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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOSE DECASTRO, Plaintiff, vs. LAS VEGAS METROPOLITAN POLICE DEPARTMENT; CLARK COUNTY, NEVADA; SERGEANT HUTCHINSON, in his individual capacity; OFFICER BRUEN, in his individual capacity; OFFICER FRUMPKIN, in his individual capacity; SUPERVISING OFFICER DANNY ROSE (Badge #983), in his individual capacity; OFFICER "TOMMY" (last name unknown), in his individual capacity; and JOHN DOES 1-5, in their individual capacities, Defendants.	Case Number: 2:26-cv-00373-APG-MDC **DEFENDANTS LVMPD, SGT. HUTCHINSON, OFC. BRUEN, OFC. FRUMPKIN AND OFC. ROSE'S ANSWER TO PLAINTIFF'S COMPLAINT**

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Defendants Las Vegas Metropolitan Police Department ("LVMPD"), Sergeant Mark Hutchinson, Officer Phillip Bruen, Officer Daniel Frumkin (sued herein as "Officer Frumpkin") and Supervising Officer Danny Rose (collectively, the "LVMPD Defendants"), by and through their counsel of record, hereby answer Plaintiff's Complaint (ECF No. 2) as follows:

I. INTRODUCTION

1. The LVMPD Defendants are without sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations contained in paragraph 7 of the Plaintiff's

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Complaint and therefore deny the same.

2. Answering paragraphs 2, 4, and 6 of the Plaintiff's Complaint, the LVMPD Defendants admit only that on the night of February 14, 2024, Plaintiff was present at the scene of a fatal traffic accident investigation in the area of W. Charleston Boulevard and S. Decatur Boulevard in Las Vegas, Nevada; that Plaintiff was arrested and booked into the Las Vegas City Jail; and that Plaintiff was previously arrested by LVMPD in March 2023. The LVMPD Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations regarding Plaintiff's occupation, the outcome of Plaintiff's prior criminal proceeding, and Plaintiff's prior civil litigation, and therefore deny the same. The LVMPD Defendants deny the remaining allegations contained in paragraphs 2, 4, and 6.

3. The LVMPD Defendants deny the allegations contained in paragraphs 1, 3, 5, and 8 of the Plaintiff's Complaint.

II. JURISDICTION AND VENUE

4. Answering paragraphs 9, 10, and 11 of the Plaintiff's Complaint, the LVMPD Defendants admit that this Court has subject matter jurisdiction over Plaintiff's federal claims, that the Court may exercise supplemental jurisdiction over Plaintiff's state law claims, and that venue is proper in this District, but deny that Plaintiff is entitled to any relief.

5. The LVMPD Defendants deny any remaining allegations contained in paragraphs 9 through 11 of the Plaintiff's Complaint, including any allegation that the LVMPD Defendants violated the Constitution or laws of the United States.

III. PARTIES

6. The LVMPD Defendants are without sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations contained in paragraphs 12, 18, and 19 of the Plaintiff's Complaint, and therefore deny the same.

7. Answering paragraph 13 of the Plaintiff's Complaint, the LVMPD Defendants admit that LVMPD is a law enforcement agency operating in Clark County, Nevada, and deny the remaining allegations.

8. Answering paragraph 14 of the Plaintiff's Complaint, the LVMPD Defendants admit that LVMPD is a political subdivision of the State of Nevada and that the Sheriff of Clark County is the final policymaker for LVMPD. The LVMPD Defendants deny that Clark County is responsible for the policies, practices, training, supervision, oversight, and discipline of LVMPD and its personnel, and deny the remaining allegations.

9. Answering paragraph 15 of the Plaintiff's Complaint, the LVMPD Defendants admit that Sergeant Mark Hutchinson is a sworn LVMPD sergeant who was present at the scene on February 14, 2024, and that Plaintiff purports to sue him in his individual capacity. The LVMPD Defendants deny the remaining allegations.

10. Answering paragraph 16 of the Plaintiff's Complaint, the LVMPD Defendants admit that Officer Phillip Bruen and Officer Daniel Frumkin (sued herein as "Officer Frumpkin") are sworn LVMPD officers who were present at the scene on February 14, 2024, and that Plaintiff purports to sue each in his individual capacity. The LVMPD Defendants deny the remaining allegations.

11. Answering paragraph 17 of the Plaintiff's Complaint, the LVMPD Defendants admit that Danny Rose is a sworn LVMPD employee who was present at the scene on February 14, 2024, and that Plaintiff purports to sue him in his individual capacity. The LVMPD Defendants state that any audio or video recording referenced speaks for itself and deny any characterization inconsistent therewith. The LVMPD Defendants deny the remaining allegations.

12. Except as expressly admitted above, the LVMPD Defendants deny the allegations contained in paragraphs 13 through 17 of the Plaintiff's Complaint.

IV. FACTUAL BACKGROUND

13. The LVMPD Defendants are without sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations contained in paragraphs 21, 51, 52, and 53 of the Plaintiff's Complaint, and therefore deny the same.

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14. Answering paragraph 20 of the Plaintiff's Complaint, the LVMPD Defendants admit that a fatal traffic accident occurred in the area on February 14, 2024, and deny the remaining allegations, including that the accident scene had been cleared, that no investigation was underway, and that the roadway was open to the public.

15. Answering paragraph 29 of the Plaintiff's Complaint, the LVMPD Defendants admit that Plaintiff stated he was a member of the media and deny the remaining allegations.

16. Answering paragraph 36 of the Plaintiff's Complaint, the LVMPD Defendants admit that Plaintiff was previously arrested by LVMPD in March 2023 and deny the remaining allegations.

17. Answering paragraph 49 of the Plaintiff's Complaint, the LVMPD Defendants admit that Plaintiff was booked into the Las Vegas City Jail and deny the remaining allegations.

18. Answering paragraphs 25, 26, 28, 31, 33, 34, 35, 38, 39, 40, 42, 46, 47, and 48 of the Plaintiff's Complaint, the LVMPD Defendants state that the audio and video recordings referenced therein speak for themselves, deny any characterization of those recordings inconsistent with their contents, and deny the remaining allegations.

19. The LVMPD Defendants deny the allegations contained in paragraphs 22, 23, 24, 27, 30, 32, 37, 41, 43, 44, 45, 50, 54, and 55 of the Plaintiff's Complaint, and, except as expressly admitted above, deny all remaining allegations contained in paragraphs 20 through 55.

V. CLAIMS FOR RELIEF

COUNT I

FIRST AMENDMENT RETALIATION (42 U.S.C. §1983)

(AGAINST ALL INDIVIDUAL DEFENDANTS)

20. Answering paragraph 56 of the Plaintiff's Complaint, the LVMPD Defendants repeat and incorporate their responses to paragraphs 1 through 55 as though fully set forth herein.

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21. Paragraphs 57, 58, and 63 of the Plaintiff's Complaint state legal conclusions to which no response is required. To the extent a response is required, the LVMPD Defendants deny the allegations.

22. The LVMPD Defendants deny the allegations contained in paragraphs 59, 60, 61, 62, 64, and 65 of the Plaintiff's Complaint.

COUNT II

FOURTH AMENDMENT: UNLAWFUL SEIZURE AND EXCESSIVE FORCE (42 U.S.C. §1983)

(AGAINST ALL INDIVIDUAL DEFENDANTS)

23. Answering paragraph 66 of the Plaintiff's Complaint, the LVMPD Defendants repeat and incorporate their responses to paragraphs 1 through 65 as though fully set forth herein.

24. Answering paragraph 67 of the Plaintiff's Complaint, the LVMPD Defendants admit only that Plaintiff was placed in handcuffs, arrested, and booked into the Las Vegas City Jail, and deny the remaining allegations.

25. The LVMPD Defendants deny the allegations contained in paragraphs 68, 69, 70, 71, and 72 of the Plaintiff's Complaint, and deny the remaining allegations contained in paragraph 67.

COUNT III

FOURTEENTH AMENDMENT: SUBSTANTIVE DUE PROCESS – FABRICATION OF FALSE NARRATIVE AND SUPPRESSION OF EXCULPATORY EVIDENCE (42 U.S.C. §1983)

(AGAINST ALL INDIVIDUAL DEFENDANTS)

26. Answering paragraph 73 of the Plaintiff's Complaint, the LVMPD Defendants repeat and incorporate their responses to paragraphs 1 through 72 as though fully set forth herein.

27. The LVMPD Defendants deny the allegations contained in paragraphs 74, 75, and 76 of the Plaintiff's Complaint.

COUNT IV

FAILURE TO INTERVENE (42 U.S.C. §1983)

(AGAINST SUPERVISING OFFICER DANNY ROSE AND JOHN DOES 1-5)

28. Answering paragraph 77 of the Plaintiff's Complaint, the LVMPD Defendants repeat and incorporate their responses to paragraphs 1 through 76 as though fully set forth herein.

29. Paragraph 81 of the Plaintiff's Complaint states a legal conclusion to which no response is required. To the extent a response is required, the LVMPD Defendants deny the allegations. To the extent Count IV is directed to John Does 1-5, no response is required from the LVMPD Defendants; to the extent a response is required, the LVMPD Defendants deny the allegations.

30. The LVMPD Defendants deny the allegations contained in paragraphs 78, 79, and 80 of the Plaintiff's Complaint.

COUNT V

MONELL LIABILITY (42 U.S.C. §1983)

(AGAINST LVMPD AND CLARK COUNTY)

31. Answering paragraph 82 of the Plaintiff's Complaint, the LVMPD Defendants repeat and incorporate their responses to paragraphs 1 through 81 as though fully set forth herein.

32. To the extent the allegations of Count V are directed to Defendant Clark County, Nevada, no response is required from the LVMPD Defendants. To the extent a response is required, the LVMPD Defendants deny the allegations.

33. The LVMPD Defendants deny the allegations contained in paragraphs 83, 84, 85, 86, and 87 of the Plaintiff's Complaint.

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COUNT VI

STATE LAW CLAIMS: ASSAULT AND BATTERY

(AGAINST ALL INDIVIDUAL DEFENDANTS)

34. Answering paragraph 88 of the Plaintiff's Complaint, the LVMPD Defendants repeat and incorporate their responses to paragraphs 1 through 87 as though fully set forth herein.

35. Answering paragraph 91 of the Plaintiff's Complaint, the LVMPD Defendants admit that the Court may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367, but deny that Plaintiff is entitled to any relief.

36. The LVMPD Defendants deny the allegations contained in paragraphs 89 and 90 of the Plaintiff's Complaint.

COUNT VII

STATE LAW CLAIM: FALSE ARREST AND FALSE IMPRISONMENT

(AGAINST ALL INDIVIDUAL DEFENDANTS)

37. Answering paragraph 92 of the Plaintiff's Complaint, the LVMPD Defendants repeat and incorporate their responses to paragraphs 1 through 91 as though fully set forth herein.

38. Answering paragraphs 94 and 95 of the Plaintiff's Complaint, the LVMPD Defendants admit only that Plaintiff was handcuffed, transported, and booked into the Las Vegas City Jail, and that the Court may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367. The LVMPD Defendants deny the remaining allegations contained in paragraphs 94 and 95.

39. The LVMPD Defendants deny the allegations contained in paragraph 93 of the Plaintiff's Complaint.

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VI. (SIC) PRAYER FOR RELIEF

The LVMPD Defendants deny that Plaintiff is entitled to any of the relief requested in subparagraphs (a) through (f) of his Prayer for Relief, or to any relief whatsoever. Any allegation of the Complaint not expressly admitted herein, including any allegation contained in headings or unnumbered paragraphs, is denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

The Defendant officers had probable cause to arrest Plaintiff.

THIRD AFFIRMATIVE DEFENSE

The complained of acts of these Answering Defendants were justified and privileged under the circumstances.

FOURTH AFFIRMATIVE DEFENSE

At all times mentioned in Plaintiff's Complaint, these Answering Defendants acted in good faith belief that their actions were legally justifiable.

FIFTH AFFIRMATIVE DEFENSE

The individual officers are entitled to qualified immunity from the claims alleged against them in Plaintiff's Complaint.

SIXTH AFFIRMATIVE DEFENSE

That Nevada Revised Statutes Chapter 41 limits the damages that may be collectible against a political subdivision of the State of Nevada.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint concerns a discretionary function of the LVMPD Defendants for which Defendant LVMPD is immune pursuant to NRS 41.032.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Heck v. Humphrey, 512 U.S. 477 (1994), to the extent judgment in Plaintiff's favor would necessarily imply the invalidity of any conviction, plea, or other disposition arising from his February 14, 2024 arrest.

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH 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 the 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.

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FOURTEENTH AFFIRMATIVE DEFENSE

These Answering Defendants have not been negligent and have not breached their duty to properly supervise the conduct of its employees with whom Plaintiff interacted.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's First Amendment retaliation claim is barred because probable cause existed for his arrest.

SIXTEENTH AFFIRMATIVE DEFENSE

Any force used upon Plaintiff was objectively reasonable under the totality of the circumstances and was privileged as reasonably necessary to effect a lawful arrest.

SEVENTEENTH AFFIRMATIVE DEFENSE

LVMPD cannot be held liable under 42 U.S.C. § 1983 on a theory of respondeat superior, and no policy, custom, or practice of LVMPD was the moving force behind any alleged constitutional violation.

EIGHTEENTH AFFIRMATIVE DEFENSE

Punitive damages are not recoverable against LVMPD under 42 U.S.C. § 1983 or under NRS 41.035, and any award on Plaintiff's state law claims is subject to the limitations of NRS 41.035.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's state law claims are barred, in whole or in part, as Plaintiff failed to provide notice to LVMPD's governing agency within two years as required by NRS 41.036.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are subject to dismissal for insufficient process and insufficient service of process, including failure to timely serve the LVMPD Defendants within the period required by Fed. R. Civ. P. 4(m).

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff lacks standing to pursue declaratory and injunctive relief because he cannot

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demonstrate a real and immediate threat of future injury.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his alleged damages, if any.

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

WHEREFORE, the LVMPD Defendants pray for judgment as follows:

1. That Plaintiff takes nothing by virtue of his Complaint on file herein, that the same be dismissed with prejudice;

2. For an award of reasonable attorney fees and costs of suit incurred in the defense of this action; and

3. For such other and further relief as this Court may deem just and proper in the premises.

Dated this 9th day of November, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANTS LVMPD, SGT. HUTCHINSON, OFC. BRUEN, OFC. FRUMPKIN AND OFC. ROSE'S ANSWER TO PLAINTIFF'S COMPLAINT** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 9th day of November, 2026.

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

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:

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