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**U.S DISTRICT COURT
DISTRICT OF NEVADA**

DAVID ROY STILWELL, an individual;
LILLIAN "TIGER LILY" GONZALEZ, an
individual; MIKE "BONES" DAVIS, an
individual; VICTOR "DOC" MOSS, an
individual; KAREN JURASINSKI, an
individual; RICHARD "DIRTY RICK"
POLLARD, an individual; BURL DEAN
BOLTON, an individual; JAMES B.
CANFIELD, an individual; LUANN
"CHEYENNE" FOSCHI, an individual;
TIMOTHY FARRELL, an individual;
BRIAN KATZ, an individual; CARLOS
AUGUSTINE BOLTON, and individual; on
behalf of themselves and others similarly
situated; collectively,

Class Plaintiffs,

v.

CLARK COUNTY, a political subdivision of
the State of Nevada; CITY OF BOULDER
CITY, a political subdivision of the State of
Nevada; CITY OF NORTH LAS VEGAS, a
political subdivision of the State of Nevada;
CITY OF HENDERSON, a political
subdivision of the State of Nevada; CITY OF
MESQUITE, a political subdivision of the
State of Nevada; CITY OF LAS VEGAS, a
political subdivision of the State of Nevada;
and COES 1 through 10; collectively,

Defendants.

Case No.:

Dept No.:

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

1 Class Plaintiffs David Roy Stilwell, Lillian “Tiger Lily” Gonzalez, Mike “Bones” Davis,
2 Victor “Doc” Moss, Karen Jurasinski, Richard “Dirty Rick” Pollard, Burl Dean Bolton, James B.
3 Canfield, LuAnn “Cheyenne” Foschi, Timothy Farrell, Brian Katz and Carlos Augustine Bolton,
4 on behalf of themselves and others similarly situated (the “Class Plaintiffs”), by and through
5 their attorneys of the law firm of GALLIAN WILCOX WELKER OLSON & BECKSTROM,
6 LC, and as for their Complaint against Defendants, aver as follows:
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8 **JURISDICTION AND VENUE**

- 9 1. At all times relevant herein, Class Plaintiffs David Roy Stilwell, Lillian “Tiger Lily”
10 Gonzalez, Mike “Bones” Davis, Victor “Doc” Moss, Karen Jurasinski, Richard “Dirty Rick”
11 Pollard, Burl Dean Bolton, James B. Canfield, LuAnn “Cheyenne” Foschi, Timothy Farrell,
12 Brian Katz and Carlos Augustine Bolton were individuals domiciled in Clark County, Nevada.
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- 14 2. At all times relevant herein, Defendants CLARK COUNTY, CITY OF BOULDER
15 CITY, CITY OF NORTH LAS VEGAS, CITY OF HENDERSON, CITY OF MESQUITE and
16 CITY OF LAS VEGAS are and were political subdivisions of the State of Nevada.
17
- 18 3. Fictitious Defendants COES 1 through 10 (“COES”) are those parties whose identities
19 are currently unknown to the Class Plaintiffs, who may have caused or contributed to the conduct
20 complained of by Class Plaintiffs herein. When the true names of those fictitious Defendants are
21 discovered, they will be substituted into this Complaint accordingly. (CLARK COUNTY, CITY
22 OF BOULDER CITY, CITY OF NORTH LAS VEGAS, CITY OF HENDERSON, CITY OF
23 MESQUITE and CITY OF LAS VEGAS and COES are collectively referred to herein as the
24 “Defendants.”)
25
- 26 4. The acts and omissions of the Defendants giving rise to Class Plaintiffs’ injuries and
27 claims arose in Clark County, Nevada.
28
5. At the present time, there exists an actual controversy between the Class Plaintiffs and

1 the Defendants, as set forth below.

2 6. As of the date of this Complaint, the Class Plaintiffs have suffered actual injury and are
3 continually exposed to threatened injury, as set forth below.

4 7. Jurisdiction over the Class Plaintiffs' claims in this Court is proper and is predicated upon
5 Article III, Section 2 of the U.S. Constitution and 28 U.S.C. §1331, §1334 and §1367.

6 8. Venue over the Class Plaintiffs' claims in this Court is proper and is predicated upon 28
7 U.S.C §1391(b).
8

9 **CLASS ACTION AVERMENTS**

10 9. Numerosity – The Class Plaintiffs are informed and reasonably believe that the other
11 persons similarly situated in Clark County (the “Class Members”) exceeds forty thousand
12 persons holding an “M” endorsement on their State of Nevada Drivers License. By virtue of the
13 size of the Class Members, joinder of individual claims is impractical. In addition, individual
14 actions (i) present a high risk of inconsistent or varying adjudications and (ii) are
15 disproportionately burdensome and costly to individuals harmed by the Defendants' actions. For
16 these reasons, presentation of all the claims of the Class Members in a single forum is highly
17 desirable.
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20 10. Commonality – The questions of law and fact presented by the Class Plaintiffs are
21 common to all the Class Members and predominate over any questions affecting only individual
22 Class Members. The Class Members, as operators of motorcycles in Clark County, all use the
23 same public roadways which are policed by the Defendants. All Class Members are subject to
24 enforcement of NRS §486.231 (“Nevada’s Helmet Law”) by the Defendants. All Defendants
25 have certain formal and informal policies of enforcement of Nevada’s Helmet Law. Upon
26 citation by the Defendants for violation of Nevada’s Helmet Law (a “Helmet Ticket”), all Class
27 Members are subject to the same damages incurred either by (i) the payment of the fines and fees
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1 associated with the Helmet Ticket or (ii) the incurring of legal fees and costs and/or personal
2 inconvenience in defense against the charges set forth in the Helmet Ticket. The Defendants
3 have acted or refused to act on grounds generally applicable to all the Class Members, thereby
4 making injunctive and declaratory relief for all the Class Members appropriate.

5 11. Typicality – The Class Plaintiffs are typical of the Class Members in that each is (i) a
6 person holding an “M” endorsement on their State of Nevada Drivers License, (ii) a person who
7 may or does operate a motorcycle on the roadways policed by the Defendants, (iii) a person who
8 may or has been the subject to arbitrary and discriminatory enforcement of Nevada’s Helmet
9 Law, (iv) a person who has been or may be stopped and cited by the Defendants for violation of
10 Nevada’s Helmet Law, (v) a person who may or has made payment of the fines and fees
11 associated with the Helmet Ticket or (vi) a person who will or has incurred legal fees and costs
12 and/or personal inconvenience in defense against the charges set forth in the Helmet Ticket and
13 (vii) a person who has no adequate remedy at law for the damages incurred. The individual
14 interests of the Class Plaintiffs are uniquely congruous with the interests of all the Class
15 Members.
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19 12. Adequacy – The claims of the Class Members are identical, intertwined and interrelated
20 to the interests of the Class Plaintiffs to the extent that the interests of the Class Members will be
21 fairly and adequately protected in their absence. The Class Plaintiffs have the resources and the
22 advice of experienced counsel to the extent necessary to prosecute the matter on behalf of all the
23 Class Members.
24

25 GENERAL FACTUAL ALLEGATIONS

26 13. The Defendants, with constitutionally deficient probable cause, engage in an ongoing
27 pattern and practice of arbitrary and discriminatory enforcement of NRS §486.231, in violation
28 of (i) Article I, Section 8 of the Nevada Constitution, (ii) the 4th and 14th Amendments to the U.S.

1 Constitution and (iii) case law set forth in Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct.
2 2294 (1972) and Gallegos v. State, 163 P.3d 456 (Nev. 2007), among others.

3 14. The Class Members have exhausted all reasonable, applicable administrative remedies, if
4 any, by way of (i) internal affairs complaints filed with the Defendants, (ii) administrative claims
5 filed with the Defendants and (iii) a concerted and productive effort to obtain from the
6 Defendants the actual standard intended to be enforced.

7
8 15. The Defendants do not enjoy qualified immunity under NRS 41.031(1) because, by
9 issuing Helmet Tickets with constitutionally deficient probable cause, the Defendants and their
10 agents engage in acts that are illegal and not discretionary in nature. The agents of the
11 Defendants do have discretion to cite and prosecute, or not cite or prosecute, when there exists
12 constitutionally sufficient probable cause and that decision is entitled to qualified immunity;
13 however, the agents of the Defendants **do not** have discretion to cite or prosecute with
14 constitutionally deficient probable cause. The fact that the Defendants routinely convict Class
15 Members in a court of non-record below does not present irrebuttable evidence of
16 constitutionally sufficient probable cause.
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19 **FIRST CAUSE OF ACTION**

20 ***Violations of the 4th Amendment protections against unreasonable search and seizure.***

21 16. The Class Plaintiffs reassert and reallege all other allegations of this Complaint and
22 incorporate them herein as if set forth in full.

23 17. The Defendants have failed to instruct, train or equip their agents in the particulars of the
24 Nevada Helmet Law or the constitutionally sufficient probable cause necessary to issue a Helmet
25 Ticket under the Nevada Helmet Law.

26
27 18. The Defendants, through their agents, have an ongoing pattern and practice of issuing
28 Helmet Tickets to the Class Members that are not supported by constitutionally sufficient

1 probable cause, thereby violating the civil rights of the Class Members under the 4th
2 Amendment.

3 19. As a direct and proximate result of the actions of the Defendants, the Class Members
4 have suffered and continue to suffer economic damages and violations of their civil rights.

5 20. The Defendants are liable for all general, consequential, and incidental damages caused
6 by or assessed to Defendants.
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8 **SECOND CAUSE OF ACTION**

9 ***Violations of the 14th Amendment protections against Arbitrary and Discriminatory
10 Enforcement.***

11 21. The Class Plaintiffs reassert and reallege all other allegations of this Complaint and
12 incorporate them herein as if set forth in full.

13 22. The Defendants have failed to instruct, train or equip their agents in the particulars of the
14 Nevada Helmet Law or the constitutionally sufficient probable cause necessary to prosecute a
15 Helmet Ticket under the Nevada Helmet Law.

16 23. The Defendants, through their agents, have an ongoing pattern and practice of arbitrary
17 and discriminatory prosecution of the Nevada Helmet Law, in the absence of constitutionally
18 sufficient probable cause, thereby violating the Class Members their Equal Protection Rights
19 under the 14th Amendment.
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21 24. The Defendants, through their agents, have an ongoing pattern and practice of dismissing
22 Helmet Tickets when contested in the courts of non-record below or appealed to the courts of
23 record above, thereby denying the Class Members their Due Process Rights to challenge
24 enforcement of the Nevada Helmet Law under the 14th Amendment. As a result, the Class
25 Members have been and continue to be denied an adequate remedy at law.
26

27 25. The Defendants independently impose a disparity of fines and fees upon the Class
28 Members for violation of the Nevada Helmet Law, with no rational basis for the disparities,

1 thereby violating the Class Members their Equal Protection Rights under the 14th Amendment.

2 26. The Defendants, through their agents, have an ongoing pattern and practice of refusing to
3 enforce companion criminal statute, NRS §486.241, evincing an arbitrary and discriminatory
4 enforcement of NRS §486.231, thereby violating the Class Members their Equal Protection
5 Rights under the 14th Amendment.

6
7 27. As a direct and proximate result of the actions of the Defendants, Plaintiffs have suffered
8 and continue to suffer economic damages and violations of civil rights.

9 28. The Defendants are liable for all general, consequential, and incidental damages caused
10 by or assessed to Defendants.

11 **THIRD CAUSE OF ACTION**
12 ***Malicious Prosecution***

13 29. The Class Plaintiffs reassert and reallege all other allegations of this Complaint and
14 incorporate them herein as if set forth in full.

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16 30. The Defendants, through their agents, have an ongoing pattern and practice of instituting
17 criminal actions against the Class Members with constitutionally deficient probable cause to
18 commence the action.

19 31. The Defendants, through their agents, have an ongoing pattern and practice of dismissing
20 actions under the Nevada Helmet Law, when challenged by the Class Members, which results in
21 a termination of the action in favor of the Class Members.

22
23 32. As a direct and proximate result of the actions of the Defendants, Plaintiffs have suffered
24 and continue to suffer economic damages and violations of civil rights.

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26 33. The Defendants are liable for all general, consequential, and incidental damages caused
27 by or assessed to Defendants.

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FOURTH CAUSE OF ACTION
Abuse of Process.

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2 34. The Class Plaintiffs reassert and reallege all other allegations of this Complaint and
3 incorporate them herein as if set forth in full.
4

5 35. The Defendants, through their agents, have an ongoing pattern and practice of engaging
6 in arbitrary and discriminatory enforcement of the Nevada Helmet Law as a pretext for invading
7 the liberties and civil rights of the Class Members, with no demonstrated concern for the safety
8 or civil rights of the Class Members. This pattern and practice, unsupported by constitutionally
9 sufficient probable cause, evinces an ulterior motive and malice, and is in direct violation of the
10 Defendants' own policy against bias-based policing.
11

12 36. The Defendants, through their agents, have an ongoing pattern and practice of the
13 improper use of the legal process in prosecuting the Class Member in the absence of
14 constitutionally sufficient probable cause.
15

16 37. As a direct and proximate result of the actions of the Defendants, Plaintiffs have suffered
17 and continue to suffer economic damages and violations of civil rights.

18 38. The Defendants are liable for all general, consequential, and incidental damages caused
19 by or assessed to Defendants.
20

21 **WHEREFORE**, the Class Plaintiffs request judgment against the Defendants as follows:

- 22 1. For Declaratory Judgment that the Defendants have and continue to engage in the
23 violation of the Class Members' rights against unreasonable search and seizure under the
24 4th Amendment;
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26 2. For Declaratory Judgment that the Defendants have and continue to engage in the
27 violation of the Class Members' Due Process and Equal Protection rights under the 14th
28 Amendment;
3. For Declaratory Judgment that the Defendants have and continue to engage in the

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malicious prosecution of the Class Members;

4. For Declaratory Judgment that the Defendants have and continue to engage in the abuse of process against the Class Members;
5. For all consequential, incidental and special damages that the Class Members have suffered, in amounts to be proven at trial;
6. For Injunctive Relief, (i) requiring the Defendants to remediate their illegal ongoing pattern and practice and (ii) barring Defendants from further enforcing NRS §486.231 with constitutionally deficient probable cause;
7. Pursuant to NRS 17.1310, prejudgment interest at the legal rate from the date of the filing of Class Plaintiffs' complaint until paid;
8. For costs incurred and accruing; and
9. For such other and further relief as the Court deems just under the circumstances.

DATED this 27th day of September, 2011.

GALLIAN, WILCOX, WELKER
OLSON & BECKSTROM, LC

By: _____



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