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Fourth Judicial District, Ada County
Trent Tripple, Clerk of the Court
By: Deputy Clerk - Sims-Douglas, Linda

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHASIDY DECKER and ROBERT CALACAL, Plaintiffs, vs. CITY OF MERIDIAN, IDAHO, and MAYOR ROBERT SIMISON, in his official capacity, Defendants.	Case No. CV01-22-11962 FINDINGS OF FACT AND CONCLUSIONS OF LAW

In May 2022, Plaintiff Robert Calacal bought an improved single-family residential property. In return for rent payments, Calacal agreed to let Plaintiff Chasidy Decker live on the property in her mobile tiny home. This arrangement is on hiatus, though, because it violates two Meridian city ordinances. First, Unified Development Code ("U.D.C.") § 11-3A-20 prohibits using a vehicle—including a mobile tiny home—as living quarters except within an approved recreational vehicle ("RV") park. Second, U.D.C. § 11-4-3-12, which regulates secondary dwellings on single-family residential properties, prohibits using a mobile tiny home as a secondary dwelling and mandates that the primary and secondary dwellings be owned by the same person.

On August 15, 2022, Plaintiffs filed this action against Defendants City of Meridian, Mayor Robert Simison, Code Enforcement Officer Anthony Negrete, and the Meridian City Council. Their original complaint asserted five claims, all arising

under the Idaho Constitution: Count 1, a facial challenge to section 11-3A-20 as a violation of their substantive due process rights under article I, section 13; Count 2, an as-applied substantive due process challenge to section 11-3A-20 by Decker; Count 3, a like as-applied challenge by Calacal; Count 4, an equal-protection claim under article I, section 2, alleging that section 11-3A-20 is being selectively enforced against new Meridian residents; and Count 5, a free-speech claim by Decker under article I, section 9, alleging that Defendants retaliated against her for speaking critically of Meridian's code-enforcement practices to the press. (Compl. ¶¶ 112–82.) Declaratory and injunctive relief, as well as nominal damages, were sought on all five claims. (*Id.* Prayer for Relief ¶¶ 1–11.)

Defendants moved to dismiss Plaintiffs' complaint. On November 7, 2022, the Court issued an order that dismissed Count 1 and dismissed the Meridian City Council as a defendant. (Mem. Decision & Order 14–19, Nov. 7, 2022.) Otherwise, Plaintiffs' claims survived. (*Id.* at 19–26.) That said, because Defendants persuasively argued that Counts 2 and 3 were moot as pleaded—Plaintiffs having challenged section 11-3A-20 but not section 11-4-3-12, which also barred their rental arrangement—the Court agreed to construe the complaint as challenging both ordinances. (*Id.* at 9–12.)

Meanwhile, Plaintiffs sought a preliminary injunction allowing Decker to live in her mobile tiny home on Calacal's property while this action is pending. (Mem. Supp. Pls.' Mot. Prelim. Inj. 1, 6, 15.) That motion was decided along with Defendants' motion to dismiss. It was denied because even if the flat prohibitions in

sections 11-3A-20 and 11-4-3-12 on living in a mobile tiny home on a single-family residential property are unconstitutional, Plaintiffs' arrangement would still be unlawful unless two unchallenged requirements of section 11-4-3-12 are also unconstitutional. (*See* Mem. Decision & Order 27–31, Nov. 7, 2022.) First, a secondary dwelling may not be placed on a single-family residential property unless the property owner resides on the property for at least six months of the year ("Owner Occupancy Requirement"). U.D.C. § 11-4-3-12(B). Second, the property owner must own the secondary dwelling ("Unified Ownership Requirement"). *Id.* Because Calacal didn't reside on the property and didn't own the mobile tiny home, Plaintiffs' arrangement violated both the Owner Occupancy Requirement and the Unified Ownership Requirement. Plaintiffs hadn't challenged either requirement's validity, so they hadn't shown a substantial likelihood of succeeding on Counts 2 and 3. (Mem. Decision & Order 27–31, Nov. 7, 2022.)

Calacal later satisfied the Owner Occupancy Requirement by making his son, who lives on the property, a co-owner. (*See* Am. Compl. ¶ 23.) And, in an amended complaint filed on May 30, 2023, Plaintiffs formally expanded Counts 2 and 3 to challenge section 11-4-3-12's constitutionality, attacking <u>both</u> its subsection H's flat prohibition on using a mobile tiny home as a secondary dwelling on a single-family residential property <u>and</u> its subsection B's Unified Ownership Requirement. (Am. Compl. ¶¶ 6, 138, 149, 163–98.) The amended complaint also reflected a litigation development occurring a few days before its filing: the dismissal on technical grounds of the claims against Officer Negrete. (*See* Order 1, May 25, 2023.) Given

that development, Officer Negrete wasn't named as a defendant in the amended complaint, leaving only the City of Meridian and Mayor Simison as defendants. (*See* Am. Compl. ¶¶ 24–25.)

In January 2024, both sides moved for summary judgment. Plaintiffs sought judgment on only Counts 2 and 3, arguing that the City of Meridian lacks a rational basis for barring Decker from living in her mobile tiny home on Calacal's property. Meanwhile, Defendants advanced a barrage of theories on which Plaintiffs' claims supposedly should fail, including that because Plaintiffs never applied for a secondary dwelling permit under section 11-4-3-12, they hadn't exhausted their administrative remedies. On March 1, 2024, the Court denied both motions, with one exception: Count 5, Decker's free-speech claim, failed to the extent the alleged retaliation is Officer Negrete's issuance of a notice of violation of section 11-3A-20. (Mem. Decision & Order Summ. J. 23–27.)

What was expected to be a three-day bench trial on Plaintiffs' surviving claims beginning on April 1, 2024, and ending on April 3, 2024, turned out to be a six-day bench trial that began as scheduled but didn't end until April 17, 2024, with a hiatus caused by Plaintiffs' gross underestimation of the time they would take examining witnesses, (*compare* Joint Witness List 2 *with* Ct. Mins. Apr. 1–4, 2024 & Apr. 16–17, 2024), coupled with their short-lived, mid-trial conviction that Calacal's property isn't part of the City of Meridian, in which case the validity of its ordinances would be of no consequence to them. Thirteen witnesses testified: Calacal; Decker; Decker's friends Jessica and James Williamson; Brett Williamson,

the prior owner of Calacal's property; Plaintiffs' retained expert witness Bruce Chatterton; and several people employed by the City of Meridian, namely Planning Supervisor Bill Parsons, Public Works Inspection Services Manager Garrick Nelson, Fire Marshal Joe Bongiorno, former Land Development Supervisor Seth Oaks, Building Official Bret Caulder, Code Enforcement Supervisor Laci Ooi, and Officer Negrete. The evidentiary record also includes the many facts to which the parties stipulated in their *Joint Stipulation of Facts for Trial*, the additional fact to which they stipulated in their *Joint Notice Regarding Resolution of Annexation Issue and Supplemental Stipulation of Fact for Trial*, Plaintiffs' Exhibits 1–165, 167–170, and 172–173, and Defendants' Exhibits 1001–1010, 1012–1014, 1016, 1020–1029, 1031, 1043–1045, 1048–1050, 1055–1057, 1060–1067, 1069–1117, and 1125.

At the end of the trial, the parties were given almost two months to obtain a trial transcript and use it to prepare proposed findings of fact and conclusions of law. Once their respective proposed findings of fact and conclusions of law were filed on June 14, 2024, the matter was taken under advisement. Having carefully reviewed the evidentiary record and the proposed findings of fact and conclusions of law, the Court issues its findings of fact and conclusions of law.

I.

FINDINGS OF FACT

1. All the facts to which the parties stipulated in their *Joint Stipulation of Facts for Trial* or their *Joint Notice Regarding Resolution of Annexation Issue and Supplemental Stipulation of Fact for Trial* are incorporated by reference. That said, some stipulated facts will be reiterated in these Findings of Fact.

2. Robert Calacal lives in California. (Tr. 210:8–9.) On or about May 15, 2022, he bought 1926 Leisure Lane in Meridian, a single-family residential property, expecting his adult son to live there. (Tr. 212:11–213:8, 242:8–17.) Calacal bought the property partly because the home built there is equipped with RV hookups for water, sewer, and electrical utilities that are "materially the same" as those usually available in RV parks, including the RV park in Meridian. (Tr. 232:22–235:6; Joint Stip. Facts ¶ 74). Calacal planned to rent access to the hookups to offset his mortgage payments. (Tr. 234:9–235:6.)

3. Calacal's son has resided in the home located at 1926 Leisure Lane since on or about May 17, 2022. (Joint Stip. Facts ¶ 66.) Calacal and his son now co-own the property. (*Id.* ¶ 67.)

4. Chasidy Decker grew up in the Treasure Valley and currently lives in Boise. (Tr. 70:14–17.) In or around 2018, she relocated to Nevada following her grandfather's death. (Tr. 79:25–80:10; Joint Stip. Facts ¶ 60.) While living in Nevada, Decker hired Tiny Idahomes to build her a customized mobile tiny home for about $76,000. (Tr. 76:24–77:16, 82:11–83:3; Joint Stip. Facts ¶ 52.) She lived in her mobile tiny home in Sparks, Nevada, from May 2019 until November 2021. (Joint Stip. Facts ¶¶ 51, 60.) Decker then moved her mobile tiny home to an RV park in Jerome, Idaho, and lived in it there until May 2022. (*Id.* ¶ 61.) Living in her mobile tiny home for those three years didn't cause her to experience any health or safety problems. (*Id.* ¶ 62.)

5. The 252-square-foot mobile tiny home is constructed with two-by-four lumber, blown-in fiberglass batt insulation, board and batten siding, double-paned and tempered glass windows, and standing seam metal roofing. (*E.g.*, *id.* ¶¶ 53–54.) Inside and out, its construction, fixtures, and appliances are comparable to those of a traditional, stick-built home, except that the structure is built on a chassis and its utility connections are above-ground flexible hoses. (*See id.* ¶ 55; Tr. 78:18–25, 1554:21–1556:16, 1619:9–1629:20, 1644:2–1645:25; Exs. 168–170.) The mobile tiny home includes, for example, a residential toilet, a whirlpool tub, vinyl wood plank flooring, and a stainless-steel refrigerator. (Tr. 1628:12–1629:2; Ex. 168). It is certified by both the Recreation Vehicle Industry Association ("RVIA"), (Joint Stip. Facts ¶ 59; Ex. 68), and the National Organization for Alternative Housing ("NOAH"), (Exs. 172–73).[1]

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[1] Exhibits 172 and 173 are the NOAH certificate of compliance and an associated sticker issued to Decker mid-trial, on April 15, 2024. Defendants first learned of them the next evening, so they objected at trial to their admission into evidence, and the Court took the objection under advisement. (Tr. 1616:11–17.) In their proposed findings and conclusions, they continue to object, arguing that the timing of the NOAH certification prevented them from questioning their witnesses about its import. (Defs.' Proposed Findings Fact & Conclusions Law 3–4.) At trial, though, Defendants' witnesses disclaimed knowledge of NOAH certifications, (Tr. 326:11–15, 408:1–3, 477:3–5, 519:5–6, 608:12–14, 719:19–21), leaving unclear the questioning Defendants would've conducted had Decker's NOAH certification happened sooner. Moreover, the Court told Defendants it would consider accepting supplementary evidence and argument concerning the mobile tiny home's NOAH certification if they requested it in their proposed findings of fact and conclusions of law, but they made no such request. (*See* Tr. 1605:2–7.) Consequently, the Court isn't persuaded that Defendants are meaningfully prejudiced by the admission of Exhibits 172 and 173. They are admitted into evidence.

6. Hoping to return to the Treasure Valley from Jerome, Decker responded to Calacal's Craigslist advertisement offering the use of 1926 Leisure Lane's RV hookups. (Tr. 89:10–14, 101:13–102:1, 243:15–19.) On May 16, 2022, Plaintiffs entered into a lease agreement under which Decker agreed to pay Calacal $600 in rent and $100 toward utilities each month in exchange for being allowed to park—and live in—her mobile tiny home in the side yard of 1926 Leisure Lane. (Joint Stip. Facts ¶¶ 71–72; Ex. 4.) On May 18, 2022, Decker moved her mobile home tiny home into the north side yard of 1926 Leisure Lane and connected it to the residence's RV hookups. (Joint Stip. Facts ¶¶ 75–76.) Plaintiffs didn't realize that city ordinances disallowed this arrangement. (Tr. 120:4–14, 235:3–11.)

7. Decker's arrival at 1926 Leisure Lane met with immediate opposition. On May 19, 2022, Calacal's neighbor contacted the City of Meridian's Code Enforcement personnel to complain about Decker's tiny home. (*Id.* ¶ 83.) The neighbor also complained about a mobile tiny home parked at 1928 Leisure Lane. (*E.g.*, Ex. 8, at 1; Tr. 1425:16–24.) The neighbor's complaints were received by Meridian Code Enforcement Officer Anthony Negrete, who responded to both Leisure Lane addresses that same day. (Joint Stip. Facts ¶ 84; Ex. 8, at 1.)

8. When Officer Negrete visited 1926 Leisure Lane on May 19, Calacal wasn't there. (Ex. 7, at 2.) But he encountered Decker and a man who lived with her in her mobile tiny home—her boyfriend Cole Lang, though Officer Negrete didn't get his name. (*Id.*; Tr. 105:1–4, 105:17–106:18.) Officer Negrete told Decker that, according to city code, her mobile tiny home had to be placed on an improved

surface, like asphalt or concrete, and no one could live in it. (Ex. 7, at 2.) Decker acknowledged to Officer Negrete that she was living in her mobile tiny home. (*Id.*)

9. Officer Negrete spoke with Calacal over the phone a few days later, on May 23, 2022. (Ex. 7, at 2.) Similar to what he'd told Decker, Officer Negrete explained that because the tiny home was on wheels, it had to be placed on an improved surface and no one could live in it; if Calacal wanted to use the mobile tiny home as a residence, it had to be on a foundation—not wheels—and required a permit from the City of Meridian. (*Id.*; Tr. 248:23–249:20.) Calacal agreed to work toward having the people in the tiny home move out. (Ex. 7, at 2.) Officer Negrete gave him ten days to do so. (*E.g.*, Tr. 115:19–117:9.)

10. During his May 19 visit to 1928 Leisure Lane—the other address about which the neighbor complained—Officer Negrete wasn't able to speak with the property owners, but he noticed that the mobile tiny home wasn't on an improved surface and couldn't tell whether anyone was living in it. (Ex. 8, at 1–2.) He spoke with the owners on May 23, 2022, and was assured that no one lived in the mobile tiny home; it simply served as a playhouse for their children.[2] (*Id.*) Because it didn't appear that section 11-3A-20, which prohibits living in a mobile tiny home

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[2] The investigation also included speaking on another occasion with the parents of one of the property owners, who were babysitting when Officer Negrete visited the property. (Tr. 1450:5–1452:6.) Plaintiffs make much of the contrast between his willingness to speak to people who weren't property owners about that investigation and his unwillingness to talk to Jason Jones about the investigation of 1926 Leisure Lane. (*See id.*; Finding of Fact 19, *infra.*) Officer Negrete's explanation, however, is entirely reasonable: He spoke with the persons present at 1928 Leisure Lane while he was there investigating a code violation, but Jones was never present at 1926 Leisure Lane. (*See* Tr. 1450:5–1452:6; *see also* Tr. 1339:1–9.)

anywhere but within an RV Park, was being violated, Officer Negrete informed the owners of 1928 Leisure Lane that their mobile tiny home had to be on an improved surface or behind a six-foot privacy fence. (*Id.*; *see also* Tr. 1444:7–16.) He told them he would follow up on May 31, 2022. (Ex. 8, at 2.)

11. When Officer Negrete returned to 1928 Leisure Lane on May 31 as promised, no progress toward compliance had yet been made. (*Id.*) At the property owners' request, though, Officer Negrete agreed to give them until June 10, 2022, to come into compliance. (*Id.*) But, several days beforehand, the owners e-mailed him to say that the mobile tiny home had been moved and the fence repaired. (*Id.*)

12. Officer Negrete and Calacal spoke by telephone on May 26, 2022, (Ex. 7, at 2), and met in person outside of 1926 Leisure Lane on May 31, 2022, (*id.*; Tr. 253:3–254:11). During these conversations, Calacal said he wanted to comply but was having trouble finding someone to pave the side yard on short notice. (Ex. 7, at 2–3; Tr. 251:1–13.) He also said it would take several weeks at least to get Decker's tiny house on a foundation and get a permit for it. (Ex. 7, at 2.) Officer Negrete agreed to give Calacal until June 10, 2022, to come into compliance, explaining that he'd given the residents at 1928 Leisure Lane the same deadline. (*Id.* at 2–3.) Officer Negrete did, however, indicate that he'd be willing to grant Calacal additional time if forward progress was being made. (*Id.* at 3.)

13. During one of these conversations, Calacal asked Officer Negrete why he'd started investigating 1926 Leisure Lane for code violations. (Tr. 255:15–24.) Officer Negrete said it was because Calacal was a recent purchaser and Code

Enforcement typically inspects areas where properties have recently transferred ownership. (*Id.*)

14. Panicked that she may be forced from her tiny home with nowhere to go, Decker contacted a local tiny home advocate, Jason Jones. (Tr. 121:16–24.) On June 1, 2022, Jones e-mailed the Meridian City Council and Mayor Simison on Decker's behalf to inquire about her options. (Tr. 122:13–19; Ex. 14, at 3.) His e-mail asked whether the ten-day deadline could be extended and whether there was an appeal or variance process Decker could pursue. (*Id.*)

15. Deputy City Attorney Emily Kane responded to Jones's e-mail. (Ex. 14, at 1–2.) She said that Decker was prohibited from living in a mobile tiny home anywhere but within an RV park and that any secondary dwelling on a residential property must be built on a foundation, comply with the International Residential Code, and be connected to city utilities. (*Id.*) Kane encouraged Decker to contact local RV parks or other jurisdictions about the availability of locations for her mobile tiny home. (*Id.*)

16. Decker received a copy of Kane's e-mail. (Tr. 123:18–24.) It left her "defeated." (Tr. 124:7–9.) Before she responded to Calacal's Craigslist ad, Decker had spent months trying to find an available spot in an RV park in the Treasure Valley and every place had turned her away, saying they didn't accept mobile tiny homes, and even if they did, the waiting lists were prohibitively long (some having two- or three-year waiting periods). (Tr. 102:2–13, 118:17–119:23.)

17. Dissatisfied with the City's response, Jones contacted the *Idaho Statesman* newspaper and Decker agreed to an interview. (Tr. 124:13–125:23.)

18. On June 2, 2022, a reporter from the *Statesman* contacted the City's spokesperson for information about Decker's case. (Joint Stip. Facts ¶ 91.)

19. Also on June 2, Jones left Officer Negrete a voicemail. (*E.g.*, Tr. 1338:3–10.) When Officer Negrete returned the call, he declined to discuss the investigation of 1926 Leisure Lane because Jones owned neither the property nor the mobile tiny home. (Tr. 1338:20–25.) Later that day, Officer Negrete informed Emily Kane and one of his supervisors, Code Enforcement Officer Ami Nunes, that he would issue notices of violation if 1926 Leisure Lane wasn't in compliance by June 10. (Joint Stip. Facts ¶ 92; Ex. 7, at 3.) He took that step because he'd never prepared a notice of a mobile tiny home-related violation, so he didn't have a preexisting template and the City of Meridian's legal department sometimes needs a week or two to prepare a new notice of violation.[3] (Tr. 1346:1–1349:8.)

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[3] Plaintiffs say it isn't a coincidence that Officer Negrete began talking about issuing notices of violation the same day Jones called him and the *Statesman* contacted the City's spokesperson. But the spokesperson didn't forward the *Statesman*'s e-mail to Code Enforcement until June 3—the day *after* Officer Negrete talked to Emily Kane and Officer Nunes. (Joint Stip. Facts ¶ 93; Ex. 16.) Further, Officer Negrete credibly testified that he didn't open this e-mail, so he didn't then know about the *Statesman*'s inquiry. (Tr. 1343:21–345:19.) These facts, combined with corroborating testimony from Code Enforcement Supervisor Lacy Ooi that the City's legal department often takes a week to prepare draft notices of violation, (*see* Tr. 752:6–9), convince the Court that neither Jones's phone call nor the *Statesman*'s inquiry played any role in Officer Negrete's decision to contact the City's legal department on June 2 to seek assistance with drafting notices of violation.

20. On June 7, 2022, Officer Negrete texted Officer Nunes to confirm that leaving Jones out of the conversation was the right approach, writing, "Okay, want to be on the same page since [Jones] involved the newspaper." (Joint Stip. Facts ¶ 97; Ex. 6.)

21. On the afternoon of June 8, 2022, the *Statesman* published a digital article entitled, "Tiny house owner told to vacate by Meridian ID code enforcer." (Joint Stip. Facts ¶ 98.) The next day, the *Statesman* ran on the front page of its print edition an article sympathetic to Decker's plight. (*Id.* ¶ 99.)

22. On the morning of June 9, 2022—just hours after the *Statesman* published its digital article about Decker's tiny home—Officer Negrete drove by 1926 Leisure Lane, recorded the code violations he observed, and ran registration checks on all the cars parked there. (Ex. 7, at 3–4.) He also drove by 1928 Leisure Lane and visually confirmed that the tiny home was now screened by a privacy fence. (Ex. 8, at 2.) Officer Negrete closed his investigation of 1928 Leisure Lane that day.[4] (*Id.*) During his June 9 visit to both Leisure Lane addresses, Officer Negrete was accompanied by a second code enforcement officer. (*Id.* at 3; Tr. 1441:21–1442:22.)

23. According to Plaintiffs, Officer Negrete's decision to visit Calacal's property on June 9, a day before his scheduled check-in date on June 10, while

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[4] In his final case note concerning 1928 Leisure Lane, Officer Negrete wrote that the mobile tiny home is "unattached from the residence with no utilities." (Ex. 8, at 2.) But, screened as the mobile tiny home was behind a privacy fence, it isn't clear how he came to that conclusion. (*See id.* at 8.)

simultaneously closing his investigation of 1928 Leisure Lane, was provoked by the *Statesman* article. They also see the presence of a second code enforcement officer as proof of Officer Negrete's ill will. According to Officer Negrete, however, he gave the owners of both Leisure Lane addresses a June 10 check-in date without realizing that June 10 was a Friday, a day off for him because he works Monday through Thursday. (Tr. 1057:19–20, 1211:21–24, 1358:9–1359:5.) So, he visited 1926 Leisure Lane on June 9 to see if any progress was being made before the end of his work week, not to take enforcement action. (Tr. 1336:5–10, 1368:5–10.) And, as for the second officer's presence, Officer Negrete explained that before his simultaneous investigations of both Leisure Lane addresses, he'd never dealt with mobile-tiny-home violations, so he requested a more experienced officer's guidance. (Tr. 1361:2–23, 1442:13–15.) The Court believes Officer Negrete's testimony on these points and isn't persuaded that Officer Negrete noted code violations at 1926 Leisure Lane on June 9 or closed his investigation of 1928 Leisure Lane on June 9 in response to the *Statesman* article.

24. On June 14, 2022, Officer Negrete sent Plaintiffs a series of notices of criminal violation and orders to abate. Decker was notified that living in her mobile tiny home at 1926 Leisure Lane violated U.D.C. § 11-3A-20, under which she could be prosecuted if the violation continued beyond August 1, 2022. (Joint Stip. Facts ¶¶ 100–101; Ex. 1.) She also received a notice ordering her to "remove the unregistered vehicles parked in the side yard . . . or screen any vehicles parked in the side yard . . . [with] a solid fence, six (6) feet in height" by June 27, 2022, or risk

being prosecuted under U.D.C § 11-3C-4(A)(2)(c)(2). (Joint Stip. Facts ¶ 102; Ex. 2.) This second notice was precipitated by Decker's black Jeep Renegade and Lang's white Chevrolet Caprice being parked in the side yard of 1926 Leisure Lane with expired registrations "as of June 14, 2022." (Joint Stip. Facts ¶ 103; Ex. 2.) Calacal received a notice of violation alleging three distinct code violations. (Joint Stip. Facts ¶ 104; Ex. 3.) The first and second alleged violations mirrored those in the notices sent to Decker. (Ex. 3, at 1–2.) The third involved a black Toyota Tacoma pickup truck belonging to a friend of Calacal's son being parked in 1926 Leisure Lane's street yard—*i.e.*, an unimproved area in front of the home—"as of June 9, 2022" in violation of U.D.C § 11-3C-4(B). (*Id.* at 2; Joint Stip. Facts ¶ 106.) Calacal was ordered to remove it from the street yard and cease using the street yard for parking until it was improved (*i.e.*, paved). (Ex. 3, at 2.)

25. Officer Negrete had done registration checks on the Chevrolet Caprice and the Toyota Tacoma, so he knew who owned them, but he didn't issue notices of violation to the owners. (Ex. 7, at 3–4.) When asked why he didn't issue such a notice to the Tacoma's owner, Officer Negrete said it was because "[t]hey are not the property owner. And our policy states that we actually contact the property owner if it's a UDC violation, and then it is the occupant, and then a responsible party."[5] (Tr. 1289:24–1290:7.) The Court considers that testimony credible. Officer Negrete

[5] Officer Ooi confirmed that Code Enforcement's preference is to issue notices of violation to the owner of the real property. (*See* Tr. 905:23–906:12.) Consequently, Calacal received a notice for all violations on 1926 Leisure Lane. As for Decker, Officer Negrete issued a notice of violation to her as the registered owner of the Jeep Renegade and the owner of the mobile tiny home. (Tr. 1290:10–18.)

struggled, however, to explain why he didn't issue a notice to Lang and instead listed the Caprice on Decker's notice. (*See* Tr. 1403:16–1404:6.) The likeliest explanation is that Officer Negrete hadn't taken Lang's name and wasn't sure the man he'd seen with Decker was the same man who was the Caprice's registered owner: Lang. According to Officer Ooi, it was "probably a mistake" for Officer Negrete not to issue a notice of violation to Lang when, under the circumstances, he had reason good reason to believe that Lang was living in the mobile tiny home. (Tr. 900:22–902:3.)

26. Plaintiffs don't dispute the facts alleged in their notices of violation. They were, however, surprised to be formally accused of violations unrelated to Decker's mobile tiny home. Decker testified that she had never been told that city code required that her vehicle and Lang's vehicle be registered or screened by a privacy fence. (Tr. 109:11–112:6, 130:1–131:15.) Similarly, Calacal testified that Officer Negrete never mentioned parking violations aside from the placement of the mobile tiny home. (Tr. 255:6–14, 259:23–261:1, 271:23–272:8.) Officer Negrete's case notes say, however, that he told Calacal on May 31 that all vehicles must be registered, operable, and parked on an improved surface. (Ex. 7, at 2–3.) In the main, the Court considers Decker, Calacal, and Officer Negrete to have testified at trial to the truth as they recall it. That Officer Negrete's case notes contradict Plaintiffs' testimony doesn't show deceit on anyone's part. Officer Negrete prepared his notes shortly after to the events at issue, (*e.g.,* Tr. 1263:8–22, 1265:23–1266:5), and Plaintiffs were under considerable stress trying to secure housing for Decker.

That Plaintiffs may have missed or forgotten an offhand comment by Officer Negrete about vehicle registration and parking issues strikes the Court as far more likely than Plaintiffs' more incendiary explanation: that Officer Negrete falsified his notes after the fact. Hence, the Court finds that Officer Negrete apprised Calacal of his concerns about parking violations when they met on May 31.

27. As just noted, the notices of violation issued to Plaintiffs required them to bring the mobile tiny home into compliance with section 11-3A-20 by August 1. The gap between Officer Negrete's first contact with Decker on May 19 and this August 1 deadline is seventy-five days—significantly longer than the ten-day deadline Meridian residents are usually given to rectify minor code violations, and more time than usually is allowed to rectify more serious code violations. (Tr. 739:19–740:13, 749:22–25, 1059:3–1060:23, 1393:21–24.)

28. City of Meridian Code Enforcement personnel rarely encounter violations of section 11-3A-20, and even when they do, the violations generally involve temporary stays in tents or RVs. (Tr. 752:11–759:7; *see also* Tr. 1361:24–1362:6, 1509:20–1510:25.) Because, by contrast, Decker intended to use her mobile tiny home as a permanent residence, Code Enforcement recognized that coming into compliance would be difficult, so Plaintiffs were given more time to do so than would normally be given. (*See* Tr. 749:22–752:23, 1060:19–1061:14.)

29. In early August 2022, a six-foot privacy fence was built at 1926 Leisure Lane, so the wheels and utility connections of Decker's mobile tiny home were no longer visible from the street. (Tr. 281:10–283:25; Ex. 7, at 8, 29–30.)

30. Decker complied with the abatement order by moving out of her mobile tiny home on the evening of August 1, 2022, and she began staying with friends. (Tr. 71:21–72:1, 308:11–15, 313:8–18; Ex. 67.)

31. At approximately 6:45 a.m. on August 2, 2022, Decker returned to her mobile tiny home to retrieve some personal items and walk her dog before work.[6] (Tr. 134:1–137:22.) While there, she encountered Officer Negrete, who accused her of staying in the mobile tiny home that night. (Tr. 138:9–16; Ex. 7, at 6.) For whatever reason, Officer Negrete didn't believe that Decker would return to the mobile tiny home so early in the morning, (*see* Tr. 1498:1–1503:2, 1507:5–1508:13), so he warned her that Code Enforcement officers would drive by 1926 Leisure Lane from time to time to make sure she wasn't living there, (Ex. 7, at 6; *see also* Tr. 158:21–159:3, 1497:9–15). He also told her that he'd seen the recent *Statesman* article and regarded as inaccurate its use of the word "eviction" to describe the enforcement action being taken against her. (*See id.*; Tr. 140:20–141:3.)

32. While Officer Negrete was discussing the *Statesman* article, Decker felt "a little intimated" because he "got a little defensive" and "a little angry."[7] (Tr.

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[6] Upon moving out, Decker couldn't immediately bring her dog with her. (*See* Tr. 137:24–138:1, 196:1–5; Ex. 7, at 6–7.) So, she left the dog in her mobile tiny home with the air conditioner running until she found the dog a more suitable living arrangement. (*See, e.g.*, Ex. 7, at 6–7.)

[7] When asked about this conversation at trial, Officer Negrete denied getting angry or raising his voice. (Tr. 1493:12–1494:1.) But, considering that Officer Negrete admitted to disagreeing with the *Statesman* article and disliking that it "made the City look negative," (Tr. 1492:22–1493:11), the Court is persuaded that the tenor of the conversation, while probably less hostile than Decker remembers, was less cordial than Officer Negrete admits.

140:20–24.) Decker asked Officer Negrete why he was taking enforcement action against her and Calacal when another mobile tiny home was parked just two houses down the street and other neighboring properties were cluttered with junk. (Tr. 147:8–10, 148:15–149:10.) As she did so, she pointed to the property immediately next door to 1926 Leisure Lane, whose yard had a shipping container and several vehicles, including a broken-down racecar, parked on the grass out front, clearly visible from where she and Officer Negrete were standing. (Tr. 148:15–149:10, 157:9–158:16; Ex. 160, at 3–5.)

33. Officer Negrete's response was two-fold. He explained that the mobile tiny home at 1928 Leisure Lane was behind a privacy fence and wasn't being used as a residence, making the situation different.[8] (Tr. 147:8–15.) As to the possible parking violations at nearby properties, Officer Negrete said that Leisure Lane has a mixture of conforming and nonconforming properties, but if a new purchaser moves in, they must comply with the current code. (Tr. 156:2–9.) Building on this logic, he explained that if Decker had entered into her lease agreement with the prior owner of 1926 Leisure Lane rather than Calacal, her mobile tiny home wouldn't be an issue. (Tr. 156:10–14.)

34. At trial, Officer Negrete was asked to explain his process for initiating an investigation. (Tr. 1220:10–11.) He credibly testified that an investigation usually begins after Code Enforcement receives a complaint, whether online, over

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[8] When Calacal asked Officer Negrete about the mobile tiny home at 1928 Leisure Lane, he received the same response: no one lived in it. (Tr. 257:12–20.)

the phone, or in person.[9] (Tr. 1220:10–15, 1221:16–1223:8.) In-person complaints can include those made by the target of an ongoing investigation, pointing to other suspected violations on a neighboring property. (Tr. 1223:9–1224:2.) Officer Negrete generally considers such in-person complaints to be a valid way to initiate a complaint, (*see id.*), but during the busy season, when his caseload is high, he gives the complaining party his business card and asks them to contact him or asks them to submit an online complaint form, (Tr. 1223:23–1224:22). If the complainant doesn't contact him or submit a complaint form, Officer Negrete figures the complainant isn't serious about having the alleged violations addressed. (Tr. 1226:19–1227:8, 1229:19–1230:6, 1231:1–1232:15.)

35. Two other aspects of Officer Negrete's standard approach are worth mentioning. First, unlike some of his fellow Code Enforcement officers, Officer Negrete is known to give residents courtesy warnings before issuing a formal notice of violation. (Tr. 1241:9–1243:15, 1316:20–1317:2; *see also* Tr. 728:9–733:25, 773:25–774:2.) Courtesy warnings aren't required. (Tr. 729:8-11, 1242:15–16, 1243:5–6.) But, if the resident is willing to speak with him and seems amenable to working toward compliance, Officer Negrete often waits to issue a formal notice of violation, (Tr. 1246:7–12, 1247:13–1248:6), much as he did with Plaintiffs here.

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[9] Though Officer Negrete's investigations are usually complaint-based, there are some exceptions to this general rule. For example, Officer Negrete may investigate code violations that are likely to impact other people, even without a complaint, such as when he observes spilled oil or blocked access to wheelchair ramps. (*See* Tr. 1234:20–1240:14.) Officer Negrete is likelier to initiate these sorts of investigations when his caseload is low. (Tr. 1235:5–12.)

Second, Officer Negrete may choose not to warn a resident about minor code violations before issuing a notice if the he had been working with the resident on abating a more significant violation, especially when the minor violations may be abated in the process of abating the more significant violation. (*See* Tr. 1243:21–1247:12, 1250:4–1251:1, 1252:25–1255:24; *see also* Tr. 1302:13–19.) If the primary violation isn't abated, however, Officer Negrete will issue a notice of violation encompassing all violations on the property, whether or not he had previously warned the resident about the minor violations. (*See* Tr. 1255:12–24.)

36. Officer Negrete didn't investigate possible code violations on Leisure Lane that were easily visible to him while coming and going from Calacal's property because he hadn't paid attention to properties not the subject of his investigation and because, in any event, he didn't know whether those properties were conforming or nonconforming. (Tr. 1471:24–1472:18, 1483:3–19.) He didn't investigate possible code violations immediately next door to 1926 Leisure Lane after Decker pointed them out because she didn't ask him to. (Tr. 1514:7–21.) Decker "didn't formally complain" about other perceived code violations on Leisure Lane—she was just "compar[ing]." (Tr. 199:1–9.)

37. For a few reasons, most Code Enforcement investigations originate with a citizen complaint. First, with only six code enforcement officers, Officer Ooi excluded, caseloads are high. (*See* Tr. 735:19–22.) For example, during the summer months—Code Enforcement's busiest season—each officer often carries twenty to thirty open cases at a time. (Tr. 743:2–7, 1052:20–24.) Second, absent a complaint,

it can be difficult or impossible for officers to know how long a particular violation has been ongoing. (Tr. 735:22–25, 1055:24–1056:7.) Finally, it isn't clear from a visual inspection alone whether a property has nonconforming use rights. (Tr. 1054:13–1055:10.) Determining whether a property has nonconforming use rights requires reviewing development and annexation agreements, checking when the property was constructed and when the relevant codes were enacted, and reviewing aerial photographs. (Tr. 394:6–398:2, 1054:13–1055:10.) For all these reasons, "very few" investigations are handled without a complaint. (Tr. 735:21.)

38. When the trial ended, Decker's tiny home was still parked at 1926 Leisure Lane behind a six-foot privacy fence. (Tr. 206:6–12.)

39. Decker is willing to apply for any permits and submit to any inspections necessary for the City of Meridian to permit her to live in her mobile tiny home on Calacal's property. (Tr. 72:21–73:1.)

40. The City of Meridian is capable of inspecting and performing a plan review of Decker's mobile tiny home for use as a secondary dwelling. (*E.g.*, Joint Stip. Facts ¶ 113.) The reason the City of Meridian wouldn't do so, were Plaintiffs to apply for the requisite permit, is that its zoning code flatly prohibits using a mobile tiny home as a secondary dwelling on a single-family residential property. (*Id.* ¶¶ 109–118.)

II.

CONCLUSIONS OF LAW

Counts 2 and 3: the as-applied substantive due process challenges

1. Every Idaho city has constitutional authority to "make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws." Idaho Const. art. XII, § 2. And, under the Local Land Use Planning Act ("LLUPA"), I.C. §§ 67-6501 to -6539, cities have broad statutory authority to regulate the use of lands within their boundaries. Together, these constitutional and statutory provisions give cities broad authority to adopt reasonable zoning ordinances. *E.g.*, *Ciszek v. Kootenai Cnty. Bd. of Comm'rs,* 151 Idaho 123, 131, 254 P.3d 24, 32 (2011); *Sprenger, Grubb & Assocs., Inc. v. City of Hailey,* 133 Idaho 320, 321, 986 P.2d 343, 344 (1999); *State v. Clark*, 88 Idaho 365, 374, 399 P.2d 955, 960 (1965); *Dawson Enters., Inc. v. Blaine Cnty.,* 98 Idaho 506, 511, 567 P.2d 1257, 1262 (1977); *see generally* 101A C.J.S. *Zoning and Land Planning* § 20, Westlaw (database updated May 2024).

2. Zoning ordinances are presumptively valid. *E.g.*, *S. Fork Coal. v. Bd. of Comm'rs of Bonneville Cnty.*, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990). More precisely, a zoning ordinance is considered reasonable and therefore valid unless a challenger proves it arbitrary, capricious, or discriminatory, which would make it unreasonable and therefore invalid. *E.g.*, *Dry Creek Partners, LLC, v. Ada Cnty. Comm'rs ex rel. State,* 148 Idaho 11, 19, 217 P.3d 1282, 1290 (2009). An ordinance with "no substantial relationship to the public health, safety, morals, and general

welfare" fails this undemanding reasonableness test. *Id*. (quoting 101A C.J.S. *Zoning & Land Planning* § 25 (2009)).

3. In deciding whether a zoning ordinance is reasonable, a court considers "all the existing circumstances or contemporaneous conditions, the objects sought to be obtained, and the necessity or lack thereof for its adoption." *Cole-Collister Fire Prot. Dist. v. City of Boise*, 93 Idaho 558, 562, 468 P.2d 290, 294 (1970). Though a court may doubt the wisdom of a particular enactment, "as long as there are considerations of public health, safety, morals, or general welfare which the legislative body may have had in mind, which have justified the regulation, it must be assumed by the court that the legislative body had those considerations in mind and that those considerations did justify the regulation." *Clark*, 88 Idaho at 376, 399 P.2d at 961. So, "[w]here there is a basis for a reasonable difference of opinion, or if the validity of legislative classification for zoning purposes is debatable, a court may not substitute its judgment for that of the local zoning authority." *City of Lewiston v. Knieriem*, 107 Idaho 80, 83, 685 P.2d 821, 824 (1984); *see also Dry Creek Partners*, 148 Idaho at 18, 217 P.3d at 1290 ("When a legislative judgment is called into question, it will be upheld if there is 'any state of facts either known or which could reasonably be assumed affords support for it.'") (quoting *United States v. Carolene Prods. Co.,* 304 U.S. 144, 154 (1938)). In other words, "so long as the reasonableness of a zoning ordinance is fairly debatable, the ordinance will be upheld." *Dry Creek Partners*, 148 Idaho at 18, 217 P.3d at 1290 (first citing *Village*

of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926); and then citing 101A C.J.S. *Zoning & Land Planning* § 25 (2009)).

4. According to U.D.C. § 11-4-3-12(B)'s Unified Ownership Requirement, "[s]econdary dwelling units shall not be . . . segregated in ownership from the single-family dwelling unit." U.D.C. § 11-4-3-12(B). Calacal and his son own 1926 Leisure Lane and the primary residence built there, but they don't own the mobile tiny home Plaintiffs propose to use as a secondary dwelling. Decker owns that. So, Plaintiffs' arrangement violates the Unified Ownership Requirement.

5. As part of Counts 2 and 3, Plaintiffs claim the Unified Ownership Requirement is unconstitutional as applied to their arrangement, which, again, involves using a mobile tiny home as a secondary dwelling on a single-family residential property. They failed, however, to mount a meaningful challenge to the Unified Ownership Requirement's validity at trial. They presented *no discernable evidence* that the Unified Ownership Requirement is unreasonable and therefore invalid as applied to their arrangement. And, in their proposed findings of fact and conclusions of law, they make *no argument* that it is unreasonable and therefore invalid as applied to their arrangement. As already noted, zoning ordinances are presumptively valid, *e.g.*, *S. Fork Coal.*, 117 Idaho at 860, 792 P.2d at 882, and can be invalidated in court only if a challenger proves them arbitrary, capricious, or discriminatory, *e.g.*, *Dry Creek Partners,* 148 Idaho at 19, 217 P.3d at 1290. Because Plaintiffs presented neither evidence nor argument to support their challenge to the Unified Ownership Requirement, the Court must reject that

challenge and uphold the Unified Ownership Requirement as applied to Plaintiffs' arrangement.[10] Consequently, Counts 2 and 3 fail on the merits to the extent they make an as-applied challenge to the Unified Ownership Requirement.

6. U.D.C. § 11-3A-20 prohibits living in a mobile tiny home anywhere but within an approved RV park, and U.D.C. § 11-4-3-12(H) prohibits using a mobile tiny home as a secondary dwelling at a single-family residential property. Plaintiffs' arrangement violates both ordinances—the former because 1926 Leisure Lane isn't an approved RV park, and the latter because Decker's mobile tiny home would be used as a secondary dwelling.

7. Plaintiffs claim that sections 11-3A-20 and 11-4-3-12(H) are unconstitutional as applied to their arrangement because the City of Meridian lacks a rational basis for prohibiting Decker's mobile tiny home—which is built comparably to a traditional home aside from its small size and placement on a chassis—from being used as a secondary dwelling at a single-family residential property. Plaintiffs mustered reasonably compelling evidence that Decker's mobile

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[10] In denying Plaintiffs' motion for a preliminary injunction, the Court made plain that the Unified Ownership Requirement is an obstacle Plaintiffs must overcome to succeed on Counts 2 and 3. (*See* Mem. Decision & Order 27–31, Nov. 7, 2022.) Also, during the summary-judgment hearing, the Court asked Plaintiffs' counsel to explain why the Unified Ownership Requirement is constitutionally infirm. Plaintiffs' counsel suggested that Defendants hadn't put the Unified Ownership Requirement at issue by specifying its purposes. But that response inverts the burden of proof; the Unified Ownership Requirement is valid unless Plaintiffs prove otherwise. In any event, because the Unified Ownership Requirement's constitutionality wasn't decided on summary judgment, it remained to be decided at trial. Consequently, the Court expected it to be addressed at trial in a reasonably fulsome way. Instead, it was ignored.

tiny home is about as safe to live in as a more traditional secondary dwelling and could be occupied at 1926 Leisure Lane without harm to neighboring properties. Regardless, the challenge is nonjusticiable, as the Court will explain.

8. Mootness considerations implicate jurisdiction, so the Court must raise them *sua sponte*. *E.g.*, *Berglund v. Dix*, 170 Idaho 378, 384, 511 P.3d 260, 266 (2022); *In re Doe I*, 145 Idaho 337, 340, 179 P.3d 300, 303 (2008).

9. "An issue becomes moot if it does not present a real and substantial controversy that is capable of being concluded by judicial relief." *Blaskiewicz v. Spine Inst. of Idaho, P.A.,* 171 Idaho 201, 205, 519 P.3d 1141, 1145 (2022) (internal quotation marks omitted) (quoting *State v. Barclay*, 148 Idaho 6, 8, 232 P.3d 327, 329 (2010)). "An issue does not present a real and substantial controversy if any judicial relief . . . would simply create precedent for future cases and would have no effect on either party." *Id.* (quoting *Barclay*, 149 Idaho at 8, 232 P.3d at 329) (internal quotation marks omitted). Put differently, a case is moot if "a judicial determination will have no practical effect upon the outcome." *Hansen v. Denney*, 158 Idaho 304, 307, 346 P.3d 321, 324 (Ct. App. 2015) (quoting *Goodson v. Nez Perce Cnty. Bd. of Cnty. Comm'rs,* 133 Idaho 851, 853, 993 P.2d 614, 616 (2000)); *see also* 1 Am. Jur. 2d *Actions* § 43, Westlaw (database updated May 2024).

10. Were the Court to hold that sections 11-3A-20 and 11-4-3-12(H) are unreasonable and therefore invalid as applied to Plaintiffs' arrangement, Plaintiffs still wouldn't be entitled to effectuate their arrangement. Such a holding would mean only that if Plaintiffs applied under section 11-4-3-12 for a secondary dwelling

permit, the application couldn't be denied simply because the proposed secondary dwelling is a mobile tiny home. But it would still have to be denied for failure to satisfy the Unified Ownership Requirement. Consequently, a favorable ruling from the Court on Plaintiffs' challenge to sections 11-3A-20 and 11-4-3-12(H) would get them nowhere as a practical matter. As a result, that challenge is moot.

11. The mootness doctrine has three exceptions. They must be considered to determine whether Plaintiffs' challenge to sections 11-3A-20 and 11-4-3-12(H), though moot, is nevertheless justiciable. The exceptions are: "(1) when there is the possibility of collateral legal consequences imposed on the person raising the issue; (2) when the challenged conduct is likely to evade judicial review and thus is capable of repetition; and (3) when an otherwise moot issue raises concerns of substantial public interest." *Barclay*, 149 Idaho at 8, 232 P.3d at 329 (quoting *Koch v. Canyon Cnty.,* 145 Idaho 158, 163, 177 P.3d 372, 377 (2008)).

12. Plaintiffs face no possibility of collateral legal consequences if their moot challenge to sections 11-3A-20 and 11-4-3-12(H) isn't decided, so the first exception is plainly inapplicable.

13. So is the second. If some other Meridian resident is subjected to an enforcement action for living in a mobile tiny home on a single-family residential property, that resident can seek judicial redress just as Plaintiffs did. Although this sort of dispute might arise again, the timeframes involved aren't so tight as to inhibit judicial review. *See, e.g.*, *Turner v. Rogers*, 564 U.S. 431 (2011); *Moore v. Ogilvie*, 39 U.S. 814 (1969).

14. Plaintiffs' best hope is the third exception, which allows courts to resolve moot issues that present "concerns of substantial public interest." *Koch,* 145 Idaho at 163, 177 P.3d at 377. Throughout this litigation, Plaintiffs have cast their arrangement as a remedy, if their lead is broadly followed, to a supposed housing crisis. But Counts 2 and 3 are as-applied claims that, by nature, concern Plaintiffs' particular situation. The Court knows of no reason to think anyone wants to implement an arrangement in Meridian similar to Plaintiffs' arrangement except compliant with the Unified Ownership Requirement. So, a favorable decision on Plaintiffs' moot challenge to sections 11-3A-20 and 11-4-3-12(H) seems highly unlikely to help a sizeable number of people obtain a secondary dwelling permit for a mobile tiny home (though the Unified Ownership Requirement prevents Plaintiffs from getting one). Further, while the Court doubts a sizeable number of people desire an arrangement in Meridian matching Plaintiffs', where the owner of a single-family residential property allows a third party to live on the property in the third party's mobile tiny home,[11] lawfully implementing any such arrangement would require filing a lawsuit challenging the Unified Ownership Requirement. The application of sections 11-3A-20 and 11-4-3-12(H) to any such arrangement is best decided in that same lawsuit. Counts 2 and 3 don't present concerns of substantial public interest.

[11] Indeed, testimony by Officers Ooi and Negrete suggests that Code Enforcement officers rarely encounter violations of section 11-3A-20, and even when they do, the violations usually involve short-term stays in RVs. (Finding of Fact 28, *supra.*)

15. In sum, then, Counts 2 and 3 are moot to the extent they challenge sections 11-3A-20 and 11-4-3-12(H), and no exception to the mootness doctrine renders that challenge justiciable. Accordingly, Counts 2 and 3 are dismissed without prejudice as nonjusticiable to the extent they challenge sections 11-3A-20 and 11-4-3-12(H).

Count 4: the selective-enforcement claim

16. Article I, section 2 of the Idaho Constitution guarantees that Idaho residents will be treated equally under the law. Idaho Const. art. I, § 2. It is rooted in the idea "that all persons in like circumstances should receive the same benefits and burdens of the law," *BABE VOTE v. McGrane*, ___ Idaho ___, ___, 546 P.3d 694, 714 (2024) (quoting *Med. Recovery Servs., LLC v. Strawn*, 156 Idaho 153, 159, 321 P.3d 703, 709 (2014)), and is violated when a statute or regulation is enforced in a selective or discriminatory manner, *e.g.*, *Anderson v. Spalding*, 137 Idaho 509, 50 P.3d 1004 (2002). A claimant must show "a deliberate plan of discrimination based upon some improper motive like race, sex, religion, or some other arbitrary classification." *Id.* (first citing *Whren v. United States,* 517 U.S. 806, 813 (1996); then citing *Young Elec. Sign Co. v. State,* 135 Idaho 804, 809, 25 P.3d 117, 122 (2001); and then citing *Henson v. Dep't of Law Enf't,* 107 Idaho 19, 23–24, 684 P.2d 996, 1000–01 (1984)). In some circumstances, disparate treatment arising from a misunderstanding of the law can amount to an arbitrary or irrational classification for equal-protection purposes. *See Christian Sci. Reading Room Jointly Maintained*

v. City & Cnty. of San Francisco, 784 F.2d 1010, 1016 (9th Cir. 1986), *amended on other grounds by* 792 F.2d 124 (9th Cir. 1986).

17. Plaintiffs say they were subjected to heightened enforcement action because the City of Meridian misunderstands how nonconforming-use rights (*i.e.*, grandfathered rights) terminate. (Pls.' Proposed Findings Fact & Conclusions Law 43–51.) Specifically, Plaintiffs contend Officer Negrete treated them differently from neighbors engaged in "materially indistinguishable" code violations based on his incorrect belief that nonconforming-use rights terminate upon a change of property ownership, so new property owners like Calacal must conform to current code even though longtime property owners need not do so. (*See id.*)

18. A "nonconforming use" is a "use of land which lawfully existed prior to the enactment of a zoning ordinance and which is maintained after the effective date of the ordinance even though not in compliance with use restrictions." *Eddins v. City of Lewiston,* 150 Idaho 30, 34, 244 P.3d 174, 178 (2010) (quoting *Baxter v. City of Preston,* 115 Idaho 607, 608–09, 768 P.2d 1340, 1341–42 (1989)). The constitutionally guaranteed right to due process of law encompasses, however, the right to continue a nonconforming use after the enactment of a zoning ordinance that bars it. *E.g., id.* Though nonconforming-use rights can be lost through abandonment or expansion, *see, e.g.*, 83 Am. Jur. 2d *Zoning and Planning* § 579, Westlaw (database updated May 2024); *Eddins*, 150 Idaho at 34, 244 P.3d at 178, they aren't lost simply because the property is conveyed to a new owner, *e.g.*, *O'Connor v. City of Moscow,* 69 Idaho 37, 43–44, 202 P.2d 401, 404–05 (1949).

19. Because nonconforming-use rights don't terminate upon a change of ownership, Officer Negrete espoused a mistaken view of them during his interactions with Plaintiffs. (*See* Findings of Fact 13 & 33, *supra.*) Defendants share his mistaken view. (*See* Joint Stip. Facts ¶ 126.) Regardless, their mistaken view of nonconforming-use rights lacks equal-protection implications unless it caused them to treat Plaintiffs less favorably than similarly situated individuals. In other words, it doesn't matter that Officer Negrete mistakenly thought Calacal couldn't have acquired nonconforming-use rights when he purchased 1926 Leisure Lane unless Plaintiffs prove they were "intentionally . . . treated differently based on" that mistaken understanding of the law. *Terrazas v. Blaine Cnty. ex rel. Bd. of Comm'rs*, 147 Idaho 193, 205, 207 P.3d 169, 181 (2009) (emphasis added).

20. Officer Negrete began investigating 1926 Leisure Lane and 1928 Leisure Lane when Calacal's neighbor lodged a complaint with Code Enforcement about the mobile tiny homes on each property. (Finding of Fact 7, *supra.*) Although 1926 Leisure Lane had just been purchased by Calacal a few days earlier, (Finding of Fact 2, *supra*), there is no evidence that 1928 Leisure Lane was—or was believed by Officer Negrete to be—under new ownership. That Officer Negrete investigated the mobile tiny homes at both addresses shows that it was the neighbor's complaint, not Calacal's status as a new owner, that prompted the investigation of 1926 Leisure Lane, despite that Officer Negrete told Calacal the opposite, (Finding of Fact 13, *supra*), perhaps not wanting to reveal that a neighbor had complained about Decker's mobile tiny home.

21. Nor does the record support Plaintiffs' argument that Officer Negrete, having visited Leisure Lane to investigate the neighbor's complaint about the mobile tiny homes at 1926 Leisure Lane and 1928 Leisure Lane, should've investigated obvious code violations on neighboring properties but didn't because of his mistaken view of nonconforming-use rights. Code Enforcement rarely investigates code violations absent a complaint because their duration and whether the property has nonconforming-use rights are difficult to know and can't be determined by a visual inspection alone. (Finding of Fact 37, *supra*.) In other words, Code Enforcement doesn't initiate potentially time-consuming inquiries without a complaint.[12] (*See id.*) It isn't surprising, then, that when Officer Negrete was asked about the shipping container, trailers, and broken-down cars parked on an unimproved surface and unscreened from the street on the property adjacent to 1926 Leisure Lane, he said he didn't notice because he wasn't investigating that property and whether there was a violation would depend on whether "the property is conforming or nonconforming." (Finding of Fact 36, *supra*.) Nothing in Officer Negrete's answer is plainly inaccurate or inconsistent with Code Enforcement's standard practice of investigating code violations only in response to a complaint.

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[12] Determining whether a property has a nonconforming-use right to engage in a particular activity necessarily involves a fact-intensive inquiry into when the use began, when the ordinance barring that use was enacted, and whether the owner of the property at any time abandoned or expanded the use. As Officer Ooi testified, that information can't be gleaned from a visual inspection, so Code Enforcement's approach—not undertaking such inquiries without a complaint—functions as a resource-management measure. Count 4 doesn't challenge the propriety of a generally complaint-initiated mode of enforcement.

22. Against this backdrop, to establish that Defendants selectively investigated 1926 Leisure Lane for code violations because Calacal was a new owner, Plaintiffs need evidence that a complaint was made against another property on Leisure Lane but Officer Negrete didn't investigate because he misunderstands nonconforming-use rights. Trying to make this showing, Plaintiffs argue that, based on his trial testimony, Officer Negrete considers in-person complaints made by the target of an investigation about violations on a neighboring property to be valid, investigable complaints. (Pls.' Proposed Findings Fact & Conclusions Law 50.) Building on that testimony, Plaintiffs say Decker made a valid complaint about junked cars and shipping containers on an unimproved surface at the property adjacent to 1926 Leisure Lane when she spoke with Officer Negrete on August 2, 2022. (*Id.* at 48.) But Officer Negrete doesn't remember Decker making a complaint about a neighboring property, and Decker said she didn't make one. (Finding of Fact 36, *supra*.) That Decker may have commented on suspected violations next door in a way that neither she nor Officer Negrete understood to be a complaint doesn't establish that he intentionally ignored a complaint based on his misunderstanding of the applicable law.

23. In sum, the evidence shows that Code Enforcement rarely investigates code violations absent a complaint, and the evidence shows that Officer Negrete investigated every property on Leisure Lane about which a complaint was made. Because there is no good evidence that Officer Negrete's misunderstanding of nonconforming-use rights caused him not to investigate complaints about code

violations at other properties that are similar in nature to the code violations of which he accused Plaintiffs, Plaintiffs haven't established that they were "treated differently based on a distinction that fails the rational basis test." *Terrazas*, 147 Idaho at 205, 207 P.3d at 181. Count 4 is dismissed with prejudice.

<u>Count 5: Decker's free-speech retaliation claim</u>

24. Article I, section 9 of the Idaho Constitution ensures that Idahoans "may freely speak, write and publish on all subjects." Idaho Const. art. I, § 9. It guarantees free-speech rights "substantially similar" to those provided by the First Amendment to the federal constitution. *State v. Hammersley*, 134 Idaho 816, 819, 10 P.3d 1285, 1288 (2000), *overruled on other grounds by State v. Poe*, 139 Idaho 885, 88 P.3d 704 (2004). As a result, First Amendment retaliation precedents are instructive when evaluating a retaliation claim under Article I, section 9.

25. "[T]he First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech." *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019) (internal quotation marks omitted). A First Amendment retaliation claim requires the plaintiff to prove that "(1) he was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity[,] and (3) the protected activity was a substantial or motivating factor in the defendant's conduct." *Capp v. Cnty. of San Diego*, 940 F.3d 1046, 1053 (9th Cir. 2019) (quoting *O'Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016)).

26. When the allegedly retaliatory conduct involves an arrest, prosecution, or like enforcement action, however, the plaintiff must also make one of two threshold showings: (i) the defendant lacked probable cause to believe the plaintiff committed a violation of law that justifies taking the enforcement action; or (ii) if instead the defendant had probable cause, the enforcement action is rarely taken against similarly situated individuals. *See Nieves*, 587 U.S. at 401–04 (requiring lack of probable cause in retaliatory-arrest cases)[13]; *Richards v. Dep't of Bldg. Inspection of City & Cnty. of San Francisco,* No. 20-CV-01242-JCS, 2021 WL 5415254 at *7–11 (N.D. Cal. Nov. 19, 2021) (applying probable-cause requirement in context of permit revocation); *but see Lozman v. City of Riviera Beach*, 585 U.S. 87 (2018) (holding probable-cause requirement inapplicable to claims alleging retaliatory arrest made according to official municipal policy of intimidation). A plaintiff who makes either showing may proceed in the same manner as with any other retaliation claim. *See Nieves*, 587 U.S. at 404.

27. Count 5, Decker's free-speech claim, was limited on summary judgment to the assertion that Officer Negrete issued notices of parking violations

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[13] Early in this litigation, the Court expressed skepticism that *Nieves* should be extended to cases in which the claimant was neither arrested nor prosecuted. (Mem. Decision & Order Summ. J. 25–26.) After all, some of the policy considerations underlying *Nieves*'s probable-cause requirement, *see* 578 U.S. at 403–04, are of questionable applicability when neither an arrest nor a prosecution occurred. Both sides, however, have consistently invited the Court to apply *Nieves* to Count 5. Upon that invitation, and lacking a principled reason for restricting *Nieves* to cases involving allegedly retaliatory arrests or prosecutions, the Court applied *Nieves* to Count 5 on summary judgment, (Mem. Decision & Order Summ. J. 20–27), and continues to do so now.

to Plaintiffs in retaliation for Decker's comments to the *Statesman*. (Mem. Decision & Order Summ. J. 20–27.) Plaintiffs don't deny that the notices of parking violations were supported by probable cause. (Finding of Fact 26.) Consequently, they must establish that such notices aren't normally issued to similarly situated individuals. *See Nieves*, 587 U.S. at 406–07. Plaintiffs argue three grounds for finding that notices of parking violations aren't normally issued to similarly situated individuals: (i) Officer Negrete ignored similar parking violations at properties neighboring 1926 Leisure Lane; (ii) Officer Negrete didn't give Plaintiffs an oral warning about the parking violations before issuing the notices; and (iii) the notice issued to Decker encompassed the Chevrolet Caprice owned by her boyfriend Lang, to whom no such notice was issued. (*See* Pls.' Proposed Findings Fact & Conclusions Law 55–63.) The Court takes these three theories in turn.

28. The first theory is essentially Count 4 redux, the difference being that Defendants are alleged to have treated Plaintiffs differently because Decker spoke to the press instead of because Calacal wasn't a longtime property owner. As the Court just concluded with respect to Count 4, a neighbor complained about Decker's mobile tiny home and the mobile tiny home at 1928 Leisure Lane, drawing Officer Negrete's attention to those properties. Although the neighbor's complaint wasn't about parking violations, once a complaint draws Officer Negrete to a property and he begins trying to get the owner to abate the code violation about which the complaint was made, he also addresses any other code violations he notices there. (Finding of Fact 35, *supra*.) No complaint—whether related to parking violations or

otherwise—was made about any other property on Leisure Lane. The absence of a complaint about other properties on Leisure Lane explains why possible parking violations at those other properties weren't investigated and notices of violation concerning them weren't issued, (Conclusions of Law 20–23, *supra*), though such notices were issued to Plaintiffs. In other words, while parking violations likely were present at other Leisure Lane properties, Plaintiffs haven't shown that they are similarly situated to the owners of those other properties, as no one complained about code violations at those other properties but a neighbor did complain about a code violation at 1926 Leisure Lane.

29. Plaintiffs' second theory fares no better. As detailed in the Court's factual findings, Officer Negrete didn't fail to warn Plaintiffs about parking violations—he told Calacal on May 31, 2022, that all vehicles must be registered, operable, and parked on an improved surface. (Finding of Fact 26, *supra*.) That Officer Negrete warned Calacal about parking violations generally, instead of warning him about particular vehicles at particular times, isn't meaningful. Nor is it meaningful that Officer Negrete's warning came before the Toyota Tacoma pickup truck was parked unlawfully on June 9, 2022. (Finding of Fact 24, *supra*.) Though Officer Negrete *usually* warns residents about code violations before issuing a notice of violation, (Finding of Fact 35, *supra*), the evidence doesn't show that he warns residents about every particularized instance of a violation before issuing a notice of violation. Further, even if Officer Negrete hadn't warned Calacal about parking violations on May 31, Plaintiffs' argument still wouldn't be persuasive. At trial,

Officer Negrete credibly testified that although his standard practice is to warn residents about code violations, he may choose not to warn a resident about minor code violations before including them in a notice of violation if a more significant violation he had been working with the resident to address causes him to issue such a notice. (*Id.*) Officer Negrete warned Plaintiffs about their section 11-3A-20 violation weeks before he issued notices of violation. Thus, the Court cannot find that Officer Negrete treated Plaintiffs differently from similarly situated individuals by not warning Plaintiffs about parking violations before including them in a series of notices precipitated by section 11-3A-20 violations.

30. Plaintiffs' third theory is better supported by the evidence. The U.D.C. places the compliance obligation on "the owner, occupier or other person responsible for the condition of the land and buildings." U.D.C. § 11-1-11(A)(3). Accordingly, notices of violation, when issued, should be served "upon the owner, tenant, <u>or</u> other person responsible for the condition." U.D.C. § 11-1-11(B)(2) (emphasis added). Though this list is disjunctive, suggesting that notices of violation can properly be served on owners in any of these three categories, Officers Ooi and Negrete both testified that Code Enforcement's preference is holding real property owners responsible for code violations on their property. (Finding of Fact 25 & n.5, *supra.*)

31. Decker received a notice of violation for the Caprice even though she was neither its registered owner nor the owner of 1926 Leisure Lane. The Caprice's registered owner, Lang, didn't receive a notice of violation, nor did Calacal's son's friend, who was the registered owner of the Tacoma. (Finding of Fact 25, *supra.*)

As the property owner, Calacal understandably received a notice of violation concerning both of these vehicles, as well as concerning Decker's unlawfully parked Jeep Renegade and her mobile tiny home. (Finding of Fact 24, *supra*.) Notices of violation can be issued to the occupants of real property. U.D.C. § 11-1-11(B)(2). Both Decker and Lang were occupants of 1926 Leisure Lane, as Officer Negrete had good reason to think, and each was the registered owner of a vehicle parked there unlawfully. (Finding of Fact 25, *supra*.) Hence, issuing her, but not him, a notice of violation concerning the Caprice amounts to treating her differently than at least one similarly situated individual.

32. In this limited respect, Decker has made one of the two alternative threshold showings required in Conclusion of Law 26, *supra*. Consequently, the question becomes whether she has proved each of the three elements of her retaliation claim, as laid out in Conclusion of Law 25, *supra*. For the reasons the Court is about to explain, she has not.

33. Decker engaged in a constitutionally protected activity by speaking critically of Defendants' enforcement practices to the *Statesman*. (*See* Findings of Fact 17–18, 21, *supra*.) "[T]he law is settled that . . . the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out." *Hartman v. Moore*, 547 U.S. 250, 256 (2006); *see also Capp*, 940 F.3d at 1054 ("It is well settled that the activity for which Capp was allegedly retaliated against—voicing criticism of the Agency's conduct—is constitutionally protected."). The first element is established.

34. The second element, as applied to this case, requires proof that Officer Negrete's issuing Plaintiffs notices threatening misdemeanor prosecutions for parking violations "would chill a person of ordinary firmness from continuing to engage in the protected activity." *Capp,* 940 F.3d at 1053 (quoting *O'Brien*, 818 F.3d at 932). As the Court noted on summary judgment, whether Decker's speech was chilled isn't determinative. (Mem. Decision & Order Summ. J. 22–23.) Instead, the question is whether "a person of ordinary firmness" would be deterred from voicing criticism of official conduct if doing so resulted in threatened misdemeanor prosecutions. *See Capp*, 940 F.3d at 1054–55 (first citing *O'Brien*, 818 F.3d at 933; and then citing *Mendocino Env't. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300 (9th Cir. 1999)). The Court assumes, without deciding, that Decker made this showing, though the ease with which the parking violations could be abated militates in favor of the opposite conclusion.

35. The third element is problematic for Decker. It requires proof that her contact with the *Statesman* was a "substantial or motivating factor" in Defendants' conduct. *E.g.*, *Capp*, 940 F.3d at 1053. This is a causation requirement. To prevail on her claim, Decker must show that, absent Defendants' retaliatory animus, she wouldn't have received a notice of violation for Lang's parking violation (the mention of that particular violation in her notice of parking violations being the only way in which she has proved she was treated differently from any similarly situated individual). *See, e.g., Nieves*, 587 U.S. at 398 ("It is not enough to show that an official acted with a retaliatory motive and that the plaintiff was injured—

the motive must *cause* the injury.”). Having heard extensive testimony from Decker, Officer Negrete, and numerous others, the Court isn’t persuaded that Decker’s decision to speak to the *Statesman* played any role in the notice of violation she received for Lang’s Chevrolet Caprice.[14]

36. Trying to prove Defendants’ retaliatory animus, Plaintiffs point to several occurrences—some preceding Decker’s receipt of the notice of violation and some following it—that they insist should color the Court’s view of Officer Negrete’s conduct. For example, Plaintiffs say it wasn’t a coincidence that Officer Negrete asked the City’s legal department to prepare notices of violation for 1926 Leisure Lane on June 2—about a week before his scheduled check-in date on June 10—when that was the same day Jason Jones contacted him and the *Statesman* sought comment from the City of Meridian’s spokesperson. (Pls.’ Proposed Findings Fact & Conclusions Law 63–64.) They also say it wasn’t a coincidence that Officer Negrete stopped investigating 1928 Leisure Lane but recorded code violations at 1926 Leisure Lane on June 9, shortly after the *Statesman* published its online and print articles. (*Id*. at 60.) But, as detailed at length in its factual findings, the Court disagrees that these actions were motivated by Decker’s contact with the *Statesman*. (*See* Findings of Fact 19 & n.3, 23.) The Court also disagrees with

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[14] Nor, for that matter, did it play any role in Officer Negrete’s issuing Decker a notice of parking violation concerning her Jeep Renegade or in his issuing Calacal a notice of parking violation concerning the Renegade, Lang’s Caprice, or Calacal’s son’s friend’s Tacoma. So, even if the Court is wrong to conclude that Officer Negrete’s issuance of the notices of parking violations didn’t amount to treating Decker differently from similarly situated individuals other than by mentioning Lang’s Caprice in the notice issued to her, Count 5 would still fail.

Plaintiffs' insinuation that there was anything untoward about Officer Negrete's refusal to speak with Jones about 1926 Leisure Lane, even though he'd been willing to talk to third parties about his investigations of other properties. (Finding of Fact 10 & n.2.) Officer Negrete offered reasonable and credible explanations for why he took these actions when he did. (*See* Finding of Fact 10 & n.2, 19, 23.) The Court isn't persuaded that they are proof of retaliatory animus.

37. A few of the facts upon which Plaintiffs rely do, however, warrant further mention. One is that Officer Negrete was rude, perhaps even "a little angry," when he discussed the *Statesman* article with Decker on August 2, 2022. (Finding of Fact 32, *supra*.) According to Plaintiffs, this is "direct evidence of retaliatory intent." (Pls.' Proposed Findings Fact & Conclusions Law 63.) Another is that Officer Negrete closed his investigation of 1928 Leisure Lane with a case note indicating that the mobile tiny home there was disconnected from utilities, even though the privacy fence would have prevented him from visually confirming that fact. (Finding of Fact 22 n.4, *supra*.) As Plaintiffs see it, Officer Negrete must have been significantly more vigorous in his code enforcement efforts against Decker than he was against other residents once he knew she'd spoken to the press. (*See* Pls.' Proposed Findings Fact & Conclusions Law 62.)

38. Officer Negrete was irritated by the *Statesman* article. He needlessly complained to Decker about its use of the term "eviction" during a later visit to 1926 Leisure Lane. But that doesn't prove much. Nor does his drawing a seemingly unsupported conclusion about a trifling detail concerning the mobile tiny home at

1928 Leisure Lane.[15] Having heard hours of testimony from Officer Negrete, during which he explained his enforcement decisions and the reasons for them, the Court isn't convinced that Decker's interview with the *Statesman* was a motivating factor. This conclusion extends to his decision to issue a notice of violation to Decker for Lang's vehicle but not to issue notices of violation to either Lang or the owner of the Toyota Tacoma. The U.D.C. permits issuing notices of violation to the "owner, tenant, or other person responsible for the violation." U.D.C. § 11-1-11(B)(2). Officer Negrete issued a notice of violation to Decker for the Caprice because he knew it was being driven by her boyfriend, who he had seen with her outside her mobile tiny home, but he hadn't taken that man's name and wasn't sure it was Lang, the Caprice's registered owner. (Finding of Fact 25, *supra*.) In retrospect, Officer Negrete's hesitancy was misplaced. That said, Officer Negrete was disinclined to issue notices to people he hadn't met when he couldn't be sure of their involvement in the violations at issue. He had met Calacal and Decker and understood their interests in the underlying property. By contrast, there is no evidence he was introduced to Lang or the owner of the Tacoma. Hence, the Court isn't convinced that his decision to issue a notice of violation to Decker for Lang's vehicle—whether technically proper or not—was motivated or substantially affected by Decker's having spoken critically of Defendants to the press.

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[15] Officer Negrete closed his investigation of 1928 Leisure Lane once the mobile tiny home there was screened by a privacy fence. (*See* Findings of Fact 11, 22.) Because he had already concluded that no one lived in that mobile tiny home, whether it was connected to utilities didn't matter. (Findings of Fact 10–11.)

39. For all these reasons, the Court finds that Decker's free-speech retaliation claim wasn't proved by a preponderance of the evidence.

Accordingly,

IT IS ORDERED that Counts 2 and 3 are dismissed with prejudice to the extent they challenge the constitutionality of section 11-4-3-12(B) as applied to Plaintiffs. Plaintiffs made that challenge in their amended complaint but failed to pursue it at trial.

IT IS FURTHER ORDERED that Counts 2 and 3 are dismissed without prejudice as nonjusticiable to the extent they challenge the constitutionality of section 11-3A-20 and section 11-4-3-12(H) as applied to Plaintiffs.

IT IS FURTHER ORDERED that Counts 4 and 5 are dismissed with prejudice.

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on July 23, 2024, I served a copy of this document as follows:

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