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Defendants.

20 KENNEDY  
19 TONY WORTHMAN; PROSECUTOR  
18 MICHAEL VILLIANE; STEVEN WOLFSON;  
17 GABRIEL VILLANNEVA; JUDGE  
16 NEVADA; JUDGE DIANE SULLIVAN,  
15 NADIG; KATRINA ROSS; STATE OF  
14 MATSUDA; ROBERT MOOS; BENJAMIN  
13 METRO POLICE DEPARTMENT; JESS  
12 (ASSIGNED INVESTIGATOR); LAS VEGAS  
11 INTERNAL AFFAIRS POLICE OFFICER  
10 Corporation; CARL ARNOLD; JAKE GULLO;  
9 PALLUCK ASSOCIATES CORP., a  
8 LAS VEGAS ATHLETIC CLUB SMITH-

v.

Plaintiff,

RUSSELL MARTIN,

DEFENDANT LAS VEGAS  
ATHLETIC CLUB'S NOTICE OF  
APPEARANCE OF COUNSEL

CASE NO.: A-24-892352-C  
DEPT. NO.: 18

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

Attorneys for Defendant  
LAS VEGAS ATHLETIC CLUB

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**DEFENDANT LAS VEGAS ATHLETIC CLUB'S**  
**NOTICE OF APPEARANCE OF COUNSEL**

Please take Notice that ERIK W. FOX, ESQ., of the law firm of WOLFE & WYMAN LLP hereby enters his appearance as counsel for Defendant LAS VEGAS ATHLETIC CLUB.

DATED: June 13, 2024

WOLFE & WYMAN LLP

By: /s/ ERIK W. FOX

ERIK W. FOX, ESQ.

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6757 Spencer Street

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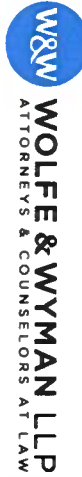
**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 13<sup>th</sup> day of June 2024, the foregoing **DEFENDANT LAS VEGAS ATHLETIC CLUB'S NOTICE OF APPEARANCE OF COUNSEL** was served electronically on all parties registered with the Court's electronic filing system. For those parties not registered, service was made by depositing a copy for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada to the following:

Russell Martin  
5251 Lindell Rd. #103  
Las Vegas, NV 89118

/s/ PAM LAMPER  
An employee of WOLFE & WYMAN LLP

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**LAS VEGAS ATHLETIC CLUB**

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

CASE NO.: A-24-892352-C  
DEPT. NO.: 18

**RUSSELL MARTIN,**  
Plaintiff,

v.

**LAS VEGAS ATHLETIC CLUB SMITH-**  
**PALLUCK ASSOCIATES CORP., a**  
**Corporation; CARL ARNOLD; JAKE GULLO;**  
**INTERNAL AFFAIRS POLICE OFFICER**  
**(ASSIGNED INVESTIGATOR); LAS VEGAS**  
**METRO POLICE DEPARTMENT; JESS**  
**MATSUDA; ROBERT MOOS; BENJAMIN**  
**NADIG; KATRINA ROSS; STATE OF**  
**NEVADA; JUDGE DIANE SULLIVAN,**  
**GABRIEL VILLANNEVA; JUDGE**  
**MICHAEL VILLIANE; STEVEN WOLFSON;**  
**TONY WORTHMAN; PROSECUTOR**  
**KENNEDY**  
**Defendants.**

Defendant LAS VEGAS ATHLETIC CLUB ("LVAC"), by and through its counsel of record, WOLFE & WYMAN LLP, hereby moves this Court to dismiss the Plaintiff's complaint and to deem Plaintiff Russell Martin a Vexatious Litigant.  
This Motion and Counter-motion are based upon the pleadings, Memorandum of Points and Authorities contained herein.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION<sup>1</sup>**

This Court has seen this matter before, wherein the Court spent considerable time identifying for Martin the procedural posture of the case. This Motion incorporates by reference the Motion to Dismiss and related filings by LVAC in the first Martin Action (A864256) and hereinafter the “Dismissed Martin Action.” For purposes of clarity, this Motion addresses the Martin Amended Complaint filed on June 5, 2024 (hereinafter the Second Martin Complaint). The Second Martin Complaint is barred by res judicata having been dismissed on December 4, 2023 (Doc ID# 73 and 74). No appeal by Martin was filed related to the Dismissed Martin Action.

The Second Martin Complaint appears to involve the same parties and the same allegations, including suing a Clark County Court District Judge, a Las Vegas Justice Court Judge, LVMPD and a variety of government officials, including the Nevada Attorney General. All these parties are included because of a dispute over access to an LVAC racquetball court between Robert Moos and Martin. As a result of Martin’s actions, he was subject to criminal process for a charge of Battery under NRS 200.481(2)(a). That criminal matter is now dismissed negating the claims in this Second Martin Action.

As a refresher for the Court related to the Dismissed Martin Action, that matter was dismissed on the basis that Martin failed to respond to Motions to Dismiss filed by the Defendants in that matter. During the course of the proceeding, this Court explained to Martin that he was required to file Oppositions to each of the dismissal motions. Notwithstanding, Martin has filed again over the same set of circumstances, naming 17 Defendants. Where Martin files the same Action again against the same parties, including Judges, Public Defenders, District Attorneys and LVAC, he should be deemed a vexatious litigant and precluded from filing anything in the State of Nevada, the

<sup>1</sup> All facts stated in this Motion are derived from Martin’s May 1, 2024, Complaint.



1 Courts of Clark County, or the Las Vegas Justice Court related to circumstances alleged in the  
2 Second Martin Complaint. Martin was previously cautioned in the LVAC Motion to Dismiss as part  
3 of the Dismissed Martin Action that his rampant redundant filing of cases related to this issue could  
4 qualify him as a vexatious litigant. Martin has reached that status with this new filing after he was  
5 expressly informed that the Court granted dismissal because Martin failed to oppose the various  
6 dismissal motions.

7  
8 **II. FACTS AND PARTIES STATED IN THE DISMISSED MARTIN ACTION**

9 Plaintiff, Russell Martin, filed his *Pro Per* Complaint against the Judge overseeing his  
10 criminal case, the Public Defender trying to assist him with the criminal case, Las Vegas Athletic  
11 Club ("LVAC"), and LVMPD, among others. The entire suit stems from a September 2019  
12 exchange between another LVAC member, Moos, and Plaintiff Martin. The incident resulted from a  
13 physical altercation following a dispute over who was entitled to use the next racquetball court time.  
14 The incident caused Moos to suffer a substantial head injury requiring medical treatment. Moreover,  
15 the event blossomed: (1) a Small Claims Judgment in Moos' favor; (2) a criminal case against  
16 Martin for the injuries to Moos, (3) a prior Complaint on this same subject matter and (4) this new  
17 matter over the same subject matter.

18 Therefore, LVAC respectfully requests this Court grant this Motion and dismiss LVAC with  
19 prejudice, as Martin has alleged no facts showing LVAC would be responsible for any claim brought  
20 by Martin.

21  
22 **III. STATEMENT OF FACTS**

23 **A. INCIDENT FACTS?**

24 Martin was at a Las Vegas Athletic Club on September 9, 2019. On that date, Martin first  
25 encountered Robert Moos around 4:30 pm at the racquetball courts. Martin states he signed for use  
26 of the court prior to Moos. However, Moos stated he had verbally reserved the Court prior to Martin.

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28 <sup>2</sup> The following facts are taken from Martin's Complaint filed January 19, 2023, pages 4-5.



1 Once the prior game concluded, Martin and Moos had a dispute about who was entitled to play next.  
2 The situation escalated with Martin placing his hand on Moos' forehead and pushing him away at  
3 the first physical contact between the two. Moos reacted by swinging his racquet at Martin's head  
4 and hitting it, per Martin. Thereafter, Martin swung his racquet at Moos causing Moos to fall back  
5 through the Court door, impacting his head on the ground. The ground was bloodied from Moos's  
6 fall.

**B. MARTIN'S CLAIM AGAINST LVAC**

7 Martin alleges in paragraphs 49-54 of the Second Martin Action Amended Complaint  
8 (unserved at the time of this filing) as follows. In summary Martin states, LVAC failed to  
9 investigate the events of the Martin-Moos incident to protect Club Members from being assaulted by  
10 Moos. Moos' membership with LVAC was not terminated following the incident. LVAC did not  
11 file a report with an unidentified agency, that caused Martin to lose a Small Claims Action brought  
12 by Moos. "LVAC knows that from presented evidence that Robert Moos is a retired police officer.  
13 They refuse to discharge Robert Moos as a club member thus putting members at risk. Also,  
14 consolidating the narrative to conspire with the legal system to judge Russell Martin guilty." As a  
15 result, Martin alleges the loss of business opportunity and revenue.

16 None of the above allegations involve an actual claim against LVAC. Moreover, this Court  
17 is entitled to take judicial notice of the Martin Criminal Case (19F18687X) wherein on November  
18 20, 2023, the Martin Criminal Action was dismissed. Martin cannot be adjudged guilty where his  
19 case dismissed seven months prior to the filing of the Second Martin Complaint.<sup>4</sup> It is unclear how  
20 the dismissal of the criminal case does not completely nullify the allegations and claims stated in this  
21 new Complaint.

**C. THE JUSTICE AND DISTRICT COURT CRIMINAL DOCKETS FROM THE INCIDENT**

22 Although the Criminal cases are now dismissed, the following is a recitation of the history of  
23 those cases. The LVJC docket shows Martin was charged with "Battery w/use of DW" pursuant to  
24 NRS 200.481(2)(e)(2). As part of Martin's bail condition, he was required to stay away from the  
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28 <sup>3</sup> See Second Martin Action Amended Complaint ¶ 53.  
<sup>4</sup> A remittitur was ordered by the District Court on March 17, 2023, in C351363 resulting in the dismissed Martin Criminal Case.

1 "Las Vegas Athletic Club." The matter was bound over to District Court, before Judge Villani. A  
 2 Guilty Plea was entered on April 27, 2022, "Mr. Gullio indicated this matter was negotiated, as the  
 3 Defendant will plea no contest, the adjudication will be stayed as the Defendant will make a flat  
 4 \$2500.00 payment to Robert Moos, or make payments of \$250.00 per month over a year,  
 5 furthermore requesting the case be dismissed after the payment is made."  
 6 Thereafter, Martin sought to withdraw his Guilty Plea, with Judge Villani granting that  
 7 request on January 9, 2023. Martin is scheduled for a Jury Trial on July 3, 2023. The criminal  
 8 process and the Small Claims matter referenced by Martin in his Complaint are intertwined.  
 9 **D. THE SMALL CLAIMS ACTION BY MOOS AGAINST MARTIN**  
 10 As the Small Claims matter was referenced by Martin in his Complaint, this Court may take  
 11 judicial notice of the Small Claims docket pursuant to NRS 47.130. Moos filed a Small Claims  
 12 Complaint against Martin on June 22, 2020, for Moos' damages relating to the incident. This was  
 13 mere months after the LVAC altercation between Moos and Martin. A Small Claims Judgment was  
 14 entered in Moos' favor on February 10, 2021. The judgment in favor of Moos, was related to Moos's  
 15 damages caused by Martin on the date of the incident. Martin's Counterclaim was denied by the  
 16 Judge Pro Tem. Thereafter, Moos sought to conduct a Judgment Debtor Exam on multiple  
 17 occasions. Martin failed to appear and a Bench Warrant was issued for contempt related to the  
 18 Judgment Debtor Order.  
 19 Thereafter, Martin filed a "Motion to Hear Case Again", which was denied on June 21, 2022.  
 20 Following, the most recent Civil Bench Warrant issued as to Martin on March 29, 2023, Martin filed  
 21 a Motion to Set Aside Default Judgment. Pursuant to JCRCP 98, an appeal of a Justice Court  
 22 decision must be made within five days after "entry of the judgment." As the Small Claims  
 23 Judgment was entered and noticed at or around February 10, 2021, the deadline for any appeal had  
 24 passed prior to his latest appeal attempt. However, no such appeal was ever made and is no longer  
 25 permissible.  
 26 That said, the context of the Small Claims Judgment against Martin, the Bench Warrant  
 27 issuance against Martin, and the Criminal Dockets must be read in context with this instant case. It is  
 28 clear from a reading of the Dockets for these matters, Martin is merely trying to avoid the





1 consequences of his September 9, 2019, actions to the point where he has become a vexatious  
2 litigant. This is true even though the criminal charges against Martin are now dismissed.

3 **IV. LEGAL ARGUMENT**

4 **A. MOTION TO DISMISS STANDARD**

5 The Court should dismiss the Complaint, as to LVAC, because Martin fails to state a claim  
6 for which relief can be granted. NRCF 12(b)(5) provides that the defense of failure to state a claim  
7 upon which relief can be granted shall be set forth by motion. In reviewing a motion to dismiss,  
8 "[d]ismissal is proper where the allegations are insufficient to establish the elements of a claim for  
9 relief." *Stockmeier v. Nevada Dept. of Corrections Psychological Review Panel*, 124 Nev. 313, 316,  
10 183 P.3d 133, 135 (2008) (internal quotations omitted). A complaint must allege facts sufficient to  
11 establish all the necessary elements of each cause of action upon which recovery is predicated and,  
12 as the Nevada Supreme Court explained, "if a pleader cannot allege definitely and in good faith the  
13 existence of an essential element of his claim, it is difficult to see why this basic deficiency should  
14 not be exposed at the point of minimum expenditure of time and money by the parties and the court."  
15 *Danning v. Lum's Inc.*, 86 Nev. 868, 869, 478 P.2d 166, 167 (1970).

16 "[A] motion to dismiss remains a motion to dismiss until converted by the district court into a  
17 motion for summary judgment. This conversion occurs, if at all, only when the district court enters a  
18 formal written order resolving the motion, and actually considers materials outside the pleadings in  
19 resolving the motion." *Gallen v. Dist. Ct.*, 112 Nev. 209, 212, 911 P.2d 858, 18859-60 (1996).

20 Moreover, "[i]n evaluating a motion to dismiss, courts primarily focus on the allegations in  
21 the complaint." *Baxter v. Dignity Health*, 131 Nev., Adv. Op. 76, 357 P.3d 927, 930 (2015).  
22 However, the four corners of the complaint do not limit this court's review. *Id.* Rather, this "court  
23 may also consider unattached evidence on which the complaint necessarily relies." *Id.* (internal  
24 quotation omitted). If a document is "incorporated by reference or integral to the claim," this court  
25 may consider said document without converting a motion to dismiss into a motion for summary  
26 judgment. *Id.* (internal quotation omitted).

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We know from Martin's allegations, that LVMPD responded to the incident, and performed an investigation including responding to the incident at LVAC. That investigation led to the criminal cases in Las Vegas Justice Court and before the Clark County District Court, with a pending criminal trial for July 3, 2023. Martin does not describe why the actions taken by LVAC on

LVAC to do so. We know from Martin's allegations, that LVMPD responded to the incident, and performed an investigation including responding to the incident at LVAC. That investigation led to the criminal cases in Las Vegas Justice Court and before the Clark County District Court, with a pending criminal trial for July 3, 2023. Martin does not describe why the actions taken by LVAC on

**C. THE ALLEGATION OF NOT FILING A POLICE REPORT IS NOT AN ACTIONABLE CLAIM**

NRS 11.190(4)(e) requires the filing of a negligence claim within two years of the date of the incident. This Court is entitled to take judicial notice of public records related to Las Vegas Justice Court records. NRS 47.130 permits this Court to judicially notice matters of fact where: the facts are not at issue, the facts are generally known within the territorial jurisdiction of the Court or the facts are capable of ready determination. In this instance the LVJC Docket (Case: 19F18687X) provides detail related to the charges and disposition of the Martin criminal case. The event occurred on September 9, 2019, and Martin was arrested on the date of the event, with his criminal process starting on September 10, 2019. The Court is entitled to take judicial notice of those dates. Martin did not file this Action until May 1, 2024, almost five years later. The case must be dismissed because the Martin Las Vegas Justice Court criminal case was initiated on September 9, 2019. More than two years have passed since the filing of that criminal case warranting dismissal based on the statute of limitations.

**B. MARTIN FAILED TO FILE A NEGLIGENCE CLAIM AGAINST LVAC WITHIN THE 2-YEAR STATUTE OF LIMITATIONS**



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1 the date of the incident, and in cooperating with LVMPD as it performed its investigation was  
2 insufficient. Martin detailed the occurrence and admitted in his Complaint to the altercation with  
3 Moos, and that the altercation caused Moos to be injured.

4 A claim for false imprisonment "is an unlawful violation of the personal liberty of another  
5 and consists in confinement or detention without sufficient legal authority." NRS 200.460(1). There  
6 are no allegations in Martin's Complaint that LVAC violated his personal liberty on September 9,  
7 2019. Martin's own Complaint is replete with reference that Martin was arrested by LVMPD and  
8 the criminal prosecution process started thereafter. LVAC has no control over the actions of the  
9 LVMPD or the decision to prosecute Martin for the event. As Martin has failed to plead any claim  
10 as to LVAC, let alone alleging sufficient facts for LVAC to be responsible for a false imprisonment  
11 claim, LVAC must be dismissed from this matter.

12 **D. RES JUDICATA BARS THIS SECOND ACTION BY MARTIN**

13 The doctrine of res judicata is applicable here. Martin filed a second suit after the first was  
14 dismissed on the same set of operative facts and against the same parties. The doctrine barred this  
15 Second Martin Action and is defined as:

16 "Generally, the doctrine of res judicata precludes parties or those in privity  
17 with them from re-litigating a cause of action or an issue which has been  
18 finally determined by a court of competent jurisdiction." *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994), holding modified  
19 on other grounds by *Exec. Mgmt. Ltd. v. Titor Tile Ins. Co.*, 114 Nev. 823, 963 P.2d 465 (1998). "The doctrine is intended to prevent multiple litigation  
20 causing vexation and expense to the parties and wasted judicial resources by  
21 precluding parties from re-litigating issues they could have raised in a prior  
22 action concerning the same controversy." *Id.*

23 the Second Martin Action must be dismissed with prejudice.  
24 *Kupitz-Blinkinsop v. Blinkinsop*, 136 Nev. 360, 364, 466 P.3d 1271, 1275 (2020). On this basis alone

25 **V. MOTION TO DEEM RUSSELL MARTIN A VEXATIOUS LITIGANT**

26 LVAC seeks a restrictive Order barring Martin from filing any other case or action related to  
27 the circumstances announced in the Dismissed Martin Action or this Second Martin Action. Both  
28 matters involved the same facts, circumstances and criminal case histories. The Nevada Supreme  
Court has defined:

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Although Nevada does not have a specific vexatious-litigant statute, we conclude that the district courts have inherent authority to issue orders that restrict a litigant's filings that challenge a judgment of conviction and sentence if the court determines that the litigant is vexatious. Similar to the federal and state courts and this court's conclusions in *Jordan*, the authority to issue a restrictive order is based on the fact that the courts are constitutionally authorized to issue all writs proper and necessary to complete the exercise of their jurisdiction and that "courts possess inherent powers of equity and of control over the exercise of their jurisdiction." *Jordan*, 121 Nev. at 59, 110 P.3d at 41 (*quoting* Nev. Const. art. 6 § 4, 6(1)).

*Jones v. Eighth Jud. Dist. Ct.*, 130 Nev. 493, 498, 330 P.3d 475, 479 (2014).

Martin has had due process rights related to this matter in the form of the Dismissed Martin Action. Again, the Dismissed Martin Action was dismissed pursuant to EDCR 2.20(e), because Martin failed to oppose any dismissal motion filed by the Defendants in that matter. This Second Martin Action is no different than the Dismissed Martin Action. The only exception is a in the Dismissed Martin Action the False Imprisonment Claim morphed into Negligence in the Second Martin Action. However, that Negligence claim is barred by the two-year statute of limitations. This Second Martin Action is frivolous because Martin had the opportunity to prosecute the Dismissed Martin Action but simply failed to respond to any dismissal filing by the Defendants in that matter. Moreover, Martin failed to appeal the determination of the District Court in the Dismissed Martin Action. The record is replete with Martin's opportunity to prosecute the original matter. He failed to do so and with his suing of elected officials, Clark County agencies and many others without basis he should not be permitted to file a third time on the same claims and circumstances. LVAC respectfully requests this court enter findings consistent with the needless and duplicative nature prohibiting Martin from filing any additional actions or claims related to this same set of circumstances.

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**VI. CONCLUSION**

Because this matter is redundant and past the statute of limitations for the lone claim for negligence against LVAC, the case must be dismissed on grounds of res judicata. Moreover, LVAC respectfully requests this Court enter and Order with findings that Russell Martin is declared a vexatious litigant as to filing additional matters or cases related to these same circumstances.

DATED: June 13, 2024

WOLFE & WYMAN LLP

By: /s/ ERIK W. FOX

ERIK W. FOX, ESQ.

Nevada Bar No. 8804

6757 Spencer Street

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Attorneys for Defendant

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**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on the 13<sup>th</sup> day of June 2024, the foregoing DEFENDANT LAS VEGAS ATHLETIC CLUB'S MOTION TO DISMISS AND COUNTERMOTION TO DEEM PLAINTIFF RUSSELL MARTIN A VEXATIOUS LITIGANT was served electronically on all parties registered with the Court's electronic filing system.

For those parties not registered, service was made by depositing a copy for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada to the following:

Russell Martin  
5251 Lindell Rd. #103  
Las Vegas, NV 89118

/s/ PAM LAMPER  
An employee of WOLFE & WYMAN LLP