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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 PATRICK STEPHEN DAVIS,
11 Plaintiff,
12 v.
13 STATE OF NEVADA ET AL.;
14 Defendants.

Case No.: **3:13-cv-00559-MMD-WGC**

OPPOSITION TO PLAINTIFF'S MOTION
FOR DISCOVERY PLAN
AND SCHEDLING ORDER

Attorney General's Office
Department of DMV/DPS
555 Wright Way
Carson City, NV 89711

15 Defendants the State of Nevada, Nevada Board of Parole Commissioners, Nevada
16 Department of Public Safety, Nevada Division of Parole and Probation, Connie Bisbee, James
17 Wright, Bernard Curtis, Claudia Steiber, Natalie Wood, Claudia Cole, Aaron Evans, James
18 Gothan, James Sackett and Nevada Attorney General Catherine Cortez Masto, through their
19 attorneys, CATHERINE CORTEZ MASTO, Attorney General, and LORI M. STORY, Deputy
20 Attorney General, oppose Plaintiff's motion for discovery plan and scheduling order (dkt no.
21 15). The Defendants' opposition is made pursuant to Fed. R. Civ. P. 26 and LR 16-1 and is
22 based on the attached Points and Authorities and all other papers and pleadings filed therein.

23 **POINTS AND AUTHORITIES**

24 **I. BACKGROUND**

25 In this is an action brought by Plaintiff, Patrick Davis, a motion to dismiss (dkt. no. 6)
26 and an unopposed motion for protective order to stay discovery (dkt. no. 10) await decision by
27 the Court. The motion to stay discovery asserted the belief that conducting discovery on the
28 unsettled claims would be a waste of resources, particularly where the parties expected that

1 an amended complaint might be entertained by the Court. On March 10, 2014, Plaintiff filed
2 the instant motion seeking a discovery plan and scheduling order with special scheduling (dkt
3 no. 15) along with multiple motions seeking leave to add parties and amend the complaint
4 (dkt. nos. 11 and 12), requesting notice of deficiencies of the complaint on file (dkt no. 14) and
5 a protective order to preserve discovery (dkt. no. 13). This response to the motion for
6 scheduling order is filed by Defendants, opposing the motion on the basis that setting a
7 scheduling order and discovery plan would be a waste of resources and the motion should be
8 considered waived, given Plaintiff's failure to oppose the Defendants' motion for stay.

9 **II. ARGUMENT**

10 **A. Plaintiff Waived Argument For Discovery Plan.**

11 Plaintiff moves the Court for a discovery plan and scheduling order. The Court should
12 deny this motion as Plaintiff waived these arguments when he failed to oppose the
13 Defendants' earlier filed motion for protective order to stay discovery. See LR 7-2(d) ("The
14 failure of an opposing party to file points and authorities in response to any motion shall
15 constitute a consent to the granting of the motion.")

16 **B. No Good Cause Shown for Making Request at This Time.**

17 Plaintiff has not stated in his motion why he believes a scheduling order and discovery
18 plan are necessary at this time given the pending substantive motion to dismiss his complaint
19 and his own motions for permissive joinder and to amend. These motions leave little certainty
20 as to the scope of discovery required or allowed because it is unknown what claims or parties
21 might ultimately survive the Court's review, consideration and decision. Although Fed. R. Civ.
22 P. 26(f) and LR 16 require such an order and plan be formulated by the parties and submitted
23 to the court, Defendants' unopposed motion for stay of this obligation outlined the uncertainty
24 and highlighted the potential for wasted time, energy, and expense should discovery be
25 required prior to a decision on the pending motions. Nothing has changed to reduce the
26 uncertainty since that motion was filed. In fact, Plaintiff has since filed the above-identified
27 motions which exacerbate the unknown factors in this litigation.

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1 II. CONCLUSION

2 Defendants request the Court deny the motion for scheduling order and discovery plan
3 as Plaintiff waived his objections to a stay of discovery pending the decision on the motion to
4 dismiss and because Plaintiff has not offered any reason why discovery should proceed on
5 the schedule he proposes given that it remains unclear what claims and parties will remain in
6 this action.

7 DATED this 26th day of March, 2014.

8 CATHERINE CORTEZ MASTO
9 Attorney General

10 By: /s/ Lori M. Story
11 LORI M. STORY
12 Deputy Attorney General
13 *Attorneys for Defendants*

14 Attorney General's Office
15 Department of DMV/DPS
16 555 Wright Way
17 Carson City, NV 89711

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this date I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing OPPOSITION TO PLAINTIFF'S MOTION FOR DISCOVERY PLAN AND SCHEDLING ORDER, addressed to:

PATRICK S. DAVIS
REDACTED
SPARKS, NEVADA 89431

DATED this 26th day of March, 2014.

/s/ Janice M. Riherd
JANICE M. RIHERD
An Employee of the State of Nevada

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Department of DMV/DPS
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