

1 4. Manager Brown and Ms. Rodriguez are not elected public officers. Manager Brown
2 is employed as the Manager for Washoe County. Ms. Rodriguez is employed as the
3 Registrar of Voters for Washoe County.

4 5. The ROV is a department of Washoe County, and not a separate legal entity or
5 political subdivision of the State of Nevada.

6 **II. The Present Case**

7 6. After he filed his Complaint, Beadles filed over one hundred “supplemental
8 exhibits:” (1) the Supplemental Exhibits in Support of Plaintiff’s Complaint filed August 9,
9 2023, and (2) the Supplemental Exhibits in Support of Plaintiff’s Motions filed August 24,
10 2023. In this filing, Beadles provided the Court approximately six binders and two
11 flashdrives of files accompanying the aforementioned supplements. Beadles has now filed
12 one hundred and forty-five “supplemental exhibits,” among other things, which include
13 various national and local news articles and Edward Solomon¹ elections content. These
14 supplemental exhibits were filed without leave of Court, are not part of the Complaint, and
15 do not amend the Complaint.

16 7. Beadles alleges that by not acknowledging and not responding to the three
17 documents he and others allegedly submitted to Defendants, Defendants “deprived
18 Plaintiff to have his grievances heard as enshrined in Nev. Const. Art. 1 § 10.” *Compl.* at
19 ¶75, ¶71.

20 8. Beadles also alleges Defendants violated his rights under Article 2 Section 1A
21 Subsection 11 of the Nevada Constitution. *Compl.* at ¶72. Beadles claims he has a
22 “constitutional right to pose grievances” and have them resolved “fairly, accurately and
23 efficiently,” but Defendants ignored his complaints. *Compl.* at ¶45, ¶72, ¶75.

24
25 ¹ The Court takes judicial notice of *Joey Gilbert v. Steve Sisolak et al.*, Case no. 22 OC 000851B, filed in the First
26 Jud. Dist. Ct. of the State of Nevada in and for Carson City. Therein, Joey Gilbert based a “highly dubious”
claim alleging election fraud on mathematics created by individual named Edward Solomon.

1 9. Beadles alleges Defendants breached their duty under their oath because “[a]s of the
2 filing of this complaint, there has been no acknowledgement or response from the
3 Defendants regarding the underlying Petitions filed by Plaintiff.” *Compl.* at ¶75.

4 10. Within his first cause of action, Beadles alternatively pleads that mandamus relief
5 should issue to compel Defendants to respond to his grievances, and to “rectify” the issues
6 alleged in those grievances. *Compl.* at ¶86.

7 11. Beadles states generally, “Defendants... failed to fulfill the duties of their respective
8 offices as alleged herein.” *Compl.* at ¶91. Beadles identifies no specific duty for which
9 Defendants individually committed malpractice or neglect. Beadles alleges that, “By failing
10 to address the Petitions, Defendants have each violated their oath to office, Nevada Revised
11 Statutes and Administrative Codes, and violated the Plaintiff’s constitutional rights.”
12 *Compl.* at ¶46.

13 12. Beadles also states, “Defendants have additionally failed to address, correct, or
14 rectify the issues raised in the underlying Petitions, including but not limited to, (1)
15 updating and resolving the voter registration lists; (2) providing proper vote counting
16 mechanisms; (3) counting votes in secret; (4) inadequate signature verification; (5) illegal
17 function within the election system; (6) violations of election procedures as required under
18 Nevada law. [Exhibit 109].” *Compl.* at ¶91; *see also Compl.* at ¶¶46–51.

19 13. The Court finds that Beadles fails to identify a specific act of malfeasance or
20 nonfeasance directly connected to a specific legal duty tied to Commissioner Hill, Manager
21 Brown, or Ms. Rodriguez.

22 14. The Complaint and Opposition identify internal “mission statements,” which are
23 not laws and do not impose specific legal duties on specific employees. *Compl.* at ¶60; *Opp.*
24 at 61.

25 15. Beadles provides numerous examples of a board of county commissioners’ power to
26 act regarding elections. *See e.g. Opp.* at 78. He provides no legal authority *requiring* those

1 actions, much less requiring Commissioner Hill, Manager Brown, or Ms. Rodriguez to
2 perform those actions in the way Beadles would prefer them performed.

3 16. In his “Demand for Relief,” Beadles asks the Court to “strike down NRS
4 293.269935(2) and 293.3606(4) to allow public inspection of ballots.” *Compl.* at p. 16. He
5 asks that the Court prohibit Defendants from “using any voting and tabulation machines
6 for elections,” and asks for general monetary damages in excess of \$15,000. *Id.* He asks that
7 the Court require Defendants to use paper ballots, “[e]njoin the Defendants and make the
8 digitized vote tally database (Microsoft SQL) open for public inspection,” require
9 Defendants disclose applicant name and credentials, prohibit Defendants from using QR
10 codes, “halt” Defendants’ expenditure of “unapproved and unsafe equipment and
11 software.” *Id.* He also requests that the Court require Defendants “take into account and
12 redress all elections issues that Plaintiff puts on the table, no shying away.” *Id.* at p. 15.

13 17. In the Opposition to Motion to Dismiss, Beadles includes approximately fourteen
14 pages setting forth calculations that Beadles claims prove the 2020 election was “rigged.”
15 *Opp.* 39–52. Based on his “formula,” he argues that “Biden lost to Trump, Angie Taylor lost
16 to Montognese, Devon Reese lost to Eddie Lorton, and Alexis Hill lost to Marsha
17 Berkbigler in the 2020 elections.” *Opp.* at 41. Notably, similar allegations regarding
18 elections fraud based on mathematics from unqualified Edward Soloman were debunked in
19 in last year’s Beadles-funded primary elections contest.² Affirming sanctions in that case,
20 the Nevada Supreme Court recently held that: “[s]ometimes, as is the case here, the issue is
21 novel because it is so lacking in arguable merit that no previous litigant has raised it.”³
22 Allegations “that an election was affected by ‘a predetermined algorithm’ and ‘illicit

23 _____
24 ² Case no. 22 OC 000851B, filed in the First Jud. Dist. Ct. of the State of Nevada in and for Carson City. The
25 Court takes judicial notice of Beadles’s documented role in that case. *See Notice of Violation of Supreme Court*
26 *Rule 229(2)(b)*, filed on August 12, 2022 in case no. 22 OC 000851B (discussing Beadles’s role as “Mr. Gilbert’s
benefactor”).
³ *Mueller v. First Jud. Dist. Ct. in and for Cnty. of Carson City*, no. 86064, 2023 WL 5317951 at *3 (Aug. 17, 2023).

1 mathematics,' with no legitimate explanation for how that occurred, much less evidence to
2 support those allegations, falls far short of being 'legitimate.'" *Id.* More to the point,
3 Beadles's mathematics have no bearing on whether he can state a claim for relief regarding
4 his unanswered elections petitions or for removal based on a public officer's official duties.

5 CONCLUSIONS OF LAW

6 18. A claim may be dismissed for "failure to state a claim upon which relief can be
7 granted." NRCP 12(b)(5). On a Rule 12(b)(5) dismissal, the Court must liberally construe
8 the pleadings and accept all allegations as true. *Buzz Stew, LLC v. City of N. Las Vegas*, 124
9 Nev. 22, 227–28, 181 P.3d 670, 672 (2008). Dismissal is appropriate if the allegations fail
10 to state a cognizable claim of relief when taken at "face value" and construed favorably on
11 behalf of the non-moving party. *Morris v. Bank of Am.*, 110 Nev. 1274, 1276, 886 P.2d 454,
12 456 (1994)(quoting *Edgar v. Wagner*, 101 Nev. 226, 227–28, 699 P.2d 110, 111–12 (1985)).

13 19. Beadles's rogue "supplemental exhibits," are outside the pleadings and will not be
14 considered. Supplemental pleadings may not be filed without Court permission. NRCP
15 15(d). A party must move the Court to file a supplemental pleading, and then the Court
16 may, at its discretion, permit the filing. *Id.* There is no inherent right nor ability to
17 unilaterally file supplements to pleadings. *See id.*

18 20. Beadles's supplemental exhibits ((1) the Supplemental Exhibits in Support of
19 Plaintiff's Complaint filed August 9, 2023, and (2) the Supplemental Exhibits in Support of
20 Plaintiff's Motions filed August 24, 2023) are not part of the Complaint, and are not within
21 the scope of a Motion to Dismiss pursuant to Rule 12(b)(5).

22 21. Even if the Court were to convert the Motion to Dismiss to a Motion for Summary
23 Judgment based on Beadles's supplemental exhibits, judgment in favor of Defendants
24 would be appropriate. Beadles does not support any alleged facts with admissible evidence.
25 Additionally, most facts alleged are immaterial to his causes of action, e.g. wide-spread
26 election fraud, "unclean" voter rolls, etc. The nonmoving party "is not entitled to build a

1 case on the gossamer threads of whimsy, speculation, and conjecture.” *Collins v. Union Fed.*
2 *Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983). No fact finder could return a
3 verdict in Beadles’s favor on the claims alleged against these Defendants, and therefore
4 summary judgment would likewise be appropriate.

5 **I. BEADLES’S FIRST CAUSE OF ACTION**

6 22. Beadles’s first cause of action alleges that Defendants’ failure to respond to his
7 “petitions” amounts to a constitutional violation under the Nevada Constitution Article 1
8 Section 10, Article 2 Section 1A(11), Article 15 Section 2 and NRS 293.2546(11). *Compl.* at
9 ¶¶67–87. The “petitions” are comprised of two complaints about elections processes and
10 one Statement of Contest for the 2022 election. *Compl.* at ¶73; Exs. 1–3 to *Compl.*

11 **A. BEADLES FAILS TO STATE A CLAIM UNDER ARTICLE 1 SECTION 10 OF THE**
12 **NEVADA CONSTITUTION.**

13 23. Article One, Section Ten of the Nevada Constitution, titled “Right to assemble and
14 to petition,” provides: “The people shall have the right freely to assemble together to
15 consult for the common good, to instruct their representatives and to petition the
16 Legislature for redress of Grievances.” NEV. CONST. ART. 1 SEC. 10 (emph. added).

17 24. Beadles’s allegations, specifically that Washoe County, Manager Brown,
18 Commissioner Hill, and Ms. Rodriguez did not respond to his complaints, do not give rise
19 to a claim under Article 1 Section 10 of the Nevada Constitution. Construing the
20 Complaint broadly, there are no facts alleged that, if true, demonstrate that Defendants
21 impeded Plaintiff’s right to assemble, to instruct his representatives, or to petition the
22 Legislature.

23 25. The Court finds that Beadles failed to state a claim under Article 1 Section 10 of
24 the Nevada Constitution. Dismissal with prejudice is appropriate because amendment
25 would be futile.

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1 **B. BEADLES FAILS TO STATE A CLAIM UNDER ARTICLE 2 SECTION 1A**
2 **SUBSECTION 11 OF THE NEVADA CONSTITUTION OR UNDER THE NEVADA**
3 **VOTERS' BILL OF RIGHTS.**

4 26. Article 2 Section 1A Subsection 11 provides that each registered voter in the State of
5 Nevada has the right “to have complaints about elections and election contests resolved
6 fairly, accurately and efficiently as provided by law.” This is codified in NRS 293.2546(11),
7 the Nevada Voters’ Bill of Rights.

8 27. The Nevada Secretary of State is the Chief Officer for Elections in the State. NRS
9 293.124. As Chief Officer for Elections, the Secretary of State is responsible for the
10 execution and enforcement of all provisions of NRS Title 24 (NRS Chapters 293–306), and
11 all other provisions of State and Federal law relating to elections in this State. *Id.*

12 28. Consistent with this framework, the Nevada Administrative Code provides that “[a]
13 person who wishes to file a complaint concerning an alleged violation of any provision of
14 Title 24 of NRS [NRS Chapters 293–306], must: 1. **Submit the complaint in writing to the**
15 **Secretary of State**; and 2. Sign the complaint.” NAC 293.025 (emph. added). The
16 obligation is on the Secretary of State to “resolve [the complaints] fairly, accurately and
17 efficiently as provided by law.” NRS 293.2546(11); NAC 293.025.

18 29. In addition to submitting complaints to the Secretary of State concerning any
19 alleged violation of NRS Title 24, any registered voter may contest the election of a
20 candidate by filing a Statement of Contest with the clerk of the district court. NRS
21 293.407. The Court finds that this statute imposes no duty on a County, a County
22 Commissioner, a County Manager, or a Registrar of Voters.

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1 30. Additionally, there is no private right of action to enforce Article 2 Section 1A
2 Subsection 11 of the Nevada Constitution. In determining whether a private right of action
3 exists to enforce a provision of the Nevada Constitution, the initial inquiry is whether the
4 provision at issue is “self-executing.” *Mack v. Williams*, 138 Nev. Adv. Op. 86, 522 P.3d
5 434, 441–42 (2022) (citing *Wren v. Dixon*, 40 Nev. 170, 161 P. 722, 729 (1916)).⁴ “A
6 constitutional provision may be said to be self-executing if it supplies a sufficient rule by
7 means of which the right given may be enjoyed and protected, or the duty imposed may be
8 enforced; and it is not self-executing when it merely indicates principles, without laying
9 down rules by means of which those principles may be given the force of law.” *Wren*, 40
10 Nev 170, 161 P. at 729. Additionally, a prohibitory provision is self-executing as it is
11 complete in itself to the extent of the prohibition. *Mack*, 138 Nev. Adv. Op. 86, 522 P.3d at
12 441–42. Only self-executing constitutional provisions give rise to a cause of action
13 independent of any statutory procedure authorizing a private action. *Alper v. Clark County*,
14 93 Nev. 569, 572, 571 P.2d 810, 812 (1977).

15 31. Beadles acknowledges “Nev. Const. Art 2 Sec 1A § 11 does not confer an obligation
16 onto the Defendants, rather, Plaintiff contends that Sec 1A § 11 is silent as to the responsive
17 agency or department. Nothing in the Nevada Constitution dictates how a grievance
18 should be posed, just that a person’s grievances cannot be simply ignored.” *Opp.* at p. 99.
19 With this, Beadles concedes Article 2 Section 1A is not a self-executing provision of the
20 Nevada Constitution and he cannot bring a private right of action.

21 32. Addressing Beadles’s allegation that he is entitled to relief under Article 2 § 1A(11)
22 first, which is included in the Nevada Voters’ Bill of Rights as NRS 293.2546(11), this
23

24 ⁴ Beadles’s Opposition includes analysis as to whether the Nevada Constitutions are self-executing, arguing
25 he has a private right of action, and citing to *Mack v. Williams*, 138 Nev. Adv. Op. 86, 522 P.3d 434 (2022).
26 *Opp.* at 10–12. Because he raised this argument, it is therefore appropriate to analyze the merits of those
issues.

1 provision states that each registered voter in the State of Nevada has the right “to have
2 complaints about elections and election contests resolved fairly, accurately and efficiently
3 as provided by law.” This is not a prohibitory provision and lacks the detailed means to
4 describe how the policy would be enforced. Insofar as it explicitly states “as required by
5 law,” this provision defers to the legislature to set forth processes to enforce this policy.
6 Therefore, Article 2 § 1A(11) of the Nevada Constitution is not self-executing.

7 33. Turning to the statute, nothing in NRS 293.2546(11) contemplates a private right of
8 action. To the contrary, the Legislature made clear via NRS 293.840 that violations of
9 Chapter 293 may result in criminal penalties and a civil penalty, but only in “a civil action
10 brought in the name of the State of Nevada by the Attorney General or by any district
11 attorney in a court of competent jurisdiction.” Nothing in NRS Chapter 293 authorizes
12 Plaintiff to pursue a private right of action for an alleged violation of NRS 293.3546(11),
13 nor does Article 2 § 1A(11) provide for a private right of action.⁵

14 34. Assuming *arguendo* that a private right of action could be brought under Article 2 §
15 1A(11) or NRS 293.3546, Beadles does not state a claim on which relief could be granted.
16 Beadles erroneously suggests, “this Court must determine where the responsibility falls
17 within local government when a citizen poses an inquiry or complaint and
18 petition...regarding election abnormalities, errors, and improper procedures on behalf of
19 the ROV.” *Opp.* at 99.

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23 ⁵ That there is no private cause of action is separate from whether there may be a writ of mandamus
24 compelling performance of a nondiscretionary duty. *See American Civil Liberties Union of Nev. v. Cnty. of Nye*,
25 no. 85507, 2022 WL 14285458 (Oct. 21, 2022)(unpublished disposition)(granting a writ of mandamus
26 regarding specific duties set forth in NRS Chapter 293); *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 961,
194 P.3d 96, 102 (2008)(“[W]hen an administrative official is expressly charged with enforcing a section of
laws, a private cause of action generally cannot be employed.”).

1 35. Establishing the process through which a complaint about elections will be heard is
2 within the purview of the legislature. Per NRS 293.124, the Secretary of State is the Chief
3 Office for Elections in Nevada, and all execution and enforcement of NRS Title 24 (NRS
4 Chapters 293–306), and all other provisions of State and Federal law relating to elections,
5 are the responsibility of the Secretary of State. NRS 293.124(1). The Secretary of State
6 was given broad authority to enact regulations as are necessary to carry out the provisions
7 of Title 24. NRS 293.124(2). Such regulations have the force of law. NRS 233B.040(1)(a);
8 *Banegas v. State Industrial Ins. Sys.*, 117 Nev. 222, 227, 19 P.3d 245, 248 (2001)(recognizing
9 “the Legislature may authorize administrative agencies to make rules and regulations
10 supplementing legislation.”).

11 36. NAC 293.025 specifically provides: “A person who wishes to file a complaint
12 concerning an alleged violation of any provision of Title 24 of NRS [NRS Chapters 293–
13 306], must: 1. Submit the complaint in writing to the Secretary of State; and 2. Sign the
14 complaint.” The obligation is on the Secretary of State to “resolve [the complaints] fairly,
15 accurately and efficiently as provided by law.” NRS 293.2546(11); NAC 293.025. Thus,
16 state law places the “duty” to resolve complaints about elections based on Article 2 §
17 1A(11) on the Secretary of State’s office rather than on the named Defendants in this
18 action. Accordingly, Beadles’s claim fails because there is no duty or obligation mandated
19 by Nevada law for the Defendants to respond to his complaints related to the elections
20 process.

21 37. In addition to submitting complaints to the Secretary of State concerning any
22 alleged violation of NRS Title 24, any registered voter may contest the election of a
23 candidate by filing a Statement of Contest with the clerk of the district court. NRS
24 293.407. Again, this statute imposes no duty on a County, a County Commissioner, a
25 County Manager, or a Registrar of Voters.

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1 38. The Court finds that nothing in Nevada law required Defendants to respond to
2 documents that, by law, were required to be submitted to the Nevada Secretary of State or
3 the district court. Even if there was a duty, that duty would only be to resolve the
4 complaint—not to respond or “rectify” the alleged issue in the manner that the
5 complainant prefers. The Complaint, construed liberally and in favor of Beadles, fails to
6 state a claim under Article 2 Section 1A(11) of the Nevada Constitution or NRS
7 293.2546(11).

8 39. Additionally, amendment would be futile because there is no set of facts that would
9 give rise to a claim under Article 2 Section 1A(11) against these Defendants. Therefore,
10 dismissal with prejudice is appropriate.

11 **C. BEADLES FAILS TO STATE A CLAIM UNDER ARTICLE 15 SECTION 2 OF THE**
12 **NEVADA CONSTITUTION.**

13 40. Article 15 Section 2 of the Nevada Constitution requires all members of the
14 legislature, and all officers, executive, judicial and ministerial, to take an oath before
15 performing the duties of their respective offices. The oath provides, in relevant part, that
16 the public officer will support, protect, and defend the Constitutions of the United States
17 and Nevada, and “will well and faithfully perform all duties of [their] office...” NEV.
18 CONST. ART. 15 SEC. 2.

19 41. As set forth above, responding to Beadles’s allegations of violations of elections
20 laws or elections challenges are not within the duties of Defendants’ offices. Plaintiff’s
21 assertions that “Defendants have thus perjured their oath of office” by not responding to
22 his complaints does not state a claim under Article 15 of the Nevada Constitution. *See*
23 *Compl.* at ¶75; NEV. CONST. ART. 15 SEC. 2. In his opposition, Beadles simply reiterates
24 that the Nevada Constitution requires officers take an oath and summarily concludes “thus
25 plaintiff can hold them accountable.” *Opp.* at 8. He further argues that “implicit in this
26 oath is a commitment to uphold the principles of democracy, which include addressing the

1 concerns and grievances of the citizenry.” *Id.* at 64, 69, 73.

2 42. As previously demonstrated, responding to Beadles’s allegations of violations of
3 elections laws or elections challenges are not within the duties of Defendants’ offices.
4 Beadles’s suggestion that responding to his grievances is “implicit in this oath” has no basis
5 in law, and therefore his claim fails as a matter of law. Moreover, this provision of the
6 Nevada Constitution does not include a private right of action. *Mack*, 138 Nev. Adv. Op.
7 86, 522 P.3d at 441–42.

8 43. The Court finds that Beadles failed to state a claim upon which relief can be granted
9 under Article 15 of the Nevada Constitution. Additionally, amendment would be futile
10 because there is no set of facts that would give rise to a claim under Article 15 of the
11 Nevada Constitution against these Defendants. Therefore, dismissal with prejudice is
12 appropriate.

13 **D. MANDAMUS RELIEF IS UNATTAINABLE.**

14 44. A Court may issue a writ “to compel the performance of an act which the law
15 especially enjoins as a duty resulting from an office, trust or station...” NRS 34.160.
16 “Mandamus is an extraordinary remedy which will not lie to control discretionary action,
17 unless discretion is manifestly abused or is exercised arbitrarily or capriciously.” *Mineral*
18 *Cnty. v. State, Dep’t of Conserv.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001)(internal citations
19 and quotations omitted). “A manifest abuse of discretion is a clearly erroneous
20 interpretation of the law or a clearly erroneous application of a law or rule. *State Office of*
21 *the Atty. Gen. v. Justice Ct. of Las Vegas Twp.*, 133 Nev. 78, 80–81, 392 P.3d 170, 172
22 (2017)(internal citations and quotation marks omitted).

23 45. Writ relief is an extraordinary remedy that will only issue at the discretion of the
24 Court. *State v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 118 Nev. 140, 146, 42 P.3d 233, 237
25 (2002). “[M]andamus will never issue, unless a clear, legal right to the relief sought is
26 shown.” *State v. Daugherty*, 48 Nev. 299, 231 P. 384, 385 (1924). The Court lacks authority

1 to grant equitable relief when a party has an adequate remedy at law. *Las Vegas Valley Water*
2 *Dist. v. Curtis Park Manor Water Users Ass'n*, 98 Nev. 275, 277, 646 P.2d 549, 550 (1982).

3 46. Here, there is no duty in law requiring any of the Defendants to respond to
4 Beadles's petitions. NRS 293.2546(11); NAC 293.025. As such, there is no legal basis to
5 issue a writ to compel such a response, or to compel Defendants to "rectify" Beadles's
6 perceived grievances. Moreover, Beadles overlooked his available legal remedies to submit
7 his petitions to the Nevada Secretary of State and the clerk of the district court as provided
8 under Nevada's election laws. NAC 293.025.

9 47. Beadles fails to state a claim for writ of mandamus relief in his first cause of action.
10 Additionally, amendment would be futile because Defendants have no specific legal duties
11 to address Beadles's alleged issues or to act in the way Beadles asserts that they should. The
12 Court hereby finds dismissal with prejudice is appropriate.

13 **E. DISCRETIONARY ACT IMMUNITY OTHERWISE PROHIBITS THE FIRST CAUSE OF**
14 **ACTION.**

15 48. In relevant part, NRS 41.032 states that:

16 [N]o action may be brought under NRS 41.031 or against ... an
17 officer or employee of the State or any of its agencies or political
subdivisions which is:....

18 2. Based upon the exercise or performance or the failure to exercise
19 or perform a discretionary function or duty ... whether or not the
discretion involved is abused.

20 49. A two-part test is used to determine whether discretionary-function immunity under
21 NRS 41.032 applies to shield a defendant from liability." *Clark Cnty. Sch. Dist. v. Payo*, 133
22 Nev. 626, 631 (2017). Under the two-part test, a government defendant is not liable if the
23 decision (1) involves an 'element of individual judgment or choice,' and (2) is 'based on
24 considerations of social, economic, or political policy.'" *Id.* at 631–32 (citations omitted).
25 The specific decision and the employee's subjective intent is irrelevant to whether the type
26 of decision is susceptible to policy analysis. *Paulos v. FCH1, LLC*, 136 Nev. 18, 26, 456 P.3d

1 589, 595 (2020).

2 50. In this case, Defendants are being sued because they chose not to respond to
3 Beadles's allegations of impropriety in the elections process following the 2022 election.
4 As detailed above, Defendants did not have a legal duty to respond to Beadles's allegations
5 as State law requires allegations relating to the elections process to be submitted to the
6 Secretary of State and any challenge to the election is to be filed as a Statement of Contest
7 with the district court. NRS 293.2546(11); NRS 293.413; NAC 293.025. Because the
8 decision whether to respond to Beadles's "petitions" was based the alleged failure to
9 perform a discretionary function, the Court finds that Defendants would be entitled to
10 discretionary act immunity.

11 51. Even if Beadles could state a viable claim in his first cause of action, it would be
12 subject to dismissal based on discretionary act immunity. The Court finds the applicability
13 of discretionary act immunity further warrants the First Cause of Actions' dismissal with
14 prejudice, as any amendment would be futile.

15 **II. BEADLES'S SECOND CAUSE OF ACTION**

16 52. Beadles's Second Cause of Action demands Ms. Rodriguez's removal from her
17 appointed position as Registrar of Voters, Manager Brown's removal from his appointed
18 position as Washoe County Manager, and Commissioner Hill's removal from her elected
19 position as Chair of the Washoe County Board of County Commissioners. The Complaint
20 cites NRS 283.440 and NRS 266.430 as a basis for removal. *Compl.* at ¶89.

21 **A. THE COMPLAINT FAILS TO STATE A CLAIM FOR REMOVAL UNDER NRS** 22 **266.430.**

23 53. NRS 266.430 provides for criminal penalties and the removal of the mayor or any
24 municipal officer of an incorporated city or town who is adjudged guilty of nonfeasance,
25 misfeasance or malfeasance. No private citizen "may institute criminal proceedings
26 independently." *People for Ethical Operation of Prosecutors & Law Enft v. Spitzer*, 267 Cal. Rptr.

1 3d 585 (2020), as modified (Sept. 8, 2020). “[I]n American jurisprudence ... a private
2 citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of
3 another.” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

4 54. Beadles has no standing to pursue any criminal penalty, and NRS 266.430 is
5 otherwise inapplicable to Commissioner Hill, Manager Brown, and Ms. Rodriguez. They
6 are employed by Washoe County, not an incorporated city or town, and this is a civil
7 action. As such, NRS 266.430 is inapplicable as a matter of law.

8 55. Beadles fails to state a claim for removal under NRS 266.430. Because NRS 266.430
9 is inapplicable to Commissioner Hill, Manager Brown, and Ms. Rodriguez as a matter of
10 law, amendment would be futile. The Court finds that dismissal of this claim with prejudice
11 is appropriate.

12 **B. THE COMPLAINT FAILS TO STATE A CLAIM FOR REMOVAL UNDER NRS**
13 **283.440.**

14 56. Removal “is an extreme and extraordinary measure, intended only for extreme and
15 extraordinary occasions.” *Jones v. Eighth Jud. Dist. Ct. of State*, 67 Nev. 404, 418, 219 P.2d
16 1055, 1062 (1950). “It is fraught with seriousness and a demand for extreme caution both
17 from the standpoint of him who prefers the charge and him who listens and pronounces
18 judgment.” *Id.*

19 57. Nevada law provides a procedure for “removal of certain public officers.” NRS
20 238.440. A public officer “who refuses or neglects to perform any official act in the manner
21 and form prescribed by law, or who is guilty of any malpractice or malfeasance in office,
22 may be removed therefrom...” NRS 283.440(1). The burden of proof is beyond a
23 reasonable doubt. *Jones*, 67 Nev. at 418, 219 P.2d at 1062. Removals are summary
24 proceedings with no right to a jury trial. *Jones*, 67 Nev. at 418, 219 P.2d at 1062.

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1 58. To state a claim for removal, a person must verify under oath that the public officer:

2 Has been guilty of charging and collecting illegal fees for
3 services rendered or to be rendered in the officer's office;

4 Has refused or neglected to perform the official duties pertaining
5 to the officer's office as prescribed by law; or

6 Has been guilty of any malpractice or malfeasance in office.

7 NRS 283.440(2).

8 59. Only when the complaint sets forth one of the above circumstances, is the court
9 required to cite the party charged to appear. *See id.*

10 60. To state a claim for malfeasance to warrant removal from office, "the act of
11 malfeasance must have a direct relation to and be connected with the performance of
12 official duties." *Jones*, 67 Nev. at 408, 219 P.2d at 1057. "Malfeasance" is synonymous with
13 "malpractice." *Buckingham v. Fifth Jud. Dist. Ct. in and for Mineral Cnty.*, 60 Nev. 129, 102
14 P.2d 632, 635 (1940). "Malfeasance requires, at the very least, an allegation of knowledge
15 that the act was wrongful, if not a greater level of intent." *Law v. Whitmer*, 136 Nev. 840,
2020 WL 7240299 at *19 (Nev. Dec. 8, 2020)(unpublished disposition).

16 61. To state a claim for removal based on malfeasance, "the mere words 'malpractice'
17 and 'malfeasance' will not suffice." *Buckingham*, 60 Nev. 129, 102 P.2d at 635-36. "The
18 wrongful act must be made to appear by the description employed[.]" *Id.* The complaint
19 must allege an act of malfeasance having "a direct relation to and be connected with the
20 performance of official duties." *Jones v. Eighth Jud. Dist. Ct. of State*, 67 Nev. 404, 408, 219
21 P.2d 1055, 1057 (1950). "[T]he conduct charged must be something that the defendant did
22 in his official capacity." *Id.*

23 62. The other basis for removal is nonfeasance. NRS 283.440(2). "Omissions to act are
24 not acts of malfeasance..." *Buckingham*, 60 Nev. 129, 102 P.2d at 635. Acts of omission are
25 to be analyzed under the section: "refuse or neglect to perform any official act in the
26 manner and form as now prescribed by law..." *Id.* "Nonfeasance is the substantial failure to

1 perform a required legal duty. Misfeasance is the doing in a wrongful manner of that which
2 the law authorizes or requires him to do.” *Schumacher v. State ex rel. Furlong*, 78 Nev. 167,
3 172, 370 P.2d 209, 211 (1962). Only nonfeasance can establish that an officer “refused or
4 neglected” to perform an official act. *See id.*

5 63. To state a claim for nonfeasance, the Complaint must identify an act required by law
6 to be specifically performed by the person whose removal is sought and allege the person
7 refused or neglected to so act. *Buckingham*, 60 Nev. 129, 102 P.2d at 636 (“...the acts of
8 omission charged against him do not come within the provisions of Section 4860, N.C.L.,
9 for reason that the acts which it alleged were omitted were not required of a county
10 treasurer at the time of the enactment of the said Section 4860.”). Even where an official
11 duty exists, the officer can have discretion in carrying out the duty unless specifically
12 prescribed by law. *See Jones*, 67 Nev. at 411–12, 219 P.2d at 1058–59. Allegations describing
13 a public officer exercising that discretion is not nonfeasance that would state a claim for
14 removal. *Id.*

15 64. In sum, the two relevant bases for removal are if an officer (1) “refused or neglected
16 to perform **official duties... as prescribed by law;**” or (2) is guilty of malfeasance. NRS
17 283.440(2)(emph. added). The officer must have substantially failed to perform their legal
18 duties or intentionally committed a wrongful act directly related to their duties. *Id.*; *Jones*,
19 67 Nev. at 408, 219 P.2d at 1057; *Schumacher*, 78 Nev. at 172, 370 P.2d at 211.

20 65. Where there is no official duty to act prescribed by law, there can be no removal. *See*
21 NRS 283.440(2); *Schumacher*, 78 Nev. at 172, 370 P.2d at 211, *citing Buckingham*, 60 Nev.
22 129, 102 P.2d at 635. In *Buckingham*, “the particular acts of omission were not required of
23 Buckingham as part of his duties as county treasurer and, thus, Buckingham did not refuse
24 or neglect to perform any official act in the manner and form prescribed by law.”
25 *Schumacher*, 78 Nev. at 172, 370 P.2d at 211 (citations omitted).

26 //

1 **i. Commissioner Hill**

2 66. Beadles does not and cannot identify any specific legal duty for Commissioner Hill.
3 *See Compl.; Jones*, 67 Nev. at 408, 219 P.2d at 1057 (requiring a specific official duty for
4 malfeasance); *Buckingham*, 60 Nev. 129, 102 P.2d at 635 (requiring a specific official duty
5 for nonfeasance). Commissioner Hill was elected to the Washoe County Board of County
6 Commissioners. The Board of County Commissioners has various powers to act on behalf
7 of their county, with certain limitations. *See* NRS 244.146. The Board may act in a meeting
8 with a quorum present. NRS 244.060(1). Commissioner Hill cannot act on her own; there
9 must be a majority vote of all county commissioners. *See* NRS 241.015(1). More
10 importantly, there are no specific official duties requiring an individual county
11 commissioner to act regarding elections. *See* NRS Chapter 244; NRS Chapter 293. Beadles
12 failed to allege that Commissioner Hill has committed malfeasance or nonfeasance under
13 Nevada law because there is no official duty to act on the matters alleged in the Complaint.

14 67. The Court finds that Beadles failed to state a claim for Commissioner Hill's
15 removal. Dismissal with prejudice is appropriate. Amendment would be futile because
16 Commissioner Hill has no official duty to act regarding the issues set forth in Beadles's
17 Complaint.

18 **ii. Manager Brown**

19 68. Beadles does not and cannot identify any specific legal duty for Manager Brown to
20 act regarding issues set forth in the Complaint. *See Compl.* A county manager serves at the
21 pleasure of the board of county commissioners. NRS 244.125(2). A county manager has
22 no specific duty regarding elections procedures. *See* NRS 244.135. The Complaint fails to
23 sufficiently allege that Manager Brown committed malfeasance or nonfeasance because
24 there is no official duty to act regarding the issues therein. *See Compl.*

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1 69. The Court finds that Beadles failed to state a claim for Manager Brown's removal.
2 Dismissal with prejudice is appropriate. Amendment would be futile because Manager
3 Brown has no official duty to act regarding the issues set forth in Beadles's Complaint.

4 **iii. Ms. Rodriguez**

5 70. While Ms. Rodriguez has certain legal duties as the Registrar of Voters, Beadles
6 does not sufficiently allege acts of malfeasance or omissions of nonfeasance. He alleges
7 "Defendants have additionally failed to address, correct, or rectify the issues raised in the
8 underlying Petitions, including but not limited to, (1) updating and resolving the voter
9 registration lists; (2) providing proper vote counting mechanisms; (3) counting votes in
10 secret; (4) inadequate signature verification; (5) illegal function within the election system;
11 (6) violations of election procedures as required under Nevada law. [Exhibit 109]." *Compl.*
12 at ¶91; *see also Compl.* at ¶¶46–51.

13 71. As an initial matter, there are no specific egregious acts of wrongdoing specific to
14 Ms. Rodriguez that would state a claim for removal based on malfeasance. *See id*; *see*
15 *generally Compl.* Allegations of "illegal function" and vague "violations of election
16 procedures," are no different than simply alleging there is "malfeasance." This does not
17 state a claim for removal based on malfeasance. *Buckingham*, 60 Nev. 129, 102 P.2d at 635–
18 36. There is no allegation that Ms. Rodriguez herself committed an egregious act related to
19 her duties, and therefore it is not malfeasance under NRS 283.440. *See Compl.*

20 72. Regarding nonfeasance, the Complaint falls well short of alleging Ms. Rodriguez
21 neglected or refused to perform an official duty. A registrar of voters must cancel voter
22 registration in certain circumstances, maintain certain voter registration records, and
23 provide voters written notice of any changes to their voter registration. NRS 293.530. An
24 allegation that there are issues with "updating and resolving voter registration lists" does
25 not allege Ms. Rodriguez specifically neglected or refused to perform her duties under NRS
26 293.530. An allegation that there are issues with "providing proper vote counting

1 mechanisms” does not allege Ms. Rodriguez specifically neglected or refused to perform an
2 official duty as prescribed by law. Regarding public observation, the registrar of voters must
3 allow general public observation of ballot counting unless it interferes with ballot counting.
4 NRS 293B.353; NAC 293.311(4). Having discretion in carrying out that duty, the allegation
5 is so vague that it does not allege Ms. Rodriguez specifically neglected or refused to so
6 perform. *See Jones*, 67 Nev. at 411–12, 219 P.2d at 1058–59. Lastly, general allegations of
7 “illegal function” and vague “violations of election procedures” do not allege Ms.
8 Rodriguez specifically neglected or refused to perform an official duty as prescribed by law.

9 73. Beadles does not and cannot identify any specific act of malfeasance or nonfeasance
10 attributable to Ms. Rodriguez. Although Beadles makes conclusory allegations about the
11 quality of the list of registered voters, the manner and mechanisms used to county votes,
12 and vague overarching dissatisfaction with the elections process, he has never substantiated
13 his claims using the proper remedy, which is by submitting these complaints to the
14 Secretary of State for investigation, a hearing if appropriate, and resolution by the Chief
15 Officer for Elections in the State. *See* NAC 293.025; NAC 293.500–55. To circumvent that
16 process, and instead attempt to terminate a public employee using a summary proceeding,
17 would result in a miscarriage of justice. Moreover, Beadles fails to allege the type of
18 “extreme and extraordinary occasions” that may warrant removal. *Jones*, 67 Nev. at 418,
19 219 P.2d at 1062.

20 74. The Court finds that Beadles failed to state a claim for Ms. Rodriguez’s removal.
21 Dismissal with prejudice is appropriate. Amendment would be futile because, as set forth
22 below, Ms. Rodriguez’s non-elected position is not otherwise subject to removal under NRS
23 283.440.

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1 **C. EVEN IF BEADLES COULD STATE A CLAIM FOR REMOVAL UNDER NRS**
2 **283.440, MANAGER BROWN AND MS. RODRIGUEZ ARE NOT “PUBLIC**
3 **OFFICERS” SUBJECT TO REMOVAL UNDER NRS 283.440.**

4 75. The title of NRS 283.440 states the section addresses “Removal of **certain public**
5 **officers** for malfeasance or nonfeasance; Procedure; appeal.” (emph. added). In Section 1,
6 it states “Any person who is now **holding** or who shall hereafter **hold any office...**” NRS
7 283.440(1)(emph. added). NRS Chapter 283 does not define “public officer” and does not
8 define “hold any office.” *See id.*

9 76. The language of NRS 283.440 is ambiguous as to whether it applies only to local
10 elected officials, or whether it includes all public employees regardless of whether their
11 positions are elected. *See Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405
12 (2014)(“when a statute is susceptible to more than one reasonable interpretation, it is
13 ambiguous...”). Ambiguity is resolved “by looking at the statute’s legislative history and
14 construing the statute in a manner that conforms to reason and public policy.” *Id.* A statute
15 should not be read “so as to produce absurd or unreasonable results.” *Orion Portfolio Servs.*
16 *2, LLC v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531
(2010).

17 77. Legislative history for NRS 283.440 confirms that the removal provisions apply only
18 to elected officials. *See Exhibit 1 to Motion to Dismiss, Min. of the Meeting of the Assembly*
19 *Comm. on Gov. Affairs*, at 13–20, 80th Leg. (Nev. April 1, 2019); *Exhibit 2 to Motion to*
20 *Dismiss, Min. of the Meeting of the Senate Comm. on Gov. Affairs*, at 13–24, 80th Leg. (Nev.
21 May 3, 2019). NRS 283.440 was recently amended by Assembly Bill 397 in 2019, to allow
22 for removal based on Title VII violations. *See id.*

23 78. When first introducing Assembly Bill 397, Assemblywoman Teresa Benitez-
24 Thompson explained that the bill would allow for removal of “a local elected official” for
25 sexual harassment or discrimination. *Ex. 1 to Motion to Dismiss* at 13. “This bill seeks to
26 establish accountability **for elected officials** by giving the Nevada Equal Rights

1 Commission the ability to make a recommendation to impeach an **elected official** when he
2 or she has demonstrated egregious behavior. *Id.* at 14 (emph. added). Answering a
3 question, she explained, “The intent of the legislation, Assemblyman Elison, is to allow
4 NERC to flow through their normal process: bring in **the elected official**, and as she said,
5 give them an additional tool of recommendation up to impeachment.” *Id.* at 19 (emph.
6 added). AB 397 addressed the deficit in remedies for an employee who is a victim of
7 harassment perpetrated by an elected official “because there is no way to remove **the**
8 **elected person.**” *Ex. 2 to Motion to Dismiss* at 13 (emph. added). When the harassment is
9 perpetrated by a non-elected employee, there are generally internal procedures to remove
10 or reprimand that employee. Assemblywoman Teresa Benitez-Thompson’s intern explained
11 “The intent of A.B. 397 is to ensure elected officials are abiding by the virtue of their office
12 and maintaining the public trust...” *Id.* at 16. The Court finds this shows that the intent of
13 NRS 283.440 is to provide a procedure only for elected officials, and not for non-elected
14 government employees.

15 79. Additionally, Nevada courts have never applied NRS 283.440 to a public employee,
16 even an appointed high-level employee. *See Jones*, 67 Nev. 404, 219 P.2d 1055 (involving an
17 elected District Attorney); *Mason v. Gammick*, 133 Nev. 1047, 2017 WL 2945616 (June 26,
18 2017)(unpublished disposition)(involving an elected District Attorney); *Buckingham*, 60
19 Nev. 129, 102 P.2d 632 (involving elected County Clerk and County Treasurer); *Schumacher*,
20 78 Nev. 167, 370 P.2d 209 (involving an elected County Assessor); *Gay v. Dist. Ct. of Tenth*
21 *Jud. Dist. in and for Clark Cnty.*, 41 Nev. 330, 171 P. 156 (1918)(involving an elected Sheriff);
22 *Adler v. Sheriff, Clark Cnty.*, 92 Nev. 436, 552 P.2d 334 (1976)(involving an elected Sheriff);
23 *Hawkins v. Eighth Jud. Dist. Ct., Clark Cnty.*, 67 Nev. 248, 216 P.2d 601, 605 (1950)(involving
24 an elected District Attorney); *State of Nevada v. Culverwell*, 890 F.Supp. 933 (D. Nev.
25 1995)(involving elected County Commissioners and City Councilmembers). The Court
26 finds this persuasive to show that “Certain public officers” subject to removal under NRS

1 283.440 means elected officials.

2 80. The limited application to elected officials produced a reasonable result. *See Orion*
3 *Portfolio Servs. 2, LLC*, 126 Nev. at 403, 245 P.3d at 531. An appointed position, or general
4 public employee, may be removed or terminated by their employer. Public employees also
5 often have various collective bargaining rights and agreements. *See* NRS Chapter 288. The
6 Court finds that it would be unreasonable and absurd to read NRS 283.440 to allow a
7 person who disapproves of any government employee ability to unilaterally seek removal
8 of that employee. *See Orion Portfolio Servs. 2, LLC*, 126 Nev. at 403, 245 P.3d at 531. It was
9 reasonable, however, for the Nevada Legislature to create a procedure for an elected
10 official's removal, and it did so in enacting NRS 283.440. Consistent with the legislative
11 intent, NRS 283.440 may not used as a mechanism for a member of the public to remove a
12 public employee with whom they are dissatisfied.

13 81. The Court finds that NRS 283.440 applies only to public employees who hold
14 elected positions.

15 82. Here, neither Manager Brown nor Ms. Rodriguez are elected officials, and thus
16 neither are subject to removal proceedings under NRS 283.440. *See* NRS 244.135(1). The
17 County Manager, Manager Brown, is appointed by the Board of County Commissioners.
18 NRS 244.125(1). The Registrar of Voters, Ms. Rodriguez, is appointed by the Board of
19 County Commissioners. NRS 244.164(1). Manager Brown and Ms. Rodriguez serve at the
20 pleasure of the Washoe County Board of County Commissioners. *Id.*; NRS 244.125(2). As
21 such, they can be removed from their positions only by the Washoe County Board of
22 County Commissioners.

23 83. Even if Beadles could otherwise state a claim for Manager Brown or Ms.
24 Rodriguez's removal under NRS 283.440, neither are not elected officials and they cannot
25 be removed from their employment under NRS 283.440. This further supports the Court's
26 finding that dismissal with prejudice is appropriate, as amendment would be futile.

1 **E. MONETARY DAMAGES AND EQUITABLE RELIEF ARE UNATTAINABLE FOR**
2 **REMOVAL ACTIONS.**

3 84. In a removal action under NRS 283.440, “[t]he remedy is removal from
4 office. Nothing in the statutes allows for recovery of damages by the complainant against
5 the officer.” *Armstrong v. Reynolds*, 2:17-cv-02528-APG-CWH, 2019 WL 1062364 at *8 (D.
6 Nev. Mar. 6, 2019), *aff’d in part, rev’d in part and remanded*, 22 F.4th 1058 (9th Cir. 2022).
7 There is no private claim for malfeasance. *Id.*

8 85. Here, Beadles improperly seeks injunctive relief regarding elections
9 procedures in his removal claim. Even if the claim for removal were viable, injunctive relief
10 and monetary damages are unavailable. Removal is the only available remedy for that
11 claim.

12 **III. THE OFFICE OF THE REGISTRAR OF VOTERS IS NOT A SUABLE**
13 **ENTITY.**

14 86. The State of Nevada waived immunity from civil actions on behalf of itself and the
15 political subdivisions of the State, subject to certain limitations. NRS 41.031. However,
16 “In the absence of statutory authorization, a department of the municipal government may
17 not, in the department name, sue or be sued.” *Wayment v. Holmes*, 112 Nev. 232, 237–38,
18 912 P.2d 816, 819 (1996). A department of a county is not a suable entity because it is not
19 political subdivision of the State of Nevada. *Id.*; *see also Schneider v. Elko Cnty. Sheriff’s*
20 *Dep’t*, 17 F. Supp. 2d 1162, 1165 (D. Nev. 1998)(dismissing suit against a county sheriff’s
21 department for lack of capacity to be sued). A county department is “immune from suit”
22 because it is not a suable entity. *Wayment*, 112 Nev. at 239, 912 P.2d at 820.

23 87. Even if Beadles could state viable claims in this action, the ROV is not a suable
24 entity. The Court finds that dismissal of all claims against the ROV with prejudice is
25 appropriate, as amendment would be futile.

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1 **IV. BEADLES’S MISCELLANEOUS RELIEF IS UNATTAINABLE.**

2 88. Nevada law prohibits awards of punitive damages against government entities and
3 employees. NRS 41.035(1). “An award may not include any amount as exemplary or
4 punitive damages.” *Id.*

5 89. As a matter of law, even if Beadles had any viable claim against Defendants, he
6 would not be entitled to recover punitive damages. Therefore, the Court dismisses with
7 prejudice Beadles’s request for punitive damages.

8 90. The Court “cannot recognize a remedy absent an underlying cause of action.”
9 *Badillo v. American Brands, Inc.*, 117 Nev. 34, 41, 16 P.3d 435, 440 (2001). “Altering common
10 law rights, creating new causes of action, and providing new remedies for wrongs is
11 generally a legislative, not a judicial, function.” *Id.* 117 Nev. at 42, 16 P.3d at 440.

12 91. Here, Beadles asks this Court to award him various relief that not connected to any
13 cause of action. *Compl.* at p. 16. As set forth above, the Court finds dismissal with prejudice
14 is appropriate for both causes of action. There is no legally tenable avenue for Beadles to
15 obtain the relief requested. Therefore, the Court dismisses with prejudice Beadles’s requests
16 for relief.

17 **JUDGMENT**

18 Therefore, based on the above Findings and Fact and Conclusions of Law made by
19 this Court, and good cause appearing, the following Judgment is entered by the Court:

20 **IT IS HEREBY ORDERED** that Defendants’ Motion to Dismiss is **GRANTED**.

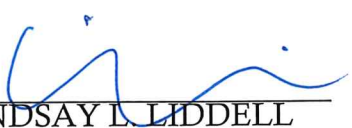
21 **IT IS HEREBY FURTHER ORDERED** that this case is **DISMISSED WITH**
22 **PREJUDICE**.

23 Dated _____.

24
25 _____
26 JAMES T. RUSSELL
DISTRICT JUDGE

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Submitted on 10/20/23 by:



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