identify that as yourself?

3 A. Yes, I can.

4 Q. At this point can you describe the interaction
5 that's taking place between yourself and Ms. Paulos?

6 A. I'm asking her if she's okay to my recollection.

7 Q. Do you recall what her response was, if any?

8 A. No response.

9 Q. I'm going to play the video a little more for
10 you. At approximately 15:16:51 it appears that
11 Ms. Paulos turns away from you and starts walking away
12 from you. You said earlier that she kept walking away
13 from you; is this what you were describing?

14 A. Yes.

15 Q. Again, were you giving her directions at this
16 point or speaking to her or having any communication
17 with her?

18 A. I was attempting to.

19 Q. Do you recall specifically were you asking her to
20 do anything or were you just asking her questions about
21 her welfare at this point?

22 A. I don't remember specifically.

23 Q. I just stopped it, we're at 15:16:55, if you look
24 in the middle of the frame right between the two palm
25 trees it appears that there's an exchange going on

1 between yourself and Ms. Paulos, are you able to
2 describe for me what's happening at that point?

3 A. To my recollection she started screaming and she
4 reached for my firearm.

5 Q. I'm stopping the tape at 15:17:00, can you please
6 describe what's taking place on the screen at this time.

7 A. After she attempted to grab my firearm I created
8 distance from her. At that point she was away from me
9 approximately two or three feet, I attempted to get her
10 into custody by placing her hands behind her back.

11 Q. At this point is Plaintiff cooperating with you
12 or is she resisting?

13 A. She's resisting.

14 Q. Do you recall if you were giving her verbal
15 directions at that time?

16 A. Yes.

17 Q. Do you recall specifically what those were?

18 A. Police officer, stop resisting.

19 Q. Did Plaintiff make -- and I'm sorry, I kept using
20 the term "plaintiff," I mean Cristina Paulos, do you
21 understand?

22 A. Yes.

23 Q. Did Plaintiff have any verbal response to you
24 during these events?

25 A. Just yelling.

1 Q. Was she yelling anything in particular or was it
2 just incoherent kind of screaming?

3 A. Incoherent, yeah.

4 Q. Play the video a little more for you. I've
5 stopped the video at 15:17:02, can you describe what's
6 going on at this point?

7 A. I took Ms. Paulos to the ground in an attempt to
8 handcuff her.

9 Q. So at approximately 15:17:02 Ms. Paulos is taken
10 to the ground. Once she's taken to the ground is she
11 being compliant with you?

12 A. No.

13 Q. When she's on the ground are you continuing to
14 give her verbal instruction?

15 A. Yes.

16 Q. And what would those instructions be?

17 A. Stop resisting, show me your hands, give me your
18 hands, stop resisting.

19 Q. And I believe it's reflected on the video, but
20 during these events you're wearing a Las Vegas
21 Metropolitan police officer uniform; is that correct?

22 A. Summer uniform, yes.

23 Q. That consists of a badge that says Las Vegas
24 Metropolitan Police Department, correct?

25 A. Yes, sir.

1 to identify where you were at on the frame? It's right
2 here.

3 A. Yes.

4 Q. I want you to pay attention to what you're doing.
5 I'm going to show you about 10 seconds of film and then
6 I'm going to ask you questions about what you're doing
7 and why you're doing it.

8 Okay?

9 A. Okay.

10 Q. I actually played about eight seconds. I stopped
11 it at 15:17:33. Did you see what occurred during that
12 time? Do you want me to play it again?

13 A. I think I summoned somebody.

14 Q. Do you recall on the date of this incident
15 summoning someone for help or assistance?

16 A. Yes.

17 Q. Do you recall who that was?

18 A. I believe it was a black female adult wearing a
19 Palms security uniform.

20 Q. And if we look on the video, I'm going to back it
21 up to 15:17:25 again, I'm going to play it for you, tell
22 me if you see the individual you recall summoning?

23 A. Yes.

24 Q. And it appears that it's a blond female wearing a
25 black uniform; is that correct?

1 A. Yes.

2 Q. Do you recall why you gestured to that person for
3 assistance?

4 A. I still didn't have Ms. Paulos in custody.

5 Q. Would you agree with me that the Palms security
6 officer became involved in this matter at your request?

7 A. Yes.

8 Q. I assume the point of what's going on here was
9 that you were trying to detain the plaintiff at that
10 point, correct?

11 A. Yes.

12 Q. Was that being done at your discretion or at the
13 Palms' discretion?

14 A. At mine.

15 Q. Would you agree that Plaintiff was being detained
16 under your control and not the Palms' control?

17 A. Yes.

18 Q. Do you agree that the Palms did not participate
19 in this matter until you requested them to do so?

20 A. Yes.

21 Q. Did you request that they aid in detaining the
22 plaintiff because that was necessary?

23 A. Yes.

24 Q. Was that for your safety?

25 A. For my safety and for Ms. Paulos' safety.

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
) ss.

3 COUNTY OF CLARK)

4 I, Gina J. Mendez, a duly commissioned Notary
5 Public, Clark County, State of Nevada, do hereby
6 certify: That I reported the taking of the deposition
7 of the witness, OFFICER AARON BACA, commencing on
8 Friday, February 28, 2014 at 1:07 o'clock p.m.;

9 That prior to being examined, the witness was
10 by me duly sworn to testify to the truth. That I
11 thereafter transcribed my said shorthand notes into
12 typewriting and that the typewritten transcript of said
13 deposition is a complete, true and accurate
14 transcription of said shorthand notes.

15 I further certify that I am not a relative or
16 employee of an attorney or counsel of any of the
17 parties, nor a relative or employee of an attorney or
18 counsel involved in said action, nor a person
19 financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand in my office in the County of Clark, State of
22 Nevada, this 11th day of March, 2014.

23
24 /s/Gina J. Mendez

25 Gina J. Mendez, CCR No. 787

EXHIBIT "E"

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EXHIBIT "E"

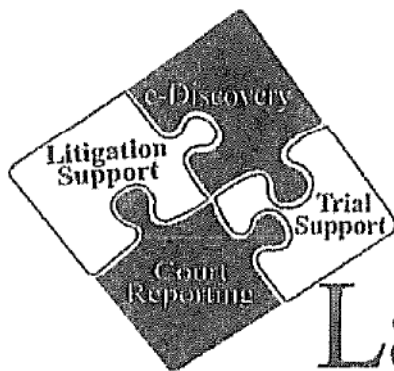


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Lawyer Solutions Group

Transcript of the Testimony of **CRISTINA PAULOS**

Date: March 25, 2013

Case: PAULOS v. FCH1

prepare. discover. litigate

Lawyer Solutions Group, LLC

Phone: 702-430-5003

Fax: 702-974-0125

Email: scheduling@lawyersolutionsgroup.com

Internet: lawyersolutionsgroup.com

CRISTINA PAULOS 3/25/2013

1

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 CRISTINA PAULOS, an individual)
5 Plaintiff,)Case No. A12-666754-C
6)Dept No. XXVI
7 vs.)
8)
9 FCHI, LLC, a Nevada limited)
10 liability company; LAS VEGAS)
11 METROPOLITAN POLICE DEPARTMENT)
12 a government entity; DOES 1)
13 through 10,)
14 Defendants.)
15 -----)

16 DEPOSITION OF CRISTINA PAULOS
17 Taken on March 25, 2013
18 At 9:02 a.m.
19 At Moran Law Firm
20 630 S. Fourth Street
21 Las Vegas, Nevada
22
23
24

25 Reported by: Yvette Rodriguez, CCR NO. 860

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CRISTINA PAULOS 3/25/2013

3

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CRISTINA PAULOS 3/25/2013

2

1 APPEARANCES:
2 For the Plaintiff:
3 BY: ELLIOT BLUT, ESQ.
4 300 S. Fourth Street, Suite 701
5 Las Vegas, Nevada 89101
6 For the Defendants:
7
8 BY: JUSTIN W. SMERBER, ESQ.
9 MORAN LAW FIRM
10 630 South Fourth Street
11 Las Vegas, Nevada 89101
12 BY: CRAIG R. ANDERSON, ESQ.
13 MARQUIS AURBACH COFFING
14 10001 Park Run
15 Las Vegas, Nevada 89145
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CRISTINA PAULOS 3/25/2013

4

1 LAS VEGAS, NEVADA, MARCH 25, 2013
2 9:02 A.M.
3 -oOo-
4 (In an off-the-record discussion
5 held prior to the commencement
6 of the deposition proceedings,
7 counsel agreed to waive the
8 court reporter requirements
9 under Rule 30(b)(4) of the
10 Nevada Rules of Civil
11 Procedure.)
12 -oOo-
13 Whereupon,
14 CRISTINA PAULOS,
15 having been first duly sworn to testify to the
16 truth, the whole truth and nothing but the truth,
17 was examined and testified as follows:
18 -oOo-
19 EXAMINATION
20 BY MR. SMERBER:
21 Q Could you please state your name for the
22 record.
23 A Cristina Paulos.
24 Q Have you ever had your deposition taken
25 before?

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CRISTINA PAULOS 3/25/2013

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1 A Yes. Actually, it was under my parents'
2 name. So it wasn't my vehicle. I was just using
3 it. I just like to call it mine just because, you
4 know, I was driving it.
5 Q Okay. Do you -- can you tell me the type
6 of accident that you had. Did it involve just your
7 vehicle or did it involve multiple vehicles?
8 A It involved multiple vehicles.
9 Q How many?
10 A I believe three.
11 Q Do you know who caused the accident?
12 A No.
13 Q Do you know if you sustained any injuries
14 in that accidents?
15 A Yes.
16 Q What injuries did you sustain in that
17 accident?
18 A The seat belt teared my skin off my
19 breast.
20 Q What breast, your right or your left?
21 A My left.
22 Q Did your air bag deploy?
23 A Yes.
24 Q Do you know if you sustained any injuries
25 or burns as a result of the air bag deploying?
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CRISTINA PAULOS 3/25/2013

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1 A No.
2 Q Besides the seatbelt tearing the skin off
3 of your left breast, did you sustain any other
4 injury in that accident?
5 A No.
6 Q Can you tell me what you did immediately
7 after the accident occurred?
8 A No.
9 Q Do you have any recollection of the event
10 that occurred immediately after your accident?
11 A Some.
12 Q Tell me what you do remember occurring
13 after your accident.
14 A I remember being pushed on the floor and
15 screaming and being obtained in zip ties.
16 Q Who pushed you on the floor?
17 A I'm not sure. Somebody in a uniform.
18 Q What did the uniform look like?
19 A I'm not sure. Just a general uniform.
20 Q What color was the uniform?
21 A I don't remember.
22 Q Was the person a male or female --
23 A Male.
24 MR. BLUT: You have to wait till he
25 finishes, even though you can anticipate his
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CRISTINA PAULOS 3/25/2013

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1 question.
2 BY MR. SMERBER:
3 Q Was it one person who pushed you on the
4 floor or multiple people?
5 A I'm not sure.
6 Q Did this person say anything to you prior
7 to pushing you on the floor?
8 A No, not that I recall.
9 Q Did you say anything to this person prior
10 to pushing you -- prior to them pushing you on the
11 floor?
12 A Just screamed.
13 Q What did you scream? Anything verbal or
14 just actual screams?
15 A Just screaming.
16 Q Do you know why you were screaming?
17 A Cause I was scared.
18 Q And you said that you were pushed on the
19 floor and you continued to scream, correct?
20 A Yes.
21 Q And you're just screaming out screams, no
22 verbal words, correct?
23 A Not that I can recall.
24 Q And then you were placed in zip ties?
25 A No, I was in zip ties when they pushed me
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CRISTINA PAULOS 3/25/2013

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1 on the floor.
2 Q Okay.
3 A They restrained my -- they restrained me
4 so I was restrained. On the floor, it -- they
5 restrained me.
6 Q Were you restrained with the zip ties
7 before you were placed on the ground?
8 A No.
9 Q So you were put on the ground and then you
10 were put in zip ties, correct?
11 A I don't remember.
12 Q Were you resisting this person in the
13 uniform?
14 A No.
15 Q Were you complying with their requests?
16 A There was no request made. Not that I
17 remember.
18 Q Okay.
19 A I don't remember the person saying
20 anything to me.
21 Q So your recollection as you sit here today
22 is that this person approached you, without saying
23 anything to you, and pushed you on the ground, and
24 at some point, put zip ties on you?
25 MR. BLUT: Object to the form.
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CRISTINA PAULOS 3/25/2013

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1 saying, you cannot tell me whether or not you were
2 resisting a police officer because you don't
3 remember, but you think based upon your knowledge of
4 yourself that you wouldn't act that way?

5 A Yeah.

6 Q Do you have any reason to believe that on
7 the date of this incident you were acting out of
8 character for yourself?

9 A I don't know.

10 Q Do you believe that because you had been
11 in a fight with your boyfriend and decided to move
12 out of your home, and then got in a fight with your
13 sister, that maybe you were acting out of character
14 for yourself?

15 A Yeah, probably.

16 Q You would agree with me that if you were
17 shown on surveillance video struggling with this
18 police officer, that that would be out of character for
19 you, correct?

20 MR. BLUT: Object to the form.

21 THE WITNESS: What was that again?

22 BY MR. SMERBER:

23 Q Would you agree with me that if you were
24 shown on surveillance video struggling with this
25 police officer, that that would be out of character

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CRISTINA PAULOS 3/25/2013

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1 A Right.

2 Q Okay. I'm just saying if I were to show
3 you a video of yourself, struggling with this police
4 officer then you would agree with me that that is
5 you acting out of character, correct?

6 MR. BLUT: Object to the form.

7 THE WITNESS: Yeah, I guess.

8 BY MR. SMERBER:

9 Q Okay. As you look in Exhibits D, E, and
10 F, are you able to identify anyone who works for the
11 Palms?

12 A I wouldn't know. I do recognize that as
13 Palms' property. Cause there is the sign right
14 here. That's the Palms' sign; isn't it?

15 Q Okay.

16 MR. BLUT: You cannot ask him questions.

17 THE WITNESS: Oh, I can't ask him
18 questions.

19 (Off the record.)

20 BY MR. SMERBER:

21 Q Ma'am, we're going back on the record.

22 You had a break and an opportunity to speak with
23 your counsel. You understand that all of the
24 admonishments that I previously gave you, they still
25 apply. You understand?

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CRISTINA PAULOS 3/25/2013

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1 for you?

2 MR. BLUT: Same objection.

3 THE WITNESS: I have never been shown a
4 video.

5 BY MR. SMERBER:

6 Q I'm not asking what your review of the
7 video is. I'm saying if you were shown a video and
8 it did show you struggling with this officer, that
9 that would be out of character for you, correct?

10 MR. BLUT: Same objection.

11 THE WITNESS: So you're saying if someone
12 were to show me a video that I'm wrestling with
13 an officer, that I would be surprised?

14 BY MR. SMERBER:

15 Q Yes. Do you think that that would be
16 something that you would do?

17 A But you're showing me a video. So -- what
18 are you asking me? I'm not quite sure. What --
19 what do you want to ask me? I don't quite
20 understand what you're getting at.

21 Q Okay. Let me break it down. You're
22 saying that you did not resist and struggle with
23 this officer. And you're saying that your basis for
24 that is that that is simply out of character for
25 you, you would not do that, right?

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CRISTINA PAULOS 3/25/2013

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1 A Understand.

2 Q Okay. So let's go back to the incident
3 that you had at the Palms. Can you tell me any
4 interaction that you had, physical or verbal, with
5 anyone from the Palms?

6 A I only would talk to a woman. That's all
7 I remember. And she worked for the Palms.

8 Q So you spoke to a woman from the Palms.
9 Was this during your incident or after?

10 A After.

11 Q So after your incident you spoke to a
12 woman, and do you know her name?

13 A No.

14 Q What did you and this woman speak to you
15 after your incident occurred?

16 A I don't remember. But I remember I
17 wouldn't talk to anybody. Any of the men. I wanted
18 to talk to a woman. I felt threatened. So I felt
19 like, that the only person I could talk to was a
20 woman.

21 Q So you requested to speak to a woman?

22 A That's -- I only would talk to the woman.

23 That's all I remember. There was -- there was only
24 one woman there, if I remember.

25 Q So there was a woman there, and you would

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CRISTINA PAULOS 3/25/2013

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1 Q Did --
 2 A I wasn't really attacking my father.
 3 Q Did your father suffer any injuries?
 4 A No.
 5 Q Who was your boyfriend?
 6 A Terry Woltman.
 7 Q The same one from August 7, 2011?
 8 A Yes.
 9 Q Did you attack Terry?
 10 A No.
 11 Q So in L.A. did Terry suffer any injuries?
 12 A No.
 13 Q When did you break up with Terry?
 14 A Right after that.
 15 Q Is he still local?
 16 A No.
 17 Q Where is he at now?
 18 A Mexico City.
 19 Q So you began to have manic episode in L.A.
 20 Terry called your parents, they picked you and drove
 21 you back to Las Vegas. The manic episode lasted
 22 about two days, and that is how you ended up at St.
 23 Rose?
 24 A Yes.
 25 Q Understanding your attorney's prior
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CRISTINA PAULOS 3/25/2013

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1 objection, other than the force used on you on
 2 August 7, 2011, is there any other action the police
 3 took that you are suing them for to your knowledge
 4 at this point?
 5 MR. BLUT: Object to the form.
 6 THE WITNESS: My only knowledge is the
 7 burns and injuries and the mental health.
 8 BY MR. ANDERSON:
 9 Q And the burns, are the ones to your thigh,
 10 your face, and your right butt cheek, correct?
 11 A And my leg.
 12 Q Your leg?
 13 A Yeah.
 14 Q And are you including the breast burn --
 15 A No.
 16 MR. ANDERSON: Okay. That's all I got.
 17 MR. SMERBER: I don't have anything else.
 18 MR. BLUT: Send me the signature page.
 19 -oOo-
 20 (Whereupon, the deposition
 21 concluded at 2:45 p.m.)
 22
 23
 24
 25
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CRISTINA PAULOS 3/25/2013

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1 CERTIFICATE OF DEPONENT
 2 PAGE LINE CHANGE REASON
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 19 I, CRISTINA PAULOS, deponent herein, do
 hereby certify and declare the within and
 20 foregoing transcription to be my deposition in
 21 said action; under penalty of perjury, that I
 have read, corrected, and do hereby affix my
 22 signature to said deposition.
 23
 24 CRISTINA PAULOS, Deponent Date
 25
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CRISTINA PAULOS 3/25/2013

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1 CERTIFICATE OF REPORTER
 2 STATE OF NEVADA)
) ss:
 3 COUNTY OF CLARK)
 4 I, Yvette Rodriguez, a duly commissioned
 5 Notary Public, Clark County, State of Nevada,
 6 do hereby certify:
 7 That I reported the deposition
 8 of CRISTINA PAULOS, commencing on March 25, 2013 at
 9 2:45 p.m.
 10 That prior to being deposed, the witness
 11 was duly sworn by me to testify to the truth;
 12 that I thereafter transcribed my said shorthand
 13 notes into typewriting; and that the
 14 typewritten transcript is a complete, true, and
 15 accurate transcription of my said shorthand
 16 notes.
 17 I further certify that I am not a relative
 18 or employee of counsel or any of the parties,
 19 nor a relative or employee of the parties
 20 involved in said action, nor a person
 21 financially interested in the action.
 22 IN WITNESS WHEREOF, I have set my hand
 23 in my office in the County of Clark, State of
 24 Nevada, this 11th day of April, 2013
 /s/YVETTE RODRIGUEZ
 25
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EXHIBIT "F"

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EXHIBIT "F"

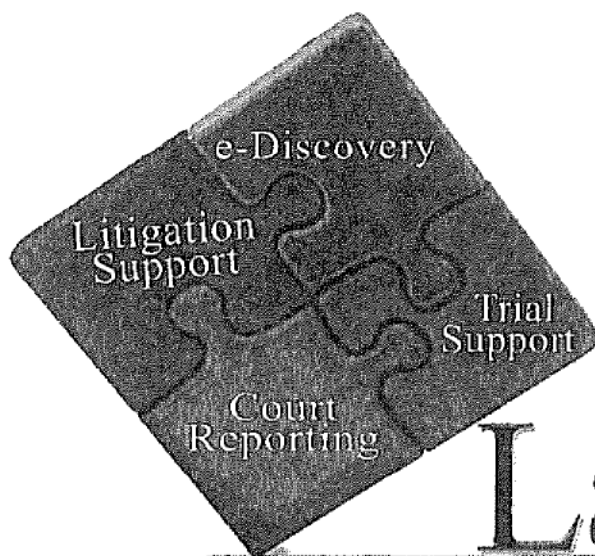


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Transcript of **STEVEN BAKER**

Date: September 4, 2014

Case: PAULOS v. FCH1, LLC

Lawyer Solutions Group
Phone: 702-430-5003

STEVEN BAKER

9/4/2014

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CRISTINA PAULOS, an)
individual,) CASE NO.: 2:13-cv-01546-
) JCM-PAL
Plaintiff,)
)
vs.)
)
FCHI, LLC, a Nevada)
limited liability)
company; LAS VEGAS)
METROPOLITAN POLICE)
DEPARTMENT, a government)
entity; JAKE VON GOLDBERG,)
an individual; JEFFREY B.)
SWAN an individual; JEANNIE)
HOUSTON, an individual;)
AARON BACA, an individual,)
and DOES 1 through 10,)
)
Defendants.)
)
)

DEPOSITION OF STEVEN T. BAKER
Taken on Thursday, September 4, 2014
At 10:00 a.m.
630 South Fourth Street
Las Vegas, Nevada

Reported by: RENE' HANNAH, CCR #326

Page 3

(NRCF Rule 30(b)(4) was waived by the parties prior
to commencement of the deposition.)

Thereupon,

STEVEN BAKER,

having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MR. SMERBER:

Q Mr. Baker, please state your full name for
the record.

A Steven T. Baker.

Q Mr. Baker, my understanding is you've been
deposed on several occasions; is that correct?

A Correct.

Q Do I need to go through the standard
admonitions or are you comfortable proceeding
without them?

A We can proceed. I'm comfortable.

Q The only one that I'll remind you of is
you've been given an oath, subject to the same
penalty of perjury as if you were sitting in a
court. Do you understand that?

A I do.

Q All right. Mr. Baker, you have been
retained as an expert in this matter. Are you aware

Page 2

APPEARANCES:

For the Plaintiff: ELLIOT BLUT, ESQ.

Blut Law Group, APC
300 South Fourth Street #701
Las Vegas, Nevada 89101
(702) 384-1050
eblut@blutlaw.com

For the Defendant FCHI, LLC:

JUSTIN W. SMERBER, ESQ.
Moran Law Firm
630 south fourth street
Las Vegas, Nevada 89101
(702) 384-8424

For the Defendant LVMPD:

CRAIG R. ANDERSON, ESQ.
Marquis Aurbach Coffing
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Las Vegas, Nevada 89145
(702) 382-0711
canderson@maclaw.com

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Examination by: Direct Cross Re-direct Recross

Mr. Smerber 3 49 54
Mr. Anderson 49 54
Mr. Blut 53

EXHIBITS

Number	Description	Page
21	Defendant's	
22	Exhibit A	7
	Exhibit B	9
23	Exhibit B-1	10
	Exhibit C	12
24	or trial	
25	Exhibit D	55

Page 4

of that?

A Yes.

Q Who retained you as an expert?

A Elliott Blut.

Q When were you first retained?

A Let me look at my book for the exact date.
April 10th of '13.

Q And what's your understanding of your
expert designation in this matter?

A I was retained to look at the security
practices and the procedures surrounding an arrest
and detention in the parking lot entrance to The
Palms.

Q Okay. Were you asked to evaluate the
Palm's private security practices or were you asked
to assess and evaluate The Palms as well as Metro?

A Predominantly The Palms. Metro as far as
how they interacted.

Q Okay.

A So they're kind of intertwined. You can't
really separate them fully.

Q Mr. Baker, your services that you provides
us here as expert, do you do it under a company or
sole proprietorship?

A I am a sole proprietor under the name VTI

1 (Pages 1 to 4)

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STEVEN BAKER

9/4/2014

Page 5

1 Associates.
 2 Q What's it called again?
 3 A VTI Associates.
 4 Q How long have you been operating that
 5 company?
 6 A Since about 19, I guess '95, '96,
 7 somewhere in there.
 8 Q Do you have any employees other than
 9 yourself that are employed by VTI Associates?
 10 A Currently I have one part-timer.
 11 Q Did that one part-time employee assist you
 12 in, participate in any way in your expert opinions
 13 in this matter?
 14 A No. They've had no involvement in any
 15 expert work.
 16 Q So as far as the expert reports and
 17 opinions that you've provided in this matter, these
 18 were generated solely by you without the assistance
 19 of anyone; is that fair?
 20 A Correct.
 21 Q Okay. Mr. Baker, I understand that you've
 22 got, I think it's three formal degrees; is that
 23 correct.
 24 A Yes.
 25 Q What are your formal degrees you have?

Page 6

1 A I have an associates degree from Lancing
 2 Community College.
 3 Q In?
 4 A Business.
 5 Q Okay.
 6 A I have a bachelors in criminal justice
 7 from Lake Superior State.
 8 Q Okay.
 9 A And a masters in security administration
 10 from the University of Detroit.
 11 Q So as far as your formal degrees, seems
 12 like the masters is the one that is most applicable
 13 to your expert opinions in this case; is that fair?
 14 A Masters or bachelors.
 15 Q Okay. Criminal justice is a little
 16 broader; would you agree?
 17 A Yes. It was a criminal justice slash loss
 18 control, so it was a private-sector focused degree.
 19 Q We're not dealing with any loss control in
 20 this case, though, right?
 21 A Well, it was just a term at the time that
 22 they were using for the private sector.
 23 Q Let's run through some exhibits real quick
 24 that we'll attach to the deposition. The first one
 25 that I have, I'm going to give you a copy, it's your

Page 7

1 February 24th, 2014 report.
 2 MR. SMERBER: Gentlemen, I assume you have
 3 these?
 4 MR. BLUT: Sure, I'll take one.
 5 MR. SMERBER: This is everything I'm going
 6 to give him.
 7 BY MR. SMERBER:
 8 Q Do you recognize that document, sir?
 9 A Yes, I think it's just got two first pages
 10 on it.
 11 Q Yeah, I got it that way. In any event.
 12 A Interesting.
 13 Q Aside from the fact it has two first
 14 pages, is that your report that you drafted in this
 15 matter?
 16 A I'm trying to remember if I had one or two
 17 that I had at the time where I typed something. It
 18 could be something like a double first page. But
 19 yeah, it appears to be that, correct.
 20 Q Okay. We're going to mark that as Exhibit
 21 A real quick so we can reference it.
 22 (Defendant's Exhibit A marked.)
 23 BY MR. SMERBER:
 24 Q Now, Mr. Baker, is this the only report
 25 you have drafted in this matter?

Page 8

1 A Only report. I may have had a couple of
 2 versions in there that were typos. I'm trying to
 3 think of that. That's one I did have. So I'm not
 4 sure what sequence of what.
 5 Q You're indicating there are potentially
 6 other drafts of your report?
 7 A Yeah. They would have been in the file I
 8 produced.
 9 Q Do you happen to have that file that you
 10 produced?
 11 A I already gave it to you, didn't I? Back
 12 around the original date?
 13 MR. BLUT: At some point we gave you guys
 14 a CV that had all those, I believe expert and Mr.
 15 Baker, CV. You had asked for it and we turned it
 16 over.
 17 BY MR. SMERBER:
 18 Q Okay.
 19 A If not, I can reproduce it. Not a
 20 problem.
 21 Q These drafts, would they contain anything
 22 else of substance or would it just be typographical
 23 changes?
 24 A No, I believe just typo changes.
 25 Q If you look at Exhibit A in front of you

2 (Pages 5 to 8)

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STEVEN BAKER

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Page 17

1 15:20:13?
 2 A They were still there at the incident.
 3 Q So anybody who's there is involved?
 4 A We could say that.
 5 Q Okay.
 6 A You know, either witness, participant.
 7 Q So what is their role after 15:20:13 in
 8 your professional opinion?
 9 A They're still providing support.
 10 Q They're providing support to whom?
 11 A To Metro and to the incident itself.
 12 Q Okay.
 13 A We don't know who some of these other
 14 people I see them interacting with are. There's no
 15 documentation saying what they're doing, so.
 16 Q Okay.
 17 A So I would be speculating as to what that
 18 involvement is, but they're still interacting. They
 19 didn't leave.
 20 Q So as far as what their involvement was
 21 after 15:20:13, you would only be speculating as to
 22 what that involvement was?
 23 A Other than what's in the documentation,
 24 yes.
 25 Q Is there something else you can identify

Page 18

1 in the documentation, because I haven't read
 2 anything that you say they did after 15:20:13.
 3 A Yeah, we can just guess at what they're
 4 doing from the video.
 5 Q So it's important, I know it sounds like
 6 I'm nitpicking with you as far as Palms' involvement
 7 in this case after 15:20:13, you don't have any
 8 opinions on what they're doing because as far as
 9 what they're doing you could only speculate; is that
 10 fair?
 11 A Well, we are, it would be speculation.
 12 Q Okay. So let's go to the next page of
 13 your report, page 3. That's where you have your
 14 analysis and opinion; is that correct?
 15 A Correct.
 16 Q Your first opinion there appears to be
 17 focused on Metro and what they're doing, and I'll
 18 tell you why I'm saying that. The heading says
 19 defendant LVMPD failed to exercise care and caution
 20 for plaintiff by keeping plaintiff prone on the hot
 21 pavement after restraining. Is my understanding
 22 correct that opinion is directed towards Metro and
 23 their actions?
 24 A Predominantly, yes. As I said, there is
 25 some interaction here. It's a little tough to

Page 19

1 totally separate everything out, but yes.
 2 Q Let me ask you this. The interaction or
 3 overlap that pertained to Palms, is that contained
 4 within opinion two?
 5 A Well, it's addressed in both because even
 6 in number one, even though that's the heading title,
 7 I also have the same LVMPD officer and Palms
 8 security officer.
 9 Q Okay. So let's, I was going to try and
 10 save some time because I'm paying for it, but let's
 11 go through the first one. The first one you do
 12 reference both of them. You say, "Once plaintiff
 13 was under control and retained, defendant LVMPD
 14 officer and Palms security officer should have
 15 removed plaintiff from the hot pavement"; is that
 16 correct?
 17 A Correct.
 18 Q Is there anything else in that opinion
 19 that pertains to the Palms or is it just that they
 20 should have moved the plaintiff off the hot
 21 pavement?
 22 A The rest of it is just supporting
 23 information, so that's the gist of that, if you
 24 will.
 25 Q Okay. Let's focus on the very first line

Page 20

1 of this that I skipped. It says, "LVMPD officer was
 2 justified in his arrest of plaintiff," correct?
 3 A Yes.
 4 Q So would you agree with me that the
 5 plaintiff was arrested by Metro in this matter; is
 6 that fair?
 7 A Well, detained, arrested, depending,
 8 because there was no actual charge from the initial
 9 part. But they're taking that person into custody,
 10 if you will, might be a better way to clarify that.
 11 Q Okay.
 12 A It was done by Metro, yes.
 13 Q So the terminology in your report is
 14 incorrect when you say arrest?
 15 A Well.
 16 Q You know what? That didn't sound right.
 17 I didn't mean to be harsh.
 18 A Okay.
 19 Q But you would agree with me at this point
 20 there wasn't an arrest?
 21 A Correct. It was more of a detention at
 22 least at that time. We don't know exactly why, you
 23 know. And we didn't find that out until much later
 24 what exactly Mr. Baca was thinking there.
 25 Q So no arrest in this matter?

5 (Pages 17 to 20)

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STEVEN BAKER

9/4/2014

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<p>1 A Correct.</p> <p>2 Q And as far as what the Palms' involvement</p> <p>3 was after the arrest and detention, you can only</p> <p>4 speculate; is that fair?</p> <p>5 MR. BLUT: Object to the form.</p> <p>6 THE WITNESS: Well, yes, based on what's</p> <p>7 in the video because there is no written</p> <p>8 documentation.</p> <p>9 MR. SMERBER: Okay. That's all the</p> <p>10 questions I have.</p> <p>11 MR. ANDERSON: I'll be quick.</p> <p>12 CROSS-EXAMINATION</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q Mr. Baker, my name is Craig Anderson. I</p> <p>15 represent the cops. I've got the police officers in</p> <p>16 this matter. Have you ever worked as a policeman?</p> <p>17 A No, sir.</p> <p>18 Q Have you ever gone to a police academy?</p> <p>19 A Taught in some, assisted in some, but I've</p> <p>20 never attended them as a police officer.</p> <p>21 Q Have you ever served as an expert against</p> <p>22 a law enforcement agency or police officer before?</p> <p>23 A No.</p> <p>24 Q Have you ever received any specific</p> <p>25 training in the Fourth Amendment?</p>	<p>1 the cuffs, no, I don't have any issues with that.</p> <p>2 Q Okay. At what point did you believe Miss</p> <p>3 Paulos should have been lifted off the ground?</p> <p>4 A Well, just within moments, I'm not sure</p> <p>5 how many seconds, it's less than minutes after the</p> <p>6 officer actually gets the custodial control and gets</p> <p>7 her into handcuffs, the two other units arrive. So</p> <p>8 now you've got four caged units available. That's</p> <p>9 where you then put her in the cage. That's why</p> <p>10 we've got a caged vehicle.</p> <p>11 Q Have you ever gone hands-on with an</p> <p>12 individual during your career?</p> <p>13 A Yes.</p> <p>14 Q When that occurred and you have been</p> <p>15 involved in an altercation similar to Officer Baca,</p> <p>16 do you get tired?</p> <p>17 A Absolutely.</p> <p>18 Q Is it surprising how quickly your body</p> <p>19 loses its oxygen?</p> <p>20 A It's amazing how quickly you lose it.</p> <p>21 Q And so if I understand correctly, correct</p> <p>22 me if I'm wrong, it's your opinion the officers have</p> <p>23 got Miss Paulos to her feet around the time the</p> <p>24 second group of officers arrive?</p> <p>25 A Either that officer or the second group of</p>
Page 50	Page 52
<p>1 A Multiple classes or things where it's been</p> <p>2 discussed.</p> <p>3 Q Okay, classes. Have you ever taught the</p> <p>4 Forth Amendment?</p> <p>5 A No, because it really isn't a private</p> <p>6 sector issue as much as it is a public. There's</p> <p>7 some cross-over in certain states, but.</p> <p>8 Q At trial do you intend to render an</p> <p>9 opinion against the individual officers or the Las</p> <p>10 Vegas Metropolitan Police Department?</p> <p>11 A Only what's included in the report about</p> <p>12 the time on the ground.</p> <p>13 Q Okay. And so let's see if we're on the</p> <p>14 same page. You agree that Metro had the right to</p> <p>15 take Miss Paulos into custody?</p> <p>16 A Correct.</p> <p>17 Q Do you have any criticisms of the actual</p> <p>18 taking her to the ground?</p> <p>19 A No.</p> <p>20 Q So your criticisms against the officers</p> <p>21 are for the time spent on the ground?</p> <p>22 A Yes. Some up there it does appear that</p> <p>23 the officer at one time reaches up and holds her</p> <p>24 head to the ground, too, which I do have a little</p> <p>25 issue with. But as far as that, getting her into</p>	<p>1 officers, the back-up officers could have absolutely</p> <p>2 taken her and put her in the vehicle.</p> <p>3 Q Okay. Do you have any criticisms of</p> <p>4 Officer Baca? You understand he's the primary</p> <p>5 officer?</p> <p>6 A Correct.</p> <p>7 Q Do you have any criticisms of his conduct</p> <p>8 prior to the second group of officers arriving</p> <p>9 beyond him touching her head?</p> <p>10 A No.</p> <p>11 Q Okay. Now, you stated in your report that</p> <p>12 you're unsure how long she was on the ground.</p> <p>13 A Correct.</p> <p>14 Q And from the time that she's handcuffed</p> <p>15 until the paramedics, from the time she went down</p> <p>16 until the paragraphs arrived, which is roughly nine</p> <p>17 minutes according to your report.</p> <p>18 A Yes.</p> <p>19 Q I'm reading from the paragraph.</p> <p>20 A I believe it's, I have since found out it</p> <p>21 was like 32 to 36 that she was transported. Right</p> <p>22 in there. 30 some minutes.</p> <p>23 Q All right. Is it your opinion that she</p> <p>24 was on the ground for that entire nine minutes?</p> <p>25 A I do not know.</p>

13 (Pages 49 to 52)

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STEVEN BAKER

9/4/2014

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1 CERTIFICATE OF REPORTER
 2 STATE OF NEVADA)
) ss:
 3 COUNTY OF CLARK)
 4 I, Rene' Hannah, Certified Court Reporter,
 5 do hereby certify:
 6 That I reported the deposition of STEVEN
 7 T. BAKER, commencing on Thursday, September 4th,
 8 2014, at 10:00 a.m.
 9 That prior to being deposed, the witness
 10 was duly sworn by me to testify to the truth. That
 11 I thereafter transcribed my said shorthand notes
 12 into typewriting and that the typewritten transcript
 13 is a complete, true and accurate transcription of my
 14 said shorthand notes.
 15 I further certify that I am not a relative
 16 or employee of counsel of any of the parties, nor a
 17 relative or employee of the parties involved in said
 18 action, nor a person financially interested in
 19 the action.
 20 IN WITNESS WHEREOF, I have set my hand in
 21 my office in the County of Clark, State of Nevada,
 22 this 16TH day of September, 2014.
 23
 24 /s/ Rene R. Hannah
 25 RENE' R. HANNAH, CCR NO. 326

15 (Page 57)

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EXHIBIT "G"

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EXHIBIT "G"



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001090

001090

Alan W. Zajic, CPP, CSP, ICPS – Security Consultant – Nevada License No. 978

March 24, 2013

Justin W. Smerber, Esq.
Moran Law Firm, LLC
630 South Fourth Street
Las Vegas, Nevada 89101

Re: Cristina Paulos vs. F.P. Holdings, L.P, et al
Clark County Case No.: A-12-666754
For Defendant F.P. Holdings, L.P.

Dear Mr. Smerber,

Please accept this letter as my Initial Expert Disclosure Report in the above referenced matter. This Initial Report is based on the materials reviewed as of this date. Any subsequent evidence, deposition testimony, documents or additional investigation may subject this report to alteration, modification or amplification. I would anticipate a timely addendum to this initial report in the future.

For the purposes of this report Cristina Paulos will be referred to as "Plaintiff". F.P. Holdings, L.P. will be referred to as "Palms" and Las Vegas Metropolitan Police Department will be referred to as "LVMPD"

Experience and Qualifications:

I have over 35 years of practical, hands on experience in the areas of security, hospitality and public contact primarily in the gaming environments. I am currently a Council Vice President for ASIS International with oversight responsibility for the Gaming and Wagering Protection Council, Banking and Financial Institutions Security Council and the Retail and Loss Prevention Council. I am a past Chairman of the Gaming and Wagering Protection Council and the Hospitality, Entertainment and Tourism Council and am an active member of the ASIS International Security organization nationally and in Nevada. I hold the designation of Certified Protection Professional (CPP) with ASIS International.

I am also a member and am a Board Director of the International Association of Certified Surveillance Professionals and hold the designation of Certified Surveillance Professional (CSP). Also in addition I am a member of the International Association of Professional Security Consultants, the International Society of Crime Prevention Practitioners, and other professional organizations. I hold the Designation of International Crime Prevention Specialist (ICPS) with the ISCPP.

My experience includes consulting for gaming facilities in various jurisdictions including Nevada where I actively conduct consulting projects and training of casino security personnel. I am an instructor at the University of Nevada at Reno in the Gaming Management Program and at UNLV for the International Gaming Institute where I regularly conduct classes in security and surveillance applications.

I have also lectured and presented security and surveillance sessions as an invited guest speaker at national and regional seminars on security applications to include ASIS International, International Security Conferences, the Global Gaming Exposition, World Game Protection Conference and others.

Alan W. Zajic, CPP, CSP, ICPS – Security Consultant – Nevada License No. 978

I am a licensed Security Consultant in the State of Nevada and hold professional licenses for private investigations and security operations (Private Patrolman). I have extensive training and experience in both the proprietary and contract security disciplines and have extensive experience in Forensic Security Consulting in gaming environments. All of this experience and training allow me to opine in this matter. I am currently certified in Techniques of Alcohol Management by TAM of Nevada. A complete copy of my most recent CV is attached for your reference.

(See Exhibit A)

I have previously testified in the 8th Judicial District of Nevada, and other jurisdictions, and have been accepted as an expert witness in various security and surveillance areas, gaming, casino security, multi unit housing, retail, bar and nightclub security, and in crisis intervention. A listing of the cases where I have testified during the four years preceding this report is attached.

(See Exhibit B)

As a security professional I have had articles published or have been interviewed by the media in various professional publications or consumer news publications. A listing of the known media events I have participated in during at least the Last 10 years is attached.

(See Exhibit C)

Methodology:

The methodology utilized in my analysis of this case is based on the review of documents available to me as of the date of this report *(See Exhibit D)* and is consistent with IAPSC Forensic Methodology¹ which has been widely utilized and peer reviewed. My analysis is consistent with good and accepted practices within the security industry, my experience as a security practitioner, my experience as a Nevada licensed security consultant and professional instructor, all of which has been applied to the evidence presented.

Scope and Retention:

I was first contacted in this matter by Justin W. Smerber, Esq. on 01/31/13. After reviewing this matter for any known conflicts I was given a basic fact pattern and circumstances surrounding this matter. I subsequently agreed to perform the services of a Forensic Security Consultant up to and including testimony at deposition or trial if requested.

Fee Schedule:

My fees for services in this matter are consistent with my standard agreement. I am charging \$325.00 per hour for all work. Requested travel by either party involves full day rates of \$2,600.00 per day plus travel expenses to include Business Class Airfares.

¹ International Association of Professional Security Consultants, Forensic Methodology

Alan W. Zajic, CPP, CSP, ICPS – Security Consultant – Nevada License No. 978

Initial Opinions:

This Initial Report is based on the materials reviewed as of this date. Any subsequent evidence, deposition testimony, documents or additional investigation may subject this report to alteration, modification or amplification. I would anticipate a timely addendum to this initial report in the future.

- 1. Palms Security personnel were not in control of Plaintiff and were assisting LVMPD in the detention of Plaintiff at the scene. The incident was a police matter.**

A traffic accident involving the Plaintiff occurred at the primary vehicle ingress/egress location at the Palms at approximately 15:20 hours. LVMPD responded with a police officer to the scene. Security personnel at the Palms also responded to the location. A female Security Officer, Jeanne Houston, was the first to respond. [Palms security report, PAULOS000016-00020] The proprietary security report also clearly indicates that LVMPD Officer Baca attempted to take the Plaintiff into custody and requested the assistance of security officer Houston.

Security officer Houston completed a voluntary statement and provided it to Officer Baca. The following is a typed version of her statement:

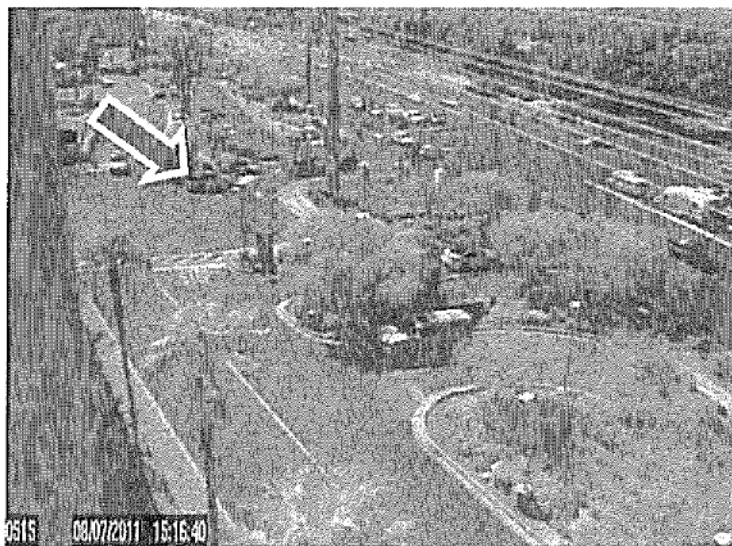
"At approximately 3:20 pm on Aug 7, 2011 I security officer Jeannie Houston was called to the front main doors for accident. When I arrived Metro had just arrived on s..... I parked the truck to block exit going out when I witness a female trying to leave the accident. Officer Baca told her to stop when she tried to hit him, she then tried to reach for his gun. Officer Baca took her down to the ground and ask for assistance from me. I helped keep her down till more Metro showed up at the accident."

In reviewing the video coverage of this incident the LVMPD police car arrives on scene at approximately 15:16:12 hours.



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Shortly after LVMPD Officer Baca arrives Security Officer Houston arrives in the security truck at 15:16:40. The video evidence matches the written statement of security officer Houston.



LVMPD Officer Baca first attempts to control Plaintiff who is actively resisting him at 15:16:56. Plaintiff has already left the scene, returned, created a disturbance and had been in the driver's seat of the other parties vehicle.



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LVMPD Officer Baca is required to control Plaintiff who is out of control by bringing her to the ground at 15:17:02.



At approximately 15:17:27 LVMPD Officer Baca waves to Palms Security Officer Houston to assist him.



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Security Officer Houston is then observed responding to LVMPD Officer Baca's request as she is talking on the security radio at 15:17:29



Security Officer Houston is then observed assisting LVMPD Officer Baca in controlling Plaintiff at 15:17:29.



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LVMPD Officer Baca removes his handcuffs from his belt and with the assistance of Security Officer Houston is now able to place handcuffs on the Plaintiff at approximately 15:17:49



Additional LVMPD Officers arrive along with additional Palms Security Officers to control traffic. There are at least 3 LVMPD officers now on scene at 15:19:56.



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Although the camera pans away from the arrest by LVMPD towards the intersection, it returns and clearly indicates that Security Officer Houston has now turned Plaintiff fully over to LVMPD officers on scene at 15:20:12



The actions of Palms Security Officer Houston were professional, reasonable under the circumstances and appropriate. When Houston first arrives she does not interfere or immediately assist until she is summoned by LVMPD Officer Baca to assist him in controlling the obviously combative and irrational Plaintiff. Once Summoned by Baca, Security Officer Houston appropriately assisted LVMPD with containment until the arrival of LVMPD backup officers on scene.

Upon arrival of additional LVMPD backup officers Houston disengaged, appropriately, and let the additional LVMPD Officers assist in the arrest of Plaintiff.

LVMPD was in full control of the Plaintiff, the custody decisions, and the requested involvement by Palms Security to assist in restraining the Plaintiff. LVMPD Officer Baca had the statutory authority to request assistance from Security Officer Houston as defined by NRS 171.132.

NRS 171.132 Person making arrest may summon assistance. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.
(Added to NRS by 1967, 1402)

Alan W. Zajic, CPP, CSP, ICPS – Security Consultant – Nevada License No. 978

Summary:

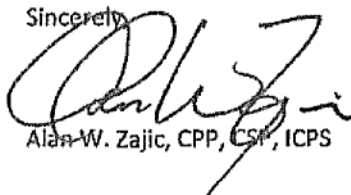
Palms Security responded to an incident created by the Plaintiff at the primary ingress/egress point for vehicle traffic to the business. Plaintiff was acting in an irrational and dangerous manner as depicted in the video evidence reviewed in this matter.

Security Officer Houston responded in a professional and appropriate manner and was subsequently requested by a sworn police officer to assist him in controlling the combative Plaintiff. Security Officer Houston assisted LVMPD Officer Baca until he was able to place Plaintiff in restraints and until additional LVMPD Officers arrived on scene. Palms Security Officers also assisted in traffic control during the incident until sufficient police arrived. Once sufficient police arrived, Houston extracted herself from assisting Baca.

The actions of Palms security personnel were more than reasonable, appropriate and professional under the circumstances and were well within or exceeded the common practices and Standard of Care of similar security environments and conditions.

The video coverage of the incident is sufficient to accurately document the actions and compare to the witness statements and reports in this matter. I look forward to additional discovery to include deposition testimony and additional investigation. I will supplement this Initial Expert Disclosure Report as necessary or as requested in a timely manner.

Sincerely,



Alan W. Zajic, CPP, CSP, ICPS

EXHIBIT "H"

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EXHIBIT "H"



MORAN BRANDON
BENDAUID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

Alan W. Zajic, CPP, CSP, ICPS – Security Consultant – Nevada License No. 978

June 19, 2014

Justin W. Smerber, Esq.
Moran Law Firm, LLC
630 South Fourth Street
Las Vegas, Nevada 89101

Re: Cristina Paulos vs. F.P. Holdings, L.P, et al
United States District Court, District of Nevada, Case No. 2:13-cv-01546-JCM-PAL
For Defendant F.P. Holdings, L.P.

First Addendum to Initial Expert Disclosure Report

Dear Mr. Smerber,

Please accept this letter as my First Addendum/Supplement to my Initial Expert Disclosure Report dated 03/24/2013. This Addendum is based on the materials reviewed as of this date. Any subsequent evidence, deposition testimony, documents or additional investigation may subject this report to alteration, modification or amplification. I will supplement this Addendum/Supplement and my initial report as required or requested.

For the purposes of this report Cristina Paulos will be referred to as "Plaintiff". F.P. Holdings, L.P. will be referred to as "Palms" and Las Vegas Metropolitan Police Department will be referred to as "LVMPD".

All of the opinions and basis for them in my original report remain unchanged.

Additional Documents Received:

The following additional discovery and documents have been received and reviewed in this matter since my initial report of 03/24/2013:

15. Deposition Transcript of Christina Paulos taken 03/25/2013
16. Deposition Transcript of Aaron Baca taken 02/28/2014
17. Plaintiff's Expert Report of Steven T. Baker
18. Defendant Officer Aaron Baca's Answers to Plaintiff's First Set of Interrogatories
19. Defendant Officer Jeffrey B. Swan's Answers to Plaintiff's First Set of Interrogatories
20. Defendant Officer Jake Von Goldberg's Responses to Plaintiff's first set of Interrogatories

Alan W. Zajic, CPP, CSP, ICPS – Security Consultant – Nevada License No. 978

Testimony from 03/24/2013 to 06/19/2014:

Voletta Ireland vs. Sayegh Deposition	Clark County, NV Case No. A-12-661571-C
Lilliana Flores vs. Las Vegas 51's Deposition	Clark County, NV Case No. A-11-653515-C
Jane Doe vs. Carnival Corporation Deposition	U.S. District Court, Miami Division Case No. 13-CV-20167-KMW
Donna McReynolds/Corynn Gnass vs. Opbiz, LLC Trial Testimony	Clark County, NV Case No. A-09-602305

Professional Presentations from 03/24/2013 to 06/19/2014:

Southern California Surveillance Symposium, October 2013
Keynote Speaker on Surveillance responses to Critical Incidents in Gaming environments

Nightclub and Bar Show, March 2014
Primary Speaker in a session on Managing Social Behavior during closing periods presented to nightclub and bar owners and managers.

National Indian Gaming Association Conference, May 2014
Invited Guest Speaker on Critical Response in Gaming Environments for Active Shooter and Robbery Incidents.

Media Articles from 03/24/2014 to 06/19/2014:

Pittsburg Tribune Review Interview: Casino Data Hacking, March 2014
Interviewed on casino customer data breaches as a result of the recent data hacking at Las Vegas Sands, Corp.

I am attaching my most recent Curriculum Vitae as of 12/15/2013.

(See Exhibit A)

Alan W. Zajic, CPP, CSP, ICPS – Security Consultant – Nevada License No. 978

Additional Support and Opinions:

- 1. Palms Security personnel were not in control of Plaintiff and were assisting LVMPD in the detention of Plaintiff at the scene. The incident was a police matter.**

The deposition testimony of Plaintiff supports the opinion that this was a police matter and that Palms security personnel acted in a professional manner in response to the accident and subsequent actions by Plaintiff that blocked the main entrance to the facility.

Plaintiff testified that a male pushed her to the ground and that person was wearing a uniform. Plaintiff could not identify that the female security officer (Houston) pushed her to the ground. [Paulos deposition, p.46] Plaintiff did not know who restrained her [Paulos deposition, p.65 and 68] Plaintiff further testified that she did not know who put her in restraints. [Paulos deposition, p. 74]

Plaintiff also testified that she spoke to a woman after the incident that worked for the Palms and that she would only speak to a woman and felt threatened by the men. Plaintiff felt that speaking to a woman made her feel less threatened. [Paulos deposition pp. 72-73]

The testimony of police officer Aaron Baca also supports the opinion that this was a police matter and that Palms acted reasonably, appropriately and in a manner consistent with common practices in cooperation with police for a casino security department. LVMPD officer Aaron Baca testified in his deposition that when he arrived and made contact with Plaintiff she was screaming and felt she was reaching for his firearm. [Baca deposition, p.11 and p. 15] Baca further testified that he took Plaintiff to the ground. [Baca deposition, p.16]

Baca also testified and identified on the video that he summoned a black female adult wearing a Palms security uniform [Baca deposition, p. 18] and that the Palms security officer became involved at his request and direction [Baca deposition, p.19]. Baca further testified that Plaintiff was being detained under his control and direction and not the Palms. Baca also testified that Palms did not participate in the detention until his request and that he requested the aid of Palms security in detaining Plaintiff. [Baca deposition, p. 19]

Baca testified that the Palms security officer was attempting to assist him in getting Plaintiff's arms from underneath her and that the actions of the Palms security officer did not exceed his requests [Baca deposition, p.20], or that they were inappropriate. Baca also testified that it was not the Palms security officer's discretion as to where Plaintiff was being detained [Baca deposition, p.28] or for how long [Baca deposition, p. 29]

The summary in my Initial Expert Disclosure Report remains the same and the additional documents provided further supports my opinions in this matter. The following is the summary from my original report dated 03/24/2013:

Alan W. Zajic, CPP, CSP, ICPS – Security Consultant – Nevada License No. 978

Summary:

Palms Security responded to an incident created by the Plaintiff at the primary ingress/egress point for vehicle traffic to the business. Plaintiff was acting in an irrational and dangerous manner as depicted in the video evidence reviewed in this matter.

Security Officer Houston responded in a professional and appropriate manner and was subsequently requested by a sworn police officer to assist him in controlling the combative Plaintiff. Security Officer Houston assisted LVMPD Officer Baca until he was able to place Plaintiff in restraints and until additional LVMPD Officers arrived on scene. Palms Security Officers also assisted in traffic control during the incident until sufficient police arrived. Once sufficient police arrived, Houston extracted herself from assisting Baca.

The actions of Palms security personnel were more than reasonable, appropriate and professional under the circumstances and were well within or exceeded the common practices and Standard of Care of similar security environments and conditions.

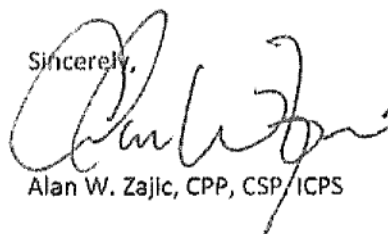
The video coverage of the incident is sufficient to accurately document the actions and compare to the witness statements and reports in this matter. I look forward to additional discovery to include deposition testimony and additional investigation. I will supplement this Initial Expert Disclosure Report as necessary or as requested in a timely manner.

The testimony of LVMPD officer Baca clearly demonstrates that he was in control of the contact and subsequent detention of Plaintiff and that he requested the assistance of Palms security personnel which was appropriate and well within his authority.

As previously stated this Addendum/Supplement is provided based on additional documents and deposition testimony received after my initial report.

I look forward to testifying in this matter.

Sincerely,



Alan W. Zajic, CPP, CSP, ICPS

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CLERK OF THE COURT

Marquis Aurbach Coffing
 Craig R. Anderson, Esq.
 Nevada Bar No. 6882
 10001 Park Run Drive
 Las Vegas, Nevada 89145
 Telephone: (702) 382-0711
 Facsimile: (702) 382-5816
 canderson@maclaw.com

Attorneys for Defendants LVMPD and Ofc. Swan

DISTRICT COURT**CLARK COUNTY, NEVADA**

CRISTINA PAULOS,

Plaintiff,

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

vs.

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

Defendants.

DEFENDANTS LVMPD AND OFC.
BACA'S MOTION FOR SUMMARY
JUDGMENT

Defendants Las Vegas Metropolitan Police Department ("LVMPD") and Officer Aaron Baca ("Ofc. Baca"), (collectively "LVMPD Defendants"), by and through their attorney of record, Craig R. Anderson, Esq., with the law firm of Marquis Aurbach Coffing, hereby moves this court for summary judgment. This Motion is made and based upon all papers, pleadings, and records on file herein, the attached Memorandum of Points & Authorities, and such oral argument, testimony and evidence as the court may entertain.

Dated this 4 day of January, 2016.

MARQUIS AURBACH COFFING

By:

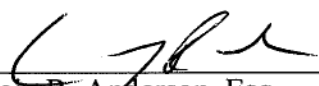
Craig R. Anderson, Esq.
 Nevada Bar No. 6882
 10001 Park Run Drive
 Las Vegas, Nevada 89145
 Attorney(s) for LVMPD Defendants

NOTICE OF MOTION

You and each of you will please take notice that DEFENDANTS LVMPD AND OFC. BACA'S MOTION FOR SUMMARY JUDGMENT will come on regularly for hearing on the 3rd day of MARCH, 2016, at the hour of 9:00A.m., or as soon thereafter as counsel may be heard, in Department 32 in the above-referenced court.

Dated this 6 day of January, 2016.

MARQUIS AURBACH COFFING

By 
Craig R. Anderson, Esq.
Nevada Bar No. 6882
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for LVMPD Defendants

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiff Cristina Paulos ("Paulos") alleges that LVMPD officer Aaron Baca ("Ofc. Baca") acted negligently when he detained her on August 7, 2011. On that date, Paulos caused two car accidents in front of the Palms Hotel and Casino ("the Palms"). After the second accident, Paulos exited her vehicle and fled the scene. Paulos eventually returned and attempted to steal the second vehicle she hit. After her theft attempt failed, Ofc. Baca attempted to contact Paulos and ascertain "what was going on." In response, Paulos lunged at him and reached toward his firearm. Ofc. Baca thwarted Paulos' assault and attempted to take her into custody from a standing position. Paulos resisted. Based upon Paulos' resistance, Ofc. Baca pushed Paulos to the pavement. Once on the ground, Paulos continued to resist and refused to surrender her arms/wrists. Unable to gain control of Paulos, Ofc. Baca summoned the assistance of Palms security guard, co-defendant Jeannie Houston ("Houston"). After about one minute, Ofc. Baca and Houston were able to get Paulos into handcuffs. Once handcuffed, Paulos remained on the ground for 2 minutes and 50 seconds while Ofc. Baca summoned medical assistance, updated

1 Even if officer Baca had used excessive force against Paulos in violation of a constitutional
2 right, LVMPD defendants would still be entitled to qualified immunity if they can show that the
3 right that Paulos claims is not “clearly established.” *Mattos*, 661 F.3d at 440 (citing *Pearson*, 555
4 U.S. at 223). In this analysis, courts determine “whether it would be clear to a reasonable officer
5 that his conduct was unlawful in the situation he confronted.” *Deorle*, 272 F.3d at 1278–79.

6 The Ninth Circuit has developed a three-step inquiry for determining whether a right is
7 clearly established. See *Boyd v. Benton Cnty.*, 374 F.3d 773, 781 (9th Cir. 2004). First, courts must
8 examine whether “the right is clearly established by decisional authority of the Supreme Court or
9 [the Ninth] Circuit. *Id.* Next, “[i]n the absence of binding precedent, [the Ninth Circuit] look[s] to
10 whatever decisional law is available . . . including decisions of state courts, other circuits, and
11 district courts.” *Id.* (internal quotation marks omitted). Finally, even when there is no relevant case
12 law available, courts analyze whether “an officer’s conduct ‘is so patently violative of the
13 constitutional right that reasonable officials would know without guidance from the courts that the
14 action was unconstitutional’” *Id.* (quoting *Deorle*, 272 F.3d at 1286) (emphasis added).

15 Here, there are no binding decisions analyzing whether restraining a suspect on asphalt hot
16 enough to cause severe burns violates the Fourth Amendment. There is, however, a district court
17 case within the Ninth Circuit, as well as two circuit court cases outside this circuit, with
18 circumstances comparable to the instant case. The court will therefore analyze whether taken
19 together, these cases carve out a clearly established right. The court will then proceed to address
20 whether officer Baca’s conduct was patently violative of the constitutional right.

21 **a. Non-binding case law**

22 In *Price v. County of San Diego*, the district court found that leaving a suspect restrained
23 on hot asphalt for several minutes did not constitute excessive force. 990 F. Supp. 1230, 1241
24 (S.D. Cal. 1998). There, officers sprayed the suspect with pepper spray and wrestled him to the
25 ground after he violently resisted arrest. *Id.* at 1234. The officers then placed the suspect in a four-
26 point restraint (a “hogtie”) and allowed him to lie shirtless for several minutes on asphalt
27 approximately 133.9 degrees in temperature. *Id.* at 1235. The suspect stopped breathing and died
28 on the scene. Because the district court specifically concluded that leaving him on the hot asphalt

1 did not constitute excessive force, this case does not help to clearly establish a right against being
2 placed on hot asphalt.

3 Similarly, in *Rubio v. Lopez*, the Eleventh Circuit found that restraining a suspect on hot
4 asphalt did not violate a clearly established right. 445 F. App'x 170, 173 (11th Cir. 2011). There,
5 an officer removed the suspect from his police vehicle after the suspect began kicking at the
6 windows and then "hobble-tied" him, forcing his chest and face onto the hot pavement. *Id.* at 172.
7 "While on the pavement, [the suspect] screamed that his skin was burning." *Id.* at 172–73. The
8 "incident lasted about a minute" and resulted in second degree burns. *Id.* at 174. The court
9 "conclude[d] that not every reasonable officer in [the officer's] position would have known that
10 restraining [a suspect] on the hot pavement violates the Fourth Amendment." *Id.* at 174. Therefore,
11 this case also does not help establish a right against being placed on hot asphalt.

12 Finally, in *Howard v. Kansas City Police Department*, the Eighth Circuit found that
13 officers used excessive force and violated a clearly established right when they forced an individual
14 to remain seated on hot asphalt, even after he was complaining about the resulting pain. 570 F.3d
15 984, 988. However, the court defined this right narrowly, finding that case law had "clearly
16 established that the Fourth Amendment was violated if an officer unreasonably ignored the
17 complaints of a seized person that the force applied by the officer was causing more than minor
18 injury." *Id.* at 991 (citing "a series of cases involving failure to respond to complaints of overly-
19 tight handcuffs") (emphasis added).

20 There, officers discovered that the plaintiff was an injured victim rather than a suspect after
21 they forced him to the ground. *Id.* at 989. Despite this fact, the officers ignored the plaintiff's
22 complaints that the asphalt was burning him and his request to move to a grassy area. *Id.* at 989–
23 90. The plaintiff began "moving his shoulders back and forth in an attempt to lift his back and
24 arms off the asphalt," but the officers held him down against the asphalt. *Id.* at 987. It took officers
25 four to six minutes after the plaintiff began complaining to finally place a blanket under him. *Id.*
26 at 990. As a result, he suffered second degree burns. *Id.*

1 In turn, the officers in Howard violated the plaintiff's clearly established right by ignoring
2 his consistent and explicit complaints for four to six minutes and by forcibly preventing him from
3 moving without any justification. Id.

4 In comparing these cases, this court finds that there is no clearly established right against
5 being restrained on hot asphalt for a brief period of time. Even in Price and Rubio, the courts did
6 not find violations of the Fourth Amendment, despite the fact that officers there used more extreme
7 methods of restraining the suspect on the ground than in the instant case (i.e., hog-tying or hobble-
8 tying). Additionally, the Eighth Circuit in Howard limited the right it was identifying to the right
9 against having one's complaints of pain ignored by arresting officers.

10 Even if the right identified in Howard is a clearly established right, a question this court
11 does not reach today, it would not be applicable to the instant case. Paulos admits that she does
12 not remember explicitly telling any of the officers on scene that she was being burned by the
13 asphalt or was generally in pain. (Doc. # 33-2 pp. 79-83).⁵ Similarly, all the officers claim that
14 Paulos never expressed any discomfort to them. While Paulos does assert she screamed in pain for
15 some portion of the time she was on the ground, (doc. # 33-2 p. 79), she also screamed incoherently
16 at officer Baca before attacking him, (doc. # 33-3 pp. 15-16),⁶ and later yelled to herself while
17 seated in the grassy area (doc. # 33-5 p. 22). Therefore, it is clear that Paulos did not communicate
18 her pain to the officers in any discernible manner.

19 Accordingly, the court finds that LVMPD defendants did not violate any right established
20 by case law.

21 **b. Whether officer Baca's conduct was patently violative of the**
22 **Constitution**

23 _____
24 ⁵ This portion of Paulos' deposition refers to a twenty-minute period she spent on the ground. This time
25 range, however, is based on an estimate she heard from a nurse after the incident. (Doc. # 33-2 p. 50). Asked about
26 her personal recollection, Paulos responded: "I don't know how long I was on the ground." (Id.). Therefore, this
27 speculation does not conflict with the court's earlier determination based on the security footage that Paulos spent a
28 total of five minutes on the ground.

⁶ Paulos does not deny screaming prior to attacking officer Baca, but rather claims that she does not remember
doing so. She stated: "I don't know what occurred before I was placed on the ground." (Doc. # 33-2 p. 80).

1 The Ninth Circuit has recognized that some conduct is “so patently violative of [a]
2 constitutional right’ that reasonable officers should have known that their actions were
3 unconstitutional without guidance from the courts.” Boyd, 374 F.3d at 783 (quoting Deorle, 272
4 F.3d at 1286). This court finds that officer Baca’s conduct does not fit this description. It is
5 undisputed that he reasonably brought Paulos to the ground after she attacked him and then
6 struggled to handcuff her. It would be very difficult to conclude that briefly allowing her to remain
7 on the ground was a patent violation of the Constitution, when Paulos neither complained of
8 injuries nor exhibited them immediately after the incident.

9 Based on the foregoing reasons, the court finds that officer Baca did not violate a clearly
10 established right and thus qualified immunity applies to him and all LVMPD defendants for
11 Paulos’ excessive force claim. The court will therefore grant LVMPD defendants’ motion for
12 summary judgment on this claim.

13 **III. Monell claim against LVMPD (claim five)**

14 Under Monell, municipal liability must be based upon the enforcement of a municipal
15 policy or custom, not upon the mere employment of a constitutional tortfeasor. 436 U.S. at 691.
16 Therefore, in order for liability to attach, four conditions must be satisfied: “(1) that [the plaintiff]
17 possessed a constitutional right of which he was deprived; (2) that the municipality had a policy;
18 (3) that this policy amounts to deliberate indifference to the plaintiff’s constitutional right; and (4)
19 that the policy is the moving force behind the constitutional violation.” Van Ort v. Estate of
20 Stanewich, 92 F.3d 831, 835 (9th Cir. 1996) (internal quotation marks omitted).

21 Here, the court has already determined that LVMPD officers did not violate Paulos’ Fourth
22 Amendment rights. Accordingly, there is no liability to impute to their municipal employer (i.e.,
23 Las Vegas Metropolitan Police Department). The court therefore grants LVMPD defendants’
24 motion for summary judgment on Paulos’ Monell claim.

25 **IV. State law claims against LVMPD defendants and Palms**

26 Considering the court’s ruling on the instant motions, the only remaining claims in this suit
27 are Paulos’ state law claims against LVMPD defendants (negligence) and Palms (negligence and
28 false imprisonment). The court therefore declines to exercise supplemental jurisdiction over these

1 state law causes of action. *Wade v. Reg'l Credit Ass'n*, 87 F.3d 1098, 1101 (9th Cir. 1996) (holding
2 that "where a district court dismisses a federal claim, leaving only state claims for resolution, it
3 should decline jurisdiction over the state claims and dismiss them without prejudice").

4 Based on the foregoing, Paulos' remaining state law claims will be dismissed without
5 prejudice.

6 **V. Conclusion**

7 Based on the above analysis, the court will grant LVMPD defendants' motion for summary
8 judgment, (doc. # 33), as to Cristina Paulos' fourth claim (excessive force) and fifth claim (Monell
9 municipal liability). The court will therefore decline to exercise supplemental jurisdiction over the
10 state law claims against LVMPD defendants (negligence) and Palms (negligence and false
11 imprisonment) and dismiss them without prejudice.

12 Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that LVMPD defendants'
14 motion for summary judgment, (doc # 33), be, and the same hereby is, GRANTED in part, as to
15 plaintiff's federal claims.

16
17 IT IS FURTHER ORDERED that plaintiff's remaining state law claims against LVMPD
18 defendants and Palms, be, and the same hereby are, DISMISSED without prejudice.

19 IT IS FURTHER ORDERED that Palms' motions for summary judgment, (docs. # 34, 35),
20 be, and the same hereby are, DENIED as moot.

21 IT IS FURTHER ORDERED that plaintiff file her motion for default judgment against
22 defendant Jeannie Houston within ten days of the date of this order, when the court intends to close
23 the case.

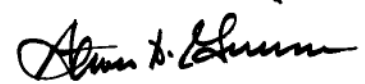
24 DATED March 12, 2015.

25
26 
27 UNITED STATES DISTRICT JUDGE
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Marquis Aurbach Coffing
 Craig R. Anderson, Esq.
 Nevada Bar No. 6882
 10001 Park Run Drive
 Las Vegas, Nevada 89145
 Telephone: (702) 382-0711
 Facsimile: (702) 382-5816
 canderson@maclaw.com
 Attorneys for Defendants LVMPD and
 Baca



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

CRISTINA PAULOS,

Plaintiff,

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

vs.

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.

**LVMPD DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR
 RECONSIDERATION ON MOTION TO DISMISS**

I. INTRODUCTION

Plaintiff Cristina Paulos' ("Paulos") opposition does not meaningfully oppose the defendants Las Vegas Metropolitan Police Department ("LVMPD") and Ofc. Aaron Baca's ("Ofc. Baca") Motion for Reconsideration on Motion to Dismiss. The defendants' motion for reconsideration is rather simple. It argues that the Court's November 3, 2015 Order (the "Order"), is "clearly erroneous." Specifically, this Court incorrectly concluded that the Honorable Judge James C. Mahan never made a specific finding that Ofc. Baca acted reasonably and his dismissal of the Paulos' federal law unreasonable force claims was solely based upon the doctrine of qualified immunity. Ex. A and Ex. B (attached to LVMPD Defendants' Motion to Reconsider). As set forth in the LVMPD Defendants' Motion to Reconsider, Judge Mahan did

find that Ofc. Baca acted reasonably several times in his order. Specifically, Judge Mahan made the following findings of fact:

- First, Judge Mahan found that Ofc. Baca acted “objectively reasonable” to take Paulos to the ground and that any subsequent delay in getting her off the ground “is not unreasonable” as it was “reasonable to take time to assess the situation.” See Paulos v. FCH1, LLC, No. 2:13-cv-1546-JCM-PAL, 2015 WL 111972, at *8-9 (D. Nev. March 12, 2015).
- Second, Judge Mahan specifically stated that “officer Baca **did not** use excessive force in arresting Paulos.” Id. at *9 (emphasis added). Under federal law, excessive force is unreasonable force. See Graham v. Connor, 490 U.S. 386, 397 (1989). Hence, because Judge Mahan found Ofc. Baca did not use excessive force, he found that he used reasonable force.
- Third, LVMPD’s liability unambiguously states that “the court has already determined that the LVMPD officers **did not violate** Paulos’ Fourth Amendment rights.” Id. at *12 (emphasis added). This sentence came after Judge Mahan addressed qualified immunity. LVMPD, as a municipality cannot receive qualified immunity, thus, if Judge Mahan’s order was based solely on qualified immunity, Judge Mahan would have had to have addressed LVMPD’s liability – which he did not. Id.

Importantly, Paulos’ opposition never argues this reasonableness issue. Rather, the opposition recycles the arguments raised in Paulos’ opposition to the original motion to dismiss – that state law negligence claims differ from 42 U.S.C. § 1983 unreasonable seizure claims. This is incorrect and was properly ignored by the Court in its November 3, 2015 order. See Ex. B. The reason is because Paulos is wrong. Both state law negligence claims and federal unreasonable seizure claims require a finding of unreasonableness. See Belch v. Las Vegas Metro. Police Dep’t., 2012 WL 4610803, *11 (D. Nev. 2012) (“an officer’s breach of duty in a negligence claim is analyzed under the reasonableness standard of the Fourth Amendment”) (citations omitted). Further, this is not an unusual case. State courts regularly dismiss state law negligence claims after a federal court finds an officer’s actions to be reasonable. See e.g., Hernandez v. City of Pomona, 46 Cal. 4th 501 (2009); F.E.V. v. City of Anaheim, 2013 WL 3184670 (Cal. App. 4th Ct. June 26, 2013); Vanvorous v. Burmeister, 262 Mich. App. 467, 687 N.W. 2d 132 (2004).

In short, Paulos’ opposition offers nothing to dispute the defendants’ arguments. It is undeniable that Judge Mahan concluded that Ofc. Baca acted reasonably and did not violate the Fourth Amendment. This finding is binding on this Court and the doctrine of issue preclusion

bars Paulos' state law negligence claim. Therefore, the LVMPD defendants respectfully request that this Court reconsider its November 3, 2015 Order and dismiss Paulos' state law negligence claim against LVMPD and Ofc. Baca.

II. LEGAL ARGUMENT

A. STANDARD OF REVIEW

Eighth Judicial District Court Rule 2.24(a) allows a party to seek reconsideration of a ruling of the court. "In a concise and non-argumentative manner, such a petition should direct attention to some controlling matter which the court has overlooked and misapprehended." See Matter of Ross, 99 Nev. 657 (1983). "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 (8th 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). EDCR 2.24 provides that the Court has complete discretion to consider a motion to reconsider or for rehearing. See EDCR 2.24(a).

According to Paulos' opposition, "LVMPD did not provide the Court with substantially different evidence in support of their request . . . [i]t appears that LVMPD simply wants to make the same unavailing arguments previously raised in their Motion to Dismiss." Opp. at 2¹:22-25. Paulos' argument misses the point for a couple of reasons. First, the LVMPD defendants' motion clearly states in its "Introduction" that there is no new evidence and the motion is based on the "Court's Order [being] clearly erroneous as it misrepresents Judge Mahan's federal court order." Mot. at 3:7-8. Second, this Court agreed with the LVMPD defendants' argument that issue preclusion prohibited Paulos' claim *if* Judge Mahan found that Ofc. Baca acted reasonably. However, this Court incorrectly concluded that Judge Mahan never found that Ofc. Baca acted

¹ Paulos' opposition is not paginated.

1 reasonably and dismissed on the federal claims on the sole basis of qualified immunity. See Ex.
 2 A. Because Judge Mahan, in actuality, found that Ofc. Baca acted reasonably and also dismissed
 3 the federal claims against him on the alternative basis of qualified immunity, the LVMPD
 4 defendants are only arguing that this Court misinterpreted Judge Mahan's order.

5 **B. PAULOS' ARGUMENT HAS ALREADY BEEN REJECTED BY THIS**
 6 **COURT**

7 Paulos' opposition's argument simply recycles the arguments she raised in her opposition
 8 to the original motion to dismiss. According to Paulos, her "negligence claim was not litigated
 9 in the U.S. District Court" because Judge Mahan remanded the claims. Opp. at 4:3-15 (emphasis
 10 in original).

11 Lost on Paulos is the fact that both her state law negligence claim and federal law
 12 unreasonable seizure claim require a finding of unreasonableness. If Ofc. Baca acted reasonably
 13 under the circumstances, both claims fail. See Belch, 2012 WL 4610803, *11. *Paulos never*
 14 *argues that Judge Mahan did not find Ofc. Baca acted reasonably.* The reason is because she
 15 knows that Judge Mahan made that specific finding multiple times in his federal order. Paulos'
 16 opposition makes no attempt to explain the following findings made by Judge Mahan:

17 First, with respect to the actual detention:

- 18 • Here, the incidents' objective factors made it **reasonable** for officer Baca to
 19 believe that Paulos was reaching for his firearm and that she was therefore a
 20 serious threat to him and all involved. Paulos' own security expert asserts that in
 21 the security footage, she 'is seen to reach towards the right waist area of the
 22 officer . . . ' [citations omitted]. Even without considering the firearm itself, it is
 undeniable that Paulos lunged at Ofc. Baca after he calmly approached her mere
 seconds earlier. This erratic, irrational, and aggressive behavior indicated that
 Paulos was dangerous. **Therefore, both [Graham] factors 1 and 2 weigh in favor**
 of the LVMPD defendants" Paulos, at *8 (emphasis added).

23 Second, with respect to keeping Paulos on the ground:

- 24 • ". . . the court has already found that there was at most a two minute and 40
 25 second delay between additional officers' arrival and Paulos being lifted off the
 26 ground. Such a delay is **not unreasonable** considering that the officers arrived to
 27 a scene involving a multi-vehicle accident, multiple bystanders, and individuals
 28 restrained on the ground, and a winded officer. It is thus **reasonable** to take a few
 minutes to assess the scene before moving a suspect that poses an unknown level
 of danger. This conclusion is further supported by the fact that Paulos admits she
 never verbalized her discomfort to any officer at any time. [citation omitted]
 Therefore, this factor weighs in favor of the LVMPD defendants. Paulos, at *9
 (emphasis added).

1 Third, Judge Mahan, *before even addressing qualified immunity*, made the following
2 finding of fact in summation of his reasonable determination:

3 While it is unfortunate that Paulos incurred such burns as a result of her arrest in
4 this incident, the court finds that officer Baca's use of minimal force in restraining
5 her was appropriate considering the objective threat she posed in her undeniable
6 attempt to resist arrest. In light of this assessment and the lack of any genuine
7 disputed material fact, the court finds that ***officer Baca did not use excessive
force in arresting Paulos.*** The conclusion applies to all officers who arrived on
8 scene after Paulos was restrained on the ground.

9 Paulos, *9 (emphasis added).

10 It is critical to note that all of the above statements occurred before Judge Mahan even
11 addressed the issue of qualified immunity. After finding that Ofc. Baca acted reasonably, Judge
12 Mahan turned his attention to the issue of qualified immunity. In doing so, he specifically
13 qualified his analysis by stating "[e]ven if officer Baca used excessive force against Paulos in
14 violation of a constitutional right, the LVMPD defendants would still be entitled to qualified
15 immunity if they could show that the rights Paulos claims is not 'clearly established'." Paulos at
16 *10 (citations omitted)(emphasis added). The phrase "even if" clearly demonstrates that Judge
17 Mahan was stating an alternative basis for his decision.

18 Finally, after making his qualified immunity finding, Judge Mahan reiterated one more
19 time that his ultimate decision in section III of Judge Mahan's order. In that section, Judge
20 Mahan addresses Paulos' Monell claim against LVMPD. Under 42 U.S.C. §1983, a municipality
21 (such as LVMPD), is not entitled to qualified immunity. See Harlow v. Fitzgerald, 457 U.S.
22 800, 818 (1982). In other words, if Judge Mahan's decision was based on qualified immunity,
23 then Judge Mahan would be required to address the Monell claims against LVMPD. Judge
24 Mahan specifically states that he has already found that Ofc. Baca did not violate the Fourth
25 Amendment. Hence, he acted reasonably.

26 Paulos' opposition fails to address Judge Mahan's explicit findings and just argues that
27 Judge Mahan's refusal to exercise supplemental jurisdiction defeats the LVMPD defendants
28 claims. Unsurprisingly, Paulos offers no supporting legal authority. The reason is because every
court that has addressed this very issue disagrees with her. See Hernandez v. City of Pomona, 46

1 Cal. 4th 501, 207 P.3d 506 (2009); F.E.V. v. City of Anaheim, 2013 WL 3184670 (Cal. Ct. App.
2 June 6, 2013); Vanvorous v. Burmeister, 262 Mich. App. 467, 687 N.W. 2d 132 (2004);
3 Williams v. City of Grosse Pointe Park, 2008 WL 274872 (Mich. App. January 31, 2008); Dunn
4 v. Matatall, 2010 WL 1979795 (Mich. App. May 18, 2010). Paulos' opposition does not even
5 mention these cases – let alone address them.

6 **III. CONCLUSION**

7 Based upon the above, the LVMPD defendants respectfully request that this court
8 reconsider its November 3, 2015 order and grant the LVMPD defendants' Motion to Dismiss, or
9 in the Alternative, Motion for Summary Judgment.

10 Dated this 7th day of December, 2015.

11 MARQUIS AURBACH COFFING

12
13 By: 

14 Craig R. Anderson, Esq.
15 Nevada Bar No. 6882
16 10001 Park Run Drive
17 Las Vegas, Nevada 89145
18 Attorney for LVMPD Defendants
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **LVMPD DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR RECONSIDERATION ON MOTION TO DISMISS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 28th day of December, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

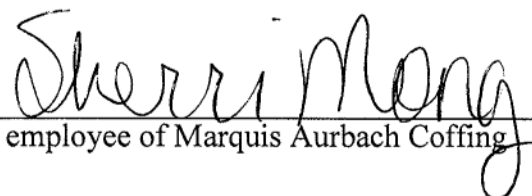
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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

n/a


an employee of Marquis Aurbach Coffing

² 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).

36

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CLERK OF THE COURT

1 **054**
2 **LEW BRANDON, JR., ESQ.**
3 Nevada Bar No.: 5880
4 **JUSTIN W. SMERBER, ESQ.**
5 Nevada Bar No.: 10761
6 **MORAN LAW FIRM, LLC**
7 630 S. Fourth Street
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11 *l.brandon@moranlawfirm.com*
12 Attorneys for Defendants,
13 FCH1, LLC and JEANNIE HOUSTON

14
15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 CRISTINA PAULOS, an individual,

18 Plaintiff,

19 v.

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

20 FCH1, LLC, a Nevada limited liability
21 company; LAS VEGAS
22 METROPOLITAN POLICE
23 DEPARTMENT, a government entity;
24 JAKE VON GOLDBERG, an individual;
25 JEFFREY B. SWAN, an individual;
26 JEANNIE HOUSTON, an individual;
27 AARON BACA, an individual; and
28 DOES 1 through 10,

Defendants.

DEFENDANT, FCH1, LLC AND JEANNIE HOUSTON'S JOINDER TO LAS VEGAS
METROPOLITAN POLICE DEPARTMENT'S MOTION FOR SUMMARY
JUDGMENT

COMES NOW, Defendant, FCH1, LLC and JEANNIE HOUSTON, by and through
their attorneys of record, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ. of
MORAN BRANDON BENDAVID MORAN, and hereby submits the following Joinder to Las
Vegas Metropolitan Police Department's Motion for Summary Judgment.



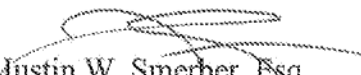
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1 This Motion is made and based upon the Points and Authorities attached hereto along
2 with the papers and pleadings on file herein and oral arguments at the time of hearing.

3 DATED this 6th day of January, 2016.

4 MORAN BRANDON BENDAVID MORAN

5
6 
/s/ Justin W. Smerber, Esq.

7 LEW BRANDON, JR., ESQ.

8 Nevada Bar No. 5880

9 JUSTIN W. SMERBER, ESQ.

10 Nevada Bar No. 10761

11 630 S. Fourth Street

12 Las Vegas, Nevada 89101

13 Attorneys for Defendants,

14 FCH1, LLC and JEANNIE HOUSTON

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I.
17 FACTS

18 On September 7, 2011, Plaintiff was driving westbound on Flamingo Road in front of
19 the Palms Casino Resort and caused an accident. *See Plaintiff's Amended Complaint at p. 3, ll.*
20 *21-22 on file herein.*¹ Pursuant to the Palms Security Report, Palms Security Officer and
21 Defendant herein, Jeannie Houston was dispatched to the scene. *See FCH1, LLC's Incident*
22 *File Full Report, at p. 1, attached hereto as Exhibit "B."* LVMPD Officer and Defendant
23 herein, Aaron Baca (hereinafter "Officer Baca") was on scene when Houston arrived. *See Id.*
24 Officer Baca was required to take Plaintiff into custody for getting physical with him. *See Id.*
25 During the process of taking Plaintiff into custody, LVMDP Officer Baca requested Houston's
26 assistance. *See Id.* Houston assisted as directed until additional LVMPD Officers could arrive
27 on scene. *See Id.*

28 ¹ See also Surveillance Video attached as Exhibit "A."



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1 Following the incident, Security Officer Houston wrote a voluntary statement, which
2 described her involvement as follows:

3 At approximately 3:20 pm on Aug 7, 2011 I security officer Jeannie Houston
4 was called to the front main doors for an accident. When I arrived Metro had
5 just arrived on scene. I parked the truck to block exit going out when I
6 witness a female trying to leave the accident. Officer Baca told her to stop
7 when she tried to hit him, she then tried to reach for his gun. Officer Baca
took her down to the ground and asked for assistance from me. I helped keep
her down till more Metro showed up at the accident.

8 *See Voluntary Statement of Jeannie Houston, attached hereto as Exhibit "C."*

9 On February 28, 2014, LVMPD Officer Baca was deposed regarding this matter. *See*
10 *Officer Baca Deposition attached as Exhibit "D."* During the deposition, LVMPD Officer
11 Baca was shown the Palms video surveillance from the date of the incident and asked to explain
12 what was happening.² With respect to Plaintiff, LVMPD Officer Baca testified:

14 Q. Can you kind of give me a general description of what
15 you recall in terms of your interaction with Ms. Paulos
that day?

16 A. I tried to contact her to see if she was okay as far as the
17 accident after she was pointed out by someone people
18 that apparently she had crashed into... When I made
19 contact with her she wasn't listening to me, she kept
20 walking away from me and trying to turn around and
21 finally when she did make contact with me she started
screaming and I felt that she was reaching for my
firearm.

22 ...

23 Q. I just stopped it, we're at 15:16:55, if you look in the
24 middle of the frame right between the two palm trees it
25 appears that there's an exchange going on between
yourself and Ms. Paulos, are you able to describe
for me what's happening at that point?

26 A. To my recollection she started screaming and she
27 reached for my firearm.
28

² A copy of Palms' video surveillance has been attached hereto as Exhibit "A."



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1 Q. I'm stopping the tape at 15:17:00, can you please
2 describe what's taking place on the screen at this time.

3 A. After she attempted to grab my firearm I created
4 distance from her. At that point she was away from me
5 approximately two or three feet, I attempted to get her
6 into custody by placing her hands behind her back.

7 Q. At this point is Plaintiff cooperating with you or is she
8 resisting?

9 A. She's resisting.

10 *See Ex. D at p. 11, ll. 9-22, p. 14, ll. 23-25 and p. 15, ll. 1-13.* In regard to taking Plaintiff to the
11 ground, LVMPD Officer Baca testified:

12 Q. ...I've stopped the video at 15:17:02, can you describe
13 what's going on at this point?

14 A. I took Ms. Paulos to the ground in an attempt to
15 handcuff her.

16 Q. So at approximately 15:17:02 Ms. Paulos is taken to
17 the ground. Once she's taken to the ground is she
18 being compliant with you?

19 A. No.

20 *Id. at p. 16, ll. 4-12.* With respect to requesting assistance from Security Officer Houston,
21 LVMPD Officer Baca further testified:

22 Q. Do you recall on the date of this incident summoning
23 someone for help or assistance?

24 A. Yes.

25 Q. Do you recall who that was?

26 A. I believe it was a black female adult wearing a Palms
27 security uniform.

28 Q. And if we look on the video, I'm going to back it up
to 15:17:25 again, I'm going to play it for you, tell
me if you see the individual you recall summoning.

A. Yes.

Q. And it appears that it's a blond female wearing a
black uniform; is that correct?

A. Yes.



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1 Q. Do you recall why you gestured to that person for
2 assistance?

3 A. I still didn't have Ms. Paulos in custody.

4 *Id. at p. 18, ll. 14-25 and p. 19, ll. 1-4.*

5 Lastly, LVMPD Officer Baca confirmed Plaintiff's detention was at his discretion; not the
6 Palms:

7 Q. Would you agree with me that the Palms security officer
8 became involved in this matter at your request?

9 A. Yes.

10 Q. I assume the point of what's going on here was that you
11 were trying to detain the plaintiff at that point,
12 correct?

13 A. Yes.

14 Q. Was that being done at your discretion or at the Palms'
15 discretion?

16 A. At mine.

17 Q. Would you agree that Plaintiff was being detained
18 under your control and not the Palms' control?

19 A. Yes.

20 Q. Do you agree that the Palms did not participate in this
21 matter until you requested them to do so?

22 A. Yes.

23 Q. Did you request that they aid in detaining the
24 plaintiff because that was necessary?

25 A. Yes.

26 *Id. at p. 19, ll. 5-23.*

27 On March, 25, 2013, Plaintiff was deposed regarding this matter. *See Deposition of*
28 *Cristina Paulos, attached hereto as Exhibit "E."* During the deposition, Plaintiff corroborated
LVMPD Officer Baca's testimony that he took Paulos to the ground:

Q. Tell me what you do remember occurring after your accident.

A. I remember being pushed on the floor and screaming and being
obtained [sic] in zip ties.



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1 Q. Who pushed you on the floor?
 2 A. I'm not sure. Somebody in a uniform.

3 ...

4 Q. Was the person a male or female --
 5 A. Male.

6 *Id. at p. 46, ll. 12-16 and ll. 22-23.*

7 With respect to Palms' involvement, Plaintiff testified:

8 Q. Okay. So let's go back to the incident that you had at the
 9 Palms. Can you tell me any interaction that you had, physical
 10 or verbal, with anyone from the Palms?

11 A. I only would talk to a woman. That's all I remember. And she
 12 worked for the Palms.

13 Q. So you spoke to a woman from the Palms. Was it during your
 14 incident or after?

15 A. After.

16 Q. So after your incident you spoke to a woman, and do you know
 17 her name?

18 A. No.

19 Q. What did you and this woman speak to you after your incident
 20 occurred? [sic]

21 A. I don't remember. But I remember I wouldn't talk to anybody.
 22 Any of the men. I wanted to talk to a woman. I felt threatened.
 23 So I felt like, that the only person I could talk to was a woman.

24 *Id. at p. 72, ll. 2-20.*

25 On September 4, 2014, Plaintiff's Expert Witness, Steven T. Baker (hereinafter "Baker")
 26 was deposed. *See Deposition of Steven T. Baker, attached hereto as Exhibit "F."* Baker was
 27 asked about his February 24, 2014 Report that he prepared in this matter. *Id. at p. 6, ll. 23-25*
 28 *and p. 7, ll. 1-19.* During his deposition, Baker admitted that Plaintiff's detention in this matter
 was performed by LVMPD:



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1 Q. Okay. Let's focus on the very first line of this that I skipped. It
2 says, "LVMPD officer was justified in his arrest of plaintiff,"
3 correct?

4 A. Yes.

5 Q. So would you agree with me that the plaintiff was arrested by
6 Metro in this matter; is that fair?

7 A. Well, detained, arrested, depending, because there was no
8 actual charge from the initial part. But they're taking that person
9 into custody, if you will, might be a better way to clarify that.

10 Q. Okay.

11 A. It was done by Metro, yes.

12 *Id. at p. 19, l. 25 and p. 20, ll. 1-12.* Mr. Baker also agreed that there was nothing wrong with
13 Plaintiff being taken to the ground, or Plaintiff being detained on the ground until back up
14 LVMPD officer's arrived. *See Id. at p. 50-52.* This is critical because Palms Security Officer
15 Houston only assists until the back-up LVMPD Officer's arrive. The surveillance then shows
16 Ms. Houston withdrawing from the situation.

17 Palms' Security Expert, Alan Zajic (herein after "Zajic") completed his Initial Expert
18 Disclosure Report in this matter on March 24, 2013. *See Alan Zajic's March 24, 2013 Report,*
19 *attached hereto as Exhibit "G."* In addition, Zajic drafted his First Addendum/Supplement to
20 his Initial Expert Disclosure Report on June 19, 2014. *See Alan Zajic's June 19, 2014 Letter,*
21 *attached hereto as Exhibit "H."* In his Report, Zajic stated:

22 LVMPD was in full control of the Plaintiff, the custody decisions, and the
23 requested involvement by Palms Security to assist in restraining the
24 Plaintiff. LVMPD Officer Baca had the statutory authority to request
25 assistance from Security Officer Houston as defined by NRS 171.132.³

26 *Ex. G at p. 8.* Moreover, in his Report Zajic opined:

27 Palms Security responded to an incident created by the Plaintiff at the
28 primary ingress/egress point for vehicle traffic to the business. Plaintiff
was acting in an irrational and dangerous manner as depicted in the video
evidence reviewed in this matter.

³ NRS 171.132 Person making arrest may summon assistance. Any person making an arrest may orally summon
as many persons as he deems necessary to aid him therein. (Added to NRS by 1967, 1402)



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1 Security Officer Houston responded in a professional and appropriate
2 manner and was subsequently requested by a sworn police officer to assist
3 him in controlling the combative Plaintiff. Security Officer Houston
4 assisted LVMPD Officer Baca until he was able to place Plaintiff in
5 restraints and until additional LVMPD Officers arrived on scene. Palms
6 Security Officers also assisted in traffic control during the incident until
7 sufficient police arrived. Once sufficient police arrived, Houston extracted
8 herself from assisting Baca.

7 The actions of Palms security personnel were more than reasonable,
8 appropriate and professional under the circumstances and were well
9 within or exceeded the common practices and Standard of Care similar
10 security environments and conditions.

10 *Id. at p. 9.* Furthermore, in his Supplemental report Zajic opined:

11 The testimony of LVMPD Officer Baca clearly demonstrates that he
12 was in control of the contact and subsequent detention of Plaintiff and
13 that he requested the assistance of Palms security personnel which was
14 appropriate and well within his authority.

14 *Ex. H at p. 4.*

15 In summary, Palms only became involved in this matter due to the request of an
16 LVMPD Officer. Yet, on April 29, 2015, Plaintiff filed her Amended Complaint alleging the
17 following causes of action against Palms: 1) Negligence and 2) False Imprisonment. *See*
18 *generally Plaintiff's Second Amended Complaint, on file herein.* Palms now moves this
19 Honorable Court for Summary Judgment.
20

21 ///

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III.

SUMMARY JUDGMENT STANDARD

A Motion for Summary Judgment is a procedure that terminates, without a trial, actions in which there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. NEV. R. CIV. P. 56(c).⁴ A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. Tate v. Lau, 865 F.Supp. 681, 686 (1994).⁵

The moving party is entitled to summary judgment if the non-moving party, who bears the burden of persuasion at trial, fails to designate "specific facts showing that there is a genuine issue for trial." Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court. Northwest Motorcycle Ass'n v. U.S. Dep't of Agric., 18 F.3d 1468, 1471 (9th Cir. 1994).

The party moving for summary judgment has the initial burden of showing the absence of a genuine issue of material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970).⁶ That burden is met by showing an absence of evidence to support the non-moving party's case. Celotex, 477 U.S. at 325. All justifiable inferences must be viewed in the light most favorable to the non-moving party. County of Tuolumne v. Cmty. Hosp., 236 F.3d 1148, 1154 (9th Cir.

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⁴ See also Shepard v. Harrison, 100 Nev. 178, 678 P.2d 670 (1984); Pacific Pools Constr. Co. v. McClain's Concrete, Inc., 101 Nev. 557, 706 P.2d 849 (1985).

⁵ See also Admiralty Fund v. Jones, 677 F.2d 1289, 1293 (9th Cir. 1992); Posadas v. City of Reno, 109 Nev. 448, 851 P.2d 438 (1993).

⁶ See also Metro Indus., Inc. v. Sammi Corp., 82 F.3d 839, 847 (9th Cir. 1996); Butler v. Bogdanovich, 101 Nev. 449, 705 P.2d 662 (1985); Intermountain Veterinary Medical Ass'n v. Kiesling-Hess Finishing Co., 101 Nev. 107, 706 P.2d 137 (1985); Main v. Stewart, 109 Nev. 721, 857 P.2d 755 (1993).



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2001).⁷ This then shifts the burden to the non-moving party to set forth specific facts demonstrating that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Only where reasonable minds could differ on the material facts at issue, should summary judgment not be granted. Mallard Auto. Group v. Leclair Management Corp., 153 F. Supp. 2d 1211, 1213 (Nev. 2001).⁸

The party opposing summary judgment must come forth with evidence in the form of affidavits and depositions, etc., which set forth specific facts, and cannot rest on mere pleadings. Aldabe v. Adams, 81 Nev. 280, 402 P.2d 34 (1965).⁹ Although the parties may submit evidence in an inadmissible form; namely, depositions, admissions, interrogatory answers, and affidavits, only evidence that might be admissible at trial may be considered by a trial court in ruling on a motion for summary judgment. Beyene v. Coleman Security Services, Inc., 854 F.2d 1179, 1181 (9th Cir. 1988). Conclusory or speculative testimony is insufficient to raise a genuine issue of fact to defeat summary judgment. Anheuser-Busch, Inc. v. Natural Beverage Distribs., 69 F.3d 337, 345 (9th Cir. 1995).¹⁰ Uncorroborated and self-serving testimony, without more, will not create a genuine issue of material fact, necessary to preclude summary judgment. Villiarimo v. Aloha Island Air Inc., 281 F.3d 1054, 1061 (9th Cir. 2002). Factual disputes, which are irrelevant or unnecessary, will not defeat a motion for summary judgment. Great West Cas. Co. v. See, 185 F. Supp. 2d 1164, 1167 (Nev. 2002).

Where there is a complete failure of proof concerning an essential element of the nonmoving party's case, all other facts are rendered immaterial, and the moving party is entitled

⁷ See also Martinez v. City of Los Angeles, 141 F.3d 1373, 1378 (9th Cir. 1998); Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio, 475 U.S. 574, (1986).

⁸ See also Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995).

⁹ See also Ferreira v. P.C.H. Inc., 105 Nev. 305, 774 P.2d 1041 (1989).

¹⁰ See also Hahn v. Sargent, 523 F.2d 461, 467 (9th Cir. 1975)



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1 to judgment as a matter of law. *Id.* Summary judgment shall be entered "against a party who
 2 fails to make a showing sufficient to establish the existence of an element essential to that
 3 party's case, and on which that party will bear the burden of proof at trial." *Raymond v.*
 4 *Albertson's Inc.*, 38 F. Supp. 2d 866, 868 (Nev. 1999) citing *Celotex*, 477 U.S. at 322. The
 5 opposing party is not entitled to have the motion for summary judgment denied on the mere
 6 hope that at trial he will be able to discredit movant's evidence. *Hickman v. Meadow Wood*
 7 *Reno*, 96 Nev. 782, 617 P.2d 871 (1980). Most importantly, **SUMMARY JUDGMENT IS**
 8 **NOT A DISFAVORED PROCEDURAL SHORTCUT, BUT AN INTEGRAL PART OF**
 9 **THE FEDERAL RULES AS A WHOLE.** (*Emphasis added*). *See*, 185 F. Supp. 2d at 1167.

12 Lastly, the Nevada Supreme Court declared in *Wood v. Safeway, Inc.* that the "slightest
 13 doubt" standard is no longer applicable to motions for summary judgment. *Wood v. Safeway,*
 14 *Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). The "slightest doubt" rule precluded summary judgment
 15 if there was a slightest doubt as to the operative facts of a case. While the Nevada Supreme
 16 Court used the slightest doubt standard for nearly fifty-one (51) years, Courts and commentators
 17 criticized it as unduly limiting the use of summary judgment. *Id.* at 1029-1030. However, the
 18 Nevada Supreme Court clearly and unambiguously rejected the "slightest doubt" standard in the
 19 *Wood v. Safeway* case, stating that the Court now adopts the standards set forth in *Liberty*
 20 *Lock*, *Celotex*, and *Matsushita* as outlined above. *Id.* at 1031.

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III.

LEGAL ARGUMENT

In the present matter, Plaintiff cannot designate specific facts to create a genuine issue of material fact that would prevent Palms from obtaining summary judgment. Plaintiff's own actions caused this incident and Palms only became involved in this matter at the request of LVMPD, in compliance with Nevada Revised Statute § 171.132. As such, Plaintiff's Negligence and False Imprisonment causes of actions must fail and Summary Judgment is appropriate.

A. Palms and Houston are entitled to Summary Judgment, because there is no evidence that they acted negligently towards Plaintiff or improperly detained Plaintiff.

In order for Palms to be held liable under a theory of negligence, Plaintiff has the burden of demonstrating that the (1) defendant owed a duty of care with respect to the plaintiff; (2) defendant breached this duty; (3) the breach was both the actual and proximate cause of the plaintiff's injuries; and (4) that the plaintiff did in fact suffer damages. *Doud v. Las Vegas Hilton Corp.*, 864 P.2d 796, 109 Nev. 1096 (1993). Longstanding Nevada case law makes clear that, "THE MERE FACT THAT THERE WAS AN ACCIDENT OR OTHER EVENT AND SOMEONE WAS INJURED IS NOT ITSELF SUFFICIENT TO PREDICT LIABILITY." (*Emphasis added.*) *Gunlock v. New Frontier Hotel*, 78 Nev. 182, 184-84, 370 P.2d 682 (1962). Negligence is never presumed but must be established by substantial evidence. *Id.*

In the matter, Plaintiff is arguing that Palms and Houston were negligent in assisting LVMPD Officers on the date in question. It is Plaintiff's contention that Palms and Houston breached a duty of care towards Plaintiff by responding to Officer Baca's request for assistance



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1 to control Plaintiff while she engaged in a manic episode. However, Plaintiff has no factual
2 basis for this claim. No reasonable person would find that Palms and/or Houston acted
3 unreasonably in responding to Officer Baca's request for assistance. Further, the evidence is
4 clear that Plaintiff's detention was initiated and controlled by LVMPD Officer Baca; not the
5 Palms.
6

7 Nevada law permits a police officer making an arrest to summon assistance as the officer
8 feels necessary. *See NRS 171.132*. Specifically, the statute provides:

9 Any person making an arrest may orally summon as many persons as the person
10 making the arrest deems necessary to aid him or her therein.

11 LVMPD Officer Baca testified that he summoned the Palms' Security Officer Jeannie Houston
12 to assist him in placing Plaintiff in custody. *See Baca Deposition at pp. 18 - 19, ll. 14-25 ;1-4*
13 *attached as Exhibit "D."* As such, Palms did not participate in this matter until LVMPD Officer
14 Baca requested them to do so, which would have been in accordance with NRS 171.132. *Id. at*
15 *p. 11, ll. 9-22*.
16

17 Further, Plaintiff's own security expert, Steve Baker confirms that Palms Security did
18 nothing inappropriate. In his deposition, Mr. Baker testifies that there was nothing
19 inappropriate about Plaintiff being taken to the ground. *See Baker Deposition at p. 50, ll. 17-19*
20 *attached as Exhibit "F."* Mr. Baker's criticism is how long Plaintiff was on the ground after
21 being taken down. *See Id. at p. 50, ll. 20-25*. Mr. Baker explains that after the other two
22 LVMDP officers arrived on scene, then Plaintiff should have been taken off the ground and
23 placed in one of their vehicles. *See Id. at p. 51, ll. 2-10*. According to Mr. Baker the improper
24 and negligent detention of Plaintiff took place while Plaintiff was detained on the asphalt after
25 the second and third LVMPD officers arrived. *See Id.* This confirms Palms and Houston's
26 lack of culpability in this matter because once the second and third LVMPD officers arrive on
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1 scene, Ms. Houston steps away from Plaintiff and is no longer assisting in her alleged detention.
 2 *See Surveillance Video attached as Exhibit "A."* Even Plaintiff's own expert confirms that
 3 Palms and Houston did nothing inappropriate.

4 This same logic can be applied to Plaintiff's claim for False Imprisonment. In order to
 5 establish a claim for false imprisonment, is necessary for plaintiff to prove that she was
 6 "restrained of [her] liberty under the probable imminence of force **without any legal cause or**
 7 **justification.**" (*Emphasis added.*) *Id. citing Marshall v. City of Carson*, 86 Nev. 107, 110, 464
 8 P.2d 494 (1970). In the present matter, Plaintiff cannot maintain her cause of action for false
 9 imprisonment, because her own expert confirms that her detention was appropriate.

10 Again, Plaintiff's own liability expert, Steve Baker testified that he agrees Plaintiff was
 11 detained by LVMPD and not Palms or Houston. *See Baker Deposition at p. 19 – 20, ll. 25-25;*
 12 *I-12 attached as Exhibit "F."* Further, Mr. Baker agrees that it was appropriate for Plaintiff to
 13 be taken into custody and taken to the ground by LVMPD. *See Id. at p. p. 50, ll. 17-19.*
 14 Further, Mr. Baker agrees that the detention of Plaintiff on the ground from the time she is
 15 initially taken down, until the second and third officers arrive on scene was reasonable and
 16 appropriate. *See Id. at p. 51.* And further, surveillance confirms that Palms Security Officer
 17 Jeannie Houston only participated in Plaintiff's detention until the second and third LVMPD
 18 Officers arrived. *See Surveillance attached as Exhibit "A."* Accordingly, Plaintiff simply has
 19 no claim for false imprisonment against Palms or Houston, as Plaintiff's own expert agrees that
 20 Plaintiff's detention was justified during all periods of their involvement.

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V.
CONCLUSION

Based upon the foregoing, Defendant, FCH1, LLC and JEANNIE HOUSTON, respectfully requests that Summary Judgment be granted against Plaintiff, CRISTINA PAULOS and in favor of FCH1, LLC and JEANNIE HOUSTON with prejudice.

DATED this 6th day of January, 2016.

**MORAN BRANDON BENDAVID
MORAN**


/s/ Justin W. Smerber, Esq.

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Nevada Bar No. 5880

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on January 6th 2016, I served a true and correct copy of the foregoing **DEFENDANT, FCHI, LLC AND JEANNIE HOUSTON'S JOINDER TO LVMPD'S MOTION FOR SUMMARY JUDGMENT** through the Court's ECF electronic filing system:

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EXHIBIT "A"

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EXHIBIT "A"



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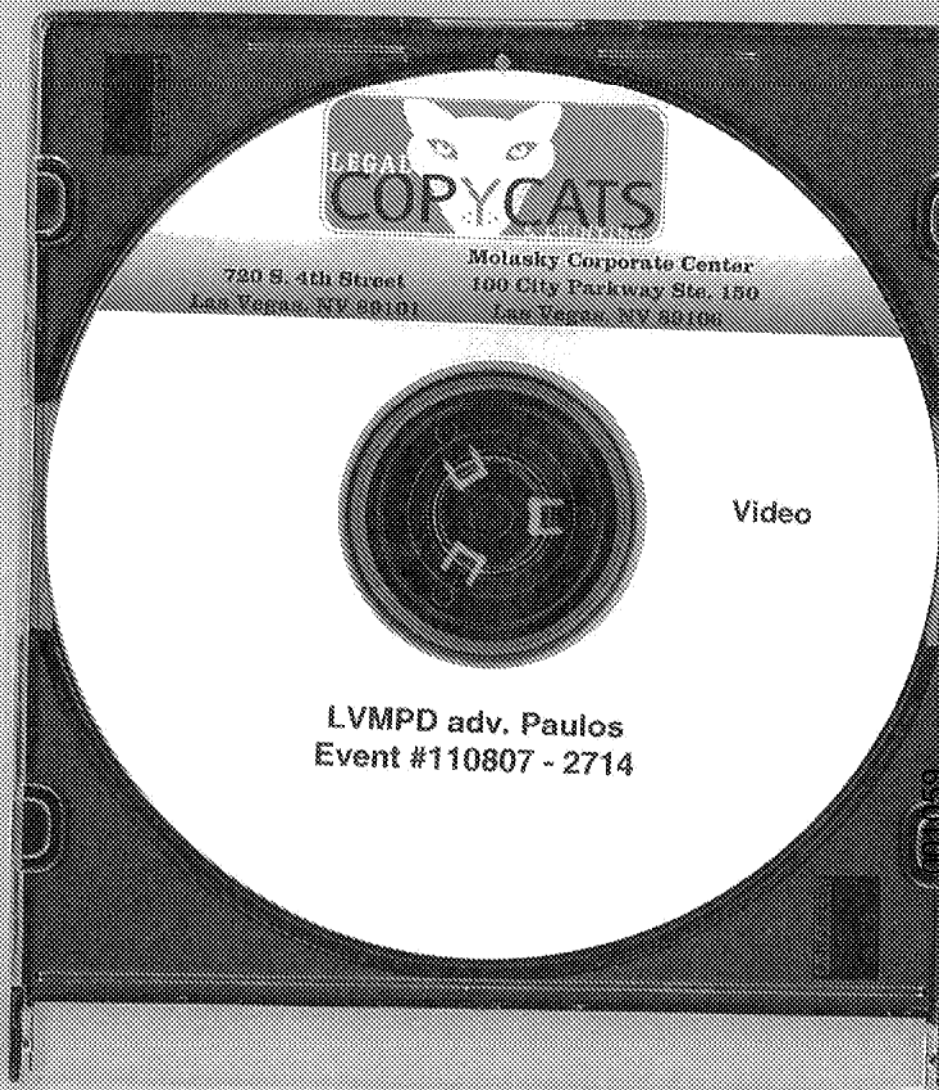


EXHIBIT "B"

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EXHIBIT "B"



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Incident File Full Report

Incident File #IN20110002284

INCIDENT DATA

Date/Time Occurred: August 7, 2011 15:14
Date/Time Created: August 7, 2011 17:50
Incident Status: Closed
Property: Palms
Department Name: Security
Owner: cswenson
Created By: cswenson
Location: Parking
Sublocation: Main Valet

Daily Log #: DL20110053649

Synopsis: houston, king, matthews - car accident on property @ 1513 / metro on scene, detained a female / ccfd engine #32 on property @ 1525 hours / AMR #2723 on property @ 1530 hours / one subject transported to UMC / second AMR #9700 on prop @ 1541 / second subject to UMC departed @ 1549 / all parties cleared @ 1610 clean up completed @ 1647

Incident Type: Property

Specific: Vehicle Accident

Category:

Details: On Sunday August 7, 2011 at approximately 1520 I, Security Supervisor Chris Swenson responded to the main drive in reference to a report of an automobile accident.

Security Officer Jeannie HOUSTON was dispatched and Las Vegas Metropolitan police Department (LVMPD) Officer BACA arrived on scene at approximately 1516, BACA was required to take a female into custody for getting physical with him and requested HOUSTON'S assistance in restraining her. HOUSTON assisted as directed until BACA received backup LVMPD OFFICERS at approximately 1519. Security Officers Kyle KING and Riley MATTHEWS responded and assisted with traffic control on flamingo per LVMPD's request. Upon traffic control methods being deployed by LVMPD, MATTHEWS and KING assisted with crowd control and traffic on property.

Female who caused the accident was identified as Cristina Natsuko PAULOS driving a small late model blue station wagon, PAULOS was traveling west bound on Flamingo road when she crossed over the concrete divider curb turning left into east bound traffic which had right of way, being struck by a car heading east bound through the intersection she came to rest in a front end collision with a Nissan EXTERRA in the Palms main drive EXIT lane. PAULOS and the unidentified driver of the car hit in the intersection were both transported to UMC medical for treatment.

Surveillance coverage was conclusive of both the traffic accident and the incident with BACA arresting the female, copies of the coverage were dubbed and turned over to LVMPD.

PARTICIPANT DATA

Full Name:	
Primary Role:	Participant Type:
Secondary Role:	Taken From Scene:
Police Contacted:	Police Contacted Result:
Address:	
Contact Info:	

Reporting Party:

Supervisor:

Printed: November 18, 2011 9:16

Page 1 of 5

PAULOS000016

Incident File Full Report

Incident File #IN20110002284

ATTACHMENTS

Title	Attached By	Date/Time Attached	Original Filename
2284 voluntary.pdf	cswenson	August 8, 2011 14:46	2284 voluntary.pdf
2284.pdf	cswenson	August 8, 2011 14:46	2284.pdf
	cswenson	August 7, 2011 19:35	2284 008.jpg



cswenson August 7, 2011 19:35 2284 002.jpg



Reporting Party:

Supervisor:

Printed: November 18, 2011 9:16

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PAULOS000017

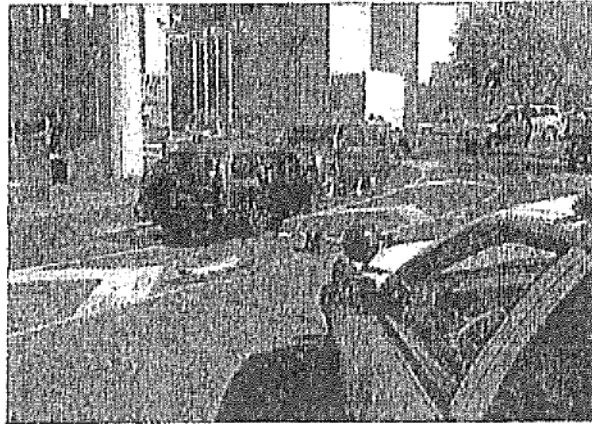
Incident File Full Report

Incident File #IN20110002284

cswenson

August 7, 2011 19:35

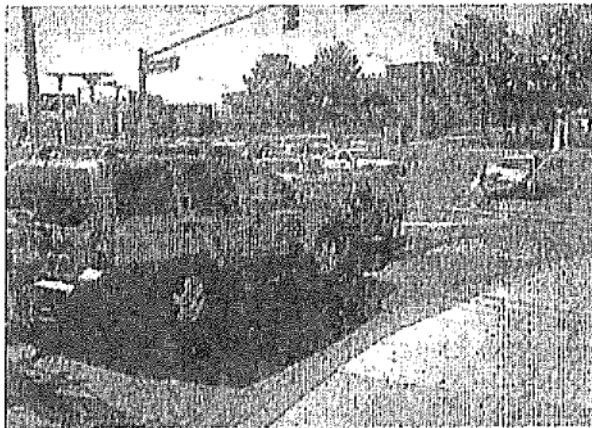
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cswenson

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cswenson

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Reporting Party:

Supervisor:

Printed: November 18, 2011 9:16

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PAULOS000018

Case No. 74912

In the Supreme Court of Nevada

CRISTINA PAULOS,
Appellant,

vs.

FCH1, LLC; LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT; JEANNIE
HOUSTON; and AARON BACA,
Respondents.

Electronically Filed
Oct 24 2018 12:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable ROB BARE, District Judge
District Court Case No. A716850

**APPELLANT'S APPENDIX
VOLUME 5
PAGES 1001-1250**

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Pro Bono Attorneys for Appellant

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03	Defendant Las Vegas Metropolitan Police Department’s Demand for Jury Trial	08/29/12	1	17–18
04	Amended Complaint for: (1) Negligence (2) Negligence (3) False Imprisonment	09/20/12	1	19–26
05	Defendant Las Vegas Metropolitan Police Department’s Answer to Plaintiff’s Amended Complaint	09/23/12	1	27–31
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13	Affidavit of Service of Summons and Second Amended Complaint on Defendant Jeffrey B. Swan	08/19/13	1	67–68
47	Amended Case Appeal Statement	01/31/18	7	1702–1705
04	Amended Complaint for: (1) Negligence (2) Negligence (3) False Imprisonment	09/20/12	1	19–26
46	Case Appeal Statement	01/12/18	7	1697–1701
01	Complaint for: (1) Negligence (2) Negligence (3) False Imprisonment	08/14/12	1	1–9
21	Complaint for: (1) Negligence (2) Negligence (3) False Imprisonment	04/13/15	3	606–615
02	Defendant Las Vegas Metropolitan Police Department's Answer to Plaintiff's Complaint	08/29/12	1	10–16
05	Defendant Las Vegas Metropolitan Police Department's Answer to Plaintiff's Amended Complaint	09/23/12	1	27–31

03	Defendant Las Vegas Metropolitan Police Department's Demand for Jury Trial	08/29/12	1	17–18
14	Defendant Las Vegas Metropolitan Police Department's Notice of Removal	08/28/13	1	69–101
33	Defendant LVMPD and Ofc. Baca's Motion for Reconsideration on Motion to Dismiss	11/13/15	4	979–999
37	Defendant LVMPD and Ofc. Baca's Motion for Summary Judgment	01/06/16	5 6	1105–1250 1251–1364
36	Defendant, FCH1, LLC and Jeannie Houston's Joinder to Las Vegas Metropolitan Police Department's Motion for Summary Judgment	01/06/16	5	1042–1104
06	Defendant, FCH1, LLC, Erroneously Named as F.P. Holdings, L.P.'s Answer to Plaintiff's First Amended Complaint	10/10/12	1	32–38
10	Defendant, FCH1, LLC's Answer to Plaintiff's Second Amended Complaint	08/12/13	1	55–62
26	Defendants LVMPD and Ofc. Aaron Baca's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment	05/19/15	3 4	634–750 751–829
44	Defendants LVMPD and Officer Baca's Notice of Entry of Findings of Fact and Conclusions of Law	12/14/17	7	1673–1682
41	Defendants LVMPD and Officer Baca's Reply to Plaintiff's Opposition to Motion for Summary Judgment	07/25/17	7	1629–1658
15	Defendants LVMPD, Baca, Von Goldberg and Swan's Motion for Summary Judgment	10/30/14	1 2	102–250 251–354
17	Defendants LVMPD, Baca, Von Goldberg and Swan's Reply to Plaintiff's Opposi-	12/31/14	3	573–602

	tion [#39] to Motion for Summary Judgment			
24	Defendants, FCH1, LLC and Jeannie Houston's Answer to Plaintiff's First Amended Complaint	05/14/15	3	625–631
40	Defendants, FCH1, LLC and Jeannie Houston's Reply to Plaintiff's Opposition to Motion for Summary Judgment	07/24/17	7	1604–1628
25	Demand for Jury Trial	05/14/15	3	632–633
22	First Amended Complaint for: (1) Negligence (2) Negligence (3) False Imprisonment	04/29/15	3	616–623
18	Judgment in a Civil Case	06/01/15	3	603
35	LVMPD Defendants' Reply to Plaintiff's Opposition to Motion for Reconsideration on Motion to Dismiss	12/28/15	5	1035–1041
28	LVMPD Defendants': (1) Reply to Plaintiff's Opposition to Motion to Dismiss, or in the Alternative, Motion for Summary Judgment; and (2) Opposition to Plaintiff's Counter-Motion for Sanctions	07/10/15	4	926–939
19	Mandate	05/17/17	3	604
45	Notice of Appeal	01/12/18	7	1683–1696
32	Notice of Entry of Findings of Fact and Conclusions of Law	11/09/15	4	971–978
20	Order on Mandate	05/18/17	3	605
43	Order Setting Civil Jury Trial, Pre-trial Conference/Calendar Call	10/30/17	7	1671–1672
16	Plaintiff's Opposition to Defendant LVMPD's Motion for Summary Judgment	12/15/14	2 3	355–500 501–572

27	Plaintiff's Opposition to Defendant LVMPD's Motion to Dismiss and Motion for Summary Judgment and Counter-Motion for Sanctions	06/22/15	4	830–925
34	Plaintiff's Opposition to Defendant LVMPD's Motion to Reconsider	12/21/15	4 5	1000 1001–1034
39	Plaintiff's Opposition to LVMPD Defendants' Motion for Summary Judgment and Palms' Joinder	07/12/17	6 7	1388–1500 1501–1603
29	Plaintiff's Reply to LVMPD's Opposition to Motion for Sanction	07/16/15	4	940–947
30	Recorder's Transcript of All Pending Motions	08/11/15	4	948–967
42	Recorder's Transcript of Hearing: Defendants LVMPD and Ofc. Baca's Motion for Summary Judgment	10/19/17	7	1659–1670

1 This Opposition is made and based upon all of the files and pleadings herein, the
2 Points and Authorities set forth hereunder, and any oral argument that this Court may entertain
3 at the hearing of the Motion.

4 DATED this 21st day of December, 2015

5 POTTER LAW OFFICES
6 BLUT LAW GROUP

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18 *Attorneys for Plaintiff*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I.**

16 **INTRODUCTION**

17 LVMPD's Motion merely rehashes the same arguments that this Court has previously
18 rejected in its Findings of Fact and Conclusions of Law of November 5, 2015. (Exhibit 1).
19 LVMPD's Motion is a "second bite at the apple" that fails to offer any new evidence,
20 whatsoever; and merely states the conclusion the that Court's prior order was clearly erroneous,
21 apparently because LVMPD disagrees with the Order.

22 **II.**

23 **FACTS**

24 **A. PROCEDURAL POSTURE**

25 Plaintiff originally filed this case in Nevada's Eighth Judicial District Court on August
26 12, 2012. The LVMPD Defendants removed this case to U.S. District Court on August 27,
27 2013. Eventually, LVMPD filed a Motion for Summary Judgment. On March 12, 2012, the
28 U.S. District Court granted summary judgment in favor of LVMPD as to Plaintiff's claims for

1 violations of her civil rights. As noted above, the U.S. District Court did not analyze Plaintiff's
2 state tort claims and declined to exercise supplemental jurisdiction over those claims.

3 On May 19, 2015, LVMPD filed a Motion to Dismiss or, in the alternative, Motion for
4 Summary Judgment raising identical arguments as those addressed in LVMPD's present
5 Motion for Reconsideration. This Court properly denied LVMPD's Motion. (See, Exhibit 1).

6 III.

7 ARGUMENT

8 A. STANDARD OF REVIEW

9 E.D.C.R. 2.24(a)-(c) provides:

10 (a) No motions once heard and disposed of may be renewed in
11 the same cause, nor may the same matters therein embraced be
12 reheard, unless by leave of the court granted upon motion
therefor, after notice of such motion to the adverse parties.

13 (b) A party seeking reconsideration of a ruling of the court, . . .
14 must file a motion for such relief within 10 days after service of
15 written notice of the order or judgment unless the time is
shortened or enlarged by order. A motion for rehearing or
reconsideration must be served, noticed, filed and heard as is any
other motion

16 (c) If a motion for rehearing is granted, the court may make a
17 final disposition of the cause without reargument or may reset it
18 for reargument or resubmission or may make such other orders as
are deemed appropriate under the circumstances of the particular
case.

19 "A district court may reconsider a previously decided issue **if substantially different**
20 **evidence is subsequently introduced or the decision is clearly erroneous.**" Masonry & Tile
21 Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741, 941 P.2d 486,
22 489 (1997) (emphasis added). In the subject Motion, LVMPD did not provide the Court with
23 substantially different evidence in support of their request to Rather, It appears that LVMPD
24 simply want to make the same unavailing arguments previously raised in their Motion to
25 Dismiss.

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1 **B. PLAINTIFF’S STATE TORT CLAIMS ARE NOT BARRED BY THE DOCTRINE OF ISSUE**
2 **PRECLUSION**

3 Plaintiff’s negligence claim was not litigated in the U.S. District Court. On the contrary,
4 the U.S. District Court granted summary judgment in favor of LVMPD on Plaintiff’s civil
5 rights claims pursuant to 42 USC § 1983 and declined to exercise supplemental jurisdiction
6 over Plaintiff’s state tort claims. Specifically, the Federal Court stated: “**Considering the**
7 **court’s ruling on the instant motions, the only remaining claims in this suit are Paulos’**
8 **state law claims against LVMPD defendants (negligence) and Palms (negligence and false**
9 **imprisonment). The court therefore declines to exercise supplemental jurisdiction over**
10 **theses state law causes of action. *Wade v. Reg’l Credit Ass’n*, 87 F.3d 1098, 1107 (9th Cir.**
11 **1996)(holding that ‘where a district court dismisses a federal claim, leaving only state**
12 **claims for resolution, it should decline jurisdiction over the state claims and dismiss them**
13 **without prejudice’).**

14 **Based on the foregoing, Paulos’ remaining claims will be dismissed without**
15 **prejudice.”** (Exhibit 2 - Mahan’s Order, pp.17-18)(emphasis added).

16 In light of the fact that the U.S. District Court unequivocally declined to decide the
17 merits of Plaintiff’s state tort claims, LVMPD’s instant motion must be denied.

18 As the Court, and Counsel, are well aware in order to sustain an action under section
19 1983, a plaintiff must demonstrate (1) that the conduct complained of was committed by a
20 person acting under color of state law; and (2) that the conduct deprived the plaintiff of a
21 federal constitutional or statutory right." Wood v. Ostrander, 879 F.2d 583, 587 (9th Cir. 1989).

22 Whereas, in order to prevail on a negligence theory a plaintiff must demonstrate that (1)
23 the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the
24 breach was the legal cause of the plaintiff’s injuries, and (4) the plaintiff suffered damages.
25 Dauber v. Sr. Bridges of Sparks Fam. Hosp., 282 p.3d 727, 732 (2012).

26 Therefore, it is apparent that LVMPD’s assertion that “[t]he legal standard for Paulos’
27 current negligence claim and her § 1983 claim is the same” lacks candor because the elements
28 of each cause-of-action are separate and distinct. For example, the tort of negligence does not

1 require state action or deprivation of a constitutional right. Likewise, a § 1983 action does not
2 require that a plaintiff demonstrate the elements of duty, breach, causation, or damage.
3 Consequently, this Court should deny LVMPD's Motion because the Court's prior ruling is
4 correct and LVMPD has failed to offer any new evidence to justify disturbing the prior order.

5 Nevada does not employ the terminology of *res judicata* to encompass the separate and
6 distinct concepts of claim preclusion and issue preclusion. Five Star Capital Corporation v.
7 Ruby, 194 P.3d 709 (2008). Rather, the Nevada Supreme Court addresses the concepts
8 separately. Id.

9 LVMPD's brief merely raises arguments concerning issue preclusion. (*LVMPD Motion*,
10 pp. 12-15). Accordingly, Plaintiff will limit her opposition to LVMPD's issue preclusion
11 arguments because generally a court will not address arguments which a party failed to provide
12 any argument or citation to authority on the issue. LVMPD v. Coregis Insurance Co., 256 P.3d
13 958, 961 n.2 (2011).

14 Issue preclusion refers to the effect of a judgment in foreclosing re-litigation of a
15 matter that has been litigated and decided. Migra v. Warren Cirt School Dist. Bd. Of Ed., 465
16 U.S. 75, 77 fn. 1 (1984)(*citing* Restatement (Second) of Judgments § 27). The factors necessary
17 for application of issue preclusion: (1) the issue decided in the prior litigation must be identical
18 to the issue presented in the current action; (2) the initial ruling must have been on the merits
19 and have become final; (3) the party against whom the judgment is asserted must have been a
20 party or in privity with a party to the prior litigation; and (4) the issue was actually and
21 necessarily litigated. Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1055 (Nev. 2008).

22 In this case, LVMPD cannot satisfy at least three of the four facts necessary for issue
23 preclusion. Although, Plaintiff and LVMPD were parties to the proceedings in federal court,
24 none of the other factors are satisfied.

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1 1. Identical Issues

2 Evaluating whether a defendant was negligent versus evaluating whether a individual
3 violated a citizen's civil rights are not identical issues because each analysis requires discrete
4 questions of law and factual determinations. Specifically, in order "[t]o sustain an action under
5 section 1983, a plaintiff must show (1) that the conduct complained of was committed by a
6 person acting under color of state law; and (2) that the conduct deprived the plaintiff of a
7 federal constitutional or statutory right." Wood v. Ostrander, 879 F.2d 583, 587 (9th Cir. 1989).

8 Whereas in order to prevail on a negligence theory, under Nevada law, a plaintiff must
9 demonstrate that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached
10 that duty, (3) the breach was the legal cause of the plaintiff's injuries, and (4) the plaintiff
11 suffered damages. Dauber v. Sr. Bridges of Sparks Fam. Hosp., 282 P.3d 727, 732 (2012).

12 As noted above, the issues presented by a § 1983 action for violation of federal civil
13 rights differ considerably for a state tort under a negligence theory obviously differ because a
14 plaintiff is not required to demonstrate the elements of duty, breach, causation, or damage
15 when proving a § 1983 claim; just as a Plaintiff alleging negligence is not required to
16 demonstrate a violation of a constitutional right, committed by an official acting under the
17 color of law. Consequently, a § 1983 action does not present "identical issues" to a state tort
18 claim for negligence. Therefore, an individual struck by a vehicle being pursued by a police
19 car, while not able to sue police for a violation of civil rights, can sue for the police's
20 negligence. City of Pinellas Park v. Brown, 604 So. 2d 1222 (Fla. 1992). Additionally,
21 numerous other courts have upheld the viability of a negligence action against the police
22 department in the absence of a civil rights violation. For example, although officers were
23 immune from suit, plaintiff who was injured following a police pursuit, could sue the city for
24 its negligent vehicular pursuit police. Colvin v. City of Gardena, 11 Cal. App. 4th 1270 (2d
25 Dist. 1992). Likewise, a plaintiff who was an innocent could sue police for negligent
26 high-speed police pursuit of a suspected bank robber. Biscoe v. Arlington County, 738 F.3d
27 1352 (1984). Furthermore, a New York appellate court upheld finding of negligence following
28 a jury verdict when plaintiff was struck by a speeding car being negligently pursued by a police

1 officer. Mvers v. Harrison, 438 F.2d 293 (2d. Cir. 1971); Similarly, police liable under state
2 torts for injuries resulting from a negligent pursuit. Thain v. City of New York, 30 N.Y.2d 524
3 (1972).

4 The mere fact that LVMPD conflates “reasonableness under the totality of the
5 circumstances”, for purposes of § 1983, with negligence does not make the discrete theories of
6 liability “identical issues.”

7 2. Final ruling on the merits

8 LVMPD’s assertion that the U.S. District Court made a “final ruling upon the merits,”
9 with regard to Plaintiff’s negligence claim cannot withstand the scrutiny of reason.

10 Simply put, the U.S. District Court expressly declined to make any ruling, whatsoever,
11 on the merits of Plaintiff’s negligence claim. On the contrary, the Court stated: “**The court**
12 **therefore declines to exercise supplemental jurisdiction over theses state law causes of**
13 **action.**” (Exhibit 2 - Mahan’s Order, pp.17-18)(emphasis added).

14 3. Issues actually and necessarily litigated

15 Similarly, Plaintiff’s negligence claim was not litigated in the U.S. District Court. On
16 the contrary, the U.S. District Court granted summary judgment in favor of LVMPD on
17 Plaintiff’s civil rights claims pursuant to 42 USC § 1983 and declined to exercise supplemental
18 jurisdiction over Plaintiff’s state tort claims. (Exhibit 2, pp. 17-18). In doing so the Court chose
19 not to perform any analysis, whatsoever, concerning Plaintiff’s negligence claims.
20 Consequently, it is disingenuous to argue that Plaintiff’s negligence claims were actually and
21 necessarily litigated.

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IV.

CONCLUSION

LVMPD has failed to demonstrate the existence of any new evidence. Further, LVMPD's Motion does not demonstrate that the Court's Order was clearly erroneous, but rather than LVMPD merely disagrees with the prior order. Consequently, this Court should Deny LVMPD's motion, without reargument, because the Court has previously made the proper findings of fact and conclusions of law.

DATED this 21st day of December, 2015

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Exhibit 1

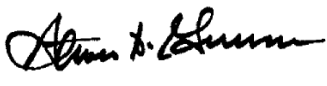
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Exhibit 1

Original

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

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 CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

CRISTINA PAULOS,

Plaintiff,

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

vs.

Date: 8/11/15
 Time: 9:00 a.m.

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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendants Las Vegas Metropolitan Police Department ("LVMPD") and Ofc. Aaron Baca's (hereinafter "LVMPD defendants") Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, having come on for hearing before this honorable on August 11, 2015, with Craig R. Anderson, Esq., of Marquis Aurbach Coffing, appearing on behalf of the LVMPD defendants; Justin W. Smerber, Esq., of Moran Brandon Bendavid Moran, appearing on behalf of defendants FCH1, LLC and Jeannie Houston; and Cal Potter, III, Esq. and C.J. Potter, IV, Esq., of Potter Law Offices, appearing on behalf of the plaintiff, with the Court having considered the pleadings and papers on file herein, and the argument of counsel made a the hearing, the Court
 25 **HEREBY FINDS AS FOLLOWS:**

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FINDINGS OF FACT

1
2 1. On August 14, 2012, plaintiff Cristina Paulos ("Paulos") filed a complaint in
3 Nevada's Eighth Judicial District Court alleging that LVMPD acted negligently on August 7,
4 2011. See Case No. A-12-666754-C.

5 2. Paulos amended this complaint on two occasions.

6 3. Paulos' Second Amended Complaint filed on August 5, 2013, included federal 42
7 U.S.C. §1983 claims against LVMPD and three individual officers.

8 4. Due to the federal claims, on August 27, 2013, the LVMPD defendants removed
9 Paulos' case to the United States District Court for the District of Nevada. See 2:13-cv-01546-
10 JCM-PAL.

11 5. After discovery closed in the federal litigation, the LVMPD defendants filed a
12 motion for summary judgment on all claims against them. Paulos opposed the motion and the
13 LVMPD defendants filed a reply.

14 6. On March 12, 2015, federal district court Judge James C. Mahan entered his
15 summary judgment order. See Paulos v. FCH1, LLC, 2:13-cv-1546-JCM-PAL, 2015 WL
16 1119972 (D. Nev. Mar. 12, 2015). The federal court order only addressed Paulos' federal 42
17 U.S.C. §1983 law claims against the LVMPD defendants. Id.

18 7. The federal district court found that summary judgment was appropriate on all
19 federal 42 U.S.C. §1983 claims against the LVMPD defendants. Id.

20 8. After dismissing the federal law claims against the LVMPD defendants, the
21 federal court "decline[d] to exercise supplemental jurisdiction over the state law claims against
22 the LVMPD defendants (negligence) and Palms (negligence and false imprisonment) and
23 dismisses them without prejudice." Id. at p. 18.

24 9. After dismissing the state law claims without prejudice, Paulos filed her current
25 lawsuit. With respect to the LVMPD defendants, the complaint alleges negligence. Paulos'
26 negligence claim against the LVMPD defendants reads as follows:
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1 26. Defendant LVMPD owed Plaintiff a duty to use ordinary care and/or skill
2 in performing police practices so as not to cause Plaintiff to suffer emotional and
physical injuries.

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

6 28. That LVMPD Officers had a duty to use reasonable care in restraining
Plaintiff to avoid causing injuries, to wit, see burns to her body.

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

10 Compl. at ¶¶26-29.

11 10. On May 19, 2015, the LVMPD defendants filed a Motion to Dismiss, or in the
12 Alternative, Motion for Summary Judgment.

13 11. According to the LVMPD defendants' motion: (1) the doctrine of issue preclusion
14 barred Paulos' entire negligence claim against the LVMPD defendants because the federal
15 district court had specifically found that Ofc. Baca acted reasonably; and (2) that Paulos'
16 negligent, hiring, training and supervision claim was untenable as a matter of law pursuant to
17 NRS 41.032.

18 12. Paulos opposed the LVMPD defendants' motion and filed a counter-motion for
19 sanctions.

20 13. The LVMPD defendants replied to Paulos' opposition and filed an opposition to
21 Paulos' countermotion. Paulos replied to the LVMPD defendants' opposition to the
22 countermotion.

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CONCLUSIONS OF LAW

1. NRCF 12(b) calls for summary judgment when things outside the pleadings are presented to and not excluded by the court. Here, the LVMPD defendants submitted evidence and federal court orders. The court therefore, treats the LVMPD defendants' motion to dismiss, or in the alternative, motion for summary judgment, as a motion for summary judgment.

2. Summary judgment is appropriate when no genuine issue of material fact remains for trial and the moving party is entitled to judgment as a matter of law. Moody v. Manny's Auto Repair, 110 Nev. 320, 323 (1994).

3. First, the LVMPD defendants moved to dismiss Paulos' negligent hiring, training and supervision claim under NRS 41.032. Nevada has generally waived its sovereign immunity. See NRS 41.032(1). Its waiver, however, contains exceptions. One exception is that no action may be brought against an officer or employee of Nevada "[b]ased upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the State or any of its agencies or political subdivisions or any officer, employee or immune contractor of any of these, whether or not the discretion involved is abused." See NRS 41.032(2).

4. Because there is no Nevada Supreme Court case law on this issue, the Court looks to federal courts for guidance. Under Nevada law, the discretionary function exception barred negligent hiring and supervision claims. See Beckwith v. Pool, No. 2:13-cv-125-JCM-NJK, 2013 WL 3049070, at *6 (D. Nev. June 17, 2013) (dismissing plaintiff's cause of action for negligent hiring, retention, training, supervision in a motion to dismiss posture because the decision of which police officers to hire, and how to train and supervise them are an integral part of governmental policy-making or planning). See also Neal-Lomax v. Las Vegas Metro. Police Dep't., 574 F.Supp. 2d 1170, 1192 (D. Nev. 2008) aff'd 371 F.App'x 752 (9th Cir. 2010). The Court finds that the alleged failure by LVMPD to adequately train its officers falls within the scope of discretionary immunity, and LVMPD is entitled to discretionary immunity. Therefore, the LVMPD defendants' motion to dismiss the negligent hiring, training, and supervision claim against LVMPD is GRANTED.

1 5. Second, the LVMPD defendants move to dismiss the negligence claim under the
2 doctrine of issue of preclusion. Issue preclusion requires: (1) the issue decided in the prior
3 litigation must be identical to the issue presented in the current actions; (2) the initial ruling must
4 have been on the merits and have become final; (3) the party against whom the judgment is
5 asserted must have been a party or privy with a party to the prior litigation; and (4) the issue was
6 actually and necessarily litigated. Five Star Corp. v. Ruby, 124 Nev. 1048, 1055 (2008) (holding
7 modified by Weddell v. Sharp, 131 Nev. Adv. Op. 28, 350 (P.3d 80 (2015))). Paulos argues that
8 issue preclusion does not apply in this case because the issue decided in a prior litigation was not
9 identical to the issue presented in the current action.

10 6. This Court finds that Judge Mahan, in the federal case, did not issue a ruling or a
11 finding that Ofc. Baca acted reasonably. This Court finds that Judge Mahan only found that Ofc.
12 Baca was entitled to qualified immunity and only granted summary judgment on this issue. See
13 Paulos v. FCH1, LLC, No. 2:13-cv-1546-JCM-PAL 2015 WL 1119972, at *12 (D. Nev. Mar.
14 12, 2015).

15 7. Because this Court finds that Judge Mahan's order and decision was based only
16 upon qualified immunity and not reasonableness finding, it finds that issue preclusion does not
17 apply and dismissal is improper. Therefore, the LVMPD defendants' motion to dismiss the
18 negligence claim based upon issue preclusion is DENIED.

19 8. The Court finds that Paulos' countermotion for sanctions is DENIED.

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

2 The LVMPD Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary
3 Judgment is GRANTED in part and DENIED in part and Paulos' countermotion for sanctions is
4 DENIED.

5 Dated this 15 day of October, 2015.

Dated this 6 day of October, 2015.

6 MARQUIS AURBACH COFFING

POTTER LAW OFFICES

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Attorney for Plaintiff

11 Dated this 6 day of October, 2015.

Dated this 5 day of October, 2015.

12 BLUT LAW GROUP, APC

MORAN BRANDON BENDAVID MORAN

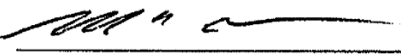
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Attorney for Defendants FCH1, LLC and
Houston

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21 IT IS SO ORDERED this 3 day of Nov October, 2015.

22
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24 
25 District Court Judge
26 ROB BARE
27 JUDGE, DISTRICT COURT, DEPARTMENT 32
28

MARQUIS AURBACH COFFING

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Exhibit 2

001016

001016

Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CRISTINA PAULOS,

Plaintiff(s),

v.

FCH1, LLC, et al.,

Defendant(s).

Case No. 2:13-CV-1546 JCM (PAL)

ORDER

Presently before the court is a motion for summary judgment submitted by the Las Vegas Metropolitan Police Department (hereinafter "LVMPD"), as well as officers Aaron Baca, Jake Von Goldberg, and Jeffery Swan (collectively hereinafter "LVMPD defendants"). (Doc. # 33). Plaintiff Cristina Paulos filed a response, (doc. # 39), and LVMPD defendants filed a reply, (doc. # 43).

Also before the court is a motion for summary judgment submitted by defendant FCH1, LLC (hereinafter "Palms"). (Doc. # 35). Paulos filed a response, (doc. # 40), and Palms filed a reply, (doc. # 44).

Also before the court is a partial motion for summary judgment regarding punitive damages submitted by Palms. (Doc. # 34). Paulos filed a response, (doc. # 40), and Palms filed a reply, (doc. # 42).

I. Background

This case arises out of an incident where a police officer detained a suspect who attacked him by forcing her to the ground. The suspect received second and third degree burns as the result of being restrained on the hot asphalt for several minutes. Officer Baca, who brought Paulos to the ground and handcuffed her, is the officer primarily involved in the incident. Paulos asserts multiple

1 claims against LVMPD, officer Baca, and officers Swan and Von Golberg, who arrived later on
2 scene. Paulos also brings claims against FCH1, LLC, the owner and operator of the Palms casino
3 and resort hotel, for the participation of one of its security guards, Jeannie Houston, in the arrest.¹

4 The incident took place on August 7, 2011. In her deposition, Paulos attests to not
5 remembering many of the underlying events, including how she ended up restrained on the ground.
6 (Doc. # 39-1 pp. 144–45). However, two different Palms security cameras captured much of the
7 incident on video.² A comparison of this footage, Paulos' own deposition testimony, and LVMPD
8 defendants' presented evidence reveals that there is no genuine dispute of material fact in this case.

9 The incident began at about 3:13 P.M., when Paulos' vehicle jumped a median and entered
10 the intersection in front of an exit from Palms, colliding with another vehicle. Paulos continued
11 driving the short distance into the exit and collided head-on with a separate vehicle. Shortly
12 thereafter, Paulos is clearly seen rapidly leaving the scene of the accident. (Video A at 15:14:32).
13 She then returned to the scene, and the footage shows her sitting in the passenger seat of the second
14 vehicle she struck. The apparent owner of the vehicle reached across Paulos in order to remove
15 the keys from the ignition. (Video B at 15:16:32).

16 By this time, officer Baca, who was in the area during the course of his normal shift, arrived
17 on scene in order to evaluate the situation. As Paulos exited the vehicle she struck, its owner told
18 officer Baca that she was attempting to steal the vehicle. Officer Baca therefore approached Paulos
19 in order to speak with her. It is clear from the footage that the officer had not drawn any type of
20 weapon or even handcuffs from his utility belt and approached Paulos in a calm manner. (Video
21 B at 15:16:48).

22
23 ¹ Paulos also brought suit against Houston. While attorneys for LVMPD defendants also originally listed
24 themselves as attorneys for Houston (see, e.g., doc. # 5), the parties later stipulated that this was in error. (Doc. # 14).
25 Since then, Houston has failed to file an answer to Paulos' complaint, and the clerk of the court entered an order of
26 default against her. (Doc. # 22). Therefore, none of these motions for summary judgment apply to Houston, and the
27 court will only refer to her for the purpose of discussing the case's facts.

28 ² Each video camera captures different key portions of the incident, and the court will therefore refer to their
content separately. The black-and-white video will be referred to as "Video A," while the color video will be referred
to as "Video B." (See doc. # 33 p. 5 n. 2). Time cites will be given in the twenty-four hour format that both videos use
(e.g., 3:00 P.M. is 15:00:00).

1 In response, Paulos turned her back to officer Baca and walked a short distance away from
2 him. After the officer ordered her to stop, Paulos turned and then lunged at officer Baca towards
3 his waist with both hands extended. (Video B at 15:16:54). He claims that she was reaching for
4 his gun and that he felt her hand make contact with it. Whether Paulos was specifically reaching
5 for the weapon and whether she actually made contact is not clear from the video.

6 In order to thwart the attack, officer Baca immediately pushed Paulos a short distance
7 away. Although stumbling backwards, Paulos remained standing. Officer Baca quickly closed the
8 distance between them and attempted to restrain Paulos from behind. Struggling to do so, he forced
9 her to the ground. (Video B at 13:17:02). Paulos was thus lying on the asphalt pavement that
10 constitutes the exit lane coming out of Palms.

11 For the next two minutes, officer Baca continued his attempts to handcuff Paulos. (Video
12 B at 15:17:04–18:35). He claims that Paulos resisted arrest throughout this time period. At the
13 onset, however, trees and surrounding bystanders obstruct the camera's view. Nonetheless, officer
14 Baca is seen calling over Palms security officer Jeannie Houston to assist him in restraining Paulos,
15 which she proceeded to do. (Video B at 15:17:28). By this point, the camera shows Paulos
16 struggling against officer Baca and Houston until they finally succeed in handcuffing her. (Video
17 B at 15:17:38–18:35).

18 Less than two minutes later, additional LVMPD officers arrived on scene. (Video B at
19 15:19:50). The color footage ends at this point and the black-and-white security camera's view is
20 obscured. It is therefore not clear exactly how long Paulos remained on the ground after back-up
21 arrived. However, LVMPD defendants assert that the timeframe can be two minutes and forty
22 seconds at most, because back-up arrived at 15:19:50 and Paulos is seen standing at 15:22:30.
23 (Video A). LVMPD defendants further assert that Paulos is seen seconds later walking with
24 officers away from the pavement towards a nearby grassy area.

25
26 It is not clear to the court that the figure in this footage segment is definitively Paulos.
27 However, her opposition to LVMPD defendants' motion to dismiss, which disputes several of the
28 "undisputed facts" in defendants' motion, never disputes these specific, key assertions. (Doc. # 39,

1 pp. 6–7). The court will therefore accept that the figure is Paulos and that she remained on the
2 ground for at most two minutes and forty seconds after additional officers arrived on scene. This
3 means that Paulos spent a little more than five minutes on the ground in total.

4 After Paulos was situated in the grassy area, several other officers spoke with her, including
5 officer Swan and Sergeant Jason Harney, officer Baca’s immediate supervisor. At no point did
6 Paulos complain to any of the officers of burns or any other type or injury. (Doc. # 33-2 pp. 79–
7 83). Nor did any of the officers note seeing any injury in their reports. Officer Swan did note,
8 however, that Paulos’ behavior was erratic at this point. She would be crying, then suddenly happy,
9 then suddenly screaming. (Doc. # 33-5 p. 22). Paulos both screamed to herself and cursed at the
10 officers. It was this behavior and the fact that she had just been in a car accident that led to her
11 being submitted for medical treatment. (see doc. # 33-9 p. 2; doc. # 33-3 p. 91).

12 After paramedics arrived on scene, they transported Paulos to University Medical Center,
13 where she was treated from August 7–9. Paulos’ own medical expert, Dr. Matthew Young, testified
14 at his deposition that this treatment was primarily related to the psychosis she exhibited during the
15 incident. (Doc. # 33-15 p. 17–20). Despite how visually severe Paulos’ burns later appeared,³ the
16 application of a burn cream was the only burn-related treatment she received during this initial
17 hospital stay. (Id; doc. # 33-10).

18 This is not surprising. As explained by both Dr. Young and Dr. Andrew Silver, the burn
19 specialist who eventually treated Paulos, a burn may not seem serious at first but can reveal itself
20 to be more severe over the course of several days. (Doc. # 33-15 pp. 18–19; doc. # 39-4 pp. 14–
21 16). This process is called “burn conversion.” (Doc. # 39-4 pp. 14–15).

22 When University Medical Center discharged Paulos on August 9, her discharge sheet
23 referenced only blisters that had developed on her body. (Doc. # 39-4 pp. 21–22). It was not until
24 August 11 that Paulos began receiving treatment at Lyons Burn Care Unit. There, she received
25 skin graft surgeries. (Id. at p. 27).

26 Paulos filed a complaint on August 14, 2012, and a second amended complaint on August
27 5, 2013. (Doc. # 2 Exh. A,C). Defendants then removed the instant action to federal court.

28

³ It is unclear when photos of Paulos’ burns were taken.

1 Paulos' complaint asserts five causes of action: (1) a negligence claim against Palms,
2 Houston, and other unnamed defendants; (2) a negligence claim against LVMPD defendants; (3)
3 a false imprisonment claim against Palms, Houston, and other unnamed defendants; (4) a claim of
4 excessive force in violation of the Fourth Amendment under 42 U.S.C. § 1983 against LVMPD
5 defendants; (5) a failure to train, direct, or supervise (Monell municipal liability) claim against
6 LVMPD. (Doc. # 2 Exh. C).

7 LVMPD defendants move for summary judgment for claims two, four, and five. (Doc. #
8 33). Palms moves for summary judgment for claims one and three. (Doc. # 35). It also moves for
9 partial summary judgment on Paulos' request for punitive damages. (Doc. # 34).

10 **II. Legal Standard**

11 The Federal Rules of Civil Procedure provide for summary judgment when the pleadings,
12 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
13 show that "there is no genuine issue as to any material fact and that the movant is entitled to a
14 judgment as a matter of law." Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is
15 "to isolate and dispose of factually unsupported claims." Celotex Corp. v. Catrett, 477 U.S. 317,
16 323–24 (1986).

17 In determining summary judgment, a court applies a burden-shifting analysis. "When the
18 party moving for summary judgment would bear the burden of proof at trial, it must come forward
19 with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at
20 trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine
21 issue of fact on each issue material to its case." C.A.R. Transp. Brokerage Co. v. Darden Rests.,
22 Inc., 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted).

23 ...

24 ...

25 In contrast, when the nonmoving party bears the burden of proving the claim or defense,
26 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
27 element of the nonmoving party's case; or (2) by demonstrating that the nonmoving party failed
28 to make a showing sufficient to establish an element essential to that party's case on which that

1 party will bear the burden of proof at trial. See *Celotex Corp.*, 477 U.S. at 323–24. If the moving
2 party fails to meet its initial burden, summary judgment must be denied and the court need not
3 consider the nonmoving party’s evidence. See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–
4 60 (1970).

5 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
6 to establish that a genuine issue of material fact exists. See *Matsushita Elec. Indus. Co. v. Zenith*
7 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the opposing
8 party need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
9 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing versions
10 of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 631 (9th
11 Cir. 1987).

12 In other words, the nonmoving party cannot avoid summary judgment by relying solely on
13 conclusory allegations that are unsupported by factual data. See *Taylor v. List*, 880 F.2d 1040,
14 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
15 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
16 for trial. See *Celotex Corp.*, 477 U.S. at 324.

17 At summary judgment, a court’s function is not to weigh the evidence and determine the
18 truth, but to determine whether there is a genuine issue for trial. See *Anderson v. Liberty Lobby,*
19 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all justifiable
20 inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is
21 merely colorable or is not significantly probative, summary judgment may be granted. See *id.* at
22 249–50.

23 . . .

24 . . .

25 **III. Discussion**

26 Defendants seek summary judgment on each of the five claims in Paulos’ second amended
27 complaint. Because the fourth claim (Fourth Amendment excessive force) and the fifth claim (a
28

Monell municipal liability claim) are the only federal questions in this case, the court will address them first.⁴

A. Fourth Amendment excessive force (claim four)

Paulos' fourth claim seeks to hold LVMPD; officers Baca, Von Goldberg, and Swan; and other unnamed LVMPD employees, liable for violations of her Fourth Amendment rights. Paulos brings this claim under 42 U.S.C. § 1983, asserting that officer Baca exercised excessive force during his arrest of her on August 7, 2011, and that the other officers failed to prevent this constitutional violation.

As an initial matter, it is well established that "a local government body [such as a police department] cannot be held liable under § 1983 'solely because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a respondeat superior theory.'" *Jackson v. Barnes*, 749 F.3d 755, 762 (9th Cir. 2014) cert. denied, 135 S. Ct. 980 (2015) (quoting *Monell v. N.Y.C. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978)). The court will therefore address the liability of the Las Vegas Metropolitan Police Department only in regards to Paulos' Monell claim.

In response to Paulos' claim of excessive force, officer Baca argues that his actions were reasonable as a matter of law and that in the alternative, he cannot be held liable on this claim under the doctrine of qualified immunity. Because a qualified immunity analysis addresses whether a defendant violated a constitutional right, it will be combined with the excessive force analysis.

1. Legal standard- qualified immunity for excessive force

Where a plaintiff has stated a valid cause of action under 42 U.S.C. § 1983, government officials sued in their individual capacities may raise the affirmative defense of qualified immunity. See *Spoklie v. Montana*, 411 F.3d 1051, 1060 (9th Cir. 2005); see also *Goodman v. Las Vegas Metro. Police Dep't*, 963 F. Supp. 2d 1036, 1058 (D. Nev. 2013). Qualified immunity "balances two important interests—the need to hold public officials accountable when they exercise

⁴ Paulos' second amended complaint contains a typographical error, labeling both the false imprisonment claim and the separate excessive force claim as "third cause of action." The court will therefore refer to the excessive force claim as the "forth claim" and the Monell claim as the "fifth claim."

1 power irresponsibly, and the need to shield officials from harassment, distraction, and liability
2 when they perform their duties reasonably.” Pearson v. Callahan, 555 U.S. 223, 231 (2009). It
3 protects government officials performing discretionary functions from liability for civil damages
4 as long as their conduct does not violate “clearly established statutory or constitutional rights of
5 which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).
6 “The principles of qualified immunity shield an officer from personal liability when an officer
7 reasonably believes that his or her conduct complies with the law.” Pearson, 555 U.S. at 244.

8 Deciding whether an officer is entitled to qualified immunity is a two-step analysis. First,
9 the court assesses whether the plaintiff has alleged or shown a violation of a constitutional right.
10 Second, the court decides whether the right at issue was clearly established at the time of the
11 defendant’s alleged misconduct. Pearson, 555 U.S. at 232. Meeting either prong will establish
12 qualified immunity. See Davis v. City of Las Vegas, 478 F.3d 1048, 1056 (9th Cir. 2007). The
13 Supreme Court has instructed that district judges may use their discretion in deciding which prong
14 to address first based on the circumstances of the case at hand. See Pearson, 555 U.S. at 236.

15 **2. Violation of a constitutional right**

16 Turning to the first step, whether officer Baca violated a constitutional right through
17 excessive force, the court “examine[s] the use of force to effect an arrest in light of the Fourth
18 Amendment’s prohibition on unreasonable seizures.” Deorle v. Rutherford, 272 F.3d 1272, 1279
19 (9th Cir. 2001) (citing Graham v. Connor, 490 U.S. 386 (1989)). “Determining whether the force
20 used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful
21 balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests
22 against the countervailing governmental interests at stake.” Graham, 490 U.S. at 396 (internal
23 quotation marks omitted).

24 **a. The nature and quality of intrusion**

25 This side of the balancing test “assess[es] the quantum of force used to arrest [a plaintiff]
26 by considering the type and amount of force inflicted.” Deorle, 272 F.3d at 1279 (internal quotation
27 marks omitted). At the onset, it is important to note that the force that officer Baca used against
28 Paulos is different than most excessive force cases in regards to both type and amount.

1 In arresting Paulos by bringing her to the ground and handcuffing her, officer Baca did not
2 use any seizure devices that the Ninth Circuit has classified as at least an “intermediate” use of
3 force, such as pepper spray, a baton, or a taser. See, e.g., *Young v. Cnty. of L.A.*, 655 F.3d 1156,
4 1161 (9th Cir. 2011) (holding that “[b]oth pepper spray and baton blows are forms of force capable
5 of inflicting significant pain and causing serious injury . . . [and] [a]s such, both are regarded as
6 ‘intermediate force’”); *Bryan v. MacPherson*, 630 F.3d 805, 826 (9th Cir. 2010) (concluding
7 that the use of tasers “constitute an intermediate, significant level of force”).

8 Even without the use of such devices, the way in which officer Baca manually restrained
9 Paulos is vastly different from incidents the Ninth Circuit has found excessive. See, e.g.,
10 *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1056 (9th Cir. 2003) (finding
11 that officers applying their weight to a suspect’s neck and torso while he lay handcuffed on the
12 ground was “severe and . . . capable of causing death or serious injury.”); *Davis*, 478 F.3d at 1055
13 (deeming an officer’s conduct “extremely severe,” when he slammed a handcuffed suspect head-
14 first into a wall, pressed his knee into his back, and punched him in the face). In contrast to these
15 types and amounts of force, the court finds that officer Baca used minimal force in arresting Paulos.

16 Additionally, Paulos’ own security expert, Steven Baker, explicitly stated that he had no
17 criticism of how officer Baca brought Paulos to the ground and handcuffed her. (Doc. # 33-18 pp.
18 50–52). Baker also opined that he had little to no criticism of officer Baca keeping Paulos on the
19 ground until the point that additional officers arrived on scene. (*Id.*). Baker readily agrees that the
20 type of physical exertion that officer Baca underwent in restraining Paulos would have
21 “absolutely” tired him. (*Id.*). The plaintiff’s own evidence supports the officer’s assertion that he
22 was too winded from the struggle with Paulos to move her off the ground. (Doc. # 33-3 p. 85).

23 In turn, the only use of force actually in dispute in this incident is LVMPD defendants’
24 decision to allow Paulos to continue lying on the hot asphalt for the approximately two minutes
25 and forty seconds between additional officers arriving on scene and them lifting her to her feet.
26 The court must therefore weigh this decision and the second and third degree burns Paulos incurred
27 during her entire time on the asphalt against the government interests at stake.

28 **b. The countervailing governmental interests at stake**

1 In *Graham*, the Supreme Court created three factors for measuring the government’s
2 interest in conducting a particular arrest: (1) the severity of the suspect’s crime, (2) whether the
3 suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect
4 actively resisted arrest or attempted to evade arrest by flight. 490 U.S. at 396. Beyond these specific
5 factors, courts also look at the totality of the circumstances. *Mattos v. Agarano*, 661 F.3d 433, 441
6 (9th Cir. 2011).

7 In weighing these factors against the nature and quality of instruction, “[t]he
8 ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable
9 officer in the scene, rather than with the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396. The
10 court must allow “for the fact that police officers are often forced to make split-second
11 judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount
12 of force that is necessary in a particular situation.” *Mattos*, 661 F.3d at 442 (quoting *Graham*, 490
13 U.S. at 396–97).

14 This inquiry is objective. *Graham*, 490 U.S. at 397 (“[T]he question is whether the officers’
15 actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them . . .
16 .”). A reasonable use of force encompasses a range of conduct, and the availability of a less-
17 intrusive alternative will not render conduct unreasonable. *Wilkinson v. Torres*, 610 F.3d at 551
18 (citing *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994)).

19 . . .

20 . . .

- 21 i. Factors 1 & 2: the severity of the crime and the immediate threat of
22 safety of the officers or others

23 The court will combine these two factors, because the only crime at issue is Paulos’ assault
24 against officer Baca. The latter factor, whether Paulos posed an immediate threat to the safety of
25 officer Baca or others, is the most important *Graham* inquiry. See, e.g., *Smith v. City of Hemet*,
26 394 F.3d 689, 702 (9th Cir. 2005). An officer’s good intentions will not make an objectively
27 unreasonable use of force constitutional. *Graham*, 490 U.S. at 397. When the court considers
28 whether an immediate threat existed, a “simple statement by an officer that he fears for his safety

1 or the safety of others is not enough; there must be objective factors to justify such a concern.”
2 Mattos, 661 F.3d at 441–42 (quoting Deorle, 272 F.3d at 1281).

3 As an initial matter, LVMPD defendants assert that Paulos’ conduct prior to her contact
4 with officer Baca (i.e., causing the accident, fleeing the scene, and possibly attempting to steal a
5 vehicle) should be included in weighing the severity of her actions. While hindsight might suggest
6 that some of these actions were criminal, officer Baca himself admits that he approached Paulos
7 to only determine what had happened and that he did not believe at the time that she had committed
8 any crime. (Doc. # 33-3 pp. 62, 88). Since these initial events did not enter in officer Baca’s
9 decision to arrest Paulos and use force in doing so, the court will not weigh them in this
10 consideration.

11 Nonetheless, Paulos did commit a serious crime when she attacked officer Baca and
12 therefore posed a serious threat to him and bystanders. While not denying the attack itself, Paulos
13 disputes the officer’s contention that she was reaching for his firearm. She asserts that the video
14 evidence is not clear to this end and that the question should therefore be left for a jury. This
15 argument is not convincing.

16 This case is not a criminal prosecution of Paulos, where a determination that she attempted
17 to use a deadly weapon would create an aggravating condition in a crime. See NRS § 200.471(2)
18 (increasing the sentence for assaulting an officer with “the use of a deadly weapon or the present
19 ability to use a deadly weapon”). Instead, an excessive force claim is premised on the reasonability
20 of an officer’s conduct and whether objective factors supported his safety concerns.

21 Here, the incident’s objective factors made it reasonable for officer Baca to believe that
22 Paulos was reaching for his firearm and that she was therefore a serious threat to him and all
23 involved. Paulos’ own security expert asserts that in the security footage, she “is seen to reach
24 toward the right waist area of the officer” (Doc. # 33-17 p. 4). Even without considering the
25 firearm itself, it is undeniable that Paulos lunged at officer Baca after he had calmly approached
26 her mere seconds earlier. This erratic, irrational, and aggressive behavior indicated that Paulos was
27 dangerous. Therefore, both factors 1 and 2 weigh in favor of LVMPD defendants.

28 ii. Factor 3: whether the suspect actively resisted arrest or attempted

1 to evade arrest by flight

2 Turning to the third Graham factor, there is no doubt that Paulos resisted arrest for at least
3 some portion of her time on the ground. The segments of the security footage not obscured clearly
4 show her struggling against both officer Baca and the Palms security guard. (Video B at 15:17:38).
5 Furthermore, both Paulos' security expert and her police practices expert acknowledge that the
6 footage shows her struggling. (Doc. # 33-17 p. 4; doc. # 39-7 p. 7).

7 Despite this evidence and the fact that Paulos claims limited memory of the incident, she
8 denies ever struggling with officer Baca. (Doc. # 39-1 p. 48). Nonetheless, the court is not required
9 to accept a version of events in contradiction to available evidence. *Scott v. Harris*, 550 U.S. 372,
10 380 (2007) (holding that when a non-moving party's version of the facts "is blatantly contradicted
11 by the record, so that no reasonable jury could believe it, a court should not adopt [it] for purposes
12 of ruling on a motion for summary judgment."). The court therefore concludes that Paulos resisted
13 arrest.

14 While analysis of this factor would normally end at this point, the court must consider how
15 it applies to the fact that LVMPD defendants allowed Paulos to lie on the ground even once
16 additional officers arrived. Her security expert asserts that the availability of more officers and
17 their "caged" police vehicles necessitated immediately moving Paulos into one of these vehicles.
18 (Doc. # 33-18 p. 51). The court agrees that the presence of additional officers would naturally
19 begin to mitigate the severity of a suspect's resistance once she is restrained on the ground.

20
21 Nonetheless, the court has already found that there was at most a two minute and forty
22 second delay between the additional officers' arrival and Paulos being lifted off the ground. Such
23 a delay is not unreasonable considering that the officers arrived to a scene involving a multi-vehicle
24 accident, multiple bystanders, an individual restrained on the ground, and a winded officer. It is
25 thus reasonable to take a few minutes to assess the scene before moving a suspect that poses an
26 unknown level of danger. This conclusion is further supported by the fact that Paulos admits she
27 never verbalized her discomfort to any officer at any time. (Doc. # 33-2 pp. 79-83). Therefore,
28 this factor weighs in the favor of LVMPD defendants.

1 iii. Other factor: mental illness

2 Finally, the court addresses Paulos' contention that the disturbed mental state she displayed
3 throughout the incident should be a mitigating factor in assessing the governmental interest at
4 stake. In this regard, the Ninth Circuit has rejected a "per se rule establishing two different
5 classifications of suspects: mentally disabled persons and serious criminals." Deorle, 272 F.3d at
6 1283. It has instead "emphasized that where it is or should be apparent to the officers that the
7 individual involved is emotionally disturbed, that is a factor that must be considered in
8 determining, under Graham, the reasonableness of the force employed." Id. (emphasis added).

9 The rationale for this policy is that "[t]he problems posed by, and thus the tactics to be
10 employed against, an unarmed, emotionally distraught individual who is . . . resisting arrest are
11 ordinarily different from those involved in law enforcement efforts to subdue an armed and
12 dangerous criminal" Id. at 1282–83 (finding that firing upon an emotionally disturbed suspect
13 with a less-than-lethal round was unreasonable when the officer observed his state for over half an
14 hour. Id. at 1283.

15 While it is clear in hindsight that Paulos was suffering from some form of psychosis during
16 the incident, officer Baca never had a chance to make this observation. Unlike the officer in Deorle,
17 he did not have time to observe her state of mind; she attacked him mere seconds after he
18 approached her. In turn, any mental illness that Paulos may have been suffering from could not
19 have been apparent to officer Baca at the onset of the arrest. The issue therefore does not enter into
20 the analysis.

21 iv. Totality of the circumstances

22 While it is unfortunate that Paulos incurred such severe burns as a result of her arrest in
23 this incident, the court finds that officer Baca's use of minimal force in restraining her was
24 appropriate considering the objective threat she posed and her undeniable attempt to resist arrest.
25 In light of this assessment and the lack of any genuine dispute of material fact, the court finds that
26 officer Baca did not use excessive force in arresting Paulos. This conclusion also applies to all
27 officers who arrived on scene after Paulos was restrained on the ground.

28 **3. Clearly established right**