

1 LUKE A. BUSBY, ESQ
2 Nevada Bar No. 10319
3 LUKE ANDREW BUSBY, LTD.
4 316 California Ave # 82
5 Reno, Nevada 89509
6 O: 775.453.0112
7 luke@lukeandrewbusbyltd.com
8 *Designated Resident Nevada Counsel for Plaintiff*

6 David B. Owens
7 LOEVY & LOEVY
8 100 S. King Street, #100
9 Seattle, WA 98104
10 david@loevy.com
11 *Will comply with LR IA 11-2 within 30 days.
12 *Counsel for Plaintiff Paul Browning*

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA (LAS VEGAS)

12 PAUL LEWIS BROWNING,)
13)
14 Plaintiff,)
15 v.)
16 LAS VEGAS METROPOLITAN)
17 POLICE DEPARTMENT, LT. GREG)
18 JOLLEY, LT. JOHN CONNER, SGT. F.)
19 JERGOVIC, SGT. C. ALBERT,)
20 DETECTIVE SGT. MICHAEL BUNKER))
21 #653, DETECTIVE SGT. T. ROSEN,)
22 DETECTIVE ROBERT LEONARD)
23 P#471, DETECTIVE H. OREN,)
24 DETECTIVE BERT LEVOS #144,)
25 DETECTIVE THORTON, OFFICER)
26 GREGORY BRANON P#2187,)
27 OFFICER GARY CALDWELL, P#2301,)
OFFICER DAVID RADCLIFFE P#2191,)
OFFICER R. ROBERTSON P#120, AND)
IDENTIFICATION SPECIALIST)
DAVID R. HORN #C1928,)
Defendants.)

Case No.: 2:20-cv-1381
Complaint and Jury Demand

25 Now comes Plaintiff PAUL LEWIS BROWNING, by and through counsel,
26 and complains of Defendants the LAS VEGAS METROPOLITAN POLICE
27

1 DEPARTMENT (“Department” or “LVMPD”), former Las Vegas Metropolitan
2 employees Lt. Greg Jolley, Lt. John Conner, Sgt. F. Jergovic, Sgt. C. Albert,
3 Detective Sgt. Michael Bunker #653, Detective Sgt. T. Rosen, Detective Robert
4 Leonard P#471, Detective H. Oren, Detective Bert Levos #144, Detective Thorton,
5 Officer Gregory Branon P#2187, Officer Gary Caldwell, P#2301, Officer David
6 Radcliffe P#2191, Officer R. Robertson P#120, and Identification Specialist David R.
7 Horn #C1928, as follows:

8 **Introduction**

9 1. As a result of misconduct by the Defendants, Plaintiff Paul Browning
10 was wrongfully convicted of a murder he did not commit.

11 2. Browning was twice sentenced to death by execution, which would
12 have been a tragic miscarriage of justice that could not, in any way, ever be undone.

13 3. All told, Browning then spent more than 32 years on Nevada’s death
14 row, facing the prospect of a state-sanctioned killing, despite the fact he was
15 innocent of the crime.

16 4. Plaintiff’s conviction was only possible due to the violation of his
17 constitutional rights, including the Defendants’ failure to disclose evidence about
18 the perpetrator exculpating Plaintiff through police creating false evidence
19 purporting to link Browning to the crimes.

20 5. After evidence of Defendants’ violations of Plaintiff’s constitutional
21 rights and other exculpatory evidence was brought to light, the wrongful conviction
22 of Plaintiff was vacated and the charges ultimately dismissed with prejudice.

23 6. Nothing can give Plaintiff years of his life—spent away from his loving,
24 supportive family and while enduring the trauma of a possible execution—back.
25 And, while nothing can truly account for the immense pain and trauma Plaintiff
26 has endured, Browning brings this action to seek a measure of justice for his more
27 than three decades of wrongful incarceration.

1 to the statutes, ordinances, regulations, policies, customs, and usage of the Las
2 Vegas Metropolitan Police Department, Clark County, and the State of Nevada.
3 They are sued in their individual capacity. Upon information and belief, the
4 Defendant Officers are entitled to indemnification under statute and by contract.

5 12. Defendant Las Vegas Metropolitan Police Department (“LVMPD”) is a
6 political subdivision of the State of Nevada and employed the Defendant Officers.
7 The LVMPD is liable for all state law torts committed by the Defendant Officers
8 while they were employed by the LVMPD pursuant to the doctrine of *respondeat*
9 *superior*. The LVMPD is responsible for its own policies, practices, and customs and
10 the violation of Plaintiff’s constitutional rights that were caused by its policies,
11 and/or customs.

12 **Factual Background**

13 13. Plaintiff grew up in Los Angeles, and has always remained close to his
14 family, particularly his mother. Before he was wrongfully convicted, Plaintiff
15 enjoyed activities like water skiing, flying model planes, riding motorcycles and dirt
16 bikes.

17 14. In 1985, Plaintiff decided to leave California to be closer to his mother
18 who then lived in Maryland.

19 15. Plaintiff set out on an extended cross-country trip with a friend,
20 Marsha Gaylord, and decided to stop-over in Las Vegas for a while.

21 16. As part of that extended trip, on November 8, 1985, Plaintiff and
22 Gaylord were staying at the Normandie Hotel, on Las Vegas Blvd in Las Vegas,
23 Nevada.

24 17. Plaintiff’s hair was styled in a short Afro; a dry hairstyle above the
25 head.

The Robbery and Murder of Hugo Elsen on November 8, 1985

1
2 18. Hugo Elsen and his wife, Josy Elsen, were the owners of a jewelry
3 store in Las Vegas, Nevada a few blocks from the Normandie Hotel.

4 19. The Elsen's store had a front "showroom" with jewelry displays.

5 20. The store also had a back room, with storage and a place to rest.

6 21. The store also had a "buzzer" for letting people inside.

7 22. On November 8, 1985, while manning the showroom, Hugo Elsen was
8 attacked and brutally stabbed during the course of a robbery where the perpetrator
9 stole at least 70 pieces of jewelry.

10 23. The crime scene was bloody.

11 24. The perpetrator stole at least 70 pieces of jewelry, and fled out the
12 front door of the store, leaving bloody footprints in his wake.

13 25. At the time of the tragic crime, Josy was in a back room taking a nap.

14 26. Hearing the sounds of the crime, Josy awoke and came out to the front
15 room where she saw the perpetrator standing over Hugo with a knife.

16 27. Josy did not see the perpetrator's face, but only caught a glance at his
17 side.

18 28. The perpetrator then fled the scene, leaving through the front door.

19 29. After the perpetrator left, Josy rushed out of the store through the
20 back door and went to a business nearby to seek assistance from Debra Coe.

21 30. When Josy arrived at Coe's office, Coe went to her front window to see
22 if she could see the perpetrator trying to get away.

23 31. Coe saw someone proceeding near the Elsens' store.

24 32. That person was not the perpetrator.

25 33. In fact, Coe recognized that the person had not, and could not have,
26 been the perpetrator fleeing the scene of the crime.

27

1 leading from Hugo and out the front door came from paramedics arriving later
2 when they knew that was not the case.

3 **Browning Had Nothing to Do with the Murder of Hugo Elsen**

4 44. Plaintiff was not involved in the robbery and murder of Hugo Elsen in
5 any way whatsoever.

6 45. Instead, Plaintiff had been at the Normandie hotel and was heading
7 out to walk downtown, a considerable distance.

8 46. After leaving the hotel, Plaintiff came across a man named Randy
9 Wolfe, who was staying at the same hotel.

10 47. Plaintiff had met Randy and his wife, Vanessa Wolfe, only a day or two
11 before at the hotel and was introduced via Gaylord.

12 48. Randy Wolfe was in a yellow Datsun car, agreed to give Plaintiff a ride
13 downtown, and told Plaintiff to meet him at his hotel room.

14 49. Plaintiff walked back to the hotel and went to the Wolfes' hotel room.

15 50. There, Plaintiff observed jewelry on the beds, and saw Vanessa Wolfe
16 cutting tags of the items but did not have any idea where the items had come from.

17 51. Randy and Vanessa separately left their room, leaving Plaintiff there
18 waiting for them to return for his ride downtown.

19 52. Randy took a large portion of the jewelry with him.

20 53. Plaintiff knew nothing about the attack on Hugo, where the jewelry
21 had come from, or what the Wolfes were doing.

22 **The Investigation Zeros In on Plaintiff**

23 54. Instead of investigating a perpetrator that matched the description
24 provided by the victim, and while suppressing the fact that the victim was even
25 cognizant enough to provide a description of the perpetrator, the Defendant Officers
26 nearly immediately focused on Plaintiff.

1 55. The Defendant Officers, including but not limited to Defendants
2 Bunker, Albert, Caldwell, and Radcliffe, were provided with clearly false
3 information from Randy and Vanessa Wolfe, who were obviously involved in the
4 crime in some way.

5 56. Vanessa and Randy Wolfe lied to investigators and claimed Browning
6 was involved, even though he was not.

7 57. No reasonable police officer would have believed the story provided by
8 the Wolfes that day, or that the Wolfes themselves were innocent.

9 58. The Wolfes' obviously implausible story included claiming Browning
10 spontaneously confessed to them in the moments after the crime, stashed the
11 proceeds of the crime in their hotel room, then sat idly by after giving them the
12 murder weapon (a knife) and asking them to dispose of it.

13 59. The story itself was incoherent, nonsensical, and obviously and
14 transparently false.

15 60. Indeed, the Defendant Officers knew that the Wolfes lacked credibility,
16 would provide false information to implicate others, would do so to further their
17 own criminal ends, and that they could not be trusted.

18 61. Nonetheless, in fabricating evidence, the Defendant Officers generated
19 police reports purporting that the Wolfes were reliable, honest witnesses, when they
20 well knew that this was untrue.

21 62. Acting pursuant to the policies, practices, and customs of the LVMPD,
22 the Defendant Officers routinely used unreliable informants, including the Wolfes,
23 to seek bogus charges against innocent people while forgiving other criminal acts.

24 63. For example, around the same time they made false statements about
25 Plaintiff, the Wolfes falsely alleged that an innocent man, Gerald Morell, committed
26 a crime in their presence, when he had not.

27

1 64. As with Plaintiff, the Wolfes purported to lead the police to the
2 purported murder weapon (also a knife), even though they had faked the whole
3 thing.

4 65. The Defendant Officers, who interacted with the Wolfes regularly on
5 the street, suppressed the extent of the Wolfes' own modus operandi from both
6 criminal defendants and even the Clark County District Attorney's Office.

7 66. Nonetheless, with Plaintiff still waiting for a ride downtown, the
8 Defendant Officers, including Defendants Bunker, Radcliffe, Caldwell, and possibly
9 others, rushed in to the hotel room to arrest Plaintiff, despite the fact that the
10 Wolfes' story was obviously false, made by people who police knew lacked
11 credibility, and despite there being no probable cause to suspect Plaintiff was
12 involved in the robbery and murder of Hugo Elsen.

13 67. The arresting officers knew Plaintiff was not the perpetrator.

14 68. The arresting officers knew, or should have known Plaintiff was
15 innocent by what transpired next: the arresting officers searched Plaintiff's body
16 and clothing, and did not find any blood, defensive wounds, or any other evidence
17 indicative of him having just brutally stabbed Hugo Elsen.

18 69. Plaintiff also consented to the search of his own apartment at the
19 hotel. The search of the room produced no weapon, clothing, jewelry, or anything
20 else related to the murder.

21 70. Even though Plaintiff did not have any blood on him, his shoes could
22 not have been the ones that left prints exiting the front of the store, his description
23 conflicted with that of the perpetrator, he was not in possession of any of the stolen
24 jewelry, and the Wolfes themselves were in possession of stolen jewelry, the
25 Defendants decided to attempt to implicate Plaintiff in the crime, rather than
26 investigate the Wolfes or who may have worked with them to commit the robbery-
27 murder.

1 71. To do so, Defendants not only suppressed exculpatory evidence, but set
2 out to manufacture false evidence against Plaintiff.

3 72. Among themselves, the Defendant Officers agreed to work together to
4 attempt to secure Plaintiff's wrongful conviction in violation of his constitutional
5 rights and despite his innocence.

6 73. For example, at the police station, Detectives threatened Plaintiff,
7 subjected him to an extremely cold, uncomfortable environment, and otherwise
8 pressured him to provide a false confession.

9 74. When Plaintiff attempted to truthfully provide a statement,
10 questioning Defendants, including but not limited to Defendant Levos and Officer
11 Radcliffe, one of the Defendants began writing it down. But, once Defendants
12 realized that Plaintiff was providing a truthful, exculpatory statement, rather than
13 a false confession, they not only refused to take the statement but also destroyed
14 the only contemporaneous recording of the statements Plaintiff made on that day
15 about what happened.

16 75. Doing so amounts to a destruction of evidence, done in bad faith to
17 prejudice Plaintiff, and assist in Defendants efforts to wrongfully prosecute and
18 convict Plaintiff for a crime he did not commit.

19 76. In addition, in fabricating evidence, Defendants indicated in reports
20 that Plaintiff was not willing to speak to them whatsoever, despite the fact that he
21 only invoked his *Miranda* rights after they had made it clear they would not accept
22 his exculpatory statements.

23 77. Defendants also fabricated police reports after Plaintiff had been
24 arrested purporting to attribute to him statements he never made.

25 78. Defendants further destroyed and/or failed to preserve other evidence,
26 including crime scene evidence that likely contained the perpetrators' blood, DNA,
27 or other genetic markers.

Defendants Manufacture and Fabricate Evidence

1
2 79. Defendants knew that Josy had not seen the perpetrator's face and
3 would not be able to identify the person who committed the crime.

4 80. Josy was shown a photographic lineup that included Plaintiff. At that
5 time, Josy confirmed that she was not able to make identification; that she saw the
6 perpetrator for only a "slight moment"; that she saw the perpetrator from the side;
7 and that she never saw the perpetrator's full face.

8 81. Josy did not select Plaintiff and could not have made an identification.

9 82. Between this interaction and trial, Josy interacted with LVMPD
10 officers and detectives who, upon information and belief, took steps to indicate to
11 Josy that Plaintiff was the perpetrator.

12 83. At trial, evidence concerning Josy identifying Browning was presented
13 as an "identification" of the perpetrator.

14 84. This "identification" was unreliable and a result of Defendants' acts.

15 85. Debra Coe did not see the perpetrator when she looked out her office
16 window.

17 86. Nonetheless, Defendants decided to ignore that fact, and attempt to
18 present her as an "identification" witness who had seen the perpetrator.

19 87. Defendants were only able to do so by manipulating Coe, suppressing
20 exculpatory and impeachment evidence of the perpetrator and their own acts, and
21 by using suggestion to have Coe "reconsider" her description and even undermine
22 what she actually observed.

23 88. After Coe "reconsidered" her description, Defendants subjected Coe to
24 a highly suggestive showup of Plaintiff.

25 89. To make matters worse, the "show-up" took place in low light; after
26 Plaintiff was pulled out of a police car; that car was parked near the Elsen's store;
27 and while Plaintiff was handcuffed and not wearing a shirt.

1 90. Suggestively, Defendants even told Coe that they had a suspect and
2 asked her to make an identification of Plaintiff.

3 91. Coe obliged, and claimed Plaintiff was the person she had seen
4 through the window after Josy had come to her business and told her what
5 happened.

6 92. Defendants' tactics were unduly and unnecessarily suggestive.

7 93. Thereafter, in fabricating evidence, Defendants suggested to Coe
8 information and, in conjunction with their failure to disclose evidence, took efforts
9 to make it appear Coe's identification of Plaintiff as the perpetrator was reliable,
10 when that suggestion was incorrect and unreliable.

11 94. As a result of Defendants' misconduct, at trial, Coe claimed that she
12 was "certain" she had seen Plaintiff out the window and the prosecution was able to
13 suggest that the person she had seen was the perpetrator.

14 95. Defendants manipulated a third person, Charles Woods, in the area of
15 the Elsen's shop in the aftermath of the crime.

16 96. Woods also did not see the perpetrator.

17 97. Woods saw a man on the street around the time of the Elsen attack.

18 98. Though the police knew Woods had not seen the perpetrator fleeing the
19 scene with jewelry, they told him they wanted him to identify a suspect, and
20 presented Browning in a showup, again shirtless, handcuffed, and in proximity to a
21 police car.

22 99. There was no exigency or justification for the officers using obviously
23 suggestive, unreliable showup procedures with Coe and Woods, or for telling them
24 beforehand they should make an identification.

25 100. These were textbook examples of suggestive techniques, were
26 unreasonable, and evident of inadequate training, policies, and practices of the
27 LVMPD with respect to identification procedures.

1 111. The case against Plaintiff was exceedingly weak.

2 112. The Wolfes, in fact, turned in the bulk of the stolen jewelry, even after
3 two searches of their hotel room by the police—because, by the time the police
4 arrived, the Wolfes had already taken the bulk of the jewelry out of the hotel.

5 113. Owing to their deep knowledge of the Defendant Officers’ willingness
6 to suppress evidence of their crimes and even fabricate evidence on their behalf for
7 “assistance” in prosecutions as informants, the Wolfes were brazen in their actions.

8 114. Randy Wolfe wore jewelry stolen from the Elsens unabashedly after
9 the crime and even at a preliminary hearing where he testified against Plaintiff and
10 lied about not having kept the jewelry.

11 115. None of the recovered jewelry had Plaintiff’s fingerprints on them or
12 anything linking Plaintiff to the stolen goods.

13 116. Vanessa Wolfe also admitted that she and Randy ran “cons” where
14 they “bilked” people out of their money. Despite their obvious lack of credibility and
15 involvement in Elsen’s death in some way, neither of the Wolfes were investigated
16 by Defendants or charged for their crimes.

17 117. Instead, despite the fact he was innocent, Plaintiff was convicted of
18 four crimes involving robbery and murder of Hugo Elsen—a result of Defendants’
19 misconduct.

20 118. Plaintiff was sentenced to death.

21 **Plaintiff’s Exoneration**

22 119. Plaintiff appealed his wrongful conviction, but his conviction and
23 sentence were affirmed.

24 120. Plaintiff continued to seek relief, filing a state habeas petition, which
25 was rejected in the trial court. In 2004, the Nevada Supreme Court reversed the
26 denial of Plaintiff’s challenge to his death sentence, but Plaintiff was resentenced to
27 death on remand.

1 **Count I: 42 U.S.C. § 1983 – Fourteenth Amendment**

2 **Due Process**

3 126. Each preceding paragraph of this Complaint is incorporated as if
4 restated fully herein.

5 127. In the manner described more fully above, the Defendant Officers,
6 acting as investigators, individually, jointly and in conspiracy with each other,
7 deprived Plaintiff of his constitutional right to due process and a fair trial.

8 128. In the manner described more fully above, Defendants Lt. Greg Jolley,
9 Lt. John Conner, Sgt. F. Jergovic, Sgt. C. Albert, Detective Sgt. Michael Bunker
10 #653, Detective Sgt. T. Rosen, Detective Robert Leonard P#471, Detective H. Oren,
11 Detective Bert Levos #144, Detective Thorton, Officer Gregory Branon P#2187,
12 Officer Gary Caldwell, P#2301, Officer David Radcliffe P#2191, Officer R. Robertson
13 P#120, and Identification Specialist David R. Horn #C1928 deliberately withheld
14 exculpatory and impeachment evidence from Plaintiff, his attorneys, and from state
15 prosecutors, among others, thereby misleading and misdirecting the criminal
16 prosecution against Plaintiff, including but not limited to evidence: that Hugo Elsen
17 gave a description of the perpetrator; that Hugo Elsen's description of the
18 perpetrator could not have been Plaintiff; that the bloody shoeprints from the crime
19 scene were from the perpetrator; concerning the Wolfes' credibility and status as
20 police informants; that they had fabricated police reports and other forms of their
21 own misconduct.

22 129. In addition, as described more fully above, the Defendant Officers
23 deliberately fabricated and solicited false evidence, including witness statements
24 and testimony they knew to be false, fabricated police reports and other evidence
25 falsely implicating Plaintiff, obtained charges against Plaintiff, obtained his
26 conviction using that false evidence, and failed to correct fabricated evidence they
27 knew to be false when it was used against Plaintiff during his criminal trial.

1 Moreover, Defendants used investigative techniques that were so coercive and
2 abusive that they knew, or were deliberately indifferent to, the fact that those
3 techniques would yield false information that was used to convict Plaintiff.

4 130. In addition, as described more fully above, the Defendant Officers also
5 used unduly and impermissibly suggestive techniques to generate unreliable
6 identification evidence that was admitted against Plaintiff at trial and to his
7 detriment.

8 131. In addition, as described more fully above, the Defendant Officers also
9 destroyed and/or failed to preserve exculpatory and materially-favorable evidence,
10 and allowed such evidence to be destroyed and/or unpreserved in bad faith.

11 132. In addition, based on information and belief, the Police Officer
12 Defendants concealed and fabricated additional evidence that is not yet known to
13 Plaintiff.

14 133. In addition, the Defendant Officers subjected Plaintiff to arbitrary
15 governmental action that shocks the conscience in that Plaintiff was deliberately
16 and intentionally framed for a crime of which he is totally innocent, through
17 Defendants' misconduct. Defendants' actions contravened fundamental canons of
18 decency and fairness and violated Plaintiff's rights under the Fourteenth
19 Amendment.

20 134. The Defendant Officers' misconduct directly resulted in the unjust,
21 unconstitutional, and wrongful criminal conviction of Plaintiff, thereby denying him
22 constitutional right to due process and a fair trial guaranteed by the Fourteenth
23 Amendment. Absent this misconduct, the prosecution of Plaintiff could not and
24 would not have been pursued, and he would not have been convicted.

25 135. The misconduct described in this Count was objectively unreasonable
26 and was undertaken intentionally, with reckless and deliberate indifference to the
27 rights of others.

1 136. The Defendant Officers were acting under color of law and within the
2 scope of their employment when they took these actions.

3 137. As a result of the Defendant Officers' misconduct described in this
4 Count, Plaintiff suffered loss of liberty, great mental anguish, humiliation,
5 degradation, physical and emotional pain and suffering, and other grievous and
6 continuing injuries and damages as set forth above.

7 138. Upon information and belief, the Defendant Officers' misconduct
8 described in this Count was undertaken pursuant to the policies, practices, and
9 customs of the LVMPD, in the manner more fully described herein.

10 **Count II: 42 U.S.C. § 1983 – Fourth Amendment**

11 **Detention without Probable Cause and Deprivation of Liberty**

12 139. Each preceding paragraph of this Complaint is incorporated as if
13 restated fully herein.

14 140. In the manner described more fully above, Defendants Lt. Greg Jolley,
15 Lt. John Conner, Sgt. F. Jergovic, Sgt. C. Albert, Detective Sgt. Michael Bunker
16 #653, Detective Sgt. T. Rosen, Detective Robert Leonard P#471, Detective H. Oren,
17 Detective Bert Levos #144, Detective Thorton, Officer Gregory Branon P#2187,
18 Officer Gary Caldwell, P#2301, Officer David Radcliffe P#2191, Officer R. Robertson
19 P#120, and Identification Specialist David R. Horn #C1928 acting as investigators,
20 individually, jointly, and in conspiracy with each other, accused Plaintiff of criminal
21 activity and exerted influence to initiate, continue, and perpetuate judicial
22 proceedings against Plaintiff without any probable cause for doing so and in spite of
23 the fact that they knew Plaintiff was innocent.

24 141. In so doing, the Defendant Officers caused Plaintiff to be unreasonably
25 seized without probable cause and deprived of liberty, in violation of Plaintiff's
26 rights secured by the Fourth Amendment.

27

1 142. The misconduct described in this Count was objectively unreasonable
2 and was undertaken intentionally, with reckless and deliberate indifference to the
3 rights of others.

4 143. The Defendant Officers were acting under color of law and within the
5 scope of their employment when they took these actions.

6 144. As a result of Defendants' misconduct described in this Count, Plaintiff
7 suffered loss of liberty, great mental anguish, humiliation, degradation, physical
8 and emotional pain and suffering, and other grievous and continuing injuries and
9 damages as set forth above.

10 145. Upon information and belief, the Defendant Officers' misconduct
11 described in this Count was undertaken pursuant to the policies, practices, and
12 customs of the LVMPD, in the manner more fully described herein.

13 **Count III: 42 U.S.C. § 1983 – Failure to Intervene**

14 146. Each preceding paragraph of this Complaint is incorporated as if
15 restated fully herein.

16 147. In the manner described more fully above, during the constitutional
17 violations described herein, Defendants Lt. Greg Jolley, Lt. John Conner, Sgt. F.
18 Jergovic, Sgt. C. Albert, Detective Sgt. Michael Bunker #653, Detective Sgt. T.
19 Rosen, Detective Robert Leonard P#471, Detective H. Oren, Detective Bert Levos
20 #144, Detective Thorton, Officer Gregory Branon P#2187, Officer Gary Caldwell,
21 P#2301, Officer David Radcliffe P#2191, Officer R. Robertson P#120, and
22 Identification Specialist David R. Horn #C1928 each stood by without intervening to
23 prevent the violation of Plaintiff's constitutional rights, even though they had the
24 opportunity to do so.

25 148. The misconduct described in this Count was objectively unreasonable
26 and was undertaken intentionally, with reckless and deliberate indifference to the
27 rights of others.

1 149. The Defendant Officers were acting under color of law and within the
2 scope of their employment when they took these actions.

3 150. As a result of Defendants' misconduct described in this Count, Plaintiff
4 suffered loss of liberty, great mental anguish, humiliation, degradation, physical
5 and emotional pain and suffering, and other grievous and continuing injuries and
6 damages as set forth above.

7 **Count IV: 42 U.S.C. § 1983 – Conspiracy to Deprive Constitutional Rights**

8 151. Each preceding paragraph of this Complaint is incorporated as if
9 restated fully herein.

10 152. Prior to Plaintiff's conviction, Defendants Lt. Greg Jolley, Lt. John
11 Conner, Sgt. F. Jergovic, Sgt. C. Albert, Detective Sgt. Michael Bunker #653,
12 Detective Sgt. T. Rosen, Detective Robert Leonard P#471, Detective H. Oren,
13 Detective Bert Levos #144, Detective Thorton, Officer Gregory Branon P#2187,
14 Officer Gary Caldwell, P#2301, Officer David Radcliffe P#2191, Officer R. Robertson
15 P#120, and Identification Specialist David R. Horn #C1928, acting in concert with
16 other co-conspirators, known and unknown, reached an agreement among
17 themselves to frame Plaintiff for a crime he did not commit and thereby to deprive
18 him of his constitutional rights, all as described in this Complaint. Defendants
19 agreed to investigate and to exert influence to cause the prosecution of Plaintiff for
20 a crime he did not commit and took overt actions in conformity with that
21 agreement.

22 153. As further described above, the Defendant Officers agreed to fail to
23 disclose exculpatory evidence and then, to further conceal their acts, fabricate
24 evidence against Plaintiff in a number of ways, including generating false police
25 reports and unreliable identification evidence.

26 154. In so doing, the Defendant Officers agreed to accomplish an unlawful
27 purpose by unlawful means. In addition, these co-conspirators agreed among

1 themselves to protect one another from liability by depriving Plaintiff of these
2 rights.

3 155. In furtherance of their conspiracy, the Defendant Officers committed
4 overt acts and were otherwise willful participants in joint activity.

5 156. The misconduct described in this Count was objectively unreasonable
6 and was undertaken intentionally, with reckless and deliberate indifference to the
7 rights of others.

8 157. As a result of the Defendant Officers misconduct described in this
9 Count, Plaintiff suffered loss of liberty, great mental anguish, humiliation,
10 degradation, physical and emotional pain and suffering, and other grievous and
11 continuing injuries and damages as set forth above.

12 **COUNT VI**

13 **42 U.S.C. § 1983 – Policy & Custom Claims**

14 **Against LVMPD**

15 158. Plaintiff incorporates each paragraph of this complaint as if fully
16 restated herein.

17 159. Plaintiff's injuries described in this complaint and the violations of his
18 constitutional rights discussed above were caused by the policies and customs of the
19 Las Vegas Metropolitan Police Department, as well as by the actions of policy-
20 making officials for the Las Vegas Metropolitan Police Department.

21 160. At all times relevant to the events described in this complaint and for a
22 period of time before and after, the Las Vegas Metropolitan Police Department
23 failed to promulgate proper or adequate rules, regulations, policies, and procedures
24 governing: the conduct of homicide investigations and the questioning of criminal
25 suspects and witnesses by officers and agents of the Las Vegas Metropolitan Police
26 Department; the use of "informant" testimony; the collection, documentation,
27 preservation, testing, and disclosure of evidence, including physical evidence,

1 material exculpatory evidence and impeachment evidence, and information bearing
2 upon the credibility of both lay and law-enforcement witnesses; writing of police
3 reports and taking of investigative notes; obtaining statements and testimony from
4 witnesses; the conduct of eyewitness identification procedures; the maintenance of
5 investigative files and disclosure of those files in criminal proceedings.

6 161. In addition or alternatively, the Las Vegas Metropolitan Police
7 Department failed to promulgate proper and adequate rules, regulations, policies,
8 procedural safeguards, and procedures for the training and supervision of officers
9 and agents of the Department, with respect to the homicide investigations,
10 interview techniques to be used when questioning criminal suspects and witnesses;
11 the production and disclosure of evidence, including physical evidence, material
12 exculpatory evidence and impeachment evidence, and information bearing upon the
13 credibility of both lay and law-enforcement witnesses; “informant” information and
14 evidence; the writing of police reports and taking of investigative notes; obtaining
15 statements and testimony from witnesses; and the maintenance of investigative
16 files and disclosure of the files in criminal proceedings.

17 162. Officers and agents of the Las Vegas Metropolitan Police Department
18 committed these failures to promulgate proper or adequate rules, regulations,
19 policies, and procedures.

20 163. Had officers and agents of the Las Vegas Metropolitan Police
21 Department promulgated appropriate policies, then the violation of Plaintiff’s
22 constitutional rights would have been prevented.

23 164. In addition, upon information and belief, at all times relevant to the
24 events described in this complaint and for a period of time before, the Las Vegas
25 Metropolitan Police Department had notice of a practice and custom by officers and
26 agents of the Department pursuant to which individuals suspected of criminal
27 activity, like Plaintiff, were falsely implicated in crimes through “informant”

1 testimony; subject to criminal prosecution on the basis of identification evidence
2 that was generated through impermissibly suggestive procedures; and who were
3 prosecuted while members of the Department and the Department itself failed to
4 disclose exculpatory and impeachment evidence.

5 165. In addition, at all times relevant to the events described in this
6 complaint and for a period of time before, the Las Vegas Metropolitan Police
7 Department had notice of practices and customs of officers and agents of the
8 Department that included one or more of the following: (1) officers did not record
9 investigative information in police reports, did not maintain proper investigative
10 files, and/or did not disclose investigative or other materials to prosecutors and
11 criminal defendants; (2) officers falsified statements and testimony of witnesses; (3)
12 officers fabricated false evidence implicating criminal defendants in criminal
13 conduct; (4) officers failed to maintain and/or preserve evidence and/or destroyed
14 evidence, including physical evidence; and/or (5) officers pursued wrongful
15 convictions through profoundly flawed investigations, including through the use of
16 unreliable “informant” testimony.

17 166. These practices and customs, individually and/or together, were
18 allowed to flourish because the leaders, supervisors, and policymakers of the Las
19 Vegas Metropolitan Police Department directly encouraged and were thereby the
20 moving force behind the very type of misconduct at issue by failing to adequately
21 train, supervise, and control their officers, agents, and employees in the areas
22 identified above and by failing to adequately punish and discipline prior instances
23 of similar misconduct, thus directly encouraging future abuses like those affecting
24 Plaintiff.

25 167. The above practices and customs, so well settled as to constitute *de*
26 *facto* policies of the Las Vegas Metropolitan Police Department, were able to exist
27 and thrive, individually and/or together, because policymakers with authority over

1 the same exhibited deliberate indifference to the problem, thereby effectively
2 ratifying it.

3 168. In addition, the misconduct described in this count was undertaken
4 pursuant to the Las Vegas Metropolitan Police Department policies and practices in
5 that the constitutional violations committed against Plaintiff were committed with
6 the knowledge, approval, or endorsement of persons with final policymaking
7 authority for the Department or were actually committed by persons with such final
8 policymaking authority.

9 169. As a consequence, the final policymakers for the Las Vegas
10 Metropolitan Police Department approved of, adopted, and therefore ratified the
11 actions of the Defendant Officers, including their violations of Plaintiff's
12 constitutional rights, making the Las Vegas Metropolitan Police Department liable
13 for this misconduct. In fact, based upon information and belief, rather than taking
14 steps to correct the obvious faults and failures with the investigation, including
15 through training or discipline, the final policy makers for the Las Vegas
16 Metropolitan Police Department further ratified the actions of the Defendant
17 Officers by continuing to employ them, promote them, and approve of their work on
18 the Elsen homicide investigation that resulted in Plaintiff's wrongful conviction.

19 170. Plaintiff's injuries and the constitutional violations he suffered were
20 caused by officers, agents, and employees of the Las Vegas Metropolitan Police
21 Department, including but not limited to the Defendant Officers, who acted
22 pursuant to one or more of the policies, practices, and customs set forth above in
23 engaging in the misconduct described in this count.

24 **Count VI: Nevada State Law – Malicious Prosecution**

25 171. Each paragraph of this Complaint is incorporated as if restated fully
26 herein.

1 172. In the manner described more fully above, Defendants Lt. Greg Jolley,
2 Lt. John Conner, Sgt. F. Jergovic, Sgt. C. Albert, Detective Sgt. Michael Bunker
3 #653, Detective Sgt. T. Rosen, Detective Robert Leonard P#471, Detective H. Oren,
4 Detective Bert Levos #144, Detective Thorton, Officer Gregory Branon P#2187,
5 Officer Gary Caldwell, P#2301, Officer David Radcliffe P#2191, Officer R. Robertson
6 P#120, and Identification Specialist David R. Horn #C1928, acting as investigators,
7 individually, jointly, and in conspiracy with each other, and maliciously, instituted
8 or continued the prosecution of Plaintiff without probable cause. As a consequence
9 of the criminal prosecution, Plaintiff was unlawfully seized, deprived of liberty, and
10 wrongfully convicted of a crime of which he is innocent.

11 173. Plaintiff's criminal prosecution was terminated in his favor in a
12 manner indicative of innocence.

13 174. The Defendant Officers were acting under color of law and within the
14 scope of their employment when they took these actions.

15 175. Through the doctrine of *respondeat superior*, Defendant LVMPD is
16 liable as a principal for all torts committed by its employees or agents, including the
17 misconduct by the Defendant Officers.

18 176. As a direct and proximate result of the Defendants' actions, Plaintiff's
19 rights were violated and he suffered injuries and damages, including but not limited
20 to loss of liberty, physical injury, emotional pain and suffering, and other grievous
21 and continuing injuries and damages as set forth above.

22 **Count VII: Nevada State Law – Abuse of Process**

23 177. Each paragraph of this Complaint is incorporated as if restated fully
24 herein.

25 178. In the manner more fully described above, Defendants Lt. Greg Jolley,
26 Lt. John Conner, Sgt. F. Jergovic, Sgt. C. Albert, Detective Sgt. Michael Bunker
27 #653, Detective Sgt. T. Rosen, Detective Robert Leonard P#471, Detective H. Oren,

1 Detective Bert Levos #144, Detective Thorton, Officer Gregory Branon P#2187,
2 Officer Gary Caldwell, P#2301, Officer David Radcliffe P#2191, Officer R. Robertson
3 P#120, and Identification Specialist David R. Horn #C1928, through the actions
4 described more fully above, procured and exerted influence to continue a criminal
5 proceeding against Plaintiff, with an ulterior purpose other than resolving a legal
6 dispute or resolving the guilt or innocence of Plaintiff in the murder of Hugo Elsen.
7 Defendants also committed willful acts in the use of the legal process which were
8 not proper in the regular conduct of Plaintiff's criminal proceeding.

9 179. The Defendant Officers were acting under color of law and within the
10 scope of their employment when they took these actions.

11 180. Through the doctrine of *respondeat superior*, Defendant LVMPD is
12 liable as a principal for all torts committed by its employees or agents, including the
13 misconduct by the Defendant Officers.

14 181. As a direct and proximate result of the Defendants' actions, Plaintiff's
15 rights were violated and he suffered injuries and damages, including but not limited
16 to loss of liberty, physical injury, emotional pain and suffering, and other grievous
17 and continuing injuries and damages as set forth above.

18 **Count VIII: Nevada State Law – Intentional Infliction of Emotional Distress**

19 182. Each paragraph of this Complaint is incorporated as if restated fully
20 herein.

21 183. In the manner described more fully above, Defendants Lt. Greg Jolley,
22 Lt. John Conner, Sgt. F. Jergovic, Sgt. C. Albert, Detective Sgt. Michael Bunker
23 #653, Detective Sgt. T. Rosen, Detective Robert Leonard P#471, Detective H. Oren,
24 Detective Bert Levos #144, Detective Thorton, Officer Gregory Branon P#2187,
25 Officer Gary Caldwell, P#2301, Officer David Radcliffe P#2191, Officer R. Robertson
26 P#120, and Identification Specialist David R. Horn #C1928, acting as investigators,
27 individually, jointly, and in conspiracy with each other, engaged in extreme and

1 outrageous conduct with the intention of, or with reckless disregard for, causing
2 Plaintiff emotional distress, and Plaintiff suffered severe or extreme emotional
3 distress. Defendants' misconduct was the actual and proximate cause of Plaintiff's
4 severe or extreme emotional distress.

5 184. The Defendant Officers were acting under color of law and within the
6 scope of their employment when they took these actions.

7 185. Through the doctrine of *respondeat superior*, Defendant LVMPD is
8 liable as a principal for all torts committed by its employees and agents, including
9 the misconduct by Detectives described in this Count.

10 186. As a direct and proximate result of the Defendants' actions, Plaintiff's
11 rights were violated and he suffered injuries and damages, including but not limited
12 to loss of liberty, physical injury, emotional pain and suffering, and other grievous
13 and continuing injuries and damages as set forth above.

14 **Count IX: Nevada State Law – Civil Conspiracy**

15 187. Each paragraph of this Complaint is incorporated as if restated fully
16 herein.

17 188. In the manner described more fully above, Defendants Lt. Greg Jolley,
18 Lt. John Conner, Sgt. F. Jergovic, Sgt. C. Albert, Detective Sgt. Michael Bunker
19 #653, Detective Sgt. T. Rosen, Detective Robert Leonard P#471, Detective H. Oren,
20 Detective Bert Levos #144, Detective Thorton, Officer Gregory Branon P#2187,
21 Officer Gary Caldwell, P#2301, Officer David Radcliffe P#2191, Officer R. Robertson
22 P#120, and Identification Specialist David R. Horn #C1928, acting in concert with
23 other known and unknown co-conspirators conspired and intended by concerted
24 action to accomplish an unlawful objective for the purpose of harming Plaintiff,
25 which resulted in damage to him. Defendants agreed to investigate and cause the
26 prosecution of Plaintiff for a crime he did not commit and took overt actions in
27 conformity with that agreement.

1 189. In furtherance of the conspiracy, the Defendant Officers committed
2 overt acts and were otherwise willful participants in joint activity.

3 190. The Defendant Officers were acting under color of law and within the
4 scope of their employment when they took these actions.

5 191. Through the doctrine of *respondeat superior*, Defendant LVMPD is
6 liable as a principal for all torts committed by its employees or agents, including the
7 misconduct by the Defendants described in this Count.

8 192. As a direct and proximate result of the Defendants' actions, Plaintiff's
9 rights were violated and he suffered injuries and damages, including but not limited
10 to loss of liberty, physical injury, emotional pain and suffering, and other grievous
11 and continuing injuries and damages as set forth above.

12 **Count X: Nevada State Law – Indemnification**

13 193. Each paragraph of this Complaint is incorporated as if restated fully
14 herein.

15 194. Nevada law provides that LVMPD is directed to pay any tort judgment
16 for compensatory damages for which their employees are liable within the scope of
17 their employment activities.

18 195. Defendants Lt. Greg Jolley, Lt. John Conner, Sgt. F. Jergovic, Sgt. C.
19 Albert, Detective Sgt. Michael Bunker #653, Detective Sgt. T. Rosen, Detective
20 Robert Leonard P#471, Detective H. Oren, Detective Bert Levos #144, Detective
21 Thorton, Officer Gregory Branon P#2187, Officer Gary Caldwell, P#2301, Officer
22 David Radcliffe P#2191, Officer R. Robertson P#120, and Identification Specialist
23 David R. Horn #C1928 were employees of the Defendant LVMPD and acted within
24 the scope of their employment at all times relevant in committing the actions and
25 omissions described herein.

1 WHEREFORE, Plaintiff, PAUL LEWIS BROWNING, by and through
2 counsel, respectfully requests that this Court enter a judgment in Plaintiff's favor
3 and against Defendants LAS VEGAS METROPOLITAN POLICE DEPARTMENT
4 and former Las Vegas Metropolitan Police Officers Defendants Lt. Greg Jolley, Lt.
5 John Conner, Sgt. F. Jergovic, Sgt. C. Albert, Detective Sgt. Michael Bunker #653,
6 Detective Sgt. T. Rosen, Detective Robert Leonard P#471, Detective H. Oren,
7 Detective Bert Levos #144, Detective Thorton, Officer Gregory Branon P#2187,
8 Officer Gary Caldwell, P#2301, Officer David Radcliffe P#2191, Officer R. Robertson
9 P#120, and Identification Specialist David R. Horn #C1928 awarding compensatory
10 damages, costs, and attorneys' fees against each Defendant and punitive damages
11 against the individual Defendants, as well as any other relief this Court deems
12 appropriate.

13 **JURY DEMAND**

14 Plaintiff, PAUL LEWIS BROWNING, by and through undersigned counsel,
15 hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on
16 all issues so triable.

17 RESPECTFULLY SUBMITTED,

18 PAUL LEWIS BROWNING

19 By: /s/ Luke Busby
20 Designated Resident Nevada Counsel for
21 Plaintiff

22
23 LUKE A. BUSBY, ESQ
24 Nevada Bar No. 10319
25 LUKE ANDREW BUSBY, LTD.
26 316 California Ave # 82
27 Reno, Nevada 89509
O: 775.453.0112
luke@lukeandrewbusbyltd.com
Designated Resident Nevada Counsel for Plaintiff

1 David B. Owens
2 LOEVY & LOEVY
3 100 S. King Street, #100
4 Seattle, WA 98104
5 david@loevy.com
6 *Will comply with LR IA 11-2 within 30 days.
7 *Counsel for Plaintiff Paul Browning*
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