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*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

**MARIE THERESA NOLAN**, individually  
and as special administratrix of the Estate of  
John Benjamin Kraai;

Plaintiffs,

vs.

**CITY OF LAS VEGAS; LAS VEGAS  
FIRE & RESCUE; WILLIAM L.  
MCDONALD**, individually and in his  
capacity as Fire Chief; **BETSY  
FRETWELL**, individually and in her  
capacity as City Manager; **FRED DEIN**,  
individually; **MCNASTYS AUTO &  
CYCLE**, a sole proprietorship; and **JOHN  
DOES I through X**, inclusive;

Defendants.

**CASE NO.:**

**COMPLAINT**

**[DEMAND FOR JURY TRIAL]**

**Causes of Action:**

1. *Violation of Civil Rights – Monell Liability*
2. *Violation of Civil Rights – Life & Security of Person*
3. *Violation of Civil Rights – Familial Relationships*
4. *Negligence*
5. *Wrongful Death*
6. *Assault*
7. *Battery*

*“The state cannot arbitrarily assert its power so as to cut short a person's life.”*

- *Ross v. United States, 910 F.2d 1422, 1433 (7th Cir. 1990).*

**INTRODUCTION**

1. This is an action for Wrongful Death and Constitutional violations suffered by decedent John Benjamin Kraai. Plaintiff brings this action for compensatory damages under 42 U.S.C. § 1983 because Defendants jointly and severally deprived Decedent of his federally-

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1 protected right to bodily security, life, and Equal Protection of Laws secured to him by the  
2 Fourteenth Amendment. U.S. CONST. amend. XIV.

3  
4 2. Plaintiff Marie Theresa Nolan (“Marie”) is the biological mother and personal  
5 representative of the estate of John Benjamin Kraai (“Kraai”) and brings this action on behalf of  
6 the estate pursuant to Nev. Rev. Stat. 41.085 and as applied through 42 U.S.C. § 1983 and § 1988.  
7 At the time of his death, John Benjamin Kraai was 42 years old and in good health. He died  
8 intestate, and Marie Theresa Nolan, his mother, has been appointed the special administratrix of  
9 the estate. Plaintiff brings this action individually and on behalf of the estate to recover damages  
10 resulting from the wrongful death of Kraai. Nev. Rev. Stat. 41.085 and as applied through 42  
11 U.S.C. § 1983 and § 1988.  
12

13 3. Acting under the color of state law, Defendants implemented a 9-1-1 dispatch  
14 policy for the City of Las Vegas whereby ambulances operated by private companies, including  
15 but not limited to American Medical Response, *were prevented from responding to 9-1-1 calls*  
16 *for emergency medical services* – a measure calculated to increase City of Las Vegas revenues by  
17 automatically assigning all dispatch calls to Las Vegas Fire & Rescue. Privately operated  
18 ambulances, which had previously handled the majority of all such calls, would thenceforth receive  
19 notification from 9-1-1 dispatchers manually, and only “if necessary.”  
20

21 4. That persons in need of emergency medical services would be subjected to  
22 needlessly delayed ambulance response times as a result of this policy could not have been more  
23 foreseeable. But with dollar signs in their eyes, Defendants recklessly disregarded common sense  
24 and a chorus of public warnings that the Las Vegas Fire & Rescue was unequipped to handle the  
25 majority of 9-1-1 calls, demonstrating deliberate indifference to the value of the lives that would  
26 be lost as a result. No responsible municipal official would have implemented such a policy.  
27

28 5. On February 23, 2014, John Benjamin Kraai was involved in an altercation in Las

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Vegas, Nevada whereby the Kraai was shot in the torso by Defendant Fred Dein, the owner of Kraai’s employer, McNastys Auto & Cycle. The incident occurred within close proximity to an American Medical Response ambulance that was not dispatched to his aid in response to a 9-1-1 call for help. Instead, pursuant to Defendants’ newly-adopted policy, he was forced to wait twenty-six (26) critical, unnecessary, minutes for a Fire Department ambulance to arrive, leading to his death from otherwise treatable injuries.

6. As a direct result of Defendants’ policies, practices, customs and procedures, John Benjamin Kraai was deprived of his rights to be bodily security and life guaranteed to him by the Fourth Amendment to the United States Constitution.

**JURISDICTION AND VENUE**

7. The Jurisdiction of this Court is invoked pursuant to the Civil Rights Act, 42 U.S.C. § 1983 et seq; the Judicial Code, §§ 1331 and 1343(a); and the Constitution of the United States.

8. Venue is proper in this District under 28 U.S.C. § 1391(b). The parties reside, or, at the time the events took place, resided in this judicial district, and the events giving rise to

9. Plaintiffs’ claims also occurred in this judicial district.

**PARTIES**

10. Plaintiff Marie Theresa Nolan (“Marie”) is the mother of Decedent and is the duly-appointed special administratrix for the estate of Estate of John Benjamin Kraai. At all times relevant hereto, Marie has been a resident of the State of Nevada, County of Clark. Plaintiff Marie sues in her individual capacity, in her capacity as special administratrix of the Estate of John Benjamin Kraai, and as an heir pursuant to N.R.S. 41.085.

11. Defendant City of Las Vegas is a municipality existing under the laws of the State of Nevada.

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12. Defendant Las Vegas Fire & Rescue is a department of the City of Las Vegas.

13. Defendant William L. McDonald is the Fire Chief for the City of Las Vegas and at all material times mentioned herein, was acting under the color of law when he engaged in conduct that led to Plaintiffs' injuries. Defendant McDonald is sued in his individual capacity and in his capacity as Fire Chief.

14. Defendant Betsy Fretwell is the City Manager for the City of Las Vegas and at all material times mentioned herein, was acting under the color of law when she when she engaged in conduct that led to Plaintiffs' injuries. Defendant Fretwell is sued in her individual capacity and in her capacity as City Manager.

15. Defendant Fred Dein is the owner of McNastys Auto & Cycle and at all times relevant herein is a resident of the State of Nevada, County of Clark.

16. Defendant McNastys Auto & Cycle is a Nevada sole proprietorship owned and operated by Defendant Fred Dein; At all times relevant herein, Defendant McNastys was conducting business in the State of Nevada, County of Clark.

17. Plaintiffs do not know the true names and capacities or involvement, whether individual, corporate, associate, partnership or otherwise of the Defendants named here in as John Does I through X, inclusive. Plaintiffs pray leave to amend this Complaint to show their true names and capacities when the same have been finally determined.

**FACTS**

18. For decades, Defendant City of Las Vegas ("City") responded to 9-1-1 calls for emergency medical services by simultaneously dispatching ambulances operated by Defendant Las Vegas Fire & Rescue ("LVFR") and by private contractors.

19. LVFR and private contractors charge patients for medical transports.

20. According to LVFR, it operates a fleet of 23 ambulances, while one of the City's

1 principal private ambulance contractors, American Medical Response (“AMR”), reports that it  
2 operates a fleet of a fleet of approximately 70 ambulances. With its much larger fleet of  
3 ambulances, AMR handled the majority of medical transports – and had done so for many years.

4  
5 21. The City’s “dual-response” system relied upon the use of a computer-aided dispatch  
6 (“CAD”) system to automatically relay dispatch calls to ambulances operated by both LVFR and  
7 private contractors.

8  
9 22. In 2012, the International City/County Management Association issued a report  
10 noting that the City could save up to \$14 million annually by assuming all responsibility for  
11 emergency transport.

12  
13 23. Citing this untapped source of revenue, Defendants came up with a plan to modify  
14 the City’s 9-1-1 dispatch system so as to prevent private ambulances from automatically receiving  
15 dispatch calls for emergency medical services. Defendant Betsy Fretwell (“Fretwell”), in her  
16 capacity as Las Vegas City Manager, and Defendant William L. McDonald (“McDonald”), in his  
17 capacity as Las Vegas Fire Chief, were the responsible decision-makers acting on behalf of the  
18 City and LVFR.

19  
20 24. Upon information and belief, beginning in or about January 2015, AMR and other  
21 private ambulance companies began experiencing frequent delays in dispatch time.

22  
23 25. Upon information and belief, Defendants began testing what would become their  
24 new “policy” in or about January 2015.

25  
26 26. McDonald thus abruptly announced on March 2, 2014, that effective *starting the*  
27 *next day*, private ambulances would no longer receive automatic dispatch calls through the City’s  
28 CAD system. However, upon information and belief, private ambulances had in fact stopped receiving  
automatic dispatch calls as early as January 2015.

27  
28 27. Blindsided by the announcement, AMR and others warned Defendants – including

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1 in published media reports – that the City’s new policy would result in delayed emergency  
2 response times, jeopardizing health and safety for those in need of emergency medical services.

3  
4 Tragically, Defendants did not heed these warnings.

5 28. Plaintiffs are informed and believe, and upon such information and belief, allege that under  
6 the newly-implemented policy, private contractors could still be dispatched in response to a 9-1-1 call, but  
7 that call would have to be made by 9-1-1 dispatchers manually.

8 29. The decision-making process as to whether to dispatch a private ambulance has not been  
9 publicly disclosed by Defendants.

10 30. On or about February 23, 2014, John Benjamin Kraai went to his former employer’s  
11 place of business, McNastys, at 4350 Arville Street, C-19, Las Vegas, Nevada 89103 to retrieve  
12 his tools.

13 31. Upon arrival, the owner of McNastys, Defendant Fred Dein, began yelling and  
14 threatening Kraai.

15 32. While Kraai was attempting to calm Dein down, Dein produced a gun and shot  
16 Kraai in the torso.

17 33. A 9-1-1 caller immediately reported Kraai’s injury.

18 34. Although an AMR ambulance was stationed and awaiting dispatch nearby, it was  
19 not dispatched because of the City’s testing of the new 9-1-1 dispatch policy/protocols.  
20

21 35. Instead, an LVFR ambulance stationed farther from Kraai was dispatched, critically  
22 delaying Kraai’s treatment by an astounding twenty-six minutes; thereby causing Kraai’s needless  
23 and painful death from his injuries.

24 36. Defendants tested and implemented a policy preventing private ambulances from  
25 being dispatched to 9-1-1 emergencies knowing well the substantial risk that delayed ambulance  
26 response times would result. Further, Defendants perpetuated the policy for months despite their  
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actual knowledge that response times were being delayed.

37. Defendants acted with deliberate indifference to the bodily security and lives of persons in need of emergency medical services.

38. Defendants' implementation of this policy prevented Kraai from receiving the immediate medical treatment that would otherwise have been dispatched to his aid, resulting in his wrongful death.

39. Defendants' actions and inactions constituted a stunning abuse of government power, asserted by them so as to cut short the life of Kraai and, doubtlessly, many others.

40. Plaintiffs have therefore had to retain the services of CALLISTER & ASSOCIATES to prosecute this action and is entitled to reasonable award of attorneys' fees and costs therefore under 42 U.S.C. § 1988.

**FIRST CLAIM FOR RELIEF**  
*Violation of Civil Rights to Life and Security of Person*  
*42 U.S.C. § 1983 - Custom and Policy/Monell Liability*

41. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth herein.

42. 42 U.S.C. § 1983 provides in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory subjects, or causes to be subjected, any person of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit at equity or other proper proceeding for redress.

43. At all times material hereto, Defendants, and each of them, acted under the color of state law.

44. Defendants made, modified and carried out the policies of the City and LVFR.

45. Defendants, and each of them, subjected Kraai to violations of his rights to personal

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security, bodily integrity, and Equal Protection of Laws guaranteed by the Fourteenth Amendment by:

- (a) testing, adopting, and implementing a policy of preventing private ambulances from responding to 9-1-1 calls for emergency medical services;
- (b) failing to provide an adequate replacement for the private emergency medical services displaced as a result of the policy;
- (c) directly and proximately causing emergency medical services to Kraai to be critically delayed resulting in his wrongful death.

46. The aforementioned policies, practices, and customs of Defendants were the driving force behind said constitutional violations.

47. As a proximate result of Defendants' wrongful acts, Plaintiff has been deprived of the society, love, comfort, companionship, financial support, emotional support and support services of decedent Kraai.

48. As a further proximate result of the Defendants' wrongful acts as alleged above, Decedent Kraai has lost the enjoyment of life.

49. The wrongful acts perpetrated by Defendants in intentionally disregarding the constitutional rights of the Plaintiffs and the Decedent were willful, oppressive, malicious and performed with a wanton disregard for the established and constitutionally protected rights of the Plaintiff and the Decedent.

50. As a direct and proximate result of Defendants' actions, Plaintiff has suffered damages in an amount in excess of \$10,000.00

51. Plaintiff has therefore had to retain the services of CALLISTER & ASSOCIATES to prosecute this action and is entitled to reasonable award of attorneys' fees and costs therefore under 42 U.S.C. § 1988.

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**SECOND CLAIM FOR RELIEF**  
*Violation of Civil Rights to Life and Security of Person*  
*42 U.S.C. § 1983 - Deliberate Indifference*

52. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth herein.

53. 42 U.S.C. § 1983 provides in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory subjects, or causes to be subjected, any person of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit at equity or other proper proceeding for redress.

54. Defendants implemented the new 9-1-1 dispatch policy knowing well the substantial likelihood that emergency medical services to those in need would be unnecessarily delayed.

55. Despite Defendants' actual knowledge that ambulance response times were, in fact, being delayed as a result of the testing and implementation of the new 9-1-1 policy, Defendants kept it in place at the time of Kraai's death and afterwards.

56. Defendants directly and proximately caused Kraai to be deprived of private emergency medical services resulting in his suffering and wrongful death.

57. Defendants, and each of them, acted with deliberate indifference to Kraai's rights to bodily security, life, and Equal Protection of the laws guaranteed by the Fourteenth Amendment.

58. The aforementioned policies, practices, and customs of Defendants were the driving force behind said constitutional violations.

59. As a proximate result of Defendants' wrongful acts, Plaintiff has been deprived of the society, love, comfort, companionship, financial support, emotional support and support services of decedent Kraai.

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60. As a further proximate result of the Defendants' wrongful acts as alleged above, Decedent Kraai has lost the enjoyment of life.

61. The wrongful acts perpetrated by Defendants in intentionally disregarding the constitutional rights of the Plaintiff and the Decedent were willful, oppressive, malicious and performed with a wanton disregard for the established and constitutionally protected rights of the Plaintiff and the Decedent.

62. As a direct and proximate result of Defendants' actions, Plaintiff has suffered damages in an amount in excess of \$10,000.00

63. Plaintiff has therefore had to retain the services of CALLISTER & ASSOCIATES to prosecute this action and is entitled to reasonable award of attorneys' fees and costs therefore under 42 U.S.C. § 1988.

**THIRD CLAIM FOR RELIEF**  
*Violation of Civil Rights to Familial Relationships*  
**42 U.S.C. § 1983**

64. Plaintiffs repeats and realleges each and every allegation set forth above as though fully set forth herein.

65. 42 U.S.C. § 1983 provides in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory subjects, or causes to be subjected, any person of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit at equity or other proper proceeding for redress.

66. Defendants, and each of them, acting under color of state law, deprived Plaintiff Marie and Decedent Kraai of their constitutional right to a familial relationship without due process of law by implementing the policy as alleged above.

67. The aforementioned policies, practices, and customs of Defendants were the

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1 driving force behind said constitutional violations.

2  
3 68. As a proximate result of Defendants' wrongful acts, Plaintiff has been deprived of  
4 the society, love, comfort, companionship, financial support, emotional support and support  
5 services of decedent Kraai.

6 69. The wrongful acts perpetrated by Defendants in intentionally disregarding the  
7 constitutional rights of the Plaintiff and the Decedent were willful, oppressive, malicious and  
8 performed with a wanton disregard for the established and constitutionally protected rights of the  
9 Plaintiff and the Decedent.

10 70. As a direct and proximate result of Defendants' actions, Plaintiff has suffered  
11 damages in an amount in excess of \$10,000.00

12 71. Plaintiff has therefore had to retain the services of CALLISTER & ASSOCIATES to  
13 prosecute this action and is entitled to reasonable award of attorneys' fees and costs therefore under  
14 42 U.S.C. § 1988.

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17 **FOURTH CLAIM FOR RELIEF**  
18 *Negligence*

19 72. Plaintiff repeats and realleges each and every allegation set forth above as though  
20 fully set forth herein.

21 73. Defendants owed Kraai a duty not to test and/or implement a policy so as to prevent  
22 him from receiving emergency medical services.

23 74. Defendants breached this duty by testing and/or implementing the new 9-1-1 policy  
24 as alleged above.

25 75. Kraai suffered a painful death as a direct and proximate result of Defendants'  
26 testing and implementation of the new 9-1-1 policy.

27 76. Plaintiffs have suffered grief and sorrow, loss of probable support, companionship,  
28

1 society, and comfort as a result of Kraai's wrongful death.

2  
3 77. As a direct and proximate result of Defendants' actions, Plaintiff has suffered  
4 damages in an amount in excess of \$10,000.00.

5 78. Plaintiff has therefore had to retain the services of CALLISTER & ASSOCIATES to  
6 prosecute this action and is entitled to reasonable award of attorneys' fees and costs therefore.

7  
8 **FIFTH CLAIM FOR RELIEF**  
9 ***Wrongful Death pursuant to N.R.S. § 41.08***

10 79. Plaintiff repeats and realleges each and every allegation set forth above as though  
11 fully set forth herein.

12 80. NRS 41.085(2) provides:

13 When the death of any person [...] is caused by the *wrongful act* or *neglect*  
14 of another, the heirs of the decedent and the personal representatives of the  
15 decedent may each maintain an action for damages against the person who  
16 caused the death . . . *Id.* (Emphasis added).

17 81. Defendants owed Kraai a duty not to implement a policy so as to prevent him from  
18 receiving emergency medical services.

19 82. Defendants breached this duty by implementing the new 9-1-1 policy as alleged  
20 above.

21 83. Defendants Dein and McNasty's, by their wrongful acts as described above, as well  
22 as the acts of the remaining Defendants, caused Kraai's untimely and wrongful death.

23 84. Kraai suffered a painful death as a direct and proximate result of Defendants'  
24 negligence and wrongful acts as alleged above.

25 85. Plaintiff has suffered grief and sorrow, loss of probable support, companionship,  
26 society, and comfort as a result of Kraai's wrongful death.

27 86. Prior to his death, Decedent Kraai received severe emotional trauma and great pain  
28 and suffering resulting in disfigurement and loss of enjoyment of life.

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87. That as a direct and proximate result of the Defendants' conduct, the estate of John Benjamin Kraai incurred damages and is entitled to recover damages for medical expenses, medical care and treatment, and for burial expenses on behalf of the decedent.

88. That as a further direct and proximate result of the Defendants' conduct, Plaintiff is entitled to recover damages for the pain, suffering, and disfigurement of Decedent Kraai.

89. As a direct and proximate result of Defendants' actions, Plaintiff has suffered damages in an amount in excess of \$10,000.00

90. Plaintiff has therefore had to retain the services of CALLISTER & ASSOCIATES to prosecute this action and is entitled to reasonable award of attorneys' fees and costs therefore.

**SIXTH CLAIM FOR RELIEF**  
*Assault, as against Defendants Dein & McNastys*

91. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth herein.

92. As a result of Defendants Dein and McNastys conduct as described above, Dein and McNastys intentionally caused Kraai to suffer an apprehension of imminent bodily contact.

93. As a direct and proximate result of Dein and McNastys conduct, Plaintiff and Decedent have been damaged in an amount in excess of \$10,000.00, the exact amount to be proven at trial.

94. Plaintiff has therefore had to retain the services of CALLISTER & ASSOCIATES to prosecute this action and is entitled to reasonable award of attorneys' fees and costs therefore.

**SEVENTH CLAIM FOR RELIEF**  
*Battery, as against Defendants Dein & McNastys*

95. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth herein.

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96. As a result of Defendants Dean’s and McNastys’ conduct as described above, Dean and McNasty intentionally inflicted a harmful and/or offensive bodily contact on Kraai.

97. The harmful contact was the actual and proximate cause of Kraai’s pain and suffering.

98. As a direct and proximate result of Defendants’ conduct, Plaintiff and Decedent have been damaged in an amount in excess of \$10,000.00, the exact amount to be proven at trial.

99. Plaintiff has therefore had to retain the services of CALLISTER & ASSOCIATES to prosecute this action and is entitled to reasonable award of attorneys’ fees and costs therefore.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment against Defendants as follows:

- A. Compensatory damages in an amount in excess of \$10,000.00;
- B. Punitive damages;
- C. Injunctive relief requiring Defendants to take affirmative steps to eliminate any existing policies resulting in the arbitrary denial of emergency services and to prevent the adoption of such policies in the future.
- D. General damages in an amount in excess of \$10,000.00;
- E. Special damages in an amount in excess of \$10,000.00;
- F. Statutory interest;
- G. Costs of suit incurred herein;
- H. Reasonable attorney fees.
- I. For such other and further relief as the Court deems just and proper.

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**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated this 14<sup>th</sup> day of July, 2015.

Respectfully submitted,

**CALLISTER & ASSOCIATES**



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