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13 *Attorneys for Defendant Ocean Fleming*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

CASE NO. C-11-276866  
DEPT NO.: 17

12 vs.

13 OCEAN FLEMING,

14 Defendant.

Hearing Date: June 22, 2017  
Hearing Time: 8:30 a.m.

15  
16 **DEFENDANT OCEAN FLEMING'S OPPOSITION TO LVMPD'S MOTIONS TO**  
17 **QUASH SUBPOENAS FOR IAB AND CRIMINAL INTELLIGENCE**  
18 **INVESTIGATIONS OF THE OFFICERS**

18 Defendant Ocean Fleming, by and through his appointed counsel,  
19 Janiece S. Marshall, Esq. and Michael Cristalli, Esq. of the law firm of Gentile  
20 Cristalli Miller Armeni Savarese, opposes LVMPD Motion(s) to Quash the eight  
21 subpoena duces tecum for LVMPD's IAB and Criminal Intelligence files of the  
22 officers involved in the prosecution of Mr. Fleming and who are the subject of  
23 an FBI investigation as well as an LVMPD investigation that resulted in LVMPD  
24 making "sweeping changes" to its VICE unit for the following reasons:

- 25 1. This Court **granted** Mr. Fleming's motion to conduct discovery.
- 26 2. The DA's office, prior to its recusal, **already produced** three  
27 documents from LVMPD's investigation of the officers.
- 28 3. The documents subpoenaed are not only **relevant but are highly**

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probative to this Action because:

a. Detectives Beas and Baughman were both having sex with Jessica Gruda, the primary witness against Defendant Fleming, eattached Affidavit by Gruda's former roommate. *See Exhibit A, Affidavit of Sarah Davey.*

b. Detective Baughman, the lead detective in the prosecution of Ocean Fleming, is also believed to have been having a romantic/sexual relationship with the lead prosecutor, Liz Mercer (and Baughman's current wife) during the prosecution and trial of Ocean Fleming in 2012.

c. Detective Baughman is also believed to have been involved in a romantic/sexual relationship with Lt. Hughes, his supervisor.

d. Detective Gray was involved in the prosecution of Defendant Ocean Fleming and also believed to have been the subject of the investigation.


d. Text messages exist between Baughman and a witness prostitute in another case that appear to support claim that Detective Baughman was coaching the witness testimony.

4. Defendant Fleming's subpoena specifically stated that LVMPD was required to produce any non-privileged documents, but LVMPD failed to produce any documents nor provided any privilege log for the allegedly privileged documents withheld.

5. LVMPD's objections based upon privilege and relevance with respect to discovery in civil rights actions under 1983 actions as well as discovery sought in the direct prosecution of a defendant, neither of which are pertinent to the circumstances at hand in this post-conviction relief action where the misconduct occurred during the prosecution of Mr. Fleming and where the officers are being investigated for public corruption for their conduct.

1 This Opposition is based upon the following Memorandum of Points and  
2 Authorities, the pleadings and papers on file, the exhibits attached hereto, and  
3 any argument the Court may allow at hearing.

4 GENTILE CRISTALLI  
5 MILLER ARMENI SAVARESE

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12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. STATEMENT OF FACTS**

14 **A. Procedural Facts**

- 15 1. Mr. Fleming filed a pro se post-conviction relief petition, alleging, *inter*  
16 *alia*, that LVMPD detectives were having improper relationships with the  
17 prostitute witnesses during the prosecution of his case and then coached  
18 witnesses how to testify. *See Petition.*
- 19 2. Following its review of that Petition, this Court appointed undersigned  
20 counsel to represent Mr. Fleming. *See Court's Order appointing counsel.*
- 21 3. On May 18, 2017, this Court issued an Order granting Defendant's  
22 Fleming's Motion to Conduct Discovery. *See Order.*
- 23 4. Prior to granting the Order allowing Defendant to conduct discovery in  
24 this Action, this Court reviewed *in camera* some but not all the  
25 documents from LVMPD's investigation of the officers. The subpoenas  
26 seek the additional documents in the files.
- 27 5. Defendant Fleming served on LVMPD eight subpoenas for the four  
28 officers, seeking documents within the investigative files of IAB and  
Criminal Intelligence regarding complaints against these officers from the

1 date that Lt. Hughes created the special pandering unit, assigned  
2 Baughman and Beas to it with Intelligence Detective Gray assistance.

3 6. LVMPD filed four motions to quash the subpoenas, failing to produce  
4 even one single document and failing to provide any privilege log.

5 **B. Relevant Facts**

6 1. On April 13, 2017, Sheriff Lombardo admitted that the FBI is  
7 investigating public corruption involving LVMPD'S VICE unit. See  
8 [http://www.lasvegasnow.com/news/i-team-fbi-probe-leads-to-changes-in-](http://www.lasvegasnow.com/news/i-team-fbi-probe-leads-to-changes-in-metros-vice-/unit)  
9 [metros-vice-/unit](http://www.lasvegasnow.com/news/i-team-fbi-probe-leads-to-changes-in-metros-vice-/unit).

10 2. Sheriff Lombardo further admitted that LVMP has made sweeping  
11 changes to its VICE command and oversight of VICE detectives as a  
12 consequence of the conduct of the subject officers. *Id.*

13 3. The same team of LVMPD officers and the same DA (Liz Mercer who is  
14 now married to Detective Baughman) that prosecuted Mr. Fleming also  
15 prosecuted other defendants on eerily identical factual allegations and  
16 charges. *Id.* See also [hhps://knpr.org/knpr/2017-06/why-fbi-](https://knpr.org/knpr/2017-06/why-fbi-investigating-metros-vice-unit)  
17 [investigating-metros-vice-unit](https://knpr.org/knpr/2017-06/why-fbi-investigating-metros-vice-unit).

18 4. Over 100 text messages between former Detective Baughman and a  
19 witness in another PIT prosecution support that Detective Baughman  
20 was having an improper relationship with another witness prostitute and  
21 coaching the witness on the kidnapping charge in that case. *See Petition.*

22 5. The primary witness who testified against Mr. Fleming, Jessica Gruda,  
23 was having sexual relations with both Detectives Beas and Baughman  
24 during the prosecution of Mr. Fleming according to her roommate and as  
25 set forth in the attached affidavit. *Exhibit A, Affidavit of Sarah Davey.*

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1           **II. ARGUMENT**

2           **A. LVMPD HAS NOT PROVIDED NEVADA AUTHORITY THAT THE**  
3           **SUBPOENAED DOCUMENTS ARE PROTECTED BY PRIVILEGE**

4           This case involves salacious and unsavory allegations of public  
5 corruption against LVMPD police officers that LVMPD seeks by its Motions to  
6 Quash to continue to conceal, arguing that the files are privileged, not relevant  
7 and that Defendant Fleming is using discovery under NRS 34.780 “as a means  
8 of rummaging through the Department’s files.” *See Opposition(s) at 9.*

9           Yet, LVMPD provides no Nevada authority to support its contention that  
10 in a post-conviction relief action that the IAB or the Criminal Intelligence files  
11 are privileged where the documents subpoenaed concern investigations of  
12 improper conduct of the officers as it relates to the underlying prosecution of  
13 the defendant at trial. Rather, LVMPD’s extensive duplicate motions to quash  
14 the subpoenas in this case, seeks to rely upon case law involving objections to  
15 discovery in civil cases involving civil rights 1983 cases or discovery by a  
16 defendant sought prior to the criminal trial proceedings. Neither of those  
17 circumstances exist in this case.

18           Additionally, the burden of establishing a privilege rests on the party  
19 claiming the privilege. *See Davis v. Fendler*, 650 F.2d 1154, 1160 (9<sup>th</sup> Cir.1981).  
20 Further, when privileges are asserted as to documents, the assertion of the  
21 privilege is accomplished through a privilege log. Here, LVMPD has provided  
22 no privilege logs.

23           Moreover, Nevada public policy discourages a broad assertion of  
24 privilege: “It is well settled that privileges, whether created by statute or the  
25 common law, should be interpreted and applied narrowly.” *PR Partners v.*  
26 *Board of County Commissioners of Clark County*, 116 Nev. 616, 6 P.3d 465  
27 (2000). The Nevada Supreme Court has cited with approval, on numerous  
28 occasions, of the ruling in *US v. Nixon*, 416 US 683 (1974). In *Nixon*, the US

1 Supreme Court determined that privileges are “designed to protect weighty and  
2 legitimate competing interests . . . whatever their origins, the exceptions to the  
3 demand for every man’s evidence are not lightly created nor expansively  
4 construed, for they are in the derogation of the search for truth.” 416 US at  
5 709-710.

6 Most importantly, LVMPD appears to be unaware that the DA’s office  
7 previously submitted to the Court three documents from LVMPD’S IAB file  
8 investigating these officers. Thus, any alleged privileged has been waived. In  
9 fact, this Court granted Defendant Fleming’s motion to conduct discovery after  
10 reviewing those three documents from the investigation. The Court is,  
11 therefore, well aware of how probative the documents sought are to this post-  
12 conviction relief action without Defendant Fleming going into specific detail.  
13 Any assertion of privilege is always balanced against the probative value of the  
14 evidence. As such, Defendant Fleming is entitled to the entire investigation not  
15 merely three documents that the DA’s office decided to provide before it  
16 recused itself from this Action. The fact that the documents show an unsavory  
17 side that LVMPD would prefer not be exposed is not the basis for asserting a  
18 privilege.

19 **B. THE DOCUMENTS SUBPOENAED ARE RELEVANT AND HIGHLY**  
20 **PROBATIVE EVIDENCE**

21 Contrary to LVMPD’s assertion, Defendant Fleming is not merely  
22 rummaging through its files. First and foremost, the improper conduct of the  
23 officers is no longer mere speculation. Not only has LVMPD and the FBI  
24 investigated the improper conduct of these officers, but LVMPD admitted in  
25 April 2017 that it had already made “sweeping changes” to the command and  
26 oversight of the VICE unit as a result of the conduct of the officers.  
27 Furthermore, there may still be federal indictments against one or more of  
28 these officers.

1 Second, attached to this Opposition is the Affidavit of Sarah Davey, the  
2 former roommate and friend of the primary witness against Ocean Fleming at  
3 trial, Jessica Gruda. Because Sarah Davey lived with Jessica Gruda prior to  
4 the arrest of Ocean Fleming in 2011 and continued to reside with Jessica  
5 Gruda until up to the eve of Mr. Fleming's trial date in August 2012. Sarah  
6 witnessed Jessica Gruda's interaction with both Detective Baughman and  
7 Detective Beas. She was aware of the text messages, phone calls and visits  
8 made by the Detectives to Jessica Gruda and that both detectives were having  
9 sex with Jessica Gruda.

10 Given that Jessica Gruda was the key witness at trial against Ocean  
11 Fleming, her relationship with the Detectives is highly probative evidence in  
12 supporting Mr. Fleming's post-conviction relief petition that the Detectives  
13 improperly influenced and coached the witness' testimony against Mr. Fleming.  
14 Consequently, LVMPD's investigation of the conduct of the police and any  
15 complaints made against these officers during their investigation and  
16 prosecution of Mr. Fleming is without question relevant.

17 Given the above, the documents exist. Defendant Fleming seeks the  
18 documents pertaining to LVMPD's investigation of these VICE officers from the  
19 date the special unit was formed under Lt. Hughes' command when she hired  
20 Detective Baughman and Beas in 2008 to today's date given that the  
21 investigation was ongoing as of this year and given that Defendant Ocean  
22 Fleming is one of the defendants who was targeted by Detective Baughman and  
23 his "Pimp Enforcement Team" ("PIT") prior to his arrest in 2011. This request  
24 is not overbroad because Detective Baughman and his team targeted  
25 Defendant Fleming for years prior to conviction. Thus, complaints about their  
26 conduct from when this special team was created is relevant and highly  
27 probative.

28 As such, Defendant Fleming is entitled to the documents contained in

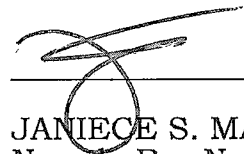
1 the files maintained by IAB and by Criminal Intelligence. LVMPD's investigation  
2 of the complaints of improper conduct by currently employed officers (Gray and  
3 Beas) would be conducted by the IAB while LVMPD's investigation into the  
4 conduct of former officers (Hughes and Baughman) would be conducted by  
5 Criminal Intelligence. Of note, Detective Gray continued to be assigned to  
6 Criminal Intelligence until only recently.

7 **III. CONCLUSION**

8 For the reasons set forth above, Defendant Fleming request that the  
9 Court deny LVMPD's Motions(s) to Quash the subpoenas and order LVMPD to  
10 produce the documents set forth in the eight subpoenas,

11 Dated this 19 day of June, 2017.

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13 GENTILE CRISTALLI  
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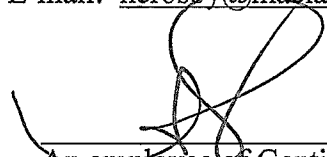


CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile Cristalli Miller Armeni Savarese hereby certifies that on the 19<sup>th</sup> day of June, 2017, I served a copy DEFENDANT OCEAN FLEMING'S OPPOSITION TO LVMPD'S MOTIONS TO QUASH SUBPOENAS FOR IAB AND CRIMINAL INTELLIGENCE INVESTIGATIONS OF THE OFFICERS, by electronic means and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

DISTRICT ATTORNEY  
CRIMINAL DIVISION  
200 East Lewis Avenue  
Las Vegas, Nevada 89101  
E-mail: [PDmotions@clarkcountyda.com](mailto:PDmotions@clarkcountyda.com)  
[Motions@clarkcountyda.com](mailto:Motions@clarkcountyda.com)

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An employee of Gentile Cristalli  
Miller Armeni Savarese

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**EXHIBIT A**

**EXHIBIT A**

**AFFIDAVIT OF SARAH DAVEY\_**

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK        )

I, Sarah Davey, being duly sworn, deposes and says as follows:

1. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

2. This Affidavit is being made regarding the *State of Nevada v. Ocean Fleming*, Case No.: C-11-276866-1.

3. Affiant is Jessica Gruda's former roommate and friend of Jessica Gruda.

4. Upon information and belief, Jessica Gruda testified against Ocean Fleming at the criminal trial in 2012.

5. Affiant was never contacted by either the Metropolitan Police Department or by the Clark County District Attorney's office to testify at the trial of Ocean Fleming despite Affiant living with Jessica Gruda at the time of the events alleged to have occurred in 2011 between Ocean Fleming and Jessica Gruda and that, upon information and belief, allegedly gave rise to the prosecution of Ocean Fleming.

6. As a consequence of being Jessica Gruda's friend and roommate, Affiant became aware that Jessica Gruda was having sexual relations with both Detectives Albert Beas and Detective Christopher Baughman.

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