

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

IT IS ORDERED this _____ day of October, 2017.

District Court Judge

Submitted By:

MARQUIS AURBACH COFFING

By: 

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Attorney for Defendants LVMPD and Baca

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

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


District Court Judge

ROB BARE

JUDGE, DISTRICT COURT, DEPARTMENT 32

Submitted By:

MARQUIS AURBACH COFFING

By:

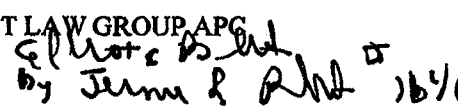
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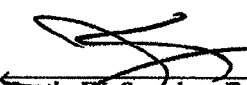
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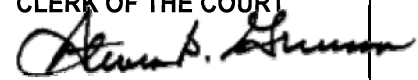
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22 *Attorneys for Plaintiff*
23 *Cristina Paulos*

24 **DISTRICT COURT**
25 **CLARK COUNTY, NEVADA**

26 CRISTINA PAULOS,

27 Plaintiff,

28 *vs.*

29 FCH1, LLC, a Nevada limited liability
30 company; LAS VEGAS METROPOLITAN
31 POLICE DEPARTMENT, a government
32 entity; JEANNIE HOUSTON, an individual;
33 AARON BACA, an individual; and DOES 1
34 through 10,

35 Defendants.

Case No. A-15-716850-C

Dept. No. XXXII

NOTICE OF APPEAL

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

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

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

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

6 Dated this 12th day of January, 2018.

7 LEWIS ROCA ROTHGERBER CHRISTIE LLP

8 By /s/ Abraham G. Smith

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14 *Attorneys for Plaintiff*

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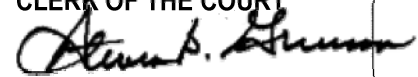
Lewis Roca
ROTHGERBER CHRISTIE

EXHIBIT 1

001686

EXHIBIT 1

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Attorneys for Defendants LVMPD and Officer Baca

DISTRICT COURT

CLARK COUNTY, NEVADA

CRISTINA PAULOS,

Plaintiff,

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

vs.

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

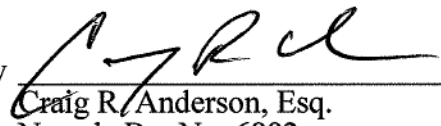
FCH1, LLC, a Nevada limited liability company;
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, a government entity;
AARON BACA, an individual
and DOES 1 through 10,

Defendants.

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

Dated this 3 day of December, 2017.

MARQUIS AURBACH COFFING

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

CERTIFICATE OF SERVICE

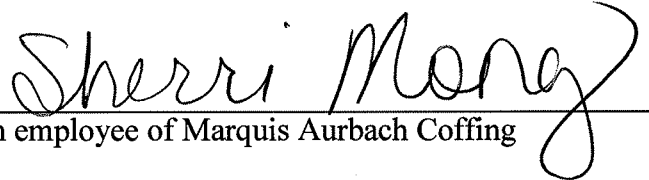
I hereby certify that the foregoing **DEFENDANTS LVMPD AND OFC. BACA'S**
NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW was
 submitted electronically for filing and/or service with the Eighth Judicial District Court on the
19th day of December, 2017. Electronic service of the foregoing document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

Elliot S. Blut, Esq.
 Attorney for Plaintiff
 eblut@blutlaw.com
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Justin W. Smerber, Esq.
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 Attorneys for Defendant FCH1, LLC
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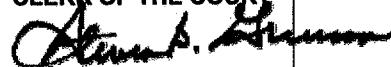
I further certify that I served a copy of this document by mailing a true and correct copy
 thereof, postage prepaid, addressed to:

n/a


 an employee of Marquis Aurbach Coffing

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

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 ORIGINAL

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

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

13 CRISTINA PAULOS,

14 Plaintiff,

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

15 vs.

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

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

21 Defendants.

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

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

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///

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1 **I. FINDINGS OF FACT**

2 **A. FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

20 **B. PROCEDURAL HISTORY**

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

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

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

27

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS ORDERED this _____ day of October, 2017.

District Court Judge

Submitted By:

MARQUIS AURBACH COFFING

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

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


District Court Judge

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

Submitted By:

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By:

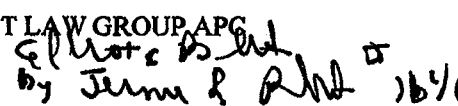
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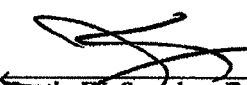
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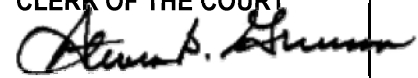

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*Attorneys for Plaintiff
Cristina Paulos*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CRISTINA PAULOS,

Plaintiff,

vs.

FCH1, LLC, a Nevada limited liability
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POLICE DEPARTMENT, a government
entity; JEANNIE HOUSTON, an individual;
AARON BACA, an individual; and DOES 1
through 10,

Defendants.

Case No. A-15-716850-C

Dept. No. XXXII

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Plaintiff CRISTINA PAULOS

2. Identify the judge issuing the decision, judgment, or order appealed from:

THE HONORABLE ROB BARE

3. Identify each appellant and the name and address of counsel for each appellant:

Attorneys for Appellant Cristina Paulos

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4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Attorneys for Respondents FCH1, LLC and Jeannie Houston

JUSTIN W. SMERBER
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630 South Fourth Street
Las Vegas, Nevada 89101
(702) 384-8424

*Attorneys for Respondents Las Vegas Metropolitan Police
Department and Aaron Baca*

CRAIG R. ANDERSON
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5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

1 7. Indicate whether appellant is represented by appointed or retained
2 counsel on appeal:

3 Retained counsel

4 8. Indicate whether appellant was granted leave to proceed in forma
5 pauperis, and the date of entry of the district court order granting such
6 leave:

7 Appellant is in the process of applying for leave to proceed in
8 forma pauperis.

9 9. Indicate the date the proceedings commenced in the district court, *e.g.*,
10 date complaint, indictment, information, or petition was filed:

11 "Complaint for (1) Negligence (2) Negligence and (3) False
12 Imprisonment," filed April 13, 2015

13 10. Provide a brief description of the nature of the action and result in the
14 district court, including the type of judgment or order being appealed and
15 the relief granted by the district court:

16 This is a negligence and false imprisonment action arising out
17 of plaintiff's arrest. Defendants handcuffed and detained plaintiff
18 on hot asphalt that resulted in severe burns to her body. The
19 LVMPD defendants moved to reconsider an order denying their
20 motion to dismiss. The district granted the motion based on the
21 issue of claim preclusion. Plaintiff appeals from the findings of fact
22 and conclusions of law granting summary judgment in favor of the
23 LVMPD defendants and dismissing FCH1, LLC and Jeannie
24 Houston from the action.

25 11. Indicate whether the case has previously been the subject of an appeal or
26 an original writ proceeding in the Supreme Court and, if so, the caption
27 and Supreme Court docket number of the prior proceeding.

28 N/A

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility
of settlement:

Undersigned counsel is not aware of any circumstances that
make settlement impossible.

1 Dated this 12th day of January, 2018.

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3 By /s/ Abraham G. Smith

4 DANIEL F. POLSENBERG (SBN 2376)
5 ABRAHAM G. SMITH (SBN 13,250)
6 3993 Howard Hughes Parkway, Suite 600
7 Las Vegas, Nevada 89169
8 (702) 949-8200

9 *Attorneys for Plaintiff*

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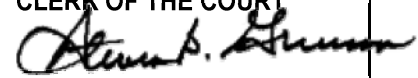
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*Attorneys for Plaintiff
Cristina Paulos*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CRISTINA PAULOS,

Plaintiff,

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.

Case No. A-15-716850-C

Dept. No. XXXII

**AMENDED CASE
APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:

Plaintiff CRISTINA PAULOS

2. Identify the judge issuing the decision, judgment, or order appealed from:

THE HONORABLE ROB BARE

3. Identify each appellant and the name and address of counsel for each appellant:

Pro Bono Appellate Attorneys for Appellant Cristina Paulos

DANIEL F. POLSENBERG
ABRAHAM G. SMITH
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4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Attorneys for Respondents FCH1, LLC and Jeannie Houston

JUSTIN W. SMERBER
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630 South Fourth Street
Las Vegas, Nevada 89101
(702) 384-8424

*Attorneys for Respondents Las Vegas Metropolitan Police
Department and Aaron Baca*

CRAIG R. ANDERSON
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 942-2136

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained *pro bono* counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

Appellant was granted leave to proceed in forma pauperis.
The order granting her application was entered on January 25,
2018.

9. Indicate the date the proceedings commenced in the district court, e.g., date complaint, indictment, information, or petition was filed:

"Complaint for (1) Negligence (2) Negligence and (3) False Imprisonment," filed April 13, 2015

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This is a negligence and false imprisonment action arising out of plaintiff's arrest. Defendants handcuffed and detained plaintiff on hot asphalt that resulted in severe burns to her body. The LVMPD defendants moved to reconsider an order denying their motion to dismiss. The district granted the motion based on the issue of claim preclusion. Plaintiff appeals from the findings of fact and conclusions of law granting summary judgment in favor of the LVMPD defendants and dismissing FCH1, LLC and Jeannie Houston from the action.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

N/A

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Undersigned counsel is not aware of any circumstances that make settlement impossible.

Dated this 31st day of January, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By */s/ Abraham G. Smith*

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Attorneys for Plaintiff

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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 12:46 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 7
PAGES 1501-1705**

DANIEL F. POLSENBERG (SBN 2376)
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Pro Bono Attorneys for Appellant

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
	Case No. A-12-666754-C			
01	Complaint for: (1) Negligence (2) Negligence (3) False Imprisonment	08/14/12	1	1–9
02	Defendant Las Vegas Metropolitan Police Department’s Answer to Plaintiff’s Complaint	08/29/12	1	10–16
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
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
07	Affidavit of Service of Summons and Complaint on F.P. Holdings, L.P.	11/06/12	1	39–40
08	Affidavit of Service of Summons and Complaint on Las Vegas Metropolitan Police Department	11/06/12	1	41–42
09	Second Amended Complaint for: (1) Negligence (2) Negligence (3) False Imprisonment (4) Violation of Constitutional Rights (5) Violation of Constitutional Rights	08/01/13	1	43–54
10	Defendant, FCH1, LLC’s Answer to Plaintiff’s Second Amended Complaint	08/12/13	1	55–62
11	Affidavit of Service of Summons and Second Amended Complaint on Defend-	08/19/13	1	63–64

	ant Aaron Baca			
12	Affidavit of Service of Summons and Second Amended Complaint of Defendant Jake Von Goldberg	08/19/13	1	65–66
13	Affidavit of Service of Summons and Second Amended Complaint on Defendant Jeffrey B. Swan	08/19/13	1	67–68
14	Defendant Las Vegas Metropolitan Police Department's Notice of Removal	08/28/13	1	69–101
	Case No. 2:13-cv-01546-JCM-PAL			
15	Defendants LVMPD, Baca, Von Goldberg and Swan's Motion for Summary Judgment	10/30/14	1 2	102–250 251–354
16	Plaintiff's Opposition to Defendant LVMPD's Motion for Summary Judgment	12/15/14	2 3	355–500 501–572
17	Defendants LVMPD, Baca, Von Goldberg and Swan's Reply to Plaintiff's Opposition [#39] to Motion for Summary Judgment	12/31/14	3	573–602
18	Judgment in a Civil Case	06/01/15	3	603
19	Mandate	05/17/17	3	604
20	Order on Mandate	05/18/17	3	605
	Case No. A-15-716850-C			
21	Complaint for: (1) Negligence (2) Negligence (3) False Imprisonment	04/13/15	3	606–615
22	First Amended Complaint for: (1) Negligence (2) Negligence (3) False Imprisonment	04/29/15	3	616–623
23	Acknowledgment of Service	05/12/15	3	624
24	Defendants, FCH1, LLC and Jeannie	05/14/15	3	625–631

	Houston's Answer to Plaintiff's First Amended Complaint			
25	Demand for Jury Trial	05/14/15	3	632–633
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
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
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
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
31	Scheduling Order	10/21/15	4	968–970
32	Notice of Entry of Findings of Fact and Conclusions of Law	11/09/15	4	971–978
33	Defendant LVMPD and Ofc. Baca's Motion for Reconsideration on Motion to Dismiss	11/13/15	4	979–999
34	Plaintiff's Opposition to Defendant LVMPD's Motion to Reconsider	12/21/15	4 5	1000 1001–1034
35	LVMPD Defendants' Reply to Plaintiff's Opposition to Motion for Reconsideration on Motion to Dismiss	12/28/15	5	1035–1041
36	Defendant, FCH1, LLC and Jeannie Houston's Joinder to Las Vegas Metro-	01/06/16	5	1042–1104

	politan Police Department's Motion for Summary Judgment			
37	Defendant LVMPD and Ofc. Baca's Motion for Summary Judgment	01/06/16	5 6	1105–1250 1251–1364
38	Supplement to Defendants LVMPD and Ofc. Baca's Motion for Summary Judgment	06/28/17	6	1365–1387
39	Plaintiff's Opposition to LVMPD Defendants' Motion for Summary Judgment and Palms' Joinder	07/12/17	6 7	1388–1500 1501–1603
40	Defendants, FCH1, LLC and Jeannie Houston's Reply to Plaintiff's Opposition to Motion for Summary Judgment	07/24/17	7	1604–1628
41	Defendants LVMPD and Officer Baca's Reply to Plaintiff's Opposition to Motion for Summary Judgment	07/25/17	7	1629–1658
42	Recorder's Transcript of Hearing: Defendants LVMPD and Ofc. Baca's Motion for Summary Judgment	10/19/17	7	1659–1670
43	Order Setting Civil Jury Trial, Pre-trial Conference/Calendar Call	10/30/17	7	1671–1672
44	Defendants LVMPD and Officer Baca's Notice of Entry of Findings of Fact and Conclusions of Law	12/14/17	7	1673–1682
45	Notice of Appeal	01/12/18	7	1683–1696
46	Case Appeal Statement	01/12/18	7	1697–1701
47	Amended Case Appeal Statement	01/31/18	7	1702–1705

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

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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

AARON BACA 2/28/2014

1 A. On occasion.

2 Q. I mean, have you ever been a field training
3 officer?

4 A. No.

5 Q. Have you ever taken the sergeants exam?

6 A. No.

7 Q. Is there a reason why?

8 A. No.

9 Q. You're satisfied with being a patrol officer?

10 A. I like what I do.

11 Q. In terms of the scenarios that you would go
12 through, we've established you did it up at the academy
13 up off of Cheyenne, what do you recall about that type
14 of training where you would through and try to determine
15 whether they were yes, no, maybe?

16 A. Just to handle the situation.

17 Q. And handling the situation would be a situation
18 where through your training you've been taught to deal
19 with people that are not necessarily responsive,
20 correct?

21 A. Correct.

22 Q. You've dealt with people that are drunk?

23 A. Yes.

24 Q. You've dealt with people that are under the
25 influence of drugs?

AARON BACA

2/28/2014

1 A. Yes.

2 Q. You've dealt with people that don't like dealing
3 with you as an officer and maybe swear at you?

4 A. Yes.

5 Q. And under those scenarios if they're swearing at
6 you or they're screaming at you you've been taught as an
7 officer that you're kind of thick skinned and where a
8 sensitive guy like myself might be upset you deal with
9 those situations on a day in and day out basis --

10 A. Yes.

11 Q. -- isn't that true?

12 A. Yes.

13 Q. And in terms of the situation here with
14 Ms. Paulos did you make a determination of whether she
15 was a yes, no or maybe?

16 A. I hadn't made any determination until she tried
17 to grab my gun.

18 Q. Did you make any type of assessment?

19 A. I couldn't have -- I didn't have the time to make
20 any kind of assessment, she wasn't answering me, she was
21 going back and forth and then when she did look at me
22 she immediately looked at my gun and reached for my gun
23 and started screaming.

24 Q. In terms of the call that you received what's
25 going through your mind when you received the call?

AARON BACA 2/28/2014

1 MR. SMERBER: Objection. Form. Foundation.
2 Mischaracterizes.

3 THE WITNESS: I didn't receive a call, I
4 arrived on the call as it was happening.

5 BY MR. POTTER:

6 Q. Did you receive any kind of message over your
7 radio system?

8 A. I believe the only notification I had came up on
9 the computer as an accident, a high priority incident is
10 what it comes up through at 4321 West Flamingo, which is
11 the address for the Palms. I happened to be traveling
12 eastbound on Flamingo around Arville, I got on my radio,
13 I announced that I'm arriving on it, at that point I
14 believe the dispatcher probably assigned me to that
15 event, I got out and that happened.

16 Q. So on the real time, when we look at it you
17 were -- you received a dispatch on it, though; is that
18 correct? Is that fair?

19 A. Probably after I -- after I announced on the
20 radio that I arrived on the call.

21 Q. But you had a call, fair?

22 A. Not fair because I arrived on it and then I got
23 assigned to it once I notified her that I arrived.

24 Q. So simultaneously is that what you're saying?

25 A. Simultaneously with everything that was happening

AARON BACA 2/28/2014

1 it probably happened within five or 10 seconds of me
2 getting there, me being assigned.

3 Q. So if the call shows that it went out before you
4 actually arrived would there be a reason?

5 A. Be a reason for what?

6 Q. That the call shows it went out before you
7 arrived?

8 A. Would there be a reason why the call would show
9 before I arrived?

10 Q. Yeah.

11 A. Because it's a high priority incident apparently.

12 Q. What does that mean to you?

13 A. To me that means if somebody calls 911 and gives
14 some details the dispatcher in the dispatch center is
15 going to prioritize different calls. Automatically
16 those calls will come up on the screen to let officers
17 know what's going on. If I hear the alert term on the
18 computer and I look at it and I'm right here, then I
19 have that opportunity to stop any -- or help render
20 assistance to anybody in that area.

21 Q. And by "render assistance" it would be victims of
22 an accident; is that fair?

23 A. Of an accident, of a robbery, of a burglary,
24 whatever.

25 Q. I mean, when you were going there did you think

AARON BACA 2/28/2014

1 you were going to a burglary or a robbery?

2 A. I wasn't going specifically there, that was the
3 end of my shift, I was actually on my way to the I-15 to
4 head south.

5 Q. Okay. And where was your duty station at?

6 A. At Enterprise, Rainbow and Windmill.

7 Q. And you had worked a full shift at that point in
8 time?

9 A. Our shift ends at 4:30.

10 Q. What time do you actually go back then normally
11 if you're concluding your 4:30 shift?

12 A. With travel time we usually start heading back to
13 the station around 3:00, 3:30.

14 Q. Now, prior to this had you ever been in a
15 situation where somebody that you had placed under
16 arrest had suffered these type of burn injuries?

17 A. No.

18 Q. Were you ever trained in dealing with individuals
19 in the heat of Las Vegas and surfaces that can burn an
20 individual such as depicted in Pictures 1 through 7?

21 MR. ANDERSON: Objection. Form.

22 Go ahead.

23 THE WITNESS: It's been discussed in
24 briefing during summer hours.

25 ///

AARON BACA 2/28/2014

1 BY MR. POTTER:

2 Q. During the time frame in question do you recall
3 whether it was discussed during the time that
4 Sergeant Harney was your supervisor?

5 A. Not specifically, but in general in briefings.

6 Q. Tell me what you recall, take as much time as you
7 need to recall.

8 A. Just about, you know, when we get out of spring
9 and it starts getting into the summer months we're
10 reminded to, you know, with all -- at all possible if we
11 can to remove subjects off of asphalt in a reasonable
12 amount of time once the situation is safe.

13 Q. And prior to this incident had you ever seen as a
14 result of some other officer's actions the burns that
15 people have sustained?

16 A. No.

17 Q. Is that a formal training that you had in
18 addition to the briefing when you went through academy
19 training?

20 A. A formal training?

21 Q. Yes, did you go through scenarios with role
22 players where you would try to take people into custody
23 as part of your use of force handcuffing techniques to
24 ensure people were not burned as a result of coming in
25 contact with hot asphalt?

AARON BACA 2/28/2014

1 A. We were reminded of it, but like I said when the
2 situation is safe then we move those subjects.

3 Q. What about vehicles, were you ever taught not to
4 put individuals on vehicles during the summer months?

5 A. I'm sure it's been mentioned, yes.

6 Q. I'm not asking whether you're sure, I'm asking
7 you whether you recall specific training where you're
8 told not to put people on the hood of a cruiser?

9 A. Well, they stand in front of the cruiser. I
10 don't put people on the hood, per se, I'll stand them
11 near the front of the car or the back of the car.

12 Q. And what's the reason for that?

13 A. Because the vehicle is my office and that's where
14 I conduct my business.

15 Q. As you sit here today you don't recall whether
16 there was any specific academy training dealing with
17 individuals being taken down on hot asphalt during the
18 summer months in Las Vegas?

19 A. State that again.

20 Q. During the time that you were in academy training
21 with the Las Vegas Metropolitan Police Department, do
22 you recall whether there was any specific training
23 dealing with not putting people down on asphalt during
24 the summer months?

25 A. I don't recall.

AARON BACA 2/28/2014

1 Q. Now, during the time that you went through the
2 academy were you also trained on excited delirium?

3 A. Yes.

4 Q. What do you recall about being trained on excited
5 delirium?

6 A. That the person is in need of medical attention.

7 Q. What's your understanding of what excited
8 delirium is?

9 A. As far as their demeanor?

10 Q. Yes.

11 A. Profuse sweating, they're in a state of medical
12 emergency.

13 Q. Did you make that determination that Ms. Paulos
14 was suffering from excited delirium at the time that you
15 were involved with her?

16 A. No, I didn't.

17 Q. Did you ever ask for any treatment for her for
18 excited delirium?

19 A. I requested medical.

20 Q. Specifically dealing with excited delirium, did
21 you ever ask for any treatment dealing with excited
22 delirium?

23 A. No.

24 Q. Is there a reason why you didn't?

25 A. Time, I had very limited time with Ms. Paulos.

AARON BACA

2/28/2014

1 Q. Did you ever make a determination that she was
2 suffering from excited delirium?

3 A. I didn't, no.

4 Q. Do you know if anybody did?

5 A. I do not know.

6 Q. In terms of your training with excited delirium,
7 are you trained not to place individuals down for a
8 prolonged period on a prone position with excited
9 delirium?

10 A. Yes.

11 Q. What's the training you've received?

12 A. That they should be sitting up.

13 Q. Why is that?

14 A. So they can breathe a little bit better.

15 Q. If they're left in a prone position what's the
16 risk or danger?

17 A. They could stop breathing.

18 Q. And ultimately die; is that fair?

19 A. Yes.

20 Q. I mean, you've been trained that, right?

21 A. Yes.

22 Q. And how many academies have you learned that in,
23 you've been through, what, three academies?

24 A. Yes.

25 Q. Did you learn about excited delirium with the

AARON BACA 2/28/2014

1 federal government back in Georgia?

2 A. No, I don't believe they covered that.

3 Q. How about the Air Force, did they train on
4 excited delirium?

5 A. No.

6 Q. So Metro trained you about excited delirium?

7 A. Yes.

8 Q. Did you also go through any type of training with
9 Metro about deescalating situations?

10 A. Yes.

11 Q. When did you go through that training?

12 A. During the academy and every year with advanced
13 officer skills training.

14 Q. In terms of the advanced officer skills training
15 about deescalation prior to the date in question
16 August 7th, 2011, first of all, in 2011 do you recall
17 whether you went through deescalation training?

18 A. We covered defensive tactics and that type of
19 training quarterly.

20 Q. So you did go through it when?

21 A. I don't know specifically prior to that date what
22 date I may have gone through it.

23 THE WITNESS: Can I use the rest room.

24 MR. POTTER: Sure.

25 (Short recess taken.)

AARON BACA 2/28/2014

1 (Record read.)

2 BY MR. POTTER:

3 Q. And you had answered previously you do it
4 quarterly; is that fair?

5 A. Training?

6 Q. Yeah, deescalation training.

7 A. We do training consistently every other week.

8 Q. How about in terms of the deescalation, were you
9 ever certified in the recent deescalation training that
10 was mandated after the justice department review?

11 A. Yes.

12 Q. And in terms of that training do you recall what
13 was involved in that training?

14 A. To deescalate situations.

15 Q. What did that mean to you?

16 A. To me?

17 Q. Yes.

18 A. Do your best to try to deescalate the situation
19 while maintaining a safe environment for officers and
20 the public.

21 Q. Do you recall whether you were ever interviewed
22 by internal affairs concerning this matter?

23 A. Never.

24 Q. Have you ever been involved in any internal
25 affairs investigations?

AARON BACA 2/28/2014

1 A. As a witness.

2 Q. Other than as a witness have you ever been the
3 subject for the IB investigation?

4 A. No.

5 Q. And the times that you were a witness do you
6 recall what the incident was?

7 A. Not at this time.

8 Q. Have you testified more than once as a witness in
9 terms of internal affairs?

10 A. No.

11 Q. Just one time?

12 A. Yes.

13 Q. And you don't recall what the one time was about?

14 A. Yes, I do.

15 Q. What did it involve?

16 A. Lost property.

17 Q. Anything more than that? Was it allegations of
18 theft or misappropriation or what?

19 A. It was lost property.

20 Q. And lost property about -- what had happened to
21 the lost property?

22 A. It was lost by another officer.

23 Q. When did you first learn about this lawsuit?

24 A. I don't remember.

25 Q. Do you remember how you learned about it?

AARON BACA 2/28/2014

1 A. I was contacted by risk management.

2 Q. Have you ever been certified in any kind of
3 critical incident type training?

4 A. Are you asking if I'm a CIT officer?

5 Q. Yes.

6 A. Yes, I am.

7 Q. You are CIT?

8 A. Yes.

9 Q. And were you at the time of the incident?

10 A. Yes.

11 Q. When did you become a CIT officer?

12 A. I want to say maybe 2008. I have to go through
13 my training records to get exact dates.

14 Q. What did you have to do to become a critical
15 incident training officer?

16 A. We attended a 40-some hour class that was put on
17 by a doctor from Rawson-Neal, I believe.

18 Q. Do you know who the doctor was?

19 A. I can't remember his name.

20 Q. Were you ever trained to deal with people that
21 were bipolar?

22 A. We talk to people that are bipolar on a daily
23 basis.

24 Q. During the contact as a police officer you come
25 in contact with mentally ill people on a frequent basis?

AARON BACA 2/28/2014

1 A. Frequent basis.

2 Q. Pursuant to your training with Rawson-Neal, what
3 are you taught to do in those situations?

4 A. Talk to them, find out what's going on with them,
5 see how I can assist them if they need any mental help
6 as far as getting them to a hospital to be evaluated.

7 Q. What about if they're anxious or yelling or
8 screaming and not listening, what are you trained to do
9 in those situations?

10 A. Try to calm them down.

11 Q. How do you do that?

12 A. By talking to them.

13 Q. What if they don't listen, what are you trained
14 to do at that point in time?

15 A. Well, if there's no crime that is committed they
16 can go on their way. Mental illness is not a crime.

17 Q. So you would release them at that point in time?

18 A. I could, yes, unless they're a danger to
19 themselves or they could not provide nourishment for
20 themselves or it's reasonably believed that they may
21 cause harm to themselves or inflict harm on others.

22 I can go get you the form if you need me to.

23 Q. I'm sorry?

24 A. I can get the legal form if you need me to read
25 it all.

AARON BACA 2/28/2014

1 Q. The Legal 2000 form?

2 A. Yes.

3 Q. I'm familiar with it --

4 A. Okay.

5 Q. -- professionally.

6 In terms of the situation you recall you drive
7 up, do you believe a crime was taking place at that
8 point in time?

9 A. At that point in time I don't know what had taken
10 place.

11 Q. You come in contact with Ms. Paulos, prior to
12 that had you talked to any other individuals at the
13 scene?

14 A. I was walking up, I remember the man that was
15 wearing the swim shorts, swim trunks saying, She's
16 trying to steal my car and tried to ask what was going
17 on with her, she wasn't listening to me or even
18 acknowledging me and then she tried to grab my gun.

19 Q. You saw the picture of her getting out of the
20 car, did you actually see the incident that we've showed
21 to you either in the video and the pictures?

22 A. That she's getting -- I've seen it in the video,
23 yes.

24 Q. Getting out of the car?

25 A. Yes.

AARON BACA 2/28/2014

1 Q. Do you recall if you were there at the scene when
2 that occurred?

3 A. I believe he said, She's in my car.

4 Q. Did you see him get her to come out?

5 A. She came out of the vehicle and I tried to talk
6 to her.

7 Q. Before we get to that point, did you see the
8 gentleman that you've described in the trunks having her
9 come out of the car?

10 A. I don't recall.

11 Q. At that point in time had she committed a crime?

12 A. No.

13 Q. In terms of the conduct that you saw did she
14 appear to get out of the car with the individual?

15 A. I don't know when she got out of the car what was
16 on her mind.

17 Q. But you didn't see her come out of the car?

18 A. I saw her in the general area.

19 Q. And is it fair to say in reviewing the video that
20 she has her arms out; is that fair?

21 A. I would have to look at the video again.

22 Q. At any time did she touch you?

23 A. When she tried to grab my firearm.

24 Q. And by touching the firearm or by trying to touch
25 the firearm did she ever touch your firearm?

AARON BACA

2/28/2014

1 A. Yes, she got her hands on my belt down here.

2 Q. And by the belt down here, just for the record
3 what are you talking about?

4 A. I'm talking about the area where I hold my extra
5 magazine, my pepper spray and my firearm, this general
6 area.

7 Q. My question to you, though, is did she ever touch
8 your weapon?

9 A. Yes.

10 Q. And what part of the weapon did she touch?

11 A. Right on the front here, the hammer, the holster
12 release area.

13 Q. Is it fair to say that you did not see that on
14 the tape?

15 A. No, I saw it on the tape.

16 Q. You saw her touch your firearm on the tape?

17 A. I saw her hands go where I felt her hands go on
18 the tape.

19 Q. My question is not where you felt or -- first of
20 all, did you actually feel it?

21 A. Did I feel her attack me, yes, I did.

22 Q. Not did you -- I'm asking whether you felt her
23 touch the firearm.

24 A. Yes.

25 Q. And did you actually see at the time of the

AARON BACA 2/28/2014

1 incident did you look down at what she was doing?

2 A. I don't recall.

3 Q. What's going through your mind at that point in
4 time?

5 A. To create distance from her and maintain my
6 firearm.

7 Q. Isn't that what your concern was before, I mean,
8 weren't you supposed to create distance from her to
9 begin with?

10 A. To begin with when?

11 Q. Well, she gets out of the car and she's walking
12 away from you, isn't she?

13 A. I would have to look at the video again.

14 Q. You don't recall if she walked away?

15 A. I remember she's walking back and forth. She did
16 turn once and then she turned back to me and attacked
17 me.

18 Q. You've testified that she turned around, what are
19 you saying to her at that point in time?

20 A. What's going on? Can I help you? I'm probably
21 making a lot of comments to her.

22 Q. At that point in time are you in fear for your
23 safety?

24 A. When she tried to grab my firearm, yes.

25 Q. I move to strike the answer as being

AARON BACA 2/28/2014

1 nonresponsive. I ask you to not refrain my question,
2 listen to my question --

3 A. Okay.

4 Q. -- and stay at that point in time.

5 I'm asking you at the point in time when she
6 turns around, first of all, has she committed any crime
7 at that point?

8 A. I don't know.

9 Q. And why don't you know at that point in time?

10 A. Because the investigation hadn't been conducted
11 to what she -- how she was involved in anything other
12 than the gentleman in the shorts saying she's trying to
13 steal my vehicle.

14 Q. At that point in time did you ask for any backup?

15 A. I don't recall.

16 Q. You've had an opportunity to review the call or
17 have you? Have you had an opportunity to review the
18 call list?

19 A. The call that came on the screen?

20 Q. No, the calls that -- the real-time recordings
21 dealing with what transpired.

22 A. No, I have not.

23 Q. You haven't?

24 A. No.

25 Q. So you don't have a recollection of whether you

AARON BACA 2/28/2014

1 called --

2 A. No, I haven't heard any of the radio traffic.

3 Q. How about after the point in time where you say
4 she physically touched your weapon, do you recall
5 whether you made any efforts to call for backup at that
6 point?

7 A. I believe I did say that on the radio. I don't
8 know exact verbiage that I used, though.

9 Q. Generally speaking you asked for some kind of
10 backup?

11 A. Yes.

12 Q. More than once?

13 A. I don't recall.

14 Q. And you haven't had an opportunity to review
15 that; is that fair?

16 A. I haven't.

17 Q. You decided to go hands on at that point?

18 A. When she tried to grab my gun?

19 Q. Yes.

20 A. Yes.

21 Q. And what was the reason that was going through
22 your mind at that point in time?

23 A. That she's a danger to me and to the public.

24 Q. And at that point in time you're trying to create
25 a distance; is that fair?

AARON BACA 2/28/2014

1 A. I created a distance from her, yes.

2 Q. How did you do that?

3 A. By pushing her away.

4 Q. And at that point in time what's your intent?

5 A. To create distance and to reevaluate the
6 situation and to get her into custody.

7 Q. What are you reevaluating at that point in time?

8 A. See how she reacts to it. I don't know if she
9 was going to further attack me or run, take flight.

10 Q. What did she do at that point in time?

11 A. She turns away after I pushed her.

12 Q. And turns away meaning what, her back's to you at
13 that point?

14 A. I would have to review the video.

15 Q. What's your recollection?

16 A. My recollection is that she attempted to grab my
17 firearm, I created distance by pushing her away, her
18 back was to me, at that point I reengaged her in an
19 attempt to take her into custody with her hands behind
20 her back. She failed to heed my instructions.

21 Q. What instructions do you give at that point?

22 A. Police officer, stop resisting, put your hands
23 behind your back, she failed to do that, I took her to
24 the ground.

25 Q. How did you take her to the ground?

AARON BACA

2/28/2014

1 A. I took her to the ground.

2 Q. Sweep her or did you use some kind of maneuver?

3 A. I don't recall.

4 Q. You watched the tape, as you sit here today you
5 don't have any recollection as to how you took her to
6 the ground?

7 A. It looked like I placed her on the ground by her
8 arms.

9 Q. And you're motioning with your two hands and
10 moving to your right; is that correct?

11 A. Trying to -- I don't know how I did it, but I got
12 her on the ground. I don't know if I foot swept her or
13 what.

14 Q. What's going through your mind at that point in
15 time?

16 A. To put her hands into handcuffs.

17 Q. How big are you?

18 A. Five-eleven.

19 Q. How much do you weigh?

20 A. At that point probably 205 pounds.

21 Q. Did you consider yourself to be in good
22 condition?

23 A. Relative.

24 Q. What do you mean by that?

25 A. I work out.

AARON BACA

2/28/2014

1 Q. Do you recall how big she was?

2 A. No.

3 Q. And what happens at that point in time when you
4 take her down?

5 A. She's resisting me, not giving me her hands to
6 place in handcuffs.

7 Q. Is she screaming at that point?

8 A. Incoherently.

9 Q. Is she screaming in pain at that point in time
10 that she's being burned?

11 A. She's screaming like she screamed when she
12 attacked me.

13 Q. You don't have any --

14 A. Inaudible. It was just a yelling, screaming.

15 Q. Do you believe she was being injured at that time
16 after looking at these pictures?

17 MR. ANDERSON: Objection. Form.

18 THE WITNESS: No.

19 BY MR. POTTER:

20 Q. No?

21 A. No.

22 Q. Do you believe these pictures are the result of
23 the actions that you took?

24 A. No.

25 Q. What do you believe they're from?

AARON BACA 2/28/2014

1 A. I have no idea.

2 Q. You don't believe she was burned?

3 MR. SMERBER: Objection. Form. Foundation.

4 THE WITNESS: I believe she was burned.

5 BY MR. POTTER:

6 Q. Do you believe she was burned at the time that
7 she was on the asphalt and you were holding her down?

8 MR. SMERBER: Same.

9 MR. ANDERSON: Objection. Form.

10 THE WITNESS: No.

11 BY MR. POTTER:

12 Q. You don't believe she was burned then?

13 A. I don't believe she was burned as a result of my
14 actions, no.

15 Q. Oh, I see. But you believe she was burned at
16 that point in time?

17 A. I don't believe she was burned at that point in
18 time. I don't have any medical training on what kind of
19 burn she received.

20 Q. Well, let me tell you that she's -- the medical
21 records show that she received third degree burns, have
22 you ever heard that before?

23 A. Yes.

24 MR. ANDERSON: Objection. Form.

25 MR. SMERBER: Same objection.

AARON BACA 2/28/2014

1 Mischaracterizes.

2 MR. POTTER: What does it mischaracterize?

3 MR. SMERBER: They actually indicate
4 superficial burns, they also indicate second degree
5 burns. It's not until a much later point that there's
6 reference of third degree burns. So I'd say that to
7 just say that they reference third degree burns is a
8 mischaracterization.

9 MR. POTTER: Okay.

10 BY MR. POTTER:

11 Q. Well, let's deal with what Mr. Smerber has
12 brought up. Have you been told that ultimately it was
13 determined that she received third degree burns?

14 A. Have I been told?

15 Q. Yes.

16 A. You just told me that, yes, sir.

17 Q. You never heard it before?

18 A. I've seen pictures I guess of this so --

19 Q. You've seen these pictures today, your testimony
20 was you hadn't seen them before; is that fair?

21 A. I haven't seen these pictures.

22 Q. Which pictures?

23 A. These.

24 Q. The pictures of her face?

25 A. All these pictures that you have --

AARON BACA 2/28/2014

1 Q. Okay. What pictures have you seen of her?

2 A. I think that one.

3 Q. Which one, this one?

4 A. This one.

5 Q. For the record it's No. 7.

6 In terms of the reports that were conducted in
7 this case is there a report that you generated yourself?

8 A. No.

9 Q. Why is that?

10 A. There was no use of force --

11 Q. I'm not talking about use of force, did you do an
12 officer's report at the time of the incident?

13 A. No.

14 Q. Why?

15 A. I was instructed not to do one.

16 Q. By your sergeant?

17 A. By my supervisor, yes.

18 (Whereupon, Plaintiff's Exhibit 8
19 was marked for identification.)

20 BY MR. POTTER:

21 Q. I'm going to hand you what's been marked as
22 Exhibit 8. Do you recognize that document?

23 A. It's a traffic ticket.

24 Q. Have you ever seen this before?

25 A. A traffic ticket or this ticket?

AARON BACA 2/28/2014

1 Q. This ticket.

2 A. No.

3 Q. Do you know whose signature that is?

4 A. No.

5 Q. Is that your signature?

6 A. No.

7 Q. The P number is 7303, that is not your P number?

8 A. No.

9 Q. What is your P number for the record?

10 A. 8754.

11 Q. This deals with a DUI accident drugs or alcohol,
12 do you recall whether, in fact, you have any knowledge
13 of this citation being issued?

14 A. No knowledge of it being issued. I don't know if
15 I told you, but I was relieved from the scene.

16 Q. No, you didn't. What happened?

17 A. I was relieved and I left, swing shift handled
18 all this.

19 Q. I've been doing this for 35 years, never seen a
20 typed citation. Do you know why this one's typed?

21 A. I have no idea.

22 Q. The excited delirium, I'll reference to the
23 delirium on the DUI accident, do you recall ever seeing
24 that before?

25 MR. ANDERSON: Just where it says delirium?

AARON BACA 2/28/2014

1 MR. POTTER: Yeah.

2 THE WITNESS: No.

3 BY MR. POTTER:

4 Q. Never saw it before?

5 A. No.

6 (Whereupon, Plaintiff's Exhibit 9
7 was marked for identification.)

8 By MR. POTTER:

9 Q. Have you ever seen this document before?

10 A. A blank one, not this -- this one particular?

11 Q. Yes.

12 A. No.

13 Q. I mean, you do DUIs, right, as a traffic police
14 officer?

15 A. I have done DUIs.

16 Q. There's a reference to yourself on the second
17 page, it's LVMPD 12, it's the second page of the
18 document. Any recollection of discussions with the
19 officer that signed this particular report?

20 A. Just him putting, Fought with first responding
21 officer, Officer Baca?

22 Q. Yes.

23 A. No.

24 Q. It's written by an Officer Swan, do you know
25 Officer Swan?

AARON BACA 2/28/2014

1 A. Personally, no.

2 Q. And what's the distinction that you're making?

3 A. Do I know him on a personal level, no. Have I
4 come across him in passing, probably.

5 Q. On the second page there's a discussion about
6 excited delirium. Do you recall ever discussing
7 Officer Swan's report about excited delirium?

8 A. No.

9 Q. Any recollection of any discussion with any DA's
10 about the charges themselves?

11 A. No.

12 Q. Were you ever called to testify in the DUI case?

13 A. No.

14 Q. How about at Department of Motor Vehicles, do you
15 recall whether there was any DMV type hearing?

16 A. No.

17 Q. Do you normally testify in DMV hearings if you're
18 involved in a case?

19 A. If I make the arrest, normally.

20 Q. It's your testimony you weren't involved in the
21 arrest; is that fair?

22 A. I was not involved in the arrest.

23 Q. During the time that the incident was taking
24 place, did you have any contact with the paramedics?

25 A. Probably.

AARON BACA 2/28/2014

1 Q. I'm not asking you to speculate, but I'm trying
2 to find out if you have a recollection of whether you
3 talked to the paramedics?

4 A. I believe I let them know what she tried to do.

5 Q. What did you say to them?

6 A. That she tried to grab my gun.

7 Q. Did you talk to them about any of the thoughts of
8 excited delirium?

9 A. No.

10 Q. You hadn't made that determination?

11 A. No.

12 Q. Did you talk to them about the fact that she was
13 yelling and screaming and you couldn't tell what she was
14 yelling and screaming about?

15 A. No.

16 Q. Did you consider her to be emotionally disturbed
17 at the time --

18 A. Did I consider her to be?

19 Q. Yes.

20 A. I didn't know what was going on with her.

21 Q. Did you consider her to have any specific
22 injuries? I know we've gone over this before, but did
23 you have any specific recollection of discussing any
24 injuries with the paramedics?

25 A. I may have advised them that she had been

AARON BACA 2/28/2014

1 involved in a vehicle accident.

2 Q. As a result of this incident were you required to
3 go through any type of hands-on training in terms of
4 dealing with handcuffing procedure of an aggressive or
5 emotionally disturbed person?

6 A. Because of this incident?

7 Q. Yeah.

8 A. No.

9 Q. And we discussed before you were not disciplined
10 by anyone that was in a supervisory position, correct?

11 A. No.

12 Q. Did you consider all of your actions in this
13 particular matter dealing with her pursuant to your
14 policies and practice and training?

15 A. Did I consider --

16 Q. Yes, were you in sync with your training and your
17 actions --

18 A. Do I believe that I was in --

19 Q. Yes.

20 A. Yes, I do.

21 Q. And no supervisor has ever told you that what you
22 did wasn't proper; is that correct?

23 A. No.

24 Q. And if you had the opportunity to do it again
25 would you do it the same way you did on that date?

AARON BACA 2/28/2014

1 A. Yes.

2 Q. In terms of calling for assistance, have you ever
3 called for assistance from non-law enforcement lay
4 people for assistance in handcuffing procedures?

5 A. Not that I can recollect right now.

6 Q. That's the only time you've ever done that?

7 A. As far as I can recollect.

8 Q. Did you know the individual that was the security
9 officer?

10 A. No.

11 Q. Ever seen her before?

12 A. No.

13 Q. Any knowledge of her skill sets?

14 A. No.

15 Q. Training, anything of that nature?

16 A. No.

17 Q. What did you actually ask for?

18 A. Some help in getting her into custody.

19 Q. Do you recall whether you explained any further
20 than that other than can you help me or do you recall
21 what you actually said?

22 A. I believe it was, Can you give me some help.

23 Q. And what did she do at that point in time?

24 A. She came over and assisted me.

25 Q. What did she do?

AARON BACA

2/28/2014

1 A. She was able to get one of her arms out and --
2 she was able to secure one of her arms, I don't know if
3 it was -- I believe it was her right arm, which was
4 underneath her. I was able to get her left arm out from
5 underneath her and maintain control of Paulos until I
6 could get my handcuffs out and secure her.

7 Q. I thought you had her cuffed on one arm?

8 A. I cuffed her on one arm, brought the other arm
9 and cuffed her.

10 Q. At the time in which you took her down you didn't
11 have her cuffed?

12 A. (Witness shakes head.)

13 Q. I'm sorry, you have to answer out loud.

14 A. No.

15 Q. At the time that you went hands on with her and
16 you pulled one arm back, you didn't have your cuffs out
17 at that time?

18 A. No.

19 Q. What were you attempting to do then at that point
20 in time?

21 A. Handcuff her while she's standing up with her
22 hands behind her back.

23 Q. Were you going to speed cuff her?

24 A. Well, I had to get control of her hands first.

25 Q. All right.

AARON BACA 2/28/2014

1 A. And when she started pulling away then I took her
2 to the ground.

3 Q. And at no time did you have your handcuffs out
4 prior to taking her to the ground; is that fair?

5 A. I did not have my handcuffs out prior to taking
6 her to the ground.

7 Q. When you had her on the ground did you have your
8 knee in her back?

9 A. I don't recall.

10 Q. Have you been taught to put your knee in their
11 back to control an individual?

12 A. No, usually we're crouched. If there's a knee on
13 anybody it would be towards the rear buttock area.

14 Q. Okay. Did you have your knee in the rear buttock
15 area?

16 A. I don't recall.

17 Q. What was your plan or your assessment then to get
18 her handcuffed?

19 A. It was a dynamic situation that I needed to
20 maintain control over since she had already tried to
21 grab my gun once.

22 Q. Did you believe you didn't have control over her?

23 A. I believe that I was maintaining control over
24 her.

25 Q. But you needed the assistance of another

AARON BACA 2/28/2014

1 individual to actually effectuate the handcuffing; is
2 that fair?

3 A. Yes.

4 Q. Did you have any concerns about her being on the
5 asphalt?

6 A. No.

7 Q. Why is that?

8 A. Because it was a dynamic situation, she attempted
9 to grab my gun and I was doing what I had to do to get
10 her into custody at that time.

11 Q. By the tape that we watched it appears she's on
12 there for three minutes; is that fair?

13 A. Yes.

14 Q. And during the three minutes that she's on the
15 ground I think you testified that at some point in time
16 she's taken over to the grass; is that correct?

17 A. Yes.

18 Q. On whose determination was it to take her over to
19 the grass?

20 A. I don't recall.

21 Q. It wasn't yours?

22 A. Probably. Maybe. I don't know.

23 Q. Not probably, maybe, I'm just asking if you know.
24 At that point in time there was other officers there?

25 A. There was other officers there, yes.

AARON BACA 2/28/2014

1 Q. Do you have any recollection of anybody telling
2 you you need to get her over to the grass?

3 A. No.

4 Q. No. But she ultimately was taken over to the
5 grass?

6 A. She was taken over to the grass.

7 Q. Do you recall what kind of shoe wear she had on,
8 if any?

9 A. No.

10 Q. Do you recall if she was barefoot?

11 A. I don't recall.

12 Q. Do you recall whether she had any kind of blood,
13 scrapes, bruises, anything of that nature?

14 A. I don't recall.

15 MR. POTTER: Let's take a break and see if
16 we have some other stuff here.

17 (Short recess taken.)

18 BY MR. POTTER:

19 Q. Officer Baca, I want to focus back on the
20 handcuffing. Once Ms. Paulos is handcuffed we spent
21 quite a bit of time about the security officer then got
22 up and left at that point in time; is that correct?

23 A. Yes.

24 Q. Was she still yelling and screaming at that point
25 in time?

AARON BACA

2/28/2014

1 A. I don't know. I don't have any memory of what
2 happened right then.

3 Q. But she stays on the ground; is that correct?

4 A. She's on the ground, yes.

5 Q. And we see, and Mr. Smerber asked you some
6 questions, we see Ms. Houston over in a different area
7 and he's pointed out where she's standing, but
8 Ms. Paulos is still on the ground at that point in time
9 and then you have other officers that arrive at that
10 point in time?

11 A. Yes.

12 Q. Are you still holding her on the ground?

13 A. I believe I'm there, yes.

14 Q. Physically by there she's still on the ground and
15 then ultimately see her picked up or moved over to the
16 grass area; is that right?

17 A. Yes.

18 Q. How long is she on the ground to your
19 recollection after the security officer Houston gets up
20 and walks away?

21 A. I don't know. I'd have to look at the tape to
22 get an accurate -- could have been a couple of minutes,
23 a minute.

24 Q. Could be more? I mean, the tape seems to stop at
25 some point in time.

AARON BACA 2/28/2014

1 A. Okay.

2 Q. I'm just curious if you recall how long she's on
3 the ground.

4 A. I can't give you a fair estimate because she
5 wasn't laid there forever.

6 Q. What's going on as you sit here today in
7 recollection she's faced -- pin down, she's still in a
8 prone position, she's not brought up in an upright
9 position, correct?

10 A. No.

11 Q. Did any of the officers talk to you at any time
12 about excited delirium?

13 A. No.

14 Q. She's not moved because there's a concern that
15 she might be suffering from excited delirium?

16 A. No, she was moved once the situation was made
17 safe by the other officers relieving me because I had
18 just been in a struggle with her.

19 Q. And after she was brought to her feet was she
20 walked over to the grass at that point in time?

21 A. I don't know.

22 Q. You don't remember?

23 A. I don't remember.

24 Q. She could have stayed on the asphalt for another
25 period of time?

AARON BACA

2/28/2014

1 A. I don't know.

2 Q. Well, did you walk over with her?

3 A. No.

4 Q. You were relieved at that point in time?

5 A. Yes.

6 Q. Were you winded at that point in time?

7 A. Yes.

8 Q. Can you describe how you felt?

9 A. Tired, winded.

10 Q. Do you remember some officer saying to you, Look,
11 let us take it from here?

12 A. No.

13 Q. Who walked her over if you don't recall?

14 A. I don't know.

15 Q. Do you know who the other officers were?

16 A. I could speculate, but I don't know for sure who
17 the other officers are.

18 Q. You didn't write a report so there's no way to
19 refresh your recollection?

20 A. There was no report done by me.

21 Q. And we've gone over the fact that the officers
22 that did write the DUI report and the citation were not
23 on your shift; is that fair?

24 A. I don't know what shift they were.

25 Q. Do you recall whether anyone from your shift came

AARON BACA

2/28/2014

1 as backup?

2 A. Maybe one or two, I believe.

3 Q. Any recollection of who they were?

4 A. I believe Officer Novak was there and maybe
5 Officer Cohen and my supervisor Sergeant Harney.

6 Q. Those two officers have you ever discussed this
7 incident with them?

8 A. After? Probably.

9 Q. Any recollection of what you discussed with them?

10 A. What she -- what Ms. Paulos did to me when I
11 tried to make contact with her.

12 Q. They weren't there, though; is that fair?

13 A. They weren't there when she did that, no, they
14 arrived after.

15 Q. What did you discuss with them then?

16 A. That she had tried to grab my gun.

17 Q. Did you at any time ever want to put that in
18 writing so that you would have some memorialization of
19 what your mindset was at the time of the incident?

20 A. Did I want to put that in writing?

21 Q. Yeah.

22 A. No.

23 Q. What did you want to put in writing when you
24 wanted to do the use of force report?

25 A. I would have documented the events that happened.

AARON BACA

2/28/2014

1 Q. And the reason you document things is because you
2 have to testify about them many times years later; is
3 that fair?

4 A. Yes.

5 Q. And as part of your investigation you're trained
6 to put in events and as much information that would help
7 you refresh your recollection at the time you have to
8 testify; is that fair?

9 A. Yes.

10 Q. And you didn't do any of that, did you?

11 A. I was instructed not to do use of force.

12 Q. I know, but you didn't do it, I mean, you don't
13 have any field notes or anything concerning this
14 incident, do you?

15 A. No.

16 Q. Did you make any field notes?

17 A. No.

18 MR. POTTER: All right. I'll pass the
19 witness.

20 MR. ANDERSON: Briefly.

21

22 EXAMINATION

23 BY MR. ANDERSON:

24 Q. Now, when you arrived on scene did you intend to
25 arrest Ms. Paulos?

AARON BACA

2/28/2014

1 A. No.

2 Q. What was your intentions when you arrived?

3 A. To figure out what had happened.

4 Q. Did you believe at that point in time you had the
5 right to detain her?

6 A. Yes, to find out what was going on.

7 Q. And that was based upon the car accidents?

8 A. Yes.

9 Q. Did you have any intent when you first showed up
10 to go hands on with her?

11 A. No.

12 Q. What changed your decision that made you go hands
13 on?

14 A. When she attacked me and tried to obtain my
15 weapon.

16 Q. So who was dictating your action?

17 A. Ms. Paulos.

18 Q. Now, when she lunged at you and you went hands
19 on, what weapons on your duty belt did you have
20 available that you think would have been reasonable that
21 you could have used in that situation?

22 A. I could have used my Taser, I could have used my
23 pepper spray, my OC spray, I could have used my baton.

24 Q. Did you ever draw your Taser?

25 A. No.

AARON BACA 2/28/2014

1 Q. Did you ever pull your pepper spray?

2 A. No.

3 Q. Did you ever pull your baton?

4 A. No.

5 Q. Why not?

6 A. Because I felt that just being hands on with her
7 was the least obtrusive to her.

8 Q. It was your initial intent to handcuff her
9 standing up?

10 A. Yes.

11 Q. What changed that?

12 A. When she resisted and then I took her to the
13 ground.

14 Q. And why would you take someone to the ground?

15 A. It's easier to handcuff them.

16 Q. Are you trained that way?

17 A. In different situations, yes.

18 Q. Is it that type of situation where you take
19 someone to the ground?

20 A. Yes.

21 Q. So if you're trying to handcuff someone in a
22 standing position and they're not being compliant what
23 are you trained to do?

24 A. To use arm locks or to take them to the ground to
25 get a better -- what's the word I'm looking for -- it's

AARON BACA 2/28/2014

1 easier in some aspects to handcuff somebody when they're
2 on the ground.

3 Q. And you explained that you were -- even after
4 once she was on the ground did you have difficulty
5 handcuffing her?

6 A. Yes.

7 Q. And you acquired assistance?

8 A. Yes.

9 Q. During the struggle you explained you got tired,
10 can you explain in more detail how you felt after you
11 got her handcuffed?

12 A. I was a little winded. Of course, you have the
13 adrenaline dump, adrenaline going through you so you're
14 a little shaky, I had other concerns, I needed to make
15 the area safe so I needed to get on my radio to request
16 additional units and advise dispatch what was going on.

17 Q. So after you get her handcuffed what are your
18 responsibilities immediately at that point?

19 A. To determine what happened as far as if there's
20 any other subjects involved, why would she do what she
21 did to me and to get additional units there.

22 Q. When did you call for medical?

23 A. I don't recall.

24 Q. Would it have been after you handcuffed her or
25 before?

AARON BACA

2/28/2014

1 A. After.

2 Q. Now, when you called for medical were you calling
3 for medical because of the fact you had taken her to the
4 ground?

5 A. I was calling for medical because she -- from
6 that point what I know she was involved in an accident,
7 I had taken her to the ground and she wasn't, you know,
8 following instructions and needed to make the scene
9 safe.

10 Q. When you called for medical had you seen any
11 physical signs of injury on Ms. Paulos?

12 A. No.

13 Q. Did you ever see any signs of injury on
14 Ms. Paulos?

15 A. No.

16 Q. Did she ever specifically tell you she was
17 injured?

18 A. No.

19 Q. When you say she was screaming did her screams on
20 the ground ever change from the screams when she was
21 standing?

22 A. No.

23 Q. Did you have a chance to view her legs after you
24 handcuffed her?

25 A. No.

AARON BACA 2/28/2014

1 Q. Did she ever tell you the ground was hot?

2 A. No.

3 Q. Did she ever ask you to get her off the ground?

4 A. No.

5 Q. According to your training when do you take
6 someone off the ground?

7 A. When the scene's safe.

8 Q. Do you believe you followed that training in this
9 instance?

10 A. Yes.

11 Q. Did anyone ask you to keep her on the ground?

12 A. No.

13 Q. Did you ask anyone to keep her on the ground?

14 A. No.

15 Q. Do you feel that she was kept on the ground to
16 punish her?

17 A. No.

18 MR. ANDERSON: That's all I have. Thank
19 you.

20 MR. SMERBER: I don't have any questions.

21 MR. POTTER: No.

22 (Thereupon, the deposition
23 concluded at 3:11 p.m.)

24 * * * * *

25

AARON BACA

2/28/2014

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CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE

* * * * *

DECLARATION OF DEPONENT

I, OFFICER AARON BACA, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition this ____ day of _____, 2014.

OFFICER AARON BACA

AARON BACA

2/28/2014

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

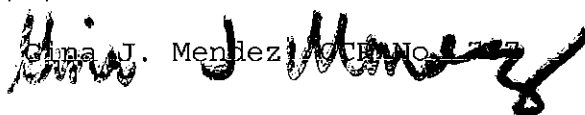
25  Gina J. Mendez, Notary No. 707

Exhibit 3

001549

001549

Exhibit 3

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

**CONDENSED
TRANSCRIPT**3 CRISTINA PAULOS, an)
4 individual,)

5 Plaintiff,)

6 vs.)

) CASE NO.:

) 2:13-cv-01546-JCM-PAL

7 FCH1, LLC, a Nevada)
limited liability company;)8 LAS VEGAS METROPOLITAN)
POLICE DEPARTMENT, a)9 government entity; JAKE VON)
GOLDBERG, an individual;)10 JEFFERY B. SWAN, an)
individual; JEANNE HOUSTON,)11 an individual; AARON BACA,)
an individual; and DOES 1)

12 through 10,)

13 Defendants.)

14
15
16
17 DEPOSITION OF OFFICER JEFFREY B. SWAN

18 TUESDAY, SEPTEMBER 30, 2014

19 12:35 P.M.

20 AT 1125 SHADOW LANE

21 LAS VEGAS, NEVADA

22
23
24 REPORTED BY: MICHELLE R. FERREYRA, CCR No. 876

25 JOB NO.: 221726-A

OFFICER JEFFREY B. SWAN - 09/30/2014

<p>1 DEPOSITION OF OFFICER JEFFREY B. SWAN, 2 taken at 1125 Shadow Lane, Las Vegas, Nevada, on 3 TUESDAY, SEPTEMBER 30, 2014, at 12:35 p.m., before 4 Michelle R. Ferreyra, Certified Court Reporter, in and 5 for the State of Nevada. 6 APPEARANCES: 7 For the Plaintiff: 8 POTTER LAW OFFICES 9 BY: CAL J. POTTER, III, ESQ. 10 1125 Shadow Lane 11 Las Vegas, NV 89102 12 (702) 385-1954 13 (702) 385-9081 Fax 14 info@potterlawoffices.com 15 16 For Defendants Las Vegas Metropolitan Police 17 Department, Jake Von Goldberg, Jeffrey B. Swan, Jeanne 18 Houston, Aaron Baca: 19 MARQUIS AURBACH COFFING 20 BY: CRAIG R. ANDERSON, ESQ. 21 10001 Park Run Drive 22 Las Vegas, NV 89145 23 (702) 382-0711 24 (702) 382-5816 Fax 25 canderson@maclaw.com</p>	<p>Page 2</p> <p>1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 30, 2014; 2 12:35 P.M. 3 -000- 4 (In an off-the-record discussion held prior to the 5 commencement of the deposition proceedings, counsel 6 agreed to waive the court reporter requirements under 7 Rule 30(b)(4) of the Nevada Rules of Civil Procedure.) 8 9 MR. POTTER: Let's go ahead and put our 10 appearances on the record. Go ahead, Travis. 11 MR. DUNSMOOR: Travis Dunsmoor, Moran Law 12 Firm. I am here for the Palms. 13 MR. ANDERSON: Craig Anderson on behalf of 14 Las Vegas Metropolitan Police Department, Officer Baca, 15 Officer Swan, and Officer Von Goldberg. 16 MR. POTTER: Can you go ahead and swear in the 17 witness? 18 And by the way, I'm Cal Potter. I don't know 19 if I introduced myself. 20 THE WITNESS: That's fine, sir. 21 MR. POTTER: I represent the plaintiff. 22 Whereupon, 23 OFFICER JEFFREY B. SWAN, 24 having been first duly sworn to testify to the truth, 25 the whole truth and nothing but the truth, was examined</p> <p>Page 4</p>
<p>1 I N D E X 2 WITNESS: OFFICER JEFFREY B. SWAN 3 EXAMINATION 4 Examination By Mr. Potter 5 6 7 INDEX TO EXHIBITS 8 EXHIBIT 9 Exhibit 1 Notice of Deposition of 10 Officer Jeffrey B. Swan 11 Exhibit 2 First Amended Complaint filed 12 by Mr. Brent Bryson 13 Exhibit 3 Citation in this matter 14 Exhibit 4 Officer Swan's report 15 Exhibit 5 Copy of lab report 16 Exhibit 6 Maricopa County Study, also 17 sometimes called The Streets 18 of Fire Study 19 Exhibit 7 Article by Paul Harrison, 20 dated June 26, 2013 21 Exhibit 8 Ms. Paulos' facial shot 22 Exhibit 9 Photo of Ms. Paulos' leg 23 24 25</p> <p>Page 3</p> <p>PAGE 5</p> <p>PAGE 11 12 23 31 40 42 44 46 46</p>	<p>Page 5</p> <p>1 and testified as follows: 2 3 EXAMINATION 4 BY MR. POTTER: 5 Q. Can you state your name for the record? 6 A. Jeffrey B. Swan. 7 Q. Officer Swan, have you ever had your 8 deposition taken before? 9 A. Yes, I have, several times. 10 Q. Do you know how recently you were deposed? 11 A. I believe three months ago. 12 Q. All right. And when you say "several times," 13 is it more than ten? 14 A. In the last 13 years, yes. 15 Q. And related to your duties as a traffic 16 officer? 17 A. Yes. 18 Q. Have you ever given depositions in other than 19 car accident type situations? 20 A. No, sir. 21 Q. Let me just go over what we're going to do 22 here today. The oath is the same oath that you would 23 take in a court of law. Do you understand that? 24 A. Yes, sir. 25 Q. It carries with it the same solemnities and</p>

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 6

1 sanctions if you were shown not to tell the truth. Do
2 you understand that?

3 A. Yes, sir.

4 Q. I say that not to suggest you are not going to
5 tell the truth, but to impress upon the fact that even
6 though we're in my conference room, it's as if we were
7 in the courthouse. Do you understand that?

8 A. Yes, sir, I do.

9 Q. Have you testified in a number of traffic
10 criminal type situations, DUIs, things of that nature?

11 A. Yes, sir, I do.

12 Q. All right. The court reporter here, of
13 course, is taking down everything that we're saying, my
14 questions as well as your answers, any questions that
15 other counsel may have, as well as the objections that
16 may be made. If there's an objection made, we need to
17 make sure we get it sorted out. So rather than give an
18 answer, we will just try and work out the objection.
19 Unless you are instructed by Mr. Anderson not to answer
20 a question, you still have to answer the question after
21 the objection. Do you understand that?

22 A. Yes, I do.

23 Q. The court reporter is taking everything we're
24 saying down. We need to make sure we get a clear
25 record. Many times in conversations we use head

Page 7

1 gestures or uh-huhs or hand gestures. But to make sure
2 we get a clear record, we ask you to answer aloud. Do
3 you understand that?

4 A. Yes, sir.

5 Q. If you don't give me an answer aloud, I may
6 interrupt you and ask for a clarification on your
7 answer. I'm not trying to be rude to you, but I'm just
8 trying to make sure I get a clear record. Do you
9 understand that?

10 A. Yes, sir, I do.

11 Q. If my questions don't make any sense, you have
12 a right to ask me to repeat it, clarify it so that you
13 do understand it. Do you understand that?

14 A. Yes, sir, I do.

15 Q. In preparation for your deposition, do you
16 recall what you reviewed or if you reviewed any
17 materials?

18 A. I reviewed the exhibits that were given to me
19 by my attorney.

20 Q. That's the other thing, I don't need to go
21 into anything you may have discussed with your
22 attorney, but I am entitled to have your
23 understandings, as well as any conversations you may
24 have had with other police officers in the matter. Do
25 you understand that?

Page 8

1 A. Yes, sir, I do.

2 Q. And by the exhibits, what do you mean?

3 A. I mean as far as the traffic report, my
4 incident crime report, my citation, and the CAD report
5 that -- of all the officers that were involved on that
6 scene.

7 Q. Now, in terms of the deposition here, I'm
8 going to ask you some background question, and then I
9 will ask you about the incident itself and training
10 issues and things of that nature, but I wanted
11 to -- and I have your answers to interrogatories that
12 you answered previously, but I just wanted to get some
13 clarification. Where did you graduate high school,
14 what city and state?

15 A. Chesterton High -- it's called Chesterton High
16 School, Chesterton, Indiana.

17 Q. That was in 1980?

18 A. Yes, sir.

19 Q. And then you went into the Air Force for,
20 what, 20 years?

21 A. Yes, sir, I did.

22 Q. You were trained in law enforcements?

23 A. Security forces.

24 Q. What's the difference?

25 A. Security forces is a more or less a ground and

Page 9

1 pound as far as security at the air base, air base
2 ground defense.

3 Q. How did it come about that you ended up in
4 Las Vegas?

5 A. I was stationed here in an undisclosed
6 location in Nevada.

7 Q. Were you recruited to join Metro?

8 A. I actively seeked application with Metro
9 through friends of mine that were Metro officers who
10 suggested that I apply, and I did so.

11 Q. During the time that you worked security, did
12 you ever work in the Las Vegas area with the Air Force?

13 A. No, sir, I did not.

14 Q. Were you ever trained into the dangers of hot
15 asphalt and summer months at any of the training
16 facilities or Air Force bases that you worked at?

17 A. No, sir, I was not, not while I was in the
18 Air Force.

19 Q. How about when you went to work with Metro,
20 did you ever learn about the dangers of an individual
21 being placed on hot asphalt during the time that they
22 would be either cuffed or taken into control?

23 A. Yes, sir, I did.

24 Q. Where did you learn that or discuss that?

25 A. It is taught in the academy, and it's also

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 10

Page 12

1 re-enforced during periodic train.
 2 Q. Do you know in what type of class it's taught?
 3 A. Custody and control, officer safety, and
 4 suspect control and safety.
 5 Q. What is taught, if you can recall? Are the
 6 dangers of burns taught or --
 7 A. Due to the -- the area of living in Las Vegas,
 8 due to the extreme heat, sometimes the pavement can
 9 exceed high temperatures. And once a suspect is
 10 brought into control should be immediately taken off
 11 the pavement if deemed suitable or able to do at that
 12 time.
 13 Q. Are you aware of any policy or procedures that
 14 were taught concerning what we've just discussed?
 15 A. I believe it may be in policy under
 16 handcuffing and restraint and the course continuum.
 17 Q. Prior to this incident of August 7, 2011, have
 18 you ever been involved in a situation where an
 19 individual is burned as a result of being placed on hot
 20 pavement?
 21 A. No, sir, not -- not me personally.
 22 Q. What do you mean by that?
 23 A. I have never witnessed it, and I have never
 24 been the officer that was involved in it.
 25 Q. Do you have any knowledge of other incidents

Page 11

1 that involved individuals being burned on pavement?
 2 A. I have heard of other cases through the
 3 Department where that has happened from redness to the
 4 skin, as far as I know.
 5 Q. As you sit here, do you have in your mind
 6 where and when you heard about the other burns?
 7 A. I believe it was when I just came out of the
 8 academy -- or no. I had been in field training, and it
 9 was starting to become summer, and the field training
 10 officer made sure -- reiterated that, that once the
 11 temperatures come -- come up, you need to be aware that
 12 you can't put a suspect down on the ground on hot
 13 pavement or unless it's entirely that you have to
 14 because of your safety and the suspect's safety where
 15 it has to be -- they have to be controlled and put on
 16 the ground.
 17 Q. Do you know an Officer Monaco?
 18 A. Excuse me?
 19 Q. Do you know an Officer Monaco?
 20 A. No, I don't.
 21 Q. There was a case when you would have been
 22 coming out of the academy training.
 23 MR. POTTER: If I can mark this as -- I will
 24 mark your notice as 1.
 25 (Exhibit 1 marked.)

1 MR. POTTER: This can be 2.
 2 (Exhibit 2 marked.)
 3 BY MR. POTTER:
 4 Q. This involves a lawsuit that was filed by a
 5 prominent attorney here in Las Vegas named Mr. Brent
 6 Bryson, and it involved a Jean Anne Hughes and an
 7 officer listed as Carlos Mendoza and Jim Monaco. I had
 8 asked you about Officer Monaco. Do you know an Officer
 9 Carlos Mendoza?
 10 A. No, sir, I do.
 11 Q. Were you ever under Jerry Keller when he was
 12 sheriff?
 13 A. Yes, I was.
 14 Q. All right. And this involves a circumstance
 15 where an individual received serious second degree and
 16 third degree burns, I believe is what's spelled out in
 17 it. Do you recall if you were ever trained and an
 18 issue dealing with a situation involving a Jean Anne
 19 Hughes?
 20 A. No, sir, I was not.
 21 Q. It took place at the Marker Down Lounge,
 22 June the 4th of 2000, so it would have been before you
 23 went through the academy; is that correct?
 24 A. I was still in the Air Force, sir.
 25 Q. When cases occur, do you have any knowledge of

Page 13

1 whether they're used as training issues, similar to
 2 what would occur if there had been some type of
 3 breakdown in policy or practice? Do you recall during
 4 the time that you went through the academy whether, in
 5 fact, you were trained on specific fact patterns from a
 6 case?
 7 A. Usually, it's been provided during training in
 8 scenarios, but we're not aware of who the -- the victim
 9 was or who the officers were. Basically, it's
 10 something has happened, we learn from it, and then they
 11 train it to us so that won't happen again.
 12 Q. In this particular instance, do you have any
 13 recollection of specific fact patterns dealing with
 14 training -- I know you talked about the field training,
 15 but where they went over just putting an individual
 16 down on the asphalt?
 17 A. Yeah. Periodic training, when we have
 18 quarterly defense tactics and as it gets warmer from
 19 the fall to wintertime to when it gets spring, usually
 20 it's brought up in training, that be aware that the
 21 temperatures are coming up and you need to be cognizant
 22 of the suspect and the surroundings as far as asphalt
 23 and people in the area and that such.
 24 Q. Have you, yourself, ever trained that to other
 25 officers?

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 14

1 A. No.
 2 Q. Have you ever served as a field training
 3 officer?
 4 A. No, I have not.
 5 Q. Were you ever on SWAT?
 6 A. No, sir.
 7 Q. Has most of your service been with traffic?
 8 A. I served five years on patrol in northeast and
 9 grave yards on the weekend, and then I aspired to do
 10 traffic. And then I went to traffic, and I have been
 11 there for the last seven years.
 12 Q. Now, in terms of your actual involvement
 13 throughout your course and career with the Department,
 14 have you ever been disciplined for any reason?
 15 A. No, I have not.
 16 Q. Have you ever been sued prior to this lawsuit?
 17 A. Not that I am aware of.
 18 Q. Have you ever had to testify in any type of
 19 Internal Affairs proceedings?
 20 A. Yes. As far as being a witness to a -- as far
 21 as discourtesy or alleged -- alleged someone taking
 22 money from a vehicle or something like that, but never
 23 as the subject.
 24 Q. Can you be any more explicit in what you are
 25 talking about?

Page 15

1 A. For instance, a partner and I had a DUI. The
 2 girlfriend was the driver. She was arrested for DUI.
 3 The boyfriend was told to leave the scene and then
 4 later complained that we had taken \$400 out of his car,
 5 his -- and his medical marijuana that was also in the
 6 car.
 7 Q. How long ago was that?
 8 A. I'd say three -- at least three years ago,
 9 two, three years ago.
 10 Q. And they were not sustained?
 11 A. No.
 12 Q. Were you a suspect in that?
 13 A. No, sir, I was not.
 14 Q. Were you a person of interest?
 15 A. No, sir, I was not.
 16 Q. Let's just focus on the incident itself,
 17 taking you back to August the 7, 2011, do you recall
 18 what shift you were on?
 19 A. Swing shift, sir.
 20 Q. What would be the timeframe of swing shift?
 21 A. I believe at that time it was 2:00 to 12:00.
 22 Q. And do you recall receiving a call concerning
 23 an incident at the Palms?
 24 A. Yes, sir, I do.
 25 Q. And do you recall how many officers were on

Page 16

1 scene when you arrived?
 2 A. I know there was several. I was consumed with
 3 my part of the event. I was in the intersection at
 4 Flamingo -- Winner Circle with a three-car accident at
 5 about 3:30 in the afternoon. At that time, it's pretty
 6 congested, so it's a dynamic scene for me, let alone to
 7 look outside as to what's going on. I knew there were
 8 other officers there, and they were taking care of the
 9 situation at that end. I was more concerned with my
 10 victims of the accident, getting the vehicles off the
 11 roadway and doing my investigation.
 12 Q. And was that an accident separate and distinct
 13 from the accident that was involved with Paulos?
 14 A. No. It's the same accident, sir.
 15 Q. And the individuals, if you can recall, who
 16 were the individuals that you were dealing with?
 17 A. I dealt with an Asian male. I can't recall
 18 his name at this time. I would have to look at my
 19 accident report. He was pretty distraught, and he was
 20 hit front to front, not a head-on collision, but
 21 angled. Also made contact with a gentleman in an
 22 Xterra who was the driver of the Xterra. He said he
 23 didn't see the accident, but he was involved after
 24 Ms. Paulos' car made contact with the vehicle. I was
 25 more concerned with doing my investigation with all the

Page 17

1 traffic and trying to get control of my -- my -- my
 2 scene of what I was in control of.
 3 Q. All right. How did it come about that you
 4 took over the traffic investigation scene?
 5 A. I was called by Metro dispatch and was told to
 6 respond to that area for a three-car accident.
 7 Q. All right. And when you actually arrived at
 8 the scene, did anyone give you instructions on what to
 9 do?
 10 A. No, sir. I'm in charge of that scene. It's
 11 mine.
 12 Q. Based on the dispatch?
 13 A. Yes.
 14 Q. Did you have an occasion to see Officer Baca?
 15 A. I didn't see him until later in the
 16 investigation.
 17 Q. How did it come about that you saw him?
 18 A. He came over to me saying that he had a
 19 suspect, the suspect of the vehicle because it might
 20 have been a hit and run because the driver had left the
 21 scene. I then contacted him and the -- the driver of
 22 the vehicle was being placed on a gurney and put in the
 23 ambulance at the time.
 24 Q. All right. And in terms of the individual
 25 that was being placed on the gurney and the ambulance,

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 18

1 do you know why the individual was being placed on the
2 gurney in the ambulance?

3 A. Officer Baca expressed to me that she had
4 excited delirium. She was incoherent at times,
5 extremely violent, mood swings, profusely sweating. At
6 times, she would be way up -- way up high as far as her
7 actions and then all of a sudden she would shut down
8 and be totally quiet and complacent, like she didn't
9 even know what was going on around her.

10 Q. Did you have occasion to talk with the
11 individual?

12 A. Which individual, sir?

13 Q. I mean the individual that was placed on the
14 gurney that he was talking about, the suspect?

15 A. Yes. I attempted to do implied consent while
16 she was in the back of the ambulance. Because I
17 didn't -- due to the totality of the investigation and
18 my accident and her accident, I deemed that she was
19 under the influence of possible narcotic.

20 Q. All right. And what is the possible narcotic?

21 A. Possibly a stimulant. Because of the fact of
22 her highs and lows and being aggressive pretty much is
23 a tall tale sign for the use of a narcotic as far as a
24 stimulant.

25 Q. All right. What about the interaction you had

Page 19

1 with her lead you to that conclusion?

2 A. Can you reword that for me, please?

3 Q. Yes. Are there specific facts that you can
4 articulate as to what led you to the suspicion that she
5 was under the influence of a stimulant?

6 A. Through the driving patterns that I received
7 from the witnesses. That she crossed the median, made
8 the left turn causing the accident. Witnesses also
9 stated that she had left the scene, came back, and then
10 tried to attempt to take a vehicle from one of the
11 victims. And then also her erratic behavior, profuse
12 sweating, the fact that it's in the definition of
13 excited delirium. She was half dressed. She only had
14 a pair of underwear and T-shirt on. Rambling thoughts
15 that made no sense and all of a sudden just shut down
16 and be totally lucid. And that's -- gives me the
17 reason to believe that it was a possible stimulant.

18 Q. Now have you been trained as a drug
19 recognition expert?

20 A. No, not yet.

21 Q. And what do you mean by "not yet?"

22 A. I planned on taking the class. I'm trying to
23 get enrolled in the class.

24 Q. Are you certified as a horizontal gaze and
25 stigmas?

Page 20

1 A. Yes, I am.

2 Q. Did you perform any type of horizontal gaze
3 and stigmas?

4 A. No, I did not. Because the fact that she was
5 combative at the time, she was strapped to the gurney,
6 and it could have been possible that she had a head
7 injury during the accident, and it's against all
8 horizontal gaze and stigmas rules as far as the head
9 injury could affect the horizontal gaze and stigmas.

10 Q. And then in terms of the excited delirium, did
11 you call for any critical incident trained officer to
12 make any determinations about the excited delirium?

13 A. No, sir. She was already in custody when I
14 made contact with her.

15 Q. Is there a policy or practice that prohibits
16 from calling for a critical incident, a trained officer
17 at that juncture?

18 A. Well, it usually -- in the fact of excited
19 delirium, usually what we will do is we will set
20 up -- we will call for a CIT, call for medical. We
21 will set up a perimeter around that person to make sure
22 the scene is contained. And then we will set up a team
23 that goes in and tries to make contact with the CIT to
24 try to calm that person down, to get them into custody
25 and then get them into medical and get them transported

Page 21

1 to the hospital.

2 Q. Are they transported to a psych unit, if you
3 know, or to an ER facility, if you know?

4 A. Usually it's an ER facility, as far as I know.

5 Q. And then do you also go to the ER facility?

6 A. Not -- I have only experienced excited
7 delirium twice in my career.

8 Q. All right. And what times were those?

9 A. Once with a black male that was high on PCP.
10 When I was training and on my graveyard shift in the
11 northeast. I believe it was like in my fourth or
12 fifth -- fourth year being in the Department and then
13 at this time at Flamingo in front of the Palms.

14 Q. All right. And in terms of the particular
15 situation with Ms. Paulos, did you have any
16 understanding that she had suffered severe burns at the
17 time of her detainment?

18 A. No, sir, I did not.

19 Q. Did anyone tell you that she was in pain or
20 complaining of injuries at any point in time?

21 A. No, sir, she did not.

22 Q. I know you said she didn't, but did anyone
23 tell you that she was in incredible pain?

24 A. No, sir.

25 Q. Did she appear to be crying at any point in

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 22

1 time?

2 A. She was crying and then she was happy and then
3 she was screaming, all -- she went the gamut of all
4 emotion.

5 Q. Have you ever been in a situation where you've
6 seen an individual who has suffered severe burns?

7 A. No, I have not.

8 Q. As you were dealing with her, did you observe
9 any severe burns?

10 A. No. At the time, she was restrained in the
11 ambulance gurney with a blanket on her. And then when
12 I proceeded to the hospital to do the citation and
13 contacted Officer Vacarro who did the blood draw, she
14 was wrapped in blankets and restrained inside the
15 gurney in the hospital.

16 Q. And pursuant to your testimony with excited
17 delirium, what type of treatment, if any, are you
18 supposed to engage in, if that's the proper term?

19 A. I don't understand your question, sir.

20 Q. Do you have an understanding of why blankets
21 were used or whether blankets were part of the
22 treatment for excited delirium?

23 A. No, I do not. I believe that they were
24 trying -- at the time at the hospital, they were trying
25 to keep her warm because it gets cold in there.

Page 23

1 Q. Okay.

2 A. That's just my opinion.

3 Q. Why don't we go through our next exhibit.
4 (Exhibit 3 marked.)

5 BY MR. POTTER:

6 Q. I'm going to hand you what's been marked for
7 identification purposes as Exhibit 3, the citation in
8 this matter. First of all, did you generate this
9 particular document.

10 A. Yes, sir, I did.

11 Q. Physically, how did you go about doing that?

12 A. I have an MC75 computer which allows me to
13 print out the ticket -- or to accomplish the form and
14 then print it on a printout.

15 Q. Is that done on your motorcycle?

16 A. Yes. It's portable. I can carry it in my
17 hand, but it's charged in my motorcycle.

18 Q. And the information that's contained, and this
19 is part of your investigation?

20 A. Yes, sir, it is.

21 Q. And the time that -- of the violation is
22 listed as 1515; is that correct?

23 A. Yes. We usually normally use the time of the
24 call is the time I received that call.

25 Q. And then the issuance date is at 1647. Do you

Page 24

1 recall if this was issued in the hospital?

2 A. Yes, it was.

3 Q. Do you remember what hospital you were at?

4 A. I believe it was UMC Trauma.

5 Q. The statements down about DUI, drugs or
6 alcohol, did you make any determination of whether the
7 individual was under the influence of alcohol?

8 A. No. I believe -- when I made contact with her
9 in the ambulance, I didn't smell any odor of alcohol on
10 her in any way. That's why I believe it was due to her
11 active aggression and the profuse sweating and
12 everything that it was probably chemically induced as
13 far as a stimulant. That's why it's DUI accident
14 drugs.

15 Q. Did you make any determination, either by
16 interview or otherwise, that drugs were present at the
17 scene?

18 A. They're -- I didn't -- according to the
19 impound report the vehicle, there was no drugs found,
20 there was no drugs found on Ms. Paulos at the time.

21 Q. At any of the interviews or conversations by
22 any of the officers, witnesses, did anybody say they
23 had seen drugs or --

24 A. No.

25 Q. Okay.

Page 25

1 A. It was my professional opinion that she was
2 under the influence.

3 Q. And that's based upon the erratic behavior
4 that you were talking about and the other factors you
5 mentioned?

6 A. Yes, sir, it is.

7 Q. And we've talked a little bit about swift mood
8 swings and the delirium. Any other facts that you are
9 aware of that would have led you to believe that she
10 was under the influence of drugs?

11 A. Basically what I have already explained.

12 Q. You said you talked about implied consent.

13 Did you have her make a choice of what she was going to
14 do?

15 A. Yes. I read the -- we -- at the time, it's
16 since change due to the law, that I read her implied
17 consent while she was in the ambulance. At that time,
18 she was quiet, and I read the implied consent from the
19 form. And at that time, she told me to go fuck myself.

20 Q. And --

21 A. And I have reclaimed that as a refusal, so I
22 had Officer Vacarro follow the ambulance to UMC Trauma
23 to do the blood draw.

24 Q. As an officer, you have been trained to deal
25 with individuals that swear --

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 26

Page 28

1 A. Yes, sir.
 2 Q. -- is that correct?
 3 I mean, you go through the training and the
 4 academy as well as defensive training dealing with
 5 belligerent individuals?
 6 A. Yeah. I didn't take it personal.
 7 Q. Did you believe that by an individual swearing
 8 at a uniformed officer that that was indicative of
 9 somebody that was suffering from some type of malady?
 10 A. It's possible. But it also could be someone
 11 that was under the influence of drugs.
 12 Q. What are the other possibilities that it could
 13 be if it's not an individual that's under the influence
 14 of drugs?
 15 MR. ANDERSON: Objection. Form.
 16 Go ahead and answer.
 17 THE WITNESS: It could be -- it could be a
 18 number of things. People's up bringing, I mean --
 19 people's disdain for the police. It could be mental
 20 issues, it could be drug issues. That's normally what
 21 I experience.
 22 BY MR. POTTER:
 23 Q. All right. Have you ever been in a situation
 24 where you learned an individual suffered a head injury
 25 and was belligerent and swearing at the police because

Page 27

1 they suffered a head injury?
 2 A. Yes, I have, several times.
 3 Q. How would you then find out if the individual
 4 had had a head injury? Do you follow up on the
 5 treatment?
 6 A. I let the medical personnel figure that out
 7 once she has been transported to the hospital.
 8 Q. Now, did the paramedics have any conversations
 9 with you or did you have any conversations with them
 10 concerning her?
 11 A. No. It was a pretty dynamic scene, and they
 12 wanted to get her to the hospital as quick as possible
 13 because of her behavior.
 14 Q. Did they say anything more explicit other than
 15 the fact that they wanted to get her to the hospital
 16 very quickly because of her behavior?
 17 A. Correct. They said we have got to -- you
 18 know, Officer, are you done? We need to go. We want
 19 to get her to UMC because she's too combative for us,
 20 and she was restrained.
 21 Q. And when she is restrained, how is she
 22 restrained on the gurney?
 23 A. I believe paramedics have the canvas straps
 24 that they go -- that they place across her body.
 25 Q. All right. Is she in handcuffs at all?

1 A. No, not that I am aware of.
 2 Q. Do you know what posey restraints are? Have
 3 you ever heard of that term?
 4 A. No, sir.
 5 Q. And I take it because of the fact that she was
 6 on a gurney, she didn't have any field sobriety tests
 7 either?
 8 A. No. That was stipulated in my incident
 9 report. I could not perform the test due to her being
 10 combative and restrained. It was be an officer safety
 11 and suspect safety issue.
 12 Q. Do you recall whether there was any -- I may
 13 have asked you this -- any DMV hearing concerning this
 14 matter?
 15 A. No, not that I am aware of.
 16 Q. You were never called to testify?
 17 A. It's possible I could have been, but it's been
 18 so long I don't recall it.
 19 Q. Were you aware of the outcome of the blood
 20 draw?
 21 A. Yes. I received the lab report later. It
 22 said is came back zeros.
 23 Q. So in that instance, I mean, you didn't take
 24 any license at the scene; correct?
 25 A. No.

Page 29

1 Q. And you wouldn't have taken a temporary
 2 license or anything?
 3 A. No. No. Because I had no evidence proving
 4 that she was under the influence or had alcohol in her
 5 system or to possess her license to have it revoked
 6 through the DMV.
 7 Q. So unless she received some kind of
 8 notification, what, from the hospital or how would you
 9 get the report about --
 10 A. Usually we get it by -- if the suspect
 11 performs a breath test and they are over the .08, then
 12 I can possess their license. Normally we receive a
 13 notification from DMV to do a revocation sheet, send it
 14 back to them, and they set up the court date for the
 15 individual to appear, and then the judge will decide
 16 whether the driver's license is going to be revoked or
 17 not.
 18 Q. And on the blood draw type situations, if
 19 they're pulled in the emergency room, do you take a
 20 sample?
 21 A. After implied consent is done, we
 22 have -- normally the nurses at the hospital won't do
 23 it, so it's Quest. It's a company that does the
 24 phlebotomy. It's witnesses -- it was at this time
 25 witnessed by Officer Vacarro who did the blood draw for

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 30

1 me because I was still at the scene most of the time.
 2 And what they do is they witness that the needle goes
 3 into the individual's arm, it's drawn in the blood,
 4 then he places it in the box, seals it, and then he
 5 transports it to an evidence vault, the closest
 6 evidence vault. And I believe at this time, it was
 7 CCDC where the evidence vault is located to drop off
 8 blood draws.

9 Q. And then if, in fact, the blood is -- the
 10 sample is then tested independent of what would be done
 11 at UMC --

12 A. Yes.

13 Q. -- is that correct?

14 A. It's totally separate.

15 Q. And then if it's positive, you get notified
 16 by --

17 A. Through the -- the crime lab, from Metro's
 18 crime lab. I receive the report, a copy of the report
 19 stating what the -- what was inside the blood that
 20 would determine whether I would provide a revocation or
 21 not.

22 Q. Are you able to approximate how many like DUIs
 23 you have in the system going at any given time? I
 24 mean, does it average?

25 A. I -- lately I have been averaging at least six

Page 31

1 to eight DUIs a month.

2 Q. So depending on whether they're blood or
 3 breath, then you have to look out for those?

4 A. Normally, I just wait for the sheets to come
 5 to my mailbox, and then I then -- normally, our front
 6 office and traffic will attach those to a revocation
 7 form and give us a due date, and it's required that we
 8 fill it out and submit it before the due date so it
 9 moves forward in the system. Because I deal with
 10 alcohol, drugs, spice, all the other parameters of
 11 driving under the influence.

12 Q. I would ask you about spice, but it's not
 13 really related, just for learning.

14 A. It's nasty stuff.

15 MR. POTTER: Let's mark this as the next
 16 exhibit.

(Exhibit 4 marked.)

18 BY MR. POTTER:

19 Q. This is Exhibit No. 4. Is this your report?

20 A. Yes, sir, it is.

21 Q. And is this written contemporaneous to the
 22 incident or is it written at a later time?

23 A. It was written after I had cited Ms. Paulos.

24 Q. So is it written at the hospital, then?

25 A. It's actually written during all phases.

Page 32

1 Q. I'm going to compliment on your fine
 2 permanship. It's always difficult -- I don't recall
 3 when they changed, but Metro used to type out these
 4 things, but now they're handwritten. It's always more
 5 of a challenge.

6 A. We still do. It's more going to be typed now
 7 because of the computers. But this was at the
 8 time -- and actually, that day was pretty hectic for
 9 motor officers, so I did it handwritten. It was
 10 quicker than jumping -- finding an area command to type
 11 it on the computer. I had accidents holding that I had
 12 to get to.

13 Q. And the determinations that are officer
 14 observations there about the engine not running and the
 15 vehicle is in drive, do you personally make those
 16 determinations?

17 A. Yes. I physically and visually check the
 18 vehicles -- all the vehicles on my scene.

19 Q. The information that she fought with the first
 20 responding officer, Officer Baca, do you recall if you
 21 received that information from Officer Baca?

22 A. Yes, I did.

23 Q. Do you recall if there was any other
 24 information that you had received from him?

25 A. He stated that he had the suspect for my V1

Page 33

1 driver, which would be the at-fault driver, and he
 2 explained to me that he had to take her into custody
 3 because she went for his gun.

4 Q. And is there a reason why that's not in here?

5 A. I thought that fighting with the officer was
 6 sufficient for the report. Because it's more concern
 7 with the impaired driving than it is the actual
 8 specifics of grabbing an officer's gun.

9 Q. Doesn't grabbing an officer's gun constitute a
 10 separate offense?

11 A. Yes, it does.

12 Q. What offense does that constitute?

13 A. It could be battery on a police officer, it
 14 could be a number of things, depending on what the
 15 criteria is.

16 Q. All right. And as the officer that's doing
 17 the cite, you didn't cite her for anything other than
 18 the DUI?

19 A. I believe I cited her for -- yeah. Just the
 20 DUI. I felt that was necessary instead of adding
 21 charges as far as the left turn at the intersection.

22 Q. And the DUI accident, over aggressive,
 23 physically fought with the officer on the scene. Once
 24 again, citation doesn't say anything about trying to
 25 grab a gun, does it?

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 34

1 A. No, it doesn't.

2 Q. Would that information be passed along to some

3 detective to make a determination if other charges are

4 going to be filed?

5 A. I believe if officer Baca submitted a use of

6 force and did all the other required things when he's

7 involved in that type of situation detectives would

8 further investigate that.

9 Q. So it would be up to Officer Baca?

10 A. Yeah. It would have nothing to do to me. It

11 didn't occur to me, so I didn't read that officer.

12 Q. Did you ever read the use of force report by

13 Officer Baca?

14 A. No, sir, I did not.

15 Q. Other than what we have discussed with reports

16 you have in hand and citation, did you have any further

17 follow up concerning this case?

18 A. No. I -- my -- normally, my scene is the

19 dynamic one of the accident itself.

20 Q. All right. And was behind the wheel per

21 witness -- once again, that's an element you have to

22 show, is that the victim was operating the vehicle?

23 A. Correct.

24 Q. Any other information you received concerning

25 the fact that Ms. Paulos was outside the vehicle?

Page 35

1 A. It would be all listed under that event

2 number --

3 Q. Okay.

4 A. -- from all the witness statements that

5 we -- that was taken from myself and other officers.

6 Q. The last part of what we actually got marked

7 as LVMPD 12, second page, talks about unable to get

8 answers from driver. Once again, you didn't ask the

9 standard questions because of her condition; is that

10 fair?

11 A. I attempted to ask the questions, but she

12 refused to answer any of my questions.

13 Q. Okay.

14 A. She would ramble on totally outside of the

15 scope of what we were talking about.

16 Q. Same thing about the impaired driving report.

17 You make note that asphalt is in the area; is that

18 correct, parking lot?

19 A. Yes.

20 Q. I'm referring just for the record to page 13

21 of the exhibit.

22 A. It's page 3.

23 Q. Testimony has been that she had on a swim suit

24 and cover up. Do you have any knowledge of.

25 A. No. I believed it was a shirt at the time

Page 36

1 because I had a brief -- able to see her before she was

2 in the ambulance.

3 Q. You --

4 A. And I know she was barefoot.

5 Q. And by "you are able to see her," was that

6 before she had the blanket on her?

7 A. Yeah. As it -- I was in the middle of the

8 intersection when they were near the entrance of the

9 Palms, and I could see them placing her on the gurney

10 before they put the blanket on her and -- and strapped

11 her down --

12 Q. Okay.

13 A. -- so she didn't hurt herself.

14 Q. And then on LVMPD, the second half of the

15 page, that's where you normally would do your field

16 sobriety tests?

17 A. Yes.

18 Q. SFTs?

19 A. Yes, sir.

20 Q. Same thing on 14, 15?

21 A. Yes. Accept for the bottom of the page.

22 That's where I wrote implied consent and noted it.

23 Q. And refused?

24 A. Correct.

25 Q. And once you have a refusal, you have the

Page 37

1 opportunity to then take a draw; is that correct?

2 A. Yes, at the time. Now case law has changed

3 where we are required to submit for a search warrant.

4 Q. Just for the record, at this point in time,

5 nobody was doing search warrants?

6 A. No. It was not -- Supreme Court had not

7 changed the ruling until just last year.

8 Q. You were able to get it within the two-hour

9 limit; is that correct?

10 A. Yes, I was. That's why I had Officer Vacarro

11 follow the ambulance and do the blood draw because my

12 scene was going to take longer, and I was worried about

13 the timeframe --

14 Q. Right.

15 A. -- to do both.

16 Q. Today you testified that you were worried she

17 was on stimulants. In the report you talk about

18 depressants, mental prescribed meds. Do you recall as

19 you sit here today whether it was stimulants or

20 depressants?

21 A. It could -- as far as -- because I am not a

22 drug recognition officer, I have since learned the

23 different signs, and I was trying to do a broad scope

24 of what -- so I could get the lab to do -- to find what

25 type of narcotics were in her system. I knew it was

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 38

1 some type of -- I believe it was some type of narcotic,
2 but at that time, I hadn't been trained enough to know
3 the difference, as far as -- and since then, I have
4 learned what those difference are.

5 Q. So you are testifying now as to what you have
6 had further training on since the incident?

7 A. Correct.

8 Q. What kind of stimulants were you thinking of
9 earlier in the deposition?

10 A. Normally, people with mental issues, it would
11 be depressants to keep them low, keep them more level.
12 The stimulants, as far as cocaine and stuff like
13 that --

14 Q. Illegal?

15 A. -- methamphetamine, certain types of
16 prescribed medications.

17 Q. What were the prescribes you were thinking of?

18 A. I can't make -- remember the names. I have
19 kind of like a cheat sheet on my bike --

20 Q. Right?

21 A. -- to where I can look up what the stimulant
22 may be and their actions and what their -- the
23 different -- it's part of the DRE training that I
24 haven't received yet, but I use it kind of as a cheat
25 sheet to figure out what I am looking at so I can get a

Page 39

1 DRE to come verify everything and make sure that's what
2 we're looking at.

3 Q. At the time of the incident, what kind of
4 depressants were you thinking of?

5 A. I'm not a medical doctor. I just go by the
6 basic things of what depressant do to help patients.

7 Q. First of all, were the depressants that you
8 were thinking of at the time that of the incident when
9 you wrote this, did you believe them to be illegal
10 depressants?

11 A. I didn't know if they were illegal or not.
12 They could be both.

13 Q. Right.

14 A. So I can't make that determination.

15 Q. What type of illegal depressants are you aware
16 of, at least at this point in time?

17 A. There's several, like heroin, that usually
18 comes to mind first.

19 Q. Anything else?

20 A. Not that I can recall right now.

21 Q. Any understanding of depressants that would
22 have been prescribed?

23 A. It's possible, but I don't know the names of
24 them.

25 Q. Okay.

Page 40

1 A. Like I said, I only go by a category of what I
2 see on my cheat sheet.

3 MR. POTTER: This will be our next exhibit,
4 which I believe is Exhibit 5.

5 (Exhibit 5 marked.)

6 BY MR. POTTER:

7 Q. This is the lab report from Dana Russell.

8 A. Yes, sir.

9 Q. Have you seen this before.

10 A. Yes. This is the lab report that is sent to
11 my mailbox at traffic to notify me of the contents of
12 the driver's blood.

13 Q. So even though you were looking for narcotics
14 or drugs, it was also checked for alcohol; is that
15 fair?

16 A. Yes, sir, that is fair.

17 Q. And Ms. Russell's report says that there
18 wasn't any alcohol in her system?

19 A. Correct.

20 Q. And then the second page deals with the
21 testing for narcotics for prescriptive drugs, negative
22 results. Did you receive a copy of this also?

23 A. Yes, sir, I did.

24 Q. So the first one comes out November the 29th
25 that's it's date stamped for distribution. You

Page 41

1 received that?

2 A. I believe I received them both at the same
3 time.

4 Q. And the other one is about a month later on
5 December the 28th of 2011?

6 A. Correct. So I probably received it sometime
7 in January.

8 Q. In any event, you took no further action --

9 A. No.

10 Q. -- based upon that? Were you surprised by the
11 outcome or do you even recall the incidents when you
12 get them?

13 A. Yeah. I -- I was a little bit surprised
14 that -- that she had no narcotics in her system by
15 the -- the reactions of what I was seeing on the scene.

16 Q. Did you make any effort to find out why --

17 A. That's when I -- that's when I found out the
18 results, I deemed that she was probably having a
19 mental -- a mental issue.

20 Q. Was that ever discussed with you by any of
21 your supervisors, the fact that you cited somebody for
22 DUI when, in fact, they were suffering from a mental
23 issue?

24 A. No. It was a good faith citation.

25 Q. I understand. But in terms of determination,

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 42

1 did you question yourself about whether there was some
 2 further need to recognize whether an individual is
 3 having a breakdown or something of that nature?
 4 A. That's for medical personnel to decide.
 5 Q. Okay.
 6 A. I only go by what I have been taught and what
 7 I have been trained to -- to look for, and that's the
 8 same keys as far as narcotics. And, yes, it did kind
 9 of surprise me that she didn't have any narcotics in
 10 her system.
 11 MR. POTTER: We will mark this as the next one
 12 in order.
 13 (Exhibit 6 marked.)
 14 BY MR. POTTER:
 15 Q. I am handing you what has been marked as
 16 Exhibit 6. I will ask you to let me know when you have
 17 had a chance to take a look at it.
 18 A. (Witness complies.)
 19 MR. ANDERSON: Do you want him to read the
 20 whole thing?
 21 BY MR. POTTER:
 22 Q. No. I'm just trying to find out if you have
 23 any recognition or have ever seen it before?
 24 A. No, sir, I have not.
 25 Q. It's a 1995 article sometimes called Maricopa

Page 43

1 County Study dealing with pavement temperature and
 2 burns. It's also called sometimes The Streets of Fire
 3 Study that was conducted. I'm just trying to find out
 4 from you whether you have any recollection during the
 5 time you went through the academy or thereafter whether
 6 you ever heard about this study?
 7 A. No, sir. It's basically trained that when the
 8 pavement's hot, if possible, don't put people down on
 9 the pavement. And if you do, get them up as quick as
 10 you can --
 11 Q. Are you --
 12 A. -- when it's safe to do.
 13 Q. Right. Are you also trained in positional
 14 asphyxia during the timeframe in --
 15 A. I have been trained for LVNR. It's
 16 like -- for that.
 17 Q. Latter vascular --
 18 A. Yes.
 19 Q. -- restraint?
 20 A. Yes.
 21 Q. Is that different in what you have been
 22 trained -- or have you been trained in positional
 23 asphyxia?
 24 A. I have been told that it can happen,
 25 but -- and to make sure that if the suspect is in

Page 44

1 custody with cuffs, to get them up so they are not
 2 laying on their chest in order to cause it.
 3 Q. Okay. All right. And was that in the context
 4 also with that LV --
 5 A. That's all in the same type training. When
 6 they do LVNR, they go into the asphyxia thing. Because
 7 sometimes that's during LVNR, and you get them into
 8 cuffs on the ground, and you need to get them set up
 9 and make sure they're breathing on their own. Because
 10 if they're down too long due to weight --
 11 Q. Right.
 12 A. Or due to health issues that they could
 13 be -- have that caused.
 14 Q. Were you here when the Lemen case occurred?
 15 A. It doesn't ring a bell, sir.
 16 Q. Felipe Lemen, it was a French man who died in
 17 the jail?
 18 A. I -- I believe I heard about it, but it's like
 19 anyone else on the news.
 20 Q. Yes. It was like in 2001?
 21 A. Something like that, yes.
 22 MR. POTTER: Let me just mark this. This is
 23 the next exhibit.
 24 (Exhibit 7 marked.)
 25 \\\

Page 45

1 BY MR. POTTER:
 2 Q. Here's another article that I have identified
 3 by a Paul Harrison. He's a medical guy for the RJ.
 4 It's a June 26, 2013 article. It's after the incident,
 5 but I was trying to find out if you recall ever being
 6 trained on this particular concern or incidence?
 7 A. No, sir.
 8 Q. Do you know a Dr. Dale Carrison that's
 9 mentioned in the article?
 10 A. Yeah. I believe I have seen him at UMC Trauma
 11 before.
 12 Q. He's an ex FBI agent that went to medical
 13 school. Do you know that?
 14 A. I didn't -- I wasn't aware of that. I just
 15 know him in passing, as far as for coming in for motor
 16 vehicle accidents, and if he happens to be there
 17 sometimes.
 18 Q. Okay.
 19 A. He's usually too busy to talk to.
 20 Q. White hair and white mustache?
 21 A. Yes. Glasses, too.
 22 Q. The next items are -- well, let me show you a
 23 couple of them.
 24 MR. POTTER: We will mark these as the next in
 25 order.

OFFICER JEFFREY B. SWAN - 09/30/2014

<p>1 (Exhibit 8 marked.)</p> <p>2 BY MR. POTTER:</p> <p>3 Q. First picture is Ms. Paulos' facial shot. Do</p> <p>4 you recall if you have ever seen that before?</p> <p>5 A. No, sir.</p> <p>6 Q. It shows a burn on her face. Do you recall</p> <p>7 whether, in fact, you have ever seen that burn before?</p> <p>8 A. No, sir.</p> <p>9 Q. And this would have been at the time that</p> <p>10 she's brought in to the ER. Do you have any</p> <p>11 recollection of that?</p> <p>12 MR. ANDERSON: Objection. Form.</p> <p>13 THE WITNESS: No, sir, I do not.</p> <p>14 MR. POTTER: If we can mark this as the next</p> <p>15 in order.</p> <p>16 (Exhibit 9 marked.)</p> <p>17 BY MR. POTTER:</p> <p>18 Q. Next one is of the same individual. It shows</p> <p>19 a -- what we have referred to at least on the</p> <p>20 plaintiff's side is a swim cover up. Do you recall if</p> <p>21 that's what she was wearing at the time of the</p> <p>22 incident?</p> <p>23 A. It doesn't look familiar, sir.</p> <p>24 Q. It once again shows burns over -- I guess it's</p> <p>25 her left leg. Any recollection of seeing those types</p>	<p>Page 46</p> <p>1 never heard anything about that?</p> <p>2 A. No, sir.</p> <p>3 Q. When did you first hear about the lawsuit, if</p> <p>4 you can recall?</p> <p>5 A. When I was contacted by Mr. Anderson.</p> <p>6 Q. Were you ever actually served with the</p> <p>7 complaint?</p> <p>8 MR. ANDERSON: Did Metro give you a copy of</p> <p>9 it?</p> <p>10 THE WITNESS: I believe I came -- it's after I</p> <p>11 spoke with you, and the other attorney sat down with me</p> <p>12 with it.</p> <p>13 MR. ANDERSON: What attorney?</p> <p>14 THE WITNESS: The German lady.</p> <p>15 MR. ANDERSON: Oh, risk management?</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. ANDERSON: Okay. Did risk management</p> <p>18 provided you with a copy?</p> <p>19 THE WITNESS: Yeah. They gave me a copy</p> <p>20 and -- and we went through it -- went over it with me.</p> <p>21 BY MR. POTTER:</p> <p>22 Q. Do you remember when that was?</p> <p>23 A. I don't remember the last time -- the first</p> <p>24 time I saw him. Maybe two years ago.</p> <p>25 MR. ANDERSON: Right after you named him.</p>
<p>Page 47</p> <p>1 of burns?</p> <p>2 A. No, sir.</p> <p>3 Q. Have you ever seen those types of burns on any</p> <p>4 human being?</p> <p>5 A. On a personal level, going to the burn unit</p> <p>6 and seeing kids to go say hello to them, but not during</p> <p>7 duty.</p> <p>8 Q. You do visitations to the burn unit?</p> <p>9 A. Yeah. I like to give my time and go see kids</p> <p>10 and drop off Christmas presents and stuff like that.</p> <p>11 Q. This picture would have been, I believe the</p> <p>12 testimony was, from the ER facility. Any recollection</p> <p>13 or knowledge that Ms. Paulos ended up in the Burn Unit?</p> <p>14 A. No.</p> <p>15 MR. ANDERSON: Objection. Foundation. Form.</p> <p>16 Go ahead and answer.</p> <p>17 THE WITNESS: No, sir.</p> <p>18 BY MR. POTTER:</p> <p>19 Q. Other than when you sat down here, you didn't</p> <p>20 have any knowledge that she had been in the Burn Unit?</p> <p>21 A. No, sir.</p> <p>22 Q. Are you aware of what medical treatment she</p> <p>23 went through?</p> <p>24 A. No, sir.</p> <p>25 Q. Or the grafting and things of that nature, you</p>	<p>Page 48</p> <p>1 Q. Oh, okay. All right.</p> <p>2 A. Just guessing.</p> <p>3 Q. So it would have been a German lady in risk</p> <p>4 management that first notified you of the case?</p> <p>5 A. I was notified by Mr. Anderson's office and</p> <p>6 then by e-mail. And then I was told to meet with him,</p> <p>7 and that's when they went over everything with me. And</p> <p>8 I was told to go see the risk manager, who was down the</p> <p>9 hall, and then she did all the explaining of the</p> <p>10 complaint and everything.</p> <p>11 Q. Okay. All right.</p> <p>12 A. It's been so long ago.</p> <p>13 Q. From reviewing your answers, you have never</p> <p>14 been disciplined for any reason concerning this matter;</p> <p>15 is that fair?</p> <p>16 A. No, sir.</p> <p>17 MR. POTTER: All right. I will pass the</p> <p>18 witness at this time.</p> <p>19 MR. DUNSMOOR: No questions.</p> <p>20 MR. ANDERSON: I have no questions.</p> <p>21 MR. POTTER: Good. You are free to go.</p> <p>22 THE WITNESS: All right. Thank you.</p> <p>23 (Thereupon, the deposition concluded at</p> <p>24 1:35 p.m.)</p> <p>25</p>

OFFICER JEFFREY B. SWAN - 09/30/2014

Page 50

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

* * * * *

I, OFFICER JEFFREY B. SWAN, deponent herein, do hereby
 certify and declare under the penalty of perjury the
 within and foregoing transcription to be my deposition
 in said action; that I have read, corrected and do
 hereby affix my signature to said deposition.

 OFFICER JEFFREY B. SWAN, Deponent

Page 51

CERTIFICATE OF REPORTER

STATE OF NEVADA)
 COUNTY OF CLARK)

I, Michelle R. Ferreyra, a Certified Court
 Reporter licensed by the State of Nevada, do hereby
 certify: That I reported the deposition of OFFICER
 JEFFREY B. SWAN, commencing on TUESDAY, SEPTEMBER 30,
 2014, at 12:35 p.m.

That prior to being deposed, the witness was
 duly sworn by me to testify to the truth. That I
 thereafter transcribed my said stenographic notes into
 written form, and that the typewritten transcript is a
 complete, true and accurate transcription of my said
 stenographic notes, and that a request has been made to
 review the transcript.

I further certify that I am not a relative,
 employee or independent contractor of counsel or of any
 of the parties involved in the proceeding, nor a person
 financially interested in the proceeding, nor do I have
 any other relationship that may reasonably cause my
 impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my
 office in the County of Clark, State of Nevada, this
 14th day of October, 2014.


 MICHELLE R. FERREYRA, CCR No. 876

Exhibit 4

001564

001564

Exhibit 4

DISTRICT COURT
CLARK COUNTY, NEVADA

CRISTINA PAULOS, an individual,

Plaintiff,

vs.

Case No. A-12-666754-C

Dept. No. XXVI

FCH1, 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 ANDREW SILVER, M.D.

Las Vegas, Nevada

Tuesday, June 24, 2014

Volume I

Reported By:

Ellen L. Ford, RPR, CRR

CSR No. 846

Job No. 1880669

Pages 1 - 44

Page 1

1	DISTRICT COURT	1	INDEX
2	CLARK COUNTY, NEVADA	2	WITNESS EXAMINATION
3		3	Andrew Silver, M.D.
4	CRISTINA PAULO, an individual,	4	Volume I
5	Plaintiff, Case No. A-12-666754-C	5	By Mr. Anderson 5
6	vs. Dept. No. XXVI	6	By Mr. Potter 35
7	FCH1, LLC, a Nevada limited	7	By Mr. Anderson 38
8	liability company, LAS VEGAS	8	By Mr. Smerber 40
9	METROPOLITAN POLICE DEPARTMENT,	9	By Mr. Potter 42
10	a government entity; JAKE VON	10	
11	GOLDBERG, an individual; JEFFREY	11	
12	B. SWAN, an individual; JEANNIE	12	EXHIBITS
13	HOUSTON, an individual; AARON	13	EXHIBITS DESCRIPTION PAGE
14	BACA, an individual and DOES 1	14	Exhibit 1 UMC Trauma Resuscitation Nursing
15	through 10,	15	Flow Sheet record 18
16	Defendants.	16	
17		17	Exhibit 2 UMC Outpatient Burn Care Unit
18	Deposition of ANDREW SILVER, M.D., taken on	18	record 24
19	behalf of Defendants, at Marquis Aurbach Coffing,	19	
20	10001 Park Run Drive, Las Vegas, Nevada, beginning at	20	Exhibit 3 photograph 28
21	2:07 p.m. and ending at 2:53 p.m. on Tuesday, June 24,	21	
22	2014, before Ellen L. Ford, Certified Shorthand	22	Exhibit 4 photograph 29
23	Reporter No. 846.	23	
24		24	
25		25	
Page 2		Page 4	
1	APPEARANCES:	1	Las Vegas, Nevada, Tuesday, June 24, 2014
2		2	2:07 p.m.
3	On Behalf of Plaintiff:	3	(NRCF Rule 30(b)(4) waived by the
4	POTTER LAW OFFICES	4	parties before the commencement
5	BY: C.J. POTTER, IV, ESQ.	5	of the deposition.)
6	1125 Shadow Lane	6	Whereupon --
7	Las Vegas, Nevada 89102	7	ANDREW SILVER, M.D.
8	(702) 385-1954	8	being first duly sworn to tell the truth, the whole
9	e-mail: cj@potterlawoffices.com	9	truth, and nothing but the truth, was examined and
10		10	testified as follows:
11	On Behalf of Defendant LVMPD, Jake Von Goldberg,	11	EXAMINATION
12	Jeffrey B. Swan, and Aaron Baca:	12	BY MR. ANDERSON:
13	MARQUIS AURBACH COFFING	13	Q Can I get you to state your name for the
14	BY: CRAIG R. ANDERSON, ESQ.	14	record?
15	10001 Park Run Drive	15	A Andrew Silver.
16	Las Vegas, Nevada 89145	16	Q Dr. Silver, have you had your deposition taken
17	(702) 382-0711	17	before?
18	e-mail: canderson@maclaw.com	18	A Yes.
19	On Behalf of FCH1, LLC and Jeannie Houston:	19	Q Okay. So you understand what we're going to do
20	MORAN LAW FIRM	20	here today?
21	BY: JUSTIN W. SMERBER, ESQ.	21	A Yes.
22	630 South Fourth Street	22	Q Okay. So essentially, the oath you took you've
23	Las Vegas, Nevada 89101	23	agreed to tell the truth. Is there any reason that
24	(702) 384-8424	24	you can't tell the truth today; for example, are you
25	e-mail: j.smerber@moranlawfirm.com	25	on any medication or anything that would prevent you
Page 3		Page 5	

<p>1 from giving truthful testimony?</p> <p>2 A No.</p> <p>3 Q Okay. Do you need me to explain the deposition</p> <p>4 process to you?</p> <p>5 A You could.</p> <p>6 Q Okay. My name is Craig Anderson and I</p> <p>7 represent the Las Vegas Metropolitan Police Department</p> <p>8 and several officers. Directly to my left is Justin</p> <p>9 Smerber who represents The Palms Casino and one of its</p> <p>10 security guards, and then Mr. C.J. Potter represents</p> <p>11 the Plaintiff, Cristina Paulos, in this litigation.</p> <p>12 You understand that you were one of</p> <p>13 Miss Paulos's treating physicians?</p> <p>14 A Correct.</p> <p>15 Q Okay. This is the opportunity for all three of</p> <p>16 us to just basically ask you questions about your care</p> <p>17 and treatment of Miss Paulos. Do you understand that?</p> <p>18 A Yes.</p> <p>19 Q Okay. It's not an opportunity for us to harass</p> <p>20 you or trick you in any way. So when I ask a</p> <p>21 question, we only want the answers that you actually</p> <p>22 remember. "I don't know"s, "I don't remember"s are</p> <p>23 perfectly acceptable answers. Okay?</p> <p>24 A Okay.</p> <p>25 Q If at any time, you know, we ask a question</p> <p style="text-align: right;">Page 6</p>	<p>1 your answer, because we don't want to talk over one</p> <p>2 another. Again, that's for the court reporter. Okay?</p> <p>3 A Okay.</p> <p>4 Q Did you review anything before coming here</p> <p>5 today?</p> <p>6 A Yes.</p> <p>7 Q What did you review?</p> <p>8 A The chart from her hospital stay.</p> <p>9 Q Okay. And would that chart include just the</p> <p>10 Burn Care Unit documents, or would it also include the</p> <p>11 other UMC documents?</p> <p>12 A It will include the Burn Care documents, all of</p> <p>13 the documents that were produced while she was in the</p> <p>14 hospital --</p> <p>15 Q Okay.</p> <p>16 A -- as well as the nursing records.</p> <p>17 Q Okay. And as you sit here today, do you have</p> <p>18 an independent recollection of treating Miss Paulos?</p> <p>19 A Yes, I do.</p> <p>20 Q Did reviewing the records refresh your memory</p> <p>21 as to what treatment you provided her?</p> <p>22 A Somewhat.</p> <p>23 Q Okay. Can you give me just a thumbnail sketch</p> <p>24 of your education?</p> <p>25 A Yes. I went to college at Rockhurst</p> <p style="text-align: right;">Page 8</p>
<p>1 that you don't know the answer to, don't answer it.</p> <p>2 Okay?</p> <p>3 At the end of this process, the court reporter</p> <p>4 will provide you with a transcript of what you and I</p> <p>5 talked about today. You'll have the opportunity at</p> <p>6 that point to go through, read my questions, read your</p> <p>7 answers, and make any changes. Okay?</p> <p>8 A Okay.</p> <p>9 Q You understand that you're not being sued in</p> <p>10 this litigation, correct?</p> <p>11 A Correct.</p> <p>12 Q Okay. You're simply here as a treating</p> <p>13 physician to talk about what you did with Miss Paulos.</p> <p>14 If at any time during this process I say,</p> <p>15 'Dr. Silver, was that a yes, was that a no,' what that</p> <p>16 either means is you either shook your head or nodded.</p> <p>17 I'm trying to get a verbal response because to my</p> <p>18 right here is a court reporter. She is taking down</p> <p>19 everything you and I say, and the way that we speak in</p> <p>20 everyday -- you know, the language we use and gestures</p> <p>21 we use are difficult for her to get down. Okay?</p> <p>22 A Okay.</p> <p>23 Q There's times I'll ask you a question that</p> <p>24 you'll know exactly where I'm going. Please allow me</p> <p>25 to finish that question, as I'll allow you to finish</p> <p style="text-align: right;">Page 7</p>	<p>1 University, majored in chemistry. Then I went to</p> <p>2 medical school at St. Louis University. And then I</p> <p>3 have been a resident physician at UMC for the past</p> <p>4 four years.</p> <p>5 Q You're licensed in the State of Nevada?</p> <p>6 A Correct.</p> <p>7 Q Any other states?</p> <p>8 A No.</p> <p>9 Q Are you Board certified in anything?</p> <p>10 A No.</p> <p>11 Q Okay. Do you have any special training or</p> <p>12 licensures with respect to burn care?</p> <p>13 A We -- I'm a plastic surgery resident, and so we</p> <p>14 are, within that, qualified to do burn surgery.</p> <p>15 Q Okay. And I notice that you've -- a couple of</p> <p>16 articles you've published on pavement burns?</p> <p>17 A Correct.</p> <p>18 Q Okay. What type of research and work have you</p> <p>19 done with respect to pavement burns?</p> <p>20 A The first paper that I presented and wrote was</p> <p>21 based on a series of cases of similar patients that I</p> <p>22 directly treated.</p> <p>23 The second is a five-year review of all</p> <p>24 patients treated for pavement burns at University</p> <p>25 Medical Center.</p> <p style="text-align: right;">Page 9</p>

1 Q Okay. So you're familiar with the care and
2 treatment of pavement burns?
3 A Very.
4 Q Okay. And, I'm sorry, you may have answered
5 this, but how many years have you been practicing?
6 A Four.
7 Q And is burn care wound care, is that your
8 specialty?
9 A It's included within the specialty.
10 Q Okay. What would your specialty be and what
11 would that include?
12 A The specialty would be plastic surgery. We do
13 burn care, wound care, reconstructive surgery,
14 cosmetic surgery, and hand surgery, and craniofacial
15 surgery.
16 Q Now, with respect to -- is it called the UMC
17 Burn Care Unit? Is that what it's called?
18 A It's called the Lions Burn Care Unit.
19 Q Lyons, L-y-o-n-s?
20 A Yes, I believe so.
21 Q Okay. Now, you were working at the Lions Burn
22 Care Unit in August of 2011?
23 A Correct. July and August specifically, yes.
24 Q Now, at UMC, when would you become involved in
25 a patient's care who came to the Emergency Room? What

Page 10

1 would trigger them to contact someone at the Lions
2 Unit?
3 A If the physician determines that they need our
4 assistance in the Emergency Department, they call us
5 directly.
6 Q Okay. And so if someone has burns, do they
7 automatically call you?
8 A Not necessarily.
9 Q Do you have a feeling for when they contact
10 you, what type of injuries they're seeing that would
11 lead them to contact you?
12 A Yes. They generally describe those to us.
13 Q Okay. If someone arrived with third-degree
14 burns, would you automatically be contacted?
15 A We probably should be, but it's not necessarily
16 done, as such.
17 Q Just talking about burns in general, are there
18 different kinds of burns?
19 A Yes.
20 Q Okay. Is one type of burn a heat burn?
21 A Not specifically heat --
22 Q Okay.
23 A -- they're usually determined by mechanism.
24 Q Okay. So what type of mechanisms do you deal
25 with? What type of different burns are there?

Page 11

1 A There are flame burns, scald burns, contact
2 burns, then people also consider frostbite as a type
3 of burn.
4 Q And what type of burn is created by asphalt?
5 A That would be a contact burn.
6 Q Contact. Okay.
7 Now, are there differences between heat burns
8 and chemical burns?
9 A Yes.
10 MR. POTTER: Just for the record, I object to
11 any opinion we offered, just by the fact that he's a
12 treating physician not retained as an expert. You can
13 go ahead, though.
14 BY MR. ANDERSON:
15 Q Okay. So are there differences between heat
16 burns and chemical burns?
17 A Yes.
18 Q Do you treat chemical burns?
19 A Occasionally.
20 Q What's the difference between a chemical burn
21 and a contact burn?
22 A Chemical burn is usually caused by contact with
23 a substance that burns the skin directly. There is
24 not necessarily a heat-associated factor that you
25 would see with a contact burn.

Page 12

1 Q Can asphalt cause a chemical burn?
2 MR. POTTER: Can I just have a continuing
3 objection?
4 MR. ANDERSON: That's fine, yeah.
5 MR. POTTER: Thank you.
6 THE WITNESS: Not that I'm aware of.
7 BY MR. ANDERSON:
8 Q Okay. And is there still just three degrees of
9 burn; first-degree, second-degree, and third-degree?
10 A In some scales there's a fourth-degree.
11 Q Okay. Can you describe a first-degree burn to
12 me?
13 A A first-degree burn is commonly known as a
14 sunburn type of degree. So it's just to the most
15 superficial layers of the skin.
16 Q And what would be the expected progression of a
17 first-degree burn? How would you treat that?
18 A Just with symptom relief, purely.
19 Q What's a second-degree burn?
20 A A second-degree burn goes into the deeper
21 layers of the skin called the dermis, and it involves
22 only a portion of the dermis.
23 Q And how do you treat a second-degree burn?
24 A It depends truly upon the depth. Usually
25 symptom relief. And if the burn is not expected to

Page 13

1 heal within the first few weeks, it is usually excised
2 and grafted. Primarily, we do mainly wound care on
3 them.

4 Q Okay. So a second-degree burn can lead to
5 grafting?

6 A Correct.

7 Q And then finally, what's a third-degree burn?

8 A A third-degree burn is when you go all the way
9 through that layer of the dermis.

10 Q And what's a full thickness third-degree burn?

11 A That's actually the same terminology --

12 Q Okay.

13 A -- just interchangeable.

14 Q Now, is there such thing as burn conversion?

15 A Could you clarify that?

16 Q There was a record in Miss Paulos's record that
17 says, "The burn has converted." Okay? Do you know
18 what that means?

19 A Yes.

20 Q Okay. What does that mean?

21 A Just means that it generally progressed in
22 depth.

23 Q Okay. So could a first-degree burn over days
24 progress into a third-degree burn?

25 A A first-degree burn would probably be unlikely

Page 14

1 A I'd see the patient on a daily basis and report
2 what I had found to Dr. Ozobia. He usually saw her,
3 as well, but it was my main responsibility.

4 Q Do you have an understanding, based upon your
5 review of the medical records, as to why Miss Paulos
6 was taken to UMC on August 7th, 2011?

7 A I do not.

8 Q Okay. Did you review any records from her
9 initial stay at UMC, which is August 7th to
10 August 9th?

11 A I saw one brief report that alluded to her
12 stay, but did not review those records directly.

13 Q Okay. Do you know the status of her burns
14 during the two-day stay, August 7th to August 9th, at
15 UMC?

16 A I do not.

17 Q According to the initial intake sheet, she has
18 burns, second-degree on the left lateral thigh, left
19 lateral leg, and right medial leg.

20 If someone comes in with second-degree burns
21 from asphalt, the Lions Burn Unit would not
22 necessarily be called to treat them?

23 A Not necessarily.

24 MR. POTTER: Object to form. You can go ahead.

25

Page 16

1 to progress that deep.

2 Q But could a second-degree burn progress into a
3 third-degree burn?

4 A Yes, it could.

5 Q So kind of what I'm looking for here is, so if
6 someone comes in with a second-degree burn, it's
7 possible for that burn to worsen and become a
8 third-degree?

9 A Correct.

10 Q Okay. What causes that? What factors cause
11 that?

12 A There are many different factors that can cause
13 it; pressure being one, inadequate fluid resuscitation
14 being another, infection, and there are times where a
15 burn can be documented inappropriately or incorrectly
16 based on the timing, as some continue to progress
17 regardless of what you do, you just don't notice it on
18 initial appearance how deep it really is.

19 Q Moving on to Miss Paulos. Generally, what role
20 did you play in her treatment?

21 A I was the resident physician in control of her
22 care under Dr. Nathan Ozobia.

23 Q And who would have been more responsible for
24 seeing her on a day-to-day basis; yourself or
25 Dr. Ozobia?

Page 15

1 BY MR. ANDERSON:

2 Q Not necessarily?

3 A (Non-verbal response.)

4 Q Okay. Were there any records indicating that
5 anyone from the Lions Burn Care Unit treated
6 Miss Paulos between August 7th and August 9th?

7 A I don't know.

8 Q Okay. Now, in addition to treating burns, does
9 the Lions Burn Care Unit also treat injuries such as
10 road rash?

11 A Yes.

12 Q What's the difference between burns and road
13 rash?

14 A Road rash is more commonly caused by a friction
15 with the surface that removes layers of the skin. As
16 they burn, the damage is primarily done, in most
17 instances, by the actual heat transfer.

18 Q Can you have a hybrid injury which is both a
19 contact heat burn and friction?

20 MR. POTTER: Object, again, to the extent it's
21 calling for expert testimony.

22 THE WITNESS: You could.

23 BY MR. ANDERSON:

24 Q Okay. Have you ever treated someone with a
25 burn that was both a heat contact burn and a road rash

Page 17

5 (Pages 14 - 17)

1 burn?
 2 A Yes.
 3 Q I want to show you a UMC document which we'll
 4 mark as Exhibit 1.
 5 (Exhibit 1 - UMC record - marked for
 6 identification.)
 7 BY MR. ANDERSON:
 8 Q This is a document from -- the date is
 9 August 7th, so this would have been, according to this
 10 document, the date that she came into the Emergency
 11 Room at UMC.
 12 If you look at the diagram of the individual,
 13 it lists some abrasions, but it doesn't list any
 14 burns. Just if you know, would visible burns be
 15 included on this chart by the nursing staff at UMC, or
 16 should they be?
 17 A I have not seen burns listed on this form
 18 before.
 19 Q Okay. Now, on -- if you develop -- if you have
 20 second- or third-degree burns, are they immediately
 21 visible or does it take time for them to become
 22 visible?
 23 A That varies.
 24 Q And what do you mean by "it varies"?
 25 A The appearance of the burn may not be as severe

Page 18

1 second- or third-degree burn, you don't always
 2 immediately have like blistering and skin separation,
 3 that sort of thing; is that fair?
 4 A Yes. More so for a superficial burn than a
 5 full thickness third-degree burn.
 6 Q And so it's your experience that typically
 7 burns are not included on the Patient Injury Diagram
 8 Chart?
 9 A This is not a form that I fill out, this is
 10 usually filled out, I believe, by the nursing staff or
 11 by the ER physician. But this is not a form that we
 12 would use for the Burn Care Unit or for a trauma
 13 evaluation by the Surgical Department.
 14 Q Okay. But the UMC Emergency Room doctor and
 15 Emergency Room nurses, would they be expected to
 16 identify visible burns on a person, though, if they
 17 were doing this chart?
 18 A Can you rephrase that?
 19 Q Yeah. What I'm wondering is why her burns are
 20 not identified on this chart. And if that's standard
 21 that they don't touch burns, they just leave that to
 22 you guys, or if, you know, they weren't visible at
 23 this time.
 24 A I'm not completely aware of everything they're
 25 expected to do, but I would expect that something of

Page 20

1 as the burn actually is.
 2 Q Okay. So is it possible someone with second-
 3 or third-degree burns has a non -- an injury that's
 4 initially non-visible?
 5 A That would be highly unlikely to be completely
 6 non-visible.
 7 Q Could a second- or third-degree burn suffered
 8 from asphalt initially appear to just be abrasions?
 9 A Yes, or bruising associated with abrasions.
 10 Q Could it be an injury that a layperson would
 11 not initially associate to be a burn?
 12 MR. POTTER: Object, it calls for speculation.
 13 But go ahead.
 14 THE WITNESS: It's possible.
 15 BY MR. ANDERSON:
 16 Q Okay. I'll represent to you that the ambulance
 17 drivers that carried Miss Paulos from The Palms to UMC
 18 listed "superficial burns". Have you seen that sort
 19 of a description before in medical records?
 20 A I have seen that description.
 21 Q Okay. Is it possible that a burn that is
 22 called a superficial burn later progresses into a
 23 second- or third-degree burn?
 24 A Yes, it is.
 25 Q So what I'm getting at, so if you suffer a

Page 19

1 this sort may be on the form.
 2 MR. POTTER: I object to speculation on the
 3 previous one. Sorry. I don't want to speak over
 4 anyone.
 5 BY MR. ANDERSON:
 6 Q And now, according to the UMC Hospital records,
 7 not the Lions Burn Care Unit records, Miss Paulos was
 8 discharged on August 9th.
 9 Now, between August 7th and August 9th, I can't
 10 find any records where she was referred to the Burn
 11 Care Unit or received any Burn Care Unit treatment.
 12 What would that tell you about her burn injuries, if
 13 anything?
 14 A Not entirely too much.
 15 Q Okay. Does the UMC Emergency Room staff
 16 attempt to treat most burns themselves if they don't
 17 view them as being to the level that you would treat
 18 them?
 19 A That would also be speculation on my part, but
 20 at times they do call and ask for recommendations.
 21 Q Okay. According to this discharge sheet, the
 22 only references -- as far as the left -- this is what
 23 the records states -- "As far as the left thigh, the
 24 patient had developed blisters, as well as bullae."
 25 Did I say that right?

Page 21

6 (Pages 18 - 21)

1 A Yes.
 2 Q What's bullae?
 3 A It's a confluence of blisters. It's just over
 4 a larger area.
 5 Q Okay. So according to this record, Miss Paulos
 6 had blisters upon her discharge from UMC.
 7 Are discharge -- I mean -- are blisters and
 8 bullae something that require the Burn Care Unit to
 9 investigate?
 10 A Not necessarily.
 11 Q And then the note goes on to state that, "We
 12 consulted the Burn Care Unit nurses who have come over
 13 and given the patient sulfadiazine and a dressing on
 14 top."
 15 Do you reach any conclusions from that
 16 statement as to what happened?
 17 A No.
 18 Q Okay. So they put an ointment on top of it and
 19 a dressing?
 20 A Correct.
 21 Q What level of burn would they treat in that
 22 manner?
 23 A Depends on who's treating the burn.
 24 Q Okay. Just up to the person?
 25 A Yes.

Page 22

1 injuries are sometimes referred to as "burns", and at
 2 other times they're referred to as "road rash". What
 3 would account for that discrepancy?
 4 MR. POTTER: Object, calls for speculation.
 5 MR. ANDERSON: I can just read it. I'll mark
 6 this as Exhibit 2.
 7 (Exhibit 2 - medical record - marked for
 8 identification.)
 9 BY MR. ANDERSON:
 10 Q This is just an example of what I'm referring
 11 to. Bates stamp PAULOS000358 at the bottom. This is
 12 from treatment dates August 12th, August 13th,
 13 August 14th.
 14 If I look up at the top part of that document
 15 where it says "Wound Type", there's a box for
 16 "Pressure Ulcer", "Burn and Degree", "Surgery" and
 17 "Road Rash". Do you see that?
 18 A Yes, I do.
 19 Q And on this particular chart, "Road Rash" is
 20 checked, and above it it says "Left leg, left thigh".
 21 In your treatment of Miss Paulos, did you ever
 22 reach a determination as to whether her injuries were
 23 caused by heat burn or by road rash?
 24 MR. POTTER: Object, calls for expert
 25 testimony.

Page 24

1 Q Okay. Is it unusual that she developed
 2 blisters and bullae two days after the event, or is
 3 that pretty standard for a burn?
 4 A That can be standard.
 5 Q Okay. And what's sulfadiazine?
 6 A It's just an antibiotic ointment that's
 7 commonly used on burns.
 8 Q The discharge report states that she was
 9 discharged in stable condition. Would you agree with
 10 that, with a second-degree burn, if it had
 11 sulfadiazine and dressing, that that could be stable?
 12 A Yes.
 13 Q And then according to my records, Miss Paulos
 14 began receiving treatment at the Burn Care Unit on
 15 August 11th. Does that sound right with what you
 16 reviewed?
 17 A My records are from her hospital stay only.
 18 That was the only chart they had available.
 19 Q Okay. So did you review any records from the
 20 Lions Burn Care Unit?
 21 A From the actual Burn Care Unit, yes, but not
 22 from the Out-Patient Burn Care Center. They are
 23 connected, so that may lead to some confusion.
 24 Q Okay. Now, throughout Miss Paulos's records,
 25 with respect to the left side of her body, the

Page 23

1 THE WITNESS: Can you rephrase that for me,
 2 please?
 3 BY MR. ANDERSON:
 4 Q Yeah. Do you have an opinion as to whether the
 5 left leg wounds you treated on Miss Paulos were caused
 6 by a heat burn or road rash?
 7 A Yes.
 8 Q Okay. What is that opinion?
 9 A It would be more consistent with a burn
 10 contacted with pavement than it would from road rash.
 11 Q And throughout some of Dr. Ozobia's records and
 12 the nursing records, it mentions both burns and road
 13 rash. Is that common to have two different diagnoses?
 14 A It's possible.
 15 Q Is it possible that it's a hybrid of the two;
 16 heat burns and also due to friction was aggravated?
 17 A I imagine that it could be.
 18 Q Okay.
 19 MR. POTTER: Object, that that was calling for
 20 possibilities rather than probability.
 21 BY MR. ANDERSON:
 22 Q And so how do you determine whether an injury
 23 is caused by heat contact or by road friction? What
 24 type of things are you looking at?
 25 A You're looking at the pattern of the wound, the

Page 25

7 (Pages 22 - 25)

<p>1 depth of the wound, and the consistency of the wound. 2 Q And what was Miss Paulos's wounds on her left 3 leg? How would you describe them? 4 A At the time that I saw them, it was when she 5 was at the hospital for her operation, and it was more 6 consistent with a burn, more so than a superficial 7 abrasion. 8 Q Now, road rash has three different -- 9 first-degree, second-degree, third-degree, just like a 10 burn, correct? 11 A I'm not aware of a grading system, as such. 12 Q Okay. 13 A There are different names, such as degloving or 14 road rash, depending on how much tissue is removed. 15 Q Do you recall having any conversations with 16 Dr. Ozobia as to whether the injuries were caused by 17 road rash or a heat contact burn? 18 A Not directly, no. 19 Q Now, did you treat Miss Paulos prior to her 20 surgery on August 24th? 21 A Not that I'm aware of. 22 Q Okay. So the first time that you saw her 23 wounds and injuries was around the time of her 24 surgery? 25 A Correct.</p>	<p>1 A Yes, it was. 2 Q Let's start with this one. Exhibit three. 3 (Exhibit 3 - photograph - marked for 4 identification.) 5 BY MR. ANDERSON: 6 Q Does this look like Miss Paulos's wound? Do 7 you recognize it? 8 A I don't recognize this picture directly, but it 9 is consistent with the post-operative appearance. 10 Q Did you say "post-operative"? 11 A Yes. 12 Q Okay. I'll represent to you that Miss Paulos 13 has stated under oath that she believes this picture 14 was taken on August 7th, the day she came into the 15 hospital. Would you agree with that? 16 A I don't know when this picture was taken. 17 Q Okay. But this looks like a post operation 18 picture? 19 A The pattern of the wounds look similar to the 20 pattern of her wounds that I saw from the 21 post-operative photos. 22 Q Okay. 23 A The actual appearance does not -- of the wound 24 itself does not appear post-operative to me. 25 Q Does this look like a fresh wound?</p>
<p>1 Q Okay. Now, what surgery did you assist in 2 performing? What's that surgery called? 3 A Debridement and skin grafting. 4 Q Okay. Can you explain to me as a layperson 5 what that is? 6 A Debridement specifically is removing all of the 7 tissue which is no longer alive. And the skin 8 grafting is taking an area of skin from another 9 portion of the body and placing it over the wound that 10 has been created by the initial debridement. 11 Q And what was your role in this surgery? 12 A I performed similarly as Dr. Ozobia would. 13 Q Okay. And is this surgery performed all in one 14 sitting? 15 A Most of the time. 16 Q Okay. Was Miss Paulos's performed all in one 17 day? 18 A Yes, it was. 19 Q Okay. And what's the purpose of the surgery? 20 What's the goal? 21 A You need to remove all of the tissue that is no 22 longer alive, and to seal the wound as soon as 23 possible. 24 Q And how did she take to the surgery? Was it 25 successful?</p>	<p>1 A It's possible. 2 Q And when you say "the pattern of the wound", 3 tell me what you see in this picture to a layperson. 4 A The pattern specifically that I referred to is 5 similar to the area on the body in which we operated 6 for Miss Paulos. 7 Q Okay. And do you recall where you took the 8 donor sites from on Miss Paulos? 9 A I believe they were from the right thigh. Just 10 based on the general location of the wounds, it would 11 seem that that would be the most likely choice, but 12 I'm not positive where we took them from. 13 Q Okay. Could this be a pre-operative picture or 14 picture taken right before the surgery was performed? 15 A It could be. 16 MR. POTTER: Speculation and the possibility. 17 (Exhibit 4 - photograph - marked for 18 identification.) 19 BY MR. ANDERSON: 20 Q And this Exhibit 4 that I've just handed you is 21 a picture that actually has a date on it. It says 22 August 31st. Would that be the date of the picture? 23 A It appears as if it is. 24 Q So this would be about a week post-surgery? 25 A Yes.</p>

Page 26

Page 28

Page 27

Page 29

8 (Pages 26 - 29)

1 Q Okay. Can you tell me what that picture shows?
2 A The picture shows healing skin grafts. It also
3 shows a donor site on both the left and right
4 thighs -- or what appear to be donor sites, the part
5 that are covered with the yellow gauze on the tops of
6 the thighs.

7 And it looks like there may be an additional
8 donor site down below where the yellow gauze is also
9 present, or it also could have been an area where the
10 nurses were unable to take the dressing off at that
11 time.

12 Q Okay. So going back real quick to Exhibit 3,
13 looking at that picture. So is it possible that's a
14 fresh wound that was -- that that's something that
15 occurred that day?

16 MR. POTTER: Object to the characterization
17 "possibility".

18 THE WITNESS: I would say that it is possible.

19 BY MR. ANDERSON:

20 Q Okay. Is it the Burn Clinic's -- the Lions
21 Burn Clinic, is it a practice to take the picture
22 before the surgery, then pictures after?

23 A Once the Burn Care team becomes involved, they
24 usually take photos on a daily basis, except for the
25 days in which the dressings are not removed.

Page 30

1 have any future surgeries for cosmetic purposes?

2 A Yes, it is.

3 Q Were you involved in Miss Paulos's follow-up
4 after the surgery?

5 A For the time that she was in the hospital I saw
6 her, and I did see her one day in a post-operative
7 clinic with Dr. Ozobia.

8 Q And were there any complications associated
9 with her surgery that you're aware of?

10 A Not that I'm aware of.

11 Q No infections?

12 A Not that I'm aware of.

13 Q Okay. So just so I'm clear. The items here on
14 the right thigh, those represent the donor sites that
15 were used?

16 A It appears to be, yes.

17 Q Okay. And is that a standard site that you
18 would use as a donor?

19 A Yes, it is.

20 Q Okay. Now, in looking at these pictures, and
21 in your treatment of Miss Paulos, did you ever see any
22 evidence that any of her burns were chemical burns?

23 A I did not.

24 Q Okay. And do chemical burns look different
25 than heat burns?

Page 32

1 Q If someone were to come into the Emergency Room
2 with injuries as depicted in Exhibit 3, would you
3 expect the Burn Unit to be called?

4 A Yes, or the burn physician that's on-call.

5 Q Okay.

6 A I'm using that interchangeably.

7 Q Now, with respect to the surgery that was
8 performed, would Miss Paulos require future surgeries
9 in addition to what's already been done to her?

10 A After this operation?

11 Q Yes.

12 A After Exhibit 4? No, she would not require any
13 additional surgeries, unless there were cosmetic
14 deformities that she wanted to address.

15 MR. POTTER: I just object to the extent it
16 calls for expert opinion testimony.

17 BY MR. ANDERSON:

18 Q Okay. In your residency for plastic surgery,
19 is that -- do you do those type of surgeries?

20 A We do occasionally, but we usually leave these
21 as they are.

22 Q Okay. And why is that?

23 A Because it would require another operation and
24 the result may not be optimal.

25 Q So is it up to the patient as to whether they

Page 31

1 A Sometimes.

2 Q Okay. According to Miss Paulos, in a statement
3 she made under oath, she said the following, "I was
4 advised by nurses that I suffered chemical burns as
5 the burns were suffered as a result of contact with
6 hot asphalt."

7 Did any medical people ever tell you that she
8 had suffered chemical burns?

9 A No.

10 Q And I think you testified earlier that an
11 asphalt burn would not cause chemical burns.

12 A The only type of burn that could be considered
13 a chemical burn in contact with a street surface would
14 be wet concrete, that I'm aware of.

15 Q Okay. What is a sequential pneumatic
16 compression device?

17 A Those are things that we just put on the
18 patients to prevent blood clotting. It squeezes the
19 legs.

20 Q If those were put on someone with a burn, could
21 it exacerbate the burn?

22 A It's possible.

23 Q Have you seen that happen before?

24 A No.

25 Q Okay. Can it lead to blistering?

Page 33

9 (Pages 30 - 33)

1 A I've never seen that.
 2 Q Okay. So if you put a sequential pneumatic
 3 compression device on someone with burns, is it put on
 4 to treat the burn?
 5 A No.
 6 Q Okay. What's it put on for?
 7 A To prevent blood clots from forming.
 8 Q Okay. And so if they were -- if such a device
 9 was placed on Miss Paulos, would it have anything to
 10 do with her burns?
 11 A It would -- not that I'm aware of.
 12 MR. POTTER: Objection, calls for speculation.
 13 BY MR. ANDERSON:
 14 Q Okay. I'm almost done here.
 15 But so you had no involvement with Miss Paulos
 16 from August 11th through the 24th. Your first
 17 involvement was the 24th at the time of surgery?
 18 A Correct.
 19 Q Okay. Do road rash injuries and burns appear
 20 the same to the naked eye?
 21 MR. POTTER: Object to the form of the
 22 question.
 23 THE WITNESS: Not necessarily.
 24 BY MR. ANDERSON:
 25 Q I mean, what I'm confused on is her records go

Page 34

1 her for second-degree and third-degree pavement
 2 contact burns; is that correct?
 3 A Correct.
 4 Q You didn't treat her for road rash?
 5 A We treated her for what had appeared to be a
 6 burn.
 7 Q Okay. And as a result of those burns, you
 8 testified you did two procedures; debridement and skin
 9 grafts?
 10 A Yes, in the same setting.
 11 Q Okay. Debridement, you said, was removing dead
 12 skin?
 13 A Yes, non-viable tissue.
 14 Q Okay. And where did you perform the
 15 debridement procedures on Miss Paulos's body -- or on
 16 her body? That was a bad question.
 17 A In the areas documented in the illustration,
 18 you can see all the skin grafts applied to it
 19 post-operatively, where we debrided.
 20 Q Do you recall doing a debridement to her torso?
 21 A I believe she also had a burn on her breast.
 22 Q Okay. So there would be debridement to torso
 23 and the lower left extremity --
 24 A That's --
 25 Q -- is that fair?

Page 36

1 back and forth. In some records it's a road rash, in
 2 other records it's a burn.
 3 Is that discrepancy common? Do you see that in
 4 medical records commonly?
 5 A You can see people transfer diagnoses that are
 6 not entirely accurate.
 7 Q Okay. So in your opinion, does Miss Paulos
 8 require any future care based upon her condition?
 9 MR. POTTER: Object, it exceeds the scope of
 10 his treatment.
 11 THE WITNESS: I don't have any direct photos of
 12 her appearance now, but I would assume that she didn't
 13 require anything further as far as burn treatment.
 14 MR. ANDERSON: Okay. That's all I have.
 15 MR. SMERBER: I don't have anything.
 16 MR. POTTER: All right. I only think I have a
 17 handful.
 18 EXAMINATION
 19 BY MR. POTTER:
 20 Q So your treatment in August of 2011 to
 21 Miss Paulos, you testified you treated her for
 22 third-degree pavement contact burns; is that correct?
 23 A I wouldn't say they're all third-degree. Most
 24 likely it's a combination of second- and third-degree.
 25 Q Okay. You didn't treat her -- so you treated

Page 35

1 A Yes.
 2 Q And as far as the skin grafts, you're saying
 3 the area that we've marked as Exhibit 4, which you
 4 previously described as donor areas, are the yellow
 5 areas?
 6 A The donor areas are where the skin graft is
 7 taken from, and then they are applied to the areas
 8 that were debrided. You can see the net-like
 9 appearance.
 10 Q Okay. And so on Exhibit 4, for the record,
 11 you're pointing to what appears kind of like an open
 12 wound with a netting; is that fair?
 13 A Yes.
 14 Q Okay.
 15 A Technically, it's a sealed wound because the
 16 skin graft is present, although it may appear to be
 17 weeping somewhat from underneath those holes in the
 18 grafts.
 19 Q And I think you've testified that it's up to
 20 the patients to whether or not they have cosmetic
 21 surgery.
 22 Is it common for people to have a cosmetic
 23 surgery in your treatment after they've had skin
 24 grafts?
 25 A Not common.

Page 37

10 (Pages 34 - 37)

1 Q Okay. As far as your treatment of Miss Paulos,
2 you believe it was reasonable and customary for the
3 burns that she had suffered?
4 A Can you rephrase that, please?
5 Q Was your treatment of Miss Paulos reasonable
6 and customary to what you would do to someone who had
7 suffered these burns?
8 A Yes.
9 Q Okay. I think also you testified earlier that
10 you found no evidence of a chemical burn; is that
11 accurate?
12 A It's accurate.
13 Q Okay.
14 MR. POTTER: I don't have any further
15 questions.
16 MR. ANDERSON: I have ten more minutes. No.
17 EXAMINATION
18 BY MR. ANDERSON:
19 Q As part of your training, do you have any
20 knowledge or do you have any opinions as to how long
21 someone has to be on concrete and how hot that
22 concrete has to be to cause a second- or third-degree
23 burn?
24 MR. POTTER: And I'm just -- the same objection
25 I had at the beginning as far as expert testimony.

Page 38

1 THE WITNESS: I have knowledge from the work
2 that I've done in my research, yes.
3 BY MR. ANDERSON:
4 Q Okay. If pavement is 140 degrees, how long
5 would someone have to be on that pavement to suffer a
6 second- or third-degree burn?
7 MR. POTTER: The same objection, and improper
8 hypothetical.
9 THE WITNESS: Information obtained from a study
10 performed in Southern Arizona with a similar climate
11 showed once the ambient temperature was 100 degrees or
12 higher, you could have a second-degree burn in as
13 little as 30 seconds.
14 BY MR. ANDERSON:
15 Q And what determines whether a person suffers
16 that burn? I mean, is it the person? Is it the
17 environment?
18 MR. POTTER: Object, calls for speculation. Go
19 ahead.
20 THE WITNESS: That varies. It's just the
21 duration of contact with the hot surface and for any
22 factor possible.
23 BY MR. ANDERSON:
24 Q And now it's not automatic that someone will
25 have a burn in 30 seconds, it's just some people do?

Page 39

1 A If you were in contact -- direct contact and
2 did not remove yourself from that surface for that
3 time, it would be expected that you would have a burn.
4 Q Okay. If the body is moving and in motion and
5 has friction with the ground, does that increase the
6 chances of a burn or does it decrease the chances?
7 MR. POTTER: I just object to the same line.
8 THE WITNESS: It would be both.
9 BY MR. ANDERSON:
10 Q Okay. So moving around, it could do either?
11 A Correct, depending on the direct contact with
12 the pavement or not.
13 MR. ANDERSON: That's all I have. Thank you
14 very much, Doctor.
15 THE WITNESS: You're welcome.
16 MR. SMERBER: I just have one follow-up
17 question.
18 EXAMINATION
19 BY MR. SMERBER:
20 Q The study that you referenced, what was the
21 name of that, again?
22 A I believe it was "Streets of Fire", but that
23 may be inaccurate. It was performed out of Maricopa
24 Burn Center. There are very few articles related to
25 this, so it should be easy to find.

Page 40

1 Q Okay. I have one more question. Counsel was
2 asking you about follow-up surgeries a second ago.
3 I believe the first time that you were asked
4 about additional surgeries, you said that they
5 wouldn't generally be recommended because they don't
6 have a high success rate. Is that what you said?
7 A Not -- if I said it that way, I misspoke. It's
8 not -- we don't always do them because it requires
9 another operation, and there's a possibility that you
10 don't get the result that you're looking for.
11 Q Can you quantify that at all?
12 A Sure. There are a few other options. One
13 would be replacing the skin graft with a sheeted skin
14 graft. Another would be placing tissue expanders to
15 expand the surrounding tissue so that you could remove
16 some of the scar.
17 Q What I meant in terms of quantifying it is, can
18 you quantify the probabilities that you're going to
19 get the result that you want?
20 For instance, I've been told on numerous
21 occasions with cervical fusions, third of the people
22 get better, third of the people stay the same, third
23 of the people get worse. Those are kind of your odds
24 for a cervical fusion.
25 With regards to an additional skin graft like

Page 41

11 (Pages 38 - 41)

<p>1 this, can you give me a similar probability?</p> <p>2 A A probability of what specifically?</p> <p>3 Q Of success.</p> <p>4 A It depends on what your definition of "success"</p> <p>5 is.</p> <p>6 Q Okay. How about in terms of getting any</p> <p>7 benefit?</p> <p>8 MR. POTTER: I would object, calls for expert</p> <p>9 testimony.</p> <p>10 THE WITNESS: I would say that it depends on</p> <p>11 what the patient wants and what the patient would find</p> <p>12 beneficial. If they wanted to maybe remove some of</p> <p>13 the net-like appearance, that might be possible.</p> <p>14 MR. SMERBER: Okay. That's all I have.</p> <p>15 MR. POTTER: I have just one question after</p> <p>16 that.</p> <p>17 RE-EXAMINATION</p> <p>18 BY MR. POTTER:</p> <p>19 Q So with the skin graft, that net-like</p> <p>20 appearance, it leaves a permanent scar after skin</p> <p>21 graft; is that fair?</p> <p>22 A There will be permanent scars after a skin</p> <p>23 graft taken after a wound like this.</p> <p>24 Q So the choice would be either a patient could</p> <p>25 either live with a permanent scar or try to do</p> <p style="text-align: right;">Page 42</p>	<p>1 I, the undersigned, a Certified Court</p> <p>2 Reporter of the State of Nevada, do hereby certify:</p> <p>3 That the foregoing proceedings were taken</p> <p>4 before me at the time and place herein set forth; that</p> <p>5 any witnesses in the foregoing proceedings, prior to</p> <p>6 testifying, were duly sworn; that a record of the</p> <p>7 proceedings was made by me using machine shorthand</p> <p>8 which was thereafter transcribed under my direction;</p> <p>9 that the foregoing transcript is a true record of the</p> <p>10 testimony given.</p> <p>11 Further, that before completion of the</p> <p>12 proceedings, review of the transcript [] was [X]</p> <p>13 was not requested.</p> <p>14 I further certify I am neither financially</p> <p>15 interested in the action nor a relative or employee of</p> <p>16 any attorney or party to this action.</p> <p>17 IN WITNESS WHEREOF, I have this date</p> <p>18 subscribed my name.</p> <p>19</p> <p>20 Dated: July 8, 2014</p> <p>21</p> <p>22</p> <p>23</p> <p>24 ELLEN L. FORD, CSR No. 846</p> <p>25</p> <p style="text-align: right;">Page 44</p>
<p>1 something about it?</p> <p>2 A You'll have a new scar somewhere else in most</p> <p>3 instances. And at the very least, a linear scar along</p> <p>4 whatever you're able to close.</p> <p>5 MR. ANDERSON: That's all we've got. Do you</p> <p>6 want to read this and make sure that everything's</p> <p>7 accurate or do you want to waive that?</p> <p>8 THE WITNESS: I'll just waive that.</p> <p>9</p> <p>10 (TIME NOTED: 2:53 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 43</p>	

1 I, the undersigned, a Certified Court
2 Reporter of the State of Nevada, do hereby certify:

3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
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12 proceedings, review of the transcript [] was [X]
13 was not requested.

14 I further certify I am neither financially
15 interested in the action nor a relative or employee of
16 any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19
20 Dated: July 8, 2014
21


22 
23 ELLEN L. FORD
24 CCR No. 846
25

Exhibit 5

001578

001578

Exhibit 5

Pavement Temperature and Burns: Streets of Fire

From the Departments of Emergency Medicine* and Surgery*, Maricopa Medical Center (student[§]), Phoenix, Arizona.

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William Z Harrington, MD*
Bonnie L Strohschein, RN, MS†
David Reedy, MD*
Jennifer E Harrington[§]
William R Schiller, MD†

Study objective: To measure pavement temperatures over a 24-hour period to determine when patients are at risk for burns and to report cases of pavement burns with predisposing factors.

Design: Descriptive study of pavement temperatures and retrospective case series of 23 patients with pavement burns admitted to the Maricopa Medical Center during the years 1986 to 1992.

Participants: Twenty-three patients with pavement burns serious enough for them to be admitted to the burn center.

Results: We measured the temperatures of asphalt, cement, and other outdoor materials hourly for one 24-hour period using a thermocouple thermometer. Asphalt pavement was hot enough to cause burns from 9 AM to 7 PM during the summer months. It was hot enough to cause a second-degree burn within 35 seconds from 10 AM to 5 PM. The group of burned patients could be divided into three categories: incapacitated, restrained, and sensory deficient. All burns involved less than 13% of the total body surface area.

Conclusion: During summer days in the desert, pavement is often hot enough to cause burns and does so with regularity in the southwestern United States. No one should be allowed to remain in contact with hot pavement, even transiently.

[Harrington WZ, Strohschein BL, Reedy D, Harrington JE, Schiller WR: Pavement temperature and burns: Streets of fire. *Ann Emerg Med* November 1995;26:563-568.]

BURNS

Harrington et al

INTRODUCTION

In the American Southwest and in other desert areas, summer temperatures often exceed 37.8°C. Pavements, sidewalks, dirt paths and metal structures are hotter than the ambient temperature because they absorb solar radiant energy. Berens documented full-thickness pavement burns in three victims of motor vehicle crashes in Phoenix, Arizona. He also reported unverified asphalt temperatures of 77.8°C, sufficient to cause full-thickness contact burns within seconds.¹

Rumney and Way^{2,3} published subsequent studies of asphalt temperatures in several sites in Arizona. They recorded maximum daily peak asphalt temperatures of 71.1°C in June and July. The mean daily peak temperature in these months was 68.3°C. They also reported that in July and August the asphalt surface temperature peaked at 43.3°C 40% of the time and at 54.4°C 25% of the time. Peak temperatures usually occurred around 3 PM and were inversely related to the altitude of the sites measured. Other investigators have reported asphalt temperatures sufficient to cause serious burns in other parts of the country, although the danger is not sustained over the long time periods reported in Arizona.^{4,5}

We were prompted by information in these studies to review our experience over the past 6 years. We also documented the relationship of ambient temperature to

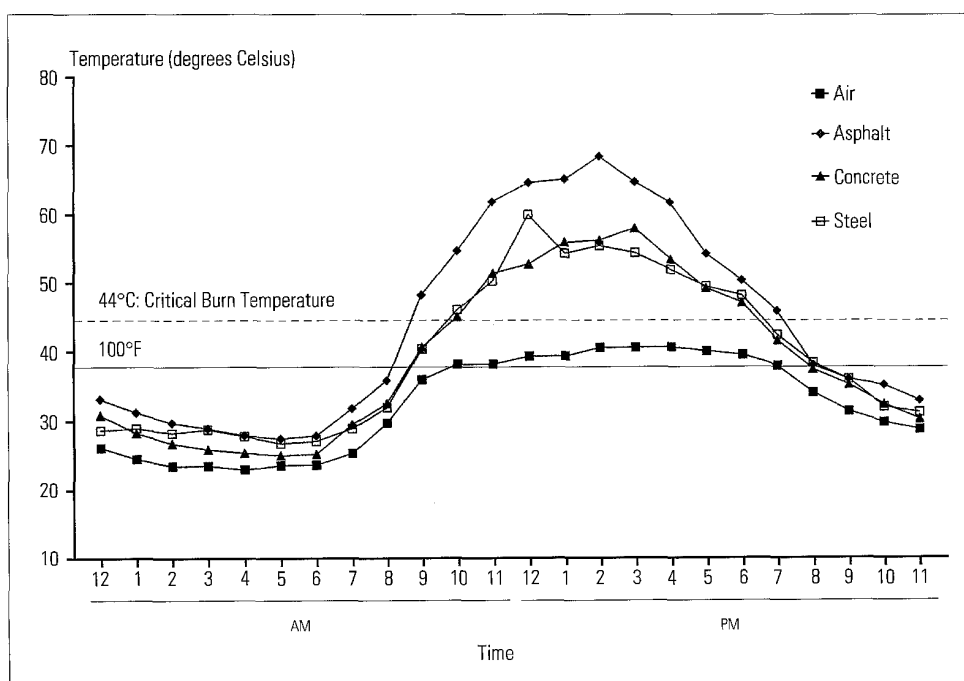
the temperatures of surfaces on or near city streets in Phoenix.

MATERIALS AND METHODS

Two of the authors (WZH and JEH) obtained surface temperature measurements hourly on asphalt and on sunlit and shaded Portland cement concrete, dirt, lawn, sand, and a steel manhole cover from midnight to midnight on June 20, 1992. A Fluke model 51 thermocouple thermometer, with a K-type bead thermocouple (John Fluke Manufacturing Company), was used for all measurements. The thermocouple had a tolerance of $\pm 2.2^\circ\text{C}$ and the thermometer an accuracy of $\pm (1\% \text{ of reading} \pm .7^\circ\text{C})$. The thermometer was calibrated in an icewater bath and consistently showed a reading of $.1^\circ\text{C}$ when tested. The thermocouple probe was placed on the pavement such that all surfaces of the thermocouple were in contact with the pavement except the superior surface, which was flush with the pavement surface. The highest reading obtained with the thermometer for each surface was recorded. Air temperature was measured with a shaded mercury thermometer 1.5 m above the ground. The researchers used the backs of their hands to subjectively test the temperatures of the various surfaces.

Figure 1.

Graphic representation of the temperature curves for ambient air and common street surfaces through a typical Southwestern day.



BURNS

Harrington et al

We obtained records of 23 pavement burn cases during a retrospective review of the logbook of all burn center admissions for the years 1986 to 1992.

RESULTS

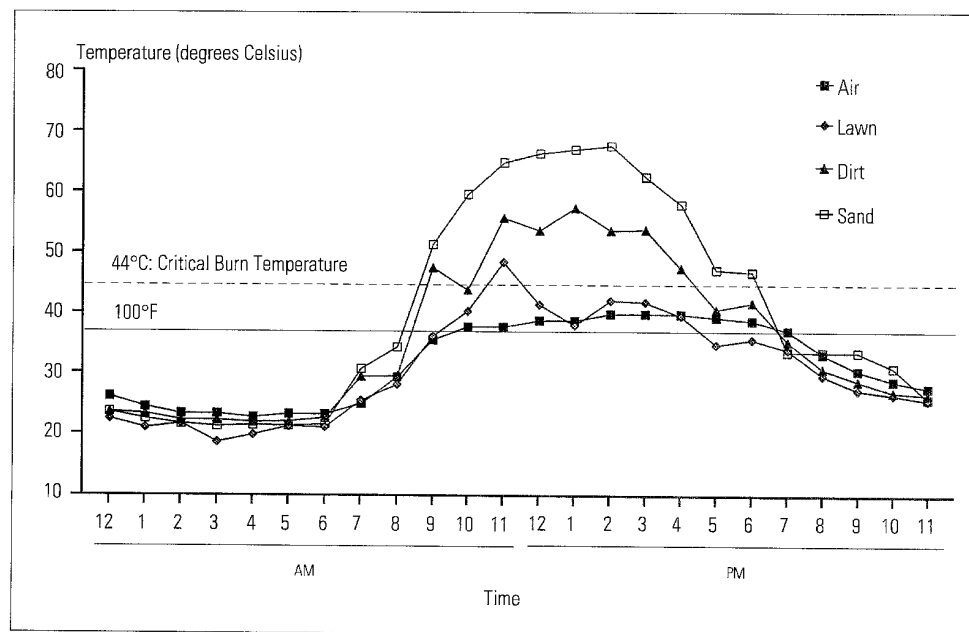
Figures 1 and 2 are graphic representations of data from the measurements of ambient air temperatures and surfaces responsible for contact burns. Asphalt and sand thermal curves over a 24-hour period were similar; those for dirt and concrete were similar at a lower level. All these temperatures were significantly higher than those of the curve from ambient air. Included in the illustrations are threshold temperatures of ambient air and the surfaces, which represent the minimum values at which cutaneous burns can occur. Air temperatures from 35°C to 37.8°C are required to produce the 44°C surface temperature capable of causing cutaneous thermal injury. All solid surfaces were capable at peak daytime temperatures of causing serious burns. Asphalt and sand both peaked at approximately 68°C, whereas dirt, cement, and steel peaked between 58°C and 60°C. Shade had a considerable moderating effect on asphalt and cement peak temperatures (43°C and 39°C, respectively), as illustrated in Figure 3. Lawn temperatures peaked at 49°C and never felt more than warm to touch, representing much less of a risk. Steel peaked at approximately 60°C but subjectively was thought to be in the "too

hot to touch for more than an instant" range for more hours daily than any other category, including asphalt (steel, 8 hours; asphalt, 6 hours; group mean, 5.25 hours). Pavements and other surfaces felt warm from 32°C to 48°C, hot from 48°C to 55°C, very hot from 55°C to 58°C, and too hot to touch for more than an instant at temperatures above 58°C. Steel felt as hot as other surfaces at measured surface temperatures, which were approximately 10°C lower than the non-metal surfaces. During our study day, the pavement was hot enough to cause burns from 9 AM to 7 PM and hot enough to cause second-degree burns within 35 seconds from 10 AM to 5 PM. At its peak temperature, pavement was hot enough to cause second-degree burns in 2 seconds.

Analysis of the 23 cases collected over 6 years revealed that most (70%) occurred in July and August. The remainder were equally divided between May and June, with one occurring in September (Table). Males constituted 60% of the group, in which the mean age was 39 years. Four patients were children, and five were older than 60 years. The mean size of the burn was approximately 6% of the total body surface area, with a range of 1% to 13%. Twelve of the 23 patients sustained full-thickness burns. All burns in our patients occurred on days with maximum temperatures above 37.8°C that were at least partly sunny. The mean peak ambient air temperatures for the group of burn victims was found in newspaper archives; it was 41.2°C. How-

Figure 2.

The relationships between ambient air temperatures and the study surfaces.



BURNS

Harrington et al

ever, for the five patients burned on partly cloudy days, the mean air temperature was 41.9°C, suggesting that hotter air temperatures may be required on cloudy days to produce sufficient surface heat to cause thermal injury.

Neurologic compromise due to preexisting illness such as diabetic neuropathy, seizures, or lumbosacral radiculopathy was a common predisposing factor. Substance abuse, extremes of age, and being held against the asphalt were other contributors to this type of injury. Although extremity burns were the most common, torso burns occurred in incapacitated and restrained patients. Fortunately, all of these burns tended to be small, averaging 6% of the body surface area, but half were full-thickness burns requiring surgical debridement and skin grafting.

DISCUSSION

The results of this study document hourly changes in the temperatures of surfaces on and near city streets related to ambient air temperature. Our data are in agreement with those of previous investigators but add significantly to the understanding of daily cyclic fluctuations in these surface temperatures. We have illustrated that protection from direct solar radiant injury by shade decreases the surface

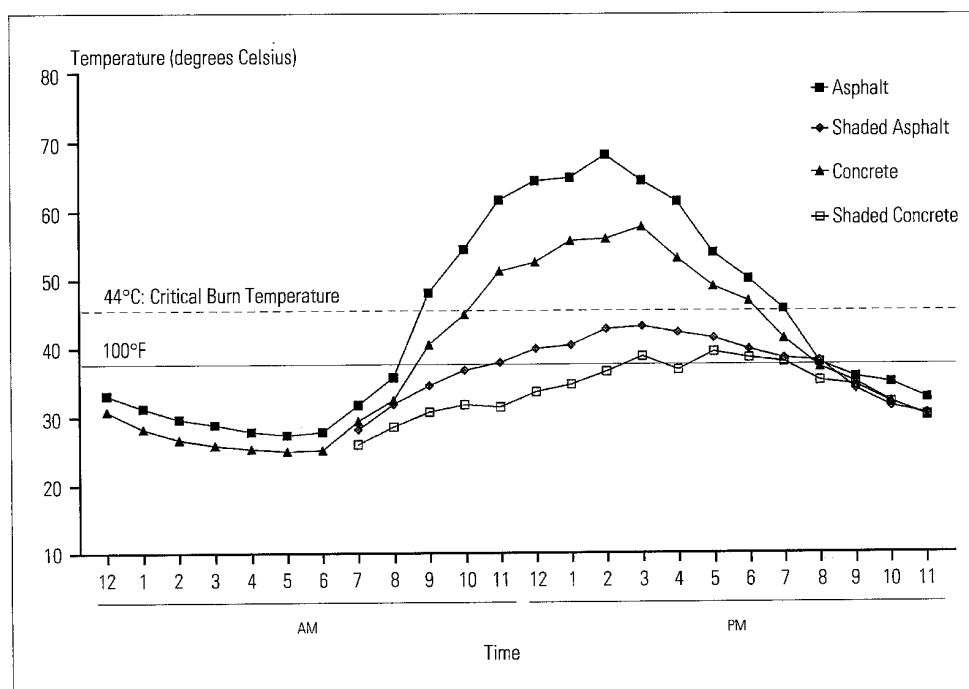
temperature even when the ambient air temperature is high. A previous study indicated that moisture on the contact surface reduced the temperature through evaporative heat loss.⁶

Although some of the mechanisms for differences in surface temperatures are obvious, such as absorptive capability of a black asphalt surface, others are more complex. Concrete and dirt surfaces may have increased capacity to dissipate heat into underlying absorptive soil and rock, whereas sand surfaces may not transmit heat to the underlying structures as effectively. The peculiarities of metal surfaces, as described in our study, are more complex, although they may be explained on the basis of molecular response to heating.

The correlation of tactile heat sensation with actual surface temperatures is documented in this study. This relationship is germane to the 1947 studies of Moritz and Henriques, who demonstrated that the time necessary to produce a cutaneous burn is logarithmically related to the surface temperature of the skin in degrees Celsius.⁷⁻⁹ These investigators found that at temperatures from 44°C to 51°C, "the rate at which burning occurs is almost doubled for each degree rise in temperature." At 44°C they demonstrated experimentally that 6 hours was required to produce a second-degree burn. The exposure in-

Figure 3.

The effects of shade on asphalt and concrete surfaces.



BURNS

Harrington et al

crements were progressively smaller as the temperatures increased. At 47°C, 45 minutes of contact was required to produce a second-degree burn; at 48°C, 15 minutes; at 50°C, 5 minutes; at 53°C, 45 seconds; at 56°C, 15 seconds; at 60°C, 5 seconds; and at 65°C, only 2 seconds. Ripple et al¹⁰ reported that 16.4 joules per square centimeter of skin of heat transfer is necessary to produce a second-degree burn. They also noted that burn severity increased logarithmically as basal skin temperature increased.

Clothing may confer some protection against this type of contact burn. Ripple et al¹⁰ estimated that clothing conferred a "thermal protection factor of 2.5." Some possible preventive factors are the presence of shade, a moist surface, and removal of the patient from contact with the hot surface. Lowry¹¹ published a study of the temperatures of air over hot surfaces and found that even a distance of 2 cm produced a

temperature differential of 15°C, thereby conferring significant protection against burns.

Although public education theoretically would prevent some of these injuries, increased awareness on the part of emergency medical service and police personnel would be more cost-effective. Even a surface that feels warm, not hot, can produce a burn given sufficient contact time. Summer rescue and police procedures should take into account the potential for this type of burn.

CONCLUSION

Even though this study was limited to one summer day, it illustrates typical curves of common contact surfaces at hourly intervals. The small patient group is typical of the types of patients and injuries encountered in this situation.

Table.

Patient information.

Contributing Factors	Age (Years)	Burn Degree (mm)	% of Total Body Surface Area	Month	Air Temperature	Weather Conditions
Car-versus-pedestrian accident; patient held on pavement	3	3	12	August	106°F (41.1°C)	Partly cloudy
Child abuse	3	2	3	May	101°F (38.3°C)	Sunny
Assault; alcohol	34	2	4	July	112°F (44.4°C)	Sunny
Police restraint	33	2	10	August	108°F (42.2°C)	Sunny
Police restraint; alcohol	48	1, 2	11	May	102°F (38.9°C)	Sunny
Extreme of age	9 months	2	1	August	108°F (42.2°C)	Sunny
Extreme of age	13 months	2	2	July	101°F (38.3°C)	Sunny
Seizure	22	3	7	July	113°F (45.0°C)	Sunny
Seizure	34	2, 3	10	August	106°F (41.1°C)	Partly cloudy
Seizure	35	2	3	July	108°F (42.2°C)	Sunny
Seizure	63	3	2	June	100°F (37.8°C)	Sunny
Weakness episode	46	3	8	June	106°F (41.1°C)	Sunny
Syncope	31	3	9	May	102°F (38.9°C)	Sunny
Drug abuse	29	2	10	July	112°F (44.4°C)	Partly cloudy
Car-versus-pedestrian accident with loss of consciousness	46	3	5	August	108°F (42.2°C)	Sunny
Mugging; alcohol	40	3	2	July	112°F (44.4°C)	Sunny
Heatstroke	57	2	4	July	106°F (41.1°C)	Sunny
Heatstroke; alcohol	82	3	7	July	105°F (40.6°C)	Sunny
Heatstroke; patient laid on pavement	69	3	13	June	106°F (41.1°C)	Sunny
Lumbosacral radiculopathy	30	3	1	July	104°F (40.0°C)	Sunny
Diabetic neuropathy	48	3	2	September	104°F (40.0°C)	Sunny
Diabetic neuropathy vascular disease	64	2	2	August	104°F (40.0°C)	Partly cloudy
Diabetic neuropathy; dementia	78	2	3	August	109°F (42.8°C)	Partly cloudy

BURNS

Harrington et al

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001584

001584

Exhibit 6

001585

Exhibit 6

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

**CONDENSED
TRANSCRIPT**

3 CRISTINA PAULOS, an
4 individual,

5 Plaintiff,

6 vs.

7 FCH1, LLC, a Nevada limited
liability company; LAS
8 VEGAS METROPOLITAN POLICE
DEPARTMENT, a government
9 entity; JAKE VON GOLDBERG,
an individual; JEFFREY B.
10 SWAN, an individual;
JEANNIE HOUSTON, an
11 individual; AARON BACA, an
individual; and DOES I
12 through 10;

13 Defendants.
14
15
16
17

CASE NO:
2:13-cv-01546-JCM-PAL

18 DEPOSITION OF OFFICER JAKE VON GOLDBERG

19 LAS VEGAS, NEVADA

20 MONDAY, SEPTEMBER 29, 2014
21
22
23

24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 221724

001586

OFFICER JAKE VON GOLDBERG - 09/29/2014

<p>Page 2</p> <p>1 DEPOSITION OF OFFICER JAKE VON GOLDBERG, held at 2 Potter Law Offices, located at 1125 Shadow Lane, Las 3 Vegas, Nevada 89102, on Monday, September 29, 2014, at 4 12:32 p.m., before Brittany J. Castrejon, Certified 5 Court Reporter, in and for the State of Nevada. 6 7 8 APPEARANCES: 9 FOR THE PLAINTIFF: 10 11 POTTER LAW OFFICES 12 BY: CAL J. POTTER, III, ESQ. 13 1125 Shadow Lane 14 Las Vegas, Nevada 89102 15 702-385-1954 16 info@potterlawoffices.com 17 18 FOR DEFENDANTS: 19 20 MARQUIS AURBACH COFFING 21 BY: CRAIG ANDERSON, ESQ. 22 10001 Park Run Drive 23 Las Vegas, Nevada 89145 24 702-382-0711 25 canderon@macclaw.com 26 FOR PALMS CASINO: 27 28 MORAN LAW FIRM, LLC 29 BY: JUSTIN W. SMERBER, ESQ. 30 630 South Fourth Street 31 Las Vegas, Nevada 89101 32 702-384-8424</p>	<p>Page 4</p> <p>1 Las Vegas, Nevada; Monday, September 29, 2014 2 12:32 p.m. 3 -oOo- 4 Whereupon -- 5 (In an off-the-record discussion held prior 6 to the commencement of the proceedings, 7 counsel agreed to waive the court reporter's 8 requirements under Rule 30(b)(4) of the 9 Nevada Rules of Civil Procedure.) 10 OFFICER JAKE VON GOLDBERG, 11 having been first duly sworn by the court reporter to 12 testify to the truth, the whole truth, and nothing but 13 the truth, was examined and testified under oath as 14 follows: 15 EXAMINATION 16 BY MR. POTTER: 17 Q. Could you state your name for the record. 18 A. It's Jake. You want my middle name too? 19 Q. Sure. 20 A. Harland, H-a-r-l-a-n-d, Von Goldberg, V-o-n 21 G-o-l-d-b-e-r-g. 22 Q. All right. And have you ever had your deposition 23 taken before? 24 A. No. 25 Q. All right. Let me just go over a little bit</p>
<p>Page 3</p> <p>1 INDEX 2 WITNESS: OFFICER JAKE VON GOLDBERG 3 EXAMINATION PAGE 4 By Mr. Potter 4 5 By Mr. Anderson 26 6 By Mr. Potter 27 7 8 9 10 EXHIBITS 11 NUMBER DESCRIPTION PAGE 12 EXHIBIT 1 Voluntary Statement, LVMPD 0007 21 13 EXHIBIT 2 Impound Report, LVMPD 0006 23 14 EXHIBIT 3 Color Photo 27 15 EXHIBIT 4 Color Photo 28 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 5</p> <p>1 about what we're going to do here today with the 2 standard admonishments that we give. 3 The oath you took is the same oath you would take 4 in a court of law. 5 Do you understand that? 6 A. Yes. 7 Q. Have you testified in court? 8 A. Yes. 9 Q. And do you know how many times you've testified? 10 A. Handful of times. 11 Q. Okay. And the only difference is we're here at 12 my office. Because there's not a judge present if 13 there's objections made, we'll try to work out the 14 objections before you answer. 15 Do you understand that? 16 A. Okay. 17 Q. You still have to answer even if they object, 18 unless your counsel instructs you not to answer. 19 Do you understand that? 20 A. Okay. 21 Q. You have to answer aloud, and you're doing a good 22 job. Many times in conversations we say uh-huh or head 23 gestures or hand gestures, but to make sure we get a 24 clear record, you have to give us an audible answer. 25 Do you understand that?</p>

OFFICER JAKE VON GOLDBERG - 09/29/2014

Page 6

Page 8

1 A. Understood.
 2 Q. Likewise, if my questions don't make any sense to
 3 you, you don't understand the question, you have the
 4 right to ask me to repeat it and clarify it until you do
 5 understand it. Okay?
 6 A. Okay.
 7 Q. The court reporter will put together a transcript
 8 in a couple of weeks. You'll have an opportunity to
 9 read and review and make changes in the transcript if
 10 you see fit.
 11 Do you understand that?
 12 A. I understand that.
 13 Q. If you do make changes and the case goes to trial
 14 and you come into trial and you made changes, I can call
 15 into question your ability to give me your best
 16 recollection on today's date and either call into
 17 question your ability to remember or tell the truth.
 18 Do you understand that?
 19 A. Understood.
 20 Q. In preparation for your deposition, have you
 21 looked at any documents?
 22 A. Not today.
 23 Q. Okay. At any time since the lawsuit was filed?
 24 A. We -- we had a meeting one time probably -- how
 25 many months ago?

Page 7

1 MR. ANDERSON: The one with me?
 2 THE WITNESS: Yes.
 3 MR. ANDERSON: Just tell him what you
 4 reviewed and looked at. Don't tell him what we said.
 5 THE WITNESS: We just reviewed the documents
 6 because I was unfamiliar with the case, and then I
 7 reviewed it and recollected it and that was it.
 8 MR. ANDERSON: And the video.
 9 THE WITNESS: And the video.
 10 MR. POTTER: All right.
 11 BY MR. POTTER:
 12 Q. How long ago did you see the video? Do you
 13 remember?
 14 A. I could not tell you what that date was.
 15 Q. Okay. Did you see yourself in the video?
 16 A. No.
 17 Q. Okay. Save me some time. We won't play it then.
 18 I want to go through a little bit about your
 19 history. I'm not trying to -- I know you answered some
 20 interrogatories and I've reviewed those, but I want to
 21 get into your history and then some of your training and
 22 then get into the incident.
 23 A. Okay.
 24 Q. All right. And can you tell me first of all, how
 25 long have you been a police officer?

1 A. A little over six years.
 2 Q. And I know that -- what you grew up in Cedar City
 3 area?
 4 A. Negative. I grew up on 28th Street.
 5 Q. Oh, you did?
 6 A. Yes.
 7 Q. Did you go to school in Southern Utah?
 8 A. No. It was out here in Nevada.
 9 Q. Okay.
 10 A. I went to school at Roy Martin, and then --
 11 actually I went to Sunrise Acres, Roy Martin, and Desert
 12 Pines.
 13 Q. So you're a native?
 14 A. I've been here since I was eight.
 15 Q. And have you also attended some college?
 16 A. Yes. I'm currently in college.
 17 Q. Where is that at?
 18 A. University of Phoenix.
 19 Q. I had that part right. I thought you were from
 20 Southern Utah.
 21 A. Nope.
 22 Q. Do you have military?
 23 A. Yes.
 24 Q. And how much military do you have?
 25 A. Eight years.

Page 9

1 Q. And part of it is as a reserves?
 2 A. Yes. Part of it active, part of it national
 3 guard, and part of it reservist.
 4 Q. And when you were in the service, what did you
 5 do?
 6 A. I had two jobs. First, I was a tank operator for
 7 the M1 Abrams and the second I was a cavalry scout.
 8 Q. And were you deployed overseas?
 9 A. Yes. I went to Iraq for 18 months.
 10 Q. Okay. Were you decorated at all?
 11 A. I have -- I'm maxed out on awards.
 12 Q. And how did it come about that you went to work
 13 for Metro?
 14 A. After I got out of the military, I was on leave
 15 from Iraq and I got my wife pregnant and instead of
 16 going special forces, I decided to stay and join the
 17 police to try to join SWAT.
 18 Q. Approximately what year was your hire?
 19 A. 2008.
 20 Q. And have you got on SWAT yet?
 21 A. Negative. Tested once.
 22 Q. During the time that you've been with the police
 23 department, have you ever had any discipline for any
 24 reason?
 25 A. Negative.

OFFICER JAKE VON GOLDBERG - 09/29/2014

Page 10

1 Q. Have you ever been named in a lawsuit prior to
2 this?

3 A. Not to my knowledge.

4 Q. Have you ever been the focus of an internal
5 affairs investigation?

6 A. Not me necessarily. I've had for domestic
7 violation. My wife got arrested, so internal affairs
8 came out.

9 Q. Were you the victim?

10 A. Yes.

11 Q. How long ago was that?

12 A. That was a year ago.

13 Q. And do you know the outcome of that particular
14 matter?

15 A. No.

16 Q. Any other internal affairs investigations?

17 A. None that cumulate into anything. Every once in
18 awhile someone will call in a complaint, and it will get
19 dissolved without me knowing even where it came from.

20 Q. Have you ever had to give interviews on other
21 matters?

22 A. I've never actually given an interview to
23 internal affairs.

24 Q. Have you ever been trained as a critical incident
25 officer?

Page 11

1 A. Negative.

2 Q. Have you ever been trained in recognition of
3 excited delirium?

4 A. I've never taken a CIT class.

5 Q. How about within your general training either in
6 academy or afterwards? Have you ever been trained in
7 recognition of excited delirium?

8 A. Yes, I'm familiar with it. We went over it a few
9 times, the signs and symptoms.

10 Q. Do you know what the signs are?

11 A. You got excessive sweating. They got, you know,
12 they're agitated. Sometimes they have restricted eyes.
13 I think the most part is just they're profusely sweating
14 and just mental confusion.

15 Q. Prior to the deposition, we were sitting here and
16 we were discussing about burns.

17 Were you ever trained in the dangers of asphalt
18 burns as a police officer?

19 A. There was never a specific -- it was just one of
20 those food-for-thought things, just be aware of it.
21 There was never a specific class just dedicated to burns
22 and having people on asphalt.

23 Q. Okay. And when you talk about food for thought,
24 what are you referring to?

25 A. I think it's just the common sense when they say

Page 12

1 just be aware, you know, if it's -- if, you know, you
2 take someone to the ground or anything like that.

3 Q. Are you aware of any written policies concerning
4 taking people to the ground on asphalt during the summer
5 months?

6 A. I'm not aware of a specific policy.

7 Q. And this particular matter after the incident
8 occurred -- first of all, was Sergeant Harney, was he
9 your sergeant on this matter?

10 A. Negative.

11 Q. Who was your sergeant?

12 A. Sergeant Kleehammer (Phonetic) for swing shift.
13 I want to say Sergeant Harney was day shift. This
14 happened during the transition period.

15 Q. Approximately what time is the transition period?

16 A. Around three o'clock.

17 Q. What time would your shift have started?

18 A. Well, we start at 2:30. We have briefing. We
19 usually hit the streets about 3:00. So depending on
20 logging on how your computer is, depending on how early
21 you get out there between 3:00 and 3:15 is when you'll
22 be logged on, ready to handle calls.

23 Q. Do you recall what the area was that you were
24 patrolling on the date in question of August the 7th,
25 2011?

Page 13

1 A. Yes. I was working Enterprise area command. I
2 was actually responsible for Sam Ocean area, which is
3 Flamingo South to St. Rose Parkway and then the 15 west
4 to Red Rock.

5 Q. This particular incident -- these resulted in
6 burns on my client Ms. Paulos, has it ever been used to
7 your knowledge as a training issue?

8 A. No.

9 Q. Did any supervisor ever discuss with you after
10 this occurred what had happened?

11 A. No.

12 Q. Were you ever asked to write out a report
13 concerning the incident?

14 A. No.

15 Q. I know that you took some statements at the
16 request of the sergeant. Do you remember who the
17 sergeant was that requested you to take statements?

18 A. I don't remember his name. It was a traffic
19 sergeant.

20 Q. And when you say a traffic sergeant, what does
21 that mean?

22 A. He works the traffic. It's a different division
23 of our department.

24 Q. Is he a motorcycle officer?

25 A. Yes, motorcycle officer.

OFFICER JAKE VON GOLDBERG - 09/29/2014

Page 14

Page 16

1 Q. Was he the ranking officer at the scene, if you
2 know?
3 A. I think he's who took over the scene because at
4 first it was day shift and after the sergeant came out,
5 the sergeant for day shift left and then the traffic
6 sergeant stayed.
7 Q. Do you know if the day shift sergeant was
8 Sergeant Jason Harney?
9 A. No. I came after the fact of everything.
10 Q. And what do you mean by after the fact?
11 A. After the incident occurred.
12 Q. Were you in a patrol vehicle?
13 A. Yes.
14 Q. And do you remember what your call numbers were?
15 A. I would have to assume I was 3 Sam 41. That's
16 been my call sign for a while.
17 Q. And do you recall what you received in terms of
18 the call or how you responded?
19 A. I believe I just drove there. I didn't go code
20 or anything because everything was already pretty much
21 handled by the time I got there.
22 Q. Okay. Do you recall whether you saw an
23 individual that had been detained or placed under
24 arrest?
25 A. Yes, I saw Ms. Paulos.

Page 15

1 Q. Okay. And did you ever have any conversations
2 with her?
3 A. No. As I got there, she was sitting on the grass
4 shouting profanities about how she hates men just to
5 herself, and I was like I better stay away from there.
6 Q. Okay. What do you mean by that?
7 A. What do you mean? By stay away from there?
8 Q. No. In terms of she was sitting on the grass.
9 Can you be anymore descriptive? Was she sitting up?
10 A. She was sitting down on the grass and she was in
11 handcuffs and it was a shaded area and that's all I
12 remember, and I just remember her shouting.
13 Q. And can you be any more specific as to what she
14 was saying?
15 A. You know, I just -- I just know it was diverted
16 towards men, and that's why I stayed away from there
17 because I didn't want to agitate her more. So that's
18 why I walked away.
19 Q. Did you know why she was in custody?
20 A. I had a hunch.
21 Q. What was your hunch?
22 A. For DUI and then from what the radio traffic I
23 heard.
24 Q. And do you have any recollection prior to this
25 incident how many times you'd been on a call for

1 suspected DUI?
2 A. I'd be making a number up. I couldn't tell you.
3 Q. Is it a frequent occurrence?
4 A. It happens. Sometimes, you know, you don't
5 necessarily respond to a DUI, but you'll stop a car, and
6 it will become DUI. Or someone will call in some DUI in
7 the area. So it could occur one time to four times a
8 day depending on how the calls are.
9 Q. Okay. And you said that she seemed to be talking
10 to her herself?
11 A. She was shouting to herself.
12 Q. What do you mean by that?
13 A. Like someone that has some kind of mental
14 condition going on or under the influence of a drug.
15 Q. And as a patrol officer, are you trained to
16 differentiate between whether an individual has a mental
17 condition or is under the influence?
18 A. Sometimes it's hard to tell because sometimes the
19 drugs can lead to mental conditions.
20 Q. Do you know if anybody had interviewed her about
21 whether she was under the influence of drugs?
22 A. No.
23 Q. No, meaning you don't know --
24 A. No, I don't know if anybody talked to her about
25 it or not yet.

Page 17

1 Q. Okay.
2 A. I stayed away from the investigation.
3 Q. Do you know who was doing the investigation?
4 A. I couldn't tell you. I'd have to assume that the
5 traffic division since it was an accident with the
6 damage.
7 Q. Did you conduct any visualization of her vehicle
8 or --
9 A. I -- I was the one that impounded her vehicle.
10 Q. Okay. And what was your process when you did
11 that?
12 A. What I do is I -- first, I make sure that the
13 VINs and the plates match up, and then from there, I do
14 an inventory of the car. And then I document any damage
15 that's on the vehicle or make sure there's no other
16 drugs or narcotics in the vehicle, and then from there,
17 I call in a tow truck.
18 Q. Okay. Did you determine whether there were any
19 drugs in the vehicle?
20 A. Honestly, I don't remember.
21 Q. Okay. Did you do an impound sheet?
22 A. Yes.
23 Q. Okay. If you would have found drugs, would you
24 have booked them?
25 A. They would have went -- unless they were

OFFICER JAKE VON GOLDBERG - 09/29/2014

Page 18

1 prescriptions for her, in her name, if they were
2 anything outside of that, they would have been impounded
3 as evidence.

4 Q. And do you recall whether you found any alcohol
5 containers or anything of that nature?

6 A. The only thing I remember off the top of my head
7 without reviewing something was she had computers in her
8 car.

9 Q. Okay. Did you impound the computers?

10 A. I think I just listed them and documented them.
11 I had no reason to take them.

12 Q. Did you examine them at all?

13 A. Yes. I looked for the serial numbers and made
14 sure they weren't stolen.

15 Q. Did you turn them on?

16 A. No.

17 Q. And you determined they weren't stolen?

18 A. Yes. They didn't come back stolen at that time.

19 Q. Did they come back at any other time?

20 A. Not to my knowledge.

21 Q. And just so we're clear here, you never placed
22 your hands on Ms. Paulos at any time?

23 A. No.

24 Q. Did you ever obtain a GED in Cedar City?

25 A. Yes.

Page 19

1 Q. Okay. When was that?

2 A. That was probably early 2004.

3 Q. And what were you doing in Cedar City?

4 A. It's how the GED works out there. If you take
5 the test out here to get your GED, it can take eight or
6 nine months to get your results back. If you go to
7 Cedar City, it takes two weeks.

8 Q. Oh, okay.

9 A. So I did it so I can get into the military.

10 Q. I understand.

11 And you also answered you never stopped or
12 detained Cristina Paulos; correct?

13 A. That's correct.

14 Q. And you never used any physical force and never
15 touched her; correct?

16 A. That's correct.

17 Q. And there were no tactical plans or anything of
18 that nature that you were made aware of?

19 A. Nope.

20 Q. And the answer kind of tailed out here. It looks
21 like it stopped, but in any event, you arrived after she
22 was on what you said was a grassy area. She was seated
23 there and she was, what, yelling to herself about how
24 she hated men?

25 A. Yes.

Page 20

1 Q. And it was your interpretation she was either
2 under the influence of some kind of narcotic or she was
3 mentally ill?

4 A. Yes.

5 Q. Okay. Did you observe any type of what you would
6 call delirium?

7 A. Obviously she was shouting to herself.

8 Q. So obviously she would be suffering from delirium
9 or possibly from delirium?

10 MR. ANDERSON: Objection. Form. Go ahead
11 and answer.

12 MR. SMERBER: Join.

13 MR. ANDERSON: You can go ahead and answer.

14 THE WITNESS: Oh, okay. She possibly could.
15 It's -- I didn't fully interview her, so I couldn't get
16 a better assumption of whether it was drugs or a mental
17 illness.

18 MR. POTTER: Okay.

19 BY MR. POTTER:

20 Q. Did you talk to an Officer Swan at the scene?

21 A. The only officer I remember talking to was an
22 Officer Mat Covatich (Phonetic) and he was helping me
23 inventory the vehicle.

24 Q. Did you at any time make any observations that
25 she was overly aggressive? She being Cristina Paulos?

Page 21

1 A. I would have to say aggressive because she was
2 yelling that hateful stuff towards men. Just -- I
3 didn't see her kicking or -- anybody.

4 Q. You didn't see her physically fight with anybody?

5 A. No. I could just tell she was amped up still
6 just by how she was yelling.

7 Q. Any observation of mood swings?

8 A. I didn't see what she was like before.

9 Q. Okay. Mark this one as 1.

10 (Exhibit 1 was marked for identification.)

11 BY MR. POTTER:

12 Q. Do you recognize this voluntary?

13 A. Yes. It was one of the ones I signed and helped
14 fill out.

15 Q. And by helping fill out, what exactly in terms of
16 the handwriting on there -- what handwriting is yours,
17 if any?

18 A. It looks like the specific crime, location of
19 occurrence, the -- pretty much that top block and the
20 event number along with the bottom part of my signature
21 and printed name.

22 Q. And the accident was injury. Do you recall who
23 was injured?

24 A. I don't remember. Usually what happens is I
25 don't do the investigation. They hand out a bunch of

OFFICER JAKE VON GOLDBERG - 09/29/2014

Page 22

Page 24

1 voluntary statements, and I just make sure that they
2 have the vehicles on there and some of the details and I
3 sign it. And then whoever investigates, reviews them
4 all, and then they make the determination.

5 Q. Do you recall if you had any conversations with
6 any of the Palms employees or security?

7 A. I don't remember.

8 Q. Or whether they were present when you arrived?

9 A. Palms security was present.

10 Q. Can you identify any of the individuals who were
11 present?

12 A. I could not recognize them.

13 Q. Okay. Do you recall how you knew they were Palms
14 employees?

15 A. How they were dressed.

16 Q. Do you recall how they were dressed?

17 A. I want to say one was in an actual security
18 uniform. It was a female, and I think the other ones
19 standing around they were in their black suits; and I
20 think they were just trying to help divert some of the
21 traffic because it was over by the entrance.

22 Q. The individual that filled out the statement in
23 Exhibit 1, Kim Marie Bak, do you recall anything about
24 that individual?

25 A. No.

Page 23

1 Q. And how did it come about that you were assigned
2 to her?

3 A. The sergeant just said, hey, you, hand out
4 voluntaries.

5 Q. Meaning to you?

6 A. To me, directing towards me.

7 Q. All right. And the other document that I have is
8 a -- Mark this 2.

9 (Exhibit 2 was marked for identification.)

10 BY MR. POTTER:

11 Q. Take a look at that. Let me know when you've had
12 a chance to look at it.

13 A. Yes. That's the vehicle impound sheet that I
14 did.

15 Q. All right. And the information that you have on
16 the top of it about the owner of the vehicle, do you
17 recall how you obtained that information?

18 A. It would have been through the DMV.

19 Q. And physically how do you go about getting the
20 information from the DMV?

21 A. On my computer we have a program that says DMV.
22 Now the computer programs changed since 2011. They had
23 a DMV one and then you put in the plate number, and then
24 it returns and then you take the serial number or the
25 VIN number and then you just check it to confirm it with

1 the actual VIN number and then make sure that everything
2 matches up, the year and the make.

3 Q. All right. And the information that you have
4 concerning about the driver being arrested for DUI on
5 that first part, first of all, Christina Natsuko, do you
6 know who that individual is?

7 A. That was Cristina Paulos.

8 Q. All right. And do you know how you came about
9 having the name Natsuko?

10 A. I asked the sergeant because I asked him what I
11 was impounding the vehicle for and then asked them what
12 the charge was that he was going to go with.

13 Q. Okay. And the fact that it was a DUI, is
14 there -- do you know if there was a drug recognition
15 officer on site or at the scene of the incident?

16 A. I don't know.

17 Q. Are you a drug recognition officer?

18 A. Negative.

19 Q. And then the information that's circle if present
20 speaks for itself, I guess. And then you also write
21 down areas or items that are not apart of the normal
22 inventory. How does that work?

23 A. What I try to do is I try to the best I can
24 actually document all her personal inventory, you know,
25 that way she doesn't lose anything or stuff comes up

Page 25

1 missing.

2 Q. And do you by reviewing this, does that refresh
3 your recollection of whether there were any type of
4 pills, narcotics, or controlled substances?

5 A. I didn't write any down, so there would have been
6 none.

7 Q. All right.

8 A. But that doesn't -- now if there was drugs in
9 there that was not prescribed to her, there is a chance
10 that those would have been taken without me inventorying
11 on there because she wouldn't have gotten that property
12 back. It wouldn't have went with the vehicle.

13 Q. Okay. But the computers and the other items, the
14 cell phones that were listed in here, they would have
15 gone with the vehicle?

16 A. Yes.

17 Q. Do you know how she was transported?

18 A. No, I do not.

19 Q. You know that you didn't transport her?

20 A. I did not transport her.

21 Q. Do you have any recollection of who handcuffed
22 her?

23 A. No. She was already handcuffed before I got
24 there.

25 Q. Okay. Fair enough.

OFFICER JAKE VON GOLDBERG - 09/29/2014

Page 26

1 Do you know if she had suffered any kind of head
2 injuries that were visible to you?
3 A. No.
4 MR. POTTER: All right. I'll pass the
5 witness.
6 MR. SMERBER: I have nothing.
7 EXAMINATION
8 BY MR. ANDERSON:
9 Q. Just a couple of real quick questions.
10 Did you ever see Ms. Paulos on the pavement at
11 all?
12 A. No.
13 Q. When you saw her on the grass, how close were you
14 to her?
15 A. I was probably, I'll say, ten feet away from her.
16 Q. Do you recall what she was wearing?
17 A. She was wearing a bathing suit.
18 Q. Were her limbs exposed?
19 A. Yes.
20 Q. Arms and legs?
21 A. Yes.
22 Q. Did you notice any wounds to her arms or legs?
23 A. No. The only thing that I saw was just the dirt
24 transfer from the ground.
25 Q. Did you notice any burns to her body?

Page 27

1 A. No.
2 MR. ANDERSON: Nothing further.
3 MR. POTTER: Let me just mark this one as 3.
4 (Exhibit 3 was marked for identification.)
5 EXAMINATION
6 BY MR. POTTER:
7 Q. Have you seen this picture before?
8 A. I'm not sure. It doesn't stick out.
9 Q. Do you recognize this individual as Cristina
10 Paulos?
11 A. I know it's her because I'm here, but if you
12 would have shown this with a bunch of other pictures, I
13 probably wouldn't have recognized her.
14 Q. Okay. It shows a burn on her face or what I'll
15 represent to you is a burn.
16 Do you recall seeing anything of that nature on
17 her face?
18 A. No, I seen no injuries that stuck out. If that
19 was present when I was there, that would have definitely
20 sparked my attention.
21 Q. And why is that?
22 A. Because it's pretty noticeable.
23 Q. If in fact there's a burn -- and you've seen the
24 pictures of her legs also where she was burned?
25 A. I saw -- the one that I remember is the news

Page 28

1 where she had the skin grafts already.
2 Q. Okay. Let me show you --
3 A. I'm sure I saw those. Just what sticks out is
4 the skin grafts.
5 Q. Let me just mark this one as the next exhibit in
6 order.
7 (Exhibit 4 was marked for identification.)
8 BY MR. POTTER:
9 Q. This one is a pre-graft but post -- number 4 is a
10 postincident but pre-grafting picture. It looks like
11 it's been debrided.
12 Do you recall seeing anything like that?
13 A. No.
14 Q. If in fact a situation like that exists, is an
15 officer to your understanding required to use some type
16 of -- or fill out some type of use of force?
17 A. If they cause injury, they're supposed to do a
18 blue team.
19 Q. I'm sorry?
20 A. They're supposed to do a blue team is what we
21 call it. It's a use of force report.
22 Q. The blue team?
23 A. That's what we call it.
24 Q. And what's involved in that?
25 A. It's a bunch of drop-down boxes where you list

Page 29

1 the individual, demeanor, and then you write a synopsis
2 of what occurred and what level of force you used.
3 Q. Okay.
4 A. And then that gets sent. I believe it goes
5 internally to internal affairs and the use of force
6 review board.
7 Q. Do you know whether you had to testify in any
8 other proceedings like a use of force board or anything
9 of that nature in this matter?
10 A. No, I haven't.
11 Q. Is this the only time you've testified concerning
12 this incident?
13 A. Yes.
14 Q. Do you have any knowledge of whether it ever went
15 to court on the DUI?
16 A. I do not have knowledge if it did.
17 Q. Okay. All right. Thank you.
18 MR. ANDERSON: Nothing.
19 MR. SMERBER: Nothing.
20 (The proceedings concluded at 1:08 p.m.)
21
22
23
24
25

OFFICER JAKE VON GOLDBERG - 09/29/2014

Page 30

1 STATE OF NEVADA)
2) SS:

3 COUNTY OF CLARK)

4 CERTIFICATE OF REPORTER

5 I, Brittany J. Castrejon, a Certified Court
6 Reporter licensed by the State of Nevada, do hereby
7 certify: That I reported the DEPOSITION OF OFFICER JAKE
8 VON GOLDBERG, on Monday, September 29, 2014, at
9 12:32 p.m.;

10 That prior to being deposed, the witness was duly
11 sworn by me to testify to the truth. That I thereafter
12 transcribed my said stenographic notes into written
13 form, and that the typewritten transcript is a complete,
14 true and accurate transcription of my said stenographic
15 notes. That the reading and signing of the transcript
16 was not requested.

17 I further certify that I am not a relative,
18 employee or independent contractor of counsel or of any
19 of the parties involved in the proceeding; nor a person
20 financially interested in the proceeding; nor do I have
21 any other relationship that may reasonably cause my
22 impartiality to be questioned.

23 IN WITNESS WHEREOF, I have set my hand in my
24 Office in the County of Clark, State of Nevada, this 8th
25 day of October, 2014.

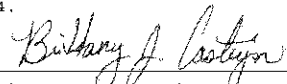

Brittany J. Castrejon, CCR NO. 926

Exhibit 7

001595

Exhibit 7

D.P. VAN BLARICOM, Inc.
MPA, FBI-NA, CHIEF of POLICE (Ret)
POLICE PRACTICES EXPERT
 835 – 91ST lane N.E.
 Bellevue, Washington 98004-4811
 (425) 453-0082 FAX 453-3263 E-Mail dvbinc@aol.com

Federal Rule 26 (a) (2) (B)
REPORT OF PLAINTIFF'S POLICE PRACTICES EXPERT
January 7, 2014 – Amended May 15, 2014

1. My name is D.P. Van Blaricom and I make this report on behalf of plaintiff in the United States District of Nevada 2:13-cv-01546-JCM-PAL filing of ***Paulos v. Las Vegas Metropolitan Police Department, et al.*** under my file 14-1789.

2. My law enforcement career has spanned over fifty-seven years of active employment to date:

- a. Twenty-nine years of continuous police service, during which I was the Chief of Police of Bellevue, Washington for the last eleven of those years;
- b. Thereafter, I have been engaged as a police practices consultant for an additional twenty-eight years;
- c. In fact, the 9th Circuit's decision in Glenn v. Washington County, Oregon (2011) describes me as "... *an expert witness, a former Bellevue, Washington Chief of Police with a law enforcement career spanning over 50 years*".

3. A detailed statement of my qualifications, experience, training and a list of all of my publications are attached hereto as Exhibit "A". Both my fee schedule for services and a list of my deposition and trial testimony for the preceding four years are attached hereto as Exhibits "B" and "C" respectively. My areas of expertise in the police arts and sciences include but are not limited to: police administration, policies, practices, procedures and standards of care; police use of force; internal investigation and discipline. As a police practices expert, I have testified in state and federal courts for both plaintiffs and defendants throughout the United States.

4. Cal Potter, III retained my services on January 6, 2014 to review the facts and circumstances of the injurious arrest of Cristina Paulos (plaintiff) by Las Vegas Metropolitan Police Department (LVMPD) officers (defendant officers) on August 7, 2011 (Sunday) at approximately 1515 hours (3:15 PM). I have discussed the matter with plaintiff's counsel and this report was prepared in reliance upon my review of the following documents:

- a. Amended Complaint;
- b. Answer;
- c. Defendant LVMPD Initial Disclosure;
- d. Plaintiff's Answers:
 - 1) First Interrogatories,

- 2) Second Requests for Admissions,
- 3) First Supplement to Early Case Conference Production,
- 4) Second Supplement to Case Conference Production;
- e. LVMPD reports 110807-2714;
- f. Photographs of plaintiff's injuries;
- g. Surveillance video of plaintiff's arrest;
- h. Plaintiff's deposition;
- i. National Law Enforcement Policy Center:
 - 1) 001 – Use of Force,
 - 2) 007 – Investigation of Employee Misconduct,
 - 3) 070 – Dealing with the Mentally Ill,
 - 4) 089 – Arrests.
- 5. I have reviewed the following additional documents since submitting my January 7, 2014 preliminary report:
 - j. Report of defense expert John Ryan;
 - k. Defendants' Responses:
 - 1) Plaintiff's First Set of Requests for Production,
 - 2) Plaintiff's First Set of Interrogatories;
 - l. Defendants' First Supplemental Disclosure Statement;
 - m. LVMPD Policies and Procedures:
 - 1) 6/002.00 – Use of Force,
 - 2) 6/005.01 – Crisis Intervention Team (CIT),
 - 3) 6/006.00 – Arrest Procedures and Declaration of Arrest;
 - n. LVMPD Use of Force training.
- 6. It is my customary practice to evaluate the objective reasonableness of police conduct on a case-by-case basis from the perspective of a former Chief of Police, career law enforcement officer and nationally recognized police practices expert (see Exhibit "A"). In conducting that evaluation I apply:
 - a. My training and experience as a police officer, who was required to make arrests in the performance of my law enforcement duties;
 - b. My training and experience as a police supervisor, who was assigned to conduct internal investigations;
 - c. My training and experience as a police supervisor and commander, who was assigned to train police officers on patrol procedures and use of force;
 - d. My training and experience as a police supervisor and commander, who had to evaluate the performance of my subordinate police officers;
 - e. My training and experience as a chief of police, who had to hire, train, assign, administer and, as may be necessary, discipline and/or terminate police officers;
 - f. My training and experience as a chief of police, who had to develop and administer policies and procedures for directing police officers under my command;
 - g. My training and experience as a chief of police, who had to review internal investigations and make the final administrative decision on whether to sustain or not sustain allegations of misconduct;

- h. My service as an elected city council member, after my retirement as chief of police;
 - i. My continuing training, as is supplemented by an ongoing review of professional publications, that addresses contemporary developments in my areas of expertise (see Exhibit "A" Continuing Training);
 - j. Additionally, I have served as a police practices expert in 1,700+ matters of police-related litigation (see Exhibit "A"), wherein I have testified at deposition or trial in hundreds of cases (see Exhibit "C") on whether or not a particular fact pattern was objectively reasonable under the totality of circumstances.
7. My method of forensic analysis is to compare the specific facts of each case that I review to my training, experience (see Exhibit "A") and recognized professional standards of care:
- a. State and federal appellate court decisions such as *Graham v. Connor* and similar citations,
 - b. National Law Enforcement Policy Center model policies and similar publications.
8. My use of certain terms (i.e. – "*negligent*", "*reasonable suspicion*", "*probable cause*", "*objectively reasonable*", "*reckless disregard*", "*deliberately indifferent*", "*duty*", "*ratified*", "*unconstitutional*", etc.) merely reflects my training and experience, in applying reasonable standards of care to police officers' conduct, and does not presume or imply a statement of any legal opinion.
9. Similarly, my use of certain terms (i.e. – "*cyanosis*", "*petechiae*", "*apnic*", "*excited delirium*", "*carotid*", "*hyoid*", "*asphyxia*", etc.) merely reflects my training and experience in reviewing triage and/or autopsy reports and does not presume or imply a statement of any medical opinion.
10. This incident involved use of force, which I have hereafter briefly discussed for the fact finder's enhanced understanding of actual police practice.
- a. Police officers, police trainers and police practice experts may not express legal opinions on use of force:
 - 1) But, they are trained to know and understand how much force may be used in the lawful performance of a police duty,
 - 2) And, "*The law dictates officer training, not the other way around*";
 - b. Both justification for and limitation on police use of force have been clearly established by the United States Supreme Court, which supercedes any contradictory state statutes or local police policies:
 - 1) *Tennessee v. Garner*, 471 U.S. 1, 105 S. Ct. (1985),
 - 2) *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. (1989);
 - c. These seminal use of force decisions are further interpreted by the United States Circuit Courts (1st through 11th), thereby further clarifying legal standards that will be individually applied within each Circuit;
 - d. American police officers **MUST COMPLY** (emphasis supplied) with these legal standards;
 - e. From a police practices perspective, the fundamental issues in any use of force are:

- 1) Was force reasonably necessary under the totality of circumstances?
- 2) If force was reasonably necessary, was the amount or degree of force used reasonable under the totality of circumstances?
- f. Specific factors that police officers are trained to evaluate, in determining the amount or degree of force to be used, are:
 - 1) Use of deadly force:
 - a) Is there probable cause to believe that a criminal suspect poses an *"immediate"* threat of death or serious physical injury to the officers or others?
 - (1) *"Immediate"* means *"taking place right now"*,
 - (2) *"Imminent"* means *"about to happen or occur"*,
 - b) And where feasible, has some warning been given?
 - 2) All uses of force:
 - a) What is the severity of the crime at issue?
 - b) Does the suspect pose an *"immediate"* threat to the safety of the officers or others?
 - c) Is the suspect actively resisting arrest or attempting to flee?
 - 3) Situational factors also affect decision making:
 - a) The use of force must be judged from the perspective of a reasonable officer on the scene and not from the 20/20 vision of hindsight,
 - b) Allowance must be made for the fact that officers are often forced to make split-second judgments, about the amount of force that is necessary in a particular situation, in circumstances that are tense, uncertain and rapidly evolving
 - c) The officer's underlying intent or motivation is irrelevant;
 - 4) In all cases, **THE TYPE AND AMOUNT OF FORCE USED MUST BE OBJECTIVELY REASONABLE UNDER THE TOTALITY OF CIRCUMSTANCES** (emphasis supplied);
- g. There are varying methods of applying force that may be justifiably used by an officer in response to a reasonably perceived threat and are, in ascending order, as follows:
 - 1) Officer presence,
 - 2) Voice command,
 - 3) Escort or soft hand hold,
 - 4) Intermediate pain compliance – **ALL** less-lethal *"pain-inflicting compliance techniques"* **MUST COMPLY** (emphases supplied) with the *Graham v. Connor* *"objective reasonableness"* standard:
 - a) Hands on,
 - b) Oleoresin capsicum (OC pepper) aerosol spray,
 - c) TASER (electronic control weapon),
 - d) Baton,

- e) Impact projectiles,
 - 5) K-9 bite,
 - 6) Firearm;
 - h. An officer is not required to progress sequentially through the afore described “steps”, however, and may immediately respond with the appropriate level of force to overcome whatever level of resistance is being encountered on a case by case basis;
 - i. As previously explained herein, the **ONLY** (emphasis supplied) constitutional standard for use of force is “*objective reasonableness under the totality of circumstances*”:
 - 1) Department policy and/or procedure may require a more restrictive use of force but does not create a constitutional standard,
 - 2) “*Negligence*” in any degree does not create a constitutional standard;
 - j. My further analysis of this incident will be within the context of the foregoing explanation of police practice for use of force in the United States.
11. Based upon my training, experience and a careful evaluation of the totality of circumstances in this matter, it is my considered professional opinion that the following facts appear to be supported by the record:
- a. Plaintiff is described as:
 - 1) Age 31 years (at time of arrest),
 - 2) 5 feet 3 inches tall,
 - 3) 150 pounds,
 - 4) Diagnosed as bi-polar;
 - b. Plaintiff was involved in a motor vehicle accident, whereupon she began demonstrating bizarre behavior;
 - c. “*LVMPD trains its police officers to recognize mental health symptoms/conditions*”;
 - d. LVMPD has adopted a specific policy and procedure for using specially trained CIT officers to interact with the mentally ill generally and “*subjects experiencing signs and symptoms of excited delirium*” specifically:
 - 1) “*Ensuring that such persons receive a response which is appropriate to the needs of the individual involved*”,
 - 2) “*Whenever possible*”,
 - 3) “*If no CIT officer responded, state the reason for the lack of response*”;
 - e. Plaintiff was more probably than not in the manic phase of a bi-polar psychotic episode:
 - 1) Therapist Mark Premselaar made that post incident evaluation;
 - 2) Processing defendant Officer Jeffrey Swan described her as being in a state of “*excited delirium*”,
 - f. Defendant Officer Aaron Baca encountered plaintiff at the accident scene and a surveillance video recorded the sequence of events:

- 1) Officer Baca physically directed plaintiff's movement,
 - 2) Plaintiff turned away from him,
 - 3) Officer Baca physically directed plaintiff back to him,
 - 4) Plaintiff reached toward Officer Baca,
 - 5) Thereupon, Officer Baca took plaintiff down to the asphalt roadway in approximately 5/6 seconds, where she struggled,
 - 6) Palms Security Officer Jeannie Houston arrived approximately 28/29 seconds later and assisted Officer Baca in securing plaintiff,
 - 7) Both Officer Baca and Security Officer Houston continued to physically hold plaintiff down against the asphalt (video ended shortly thereafter);
- g. Plaintiff's direct contact with the roadway surface on a hot Las Vegas mid-afternoon in August for an undetermined duration produced severe burns that required hospitalization, subsequent restorative surgery and further ongoing treatment (see photos for graphic illustration):
- 1) Left cheek,
 - 2) Left outer calf and thigh,
 - 3) Right upper thigh,
 - 4) Right buttock.

12. Based upon my training, experience and a careful evaluation of the totality of circumstances in this matter, it is my considered professional opinion that plaintiff was a victim of unreasonable force. In reaching that conclusion I was especially mindful of the following information from the record:

- a. All of the information previously described herein;
 - b. Plaintiff has very little recall of the incident, as is typical of a psychotic episode, but does remember:
 - 1) The "*pain*" of being burned (page 76 line 7-20, page 77 lines 1-5, page 82 lines 5-7 and page 146 lines 8-13),
 - 2) Her continual "*screaming*" (page 46 lines 14-15, page 79 line 4 and page 82 line 17);
 - c. Regardless of whether or not there was probable cause to detain and/or arrest plaintiff, it was absolutely unconscionable for **ANY** (emphasis supplied) police officer to leave a secured person in a position of direct contact with a surface so hot as to cause the extreme burn injuries suffered by plaintiff (again, see photos for graphic illustration);
 - d. To have done so demonstrates deliberate indifference to the probable consequences of such an obvious disdain for human suffering and clearly amounts to an objectively unreasonable use of excessive force, especially after plaintiff was clearly secured and under complete police control.
13. I have reviewed the report of defense expert John Ryan and offer the following rebuttal thereto:
- a. Mr. Ryan is a retired Captain (2002) from the Providence, RI Police Department and an attorney, with whom I am familiar;

- b. Mr. Ryan describes plaintiff as a “*dramatic threat*” (twice) and I must confess, if that is police practice terminology, I am unfamiliar therewith and cannot comment;
 - c. Mr. Ryan has apparently ignored the fact that plaintiff’s ongoing behavior demonstrated that she was experiencing a bi-polar psychotic episode:
 - 1) While police officers are not expected to diagnose a specific mental illness, they are trained to recognize bizarre behavior and make the connection to react accordingly (note: LVMPD concedes this fact in Answer to Interrogatory No. 15),
 - 2) Clearly, under this undisputed fact pattern, plaintiff needed to be humanely taken into custody during a medical emergency and reasonable force may be used in accomplishing that task;
 - d. The central issue in this case, however, is that after plaintiff was taken down to a hot asphalt street in Las Vegas on an August mid-afternoon, she was then both held and left there for a sufficient amount of time to sustain the severe burns that have been previously described herein (again, see photos for graphic illustration);
 - e. Mr. Ryan’s only comments on that central issue are:
 - 1) There is “*no evidence in the material provided to date of how long she was left on the asphalt*”, however, qualified medical opinion may be relied upon to estimate the duration of that exposure, based upon the severity of burning
 - 2) And, in an apparent effort to blame victim for her own injuries, “*She did not voice any discomfort to the officers*”,
 - a) As any adequately trained police officer should know, persons in a psychotic state often do not feel pain, although that in no way lessens their injuries,
 - b) That is one reason police officers have a duty to prevent unnecessary injuries to prisoners, who they have taken into custody,
 - 3) Otherwise and by analogy, a police officer could place a prisoner against any excessively hot surface and, as long as he/she “*did not voice any discomfort*”, merely leave him/her exposed to the inevitable burns – I hope Mr. Ryan would agree, as either police practices expert or attorney, that such a proposition simply makes **NO SENSE** (emphasis supplied);
 - f. Additionally, mental illness is a protected disability, under the Americans with Disabilities Act (ADA), and plaintiff’s counsel may wish to explore further discovery on that specific source of liability as well;
 - g. In summary, Mr. Ryan has simply failed to address the central issue of this matter and nothing in his report has caused me to change any of my earlier stated opinions.
14. I am prepared to testify to these opinions at deposition or trial, if called upon to do so.

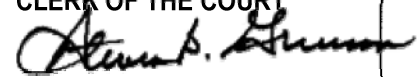
15. If I am provided with further documentation for my review, I may have additional opinions.

/s/ D.P. VAN BLARICOM

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1 **RPLY**

2 **LEW BRANDON, JR., ESQ.**

Nevada Bar No.: 5880

3 **JUSTIN W. SMERBER, ESQ.**

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4 **MORAN BRANDON BENDAVID MORAN**

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6 FCH1, LLC

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

8 CRISTINA PAULOS, an individual,

9 Plaintiff,

CASE NO.: A-15-716850-C

DEPT. NO.: XXXII

10 v.

11 FCH1, LLC, a Nevada limited liability
company; LAS VEGAS
12 METROPOLITAN POLICE
DEPARTMENT, a government entity;
13 JAKE VON GOLDBERG, an individual;
JEFFREY B. SWAN, an individual;
14 JEANNIE HOUSTON, an individual;
AARON BACA, an individual; and
DOES 1 through 10,

15 Defendants.

16 **DEFENDANTS, FCH1, LLC AND JEANNIE HOUSTON'S REPLY TO PLAINTIFF'S**
17 **OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

18 COMES NOW, Defendants, FCH1, LLC and JEANNIE HOUSTON, by and through their
attorneys of record, LEW BRANDON, JR., ESQ. and JUSTIN W. SMERBER, ESQ. of MORAN
19 BRANDON BENDAVID MORAN, and hereby submits the following Reply to Plaintiff's
Opposition to Motion for Summary.



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1 This Reply is made and based upon the Points and Authorities attached hereto along with
 2 the papers and pleadings on file herein and oral arguments at the time of hearing.

3 DATED this 24th day of July, 2017.

4 **MORAN BRANDON BENDAVID MORAN**

5 /s/ Justin W. Smerber, Esq.

6 **LEW BRANDON, JR., ESQ.**

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Attorneys for Defendants,

FCH1, LLC and JEANNIE HOUSTON

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL ARGUMENT

Plaintiff's Opposition has failed to demonstrate any genuine issue of material fact that would prevent this Court from Granting Defendant, FCH1, LLC and JEANNIE HOUSTON's Summary Judgment. Plaintiff has simply come forth with no facts whatsoever to show that either of these defendants acted negligently, or that either of these defendant's falsely imprisoned Plaintiff. It is Plaintiff's burden to come forward with facts to show a genuine issue of material fact exists in this matter. However, Plaintiff has come forward with no factual evidence and merely relies upon the argument of counsel that "a reasonable jury could" find these defendant's liable. Plaintiff has simply failed to meet her burden and summary judgment is appropriate.

A. Plaintiff has no witness to support her causes of action against FCH1, LLC and/or HOUSTON.

Plaintiff has two claims against these defendants: (1) Negligence; and (2) False Imprisonment. However, Plaintiff has no witnesses to support these claims. At the time of trial, Plaintiff will have no ability, not even through her own testimony, to support either of these claims. Accordingly, summary judgment is appropriate.

It is undisputed that FCH1, LLC and HOUSTON's only involvement in this case is that HOUSTON assisted LVMPD Officer Baca during his arrest of the Plaintiff. *See Off. Baca Deposition at pp. 18-19, ll. 14-25; 1-23 attached as Exhibit "A."* Further, it is undisputed that Plaintiff's arrest and detention was being done at the direction and control of LVMPD Officer Baca. *See Id.*

Further, FCH1, LLC and HOUSTON's involvement in this incident is very limited. Surveillance confirms that HOUSTON only has physical contact with Plaintiff from 15:17:37



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1 until 15:19:58. *See Surveillance, Camera 0513 attached as Exhibit "B."* Specifically, the
2 surveillance video confirms the following timeline:

- 3 • 15:16:55 – Plaintiff makes physical contact with LVMPD Officer Baca.
- 4 • 15:17:01 – LVMPD Officer Baca takes Plaintiff to the ground.
- 5 • 15:17:27 – LVMPD Officer Baca motions to HOUSTON for assistance.
- 6 • 15:17:37 – HOUSTON kneels down and begins assisting LVMPD Officer Baca.
- 7 • 15:19:41 – Additional LVMPD Officers arrive on scene.
- 8 • 15:19:58 – The additional LVMPD Officers relieve HOUSTON.

9 *See Id.* After 15:19:58, HOUSTON has no further contact with Plaintiff. Accordingly,
10 there is a mere two (2) minute and twenty-one (21) second time period when FCH1, LLC and
11 HOUSTON have any involvement in this incident.

12 The critical point in this case, is what did FCH1, LLC and/or HOUSTON do wrong
13 between the time period of 15:17:37 until 15:19:58? The answer is that they did nothing wrong,
14 and Plaintiff does not have a single witness to testify that anything improper was done by either
15 of these defendants. Plaintiff testified in her deposition that she viewed HOUSTON as her only
16 ally, and HOUSTON was the only person she would talk to because she was afraid of all the men
17 present. *See Plaintiff's deposition at p. 72, ll. 2-20 attached as Exhibit "C."* Plaintiff had no
18 criticism of HOUSTON during her deposition. Further, LVMPD Officer Baca stated that
19 HOUSTON only acted at his direction while he was in control of the situation. *See Off. Baca*
20 *Deposition at pp. 18-19, ll. 14-25; 1-23 attached as Exhibit "A."* Accordingly, Plaintiff has no
percipient witness testimony to present that is critical of FCH1, LLC or HOUSTON. Such is
reflected by the fact that they cite no such testimony to the Court in their Opposition.

Further, Plaintiff's own Security Expert has no criticism of FCH1, LLC or HOUSTON
relative to this actual incident. Plaintiff disclosed Steve Baker as her Security Expert. Mr. Baker



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has testified under oath in this matter. *See Baker Deposition attached as Exhibit "D."* Mr. Baker confirmed the following:

- **LVMPD detained Plaintiff; not the FCH1, LLC or HOUSTON.**

- *"Q. And as far as you already told me, it was Metro who arrested or detained the plaintiff, correct? A. Correct." See Id. pp. 40-41, ll. 23-25; 1-1.*

- **LVMPD was justified in arresting Plaintiff, i.e. no false imprisonment.**

- *"Q. You agree that Metro had the right to take Ms. Paulos into custody? A. Correct." See Id. p. 50, ll. 14-16.*

- **HOUSTON did nothing wrong in assisting LVMPD Officer Baca.**

- *"Do you think the Palms was doing anything inappropriate in following officer Baca's request for assistance? A. Following the request, no." See Id. p. 40, ll. 4-7.*

- **Baker has no criticisms of Plaintiff's detention prior to the second group of officers arriving, i.e. prior to 15:19:58 when HOUSTON's involvement ends.**

- *"Q. Do you have any criticisms of Officer Baca? You understand he's the primary officer? A. Correct. Do you have any criticism of his conduct prior to the second group of officers arriving beyond him touching her head? A. No." Id. at p. 52, ll. 3-10.*

The Court should note that Plaintiff's Opposition does not bother to cite to Mr. Baker or any other witness to show that the actions of FCH1, LLC or HOUSTON were inappropriate. With no witnesses to support her claims, it is clear that Plaintiff cannot meet her burden of showing that a genuine issue of material fact exists for trial in this matter. Accordingly, summary judgment is appropriate. *Wood v. Safeway, Inc., 121 P.3d 1026, 1031 (2005).*



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B. Plaintiff has failed to provide any evidence that FCH1, LLC used "excessive force" against Plaintiff.

Plaintiff's Opposition now argues that FCH1, LLC owed duties of care "not to use **excessive force** upon Ms. Paulos." (*Emphasis added*). Plaintiff further alleges that Defendant, breached that duty when HOUSTON held Plaintiff against hot pavement. However, Plaintiff offers absolutely no factual evidence to support this allegation. Further, Plaintiff's own disclosed Security Expert, Steve T. Baker disagrees with Plaintiff in this regard. Mr. Baker testified during his deposition as follows:

Q. Is it your opinion that the Palms Security Officers used Excessive force towards the Plaintiff in this matter?

A. Excessive as in too much force, no.

Baker Deposition at p. 27, ll. 13-16 attached as Exhibit "D." Accordingly, Plaintiff's own security expert disagrees with Plaintiff that FCH1, LLC or HOUSTON used excessive force. Plaintiff's Opposition itself offers no facts to show the alleged use of excessive force, and therefore, Plaintiff has failed to meet her burden in her Opposition to the Motion for Summary Judgment. (*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).¹*)

C. The Federal District Court has found that the amount of force used to detain Plaintiff was not excessive.

As pointed out by LVMPD in their supplemental opposition, the issue of excessive force has already been decided by the Federal District Court of Nevada, and affirmed by the 9th Circuit Court of appeals. Specifically, the Federal District Court stated as follows:

¹ See also *Ferriera v. P.C.H. Inc.*, 105 Nev. 305, 774 P.2d 1041 (1989).



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1 In light of this assessment and the lack of any genuine disputed material fact, the court
2 finds that officer Baca did not use excessive force in arresting Paulos. This conclusion
applies to all officers who arrived on scene after Paulos was restrained on the ground.

3 *Paulos v. FCH1, LLC, No. 2:13-cv-1546-JCM (PAL), 2015 WL 1119972, *9 §III(2)(b)(IV) (D.*
4 *Nev. March 12, 2015).* Clearly, given the fact that Officer Baca was found to have acted
5 reasonably and not used excessive force, it is clear that HOUSTON did not use excessive force
as her only role was to assist Officer Baca.

6 **D. FCH1, LLC and HOUSTON cannot be held liable for false imprisonment because**
7 **they were complying with LVMPD's request to aid in detaining Plaintiff.**

8 Plaintiff's Opposition argues that a jury could reasonably find that FCH1, LLC and
9 HOUSTON falsely imprisoned Plaintiff. However, FCH1, LLC and HOUSTON argue that they
10 acted in good faith based upon a request for assistance from a Law Enforcement Officer. It is a
11 clear and undisputed fact that the only reason any FCH1, LLC employee became involved in this
12 matter was because an LVMPD Officer requested assistance. *See LVMPD Officer Baca*
13 *Deposition Transcript attached to Motion for Summary Judgment as Exhibit "A."* In *Grosjean*
14 *v. Imperial Palace, Inc.*, the Nevada Supreme Court adopted the good-faith defense, which applies
15 to private parties who become liable solely because of their compliance with government agents'
16 request or in attempting to comply with the law. *Grosjean v. Imperial Palace, Inc., 212 P.3d*
17 *1068 (Nev. 2009).*² This Honorable Court has enforced the good faith defense and so has the 9th
18 Circuit Court of Appeals. *See Goodman v. Las Vegas Metro. Police Dep't, 2012 U.S. Dist. LEXIS*
19 *67364 (D. Nev. May 11, 2012); Clement v. City of Glendale. 518 F.3d 1090, 1097 (9th Cir. 2008).*
Accordingly, the good-faith defense clearly resolves any liability against FCH1, LLC and
HOUSTON as they were only acting to aid the LVMPD Officer.

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² See also *Goodman v. Las Vegas Metro. Police Dep't, 2012 U.S. Dist. LEXIS 67364 (D. Nev. May 11, 2012).*

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II.

CONCLUSION

Based upon the foregoing, Defendant, FCH1, LLC, respectfully requests that Summary Judgment be granted against Plaintiff, CRISTINA PAULOS and in favor of FCH1, LLC and JEANNIE HOUSTON.

DATED this 24th day of July, 2017.

MORAN BRANDON BENDAVID MORAN


/s/ Justin W. Smerber, Esq.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on July 24, 2017, I served a true and correct copy of the foregoing **DEFENDANT, FCH1, LLC'S REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** through the Court's ECF electronic filing system:

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/s/ Angelina M. Martinez

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EXHIBIT "A"

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EXHIBIT "A"



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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 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.

EXHIBIT "B"

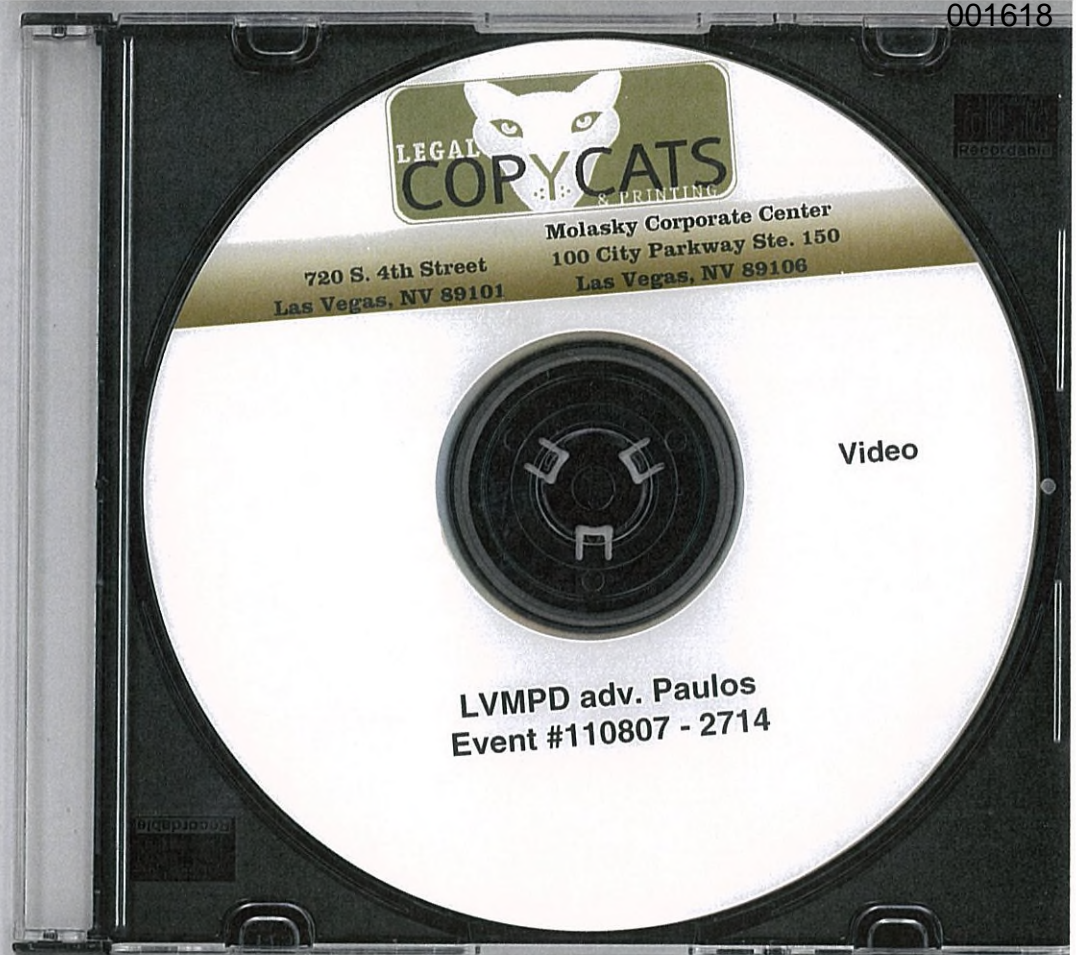
SURVEILLANCE VIDEO

EXHIBIT "B"



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Video

LVMPD adv. Paulos
Event #110807 - 2714



CENTURION
DISCOVERY

702.685.7269
3900 Paradise Rd, Suite 208
Las Vegas, NV. 89169

DVD

Paulos C v Palms

#2284
8-7-11

10/14/2014

Moran Law Firm
Client Matter:
Palms adv Paulos

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EXHIBIT "C"

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EXHIBIT "C"

MB
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BM

MB
BM



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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

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CRISTINA PAULOS 3/25/2013

69

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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CRISTINA PAULOS 3/25/2013

71

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

70

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

72

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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EXHIBIT "D"

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EXHIBIT "D"



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001623

001623



Lawyer Solutions Group

Transcript of **STEVEN BAKER**

Date: September 4, 2014

Case: PAULOS v. FCH1, LLC

Lawyer Solutions Group
Phone: 702-430-5003

1 vehicle still, apparently on the ground.
 2 Q So it's your opinion based on the video
 3 there's a point in time where the Palms security
 4 gets up and moves away from the plaintiff. Metro
 5 gets up and moves away from the plaintiff. She's
 6 still on the ground and you don't know what's
 7 happening?
 8 A Correct.
 9 Q The only thing you cite to in your report,
 10 it's on page 3, you reference Palms security policy
 11 on cooperation with the police.
 12 A Uh-huh.
 13 Q You see that?
 14 A Yep.
 15 Q Okay. I'm assuming you had typed this in
 16 your report?
 17 A Yes.
 18 Q So you read that policy; is that correct?
 19 A Correct.
 20 Q Do you disagree with that policy in any
 21 way?
 22 A No.
 23 Q Nothing wrong with their policy?
 24 A No, I do not see anything wrong with the
 25 policy.

1 Q Earlier when I was asking you about who
 2 arrested or detained the plaintiff, you said it was
 3 Metro and you said the Palms assisted.
 4 A Correct.
 5 Q Is there anything wrong with the Palms
 6 security officer assisting a Metro officer in an
 7 arrest or detention when that Metro officer has
 8 requested it?
 9 A No.
 10 Q Go to page 4 of your report. Page 4 you
 11 continue to discuss the Palms' security manual; is
 12 that right?
 13 A Yes.
 14 Q You talk about there are policies on
 15 dealing with people with mental disorders or
 16 mentally challenged, back slash, emotionally
 17 disturbed persons; is that right?
 18 A Correct.
 19 Q And you list out the factors that they
 20 have. First let me ask you in terms of that policy
 21 that they have, do you disagree with that policy?
 22 A No.
 23 Q So nothing wrong that policy, correct?
 24 A No.
 25 Q Actually, that was kind of a double

1 negative. Is there anything wrong with that policy?
 2 A No. I don't see anything wrong with that
 3 policy.
 4 Q I'm bad with the double negatives this
 5 week. I don't know why.
 6 A It's the haunted house.
 7 Q You guys are going to laugh so hard when I
 8 tell you this story. Let's go through the policy
 9 that we have. You made a bullet point list there.
 10 You pulled these right out of the manual, correct?
 11 A Correct.
 12 Q The first one, it says use as little force
 13 as necessary. Is it your opinion that the Palms
 14 security officers used excessive force towards the
 15 plaintiff in this matter?
 16 A Excessive as in too much force, no.
 17 Q Okay.
 18 A The way they grabbed the plaintiff or were
 19 holding her by the head, I would think that would
 20 not be the good way to hold somebody down. Not a
 21 good restraint tactic.
 22 Q Are you saying it falls below the standard
 23 of care?
 24 A I'm saying it would be just dangerous if
 25 I'm trying to hold somebody to cuff them, holding

1 them by their head is not anything that's taught.
 2 Q So it's your opinion you can see on video
 3 the Palms security officer holding the plaintiff by
 4 her head?
 5 A Yeah.
 6 Q Say that out loud.
 7 A Yes. I'm sorry.
 8 Q So you're saying they used an improper
 9 handcuffing technique?
 10 A Well, restraint technique in this case.
 11 They're not actually doing the handcuffing.
 12 Q So as far as this first factor, they use
 13 as little force as necessary, you think they
 14 violated that?
 15 A They certainly could have done much worse
 16 as far as when we're thinking excessive force.
 17 Q Right.
 18 A Again, I'm just limiting it to using the
 19 head as a control device.
 20 Q I understand, but we have a unique
 21 situation here, correct?
 22 A Actually, no. We have one that happens
 23 many times a day at a private casino in this town.
 24 So it's not really that unique. This is very
 25 standard in arrest and control.

1 specifically to the actions taken by the security
 2 officer in this case; is that correct?
 3 A Sorry, could you repeat that?
 4 Q Yes. The second to the last paragraph on
 5 page 4 that you kind of put parenthesis around here,
 6 correct?
 7 A Yes.
 8 Q That again is not discussing the specific
 9 actions of the security officer in this case, you're
 10 saying in general, you know, these guidelines should
 11 have been applied; is that fair?
 12 A Well, they should have been applied in
 13 this case.
 14 Q The security officer from the Palms that
 15 responded to this incident and you see on the video
 16 the female security officer, do you know her name?
 17 A Janae Houston.
 18 Q Okay. Now, in your report you say on page
 19 4 in that little paragraph that you put the
 20 parenthesis around, according to the Palms policy,
 21 she should have contacted her supervisor for
 22 guidance.
 23 A She as in Houston. I'm sorry.
 24 Q Okay. Do you know if Miss Houston
 25 consulted her supervisor before she got involved in

1 Q Let's keep it in the context of your
 2 report.
 3 A Uh-huh.
 4 Q Your report says, and I'm just reading
 5 right out of the report, page 4, "in an environment
 6 where individuals are taken into custody and held."
 7 A Uh-huh.
 8 Q So I'm talking about the term held and the
 9 context you have it in your report.
 10 A Yes, okay.
 11 Q Are you of the opinion the Palms held Miss
 12 Paulos on the date of this incident?
 13 A Again, Metro was there, the Palms was
 14 there. Exactly who turned over what, I don't know
 15 exactly. It's not clearly delineated in the report.
 16 Q Okay.
 17 A I would lean towards that the Palms
 18 assisted during the taking into custody.
 19 Q Uh-huh.
 20 A And then at some point they're separated
 21 away from it.
 22 Q Okay. So were you aware in Nevada there's
 23 a law that says if a security or peace officer asks
 24 for your assistance, then you should assist them?
 25 A Yes.

1 this matter?
 2 A There's nothing in the record on that,
 3 just that she was dispatched.
 4 Q Do you know who her supervisor was?
 5 A No.
 6 Q So as far as whether or not she actually
 7 followed this policy and contacted her supervisor,
 8 you don't know whether she did that or not?
 9 A Correct.
 10 Q The next sentence you have there says,
 11 "Palms lack of policy on arrest and care of
 12 in-custody persons is an unacceptable condition and
 13 below the standard of care in an environment where
 14 individuals are taken into custody and held." Did I
 15 read that right?
 16 A Yes.
 17 Q Okay. As far as this specific case goes,
 18 you would agree with me the Palms didn't take Miss
 19 Paulos into custody and hold her; is that fair?
 20 A Well, they assisted in the taking into
 21 custody.
 22 Q Did they hold her?
 23 A To the ground, yes. Did they detain her,
 24 keep her afterwards? That's undetermined who was in
 25 charge there.

1 Q Okay. You don't disagree with that law,
 2 do you?
 3 A No.
 4 Q Do you think that the Palms was doing
 5 anything inappropriate in following officer Baca's
 6 request for assistance?
 7 A Following the request, no.
 8 Q At what point could you say the Palms'
 9 lack of policy on arrest and care and custody of
 10 persons is unacceptable? How does that apply to
 11 this case?
 12 A Well, again, it goes down into their
 13 training and what their knowledge is. They're in an
 14 environment where it's a routine business practice
 15 to arrest people, taking their civil liberties,
 16 handcuff them, put them into their on-site jail and
 17 then transfer them to law enforcement.
 18 Q Well, let me just stop you right there.
 19 Do you agree with me some of that has nothing to do
 20 with this case. Miss Paulos never went to the Palms
 21 jail, correct?
 22 A Correct.
 23 Q And as far as you already told me, it was
 24 Metro who arrested or detained the plaintiff,
 25 correct?

1 A Correct.
 2 Q They were doing that before the Palms ever
 3 got involved in this, correct?
 4 A Correct.
 5 Q The only reason the Palms got involved in
 6 this is because they were requested to by Metro; is
 7 that fair?
 8 A That's fair.
 9 Q Okay. But you think their actions in
 10 assisting Metro was inappropriate, correct?
 11 A Correct.
 12 Q I want you to tell me specifically how
 13 their actions in assisting Metro was inappropriate.
 14 A Inappropriate in that the officer didn't
 15 appear to have any idea of how to help to restrain
 16 that person. And again, this should be a regular
 17 routine thing. Instead of going to the head again,
 18 which happens to be the issue here, wouldn't be
 19 appropriate. Holding them down on the pavement
 20 wouldn't be appropriate. Continuing to let them lay
 21 on the pavement wouldn't be appropriate. These are
 22 all things that that care and custody I'm talking
 23 about. So where you say it doesn't apply to this
 24 case, it does because we who do this every day, this
 25 should, these things should be second nature, that

1 they should know how to do it.
 2 Q How long did the Palms allow Miss Paulos
 3 to remain on the pavement?
 4 A I'm still undetermined exactly when she
 5 got off the pavement.
 6 Q And you can't, you already told me you
 7 can't say that they held her on the pavement after
 8 15:20:13, correct?
 9 A Correct.
 10 Q Okay. So at the max you could say the
 11 Palms had her on the pavement for two minutes and 35
 12 seconds?
 13 A Okay.
 14 Q Is that accurate or not?
 15 A Well, we know that they held her
 16 physically there or alone, yes.
 17 Q Okay. After that you can't say they did
 18 anything to hold her on the pavement; is that fair?
 19 A Correct. We don't know, doesn't appear
 20 anyone was holding her at that point, they just left
 21 her laying there.
 22 Q Okay. So she was on the ground by
 23 herself?
 24 A Correct.
 25 Q Okay. Do you know an individual named Al

1 Sagic?
 2 A Sagic.
 3 Q Sagic. Do you know him?
 4 A Very well.
 5 Q How long have you known Al?
 6 A Fifteen years.
 7 Q He drafted a report in this matter. Have
 8 you seen his report?
 9 A I have.
 10 Q I notice that you didn't comment anywhere
 11 in your report on his. Have you drafted any type of
 12 rebuttal report to his?
 13 A No.
 14 Q So, at the time of trial in this matter
 15 you won't be giving any opinions regarding his
 16 report, correct?
 17 A Correct. His report starts or ends before
 18 mine really starts to address issues.
 19 Q Okay. I want to talk a little bit about
 20 your CV, if you can get your CV in front of you. I
 21 want to look at your professional experiences on
 22 page 2 and 3. Have you ever personally worked in a
 23 Las Vegas casino?
 24 A No. Not as an employee, no.
 25 Q Have you ever worked in a Las Vegas hotel?

1 A Not as an employee.
 2 Q So as far as personal experience as a
 3 security officer in a Las Vegas casino, you have
 4 none; is that fair?
 5 A I've done numerous contracted training
 6 assignments and evaluations, but I've not worked as
 7 an employee.
 8 Q Do you know if Mr. Sagic, or how did you
 9 just say that?
 10 A Sagic. I-C, like in magic.
 11 Q Sagic. Do you know if he's done that?
 12 A I don't know if he's worked in a casino in
 13 Las Vegas, no.
 14 Q Okay.
 15 A He was predominantly in northern Nevada.
 16 Q Have you ever worked in the casinos as a
 17 security officer?
 18 A No, not as an employee.
 19 Q Do you know if Mr. Sagic has?
 20 A I believe so, yes.
 21 Q He has quite an extensive background in
 22 it; is that fair?
 23 A Sure.
 24 Q I'm trying to familiarize myself with your
 25 CV. Either I had it wrong or I was missing

1 A Correct.
 2 Q And as far as what the Palms' involvement
 3 was after the arrest and detention, you can only
 4 speculate; is that fair?
 5 MR. BLUT: Object to the form.
 6 THE WITNESS: Well, yes, based on what's
 7 in the video because there is no written
 8 documentation.
 9 MR. SMERBER: Okay. That's all the
 10 questions I have.
 11 MR. ANDERSON: I'll be quick.
 12 CROSS-EXAMINATION
 13 BY MR. ANDERSON:
 14 Q Mr. Baker, my name is Craig Anderson. I
 15 represent the cops. I've got the police officers in
 16 this matter. Have you ever worked as a policeman?
 17 A No, sir.
 18 Q Have you ever gone to a police academy?
 19 A Taught in some, assisted in some, but I've
 20 never attended them as a police officer.
 21 Q Have you ever served as an expert against
 22 a law enforcement agency or police officer before?
 23 A No.
 24 Q Have you ever received any specific
 25 training in the Fourth Amendment?

1 A Multiple classes or things where it's been
 2 discussed.
 3 Q Okay, classes. Have you ever taught the
 4 Forth Amendment?
 5 A No, because it really isn't a private
 6 sector issue as much as it is a public. There's
 7 some cross-over in certain states, but.
 8 Q At trial do you intend to render an
 9 opinion against the individual officers or the Las
 10 Vegas Metropolitan Police Department?
 11 A Only what's included in the report about
 12 the time on the ground.
 13 Q Okay. And so let's see if we're on the
 14 same page. You agree that Metro had the right to
 15 take Miss Paulos into custody?
 16 A Correct.
 17 Q Do you have any criticisms of the actual
 18 taking her to the ground?
 19 A No.
 20 Q So your criticisms against the officers
 21 are for the time spent on the ground?
 22 A Yes. Some up there it does appear that
 23 the officer at one time reaches up and holds her
 24 head to the ground, too, which I do have a little
 25 issue with. But as far as that, getting her into

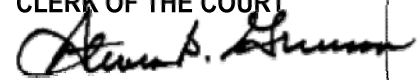
1 the cuffs, no, I don't have any issues with that.
 2 Q Okay. At what point did you believe Miss
 3 Paulos should have been lifted off the ground?
 4 A Well, just within moments, I'm not sure
 5 how many seconds, it's less than minutes after the
 6 officer actually gets the custodial control and gets
 7 her into handcuffs, the two other units arrive. So
 8 now you've got four caged units available. That's
 9 where you then put her in the cage. That's why
 10 we've got a caged vehicle.
 11 Q Have you ever gone hands-on with an
 12 individual during your career?
 13 A Yes.
 14 Q When that occurred and you have been
 15 involved in an altercation similar to Officer Baca,
 16 do you get tired?
 17 A Absolutely.
 18 Q Is it surprising how quickly your body
 19 loses its oxygen?
 20 A It's amazing how quickly you lose it.
 21 Q And so if I understand correctly, correct
 22 me if I'm wrong, it's your opinion the officers have
 23 got Miss Paulos to her feet around the time the
 24 second group of officers arrive?
 25 A Either that officer or the second group of

1 officers, the back-up officers could have absolutely
 2 taken her and put her in the vehicle.
 3 Q Okay. Do you have any criticisms of
 4 Officer Baca? You understand he's the primary
 5 officer?
 6 A Correct.
 7 Q Do you have any criticisms of his conduct
 8 prior to the second group of officers arriving
 9 beyond him touching her head?
 10 A No.
 11 Q Okay. Now, you stated in your report that
 12 you're unsure how long she was on the ground.
 13 A Correct.
 14 Q And from the time that she's handcuffed
 15 until the paramedics, from the time she went down
 16 until the paragraphs arrived, which is roughly nine
 17 minutes according to your report.
 18 A Yes.
 19 Q I'm reading from the paragraph.
 20 A I believe it's, I have since found out it
 21 was like 32 to 36 that she was transported. Right
 22 in there. 30 some minutes.
 23 Q All right. Is it your opinion that she
 24 was on the ground for that entire nine minutes?
 25 A I do not know.

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Steven D. Grierson
CLERK OF THE COURT



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Attorneys for Defendants LVMPD and Officer Baca

DISTRICT COURT

CLARK COUNTY, NEVADA

CRISTINA PAULOS,

Plaintiff,

Case No.: A-15-716850-C

Dept. No. XXXII

vs.

**DEFENDANTS LVMPD AND OFFICER
BACA'S REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

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.

Date: 8/17/17

Time: 9:30 a.m.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

As set forth in the LVMPD Defendants' Motion for Summary Judgment, plaintiff Cristina Paulos's ("Paulos") claims must be dismissed for several reasons. First, a federal court has already found that Officer Baca acted reasonably under the circumstances. The federal court's finding was not disturbed in the Ninth Circuit's affirmance. Thus, Paulos's claims are barred by the doctrine of issue preclusion. Second, there is no admissible evidence that Officer Baca acted unreasonably under the circumstances. Third, Officer Baca's actions were discretionary and he is immune under Nevada's discretionary immunity statute. Fourth, because Paulos's experts agree that the initial take-down was reasonable and that it was reasonable to keep Paulos on the ground until Officer Aaron Baca's back-up arrived, Paulos cannot establish causation because her own medical experts testified that her burns occurred in the first 10 – 30

seconds that she was on the ground – i.e., the period that her own liability expert agrees was reasonable.

Paulos's opposition does not meaningfully oppose any of the LVMPD Defendants' arguments. First, with respect to the issue preclusion argument, Paulos continues to argue that the federal court never found that Officer Baca acted reasonably and, therefore, issue preclusion does not apply. As set forth in the LVMPD Defendants' motion for reconsideration and supplement to their motion for summary judgment, it is undeniable that Judge Mahan found that Officer Baca acted reasonably and that the Ninth Circuit did not disturb that finding in affirming only Judge Mahan. Second, Paulos argues that issues of fact preclude this Court from finding reasonableness. To make this argument, Paulos misrepresents the factual record. Third, Paulos's argument that discretionary immunity does not apply to this case is based on one unpublished federal district court case. That case is contradicted by the majority of other case law on the issue. Fourth, and finally, Paulos does not dispute that her injuries occurred during the time period that she was on the ground that her own expert found to be reasonable. Thus, summary judgment is appropriate for four separate reasons.

II. PROCEDURAL AND FACTUAL ISSUES

A. PROCEDURAL ISSUES: THE COURT MUST IGNORE PAULOS'S UNAUTHENTICATED EXHIBIT

Attached to Paulos's opposition is a 1995 article entitled *Pavement Temperature and Burns, Streets of Fire* (the "1995 Article"). Paulos's opposition fails to authenticate this exhibit or explain its relevance to the subject litigation. It is well settled that unauthenticated documents cannot be considered on a motion for summary judgment. Paulos never alleges that this article was known to LVMPD at the time of the subject incident or authenticates its contents. As such, this Court can ignore the article.

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B. FACTUAL ISSUES

Paulos's opposition attempts to sanitize the facts of this case. In order to do so, Paulos misrepresents the evidence of this case. It appears that Paulos's goal is to confuse rather than clarify. The following addresses Paulos's most egregious factual misrepresentations.

1. Paulos's Misrepresentations Regarding her Mental Status on August 7, 2011

Paulos's first misrepresentation involves her mental status on the date of the event. According to Paulos, she cannot be responsible for her actions due to a mental condition. Paulos is attempting to heighten the duty Officer Baca owed to her by claiming that: (1) she was suffering from a mental disorder on August 7, 2011; (2) that Officer Baca diagnosed her as suffering from "excited delirium"¹ prior to contacting her; and (3) that Officer Swan recognized she was suffering a "manic episode" at the time of the incident. *See* Pltf's Opp. at p.3:11-21.

First, there is no evidence that Paulos was suffering from a mental disorder on the date in question. In support of this claim, Paulos only cites to her own deposition. She claims that she learned this fact from an unidentified doctor several months after the subject incident. Defts' MSJ at Ex. A at pp. 131-32. Paulos never identified the doctor or an expert capable of testifying to this claim. Therefore, there is no admissible evidence supporting this assertion.

Second, Paulos asserts:

Officer Baca expressed that Ms. Paulos was suffering from "excited delirium" and that at times, Ms. Paulos would be way up high and then all of a sudden she would shut down and be totally quiet and complacent like she didn't even know what was going on around her.

See Opp. at p.3:11-13. In truth, Paulos's quote is actually from Officer Swan - not Officer Baca. Officer Baca has never "expressed" a belief that Paulos was suffering from excited delirium. At deposition, Officer Baca testified as follows:

¹ Excited delirium is a condition that manifests as a combination of delirium, psychomotor agitation, anxiety, hallucinations, speech disturbances, disorientation, violent and bizarre behavior, insensitivity to pain, elevated body temperature, and superhuman strength.

1 Q: Did you make that determination that Ms. Paulos was suffering from
2 excited delirium at the time that you were involved with her?

3 A: *No, I didn't.*

4 ...

5 Q: Did you ever make a determination that she was suffering from excited
6 delirium?

7 A: *I didn't, no.*

8 *See Defts' MSJ at Ex. B at pp. 54-55 (emphasis added). Thus, Paulos wants the Court to believe*
9 *that Officer Baca recognized that Paulos was in the midst of a mental crisis and, therefore, owed*
10 *her a heightened duty. In actuality, Officer Baca only had six seconds to evaluate Paulos before*
11 *she assaulted him. Defts' MSJ at Ex. D at B 15:16:48 - 15:16:54.*

12 Third, Paulos misrepresents that "Officer Swan testified that Ms. Paulos was having a
13 mental episode." Pltf's Opp. at p.3:14-16. In truth, Officer Swan testified that he reached this
14 opinion weeks later and after he learned of Paulos's negative toxicology report.

15 Q: -- based upon that? Were you surprised by the outcome [of the negative
16 blood results] or do you even recall the incidents when you get them?

17 A: Yeah. I - I was a little bit surprised that - that she had no narcotics in her
18 system by - the reactions of what I was seeing at the scene.

19 Q: Did you make any effort to find out why -

20 A: That's when I - that's when I found out the results, I deemed that she was
21 *probably* having a mental - a mental issue.

22 Defts' MSJ at Ex. H at p. 41 (emphasis added).

23 Thus, Officer Swan did not suspect a mental issue until weeks later when her toxicology
24 reports returned negative. Not a single officer concluded that Paulos was having a mental crisis
25 at the scene of the incident. At the time of the incident, the officers believed that Paulos's
26 violent behavior was caused by drugs. Further, even the University Medical Center doctors who
27 treated her from August 7-10, 2011, did not diagnose her with a mental disorder. Paulos has
28 never produced a single medical record diagnosing her with a medical disorder.

2. **Paulos's Misrepresentations Regarding her Criminal Actions on August 7, 2011**

Paulos next attempts minimize her illegal and violent actions by misrepresenting them. She asserts that there is no evidence she attempted to steal Brian Larson's ("Larson") vehicle or that she assaulted Officer Baca. Thus, Paulos is arguing that the video shows her patiently waiting in Larson's vehicle for Officer Baca to arrive so she can hug him. Defts' MSJ at Ex. D at B 15:16:32 - 15:16:52. According to Paulos, Larson "had no problem getting Ms. Paulos out of his vehicle with a simple gesture." Pltf's Opp. at p.3:25-26. Therefore, Paulos disputes that she tried to steal Larson's vehicle. *Id.* at p.14:6-8.

The video clearly shows Paulos entering Larson's vehicle without permission and attempting to drive it. Defts' MSJ at Ex. D at B 15:16:32. Contrary to Paulos's representation, Larson does not get Paulos "out of his vehicle with a simple gesture." Rather, Larson is shown reaching across Paulos and removing his keys from the ignition. This interpretation of the video is supported by Larson's deposition testimony and his voluntary statement. *See* Larson's deposition and statement attached hereto as **Exhibit S** at p. 11 and **Exhibit T**.² According to Larson's statement:

I asked [Paulos] to exit my Exterra but she was trying to drive away so I reached across her and removed the keys as she exited my vehicle and an officer arrived.

Finally, Larson told Officer Baca that Paulos was "trying to steal my car" as soon as Officer Baca arrived. Defts' MSJ at Ex. B at pp. 10-11 and 61. Thus, all of the admissible evidence contradicts Paulos on this issue.

In addition to trying to steal Larson's car, Paulos committed other serious crimes - or at least acted in a manner that necessitated further investigation. First, Paulos claims that "Baca testified he did not believe Ms. Paulos had not committed any crime at the time she got into and out of the gentleman's car." Pltf's Opp. at p.10:25-26. In truth, Officer Baca testified as follows:

Q: In terms of [Paulos's] situation you recall you drive up, do you believe a crime was taking place at that point in time?

² Exhibit S is the deposition of Brian Larson and is properly authenticated by the court reporter's certificate at the front. Exhibit T is Brian Larson's voluntary statement attached to this reply. The voluntary statement is authenticated in Larson's deposition attached as Exhibit S at p. 16.

1 A: At that point in time I don't know what had taken place.

2 Q: You come in contact with Ms. Paulos, prior to that had you talked to any
3 other individuals at the scene?

4 A: I was walking up, I remember [Larson] saying, She's trying to steal my
5 car and I tried to ask what was going on whether, she wasn't listening to me or
6 even acknowledging me and then she tried to grab my gun.

7 ...

8 Q: Before we get to that point, did you see [Larson] having her come out of
9 the car?

10 A: I don't recall.

11 Q: At that point in time had she committed a crime?

12 A: No.

13 *See Defts' MSJ at Ex. B at p. 61, ll:5-18 and p. 62, ll:7-12 (emphasis added).*

14 Just moments later Officer Baca elaborated:

15 Q: I'm asking you at the point in time when she turns around, first of all, has
16 she committed any crime at that point?

17 A: I don't know.

18 Q: And why don't you know at that point in time?

19 A: Because the investigation hadn't been conducted to what she - how she
20 was involved in anything other than [Larson] saying she's trying to steal my
21 vehicle.

22 *See Id. at p. 65:3-13.*

23 Thus, Officer Baca actually testified that he did not know whether a crime had been
24 committed because he had yet to conduct an investigation. However, he unequivocally testified
25 that he had reason to believe a crime had been committed and an investigation needed to occur.

26 Second, Paulos denies that she assaulted and resisted Officer Baca. She claims "it is not
27 clear on the video that Ms. Paulos attempted [to grab Officer Baca's gun]." Pltf's Opp. at p.4:1-
28 5. She further implies that Officer Swan, a traffic officer, needed to mention this fact in his
report to make it valid. *Id.* Amazingly, Paulos even disputes that she resisted Officer Baca's
attempts to handcuff her. These self-serving statements are not based on an actual recollection
but rather her "knowledge of myself." Defts' MSJ at Ex. A at p. 68. Paulos admitted on several

occasions she does not “know what occurred before I was placed on the ground.” *Id.* at pp. 79-80.

The video clearly shows Paulos lunging at Officer Baca and reaching toward his waist area. It also shows Paulos physically resist Officer Baca when he attempts to prevent her reach and tries to handcuff her. Defts’ MSJ at Ex. D at B 15:16:48 - 15:16:54. The United States Supreme Court has held that in ruling on a motion for summary judgment, a court may rely upon video surveillance even if it contradicts the non-moving party’s version of events. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

Next, Paulos’s repeated criticism that Officer Swan did not mention the criminal assault in his traffic citation is easily explained. Officer Swan is a traffic officer who investigates traffic violations. At his deposition, Officer Swan clearly explained that if Paulos assaulted Officer Baca, “it would have nothing to do with me.” Defts’ MSJ at Ex. H at pp. 33-34. He further explained that another detective would investigate such a crime. The fact that Officer Baca chose not to arrest or pursue Paulos for assaulting a police officer does not mean a crime did not occur.

3. Paulos’s Misrepresentation Regarding Officer Baca’s Use of Force

Paulos’s most egregious misrepresentation involves Officer Baca’s testimony regarding Paulos’s time on the asphalt. According to Paulos, “Baca conceded that he physically held Ms. Paulos on the hot asphalt even after she was controlled . . . [and that] he had no concern for placing Ms. Paulos on the hot asphalt.” Pltf’s Opp. at p3:22-23 and p.4:15-16. Thus, Paulos is representing to the court that Officer Baca “conceded” he “physically” continued to push Paulos into the pavement after she was handcuffed and had “no concern” for this action. Unsurprisingly, Paulos refuses to provide Officer Baca’s actual deposition testimony.

Q: Ofc. Baca, I want to focus back on the handcuffing. Once Ms. Paulos was handcuffed, we spent quite a bit of time about the security officer then got up and left at that point and time; is that correct?

A: Yes.

Q: Was she still yelling and screaming at that point in time?

A: I don’t know. I don’t have any memory of what happened right then.

1 Q: But she stays on the ground; is that correct?

2 A: She's on the ground, yes.

3 Q: And we see . . . Ms. Paulos is still on the ground at that point and time and
4 then you have other officers that arrive at that point.

5 A: Yes.

6 Q: Are you still holding her on the ground?

7 A: I believe *I am there*, yes.

8 Defts' MSJ at Ex. B at pp. 82-83 (emphasis added).

9 Thus, Officer Baca only conceded that he was physically "there" - i.e., present. He never
10 testified that he continued to hold her down on the pavement. The best evidence is the video that
11 shows Officer Baca squatting next to Paulos - but not touching her - after the handcuffing was
12 complete. Defts' MSJ at Ex. D at B 15:18:35. The video shows no physical contact between
13 Officer Baca and Paulos once the handcuffing is complete. *Id.*

14 With respect to Paulos's claim that Officer Baca had no concern for placing Paulos on the
15 pavement, he testified that his concern was controlling the "dynamic situation" and preventing
16 Paulos from harming anyone. Defts' MSJ at Ex. B at p.81, ll:3-10. Further, it is undisputed that
17 Officer Baca, out of concern for Paulos, wanted to handcuff her from a standing position and that
18 he only took her to the ground because she resisted. *Id.* at p. 89; Ex. D at B 15:16:58. Thus, the
19 only reason Paulos ended up on the pavement was due to her own violence and resistance - - not
20 due to Officer Baca's lack of concern.

21 **III. LEGAL ARGUMENT**

22 **A. THE DOCTRINE OF ISSUE PRECLUSION BARS PAULOS'S CLAIMS**

23 ***LVMPD Defendants' Summary Judgment Argument***

24 The LVMPD Defendants' motion for reconsideration, motion for summary judgment,
25 and supplement to motion for summary judgment establish that Judge Mahan's federal court
26 order found that Officer Baca acted reasonably under the circumstances. The order, in the
27 alternative, also found he is entitled to qualified immunity. The Ninth Circuit's affirmance of
28

1 Judge Mahan's order did not disturb Judge Mahan's reasonableness finding. Thus, issue
2 preclusion prevents Paulos from rearguing the reasonableness issues.

3 ***Paulos's Opposition***

4 According to Paulos, "LVMPD's arguments concerning issue preclusion are unavailing
5 because this Court has previously determined that the issue previously litigated in Federal Court
6 concerning Baca's use of force concern Qualified Immunity rather than reasonableness." *See*
7 *Pltf's Opp.* at p.9:10-13. Next, Paulos argues that the Ninth Circuit's affirmance of Judge
8 Mahan's order only concerned the issue of qualified immunity and "it did not find that
9 Defendants acted reasonable." *Id.* at p.9:26-27. As a result, Paulos makes the conclusory
10 statement that "issue of preclusion does not apply in this case." *Id.* at p.10:4-5.

11 ***LVMPD Defendants' Reply***

12 Paulos's first argument, that this Court has already decided the issue, ignores the fact that
13 the LVMPD Defendants' motion for reconsideration was timely filed and is properly before this
14 Court. The second argument, that the Ninth Circuit only affirmed Judge Mahan on the issue of
15 qualified immunity is also unpersuasive. The Ninth Circuit reviewed Judge Mahan's entire order
16 and never disturbed his reasonableness finding. Rather, the appellate court used its discretion
17 and affirmed on the issue of qualified immunity. In doing so, the appellate court never even
18 mentioned or addressed the reasonableness finding in the original order. Thus, Judge Mahan's
19 reasonableness finding remains undisturbed. *See Pearson v. Callahan*, 555 U.S. 223, 236-42
20 (2009) (courts have discretion to evaluate claims on either the reasonableness or the qualified
21 immunity issue). Further, if the Ninth Circuit believed issues of fact remained on the
22 reasonableness issue, it would be required to reinstate Paulos's federal law *Monell* claim against
23 LVMPD as that claim is not subject to qualified immunity.

24 In sum, it is undisputable that Judge Mahan found that Officer Baca's actions were
25 reasonable under the circumstances. Further, because the Ninth Circuit did not directly address
26 the reasonableness issue and did not reinstate the *Monell* claim against LVMPD, Judge Mahan's
27 reasonableness finding remains binding on this Court and this lawsuit must be dismissed.
28

1 **B. PAULOS'S NEGLIGENCE CLAIM FAILS ON THE MERITS AS**
2 **OFFICER BACA ACTED REASONABLY**

3 ***LVMPD Defendants' Summary Judgment Argument***

4 The LVMPD Defendants' second argument is that because Officer Baca acted
5 reasonably, Paulos's negligence claim fails as a matter of law. Specifically, the LVMPD
6 Defendants provided this court with multiple cases indicating that even if suspects are injured, it
7 is not unreasonable to take them to the ground if they are resisting arrest.

8 ***Paulos's Opposition***

9 Paulos's opposition purposefully attempts to minimize the seriousness of the situation she
10 created. According to Paulos, there was no need to use any force whatsoever as she was simply
11 a victim suffering from a mental episode. In fact, Paulos takes the ridiculous position that "a
12 reasonable juror could conclude that Baca used force because he had perceived that Paulos
13 disrespected his authority as a police officer which he turned her back to him and walked away
14 [...] (sic)." Pltf's Opp. at p.11:13-16. Paulos argues that she was not resisting Officer Baca but
15 "was suffering from a manic episode." *Id.* at p.11:17-28. In sum, Paulos is requesting that the
16 court ignore the video evidence, eye witness testimony, and even her own testimony (i.e., that
17 she thought Officer Baca was the devil) to reach a conclusion completely unsupported by the
18 record.

19 ***LVMPD Defendants' Reply***

20 Police officers are entitled to use reasonable force to detain and restrain resisting
21 suspects. Sometimes a suspect's physical resistance causes the suspect to suffer injuries. If the
22 officer acted reasonably under the circumstances, then summary judgment is appropriate.

23 Paulos's opposition argues that Officer Baca should not have used any force against her
24 because she was never suspected of a crime and was never a threat to anyone's safety. This
25 argument is ridiculous and demonstrates the weakness of Paulos's lawsuit. As set forth in the
26 LVMPD Defendants' summary judgment motion, a court examines an officer's use of force by
27 considering the governmental interest at stake and looking at: (1) the severity of the crime at
28 issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others;

1 and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight. *See*
2 *Graham v. Connor*, 490 U.S. 386, 397 (1989).

3 Paulos's opposition takes the position that Officer Baca has "conceded" that Paulos did
4 not commit any crimes. Pltf's Opp. at p.10:25-26. In addition, she disingenuously downplays
5 the fact that she, without provocation, lunged at Officer Baca and attempted to access his
6 firearm. In truth, Paulos's crimes and actions were very serious. Officer Baca arrived at the
7 scene of a multi-car accident and was immediately told by Larson that Paulos was "trying to
8 steal" his car. When Officer Baca attempted to investigate Larson's claim, Paulos assaulted him
9 and reached toward his firearm. Thus, it is undisputed that Paulos committed an assault on a
10 police officer in violation of NRS 200.471(2)(d). Paulos's argument that she had committed no
11 crime is absurd. Therefore, the first *Graham* factor is easily resolved in Officer Baca's favor.

12 Paulos also claims she was never a threat to the safety of anyone. She claims that Officer
13 Baca is misrepresenting facts "to make it appear that Ms. Paulos had committed a sever [sic]
14 crime and posed a threat to the officer's safety." She labels Officer Baca's testimony as "self-
15 serving" and not supported by the circumstantial evidence. Paulos's position is disingenuous.
16 Even ignoring Officer Baca's testimony, the circumstantial evidence is overwhelming that a
17 reasonable officer would have perceived Paulos as a threat. First, Paulos demonstrated a serious
18 lack of concern for others by causing two accidents and fleeing the scene. Second, she attempted
19 to steal Larson's vehicle and "drive away." Third, when Officer Baca attempted to talk to her
20 she assaulted him and reached toward his waist area. The video clearly shows her resisting and
21 fighting with Officer Baca. Officer Baca encountered a violent and resistant suspect and had just
22 seconds to determine how to control the dynamic situation. This prong is also easily resolved in
23 Officer Baca's favor.

24 Next, Paulos, in her opposition, argues that she was not resisting or evading Officer Baca.
25 The video clearly shows that she was. Most important is the fact the video shows Paulos
26 continuing to resist and struggle even after she is placed on the ground.
27
28

1 Finally, Paulos argues that her behavior should be excused because she “was suffering
2 from a manic episode.” Plt’s Opp. at p.11:17. She implies that because she claims to have been
3 suffering from a manic episode, that Officer Baca should have treated her differently. In support,
4 Paulos intentionally misleads this court by stating that Officer Baca knew she was suffering from
5 a mental episode because “Officer Baca expressed that Ms. Paulos was suffering from ‘excited
6 delirium’ and that at times, Ms. Paulos would be way up high and then all of a sudden she would
7 shut down and be totally quiet and complacent like she didn’t even know what was going on
8 around her.” *Id.* at p.11:17-28. In truth, there is no admissible evidence that Paulos was
9 suffering from a manic episode. During discovery, Paulos never identified a medical
10 professional or expert willing to testify that Paulos was suffering from a manic episode. The
11 only evidence on this issue is Paulos’s own self-serving hearsay testimony. Paulos testified that
12 she “was told” she was having a manic episode by some unknown person. Defts’ MSJ at Ex. A
13 at pp. 131-32. Further, Paulos’s claim that Officer Baca “expressed that Paulos was suffering
14 from ‘excited delirium’” and that she exhibited mood swings is false. Officer Baca specifically
15 testified he never suspected mental illness or excited delirium. Defts’ MSJ at Ex. B at pp. 54-55.
16 In addition, Paulos incorrectly suggests that traffic officer Swan also suspected mental illness on
17 August 7, 2011. According to Officer Swan, he assumed Paulos was intoxicated or using drugs
18 and only considered mental illness weeks later when her toxicology reports returned negative.
19 Defts’ MSJ at Ex. H at p. 41. In short, none of the officers suspected mental illness on the date
20 in question. Finally, it is unfair to claim that Officer Baca should have recognized, diagnosed,
21 and responded to Paulos’s alleged bipolar disorder during the six seconds he was in her presence
22 prior to her assaulting him.

23 After fairly evaluating the evidence, it is undeniable that Officer Baca had the legal right
24 to detain Paulos and use reasonable force. According to Paulos’s expert, the only issue is
25 whether Officer Baca acted reasonably in keeping Paulos on the ground after she was handcuffed
26 and after backup arrived. Defts’ MSJ at Ex. Q at p. 3 and Ex. R at pp. 50-53. Paulos’s
27 opposition does not specifically address this time period. The reason is because current law
28 supports Officer Baca’s actions.

In *Price v. County of San Diego*, 990 F.Supp. 1230 (S.D. Cal. 1998), officers took an erratically acting suspect to the ground on hot pavement. The officers left the suspect face down on the ground hogtied for several minutes. The suspect eventually died. The district court held that the officers' actions were not "ideal" but also that "the court cannot find that his action was unreasonable." *Id.* at 1241. The court stressed that struggle left the officers "tired" and that they "had to perform other tasks, such as calling for medical assistance, controlling onlookers, sundry and other tasks that law enforcement work involved." *Id.* More recently the Eleventh Circuit addressed this issue. In *Rubio v. Lopez*, 445 Fed. Appx. 170 (11th Cir. 2011), held that officers that "hobble-tied" a suspect on hot back asphalt on a July afternoon in Florida were protected by qualified immunity. *Id.* at 172-73. The court concluded that "not every reasonable officer would have known that the pavement was so hot that it would burn someone's skin." *Id.* at 174. Paulos's opposition never mentions or cites to either case. More importantly, Paulos fails to provide this court with a single case where any court found that leaving a suspect on pavement for several minutes after a violent struggle is unreasonable. In short, Officer Baca is entitled to summary judgment on Paulos's negligence claim on the merits.

C. DEFENDANTS ARE ENTITLED TO DISCRETIONARY IMMUNITY

LVMPD Defendants' Motion for Summary Judgment Argument

The LVMPD Defendants are also entitled to summary judgment because Officer Baca's decisions during the encounter were discretionary. As set forth in the LVMPD Defendants' motion, in order to strip Officer Baca of his state law discretionary immunity that Paulos must provide evidence that he acted in bad faith. Paulos has failed to do so.

Paulos's Opposition

According to Paulos, discretionary immunity does not apply because "the District of Nevada has determined that defendants' decision to use force are not the kind of decisions that the discretionary function exception was designed to shield." Pltf's Opp. at p.17:9-11 (citing *Huff v. N. Las Vegas Police Dep't.*, 2:10-cv-01394-PMP (GWF), 2013 WL 6839421, *10 (D. Nev. Dec. 23, 2013)).

LVMPD Defendants' Reply

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 of any officer, employee or immune contractor of any of these, whether or not the discretion involved is abused.” *See* NRS 41.032(2). Nevada’s discretionary-function statute mirrors the federal tort claims act. *See Martinez v. Maruszczak*, 123 Nev. 433, 168 P.3d 720 (2007). The Nevada Supreme Court looks to federal decisional law on the Federal Tort Claims Act (“FTCA”) for guidance on what type of conduct discretionary immunity protects. *Id.* at 123 Nev. at 444, 168 P.3d at 727 (citations omitted). The purpose of Nevada’s discretionary-immunity statute and the FTCA is to compensate victims of negligence by government actors the same way they would be compensated if the actors were private. *Id.* The Nevada Supreme Court has regularly held that a police officer’s decision on how to make a lawful seizure is protected by discretionary immunity under NRS 41.032. *See, e.g., Ortega v. Reyna*, 114 Nev. 55, 62, 953 P.2d 18, 23 (1998) (“[W]e conclude that the trooper is entitled to immunity with respect to the state-law claims against him . . .”).

In 2007, the Nevada Supreme Court adopted the federal *Berkovitz-Gaubert* test for determining what type of conduct is protected under discretionary immunity. The court adopted a two-part test, allowing discretionary-function immunity to apply when (1) the acts alleged to be negligent involved an element of individual judgment or choice; and (2) the decision is based on considerations of social, economic or political policy. *Martinez*, 123 Nev. at 446-447, 168 P.3d at 729. Notably, the Nevada Supreme Court explained in *Martinez* that “under Nevada law, some acts that do not involve an element of judgment or choice may also be entitled to immunity.” *Id.*, 123 Nev. at 445 168 P.3d at 728, n.35.

Since *Martinez*, the Nevada Supreme Court has held the decision of whether to detain is a discretionary function covered by NRS 41.032. *See Gonzalez v. Las Vegas Metro Police Dep’t.*, 2013 WL 7158415, *3 (Nev.S.Ct. Nov. 21, 2013) (“decision to arrest or detain [suspect on a

warrant] was part of a policy consideration” that invoked NRS 41.032). Further, the Nevada Supreme Court implied, before *Martinez*, that uses of force are covered by NRS 41.032. *See Maturi v. Las Vegas Metro Police Dep’t.*, 110 Nev. 307, 310, 871 P.2d 932, 934 (1994) (decision of how to handcuff discretionary). The Nevada Supreme Court has never specifically addressed whether use of force decisions are covered.

The Federal Torts Claims Act and Discretionary Immunity for Use of Force

The Nevada Supreme Court relies heavily upon federal law and the FTCA in determining what invokes discretionary-function immunity. *See Martinez*, 123 Nev. at 444, 168 P.3d at 727. It is presumed the Nevada Supreme Court would follow federal FTCA law on the issue. The FTCA itself specifically has a provision dealing with uses of force by law enforcement officers. *See* 28 U.S.C. §2680(h). The very existence of this provision indicates that uses of force by police officers fall within the discretionary immunity provision of the FTCA. And, federal courts regularly conclude the decisions regarding the amount of the force are discretionary in nature. *See Kaufman v. United States*, 84 F.Supp.3d 519, 528-29 (S.D. W.Va. 2015) (the discretionary-function exception to the FTCA barred assault and battery claim); *see also Medina v. United States*, 259 F.3d 220, 226 (4th Cir. 2001) (FTCA discretionary-function analysis applies to intentional uses of force); *Beremann v. United States*, 689 F.2d 789 (8th Cir. 1982); *Gray v. Bell*, 712 F.2d 490 (D.C. Cir. 1983), cert. denied, 465 U.S. 1100 (1984); *Redmond v. United States*, 518 F.2d 811, 816-817 (7th Cir. 1975) (“government has a duty to maintain law and order but how best to fulfill this duty is solely within the discretion of its officers”); *Torres-Dueno v. United States*, 165 F.Supp. 2d 71, 74-75 (D. Puerto Rico 2001) (manner in which an arrest was carried out was protected by discretionary exception immunity); *Priah v. United States*, 590 F.Supp. 2d 920, 929 (N.D. Ohio 2008), (held that discretionary-function exception barred any negligence claim when an FBI agent used deadly force, since deciding when and how to use force by police officers clearly balances public and social policy and safety concerns). *Alfrey v. United States*, 276 F.3d 557, 565-67 (9th Cir. 2002) (finding that correctional officers have discretionary-function immunity in determining how to respond to threats).

1 In short, the FTCA and federal courts agree that use of force is a discretionary act for
 2 which discretionary immunity applies. The Nevada Supreme Court has specifically stated it
 3 looks to the FTCA and federal interpreting case law on this issue. Therefore, it is almost certain
 4 that the Nevada Supreme Court would conclude use of force is a discretionary-function subject
 5 to Nev. Rev. Stat. §41.032 protections.

6 *The Ninth Circuit and Nevada's Discretionary Immunity Statute and Use of Force*

7 The Ninth Circuit, in published decisions, has held that Nevada's discretionary-function
 8 immunity statute immunizes officers for their uses of force except in limited circumstances. In
 9 *Terry v. Nevada Gaming Control Board*, 279 F.3d 873, 878 (9th Cir. 2002), the Ninth Circuit
 10 held the decision by gaming control agents to detain an individual and how to utilize force in
 11 doing so were protected by discretionary immunity. In *Davis v. City of Las Vegas*, 478 F.3d
 12 1048, 1059 (9th Cir. 2007), Judge Reinhardt of the Ninth Circuit held that discretionary
 13 immunity protected officers with respect to their use of force unless the officers' decisions were
 14 made in "bad faith." *Id.* at 1059. *See also Sandoval v. Las Vegas Metro. Police Dep't.*, 756 F.3d
 15 1154, 1168-69 (9th Cir. 2014) (how to perform a seizure is discretionary and subject to Nevada's
 16 governmental immunity unless seizure conducted in "an abusive manner as the result of the
 17 exercise of poor judgment.") Therefore, the Ninth Circuit has held that NRS 41.032 applies in
 18 use of force cases and only does not apply when evidence of "bad faith" exists.

19 *The Nevada District Court and Nevada's Discretionary-Function Immunity Statute and*
 20 *Use of Force*

21 The Nevada District Court is divided on whether NRS 41.032 applies to an officer's use
 22 of force. One group follows the Ninth Circuit's published decision in *Davis v. City of Las Vegas*
 23 and holds that an officer is immune unless his actions are attributable to "bad faith" or "willful
 24 disregard" of the suspect's rights. *See Diaz v. Wheeler*, 3:14-cv-0436-LRH-WGC, 2017 WL
 25 424862, *4 (D.Nev. Jan. 30, 2017); *Williams v. Las Vegas Metro Police Dep't.*, 2:13-cv-1340-
 26 GMN-NJK, 2016 WL 1169447, *6-7 (D.Nev. Mar. 22, 2016) (officer immune from state-law
 27 excessive force claim because no evidence of bad faith); *Jones v. Cnty. of Clark*, 2:13-cv-01002-
 28 RFB-VCF, 2015 WL 2185408, *4-5 (D.Nev. May 8, 2015) (officers immune from state-law

claims due to no evidence of bad faith); *Flores-Zelaya v. Las Vegas Metro. Police Dep't.*, 2:13-cv-01181-JAD-CWH, 2016 WL 697782, *13 (D.Nev. Feb. 19, 2016); *Jones v. Las Vegas Metro Police Dep't.*, 2:12-cv-01636-APG-CWH, 2014 WL 5793853, *7-8 (D. Nev. Nov. 6, 2014) (discretionary immunity protected the officers on a state-law battery and negligence claim because there was no evidence of bad faith or “willful or deliberate disregard” for the rights of the decedent); *Kelly v. Las Vegas Metro Police Dep't.*, 2:12-cv-02074, 2014 WL 3725927, *12-13 (D. Nev. July 25, 2014) (officers immune due to no evidence of bad faith); *Eastman v. City of North Las Vegas*, 2:07-cv-01658-RLH-RJJ, 2010 WL 428806, *7 (D.Nev. Feb. 1, 2010).

The second group in this district focuses on the second prong of the *Berkovitz-Gaubert* test and concludes that “the amount of force to use are not the kind of policy decisions the discretionary-function exception was designed to shield.” *See Huff v. North Las Vegas Police Dep't.*, 2:10-cv-01394-PMP-GWF, 2013 WL 6839421, *10 (D.Nev. Dec. 23, 2013)). Thus, this group has concluded that there is no discretionary immunity in use of force cases.

The purpose of discretionary-function immunity is to preserve independence of action without deterrence or intimidation by fear of personal liability of vexatious suits. Indeed, an officer confronted with a threat (such as the one confronted by Officer Baca) should not be second guessed for his decisions unless there is evidence of bad faith or willful disregard for the suspects rights. Thus, the issue is whether Officer Baca acted in good faith when he used his discretion to take Paulos to the ground when she advanced upon him aggressively and reached for his firearm. Judge Mahan and the Ninth Circuit’s decisions to grant summary judgment to Officer Baca on the federal law claims establishes that he did not act in bad faith or with willful disregard to Paulos’s rights. The fact that the federal court has already found that Officer Baca acted in good faith confirms that NRS 41.032 applies and he is entitled to discretionary immunity.

D. PAULOS CANNOT ESTABLISH CAUSATION

The LVMPD Defendants’ final argument is that Paulos cannot establish causation. Specifically, her own expert has testified that it was reasonable to keep Paulos on the ground for almost three minutes. Ex. D at B 15:17:02-15:19:50; Ex. R at pp.50-52. Thus, Paulos does not

1 dispute that it was proper to keep her on the ground for almost three minutes. Paulos's liability
2 medical experts have testified that her burns occurred within 30 seconds. *See* Ex. O at p.14; Ex.
3 P at p.39. Therefore, her burns occurred during the time period that Paulos's own expert testified
4 would be reasonable.

5 **IV. CONCLUSION**

6 Based upon the above, the LVMPD Defendants motion for reconsideration and/or motion
7 for summary judgment must be granted.

8 Dated this 25 day of July, 2017.

9 MARQUIS AURBACH COFFING

10 By 

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

001646
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001646

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS LVMPD AND OFC. BACA'S**
REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
 was submitted electronically for filing and/or service with the Eighth Judicial District Court on
 the 25th day of July, 2017. Electronic service of the foregoing document shall be made in
 accordance with the E-Service List as follows:³

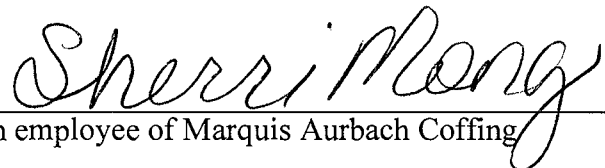
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I further certify that I served a copy of this document by mailing a true and correct copy
 thereof, postage prepaid, addressed to:

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³ 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).

Exhibit S

BRIAN LARSON

9/3/2014

1 CERTIFICATE OF REPORTER


2
3 STATE OF NEVADA)
4) ss.
COUNTY OF CLARK)

5 I, Gina J. Mendez, a duly commissioned Notary
6 Public, Clark County, State of Nevada, do hereby
7 certify: That I reported the taking of the deposition
8 of the witness, BRIAN LARSON, commencing on Wednesday,
9 September 3, 2014 at 2:00 o'clock p.m.;

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

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

21 IN WITNESS WHEREOF, I have hereunto set my
22 hand in my office in the County of Clark, State of
23 Nevada, this 12th day of September, 2014.

24 
25 /s/ Gina J. Mendez
Gina J. Mendez, CCR No. 787

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CRISTINA PAULOS, an individual.) CASE NO.:
2:13-cv-01546-JCM-PAL
Plaintiff.)
v.)
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 BRIAN LARSON

Taken on Wednesday, September 3, 2014

at 2:00 p.m.

at 630 South Fourth Street

Las Vegas, Nevada

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

Thereupon --

BRIAN LARSON,

being first duly sworn to tell the truth, the whole
truth and nothing but the truth, was examined and
testified as follows:

EXAMINATION

BY MR. BROWN:

Q. Will you please state your name for the record.

A. My name is Brian Paul Larson.

Q. Mr. Larson, is it all right if I call you Brian?

A. Absolutely.

Q. Have you ever given a deposition before?

A. I have not.

Q. I'm going to run through some of the ground rules
how to expect to proceed here today.

A. Okay.

Q. The oath that you just took is the same you'd
take in a court of law. There might not be a judge
sitting with us, but it's no different than if we were
in a courtroom. So with that I encourage you to be
forthright and honest in all of your answers.

Do you understand?

A. Yes, I do.

Q. The court reporter to my left, to your right is

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INDEX

WITNESS	PAGE
BRIAN LARSON	
Examination by Mr. Brown	3
Examination by Mr. Anderson	17
Examination by Mr. Blut	21

EXHIBITS

(None marked.)

making a verbatim record of everything we say here
today. So along with things like that as a courtesy to
her and so the record is clear I'm going to ask you not
to speak over me and I'll exchange you the same
courtesy. So let me finish my question or any of the
other attorneys before you answer. Sometimes in daily
conversation we tend to anticipate what the other one is
asking and we kind of jump in.

So along with that I need you to verbalize your
answers, no uh-huhs or uh-uhs or head shakes. If I ask
you after you answer if that's a yes or a no, I'm not
trying to be rude, I'm just trying to get some
clarification on what your response was, all right?

A. Yes.

Q. Today we might be talking about measurements or
numbers, do you know the difference between an estimate
and a guess?

A. Yes, I do.

Q. Just for clarification the way I usually explain
it is if I ask you to estimate this table sitting in
front of us, you can use your knowledge and observe and
tell us it's eight or 10 feet long. Now if I ask you to
tell me how big the table is in the upstairs conference
that'd be a guess because you've never seen it. So is
that reference clear to you?

1 A. I understand, yes.
 2 Q. If for some reason you don't understand my
 3 question, let me know, I'll be happy to rephrase it. If
 4 you do answer my question, I'm going to assume that you
 5 understood it to begin with, all right?
 6 A. Yes.
 7 Q. If you need to take a break at all just let me
 8 know. The only thing is I ask it's not while a question
 9 is pending, this isn't a marathon, but I don't
 10 anticipate we'll be here very long.
 11 Have you consumed any alcohol in the last 24
 12 hours?
 13 A. Yes, I have.
 14 Q. Have you consumed any alcohol in the last 10
 15 hours?
 16 A. No, I have not.
 17 Q. When was the last drink you had, last night?
 18 A. Yes, I was golfing yesterday and I had three
 19 cocktails on the golf course.
 20 Q. Anything that would clear your memory or ability
 21 to testify here today?
 22 A. No.
 23 Q. Have you taken any prescription drugs in the last
 24 24 hours?
 25 A. Yes.

1 Q. And you said you just moved there?
 2 A. We recently moved to that house, yes.
 3 Q. Who's we?
 4 A. Myself and Chanda who is my current girlfriend
 5 hopefully to be wife.
 6 Q. Good luck.
 7 A. Thanks.
 8 Q. What is Chanda's last name?
 9 A. Chanda Ziggler.
 10 Q. Z-i-g-g-l-e-r?
 11 A. I do believe that is correct.
 12 Q. What's your current telephone number?
 13 A. (702) 296-4371.
 14 Q. Have you reviewed any documents in preparation
 15 for your deposition here today?
 16 A. Only what I was given the other day which was to
 17 go over that I'm required to come here on this day.
 18 Q. Subpoena?
 19 A. Yes.
 20 Q. Have you spoken with anybody about your
 21 deposition here today?
 22 A. No, I have not.
 23 Q. Did you graduate high school?
 24 A. Yes, I did.
 25 Q. Where at?

1 Q. What would those be?
 2 A. I cannot remember the exact names but one is for
 3 my heart and one is for my blood pressure.
 4 Q. Nothing that affects your faculties, though?
 5 A. No.
 6 Q. Is there any reason that you feel you cannot
 7 fully give your clear and concise testimony today?
 8 A. No.
 9 Q. Is there any other names that you've been known
 10 by?
 11 A. No.
 12 Q. What's your date of birth?
 13 A. May 8th, 1973.
 14 Q. Where were you born at?
 15 A. Louisville, Kentucky.
 16 Q. How long have you been in Las Vegas?
 17 A. I moved here in 2001.
 18 Q. Are you currently married?
 19 A. I am not.
 20 Q. Do you have any children?
 21 A. I do not.
 22 Q. What's your current residence or address?
 23 A. Let me take a look because I just moved.
 24 Q. Go ahead.
 25 A. 8045 Caspian Moon Drive, Las Vegas, Nevada.

1 A. Ortonville High School in Ortonville, Minnesota.
 2 Q. What year?
 3 A. I graduated in 1991.
 4 Q. Did you attend any college afterwards?
 5 A. I did. University of Minnesota and then I moved
 6 to a technical school which was called Music Tech for
 7 audio engineer.
 8 Q. Did you receive a degree or certificate?
 9 A. Two-year degree, yes, associate's degree.
 10 Q. In audio engineering?
 11 A. Yes.
 12 Q. Any other post-high school education?
 13 A. No.
 14 Q. Do you have any military background?
 15 A. Yes.
 16 Q. What branch?
 17 A. Army and National Guard.
 18 Q. What was your rank when you were — well, were
 19 you honorably discharged?
 20 A. Yes.
 21 Q. What was your rank at discharge?
 22 A. I believe I was an E-3.
 23 Q. Do you have any knowledge as to why you were
 24 subpoenaed for deposition here today?
 25 A. I have a belief.

1 Q. What's that belief?

2 A. I believe it was from the accident that took
3 place back in 2011 at the Palms.

4 Q. Do you know about what time frame in 2011?

5 A. I know only due to the fact that I was contacted
6 earlier that it was August 7th, I believe.

7 Q. What do you recall happening on August 7th, 2011
8 with regards to this incident you described?

9 A. I was there to pick up my brother who was working
10 at the casino, I went through valet area to pick him up.
11 We continued to leave and we were going to take a left
12 on Flamingo, we were waiting at the red light and then
13 unfortunately there was a very quick accident that took
14 place in front of us which it looked like it included
15 more than myself as far as the vehicles that were
16 involved in the accident.

17 Q. And by quick accident in front of you, what do
18 you recall seeing when you're sitting at the light?

19 A. Meaning that I didn't see a lot of the vehicle
20 coming at me, it was very quick, I'm sure we were both
21 looking to the left and to the right just waiting for a
22 green light and talking, you know, sitting with a
23 relative that you haven't seen in a while and then it
24 was very instance where it seemed as though it may have
25 slowed down, but obviously there was an accident or

1 about obviously that there were more people in the car,
2 it was hard to see.

3 Q. The car that struck you?

4 A. The car that struck me, yes. Took a look at the
5 car to make sure that there was nobody in it. It looked
6 like there might have been a child in the back, but it
7 was mainly it looked like clothing and then I walked
8 back to my vehicle and basically waited.

9 There was no police officers or anything that had
10 really come out yet at the moment and the driver who
11 came and hit me and I think -- and then I started to
12 realize there were a couple other cars that were
13 involved that left and there was a certain amount of
14 time, I'm not sure how long it was, but then the driver
15 she came back to our area and I do believe this was
16 right after the police had just arrived and were
17 checking to see what was going on.

18 But unfortunately she did enter my Xterra which
19 was standing there which scared me a bit and then at
20 that point I just reached in, grabbed the keys from my
21 Xterra and then walked away and sat on the side and then
22 just kind of started looking at what was going on.

23 Q. So it was a female that was driving this other
24 car?

25 A. Yes, it was.

1 somebody hit me head on.

2 Q. You were waiting at a red light, correct?

3 A. Yes, I was.

4 Q. And does only one car strike your vehicle?

5 A. Yes, only one car struck my vehicle.

6 Q. Do you recall what kind of vehicle it was?

7 A. It was an older four-door, I cannot remember the
8 exact type it was. I was guessing it was probably about
9 six to 10 years old, I mean, I'm just kind of
10 remembering what it looks like.

11 Q. Sedan? Station wagon?

12 A. I would say it was a sedan.

13 Q. Do you remember what color?

14 A. No. There was a lot of smoke right at that
15 moment.

16 Q. So you're sitting in what would be the northbound
17 direction, correct?

18 A. Yes.

19 Q. And this vehicle hits you, then what happens?

20 A. Immediately we were very surprised, exited our
21 vehicle. My brother who was with me in this accident
22 who is James Larson left the area, was very afraid of
23 it, there was a lot of smoke. I saw the driver leave
24 the area right after the accident. I saw the smoke, I
25 moved forward towards the car because I was worried

1 Q. So you get out, you go and check, make sure that
2 nobody is in the other car, your brother basically takes
3 off because who knows what can happen danger-wise
4 perhaps and this woman leaves the area and then comes
5 back and gets into your car?

6 A. That is correct.

7 Q. Did she say anything to you?

8 A. She didn't say anything that I recall at the
9 moment, but she seemed very either excited or I can
10 understand very scared. I was worried about her well to
11 be because obviously just had an accident.

12 Q. Which side of your vehicle did she get into?

13 A. Driver's side.

14 Q. Do you know this woman's name?

15 A. Unfortunately, I do not remember the name.

16 Q. Do you say anything to her when she gets in your
17 car and you take your keys out?

18 A. I do believe that when I reached in I just said,
19 Excuse me, and then removed my keys and walked away.

20 Q. Where do you go when you walk away?

21 A. Directly across basically where -- kind of where
22 the grass is right to the left of where you have to go
23 across to the other lane and at that point that was
24 obviously when the officers arrived and I just kind of
25 basically walked I guess to the left or west from where

1 I was parked.
 2 Q. Could you estimate how long between the time of
 3 the impact with this driver's car and the police showing
 4 up elapsed?
 5 A. This would be a guess and I would guess within
 6 five minutes.
 7 Q. Fairly soon?
 8 A. Yes.
 9 Q. Did you call the police?
 10 A. No, I did not.
 11 Q. Do you know who did?
 12 A. No, I do not.
 13 Q. And you said she was acting very excited?
 14 A. She seemed as though she had just been in an
 15 accident, but, yes, she seemed very excited and I
 16 completely understand.
 17 Q. Visibly shaken I guess?
 18 A. Yes.
 19 Q. Was she shaking that you noticed?
 20 A. There was a lot of -- basically it was hard for
 21 me to understand what she was saying, I don't remember
 22 exactly what it was, but she seemed very excited or very
 23 afraid or very scared. She was saying a lot of things
 24 very loud and I believe that that was probably why I
 25 originally was worried when I saw something in the back

1 A. Not that I recall. I'm sure I talked to a couple
 2 of people.
 3 Q. But nothing in particular?
 4 A. Not that I recall.
 5 Q. Did you ever observe any action between the woman
 6 driver of the car and Metro's police officers?
 7 A. Not really. Unfortunately, I was still trying to
 8 get a hold of my brother who ran into the casino and
 9 then obviously started to realize that there was more
 10 than just one vehicle than my own that were involved in
 11 this and it was blocking the traffic and so I was just
 12 trying to see what was going on.
 13 Q. Do you recall -- did you hear any conversations
 14 between any Metro officers or Palms security?
 15 A. No, I do not.
 16 Q. Did you go off to look for your brother at this
 17 point?
 18 A. No, my brother did then walk out with the rest of
 19 his staff and we had a couple, obviously, conversations
 20 as I was sitting back then closer to the casino by the
 21 valet area and trying to start to explain what just took
 22 place.
 23 Q. Was your brother present when this woman got in
 24 your car?
 25 A. No.

1 of that vehicle that there might have still been a child
 2 or something in there. I guess that's kind of how it
 3 appeared.
 4 Q. And when you say you couldn't understand her was
 5 she coherent?
 6 A. Coherent, but very excited and speaking very
 7 quickly.
 8 Q. Was she speaking English?
 9 A. Yes, I do believe.
 10 Q. So what happened -- what do you observe -- strike
 11 that.
 12 The cops show up, do you speak to the Metro
 13 officers who arrived?
 14 A. Briefly and I do not recall who or male or female
 15 that I discussed originally and just basically asked, Do
 16 you know what had just happened, and also I think that
 17 was about the same time when she had jumped into my
 18 vehicle and then was leaving and so -- it was very -- a
 19 lot going on at the same time.
 20 Q. A lot of commotion?
 21 A. Yes.
 22 Q. Do you recall seeing Palms security arrive?
 23 A. I know that they were there, but I don't know
 24 exactly what time they arrived.
 25 Q. Did you speak to any Palms security officers?

1 Q. Is it fair to say sort of after this incident
 2 occurs Metro arrives, you kind of gather yourself and
 3 you're off to the side and you give whatever statements
 4 to the police officer you talked to and that's all you
 5 remember?
 6 A. That is pretty correct, yes.
 7 Q. Did you suffer any injuries in the accident?
 8 A. No, I did not.
 9 Q. Is there any other information or events that
 10 stick out in your mind that I haven't asked you about
 11 with regards to this incident?
 12 A. Not that I can think of right now.
 13 Q. No other conversations with anybody at that time?
 14 A. Spoke with a few people around the area. There
 15 were two other people that witnessed this and I
 16 unfortunately cannot find their information. I kept,
 17 obviously, when I'd filled out everything with the
 18 officers and I still had some of that information and I
 19 was looking for those two people that I had contact
 20 with, but I unfortunately couldn't find that.
 21 Other than that I was doing my -- whatever I had
 22 to do with the police officers, hung out with my
 23 brother, waited until all was said and done. My vehicle
 24 I was still able to drive so it didn't have to be towed
 25 and then basically I went and parked real close by and

1 hung out with my little brother.

2 Q. How long would you say it was from the time of
3 the incident -- until the time you were able to leave
4 the property?

5 A. I would have to guess right now and I would say
6 that was probably an hour and a half.

7 Q. And in that hour and a half you didn't see any
8 interaction between this woman driver and any other Palm
9 staff or Metro, fair?

10 A. Not that I recall, no.

11 Q. Have you understood all of my questions today?

12 A. Yes, I have.

13 Q. And everything you've testified is true and
14 correct to the best of your knowledge, correct?

15 A. Yes.

16 Q. I will then pass you off to the next counsel if
17 anybody would like to ask questions?

18 MR. ANDERSON: Hey, Elliott, it's Craig, do
19 you mind if I go?

20 MR. BLUT: Go.

21 EXAMINATION

22 BY MR. ANDERSON:

23 Q. So where are you located the first time you see a
24 Metro officer arrive?
25

1 running at that point and then that was when I really
2 kind of got excited and then I believe either arrested
3 her or detained her from moving.

4 Q. Did you see any physical contact between the
5 officer and Ms. Paulos?

6 A. Other than when they tried to stop her from
7 running around, I guess, no.

8 Q. Did you ever see Ms. Paulos taken to the ground
9 by any police officers?

10 A. Not that I recall.

11 Q. Did you ever personally see Ms. Paulos on the
12 ground at any time?

13 A. I do believe so, yes.

14 Q. Where was she located?

15 A. Over kind of where the grass I believe is over
16 across the street.

17 Q. Was she moved away from her vehicle at that time?

18 A. Yes, I do believe so.

19 Q. And when you say on the ground, was she sitting,
20 lying?

21 A. That I would be guessing at this point.

22 Q. But she was in a grassy area at that point?

23 A. Yes.

24 Q. How far away from her were you at that point?

25 A. I would guess 50 feet.

1 A. I believe I was standing next to my Xterra.

2 Q. And when you saw the officer where was he coming
3 from?

4 A. If I recall correctly, and this is a guess, I
5 think that person came in from the west side trying to
6 take kind of a little bit of a right and then stopping
7 pretty close to that, that's what I'm guessing.

8 Q. So you saw him in a vehicle?

9 A. Yes.

10 Q. So you saw a Metro vehicle arrive?

11 A. Correct.

12 Q. Did you see an officer exit the vehicle?

13 A. I do not recall who he was, but I'm guessing it
14 was a male officer.

15 Q. Did you see any officers have contact with -- if
16 I refer to the female as Paulos, can you for purposes of
17 this deposition agree that that's the female who was in
18 the car that struck you?

19 A. Yes.

20 Q. Did you see any officers have contact with
21 Ms. Paulos?

22 A. After I removed my keys from the Xterra was when
23 I do believe that I saw her and an officer together.

24 Q. What did you see occurring between the two?

25 A. I believe that the officer stopped her from

1 Q. Could you hear her talking?

2 A. Not well, there were many people around.

3 Q. So do you have any knowledge of any of the
4 conversations that were going on between Ms. Paulos and
5 the individuals standing around her?

6 A. No.

7 Q. Did you ever see her on the ground in front of
8 her vehicle on the asphalt?

9 A. No.

10 Q. Did you ever see her receive any medical
11 attention?

12 A. Not that I recall.

13 Q. Were you ever asked by any police officers to
14 assist in the matter as far as controlling Ms. Paulos?

15 A. No.

16 Q. When you were 50 feet away from Ms. Paulos,
17 roughly, and she was sitting on the lawn, did you have a
18 good view of her body?

19 A. No.

20 Q. Did you ever see any physical injuries on
21 Ms. Paulos?

22 A. Not that I recall.

23 Q. Did you ever see an ambulance arrive?

24 A. Not that I recall.

25 Q. So you never saw her taken away or leaving the

1 scene; is that fair?

2 A. Yes, that is fair.

3 Q. And you talked to a police officer after this
4 occurred where they just took down your statement?

5 A. Correct, yes.

6 MR. ANDERSON: That's all I have.

7 MR. BROWN: Elliot?

8 MR. BLUT: I would love to have some
9 questions for this gentleman. I guess I'll just ask you
10 one question, Mr. Larson.

11 EXAMINATION

12 BY MR. BLUT:

13 Q. Before you saw Ms. Paulos, that's my client, in
14 that grassy area and starting from when the police
15 officer and her first made contact, can you recall
16 anything she may have said in that time frame?

17 A. Can you say that again.

18 Q. Sure. From the time the police officer and
19 Ms. Paulos have their first interaction that you saw,
20 and I think you said you stepped away, from that point
21 until you saw her on the grassy area did you hear
22 anything she may have had to say?

23 A. Not that I recall, no.

24 MR. BLUT: That's all I have. Thank you.
25

1 MR. BROWN: I think that's all. Thank you
2 for your time.

3 (Thereupon, the deposition
4 concluded at 2:21 p.m.)

5 * * * * *

1 CERTIFICATE OF REPORTER

2
3 STATE OF NEVADA)

) ss.

4 COUNTY OF CLARK)

5 I, Gina J. Mendez, a duly commissioned Notary
6 Public, Clark County, State of Nevada, do hereby
7 certify: That I reported the taking of the deposition
8 of the witness, BRIAN LARSON, commencing on Wednesday,
9 September 3, 2014 at 2:00 o'clock p.m.;

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

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

21 IN WITNESS WHEREOF, I have hereunto set my
22 hand in my office in the County of Clark, State of
23 Nevada, this 12th day of September, 2014.

24 /s/ Gina J. Mendez

25 Gina J. Mendez, CCR No. 787

Exhibit T

Page 1 of 2

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

Event #

110807-2714

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>VEHICLE ACCIDENT</u>	Date Occurred <u>8-7-11</u>	Time Occurred <u>1515</u>
Location of Occurrence <u>FLAMINGO / PALMS WINNER WAY LV, NV 89103</u>	Sector/Beat <u>51</u>	<input type="checkbox"/> City <input checked="" type="checkbox"/> County

Your Name (Last / First / Middle)

BRIAN LARSON BRIAN PARR

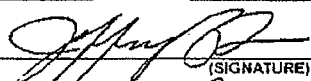
Race <u>Caucasian</u>	Sex <u>M</u>	Height <u>5' 10"</u>	Weight <u>225</u>	Hair <u>Brown</u>	Eyes <u>Brown</u>	Work Schdl. (Hours) <u>VARIES</u>	(Days Off)	Business / School <u>PRG</u>
Residence Address: (Number & Street) <u>5778 WIND DANCER DR.</u>		Bldg./Apt.# <u>10</u>		City <u>LAS VEGAS</u>		State <u>NV</u>		Zip Code <u>89118</u>
Bus. (Local) Address: (Number & Street) <u>6454 S. VALLEY VIEW</u>		Bldg./Apt.# <u>3</u>		City <u>LAS VEGAS</u>		State <u>NV</u>		Zip Code <u>89118</u>
Best place to contact you during the day		Best time to contact you during the day		Can You Identify the Suspect?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

DETAILS

Picked up my brother Jayuz @ the Palms main entrance. Waiting at the stop light to turn right on Flamingo. A green vehicle turned towards me from S-10 mph but I did not see it right away as I was looking @ the cab driver to my left. The green vehicle hit me head on. My brother ran away from the Xterra as the front of the green car was smoking. I ran to the driver's side and a female exited the car & ran towards the Palms. She returned to the green car & I asked if anyone else was in the car. She grabbed her apple w/prop & left again. 5 min later she was still very scared. She jumped in the drivers seat of

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

Witness/Officer:



(SIGNATURE)

Witness/Officer:

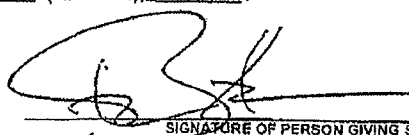
J. SWAN

(PRINTED)

P# 7313

LVMPD 65 (REV. 6-08)

SIGNATURE OF PERSON GIVING STATEMENT

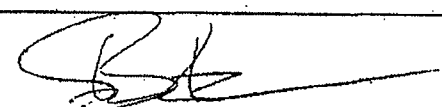


LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT CONTINUATIONPage 2 of 2Event #: 110807-2714

MY ETERRA. I ASKED HER TO EXIT MY
YTERA BUT SHE WAS TRYING TO DRIVE
AWAY SO I REACHED ACROSS HER & REMOVED
THE KEYS. AS SHE EXITED MY VEHICLE
AN OFFICER ARRIVED. SHE WAS STILL VERY
SCARED OR ACTING ODD. SHE MAY HAVE
BEEN ON ALCOHOL OR DRUGS.

Witness: Witness: J. SWAN 7303

LVMPD 88 (REV. 3-01)


BRIAN LARSON

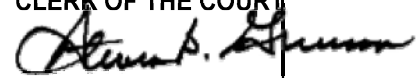
SIGNATURE OF PERSON GIVING STATEMENT

PRINT NAME OF PERSON GIVING STATEMENT

42

42

1 RTRAN



2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 CRISTINA PAULOS,
9 Plaintiff,

CASE#: A716850

DEPT. XXXII

10 vs.

11 FCH1 LLC, et al,

12 Defendants.

13 BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE
14 THURSDAY, OCTOBER 19, 2017

15 **RECORDER'S TRANSCRIPT OF HEARING**
16 **DEFENDANTS LVMPD AND OFC. BACA'S MOTION**
17 **FOR SUMMARY JUDGMENT**

18 APPEARANCES:

19 For the Plaintiff: ELLIOT S. BLUT, ESQ.

20
21 For the Defendants: JUSTIN W. SMERBER, ESQ.
22 FCH 1 LCC and
JEANNIE HOUSTON

23 For the Defendants: CRAIG R. ANDERSON, ESQ.
24 LVMPD and AARON BACA

25 RECORDED BY: CARRIE HANSEN, COURT RECORDER

1 Las Vegas, Nevada, Thursday, October 19, 2017

2 [Case called at 10:25 a.m.]

3 THE LAW CLERK: Case number A716850.

4 MR. BLUT: Good morning, Your Honor. Elliot Blut for the
5 plaintiff.

6 MR. ANDERSON: Good morning, Your Honor. Craig
7 Anderson on behalf of the police department and Officer Baca.

8 MR. SMERBER: Good morning, Your Honor. Justin
9 Smerber of the Moran law firm on behalf of the defendants Jeannie
10 Houston and FCH1 LLC, which is the Palms.

11 THE COURT: Okay. You can have a seat and relax. Mr.
12 Blut, I'm going to give you a little soliloquy that you probably didn't
13 expect. And, however, it is the one I need to give you. And it's just
14 – let me see how I can say this. The thing about lawyering and now
15 judging for me for six-and-a-half years is it should always be an
16 evolution. In other words, I don't know what the other judges
17 around here would say, but for me, probably by the time if I'm lucky
18 enough to make it 20 years, I'll sort of almost know what I'm doing
19 and then retire. You know, because you learn something along the
20 way and you evolve.

21 You know, I do find it entertaining that there's this
22 conventional wisdom that I see sometimes in the judicial corps and
23 amongst lawyers, that somehow if you do criminal cases, that
24 makes you a little bit more legitimate than those that do civil. I'm
25 here to tell you that, in my view, the amount of civil law on its face

1 and the different paths it takes you on, it's the type of stuff that I
2 think for lawyers and judges, involves your mind at such a level that
3 it makes it more difficult than I think any other area of law. That's
4 just what I think.

5 So what I'm getting to is recently, on October 5th, the
6 Nevada Supreme Court affirmed a decision that I made in a reported
7 decision of 20 – I don't know how many pages it is. It's pretty
8 long, though, 20 pages. And that decision had to do with the idea
9 of the *Five Star* case, the idea of preclusion. And we know there's
10 claim and issue preclusion in Nevada. But, you know, if you're me
11 and you're sitting around one day and, you know, you're number
12 one on the hit list of the advanced opinions and it happens to be a
13 20 page affirmance, not a bad day for you as a judge, really. You
14 know, I've had the other happen. So I'm not perfect. But, the point
15 of it is, I looked at that and I looked at your case here and I thought
16 about it and I'm here to tell you, behind the scenes, and my law
17 clerk can tell you, you know, there's been some effort put into this.
18 I've thought about it at home a couple times in light of the decision
19 that just came out.

20 And anyway, what I'm getting to is I think I should have
21 done something different the first time around. If we look at Judge
22 Mahan's order, and really that's the thing, Judge Mahan's order, as
23 you know, as I – in the past when I dealt with this, I've
24 distinguished Judge Mahan's order in a specific way. We know how
25 I did it. But really, it was actually the recent pleadings that came to

1 my attention in this motion, you know, continued on.

2 As you know, there was a motion for reconsideration that
3 had been briefed but never decided. If you look at the
4 reconsideration pleadings, in part they bring up this idea of the
5 *Graham* factors. And so, it seems like the parties in our case, that is
6 all the lawyers here in the courtroom today, engaged themselves in,
7 you know, in a reconsideration motion posture, telling me and us in
8 Department 32 here how the *Graham* factors work and how they
9 would apply, you know, here.

10 And so, that caused me to look at what Judge Mahan did
11 more. And it occurred to me that though I found a bit of a technical
12 distinction the first time I dealt with this, given that the
13 reconsideration pleadings want me to engage myself in a *Graham*
14 factors analysis, and given that I had this affirmance and it made me
15 think, you know, I need to really, you know, if my case is going to
16 be one of the ones that now is used to talk about these, you know,
17 preclusion and what have you, you know, I need to make sure I
18 follow that standard the best I can.

19 Anyway, if you look at Judge Mahan's order, he does
20 make specific findings on *Graham*, the case *Graham*. And though he
21 might have made it as I first found for one legal reason, he did make
22 all these findings. And so, I think, and of course you're going to tell
23 me not to do this and you're going to want to tell me why I
24 shouldn't now change my mind, but it seems like it's pretty square
25 that the Federal Court decided the issue under *Graham*. And so,

1 what I'm getting to is I think – well, there's no other way to say it.
2 You know, when you file a motion for reconsideration, the idea is
3 you're saying to a court, given that there's no real new law or
4 anything, you're saying that the prior decision was erroneous. I'm
5 not afraid to say it. My prior decision, I think, was erroneous. I
6 made a mistake.

7 That's why we have a reconsideration procedure. I think I
8 should have done something different, and so it could be this is a
9 defense motion here today, it could be you guys don't want to say a
10 whole lot or it could be that maybe more specifically Mr. Anderson,
11 you don't want to say a lot. But, that's the way I do see it going
12 into our hearing today. But, Mr. Anderson, let me stop talking and
13 just turn it over to you since it's your request in reconsideration.

14 MR. ANDERSON: Based upon what you said, Your Honor,
15 I'm fine resting on the pleadings. I would, you know, if there's
16 something I need to reply to after Mr. Blut is done, I'd be more than
17 happy to address it. Thank you.

18 THE COURT: Okay, fair enough. Mr. Blut?

19 MR. BLUT: Well yes, Your Honor. Just on that specific
20 point that for the issue preclusion it has to be necessary to the
21 findings. And so the findings that Judge Mahan made, he then
22 shifts gears, and I mean, I don't – we all know what it says.

23 THE COURT: Yeah.

24 MR. BLUT: But he then shifts gears and where he grants
25 the summary judgment is he says, the Court finds Officer Baca to

1 not violate a clearly established right and qualified immunity applies
2 to him and the police defendants on the claim.

3 THE COURT: Yeah.

4 MR. BLUT: And so, it also has to be that the other
5 findings in his order are not appealable because they have nothing to
6 do –the Ninth Circuit is not going to let you appeal findings that are
7 made that are not necessary to the decision.

8 So I understand what you're saying. I've read the decision
9 many times myself. But it's not – I think if it's actually and
10 necessarily litigated. And so, it wasn't necessary to the qualified
11 immunity decision. And I think that's the distinction that's important,
12 because he doesn't – whereas Judge Mahan talks about the *Graham*
13 factors, he doesn't say based on the *Graham* factors I'm giving you
14 summary judgment.

15 THE COURT: But he does make specific findings as to
16 each and every one of the factors on a number of pages here.

17 MR. BLUT: Sure, but those issues were not – as I say, it
18 was not necessary to his decision. He even says it's not necessary
19 to his decision. Right? Because he says well, even if I don't find
20 that, I'm going to find something else. And so he specifically says,
21 I'm not basing my decision on this. And I think that's the distinction
22 that you're looking for me to bring up.

23 THE COURT: Okay. Fair enough.

24 MR. ANDERSON: Briefly, Your Honor, I could, you know, I
25 – I've done this for a long time. And when you're dealing with

1 qualified immunity, a judge can make a decision on whether the
2 force used was reasonable or whether qualified immunity applies or
3 both.

4 I'll go to Exhibit 2 of their motion, which is Judge Mahan's
5 order. And that's just for the page referrals. On page 13, he
6 specifically finds that the force was reasonable. And then when he
7 goes to the qualified immunity analysis – now, qualified immunity
8 applies if an officer violated the Constitution. The officer can then
9 say, but the law regarding that use of force was not clearly
10 established. And what he says is even if Officer Baca used
11 excessive force, so it's an alternative argument.

12 Where this is put to rest is in Section 3 of Judge Mahan's
13 order, which is called a Monell claim. It's a claim against the police
14 department. Section 1983 claims are against the individual officer.
15 The department cannot be responsible. The department can only be
16 responsible for an officer's action under Section 1983 if it has a
17 custom, policy or practice. Now, if an officer violated the
18 Constitution, but is granted qualified immunity, the Monell claim as
19 it's called, the municipality claim, would go forward.

20 Here Judge Mahan says in one paragraph, here the Court
21 has already – when it's addressing the Monell claim – here the Court
22 has already determined that LVMPD officers did not violate Paulos'
23 Fourth Amendment right. And then the Ninth Circuit upheld that.
24 So, I think it's a click -- I think you're exactly right. And I could talk
25 more about it, but I – unless he's changed your opinion I'll sit down.

1 THE COURT: Okay. Mr. Smerber, you probably would
2 take the position that if I follow what Judge Mahan said and find it
3 to be inclusive, where he says, a two-minute and forty-second delay
4 between the additional officer's arrival and Paulos being lifted off the
5 ground, such a delay is not unreasonable considering the officers
6 arrived to a scene involving a multi-vehicle accident, multiple
7 bystanders, an individual restrained on the ground, and a winded
8 officer. It is thus reasonable to take a few minutes to assess the
9 scene before moving a suspect that poses an unknown level of
10 danger.

11 This conclusion is further supported by the fact – and I
12 think this is important if you look at the Federal cases actually – this
13 conclusion is further supported by the fact that Paulos admits she
14 never verbalized her discomfort to any officer at any time. You
15 know, there's Federal cases where there are people that were
16 verbalizing or objecting and that made a difference, but here the
17 judge found there was no verbalization.

18 So basically, what we have in a context that I know Mr.
19 Blut thinks somehow distinguishes it, and I did the first time around,
20 too, but we do have a Federal judge flat out saying that what this,
21 you know, officer did was reasonable. And, you know, I tend to try
22 to not be the one that decides cases as much, and, you know, when
23 you hand out summary judgments or you hand out something that's
24 case dispositive as a judge, you try to get it right the first time
25 around. I mean, it's obvious I did find a way to allow a plaintiff's

1 claim to survive. But, what can I say, I feel as though I've sort of
2 been enlightened here.

3 Mr. Smerber, as far as you're concerned, if I were to do
4 that, my guess is you have a pretty good argument that since you
5 joined in anyway, that I ought to get rid of your casino claim.

6 MR. SMERBER: That's correct, Your Honor. And we'd be
7 making that argument under the *Grosjean versus Imperial Palace*
8 case, which is a good faith defense saying that a private party that
9 becomes liable because of their good faith assistance of a police
10 officer has an immunity. And so, that is the only thing that I would
11 add, Your Honor, and I don't disagree with anything else that you've
12 said.

13 THE COURT: Okay, all right. Well, Mr. Blut, you know,
14 it's their motion and all, but under these circumstances I think it's
15 fair to give you a sort of final thought.

16 MR. BLUT: Sure, I mean, I think to work backwards on the
17 *Grosjean*, I think what's different here is that we have a security
18 practices expert, Mr. Baker, who even though they say didn't have
19 any criticisms, his report is attached as an exhibit, and even in the
20 deposition he did say that once the help arrives, they've – the
21 security person needed to get her up also. It's specific in his report,
22 which if you have negligence, then you don't have good faith,
23 because you've acted negligently. And I think that the, I mean, if
24 the analysis is the same, that Judge Mahan doesn't talk about the
25 security person, or at least I looked it over and only read it 11 times

1 in the last week, but I think that the difference here is that the Palms
2 had no policy in practice as to what they ought to do when the
3 ground is difficult and they're restraining people. And I also think
4 the fact that there is expert testimony as to the unreasonableness of
5 what Ms. Houston did at the time.

6 THE COURT: Okay.

7 MR. BLUT: In, you know, holding her down and for, we
8 can debate how many minutes, but several minutes after there's
9 other officers standing above the scene of what we can tell during
10 that time. So I think the facts in our case are a little different than
11 the *Grosjean* and the *Goodman* case that he cites as well.

12 THE COURT: Okay. Let me go ahead and give you the
13 finding. And in this situation, Mr. Anderson, I'm going to ask that
14 you prepare the order.

15 I did previously rule that specifically preclusion – issue
16 preclusion did not apply because Judge Mahan did not make findings
17 as to reasonableness under a negligence analysis, but rather under a
18 Federal qualified immunity analysis. I am today finding that that was
19 a mistake by me.

20 For issue preclusion to apply, the following factors have to
21 be met: the issue has to be decided in the prior litigation, and it
22 must be identical to the issue presented here in the current action,
23 that issue being Baca's reasonable use or unreasonable use of force.
24 That was here decided, specifically in a number of pages in his order
25 – Judge Mahan's order. The initial ruling must have been on the

1 merits and become final. I think it was and in fact I think it was –
2 wasn't it upheld by the Ninth Circuit. The party against whom the
3 judgment is served must have been a party or in privity with a party.
4 Clearly, it's all the same people.

5 And that would just leave the one I know that Mr. Blut's
6 taken issue with, this idea of it was actually necessarily litigated.
7 Judge Mahan uses this reasonability analysis in his qualified
8 immunity order because under Federal law, reasonableness is one of
9 the factors to be considered. So, he did actually necessarily allow it
10 to be litigated because, again, reasonability in a qualified immunity
11 analysis is a factor.

12 And, what I should have done and what I'm doing now is
13 realizing that because it was a factor of the qualified immunity
14 analysis, he went on to make findings. What highlighted this again
15 was it was one of those thoughts. I'll just share with you. You
16 know, I'm looking at the reconsideration paperwork and then the
17 lawyers on both sides are saying *Graham versus Connor*, *Graham*
18 *versus Connor*. And that's when it hit me, wait a second, Mahan
19 made all these findings pursuant to – all the – every factor of
20 *Graham versus Connor* is all over his order. And that's when I said
21 to myself, partly because it was highlighted in the reconsideration, I
22 found that distinction last time around, you know, giving the
23 plaintiffs their day. But, what can I say, I've come to the conclusion
24 that I made an error there. So, you can draft the order. I've said
25 enough.

1 MR. ANDERSON: Thank you, Your Honor.

2 THE COURT: I'm granting your motion. And I'm granting
3 your joinder.

4 MR. SMERBER: Thank you, Your Honor.

5 THE COURT: Okay.

6 [Hearing concluded at 10:43 a.m.]

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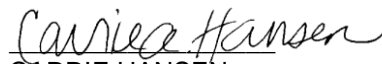
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14

15 ATTEST: I do hereby certify that I have truly and correctly transcribed the
16 audio/video proceedings in the above-entitled case to the best of my ability.

17

18


CARRIE HANSEN
Court Recorder/Transcriber

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10/30/2017 2:53 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

DISTRICT COURT

CLARK COUNTY, NEVADA

CRISTINA PAULOS, an individual,

Plaintiff,

v.

FCHI, LLC, a Nevada limited liability
company; LAS VEGAS METROPOLITAN
POLICE DEPARTMENT, a government
entity; JEANNIE HOUSTON, an individual;
AARON BACA, an individual; and DOES
1 through 10,

Defendants.

Case No.
Dept No.

A-15-710850-C
A716850
32

ORDER SETTING CIVIL JURY TRIAL, PRE-TRIAL/CALENDAR CALL

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set on a five week stack to begin on **Monday, March 12, 2018, at 9:00 a.m.**

B. A Pre-Trial/Calendar Call with the designated attorney and/or parties in proper person will be held on **Thursday, February 22, 2018, at 11:00 A.M.** As a courtesy to counsel and parties, please note that Calendar Call for Department 32 is scheduled to be held in **courtroom 3C**, however, please check courthouse monitors for any change in location.

C. The Pre-trial Memorandum must be filed prior to the Pre-Trial/Calendar Call, with a courtesy copy delivered to Department 32 Chambers. All parties, (Attorneys and parties in Proper Person) must comply with EDCR 2.67.

RECEIVED

FEB 30 2017

CLERK OF THE COURT

1 D. All discovery deadlines, deadlines for filing dispositive motions and motions to
2 amend the pleadings or add parties are controlled by the previously issued Scheduling Order.

3 E. Pursuant to EDCR 2.35, a motion to continue trial due to any discovery issues or
4 deadlines must be made before the Discovery Commissioner.

5 F. Pursuant to EDCR 2.47, all motions in limine to exclude or admit evidence must be
6 in writing and filed not less than **45 days** prior to the date set for trial and must be heard not less than
7 **14 days** prior to trial.

8 Orders shortening time will not be signed except in extreme emergencies and an upcoming
9 trial date is not considered an extreme emergency in this context.

10 Failure of the designated trial attorney or any party appearing in proper person to
11 appear for any court appearances or to comply with this Order shall result in any of
12 the following: (1) dismissal of the action (2) default judgment; (3) monetary
13 sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

14 Counsel must advise the Court immediately when the case settles or is otherwise resolved prior to
15 trial. A Stipulation which terminates a case by dismissal shall also indicate whether a Scheduling
16 Order has been filed and if a trial date has been set, and the date of that trial. A copy should be
17 given to Chambers.

18 DATED: October 6, 2017

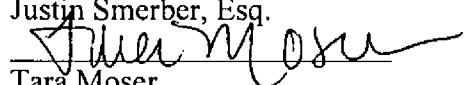
19 
20 Rob Bare
21 Judge, District Court, Department 32

22 CERTIFICATE OF SERVICE

23 I hereby certify that on or about the date e-filed, this document was e-served, mailed or a
24 copy of this Order was placed in the attorney's folder in the clerk's Office or mailed to the proper

25 person as follows:

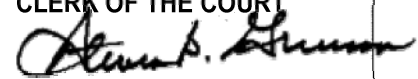
26 Elliot Blut, Esq.
27 Craig Anderson, Esq.
28 Cal Potter, Esq.
Justin Smerber, Esq.


Tara Moser
Judicial Executive Assistant

44

44

Electronically Filed
12/14/2017 8:30 AM
Steven D. Grierson
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 Officer Baca

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,

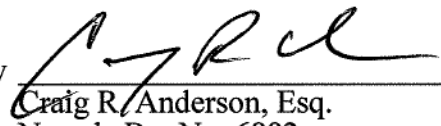
Defendants.

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

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

Dated this 3 day of December, 2017.

MARQUIS AURBACH COFFING

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

CERTIFICATE OF SERVICE

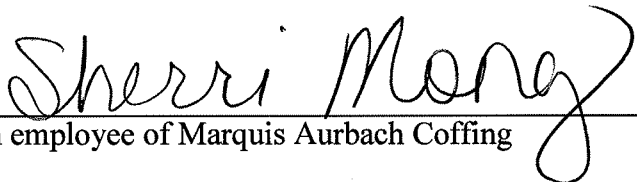
I hereby certify that the foregoing **DEFENDANTS LVMPD AND OFC. BACA'S**
NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW was
 submitted electronically for filing and/or service with the Eighth Judicial District Court on the
19th day of December, 2017. Electronic service of the foregoing document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

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

Justin W. Smerber, Esq.
 Lew Brandon, Esq.
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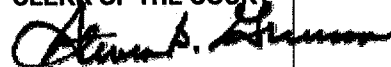
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11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 CRISTINA PAULOS,

14 Plaintiff,

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

15 vs.

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

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

21 Defendants.

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

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

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1 **I. FINDINGS OF FACT**

2 **A. FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **B. PROCEDURAL HISTORY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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