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13 Kevin McMahill and Fred Haas

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 SONIA ESPARZA,

12 Plaintiff,

13 vs.

14 WELLPATH, LLC; LAS VEGAS
15 METROPOLITAN POLICE
16 DEPARTMENT; KEVIN MCMAHILL;
17 FRED HAAS; BRIAN FUCILE; SCOTT
18 ZAVSZA; LEAH ANDERSON; ALYSSA
19 WILLIAMS; JULIAN ABRAM; DOUGLAS
20 THRASHER; LARRY WILLIAMSON;
21 CATHERINE RYAN; JESSICA ARABSKI;
22 RICHARD MEDRANO; VIVEK SHAH;
23 COLE CASEY; KESHA POLAND; MARIA
24 HOPKINS; RACHEL CLARK; KYLE
25 MARTINEAU; EARL SALVIEJO;
26 ULYANA BILOSKURSKA; AMY
27 KATHRYN ANAPOLSKY; and DOES 1-10,

22 Defendants,

23 FERNANDO MARTINEZ SANTOS

24 Nominal Defendant.

Case Number: 2:23-cv-02161-JCM-VCF

**DEFENDANTS LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT, KEVIN MCMAHILL
AND FRED HAAS’S ANSWER TO
SECOND AMENDED COMPLAINT**

26 Defendants Las Vegas Metropolitan Police Department (“LVMPD”), Kevin
27 McMahill (“McMahill”) and Fred Hass (“Haas” (collectively “LVMPD Defendants”) by
28

1 and through their attorneys of record, the law firm of Marquis Aurbach, hereby answers
2 Plaintiff's Second Amended Complaint as follows:

3 **JURISDICTION AND VENUE**

4 1. In answering Paragraphs 1-3 of Plaintiff's Second Amended Complaint,
5 LVMPD Defendants admit the allegations contained therein.

6 **PARTIES**

7 2. In answering Paragraphs 4, 5, 6, and 11-41 of Plaintiff's Second Amended
8 Complaint, LVMPD Defendants are without knowledge or information sufficient to form a
9 belief as to the truth of the allegations contained therein, and therefore, deny the same.

10 3. In answering Paragraphs 7-10 of Plaintiff's Second Amended Complaint,
11 LVMPD Defendants admit the allegations contained therein.

12 **FACTUAL ALLEGATIONS**

13 4. In answering Paragraphs 42, 48, and 61 of Plaintiff's Second Amended
14 Complaint, LVMPD Defendants deny the allegations contained therein.

15 5. In answering Paragraphs 43-47, 49-60, and 62-85 of Plaintiff's Second
16 Amended Complaint, LVMPD Defendants are without knowledge or information sufficient
17 to form a belief as to the truth of the allegations contained therein, and therefore, deny the
18 same.

19 6. In answering Paragraph 72 of Plaintiff's Second Amended Complaint,
20 LVMPD Defendants admit the allegations contained therein.

21 **FIRST CLAIM FOR RELIEF**

22 **DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS**

23 **(42 U.S.C. § 1983; Nevada Constitution, Article 1, § 8)**

24 **Special Administrator v. Individual Defendants**

25 7. In answering Paragraph 86 of Plaintiff's Second Amended Complaint,
26 LVMPD Defendants repeat and reallege each and every response thereto.

27 8. In answering Paragraphs 87-96 of Plaintiff's Second Amended Complaint,
28 LVMPD Defendants deny the allegations contained therein.

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SECOND CLAIM FOR RELIEF

DEPRIVATION OF FAMILIAL ASSOCIATION

(42 U.S.C. § 1983; Nevada Constitution, Article 1, § 8)

ESPARZA v. Individual Defendants

9. In answering Paragraph 97 of Plaintiff’s Second Amended Complaint, LVMPD Defendants repeat and reallege each and every response thereto.

10. In answering Paragraphs 98-103 of Plaintiff’s Second Amended Complaint, LVMPD Defendants deny the allegations contained therein.

THIRD CLAIM FOR RELIEF

OVERDETENTION

(42 U.S.C. § 1983; Nevada Constitution, Article 1, § 8)

Special Administrator v. MCMAHILL, HAAS, ZAVSZA, and FUCILE

11. In answering Paragraph 104 of Plaintiff’s Second Amended Complaint, LVMPD Defendants repeat and reallege each and every response thereto.

12. In answering Paragraphs 105-111 of Plaintiff’s Second Amended Complaint, LVMPD Defendants deny the allegations contained therein.

FOURTH CLAIM FOR RELIEF

MUNICIPAL LIABILITY, FAILURE TO TRAIN/POLICY AND CUSTOM

(42 U.S.C. § 1983)

Special Administrator v. the Entity Defendants

13. In answering Paragraph 112 of Plaintiff’s Second Amended Complaint, LVMPD Defendants repeat and reallege each and every response thereto.

14. In answering Paragraphs 113-117 of Plaintiff’s Second Amended Complaint, LVMPD Defendants deny the allegations contained therein.

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FIFTH CLAIM FOR RELIEF

DISABILITY DISCRIMINATION IN VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT AND SECTION 501 OF THE REHABILITATION ACT

(42 U.S.C. 12131 *et seq.*; 29 U.S.C. § 794(a))

Special Administrator v. the Entity Defendants

15. In answering Paragraph 118 of Plaintiff’s Second Amended Complaint, LVMPD Defendants repeat and reallege each and every response thereto.

16. In answering Paragraphs 119-126 of Plaintiff’s Second Amended Complaint, LVMPD Defendants deny the allegations contained therein.

SIXTH CLAIM FOR RELIEF

WRONGFUL DEATH

ESPARZA v. All Defendants

17. In answering Paragraph 127 of Plaintiff’s Second Amended Complaint, LVMPD Defendants repeat and reallege each and every response thereto.

18. In answering Paragraphs 128-129 of Plaintiff’s Second Amended Complaint, LVMPD Defendants deny the allegations contained therein.

SEVENTH CLAIM FOR RELIEF

NEGLECT OF A VULNERABLE PERSON

Special Administrator v. All Defendants

19. In answering Paragraph 130 of Plaintiff’s Second Amended Complaint, LVMPD Defendants repeat and reallege each and every response thereto.

20. In answering Paragraphs 131-133 of Plaintiff’s Second Amended Complaint, LVMPD Defendants deny the allegations contained therein.

21. As to any remaining allegations not specifically responded to, LVMPD Defendants deny the same.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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3 Plaintiff’s suit fails to state a claim for relief as they failed to allege a violation of a
4 right, privilege, or immunity secured by the United States Constitution or by the laws of the
5 United States.

SECOND AFFIRMATIVE DEFENSE

6
7 LVMPD Defendants did not enact or promulgate any policy, statute, ordinance or
8 custom, policy or procedure which denied or abridged any of the Plaintiff’s constitutional
9 rights.

THIRD AFFIRMATIVE DEFENSE

10
11 The damage sustained by the Plaintiff, if any, was caused by the acts of third persons
12 who were not agents, servants, or employees of LVMPD Defendants and who were not
13 acting on behalf of LVMPD Defendants in any manner or form, and, as such, LVMPD
14 Defendants are not liable in any manner to the Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

15
16 The complained of acts of LVMPD Defendants were justified and privileged under
17 the circumstances.

FIFTH AFFIRMATIVE DEFENSE

18
19 At all times mentioned in Plaintiff’s Complaint, LVMPD Defendants acted in good
20 faith belief that their actions were legally justifiable.

SIXTH AFFIRMATIVE DEFENSE

21
22 LVMPD Defendants are not subject to suit upon which the facts and conclusions as
23 stated in Plaintiff’s Second Amended Complaint by reason of their sovereign immunity as a
24 political subdivision of the State of Nevada, and more particularly by reason of the
25 provisions of NRS 41.031, 41.032, and 41.033.

SEVENTH AFFIRMATIVE DEFENSE

26
27 The Individual LVMPD Defendants are protected by Plaintiff’s claims under the
28 doctrine of qualified immunity.

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EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff’s claims of constitutional violation is unsupported in both fact and law, as Plaintiff have not alleged sufficient basis from which a constitutional interest might arise in conjunction with the alleged actions.

NINTH AFFIRMATIVE DEFENSE

To the extent Plaintiff’s causes of actions against LVMPD Defendants sound in negligence, no recovery can be predicated upon 42 USCA § 1983.

TENTH AFFIRMATIVE DEFENSE

Any injuries allegedly sustained by Plaintiff were the result of the decedent’s own negligence and/or actions.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to identify an unconstitutional policy, practice, or custom.

TWELTH AFFIRMATIVE DEFENSE

Plaintiff cannot recover punitive or exemplary damages because Plaintiff has failed to plead and cannot establish facts sufficient to support allegations of malice, oppression or fraud. Plaintiff is not entitled to recover punitive or exemplary damages herein under any of the claims of relief alleged as none of LVMPD Defendants’ supervisors, directors or managing agents committed the alleged malicious, fraudulent or oppressive acts, authorized to ratify such wrongful conduct or had advanced knowledge of the unfitness of any employee(s) who allegedly committed the acts and did not employ such person(s) with conscience disregard for the higher safety of others.

THIRTEENTH AFFIRMATIVE DEFENSE

The claims, and each of them are barred by Plaintiff’s failure to plead those claims with particularity.

FOURTEENTH AFFIRMATIVE DEFENSE

LVMPD Defendants reserve the right to amend these Affirmative Defenses as discovery unfolds and new information is discovered.

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FIFTEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCF 11, as amended, all possible affirmative defenses may not have been alleged herein, in so far as sufficient facts were not available after a reasonable inquiry upon the filing of this LVMPD Defendants' Answer to Plaintiff's Second Amended Complaint; therefore, LVMPD Defendants reserve the right to amend its answer to allege additional affirmative defenses if subsequent investigations so warrant.

PRAYER FOR RELIEF

WHEREFORE, LVMPD Defendants pray for judgment against Plaintiff as follows:

1. That Plaintiff take nothing by way of its Second Amended Complaint and that the same be dismissed with prejudice;
2. For an award of reasonable attorney fees and costs of suit; and
3. For any further relief as the Court deems to be just and proper.

Dated this 25th day of February 2025.

MARQUIS AURBACH

/s/ Kaden P. Killpack
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANTS LAS VEGAS METROPOLITAN POLICE DEPARTMENT, KEVIN MCMAHILL AND FRED HAAS'S ANSWER TO SECOND AMENDED COMPLAINT** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 25th day of February 2025.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

N/A

/s/ Kellie Piet
An employee of Marquis Aurbach

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