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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

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11 CHARLA CONN, administrator of the  
ESTATE OF BRENDA JEAN CLUSTKA,  
12 CHARLA CONN, and DUSTIN CONN

Case No. CV-N-05-0595-HDM-VPC

13 Plaintiffs,

14 vs.

15 CITY OF RENO, RPD OFFICER RYAN  
16 ASHTON, RPD OFFICER DAVID  
17 ROBERTSON,

18 Defendants.

19 \_\_\_\_\_ /  
20 **REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS'**  
**MOTION FOR SUMMARY JUDGMENT**

21 **I**

22 **DISCUSSION**

23 **A: There is no evidence that Clustka's actions in the prisoner transport were**  
24 **suicide threats or attempts.**

25 1. It is undisputed that Clustka was intoxicated with a blood alcohol level of 0.10%.  
26 It is further undisputed that Clustka admitted to also taking Xanax, which is a benziodiazepine  
27 type medication that acts as a central nervous system depressant, just like alcohol. Plaintiffs'  
28

1 own expert and Clustka's treating psychiatrist, Dr. Jeffrey Caplan, testified that Xanax  
2 intoxication mirrors alcohol intoxication with slurred speech, impaired motor function, and the  
3 appearance of a "drunken state." Attached as EXHIBIT "A" and incorporated herein by  
4 reference are relevant portions of Dr. Caplan's August 7, 2006 deposition transcript. Please see  
5 pages 37 – 40.

6 Alcohol and Xanax intoxication can also cause an impairment of cognitive function, a  
7 decrease of inhibitions, and judgment impairment. A person experiencing alcohol and Xanax  
8 intoxication can say things that they really don't mean to say and threaten to do things that they  
9 have no intention of doing. EXHIBIT "A", pgs. 83-85.

10 Dr. Caplan testified that when a person under the influence of alcohol and Xanax makes a  
11 threat of killing themselves, such statement must be analyzed by looking at all of the  
12 circumstances surrounding the comment to see if it is just the alcohol talking. EXHIBIT "A",  
13 pg. 83. Dr. Caplan also stated that the effects of the drugs and alcohol have such a profound  
14 effect, the only way to determine if the person is sincerely suicidal is to get the person off the  
15 effects of the drugs and alcohol so that a proper mental assessment can be done. EXHIBIT "A",  
16 pg. 83, 85.

17 2. Officers Robertson and Ashton are the only two witnesses who saw and  
18 experience Clustka's actions before, during, and after the alleged threats. Both Officer  
19 Robertson and Ashton described Clustka's action as those of a belligerent, angry, intoxicated  
20 person, and not sincere threats or attempts to harm herself. Officer Ashton described the incident  
21 as Clustka just trying to get the officers' attention. She had been walking around in the transport  
22 vehicle, screaming at the officers, and knocking on the video surveillance camera during the  
23 entire trip to the jail. His observations and experiences lead him to believe that because Clustka  
24 was not successful in causing the officers to stop the transport, she wrapped the seatbelt around  
25 her neck in a further attempt to get their attention. Relevant excerpts of Officer Ashton's May 8,  
26 2006 deposition transcript are attached as EXHIBIT "B" and incorporated herein by reference.  
27 Please see pgs. 19-20, 31, 33.  
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1           Officer Robertson also stated that his observations lead him to believe that she was not  
2 trying to harm herself. He also saw Clustka walking around in the back of the transport vehicle  
3 to approach the front of the transport and place her fingers back and forth over the camera  
4 monitor. Officer Robertson then responded to Officer Ashton's warning that she looked like she  
5 had wrapped the seat belt around her neck. When he entered the back of the transport, Clustka  
6 only had the belt "lapped" around her neck. Consequently, Officer Robertson did not believe  
7 that Clustka was trying to harm herself. His belief was that Clustka was merely acting out in  
8 anger and trying to manipulate the situation because she was not getting her way. Relevant  
9 excerpts of Officer Robertson's May 8, 2006 deposition transcript are attached as EXHIBIT "C"  
10 and incorporated herein by reference. Please see pgs. 42, 44-45, 49-50.

11           3.       There is no evidence that Clustka actually tried to harm herself. The officers'  
12 descriptions indicate that Clustka was screaming at them as soon as they entered the back of the  
13 transport. EXHIBIT "C", pg. 45. This evidence proves that Clustka had not choked herself with  
14 the seatbelt. **If she had, she would not have had the breath to scream at the officers.**  
15 Furthermore, there is no evidence that she wrapped the belt around her throat tight enough to  
16 restrict her airway. No officer or jail staff noted that Clustka was gagging, coughing, or  
17 complaining of a sore throat. And, no marks, abrasions, or bruises were noted by any officer,  
18 jail deputy, or jail medical staff.

19           4.       It is undisputed that Clustka made no attempt to harm herself while she was being  
20 held on the Civil Protective Custody. In addition, it is undisputed that she did not try to harm  
21 herself after she was released from the protective custody approximately 6 hours later. Since she  
22 was unsupervised following her release, if she truly had wanted to harm herself, she had ample  
23 opportunity to do so. The fact that she made no attempts to harm herself indicates that Officers  
24 Robertson's and Ashton's interpretation of the events were accurate.

25       **B. Clustka did not objectively appear suicidal.**

26           The first prong of a deliberate indifference claim is to determine whether Clustka  
27 demonstrated "an objectively serious medical need or a deprivation of that need" which "must be  
28 either obvious to a layperson or supported by medical evidence, like a physician's diagnosis."

1 *Aswegan v. Henry*, 49 F.3d 461, 464 (8<sup>th</sup> Cir. 1995).

2 Here, Clustka had been interviewed, examined, and/or treated by at least 6 different  
3 medical professionals, including psychiatrists, doctors, nurses, and social workers during the 72  
4 hours prior to her suicide. None of these medical professionals identified Clustka as being  
5 suicidal or at a high risk of self harm. If they had, each is qualified to have placed Clustka on an  
6 Emergency Admission or “Legal 2000” in accordance with NRS 433A, 150, *et seq.* **None did**  
7 **so.**

8 1. A copy of Northern Nevada Adult Mental Health Institute (“NNAMHI”) records  
9 for Clustka’s April 25, 2005 admission are attached as EXHIBIT “D” and incorporated herein by  
10 reference. At approximately 4:00 p.m. on April 25, 2005, Clustka was admitted into NNAMHI  
11 for evaluation of a suicide threat made to her family during a domestic dispute early that same  
12 morning. She was observed by the Institute’s medical staff during the night, and at  
13 approximately 9:30 a.m. on April 26, 2005, Clustka was found to be a low risk of harm and  
14 discharged. EXHIBIT “D”, p. 6 (COR-00948). Clustka was released from the hospital a mere 5  
15 **hours** prior to her encounter with Officers Robertson and Ashton.

16 2. Prior to Officers Robertson’s and Ashton’s arrival on scene, REMSA had  
17 responded to an emergency call for “man down” report. A copy of REMSA’S records for the  
18 April 26, 2006 call are attached as EXHIBIT “E” and incorporated herein by reference. The  
19 ambulance records indicate that REMSA was dispatched to “report of a psychiatric problem.”  
20 Clustka was examined by ambulance personnel who noted that Clustka admitted to having 2  
21 drinks. REMSA personnel then “CPC’d” the patient “per CPC Decision Tree”. The ambulance  
22 personnel then called emergency dispatch to request that RPD respond for a Civil Protective  
23 Custody (“CPC”) transport. EXHIBIT “E”, p.2. REMSA’S referral of Clustka for CPC was the  
24 call that precipitated Officers Robertson and Ashton encountering Clustka.

25 3. Following Robertson’s and Ashton’s transport of Clustka for CPC, she was  
26 interviewed and examined by the jail medical staff. A person on CPC is given a standard  
27 medical screening, which includes questions about suicide, at the time of the detainee’s  
28 acceptance into the jail facility. The detainee is then monitored during the CPC, and when the

1 detainee has sufficiently detoxified, the jail medical staff interviews the detainee prior to  
2 releasing them. It is undisputed that Clustka was not identified to be a risk of suicide or self  
3 harm during these three medical interviews. A copy of the Civil Protective Custody Initial  
4 Assessment is attached as EXHIBIT "F" and incorporated herein by reference.

5 4. Clustka was released from her CPC at approximately 8:00 p.m. on April 26, 2005.  
6 Shortly before midnight, Clustka's mother called RPD back to her house because Clustka had  
7 returned to the residence, was grossly intoxicated, and causing another disturbance. RPD  
8 officers placed Clustka on another CPC and transported her back to the jail. It is undisputed that  
9 Clustka was interviewed and examined by the jail medical staff and refused for CPC because her  
10 BA was not over the legal limit.

11 5. Because Clustka appeared grossly intoxicated, the RPD officers did not release  
12 Clustka, choosing instead to take her to the Washoe Medical Center Emergency Department for  
13 examination. It is undisputed that Clustka was admitted to the Emergency Department and  
14 examined by a doctor. It is also undisputed that she denied all suicidal thoughts or actions and  
15 was discharged at approximately 3:00 a.m. on April 27, 2005. A copy of WMC Emergency  
16 Room Report is attached as EXHIBIT "G" and incorporated herein by reference.

17 6. Following her discharge from Washoe Medical Center, Clustka returned to her  
18 mother's house and caused another disturbance. Shortly before noon, Clustka's mother called  
19 RPD to report that Clustka had returned to the residence in violation of the Temporary Protective  
20 Order. Clustka was arrested and transported to the jail where she was given a thorough initial  
21 medical screening, including mental health questionnaire, by a trained nurse. During this  
22 screening, Clustka repeatedly denied being suicidal or having suicidal thoughts. A copy of  
23 Prison Health Services intake records for April 27, 2006, is attached as EXHIBIT "H", and  
24 incorporated herein by reference.

25 None of these trained medical professionals identified that Clustka was suicidal. Most of  
26 the examinations and interviews with the medical professionals occurred **after** Clustka's  
27 encounter with Officers Robertson and Ashton. There is no evidence that Clustka was exhibiting  
28 objective signs or symptoms that she was suicidal **either before or after** her encounter with

1 Officers Robertson and Ashton. Therefore, if Clustka’s medical need was not obvious to trained  
2 medical professionals, this evidence clearly does not support a finding that those needs should  
3 have been objectively obvious to Officers Robertson and Ashton, as laypersons. *Id.*

4 **C. It is undisputed that neither Officer Robertson or Officer Ashton drew the**  
5 **necessary “inference” that Clustka had medical or safety needs that were not**  
6 **being protected.**

7 It is undisputed that both Officers Robertson and Ashton acknowledged that they were  
8 required to report any suicide threats or attempts. Furthermore, it is undisputed that neither  
9 officer believed that Clustka was sincere when she asked Robertson to kill her or when she  
10 threatened to kill herself. It is undisputed that both officers felt that Clustka was just intoxicated  
11 and acting out because she did not get her way. Therefore, if Clustka truly had medical or safety  
12 needs when she was in Officer Robertson’s and Ashton’s custody, neither officer recognized it.  
13 Otherwise, they would have reported it in accordance with their admitted duty. Without this  
14 subjective knowledge or the “drawing of the inference”, there can be no deliberate indifference.  
*Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994).

15 **D. Officers Robertson’s and Ashton’s treatment of Clustka properly addressed**  
16 **her medical and safety needs.**

17 Dr. Caplan testified that at the time of her discharge from Northern Nevada Adult Mental  
18 Health Hospital, Clustka was diagnosed with alcohol and benzodiazepine dependence. Dr.  
19 Caplan testified that Clustka’s medical and safety needs were to be kept away from the drugs and  
20 alcohol that she was abusing. EXHIBIT “A”, p.106, 108-109. He also testified that since  
21 Clustka had a BA of 0.10% when Officers Robertson and Ashton took her into CPC, Clustka  
22 could not be returned to the mental health hospital until she was detoxified below the legal limit.  
23 EXHIBIT “A”, p.150, 155. Dr. Caplan also testified that detoxing Clustka at the CPC facility at  
24 the jail would be a proper way to address this need. EXHIBIT “A”, p.150, 152, 156-157.  
25 Consequently, when Robertson and Ashton took Clustka to jail, she was separated from her  
26 drugs and alcohol, and she was being detoxified. In accordance with Dr. Caplan’s testimony, not  
27 only did Officers Robertson and Ashton properly recognize her medical needs, they provided  
28 Clustka with the care and treatment she needed.

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**II**  
**CONCLUSION**

The first element that must be proven by Plaintiffs is that Clustka’s constitutional rights were violated by the defendants. Without this proof, all of Plaintiffs’ claims and allegations must be dismissed. Here, because Clustka was a pre-trial detainee, Plaintiffs’ must show that Clustka had objectively obvious medical needs that Defendants failed to take reasonable measures to guarantee her safety. *Farmer v. Brennan*, 511 U.S. 825 (1994).

The undisputed evidence in this case leads directly to the conclusion that at the time Clustka was in the Defendants’ custody, her medical and safety needs were recognized and properly protected. Clustka’s medical condition necessitated being separated from the drugs and alcohol she was abusing. When Defendants placed Clustka on CPC, they were putting her into the custody that would accomplish this goal. Clustka could not ingest anymore drugs or alcohol while she was in the jail’s custody. In addition, it is undisputed that while on CPC, Clustka would be under the supervision and care of the Prison Health Services nurses. Consequently, if Clustka had any acute medical needs, Defendants reasonably believed those would be addressed by the jail’s medical staff.

The standard of care at issue is not negligence. *Id.* at 835. Consequently, even if the detoxification that Clustka received from the jail staff was not appropriate, if the Defendants acted reasonably in obtaining this treatment, liability cannot lie in this deliberate indifference claim. *Id.* at 837. But, since Clustka’s own doctor, Dr. Caplan, testified that supervised detoxification at the jail would be appropriate to treat Clustka on April 26, 2005, Defendants are due summary judgment as a matter of law to all claims because they did not violate Clustka’s constitutional rights. Not only did Defendants recognize Clustka’s medical needs and take reasonable steps to provide for her safety, Defendants’ actions provided Clustka with the supervised detoxification Clustka’s own doctor deemed appropriate.

Therefore, Defendants CITY OF RENO, OFFICER RYAN ASHTON AND OFFICER DAVID ROBERTSON, respectfully move this Court for an order granting summary judgment in

///

1 favor of the Defendants to all claims.

2 RESPECTFULLY SUBMITTED.

3 Dated this 13th day of October, 2006.

4 PATRICIA A. LYNCH  
5 Reno City Attorney

6 By:

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**CERTIFICATE OF SERVICE**

Pursuant to \*NRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

\_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

\_\_\_\_\_ Personal delivery.

X  CM/ECF electronic service

\_\_\_\_\_ Facsimile (FAX).

\_\_\_\_\_ Federal Express or other overnight delivery.

\_\_\_\_\_ Reno/Carson Messenger Service.

addressed as follows:

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DATED this 13th day of October, 2006.

/s/ Tamme Sutton   
Tamme Sutton  
Employee of the Reno City Attorney

An