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12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 * * *

15 HENRY A., by his next friend M.J.; CHARLES
and CHARLOTTE B., by their next friend R.D.;
16 LEO C.; VICTOR C.; MAIZY and
JONATHAN D. by their next friend S.W.;
17 LINDA E.; CHRISTINE F., and OLIVIA G. by
their next friend E.F., and MASON I., by his
18 next friend M.J., individually and on behalf of
others so situated,

19 Plaintiffs,

20 vs.

21 MICHAEL WILLDEN, Director of the Nevada
22 Department of Health and Human Services;
AMBER HOWELL, Administrator of Nevada
23 Division of Child and Family Services;
VIRGINIA VALENTINE, former Clark County
24 Manager; DON BURNETTE, Clark County
Manager; CLARK COUNTY; TOM
25 MORTON, former Director of Clark County
Department of Family Services; LISA RUIZ-
26 LEE, Director of Clark County Department of
Family Services; SYLVIA CLARK, Senior
27 Family Services Specialist; YVETTE
CHEVALIER, Caregiver Services Manager;
28 TERESA CRAGON, Case Manager; DARREL

CASE NO. 2:10-CV-00528-RCJ-PAL

**DEBBIE MALLWITZ'S FIRST
AMENDED THIRD-PARTY
COMPLAINT AGAINST DEBORAH
HILL AND JOSEPH HILL**

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1 FORD, Licensing Investigator; DEBBIE
2 MALLWITZ, Family Services Specialist II;
3 PATRICIA MARTIN, Family Services
4 Specialist; THOR MARTINEZ, Family
5 Services Specialist I; PHILOMENA
6 OSEMWENGIE, Senior Family Services
7 Specialist; STACEY SCOTT, Family Services
8 Specialist I; SONYA WEATHERS, Family
9 Services Specialist II; and DOES XI-XX,

Defendants.

DEBBIE MALLWITZ, Family Services
Specialist II,

Third-Party Plaintiffs,

vs.

DEBORAH HILL, an individual and JOSEPH
HILL, an individual,

Third-Party Defendants.

**DEBBIE MALLWITZ’S FIRST AMENDED THIRD-PARTY COMPLAINT AGAINST
DEBORAH HILL AND JOSEPH HILL**

COME NOW, Defendant/Third-Party Plaintiff, DEBBIE MALLWITZ (“Mallwitz”) appearing by and through her counsel of record, Alan J. Lefebvre, Esq. and Jonathan D. Blum, Esq. of Kolesar & Leatham, for causes of action against Third-Party Defendants, Deborah Hill and Joseph Hill, hereby amends her Third-Party Complaint (Document No. 255), on file herein and alleges as follows:

PARTIES

1. DEBBIE MALLWITZ (hereinafter the “Mallwitz” or “Third Party Plaintiff”) was previously employed with the Clark County Department of Family Services (“DFS”).
2. DEBORAH HILL (hereinafter “D. Hill”) is the former foster parent of Plaintiffs Charles and Charlotte B.
3. Upon information and belief, D. Hill is an individual now residing in the state of New York but was residing in Las Vegas during the relevant time frame.
4. JOSEPH HILL (hereinafter “J. Hill”) is the son of former foster parent of

1 Plaintiffs Charles and Charlotte B.

2 5. Upon information and belief, J. Hill is an individual residing in the state of New
3 York but was residing in Las Vegas during the relevant time frame.

4 **JURISDICTION AND VENUE**

5 6. This Court has subject matter jurisdiction for this action pursuant to 12 U.S.C. §
6 1331, 12 U.S.C. § 1332, 12 U.S.C. § 1343(a)(3 &(4). Third-Party Plaintiff further invokes
7 supplemental jurisdiction of this Court pursuant to 12 U.S.C. § 1367 to hear and decide claims
8 arising under state law.

9 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2), because a
10 substantial part of the events or omissions giving rise the claims in this case occurred in this
11 judicial district is the subject of the action is situated in this district.

12 **BACKGROUND FACTS**

13 8. Plaintiffs allege that Mallwitz, “placed more children in the home than was
14 permitted and ... [a]s a result of this improper placement, Charles and Charlotte were harmed,
15 including by suffering abuse resulting in Charlotte’s hospitalization for dehydration.” See
16 Second Amended Complaint, Par. 151(k).

17 9. The home referenced above is that of D. Hill.

18 10. D. Hill was criminally prosecuted and pled guilty to two counts of Child Neglect
19 (a Gross Misdemeanor – NRS 200.508) related to Charles and Charlotte B.

20 11. D. Hill’s son, J. Hill, was also criminally prosecuted for abuse of Charles and
21 Charlotte B.

22 12. Plaintiffs assert the following claims against Mallwitz: 1) Fourteenth Amendment
23 to the United States Constitution, Substantive Due Process: Duty to Protect (42 U.S.C. § 1983);
24 2) Fourteenth Amendment to the United States Constitution, Substantive Due Process: State
25 Created Danger (42 U.S.C. § 1983); and, 3) Negligence.

26 13. Plaintiffs seek damages against Mallwitz, including punitive and exemplary
27 damages.

28 14. On or about March 20, 2008, Deborah Hill executed an, “Agreement Between

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1 Clark County Department of Family Services and Foster Parent(s)” (hereinafter, the “Foster
2 Agreement”).

3 15. The Foster Agreement states, in part, “The Foster Parent(s) Will: ... 25.
4 Indemnify, defend and hold Clark County harmless from any and all claims, demands, actions,
5 attorney’s fees, costs and expenses based upon any acts, errors, omissions, fault or negligence of
6 the foster family, or its employees, while caring for children in their home. 26. Indemnify,
7 defend and hold harmless Clark County for any attorney’s fees or for costs of defense, even if the
8 allegations of the claims are groundless, false or fraudulent.”

9 **FIRST CLAIM FOR RELIEF**

10 **(Equitable Indemnity Against D. Hill and J. Hill)**

11 16. As a result of the acts and/or omissions of other parties, including, but not limited
12 to, D. Hill, J. Hill, and/or as yet unknown other parties, claims have been made against Mallwitz
13 in excess of seventy-five thousand dollars (\$75,000) relating to injuries allegedly sustained by
14 Charles B. and Charlotte B as the result of acts or omissions by J. Hill while in the custody and
15 under the supervision of D. Hill.

16 17. Any and all damages alleged by any party to this action are the result, in whole or
17 in part, of the acts and/or omissions of other parties, entities, or individuals, including, but not
18 limited to, D. Hill, J. Hill, and/or as yet unknown other parties, entities, or individuals.

19 18. To the extent that any liability is assigned to Mallwitz by way of any direct claim,
20 counterclaim, third-party claim, or crossclaim, such liability was strictly secondary and passive
21 to the primary and active liability of other parties, entities, or individuals, including, but not
22 limited to, D. Hill, J. Hill, and/or as yet unknown other parties, entities, or individuals.

23 19. To the extent that any liability is assigned to Mallwitz by way of any direct claim,
24 counterclaim, third-party claim, or crossclaim, Mallwitz is entitled to equitable indemnity from
25 such other defending parties, including, but not limited to, D. Hill, J. Hill, and/or as yet unknown
26 other parties, entities, or individuals.

27 20. It has been necessary for Mallwitz to retain an attorney to defend against the
28 various claims made against it and, as such, Mallwitz is entitled to the recovery of her reasonable

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1 attorney's fees and costs incurred in this action.

2 **SECOND CLAIM FOR RELIEF**

3 **(Contribution Against D. Hill and J. Hill)**

4 21. As a result of the acts and/or omissions of other parties, including, but not limited
5 to, D. Hill, J. Hill, and/or as yet unknown other parties, claims have been made against Mallwitz
6 in excess of seventy-five thousand dollars (\$75,000) relating to injuries allegedly sustained by
7 Charles B. and Charlotte B as the result of acts or omissions by J. Hill while in the custody and
8 under the supervision of D. Hill.

9 22. Any and all damages alleged by any party to this action are the result, in whole or
10 in part, of the acts and/or omissions of other parties, entities, or individuals, including, but not
11 limited to, D. Hill, J. Hill, and/or as yet unknown other parties, entities, or individuals.

12 23. To the extent that any liability is assigned to Mallwitz by way of any direct claim,
13 counterclaim, third-party claim, or crossclaim, Mallwitz is entitled to contribution from these
14 other defending parties in this action, including, but not limited to, D. Hill, J. Hill and/or as yet
15 unknown other parties, as set forth in NRS 17.225, *et seq.*

16 24. It has been necessary for Mallwitz to retain an attorney to defend against the
17 various claims made against her and, as such, Mallwitz is entitled to the recovery of its
18 reasonable attorney's fees and costs incurred in this action.

19 **THIRD CLAIM FOR RELIEF**

20 **(Express Indemnity Against D. Hill and J. Hill)**

21 25. As a result of the acts and/or omissions of other parties, including, but not limited
22 to, D. Hill, J. Hill, claims have been made against Mallwitz in excess of seventy-five thousand
23 dollars (\$75,000) relating to injuries allegedly sustained by Charles B. and Charlotte B as the
24 result of acts or omissions by J. Hill while in the custody and under the supervision of D. Hill.

25 26. Any and all damages alleged by any party to this action are the result, in whole or
26 in part, of the acts and/or omissions of D. Hill and J. Hill.

27 27. To the extent that any liability is assigned to Mallwitz by way of any direct claim,
28 counterclaim, third-party claim, or crossclaim, such liability was strictly secondary and passive

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1 to the primary and active liability of D. Hill and J. Hill.

2 28. To the extent that any liability is assigned to Mallwitz by way of any direct claim,
3 counterclaim, third-party claim, or crossclaim, Mallwitz is entitled to express indemnity from D.
4 Hill and J. Hill pursuant to the Foster Agreement.

5 29. It has been necessary for Mallwitz to retain an attorney to defend against the
6 various claims made against it and, as such, Mallwitz is entitled to the recovery of her reasonable
7 attorney's fees and costs incurred in this action.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Mallwitz demands judgment as follows:

- 10 1. For contribution pursuant to NRS 17.225;
- 11 2. For indemnity for all damages that any claimant may recover against Mallwitz by
12 way of judgment, order, settlement, or verdict;
- 13 3. For attorneys' fees and costs of suit; and
- 14 4. For such other relief as the Court deems reasonable and proper, and the evidence
15 shows.

16 DATED this 21 day of November, 2013.

17 **KOLESAR & LEATHAM**

18
19 BY 

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham and that on the 21st day of November, 2013, I caused to be served a true and correct copy of foregoing **DEBBIE MALLWITZ'S FIRST AMENDED THIRD-PARTY COMPLAINT AGAINST DEBORAH HILL AND JOSEPH HILL** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule 5(D) of the Nevada Rules of Civil Procedure, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.

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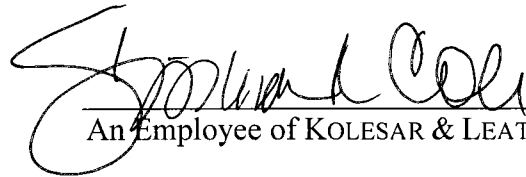
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