

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS WILSON,

Appellant,

vs.

LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT, a
governmental agency, POLICE
OFFICER E. VONJAGAN an
Individual; POLICE OFFICER
TENNANT, an Individual,

Respondent(s).

SUPREME COURT CASE
NO. 81940

DISTRICT COURT CASE NO. A-19-805368-C
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APPELLANT'S APPENDIX

Volume 1

(Wilson 00001 - 00100)

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APPENDIX - CHRONOLOGICAL INDEX

Date	Document Description	Volume No	Bates Nos.
9/13/2020	Order Granting Defendants' Motion to Dismiss	1	Wilson 00001 - 00006
4/30/2020	Plaintiff's First Amended Complaint	1	Wilson 00007 - 00021
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APPENDIX - ALPHABETICAL INDEX

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Brandon L. Phillips, Attorney at Law, PLLC; that on this date I electronically filed the foregoing APPELLANT'S APPENDIX, with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

KAEMPFER CROWELL
LYSSA S. ANDERSON
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DATED this 23rd day of March, 2021.

By: /s/ Brandon L. Phillips
An Employee of,
Brandon L. Phillips, Attorney at Law, PLLC

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15 *Officer E. Vojagan and Officer Tennant*

DISTRICT COURT

CLARK COUNTY, NEVADA

16 CURTIS WILSON, an individual,

17 Plaintiff,

18 vs.

19 LAS VEGAS METROPOLITAN POLICE

20 DEPARTMENT, a governmental agency,

21 POLICE OFFICER E. VONJAGAN, Badge No.
16098, an employee of the Metropolitan Police

22 Department; POLICE OFFICER TENNANT,
Badge No. 9817, an employee of the

23 Metropolitan Police Department, and DOES I
through X,

24 Defendant.

Case No.: A-19-805368-C

Dept. No.: 26

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Hrg date: August 4, 2020

Hrg time: 9:30 a.m.

25 The Court heard oral arguments on Defendants' motion to dismiss under NRCP 12(b)(5)
26 and NRS 11.190 on August 4, 2020 at 9:30 a.m. Ryan Daniels argued on behalf of the LVMPD
27 Defendants and Brandon Phillips argued on behalf of the Plaintiff. Having reviewed the papers
28 and pleadings on file, the various points and authorities in support of the motion, and oral
29 argument by counsel for Defendants and Plaintiff, the Court makes the following Findings of

1 Fact and Conclusions of Law:

2 **FINDINGS OF FACT**

3 1. Plaintiff Curtis Wilson’s First Amended Complaint (“FAC”) is based upon an August 22,
4 2017 interaction with LVMPD Officers Vonjagen and Tennant following Wilson’s improper
5 lane change. FAC at ¶¶ 15-16.

6 2. The FAC states that after his interaction with Officers Vonjagen and Tennant, Wilson
7 “filed a Complaint with the Las Vegas Metropolitan Police Department” on October 5, 2017.
8 FAC at ¶40.

9 3. Wilson filed his initial complaint on November 13, 2019.

10 **CONCLUSIONS OF LAW**

11 1. Each of Wilson’s three claims against the LVMPD defendants—battery, false
12 imprisonment, and negligence—are subject to a two year statute of limitations period. *See* NRS
13 11.190(4)(c)&(e).

14 2. “Statutes of limitation foreclose suits after a fixed period of time following occurrence or
15 discovery of an injury.” *Allstate Ins. Co. v. Furgerson*, 104 Nev. 772, 766 P.2d 904 at FN. 2
16 (1988).

17 3. Wilson’s claims accrued on August 22, 2017 and the statute of limitations began to run
18 on that date.

19 4. Since Wilson did not file his initial complaint until November 13, 2019—several months
20 after the two year statute of limitations had run—his claims are barred by the statute of
21 limitations.

22 5. Wilson argues that the statute of limitations was tolled while Wilson pursued the
23 complaint process with the Citizen’s Review Board (CRB). However, the statute was not tolled
24 for the following reasons:

1 6. First, tolling does not apply where administrative action is not required.

2 7. In *Siragusa v. Brown*, 114 Nev. 1384, 971 P.2d 801 (1998), the Nevada Supreme Court
3 stated that “cases tolling the statutes of limitations during the pendency of other proceedings are
4 limited to their facts and have no broader application in the instant case.” *Id.* at 808 n.7.
5 Important to this case, the Supreme Court specifically referenced *State Department of Human*
6 *Resources v. Shively*, 110 Nev. 316, 871 P.2d 355 (1994) and stated that the decision in *Shively*
7 to toll the statute of limitations relied upon the fact that the state was “*required* to pursue
8 administrative action” and the “*law favored* resolution in that forum.” *Siragusa*, 971 P. 2d at 808.

9 8. The CRB is neither an administrative agency nor an administrative court. Instead, it
10 “act[s] as an advisory body to [the police department], and to inform the public of [the citizen
11 review board’s] recommendations to the extent permitted by law.” *Las Vegas Police Protective*
12 *Ass’n Metro, Inc. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 230, 234, 130
13 P.3d 182, 186 (2006).

14 9. The CRB’s review only pertains to whether an LVMPD employee engaged in a violation
15 of a LVMPD policy. If such a policy violation is found, the CRB can make recommendations to
16 LVMPD about potential discipline, additional training, or potential policy changes.

17 10. The CRB does not and cannot make a determination that the law was violated, that a
18 complainant is entitled to legal damages, or provide any type of legal remedy to a complainant.
19 In other words, nothing the CRB could do would be a legal resolution or remedy which could
20 have any bearing on a civil law suit.

21 11. Second, tolling in this case is inconsistent with the legislative intent for the CRB.

22 12. NRS 289 governs the creation of advisory review boards in the State of Nevada. *See e.g.*,
23 NRS 298.380; NRS 298.383. Advisory review boards, such as the Citizen Review Board, cannot
24 “abridge the rights of a peace officer, school police officer, constable or deputy of a constable

1 that are granted pursuant to a collective bargaining agreement, a contract or any federal or state
2 statute or regulation.” NRS 289.385(2).

3 13. The advisory boards of this state may not abridge the rights of LVMPD (or its officers) to
4 assert the applicable statute of limitation nor does it modify, toll, or otherwise impact the
5 application of the statute of limitations.

6 14. Further, nothing in the Clark County Code of Ordinances Chapter 2.62 indicates that
7 tolling of the statute of limitations was contemplated. *See* Clark County Code of Ordinances
8 Chapter 2.62.

9 15. In addition, Las Vegas Municipal Code Chapter 2.64 likewise fails to include any
10 indication that the statute of limitations for a civil action against LVMPD or an officer be tolled.
11 *See* Las Vegas Municipal Code Chapter 2.64.

12 16. Allowing tolling of the statute of limitations while an advisory board considers possible
13 policy violations would abridge the rights of LVMPD and its police officers.

14 17. Third, Wilson did not act reasonably when he delayed filing his lawsuit.

15 18. The CRB website has information concerning its operations, its jurisdiction, and other
16 resources to explain what it does¹. The website contains a link to a video which describes its
17 complaint process.

18 19. In the video, the CRB specifically advises potential complainants that pursuing a
19 complaint with the CRB is not the same as exercising their legal rights in a court of law and that
20 the legal process is not affected by the filing at the CRB.

21 ///

22 ///

23
24 ¹ <https://citizenreviewboard.com>

1 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the
2 LVMPD Defendants' Motion to Dismiss is **GRANTED** in its entirety and all claims against the
3 LVMPD Defendants are dismissed with prejudice.

4 **IT IS SO ORDERED.**

5 DATED this ____ day of _____, 2020.

Dated this 13th day of September, 2020



DISTRICT COURT JUDGE
C4A 8A4 F7BB 26D5
Gloria Sturman
District Court Judge

6
7 Respectfully Submitted,
8 KAEMPFER CROWELL

9 */s/ Ryan Daniels*

10 _____
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18 *Officer E. Vojagan and Officer Tennant*

15 Approved as to form and content,

16 */s/ Brandon L. Phillips*

17 _____
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Curtis Wilson, Plaintiff(s)

CASE NO: A-19-805368-C

7 vs.

DEPT. NO. Department 26

8 Las Vegas Metropolitan Police
9 Department, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order of Dismissal and Order Closing Case was served via the court's
14 electronic eFile system to all recipients registered for e-Service on the above entitled case as
listed below:

15 Service Date: 9/13/2020

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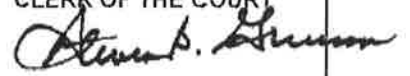
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DISTRICT COURT

CLARK COUNTY, NEVADA

CURTIS WILSON, as an individual,

PLAINTIFF,

v.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT, a
governmental agency, POLICE
OFFICER E. VONJAGAN, Badge No.
16098, an employee of the Metropolitan
Police Department, POLICE OFFICER
TENNANT, Badge No. 9817, an
employee of the Metropolitan Police
Department, and Does I through X,

DEFENDANTS

CASE NO. A-19-805368-C

DEPT. NO. 26

FIRST AMENDED COMPLAINT

Jury Trial Requested

Exemption from Arbitration: Damages in
Excess of \$50,000.

PLAINTIFF, CURTIS WILSON, by and through his attorney, Brandon L. Phillips, Esq., of
the law firm BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC, and for his causes of action
against Defendant, alleges as follows:

I. JURISDICTION

1. All of the acts complained of herein occurred in or arose from Clark County, Nevada.
All of the parties reside in or do business in the County of Clark, State of Nevada. Therefore,
this Court has jurisdiction over the parties, and concurrent jurisdiction over the subject matter
and all claims for relief pertaining hereto.

2. Venue in Clark County is proper pursuant to NRS 13.010.

II. THE PARTIES

3. At all times relevant hereto, Plaintiff, CURTIS WILSON, (hereinafter WILSON) was, and now is, a resident of the County of Clark, State of Nevada.

4. At all times relevant to this action, Defendant LAS VEGAS METROPOLITAN POLICE DEPARTMENT, (hereinafter, METRO) was, and now is, a governmental agency located in Clark County, Nevada

5. At all times relevant to this action, Defendant E. VONJAGEN, Badge No. 16098, (hereinafter, VONJAGEN) was a police officer employed by METRO.

6. At all times relevant to this action, Defendant TENNANT, Badge No. 9817, (hereinafter, TENNANT) was a police officer employed by METRO.

7. That the true name and capacity, whether individual, corporate, associate, or otherwise, of Defendant Does I through X are unknown to WILSON, who therefore sues any of the said Defendants by such fictitious names. WILSON is informed and believes and thereon alleges that each of the Defendants designated hereon as a Doe and/or a Roe owes a non-delegable duty to WILSON and is negligently responsible in some manner for the events and happenings hereon referred to and negligently caused injury and damages proximately thereby to the WILSON as hereon alleged; that this individual or entity may have been responsible for the design, construction, maintenance, care and upkeep of the Premises, which will be described more particularly in this Complaint, and which is located in Las Vegas, Nevada; that WILSON will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Defendant, Does when same have been ascertained by WILSON, together with appropriate charging allegations, and to join such Defendant in this action.

1 8. Further, WILSON alleges that Does 1 - 5 are police officers (hereinafter, the Doe
2 Officers), and Does 6 - 10 are managerial, supervisory, and/or policymaking employees of
3 METRO, (hereinafter Doe Managers). VONJAGEN, TENNANT, and the Doe Officers are sued
4 in their individual capacity for damages only.
5

6 9. At all relevant times, Defendants VONJAGEN, TENNANT and the Doe Officers were
7 duly appointed officers and/or employees of METRO, subject to oversight and supervision by
8 METRO'S elected and non-elected officials, including the Doe Managers.
9

10 10. At the time of the incident complained of herein, VONJAGEN was an officer in
11 training.
12

13 11. At the time of the incident complained of herein, TENNANT was training
14 VONJAGEN.
15

16 12. In doing the acts and, failing and omitting to act as hereinafter described, Defendants
17 VONJAGEN, TENNANT and the Doe Officers were acting on the implied and actual permission
18 and consent of METRO.
19

20 13. At all times herein, each and every METRO defendant was the agent of each and
21 every other METRO defendant and had the legal duty to oversee and supervise the hiring,
22 conduct and employment of each and every METRO defendant.
23

24 14. WILSON is informed and believes and thereon alleges that the Defendants
25 designated herein owe a non-delegable duty to WILSON and are negligently responsible for the
26 events and happenings herein referred to and negligently caused injury and damages proximately
27 thereby to the WILSON as hereon alleged.
28

II. FACTS COMMON TO ALL ALLEGATIONS

15. On August 22, 2017, WILSON was approached by VONJAGEN and TENNANT at a Car Wash near Maryland Parkway and Karen in Clark County, Nevada.

16. VONJAGEN and TENNANT confronted WILSON regarding an alleged improper lane change.

17. A discussion between VONJAGEN and TENNANT and WILSON ensued.

18. WILSON, a retired Las Vegas fireman is familiar with the process of dealing with authority in the community.

19. WILSON was dressed in gym-wear and posed no physical threat to the officers.

20. Despite the professional discussion the Parties were engaged in, VONJAGEN demanded that WILSON move to the front of a METRO police vehicle.

21. VONJAGEN then gave WILSON multiple conflicting commands by ordering him to put his things on the hood of the car and when WILSON put his hands in his pockets to empty them VONJAGEN ordered WILSON to take his hands out of his pockets.

22. VANJAGEN then claimed WILSON was not following her commands.

23. VANJAGEN then forcefully handcuffed WILSON.

24. TENNANT watched the situation escalate and failed to take any corrective action or diffuse.

25. TENNANT then joined in the forceful handling of WILSON and putting two sets of handcuffs tightly around WILSON's wrists.

26. VONJAGEN then conducted a pat down, including placing her hand on and around WILLSON'S genitals.

1 27. WILSON was then forced to stand in the sun in front of the METRO police vehicle
2 for an unreasonable amount of time.

3 28. There were no questions or interrogation of WILSON.

4 29. WILSON never posed any threat to Defendant.

5 30. After VANJAGEN and TENNANT ran a background check it was affirmed
6 WILSON had no warrant or criminal history.

7 31. WILSON posed no threat of death or injury to any METRO Defendant at any time,
8 nor did WILSON ever attempt to flee the area or to strike or otherwise harm any METRO
9 Defendant.
10

11 32. Several presently unknown Metro Officers arrived at the scene and were involved in
12 the investigation of WILSON. Since he posed no threat and had no criminal background, it is
13 clear that this investigation was racially motivated.
14

15 33. Eventually, upon the questioning of WILSON by the DOE officers it was revealed
16 that WILSON was retired Las Vegas fireman.

17 34. Immediately thereafter, WILSON was released from the handcuffs. Visibly it was
18 clear that his wrists had lost blood circulation from the tightness of the handcuffs.
19

20 35. WILSON was given a citation for unsafe lane change.

21 36. Following the altercation, WILSON went to his home. Shortly after walking in the
22 door a Metro Chief called WILSON regarding the incident.

23 37. WILSON was asked to come to Metro headquarters where he spoke with the Chief
24 and pictures of his hands and wrists were taken
25

26 38. WILSON suffered severe injuries to his hands and wrists.
27
28

1 39. WILSON sought medical treatment for his injuries whereupon he was diagnosed
2 with bilateral medial neuropathy consistent with carpal tunnel syndrome, and other injuries
3 consistent with the abuse WILSON received at the hands of the METRO Defendants.
4

5 40. On or about October 5, 2017, WILSON filed a Complaint with the Las Vegas
6 Metropolitan Police Department as required. This date is well within the time requirement
7 imposed by NRS 41.036(2), requiring complainants to give notice of their complaints within two
8 years of the incident.
9

10 41. On December 21, 2017, The Citizen Review Board issued a Finding that Referred the
11 Complaint to a Hearing Panel. "This complaint should be referred to a Hearing Panel of the
12 Citizen Review Board for further review."
13

14 42. There after Internal Affairs reviewed the matter and upon information and belief their
15 ruling did not see any misconduct.
16

17 43. On January 11, 2018, the Citizen Review Board, following a hearing, entered a
18 Findings and Recommendations: "The Hearing Panel disagrees with the findings of Internal
19 Affairs and this complaint will be scheduled for an evidentiary hearing with all subject officers,
20 the complainant and any witnesses to be subpoenaed.
21

22 44. On February 12, 2018, a letter was drafted by Lieutenant of Internal Affairs Ted
23 Glaude and approved by Sheriff Joseph Lombardo, was delivered to WILSON which stated,
24 "After a thorough and impartial review the investigation failed to produce sufficient evidence to
25 clearly prove or disprove the allegation(s), or it was determined the actions taken by the
26 employee(s) did not rise to the level of misconduct, or was not a policy violation(s). The
27 preliminary investigation and this finding were approved through two levels of review, including
28 the Lieutenant of the Internal Affairs Bureau."

1 45. On March 14, 2018, the Citizen Review Board held a hearing and issued the
2 following Findings and Recommendations.

3 a. "On December 21, 2017 a screening panel of the Citizen Review Board referred a
4 complaint filed by Curt Wilson to this hearing panel. The function of this hearing panel is review
5 of the allegations of the complaint as well as review of the findings and integrity of the
6 investigation conducted by the Internal Affairs Bureau of the Las Vegas Metropolitan Police
7 Department hereinafter referred to as IAB.

8
9 b. "Based on the allegations of the complaint, IAB investigated whether Officer Tennant
10 and Officer VonTagen violated LVMPD Rules and regulations 6/006.00 Arrest Procedures and
11 4/102.12 Interaction with the Public. IAB findings as to both allegations were no policy
12 violation.

13
14 c. "In making its findings and conclusions this panel reviewed the complaint, the
15 investigative report of IAB, the body cam and all other documents provided by IAB. The
16 standard of proof used by IAB as well as this panel is whether the moving party has satisfied the
17 burden of proof by clear and convincing evidence that the act complained of occurred.

18
19 d. "On March 14, 2018 the panel heard testimony from the subject officers as well as
20 from the complainant and investigating officers including IAB Lieutenants and Sergeants.
21 Officers Tennant and VonTagen made a traffic stop on the complainant for an improper lane
22 change wherein Officer Tennant was the FTO and Officer VonTagen was an officer in training.
23 The complainant exited his vehicle and Officer Tennant explained to WILSON why he was
24 stopped and the situation appeared to be under control when Officer VonTagen stepped in and
25 ordered Wilson to the front of her vehicle. VonTagen gave Wilson multiple commands to put his
26 things on the hood of the car and when Wilson put his hands in his pockets to empty them
27
28

1 VonTagen gave him inconsistent commands to take his hands out of his pockets. When Wilson
2 did not comply VonTagen decided to go hands on and placed Wilson in handcuffs. Officer
3 Tenant stood by and watched as this situation escalated and did not step in until VonTagen
4 needed assistance putting two sets of handcuffs around WILSON. VonTagen conducted a pat-
5 down of WILSON for weapons. The complainant did not complain of injuries and no use of
6 force report was filed.

8 "FINDINGS.

9 e. "6/006.00 Arrest Procedures

10 "The hearing panel unanimously agrees with the conclusion of no policy violation
11 reached by IAB. In making this finding the panel considered the testimony as well as statements
12 to IAB by all parties and witnesses and finds the standard of proof of clear and convincing
13 evidence was not met and the evidence failed to prove or disprove the alleged act occurred.

15 f. "4/102.12 Interaction with the Public

16 "The hearing panel agrees that as a matter of law there were no policy violations.
17 However the actions of the officers unnecessarily escalated the situation and could have
18 reasonably been construed as being discourteous thereby leaving the citizen feeling he was not
19 treated with proper respect.

21 "In making this finding the panel considered the testimony as well as statements to IAB
22 by all parties and witnesses and finds the standard of proof of clear and convincing evidence was
23 not met and the evidence failed to prove or disprove the alleged act occurred.

25 g. "RECOMMENDATIONS:

26 "Upon completion of the second investigation by Internal Affairs, the Citizen Review
27 Board agrees in part with their findings as follows:

1 **THIRD CLAIM FOR RELIEF**

2 **Negligence**

3 68. WILSON repeats and realleges each and every allegation of every preceding
4 paragraph as if fully set forth herein.
5

6 69. The actions and inactions of the Defendants were negligent and reckless, including
7 but not limited to:

8 a. the failure to properly and adequately assess the need to detain, arrest, and use force
9 causing injury against WILSON;

10 b. the negligent tactics and handling of the situation with WILSON;

11 c. the negligent detention, arrest, and use of force, including force causing injury against
12 WILSON,

13 d. the negligent use of force, including force causing injury against WILSON;

14 e. the failure to provide prompt medical care to WILSON;

15 f. the failure to properly train and supervise employees, both professional and non-
16 professional, including VONJAGEN, TENNANT, and DOES 1 - 10;

17 g. the failure to ensure that adequate numbers of employees with appropriate education
18 and training were available to meet the needs of and protect the rights of WILSON.

19 70. As a direct and proximate result of Defendants' conduct as alleged above, and other
20 undiscovered negligent conduct, WILSON was caused to suffer severe pain and loss of freedom.

21 71. METRO is vicariously liable for the wrongful acts of VONJAGEN, TENNANT, and
22 DOES 1 - 5 because their acts affirmatively caused the harm to WILSON.

23 72. The negligent acts of VONJAGEN, TENNANT, and DOES 1 - 5 resulted in bodily
24 harm to WILSON.
25
26
27
28

1 **SECOND CLAIM FOR RELIEF**

2 **False Arrest/False Imprisonment**

3 59. WILSON repeats and realleges each and every allegation of every preceding
4 paragraph as if fully set forth herein.
5

6 60. VONJAGEN, TENNANT, and DOES 1 - 5, while working as Police Officers for
7 METRO, and acting within the course and scope of their duties, intentionally deprived WILSON
8 of his freedom of movement by use of force, threats of force, menace, fraud, deceit, and
9 unreasonable duress. VONJAGEN, TENNANT, and DOES 1 - 5 also detained WILSON
10 without reasonable suspicion.
11

12 61. VONJAGEN, TENNANT, and DOES 1 - 5 detained WILSON after WILSON
13 allegedly failed to abide by VANJAGEN'S direct orders.

14 62. As confirmed by the Review Panel, WILSON could not comply with VANJAGEN.

15 63. WILSON was forcibly detained for approximately thirty (30) minutes, which was
16 unreasonable in both scope and time.
17

18 64. VONJAGEN, TENNANT, and DOES 1 - 5's conduct was inconsistent, misleading,
19 and unnecessary.

20 65. WILSON suffered severe physical damage to his hands and wrists which has
21 required medical treatment and as such he must be compensated for such injuries.
22

23 66. As a direct and proximate result of the excessive use of force by the Defendants,
24 WILSON has suffered great physical and mental pain and anxiety, and will continue to do so in
25 the future, all to his damages in excess of \$50,000.

26 67. WILSON has been required to obtain the services of an attorney in order
27 to prosecute this action and is entitled to recover reasonable attorney's fees and cost of suit.
28

1 51. WILSON remained in handcuffs for approximately thirty (30) minutes.

2 52. When WILSON was finally released from the handcuffs, visible marks on his wrists

3 were apparent from the handcuffs. WILSON's hands and wrists had lost circulation resulting in

4 discoloration to his hands and permanent damage to his wrists.

5

6 53. The following day, WILSON's hands and wrists remained visibly damaged when he

7 appeared at the Metro headquarters.

8 54. As a direct and proximate result of said of VONJAGEN and TENNANT, and

9 DOES1 - 5's conduct, WILSON suffered serious injury resulting in both severe bodily pain and

10 serious mental suffering.

11

12 55. METRO and DOE Defendants 6 - 10 are vicariously liable for the acts of

13 VONJAGEN, TENNANT, and DOES 1 - 5 because their acts were done in the course and scope

14 of their employment, maliciously, in bad faith, with hostility and with willful or deliberate

15 disregard for the rights of WILSON.

16

17 56. The conduct of VONJAGEN, TENNANT, and DOES 1 - 5 was malicious, wanton,

18 oppressive, and accomplished with ia conscious disregard for the rights of WILSON, entitling

19 WILSON to an award of exemplary and punitive damages.

20

21 57. As a direct and proximate result of the excessive use of force by the Defendants,

22 WILSON has suffered great physical and mental pain and anxiety, and will continue to do so in

23 the future, all to his damages in excess of \$50,000.

24

25 58. WILSON has been required to obtain the services of an attorney in order

26 to prosecute this action and is entitled to recover reasonable attorney's fees and cost of suit.

27 ///

28 ///

- There were deficiencies pertaining to de-escalation techniques.
- If de-escalation practices were followed properly during the vehicle stop, it could have had a much higher likelihood of officers not being required to go “hands-on”.
- Improve FTO and Trainee “Contact and Cover” principles should have been implemented.

The panel recommends Metro adopt the findings for additional training as made by IAB.”

46. Pursuant to *Dep't of Human Res. v. Shively*, 110 Nev. 316, 318, 871 P.2d 355, 356 (1994), a timely filed administrative claim tolls limitations period.

FIRST CLAIM FOR RELIEF

Battery

47. WILSON repeats and re-alleges each and every allegation of every preceding paragraph as if fully set forth herein.

48. VONJAGEN, TENNANT, and DOES 1 - 5, while working as police officers for METRO, and acting within the course and scope of their duties, intentionally took WILSON into custody by, slamming WILSON into the hood of a car, twisting WILSON’S hands behind his back, tightly handcuffing WILSON and placing him in their METRO police vehicle. The tightly placed handcuffs cut off circulation to WILSON’S wrists and hands.

49. More specifically, VONJAGEN gave conflicting commands to WILSON, which prevented his ability to comply with her orders.

50. The Officers claimed that WILSON’s conduct was aggressive and he refused to listen to their commands, both of which were false

73. As a direct and proximate result of the excessive use of force by the Defendants, WILSON has suffered great physical and mental pain and anxiety, and will continue to do so in the future, all to his damages in excess of \$50,000.

74. WILSON has been required to obtain the services of an attorney in order to prosecute this action and is entitled to recover reasonable attorney's fees and cost of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendant, and each of them, as follows:

1. For general damages in the amount of \$100,000 pursuant to NRS 41.035 per cause of action for a total amount of \$300,000;
2. For special damages for past and future medical treatment;
3. For compensatory damages;
4. For punitive damages against the individual defendants;
5. For pre-judgment interest;
6. For reasonable attorney's fees and cost of suit; and
7. For such other and further relief as the Court may deem just and proper.

DATED this 30 day of April, 2019.

BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC

[Handwritten signature]

BRANDON L. PHILLIPS, ESQ.
Nevada Bar No. 12264
1455 East Tropicana Avenue, Suite 750
Las Vegas, Nevada 89119
Attorney for Plaintiff, Curtis Wilson

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Attorney for Plaintiff, Curtis Wilson

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CURTIS WILSON, as an individual;
PLAINTIFF,
v.

CASE NO. A-19-805368-C

DEPT. NO. 26

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, Does I through X
DEFENDANT.

AFFIDAVIT OF CURTIS WILSON IN SUPPORT OF THE COMPLAINT

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

CURTIS WILSON, being first duly sworn, deposes and says;

1. I am older than eighteen years of age and am a resident of Clark County, Nevada.

2. I am the Plaintiff in this matter.

3. I have personal knowledge of the facts set forth herein; and I make this Affidavit in support of the attached Complaint.

4. I have read the Complaint filed in this case and can testify that the allegations in that document are true and correct to the best of my knowledge.

///

///

///

1 I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true
2 and correct.

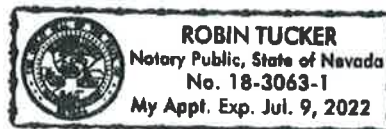
3 FURTHER AFFIANT SAYETH NAUGHT.

4 
5 CURTIS WILSON

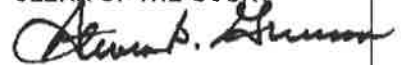
6
7 SUBSCRIBED and SWORN to before
8 me this 30th day of April 2020.

9 NOTARY PUBLIC in and for said
10 County and State

11 Clark State of Nevada
12 County



14
15 
16



1 **MDSM**
2 LYSSA S. ANDERSON
3 Nevada Bar No. 5781
4 RYAN W. DANIELS
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13 *Attorneys for Defendants*
14 *Las Vegas Metropolitan Police Department,*
15 *Officer E. Vojagan and Officer Tennant*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 CURTIS WILSON, an individual,
19
20 Plaintiff,

21 vs.

22 LAS VEGAS METROPOLITAN POLICE
23 DEPARTMENT, a governmental agency,
24 POLICE OFFICER E. VONJAGAN, Badge
No. 16098, an employee of the Metropolitan
Police Department; POLICE OFFICER
TENNANT, Badge No. 9817, an employee of
the Metropolitan Police Department, and
DOES I through X,
Defendant.

Case No.: A-19-805368-C
Dept. No.: 26

DEFENDANTS' MOTION TO DISMISS
(Filed in Lieu of an Answer)

HEARING REQUESTED

Defendants Las Vegas Metropolitan Police Department, Officer E. Vonjagan, and Officer Tennant ("LVMPD Defendants"), by and through their attorneys, Kaempfer Crowell, hereby file this Motion to Dismiss for failure to state a claim upon which relief can be granted under NRCP 12(b)(5) and NRS 11.190.

///

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Curtis Wilson's ("Wilson") Complaint must be dismissed with prejudice as all three of the claims brought against the LVMPD Defendants are time barred by the applicable statute of limitations. Wilson's three claims in his Complaint¹ arise out of an alleged incident on August 22, 2017. This action was filed eight hundred and thirteen days (813), or two years, two months, and twenty-two days after the alleged incident. (**Exhibit A**, Initial Complaint filed November 13, 2019.) Based on Wilson's own concessions, as found in the Complaint, he was aware of the factual circumstances necessary to bring this action within the required statutory period but failed to do so. Because Wilson's claims are time barred by the statute of limitations, this Court should enter an order dismissing the action with prejudice

II. FACTUAL BACKGROUND

Wilson's First Amended Complaint ("FAC") is based upon an August 22, 2017 interaction with Officers Vonjagen and Tennant following Wilson's improper lane change. **Exhibit B** at ¶¶ 15-16. During the discussion with Wilson, Vonjagen instructed that Wilson move to the front of the Metro vehicle. *Id.* at ¶20. Wilson alleges that he was "forcefully handcuffed" after Vonjagen claimed Wilson was not following her commands. *Id.* at ¶¶22-23. Wilson also alleges that Tennant "watched the situation escalate and failed to take any corrective action or diffuse" and "joined in the forceful handling of Wilson and [sic] putting two sets of handcuffs tightly around Wilson's wrists." *Id.* at ¶¶24-25.

The FAC alleges that Wilson was "forced to stand in the sun in front of the Metro police vehicle for an unreasonable amount of time." *Id.* at ¶27. Wilson alleges that on the date of the

¹ A copy of the First Amended Complaint is attached as Exhibit B for ease of reference.

1 interaction it was “clear that his wrists had lost blood circulation from the tightness of the
2 handcuffs.” *Id.* at ¶34. Wilson states that he “spoke with the Chief and pictures of his hands and
3 wrists were taken” on the day of the incident. *Id.* at ¶¶36-37. Wilson alleges that he “was
4 diagnosed with bilateral medial neuropathy consistent with carpal tunnel syndrome, and other
5 injuries.” *Id.* at ¶39.

6 Following this diagnosis, Wilson “filed a Complaint with the Las Vegas Metropolitan
7 Police Department” on October 5, 2017. *Id.* at ¶40. This action was filed seven hundred and
8 sixty-nine days (769) after the October 5, 2017 complaint with the police department. (**Exhibit**
9 **A.**) This is two years, one month, and eight days after the first attempt to seek relief for alleged
10 injuries Wilson further concedes that following the hearing conducted by the Citizens Review
11 Board, the hearing panel made a finding that “as a matter of law there were no policy violations.”
12 *Id.* at ¶45(f).

13 **III. LEGAL ARGUMENT**

14 The Nevada Rules of Civil Procedure contemplate the possibility that a plaintiff may sue
15 a defendant even when there is no possible claim for which they are entitled to relief. To protect
16 and combat against such attacks, Rule 12(b)(5) creates an opportunity for a Court to dismiss a
17 case at the earliest stages of the litigation. See NRCP 12(b)(5) (permitting a motion to dismiss
18 even before a responsive pleading is filed.) A court can grant a motion to dismiss when, while
19 assuming the truthfulness of the allegations in plaintiff’s favor (as it must do on such a motion),
20 it appears “beyond a doubt that [plaintiff] could prove no set of facts, which, if true, would
21 entitle it to relief.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670,
22 672 (2008).

23 The *Buzz Stew* standard for applying Rule 12(b)(5) requires that the trial court be liberal
24 in its interpretation of the pleading by “recogniz[ing] all factual allegations in [plaintiff’s]

1 complaint as true and draw[ing] all inferences in its favor.” *Id.* Despite this, even *Buzz Stew*
2 recognizes that some cases should not survive. This includes actions that are time barred by the
3 statute of limitations. *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998)
4 (“Dismissal on statute of limitations grounds is only appropriate when uncontroverted evidence
5 irrefutably demonstrates plaintiff discovered or should have discovered the facts giving rise to
6 the cause of action.”) (internal quotations omitted). In cases where claims are barred by the
7 statute of limitations, not only is dismissal appropriate but the Court may also grant summary
8 judgment. See *Clark v. Robinson*, 113 Nev. 949, 950-51, 944 P.2d 788, 789 (1997) (“Summary
9 judgment is proper when a cause of action is barred by the statute of limitations.”)

10 **A. Each of Plaintiff’s Claims are Time Barred and Must be Dismissed with**
11 **Prejudice**

12 **1. Wilson’s Claims are Subject to a Two Year Statute of Limitation**

13 Wilson brings three claims against the LVMPD defendants: battery, false imprisonment,
14 and negligence. Each of these claims is subject to a two year statute of limitations period. See
15 NRS 11.190(4)(c)&(e). Specifically, NRS 11.190(4)(c) state provides for the two year period of
16 limitation for “an action for libel, slander, assault, **battery, false imprisonment**, or seduction.”
17 NRS 11.190(4)(c) (emphasis added). NRS 11.190(4)(e) provides for the two limitation for “an
18 action to recover damages for injuries to a person...caused by the wrongful act or **neglect** of
19 another.” NRS 11.190(4)(e).

20 NRS 11.190(4)(a) also provides for a two year limitation period on actions “against a
21 sheriff, coroner, or constable upon liability incurred by acting in his or her official capacity and
22 in virtue of his or her office, by the omission of an official duty...” NRS 11.190(4)(a). Thus,
23 whether plaintiff is entitled to application of the statute of limitations for actions against officers,
24 personal injury, false imprisonment, or battery, the appropriate limitation period in each instance

1 is two years. Every conceivable limitation period governing this action supports dismissal of the
2 action with prejudice.

3 “Statutes of limitation foreclose suits after a fixed period of time following occurrence or
4 discovery of an injury.” *Allstate Ins. Co. v. Furgerson*, 104 Nev. 772, 766 P.2d 904 at FN. 2
5 (1988). The Nevada Supreme Court has held that the primary purpose of statutes of limitations
6 is to “[prevent] surprises through the revival of claims that have been allowed to slumber until
7 evidence has been lost, memories have faded, and witnesses have disappeared.” *Petersen v.*
8 *Bruen*, 106 Nev. 271, 273, 792 P.2d 18, 19 (1990). The Court also stated “statutes of limitation
9 embody important public policy considerations in that they stimulate activity, punish negligence,
10 and promote repose by giving security and stability to human affairs.” *Id.* at 274.

11 “The general rule concerning statutes of limitation is that a cause of action accrues when
12 the wrong occurs and the party sustains injuries for which relief could be sought.” *Petersen*, 106
13 Nev. at 281. In rare instances, the doctrine of equitable tolling applies via application of the
14 discovery rule. See *Petersen*, 106 Nev. at 274 (“An exception to the general rule has been
15 recognized by this court and many others in the form of the so-called discovery rule.”). When
16 the court applies the discovery rule, “the statutory period of limitations is tolled until the injured
17 party discovers or reasonably should have discovered facts supporting a cause of action.” *Id.*

18 The legislature has codified the discovery rule into some of Nevada’s statutes on periods
19 of limitation. See e.g. NRS 11.190(2)(a); NRS 11.190(3)(d). Unlike these statutes that clearly
20 indicate application of the discovery rule is appropriate, the provisions of NRS 11.190(4)(a),(c),
21 and (e) do not include language that the equitable tolling doctrine would apply. Compare NRS
22 11.190(4)(e) with NRS 11.190(2)(a) (applying to a cause of action for deceptive trade practice),
23 NRS 11.190(3)(a) (applying to a cause of action to recover a stolen animal), or NRS
24 11.190(3)(d) (applying to a cause of action for relief on the ground of fraud or mistake).

1 In an unpublished disposition, and thus not cited for persuasive value but informational
2 analysis, Nevada declined to extend equitable tolling under the discovery rule to causes of
3 actions controlled by NRS 11.190(4)(e). See *Dreyer-Lefevre v. Morissette*, 127 Nev. 1131, 373
4 P.3d 910 (2011). Based upon the absence of legislative intent to apply the discovery rule to
5 actions involving personal injury, battery, false imprisonment, and actions against officers, the
6 discovery rule should not apply in this case and the statute of limitations should not be equitably
7 tolled past the date of the interaction.

8 **2. Wilson's Claims Accrued on August 22, 2017.**

9 Wilson's claims accrued on August 22, 2017 and the statute of limitations began to run
10 on that date. Here, all three of Wilson's claims result from the alleged interaction resulting in
11 injuries occurred on August 22, 2017. See **Exhibit B** at ¶15. Wilson alleges that it was "clear
12 that his wrists had lost blood circulation from the tightness of the handcuffs." *Id.* at ¶34. Wilson
13 alleges that "visible marks on his wrists [sic] were apparent from the handcuffs." *Id.* at ¶51.
14 Wilson alleges that his "hands and wrists remained visibly damaged" the following day. *Id.* at
15 ¶52.

16 From his own allegations, the injury occurred on August 22, 2017. The injury was
17 immediately discoverable because the handcuffs left visible marks and it was "clear that the wrist
18 had lost blood circulation." See *Id.* at 51-52. Applying the general rule, as found in *Petersen*,
19 August 22, 2017 is the date that the causes of action in this FAC accrued for statute of limitations
20 purposes.

21 Wilson's false imprisonment cause of action likewise stems from the August 22, 2017
22 interaction. Wilson claims that he was "forcibly detained for approximately 30 minutes." *Id.* at
23 ¶62. The FAC concedes that the alleged imprisonment ended on August 22, 2017. See **Exhibit**
24 **B** at ¶34-36. Because August 22, 2017 was the date of the alleged unlawful detainment, and the

1 date of his release from the alleged imprisonment, August 22, 2017 is the accrual date for statute
2 of limitation purposes. See *Wallace v. Kato*, 549 U.S. 384, 389 127 S. Ct. 1091, 1096 (2007)
3 (“Limitations begin to run against an action for false imprisonment when the alleged false
4 imprisonment ends.”); *Petersen*, 106 Nev. at 281.

5 **3. Wilson’s Claims are Time Barred Because the Complaint was Filed**
6 **on November 13, 2019.**

7 As the Initial Complaint was filed on November 13, 2019, it is time barred. When
8 accepting the allegations as found in the FAC as true, as the Court must do in this motion, the
9 two year limitation period as applied to the causes of action arising from the August 22, 2017
10 interaction expired on August 22, 2019. This includes the claims for injuries arising out of the
11 alleged battery, injuries arising out of the alleged false imprisonment, and injuries arising out of
12 the alleged negligent acts during the August 22, 2017 interaction. Despite the August 22, 2019
13 statute of limitation deadline, the Initial Complaint was filed months later on November 13,
14 2019. (**Exhibit A.**) As a result, an order for dismissal with prejudice is appropriate because the
15 claims are barred by the statute of limitations.

16 **4. Although Tolling is Inappropriate Here, an Application of the Tolling**
17 **Doctrine Still Leave Wilson with Untimely Claims.**

18 Based upon longstanding Nevada precedent, statutory intent, and the nature of the claims
19 involved in this action, Wilson’s claims should not be equitably tolled by applying the discovery
20 rule. However, even under the discovery rule, the claims would be barred. When applying the
21 discovery rule, “the statutory period of limitations is tolled until the injured party discovers or
22 reasonably should have discovered facts supporting a cause of action.” *Petersen*, 106 Nev. at
23 274. Here, Wilsons has admitted that he sought treatment for the injury and that he brought a
24 grievance by filing a complaint as early as October 5, 2017. **Exhibit B** at ¶39-40. His decision to
seek redress for the August 22, 2017 interaction demonstrates that he had discovered, or

1 reasonably should have discovered, the facts supporting his claims for injury, false
2 imprisonment, and negligence.

3 In every conceivable situation, Wilson had discovered, or should have discovered
4 sufficient facts to support his Complaint by October 5, 2017. Accordingly, even an incredibly
5 generous application of the discovery doctrine permitting the tolling until October 5, 2017 where
6 Wilson had not only discovered the injury BUT ALSO had an opportunity to seek redress of the
7 injury via a complaint filed with Metro, would still mean that the filing of this action on
8 November 13, 2019 was outside the permitted two year limitation period by over a month. This
9 Court, even in applying an equitable tolling based upon allegations taken as true in the FAC,
10 must dismiss the action for failure to bring the claim within the statute of limitations.

11 **B. Service of the Complaint was Untimely**

12 NRCP 4(e)(1) provides that the “summons and complaint must be served upon a
13 defendant no later than 120 days after the complaint is filed, unless the court grants an extension
14 of time under this rule.” NRCP 4(e)(1). Here, the Initial Complaint was filed on November 13,
15 2019. (**Exhibit A.**) The 120 day service window expired on March 12, 2020. The FAC was
16 filed on April 30, 2020. Service of the Initial Complaint was never accomplished. The FAC was
17 served on June 5, 2020.

18 A review of docket demonstrates that Wilson did not move for an extension of the time
19 limit to serve. NRCP 4(e)(2) states “If service of the summons and complaint is not made upon a
20 defendant before the 120-day service period-or any extension thereon- expires, the court must
21 dismiss the action...” (emphasis is added). Although failure to timely serve would generally
22 result in a dismissal without prejudice, given the statute of limitation bar as outlined above, any
23 refile and service of a complaint would likewise be barred. Accordingly, this Court must
24 dismiss the action with prejudice for failure to bring the claims within the applicable statute of

1 limitations period and for failure to timely serve the summons and Complaint.

2 **IV. CONCLUSION**

3 Based upon the foregoing, this Court should enter an order dismissing the case with
4 prejudice pursuant to NRS 11.190 and for failing to timely serve the summons and Complaint.

5 DATED this 25th day of June, 2020.

6 KAEMPFER CROWELL

7
8 BY: /s/ Lyssa S. Anderson

9 LYSSA S. ANDERSON (Nevada Bar No. 5781)
10 RYAN W. DANIELS (Nevada Bar No. 13094)
11 1980 Festival Plaza Drive, Suite 650
12 Las Vegas, Nevada 89135

13 *Attorneys for Defendants*
14 *Las Vegas Metropolitan Police Department,*
15 *Officer E. Vojagan, and Officer Tennant*
16
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of the foregoing **DEFENDANTS' MOTION TO DISMISS**
3 was made this date via the Eighth Judicial District Court's Odyssey E-File & Serve website, and
4 to the following via service as stated below:

5 Brandon L. Phillips, No. 12264
6 BRANDON L. PHILLIPS, ATTORNEY AT LAW
7 1455 E. Tropicana Ave., Suite 750
8 Las Vegas, Nevada 89119

9 *Attorneys for Plaintiff*

10 DATED this 25th day of June, 2020.

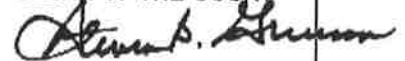
11 */s/ Bonnie Jacobs*

12 _____
13 an employee of Kaempfer Crowell
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EXHIBIT A

Plaintiff's Initial Complaint

EXHIBIT A



CASE NO: A-19-805368-C
Department 26

COMP

Brandon L. Phillips, Esq.
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Attorney for Plaintiffs: Curtis Wilson

DISTRICT COURT

CLARK COUNTY, NEVADA

CURTIS WILSON, as an individual,

PLAINTIFF,

v.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT, a
governmental agency, POLICE
OFFICER E. VONJAGAN, Badge No.
16098, an employee of the Metropolitan
Police Department, POLICE OFFICER
TENNANT, Badge No. 9817, an
employee of the Metropolitan Police
Department, and Does I through X,

DEFENDANTS.

CASE NO. _____

DEPT. NO. _____

COMPLAINT

Jury Trial Requested

Exemption from Arbitration; Damages in
Excess of \$50,000.

PLAINTIFF, CURTIS WILSON, by and through his attorney, Brandon L. Phillips, Esq., of
the law firm BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC., and for his causes of action
against Defendant, alleges as follows:

I. JURISDICTION

1. All of the acts complained of herein occurred in or arose from Clark County, Nevada.
All of the parties reside in or do business in the County of Clark, State of Nevada. Therefore,
this Court has jurisdiction over the parties, and concurrent jurisdiction over the subject matter
and all claims for relief pertaining hereto.

2. Venue in Clark County is proper pursuant to NRS 13.010.

II. THE PARTIES

3. At all times relevant hereto, Plaintiff, CURTIS WILSON, (hereinafter WILSON) was, and now is, a resident of the County of Clark, State of Nevada.

4. At all times relevant to this action, Defendant LAS VEGAS METROPOLITAN POLICE DEPARTMENT, (hereinafter, METRO) was, and now is, a governmental agency located in Clark County, Nevada

5. At all times relevant to this action, Defendant E. VONJAGEN, Badge No. 16098, (hereinafter, VONJAGEN) was a police officer employed by METRO.

6. At all times relevant to this action, Defendant TENNANT, Badge No. 9817, (hereinafter, TENNANT) was a police officer employed by METRO.

7. That the true name and capacity, whether individual, corporate, associate, or otherwise, of Defendant Does I through X are unknown to WILSON, who therefore sues any of the said Defendants by such fictitious names. WILSON is informed and believes and thereon alleges that each of the Defendants designated hereon as a Doe and/or a Roe owes a non-delegable duty to WILSON and is negligently responsible in some manner for the events and happenings hereon referred to and negligently caused injury and damages proximately thereby to the WILSON as hereon alleged; that this individual or entity may have been responsible for the design, construction, maintenance, care and upkeep of the Premises, which will be described more particularly in this Complaint, and which is located in Las Vegas, Nevada; that WILSON will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Defendant, Does when same have been ascertained by WILSON, together with appropriate charging allegations, and to join such Defendant in this action.

1 8. Further, WILSON alleges that Does 1 - 5 are police officers (hereinafter, the Doe
2 Officers), and Does 6 - 10 are managerial, supervisory, and/or policymaking employees of
3 METRO, (hereinafter Doe Managers). VONJAGEN, TENNANT, and the Doe Officers are sued
4 in their individual capacity for damages only.
5

6 9. At all relevant times, Defendants VONJAGEN, TENNANT and the Doe Officers were
7 duly appointed officers and/or employees of METRO, subject to oversight and supervision by
8 METRO'S elected and non-elected officials, including the Doe Managers.
9

10 10. At the time of the incident complained of herein, VONJAGEN was an officer in
11 training.
12

13 11. At the time of the incident complained of herein, TENNANT was training
14 VONJAGEN.
15

16 12. In doing the acts and, failing and omitting to act as hereinafter described, Defendants
17 VONJAGEN, TENNANT and the Doe Officers were acting on the implied and actual permission
18 and consent of METRO.
19

20 13. At all times herein, each and every METRO defendant was the agent of each and
21 every other METRO defendant and had the legal duty to oversee and supervise the hiring,
22 conduct and employment of each and every METRO defendant.
23

24 14. WILSON is informed and believes and thereon alleges that the Defendants
25 designated herein owe a non-delegable duty to WILSON and are negligently responsible for the
26 events and happenings herein referred to and negligently caused injury and damages proximately
27 thereby to the WILSON as hereon alleged.
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16. VONJAGEN and TENNANT confronted WILSON regarding an alleged improper lane change.

18. WILSON, a retired Las Vegas fireman is familiar with the process of dealing with authority in the community.

20. Despite the professional discussion the Parties were engaged in, VONJAGEN demanded that WILSON move to the front of a METRO police vehicle.

22. VANJAGEN then claimed WILSON was not following her commands.

24. TENNANT watched the situation escalate and failed to take any corrective action or diffuse.

25. TENNANT then joined in the forceful handling of WILSON and putting two sets of handcuffs tightly around WILSON's wrists.

26. VONJAGEN then conducted a pat down, including placing her hand on and around WILLSON'S genitals.

1 27. WILSON was then forced to stand in the sun in front of the METRO police vehicle
2 for an unreasonable amount of time.
3
4 28. There were no questions or interrogation of WILSON.
5
6 29. WILSON never posed any threat to Defendant.
7
8 30. After VANJAGEN and TENNANT ran a background check it was affirmed
9 WILSON had no warrant or criminal history.
10
11 31. WILSON posed no threat of death or injury to any METRO Defendant at any time,
12 nor did WILSON ever attempt to flee the area or to strike or otherwise harm any METRO
13 Defendant.
14
15 32. Several presently unknown Metro Officers arrived at the scene and were involved in
16 the investigation of WILSON. Since he posed no threat and had no criminal background, it is
17 clear that this investigation was racially motivated.
18
19 33. Eventually, upon the questioning of WILSON by the DOE officers it was revealed
20 that WILSON was retired Las Vegas fireman.
21
22 34. Immediately thereafter, WILSON was released from the handcuffs. Visibly it was
23 clear that his wrists had lost blood circulation from the tightness of the handcuffs.
24
25 35. WILSON was given a citation for unsafe lane change.
26
27 36. Following the altercation, WILSON went to his home. Shortly after walking in the
28 door a Metro Chief called WILSON regarding the incident.
29
30 37. WILSON was asked to come to Metro headquarters where he spoke with the Chief
31 and pictures of his hands and wrists were taken.
32
33 38. WILSON suffered severe injuries to his hands and wrists.

1 39. WILSON sought medical treatment for his injuries whereupon he was diagnosed
2 with bilateral medial neuropathy consistent with carpal tunnel syndrome, and other injuries
3 consistent with the abuse WILSON received at the hands of the METRO Defendants.
4

5 40. On or about October 5, 2017, WILSON filed a Complaint with the Las Vegas
6 Metropolitan Police Department as required. This date is well within the time requirement
7 imposed by NRS 41.036(2), requiring complainants to give notice of their complaints within two
8 years of the incident.

9 41. On December 21, 2017, The Citizen Review Board issued a Finding that Referred the
10 Complaint to a Hearing Panel. "This complaint should be referred to a Hearing Panel of the
11 Citizen Review Board for further review."
12

13 42. There after Internal Affairs reviewed the matter and upon information and belief their
14 ruling did not see any misconduct.

15 43. On January 11, 2018, the Citizen Review Board, following a hearing, entered a
16 Findings and Recommendations: "The Hearing Panel disagrees with the findings of Internal
17 Affairs and this complaint will be scheduled for an evidentiary hearing with all subject officers,
18 the complainant and any witnesses to be subpoenaed.
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20 44. On February 12, 2018, a letter was drafted by Lieutenant of Internal Affairs Ted
21 Glaude and approved by Sheriff Joseph Lombardo, was delivered to WILSON which stated,
22 "After a thorough and impartial review the investigation failed to produce sufficient evidence to
23 clearly prove or disprove the allegation(s), or it was determined the actions taken by the
24 employee(s) did not rise to the level of misconduct, or was not a policy violation(s). The
25 preliminary investigation and this finding were approved through two levels of review, including
26 the Lieutenant of the Internal Affairs Bureau."
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1 45. On March 14, 2018, the Citizen Review Board held a hearing and issued the
2 following Findings and Recommendations:

3 a. "On December 21, 2017 a screening panel of the Citizen Review Board referred a
4 complaint filed by Curt Wilson to this hearing panel. The function of this hearing panel is review
5 of the allegations of the complaint as well as review of the findings and integrity of the
6 investigation conducted by the Internal Affairs Bureau of the Las Vegas Metropolitan Police
7 Department hereinafter referred to as IAB.

8
9 b. "Based on the allegations of the complaint, IAB investigated whether Officer Tennant
10 and Officer VonTagen violated LVMPD Rules and regulations 6/006.00 Arrest Procedures and
11 4/102.12 Interaction with the Public. IAB findings as to both allegations were no policy
12 violation.

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14 c. "In making its findings and conclusions this panel reviewed the complaint, the
15 investigative report of IAB, the body cam and all other documents provided by IAB. The
16 standard of proof used by IAB as well as this panel is whether the moving party has satisfied the
17 burden of proof by clear and convincing evidence that the act complained of occurred.

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19 d. "On March 14, 2018 the panel heard testimony from the subject officers as well as
20 from the complainant and investigating officers including IAB Lieutenants and Sergeants.
21 Officers Tennant and VonTagen made a traffic stop on the complainant for an improper lane
22 change wherein Officer Tennant was the FTO and Officer VonTagen was an officer in training.
23 The complainant exited his vehicle and Officer Tennant explained to WILSON why he was
24 stopped and the situation appeared to be under control when Officer VonTagen stepped in and
25 ordered Wilson to the front of her vehicle. VonTagen gave Wilson multiple commands to put his
26 things on the hood of the car and when Wilson put his hands in his pockets to empty them
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1 VonTagen gave him inconsistent commands to take his hands out of his pockets. When Wilson
2 did not comply VonTagen decided to go hands on and placed Wilson in handcuffs. Officer
3 Tenant stood by and watched as this situation escalated and did not step in until VonTagen
4 needed assistance putting two sets of handcuffs around WILSON. VonTagen conducted a pat-
5 down of WILSON for weapons. The complainant did not complain of injuries and no use of
6 force report was filed.

8 "FINDINGS:

9 e. "6/006.00 Arrest Procedures

10 "The hearing panel unanimously agrees with the conclusion of no policy violation
11 reached by IAB. In making this finding the panel considered the testimony as well as statements
12 to IAB by all parties and witnesses and finds the standard of proof of clear and convincing
13 evidence was not met and the evidence failed to prove or disprove the alleged act occurred.

15 f. "4/102.12 Interaction with the Public

16 "The hearing panel agrees that as a matter of law there were no policy violations.
17 However the actions of the officers unnecessarily escalated the situation and could have
18 reasonably been construed as being discourteous thereby leaving the citizen feeling he was not
19 treated with proper respect.

21 "In making this finding the panel considered the testimony as well as statements to IAB
22 by all parties and witnesses and finds the standard of proof of clear and convincing evidence was
23 not met and the evidence failed to prove or disprove the alleged act occurred.

25 g. "RECOMMENDATIONS:

26 "Upon completion of the second investigation by Internal Affairs, the Citizen Review
27 Board agrees in part with their findings as follows:

- There were deficiencies pertaining to de-escalation techniques.
- If de-escalation practices were followed properly during the vehicle stop, it could have had a much higher likelihood of officers not being required to go “hands-on”.
- Improve FTO and Trainee “Contact and Cover” principles should have been implemented.

The panel recommends Metro adopt the findings for additional training as made by IAB.”

FIRST CLAIM FOR RELIEF

Battery

46. WILSON repeats and re-alleges each and every allegation of every preceding paragraph as if fully set forth herein.

47. VONJAGEN, TENNANT, and DOES 1 - 5, while working as police officers for METRO, and acting within the course and scope of their duties, intentionally took WILSON into custody by, slamming WILSON into the hood of a car, twisting WILSON’S hands behind his back, tightly handcuffing WILSON and placing him in their METRO police vehicle. The tightly placed handcuffs cut off circulation to WILSON’S wrists and hands.

48. Moe specifically, VONJAGEN gave conflicting commands to WILSON, which prevented his ability to comply with her orders.

49. The Officers claimed that WILSON’s conduct was aggressive and he refused to listen to their commands, both of which were false

50. WILSON remained in handcuffs for approximately thirty (30) minutes.

1 51. When WILSON was finally released from the handcuffs, visible marks on his wrists
2 were apparent from the handcuffs. WILSON's hands and wrists had lost circulation resulting in
3 discoloration to his hands and permanent damage to his wrists.
4

5 52. The following day, WILSON's hands and wrists remained visibly damaged when he
6 appeared at the Metro headquarters.

7 53. As a direct and proximate result of said of VONJAGEN and TENNANT, and
8 DOES1 - 5's conduct, WILSON suffered serious injury resulting in both severe bodily pain and
9 serious mental suffering.
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11 54. METRO and DOE Defendants 6 - 10 are vicariously liable for the acts of
12 VONJAGEN, TENNANT, and DOES 1 - 5 because their acts were done in the course and scope
13 of their employment, maliciously, in bad faith, with hostility and with willful or deliberate
14 disregard for the rights of WILSON.

15 55. The conduct of VONJAGEN, TENNANT, and DOES 1 - 5 was malicious, wanton,
16 oppressive, and accomplished with ia conscious disregard for the rights of WILSON, entitling
17 WILSON to an award of exemplary and punitive damages.
18

19 56. As a direct and proximate result of the excessive use of force by the Defendants,
20 WILSON has suffered great physical and mental pain and anxiety, and will continue to do so in
21 the future, all to his damages in excess of \$50,000.
22

23 57. WILSON has been required to obtain the services of an attorney in order
24 to prosecute this action and is entitled to recover reasonable attorney's fees and cost of suit.

25 **SECOND CLAIM FOR RELIEF**

26 **False Arrest/False Imprisonment**

27 58. WILSON repeats and realleges each and every allegation of every preceding
28

1 paragraph as if fully set forth herein.

2 59. VONJAGEN, TENNANT, and DOES 1 - 5, while working as Police Officers for
3 METRO, and acting within the course and scope of their duties, intentionally deprived WILSON
4 of his freedom of movement by use of force, threats of force, menace, fraud, deceit, and
5 unreasonable duress. VONJAGEN, TENNANT, and DOES 1 - 5 also detained WILSON
6 without reasonable suspicion.
7

8 60. VONJAGEN, TENNANT, and DOES 1 - 5 detained WILSON after WILSON
9 allegedly failed to abide by VANJAGEN'S direct orders.
10

11 61. As confirmed by the Review Panel, WILSON could not comply with VANJAGEN.

12 62. WILSON was forcibly detained for approximately thirty (30) minutes, which was
13 unreasonable in both scope and time.

14 63. VONJAGEN, TENNANT, and DOES 1 - 5's conduct was inconsistent, misleading,
15 and unnecessary.

16 64. WILSON suffered severe physical damage to his hands and wrists which has
17 required medical treatment and as such he must be compensated for such injuries.
18

19 65. As a direct and proximate result of the excessive use of force by the Defendants,
20 WILSON has suffered great physical and mental pain and anxiety, and will continue to do so in
21 the future, all to his damages in excess of \$50,000.

22 66. WILSON has been required to obtain the services of an attorney in order
23 to prosecute this action and is entitled to recover reasonable attorney's fees and cost of suit.
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THIRD CLAIM FOR RELIEF

Negligence

67. WILSON repeats and realleges each and every allegation of every preceding paragraph as if fully set forth herein.

68. The actions and inactions of the Defendants were negligent and reckless, including but not limited to:

a. the failure to properly and adequately assess the need to detain, arrest, and use force causing injury against WILSON;

b. the negligent tactics and handling of the situation with WILSON;

c. the negligent detention, arrest, and use of force, including force causing injury against WILSON;

d. the negligent use of force, including force causing injury against WILSON;

e. the failure to provide prompt medical care to WILSON;

f. the failure to properly train and supervise employees, both professional and non-professional, including VONJAGEN, TENNANT, and DOES 1 - 10;

g. the failure to ensure that adequate numbers of employees with appropriate education and training were available to meet the needs of and protect the rights of WILSON.

69. As a direct and proximate result of Defendants' conduct as alleged above, and other undiscovered negligent conduct, WILSON was caused to suffer severe pain and loss of freedom.

70. METRO is vicariously liable for the wrongful acts of VONJAGEN, TENNANT, and DOES 1 - 5 because their acts affirmatively caused the harm to WILSON.

71. The negligent acts of VONJAGEN, TENNANT, and DOES 1 - 5 resulted in bodily harm to WILSON.

72. As a direct and proximate result of the excessive use of force by the Defendants, WILSON has suffered great physical and mental pain and anxiety, and will continue to do so in the future, all to his damages in excess of \$50,000.

73. WILSON has been required to obtain the services of an attorney in order to prosecute this action and is entitled to recover reasonable attorney's fees and cost of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendant, and each of them, as follows:

1. For general damages in the amount of \$100,000 pursuant to NRS 41.035 per cause of action for a total amount of \$300,000;
2. For special damages for past and future medical treatment;
3. For compensatory damages;
4. For punitive damages against the individual defendants;
5. For pre-judgment interest;
6. For reasonable attorney's fees and cost of suit; and
7. For such other and further relief as the Court may deem just and proper.

DATED this 11 day of NOVEMBER, 2019.

BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC

/s/ Brandon L. Phillips

BRANDON L. PHILLIPS, ESQ.

Nevada Bar No. 12264

1455 East Tropicana Avenue, Suite 750

Las Vegas, Nevada 89119

Attorney for Plaintiff, Curtis Wilson

EXHIBIT B

Plaintiff's First Amended Complaint

EXHIBIT B

Steven D. Grierson

ACOM

Brandon L. Phillips, Esq.
BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC
Nevada Bar No. 12264
1455 E Tropicana Ave Suite 750
Las Vegas, NV 89119
Telephone: 702-795-0097
Facsimile: 702-795-0098
Email: blp@abetterlegalpractice.com
Attorney for Plaintiffs: Curtis Wilson

DISTRICT COURT

CLARK COUNTY, NEVADA

CURTIS WILSON, as an individual,

PLAINTIFF,

v.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT, a
governmental agency, POLICE
OFFICER E. VONJAGAN, Badge No.
16098, an employee of the Metropolitan
Police Department, POLICE OFFICER
TENNANT, Badge No. 9817, an
employee of the Metropolitan Police
Department. and Does I through X,

DEFENDANTS.

CASE NO. A-19-805368-C

DEPT. NO. 26

FIRST AMENDED COMPLAINT

Jury Trial Requested

Exemption from Arbitration: Damages in
Excess of \$50,000.

PLAINTIFF, CURTIS WILSON, by and through his attorney, Brandon L. Phillips, Esq., of
the law firm BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC., and for his causes of action
against Defendant, alleges as follows:

I. JURISDICTION

1. All of the acts complained of herein occurred in or arose from Clark County, Nevada.
All of the parties reside in or do business in the County of Clark, State of Nevada. Therefore,
this Court has jurisdiction over the parties, and concurrent jurisdiction over the subject matter
and all claims for relief pertaining hereto.

2. Venue in Clark County is proper pursuant to NRS 13.010.

II. THE PARTIES

3. At all times relevant hereto, Plaintiff, CURTIS WILSON, (hereinafter WILSON) was, and now is, a resident of the County of Clark, State of Nevada.

4. At all times relevant to this action, Defendant LAS VEGAS METROPOLITAN POLICE DEPARTMENT, (hereinafter, METRO) was, and now is, a governmental agency located in Clark County, Nevada

5. At all times relevant to this action, Defendant E. VONJAGEN, Badge No. 16098, (hereinafter, VONJAGEN) was a police officer employed by METRO.

6. At all times relevant to this action, Defendant TENNANT, Badge No. 9817, (hereinafter, TENNANT) was a police officer employed by METRO.

7. That the true name and capacity, whether individual, corporate, associate, or otherwise, of Defendant Does I through X are unknown to WILSON, who therefore sues any of the said Defendants by such fictitious names. WILSON is informed and believes and thereon alleges that each of the Defendants designated hereon as a Doe and/or a Roe owes a non-delegable duty to WILSON and is negligently responsible in some manner for the events and happenings hereon referred to and negligently caused injury and damages proximately thereby to the WILSON as hereon alleged; that this individual or entity may have been responsible for the design, construction, maintenance, care and upkeep of the Premises, which will be described more particularly in this Complaint, and which is located in Las Vegas, Nevada; that WILSON will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Defendant, Does when same have been ascertained by WILSON, together with appropriate charging allegations, and to join such Defendant in this action.

1 8. Further, WILSON alleges that Does 1 - 5 are police officers (hereinafter, the Doe
2 Officers), and Does 6 - 10 are managerial, supervisory, and/or policymaking employees of
3 METRO, (hereinafter Doe Managers). VONJAGEN, TENNANT, and the Doe Officers are sued
4 in their individual capacity for damages only.
5

6 9. At all relevant times, Defendants VONJAGEN, TENNANT and the Doe Officers were
7 duly appointed officers and/or employees of METRO, subject to oversight and supervision by
8 METRO'S elected and non-elected officials, including the Doe Managers.
9

10 10. At the time of the incident complained of herein, VONJAGEN was an officer in
11 training.
12

13 11. At the time of the incident complained of herein, TENNANT was training
14 VONJAGEN.
15

16 12. In doing the acts and, failing and omitting to act as hereinafter described, Defendants
17 VONJAGEN, TENNANT and the Doe Officers were acting on the implied and actual permission
18 and consent of METRO.
19

20 13. At all times herein, each and every METRO defendant was the agent of each and
21 every other METRO defendant and had the legal duty to oversee and supervise the hiring,
22 conduct and employment of each and every METRO defendant.
23

24 14. WILSON is informed and believes and thereon alleges that the Defendants
25 designated herein owe a non-delegable duty to WILSON and are negligently responsible for the
26 events and happenings herein referred to and negligently caused injury and damages proximately
27 thereby to the WILSON as hereon alleged.
28

II. FACTS COMMON TO ALL ALLEGATIONS

15. On August 22, 2017, WILSON was approached by VONJAGEN and TENNANT at a Car Wash near Maryland Parkway and Karen in Clark County, Nevada.

16. VONJAGEN and TENNANT confronted WILSON regarding an alleged improper lane change.

17. A discussion between VONJAGEN and TENNANT and WILSON ensued.

18. WILSON, a retired Las Vegas fireman is familiar with the process of dealing with authority in the community.

19. WILSON was dressed in gym-wear and posed no physical threat to the officers.

20. Despite the professional discussion the Parties were engaged in, VONJAGEN demanded that WILSON move to the front of a METRO police vehicle.

21. VONJAGEN then gave WILSON multiple conflicting commands by ordering him to put his things on the hood of the car and when WILSON put his hands in his pockets to empty them VONJAGEN ordered WILSON to take his hands out of his pockets.

22. VANJAGEN then claimed WILSON was not following her commands.

23. VANJAGEN then forcefully handcuffed WILSON.

24. TENNANT watched the situation escalate and failed to take any corrective action or diffuse.

25. TENNANT then joined in the forceful handling of WILSON and putting two sets of handcuffs tightly around WILSON's wrists.

26. VONJAGEN then conducted a pat down, including placing her hand on and around WILLSON'S genitals.

1 27. WILSON was then forced to stand in the sun in front of the METRO police vehicle
2 for an unreasonable amount of time.

3 28. There were no questions or interrogation of WILSON.

4 29. WILSON never posed any threat to Defendant.

5 30. After VANJAGEN and TENNANT ran a background check it was affirmed
6 WILSON had no warrant or criminal history.

7 31. WILSON posed no threat of death or injury to any METRO Defendant at any time,
8 nor did WILSON ever attempt to flee the area or to strike or otherwise harm any METRO
9 Defendant.

10 32. Several presently unknown Metro Officers arrived at the scene and were involved in
11 the investigation of WILSON. Since he posed no threat and had no criminal background, it is
12 clear that this investigation was racially motivated.

13 33. Eventually, upon the questioning of WILSON by the DOE officers it was revealed
14 that WILSON was retired Las Vegas fireman.

15 34. Immediately thereafter, WILSON was released from the handcuffs. Visibly it was
16 clear that his wrists had lost blood circulation from the tightness of the handcuffs.

17 35. WILSON was given a citation for unsafe lane change.

18 36. Following the altercation, WILSON went to his home. Shortly after walking in the
19 door a Metro Chief called WILSON regarding the incident.

20 37. WILSON was asked to come to Metro headquarters where he spoke with the Chief
21 and pictures of his hands and wrists were taken.

22 38. WILSON suffered severe injuries to his hands and wrists.

1 39. WILSON sought medical treatment for his injuries whereupon he was diagnosed
2 with bilateral medial neuropathy consistent with carpal tunnel syndrome, and other injuries
3 consistent with the abuse WILSON received at the hands of the METRO Defendants.
4

5 40. On or about October 5, 2017, WILSON filed a Complaint with the Las Vegas
6 Metropolitan Police Department as required. This date is well within the time requirement
7 imposed by NRS 41.036(2), requiring complainants to give notice of their complaints within two
8 years of the incident.

9 41. On December 21, 2017, The Citizen Review Board issued a Finding that Referred the
10 Complaint to a Hearing Panel "This complaint should be referred to a Hearing Panel of the
11 Citizen Review Board for further review."
12

13 42. There after Internal Affairs reviewed the matter and upon information and belief their
14 ruling did not see any misconduct.

15 43. On January 11, 2018, the Citizen Review Board, following a hearing, entered a
16 Findings and Recommendations: "The Hearing Panel disagrees with the findings of Internal
17 Affairs and this complaint will be scheduled for an evidentiary hearing with all subject officers,
18 the complainant and any witnesses to be subpoenaed.
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21 Glaude and approved by Sheriff Joseph Lombardo, was delivered to WILSON which stated,
22 "After a thorough and impartial review the investigation failed to produce sufficient evidence to
23 clearly prove or disprove the allegation(s), or it was determined the actions taken by the
24 employee(s) did not rise to the level of misconduct, or was not a policy violation(s). The
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7 Department hereinafter referred to as IAB.
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10 and Officer VonTagen violated LVMPD Rules and regulations 6/006.00 Arrest Procedures and
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14 c. "In making its findings and conclusions this panel reviewed the complaint, the
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17 burden of proof by clear and convincing evidence that the act complained of occurred.
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THIRD CLAIM FOR RELIEF

Negligence

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69. The actions and inactions of the Defendants were negligent and reckless, including but not limited to:

- a. the failure to properly and adequately assess the need to detain, arrest, and use force causing injury against WILSON;
- b. the negligent tactics and handling of the situation with WILSON;
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- e. the failure to provide prompt medical care to WILSON;
- f. the failure to properly train and supervise employees, both professional and non-professional, including VONJAGEN, TENNANT, and DOES 1 - 10;
- g. the failure to ensure that adequate numbers of employees with appropriate education and training were available to meet the needs of and protect the rights of WILSON.

70 As a direct and proximate result of Defendants' conduct as alleged above, and other undiscovered negligent conduct, WILSON was caused to suffer severe pain and loss of freedom.

71. METRO is vicariously liable for the wrongful acts of VONJAGEN, TENNANT, and DOES 1 - 5 because their acts affirmatively caused the harm to WILSON.

72. The negligent acts of VONJAGEN, TENNANT, and DOES 1 - 5 resulted in bodily harm to WILSON.

1 51. WILSON remained in handcuffs for approximately thirty (30) minutes.

2 52. When WILSON was finally released from the handcuffs, visible marks on his wrists
3 were apparent from the handcuffs. WILSON's hands and wrists had lost circulation resulting in
4 discoloration to his hands and permanent damage to his wrists.
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24 58. WILSON has been required to obtain the services of an attorney in order
25 to prosecute this action and is entitled to recover reasonable attorney's fees and cost of suit.

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- There were deficiencies pertaining to de-escalation techniques.
- If de-escalation practices were followed properly during the vehicle stop, it could have had a much higher likelihood of officers not being required to go "hands-on".
- Improve FTO and Trainee "Contact and Cover" principles should have been implemented.

The panel recommends Metro adopt the findings for additional training as made by IAB."

46. Pursuant to *Dep't of Human Res. v. Shively*, 110 Nev. 316, 318, 871 P.2d 355, 356 (1994), a timely filed administrative claim tolls limitations period.

FIRST CLAIM FOR RELIEF

Battery

47. WILSON repeats and re-alleges each and every allegation of every preceding paragraph as if fully set forth herein.

48. VONJAGEN, TENNANT, and DOES 1 - 5, while working as police officers for METRO, and acting within the course and scope of their duties, intentionally took WILSON into custody by, slamming WILSON into the hood of a car, twisting WILSON'S hands behind his back, tightly handcuffing WILSON and placing him in their METRO police vehicle. The tightly placed handcuffs cut off circulation to WILSON'S wrists and hands.

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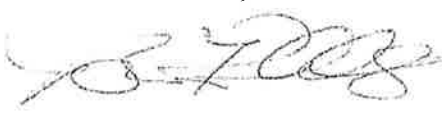
7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff prays for relief against Defendant, and each of them, as
9 follows:

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22 DATED this 30 day of April, 2020.

23 BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC

24 
25 BRANDON L. PHILLIPS, ESQ.
26 Nevada Bar No 12264
27 1455 East Tropicana Avenue, Suite 750
28 Las Vegas, Nevada 89119
 Attorney for Plaintiff, Curtis Wilson

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CURTIS WILSON, as an individual;
PLAINTIFF,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, Does I through X

DEFENDANT.

CASE NO. A-19-805368-C

DEPT. NO. 26

AFFIDAVIT OF CURTIS WILSON IN SUPPORT OF THE COMPLAINT

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

CURTIS WILSON, being first duly sworn, deposes and says;

1. I am older than eighteen years of age and am a resident of Clark County, Nevada.
2. I am the Plaintiff in this matter.
3. I have personal knowledge of the facts set forth herein; and I make this Affidavit in support of the attached Complaint.
4. I have read the Complaint filed in this case and can testify that the allegations in that document are true and correct to the best of my knowledge.

///

///

///

1 I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true
2 and correct.

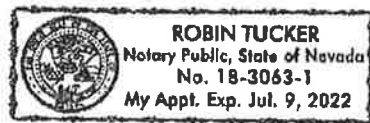
3 FURTHER AFFIANT SAYETH NAUGHT.

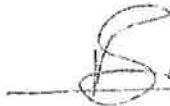
4 
5 CURTIS WILSON

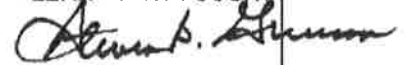
6 SUBSCRIBED and SWORN to before
7 me this 30th day of April 2020.

8
9 NOTARY PUBLIC in and for said
10 County and State

11 Clark State of Nevada
12 County



14
15 
16



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DISTRICT COURT

CLARK COUNTY, NEVADA

CURTIS WILSON, as an individual;

Plaintiff,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, a governmental agency,
POLICE OFFICER E. VONJAGAN, Badge
No. 16098, an employee of the Metropolitan
Police department, POLICE OFFICER
TENNANT, Badge No. 9817, an employee
of the Metropolitan Police Department, and
Does I through X;

Defendant.

CASE NO.: A-19-805368-C

DEPT. NO.: 26

**OPPOSITION TO MOTION TO
DISMISS**

Plaintiff, CURTIS WILSON, by and through his counsel of record, Brandon L. Phillips, Esq., of the law firm BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC., respectfully submits his Opposition to Defendants Motion to Dismiss.

This Opposition is made and based on the papers and pleadings on file herein, the following Points and Authorities, the exhibits attached hereto, and any oral argument the Court may entertain at the time of hearing this matter.

DATED this 21st day of July, 2020.

BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC

/s/ Brandon L. Phillips

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Attorney for Plaintiff, Curtis Wilson

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants' motion to dismiss contains one fatal flaw: Pursuant to State, Dep't Human
3 Resources v. Shively, 110 Nev. 316, 317 (Nev. 1994), the statute of limitations applicable to Plaintiff
4 Curtis Wilson's (hereinafter "Wilson") claims was tolled during the pendency of the administrative
5 process. Wilson commenced the administrative process on October 5, 2017 and saw it through to its
6 conclusion on March 14, 2018 – a period of one hundred sixty (160) days. Wilson's initial Complaint
7 was filed on November 13, 2019 – just two years and eighty-three (83) days after the incident giving
8 rise to his claims. Because the two-year statute of limitations was tolled for 160 days during the
9 pendency of the administrative process, Wilson's Complaint was timely when it was filed two years
10 and 83 days after the incident giving rise to his claims. Thus, Wilson's Complaint is not subject to
11 dismissal and Defendants' motion to dismiss must be denied.

12 **I. FACTUAL BACKGROUND**

13 On August 22, 2017, Wilson was stopped for a routine traffic violation. Wilson is a retired
14 Las Vegas fireman. He is also an African American. Unfortunately, before learning of Wilson's public
15 service, the Las Vegas Metropolitan Police Department ("LVMPD") officers who stopped Wilson,
16 Officer Vonjagan ("Vonjagan") and Officer Tennant ("Tennant") could only see the color of his skin.
17 In a pattern of deplorable conduct that has become rampant in police departments throughout our
18 nation and which in recent months has sparked protests in cities throughout our country, Officers
19 Vonjagan and Tennant treated Wilson in a horrifically humiliating and inhumane manner solely
20 because of his skin color. Without cause Wilson was placed in not one - but two - sets of handcuffs
21 that were so tight they left visible marks on his wrists, cut off circulation to his hands, and caused
22 injuries that he will suffer from for the rest of his life. The Officers then subjected Wilson to a pat
23 down, which was conducted by a female officer who inappropriately placed her hands on his genitals.
24 Even after placing him in two sets of handcuffs and patting him down – *all for a routine traffic stop*
25 – Officers Vonjagan and Tennant then forced Wilson to stand in the sun in 100°F heat for more than
26 30 minutes without offering him any shade or water while they purportedly investigated his
27 background. At no time did the officers who conducted this routine traffic stop have probable cause
28 to believe Wilson was guilty of anything other than an illegal lane change, yet he was presumed to be
a dangerous criminal and

1 treated like an animal. It was only once the officers learned of Wilson's service as a Las Vegas
2 firefighter that they began to treat him with any shred of human decency. In fact, as demonstrated by
3 the body camera footage from the incident, after spending more than thirty minutes in handcuffs
4 Wilson is asked his occupation, and when he reveals that he is a retired firefighter the officer
5 questioning Wilson immediately calls for the handcuffs to be removed.

6 Unfortunately, by the time the handcuffs were removed the damage was done. Despite
7 receiving prompt medical treatment for the injuries to his hands and wrists, Wilson has been informed
8 by his treating physicians that his injuries will never fully heal. He has been diagnosed with permanent
9 injuries including bilateral medial neuropathy consistent with carpal tunnel syndrome.

10 After this harrowing altercation Wilson went directly home. Shortly after he walked in the
11 door he received a telephone call from a Las Vegas Metropolitan Police Chief regarding the incident.
12 He was asked to come to LVMPD headquarters where he spoke with the Police Chief in person and
13 submitted to photographs of his hands and wrists.

14 In response to the egregious treatment to which he was subjected by Officers Vonjagan and
15 Tennant, Wilson filed a complaint ("Administrative Complaint") with the Metropolitan Police
16 Department Citizen Review Board ("CRB") on October 5, 2017, thereby commencing the
17 administrative process provided for in NRS 289.387 and Las Vegas City Ordinance Chapter 2.64. A
18 true and correct copy of Wilson's Administrative Complaint is attached hereto as **Exhibit 1**.

19 The CRB determined it had jurisdiction over Wilson's Administrative Complaint and
20 provided a copy of the Administrative Complaint to Defendant Officers Vonjagan and Tennant. *See*
21 <https://citizenreviewboard.com/ComplaintProcess.aspx> ("Once the director determines that the CRB
22 has jurisdiction to review the complaint, an acknowledgment letter goes out to the complainant with
23 the assigned case number. A copy of the complaint is sent to the subject officer as well as to the
24 Internal Affairs Bureau (IAB). The officer notification letter states the alleged type of misconduct as
25 well as a date by which the officer may submit a response in writing to the CRB.").

26 On December 21, 2017, the CRB issued a finding that, "This complaint should be referred to
27 a Hearing Panel of the [CRB] for further review." A true and correct copy of the CRB's December
28 21, 2017 Findings is attached hereto as **Exhibit 2**. In the correspondence Wilson received from the

1 CRB with its findings, the CRB states, “**If you are not satisfied** with the decision of the panel, **you**
2 **may contact legal counsel** to pursue any other legal remedies available.” A true and correct copy of
3 said correspondence is attached hereto as **Exhibit 3** (emphasis added). Wilson, trusting in the
4 administrative process and satisfied with the decision of the CRB to refer the case for further review,
5 reasonably believed he did not need to contact legal counsel to pursue other legal remedies at that
6 time.

7 While Wilson awaited the outcome of the hearing scheduled by the CRB, the LVMPD
8 Internal Affairs Bureau (“IAB”) also reviewed the matter.

9 On January 11, 2018 the CRB held its initial hearing and found, “The Hearing Panel disagrees
10 with the findings of Internal Affairs and this complaint will be scheduled for an evidentiary hearing
11 with all subject officers, the complainant and any witnesses to be subpoenaed.” A true and correct
12 copy of the CRB’s January 11, 2018 findings is attached hereto as **Exhibit 4**.

13 On February 12, 2018, Sheriff Joseph Lombardo and the IAB sent a letter to Wilson informing
14 him that, “After a thorough and impartial review, the investigation failed to produce sufficient
15 evidence to clearly prove or disprove the allegation(s), or it was determined the actions taken by the
16 employee(s) did not rise to the level of misconduct, or was not a policy violation(s).” A true and
17 correct copy of Sheriff Lombardo’s February 12, 2018 correspondence is attached hereto as **Exhibit**
18 **5**. In addition to informing Wilson of the results of the preliminary investigation conducted by the
19 IAB, the correspondence advised Wilson as to what steps he should take in response to the
20 determination: “If you are not satisfied with this finding, and the complaint was against a Police or
21 Corrections Officer, you may file a complaint with the Citizen Review Board . . . Please note you
22 only have one year from the date of the incident to file a complaint with them.” See **Exhibit 5**.

23 Just a few days later, the CRB issued subpoenas to Wilson, Officer Vonjagan, Officer
24 Tennant, and several other members of the LVMPD commanding their appearance at an
25 administrative hearing on March 14, 2018. True and correct copies of said subpoenas are attached
26 hereto as **Exhibit 6**. Although extremely disheartened by the results of the IAB preliminary
27 investigation, Wilson continued to place his faith in the administrative process.

28 . . .

1 On March 14, 2018, Wilson attended the CRB hearing. Much to his disappointment, the CRB
2 issued findings and recommendations that agreed in part with the IAB. A true and correct copy of the
3 CRB's March 14, 2018 Findings is attached hereto as **Exhibit 7**. While the CRB findings also
4 recommended improved officer training, they did not go nearly far enough to address the grave
5 injustice, humiliation, and egregious treatment Wilson suffered at the hands of Officers Vonjagan and
6 Tennant. Accordingly, after seeing the administrative process through to its conclusion Wilson
7 realized that he had no other choice but to pursue his legal remedies.

8 Thus, Wilson was entrenched in the administrative proceedings from October 5, 2017 through
9 March 14, 2018, during which time the statute of limitations on his legal claims was tolled. State
10 Dep't Human Resources v. Shively, 110 Nev. 316, 317 (Nev. 1994). After exhausting the available
11 administrative remedies without obtaining satisfactory resolution, Wilson promptly sought legal
12 counsel, who on November 13, 2019 timely filed a Complaint on Wilson's behalf.

13 **II. LEGAL ARGUMENT**

14 The question of whether statutes of limitation are tolled during the pendency of administrative
15 proceedings was answered in the affirmative by the Nevada Supreme Court in State, Dep't Human
16 Resources v. Shively, 110 Nev. 316, 317 (Nev. 1994). There the Court held, "the statute of limitations
17 applicable to [the plaintiff's] legal claim for relief was tolled while the litigants were trying to obtain
18 an administrative solution to the underlying dispute." Id. The court explained that a plaintiff must not
19 "be penalized for pursuing an administrative resolution to its dispute." Id. Because the tolling question
20 presented in Shively was one of first impression, the Court looked to other jurisdictions and found as
21 follows:

22
23 While Nevada has not specifically addressed this issue, decisions from
24 other jurisdictions recognize this sound principle. For example, in
25 Myers v. County of Orange, 86 Cal.Rptr. 198 (Ct.App. 1970), the trial
26 court found that a one-year claims limitations statute on plaintiff's
27 wrongful termination claim had expired, even though the plaintiff had
28 previously pursued an administrative remedy. On appeal, plaintiff
argued that the limitations period was tolled while she sought review
of the same employment termination dispute with the Retirement
Board of the County of Orange. The California Court of Appeals
agreed. The court held that **even where exhaustion of administrative**

1 remedies was not a prerequisite to filing suit, the limitations
2 period was tolled while plaintiff was entrenched in the
3 administrative process. The court reasoned that the law favored
4 resolution of disputes in the administrative forum and that the
5 plaintiff should not have the "clock of limitations tick in his ear"
6 while pursuing administrative action: "When an injured person has
7 several legal remedies and, reasonably and in good faith, pursues one
8 designed to lessen the extent of the injury or damages, the statute of
9 limitations does not run on the other while he is thus pursuing the
10 one[.]" Id. at 203-04; *see also Zipes v. Transworld Airlines*, 455 U.S.
11 385 (1982) (timely filed administrative claim tolls limitations period
12 of second action filed in federal court); Campbell v. Graham-
13 Armstrong, 509 P.2d 689, 694 (Cal. 1973).

14 **As evidenced by the foregoing authorities, it does not make sense**
15 **for NSWDC to lose its cause of action simply because it was**
16 **pursuing, and was required to pursue, administrative remedial**
17 **action.**

18 Id. at 318.

19 The same sound reasoning the Nevada Supreme Court cited with approval in Shively applies
20 here. Even though exhaustion of administrative remedies was not a prerequisite to filing suit, the
21 limitations period should be tolled while Wilson was entrenched in the administrative process. The
22 law favors resolution of disputes in the administrative forum and citizens aggrieved by the conduct of
23 LVMPD Officers should not have the "clock of limitations tick in [their] ear[s]" while pursuing
24 administrative action. Indeed, Defendant LVMPD itself urged Wilson to seek redress through the
25 administrative process, informing him that if he was not satisfied with the findings of the IAB
26 investigation, "you may file a complaint with the [CRB]." *See Exhibit 5*. It would not make sense for
27 Wilson or other similarly situated citizens to lose their causes of action simply because they are
28 pursuing the very administrative remedial action recommended by LVMPD.

Likewise the policy and equitable considerations underlying the Nevada Supreme Court's
decision in Shively apply here. As explained in Shively,

[T]he concerns alleviated by traditional statute of limitations law
simply do not apply. The defendant is not caught off guard when faced
with legal claims for relief that were just examined in the
administrative process. The administrative process puts the defendant

1 on notice that his actions are in dispute and may spur additional and
2 separate legal battling.
3 110 Nev. 316 at 318-19. Here, it is undeniable that Defendants had notice of Wilson's claims. Not
4 only did the administrative process put Defendants on notice that their actions were in dispute and
5 may spur additional and separate legal battling, but Defendant LVMPD had an opportunity to
6 conduct, and did in fact conduct, its own investigation, which it admits was "thorough," "went through
7 two levels of review," and took into account "all reports and available investigative resources from
8 the incident." See **Exhibit 5**. Moreover, Defendants Vonjagan and Tennant were both subpoenaed to
9 appear and give testimony at the March 14, 2018 CRB hearing. See **Exhibit 6**. As Defendants admit,
10 "The Nevada Supreme Court had held that the primary purpose of statutes of limitations is to
11 '[prevent] surprises through the revival of claims that have been allowed to slumber until evidence
12 has been lost, memories have faded, and witnesses have disappeared.'" See Motion to Dismiss, p.5:5-
13 7. Yet Defendants have not asserted, nor could they assert, that Wilson's Complaint came as a
14 surprise, that any evidence has been lost, any memories have faded, or any witnesses have
15 disappeared. Defendants have all been on notice of Wilson's claims since at least October 5, 2017
16 when he filed his Administrative Complaint with the CRB. Moreover, the incident itself was captured
17 on a "body cam" worn by one of the involved officers, and this recording was supplied to Wilson and
18 continues to be preserved by Wilson for production in this case. There is no doubt the Defendants are
19 in possession of copy of the "body cam" video as well.

20 It is anticipated that Defendants will assert this Court should view Shively narrowly based on
21 the Nevada Supreme Court's subsequent decision in Siragusa v. Brown, 114 Nev. 1384 (Nev. 1998),
22 but such an argument would be misplaced. In Siragusa, the appellant asserted fraud claims against a
23 lawyer and law firm she alleged masterminded a scheme to allow her ex-husband to deprive her of
24 property awarded to her in the divorce settlement agreement. The district court applied the discovery
25 rule and found that the plaintiff's claims accrued at the latest on the day she became aware that a
26 "sham" transfer had been concocted. The Nevada Supreme Court also based its decision on the
27 discovery rule, but reversed the District Court, holding "[W]e conclude that such awareness did not,
28 as a matter of law, constitute discovery . . . of facts constituting the fraud allegedly perpetrated by
Brown." Id. at 1391. The Nevada Supreme Court remanded the case to the district court with the
following instructions, "Thus, on remand the trier of fact must determine whether [plaintiff's]

1 discovery of [defendant's] involvement was delayed due to her alleged attempts to conceal her role
2 and whether [plaintiff] could have, nonetheless, discovered her identity earlier through diligent
3 inquiry.” *Id.* at 1394-95. Thus, the Court’s decision in Siragusa turned on its application of the
4 discovery rule, which is not at issue here.

5 In Siragusa, the Court’s only mentioned of Shively appears in a footnote which states,
6 “However, we specifically reject appellants’ argument that because they were litigating the same
7 issues against Brown in the bankruptcy proceedings as were set forth in the instant complaint, the
8 limitations periods were tolled during the pendency of those bankruptcy proceedings. . . . we hold that
9 our prior cases tolling the statutes of limitations during the pendency of other proceedings are limited
10 to their facts and have no broader application in the instant case.” The Court then cited Shively and
11 another case as examples of such prior jurisprudence. *Id.* at 1395 fn7. The equitable tolling sought by
12 the plaintiff in Siragusa would have significantly extended the application of the Court’s ruling in
13 Shively, and the mere fact that the Court declined to make such a sweeping extension does not counsel
14 against application of Shively where, as here, it is squarely on point.

15 Here, the facts here are remarkably similar to those at issue in Shively, whereas the facts at
16 issue in Siragusa were readily distinguishable. Shively involved fraud claims asserted by the State of
17 Nevada, Department of Human Resources, Welfare Division (“NSWD”) against the personal
18 representative of a Medicaid applicant. Before filing suit NSWD notified Shively of the suspected
19 fraud and afforded him an opportunity to prove the transaction giving rise to the suspicion had not
20 been undertaken for an improper purpose. Here, before filing suit Wilson notified Defendants of the
21 wrongdoing giving rise to his claims and gave them an opportunity to meaningfully address the
22 wrongdoing and take corrective action through the administrative process. Like the administrative
23 process at issue in Shively, the CRB has been set up for the express purpose of resolving the claims
24 at issue. Indeed, the LVMPD’s own website urges citizens to utilize the administrative process to
25 resolve complaints of officer misconduct. Specifically, it states, “The [CRB] was established for the
26 purpose of receiving and investigating complaints of misconduct by peace officers of the [LVMPD].”
27 <https://www.lvmpd.com/en-us/Pages/InternalAffairs-CitizenReviewBoard.aspx> (last visited July 20,
28 2020); *see also* <https://www.lvmpd.com/en-us/Pages/InternalAffairs-Complaints.aspx> (last visited

1 July 18, 2020) (“If you feel that you have a complaint against an employee of the Las Vegas
2 Metropolitan Police Department, please use the form below.”) Thus, not only does an administrative
3 process exist for the express purpose of resolving claims like those asserted by Wilson, but Defendants
4 and the CRB actually invited Wilson to seek resolution of his complaints through the administrative
5 process. In Siragusa, there was no administrative process through which the plaintiff sought redress
6 of her claims against the lawyer and law firm she ultimately sued. Neither the lawyer nor the law firm
7 was a debtor in the bankruptcy proceeding, and although she sought to have the bankruptcy court
8 exercise supplemental jurisdiction over the defendants her adversary claims against them were
9 dismissed. Thus, even if bankruptcy proceedings were administrative proceedings (which they are
10 not), they were not designed to provide a forum to resolve the types of claims at issue in Siragusa.
11 Simply put, Siragusa is distinguishable from both Shively and the instant case.

12 It is further anticipated that Defendants will assert that the administrative process was not
13 mandatory, and therefore Wilson should not receive the benefit of tolling. Although the Nevada
14 Supreme Court has not addressed this issue head on, it did comment on the question in Shively. There
15 the Court cited with approval the California case, Myers v. County of Orange, 86 Cal.Rptr. 198
16 (Ct.App. 1970), where it was “held that even where exhaustion of administrative remedies was not a
17 prerequisite to filing suit, the limitations period was tolled while plaintiff was entrenched in the
18 administrative process.” 110 Nev. 316 at 318. Moreover, where Nevada law is silent, the Nevada
19 Supreme Court looks to California case law as instructive. See Platinum Unit-Owners' Ass'n v.
20 Residential Constructors, LLC, 2015 WL 1186530, at *5 (D. Nev. Mar. 16, 2015) (“Nevada courts
21 often look to California law where Nevada law is silent.”). Thus, as indicated by the Nevada Supreme
22 Court’s discussion in Shively, and in line with the California case law cited with approval in Shively,
23 even where exhaustion of administrative remedies is not made mandatory, Wilson should not be
24 penalized for attempting to avoid litigation by placing his faith in the very administrative processes
25 that have been established for the purpose of resolving such claims.

26

27

1 In Wisembaker v. Farwell, 341 F. Supp. 2d 1160 (D. Nev. 2004), the United States District
2 Court for the District of Nevada interpreted Nevada law on equitable tolling, including in its analysis
3 a discussion of the Nevada Supreme Court's decision in Shively. The court noted,

4
5 Although there is no controlling law, the Nevada courts have dealt
6 with the issue of equitable tolling in other contexts. In dealing with
7 Nevada's anti-discrimination statutes, the Nevada Supreme Court set
8 out Nevada's doctrine of equitable tolling as follows:

9 "Without limiting or restricting the application of the doctrine of
10 equitable tolling, we note that there are several factors which have
11 been mentioned by the above authorities in determining whether the
12 doctrine should apply in a given case. Those factors include: the
13 diligence of the claimant; the claimant's knowledge of the relevant
14 facts; the claimant's reliance on authoritative statements by the
15 administrative agency that misled the claimant about the nature of the
16 claimant's rights; any deception or false assurances on the part of the
17 employer against whom the claim is made; the prejudice to the
18 employer that would actually result from delay during the time that the
19 limitations period is tolled; and any other equitable considerations
20 appropriate in the particular case."

21 Copeland v. Desert Inn Hotel, 99 Nev. 823, 826, 673 P.2d 490, 492
22 (Nev. 1983). The Nevada Supreme Court has applied this standard in
23 subsequent cases. See State, Dep't of Human Resources v. Shively, 871
24 P.2d 355 (Nev. 1994) (tolling a statute of limitations where the state
25 was required to pursue administrative action); and Siragusa v. Brown,
26 971 P.2d 801, 808 n. 7 (refusing to toll the statute of limitations during
27 the pendency of prior bankruptcy proceedings).

28 Wisembaker v. Farwell, 341 F. Supp. 2d 1160, 1164-65 (D. Nev. 2004).

Of the factors outlined by the Nevada Supreme Court in Copeland, and relied upon by the
Federal District Court in Wisembaker, four (4) are applicable here: (1) the diligence of the claimant;
(2) the claimant's reliance on authoritative statements by the administrative agency that misled the
claimant about the nature of the claimant's rights; (3) the prejudice to the defendant that would
actually result from delay during the time that the limitations period is tolled; and (4) any other
equitable considerations appropriate in the particular case.

1 Wilson was indisputably diligent in pursuing his claims. He filed his Administrative
2 Complaint less than two months after the incident that gave rise to his claims. He actively participated
3 in the administrative process, and promptly upon its unsatisfactory conclusion sought legal counsel
4 to pursue other legal remedies.

5 Both LVMPD and the CRB instructed Wilson to seek redress through the administrative
6 process, and made statements indicating that legal action would only be necessary if he were
7 dissatisfied with its outcome. See **Exhibit 3** (“If you are not satisfied with the decision of the panel,
8 you may contact legal counsel to pursue any other legal remedies available.”); see also Exhibit 5, (“If
9 you are not satisfied with this finding, and the complaint was against a Police or Corrections Officer,
10 you may file a complaint with the Citizen Review Board . . . Please note you only have one year from
11 the date of the incident to file a complaint with them.”). Notably, although LVMPD advised Wilson
12 of the one (1) year time limit to pursue an administrative claim, neither LVMPD nor the CRB ever
13 advised Wilson of the two (2) time limit to pursue a legal claim.

14 Defendants would suffer no prejudice due to delay. Defendants admit the primary purpose of
15 statutes of limitation is to guard against surprise and to avoid situations that would require defense of
16 legal claims where evidence is missing due to delay. As the Court held in Shively, “the concerns
17 alleviated by traditional statute of limitations law simply do not apply. The defendant is not caught
18 off guard when faced with legal claims for relief that were just examined in the administrative
19 process.” 318-19. Here, as in Shively, there is no surprise as Defendants have known of Wilson’s
20 claims since commencement of the underlying administrative proceeding. Moreover, Wilson first
21 sought redress of his claims by submitting to Defendants’ own internal and administrative review
22 processes. As a result of those processes, all of the evidence – including a “body cam” recording of
23 the incident itself - has been well preserved. And the witnesses who are likely to testify in this matter
24 are the same witnesses who were subpoenaed to testify in the March 14, 2018 administrative hearing
25 before the CRB.

26 Finally, equitable considerations weigh strongly in favor of tolling. The gravity of the claims
27 at issue demands resolution on the merits. Wilson is a 71-year old retired Las Vegas firefighter. For
28 more than twenty years he put his life on the line serving the people of Las Vegas. He is no doubt a

1 man deserving of respect and admiration. Yet for some reason, on August 22, 2017 he was subjected
2 to extreme and outrageous mistreatment at the hands of Defendants. Wilson's claims are not trivial
3 and must not readily be disposed of on procedural technicalities. The claims asserted by Wilson weigh
4 heavy in the scales of justice. Such claims deserve resolution on the merits.

5 **III. CONCLUSION**

6 The statute of limitations applicable to Wilson's claims was equitably tolled during the
7 pendency of the administrative process. Wilson commenced the administrative process on October 5,
8 2017 and saw it through to its conclusion on March 14, 2018 – a period of one hundred sixty (160)
9 days. Wilson's initial Complaint was filed on November 13, 2019 – two years and eighty-three (83)
10 days after the incident giving rise to his claims. Thus, Wilson's Complaint was timely when it was
11 filed.

12 DATED this 20th day of July, 2020.

13 **BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC**

14
15 /s/ Brandon L. Phillips
16 Brandon Phillips, Esq.
17 Nevada Bar No. 12264
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21 Attorney for Plaintiff: Curtis Wilson
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Las Vegas Metropolitan Police Department,
Officer E. Vojagan and Officer Tennant

Ms. Robin Tucker
An employee of,
Brandon L. Phillips, Attorney at Law, PLLC

EXHIBIT 1

EXHIBIT 1

**Las Vegas Metropolitan Police Department (LVMPD)
Citizen Review Board (CRB) Complaint Form**

COMPLAINT INFORMATION

Title: Mr. o Mrs. o Ms. o
Complainant Name: Curt Wilson
Contact Mailing Address: 10622 BEACH PLUM
City: L.V. State: NV Zip: 89156
Email Address (Optional): _____
Contact Phone # (Home): 702-235-2544
Contact Phone # (Work): N/A
Ethnicity (Optional): _____ DOB: _____
Last Four Digits of Social Security Number: 5330
If in custody, Facility and Inmate ID#: _____
Out of Custody Address & Phone: L

INCIDENT INFORMATION

Location of Incident: MARIHARD PKY NEAR KAREN (REAL C 24HR FITNESS)
Date of Incident: 6/22/17 Time of Incident (if known): _____
Name & Badge # of Accused Officer(s): TENANT # 9817-VONTAGEN #16098
HUTCHINSON ? BADGE

Statement of Complaint/Description of Incident

Attach a separate sheet of paper or on the backside of this page state the DETAILS OF THE ALLEGED MISCONDUCT BY THE OFFICER YOU ARE REPORTING, LEAVE MARGINS ON EACH SIDE OF THE PAGE similar to the margins on this page if you attach a separate sheet of paper or use the back of this page. You may submit this complaint online or it may be mailed, faxed, or emailed to: Office of the Executive Director, Citizen Review Board, 330 S. Third Street, Suite 670, Las Vegas, NV 89101, fax number 702-382-7426, email crbinfo@clarkcountynv.gov

Submit a separate complaint form for each alleged incident of misconduct by an Officer. Do Not submit complaints against medical staff to the CRB.

I HEREBY REQUEST the Board investigate the conduct alleged in this complaint and take appropriate action, as authorized by law. I hereby state that I have prepared, read, and fully understand all matters set forth in this complaint, that these proceedings are confidential as provided by law and that all information provided in this complaint is true and correct. (Please be advised that by signing this document you waive privacy and confidentiality in regards to records of criminal history and such other information as is necessary to verify the allegations of your complaint.) The information being requested on this form is to enable us to collect all background information and reports necessary to make a determination on the complaint.

Print Name: Curt Wilson Signature: Curt Wilson
Date: 10-5-17

CITIZEN REVIEW BOARD USE ONLY

Date Received: _____ Allegations: _____
Case No: _____ Status: _____

STATEMENT OF COMPLAINT

Please state in exact detail what occurred, names of all witnesses and police officers who observed the incident, name(s) of officers who engaged in alleged misconduct and what misconduct occurred, what injuries, if any, you suffered and all other facts related to the incident. Do not include unsubstantiated information, such as gossip or rumor. Attach any reports or documentation, such as photographs, medical or police reports, etc. which relate to the incident. You may submit this complaint online or it may be mailed, faxed, or emailed to: Office of the Executive Director, Citizen Review Board, 330 S. Third Street, Suite 670, Las Vegas, NV 89101, fax number 702-382-7426, email CREInfo@ClarkCountyNV.gov

* DESCRIPTION OF INCIDENT

(Attach additional sheets as needed and sign the bottom of each additional page.)

On August 8, 2017 at approximately 13:56, I was traveling west on Karen Avenue near Maryland Parkway. I signaled to make a right turn to a carwash directly behind the 24 Hour Fitness gym. I made the right turn and proceeded to the far end of the carwash. I exited my vehicle to speak to one of the carwash attendants about cleaning my vehicle and the cost associated with their services. At this time the carwash employee pointed behind me to inform me that a police vehicle was behind me, by saying "Cops" and "Policeman". At this time, I turned around and saw a male police officer (Tenant #9817) who stated, "Step over here". I walked toward Officer Tenant and his partner and asked what was the problem. Officer Tenant then indicated that I cut some vehicle off. I then indicated that I signaled prior to making my right turn and I did not cut another vehicle off when making this legal turn. At this time the female officer (VonJagen) began raising her voice and yelling at me unnecessarily and stated, "You cut the driver off!" Because of the belligerent nature of her communication towards me, I could not understand everything the female officer was saying and I respectfully inquired what she said again, so I could understand her. In just seconds after my inquiry, both officers approached me aggressively and began forcefully jerking my arms in efforts to handcuff my wrists. After twisting my arms they placed the handcuffs on my wrists, which caused severe bruising, swelling and nerve damage, evident by a lasting numbness and tingling that is still occurring two weeks after this incident. The major injury occurred on my left wrist, which is severely impacting my ability to use my left hand. At no time during this traffic stop did I resist or make any movements that would warrant this type of abuse. In addition to being brutally forced into hand cuffs, I was also inappropriately searched by the female officer in my genital area and buttocks. At no time during this incident did either officer request to see my registration or proof of insurance. After being brutally handcuffed and inappropriately searched by the officers, Officer Tenant approached my vehicle and removed my proof of insurance and registration himself. I informed him that the information was located above my visor on the driver's side of the vehicle. At this time another officer arrived, Officer Hutchinson. I asked Officer Tenant why did they act so aggressively with me and was it necessary to handcuff me in the manner fore mentioned. Officer Tenant then stated, "Do you want to see the body camera"? I replied "yes". At this point Officer Hutchinson indignantly stated, "No, you can't see it!"

I received a citation from Officer VonJagen, prior to receiving this citation, Officer VonJagen asked me if I have ever been arrested, my social security number, how long have I been driving and has anyone ever cut me off before. To this I responded, I can't remember. My response was in direct correlation with my severe pain and unspeakable humiliation. I am a senior citizen at 71 years old and I served over 20 years with the Clark County Fire Department, risking my life for citizens like these two officers. I once fell off a 2-story building and broke every bone in my foot and suffered severe back injuries as a result of protecting my community. It is incomprehensible to me why these officers would find the need to use such excessive force for a routine traffic stop and also find the need to humiliate me with no cause. This behavior was unacceptable and has caused me a great deal of post-traumatic stress, sleepless nights and physical pain.

Specify any personal information you want redacted from information provided to the subject officer.

My address and telephone number.

EXHIBIT 2

EXHIBIT 2

**Las Vegas Metropolitan Police Department
Citizen Review Board Screening Panel Findings**

Officer Involved and P #: Officer Tennant #9817, Officer VonTagen #16098 and Officer Hutchinson # 7447	Date of Incident: 8-22-17	CRB#: 17-194
Allegations of Complaint: Arrest Procedures/Interaction with the Public	Name of Complainant: Curt Wilson	CRB Hearing Date: 12-21-17
FINDINGS (check appropriate box)		

- ☐ **CASE DISMISSED:** The Review Board does not have jurisdiction to consider the complaint or the complaint does not have sufficient merit to warrant further consideration by a hearing panel or LVMPD.
- ☐ **REFERRAL FOR MEDIATION:** This complaint should be referred for mediation, subject to the acceptance by complainant and officer(s) involved.
- ☒ **REFERRAL TO HEARING PANEL:** This complaint should be referred to a Hearing Panel of the Citizen Review Board for further review
- ☐ **DISMISSED-AGREE W/IA:** The Review Board agrees with the investigation and conclusions reached of no policy violation, exonerated, not sustained or unfounded.
- ☐ **SUSTAINED-AGREE W/IA:** The Review Board agrees with the investigation and conclusions reached by IA finding the evidence proved the officer(s) did commit the alleged acts of misconduct.
- ☐ **REFERRAL TO IA:** This complaint should be referred to the Internal Affairs of Metro for investigation.
- ☐ Refer back to IA
☐ Preliminary investigation
☐ Full investigation
- ☐ **OTHER:** See Comments

Comments or Board request for investigation:

Approved: 
Chairperson

12/21/17
Date

The Information contained in these findings is legally privileged and confidential information, which shall not be disclosed by members of the Review Board to the public

EXHIBIT 3

EXHIBIT 3



CITIZEN
REVIEW BOARD

OFFICE OF THE EXECUTIVE DIRECTOR

ANDREA S. BECKMAN, ESQ.
EXECUTIVE DIRECTOR

December 21, 2017

Curt Wilson
6622 Beach Plum
Las Vegas, NV 89156

In re: Case No. 17-194

Dear Mr. Wilson

Enclosed herein please find the written findings issued by the Citizen Review Board screening panel. The panel is composed of five members from the community who are volunteers and attempt to resolve all complaints in a fair and impartial manner. Per City and County Ordinances, the Director has the authority to dismiss those cases where the board does not have jurisdiction.

In reviewing all complaints, the panel may only base their findings on the written information provided to them by the complainant, witnesses and/or the Las Vegas Metropolitan Police Department. The screening panel may determine that a case does not warrant any further investigation and either dismiss it or agree with the findings of the Internal Affairs Section of the Las Vegas Metropolitan Police Department. In either case, once the panel dismisses a case, they have no jurisdiction to review it again.

In the event the panel refers a case to the Internal Affairs Section of the police department, the case will be investigated and referred back to our office for review once the investigation is completed. You will be notified in writing of any findings made by the screening panel once they receive and review the completed investigation.

If you are not satisfied with the decision of the panel, you may contact legal counsel to pursue any other legal remedies available.

Sincerely,

Andrea S. Beckman, Esq.
Executive Director

ASB/aj
Enclosure as stated

EXHIBIT 4

EXHIBIT 4



CITIZEN
REVIEW BOARD

OFFICE OF THE EXECUTIVE DIRECTOR

ANDREA S. BECKMAN, ESQ.
EXECUTIVE DIRECTOR

January 11, 2018

Curt Wilson
6622 Beach Plum
Las Vegas, NV 89156

In re: Case No: 17-194

Dear Mr. Wilson:

Enclosed herein please find the written findings issued by the Citizen Review Board hearing panel. The panel is composed of five members from the community who are volunteers and attempt to resolve all complaints in a fair and impartial manner.

In reviewing all complaints, the panel considers all of the written information provided to them by the complainant, witnesses and the investigative reports of the Internal Affairs section of the Las Vegas Metropolitan Police Department.

Sincerely,

Andrea S. Beckman, Esq.
Executive Director

ASB/aj
Enclosure as stated

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD DISPOSITION REPORT

Officer Involved & P# Officer Tennant #9817, Officer VonTagen #16098 and Officer Hutchinson # 7447	Date, time, location of incident 4-11-17	CRB Case# 17-194
Allegations: Arrest Procedures/Interaction with the Public	Name of complainants Curt Wilson	Hearing Date 1-11-18

DISPOSITION *(Check appropriate box)*

- ☐ **SUSTAINED:** The investigation and/or evidence proved that the officer(s) did commit the alleged acts of misconduct.
- ☐ **NOT SUSTAINED:** The investigation and/or evidence failed to prove or disprove that the alleged act(s) occurred.
- ☐ **EXONERATED:** The investigation and/or evidence proved that the alleged acts occurred but was/were justified, legal and/or properly within Departmental policy.
- ☐ **UNFOUNDED:** The investigation and/or evidence proved that the officer(s) did not commit the alleged acts of misconduct.
- ☐ **POLICY FAILURE:** The investigation and/or evidence proved that the alleged acts occurred but were justified by the Department policy or procedures; however, the Citizen Review Board recommends that the policy or procedure be changed.
- ☐ **SUPERVISION/TRAINING FAILURE:** The investigation and/or evidence proved that the alleged acts occurred and were the result of inadequate supervision or training.
- ☐ **MISCONDUCT NOT BASED ON COMPLAINT:** The investigation disclosed misconduct which was not stated in the complaint.
- ☐ **COMPLAINANT NOT COOPERATIVE:** No contact can be made with complainant for a proper investigation to take place, or complainant withdraws complaint. (Note: In some limited circumstances, even when the complainant is not cooperative and not interviewed, Internal Affairs may determine that there is sufficient evidence to reach a disposition.


☒ **OTHER – SEE COMMENTS**

Recommendations: check appropriate box(s)

- ☐ Refer to mediation
- ☐ Written reprimand
- ☐ Suspension (specify number of hours not to exceed 720)
- ☐ Demotion/reduction to grade
- ☐ Additional training (specify any particular programs in comment section)
- ☐ Termination

Findings and Recommendations:

The Hearing Panel disagrees with the findings of Internal Affairs and this complaint will be scheduled for an evidentiary hearing with all subject officers, the complainant and any witnesses to be subpoenaed.


Chair

1-11-2018
date

EXHIBIT 5

EXHIBIT 5



**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

JOSEPH LOMBARDO, Sheriff

Partners with the Community

February 12, 2018

Mr. Curtis Wilson
6622 Beach Plum Way
Las Vegas, NV 89156

Reference: SOC2018-0046

Dear Mr. Wilson:

The complaint you filed with the Las Vegas Metropolitan Police Department (LVMPD) has been received and a preliminary investigation was conducted based on the information you provided in your statement. During the preliminary investigation, all reports and available investigative resources generated from the incident were reviewed.

After a thorough and impartial review, the investigation failed to produce sufficient evidence to clearly prove or disprove the allegation(s), or it was determined the actions taken by the employee(s) did not rise to the level of misconduct, or was not a policy violation(s). The preliminary investigation and this finding were approved through two levels of review, including the Lieutenant of the Internal Affairs Bureau.

If you are not satisfied with this finding, and the complaint was against a Police or Corrections Officer, you may file a complaint with the Citizen Review Board. The Citizen Review Board serves as an independent civilian oversight agency for LVMPD Police and Corrections Officers, and will review the investigation that was conducted by Internal Affairs. The CRB is not affiliated with the LVMPD. The CRB is located at 330 South 3rd Street, Suite 670, Las Vegas, NV 89101. They can be reached at (702) 455-6322. Please note you only have one year from the date of the incident to file a complaint with them.

If you have any pertinent additional information, or if you wish to discuss this matter further with the LVMPD Internal Affairs, please call Sergeant S. Smaka at (702) 828-3422. Thank you for bringing this incident to the attention of the Department. Your interest in helping us ensure we provide the best service possible to our community is appreciated.

Respectfully,
JOSEPH LOMBARDO, SHERIFF

By: **TED GLAUDE, LIEUTENANT**
Internal Affairs Bureau

JL:TG/lb



EXHIBIT 6

EXHIBIT 6

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD**

IN RE: The complaint of: Curt Wilsom

CASE NO. 17-194

Concerning: Officer Tennant
Officer VonTagen

SUBPOENA

TO: Curt Wilson
6622 Beach Plum
Las Vegas, NV 89156

Re: CRB Case # 17-194

YOU ARE HEREBY COMMANDED to appear before a Hearing Panel of the Citizen Review Board on the 14th day of March, 2018, at 9:45 a.m. as a witness before said board at 330 South Third Street, Suite 600, Las Vegas, NV 89101. You will have the right to appear with a representative of your choice.

DATED this 21st day of February, 2018.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD

By:



Andrea Beckman, Executive Director
(702) 455-6322

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD**

IN RE: The complaint of: Curt Wilson

CASE NO. 17-194

Concerning: Officer Tennant and Officer
VonTagen

SUBPOENA

TO: Officer VonTagen #16098

YOU ARE HEREBY COMMANDED to appear before a Hearing Panel of the Citizen Review Board on the 14th day of March, 2018 at 10:15 a.m. as a witness before said board at 330 South Third Street, Suite 600, Las Vegas, NV 89101. You will have the right to appear with up to two representatives of your choice.

DATED this 21st day of February, 2018.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD

By:



Andrea Beckman, Executive Director
(702) 455-6322

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD**

IN RE: The complaint of: Curt Wilson

Concerning: Officer Tennant and Officer
VonTagen

)
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)

CASE NO. 17-194

SUBPOENA

TO: Officer Tennant #9817

YOU ARE HEREBY COMMANDED to appear before a Hearing Panel of the Citizen Review Board on the 14th day of March, 2018 at 11:15 a.m. as a witness before said board at 330 South Third Street, Suite 600, Las Vegas, NV 89101. You will have the right to appear with up to two representatives of your choice.

DATED this 21st day of February, 2018.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD

By:



Andrea Beckman, Executive Director
(702) 455-6322

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD**

IN RE: The complaint of: Curt Wilson)
)
)
Concerning: Officer VonTagen and Officer)
Tennant)
)

CASE NO. 17-194

SUBPOENA

TO: Sgt. McCauslin #6590

YOU ARE HEREBY COMMANDED to appear before a Hearing Panel of the Citizen Review Board on the 14th day of March, 2018, at 1:00 p.m. as a witness before said board at 330 South Third Street, Suite 600, Las Vegas, NV 89101. You will have the right to appear with up to two representatives of your choice.

DATED this 21st day of February 2018.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD

By:



Andrea Beckman, Executive Director
(702) 455-6322

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD**

IN RE: The complaint of: Curt Wilson

CASE NO. 17-194

Concerning: Officer VonTagen and Officer
Tennant

SUBPOENA

TO: Sgt. Smaka #6098

YOU ARE HEREBY COMMANDED to appear before a Hearing Panel of the Citizen Review Board on the 14th day of March, 2018, at 1:45 p.m. as a witness before said board at 330 South Third Street, Suite 600, Las Vegas, NV 89101. You will have the right to appear with up to two representatives of your choice.

DATED this 21st day of February 2018.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD

By:



Andrea Beckman, Executive Director
(702) 455-6322

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD**

IN RE: The complaint of: Curt Wilson

CASE NO. 17-194

Concerning: Officer VonTagen and Officer
Tennant

SUBPOENA

TO: Sgt. Warren #4570

YOU ARE HEREBY COMMANDED to appear before a Hearing Panel of the Citizen Review Board on the 14th day of March, 2018, at 2:45 p.m. as a witness before said board at 330 South Third Street, Suite 600, Las Vegas, NV 89101. You will have the right to appear with up to two representatives of your choice.

DATED this 21st day of February 2018.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD

By:



Andrea Beckman, Executive Director
(702) 455-6322

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD**

IN RE: The complaint of: Curt Wilson)
)
)
Concerning: Officer VonTagen and Officer)
Tennant)
)

CASE NO. 17-194

SUBPOENA


TO: Lt. Glaude #5810

YOU ARE HEREBY COMMANDED to appear before a Hearing Panel of the Citizen Review Board on the 14th day of March, 2018, at 3:15 p.m. as a witness before said board at 330 South Third Street, Suite 600, Las Vegas, NV 89101. You will have the right to appear with up to two representatives of your choice.

DATED this 21st day of February 2018.

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD**

By:



Andrea Beckman, Executive Director
(702) 455-6322

EXHIBIT 7

EXHIBIT 7



CITIZEN
REVIEW BOARD

OFFICE OF THE EXECUTIVE DIRECTOR

ANDREA S. BECKMAN, ESQ.
EXECUTIVE DIRECTOR

March 15, 2018

Curt Wilson
6622 Beach Plum
Las Vegas, NV 89156

In re: Case No: 17-194

Dear Mr. Wilson:

Enclosed herein please find the written findings issued by the Citizen Review Board hearing panel. The panel is composed of five members from the community who are volunteers and attempt to resolve all complaints in a fair and impartial manner.

In reviewing all complaints, the panel considers all of the written information provided to them by the complainant, witnesses and the investigative reports of the Internal Affairs section of the Las Vegas Metropolitan Police Department.

Sincerely,

Andrea S. Beckman, Esq.
Executive Director

ASB/aj
Enclosure as stated

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CITIZEN REVIEW BOARD DISPOSITION REPORT

Officer Involved & P# Officer Tennant #9817, Officer VonTagen #16098	Date, time, location of incident 8-22-17	CRB Case# 17-194
Allegations: Arrest Procedures/Interaction with the Public	Name of Complainant Curt Wilson	Hearing Date 3-14-18

DISPOSITION (*Check appropriate box*)

- ☐ **SUSTAINED:** The investigation and/or evidence proved that the officer(s) did commit the alleged acts of misconduct.
- ☐ **NOT SUSTAINED:** The investigation and/or evidence failed to prove or disprove that the alleged act(s) occurred.
- ☐ **EXONERATED:** The investigation and/or evidence proved that the alleged acts occurred but was/were justified, legal and/or properly within Departmental policy.
- ☐ **UNFOUNDED:** The investigation and/or evidence proved that the officer(s) did not commit the alleged acts of misconduct.
- ☐ **POLICY FAILURE:** The investigation and/or evidence proved that the alleged acts occurred but were justified by the Department policy or procedures; however, the Citizen Review Board recommends that the policy or procedure be changed.
- ☐ **SUPERVISION/TRAINING FAILURE:** The investigation and/or evidence proved that the alleged acts occurred and were the result of inadequate supervision or training.
- ☐ **MISCONDUCT NOT BASED ON COMPLAINT:** The investigation disclosed misconduct which was not stated in the complaint.
- ☐ **COMPLAINANT NOT COOPERATIVE:** No contact can be made with complainant for a proper investigation to take place, or complainant withdraws complaint. (Note: In some limited circumstances, even when the complainant is not cooperative and not interviewed, Internal Affairs may determine that there is sufficient evidence to reach a disposition.



OTHER – SEE COMMENTS

Recommendations: check appropriate box(s)

- ☐ Refer to mediation
- ☐ Written reprimand
- ☐ Suspension (specify number of hours not to exceed 720)
- ☐ Demotion/reduction to grade
- ☒ Additional training (specify any particular programs in comment section)
- ☐ Termination

Findings and Recommendations: On December 21, 2017 a screening panel of the Citizen Review Board referred a complaint filed by Curt Wilson to this hearing panel. The function of this hearing panel is review of the allegations of the complaint as well as review of the findings and integrity of the investigation conducted by the Internal Affairs Bureau of the Las Vegas Metropolitan Police Department hereinafter referred to as "IAB".

Based on the allegations of the complaint, IAB investigated whether Officer Tennant and Officer VonTagen violated LVMPD Rules and regulations 6/006.00 Arrest Procedures and 4/102.12 Interaction with the Public. IAB findings as to both allegations were no policy violation.

In making its findings and conclusions, this panel reviewed the complaint, the investigative report of IAB; the body cam and all other documents provided by IAB. The standard of proof used by IAB as well as this panel is whether the moving party has satisfied the burden of proof by clear and convincing evidence that the act complained of occurred.

On March 14, 2018 the panel heard testimony from the subject officers as well as from the complainant and investigating officers including IAB Lieutenants and Sergeants. Officers Tennant and VonTagen made a traffic stop on the complainant for an improper lane change wherein Officer Tennant was the FTO and Officer VonTagen was the officer in training. The complainant exited his vehicle and Officer Tennant explained to Mr. Wilson why he was stopped and the situation appeared to be under control when Officer VonTagen stepped in and ordered Wilson to the front of her vehicle. VonTagen gave Wilson multiple commands to put his things on the hood of the car and when Wilson put his hands in his pockets to empty them VonTagen gave him inconsistent commands to take his hands out of his pockets. When Wilson did not comply VonTagen decided to go hands on and placed Wilson in handcuffs. Officer Tennant stood by and watched as this situation escalated and did not step in until VonTagen needed assistance putting two sets of handcuffs around Mr. Wilson. VonTagen conducted a pat-down of Mr. Wilson for weapons. The complainant did not complain of injuries and no use of force report was filed.

FINDINGS:

6/006.00 Arrest Procedures

The hearing panel unanimously agrees with the conclusion of no policy violation reached by IAB. In making this finding the panel considered the testimony as well as statements to IAB by all parties and witnesses and finds the standard of proof of clear and convincing evidence was not met and the evidence failed to prove or disprove the alleged act occurred.

4/102.12 Interaction with the Public

The hearing panel agrees that as a matter of law there were no policy violations. However, the actions of the officers unnecessarily escalated the situation and could have reasonably been construed as being discourteous thereby leaving the citizen feeling he was not treated with proper respect.


In making this finding the panel considered the testimony as well as statements to IAB by all parties and witnesses and finds the standard of proof of clear and convincing evidence was not met and the evidence failed to prove or disprove the alleged act occurred.

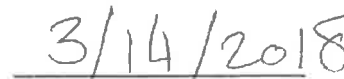
RECOMMENDATIONS:

Upon completion of the second investigation by Internal Affairs, the Citizen Review Board agrees in part with their findings as follows:

- There were deficiencies pertaining to de-escalation techniques.
- If de-escalation practices were followed properly during the vehicle stop, it could have had a much higher likelihood of officers not being required to go "hands-on".
- Improved FTO and Trainee "Contact and Cover" principles should have been implemented.

The panel recommends Metro adopt the findings for additional training as made by IAB.


Chair


date