

Patrick H. Dwyer, SBN 137743
P.O. Box 1705
Penn Valley, CA 95946
Tel: (530) 432-5407
Fax: (530) 432-9122
Email: pdwyer@pdwyerlaw.com
Attorney for Plaintiff Brendan Coleman

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

Brendan Coleman, an individual,
Plaintiff

v.

Placer County, California, a county
government; and the following
persons as individuals and in their
capacity as officials, employees or
contractors of Placer County:

Sheriff Devon Bell; Robert Madden;
Megan Yaw; Jeremy Burch;
Dan Cunningham; Aubrey Harris;
Mathew Spencer; Mackenzie Miller;
R. Scott Owens, Benjamin Eggert,
Jennifer Miskewycz; and
Does 1 through 30,

Defendants.

CASE NO.:

**COMPLAINT FOR INDIVIDUAL,
SUPERVISORY, AND MUNICIPAL
VIOLATIONS OF 42 U.S.C. §1983;
STATE LAW CLAIMS FOR ASSAULT
AND BATTERY; INTENTIONAL
INFLECTION OF EMOTIONAL
DISTRESS, VIOLATIONS OF
CALIFORNIA CIVIL CODE §51, AND
RESPONDEAT SUPERIOR LIABILITY**

EXHIBITS TO COMPLAINT

Location in Complaint

¶

Page

Exhibit 1: Coleman Tort Claim No. 1

38

11

Exhibit 1A: Placer County denial of Tort Claim 1

39

11

Exhibit 2: Coleman Tort Claim No. 2

51

14

1 \\\

2			
3			
4	Exhibit 2A: Placer County denial of Coleman Tort Claim No. 2	32	14
5	Exhibit 3: Sacramento Bee Article on Press Conference	37	10
6	Exhibit 4: Criminal complaint against Brendan Coleman	40	11
7	Exhibit 5: Declaration of Patrick H. Dwyer	41	12
8	Exhibit 6: March 7, 2017 letter to Placer County DA	42	12
9	Exhibit 7: March 17, 2017 letter to Placer County DA	43	12
10	Exhibit 8: May 2, 2017 letter to Placer County DA	44	13
11	Exhibit 9: May 24, 2017 letter to Placer County DA	45	13
12	Exhibit 10: NCAVF expert report	46	13
13	Exhibit 11: July 14, 2017 letter to Placer County DA	47	13
14	Exhibit 12: Dismissal of criminal complaint 072017	50	14
15	Exhibit 13A&B: Photos of Plaintiff being led into Cell 33	31	8
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBITS 1&1A

Copy

Claim number: 01.09.17.001

CLAIM AGAINST COUNTY OF PLACER

☐ Attach additional pages if necessary

CLAIMANT NAME: COLEMAN BRENDAN V.
Last First MI
ADDRESS: P.O. Box 6334 Folsom, CA 95763
Street City State Zip

IF ADDRESS FOR RECEIVING NOTICES IS DIFFERENT THAN STATED ABOVE, PLEASE INDICATE HERE:

BUSINESS TELEPHONE: 916 873-0249 HOME TELEPHONE: 916 873-0249
DATE OF BIRTH: 2 22 1977 DRIVER'S LICENSE #: B8325060
DATE OF INCIDENT: 7 14 2016 TIME OF INCIDENT: 1030 AM/PM
PLACE OF INCIDENT: St. Joseph Maricao Catholic Church

NAME OF COUNTY EMPLOYEE(S) INVOLVED (Or, mark "unknown"): GRANITE Bay CA.
PLACER SHERIFF DEPT, PLACER County Jail

DESCRIPTION OF HOW THE INCIDENT OCCURRED AND WHY PLACER COUNTY IS AT FAULT:

SEE ATTACHED (FACTS BASES OF CLAIM)

DESCRIBE DAMAGES, INJURIES, AND AMOUNT OF MONEY YOU ARE CLAIMING: (if claim involves an automobile, provide make, model, year, and registered owner information)

SEE ATTACHED (FACTS BASES OF CLAIM)

WARNING: IT MAY BE A CRIMINAL OFFENSE TO PRESENT A FALSE/FRAUDULENT CLAIM.

I HAVE READ THE ABOVE CLAIM AND CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNED THIS DAY OF: 8 JANUARY 2017 AT Folsom, CALIFORNIA.

RECEIVED

JAN -9 2017

CLAIMANT'S SIGNATURE

Revised 11/25/09 CLERK OF THE BOARD OF SUPERVISORS

SEE REVERSE FOR FILING INSTRUCTIONS

Brendan Coleman

Placer County Tort Claim

January 6, 2017

I. Factual Basis of Claim

On July 14, 2016 at approximately 10:30 pm, I was driving toward Folsom from Grass Valley on Folsom Auburn road. I became very sleepy while driving, I pulled off the road and into the parking lot of the St. Joseph Marelllo's Catholic Church of which I am a member in Granite Bay to rest. After parking, I got out and went into the back of my truck to lay down. I was there just a few minutes when bright lights were shown into my truck. I grabbed my wallet, phone and keys and got out of my truck. I saw two Placer County Sheriff's deputies get out of their cruiser and approach. After I greeted them, the Deputies asked what I was doing in the parking lot and I told them I had stopped to rest because I was falling asleep driving. They asked if I was alone, if I had been drinking or using drugs, and if I had any weapons. I responded that I was alone, that I had not been drinking or using any drugs, and that I did not have any weapons.

The deputies then asked for my ID and I continued to comply while Deputy Spencer (the shorter of the two) began to search the rear bed of my truck, I asked if I was being "detained" and Deputy Spencer said "you most certainly are". I asked, "What am I being detained for", but neither Deputy responded initially. I asked again saying "could you please tell me what I am being detained for, adding "I explained why I pulled off the road, you're searching my truck" "I'm cooperating". Deputy Spencer then answered on "suspicion". I asked, "Suspicion of what?" Neither deputy responded, then Deputy Spencer shined his light in my face and ordered me to step in the direction he was pointing. I did this. Deputy Spencer then asked me to move back and closer to my truck. I again complied. Deputy Spencer several times again looked into my vehicle, but found nothing. Deputy Spencer then told Deputy Miller to "arrest him" and Deputy Miller then grabbed my arm, and very quickly took me to the ground, face down. I asked the Deputies why they were doing this to me. I got no response. Deputy Spencer then began talking over his radio (a small unit attached to his shirt). Deputy Miller placed his knee on my back with my arm twisted behind me. Deputy Spencer then also kneeled down on top of me and I was hand cuffed. Deputy Miller then started to pick me up (hand cuffed behind my back) and I cried out in pain because of my back and the way I was being handled. [I have had a herniated disk with injury to my sciatic nerves since 2007.] I felt paralyzed and could barely move. Not only did I experience severe pain, my back spasmed and I had a small uncontrolled bowel movement. I informed them of this and Deputy Miller backed off momentarily while I lay on the ground, but Deputy Spencer said we are not waiting and commanded Deputy Miller to get me up. I was in severe pain at this point and was moving very slowly. I was placed into the back seat of the patrol vehicle. The hand cuffs were on extremely tight and my back was in

a terrible position. The Deputies drove their cruiser at high speed to the jail on Auburn Folsom road, doing approximately 60-65 in a 45 mph zone. I asked them to slow down, but they ignored me. I was not wearing a seatbelt. During the ride to the jail I again asked why I had been arrested and what I was being charged with. Deputy Miller then read to me from a laminated card. When he was asked if I understood, I said "no" because I was still not told what I was being arrested for or charged with. During the ride I complained several times about the hand cuffs being too tight on my wrists and that my back was in severe pain and how I was positioned in the vehicle.

When we arrived at the jail there were approximately seven Deputies waiting for us. Deputy Spencer and Miller got out of the car and said to the deputies from the jail "he is all yours boys". A tall and strong guard with a shaved head and a ball cap came over, opened the back door and hooked his arm into my cuffed arms to pull me out of the car. I explained to this deputy that I had a herniated disk and I was not able to move my left leg because it was numb. This deputy got impatient and pulled me out of the vehicle, hobbling on my leg, another deputy assisted, mocking my disabling condition until I was able to walk upright. I was then taken into the jail to be processed. I then told them again about my back and nerve problem, but they just pulled me up and then two of them got me through the door to the jail. During the intake process, there were multiple occasions when the deputies would twist me and pull up on my back and wrists, which were still handcuffed behind my back while I was sitting down and I cried out in pain. The deputies not only ignored this, I was again continually mocked by them, in particular by a female deputy who appeared to be in charge. I remember crying out in pain while cuffed and seated and again as they were taking me out of the intake area.

Two deputies brought me down a very short corridor into a solitary cell with deputies following behind. The female deputy giving orders, told the others to put me into the corner of the cell next to the urinal where there were feces and blood on the floor. I was ordered to get down on my stomach (with my hands still hand cuffed behind my back). I was able to very slowly get down to my left knee then my right, I was then told to put my face on the ground. At this time I was on my knees and attempting to slowly lean forward. The deputy on my right then pushed my head the rest of the way to the floor with my head next to the urinal and his hand on my head. The same deputy kicked my right side ribs and drove his knee into my upper middle back. He got up, adjusting his position drove his knees into my right shoulder and back. The female deputy in charge then yelled out that they had told me to get on my stomach. The deputies, grabbed my ankles and pulled them back so my knees were pulled back and I fell flat on the floor (I was still hand cuffed). The deputy on my left then bent over and removed the left handcuff, raised my left arm over my head twisting it and applied severe pressure to my elbow. I called out in pain, begging him, "please do not to break my arm". The deputy on the right removed the cuff from my right arm (while his knee was in my back). The deputy on the right received my left hand from the other deputy then placed my hands on the back of my head and put my feet to the middle of my back, similar to being hog tied. I was told not to move until I hear the door slam shut.

When I heard the door close, I did not try to get up – I was too afraid to move fearing I would still be assaulted and I was in so much pain. After several minutes I was able to slowly pull myself up. There I was, barefoot, in my shorts, bruised and in pain, filth all over my clothes, legs and face. I was in this cell by myself for about 6-7 hours. Finally, a jail guard gave me a pair of socks and moved me to a room that was a holding cell with other detainees. I was finally able to make a phone call at about 7-8 am. I still had not been told what the charges were and was unable to communicate anything to the bail bondsman until it was in their system. I was finally able to arrange bail for \$5,000. While I waited for the bondsman, I asked the nurse (an older female) to look me over and to take my statement about the injuries I had sustained. I was brought into the processing room where the nurse wrote some things down. I was released after 16 hours at about 4:00 pm on July 15, 2016. I was given a ride by the bail bondsmen to my truck. I then drove to the VA hospital in Mather. I gave a statement about what happened to the nurse and doctor and to the VA police. My injuries are documented in my medical records.

II. Legal Basis of Claims

The following list of legal claims is not intended to be exhaustive, but to provide Placer County with reasonable notice about possible legal causes of action:

1. Deputy Spencer and Deputy Miller used unnecessary and excessive force in detaining me, arresting me, and in transporting me to the Auburn County jail in violation of my rights under the Fourth Amendment to the U.S. Constitution.
2. The female and male deputies (names unknown at this time) at the Auburn County jail used unnecessary and excessive force during the “intake” process at the Auburn County jail in violation of my rights under the Fourth Amendment to the U.S. Constitution.
3. The female and male deputies (names unknown at this time) at the Auburn County jail used unnecessary and excessive force when they placed me into a solitary cell and then battered me in the cell at the Auburn County jail in violation of my rights under the Fourth Amendment to the U.S. Constitution.
4. Deputy Spencer and Deputy Miller assaulted and battered me when they detained, arrested, and transported me to the Auburn County jail under California law.
5. The female and male deputies (names unknown at this time) at the Auburn County jail assaulted and battered me during the “intake” process at the Auburn County jail in violation of California law.
6. The female and male deputies (names unknown at this time) at the Auburn County jail assaulted and battered me when they placed me into a solitary cell at the Auburn County jail in violation of California law.

7. Deputy Spencer and Deputy Miller made an unlawful (aka false) arrest upon me in violation of both California law and my rights under the Fourth Amendment to the U.S. Constitution.

8. The female and male deputies (names unknown at this time) at the Auburn County unlawfully imprisoned me when they placed me into the solitary cell at the Auburn County jail in violation of California law.

9. Deputy Spencer and Deputy Miller use of unnecessary and excessive force and their unlawful (aka false) arrest in violation of the Fourth Amendment to the U.S. Constitution was a violation of my civil rights under California law, including without limitation, the California Constitution and my civil rights under Civil Code 52 et seq..5

III. Damages

I have sustained general and consequential damages, including but limited to, physical, psychological and emotional injuries and pain and suffering resulting from the actions I have described above. I have also incurred legal costs and fees. At this time I do not have a complete estimate of my actual damages, but they will be in excess of the \$25,000 damage requirement for an unlimited civil action.

Respectfully,

January __, 2017

Brendan V. Coleman



COUNTY OF PLACER
COUNTY EXECUTIVE OFFICER, DAVID BOESCH

P.O. Box 1705
Prun Valley,
95946

OFFICE OF COUNTY EXECUTIVE
RISK MANAGEMENT DIVISION

145 FULWEILER AVENUE, SUITE 100, AUBURN, CA 95603
TELEPHONE (530) 886-2600 • FAX (530) 886-2609

January 31, 2017

Mr. Brendan Coleman
P.O. Box 6334
Folsom, CA 95763

Re: **Claim No.:** 01-09-17-001 122973
Claim Date: January 9, 2017
Date of Incident: July 14, 2016

NOTICE OF REJECTION OF CLAIM

Notice is hereby given that the above claim which you submitted to the Board of Supervisors of Placer County has been rejected by action of the Board.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim (see Government Code Section 945.6).

The time limits referred to in this notice apply only to claims or causes of action governed by the California Tort Claims Act (Government Code Section 810, et seq.). These time limits do not apply to Federal law causes of action or to State law causes of action not governed by the California Tort Claims Act. In those instances, other deadlines apply.

Nothing herein, nor any actions taken by this public entity, or any of its officers, employees or agents with regard to the above-referenced matter should be construed as a relinquishment or waiver of any legal requirement or any right or defense such as timeliness, sufficiency, proper presentation or any other matter which may be available to the County of Placer or any of its officers, employees or agents.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately. If the attorney who filed the claim on your behalf no longer represents you, you may contact an attorney but you should do so immediately.

Please also be advised that, pursuant to Sections 128.5 and 1038 of the California Code of Civil Procedure, the County will seek to recover all costs of defense in the event an action is filed in the matter and it is determined that the action was not brought in good faith and with reasonable cause.

Very truly yours,

PLACER COUNTY RISK MANAGEMENT



Jim Kotey
Liability Manager

cc: Clerk, Board of Supervisors

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That I am a citizen of the United States, am over 18 years of age, and am a resident of Placer County, CA.
2. That I am not a party to the within action.
3. That my business address is Risk Management, 145 Fulweiler Avenue, Suite 100, Auburn, CA 95603.
4. That I am readily familiar with the business practice of the County of Placer for collection and processing of correspondence for mailing with the United States Postal Service.
5. That, in the ordinary course of business, correspondence is deposited with the United States Postal Service on the same date of this Declaration.
6. That I served a copy of the within NOTICE OF REJECTION OF CLAIM by the Board of Supervisors by placing said copy in a sealed envelope addressed to the person and address shown on such within Notice, and thereafter it was, on the date shown below, placed for collection and mailing following ordinary business practices.
7. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 2/1/17

By: 

Nicole P. Artim

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBITS 2&2A

Claim number:

CLAIM AGAINST COUNTY OF PLACER

☐ Attach additional pages if necessary

CLAIMANT NAME:

Coleman
Last

Brennan
First

V.
MI

ADDRESS:

P.O. Box 12334
Street

Folsom
City

CA
State

95763
Zip

IF ADDRESS FOR RECEIVING NOTICES IS DIFFERENT THAN STATED ABOVE, PLEASE INDICATE HERE:

N/A

BUSINESS TELEPHONE:

(916) 873-0249

HOME TELEPHONE:

(916) 873-0249

DATE OF BIRTH:

2 / 22 / 1977

DRIVER'S LICENSE #:

38325060

DATE OF INCIDENT:

7 / 14 / 14

TIME OF INCIDENT:

1030

AM/PM PM

PLACE OF INCIDENT:

"SEE ATTACHED" Pgs 1-4.

NAME OF COUNTY EMPLOYEE(S) INVOLVED (Or, mark "unknown"):

UNKNOWN

DESCRIPTION OF HOW THE INCIDENT OCCURRED AND WHY PLACER COUNTY IS AT FAULT:

"SEE ATTACHED" Pgs 1-4.

DESCRIBE DAMAGES, INJURIES, AND AMOUNT OF MONEY YOU ARE CLAIMING: (if claim involves an automobile, provide make, model, year, and registered owner information)

"SEE ATTACHED" Pgs 1-4.

WARNING: IT MAY BE A CRIMINAL OFFENSE TO PRESENT A FALSE/FRAUDULENT CLAIM.

I HAVE READ THE ABOVE CLAIM AND CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNED THIS DAY OF:

MAY 25th

AT

Folsom

CALIFORNIA.

CLAIMANT'S SIGNATURE

SEE REVERSE FOR FILING INSTRUCTIONS

Brendan Coleman
Placer County Tort Claim
May 25, 2017

I. Factual Basis of Claim

On or about January 6, 2017, I filed a tort claim about my arrest on July 14, 2016 and detention at the Placer County jail. I described the factual circumstances and the legal basis for that claim in the documents I filed with Placer County Board of Supervisors. That claim was subsequently denied.

On or about November 22, 2016 Placer County produced a copy of a video of the intake area in the Auburn jail that showed me being processed into the jail. On or about November 29, 2016, I was shown this video by my attorney and I was asked if I noticed anything that was not as I remembered the events. I observed that there were multiple occasions in the intake process where I had yelled out in pain that I could not hear in the video. Based upon this, an analysis of the audio portion of the intake video was performed and multiple apparent deletions/modifications had been made in this video. A copy of a declaration dated December 15, 2016 by Patrick H. Dwyer is included with this claim. This declaration describes the editing of the intake video.

On or about March 1, 2017, the Placer County Sheriff's Office released additional video of a portion of the Auburn jail called "cell 33". As set forth in a letter from my attorney to the Placer County District Attorney dated March 7, 2017, there appear to be possible gaps in the cell 33 video and the sound volume appears

to have been turned down. A copy of this letter is attached. Cell 33 was where I was taken by five PCSO deputies and beaten.

On or about March 17, 2017, my legal counsel wrote to the Placer County DA again about problems with the evidence production. A copy of this letter is attached.

On or about April 20, 2017, additional video of various locations in the Auburn jail where I was incarcerated were produced. This time there was some video of the outside Sally area at the jail. However, the video has about a 26 minute unexplained gap during which I was inappropriately removed from the PCSO cruiser by nine PCSO deputies. My attorney sent a letter on May 2, 2017 about the many discovery problems and the 26 minute gap in the Sally port video.

On or about May 10, 2017, the PCSO finally produced the video from the cruiser driven by the PCSO deputies at the incident scene and the transport to the Auburn jail. Once again, the portion of the video that would show my detention and the excessive force that was used against me is inexplicably missing. My attorney wrote another letter to the District Attorney on May 24, and a copy is attached.

As of the filing of this claim the PCSO has not explained or remedied the problems in the evidence.

II. Legal Basis of Claims

The following list of legal claims is not intended to be exhaustive, but to provide Placer County with reasonable notice about possible legal causes of action:

1. Deputy Spencer and/or other defendants employed by the Placer

County Sheriff's Office (the names of which are not yet known) violated my right to due process under the Fourteenth Amendment to the U.S. Constitution and under Article 1 of the California constitution by tampering with evidence and then knowingly producing that evidence in a criminal proceeding against me.

2. Deputy Spencer and/or other defendants employed by the Placer County Sheriff's Office (the names of which are not yet known) have intentionally inflicted emotional distress upon me by tampering with evidence and then knowingly producing that evidence in a criminal proceeding against me.

3. Deputy Spencer and/or other defendants employed by the Placer County Sheriff's Office (the names of which are not yet known) have knowingly made false charges (i.e., false statements of fact) against me based upon knowingly false evidence and false statements in their reports, and such false statements have defamed me.

4. Deputy Spencer and/or other defendants employed by the Placer County Sheriff's Office (the names of which are not yet known) have by tampering with evidence and then knowingly producing that evidence in a misdemeanor proceeding against me have violated my civil rights under the California Constitution and the California Civil Code.

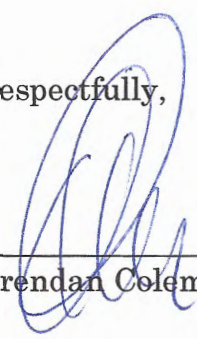
5. Deputy Spencer and/or other defendants employed by the Placer County Sheriff's Office (the names of which are not yet known) have conspired with each other to commit the foregoing (and other) constitutional and state law violations.

III. Damages

I have sustained general and consequential damages, including but limited to, physical, psychological and emotional injuries and pain and suffering resulting from the actions I have described above. I have also incurred legal costs and fees. At this time I do not have a complete estimate of my actual damages, but they will be in excess of the \$25,000 damage requirement for an unlimited civil action.

Respectfully,

May 25, 2017



Brendan Coleman



COUNTY OF PLACER
COUNTY EXECUTIVE OFFICER, DAVID BOESCH

OFFICE OF COUNTY EXECUTIVE
RISK MANAGEMENT DIVISION

145 FULWELLER AVENUE, SUITE 100, AUBURN, CA 95603

TELEPHONE (530) 886-2600 • FAX (530) 886-2601

May 31, 2017 – Second Mailing

Mr. Brendan Coleman
P.O. Box 6334
Folsom, CA 95763

Re: Claim No.: 01-09-17-001 122973
Claim Date: January 9, 2017
Date of Incident: July 14, 2016

NOTICE OF REJECTION OF CLAIM

Notice is hereby given that the above claim which you submitted to the Board of Supervisors of Placer County has been rejected by action of the Board.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim (see Government Code Section 945.6).

The time limits referred to in this notice apply only to claims or causes of action governed by the California Tort Claims Act (Government Code Section 810, et seq.). These time limits do not apply to Federal law causes of action or to State law causes of action not governed by the California Tort Claims Act. In those instances, other deadlines apply.

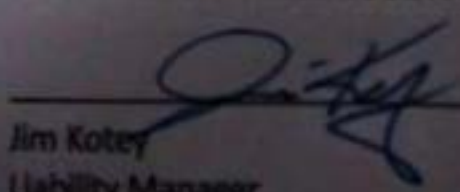
Nothing herein, nor any actions taken by this public entity, or any of its officers, employees or agents with regard to the above-referenced matter should be construed as a relinquishment or waiver of any legal requirement or any right or defense such as timeliness, sufficiency, proper presentation or any other matter which may be available to the County of Placer or any of its officers, employees or agents.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately. If the attorney who filed the claim on your behalf no longer represents you, you may contact an attorney but you should do so immediately.

Please also be advised that, pursuant to Sections 128.5 and 1038 of the California Code of Civil Procedure, the County will seek to recover all costs of defense in the event an action is filed in the matter and it is determined that the action was not brought in good faith and with reasonable cause.

Very truly yours,

PLACER COUNTY RISK MANAGEMENT


Jim Kotey
Liability Manager

Clerk, Board of Supervisors

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That I am a citizen of the United States, am over 18 years of age, and am a resident of Placer County, CA.
2. That I am not a party to the within action.
3. That my business address is Risk Management, 145 Fulweiler Avenue, Suite 100, Auburn, CA 95603.
4. That I am readily familiar with the business practice of the County of Placer for collection and processing of correspondence for mailing with the United States Postal Service.
5. That, in the ordinary course of business, correspondence is deposited with the United States Postal Service on the same date of this Declaration.
6. That I served a copy of the within NOTICE OF REJECTION OF CLAIM by the Board of Supervisors placing said copy in a sealed envelope addressed to the person and address shown on such with Notice, and thereafter it was, on the date shown below, placed for collection and mailing following ordinary business practices.
7. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated:

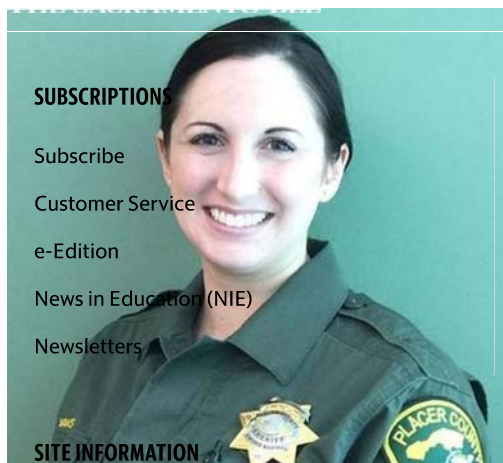
June 1, 2017

By:

Nicole P. Artim
Nicole P. Artim

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 3

[BOOKMARK FOR LATER](#)
[MY BOOKMARKS](#)


SUBSCRIPTIONS

[Subscribe](#)
[Customer Service](#)
[e-Edition](#)
[News in Education \(NIE\)](#)
[Newsletters](#)

SITE INFORMATION

Corrections Sgt. Megan Yaws is charged with falsifying police reports. She is one of three members of Placer County's law enforcement community whose arrests were announced Wednesday, May 31, 2017. **Placer County Sheriff's Department**

[FAQ](#)


Sacto 911

[Photo Reprints](#)
[Jobs at The Bee](#)

Covering crime, police and courts in the Sacramento region

[CRIME - SACTO 911](#)

MAY 31, 2017 12:06 PM

[SOCIAL, MOBILE & MORE](#)

Three Placer sheriff's employees arrested in jail abuse case

[Smartphone and Tablet Apps](#)
[Mobile Alerts](#)
[Facebook](#)
[Twitter](#)
[YouTube](#)

ADVERTISING

[Place a Classified Ad](#)

BY **PAUL STANTON AND NASH SHELLEY CHAVEZ**
ssanton@sacbee.com
[Place a Digital Ad](#)

Three Placer County sheriff's officials were arrested Wednesday on charges involving allegations of excessive force against jail inmates and falsifying evidence, the result of what Sheriff Devon Bell is calling "an extensive investigation" that included video recordings and other evidence.

[MORE](#)

The arrests of corrections Sgt. Megan Yaws,

Deputy Robert Madden and Corrections Officer

[Copyright](#)
[Commenting Policy](#)
[Privacy Policy](#)
[Terms of Service](#)

Jeffrey Villanueva came after a probe that began with a supervisor reviewing routine video footage, the sheriff's department said in an announcement. The sheriff is expected to release further details and booking photos at a news conference later Wednesday.

"The arrests stemmed from an extensive investigation by the Sheriff's Office and the Placer County District Attorney's Office, which focused on allegations of excessive force upon inmates while they were housed in the Placer County Jail in Auburn," Bell's office said in a statement.

ADVERTISING



"Deputy Madden is charged with four counts of assault under color of authority, without necessity, and three counts of falsification of an incident report. C.O. Villanueva is charged with one count of assault under color of authority, without necessity, and one count of falsification of an incident report. C.O. Sgt. Yaws is charged with one count of falsifying police reports. There is video and other evidence to support these arrests."

Bell's statement said that after the initial review of video indicated evidence of abuse, "management discovered other incidents and determined actions of the officers appeared unreasonable."

Details of the suspects' histories with the department were not immediately released, but a department Facebook post last April announced Yaws' appointment.

"Megan has more than 10 years of experience in corrections, most of that time working for the El Dorado County Sheriff's Office," the

post stated. “She started here 1 ½ years ago, and in that short amount of time she became a Jail Training Officer (JTO) and she frequently works as a shift supervisor.

“In El Dorado County, Megan was a JTO, worked in the Gang and Classification Units, and served as a shift supervisor and transport officer. She has a Bachelor’s Degree from California State University, Sacramento. Megan has great leadership skills and we have every confidence she will make a great correctional sergeant.”

A December 2015 post stated that Madden was joining the department after 10 years with Truckee police.

The three officers have been placed on administrative leave, and Bell said that “under no circumstances will unethical or illegal conduct be tolerated under my watch.”

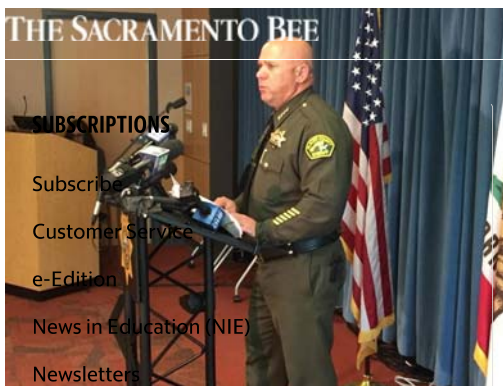
“The culture of our organization is founded upon public trust,” Bell added. “ Our core values determine how we conduct ourselves on- and off-duty, regardless of difficulty; it is the Placer County Sheriff’s Office contract with the community we serve.”

Sam Stanton: 916-321-1091, @StantonSam



Placer County Sheriff Devon Bell said, “Under no circumstances will unethical or illegal conduct be tolerated under my watch.” **Erik Bergen** - Placer County Sheriff’s Department



[BOOKMARK FOR LATER](#)[MY BOOKMARKS](#)

Placer County Sheriff Devon Bell appears at a Wednesday afternoon press conference.

SITE INFORMATION

Sacto 911
 Customer Service
 Covering crime, police and courts in the
 About Us Sacramento region

Contact Us

CRIME - SACTO 911

MAY 31, 2017 12:06 PM

‘Sad and unfortunate,’ Placer sheriff calls alleged abuse of jail inmates

BY **JOHN STANTON** AND **NASHALLY CHAVEZ**
 sstanton@sacbee.com

Three Placer County sheriff’s officials were arrested Wednesday on charges involving allegations of excessive force against at least six jail inmates and falsifying evidence, the result of what Sheriff Devon Bell is calling “an extensive investigation” that included video recordings and other evidence.

The arrests of corrections Sgt. Megan Yaws, Deputy Robert Madden and corrections Officer Jeffrey Villanueva came after a probe that began with a supervisor reviewing routine video footage from the Placer County Jail in Arden, Calif.

[Terms of Service](#)

the sheriff's department said in an announcement. After the initial review of video indicated evidence of abuse, "management discovered other incidents and determined actions of the officers appeared unreasonable," the statement said.

Bell appeared to choke up as he discussed the arrests at an afternoon press conference, saying the abuse apparently began in November and was first detected two weeks ago.

"This is sad and unfortunate," he said, stressing that the "conduct was limited to a very small number of people" and that the department discovered the incidents on its own.

"We discovered this ourselves," he said. "We investigated it ... and we made arrests."

Bell would not discuss details of the alleged abuse, saying concurrent criminal and internal affairs probes prohibited him from doing so. None of the inmates required hospital treatment.

Bell said the sheriff's department will review all video from jail facilities in Roseville and Auburn to look for any other instances of wrongdoing.

The jail maintains 366 days of recordings at both Placer County facilities.

Officials said the routine review of videos two weeks ago did not match up with a use of force report, sparking further investigation.

"It raised some red flags to the point where we started pulling video to see if there was a pattern," Bell said.

Bell said he would have liked to release the incriminating video to the public, but the Placer County District Attorney's office has requested he not do so. "It could color people's perspectives of what happened," he said. "It's an ongoing criminal investigation and due process is absolutely key when you're talking about justice."

"The video was compelling," he added.

The District Attorney's office said in a statement after Bell spoke that it was investigating six different potential victims. The



sheriff originally named four alleged inmate victims, but the department later clarified they were investigating a total of six.

The three department employees were arrested at their homes on Wednesday and had been placed on administrative duties earlier away from inmates. None would agree to be interviewed as they were being booked, officials said.

Officials named four inmates – Jacob Gillespie, Jordan White, Phillip Daley and Beau Bangert – who allegedly among those subjected to abuse, although they said it was unclear whether they had filed any grievances.

Daley and Bangert were still in custody Wednesday, and Bangert's mother said in an interview with The Bee that her son had only complained of mistreatment once, when he told her he had been subjected to prolonged use of a stun gun against him.

"He never told me," Linda Hartman said of her son. "I guess he was afraid to talk."

Hartman said he son, 26, was homeless and had been in custody regularly for minor drug possession and other charges, and added that she was surprised at how forthcoming the sheriff's department was in announcing the arrests.

"I'm amazed that someone actually took action," she said.

Hartman later declined to elaborate, saying her attorney, Jeffrey Guyton, asked her not to speak further.

Guyton declined to comment on whether he was pursuing legal action against the sheriff's department, saying he had just learned of the allegations.

According to the statement from Bell's department, "Deputy Madden is charged with four counts of assault under color of authority, without necessity, and three counts of falsification of an incident report. C.O. Villanueva is charged with one count of assault under color of authority, without necessity, and one count of falsification of an incident report. C.O. Sgt. Yaws is charged with one count of falsifying police reports. There is video and

other evidence to support these arrests.”

The sheriff's office later said it was adding two counts of assault under color of authority against Villanueva.

Bail for Madden was set at \$100,000, for Villanueva at \$75,000 and for Yaws at \$15,000.

Yaws had been with the department for two and a half years, McFadden for a year and a half and Villanueva for four years.

A department Facebook post last April announced Yaws' appointment.

“Megan has more than 10 years of experience in corrections, most of that time working for the El Dorado County Sheriff's Office,” the post stated. “She started here 1 ½ years ago, and in that short amount of time she became a Jail Training Officer (JTO) and she frequently works as a shift supervisor.

“In El Dorado County, Megan was a JTO, worked in the Gang and Classification Units, and served as a shift supervisor and transport officer. She has a Bachelor's Degree from California State University, Sacramento. Megan has great leadership skills, and we have every confidence she will make a great correctional sergeant.”

A December 2015 post stated that Madden was joining the department after 10 years with Truckee police.

The three officers have been placed on administrative leave, and Bell said that “under no circumstances will unethical or illegal conduct be tolerated under my watch.”

“The culture of our organization is founded upon public trust,” Bell added. “ Our core values determine how we conduct ourselves on- and off-duty, regardless of difficulty; it is the Placer County Sheriff's Office contract with the community we serve.”

Sam Stanton: 916-321-1091, @StantonSam



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT4

1 R. SCOTT OWENS
2 Placer County District Attorney
3 State Bar No. 146406
4 10810 Justice Center Drive, Suite 240
5 Roseville, CA 95678-6231

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Tel: (916) 543-8000
Fax: (916) 543-2550

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

AUG 17 2016

JAKE CHATTERS
EXECUTIVE OFFICER & CLERK
By: D. Lashbrook, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

--oOo--

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff,

-vs-

BRENDAN VINCENT COLEMAN
aka: BRENDAN V. COLEMAN

Defendant.
_____ /

DA NO. 16-08-102264

COURT NO. 62-147325

MISDEMEANOR COMPLAINT

COUNT ONE

On or about July 14, 2016, in the County of Placer, the crime of RESIST, OBSTRUCT, DELAY OF PEACE OFFICER OR EMT, in violation of Penal Code section 148(a)(1), a misdemeanor, was committed by BRENDAN VINCENT COLEMAN, who did willfully and unlawfully resist, delay and obstruct Deputy Spencer, deputy sheriff attempting to and discharging the duty of his office and employment.

COUNT TWO

On or about July 14, 2016, in the County of Placer, the crime of RESIST, OBSTRUCT, DELAY OF PEACE OFFICER OR EMT, in violation of Penal Code section 148(a)(1), a misdemeanor, was committed by BRENDAN VINCENT COLEMAN, who did willfully and unlawfully resist, delay and obstruct Deputy Miller, deputy sheriff attempting to and discharging the duty of his office and employment.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 9, 2016, at Roseville, Placer County, California.

R. SCOTT OWENS, DISTRICT ATTORNEY

By: Jennifer L. Miszkewycz
JENNIFER L. MISZKEWYCZ,
DEPUTY DISTRICT ATTORNEY

NOTICE.

**PLEASE TAKE NOTICE THAT COUNSEL FOR THE PEOPLE HEREBY MAKE
AN INFORMAL DEMAND FOR DISCOVERY (PURSUANT TO PENAL CODE
SECTION 1054.3) WITHIN FIFTEEN DAYS.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT5

Copy

FILED
Superior Court of California
County of Placer

DEC 16 2016

Jake Chatters
Executive Officer & Clerk
By: S. Ziegelmann, Deputy

Patrick H. Dwyer, SBN 137743
P.O. Box 1705
Penn Valley, CA 95946
Tel: (530) 432-5407; Fax: (530) 432-9122
Email: pdwyer@pdwyerlaw.com
Attorney for Brandan Coleman

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF PLACER**

The People of the State of California,

Plaintiff,

vs.

Brendan Coleman,

Defendant.

CASE NO. 62-147325

**SUPPLEMENTAL DECLARATION OF
PATRICK H. DWYER IN SUPPORT
OF DEFENDANT'S MOTION TO
COMPEL DISCOVERY**

DECLARATION OF PATRICK H. DWYER

1. I am Patrick H. Dwyer and I am the attorney for Brandan Coleman in this case.

2. I previously prepared and filed a Motion to Compel on behalf of Mr. Coleman in this action which is now pending before this Court.

3. On or about November 22, 2016, the Placer County District Attorney's Office produced a video "clip" dated July 14, 2016, from the "intake" room at the Auburn jail that purports to show the intake process for Mr. Coleman. This video file was labeled "Intake". The Intake video was produced in a proprietary file format for a

1 "basic" video viewer called "Ocularis".

2 4. I was able to use the basic Ocularis viewer provided by the DA's office to look
3 at the Intake video clip. When I played this tape, there were several obvious places
4 in the video clip where the sound had been "clipped" or suppressed. However, due to
5 the technical limitations of the Ocularis viewer (it is a stripped down "basic" viewer
6 software), I was unable to perform any technical analysis of the Intake video clip to
7 find out the nature of the audio "clips" that were so evident.
8

9 5. However, along with the Intake video clip, there was a "wav" format audio
10 file (a standard Windows file format) that contained just the audio portion of the
11 Intake video. I was able to load this file into some specialized audio analysis
12 software called "Sonic Visualizer" and then play the audio portion of the Intake
13 video and analyze the "clips" I heard on the Intake video.
14

15 6. When I played the audio file on the Sonic Visualizer software, I could clearly
16 hear several places where the audio had been "clipped" or suppressed. I then
17 turned on a feature in the software called the "spectrogram pane". This feature
18 makes it easier to see aberrations in the acoustic footprint. The places where I
19 heard "clips" in the audio corresponded with vertical black lines in the spectrogram
20 pane. These vertical black lines indicate zero sound presence. If the volume in the
21 Intake video had just dropped of its own accord, as opposed to being intentionally
22 "clipped" out, the spectrogram pane would not show a vertical black space, but a
23 area of little or no activity on the spectrogram.
24

25 7. Attached hereto as Exhibit 1 and 2 are true and correct copies of prints of my
26 PC screen with the Sound Visualizer software operating and the Intake audio file at
27
28

1 about 2:39 minutes from its beginning. These prints show a vertical black line in
2 the spectrograph pane. Directly above (where I hand circled) one can see that there
3 is zero volume in the sound print at the same location as the vertical line. When I
4 played the Intake video with the Ocularis viewer at the same time as the audio file
5 with Sonic Visualizer, the audio "clip" in the Intake video matches the audio "clip"
6 in the audio file at the point of the black line. It is obvious that there was an
7 intentional deletion of sound at the time delineated by the vertical black line.
8

9
10 8. Attached hereto as Exhibit 3 and 4 are true and correct copies of prints of my
11 PC screen with the Sound Visualizer software operating and the Intake audio file at
12 about 7:40 minutes from its beginning. These prints show a vertical black line in
13 the spectrograph pane. Directly above (where I hand circled) one can see that there
14 is zero volume in the sound print at the same location as the vertical line. When I
15 played the Intake video with the Ocularis viewer at the same time as the audio file
16 with Sonic Visualizer, the audio "clip" in the Intake video matches the audio "clip"
17 in the audio file at the point of the black line. It is obvious that there was an
18 intentional deletion of sound at the time delineated by the vertical black line.
19
20

21 9. Attached hereto as Exhibit 5 and 6 are true and correct copies of prints of my
22 PC with the Sound Visualizer software operating and the Intake audio file at about
23 12:13 minutes from its beginning. These prints show a vertical black line in the
24 spectrograph pane. Directly above (where I hand circled) one can see that there is
25 zero volume in the sound print at the same location as the vertical line. When I
26 played the Intake video with the Ocularis viewer at the same time as the audio file
27 with Sonic Visualizer, the audio "clip" in the Intake video matches the audio "clip"
28

1 in the audio file at the point of the black line. It is obvious that there was an
2 intentional deletion of sound at the time delineated by the vertical black line.

3 10. Without informing Brendan Coleman in advance of the purpose of my
4 request, I asked him to view the Intake video. Mr. Coleman did this. I asked him if
5 he though there was anything amiss in the video. He told me that he had cried out
6 in paid a number of times while in the intake area, but he did not hear these in
7 video. I then asked him if the places on the video where the sound had been
8 "clipped" corresponded with his approximate location and the time stamp in the
9 video where he remembered calling out in pain and he said he was certain that they
10 corresponded.
11

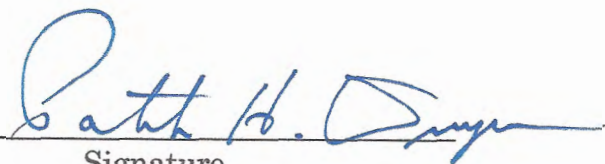
12 11. Unless the Intake video is produced in a standard industry format such as
13 "AVI" or "MP4", Defendant will not be able to properly examine the video for other
14 irregularities such as missing or altered video frames. Defense counsel has
15 requested that the Placer County District Attorney's Office promptly produce a copy
16 in such a standard file format. See Exhibit 7 hereto.
17

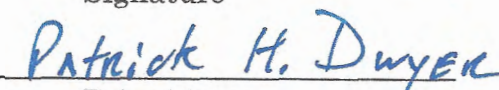
18 12. Attached hereto as Exhibit 7 is a true and correct copy of a letter I sent to the
19 Placer County District Attorney on December 12, 2016, regarding the status of their
20 response to Defendant's Informal Discovery Request No. 1. I have not received any
21 further communications or production of documents as of the time of drafting of this
22 Declaration.
23
24
25
26
27
28

1 \\\

2 I declare under penalty of perjury under the laws of California that the
3 foregoing Declaration of Patrick H. Dwyer is true and correct.
4

5
6
7
8
9 Date: December 15, 2016


Signature


Print Name

12 Located at:

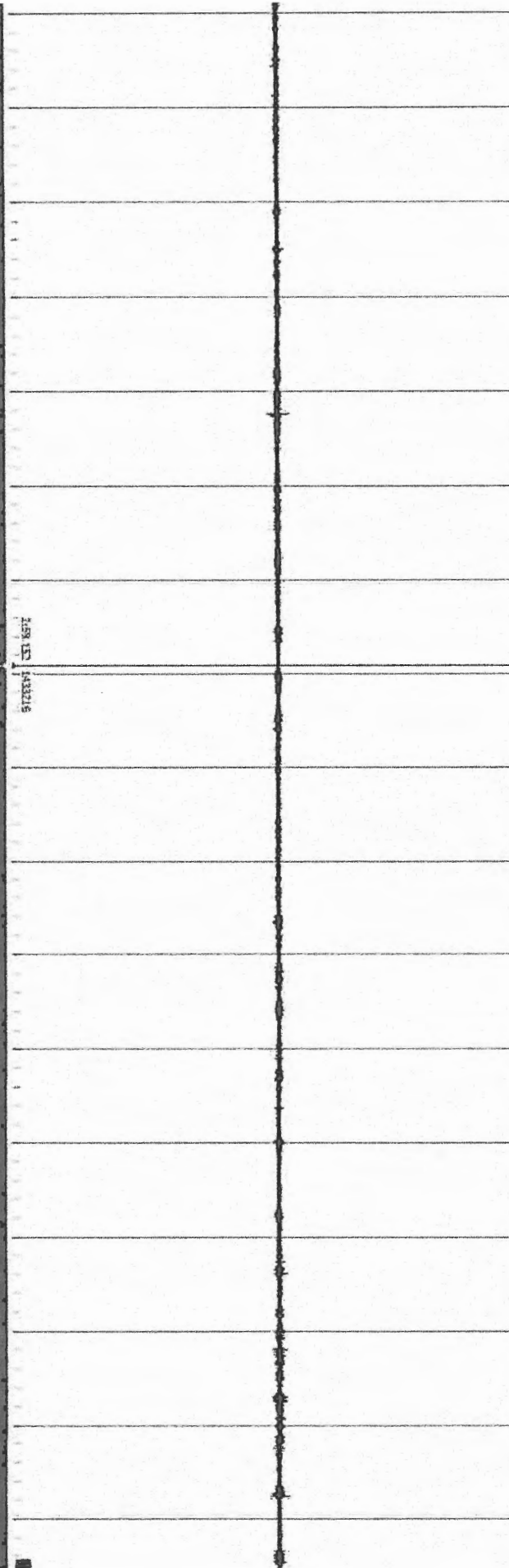
13
14 17318 Piper Lane
15 Penn Valley, CA 95946
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DWYER DECLARATION EXHIBIT 1



150 200 250 300 350 400 450 500 550 600 650 700 750 800 850 900 950 1000



149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000

Time: 0:00
End Time: 0:00
File: 0:00

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DWYER DECLARATION EXHIBIT 2

1139.616 1176928

1139.616 1176928

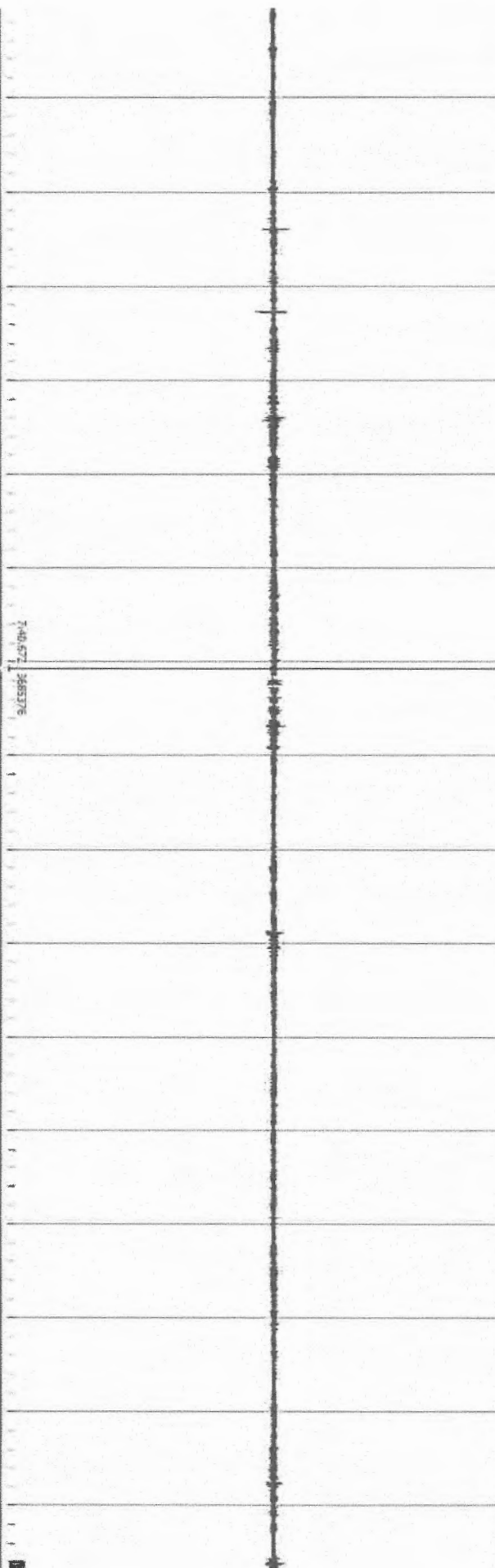
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DWYER DECLARATION EXHIBIT 3

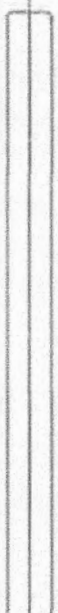
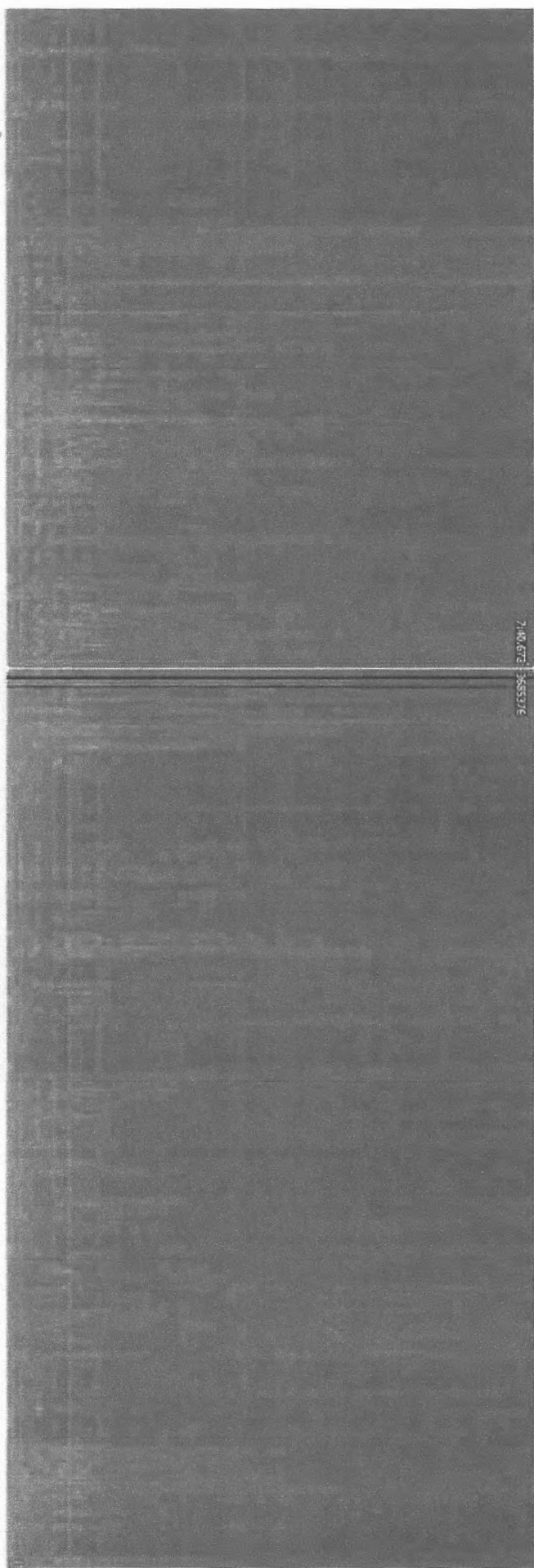


6 6:40 6:50 7:00 7:10 7:20 7:30 7:40 7:50 8:00 8:10 8:20 8:30 8:40 8:50 9:00

Time: 12
Date: 2008/11/11 00:00:00

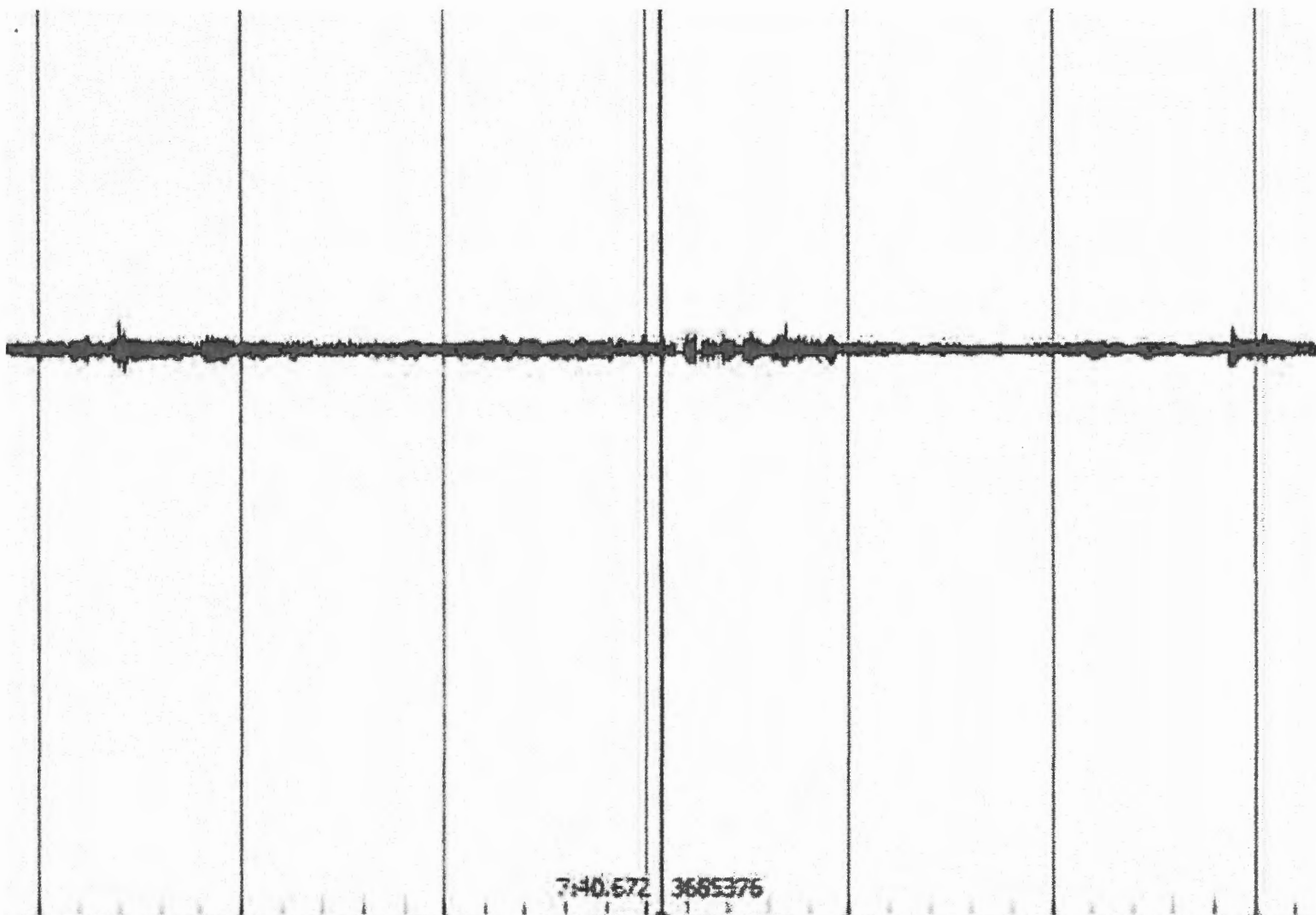


7:40:57.365376
7:40:57.365376



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DWYER DECLARATION EXHIBIT 4

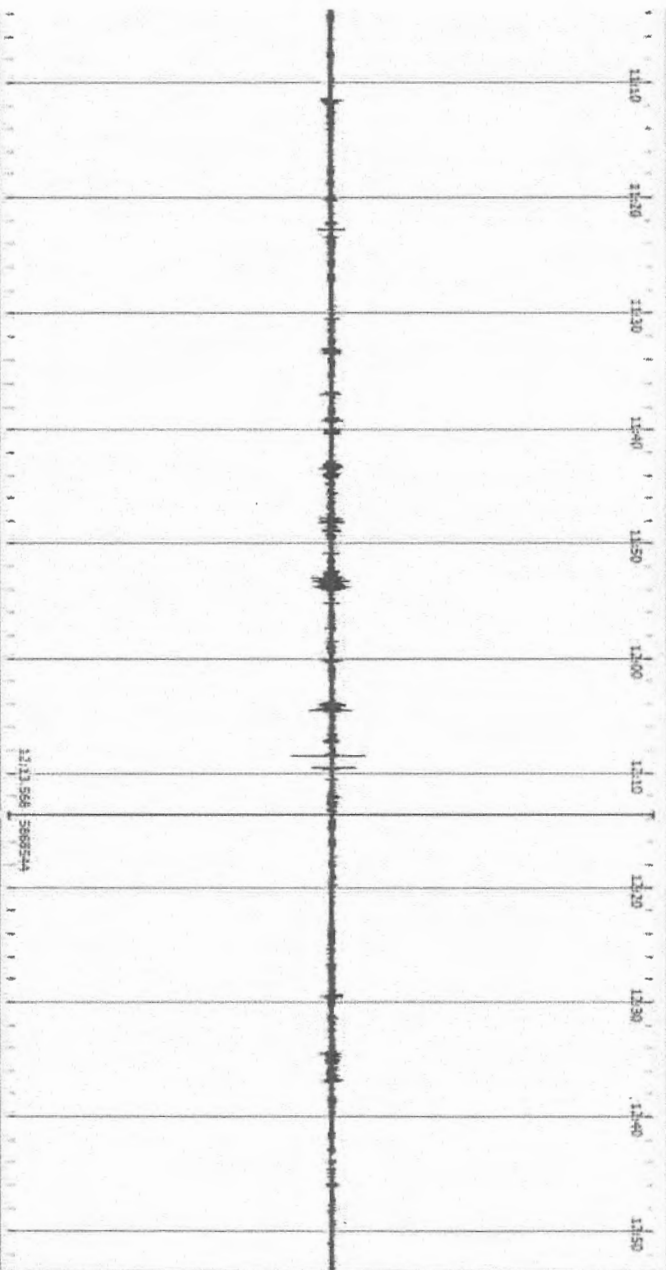


7:40.572 3685376

7:40.572 3685376

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DWYER DECLARATION EXHIBIT 5



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DWYER DECLARATION EXHIBIT 6

12:13.568 5868544

12:13.568 5868544

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DWYER DECLARATION EXHIBIT 7

PATRICK H. DWYER
ATTORNEY AT LAW

P.O. Box 1705
17318 PIPER LANE
PENN VALLEY, CALIFORNIA 95946
TELEPHONE: (530) 432-5407
FACSIMILE: 530-432-9122
pdwyer@pdwyerlaw.com

December 12, 2016

Via Email
eggert@placer.ca.gov

Ben Eggert
Placer County Probation Department
Santucci Justice Center
10810 Justice Center Drive, Suite 1700
Roseville, CA 95678

Re: People v. Brendan Coleman; Case No. 62-147325; DA # 16-08-102264
Informal Discovery Request No. 1; Defendant's Motion to Compel

Dear Ben,

I have not heard from you about the draft protective order I sent to you on November 8, 2016. Please let me know if the form I prepared is agreeable or if your office has a different form that it prefers. Again, I have the following medical records ready to release as soon as the HIPPA requirement is met:

VA Medical Records D1-16;

Serpa Medical Records D100-141;

Simonson medical records D200-220;

Nevius medical records D300-321; and

Injury photographs: D 400-413

I did receive from your office two documents by mail on November 22, 2016. One was a PDF file with 9 pages of material from the Auburn jail, mostly the booking photo and inventory of things received from Mr. Coleman upon intake. The other was a video from the Auburn jail "intake" area on the night of July 14, 2016. Thank you.

However, you have not provided any written response to my informal request, thus, it is difficult to know if all of the documents from a particular category in the request have been produced. Would you please provide a written response so that I can know if anything else will be produced and if anything is being withheld.

PATRICK H. DWYER

I have viewed the video with the Ocularis "viewer" software that was provided. Unfortunately, this software is extremely limited and does not allow careful scrutiny of the video clip. More importantly the video file is in a *proprietary* format and cannot be viewed with professional software. The "viewer" says it can export the file to an "AVI" format, which would be great, but after about 10 hours of trying, I have been unable to accomplish this. Thus, I need to request that the video be produced again *using a standard PC video format* such as AVI or MP4. [I do not need you to provide viewing software, just the file.]

I did observe from the video that one of the deputies ordered Mr. Coleman to be put into cell "33" after he left the "intake" area. However, I did not receive any video for this location. Again, I am skeptical that there is no video for cell "33". Please produce any video of this area while Mr. Coleman was detained.

I also did not receive any video for the outside of the jail (which is just outside the door on the left shown in the "intake" video). I simply do not believe that on July 14, 2016, there was no camera looking at the area outside of the jail where officers transfer a detainee from a vehicle to the jail.

I would like to know the name(s) of the person(s) responsible for producing the video that I did receive, along with a chain of custody.

Based upon the production to date, I still have not received responses to items nos. 2-3, 6-12. I did receive one page of what appears to be a two page medical screening form for Mr. Coleman's intake (responsive to item no. 4). Please confirm if this is everything "medical" for his intake.

Absent a written response and further production of other items, I must proceed with the pending Motion to Compel. I will be available on Wednesday and Thursday (the 14th and 15th) if you want to confer about the outstanding discovery. I would like to resolve everything without bothering the court.

Thank you.

Sincerely,



Patrick H. Dwyer

1 Patrick H. Dwyer, SBN 137743
2 Attorney for Brendan Coleman
3 P.O. Box 1705; 17318 Piper Lane
4 Penn Valley, CA 95946
5 Tel: 530-432-5407; Fax 530-432-5439

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF PLACER


The People of the State of California,)	Case No. 62-147325
)	[DA no. 16-08-102264]
Plaintiff,)	
)	
vs.)	PROOF OF SERVICE
)	
Brendan Coleman)	
)	
Defendant.)	
)	

I hereby certify under penalty of perjury that a copy of the:

1. Supplemental Declaration of Patrick H. Dwyer in Support of Defendant's Motion to Compel Discovery.

in the matter of The People of the State of California v. Brendan Coleman,
Case No. 62-147325 [DA Case No. 16-08-102264]; was served by hand as follows:

(a) Benjamin Eggert, Deputy District Attorney, County of Placer,
Placer County District Attorney, 10810 Justice Center Drive, Suite
240, Roseville, CA 95678-6231.


Signature

Patrick H. Dwyer
Print Name

Date: December 16, 2016

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT6

PATRICK H. DWYER
ATTORNEY AT LAW

P.O. Box 1705
17318 PIPER LANE
PENN VALLEY, CALIFORNIA 95946
TELEPHONE: (530) 432-5407
FACSIMILE: 530-432-9122
pdwyer@pdwyerlaw.com

March 7, 2017

Via Email
beggert@placer.ca.gov

Ben Eggert
Placer County Probation Department
Santucci Justice Center
10810 Justice Center Drive, Suite 1700
Roseville, CA 95678

**Re: People v. Brendan Coleman; Case No. 62-147325; DA # 16-08-102264
Informal Discovery Request No. 1; Defendant's Motion to Compel**

Dear Ben,

Last week you sent an email response to my letter of February 20, 2017.¹ Your office also released a new disc containing some additional video. I was out of town last week, so I was not able to view the new material carefully until yesterday.

With regard to the names of the officers (item no. 1 on my letter of February 20th), I need someone to print a frame from the video of the "intake" room where my client was processed and write the name of the officer next to each officer in the picture to identify them.

With regard to items nos. 2-3 in my prior letter, "Nurse 2" is not in the videos that you have provided to date. As explained in the request, "Nurse 2" should appear in the intake area where Mr. Coleman was processed for release *the next morning*. You have failed to produce any video of Mr. Coleman's processing for bail the next morning as requested and ordered by the Court.

With regard to item no. 4, you simply state that "[n]othing returned from my original request, but I emailed Deputy Spencer to confirm there was no video, patrol car or otherwise". I need a definitive statement as to whether there were cameras in the patrol car and/or on the persons of Deputies Miller and Spencer. If there were cameras, were these turned on or off? Who is in charge of any maintaining any such video?

¹

I am attaching your email of February 28, 2017.

PATRICK H. DWYER

With regard to item no. 5, there appears to have been no further response as of this date. Please respond.

With regard to item no. 6, you state that the dispatch traffic and logs have been produced. Have you verified that the items produced are complete and that there has been a full response to my request?

With regard to item no. 7, you state “ [w]e already requested any such evidence and got no return.” Have you verified whether Deputies Spencer and Miller carry cell phones, and if so, whether there are any phone calls or text messages on those phones in the relevant time frame (i.e., please check from 10 minutes before the arrest up to the time of arrival at the jail.). Please let me know in writing.

I have reviewed the new video that you produced. There are several problems. First, there is no video of the “sally area”, which as I explained in court, means the area just outside of the rear entrance of the jailhouse.² This is where Deputies Spencer and Miller arrived at the jail in their cruiser and where numerous officers came out of the jail to take my client out of the cruiser and into the jail (see the first intake video that was produced). The court ordered this to be turned over.

Second, the video that was provided last week is deficient in several respects:

- (a) the video of Cell 33 (I think this is labeled as the “Corridor” on the video produced last week) starts with the door to Cell 33 already open. Please provide the same video with a start time before this door was opened. I want to know who opened the door to Cell 33. I also want to know who put the paper over the window to Cell 33;
- (b) the video of Cell 33 has almost no audio and it appears that the audio volume has been turned very low or “off” in certain moments;
- (c) the video of Cell 33 has many “suspect” gaps or freezes in the video image. Please provide a complete explanation about these gaps. In this regard, I am informed that there has to be an administrative or administrator’s file record for the camera system in the jail.³ This administrative file (kept on the computer system that operates the cameras) will show what cameras existed, how each camera was set to operate, and if it was operating correctly. I need a copy of this administrator’s file for the date and time in question concerning Mr. Coleman’s stay at the jail.

² As mentioned above, there is no video for “Nurse 2”.

³ I confirmed this with the company that wrote the camera software.

PATRICK H. DWYER

Third, please state on the record whether there are any other cameras or camera views of, or in, Cell 33.⁴ If there are any other cameras showing Cell 33 during the relevant time, please produce the video (with full audio).

Although I presume that you are aware of the responsibility of the DA for all evidence and for the handling and preservation of any evidence by any person or entity on the prosecution team, I am attaching copies of two decisions that go over this responsibility.⁵

I will be in my office until leaving for the hearing on Thursday at 1:00 pm. I appreciate your further assistance.

Sincerely,



Patrick H. Dwyer

⁴ This would include any audio recording while my client was present.

⁵ You are obligated to ensure that all evidence favorable to the accused is turned over under *Brady v. Maryland* (1963) 373 U.S. 83, and its progeny. Moreover, as the state prosecutor you are responsible for the entire prosecution team, including the Sheriff's Office. See *In Re Brown*, 17 Cal. 4th 873 and its progeny. This includes responsibility for "any negligence on the part of other agencies acting in its behalf." *In Re Brown* at 881. I am attaching copies of *In Re Brown* and *People v. Uribe* (2008) 162 Cal. App. 4th 145, 1471-1474.

Subject: RE: People v. Coleman; Additional Video Discovery

From: Benjamin Eggert <BEggert@placer.ca.gov>

Date: 2/28/2017 9:25 AM

To: "pdwyer@pdwyerlaw.com" <pdwyer@pdwyerlaw.com>

It should be ready by now. Or at least by this PM. You can call the front desk to confirm it's made its way up there.

-----Original Message-----

From: pdwyer@pdwyerlaw.com [<mailto:pdwyer@pdwyerlaw.com>]

Sent: Tuesday, February 28, 2017 8:22 AM

To: Benjamin Eggert

Subject: Re: People v. Coleman; Additional Video Discovery

Ben,

Thank you for the email. Please let me know when it is ready for pick up.

My client will be able to identify nurse 2 when he looks at the new video. The first video produced had nurse no. 1.

Please note that I have signed a stip to continue the hearing on the Pitchess motions to March 30th as a courtesy to County Counsel. The motion to compel is still on for March 9th.

Take care.

Patrick

On 2/27/2017 4:42 PM, Benjamin Eggert wrote:

Hi Patrick,

I have in my hot little hands a new copy of the jail video. I reviewed it and it appears to be what you requested. It contains two separate files - one has cameras in 3 areas, the other has cameras in 2 areas.

I believe I had previously forwarded you the names of the people in the videos. But here it is again just in case:

Deputy Matt Spencer
Deputy Dan Cunningham
Deputy Robert Madden
CO Jeremy Burch
CO Travis Bolitho
CO Sgt. Megan Yaws
CO Aubury Harris
CO Nicole Rocco
CO Brian Fish
CO Travis Bakken

Operations Sergeant Mark MacKay supplied these identifications. He reports he was unable to identify the second arresting deputy (likely it is reserve deputy Miller).

We'll get this video discovered to you as quickly as possible.

I have reviewed your emailed letter dated 02/20/17 listing the outstanding discovery items you're looking for.

1. I'll see what I can find about the production and chain of custody

of the first video. We don't usually have a formal chain of custody for this kind of discovery item; 2. As to "Nurse 2," can you please provide us where you see her in the video so we can have someone try to ID her?

3. Pending her ID

4. Nothing returned from my original request, but I emailed Deputy Spencer to confirm there was no video, patrol car or otherwise; 5. We will order any jail incident reports concerning Mr. Coleman. This should include any notes made by any jail employee re: Mr. Coleman; 6. We already ordered and discovered the dispatch traffic and logs; 7. We already requested any such evidence and got no return.

So...

We will produce the video, and any jail incident reports. We will wait for you to let us know where/when you see "nurse 2" so we can ID her.

-Ben

-----Original Message-----

From: pdwyer@pdwyerlaw.com [mailto:pdwyer@pdwyerlaw.com]

Sent: Thursday, February 23, 2017 4:28 PM

To: Benjamin Eggert

Subject: People v. Coleman; Additional Video Discovery

Ben,

I have not heard anything further about further video production. What is the situation and when can I expect the videos?

Patrick Dwyer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT7

PATRICK H. DWYER
ATTORNEY AT LAW

P.O. Box 1705
17318 PIPER LANE
PENN VALLEY, CALIFORNIA 95946
TELEPHONE: (530) 432-5407
FACSIMILE: 530-432-9122
pdwyer@pdwyerlaw.com

March 17, 2017

Via Email
eggert@placer.ca.gov

Ben Eggert
Placer County Probation Department
Santucci Justice Center
10810 Justice Center Drive, Suite 1700
Roseville, CA 95678

**Re: People v. Brendan Coleman; Case No. 62-147325; DA # 16-08-102264
Informal Discovery Request No. 1; Defendant's Motion to Compel**

Dear Ben,

I am writing to review our discovery status, especially with regard to the video material that has been requested. Although I sent a letter to you on March 7th about this, your email of March 14, 2017, which included an email response from Deputy Spencer, causes me to write again.

The Request for Informal Discovery No. 1 (08/25/16), item no. 9 states:

Any and all video/audio recordings made at the Auburn jail that may have images of Mr. Coleman at any time between his arrival at the Auburn jail and his release to a bail bondsman. This would include video of the entrance, pat down room, holding cell, bathroom, booking area, etc.

The video that was produced two weeks ago and marked "Sally Port" shows the hallway just inside of the exterior jail entrance where Mr. Coleman was transferred from the arresting Deputy's cruiser. As noted in my letter of March 7, the video of the outdoor area where the cruiser pulled up is what we asked to be produced and the court so ordered. There are *nine* officers that walk through the doorway. There is one additional officer at the desk in the intake area when Mr. Coleman is brought in, for a total of 10 officers to be identified. Please make a print or series of prints and identify each officer by name.

The video marked "Corridor" shows the exterior of Cell 33. As stated in my letter, I need earlier video of Cell 33 which shows the paper being put over the window in the cell door and the cell door being opened. The video produced starts on 07/15/16 @ approx. 12:18 am and ends at approx. 12:21 am *and it begins with the door already opened and the window covered*. Also, as I mentioned, the audio on this video appears to have been turned down. I need to have a fully audible audio track. I also need a print(s) with each officer identified by name.

As the court ordered, the video of Mr. Coleman being interviewed by "Nurse No. 2" must be produced. This occurred while he was in the community holding cell where he was with other inmates. Please remember that we need any notes made by Nurse 2.

Thus, far, no video of Mr. Coleman actually being in Cell 33 has been produced. Is there a camera that monitors the inside of Cell 33? He was there until about 6:30 am the next morning. If so, please produce all such video.

Based upon the video of the intake process and of Mr. Coleman's placement into Cell 33, it is now imperative that all video, even if many hours in length, showing Mr. Coleman's presence or location at the jail, be produced. This video should include:

video of Mr. Coleman inside Cell 33 (he was there until about 6:30 am the next morning).

video of Mr. Coleman being transferred from Cell 33 to the community holding cell;

video of Mr. Coleman in the community holding cell (he was in this cell from about 6:30 am until mid afternoon, along with 4-6 cell mates)¹;

video of Mr. Coleman being transferred from the community cell to the cell where he was held for the bail bondsman late on the afternoon of the 7/15; and

Video of Mr. Coleman in the cell where he waited for the bail bondsmen until he was released.

¹ Please produce the names and contact information of all of the cell mates.

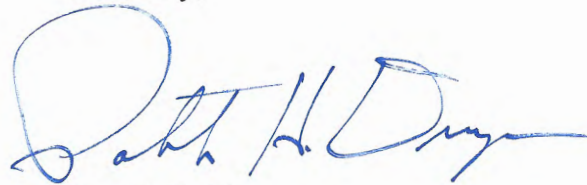
PATRICK H. DWYER

I your email of March 14th that forwards the email of Deputy Spencer (copy attached), Deputy Spencer says that there was a video of the transport, but that the dash cam video "malfunctioned" somehow and there is no video showing the arrest. This reads like the proverbial "dog ate my homework" excuse. What are you doing to verify this story? Has all video from the dash cam been secured? Where is dash cam video kept and who has a copy?

The delay in producing this video is not only costly, it is hampering the Defendants' ability to support the two pending Pitchess motions. It also delays the filing of Pitchess motions for the other officers involved in this matter.

I would appreciate your effort to get this discovery completed as expeditiously as possible. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick H. Dwyer". The signature is fluid and cursive, with a large initial "P" and "D".

Patrick H. Dwyer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT8

PATRICK H. DWYER
ATTORNEY AT LAW

P.O. Box 1705
17318 PIPER LANE
PENN VALLEY, CALIFORNIA 95946
TELEPHONE: (530) 432-5407
FACSIMILE: 530-432-9122
pdwyer@pdwyerlaw.com

May 2, 2017

Via Email
eggert@placer.ca.gov

Ben Eggert
Placer County Probation Department
Santucci Justice Center
10810 Justice Center Drive, Suite 1700
Roseville, CA 95678

**Re: People v. Brendan Coleman; Case No. 62-147325; DA # 16-08-102264
Informal Discovery Request No. 1; Defendant's Motion to Compel**

Dear Ben,

I am writing to review our discovery status in light of the most recent production of video clips.

Video – I appreciate the production of the many hours of video while Mr. Coleman was in custody. However, there are at least three areas of video that need further explanation and/or new production.

First, the new video showing the Sally area is incomplete and appears to have been edited. It shows a white Dodge cruiser pull up and a deputy in the right front passenger seat start to get out, but then it is clipped and there is nothing more until about 26 minutes later when the same white cruiser backs up and pulls away. Where is the 26 minutes of video in between the drive in and out? We know that nine officers came out into the Sally area to get Mr. Coleman because the first piece of Sally port video showed the inside view of the entrance doorway to the parking lot with nine officers bringing Mr. Coleman inside. Surely, the presence of nine officers in the parking lot would trigger any motion/activity sensor that was controlling the camera.¹ Absent an explanation which I cannot think of presently, it appears that this video clip was heavily edited. As I have written to you before, the tampering with evidence is a felony. See PC 131, 134-136, 141. Has an investigation been opened into the possible tampering of evidence?

¹ As requested twice now, please make a print of a frame(s) and write the names of the officers that come in from the Sally area into the intake room and also the names of the officers that take Mr. Coleman to Cell 33.

Second, the video of Cell 33 was almost certainly altered by turning down the audio, in particular, while the four officers are in Cell 33 with Mr. Coleman for about 2 minutes. It was during this time that he was further beaten. Mr. Coleman informs me that he was quite loud in his cries of pain, yet nothing is heard.² Also, please state in writing if there are any other cameras either inside Cell 33 or that otherwise cover the entrance to the cell. Obviously, any video from such cameras must be produced.

Third, I have read the latest email and supplemental reports of Deputy Spencer about how there was no video of the incident scene. I do not accept the explanation and I will be moving for a forensic examination and evidentiary hearing about this. In addition, Deputy Spencer said that there was video of the transport from the incident scene to the jail: why has this not been produced as requested? *All cruiser video must be produced.*

The Cruiser Dash Cam – In my letter of March 17th, I requested that you secure the dash cam video and then tell me where it is kept and who is in charge of its safekeeping. I have not received confirmation that this has been done and who is in charge of the material. Deputy Spencer's supplemental report only lends support to my prior request.

Nurse No. 2 – The new video that was produced shows nurse no. 2 the next morning, just as my client described. Who is this nurse and where are her notes that she can be seen writing down? This has been requested repeatedly.

Deputy Spencer and Deputy Miller Cellphones

We have previously requested the phone/text records for the arresting deputies from a few minutes before the incident until after the deputies went back out into the field. Nothing has been provided. These records should be produced

² There is some intelligible audio in this clip before and after the officers put Mr. Coleman into Cell 33. How can there have been no sound while four officers are in the cell with the door wide open?

PATRICK H. DWYER

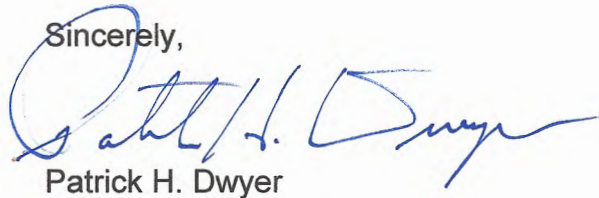
Summary

I need the above items to be produced forthwith. Your office has had 9 months to comply. Please inform me of a date certain when I can obtain the requested items.

In light of the continuing need for production, the status conference set for this Thursday, May 4th, should just be continued. Please advise if you can appear and request a continuance without my having to travel from Grass Valley just to continue this matter again.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick H. Dwyer", is written over the typed name. The signature is fluid and cursive.

Patrick H. Dwyer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT9

PATRICK H. DWYER
ATTORNEY AT LAW

P.O. Box 1705
17318 PIPER LANE
PENN VALLEY, CALIFORNIA 95946
TELEPHONE: (530) 432-5407
FACSIMILE: 530-432-9122
pdwyer@pdwyerlaw.com

May 24, 2017

Via Email
beggert@placer.ca.gov

Ben Eggert
Placer County District Attorney's Office
Santucci Justice Center
10810 Justice Center Drive, Suite 240
Roseville, CA 95678

Re: People v. Brendan Coleman; Case No. 62-147325; DA # 16-08-102264
Informal Discovery Request No. 1; Defendant's Motion to Compel

Dear Ben,

I am writing to review our discovery status in light of the most recent production of the "cruiser" video clips.

Video From PCSO Cruiser

I reviewed the video produced a few days ago from the PCSO cruiser driven by Deputy Spencer at the time of the incident. There were three files, one for each of three cameras. Once again, although the production of the video is appreciated, it raises still more questions.

First, the video is running for about a minute before there is any audio. The audio that is missing is the most critical time period in the interaction between the the deputies and Mr. Coleman. It was during this time that Mr. Coleman was detained and then put to ground and cuffed. Why is this audio segment missing?

Second, the video starts well into the time of the incident. Why is there no video starting from the commencement of the deputies' investigation of Mr. Coleman? What is the PCSO policy about when to start the video running? Or is the video always running? Or is there a trigger mechanism/event (other than a manual "start" from a deputy)?

Third, the electronic logbook that came with the video has many entries for the "import" of material. I assume that "import" entries are for transferring the video from the cruiser to a PCSO data server. Why are there approximately 55 entries for "import" on July 15, 2016, and then three very large "import" entries for August 12, 2016?

Fourth, there are five entries for "views: on July 16th, September 3rd, March 14, 2017 (twice), and March 28, 2016. Why are there "views" when the video had already been imported in the PCSO server? Moreover, this material was specifically requested on August 25, 2016, so why was it not turned over until May 25, 2017?

Fifth, even more astounding, the logbook entries then show "modifications" on July 15, 2016 (two) and a modification on March 28, 2017. What were the modifications and why were they made? Indeed, why are any modifications allowable (possible) for primary video evidence? Isn't raw evidence supposed to be booked into the PCSO and preserved? What was going on? I note that I received an email from you dated April 5, 2017, informing me that there was video from the cruiser and that you were starting to process it for production. This was a week after the last "modification" on March 28, 2017.

Sixth, based upon my clients review of the videos, it appears that there may have been editing of the audio that was produced. The nature of the apparent editing coincides with the fact that there were 55 imports of data from the cruiser video to the PCSO server.

Other Outstanding Discovery

You sent me an email on April 7, 2017 indicating that the defense request for all of the video from the jail during Mr. Coleman's incarceration was available and was being processed for production. Not only had this been requested back on August 25, 2016, it was ordered to be produced by the court in response to the defense motion to compel last December. It was produced on or about May 3, 2017. Why did it take 8-9 months for production?

The defense has been requesting the name of the second nurse ("Nurse 2") since August 25, 2016. Even though I have provided a still frame of the nurse interviewing Mr. Coleman as you requested, I still have not received her name or a copy of the records she created from that interview. Why is this being delayed?

There are other outstanding items from my prior letters to you and I will not go through everything again here. The most significant outstanding items are:

1. *Sally Area Video "Gap" Explanation and Documentation* – The explanation that there was a technical malfunction with the camera looking at the outside of the Sally Area that resulted in the 26 minute gap in the produced video has not been documented. The Defense needs the administrative log for the PCSO Auburn Jail Ocularis camera system, a full written explanation of the purported maintenance problem, and the names of the responsible PCSO personnel. On May 8, 2017, you forwarded an email from Mark McKay at the PCSO that said there was a maintenance problem and that "maintenance completed" a repair of the camera system on April 27, 2017 and that there is a documentation trail. The Defense asked for the entire maintenance trail from 30 days prior to the incident (i.e., starting from at least June 14, 2016), but nothing has been received.

2. *Ocularis Administrative Log* – There has been no production of the administrative log for the Ocularis camera system and the names of the responsible personnel on July 14-15, 2016. This was first requested after the apparent tampering with the "intake" room video was discovered, but it has not been produced. Moreover, there has been nothing produced that provides an explanation of any sort for the apparent tampering with the intake video that was discussed in the Declaration of Patrick Dwyer dated December 15, 2016. *The defense presumes this to be an admission of intentional spoilage because there has been no explanation of any kind in almost six months.*

3. *Cross-checking of Audio from Dispatch Against Audio in Cruiser Video* – In playing the cruiser video it appears that there may be additional audio that is not contained on the "voice logger record" produced by the PCSO on October 11, 2016 and subsequently produced to Defendant. In particular, as the cruiser approached and entered the Sally area there seems to be communications from the cruiser that are not in the previously provided dispatch transcript. This needs to be carefully cross-checked and any discrepancies explained.

4. The PCSO documentation of training for use of the cruiser video (both in general and for Deputies Spencer & Miller), plus any maintenance records and any administrative logbook for the camera system in the cruiser should be produced. Also, the Defense needs a technical explanation as to how many cameras are in the cruiser (are there more than the three camera views shown?) and why the cameras are pointed in the direction shown in the cruiser videos.

**The Duties of the DA to Safeguard the Evidence
and Timely Produce the Evidence Have Not Been Met**

The Defendant, Mr. Coleman, is constitutionally guaranteed that evidence: (a) will be timely produced; and (b) be preserved in its original condition.

See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley* (1995) 514 US 419, 437. Clearly, Mr. Coleman's constitutional guarantees appear to have, once again, been grossly violated with the cruiser video. I cited the foregoing and other relevant law to you on previous occasions. Regrettably, that did not seem to make any difference. Now there is an evidentiary nightmare.

At this time, the Defendant demands written assurance from the Placer County District Attorney, that:

- (a) the remaining discovery will be produced with all deliberate speed;
- (b) the DA's office will conduct an immediate and thorough investigation, including an independent (outside expert) forensic examination of the intake video, the cruiser video, "cell 33" video, and the PCSO computers that operate the jail (Ocularis) and cruiser (Watch Guard) video systems and administrative logbooks to determine:
 - (i) how these systems were configured at the time of the incident and incarceration;
 - (ii) who was the administrator in charge of these systems at the relevant times;
 - (iii) whether the original vide/audio files still exist;
 - (iv) what changes, if any, were made in the video produced to the defense from the original files and by whom;
 - (v) who made any changes to any evidence and why; and
 - (vi) can the original evidence still be produced;

It is not the responsibility of the defendant to pay for and remedy the malfeasance (if not deliberate misconduct) of the Placer County Sheriff's Office. The cost of a forensic examination of this evidentiary mess will be substantial. Defendants are only obligated to pay for the ordinary cost of copying of evidence. To shift the cost of investigating and correcting (if still possible) the spoiled evidence onto Mr. Coleman in this action would be unconstitutional.

Mr. Coleman will be entitled to complete documentation for any such investigation, especially any report or communications with a forensic expert and any technical personnel involved in the investigation.

PATRICK H. DWYER

Motion to Recuse the Placer County District Attorney

If I do not receive an adequate written assurance by the beginning of the next status conference on June 1, 2017 that the DA will conduct such a proper investigation, the Defense will file a motion to recuse the Placer County District Attorney's Office and substitute the California Attorney General to handle the prosecution of the action.

Due to the seriousness of the evidentiary mess and the failure to date to take the matter seriously, a copy of this letter is being sent to the Court, the California Attorney General, the United States Attorney for the Eastern District of California, and appropriate members of the press.

Sincerely,



Patrick H. Dwyer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT10



Tuesday, June 27, 2017

Patrick Dwyer
Patrick H. Dwyer Attorney At Law
17318 Piper Ln, Penn Valley, CA 95946

Evaluation of Evidence
People v Coleman, Case # 62—147325

On or around June 02, 2017, NCAVF was contacted by Patrick H. Dwyer, Attorney at Law, regarding video and audio evidence in the subject case. The evidence provided NCAVF was several DVD data disks containing multiple video and audio clips. The clips consisted of several recordings exported from the Placer County Jail's Ocularis Surveillance system and one from a Watch Guard camera system installed in an officer's police cruiser. NCAVF was asked to evaluate the evidence for signs or indications of editing or changing of the audio files from the Ocularis surveillance video exports.

On 06/05/2017, NCAVF was sent the following DVD's for analysis and evaluation:

"ICC Video PCSD 16-7125"
"Jail Video"
"Sally Port"
"SO-16-007152"

The disk titled "ICC Video PCSD 16-7125" contained the Watch Guard video from Officer Matthew Spencer's police cruiser. The other three disks contained various videos from the Jail. For the purposes of this preliminary evaluation, NCAVF focused on the disk titled "SO-16-007152". The goal was to determine whether or not the audio from this surveillance video, which was extracted from the Ocularis surveillance DVR, could be altered, edited, or manipulated and still be played within the Ocularis player. If successful, this would prove that it is possible to change the audio from what was originally recorded in the jail by adding or removing some or all audio components from the original.

NCAVF accessed the disk titled "SO-16-007152" and found within it the executable file for the Ocularis player. When executed, this launched the Ocularis video player. This disk contains the surveillance video from the jail's "Intake" room, as was indicated by the name of the camera angle visible. The "Intake" video appears to be approximately 12 minutes and 48 seconds long, and appears to have audio for the entirety of the video.

On inspecting the subfolders within the DVD disk, a subfolder titled "Data" was found. This folder appears to contain both the audio and video files. The video is in a proprietary format (.bin) and can only be played by the Ocularis player. The audio file, however, is in .wav format and plays perfectly in any standard media player (such as VLC or Windows Media Player),

thus allowing anyone to play and only hear the audio from the Jail's Intake room. The audio file in question is titled "coleman p264780 da request_010 - intake.wav". NCAVF theorized that this audio file could be removed from the "Data" folder, edited or manipulated to add or remove audio, and then replaced back into the "Data" folder.

The first step was that NCAVF removed the "coleman p264780 da request_010 - intake.wav" from the "Data" folder. Using the program Audacity v2.1.0 (free easy to use software, available for download from the internet), the .wav file was edited to add a musical audio recording to the .wav file. The file was then saved and a 16 bit .wav PCM file was exported from Audacity. This gave the .wav file created by NCAVF the same parameters as the .wav file in the "Data" folder (which was confirmed by examining and comparing the metadata of both .wav files). The exported .wav file edited by NCAVF was then given the same name of "coleman p264780 da request_010 - intake.wav" and replaced into the "Data" folder. Then the Ocularis player was opened, playing the Intake surveillance video. What resulted was that the video played normally and the audio playing was the audio file manipulated by NCAVF, with audio added to the .wav by NCAVF.

This same experiment was also conducted by editing the "coleman p264780 da request_010 - intake.wav" file in the program "Garage Band" and "iTunes", both of which come pre-installed on a Mac computer. NCAVF was successful in editing the audio and playing the manipulated file in Ocularis.

NCAVF's conclusion is that we proved it is possible to edit or manipulate an audio file exported by the Ocularis surveillance system and then play that manipulated file within the Ocularis player. Thus, if one wanted, it would be possible to edit the audio from an exported Ocularis surveillance video to remove statements, yells, or other audio from the recording. NCAVF further proved that such edits were possible utilizing different audio file editing software programs.

I hereby certify under penalty of perjury under the laws of the State of California the foregoing report is true and correct to the best of my knowledge.



Motti Gabler

Case Manager/Forensic Expert

www.NCAVF.com

213.973.7811

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT11

PATRICK H. DWYER
ATTORNEY AT LAW

P.O. Box 1705
17318 PIPER LANE
PENN VALLEY, CALIFORNIA 95946
TELEPHONE: (530) 432-5407
FACSIMILE: 530-432-9122
pdwyer@pdwyerlaw.com

July 12, 2017

Via Email
beggert@placer.ca.gov

Ben Eggert
Placer County District Attorney's Office
Santucci Justice Center
10810 Justice Center Drive, Suite 240
Roseville, CA 95678

Re: People v. Brendan Coleman; Case No. 62-147325; DA # 16-08-102264
Informal Discovery Request No. 1; Defendant's Motion to Compel

Ben,

I am writing to review our discovery status in light of the most recent document production (copies of the PCSO response to your subpoena) and my discussions with Jennifer Miskew at court on June 1, 2017.

I. Outstanding Discovery Items

The Defense still has not received the following items that have been previously requested:

1. The notes for nurse Kathleen Burt, RN;
2. The administrative log for the PCSO Auburn Jail Ocularis camera system from June 1, 2016 to the present [The log should show what cameras exist and how they are set to operate, where the data is stored, and the camera operational status.];
3. The maintenance records for the PCSO Auburn Jail Ocularis camera system from June 1, 2016 to the present;
4. The names of the system administrators for the PCSO Auburn Jail Ocularis camera system from June 1, 2016 to the present;

5. The maintenance records for the cruiser unit used by Deputies Spencer and Miller on July 14-15, 2016 (the "cruiser") from June 1, 2016 until the present;
6. The PCSO documentation of training for use of the cruiser Watch Dog video (both in general and specifically for Deputies Spencer & Miller); and
7. Any administrative logbook for the cruiser Watch Dog video showing how the cameras were configured on July 14-15, 2016.

In addition, based upon the evidence produced thus far, the Defense is requesting the following additional items:

1. A physical inspection of the cruiser;
2. A physical inspection of Cell 33; and
3. The video from the other two cameras that are located on the same physical pole on the fence to the Sally Port area that holds the camera from which the purported Sally Port video was recorded [There are three cameras installed on a pole on the fence near the gate entrance to the Sally Port area.].

II. Forensic Investigation of Evidence Is Required

As described in previous letters, there are a number of discrepancies in the video and audio evidence produced to date. The Defense has hired an expert, the National Center for Audio and Video Forensics ("NCAVF", CV attached), to review the Ocularis video that has been produced. In particular, the video for the intake area, Cell 33, the area between the intake and Cell 33, and the Sally Port. NCAVF was tasked to determine if there is a ready means for the manipulation of the audio portions of any of these video recordings.

As set forth in the accompanying report from NCAF Dated June 28, 2017, NCAVF found that it was not difficult to circumvent the protections for the audio portion of the Ocularis video system. This system uses standard WAV files that are commonly used on both Windows and Apple PCs. There are many audio editing programs that are available for this purpose (including freeware).

My declaration of December 15, 2016, describes the apparent modification of the first video produced in late November 2016 that shows the intake room processing of Mr. Coleman. Although this was filed with the court and has been raised on multiple occasions in open court and in letters to your office, there has never been any denial or explanation that contradict the findings in my declaration. It has now been over six

months and I must assume that your silence and failure to investigate (to my knowledge) is an admission that the findings in my declaration are correct.

I have previously reviewed the applicable law concerning both the obligation of the district attorney to produce all exculpatory evidence and that the district attorney is the responsible party for safeguarding all evidence.¹ Moreover, it is the obligation of the district attorney to not present any false evidence and to investigate when evidence is suspected of having been spoiled.² Here, the defense has directly challenged the validity of several items of key evidence to which there has been no response.³ This has now become a knowing and continuing violation of Mr. Coleman's due process which Mr. Coleman believes may, by itself, be an actionable violation of his civil rights.

At this time, the Defendant demands that the Placer County District Attorney's Office conduct an immediate and thorough investigation, including an independent (outside expert) forensic examination of the intake video, the cruiser video, Cell 33 video, and the PCSO computers that operate the jail (Ocularis) and cruiser (Watch Guard) video systems and administrative logbooks to determine:

- (i) how these systems were configured at the time of the incident and incarceration;
- (ii) who was the administrator in charge of these systems at the relevant times;
- (iii) whether the original vide/audio files still exist;
- (iv) what changes, if any, were made in the video produced to the defense from the original files and by whom;

¹ See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley* (1995) 514 US 419, 437.

² As the state prosecutor, the district attorney is responsible for the entire prosecution team, including the PCSO. See *In Re Brown*, 17 Cal. 4th 873. This includes responsibility for "any negligence on the part of other agencies acting in its behalf." *In Re Brown* at 881. This responsibility includes correcting any false evidence. Moreover, it is well established in both federal and state law that a prosecutor's knowing use of false evidence deprives the defendant of due process. See, e.g., *Miller v. Pate* (1967) 386 U.S. 1, 7; *Napue v. Illinois* (1959) 360 U.S. 264, 269; *Brown v. Borg* (9th Cir.1991) 951 F.2d 1011, 1015; *People v. Sakarias* (2000) 22 Cal. 4th 596, *In re Jackson* (1992) 3 Cal. 4th 578, 595–596.

³ See my letter of May 24, 2017, which describes problems with the video from both the deputies' cruiser and from multiple cameras in the Auburn jail.

PATRICK H. DWYER

(v) who made any changes to any evidence and why; and

(vi) whether the original evidence still can be produced.

Mr. Coleman will be entitled to complete documentation of any investigation by the DA, especially any report or communications with a forensic expert and any technical personnel involved in the investigation.

III. Defendant Is Not Responsible for Cost of Forensic Audit of PCSO Evidence

It is not the responsibility of a defendant to pay for the investigation of spoiled evidence and the malfeasance (if not deliberate misconduct) of the Placer County Sheriff's Office. The cost of a forensic examination of this evidentiary mess will be substantial. Defendants are only obligated to pay for the ordinary cost of copying and analyzing evidence that is *bona fide*.

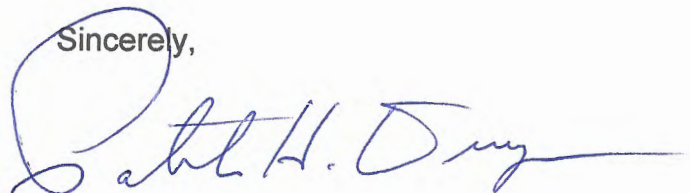
Mr. Coleman has already been substantially and unnecessarily burdened by the legal costs of his defense that has been greatly magnified by the foregoing evidentiary issues. In addition, he has now had to incur the cost of the preliminary report by NCAVF. Any further shifting of the cost of the PCSO malfeasance onto Mr. Coleman would be grossly unfair and unconstitutional.

IV. Motion to Recuse the Placer County District Attorney

If I do not receive an adequate written assurance by the beginning of the next status conference on July 20, 2017, that the DA will conduct a proper investigation, the Defense will file a motion to recuse the DA and substitute the California Attorney General to handle the prosecution of the action.

Due to the: (a) seriousness of the evidentiary mess, (b) the failure to date to take the matter seriously, and (c) the interest of the public in proper treatment of inmates and the veracity of evidence used in court, a copy of this letter is being sent to the California Attorney General, the United States Attorney for the Eastern District of California, and appropriate members of the press.

Sincerely,



Patrick H. Dwyer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT12

1 R. SCOTT OWENS,
2 Placer County District Attorney
3 State Bar No. 146406
4 10810 Justice Center Drive, Suite 240
5 Roseville, CA 95678-6231
6
7 Tel: (916) 543-8000

SUPERIOR COURT OF PLACER COUNTY

STATE OF CALIFORNIA

--oOo--

8 THE PEOPLE OF THE STATE OF
9 CALIFORNIA,

Plaintiff,

vs.

BRENDAN VINCENT COLEMAN,

Defendant.

No. 62-147325

APPLICATION FOR DISMISSAL

(Penal Code Section 1385)

DATE: July 20, 2017

TIME: 8:30 AM DEPT: 30

14
15 The District Attorney respectfully applies to the
16 Court for dismissal of the within case for the following
17 reasons:

18 The People believe that we can no longer prove this
19 case beyond a reasonable doubt in light of allegations
20 pending in other matters against potential witnesses
involved in this case.

Dated: July 19, 2017.

Respectfully submitted,

R. SCOTT OWENS, DISTRICT ATTORNEY

BY: Jennifer L. Miskewycz,
DEPUTY DISTRICT ATTORNEY

1

2

3

4

5

6

ORDER OF DISMISSAL

7

IT IS ORDERED that the present case is dismissed for
the reason stated above.

9

Dated: _____.

10

11

JUDGE OF THE SUPERIOR COURT

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF PLACER)

I, the undersigned, declare:

1. That I am a citizen of the United States.
2. That I am over 18 years of age.
3. That I am a resident of Placer County, California.
4. That I am not a party to the within action.
5. That my business address is Placer County District Attorney's Office, 10810 Justice Center Drive, Suite 240, Roseville, CA 95678-6231
6. That I am readily familiar with the business practices of the County of Placer for collection and processing of correspondence for mailing with the United States Postal Service on the same date of placement for collection.
7. That on this date I served a copy of the within

Application for Dismissal

☒ by placing a true copy thereof in a sealed envelope, and placing it for collection and mailing following ordinary business practices and addressed as follows:

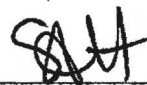
☐ transmitting said document(s) by facsimile to the number(s) set forth below:

☐ personally served said document(s) to the person(s) at the address(es) set forth below:

PATRICK HENRY DWYER
P.O. Box 1705
Penn Valley, CA 95946

Executed under penalty of perjury this 19th day of July, 2017, at Roseville, Placer County, California.

(CCP 1013A, 2015.5)


Stephanie A. Hicks,
LEGAL SECRETARY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT13 A&B

Deputy Dan Cunningham

Officer Aubrey Harris

Officer Jeremy Burch

33



Deputy Robert Madden

CO Sgt. Megan Yaws

CO Aubrey Harris

