



CASE NO: A-23-867730-C
Department 7

1 **COMP**
2 CHRISTOPHER M. PETERSON, ESQ.
3 Nevada Bar No.: 13932
4 SOPHIA A. ROMERO, ESQ.
5 Nevada Bar No.: 12446
6 JACOB SMITH
7 Nevada Bar No.: 16324
8 **AMERICAN CIVIL LIBERTIES**
9 **UNION OF NEVADA**
10 4236 W. Cheyenne Ave.
11 North Las Vegas, NV 89032
12 Telephone: (702) 366-1902
13 Facsimile: (702) 830-9205
14 Email: peterston@aclunv.org

15 MARY E. BACON, ESQ.
16 Nevada Bar No.: 12686
17 **SPENCER FANE, LLP**
18 300 S. Fourth St., Suite 950
19 Las Vegas, Nevada 89101
20 Telephone: (702) 408-3411
21 Facsimile: (702) 938-8648
22 Email: mbacon@spencerfane.com
23 *Attorneys for Plaintiffs*

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

17 REBECCA LEAVITT, an individual; LITTLE
18 BLUE SKY BRIGGS, an individual; JODIE
19 ELTZROTH, an individual; BRITNEY JACKSON,
20 an individual; MONIQA MARTINEZ, an
individual; SHARON NEWMAN, an individual;
and STACY TAI, an individual,

21 Plaintiffs,

22 vs.

23 STATE OF NEVADA ex rel. NEVADA
24 DEPARTMENT OF CORRECTIONS, a public
entity of the State of Nevada; STATE OF
25 NEVADA ex rel. NEVADA DIVISION OF
26 FORESTRY, a public entity of the State of Nevada;
27 JAMES DZURENDA, in his official capacity as
Director of the Nevada Department of Corrections;

Case No.:

Department:

COMPLAINT
(JURY TRIAL DEMANDED)

ARBITRATION EXEMPTION
CLAIMED: EQUITABLE AND
DECLARATORY RELIEF
REQUESTED

1 KACEY KC, in her official capacity as the Nevada
2 State Forester and Firewarden; SEAN MCGUIRE,
3 in his official and personal capacity; SCOTT
4 BENNER, in his official and personal capacity;
5 TODD FREY in his official and personal capacity;
6 Nevada Department of Corrections Employees
7 DOES 1 – 10, in their official and personal
8 capacities; Nevada Division of Forestry Employees
9 ROES 1 – 10, in their official and personal
10 capacities.¹

11 Defendant(s).

12
13 **COMPLAINT**

14 Plaintiffs REBECCA LEAVITT, LITTLE BLUE SKY BRIGGS, JODIE ELTZROTH,
15 BRITNEY JACKSON, MONIQA MARTINEZ, SHARON NEWMAN, and STACY TAI for their
16 Complaint allege as follows:

17 **I. Introduction**

18 Wildland fires are a growing concern in the state of Nevada. Like many other Western
19 states, prolonged droughts coupled with large, forested areas result in a constant risk of blazes in
20 the summer months. To ensure that the state has sufficient resources to combat this risk, the Nevada
21 Division of Forestry (NDF) and the Nevada Department of Corrections (NDOC) partner to train
22 incarcerated people at low-security facilities in firefighting and then press those people into
23 dangerous service on behalf of the state. Despite the importance of the service they render to the

24 ¹ NRS 12.105 State and local governmental agencies may be sued without naming members of
25 their governing bodies; service. Any political subdivision, public corporation, special district, or
26 other agency of state or local government which is capable of being sued in its own name may be
27 sued by naming it as the party without naming the individual members of its governing body in
their representative capacity. In addition to any other method which may be provided by statute or
rule of court, service may be made upon the clerk or secretary of the political subdivision,
corporation or agency.

1 Nevadan community, incarcerated firefighters make approximately \$1 per hour fighting fires while
2 working with dangerously deficient equipment, training, and supervision.

3 On April 20, 2021, Plaintiffs Leavitt, Eltzroth, Jackson, Martinez, Newman, and Tai were
4 members of a ten-person team composed of incarcerated firefighters supervised by Defendant Sean
5 McGuire, an NDF employee. Plaintiff Briggs was assigned to a second team supervised by
6 Defendant Todd Frey, who was also a NDF employee. McGuire's and Frey's immediate
7 supervisor, Defendant Scott Benner, was also present.

8 Both teams travelled from Jean Conservation Camp (JCC), a Nevada Department of
9 Corrections facility, to a site near Laughlin, Nevada to clean up the remnants of a large fire that
10 had recently swept through that area. Of the Plaintiffs, only Plaintiff Newman had any prior
11 experience with such "mop ups" and even their experience was minimal.

12 NDF supervisors set Plaintiffs and the other firefighters to work clearing out red-hot
13 embers, churning burning soil, and ripping out tree stumps by 9:30 AM. By 11:00 AM, it was
14 apparent to Plaintiffs and the other firefighters that the ground, still smoldering from the fire, was
15 burning their feet. The firefighters, including Plaintiffs, immediately reported the burning to their
16 supervisors. When Plaintiffs supervised by McGuire and Benner complained, they were mocked
17 and ignored. Frey was more sympathetic, but still required that his firefighters continue working.

18 As the day dragged on, the Plaintiffs' pain grew steadily worse. Some felt the skin on the
19 bottom of their feet loosen and blisters forming. The sole of Plaintiff Tai's boot literally melted
20 off, when Tai showed McGuire her boot, he only wrapped the boot in duct tape and sent her back
21 to work.

22 By the end of the day, many of the firefighters supervised by McGuire were visibly injured
23 and could barely walk. When the firefighters attempted to take their socks off on the bus, they
24 found that the socks had melded to their feet. Upon arrival back at JCC, many of the Plaintiffs
25 could not exit the bus without assistance and that night could only shower or reach the restroom
26 by crawling on their hands and knees. Though the firefighters were processed back into the JCC

1 by NDOC staff who observed Plaintiffs' pain and inability to walk, none of the Plaintiffs received
2 medical treatment that night.

3 The next morning, Eltzroth and Martinez were unable to walk due to their injuries. Other
4 women in their dormitory reported their medical condition to the JCC's nurse, and then Eltzroth
5 and Martinez were transported by wheelchair to the JCC's infirmary. Once the JCC's nurse
6 realized how injured Eltzroth and Newman were, he notified the JCC's administration, and the rest
7 of the firefighters were evaluated.

8 By that evening, Plaintiffs Leavitt, Martinez, Newman, and Eltzroth were transported back
9 to the NDOC's main women's facility, Florence McClure Women's Correctional Center
10 (FMWCC), and taken to the University Medical Center the next day. At the hospital, doctors
11 examined the blisters covering the bottoms of all the firefighters' feet, determined they all had to
12 undergo debridement, and then sliced away all of the skin and dead tissue without administering
13 any pain medication. This was an incredibly painful procedure for Plaintiffs. Leavitt, Martinez,
14 Newman, and Eltzroth were then returned to the infirmary at FMWCC where they spent two weeks
15 in recovery. They were later joined at the infirmary by Briggs, Jackson, Tai, and two other
16 firefighters once NDOC staff determined they too had been injured during the April 20th incident.

17 Plaintiffs now seek to remedy the harm inflicted on them and ensure that no other
18 incarcerated firefighters experience similar abuse in the future.

19 **II. Parties**

20 **A. Plaintiffs**

21 1. Plaintiff, REBECCA LEAVITT, is, and was at all times relevant herein, a resident of the
22 State of Nevada, County of Clark, and is still incarcerated at JCC.

23 2. Plaintiff, LITTLE BLUE SKY BRIGGS, is, and was at all times relevant herein, a resident
24 of the State of Nevada, County of Clark, who was incarcerated at JCC. She is now incarcerated at
25 the Florence McClure Women's Correctional Center in Clark County, Nevada.

1 3. Plaintiff, JODIE ELTZROTH, is, and was at all times relevant herein, a resident of the
2 State of Nevada, County of Clark, who was incarcerated at JCC. She currently resides at Casa
3 Grande Transitional Housing in Clark County, Nevada.

4 4. Plaintiff, BRITNEY JACKSON, is, and was at all times relevant herein, a resident of the
5 State of Nevada, County of Clark, who was incarcerated at JCC. She was released on parole and
6 now resides in Washoe County, Nevada.

7 5. Plaintiff, MONIQA MARTINEZ, is, and was at all times relevant herein, a resident of the
8 State of Nevada, County of Clark, who was at all relevant times herein, incarcerated at JCC. She
9 now resides in Clark County, Nevada.

10 6. Plaintiff, SHARON NEWMAN, is, and was at all times relevant herein, a resident of the
11 State of Nevada, County of Clark, who was incarcerated at JCC. They are now incarcerated at the
12 Florence McClure Women's Correctional Center...

13 7. Plaintiff, STACY TAI, is, and was at all times relevant herein, a resident of the State of
14 Nevada, County of Clark, who was incarcerated at JCC. She has been released on parole and now
15 resides in Riverside, California.

16 **B. Defendants**

17 8. Defendant, THE STATE OF NEVADA, DEPARTMENT OF CORRECTIONS (NDOC),
18 is the governmental agency in the State of Nevada tasked with overseeing and operating all prisons
19 located in the state, including Jean Conservation Camp and Florence McClure Women's
20 Correctional Center, and, pursuant to NRCF 4.2(d)(a), can be served with process by delivery upon
21 the Nevada Attorney General, located at 100 North Carson Street, Carson City, Nevada 89701.

22 9. Defendant, THE STATE OF NEVADA, DIVISION OF FORESTRY (NDF), is the
23 governmental agency in the State of Nevada tasked with partnering with NDOC to oversee the
24 firefighting program implemented at the Jean Conservation Camp and supervising firefighters
25 incarcerated in NDOC in the field, and, pursuant to NRCF 4.2(d)(a), can be served with process
26

1 by delivery upon the Nevada Attorney General, located at 100 North Carson Street, Carson City,
2 Nevada 89701.

3 10. Defendant JAMES DZURENDA is the Director of NDOC and is being sued in his official
4 capacity for equitable, injunctive, and declaratory relief.

5 11. Defendant KACEY KC, as the State Forester and Firewarden, directs NDF and is being
6 sued in her official capacity for equitable, injunctive, and declaratory relief.

7 12. Defendant SEAN MCGUIRE was on April 20, 2021, an NDF employee and is being sued
8 in his official and personal capacities.

9 13. Defendant SCOTT BENNER was on April 20, 2021, an NDF employee and is being sued
10 in his official and personal capacities.

11 14. Defendant TODD FREY was on April 20, 2021, an NDF employee and is being sued in
12 his official and personal capacities.

13 15. Defendants DOES 1 – 10, are unknown employees, staff, contractors, or agents of NDOC
14 being sued in their official and personal capacities, and who, pursuant to NRS 12.105 need not be
15 individually named.

16 16. Defendants ROES 1 – 10, are unknown employees, staff, contractors, or agents of NDF,
17 being sued in their official and personal capacities, and who, pursuant to NRS 12.105 need not be
18 individually named.

19 17. At all relevant times herein, all Defendants acted under color of state law, and all individual
20 Defendants were acting within the scope of their employment.

21 **III. Venue and Jurisdiction**

22 18. All transactions and occurrences that give rise to Plaintiffs' claims against Defendants
23 occurred in Clark County, Nevada.

24 19. Defendants operate and/or reside in Clark County, Nevada, and are agencies of, or
25 employed by, the State of Nevada.

26 20. This Court has original subject matter jurisdiction over this matter pursuant to Article 6,
27

1 Section 6, of the Constitution of the State of Nevada and NRS 30.030 (Uniform Declaratory
2 Judgments Act).

3 21. Venue is proper in this Court pursuant to NRS 13.020 and 13.040 because the cause, or
4 some part thereof, arose in Clark County, Nevada.

5 **IV. Factual Statement**

6 22. At the time pertinent to this Complaint, Plaintiffs, REBECCA LEAVITT, LITTLE BLUE
7 SKY BRIGGS, JODIE ELTZROTH, BRITNEY JACKSON, MONIQA MARTINEZ, SHARON
8 NEWMAN, and STACY TAI, were people incarcerated in the NEVADA DEPARTMENT OF
9 CORRECTIONS (NDOC).

10 **A. Overview of Nevada’s use of prison labor to combat wildland fires**

11 23. Due to its climate, the State of Nevada experiences frequent wildland fires.

12 24. Defendant NEVADA DIVISION OF FORESTRY (NDF) oversees the State’s efforts to
13 combat wildland fires.

14 25. Defendant NDF is a division of the Nevada Department of Conservation and Natural
15 Resources.

16 26. As of 2021, NDF employed 74 conservation crew supervisors.

17 27. As of 2021, these supervisors trained 740 people incarcerated in NDOC in wildland
18 firefighting.

19 28. As of 2021, 185 of the incarcerated people trained by NDF supervisors were assigned to
20 fight fires on behalf of the State of Nevada.

21 29. This program to use incarcerated labor to fight wildland fires in Nevada is established and
22 carried out by the State Forester and Firewarden.²

23 30. Defendant KASEY KC is the current State Forester and Firewarden.

24 31. The program is established and carried out in cooperation with Defendant NDOC.

25 _____
26 ² NRS 209.457(1)

1 32. Defendant JAMES DZURENDA is the current Director of NDOC.

2 33. The program is responsible for supervising incarcerated firefighters when they are in the
3 field.

4 34. The program is responsible for providing adequate equipment to incarcerated firefighters
5 to combat wildland fires.

6 35. The program is responsible for training incarcerated firefighters prior to the deployment in
7 the field.

8 36. The training for incarcerated firefighters consists of three days of in-class instruction.

9 37. The training is designed by Defendant NDF ROE employees.

10 38. The training is taught by Defendant NDF ROE employees.

11 39. The training does not include training in the field prior to deployment.

12 40. The training does not include further training or professional development after the three-
13 day program is completed.

14 41. The training does not include training in identifying and reporting firefighting-related
15 injuries.

16 42. As of 2021, incarcerated people composed approximately 30 percent of Defendant NDF's
17 fire response capacity.

18 43. Incarcerated people who are assigned to fight fires on behalf of the State of Nevada are
19 transferred to conservation camps.

20 44. When out in the field, an incarcerated person assigned to fight fires is supervised by
21 Defendant NDF employees.

22 45. When physically at a conservation camp, incarcerated people are supervised by Defendant
23 NDOC employees.

24 46. If assigned to fight fires, an incarcerated person is issued a pair of boots by Defendant NDF
25 to wear while on assignment.

26 47. Incarcerated people are not instructed on how to care for the boots they are issued.
27

1 48. Incarcerated people are not instructed on how to identify when the boots they are issued
2 are damaged.

3 49. When the boots are not in an incarcerated person's possession, Defendant NDF is
4 responsible for the care and storage of the boots worn by incarcerated people assigned to fight
5 fires.

6 50. All equipment other than boots used by incarcerated people to fight wildland fires is issued
7 to incarcerated people by NDF upon deployment in the field.

8 51. All equipment other than boots used by incarcerated people to fight wildland fires is stored
9 and maintained by NDF between deployments.

10 52. As required by state law, the State of Nevada requires all able-bodied people incarcerated
11 in NDOC to be employed or engaged in vocational training.³

12 53. If an incarcerated person eligible for work assignment under NRS 209.461(1)(B) refuses
13 to work, they may be subject to discipline by NDOC.

14 54. If an incarcerated person at a conservation camp refuses to work, they may be transferred
15 away from the conservation camp.

16 55. Such a transfer will likely result in placement in a higher security facility.

17 56. JCC is the only conservation camp for women in the State of Nevada.

18 57. The only other prison facility specifically for women incarcerated in NDOC is the Florence
19 McClure Women's Correctional Center (FMWCC).

20 58. FMWCC is a higher security facility than JCC.

21 59. People incarcerated at higher security facilities like FMWCC typically have more
22 restrictions on what they are allowed to do, are subject to more rules and regulations, and have a
23 lower quality of life than individuals incarcerated at lower security facilities like JCC.

24 ³ NRS 209.461(1)(b) ("Except as otherwise provided in this section, to the extent practicable, [the
25 Director shall] require each offender, except those whose behavior is found by the Director to
26 preclude participation, to spend 40 hours each week in vocational training or employment, unless
excused for a medical reason or to attend educational classes in accordance with NRS 209.396.").

1 60. Defendant KC, as State Forester and Firewarden, is obligated to establish design and
2 implement the training programs for NDF employees.

3 61. Defendant NDF does not train its employees who supervise incarcerated firefighters on
4 how to identify, treat, or manage fire-related injuries.

5 62. Defendant NDF does not train its employees who supervise incarcerated firefighters on
6 how to identify damaged or worn-out equipment.

7 63. Defendant NDF does not train its employees who manage the inventory of equipment used
8 by incarcerated firefighters on how to identify damaged, worn-out, or expired equipment.

9 64. Defendant NDF either does not have a policy on when expired, worn-out, or damaged
10 equipment will be removed from the inventory used by incarcerated firefighters, or else it does not
11 follow such a policy if one exists.

12 65. Defendant NDF does not train its employees who supervise incarcerated firefighters on the
13 unique challenges related to ensuring incarcerated firefighters' safety, such as training on the
14 coercive nature of incarceration or that incarcerated firefighters are less likely to report injuries,
15 damaged equipment, or negligent supervision than other employees due to fear of retaliation.

16 66. Defendant DZURENDA, as Director of NDOC, is obligated to establish and implement
17 training programs for NDOC employees.

18 67. Defendant NDOC does not train its employees working at conservation camps on how to
19 identify, treat, or manage fire-related injuries.

20 68. Defendant NDOC does not train its employees working at conservation camps on how to
21 identify, treat, or manage damaged or worn-out equipment issued to incarcerated firefighters and
22 stored in NDOC-managed sections of the conservation camps.

23 **B. The State of Nevada's dangerously deficient training and equipment of**
24 **Plaintiffs for firefighting**

25 69. At the time pertinent to this Complaint, each of the Plaintiffs was an incarcerated person
26 assigned to the NDOC and NDF's firefighting program.

1 70. Prior to April 20, 2022, Plaintiffs qualified for assignment to fight wildland fires on behalf
2 of the State of Nevada.

3 71. Prior to April 20, 2022, Plaintiffs were issued boots by NDF to wear when fighting
4 wildland fires.

5 72. Plaintiffs were not informed how old their boots were or how often those boots had been
6 used prior to issuance.

7 73. Prior to April 20, 2022, Plaintiffs had completed the three-day training course offered by
8 the State to incarcerated firefighters.

9 74. The training course taught to Plaintiffs consisted solely of in-class instruction.

10 75. Plaintiffs did not receive in-field training prior to April 20, 2022.

11 76. Plaintiffs did not receive training on identifying injuries related to fighting wildland fires.

12 77. Plaintiffs did not receive training on how to report injuries related to fighting wildland fires.

13 78. Plaintiffs did not receive training on maintaining the boots issued by NDF.

14 79. Plaintiffs did not receive training on identifying whether the boots issued by NDF were
15 damaged, worn out, or were otherwise unfit for use in the field.

16 80. Plaintiffs were not informed of any procedure to report negligent supervision by NDF
17 employees while fighting wildland fires.

18 81. To Plaintiffs' knowledge, there is no system available to them to report negligent
19 supervision by NDF employees in a confidential manner.

20 82. Plaintiffs were not informed of any procedure to report worn-out or damaged equipment to
21 NDF.

22 83. To Plaintiffs knowledge, there is no system available to report worn out or damaged
23 equipment to NDF.

24 84. Prior to April 20, 2022, Plaintiff NEWMAN had once been assigned to "mop up" a forest
25 fire.

1 85. Besides one prior experience with “mopping up” a fire, Plaintiff NEWMAN had no other
2 experience fighting wildland fires.

3 86. Prior to April 20, 2022, Plaintiffs LEAVITT, BRIGGS, ELTZROTH, JACKSON,
4 MARTINEZ, and TAI had no hands-on training or experience fighting wildland fires, including
5 “mopping up” after forest fires.

6 **C. Injuries resulting from April 20, 2021, work detail**

7 87. On the morning of April 20, 2021, twenty incarcerated firefighters were deployed from
8 JCC to a location inside Clark County near Laughlin, Nevada.

9 88. The twenty incarcerated firefighters were divided into two crews of ten firefighters each.

10 89. The first crew was supervised by Defendant SEAN MCGUIRE (“MCGUIRE”).

11 90. Plaintiffs LEAVITT, ELTZROTH, MARTINEZ, NEWMAN, JACKSON, and TAI were
12 on that first crew.

13 91. The second crew was supervised by Defendant TODD FREY (“FREY”).

14 92. Plaintiff BRIGGS was on the second crew.

15 93. FREY and MCGUIRE’s immediate supervisor, Defendant SCOTT BENNER
16 (“BENNER”) was physically present during the incident.

17 94. The teams arrived via bus at their intended destination at approximately 9:00 am.

18 95. The teams were informed by the NDF supervisors that a wildland fire had recently passed
19 through the area.

20 96. The teams were assigned to “mop up” after the fire, i.e. clean up the area to ensure that the
21 remaining burning wood and ground did not re-ignite.

22 97. To prevent re-ignition, the teams were expected to remove any debris that was still burning
23 in the area.

24 98. To prevent re-ignition, the teams would also churn the ground, in particular “hot spots” to
25 ensure all embers died out.

1 99. From when the teams first arrived and throughout the day, the ground continued to smolder
2 with red hot ash.

3 100. To complete their assignment, the firefighters would need to physically stand on
4 the smoldering ground to churn any remaining embers.

5 101. This was the first wildland fire assignment for which Plaintiffs LEAVITT,
6 ELTZROTH, MARTINEZ, TAI, BRIGGS, and JACKSON had used their NDF-issued boots.

7 102. This was the second wildland fire assignment for which Plaintiff NEWMAN had
8 used their NDF-issued boots.

9 **i. The injuries to Plaintiffs supervised by Defendant MCGUIRE**

10 103. The team supervised by MCGUIRE was assigned to a “hot spot” and began
11 working at approximately 9:30 AM.

12 104. The ground the team was assigned to work on was smoldering with red-hot embers.

13 105. By 11:00 AM, multiple firefighters on the crew, including Plaintiffs LEAVITT,
14 ELTZROTH, JACKSON, MARTINEZ, NEWMAN, and TAI, were complaining to MCGUIRE
15 that their feet felt like they were burning.

16 106. BENNER was made aware of these complaints, with firefighters complaining
17 directly to him about their injuries.

18 107. MCGUIRE ignored the complaints, stating that foot pain “happens on fires,” and
19 ordered the firefighters to continue working.

20 108. Similarly, BENNER ignored the complaints made by the firefighters.

21 109. As the complaints continued, MCGUIRE had Plaintiff LEAVITT take off her boots
22 and socks to inspect her feet.

23 110. Though Plaintiff LEAVITT’s feet had not yet blistered, they did appear
24 waterlogged, white, and wrinkled.

25 111. MCGUIRE provided LEAVITT with new socks and ordered her to continue
26 working.

1 112. At no point during the day did MCGUIRE check any other team members' feet for
2 injury.

3 113. After MCGUIRE inspected LEAVITT's feet, the sole of Plaintiff TAI's boot
4 melted off.

5 114. MCGUIRE had TAI tape the sole back onto her boot using duct tape and then
6 ordered her to continue working.

7 115. To avoid burning the bottoms of her feet, Plaintiff JACKSON started walking on
8 the outsides of her feet, resulting in her boots' soles melting in a distinctive fashion along the
9 outside edges.

10 116. MCGUIRE did not provide the team with a break for water or any other purpose
11 prior to lunch at 1:30 PM.

12 117. By this time, Plaintiffs LEAVITT, NEWMAN, MARTINEZ, and ELTZROTH
13 were visibly limping.

14 118. Plaintiff ELTZROTH was openly using a tool provided by NDF as a crutch as she
15 walked around to avoid walking on the bottoms of her feet.

16 119. The firefighters continued to report to MCGUIRE and BENNER that they were in
17 pain. They described the sensation as walking on "water balloons" and they believed their socks
18 had melted to their feet.

19 120. In response to these complaints, MCGUIRE told them to be "thankful for [their]
20 feet" and started telling stories about other firefighters developing blisters from similar work.

21 121. MCGUIRE also accused the firefighters of "wetting their boots" with a hose he was
22 using to spray the hot spot during the mop up even though he maintained control of the hose
23 throughout the incident.

24 122. By the afternoon, Plaintiff ELTZROTH was visibly upset and crying due to the
25 pain she was suffering.

1 123. In response, MCGUIRE told ELTZROTH, “You can keep crying as long as you
2 keep working.”

3 124. MCGUIRE also told ELTZROTH that she was a “card flip” away from not being
4 his “problem” anymore.

5 125. ELTZROTH and other members of the team understood that to mean that if
6 ELTZROTH continued to complain, she would be removed from the wildland firefighting program
7 and transferred from the minimum security JCC to the higher security FMWCC.

8 126. By the end of the day, Plaintiffs ELTZROTH and MARTINEZ were so injured that
9 they could not transport their own equipment back to the transport bus.

10 127. Due to this limitation, MCGUIRE carried ELTZROTH’s backpack while Plaintiff
11 JACKSON carried MARTINEZ’s backpack.

12 128. Plaintiffs NEWMAN, ELTZROTH, and MARTINEZ were unable to keep up with
13 the rest of the team walking back to the transport bus.

14 129. Instead of determining who on the crew was injured and the severity of those
15 injuries, MCGUIRE and BENNER told the three to hurry up so that the teams could get back to
16 JCC on time.

17 **ii. The injuries to Plaintiff supervised by Defendant Todd FREY**

18 130. The team supervised by Todd FREY was assigned to a “hot spot” and began
19 working at approximately 9:30 AM.

20 131. When her team began working, Plaintiff BRIGGS observed FREY spray the area
21 with water from a hose, and the ground immediately became boiling mud.

22 132. Many members of the team, including Plaintiffs BRIGGS, felt as if their feet were
23 burning and reported the sensation to FREY by 11:00 AM.

24 133. BRIGGS reported to FREY that she felt like her toes had melted to her socks.

25 134. Unlike MCGUIRE, FREY allowed his team to step out of the spot to cool off from
26 time to time.

1 135. Unlike MCGUIRE, FREY also provided his team with breaks outside of the
2 scheduled the lunch break to cool off.

3 136. FREY warned his team to “stay away from MCGUIRE” because MCGUIRE was
4 “on a sick one.”

5 137. Even with these precautions, FREY’s team, including Plaintiffs BRIGGS,
6 continued to feel a burning sensation in their feet.

7 138. At approximately 3:00 PM, BENNER approached Plaintiff BRIGGS to ask if she
8 was all right.

9 139. Plaintiff BRIGGS informed BENNER her feet were burning.

10 140. BENNER simply stated “okay” in response.

11 141. Neither FREY, BENNER, nor any other NDF employee inspected BRIGGS for
12 injury at any point.

13 **iii. Return to Jean Conservation Camp**

14 142. Work halted for all incarcerated firefighters at 6:30 PM.

15 143. No Plaintiffs had been allowed to stop working prior to 6:30 PM.

16 144. After boarding the bus to take them back to JCC, many of the incarcerated
17 firefighters removed their boots and socks, or at least attempted to do so.

18 145. Plaintiff MARTINEZ found that she could not remove her socks as they had melded
19 to her feet.

20 146. Plaintiff BRIGGS did not take off her boots because she was afraid that she would
21 not be able to get them back on upon returning to camp.

22 147. It took Plaintiff NEWMAN 20 minutes to remove their boots on the ride back to
23 JCC.

24 148. Plaintiff NEWMAN decided not to take their socks off on the bus once they
25 realized that they had significant burns across the bottoms of their feet.

26 149. When Plaintiff JACKSON removed her socks, she found that she had heat blisters.
27

1 150. Plaintiff JACKSON also noticed that her boots had melted and re-formed to the
2 shape of the sides of her feet.

3 151. When Plaintiff ELTZROTH attempted to take one of her socks off, it felt as if the
4 skin on the bottom of her feet was separating from the bone.

5 152. When the bus arrived at JCC, ELTZROTH was unable to leave the bus on her
6 own and needed the assistance of two other firefighters, Amber Foster and Jen McDonald, to get
7 back to her dormitory.

8 153. Likewise, MARTINEZ also needed the assistance of other firefighters to get off
9 the transport bus, with firefighters Harger and JACKSON carrying her to the dormitory after
10 MARTINEZ crawled off the bus.

11 154. No NDF employees, including MCGUIRE, FREY, and BENNER, provided
12 medical attention to Plaintiffs before returning Plaintiffs to NDOC custody.

13 155. Though Defendant NDOC DOE employees searched all of the firefighters before
14 letting anyone return to their dormitories, none of the Plaintiffs were provided medical attention
15 by NDOC staff on April 20, 2021.

16 156. Once back at the dormitory, ELTZROTH was only able to get her socks off once
17 other women living in the dormitory cut away most of her socks with scissors and then brought
18 her a bucket of water to soak her feet before peeling away the remaining pieces.

19 157. When Plaintiff BRIGGS had the opportunity to inspect her feet, she found that she
20 had an inch long blister on her left foot and burns on both feet.

21 158. Plaintiff MARTINEZ was only able to shower with other women setting up a chair
22 in the shower and carrying her to it.

23 159. Like MARTINEZ, Plaintiff NEWMAN was only able to get to into the showers by
24 her bunkmate pushing her in a chair as the pain in NEWMAN's feet made it too difficult for her
25 to stand.

1 160. Once in the shower, NEWMAN had the opportunity to inspect their feet and found
2 that they had blisters two inches deep covering the bottoms of their feet.

3 161. When NEWMAN attempted to use the bathroom that night at 3:40 AM, they
4 were forced to crawl on their hands-and-knees to reach the toilet.

5 **D. Plaintiffs' hospitalization and other consequences**

6 162. The next morning, April 21, 2021, Plaintiffs ELTZROTH and MARTINEZ could
7 not walk because of the condition of their feet.

8 163. Another incarcerated firefighter sent a "kite", which is a type of message used
9 within NDOC facilities, to the JCC nurse to let the infirmary know the severity of ELTZROTH's
10 and MARTINEZ's injuries.

11 164. NDOC staff transported first ELTZROTH and then MARTINEZ to the JCC
12 infirmary via wheelchair.

13 165. Upon inspection of their feet, the JCC nurse immediately determined that
14 ELTZROTH and MARTINEZ both had second degree burns and extensive blisters covering the
15 soles of their feet.

16 166. Upon making that determination, the JCC nurse contacted FMWCC and Lieutenant
17 Karisa Carrier of the JCC NDOC administration, notifying them that ELTZROTH and
18 MARTINEZ were seriously injured.

19 167. Carrier inspected ELTZROTH's and MARTINEZ's feet, and then inspected the
20 feet of the other women who had been on the work crews the day before.

21 168. Based upon her inspection of their feet, Carrier sent NEWMAN and LEAVITT to
22 the infirmary.

23 169. NDOC staff determined that NEWMAN and LEAVITT both had second degree
24 burns and extensive blisters covering their feet.

25 170. That evening, NDOC transported ELTZROTH, LEAVITT, NEWMAN, and
26 MARTINEZ to the larger prison infirmary at FMWCC.

27

1 171. Despite being designated as minimum custody, the Plaintiffs were shackled during
2 their transport back to FMWCC, and had to crawl on to the transport bus due to their injuries.

3 172. NDOC staff did not assist the Plaintiffs in getting onto the van.

4 173. On April 22, 2021, Plaintiffs LEAVITT, NEWMAN, MARTINEZ, and
5 ELTZROTH were sent to the University Medical Center (“UMC”) burn unit for treatment of their
6 injuries.

7 174. Again, LEAVITT, NEWMAN, MARTINEZ, and ELTZROTH were forced to
8 crawl onto the transport van without assistance.

9 175. At the burn unit, Plaintiffs LEAVITT, NEWMAN, MARTINEZ, and ELTZROTH
10 were each placed on a bed that were lined up side-by-side to each other.

11 176. Once seated, each Plaintiff’s feet were debrided one at a time, which meant that
12 hospital staff cut away all the dead skin and tissue from burns on the bottoms of Plaintiffs’ feet.

13 177. This procedure was incredibly painful.

14 178. The procedure was performed without any medication to numb the area or reduce
15 the pain.

16 179. Plaintiffs were informed that they were not given any medication to reduce the pain
17 because they are incarcerated people, and Defendant NDOC does not allow for incarcerated people
18 to receive such medication.

19 180. As such, Plaintiffs LEAVITT, NEWMAN, MARTINEZ, and ELTZROTH were
20 forced to watch each other undergo debridement in incredible pain, knowing the same was about
21 to happen to them.

22 181. After the procedure, Plaintiffs LEAVITT, NEWMAN, MARTINEZ, and
23 ELTZROTH were transported back to FMWCC and hospitalized in the infirmary at that facility.

24 182. On April 25, 2021, Plaintiffs JACKSON, TAI, and BRIGGS, along with two other
25 women, R. McCorley and L. Cook, were transported from JCC to the FMWCC infirmary due to
26 injuries suffered on April 20, 2021.

1 183. According to NDOC's own documentation, Plaintiff BRIGGS had fluid-filled
2 blisters on her feet from the fire.

3 184. According to NDOC's own documentation, Plaintiff BRIGGS had not reported her
4 injuries out of fear of being transferred from JCC to the higher security FMWCC.

5 185. According to NDOC's own documentation, Plaintiff JACKSON had second-degree
6 burns on her feet and toes, as well as fluid-filled blisters from the fire.

7 186. According to NDOC's own documentation, Plaintiff TAI had red burns and fluid-
8 filled blisters on her feet from the fire.

9 187. All Plaintiffs were held in the FWMCC infirmary until April 30, 2021.

10 188. Upon completing quarantine, they were transferred back to JCC.

11 189. Once they were returned to JCC, the Plaintiffs were again issued work boots by
12 JCC.

13 190. Defendant NDF issued to Plaintiff JACKSON the same boots that she wore during
14 the April 20, 2021, the incident, which JACKSON was able to identify by the melt pattern in the
15 soles of the boots and how the boots had melted to conform with the shape of her feet.

16 191. When Plaintiff JACKSON immediately informed NDF employees that they had
17 provided her the same boots from the incident, NDF employees took the boots from her and issued
18 a different pair.

19 192. Plaintiff JACKSON was provided no explanation as to why NDF attempted to issue
20 her the same boots again as the boots were clearly damaged.

21 193. Since the incident, all Plaintiffs have experienced intense anxiety, fear, and stress,
22 in particular fearing further injury if and when returned to the field for further work under NDF
23 supervision.

24 **E. State's own findings regarding April 20, 2021, incident**

25 194. The State's Inspector General Office conducted its own investigation into the
26 April 20, 2021, incident.

1 195. The State’s own report confirmed that incarcerated firefighters “sustained Second
2 Degree Burns on their feet from working on the NDF crew during the incident.

3 196. The State’s own report confirmed that only one of the incarcerated firefighters
4 “had participated in a similar activity of ‘mopping a fire’ in the past but for the rest of the crew it
5 was their first time.”

6 197. The State’s own report confirmed that the incarcerated firefighters had only been
7 “academically trained on how to ‘mop’ a fire but never involved or trained in the practical
8 application of doing such.”

9 198. After an inspection of the Plaintiff’s boots, the State’s investigation found that “they
10 [were] in absolute horrible condition, and the oldest boots [were] from 2013 and the newest [was]
11 2018.”

12 199. The investigator also confirmed “the boots should only be used a few times with
13 regard to fires and cycled out with new boots.”

14 200. The report observed that “adequate boots, better training by NDF to recognize
15 symptoms of such injuries and take action as well as inmates having sufficient practical training is key
16 to avoiding injury and to prevent[ing] future occurrences.”

17 **IV. Claims**

18 201. Plaintiffs incorporate paragraphs 1 through 200 into all claims for relief.

19
20 **First Cause of Action**
21 **(All Defendants)**
22 **Cruel and Unusual Punishment in violation of the Eighth Amendment and 42**
23 **U.S.C. § 1983.**

24 202. The actions of Defendants, NDOC and NDF, through the action, or inaction, of
25 their employees, violated Plaintiffs’ civil rights under 42 U.S.C. § 1983 and their right to be free
26 from cruel and unusual punishment under the Eighth Amendment of the United States
27 Constitution.

1 203. “Every person who, under color of any statute, ordinance, regulation, custom, or
2 usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other
3 person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities
4 secured by the Constitution and laws, shall be liable to the party injured....”⁴

5 204. “When a prison official acts with ‘deliberate indifference’ to the inmate’s health or
6 safety,” the failure to protect an incarcerated person constitutes an Eighth Amendment violation.⁵

7 205. Specifically, in the work context, a prisoner can raise an Eighth Amendment claim
8 when a prison official or state law compels the prisoner to “perform physical labor which [was]
9 beyond [his] strength, endanger[ed his life] or health, or cause[d] undue pain.”⁶

10 206. Here, all Defendants were deliberately indifferent to the Plaintiffs’ health or safety
11 while the Plaintiffs performed physical labor endangered their health and caused undue pain and
12 suffering.

13 207. Here, each of the Plaintiffs sustained objective and serious personal injuries through
14 work performed as part of the State of Nevada’s wildland firefighter program.

15 208. Defendants’ actions and omissions created a substantial risk of serious injury to the
16 Plaintiffs.

17 209. Defendants NDF, NDOC, NDF Employees ROE, and NDF’s State Forester and
18 Firewarden failed to properly train the Plaintiffs for the work they were performing prior to
19 deployment on April 20, 2021.

20 210. Defendants NDF, NDOC, NDF Employees ROE, and NDF’s State Firewarden
21 failed to properly train the Plaintiffs for the work they were performing prior to deployment on
22 April 20, 2021.

24 ⁴ 42 U.S.C. § 1983.

25 ⁵ *Butler v. Bayer*, 123 Nev. 450, 459, 168 P.3d 1055, 1062 (2007).

26 ⁶ *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006).

1 211. Defendants NDF, NDOC, NDF Employees ROE, and NDF's State Firewarden
2 failed to properly train the Plaintiffs to identify and report injuries related to wildland firefighting.

3 212. Defendants NDF, NDOC, NDF Employees ROE, and NDF's State Firewarden
4 failed to properly train the Plaintiffs to identify and report damaged or worn-out equipment

5 213. Defendants NDF, NDOC, NDF Employees ROE, and NDF's State Firewarden
6 failed to provide adequate safety equipment to the Plaintiffs prior to sending them out to the "mop
7 up".

8 214. Defendant NDF and NDF ROE Employees provided damaged and worn-out
9 equipment to Plaintiffs for use in the field under circumstances that indicated that the equipment
10 had met acceptable safety standards for that equipment.

11 215. Defendant State of Nevada's own investigator confirmed that the boots provided to
12 Plaintiffs were too old for use in the field and were damaged.

13 216. That Plaintiff JACKSON's damaged boots were re-issued to her following her
14 return to JCC confirms that Defendants do not inspect the equipment issued to incarcerated
15 firefighters prior to expecting those firefighters to rely on that equipment in the field.

16 217. Defendant NDF failed to provide adequate supervision for the Plaintiffs in the field.

17 218. Defendant NDF failed to adequately train Defendants MCGUIRE, FREY, and
18 BENNER on identifying, managing, and treating fire-related injuries to incarcerated firefighters
19 under their supervision.

20 219. Defendant NDF failed to adequately train Defendants MCGUIRE, FREY, and
21 BENNER on how managing incarcerated firefighters differs from managing other firefighters in
22 the field, and in particular to refrain from threatening to have firefighters transferred to higher
23 security facilities in response to work-related complaints.

24 220. Defendant NDF failed to adequately train Defendants MCGUIRE, FREY, and
25 BENNER on how to identify damaged or worn-out equipment or what to do if equipment failed
26 to meet adequate safety standards in the field.

1 221. On-scene supervision by NDF employees MCGUIRE, FREY, and BENNER was
2 deliberately indifferent to the progressively and obviously worsening physical condition of the
3 Plaintiffs.

4 222. NDF employees MCGUIRE, FREY, and BENNER failed to identify or ignored
5 basic signs of heat-related injury.

6 223. Defendant MCGUIRE in fact threatened Plaintiffs when they reported their
7 injuries.

8 224. Besides checking Plaintiff LEAVITT's feet at one point before noon, on-scene
9 supervisors from NDF made no effort to evaluate the medical condition of the Plaintiffs despite
10 multiple complaints of injury.

11 225. Defendant NDOC DOE employees failed to seek medical assistance for Plaintiffs
12 until April 21, 2021, despite multiple signs that Plaintiffs were in distress upon return to JCC,
13 including, but not limited, statements that they were in pain, crying, crawling, and only walking
14 with the assistance of other incarcerated women.

15 226. Defendant NDOC failed to train its employees stationed at conservation camps,
16 including NDOC DOE employees, on identifying and reporting fire-related injuries to incarcerated
17 firefighters.

18 227. Due to Defendants' deliberate indifference, multiple Plaintiffs suffered second-
19 burns, which, for four of the seven Plaintiffs, was so severe that transportation to a third-party
20 hospital for burn treatment and, for all Plaintiffs, necessitated treatment in the FMWCC's infirmary
21 for up to 10 days.

22 228. Due to Defendants' deliberate indifference, Plaintiffs' medical treatment was
23 inexcusably delayed for over 24 hours.

24 229. As a direct result of Defendants' deliberate indifference, Plaintiffs suffered second
25 degree burns to the bottoms of their feet, severe pain and suffering, mental and emotional distress,
26 and fear of retribution for reporting the injuries.

1 230. Therefore, Defendants acted with deliberate indifference to a substantial risk of
2 harm to Plaintiffs in violation of the Eighth Amendment of the United States Constitution,
3 incurring liability under 42 U.S.C. §1983.

4 **Second Cause of Action**
5 **(All Defendants)**
6 **Cruel and Unusual Punishment in violation of Article 1, Section 6**
7 **of the Nevada State Constitution**

8 231. Article 1, Section 6, of the Constitution of the State of Nevada bars the State from
9 inflicting “cruel and unusual punishment”.

10 232. This ban provides the same protections as the ban imposed by the Eighth
11 Amendment of the United States Constitution.⁷

12 233. In addition to paragraphs 1 to 200, Plaintiffs incorporate paragraphs through 204 to
13 229 into this Cause of Action.

14 234. Defendants acted with deliberate indifference to a substantial risk of harm to the
15 Plaintiffs in violation of Article 1, Section 6 of the Nevada Constitution, incurring liability
16 pursuant to *Mack v. Williams*, 138 Nev. Adv. Rep. 86, 522 P.3d 434 (2022).

17 **Third Cause of Action**
18 **(Defendants NDF, NDOC, NDF ROE Employees, MCGUIRE, FREY, and BENNER)**
19 **Negligence**

20 235. Defendants are liable for negligence when (1) the defendant owed the plaintiff a
21 duty of care, (2) the defendant breached that duty, (3) breach of the duty caused harm to the
22 plaintiff that was reasonably foreseeable, and (4) [the defendant’s actions resulted in] damages.⁸

23 236. “State officials have a duty to exercise ordinary care in performing their
24 duties...Therefore, at a minimum [prison officials] had a duty to exercise reasonable care to avoid
25 foreseeable harm to [incarcerated people].” *Id.*

26 ⁷ See *McConnell v. State*, 120 Nev. 1043, 1063 (2004) (determining that the ban on “cruel and
unusual punishment” under the Eighth Amendment was the same under the Nevada constitution).

27 ⁸ See *Butler*, 123 Nev. at 464, 168 P.3d at 1065.

1 237. Defendants NDF and NDOC breached that duty by failing to provide proper
2 training to Plaintiffs prior to deployment on April 20, 2021, in executing “mop ups”, identifying
3 fire-related injuries, and reporting injuries to supervisors.

4 238. Defendant NDF breached its duty to provide adequate safety equipment to Plaintiffs
5 for deployment on April 20, 2021.

6 239. Defendant NDF breached its duty to train Plaintiffs on how to (1) maintain the boots
7 provided to Plaintiffs prior to deployment on April 20, 2021, or (2) identify whether the boots that
8 were issued to Plaintiffs were too damaged or worn-out to be safely used in the field.

9 240. Defendant NDF breached its duty provide adequate supervision during Plaintiffs’
10 April 20, 2021, deployment, including failing to train Defendants MCGUIRE, FREY, and
11 BENNER on how to identify fire-related injuries, treat fire-related injuries, or the differences in
12 managing incarcerated firefighters compared to other people employed by NDF.

13 241. That Plaintiffs were injured on April 20, 2021, was foreseeable and should have
14 been expected by Defendant NDF considering the clear lack of adequate training, safety
15 equipment, and appropriate supervision provided to Plaintiffs when the Plaintiffs were going to
16 engage in work that necessarily involved risk of injury.

17 242. Defendant NDF further breached that duty, pursuant to the principle of respondeat
18 superior, through the conduct of the on-scene supervisors who failed to, among other things:
19 1) acknowledge the dangerous and defective status of the equipment; 2) provide equipment that
20 met safety standards; 3) acknowledge the progressively declining physical condition of the
21 firefighters; and 4) once made aware of the deteriorating physical condition and various arising
22 medical issues, remove the affected Firefighters from duty.

23 243. MCGUIRE was aware that the Plaintiffs under his supervision were injured because
24 the Plaintiffs and other members of his team were reporting pain and other signs of injury.

1 244. MCGUIRE was also aware that the Plaintiffs under his supervision were injured
2 because the Plaintiffs and other members were showing non-verbal signs of injury, including
3 limping and other expressions of pain.

4 245. MCGUIRE was aware that the Plaintiffs' equipment was defective because
5 Plaintiff TAI's boot sole literally melted off.

6 246. MCGUIRE responded to Plaintiffs' requests for assistance and other signs of injury
7 by either minimizing their reports, mocking their pain, or threatening to have them transferred to
8 higher security facilities.

9 247. MCGUIRE required that the Plaintiffs continue working the hot spots that caused
10 Plaintiffs' injuries.

11 248. MCGUIRE only once checked to see if one the Plaintiffs, specifically Plaintiff
12 LEAVITT, was injured, and only performed this inspection in the morning of April 20, 2021.

13 249. While not as flippant as MCGUIRE, FREY likewise was aware that Plaintiff
14 BRIGGS under his supervision was injured because BRIGGS and other members of FREY's team
15 were reporting pain and other signs of injury.

16 250. FREY likewise was also aware that the Plaintiffs under his supervision were injured
17 because the Plaintiffs and other members were showing non-verbal signs of injury, including
18 limping and other expressions of pain.

19 251. While he did not insult the members of his team, FREY took inadequate steps to
20 prevent further injury to his team, including Plaintiff BRIGGS, after becoming aware of their
21 injuries.

22 252. Furthermore, after recognizing that MCGUIRE was abusing the firefighters under
23 his supervision, FREY had a duty to correct MCGUIRE's actions.

24 253. FREY was negligent in his duties by failing to do so.
25
26
27

1 254. BENNER was aware that the Plaintiffs under MCGUIRE's and FREY's
2 supervision were injured because the Plaintiffs and other incarcerated firefighters were reporting
3 pain and other signs of injury directly to him.

4 255. BENNER was also aware that the Plaintiffs under his supervision were injured
5 because the Plaintiffs and other members were showing non-verbal signs of injury, including
6 limping and other expressions of pain under circumstances where he was present.

7 256. BENNER was also aware that the Plaintiffs' equipment was defective because he
8 knew that Plaintiff TAI's boot sole literally melted off.

9 257. BENNER was aware that Plaintiff BRIGGS was injured as he specifically asked
10 her if she was "okay" yet did nothing after she stated she was not.

11 258. BENNER was aware of MCGUIRE's treatment of the incarcerated firefighters
12 under his supervision.

13 259. BENNER was negligent in his duties to correct MCGUIRE's actions.

14 260. BENNER was negligent in failing to provide medical attention to the injured
15 Plaintiffs.

16 261. BENNER was negligent in failing to take action to prevent further injury to the
17 incarcerated firefighters.

18 262. BENNER is also liable pursuant to the principle of respondeat superior for
19 MCGUIRE's actions.

20 263. Defendant NDF, as the employer of MCGUIRE, FREY, and BENNER, is liable
21 pursuant to the principle of respondent superior for their actions, including any actions or
22 omissions by MCGUIRE, FREY, or BENNER, after any of those Defendants were notified that
23 Plaintiffs were injured or the equipment issued by NDF was defective.

24 264. Because Plaintiffs were incarcerated people, they had no choice but continue
25 working under conditions that any other employee would have ceased working immediately out
26

1 of fear of consequences outside the scope of their employment, i.e. transfer to a higher security
2 prison.

3 265. After Plaintiffs' initial contact with the visibly smoldering ground, first reports of
4 burning prior to 11:30 AM, and visible equipment failures, Defendants MCGUIRE, FREY, and
5 BENNER expected or should have expected that Plaintiffs would be seriously injured if they
6 continued working.

7 266. After initial contact with the smoldering ground, Plaintiffs injuries occurred due to
8 prolonged exposure from 9:30 AM to 6:30 PM to extreme heat while working with inadequate
9 equipment provided by Defendant NDF.

10 267. As a result of the direct negligence of Defendants, Plaintiffs suffered second degree
11 burns to the bottoms of their feet, severe pain and suffering, mental and emotional distress, and
12 fear of retribution for reporting the injuries.

13 **Fourth Cause of Action**
(Defendants NDF, MCGUIRE, FREY, and BENNER)
14 **Intentional Infliction of Emotional Distress**

15 257. Defendants are liable for intentional infliction of emotion distress when (1)
16 defendant engages in extreme and outrageous conduct with either the intention of, or reckless
17 disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or extreme
18 emotional distress and (3) actual or proximate causation.

19 258. Defendant MCGUIRE was informed by his team of incarcerated firefighters,
20 including Plaintiffs LEAVITT, ELTZROTH, JACKSON, NEWMAN, and TAI, that the
21 firefighters' feet were being burned within two hours upon arriving on site.

22 259. In response, Defendant MCGUIRE ordered the firefighters to continue working in
23 the same location without determining the cause of the burning.

24 260. When Plaintiffs showed visible signs of injury, including limping and using work
25 tools as crutches, Defendant MCGUIRE ordered them to continue working.

1 261. When Plaintiff ELTZROTH showed clear signs of emotional distress, literally
2 crying in front of Defendant MCGUIRE, Defendant MCGUIRE responded by stating that she
3 could “keep crying as long as [she] kept working.”

4 262. In response to complaints, Defendant MCGUIRE explicitly referred to Plaintiff
5 ELTZROTH’s status as an incarcerated person, suggesting that she would be transferred from JCC
6 to FMWCC if she did not stop her complaints.

7 263. Defendant MCGUIRE ordered Plaintiff TAI to continue working despite clear
8 evidence that her equipment, specifically her boots, was damaged and would not provide adequate
9 protection from the heat.

10 264. Even though Defendant MCGUIRE could clearly see that the ground was
11 smoldering, the ground was burning Plaintiffs, knew that Plaintiff’s equipment was failing, and
12 was aware of Plaintiffs’ vulnerability as incarcerated people, he ordered Plaintiffs to continue
13 working in the same location that was harming them until work ceased at 6:30 PM.

14 265. Defendant MCGUIRE’s conduct was extreme and outrageous conduct with either
15 the intention of, or reckless disregard for, causing emotional distress.

16 266. Defendant MCGUIRE’s actions caused severe emotional distress to Plaintiffs
17 LEAVITT, ELTZROTH, JACKSON, NEWMAN, and TAI.

18 267. Like Defendant MCGUIRE, Defendant FREY was aware that ground was
19 smoldering and burning the feet of his team of incarcerated firefighters, including Plaintiff
20 BRIGGS, within two hours of arriving on scene.

21 268. Though less callous than Defendant MCGUIRE, Defendant FREY still ordered his
22 team, including Plaintiff BRIGGS, to continue working until 6:30 PM though he was aware that
23 the firefighters were being burned by the ground that they were working on.

24 269. Defendant FREY’s conduct was extreme and outrageous conduct with either the
25 intention of, or reckless disregard for, causing emotional distress.

26 270. Defendant FREY’s actions caused severe emotional distress to Plaintiff BRIGGS.
27

1 271. Like Defendant MCGUIRE and FREY, Defendant BENNER was aware that
2 ground was smoldering and burning the feet of all incarcerated firefighters, including Plaintiffs,
3 within two hours of arriving on scene.

4 272. Defendant BENNER was aware that multiple Plaintiffs were showing physical
5 signs of injury, including limping and using work tools as crutches.

6 273. Defendant BENNER even approached Plaintiff BRIGGS to ask her if she was
7 “okay” to which she replied that she was not.

8 274. Though less callous than Defendant MCGUIRE, Defendant BENNER still ordered
9 both teams, including Plaintiffs, to continue working on until 6:30 PM though he was aware that
10 the firefighters were being burned by the ground that they were working.

11 275. Defendant BENNER’s conduct was extreme and outrageous conduct with either
12 the intention of, or reckless disregard for, causing emotional distress.

13 276. Defendant BENNER’s actions caused severe emotional distress to all Plaintiffs.

14 277. Defendant NDF, as the employer of MCGUIRE, FREY, and BENNER, is liable for
15 their conduct pursuant to the principle of respondeat superior.

16 **V. Requested Relief**

17 **A. Injunctive Relief**

18 278. Injunctive relief is a historical equitable remedy that has been codified in Nevada
19 law at NRS 33.010.

20 279. NRS 33.010 states that an injunction may be granted:

- 21 1. When it shall appear by the complaint that the
22 plaintiff is entitled to the relief demanded, and such
23 relief or any part thereof consists in restraining the
24 commission or continuance of the act complained of,
25 either for a limited period or perpetually.
- 26 2. When it shall appear by the complaint or
27 affidavit that the commission or continuance of some

1 act, during the litigation, would produce great or
2 irreparable injury to the plaintiff.

3 3. When it shall appear, during the litigation, that
4 the defendant is doing or threatens, or is about to do,
5 or is procuring or suffering to be done, some act in
6 violation of the plaintiff's rights respecting the subject
7 of the action, and tending to render the judgment
8 ineffectual.

9 280. As stated above, the Firefighters are entitled to relief preventing employees, staff,
10 contractors, or agents of NDOC and NDF, along with those acting in concert with them, from
11 carrying out and implementing unlawful policies, practices, and acts that create a substantial risk
12 of harm, including physical injury, to firefighters and other incarcerated people involved in the
13 wildland firefighting program.

14 281. Plaintiffs seek injunctive relief, requiring NDOC and NDF to develop and
15 implement policies, procedures, and practices to ensure that incarcerated people are protected from
16 harm due to inadequate training and negligent supervision, including but not limited to:

- 17 • Practical field training prior to deployment where fire-related and heat-related injuries
18 may occur;
- 19 • Training for incarcerated firefighters on identifying and reporting fire-related injuries;
- 20 • Training for incarcerated firefighters on identifying and reporting damaged and worn-out
21 equipment;
- 22 • Providing adequate safety equipment to incarcerated firefighters without charge to the
23 firefighters;
- 24 • Processes to ensure that equipment that is worn-out or damaged will be removed from
25 NDF's inventory to prevent the distribution of such equipment to incarcerated firefighters;
- 26 • Processes that enable incarcerated people who are working as required by Nevada law to
27 report confidentially and without retaliation, damaged or worn-out equipment, injuries,

1 and negligent supervision when equipment provided by, supervision is performed by, or
2 injuries are caused by employment entities other than NDOC;

- 3 • That employees of the State of Nevada whose negligence and/or intentional conduct
4 results in injury to the incarcerated people required to work while incarcerated by Nevada
5 law in the course of that incarcerated person's employment are disciplined.
- 6 • Proper training for all State of Nevada employees, including by not limited to employees
7 working for NDF and NDOC, who work with incarcerated firefighters to identify and
8 report injuries related to wildland firefighting.
- 9 • Proper training for all employers supervising incarcerated laborers to ensure that
10 supervisors understand that incarcerated laborers are particularly vulnerable to coercive
11 conduct by supervisors.

12 **B. Declaratory Relief**

13 282. Under the Nevada Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, this
14 Court has the power to declare the rights, status and other legal relations of the parties whether or
15 not further relief is or could be claimed, and a declaration may be either affirmative or negative in
16 form and effect, and such declarations have the force and effect of a final judgment or decree.⁹

17 283. This matter satisfies the four elements that must be met for declaratory relief to be
18 granted, as described below.¹⁰

19 284. The facts stated hereinabove reveal a justiciable controversy in which a claim of
20 right is asserted against one who has an interest in contesting it.

21 285. The controversy is between persons whose interests are adverse.

22 286. Plaintiffs have a legally protectable interest in the controversy.

23 287. The issue involved in the controversy is ripe for determination as Plaintiffs' harm
24 resulted from policies, practices, acts, and omissions of NDOC and NDF and its employees, staff,

25 ⁹ See NRS 30.030.

26 ¹⁰ *Kress v. Corey*, 65 Nev. 1, 25–26, 189 P.2d 352, 364 (1948).

1 contractors, or agents.

2 288. Plaintiffs seek a declaratory judgment that the policies, practices, acts and
3 omissions complained of herein violated Plaintiffs' rights.

4 **C. Totality of Relief Requested**

5 WHEREFORE, Plaintiffs demand a jury trial and the request the following relief from this Court:

- 6 a. Non-economic damages in the sum in excess of \$700,000, or an amount to be determined
7 at the time of trial;
- 8 b. Punitive damages in an amount sufficient to punish Defendants and deter others from like
9 behavior;
- 10 c. All equitable injunctive relief that arises from or is implied by the facts, whether or not
11 specifically requested, including an injunction preventing employees, staff, contractors, or
12 agents of NDOC, along with those acting in concert with them, from carrying out and
13 implementing unlawful policies, practices, and acts that create a substantial risk of harm
14 to inmates.
- 15 d. Declaration of rights as set forth above;
- 16 e. Reasonable attorney's fees and costs incurred in this action; and
- 17 f. Such other and further relief as the court deems just and equitable.
- 18
19
20
21
22
23
24
25
26
27

1 Dated this 22nd day of March, 2023.

This document does **not** contain the Social Security number of any person.

2
3 /s/ Christopher Peterson

CHRISTOPHER M. PETERSON, ESQ.

Nevada Bar No. 13932

SOPHIA A. ROMERO, ESQ.

Nevada Bar No. 12446

JACOB SMITH

Nevada Bar No. 16324

ACLU OF NEVADA

4263 W. Cheyenne Ave.

North Las Vegas, NV 80932

Telephone: (702) 366-1902

Facsimile: (702) 366-1331

Email: peterson@aclunv.org

4
5
6
7
8
9
10
11 /s/ Mary Bacon

MARY E. BACON, ESQ.

Nevada Bar No. 12686

SPENCER FANE, LLP

300 S. Fourth St., Suite 950

Las Vegas, Nevada 89101

Telephone: (702) 408-3411

Facsimile: (702) 938-8648

Email: mbacon@spencerfane.com

Attorneys for Plaintiffs