JUSTIN D. HEIDEMAN (USB #8897)
CORWIN BENNETT (USB #17563)
HEIDEMAN & ASSOCIATES
2696 N. University Ave. Suite 180
Provo, Utah 84604
Tel: (801) 472-7742
Fax: (801) 374-1724
Email: jheideman@heidlaw.com
cbennett@heidlaw.com
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH

JANENE THORPE, an individual, CHRISTOPHER THORPE, SR., an individual, CHRISTOPHER THORPE, JR., an individual; CHARLIE THORPE, an individual,

Plaintiffs,

vs.

CEDAR HILLS CITY, a government entity; AMERICAN FORK CITY, a government entity; AMERICAN FORK CITY POLICE DEPARTMENT, a government entity; DARREN FALSLEV, in his official capacity and individual capacity as AMERICAN FORK POLICE CHIEF; C. SLATE BLACKBURN, in his official and individual capacities; PHILLIP W.S. CRAIG, in his official and individual capacities; JENNIFER L. NAKAI, in her official and individual capacities, KANDACE N. KONECHNY, in her official and individual capacities; SETH WIATE, in his official and individual capacity; and JOHN or JANE DOES, 1-15, in their individual and/or official capacities,

Defendants.

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT CEDAR HILLS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Case No. 2:23-CV-00242
Judge David Barlow
Magistrate Daphne A. Oberg

Tier: 3

COMES NOW, Plaintiffs, JANENE THORPE, CHRISTOPHER THORPE, SR., CHRISTOPHER THORPE, JR., AND CHARLIE THORPE by and through their respective counsel

of record, and hereby respectfully submit the following *Memorandum in Opposition to Defendant Cedar Hills' Motion for Partial Summary Judgment*.

PREFERRED DISPOSITION AND GROUNDS

Plaintiffs respectfully request that the Court deny Defendant Cedar Hills' *Motion*. Cedar Hills' motion is built on a single, curated narrative: that Cedar Hills was a passive, uninformed bystander to its own police contract, with no right, ability, or practice of overseeing American Fork's conduct. That narrative does not survive contact with Cedar Hills' own contract or its own discovery responses.

The Public Safety Service Agreement gave Cedar Hills a standing right to receive police reports "pertinent to Cedar Hills." Agreement § 1.2. Cedar Hills' own interrogatory response confirms that right was exercised in practice. Specifically, American Fork "gave monthly reports of incidents it handled in Cedar Hills' city limits with summaries of actions taken by AFPD." [Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 5]. Cedar Hills' own interrogatory response also states, in its own words, that Cedar Hills "required and instructed" American Fork on training, legal compliance, and officer screening. *Id.*, Resp. to Interrog. No. 2]. And it was the Cedar Hills City Council itself — not some junior functionary — that approved the Agreement defining this entire arrangement. [*Id.*, Resp. to Interrog. No. 1].

Independently, Cedar Hills' own Agreement delegates one hundred percent of Cedar Hills' policing authority to AFPD, including "the sole right and authority... to direct and control the manner in which its employees and Officers discharge their professional and work duties." Agreement § 4. Under *Pembaur v. City of Cincinnati* and related cases, a municipality that hands final policy-making authority to another entity remains liable when that entity's policy causes a constitutional injury. Cedar Hills' *Motion* does not address this theory at all.

None of this appears in Cedar Hills' *Motion*. Instead, the *Motion* rests entirely on a single declaration from the current City Manager, portions of which are unsupported legal conclusions, and which is silent about the very oversight mechanisms Cedar Hills' own contract and discovery responses establish. Summary judgment cannot be granted on a record this contested.

RESPONSES TO DEFENDANT'S STATEMENT OF MATERIAL FACTS[1]

1. *Cedar Hills is a municipality and political subdivision of the State of Utah. Second Amended Complaint ("Complaint") ¶ 15, attached as Exhibit A.*

RESPONSE: Undisputed for the limited purpose of the instant *Motion*.

2. *Cedar Hills does not have its own police department. Declaration of Chandler Goodwin ("Goodwin Decl.") ¶ 5, attached as Exhibit B.*

RESPONSE: Undisputed for the limited purpose of the instant *Motion*.

3. *Cedar Hills contracts with American Fork City ("American Fork") to provide public safety services to Cedar Hills. See Public Safety Service Agreement, attached as Exhibit C; Goodwin Decl. ¶ 6, Ex. B.*

RESPONSE: Objected to on the grounds and to the extent that the Safety Service Agreement (the "Agreement") speaks for itself. Subject to and without waiving any objection, Undisputed but incomplete. The cited Agreement contains additional provisions material to this *Motion*, including a right of Cedar Hills to receive police reports "pertinent to Cedar Hills" [Defendant Cedar Hills' Exhibit C, § 1.2], a right of immediate termination upon a compliance finding against American Fork [id. § 6], and confirmation that the Cedar Hills City Council approved the Agreement [Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 1]. Plaintiffs address these provisions in their Statement of Additional Disputed

[1] Defendant Cedar Hills' factual assertions are set forth in italics, while Plaintiffs' responses are set forth in bold.

Facts, below.

4. *The Public Safety Service Agreement between Cedar Hills and American Fork (the "Agreement") states, in relevant part,*

> *American Fork shall at all times be considered an independent contractor for all purposes under this Agreement, including the performance of all responsibilities identified under Section 1. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership or employer/employee relationship between the parties. Neither party shall hold itself out as the representative or agent of the other party. Neither party has the right to exercise control over the other party, its employees, its Officers or its agents, and neither party shall seek such right. American Fork, its employees, and Officers assigned to Cedar Hills shall not be deemed employees or joint employees of Cedar Hills for any purpose. American Fork retains the sole right and authority to recruit, hire, promote, discipline, demote, discharge, determine rates of pay for, establish the terms and conditions of employment of, and/or to direct and control the manner in which its employees and Officers discharge their professional and work duties.*
>
> *American Fork is responsible for instructing and training its Officers consistent with this Agreement.*

Public Safety Service Agreement § 4, Ex. C.

RESPONSE: Objected to on the grounds and to the extent that the Agreement speaks for itself. Undisputed that the quoted language appears in Agreement § 4. Disputed to the extent Cedar Hills suggests this language is a complete or accurate description of the parties' operative relationship. The Agreement also obligates American Fork to provide Cedar Hills access to police reports [§ 1.2] and gives Cedar Hills a unilateral termination right tied to American Fork's legal compliance [§ 6]. ***See also*** **Statement of Additional Disputed Facts ¶¶ 1, 5.**

5. *Plaintiffs' claims stem from an incident (the "Incident") that occurred on April 23, 2021, in which American Fork police officers Defendant Philip Craig ("Officer Craig") and C. Slate Blackburn ("Officer Blackburn") allegedly unlawfully entered Plaintiffs' home and seized Plaintiff Janene Thorpe ("Janene"). See Complaint ¶¶ 209–361, Ex. A.*

RESPONSE: Undisputed that Plaintiffs' claims arise *in part* from the April 23, 2021 encounter. Disputed to the extent this paragraph implies the characterization of that encounter set forth in the *Complaint's* citation [¶¶ 209–361] is undisputed; Plaintiffs' verified *Complaint* sets forth a materially different account of the Incident, including that Officers Blackburn and Craig forced entry without lawful basis and used excessive force in pursuit of policies and customs adopted by American Fork against Plaintiffs. [*Complaint* ¶¶ 209–361]. Further Disputed to the extent that Cedar Hills infers or implies the April 23, 2021 "Incident" is the *sole* basis of Plaintiffs' claims, as Plaintiffs have identified a continuing pattern of indifference, bias, hostility, intimidation, failure and refusal to process complaints, failure and refusal to answer calls, and failure and refusal to fully and appropriately investigate claims, which both began before and continued after the April 23, 2021 physical assault against Plaintiff Janene Thorpe by Officer Criag and Officer Blackburn. [*See Complaint* ¶¶ 99-223, 394-454].

6. *Officer Craig and Officer Blackburn were American Fork police officers. See id.*

RESPONSE: Admitted in part, Disputed in part. Admitted that Officer Craig and Officer Blackburn were American Fork police officers. Disputed as to any inference from that fact that Officer Craig and Officer Blackburn were not also Cedar Hills police officers to the extent that they operated in Cedar Hills and enforced Cedar Hills' law pursuant to the aforementioned Agreement, and would not have been authorized to do so absent Cedar Hills' agreement to the same. [*See e.g. Complaint*, ¶¶ 26 and 29; Defendant Cedar Hills' Exhibit C, Section 1.2]:

> **<u>American Fork will handle all police matters in Cedar Hills</u>, including but not limited to providing Cedar Hills with access to any police reports and animal control reports pertinent to Cedar Hills; <u>assuming all municipal law enforcement</u> and animal control duties <u>within the territorial and/or</u>**

jurisdictional limits of Cedar Hills; providing preventative patrol and investigative services and NOVA instruction; and other related services *pursuant to established practice*. [Emphasis added].

7. *According to Plaintiffs, Plaintiffs' neighbor falsely accused Janene of throwing rocks at her. See id. ¶ 211.*

RESPONSE: Objected to on the grounds that Plaintiffs' verified *Complaint* speaks for itself. Subject to and without waiving any objection, Plaintiffs Admit the allegation of their verified *Complaint* and Dispute any inference inconsistent therewith. [*See Complaint* ¶ 211]. Plaintiffs' verified *Complaint* alleges the underlying accusation was itself the product of AFPD's practice of crediting Sanches allegations without adequate investigation, and that the video evidence relied upon did not support the accusation. [*Complaint*, ¶¶ 189–203].

8. *According to Plaintiffs, Officer Craig and Officer Blackburn prepared a citation based on these allegations "and went to [Plaintiffs'] to serve the citation." Id. ¶ 219.*

RESPONSE: Objected to on the grounds that Plaintiffs' verified *Complaint* speaks for itself. Subject to and without waiving any objection, Plaintiffs Admit the allegation of their verified *Complaint* and Dispute any inference inconsistent therewith. [*See Complaint* ¶ 211]. Plaintiffs Dispute to the extent this paragraph implies the citation was adequately investigated or supported by evidence; Plaintiffs' verified *Complaint* alleges the citation was issued without sufficient investigation or probable cause. [*Complaint*, ¶¶ 224–231].

9. *That is when the Incident occurred. Id. ¶¶ 232–361.*

RESPONSE: Objected to on the grounds that Plaintiffs' *Verified Complaint* speaks for itself. Subject to and without waiving any objection, Plaintiffs Admit the allegation of their *Verified Complaint* and Dispute any inference inconsistent therewith. *See Complaint* ¶ 211. Further Disputed as to Cedar Hills' characterization of the events. [*See* Response to ¶ 5,

above, and *Complaint* ¶¶ 232–361].

10. *Neither Cedar Hills nor any of its employees or officials were present during the Incident. Goodwin Decl. ¶ 7, Ex. B.*

RESPONSE: Plaintiffs object to the Goodwin *Declaration* for lack of foundation of personal knowledge. Goodwin's purported basis of personal knowledge is that he is "informed and appraised of any complaint, dispute, or issue involving Cedar Hills employees and officials," and that he "reviewed Cedar Hills' records related to this incident." [*See* Defendant Cedar Hills' Exhibit B, ¶¶ 3-4]. As to records, Plaintiffs object on grounds of hearsay and the best evidence rule. As to Mr. Goodwin being "informed and appraised," the *Declaration* neither explains how Mr. Goodwin is appraised (which itself is objectionable as hearsay), nor lays any foundation as to why the unexplained method of appraisal justifies Mr. Goodwin's bare assumption that every single complaint, dispute or issue actually reaches him. Subject to and without waiving any objection, Disputed to the extent Cedar Hills contends this establishes it lacked knowledge or oversight capacity regarding AFPD's conduct generally. [*See* Statement of Additional Disputed Facts ¶¶ 1–2]. Officer Craig and Officer Blackburn acted as Cedar Hills officials to the extent that they operated in Cedar Hills and enforced Cedar Hills' law pursuant to the aforementioned Agreement, and would not have been authorized to do so absent Cedar Hills' agreement to the same. [*See e.g.* *Complaint*, ¶¶ 26 and 29; Defendant Cedar Hills' Exhibit C, Section 1.2]:

> **American Fork will handle all police matters in Cedar Hills, including but not limited to providing Cedar Hills with access to any police reports and animal control reports pertinent to Cedar Hills; assuming all municipal law enforcement and animal control duties within the territorial and/or jurisdictional limits of Cedar Hills; providing preventative patrol and investigative services and NOVA instruction; and other related services *pursuant to established practice*. [Emphasis added].**

11. *No Cedar Hills employee or official was notified about the rock-throwing allegations or investigation. Id. ¶ 8.*

RESPONSE: Disputed. This paragraph rests solely on ¶ 8 of the Goodwin *Declaration*, which lacks adequate foundation in accordance with the objection previously stated in response to ¶ 10, *supra*, which objection and response is hereby incorporated herein by this reference. This assertion also contradicts Cedar Hills' own discovery response confirming Cedar Hills received monthly incident reports from American Fork summarizing AFPD's actions in Cedar Hills. [*See* Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 5]. This would include, but not be limited to, the "rock-throwing allegations or investigation." More importantly, this would also include every other incident involving an AFPD response to the Sanches' or Thorpes' properties – which are "in Cedar Hills' city limits" – as detailed in Plaintiffs' *Complaint.* [*See e.g. Complaint*, ¶¶ 59-61, 65-67, 77, 82-99, 128]. Cedar Hills was not only aware through these reports of AFPD's policy and practice of bias against the Thorpes prior to the April 23, 2021 assault, Cedar Hills was directly aware that the manufactured reports of AFPD regarding the Thorpes were specifically unfounded in evidence. [*See Complaint*, ¶¶ 128-134].

12. *No Cedar Hills employee or official decided to issue the citation. Id. ¶ 9.*

RESPONSE: Plaintiffs object on grounds of immateriality. Plaintiffs' theory of liability does not depend on Cedar Hills personally issuing the citation. *See* argument *infra.* Subject to and without waiving any objection, Undisputed that no Cedar Hills employee personally decided to issue the citation.

13. *American Fork did not notify Cedar Hills or its employees or officials that its officers were issuing a citation. Id. ¶ 10.*

RESPONSE: Disputed. This assertion, based on ¶ 10 of the Goodwin *Declaration*, is contradicted by the standing monthly-reporting relationship Cedar Hills' own discovery response describes. [Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 5; see also Defendant Cedar Hills' Exhibit C, § 1.2]. Plaintiffs further respond by incorporation herein of Plaintiffs' objections and response to ¶ 11, *supra*.

14. *American Fork did not notify Cedar Hills or its employees or officials that American Fork officers were going to Plaintiffs' home. Id. ¶ 11.*

RESPONSE: Disputed to the extent Cedar Hills implies it lacked any means of contemporaneous or retrospective awareness of AFPD's conduct in Cedar Hills generally; [*See* Statement of Additional Disputed Facts ¶ 2]. Plaintiffs further respond by incorporation herein of Plaintiffs' objections and response to ¶ 11, *supra.*

15. *Cedar Hills and its employees and officials did not know about the Incident until after it happened. Id. ¶ 12.*

RESPONSE: Undisputed as to the specific April 23, 2021 dispatch. Disputed to the extent this is offered to establish Cedar Hills' general lack of awareness of AFPD's conduct or pattern of conduct toward the Thorpes. [*See* Statement of Additional Disputed Facts ¶¶ 2, 6]. Plaintiffs further respond by incorporation herein of Plaintiffs' objections and response to ¶ 11, *supra.*

16. *Cedar Hills and its employees and officials do not direct American Fork or American Fork Police Department about how to perform their law enforcement services. Id. ¶ 13.*

RESPONSE: Disputed. This assertion, based on ¶ 13 of the Goodwin *Declaration*, directly contradicts Cedar Hills' own sworn discovery response, which states that Cedar Hills "required and instructed American Fork City to follow and comply with all federal, state,

and local laws, regulations, and ordinances," "required and instructed" regular officer training, and "required and instructed" officer screening and licensing. [Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 2]. Plaintiffs further respond by incorporation herein of Plaintiffs' objections and response to ¶ 11, *supra.*

Further disputed on the grounds that Cedar Hills, via the Agreement, authorized and directed AFPD to conduct "all municipal law enforcement and animal control duties … and other related services pursuant to established practice." [*See* Defendant Cedar Hills' Exhibit C, § 1.2]. Cedar Hills therefore directed AFPD to perform police services in accordance with established practice – including but not limited to the established practice of treating Plaintiffs with bias, hostility, falsifying reports, actively discouraging and refusing to respond to or investigate claims by the Thorpes, and on the whole denying Plaintiffs the benefit of equal protection under the law. Alternatively, Cedar Hills remains liable for AFPD's actions in enforcing Cedar Hills' laws because Cedar Hills essentially delegated all final-decision authority over Cedar Hills' own police powers to AFPD. [*See e.g. Id.* § 4 "American Fork retains the sole right and authority to … control the manner in which its employees and Officers discharge their professional and work duties."]

17. *Cedar Hills did not direct American Fork or American Fork Police Department about how to interact with Plaintiffs leading up to or after the Incident. Id. ¶ 14.*

RESPONSE: Undisputed as to this specific Incident. Disputed to the extent offered to establish Cedar Hills exercised no direction over AFPD generally; see Response to ¶ 16, *supra*, which is hereby incorporated herein by this reference.

18. *Cedar Hills has never had any animosity towards Plaintiffs or intention to deprive Plaintiffs of their rights. Id. ¶ 15.*

RESPONSE: Objected to as an improper legal conclusion unsupported by any stated factual foundation in the Goodwin *Declaration*. See Fed. R. Civ. P. 56(c)(4). Subject to and without waiving any objection, Disputed on the grounds that it is contradicted by Plaintiffs' verified *Complaint*, which alleges Cedar Hills' mayor had a personal relationship with the Sanches and that preferential treatment of the Sanches was attributable in part to that relationship [*Complaint*, ¶¶ 93–94]. Moreover, Cedar Hills' Mayor herself came to a court hearing in active support of the Sanches in seeking a frivolous stalking injunction against the Thorpes based upon additional baseless accusations of supposed junk in the Thorpes' yard, directly in line with the frivolous police complaints which were brought by AFPD against Janene Thorpe in the absence of any sufficient evidence. [*See* attached Exhibit 1, Depo. Of Christopher Thorpe at 71-73, 76-81; attached Exhibit 2, Depo. of Janene Thorpe at 152-153, 158-160].

19. *There is no evidence that Cedar Hills ever intended to deprive Plaintiffs of their rights*.

RESPONSE: Objected to and Disputed for the same reasons stated in the Response to ¶ 18, *supra*.

20. *Neither Cedar Hills nor its employees or officials met with the American Fork Police Department or its officers to discuss Plaintiffs. Id. ¶ 16.*

RESPONSE: Objected to on the grounds that the sole support for the averment, ¶ 16 of the Goodwin *Declaration*, lacks adequate foundation for the reasons stated in the Response to ¶ 11, *supra*, which is hereby incorporated herein by this reference.

21. *There is no evidence that Cedar Hills had a meeting of the minds with any other person to deprive Plaintiffs of their rights*.

RESPONSE: Objected to as a legal conclusion improperly presented as fact. Subject

to and without waiving any objection, Disputed for the reasons stated in the Response to ¶¶ 18–19, *supra*, which are hereby incorporated herein by this reference.

22. *Prior to Plaintiffs' allegations, Cedar Hills did not receive any complaints or allegations of police misconduct by American Fork or American Fork Police Department. See Cedar Hills's Response to Interrogatory No. 5, attached as Exhibit D; Goodwin Decl. ¶ 17, Ex. B.*

RESPONSE: Objected to for lack of adequate foundation for the reasons stated in the Response to ¶ 11, *supra*, which is hereby incorporated herein by this reference. Subject to and without waiving any objection, Disputed as directly contradicted by Cedar Hills' own discovery response, which describes a standing monthly reporting relationship through which American Fork summarized AFPD's incidents and actions in Cedar Hills. [Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 5]. Further disputed by Plaintiffs' verified *Complaint*, which alleges Cedar Hills was aware of, and did not prosecute, unfounded charges AFPD brought against the Thorpes. [*Complaint*, ¶ 134].

23. *Prior to Plaintiffs' allegations, Cedar Hills did not receive any complaints or allegations of unlawful entry or violation of privacy rights by American Fork or American Fork Police Department. See Cedar Hills's Response to Interrogatory No. 5, Ex. D; Goodwin Decl. ¶ 18, Ex. B.*

RESPONSE: Disputed for the same reasons stated in the Response to ¶¶ 10, 22, *supra*, which are hereby incorporated herein by this reference.

24. *Plaintiffs have not identified any Cedar Hills policy that deprived them of their rights. See Plaintiffs' Response to Interrogatory No. 13, attached as Exhibit E.*

RESPONSE: Disputed. This paragraph mischaracterizes the cited discovery response. In response to Cedar Hills' Interrogatory No. 13 — which specifically asked

Plaintiffs to identify the factual basis for their policy allegations — Plaintiffs directed Cedar Hills to paragraphs 45 through 454 of the operative *Complaint*, which set forth in detail the unwritten policies and customs at issue. Defendant Cedar Hills' Exhibit E, Resp. to Interrog. No. 13]. Plaintiffs did not fail to identify a policy. Cedar Hills' *Motion* does not address the policy and custom theory actually identified in that response. [See Statement of Additional Disputed Facts ¶ 9].

25. *When asked specifically about what Cedar Hills policy deprived them of their rights, Plaintiffs pointed only to ordinances they believed Cedar Hills was not properly enforcing against Plaintiffs' neighbors. Deposition of Christopher Thorpe ("Chris Dep.") at 100:9–103:20, attached as Exhibit F; Deposition of Janene Thorpe ("Janene Dep.") at 145:4–146:10, attached as Exhibit G.*

RESPONSE: Objected to on the grounds that the deposition questioning, as offered for the purposes of the *Motion*, sought a legal conclusion from a legally untrained witness, rendering the responses inadmissible opinion evidence without adequate foundation. Subject to and without waiving any objection, Disputed as an incomplete characterization of Plaintiffs' evidence and testimony, which includes the complete transcript of the deposition of Christopher Thorpe, [attached hereto as Exhibit 1], the complete transcript of the deposition of Janene Thorpe [attached hereto as Exhibit 2], the expert report of Nicolas Y. Deland [attached hereto as Exhibit 3], and Plaintiffs' verified *Complaint*. [*See* Plaintiffs Response to ¶ 24, *supra*, which is incorporated herein by this reference].

26. *These include unidentified ordinances related to lighting and shed placement. Chris Dep. at 100:9–103:20, Ex. F; Janene Dep. at 145:4–146:10, Ex. G.*

RESPONSE: Undisputed that ordinances related to lighting and shed placement were

among the matters discussed. Disputed to the extent this is offered as a complete statement of the policies and customs at issue; see Response to ¶ 25, *supra*, which is hereby incorporated by reference herein.

27. *As part of the Agreement, American Fork is obligated to train its officers. See Agreement § 4, Ex. C.*

RESPONSE: Undisputed.

28. *American Fork Police Department has specific and detailed policies requiring training for its officers and employees. See Policy 207, attached as Exhibit H.*

RESPONSE: Undisputed that American Fork Police Department has written training policies. Disputed as to materiality; Plaintiffs do not dispute that American Fork has its own written training policies, but dispute that this forecloses Cedar Hills' liability for its own failure to audit, review, or oversee the substance or application of that training despite the contractual right to do so. [*See* Defendant Cedar Hills' Exhibit C, §§ 1.2, 6; Defendant Cedar Hills' Exhibit D, Resp. to Interrog. Nos. 2, 5]. Further disputed to the extent that Cedar Hills impermissibly assumes an inference in its own favor that American Fork's policies – including the unwritten policies identified specifically in Plaintiffs' verified *Complaint* are not attributable to Cedar Hills despite Cedar Hills giving AFPD absolute final decision-making authority over police policy via the language in § 1.2 of the Agreement. [*See* Defendant Cedar Hills' Exhibit C, § 1.2].

29. *American Fork Police Department conducts monthly trainings for its officers and employees, and Officer Craig and Officer Blackburn were trained. See Training History Reports, attached as Exhibit I.*

RESPONSE: Undisputed that American Fork conducts monthly trainings and that

Officers Craig and Blackburn received some training. Disputed as to materiality for the reasons stated in the Response to ¶ 28, *supra*, which is hereby incorporated herein by this reference. Cedar Hills has produced no evidence that it ever reviewed, audited, or evaluated the substance or adequacy of that training [*See* Defendant Cedar Hills' Exhibit D, generally], despite having an express contractual right to terminate the Agreement for non-compliance. [*See* Defendant Cedar Hills' Exhibit C, § 6].

30. *Plaintiffs have not alleged any class-based discrimination. See generally Complaint, Ex. A*.

RESPONSE: Objected to on the grounds that the statement is a legal conclusion improperly presented as a statement of fact. Subject to and without waiving any objection, Plaintiffs do not dispute that they are no longer pursuing their 42 U.S.C. § 1985 claim for conspiracy against civil rights as to Defendant Cedar Hills, rendering the statement immaterial.

PLAINTIFFS' STATEMENT OF ADDITIONAL DISPUTED FACTS

Pursuant to DUCivR 56-1(b)(3), Plaintiffs identify the following additional material facts, each of which is genuinely disputed or which independently precludes summary judgment:

1. Under the Public Safety Service Agreement, American Fork was obligated to "provid[e] Cedar Hills with access to any police reports and animal control reports pertinent to Cedar Hills." [Defendant Cedar Hills' Exhibit C, § 1.2].

2. Cedar Hills' own discovery response confirms this reporting relationship was not merely contractual but operative: "American Fork gave monthly reports of incidents it handled in Cedar Hills' city limits with summaries of actions taken by AFPD." [Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 5].

3. The Cedar Hills City Council approved the Public Safety Service Agreement. [*Id.*, Resp. to Interrog. No. 1].

4. In its own discovery responses, Cedar Hills states that it "required and instructed American Fork City to follow and comply with all federal, state, and local laws, regulations, and ordinances"; "required and instructed American Fork City to provide regular instruction and training of its officers"; and "required and instructed American Fork City to specifically screen its officers." [Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 2].

5. The Agreement grants Cedar Hills the right to terminate "immediately" and in its "sole discretion" upon a finding by a "court or governmental authority" that American Fork materially breached its legal-compliance obligations. [Defendant Cedar Hills' Exhibit C, § 6].

6. Plaintiffs' **verified** Second Amended Complaint alleges, among other things, that Cedar Hills "early on took sides supporting and encouraging the Sanches' actions," [*Second Amendedn Complaint* ("*Complaint")*, ¶ 60], that this pattern "continued" over the following years, [*Id.* ¶ 61], and identifies specific instances of Cedar Hills code enforcement (through named employee Jenny Peay) declining to act on Thorpe complaints while acting on Sanches complaints. [*Complaint*, ¶¶ 89, 104–105].

7. Christopher Thorpe testified that he submitted a written complaint through Cedar Hills' code-enforcement complaint process and received a response. [Defendant Cedar Hills' Exhibit F at 98:6–18].

8. The Goodwin *Declaration* filed in support of Defendant Cedar Hills' *Motion* does not address, and Cedar Hills has not produced evidence addressing, whether Cedar Hills ever requested, reviewed, or acted upon the monthly incident reports described in Response to Interrogatory No. 5, or whether it ever exercised its termination rights under Agreement § 6.

[Defendant Cedar Hills' Exhibit 2, generally].

9. Plaintiffs' **verified** *Complaint* identifies specific, recurring instances of AFPD adopting unwritten policies and customs toward the Thorpes, including a pattern of crediting Sanches allegations over Thorpe complaints [*Complaint*, ¶¶ 95, 125, 136, 175, 201], pursuing charges without adequate investigation [*Complaint*, ¶¶ 132, 183], falsifying or misrepresenting evidence in official reports [*Complaint*, ¶¶ 68, 82, 95–96, 99–133, 149–152, 175, 178–180, 183, 200, 203, 210, 395–413], and delaying or altering incident reports after the April 23, 2021 encounter [*Complaint*, ¶¶ 205–208, 210–223, 409–413, 421–422, 433–437].

LAW & ARGUMENT

Summary judgment is appropriate only where there is no genuine dispute of material fact. Fed. R. Civ. P. 56(a). The Court views the evidence and draws all reasonable inferences in the light most favorable to Plaintiffs, the nonmoving party.[2] Where the movant's own evidence is internally inconsistent, or where the movant's supporting declaration rests on conclusory assertions rather than facts within personal knowledge, summary judgment is particularly inappropriate. Fed. R. Civ. P. 56(c)(4).[3] "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor."[4]

I. GENUINE ISSUES OF MATERIAL FACT PRECLUDE SUMMARY JUDGMENT

[2] *See e.g.* *Walden v. City of Duncan*, 2026 U.S. App. LEXIS 24346, *5, 2026 WL 2329610 (10th Cir. August 12, 2026).
[3] *See* *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1199-1200 (10th Cir. 2006) (affirming that sweeping denial "[n]o female individual enrollment specialists [sic] was terminated during my employment for failing to make monthly or yearly goals" was too broad to be supported by the limited basis of personal knowledge contained in the affidavit, and thus inadmissible for summary judgment purposes). This authority is directly applicable to the Goodwin *Declaration*'s blanket statements in ¶¶ 7-18, thereby removing Cedar Hills' purported evidentiary support for ¶¶ 10-23 of its Statements of Material Fact. *See also Tavery v. United States,* 32 F.3d 1423, 1427 n.4 (10th Cir. 1994) ("Under Fed. R. Civ. P. 56(e), only statements 'made on personal knowledge' will support a motion for summary judgment; statements of mere belief must be disregarded"); 185 F.3d 1076, 1082.
[4] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2513 (1986).

ON PLAINTIFFS' CONSTITUTIONAL CLAIMS AGAINST CEDAR HILLS (THIRD, FOURTH, NINTH, AND TENTH CAUSES OF ACTION)

Cedar Hills correctly identifies the governing rule: a municipality is not *vicariously* liable for its contractors' constitutional violations, but is liable for violations caused by its own policy or custom. Cedar Hills is correct only in the narrow, literal sense that it does not itself write police procedure. The legal reality is that delegating all police policy to AFPD does not wash Cedar Hills' hands of liability for police action taken in Cedar Hills' name and under Cedar Hills' own agreement.

A. Cedar Hills Mischaracterizes Plaintiffs' Theory.

Cedar Hills' *Motion* artificially narrows Plaintiffs' theory to isolated instances of Cedar Hills' non-enforcement of its own ordinances (the lighting and shed disputes). That conduct is relevant context for deliberate indifference, but it is not the heart of Plaintiffs' claim. The operative policies are the *unwritten* policies and customs AFPD adopted as Cedar Hills' designated final policymaker for policing. And because Cedar Hills gave AFPD the final word on all police policy, AFPD's policy is Cedar Hills' policy.

Plaintiffs' verified *Complaint* alleges, among other things, that AFPD and its officers: (1) adopted an unwritten policy of crediting the Sanches over the Thorpes in every dispute [*Complaint*, ¶¶ 95, 125, 136, 175, 201]; (2) adopted an unwritten policy of seeking charges against the Thorpes without probable cause [*Complaint*, ¶¶ 132, 183; (3) adopted an unwritten policy of animus toward the Thorpes [*Complaint*, ¶ 451]; (4) adopted a custom of falsifying reports to support charges against the Thorpes [*Complaint*, ¶¶ 68, 82, 95–96, 99–133, 149–152, 175, 178–180, 183, 200, 203, 210, 395–413]; (5) adopted a custom of ignoring Thorpe complaints and discouraging their access to emergency services [*Complaint*, ¶¶ 68–71, 83–85]; and (6) made an unwritten exception to standard reporting procedure so a report could be delayed and doctored to justify the April 23 misconduct [*Complaint*, ¶¶ 205–208, 210–223, 409–413, 421–422, 433–437]. Unwritten policies and customs of this kind

satisfy the *Monell* standard. *Swasey v. W. Valley City*, 2017 WL 108036, at *4–5 (D. Utah 2017) (allegations of repeated "fabricated probable cause" and "false reports" sufficient to plead policy or custom).

B. Total Delegation of Policymaking Authority to AFPD Makes AFPD's Policy Cedar Hills' Own Under *Pembaur*.

Monell holds a municipality liable when "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury."[5] *Pembaur* elaborated that policymaking authority is not confined to the legislature: officials other than the legislative body may hold final policymaking authority such that their decisions give rise to municipal liability.[6] The Tenth Circuit recognizes at least five ways to prove an official policy or custom, including "actions by those with final decision-making authority for the municipality."[7]

Cedar Hills has delegated one hundred percent of its policing authority to AFPD. The Public Safety Service Agreement ("Agreement") requires AFPD to "handle all police matters in Cedar Hills" and grants AFPD "the sole right and authority ... to direct and control the manner in which its employees and Officers discharge their professional and work duties." *See* Defendant Cedar Hills' Exhibit C, § 4. Cedar Hills has so thoroughly delegated "sole right and authority" to AFPD to make final decisions as to all police policy, that it cannot feign surprise that it is liable for the choices of its designated decision-maker.

The Seventh Circuit confronted the same maneuver in *King v. Kramer*, where a county sought to avoid § 1983 liability for inadequate inmate medical care by pointing to its third-party medical

[5] *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978).
[6] *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480–81 (1986).
[7] *Bryson v. City of Oklahoma City*, 627 F.3d 784, 788 (10th Cir. 2010).

contractor and citing *Monell*'s principle that municipalities cannot be liable for constitutional violations via respondeat superior. 680 F.3d 1013, 1020 (7th Cir. 2012). The court rejected that attempt. "The County cannot shield itself from § 1983 liability by contracting out its duty to provide medical services." The "underlying rationale" for municipal liability in this context "is not based on *respondent superior*, but rather on the fact that **the private company's policy becomes that of the County if the County delegates final decision-making authority to it**."[8]

The same rationale controls here. If police investigations occur in Cedar Hills, Cedar Hills has contractually made AFPD the sole arbiter of investigative procedure. If citations are issued in Cedar Hills, Cedar Hills has delegated to AFPD the exclusive authority over how they are issued. If force is used by police in Cedar Hills, Cedar Hills has left the decision entirely to AFPD. By the same logic, the unwritten decision to selectively withhold protection from the Thorpes while favoring the Sanches was likewise delegated to AFPD by Cedar Hills. Plaintiffs have identified that unwritten policy and custom in detail above. Because Cedar Hills gave AFPD final authority over all police policy, and AFPD adopted consistent, repeated unwritten policies and customs that violated Plaintiffs' rights, AFPD's policy is Cedar Hills' policy — and Cedar Hills can be held liable for it.

C. Cedar Hills' Failure-to-Train Argument Fares No Better, and Overlaps With the Deliberate-Indifference Element.

Municipal liability also attaches where "a failure to train the lawless employee reflects a deliberate indifference to the plaintiff's constitutionally-protected rights."[9] This standard overlaps with the deliberate-indifference showing Cedar Hills itself identifies as a required element of Plaintiffs' claims. And Cedar Hills itself acknowledges that liability can arise from "a decision not to

[8] *King v. Kramer*, 680 F.3d 1013, 1020 (7th Cir. 2012) (emphasis added).
[9] *Darr v. Town of Telluride*, 495 F.3d 1243, 1256-1257 (10th Cir., 2007).

take any action to alleviate a constitutional violation." [10]

D. <u>There Is a Genuine, Disputed Issue of Fact as to Cedar Hills' Knowledge of AFPD's Unconstitutional Conduct</u>.

Cedar Hills' claim of ignorance rests entirely on the conclusory representations of its current City Manager. That representation does not withstand scrutiny against Cedar Hills' own record.

Cedar Hills' own discovery response confirms that American Fork provided Cedar Hills monthly reports "detail[ing]" AFPD's incidents and actions within Cedar Hills' city limits. *See* Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 5. This directly contradicts the Goodwin *Declaration's* portrayal of Cedar Hills as uninformed of AFPD's conduct, and independently supports a *Kuchcinski* policy-of-inaction theory: Cedar Hills built, and evidently never used, a standing channel of information about the very conduct of which it now claims ignorance. Whether Cedar Hills' sworn discovery responses or Goodwin's conclusory *Declaration* is the more believable is, by itself and by definition, an issue for the trier of fact inappropriate for resolution on summary judgment.

Further, Cedar Hills completely fails to address the sworn averments in Plaintiff's verified *Complaint* that: (a) Plaintiffs informed Cedar Hills directly of the ongoing violations, and that preferential treatment of the Sanches was attributable at least in part to their relationship with Cedar Hills' mayor [*Complaint*, ¶¶ 91–94]; (b) Cedar Hills was **<u>directly</u>** aware of the charges AFPD brought against Plaintiffs and Cedar Hills made its own decision not to prosecute them as unfounded. [*Complaint*, ¶¶ 128-134].

Additionally, the Agreement's § 1.2 report-access right and § 6 immediate-termination right show retained, unexercised oversight mechanisms nowhere addressed in the Goodwin *Declaration*. Cedar Hills' own interrogatory response states that Cedar Hills "required and instructed" American

[10] *Motion* at 10 (quoting *Kuchcinski v. Box Elder Cnty*., 2019 UT 21, ¶ 33).

Fork on legal compliance, training, and officer screening. *See* Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 2. This directly contradicts Cedar Hills' assertions in ¶¶ 13, 16-17 of the Statement of Material Facts, and the Goodwin *Declaration* at ¶¶ 13-14, which assert Cedar Hills exercised no direction over American Fork whatsoever.

The Goodwin *Declaration's* foundation for its "no notice" averments (¶¶ 17–18) is itself deficient: Goodwin's stated personal-knowledge basis (¶ 3) covers complaints involving "Cedar Hills employees and officials," which American Fork officers are expressly not Cedar Hills employees under Agreement § 4. The *Declaration* does not explain how complaints about American Fork's conduct specifically would reach Goodwin at all.

At summary judgment, all inferences are drawn in the nonmovant's favor. On this record, a reasonable jury can — and likely will — infer that Cedar Hills knew of AFPD's misconduct toward the Thorpes both before and after April 23, 2021. Cedar Hills' motion for summary judgment on Plaintiffs' constitutional claims must therefore be denied.

II. CEDAR HILLS CANNOT OBTAIN SUMMARY JUDGMENT ON THE RESPONDEAT SUPERIOR CLAIM (TWENTY-SIXTH CAUSE OF ACTION) BECAUSE GENUINE DISPUTES EXIST REGARDING RETAINED CONTROL

Cedar Hills argues that § 4 of the Agreement forecloses respondeat superior liability as a matter of law simply because the Agreement labels AFPD an "independent contractor." But the "active participant" standard governing the retained-control doctrine looks to substance, not labels: "[a]n employer actively participates if the employer directs that the contracted work be done by use of a certain mode or otherwise interferes with the means and methods by which the work is to be accomplished."[11]

The Agreement itself contains provisions inconsistent with Cedar Hills' lack of control

[11] *Magana v. Dave Roth Constr.*, 2009 UT 45, ¶ 24, 215 P.3d 143.

characterization. Section 1.2 grants Cedar Hills a standing right of access to police reports. From those reports, a jury can reasonably impute Cedar Hills with knowledge of AFPD's unconstitutional actions against the Thorpes leading up to the April 23, 2021 assault in question. Section 6 grants Cedar Hills a unilateral, "sole discretion" right to terminate immediately upon a compliance finding against American Fork. That retained enforcement mechanism is tied directly to the quality and legality of American Fork's law enforcement services. Even Cedar Hills' own discovery response affirmatively describes Cedar Hills as having "required and instructed" American Fork on training, screening, and legal compliance. [Defendant Cedar Hills' Exhibit D, Resp. to Interrog. No. 2]. Whether Cedar Hills' retained contractual rights and their exercise (or non-exercise) amount to active participation sufficient to trigger the retained-control doctrine is a factual question for the jury, not a matter resolvable on the present record.

III. PLAINTIFFS ARE NOT PURSING THEIR THIRTEENTH, SEVENTEENTH, AND TWENTY-FIFTH CAUSES OF ACTION AS TO CEDAR HILLS

With respect to Plaintiffs' Causes of Action against Cedar Hills under 42 U.S.C. § 1985, Utah Constitution Art. I, § 11, and Utah Code Ann. § 53-6-210.5, upon further research and consideration, Plaintiffs believe that their alternative claims provide more appropriate and economical legal grounds for relief. Accordingly, without waiving any claims against other defendants, and without waiving any issues with respect to Plaintiffs' other claims against Cedar Hills, Plaintiffs do not intend to pursue their Thirteenth, Seventeenth, or Twenty-Fifth Causes of Action as to Defendant Cedar Hills.

IV. PUNITIVE DAMAGES

Plaintiffs also do not intend to seek punitive damages against Cedar Hills specifically, consistent with *City of Newport v. Fact Concerts, Inc*., 453 U.S. 247 (1981), and Utah Code Ann.

§ 63G-7-603(1)(a). Plaintiffs preserve their claim for punitive damages as against the individual and non-municipal Defendants.

CONCLUSION

For the foregoing reasons, Cedar Hills' *Motion for Partial Summary Judgment* should be denied as to the Third, Fourth, Ninth, and Tenth Causes of Action, and as to the Twenty-Sixth Cause of Action (respondeat superior), as Plaintiffs no longer pursue their Thirteenth, Seventeenth, Twenty-Fifth Causes of Action, nor punitive damages, against Defendant Cedar Hills.

RESPECTFULLY SIGNED and DATED this 15th day of September, 2026.

HEIDEMAN & ASSOCIATES
/s/ Corwin D. Bennett
CORWIN D. BENNETT
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 15, 2026, a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO DEFENDANT CEDAR HILLS' MOTION FOR PARTIAL SUMMARY JUDGMENT** was served on the following individual(s):

Recipient	Method
Attorneys for Defendants: Robert L. Janicki, #5493 Michael L. Ford, #8586 STRONG & HANNI 9350 South 150 East, Suite 500 Sandy, Utah 84070 Telephone: (801) 532-7080 Facsimile: (801) 323-2090 rjanicki@strongandhanni.com mford@strongandhanni.com Gary R. Guelker Jacob T. Gudenkauf J. Tyler Martin RESNICK & LOUIS, PC 222 South Main Street, 5th Floor Salt Lake City, Utah 84101 gguelker@rlattorneys.com jgudenkauf@rlattorneys.com tmartin@rlattorneys.com *Attorneys for Defendants American Fork City, American Fork City Police Department, Darren Falslev, C. Slate Blackburn and Phillip W.S. Craig, Jennifer L. Nakai, Kandace N. Konechny, and Seth Waite* H. Craig Hall Hyrum J. Bosserman Adam D. Goff BENNETT TUELLER JOHNSON & DEERE 3165 E Millrock Dr 5th Floor Salt Lake City, UT 84121 chall@btjd.com hbosserman@btjd.com agoff@btjd.com *Attorneys for Cedar Hills City*	Hand Delivery U.S. Mail, postage prepaid Overnight Mail Fax Transmission X Electronic Filing Notice

HEIDEMAN & ASSOCIATES
/s/ Corwin D. Bennett
Corwin D. Bennett
Attorney for Plaintiffs