

1 Patrick S. Davis
2 Redacted
3 Sparks, NV 89431
4 (775) Redacted
5 Plaintiff in Proper Person

6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 PATRICK STEPHEN DAVIS)
9 Plaintiff,) Case No. 3:13-CV-00559-MMD-WGC
10 vs.)
11 STATE OF NEVADA ET AL;) **MOTION FOR A PROTECTIVE**
12 Defendants) **ORDER TO PRESERVE EVIDENCE**

13 COMES NOW the Plaintiff, and respectfully requests the Court to move in his favor and
14 grant a Motion for a Protective Order to Preserve Evidence. This Motion is based on the attached
15 Memorandum of Points and Authorities, the Fifth, Sixth, Eighth and Fourteenth Amendments to
16 the United States Constitution and all other papers and pleadings filed therein.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 Plaintiff seeks a Motion for Protective Order to Preserve Evidence. The order would
20 require all parties to preserve documents, video and audio tapes, and other relevant
21 documentation and records, including Plaintiffs' specific requests; that the Defendants know of,
22 or reasonably should know of that are relevant to the above entitled action. This is partially due
23 to Plaintiff stipulating to the Defendants Motion for Protective Order to Stay Discovery pursuant
24 to Fed. R. Civ. P 26(c) pending a ruling on Defendants' Motion to Dismiss. This is further
25 caused by the Motion for Stipulated Discovery Plan and Scheduling Order with Special
26 Scheduling Review Required due to a need for extension of timelines while awaiting the decision
27 of the Court on the Defendants' Motion to Dismiss. Finally, this is requested due to the Nevada
28 Revised Statutes, which sets a time limit for the State of Nevada; and the polygraphers employed
by them. NRS 648.197(3) states that polygraphers are only required to keep certain information
for a period of 3 years. As part of the basis for the declaratory and injunctive actions asked for
by Plaintiff of this court, all of the records relating to the polygraph exam and the arrest,

1 detention and prosecution are an integral part of Plaintiff's case. Plaintiff submitted to the
2 polygraph exam on September 7, 2011, and any and all evidence that Plaintiff asserts is
3 exculpatory evidence would be destroyed by September 7, 2014. This Motion is warranted in
4 order to avoid the destruction of evidence that would be favorable to the Plaintiff.

5 **II. BACKGROUND**

6 Plaintiff brings this action against Defendants based on various statutes, directives, Policy
7 and Procedure, custom and usage, and occurrences resulting from his status as an offender
8 serving the **civil** sentence of Lifetime Supervision, pursuant to NRS 176.0931, NRS 213.1243,
9 and NAC 213.290. He has discharged all criminal obligations to the State upon completion of
10 his criminal sentence. All constitutional rights, privileges and immunities have been returned to
11 Plaintiff under Court order on or about May 6, 2008 by Judge Polaha, District Court Judge of the
12 Second Judicial District in and for the County of Washoe except those identified and withheld by
13 law; to be granted even while serving his civil sentence of Lifetime Supervision. Plaintiff alleges
14 violations of the First, Fourth, Fifth, Sixth, and Fourteenth Amendments of the US Constitution,
15 and includes the same violations under sections of the Nevada Constitution. Plaintiff further
16 claims violations of 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988 and state and federal laws.
17 Plaintiff seeks monetary damages including compensatory, punitive and exemplary damages in
18 an amount of at least \$100,000.00 per applicable claim under 42 U.S.C. 1983. Plaintiff further
19 seeks declaratory and injunctive relief under 42 U.S.C. 1983 per appropriate claim for relief, and
20 under 28 U.S.C. §§ 1331 and 2201 for other claims of relief. In addition, Plaintiff prays for
21 relief based on such other and further relief as the Court deems just and proper, in order to serve
22 the interests of judicial economy. Defendants moved to dismiss the complaint on various
23 grounds including statute of limitations issues, sovereign and qualified immunity and failure to
24 state a justiciable claim. The Motion to Dismiss is pending before this Court.

25 **III. ARGUMENT**

26 Plaintiff alleges that he was falsely arrested, detained, and maliciously held for trial by
27 the Defendants and would have been allowed to ask for discovery based on the following
28 arguments. Plaintiff requests this Court to preserve the evidence that the State would have or
could have used against the Plaintiff in the original arrest and trial; and that is applicable to the
instant 1983 case, including any evidence that he would have specifically asked for and any
exculpatory evidence that would have been obtainable to his defense of the charge which was

1 ultimately dismissed. Plaintiff was provided very limited discovery in the 22 months that he
2 awaited the dismissal of the malicious charges filed against him.

3 Defendants have a duty to preserve documents that they know, or reasonably should
4 know, are relevant to the pending lawsuits, Silvestri v. General Motors, 271 F.3d 583, 591 (4th
5 Cir.2001); Kronisch v. United States, 150 F.3d 112, 126 (2d Cir.1998); In re Napster, Inc.
Copyright Litigation, 462 F.Supp.2d 1060, 1067 (N.D.Cal.2006).

6 Plaintiff brings this motion that this well-settled preservation duty applies in this case
7 and to confirm that Defendants have taken the necessary steps, such as instituting a litigation
8 hold, to abide by it. Plaintiffs simply wish to ensure that potentially admissible evidence is not
9 being destroyed while this case awaits discovery and trial due to the stipulated Motion to Stay
10 Discovery and the Motion for Stipulated Discovery Plan and Scheduling Order with Special
11 Scheduling Review Required that extends the timelines in this case.

12 The Defendants have a duty to preserve what they know or reasonably should know will
13 be relevant evidence in this pending lawsuit, including any evidence which the destruction of
14 would prejudice the Plaintiff. Plaintiff asserts that this duty includes the institution of a
15 "litigation hold" on any document retention/destruction policies in effect. In re Napster, Inc.
16 Copyright Litigation, 462 F.Supp.2d 1060 (N.D. Cal. 2006). The information that must be
17 preserved is any that would tend to support (or disprove) Plaintiffs claims. Zublake v. UBS
Warburg LLC, 220 FRD 212, 217-8 (S.D.N.Y. 2003).

18 A party's failure to preserve documents would, thus, interfere with the Court's procedural
19 prerogatives as well as a determination on the merits. None of the exceptions to discovery
20 contained in F.R.C.P. 26(b) excuse Defendants from their duty to preserve relevant evidence.
21 "[A] party's identification of sources of electronically stored information as not reasonably
22 accessible does not relieve the party of its common-law or statutory duties to preserve evidence."
23 Advisory Committee Notes to 2006 Amendment of F.R.C.P. 26. Thus the rules and applicable
24 case law are clear that the defendants have an affirmative preservation duty and there is no basis
25 for altering that duty.

26 The Court has authority to issue such preservation orders. See, e.g., Chambers v.
27 NASCO, Inc., 501 U.S. 32, 43, (1991) (noting that courts have inherent authority "to manage
28 their own affairs so as to achieve the orderly and expeditious disposition of cases."); Nggard
Sec. Ins. Co. v. Lakewood Egg's & Mfg. Corp., 982 F.2d 363, 368 (9th Cir.1992) (a court's

1 power includes the "broad discretion to make ... evidentiary rulings conducive to the conduct of
2 a fair and orderly trial."); Capricorn Power Co. v. Siemens Westinghouse Power Corp., 220
3 F.R.D. 429, 434 n.2 (W.D.Pa.2004) ("recognizing that it has become routine to order the
4 preservation of evidence prior to the beginning of the discovery period at the initial case
5 management conference and sometimes even before such a conference in complex litigation").

6 Nevada Revised Statutes reinforce the rules of evidence and Plaintiff's request for the
7 preservation of the requested evidence should take these statutes into consideration.

8 NRS 174.235 provides in relevant part that:

9 1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the
10 request of a defendant, the prosecuting attorney shall permit the defendant to
11 inspect and to copy of photograph any:

- 12 (a) Written or recorded statements or confessions made by the
13 defendant, including but not limited to any statements made by
14 Defendant after she agreed to accept a guilty plea, as well as any
15 written or recorded statements made by a witness the prosecuting
16 attorney intends to call during the case in chief of the State, or
17 copies thereof, within the possession, custody or control of the
18 State, the existence of which is known, or by the exercise of due
19 diligence may become known, to the prosecuting attorney;
- 20 (b) Results or reports of physical or mental examinations, scientific
21 tests or scientific experiments made in connection with the
22 particular case, or copies thereof, within the possession, custody or
23 control of the State, the existence of which is known, or by the
24 exercise of due diligence may become known, to the prosecuting
25 attorney; and
- 26 (c) Books, papers, documents, tangible objects, or copies thereof,
27 which the prosecuting attorney intends to introduce during the case
28 in chief of the State and which are within the possession, custody
or control of the state, the existence of which is known, or by the
exercise of due diligence may become known, to the prosecuting
attorney.

2. The defendant is not entitled, pursuant to the provisions of this section, to the
discovery or inspection of:

- 23 (a) An internal report, document or memorandum that is
24 prepared by or on behalf of the prosecuting attorney in
25 connection with the investigation or prosecution of the
26 case.
- 27 (b) A statement, report, book, paper, document, tangible object
28 or any other type of item or information that is privileged
or protected from disclosure or inspection pursuant to the
constitution or laws of this State or the Constitution of the
United States.

1 **1. Statutory Requirements that require Preservation of Evidence**

2 While NRS 174.235 reads as set forth above, NRS 171.1965, providing for discovery
3 prior to the preliminary hearing, specifically provides for the provision to the defense of “any
4 reports of statements or confessions” of witnesses, in addition to written or recorded statements.
5 NRS 171.1965 also does not limit the statements to be provided to those the State intends to call
6 at trial. Surely, it cannot be the intent of the legislature to allow those accused greater access to
7 discovery prior to the preliminary hearing than that provided for trial. The difference in these
8 statutory provisions may well be explained by the fact that NRS 174.234 was first enacted in
9 1967, and NRS 171.1965, not until 1997. It is therefore Plaintiff’s position that if witnesses
10 interviewed told the officers anything about these alleged incidents, whether their statements
11 were recorded or not, or formal or not; the substance of these statements should be preserved and
12 provided to the defense. Clearly, if any of this information tends to discredit any potential
13 State’s witness, it is exculpatory evidence which must be provided, whether the prosecution is
14 directly aware of it or not at this time.

15 Plaintiff additionally requests preservation and production of any testing or information
16 concerning physical evidence, including any rough or “bench” notes related to the same. The
17 same rationale applies to these applies to notes or reports of witness statements.

18 **2. Constitutional Considerations Mandate Preservation of Evidence Requested**

19 NRS 174.235 provides in part that “[t]he provisions of this section are not intended to
20 affect any obligation placed upon the prosecuting attorney by the constitution of this state or the
21 Constitution of the United States to disclose exculpatory evidence to the defendant.” It is clear
22 that the State must provide to the defense all exculpatory evidence in its actual or constructive
23 possession prior to trial. Failure to do so results in a violation of the Due Process Clause of the
24 Fifth and Fourteenth Amendments of the United States Constitution. The rule applies regardless
25 of how the State has chosen to structure its overall discovery process. Brady v. Maryland, 373
26 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.12d 215 (1963); Kyles v. Whitley, 514 U.S. 419, 115 S.Ct.
27 1555, 131 L.Ed.2d 290 (1995); Strickler v. Greene, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d

1 286 (1999). Hereinafter this type of exculpatory evidence will be referred to as “*Brady*
2 material.”

3 *Brady* material is that evidence which is 1) material, 2) relevant to guilt or punishment, 3)
4 favorable to the accused, 4) and within the actual or constructive possession or anyone acting on
5 behalf of the State. Brady, supra.

6 **a. Materiality**

7 In the instant case, when the defense makes a specific request for *Brady* material and the
8 State does not provide such material, the Nevada Supreme Court has held that there are grounds
9 for reversal of a conviction “if there existed a reasonable possibility that the claimed evidence
10 would have affected the judgment of the trier of fact.” Roberts v. State, 110 Nev. 1121, 881 P.2d
11 1, 5 (1994). See, also, Jimenez v. State, 112 Nev. 610, 619, 918 P.2d 687, 692 (1996), and State
12 v. Bennett, 119 Nev. 589, 81 P.3d 1, 8 (2003).

13 Even if a specific request has not been made, reversal is still warranted “if there exists a
14 reasonable probability that, had the evidence been disclosed, the result of the proceeding would
15 have been different.” Bagley, 473 U.S. at 682, 685; Pennsylvania v. Ritchie, 480 U.S. 39, 57
16 (1986). A ‘reasonable probability’ is a probability sufficient to undermine confidence in the
17 outcome. Bagley, 473 U.S. at 678; Ritchie, 480 U.S. at 57.” Roberts, supra, 110 Nev. At 1129.

18 Therefore, absent a specific request for *Brady* material, anything that might have created
19 a probability that the confidence of the verdict was undermined is considered material. Where a
20 specific request is made, however, anything that creates a reasonable possibility that the evidence
21 might have affected the fact-finder’s judgment is material. This motion is such a specific
22 request.

23 **b. Relevancy to Guilt or Punishment**

24 *Brady* material applies not only to evidence which might affect an accused’s guilty plea,
25 but also includes evidence which could serve to mitigate an accused’s sentence if convicted.
26 Jimenez v. State, 112 Nev. 610, 918 P.2d 687 (1996). An example of this kind of evidence
27 might be where the victim of a robbery who identified the accused as one of two people who
28 robbed him, also indicated that the accused tried to keep the co-defendant from injuring him.

1 Although this identification statement would actually go to establishing the accused's guilty plea,
2 it would also be *Brady* material because it might serve to mitigate the defendant's sentence
3 because of his effort to aid the victim. Essentially, anything which could convince the court or
4 jury to impose something less than a maximum sentence, or rebut alleged aggravating
5 circumstances would be relevant to punishment.

6 **c. Favorability to the Accused**

7 The Nevada Supreme Court has spoken directly to what is considered "favorable to the
8 accused" and therefore proper *Brady* material. In Mazzan v. Warden, 116 Nev. 48, 6p7, 992
9 P.2d 25, 37 (2000) the court stated:

10 Due process does not require simply the disclosure of
11 "exculpatory" evidence. Evidence also must be disclosed if it
12 provides grounds for the defense to attack the reliability,
13 thoroughness, and good faith of the police investigation, to
14 impeach the credibility of the state's witnesses, or to bolster the
15 defense case against prosecutorial attacks. Furthermore,
16 "discovery in a criminal case is not limited to investigative leads or
17 reports that are admissible in evidence." Evidence "need not have
18 been independently admissible to have been material." (citations
19 omitted)

20 Therefore, *Brady* material under this standard, would include, but not be limited to, the
21 following examples: forensic testing which was ordered, but not done, or which was completed
22 but did not inculcate the accused; criminal records or other evidence concerning State's
23 witnesses which might show their bias (e.g., civil litigation), or otherwise impeach their
24 credibility; evidence that the alleged victim has been the alleged victim of an unusual number of
25 crimes; investigative leads or ordinarily appropriate investigation which were not followed-up on
26 or completed by law enforcement; and, of course, anything which is inconsistent with any prior
27 or present statements of a State's witness, including the failure to previously make a statement
28 which is later made or testified to. Obviously, traditionally exculpatory evidence such as that
which could show the defendant did not commit, or that someone else committed the charged
crime, or that no crime occurred, would also be included as *Brady* material.

1 **d. Within the Actual or Constructive Possession of Anyone Acting**
2 **on Behalf of the State.**

3 Based on prior experience, it is anticipated that the prosecution may assert that it has an
4 “open file” policy and that the requested material is not available in its file, especially because
5 NRS 171.1965 speaks to materials “within the possession or custody of the prosecuting
6 attorney.” This argument is unavailing. In Stricker v. Green, supra, 527 U.S. at 283, 119 S.Ct.
7 1949, the United States Supreme Court explicitly held that a prosecutor’s open file policy does
8 not in any way substitute for or diminish the State’s obligation to turn over *Brady* material. The
9 Nevada Supreme Court is in accord. “It is a violation of due process for the prosecutor to
10 withhold exculpatory evidence, and his motive for doing so is immaterial.” Jimenez v. State,
11 112 Nev. 610, 618, 918 P.2d 687, 692 (1996). Furthermore, “even if the detectives withheld
12 their reports without the prosecutor’s knowledge, ‘the state attorney is charged with constructive
13 knowledge and possession of evidence withheld by other state agents, such as law enforcement
14 officers.’ Id., 112 Nev. at 620 (citation omitted). Plaintiff submits that other state agents such as
15 probation and parole officers, welfare workers, jail personnel, and similar agents of the State are
16 also included in those from whom the prosecution must seek out *Brady* material.

17 In Kyles v. Whitley, supra, the United States Supreme Court made it clear that the
18 prosecutor has an affirmative obligation to obtain *Brady* material and provide it to the defense,
19 even if the prosecutor is initially unaware of its existence. In so finding, the Supreme Court
20 noted that “[t]he prosecution’s affirmative duty to disclose evidence favorable to a defendant can
21 trace its origins to early 20th century strictures against misrepresentation and is of course most
22 prominently associated with this Court’s decision in Brady v. Maryland . . .” Id. 514 U.S. at 432.
23 The Kyles Court also made it clear that this obligation exists even where the defense does not
24 make a request for such evidence. Id.

25 The Kyles Court additionally made the following observations when finding the State had
26 breached its duty to Kyles and discussing the prosecutor’s obligations. This in turn means that
27 the individual prosecutor has a duty to learn of any favorable evidence known to the others
28 acting on the government’s behalf in the case, including the police. But whether the prosecutor
succeeds or fails in meeting this obligation (whether, that is, a failure to disclosure is in good

1 faith or bad faith), the prosecution’s responsibility for failing to disclose known, favorable
2 evidence rising to a material level of importance is inescapable.

3 The State of Louisiana would prefer an even more lenient rule. It pleads that some of the
4 favorable evidence in issue there was not disclosed even to the prosecutor until after trial, and it
5 suggested below that it should not be held accountable under Bagley and Brady for evidence
6 known only to police investigators and not to the prosecutor. To accommodate the State in this
7 manner would, however, amount to a serious change of course from the Brady line of cases. In
8 the State’s favor it may be said that no one doubts that police investigators sometimes fail to
9 inform a prosecutor of all they know. *But neither is there any serious doubt that “procedures*
10 *and regulations can be established to carry [the prosecutor’s] burden and to insure*
11 *communication of all relevant information on each case to every lawyer who deals with it.”*
12 *Since then, the prosecutor has the means to discharge the government’s Brady responsibility if*
13 *he will, any argument for excusing a prosecutor from disclosing what he does not happen to*
14 *know about boils down to a plea to substitute the police for the prosecutor, and even for the*
15 *courts themselves, as the final arbiter’s of the government’s obligation to ensure fair trials.*
16 Kyles, supra, 514 U.S. at 437, 438 (citations and footnotes omitted, *emphasis added*).

17 There can be little question, therefore, that despite its “open file policy,” the prosecution
18 has an affirmative duty to seek out the previously discussed *Brady* material, regardless of
19 whether such material is in the hands of the prosecutor or in the hands of some other entity acting
20 on behalf of the State.

21 **3. The Preservation of Evidence Invokes Constitutional Considerations**

22 In the instant case, the Plaintiff should be entitled to any of the requested discovery which
23 would have “Provides(d) grounds for the defense to attack the reliability, thoroughness, and good
24 faith of the police investigation, to impeach the credibility of the state’s witnesses, or to bolster
25 the defense case against prosecutorial attacks. Furthermore, “discovery in a criminal case is not
26 limited to investigative leads or reports that are admissible in evidence.” Evidence “need not
27 have been independently admissible to have been material.” Mazzan, supra, 116 Nev. 48, 67, 993
28 P.2d 25, 37.

1 Therefore, any indications of attempts to influence, intimidate, or reward prospective
2 witnesses by law enforcement or any agents of this State or another jurisdiction during
3 unrecorded conversations would be *Brady* material. Additionally, any comments by prospective
4 witnesses which could be used to impeach their testimony, or which would be favorable to the
5 defense, are required *Brady* material. Any leads which were not followed-up on by police, any
6 information from potential witnesses which the State has not elected to use but which might
7 provide grounds for the defense to attack the State’s case, whether admissible in evidence or not,
8 must also be considered *Brady* material. Lastly, any criminal histories of prospective witnesses,
9 the alleged victims, and co-defendants are considered histories of prospective witnesses, the
10 alleged victims, and co-defendants are considered exculpatory; as they might provide
11 information which could be used to impeach said witnesses or contribute to a potential defense
12 or mitigation of sentence. As noted supra, this discovery is constitutionally mandated whether
13 the prosecuting attorney has it in his or her file or not, or is even aware of it. Therefore, the
14 provisions of NRS 174.235 attempting to limit the discovery to items under the custody or
15 possession of the district attorney must yield to constitutional considerations.

16 Plaintiff anticipates that the State may attempt to assert a work-product privilege
17 concerning his request for notes set forth in section “b” and others below, but he would submit
18 that the work-product privilege is intended to protect mental impressions and thoughts in
19 anticipation of litigation. Wardleigh v. Second Judicial District Court, 111 Nev. 345, 357; 891
20 P.2d 1180, 1188 (1995) (the privilege “protects an attorney’s mental impressions, conclusions, or
21 legal theories concerning the litigation, as reflected in memoranda, correspondence, interviews,
22 briefs, or in other tangible and intangible ways. See Hickman v. Taylor, 329 U.S. 495, 510-11,
23 91 L.Ed. 451, 67 S.Ct. 385 (1947); NRCp 26(b)(3).”) The privilege does not encompass
24 statements of those with information about a crime. See, In re: Petition for Writ of Mandamus,
25 111 Nev. 70, 96; 893 P.2d 866, 881 (1995), where the court noted that:

26 [t]he work product privilege, however, may not be asserted as a basis for
27 refusing to disclose the identity and statements or the substance of the
28 statements of witnesses, which must be made available to the respondent
 judge to enable the judge to prepare for a probable cause hearing

1 irrespective of whether signed statements from such witnesses have been
2 secured.

3 Other jurisdictions have specifically recognized the propriety of exempting essentially
4 verbatim witness statements from the work-product privilege. See, e.g. State ex rel. Crawford v.
5 Lake County, 549 N.E.2d 374 (Ind. 1990); Hicks v. State, 544 N.E.2d 500 (Ind. 1989).

6 For all of the foregoing reasons, both statutory authority and Plaintiff's rights to due
7 process and a fair trial, to present a defense, to confront and cross-examine the witnesses against
8 him, to be free from cruel and unusual punishment, and to effective assistance of counsel, as
9 guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the
10 United States and Article 1, Sec. 8 of the Nevada Constitution mandate that his request for
11 preservation of the evidence, as set forth below, be granted.

12 **4. Plaintiffs' Specific Requests**

13 Plaintiff hereby requests that this Court order the State of Nevada to preserve the
14 following items as they may be necessary for any trial or appeal of this matter in the instant case.

- 15 a. The last known addresses and contact information for the following:
- 16 1. Officer Evans (present during polygraph and made declaration of arrest)
 - 17 2. Officer Gothan (present during polygraph)
 - 18 3. Officer Jackson (transporting Officer)
 - 19 4. Detective Sackett (polygraph examiner)
 - 20 5. Sergeant Cole (supervising Sergeant of the Unit)
 - 21 6. Lieutenant Wood (supervising Lieutenant of the Unit)
 - 22 7. Captain Steiber (supervising Captain of the Unit)
 - 23 8. Lieutenant Helgerman (training Officer)
 - 24 9. Chief Curtis (Division of Parole and Probation)
 - 25 10. Chief Hafen (Department of Public Safety)
 - 26 11. Any person who may have provided leads to law enforcement, specifically
27 to Officer Evans or Detective Sackett, including but not limited to, his or her
28 name and whether he or she is or was a confidential informant.

1 Plaintiff was arrested and detained by the State, and an accused's constitutional right to
2 present a defense mandates that he be able to conduct an independent investigation concerning
3 the allegations made. In a situation such as that presented here where it is unknown whether
4 some potential witnesses have involvement in the criminal justice system, and/or where others
5 not yet identified by the defense may have given information about the event, it is essential to
6 determine all of those who may have been interviewed or contacted by law enforcement
7 concerning the allegations. The potential for exculpatory impeachment evidence of
8 inconsistency is always present in circumstances where multiple witnesses are involved.
9 Without having the basic information requested herein, Plaintiff will be deprived of his
10 constitutional rights to a fair trial on the issues presented in the original complaint.

11 b. Written or recorded statements, memoranda, and summaries of oral statements of
12 the following persons, whether or not the State intended to call such persons as witnesses in the
13 original arrest and detention:

- 14 1. Officer Evans;
- 15 2. Officer Gothan;
- 16 3. Officer Jackson;
- 17 4. Sergeant Cole;
- 18 5. Lieutenant Wood;
- 19 6. Lieutenant Helgerman;
- 20 7. Captain Steiber;
- 21 8. Chief Curtis;
- 22 9. Detective Sackett;
- 23 10. Any person that was interviewed or questioned regarding these events;
- 24 11. Any person who may have provided leads to law enforcement, specifically
25 Officer Evans and/or Detective Sackett, including but not limited to confidential
26 informant(s).

27 c. Original audio and/or video tape recordings of all interviews and/or polygraphs,
28 specifically the polygraph conducted on September 7, 2011 by Detective Sackett, or any other

1 conducted by or on behalf of the law enforcement agents identified in subsection (a) above,
2 relative to the charges against Plaintiff due to his arrest, including the statements of the person(s)
3 identified in subsection (b) hereinabove, as well as any other person(s) who may have or may
4 have had information relating to the charges against Plaintiff in Case No: RCR 2011-063998.

5 d. Original copies of documents or forms administered or supplied during the
6 polygraph exam, to include any signed documents, and blank copies of any document used
7 during the polygraph exam conducted on Plaintiff by Detective Sackett on or about September 7,
8 2011, specifically to include the following:

- 9 1. Consent form signed by Plaintiff and Defendant Sackett.
- 10 2. Questionnaire answered by Plaintiff.
- 11 3. Sign in and sign out sheet for Department of Public Safety Office in
12 Carson City, NV where polygraph exam was performed on Plaintiff.
- 13 4. Written list of 10 questions verbatim that were asked of Plaintiff by
14 Detective Sackett.
- 15 5. Written list of 2 questions verbatim that were asked of Plaintiff that
16 Detective Sackett and/or Officer Evans alleges were not answered and caused his
17 arrest for failure to co-operate and for failure to submit to a polygraph exam.

18 e. Original copies of documents generated by the Nevada Division of Parole and
19 Probation and/or the Nevada Department of Public Safety authorizing the polygraph exam to be
20 performed on Plaintiff on or about September 7, 2011, specifically to include the following:

- 21 1. Current copy of Policy and Procedure relating to a polygraph exam that
22 was in place on or about September 7, 2011.
- 23 2. Request from Officer Evans to Captain of Division authorizing the
24 polygraph.
- 25 3. Order of approval by Captain of Division to Officer Evans.
- 26 4. Polygraph request from Division to polygraph examiner, or Department of
27 Public safety.
- 28 5. Request for scope of questions to be asked by polygraph examiner.

1 6. Request to therapist for input regarding scope of questions to be asked of
2 Plaintiff by Detective Sackett on or about September 7, 2011.

3 7. Results of polygraph exam performed on Plaintiff by Detective Sackett on
4 or about September 7, 2011.

5 f. Statements, formal or not, and recorded or not, alleged to have been made by
6 Plaintiff related in any way to Case No: RCR 2011-063998. This request includes any notes of
7 law enforcement, including but not limited to those officers and/or detectives set forth in
8 subsection (c) herein, or any member of the Nevada Division of Parole and Probation and/or the
9 Nevada Department of Public Safety, related to the same.

10 g. Pictures or photographs, whether digital or in another form, taken of any object or
11 item which is related, in any way, to the following Case No: RCR 2011-063998, or Plaintiff.

12 h. Reports relating to the incidents complained of in Case No: RCR 2011-063998, or
13 Plaintiff including any surveillance video, video/audio of rolling surveillance, and/or audio tapes
14 prepared or generated by any of the following Officers or Detectives listed herein above and any
15 other law enforcement agent(s), or any member of the Nevada Division of Parole and Probation
16 and/or the Nevada Department of Public Safety, who were involved in any way, with the
17 incidents which are the basis for the underlying charges in the case as referenced hereinabove.

18 i. Field Notes or Case Monitoring forms (or time lines) prepared in relation to Case
19 No: RCR 2011-063998, including but not limited to, any officer notes or surveillance records of
20 any member of the Nevada Division of Parole and Probation and/or the Nevada Department of
21 Public Safety, undertaken during the time period of June 2011 through July 2013 on Plaintiff.
22 These items go directly to the nature and thoroughness of the police investigation. As noted in
23 Mazzan, supra, evidence “must be disclosed if it provides grounds for the defense to attack the
24 reliability, thoroughness, and good faith of the police investigation.” Therefore, these field notes
25 are crucial to providing the accused with the information necessary to such a defense.

26 j. All written reports, notes, memoranda, maps, drawings or diagrams written,
27 drawn or otherwise prepared in connection with, or pertaining, in any way, to the investigation of
28 the crimes charged against Plaintiff in Case No: RCR 2011-063998, by the following:

- 1 1. Nevada Division of Parole and Probation,
- 2 2. Nevada Department of Public Safety,
- 3 3. Prosecuting Attorney in Case No: RCR 2011-063998,
- 4 4. Washoe County Public Defender for Case No: RCR 2011-063998.

5 k. Any of the following enumerated items that are relevant to Case No: RCR 2011-
6 063998, or Plaintiff, whether the State intended to offer them into evidence at trial or not, that are
7 not covered under another specific request or provided previously:

- 8 1. Photographs;
- 9 2. Videotapes;
- 10 3. Audiotapes.

11 Should any of the items in this request have been lost or destroyed, those items should be
12 specifically listed, and an explanation for their loss or destruction should be furnished.

13 l. Any and all video of the premises of the Department of Public Safety polygraph
14 Office located in Carson City, Nevada during the time frame of the polygraph exam performed
15 on Plaintiff on or about September 7, 2011 from 8:30 am to 4:30 pm.

16 m. Reports of surveillance video, video/audio of rolling surveillance, and/or audio
17 tapes prepared or generated by any detective or officer, or any member of the Nevada Division
18 of Parole and Probation and/or the Nevada Department of Public Safety, relative to the
19 incident(s) on the following dates: September 7, 2011, for which Plaintiff is charged in Case No:
20 RCR 2011-063998.

21 n. Call logs, field notes and/or memos, calls for services, officer log records, and
22 radio traffic records, both audio and written or any member of the Nevada Division of Parole and
23 Probation and/or the Nevada Department of Public Safety, in regards to the following Case No:
24 RCR 2011-063998, or Plaintiff.

25 o. Administrative messages or messaging between patrol cars and dispatch, patrol
26 car to patrol car, or detective to detective, or any member of the Nevada Division of Parole and
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1 Probation and/or the Nevada Department of Public Safety, both audio and written for the
2 following Case No: RCR 2011-063998, or Plaintiff.

3 p. Any and all text messages between patrol officers, detectives, sergeants and any
4 other law enforcement personnel including any member of the Nevada Division of Parole and
5 Probation and/or the Nevada Department of Public Safety, relative to the following Case No:
6 RCR 2011-063998, or Plaintiff.

7 q. Tangible or demonstrative objects, books, papers or documents which the State
8 was going to rely on for trial, relating to the charges against Plaintiff.

9 r. All reports, laboratory or otherwise, or statements of experts made in connection
10 with the charges against Plaintiff in Case No: RCR 2011-063998, whether they were intended to
11 be used at trial or not, including results of any scientific tests, experiments or comparisons by
12 any officer, detective, crime scene analyst, laboratory technician, evidence technician, agent of
13 the State, or private individuals consulted by the State.

14 s. Plaintiff herein specifically requests information as to whether any digital imaging
15 or enhancement techniques were used in connection with the analysis of any evidence related to
16 this cause, whether the results of such techniques or analyses are intended to be used by the State
17 at trial or not.

18 t. Any criminal history information or acts concerning Plaintiff which the State
19 intended to use at the trial of this matter, including use for impeachment if he had testified,
20 and/or for proof of knowledge, intent, common scheme or plan, or other purposes, pursuant to
21 NRS 48.045.

22 u. Any information obtained during the investigation of this matter which could in
23 any way be considered favorable to Plaintiff, whether discounted by the State or not. Such
24 information includes, but is not limited to, information furnished by those interviewed during the
25 investigation, the results of any searches performed, any leads which were furnished to law
26 enforcement, whether such leads were followed-up or not, and any forensic evidence.
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