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13 Sorenson, Ofc. Sandoval and Ofc. Doolittle

14 **UNITED STATES DISTRICT COURT**

15 **DISTRICT OF NEVADA**

16 JOSE DECASTRO,

17 Plaintiff,

18 vs.

19 LAS VEGAS METROPOLITAN POLICE  
20 DEPARTMENT; STATE OF NEVADA;  
21 BRANDEN BOURQUE; JASON TORREY;  
22 C. DINGLE; B. SORENSON; JESSE  
23 SANDOVAL; OFFICER DOOLITTLE and  
24 DOES 1 to 50, inclusive,

25 Defendants.

Case Number:  
2:23-cv-00580-APG-EJY

**DEFENDANTS LVMPD, SGT.  
TORREY, OFC. BOURQUE, OFC.  
DINGLE, OFC. SORENSON, OFC.  
SANDOVAL AND OFC. DOOLITTLE'S  
SECOND MOTION FOR SUMMARY  
JUDGMENT**

26 Defendants Las Vegas Metropolitan Police Department, Ofc. Torrey, Ofc. Bourque,  
27 Ofc. Dingle, Ofc. Sorenson, Ofc. Sandoval and Ofc. Doolittle (“LVMPD Defendants”), by  
28 and through their attorneys of record, Marquis Aurbach, hereby file their Second Motion for  
Summary Judgment. This Motion is made and based upon the Memorandum of Points &  
Authorities, the pleadings and papers on file herein and any oral argument allowed by  
counsel at the time of hearing.

**MEMORANDUM OF POINTS & AUTHORITIES**

**I. INTRODUCTION**

Pursuant to this Court’s September 12, 2024 Order (1) Granting in Part Plaintiff’s  
Motion for Reconsideration and (2) Granting in Part Defendants’ Motion for Summary  
Judgment. (ECF No. 100), the LVMPD Defendants hereby bring the instant Motion seeking

1 summary judgment as to three of DeCastro's claims based in Nevada state law that had been  
2 previously dismissed prior to this Court's reconsideration of its dismissal of those claims.  
3 Specifically, the LVMPD Defendants request the Court grant summary judgment in their  
4 favor with respect to DeCastro's state law claims for false arrest, unlawful search and  
5 seizure, and invasion of privacy. As detailed herein, each of those claims fail as a matter of  
6 law because the decisions of the Defendant Officers to arrest DeCastro and conduct a search  
7 incident to arrest are discretionary actions entitled to discretionary function immunity  
8 pursuant to NRS 41.032. Moreover, DeCastro's invasion of privacy claim fails because he  
9 did not have an objectively reasonable privacy expectation in his personal effects in light of  
10 his provocative and uncooperative conduct during the subject incident. For the reasons  
11 illustrated herein, the LVMPD Defendants request the Court grant the instant Motion in its  
12 entirety.

## 13 **II. FACTUAL AND PROCEDURAL HISTORY**

### 14 **A. PROCEDURAL HISTORY**

15 On April 17, 2023, DeCastro filed the instant lawsuit. (ECF No. 1). On May 7, 2023,  
16 DeCastro amended his complaint ("FAC"). (ECF No. 13). On October 23, 2023, this Court  
17 issued its Order Granting in part Defendants' Motion to Dismiss. (ECF No. 44).  
18 Specifically, this Court dismissed with prejudice DeCastro's' claims for unreasonable search  
19 and seizure, false arrest/imprisonment, invasion of privacy and negligence-based search and  
20 seizure. (ECF No. 44 at 16). This Court also dismissed without prejudice DeCastro's equal  
21 protection claim, First Amendment retaliation claim, *Monell* claim, § 1981 claim, and  
22 negligence-based claim for biased policing without prejudice, DeCastro's excessive force  
23 and supervisor liability claims survived. This Court gave DeCastro leave to amend the  
24 claims dismissed without prejudice. (*Id.*)

25 DeCastro amended his claims and filed his Second Amended Complaint ("SAC") on  
26 November 27, 2023, which is now the operative Complaint in this case. (ECF No. 61). The  
27 SAC contains the following causes of action:  
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First Claim for Relief: 42 U.S.C. § 1983 Fourth Amendment and Nevada State Constitution false arrest against Officers Bourque, Torrey, Dingle, Sorenson, Sandoval, and Doolittle.

Second Claim for Relief: 42 U.S.C. § 1983 Fourth Amendment and Nevada State Constitution illegal search and seizure claim against Officers Bourque, Torrey, Dingle, Sorenson, Sandoval, and Doolittle.

Third Claim for Relief: 42 U.S.C. § 1983 Fourth Amendment and Nevada State Constitution excessive force against Officers Bourque and Sandoval.

Fourth Claim for Relief: Nevada state law defamation claim against Officers Bourque, Torrey, Dingle, Sorenson, Sandoval, and Doolittle.

Fifth Claim for Relief: 42 U.S.C. § 1983 First Amendment and Nevada State Constitution “chilling” claim against all defendants.

Sixth Claim for Relief: 42 U.S.C. § 1983 First Amendment and Nevada State Constitution retaliation claim against all defendants.

Seventh Claim for Relief: 42 U.S.C. § 1983 *Monell* liability claim against LVMPD, Nevada, and Sgt. Torrey.

Eighth Claim for Relief: 42 U.S.C. § 1983 and Nevada State Constitution selective enforcement and unequal police action claim against all defendants.

Ninth Claim for Relief: Nevada state law battery claim against Officer Sandoval.

Tenth Claim for Relief: Nevada state law invasion of privacy claim against Officers Bourque, Sandoval, Torrey, Dingle, Sorenson, and Doolittle.

Eleventh Claim for Relief: Nevada state law negligence claim against all individual defendants.

Twelfth Claim for Relief: 42 U.S.C. § 1983 and Nevada State Constitution failure to intervene claim against all individual defendants.

Thirteenth Claim for Relief: Nevada state law civil conspiracy claim against all individual defendants.

Fourteenth Claim for Relief: Nevada state law abuse of process claim against Officers Bourque, Sandoval, Torrey, Dingle, Sorenson, and Doolittle.

Fifteenth Claim for Relief: 42 U.S.C. § 1983 *Monell* failure to train claim against Officer Torrey, LVMPD, and the State of Nevada. (ECF No. 61, p.19-33).

(ECF No. 61).

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1 On December 11, 2023, the LVMPD Defendants filed a Motion to Dismiss  
2 Plaintiff's Second Amended Complaint, or in the Alternative, Motion for Summary  
3 Judgment. (ECF No. 66). On February 2, 2024, DeCastro filed his Response and Opposition  
4 to Defendants' Joint Motion to Dismiss Plaintiff's Second Amended Complaint, or in the  
5 Alternative, Motion for Summary Judgment<sup>1</sup>. (ECF No. 79). On February 9, 2024, the  
6 LVMPD Defendants filed their Reply in Support of ECF No. 66. (ECF No. 80). On April 5,  
7 2024, the LVMPD Defendants filed their Motion for Leave to File Supplemental Evidence  
8 in Support of Summary Judgment. (ECF No. 83).

9 On June 14, 2024, the LVMPD Defendants filed their Motion for Summary  
10 Judgment. (ECF No. 86). On July 8, 2024, DeCastro filed his Opposition to Defendants'  
11 Joint Motion for Summary Judgment and Request to Defer Matter Pending Resolution of  
12 Appeal of Criminal Conviction. (ECF No. 90). On July 22, 2024, the LVMPD Defendants  
13 filed their Reply to Plaintiff's Opposition to Motion for Summary Judgment (ECF No. 91).

14 On August 13, 2024, this Court issued its Order Granting Plaintiff's Motion for  
15 Leave to File Supplemental Briefs (ECF No. 93). On August 23, 2024, Plaintiff and  
16 Defendants filed cross briefs regarding the issues identified by the Court as requiring  
17 supplemental briefing. (ECF No. 95, ECF No. 96). The LVMPD Defendants filed a cross-  
18 response on August 30, 2024. (ECF No. 98).

19 On September 12, 2024, this Court issued its Order (1) Granting in Part Plaintiff's  
20 Motion for Reconsideration and (2) Granting in Part Defendants' Motion for Summary  
21 Judgment. (ECF No. 100) (the "Order"). In doing so, the Court reconsidered its ruling that  
22 Ofc. Bourque had probable cause to arrest DeCastro for obstruction as a matter of law, and  
23 therefore reconsidered its prior dismissal of DeCastro's invasion of privacy claim, Nevada  
24 constitutional claims based on the allegedly unlawful arrest and search incident to arrest, and  
25 negligence claim based on the arrest and search. The Court granted summary judgment in  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff was litigating the instant case *pro se* until his counsel of record filed a notice of appearance on January 10, 2024. (ECF No. 76).

1 the LVMPD Defendants' favor as to a number of claims. Following the Court's Order, the  
 2 status of DeCastro's claims is as follows:

<p>3 <b>First Claim for Relief</b></p>	<p>4 42 U.S.C. § 1983 Fourth Amendment false arrest against Officers Bourque, Torrey, Dingle, Sorenson, Sandoval, and Doolittle.</p> <p>5</p> <p>6 False arrest claim arrest against Officers Bourque, Torrey, Dingle, Sorenson, Sandoval, and Doolittle based upon Nevada Constitution.</p>	<p>7 Summary judgment granted in favor of Defendants as to 42 U.S.C. § 1983 claim.</p> <p>8</p> <p>9 Prior dismissal of Nevada Constitution theory reconsidered, and the state law theory is subject to an additional summary judgment motion.</p>
<p>10 <b>Second Claim for Relief</b></p>	<p>11 42 U.S.C. § 1983 Fourth Amendment illegal search and seizure claim against Officers Bourque, Torrey, Dingle, Sorenson, Sandoval, and Doolittle.</p> <p>12</p> <p>13 Unlawful search claim arrest against Officers Bourque, Torrey, Dingle, Sorenson, Sandoval, and Doolittle based upon Nevada Constitution.</p>	<p>14 Summary judgment granted in favor of Defendants as to 42 U.S.C. § 1983 claim.</p> <p>15</p> <p>16 Prior dismissal of Nevada Constitution theory reconsidered, and the state law theory is subject to an additional summary judgment motion.</p>
<p>17 <b>Third Claim for Relief</b></p>	<p>18 42 U.S.C. § 1983 Fourth Amendment excessive force against Officers Bourque and Sandoval.</p> <p>19</p> <p>20 Excessive force claim against Officers Bourque and Sandoval based upon Nevada Constitution.</p>	<p>21 Summary judgment granted in favor of Ofc. Bourque as to force used to effectuate arrest.</p> <p>22</p> <p>23 Summary judgment denied as to Ofc. Bourque and Ofc. Sandoval's alleged post-arrest uses of force.</p>
<p>22 <b>Fourth Claim for Relief</b></p>	<p>23 Nevada state law defamation claim against Officers Bourque, Torrey, Dingle, Sorenson, Sandoval, and Doolittle.</p>	<p>24 Summary judgment granted in favor of Defendants.</p>
<p>24 <b>Fifth Claim for Relief</b></p>	<p>25 42 U.S.C. § 1983 First Amendment "chilling" claim against all defendants.</p> <p>26</p> <p>27 Free speech violation claim against all defendants based upon Nevada Constitution.</p>	<p>28 Summary judgment granted in favor of Ofc. Doolittle, Ofc. Sorenson, Ofc. Sandoval, and Ofc. Dingle</p> <p>Summary judgment denied as to Ofc. Bourque and Sgt. Torrey.</p>
<p>28 <b>Sixth Claim for Relief</b></p>	<p>42 U.S.C. § 1983 First Amendment retaliation claim</p>	<p>Summary judgment granted in favor of Ofc. Doolittle, Ofc.</p>

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1		against all defendants.	Sorenson, Ofc. Sandoval, and Ofc. Dingle
2		Free speech violation claim	
3		against all defendants based	Summary judgment denied as to
4	<b>Seventh Claim for Relief</b>	upon Nevada Constitution.	Ofc. Bourque and Sgt. Torrey.
5		42 U.S.C. § 1983 <i>Monell</i>	Summary judgment granted in
6		liability claim against LVMPD,	favor of Defendants.
7		Nevada, and Sgt. Torrey.	
8	<b>Eighth Claim for Relief</b>	42 U.S.C. § 1983 selective	Summary judgment granted in
9		enforcement and unequal police	favor of all Defendants based on
10		action claim against all	the color of DeCastro's skin or
11		defendants.	lips, and summary judgment
12			granted in favor of Ofc. Dingle,
13			Ofc. Doolittle, Ofc. Sorenson, and
14			Ofc. Sandoval as to theory of
15			selective arrest based upon
16			exercise of constitutional rights.
17			Summary judgment denied as to
18			Ofc. Bourque and Sgt. Torrey as to
19			theory of selective arrest based
20	<b>Ninth Claim for Relief</b>	Nevada state law battery claim	upon exercise of constitutional
21		against Officer Sandoval.	rights.
22	<b>Tenth Claim for Relief</b>	Nevada state law invasion of	Summary judgment denied as to
23		privacy claim against Officers	Ofc. Bourque <sup>2</sup> and Ofc. Sandoval.
24		Bourque, Sandoval, Torrey,	
25		Dingle, Sorenson, and Doolittle.	Prior dismissal of this claim is
26			reconsidered, and this claim is
27			subject to an additional summary
28			judgment motion.
	<b>Eleventh Claim for Relief</b>	Nevada state law negligence	Summary judgment granted in
		claim against all individual	favor of Defendants.
		defendants.	
	<b>Twelfth Claim for Relief</b>	42 U.S.C. § 1983 failure to	Summary judgment granted in
		intervene claim against all	favor of Sgt. Torrey.
		individual defendants.	
			Summary judgment denied as to
			Ofc. Bourque, Ofc. Dingle, Ofc.
			Doolittle, and Ofc. Sorenson.
	<b>Thirteenth Claim for Relief</b>	Nevada state law civil	Summary judgment granted in
		conspiracy claim against all	favor of Defendants.
		individual defendants.	
	<b>Fourteenth Claim for Relief</b>	Nevada state law abuse of	Summary judgment granted in
		process claim against Officers	favor of Defendants.

<sup>2</sup> In Plaintiff's SAC (ECF No. 61), Plaintiff brought the state law battery claim solely against Ofc. Sandoval. The LVMPD Defendants request the Court clarify the pending battery claim is solely against Ofc. Sandoval.

	Bourque, Sandoval, Torrey, Dingle, Sorenson, and Doolittle.	
<b>Fifteenth Claim for Relief</b>	42 U.S.C. § 1983 <i>Monell</i> failure to train claim against Officer Torrey, LVMPD, and the State of Nevada.	Summary judgment granted in favor of Defendants.

See ECF No. 100.

The Court has permitted the LVMPD Defendants to bring a second motion for summary judgment as relates to: (1) DeCastro’s false arrest claim based upon the Nevada Constitution; (2) DeCastro’s unlawful search incident to arrest claim based upon the Nevada Constitution; (3) DeCastro’s invasion of privacy claim; and (4) whether LVMPD is vicariously liable for the officers’ various actions. Accordingly, this Motion addresses these issues.

### **B. FACTUAL BACKGROUND.**

The factual background underlying the subject incident has been thoroughly briefed in prior summary judgment motion practice. In addition, the Court has adopted factual findings through its recent Order (ECF No. 100). The LVMPD Defendants hereby incorporate the Factual Background as stated in their Motion for Summary Judgment (ECF No. 86), their Reply to Plaintiff’s Opposition to Motino for Summary Judgment (ECF No. 91), their Supplemental Brief (ECF No. 95), and the factual findings made by this Court in its Order (ECF No. 100). The LVMPD Defendants additionally incorporate the Exhibits filed in support of their Motion for Summary Judgment. (*See* ECF No. 86, *see also* ECF No. 101).

### **III. LEGAL STANDARD**

Under Rule 56 of the Rules of Federal Procedure, “[a] party may move for summary judgment, identifying each claim or defense - - or the part of each claim or defense - - on which summary judgment is sought [and] [t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). It is well established that the

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1 purpose of summary judgment “is to isolate and dispose of factually unsupported claims.”  
 2 *Celotex v. Catrett*, 477 U.S. 317, 323-24 (1986).

3 The rule, however, is not a “procedural short cut,” but a “principal tool [] by which  
 4 factually insufficient claims or defenses [can] be isolated and prevented from going to trial  
 5 with the attendant unwarranted consumption of public and private resources.” *Id.* at 327.  
 6 The moving party bears the initial burden of demonstrating the absence of a genuine dispute  
 7 as to material fact. *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc). The  
 8 burden then shifts to the non-moving party to go beyond the pleadings and set forth specific  
 9 facts demonstrating there is a genuine issue for trial. *Far Out Prods., Inc. v. Oskar*, 247 F.3d  
 10 986, 997 (9th Cir. 2001). “If the non-moving party fails to make this showing, the moving  
 11 party is entitled to judgment as a matter of law.” *Id.*

#### 12 **IV. LEGAL ARGUMENT**

##### 13 **A. SUMMARY JUDGMENT IS WARRANTED ON DECASTRO’S** 14 **STATE LAW FALSE ARREST AND UNLAWFUL SEARCH AND** 15 **SEIZURE CLAIMS.**

16 The Court should grant summary judgment in the LVMPD Defendants’ favor with  
 17 respect to DeCastro’s claims for false arrest and unlawful search incident to arrest based  
 18 upon the Nevada Constitution because the LVMPD Defendants are entitled to discretionary  
 19 immunity under NRS 41.032(2) with respect to those claims. Although the Court has found  
 20 there are factual disputes precluding the Court from determining the Defendant Officers had  
 21 probable cause to arrest DeCastro as a matter of law, an officer’s decision to arrest is a  
 22 discretionary function under Nevada law. The search incident to arrest is similarly a result of  
 23 the Defendant Officers utilizing their discretion. Therefore, summary judgment is warranted  
 24 as to these claims based on alleged violations of the Nevada Constitution.

25 The LVMPD Defendants are immune from liability as to these claims pursuant to the  
 26 doctrine of discretionary-function immunity as embodied in Nevada’s NRS 41.032. A  
 27 person cannot maintain an action against an officer or employee of Nevada “[b]ased upon  
 28 the exercise of performance or the failure to exercise or perform a discretionary function or  
 duty on the part of the State or any of its agencies . . . or of any officer . . . *whether or not*



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1 *the discretion involved is abused.*” NRS 41.032(2) (emphasis added). Nevada’s  
2 discretionary-function statute mirrors the Federal Tort Claims Act (“FTCA”), so Nevada law  
3 looks to federal law relating to the FTCA for guidance on what type of conduct is protected  
4 by NRS 41.032. *Martinez v. Maruszczak*, 123 Nev. 433, 168 P.3d 720 (Nev. 2007). In  
5 *Berkovitz* and *Gaubert*, the United States Supreme Court proffered a two-part test to guide  
6 courts in determining whether actors have discretionary immunity from FTCA claims.  
7 *Berkovitz v. United States*, 486 U.S. 531, 536–37 (1988); *United States v. Gaubert*, 499 U.S.  
8 315, 322 (1991). In *Martinez*, the Nevada Supreme Court explicitly adopted that test as  
9 relates to Nevada’s discretionary-function immunity statute NRS 41.032. *Martinez*, 123  
10 Nev. at 445, 168 P.3d at 728-29. Under the *Berkovitz-Gaubert* test, an act is entitled to  
11 discretionary immunity if: (1) the act involves elements of judgment or choice; and (2) the  
12 act is based on considerations of public policy. *Id.* Federal courts applying the *Berkovitz-*  
13 *Gaubert* test assess cases on their merits, keeping in mind Congress’ purpose in enacting the  
14 exception, which was to “prevent judicial second-guessing of legislative and administrative  
15 decisions grounded in social, economic, and political policy through the medium of an  
16 action in tort.” *Id.* at 433, 168 P.3d at 729 (internal quotation marks omitted).

17 Nevada’s discretionary-function immunity exception protects state agency decisions  
18 concerning the scope and manner in which state agencies conduct various acts. *See Shafer v.*  
19 *City of Boulder*, 896 F.Supp.2d 915, 938 (D. Nev. 2012) (citation omitted). A court does not  
20 ask whether the official abused his or her discretion; *see* NRS 41.032(2), but only whether  
21 the acts concerned a matter in which the official had discretion. In other words, the  
22 immunity is not infinitely broad, but once it is determined that the acts involved judgment or  
23 choice on social, economic, or political policy considerations, the immunity applies even to  
24 abuses of discretion. *Belch v. Las Vegas Metro Police Dep’t.*, No. 2:10-CV-00201-GMN,  
25 2011 WL 1070175, at \*4 (D Nev. 2011).

26 In Nevada, the decision of a police officer to effectuate an arrest is a discretionary  
27 decision entitled to immunity under NRS 41.032(2). In *Ortega*, the Supreme Court of  
28 Nevada concluded that no civil liability attached to a state trooper’s decision to arrest a

1 driver for allegedly refusing to sign a traffic ticket because the decision to do so was a  
2 discretionary decision requiring personal deliberation and judgment and thus entitled to  
3 immunity under NRS 41.032(2)). *Ortega v. Reyna*, 114 Nev. 55, 62, 953 P.2d 18, 23 (Nev.  
4 1998). An officer's decision as to how to accomplish a particular seizure or search is  
5 considered a discretionary determination under Nevada law, and officers are therefore  
6 immune from suit as to state law claims arising therefrom in most cases. *See id.*

7 This Court has affirmed on numerous occasions that police officers in Nevada are  
8 entitled to discretionary function immunity under NRS 41.032 in conducting an  
9 investigation and effectuating an arrest so long as the officer does not violate a mandatory  
10 directive in doing so. *See, e.g., Sandoval v. Las Vegas Metro. Police Dep't*, 854 F. Supp. 2d  
11 860 (D. Nev. 2012), *aff'd in part, rev'd in part*, 756 F.3d 1154 (9th Cir. 2014); *see also*  
12 *Napouk v. Las Vegas Metro. Police Dep't*, 669 F. Supp. 3d 1031 (D. Nev. 2023) (whether to  
13 detain or arrest a suspect and how to do so are discretionary functions of the police  
14 department); *see also Mitchell v. Las Vegas Metro Police Dep't.*, No.  
15 217CV2188JCMGWF, 2018 WL 1568670 (D. Nev. 2018) (finding that officer's decision to  
16 arrest met the two factors of the discretionary immunity test).

17 Here, the Defendant Officers are immune from liability with respect to their  
18 discretionary decision to arrest DeCastro and to conduct a search incident to arrest. It is  
19 well-settled an officer's decision to arrest is discretionary because it involves elements of  
20 judgment or choice and is based on considerations of public policy. Likewise, the Defendant  
21 Officers' decision to conduct a search incident to arrest here was discretionary because it  
22 involves an element of judgment or choice and is based on considerations of public policy,  
23 namely the need to adduce whether DeCastro was armed or otherwise posed a threat to  
24 officer safety.

25 Based on the foregoing, the LVMPD Defendants respectfully request the Court grant  
26 summary judgment in their favor as to DeCastro's state law claims based on the arrest and  
27 search incident.

28

1           **B. SUMMARY JUDGMENT IS WARRANTED ON DECASTRO'S**  
 2           **INVASION OF PRIVACY CLAIM.**

3           DeCastro's invasion of privacy claim is premised upon a theory his being searched  
 4 incident to his arrest amounted to a commission of the tort of invasion of privacy. Summary  
 5 judgment is warranted as to DeCastro's invasion of privacy claim for two separate reasons.  
 6 First, as discussed above, the search incident to arrest was a discretionary act for which the  
 7 LVMPD Defendants are immune under NRS 41.032. Second, Nevada does not recognize an  
 8 invasion of privacy claim where a party's expectation of privacy is objectively unreasonable.  
 9 DeCastro did not have an objectively reasonable expectation of privacy in his personal  
 10 effects during the event because of his provocative and uncooperative conduct during the  
 11 subject incident, namely his insistence on willfully disobeying the commands of Ofc.  
 12 Bourque prior to his arrest. Resultantly, the Court should grant summary judgment to that  
 13 claim.

14           “Nevada's common law recognizes the tort of invasion of privacy for unreasonable  
 15 intrusion upon the seclusion of another. The purpose of the tort is to provide redress for  
 16 intrusion into a person's reasonable expectation of privacy . . .” *Clark Cty. School Dist. V.*  
 17 *Las Vegas Review-Journal*, 429 P.3d 313, 320 (Nev. 2018). The tort of invasion of privacy  
 18 embraces four different tort actions: “(a) unreasonable intrusion upon the seclusion of  
 19 another; or (b) appropriation of the other's name or likeness; or (c) unreasonable publicity  
 20 given to the other's private life; or (d) publicity that unreasonably places the other in a false  
 21 light before the public.” Restatement (Second) of Torts § 652A (1977); *PETA v. Bobby*  
 22 *Berosini, Ltd.*, 895 P.2d 1269, 1278 (Nev. 1995). Here, DeCastro's claim is undoubtedly  
 23 based upon an allegedly unreasonable intrusion upon his seclusion, as the other possible  
 24 recognized bases for the tort do not apply to the facts of the instant case.

25           In *M & R Investment Co. v. Mandarino*, the Nevada Supreme Court faced the  
 26 question of whether appellant, “a twenty-two year old man, disguised in dark glasses, a false  
 27 mustache and slicked down hair, who by virtue of his skill at counting cards, [won] a great  
 28 deal of money in a short period of time” had stated a cognizable claim for intrusion against

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1 the casino personnel who confiscated his winnings, had him arrested, photographed him, and  
2 distributed his photograph to other casinos. 103 Nev. 711 at 719, 748 P.2d 488 at 493 (Nev.  
3 1987). The Nevada Supreme Court answered that question with an emphatic “No,” noting  
4 that the appellant, so conspicuously attired, could have had no subjective expectation that  
5 “casino personnel [would] turn a blind eye to his presence.” *See id.* The Nevada Supreme  
6 Court held that even viewing the facts in the light most favorable to the appellant, such an  
7 expectation was patently unreasonable and would thus not give rise to a tort action. *Id.* at  
8 719, 748 P.2d at 493.

9 Here, summary judgment as to DeCastro’s invasion of privacy claim based on the  
10 search incident to arrest is warranted for two independently sufficient reasons. First, as  
11 discussed above, the LVMPD Defendants are entitled to discretionary immunity for the  
12 search incident to arrest pursuant to NRS 41.032. DeCastro cannot overcome the protections  
13 provided to the LVMPD Defendants by Nevada’s discretionary-function immunity statute  
14 through an invasion of privacy claim. Second, the undisputed facts demonstrate DeCastro  
15 initiated the subject incident, acted in a pugnacious and indignant manner towards the  
16 Defendant Officers and refusing multiple direct orders from Ofc. Bourque to back up from  
17 an active traffic stop. DeCastro could not have had a reasonable expectation the Defendant  
18 Officers would turn a blind eye to his presence and behavior. Viewing the facts in the light  
19 most favorable to DeCastro, any subjective expectation of privacy he had in the items on his  
20 person was patently unreasonable on account of his behavior during the subject incident.

21 Based on the foregoing, the LVMPD Defendants respectfully request the Court grant  
22 summary judgment in their favor with respect to DeCastro’s state law claim for invasion of  
23 privacy.

24 ///

26 ///

28 ///

1 **V. CONCLUSION**

2 Based on the foregoing, the LVMPD Defendants respectfully request this Court  
3 grant the instant Motion for Summary Judgment in its entirety.

4 Dated this 4<sup>th</sup> day of October, 2024.

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Attorneys for Defendants

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that I electronically filed the foregoing **DEFENDANTS LVMPD,**  
13 **OFC. TORREY, OFC. BOURQUE, OFC. DINGLE, OFC. SORENSON, OFC.**  
14 **SANDOVAL AND OFC. DOOLITTLE'S SECOND MOTION FOR SUMMARY**  
15 **JUDGMENT** with the Clerk of the Court for the United States District Court by using the  
16 court's CM/ECF system on the 4<sup>th</sup> day of October, 2024.

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

19  I further certify that some of the participants in the case are not registered  
20 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

21  
22 /s/ Sherri Mong  
23 an employee of Marquis Aurbach

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