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FILED

OCT 08 2015

5 Attorneys for COUNTY OF SANTA CLARA

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY A. Román-Castillo DEPUTY

8 SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY
(CRIMINAL DIVISION)

10 THE PEOPLE,

11 V.

12 SHANE MILLER,

13 Defendant.

No. C1366347

NOTICE AND COUNTY OF SANTA CLARA'S EX PARTE APPLICATION TO SEAL THE VIDEO RECORDINGS PROVIDED TO THE COURT ON OCTOBER 7, 2015; DECLARATION OF MEGHAN LOISEL; DECLARATION OF JOHN HIROKAWA; [PROPOSED] ORDER

Department 37
Honorable Andrea E. Flint

10-15-15
130
037

18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

19 Please take notice that pursuant to Local Rule 14, the County of Santa Clara hereby applies
20 to the Court for an *ex parte* order (1) sealing the thumb drive submitted to the Court on October 7,
21 2015 by Cindy Miller, Defendant Shane Miller's mother, and its contents, (2) ordering the parties to
22 the above-captioned criminal case and their attorney's not to disclose the any jail video or
23 documents released pursuant to the subpoena duces tecum, (3) ordering anyone in the possession of
24 the video recordings or other subpoenaed document refrain from copying or disseminating them, and
25 (4) ordering any nonparties in possession of the video recordings and other subpoenaed documents –
26 including Cindy Miller, the Mercury News, and National Broadcasting Company (NBC)– to return
27 all copies to the DOC and refrain from using them.

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Notice Of And County Of Santa Clara's Ex Parte Application To
Seal The Video Recordings Provided To The Court On October 7,
2015; Declaration of Meghan Loisel; Declaration of John Hirokawa;
[Proposed] Order

14-CV-5334 WHO

1 This *ex parte* application is made on the grounds that the privacy rights of Shane Miller and
2 third-parties individuals on the videos, and the DOC's need to maintain the safety and security of its
3 correctional facilities outweigh the right of the public to access the video recordings; these
4 overriding interests support sealing the video recording and other subpoenaed documents; a
5 substantial probability exists that these overriding interests will be prejudiced if the video recordings
6 are not sealed; the proposed sealing is narrowly tailored; and no less restrictive means exist to
7 achieve the overriding interest.

8 *Ex parte* relief is necessary because the confidential recordings on the flash drive are actively
9 being sought by the media, and thus, their inclusion in the public record would likely result in their
10 widespread dissemination to the public.

11 Dated: October 8, 2015

Respectfully submitted,

ORRY P. KORB
County Counsel

14 By: 

15 MEGHAN LOISEL
16 Deputy County Counsel
17 Attorneys for COUNTY OF SANTA CLARA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Defendant Shane Miller's mother, Cindy Miller, submitted a thumb drive to the Court on
5 October 7, 2015. The thumb drive purportedly contains video recordings taken by the Santa Clara
6 County Department of Correction (DOC) in its Mail Jail facility and disclosed pursuant to the
7 Court's October 16, 2014 Minute Order (Recordings). The County of Santa Clara requests that the
8 Court issue an order (1) sealing the thumb drive and its contents, (2) ordering the parties to the
9 above-captioned criminal case and their attorneys not to disclose the Recordings to any nonparty, (3)
10 ordering anyone in the possession of the Recordings to refrain from using, copying or disseminating
11 the Recordings, and (4) ordering any nonparties in possession of the Recordings – including Cindy
12 Miller, the Mercury News, National Broadcasting Company (NBC), and their representatives – to
13 return all copies to the DOC.

14 The County makes this request to protect Miller and other arrestees who may be on the
15 Recordings' privacy interests, and to protect DOC's ability to maintain safety and security in the jail
16 that would be undermined by disclosing jail techniques for managing inmates. Immediate relief is
17 necessary to prevent widespread public dissemination of these records, and prevent the improper use
18 of the Recordings, including taking the Recordings out of context, because the media is actively
19 seeking access to the Recordings.

20 **II.**

21 **FACTS**

22 On September 11, 2014, J. Hector Moreno, Jr., then counsel for Miller, served a subpoena on
23 the DOC requesting, among other things, copies of all video surveillance of Miller. (Declaration of
24 Meghan Loisel (Loisel Decl.), Ex. A.) In response, the DOC provided a copy of its video recordings
25 of Miller to the Court. With the recordings, the DOC submitted an affidavit by Captain Troy

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1 Beliveau objecting to the release of the recordings and requesting that the Court issue a protective
2 order limiting disclosure of the Recordings to counsel, which stated:

3 NOTE: THESE RECORDINGS ARE BEING PROVIDED TO THE
4 COURT IN RESPONSE TO THE ABOVE REFERENCED
5 REQUEST ISSUED TO THE DEPARTMENT OF CORRECTION.
6 *Note: These are video recordings of the Main Jail that may show
7 arrestees other than the subject in question. The DOC objects to the
8 release of the recordings to the extent that such release violates the
privacy rights of third party subjects appearing in these video
recordings pursuant to Article 1, Section 1 of the California
Constitution. The DOC therefore requests that a Protective Order be
issued regarding the recordings depicting third parties that limits the
disclosure to counsel only.

9 (*Id.*, Ex. B.) The Court held a hearing on the motion to compel on October 16, 2014 and issued a
10 minute order releasing the Recordings to Defendant Miller. (*Id.*, Ex. C.)

11 In the past few weeks, the County has received two California Public Records Act Requests
12 from interested journalists actively seeking these video recordings. (Loisel Decl., Exs. D and E.)
13 And the County is informed that the Mercury News and the National Broadcasting Company (NBC)
14 currently possess copies of the Recordings. (*Id.* ¶6.) Neither the County nor the DOC released these
15 Recordings to anyone other than to the Court pursuant to the September 11, 2014 subpoena.

16 III.

17 ARGUMENT

18 A. THE COURT SHOULD SEAL THE RECORDINGS BECAUSE MILLER AND 19 THIRD PARTY'S PRIVACY INTERESTS AND THE DOC'S INTEREST IN 20 PRESERVING SECURITY OUTWEIGH THE PUBLIC'S RIGHT TO DISCLOSURE.

21 The Court may order that a record be filed under seal if it finds that:

- 22 (1) There exists an overriding interest that overcomes the right of
public access to the records;
- 23 (2) The overriding interest supports sealing the record;
- 24 (3) A substantial probability exists that the overriding interest will be
25 prejudiced if the record is not sealed;
- 26 (4) The proposed sealing is narrowly tailored; and
- 27 (5) No less restrictive means exist to achieve the overriding interest.

1 (Local Rule 14 of the Santa Clara County Superior Court, Criminal Division; California Rules of
2 Court, Rule 2.550(d).)

3 As to the first two necessary findings, Miller and third-party inmates' privacy interests, and
4 the DOC's interest in security are overriding interests that overcome that right of the public to the
5 records and support sealing the record.

6 The right of privacy in the California Constitution (art. I, § 1), "protects the individual's
7 reasonable expectation of privacy against a serious invasion." (*Pioneer Electronics (USA), Inc. v.*
8 *Superior Court* (2007) 40 Cal.4th 360, 370.) This interest protects some arrestees from the
9 dissemination of their arrest records as reflected in statutory law. (*Loder v. Municipal Court* (1976)
10 17 Cal.3d 859, 869-875 [detailing the statutory protections preventing disclosure of arrest records in
11 certain cases and misuse of arrest records]; *In re Jorge G.* (2004) 117 Cal.App.4th 931, 952.)
12 Furthermore, the government has a duty not to disseminate embarrassing and private information
13 about individuals. (*Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th
14 856, 886 ["[W]e conclude that the defendants in the case before us owed a duty of care to plaintiffs
15 not to place decedent's death images on the Internet for the lurid titillation of persons unrelated to
16 official CHP business."].) Failure to protect citizens' privacy interests can lead to suits for false
17 light, invasion of privacy, and intentional infliction of emotional distress. (*Ibid.*)

18 Thus, both Defendant Miller and other inmates who may have been captured in the
19 Recordings have strong privacy interests that weigh against public disclosure. Additionally, the
20 Recordings contain explicit images of Miller and show correctional officers addressing mental health
21 episodes. (Declaration of Undersheriff John Hirokawa (Hirokawa Decl.) ¶¶6, 7.) Aside from being
22 embarrassing to Miller, disclosure of the Recordings may violate his right to privacy in his mental
23 health records that are protected by the Health Insurance Portability and Accountability Act of 1996
24 (HIPAA). For these reasons, the County sought a protective order before releasing records sought
25 by Miller's defense attorney in discovery. (Loisel Decl., Ex. B.) However, the Court ordered that
26 the records be released to Defendant Miller. (*Id.*, Ex. C.)

27 //

1 Additionally, the DOC has strong interests in preventing the disclosure of the Recordings.
2 The Recordings contain images of the Santa Clara County Main Jail. (Hirokawa Decl. ¶4.) They
3 also show the techniques that correctional officers use to transfer inmates in and out of their cells.
4 (*Ibid.*) Releasing these videos would pose a severe and specific risk to the order, safety, and security
5 of DOC staff, its inmates, and the facility, in that such information could allow inmates to gain
6 insight into the methods of supervision and security that are essential for the orderly operation of
7 DOC facilities and the safety of its inmates, staff, and visitors. (*Ibid.*) This information is highly
8 confidential in that if it were disclosed, current and future inmates could obtain sufficient knowledge
9 to manipulate security measures, for example, to plan and carry out assaults on other inmates and on
10 DOC staff. (*Ibid.*)

11 Furthermore, there is no countervailing public interest in disclosure of pre-trial discovery.
12 (*See Coalition Against Police Abuse v. Superior Court* (1985) 170 Cal.App.3d 888, 900, citing
13 *Seattle Times Co. v. Rhinehart* (1984) 467 U.S. 20, 33.)

14 As to the remaining findings, a substantial probability exists that the overriding interest will
15 be prejudiced if the thumb drive is not sealed because the media is actively seeking the Recordings
16 and some media outlets already possesses them. (Loisel Decl., Ex. D and E, *id.* ¶6.) The proposed
17 order is narrowly tailored because it still allows use of the records by the litigants. And no less
18 restrictive means exist to achieve the overriding interest. (Hirokawa Decl. ¶5.)

19 Because the evidence supports the findings required by Local Rule 14, the County
20 respectfully asks that the Court seal the thumb drive and its contents.

21 **B. THE COURT SHOULD ISSUE A PROTECTIVE ORDER PREVENTING THE**
22 **DISCLOSURE OF THE RECORDINGS TO NONPARTIES AND ORDER THAT**
23 **NONPARTIES RETURN ALL COPIES OF THE RECORDINGS TO THE DOC.**

24 It is within the Court's power to issue protective orders governing the disclosure of evidence
25 produced in pre-trial discovery. The County respectfully requests that the Court issue a protective
26 order preventing anyone from disclosing or disseminating the Recordings to a nonparty because of
27 the privacy and security interests discussed above.

28 //

1 **DECLARATION OF MEGHAN LOISEL**

2 I, Meghan Loisel, declare as follows:

3 1. I am employed as a Deputy County Counsel for the County of Santa Clara and am
4 licensed to practice law before this court and all courts of the State of California. I am attorney of
5 record for the County of Santa Clara.

6 2. I have personal knowledge of the facts herein and could testify to them.

7 3. I attach as Exhibit A a true and correct copy of the subpoena the Department of
8 Corrections received from J. Hector Moreno, Jr., then counsel for Miller.

9 4. I attach as Exhibit B a true and correct copy of the affidavit by Captain Troy Beliveau
10 objecting to the release of the recordings and requesting that the Court issue a protective order
11 limiting disclosure of the recording to counsel.

12 5. I attach as Exhibit C a true and correct copy of the Court's October 16, minute order
13 releasing the Recordings to Defendant Shane Miller.

14 5. I attach as Exhibits D and E a true and correct copy of California Public Records Act
15 Requests from interested journalists actively seeking the Recordings.

16 6. I am informed and believe that the Mercury News and the National Broadcasting
17 Company (NBC) have copies of the Recordings.

18 I declare under penalty of perjury the foregoing is true and correct, and I executed this
19 Declaration on October 8, 2015 at San Jose, California.

20 By:

21 
MEGHAN LOISEL

Exhibit A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): J. HECTOR MORENO, JR. SBN: 131970 The Law Firm of J. Hector Moreno, Jr. & Associates 1800 Hamilton Avenue, Suite 100 San Jose, CA 95125 TELEPHONE NO.: 408-440-2575 FAX NO. (Optional): 408-677-4103 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): SHANE D. MILLER, Defendant	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 190 W. Hedding Street MAILING ADDRESS: 190 W. Hedding Street CITY AND ZIP CODE: San Jose, CA 95110 BRANCH NAME: San Jose Facility - Hall of Justice	
CASE NAME: PEOPLE OF THE STATE OF CALIFORNIA vs. SHANE D. MILLER	
ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS: Subpoena/Subpoena Duces Tecum	CASE NUMBER: C1366347

You must attend court or provide to the court the documents listed below. Follow the orders checked in item 2 below. If you do not, the judge can fine you, send you to jail, or issue a warrant for your arrest.

1. To: (name or business) Department of Corrections

2. You must follow the court order(s) checked below:

- a. Attend the hearing.
- b. Attend the hearing *and* bring all items checked in c. below.
- c. Provide a copy of these items to the court (Do not use this form to obtain Juvenile Court records):
 - (1) See attached sheet labeled "Provide These Items."
 - (2) _____
 - (3) _____
- d. If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."
- e. If someone else is responsible for maintaining the items checked in c. above, that person (the Custodian of Records) must also attend the hearing.
- f. If this box is checked and you deliver all items listed above to the court **within 5 days of service of this order**, you do not have to attend court if you follow the instructions in item 5.

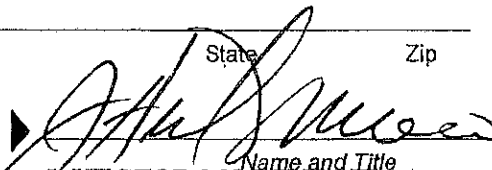
3. Court Hearing Date: _____ The court hearing will be at (name and address of court): _____
 Date: October 3, 2014 Time: 1:30 p.m. 190 W. Hedding Street
 Dept.: 44 Rm.: _____ San Jose, CA 95110

Call the person listed in item 4 below to make sure the hearing date has not changed. If you cannot go to court on this date, you must get permission from the person in item 4. You may be entitled to witness fees, mileage, or both, in the discretion of the court. Ask the person in item 4 after your appearance.

4. The person who has required you to attend court or provide documents is:

Name: J. Hector Moreno, Jr. Phone No.: 408-440-2575
 Address: 1800 Hamilton Avenue, Suite 100
 Number, Street, Apt. No.
San Jose, CA 95125
 City State Zip

FOR COURT USE ONLY

Date: September 11, 2014 Signature:  _____
 Name and Title
J. HECTOR MORENO, JR., Attorney at Law



CASE NAME: People vs. Shane D. Miller	CASE NUMBER: C1366347
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5. a. Put all items checked in item 2c and your completed *Declaration of Custodian of Records* form in an envelope. (You can ask the person in item 4 where to get this form.) Attach a copy of page 1 of this order to the envelope.
- b. Put the envelope inside another envelope. Then, attach a copy of page 1 of this form to the outer envelope or write this information on the outer envelope:
 - (1) Case name
 - (2) Case number
 - (3) Your name
 - (4) Hearing date, time, and department
- c. Seal and mail the envelope to the Court Clerk at the address listed in item 3 or The court address in the caption on page 1. You must mail these documents to the court within five days of service of this order.
- d. If you are the Custodian of Records, you must also mail the person in item 4 a copy of your completed *Declaration of Custodian of Records*. Do not include a copy of the documents.

___ The server fills out the section below. ___

Proof of Service of CR-125/JV-525

1. I personally served a copy of this subpoena on:
 Date: _____ Time: _____ a.m. p.m.
 Name of the person served: Department of Corrections
 At this address: 180 West Hedding Street, San Jose, CA 95110
 After I served this person, I mailed or delivered a copy of this Proof of Service to the person in item 4 on (date): _____
 Mailed from (city): _____
2. I received this order for service on (date): _____ and was not able to serve (name of person) _____ after (number of attempts) _____ attempts because:
 - a. The person is not known at this address.
 - b. The person moved and the forwarding address is not known.
 - c. There is no such address.
 - d. The address is in a different county.
 - e. I was not able to serve by the hearing date.
 - f. Other (explain): _____
3. Server's name: Michael List Phone no. 408-634-5478
4. The server (check one)
 - a. is a registered process server.
 - b. is not a registered process server.
 - c. is a sheriff, marshal, or constable.
 - d. works for a registered process server.
 - e. is exempt from registration under Business and Professional Code section 22350(b).
5. Server's address: P.O. Box 5255, San Jose, CA 95150
 If server is a registered process server:
 County of registration: Santa Clara County Registration no.: 1371

I declare under penalty of perjury under the laws of the State of California that I am at least 18 years old and not involved in this case and the information above is true and correct.

Date: _____

▶ MICHAEL LIST
TYPE OR PRINT NAME OF SERVER

▶ _____
SIGNATURE OF SERVER



SHORT TITLE: - People vs. Shane D. Miller	CASE NUMBER: C1366347
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ATTACHMENT (Number): 1
(This Attachment may be used with any Judicial Council form.)

Provide These Items:

1. Copies of any and all WRITINGS, as defined by Evidence Code Section 250, including but not limited to, incident reports, including but not limited to, shift reports, infraction citations, Inmate Infraction forms, writings, medical records, medical reports and infirmary reports, which concern SHANE D. MILLER. This is limited in time from September 22, 2013, to the date of production.

2. Copies of video surveillance of SHANE D. MILLER, from September 22, 2013, to the date of production. Consisting of the following:

A. All video recordings of SHANE D. MILLER, including, but not limited to, video recording of the events described in the July 17, 2014 Inmate Infraction Form, a true and correct copy of which is attached hereto as Exhibit A; and,

B. All audio recordings which accompany, are part of, or concern the above referenced matter.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 2 of 3
(Add pages as required)

Exhibit B

Declaration of Records Certification

Title of Action:	People v Shane Miller
File Number:	C1366347
Due Date:	10/03/2014
Requested by:	J. Hector Moreno, Jr., Attorney for the Defendant

I, Troy Beliveau, the undersigned, say:

1. I am the duly authorized Custodian of Records for the Santa Clara County Department of Correction;
2. I have the authority to certify copies of these records;
3. Check either A, B, C or D
 - A. The copies transmitted herewith are to the best of my knowledge, true and correct copies of the original records in the custody and control of the Santa Clara County of Santa Clara Department of Correction.

- B. The copies transmitted herewith are to the best of my knowledge, true and correct copies of the original records in the custody and control of the Santa Clara County Department of Correction as described in the above-named subpoena. Enclosed: 1 Page IR #13-51120 from 09/22/13 and 1 CD Containing Booking Video from 09/22/13 for IR #13-51120. 3 Pgs. of IR #14-53566 from 3/22/14 and 1 CD Containing Video from 03/22/14 for IR #14-53566. 3 Pgs. of IR #14-53602 from 03/25/14. 3 Pgs. of IR #14-53711 from 04/01/14. 1 Page IR #14-54521 from 05/31/14. 1 Page IR #14-54544 from 06/02/14. 2 Pgs. of IR #14-54912 from 06/26/14. 1 Page IR #14-55215 from 07/17/14. 5 Pgs. of IR#14-55217 from 07/17/14 and 1 CD Containing Video from 07/17/14 for IR #14-55217. 1 Page IR#14-55235 from 07/18/14. 2 Pgs. of IR #14-55261 from 07/20/14. 3 Pgs. of IR #14-55291 from 07/24/14 and 1 CD Containing Video from 07/24/14 for IR #14-55291. 1 Page IR #14-55327 from 07/25/14. 3 Pgs. of IR #14-55474 from 08/14/14 and 1 CD Containing Video from 08/14/14 for IR #14-55474. 1 Page Infraction from 07/13/14 and 1 Page Infraction from 07/17/14 for Shane Miller DQB938.

Note: THESE RECORDINGS ARE BEING PROVIDED TO THE COURT IN RESPONSE TO THE ABOVE REFERENCED REQUEST ISSUED TO THE DEPARTMENT OF CORRECTION. *Note: These are video recordings of the Main Jail that may show arrestees other than the subject in question. The DOC OBJECTS to the release of the recordings to the extent that such release violates the privacy rights of third party subjects appearing in these video recordings pursuant to Article 1, Section 1 of the California Constitution. The DOC therefore requests that a Protective Order be issued regarding the recordings depicting third parties that limits the disclosure to counsel only.

- C. Copies did exist, but have since been destroyed in accordance with Local and State Law and Department of Correction Policy.
 - D. No copies are transmitted herewith, because the Santa Clara County Department of Correction has none of the records described in the above-named subpoena. Note: The Department of Correction (DOC) does not have possession, custody or control of inmate medical/psychiatric records. Medical/psychiatric records requests must be directed directly to SANTA CLARA HEALTH & HOSPITAL SYSTEM/ADULT CUSTODY HEALTH SERVICES, 150 W. Hedding St., 2nd Floor, San Jose, CA 95110.
4. The records referred to above were prepared by the personnel of the Santa Clara County Department of Correction in the ordinary course of business at or near the time of the act, condition, or event.

Executed on: 10/01/2014

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



 Signature of Declarant

CAPTAIN

 Title of Declarant

I _____ in the absence of the Custodian of Records am authorized to certify Records for the Custodian of the Records.

 Signature of Declarant

 Title

Exhibit C

4 SUPERIOR COURT
190 W. HEDDING STREET
SAN JOSE, CA 95110

CASE NO. C1366347
GEN 13041585

DATE 10/16/2014 1:30 PM DEPT. 44
01/22/1977 CAB4202B62 CDY BK:Y
CLERK J. CALISEURY Padella DGB938 M
HEARING HEARING ON SUBPOENA DUCES TECUM
AGENCY SA-04315-B1688-BROWN
STATUS I-SET -NBA TW N

PEOPLE VS. SHANE D MILLER
K.A. 1501 CABRILLO CT
GROVER BEACH, CA 93433

JUDGE HON. CYNTHIA SEVELY *Hurt* DV:Y
REPORTER GABRIEL/WAIVED *Harris* CHILD: STATUS
DEF. ATTY DRENO, HECTOR (G) 11-7-14 *DA: Domestico*
CHARGES F(001)PC664(A)/1B7 *900* F(002)PC245(A)(4)
F(003)PC273.5(A) *900* F(004)PC422.1

ntc: 10/13/14 830 D46
NEXT APPEARANCE

Defendant Present Not Present Atty Present *A/R by Adhech*
 Arr'd Adv Arr Wav Amend Comp/Info Arr Plea IDC PTC Prob / Sent Interpreter Sworn
 PC977 Filed On File Repr. Adv / Wav Bail/ OR/ SORP Rect Dr Rpt FAR/ ERC Bail Apply Balance Exonerated
 NG Entered by CRT NGBRI / Adv PSet Prelim Readiness S/R MTC Bail Exonerated Forfeited Bond #
 Denies Priors/ Allegations/ Enhancements/Refusal Further Jury CT Peo / Def Wav Jury Reassumption Filed Forfeiture Set Aside Bail Rein
 TW TNW TW / WD TW Sentence Ref'd \$ _____ Costs Within 30 Days to Court
 Ref / Appt PD / ADO / IDO Con Decl Adm A / F APO / DADS/ Prop 36 P36 Re-Assmt SORP / OR Revoked Reinstated May Post & Forfeit
 Relieved Appt'd Crim Proc Susp Rein Status Hrg BW Ordered \$ _____ Stayed To Issue
 Hrg on Motion *SDT TO D46* Doubt Decl Pursuant PC 1368 No Cite Release/SCIT No Request Cash Only
 Granted Denied Submitted Off Cal Subm on Report Found BW Set Aside Recalled Filed Remain Out NWF
 Stip to Comm Drs. Appointed Max Term _____ Committed _____ Proof of _____
 Prelim Wav Certified to General Jurisdiction MDA / COM Amended to _____
 Amended to (M) VC12500(a) / VC23103(a) Pur VC23103.5 DA Stmt Filed

PLEA Conditions: None No State Prison PC17 after 1 Yr Prob Includes VOP
 Jail / Prison Term of _____ Add to Cal Vacate pending date
 Dismissal / Striking _____ Subm time of Sent Harvey Stip _____
 Adv Max Pen / Parole / Prob / immig / Appeal Reg HS11590/PC290/PC457.1/PC186.30 FSF Fines/Fees PC29800/29805/30305/666/VC14607.8
 Wav Right to Counsel Court / Jury Trial Subpoena / Confront / Examine Witnesses Self-incrimination Written Waiver filed Plea / Absentia filed
 COP GUILTY NOLO CONTENDERE to charges & admits enhancements / allegations / priors PC17 Arbuckle Factual Basis found Findings stated
 Prop 36 Granted / Unamenable / Refused / Term DEJ Eligibility Filed DEJ Granted / Rein / Term Fee \$ _____ Guilty Plea Rendered

Waives Referral APO Full Rpt CR110 issued **Fines/Fees Pay to:** DOR Traffic Court Today Audit #
 Sent Suspended _____ PROBATION DENIED

PROBATION Execution Imposition of sentence suspended for probation period
 COURT FORMAL PROBATION GRANTED for _____ Days / Mos / Yrs
 Report to APO within _____ Days Terminated Upon Release
 Perform _____ Hrs Volunteer Work as directed PO / SAP in lieu of fine/Jail
 Not drive w/o valid DL & Ins Adv VC23600 HTO Re-refer
 MOP FOP 12 hrs 3 mos 9 mos Enroll within _____ days
 DL Susp/ Restr'd/ Rvk'd for _____ IID Not/Ordered/ Rmv'd Term _____ Yrs
 No contact with victim or family / co-defts unless appr by APO PC1202.05
 DVPO issued / mod / term'd Exp _____ Victim Present
 No Contact Peaceful Contact DSA thru APO / DOR / CRT Filed
 Not own/possess deadly weapons Destroy/return weapon _____
 Stay away from _____
 Submit Search/Testing Educ/Voc Trng/Emp/ No alcohol / drugs or where sold
 Substance Abuse, Psych, Theft, Anger Mgmt, DV, Parenting cnsl / prgm
 PC296 (DNA) PC1202.1 HIV Test / Education
VOP: Wav Arr'd _____ Admits/Denies Viol Court Finds VOP / No VOP
Prob Rein / Mod / Term'd / Revoked / Remains Revoked / Ext to _____
 Original Terms & Conditions Except as Amended herein
 Co-terminous with _____ No Further Penalties / Reviews
Other: _____

COUNT	\$	+ PA \$	<input type="checkbox"/> Purs HS11350d
COUNT	\$	+ PA \$	<input type="checkbox"/> PC290.3
AIDS / CPP	\$	+ PA \$	SORP
DPF	\$	+ PA \$	EMAT \$
LAB	\$	+ PA \$	
DRF /RF	\$	Add'l RF \$	Susp'd PC1202.44/45
AEF	\$	Original Fine \$	
SECA/COPA	\$	CTS PC2900.5	\$
ICMF	\$	TOTAL DUE	\$
ICIN	\$	Payments Granted / Modified	
AR	\$	\$ / Mo beginning	
SHELTER	\$	FINE STAYED	
DV	\$	Committed @ \$ /day	<input type="checkbox"/> May Pay Out
ATTY	\$	Consec/Conc to	
ASF\$25/CPF\$10	\$	Fine / Fees	<input type="checkbox"/> Deemed Satisfied <input type="checkbox"/> Commuted
P/INVEST	\$	P/SUP \$ /Mo	<input type="checkbox"/> Waived
CJAF \$129.75/\$259.50	\$	Add'l Fees Waived	
		SECA, ICMF, ICIN, CJAF, PINVEST, PSUP FEES NOT COND. OF PROB	
		Restit <input type="checkbox"/> Gen \$	to
		As determined by APO/Court	<input type="checkbox"/> Referred to VWAC <input type="checkbox"/> Collect Civilly

JAIL/PRISON See Attach'm't Pg CDCR/Parole collect restit from Def's earnings Blended Sentence County Jail

Count	F/M	Violation	Prison Term / Yrs	Enhancement / Priors	Yrs / Styd / Strkn	HRS / DAYS / MOS

Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Total

CTS = _____ ACT + _____ 4019 1/2 1/3 PC2933.1 _____ Total Total term _____ CDCR / PC 1170h
 Straight time In Camp WWP PC1209 Fees Waived Court Rec _____ All / Except EMP/PSP/ERP/DRP/Co Parole/NP
 Sent Deemed Sr'd Rpt to Parole/Prob w/in _____ Adv/ORD _____ Yrs/Mos Parole/MS/PRCS/Appeal Consec Conc to _____
 Bal CJ Susp All but _____ Hrs/Days/Mos On Cond Complete Residential Treatment Prgm Serve Consec MO/TU/WE/TH/FR/SA/SU
 Pre-process _____ AM/PM Stay / Surrender / Transport to _____ @ _____ AM/PM or Sooner
 REMANDED-BAIL \$ _____ REMAIN AS SET NO BAIL COMMITTED RELEASED OR SORP JAC PHONE ASSMT P36
 AS COND OF SORP BAIL INCREASED / REDUCED TO PRGM AS REC BY JAC DOC TO ARRANGE TRANSPORT UPON AVAIL BED

4 SUPERIOR COURT
190 W. HEDDING ST
SAN JOSE, CA 95110

CASE NO. C1366347
TC: CEN 13041585

PEOPLE VS. SHANE D MILLER
1501 CABRILLO CT
GROVER BEACH, CA 93433

DATE 10/03/2014 1:30 PM DEPT. 44
01/22/1977 CAB4202B62 CDY BK:Y
CLERK L PADILLA/J MORRIS DQB938 M
HEARING HEARING ON SUBPOENA DUCES TECUM
AGENCY SA-04315-B1688-BROWN
STATUS I-SET -NBA TW N

JUDGE HON. SUNIL R. KULKARNI
REPORTER D. HARMS
DEF. ATTY. MORENO, HECTOR (G)
CHARGES F(001)PC664(A)/187
F(003)PC273.5(A)

D.V. Y AGENCY
CHILD: STATUS
D.A. *Demerito* APO
F(002)PC245(A)(4)
F(004)PC422 VIOLATION DATE
09/21/2013

10-1644 180
446 - RAS / 10-274
AJO 546 - RAS

NEXT APPEARANCE
 Defendant Present Not Present Atty Present *A/A Jay Aulrey* AD / PD / IDO / Special App
 Arr'd Adv Arr Wav Amend Comp/Info Arr Plea IDC PTC Prob / Sent Interpreter Sworn
 PC977 Filed On File Repr. Adv / Wav Bail/ OR/ SORP Rect Dr Rpt FAR/ ERC Bail Apply Balance Exonerated
 NG Entered by CRT NGBRI / Adv PSet Prelim Readiness S / B MTC Bail Exonerated Forfeited Bond #
 Denies Priors/ Allegations/ Enhancements/Refusal Further Jury CT Peo / Def Wav Jury Reassumption Filed Forfeiture Set Aside Bail Rein
 TW TNW TW / WD TW Sentence Ref'd \$ _____ Costs Within 30 Days to Court
 Ref / Appt PD / ADO / IDO Con Decl Adm A / F APO / DADS/ Prop 36 P36 Re-Assmt' SORP / OR Revoked Reinstated May Post & Forfeit
 Relieved Apptd Crim Proc Susp Rein Status Hrg BW Ordered \$ _____ Stayed To Issue
 Hrg on Motion *SOP M* Doubt Decl Pursuant PC 1368 No Cite Release/SCIT No Request Cash Only
 Granted Denied Submitted Off Cal Subm on Report Found BW Set Aside Recalled Filed Remain Out NWF
 Stip to Comm Drs. Appointed Max Term _____ Committed _____ Proof of _____
 Prelim Wav Certified to General Jurisdiction MDA / COM Amended to _____
 Amended to (M) VC12500(a) / VC23103(a) Pur VC23103.5 DA Stmt Filed

PLEA Conditions: None No State Prison PC17 after 1 Yr Prob Includes VOP
 Jail / Prison Term of _____ Add to Cal Vacate pending date
 Dismissal / Striking _____ Subm time of Sent Harvey Stip

Adv Max Pen / Parole / Prob / Immig / Appeal Reg HS11590/PC290/PC457.1/PC186.30 FSF Fines/Fees PC29800/29805/30305/666/VC14607.8
 Wav Right to Counsel Court / Jury Trial Subpoena / Confront / Examine Witnesses Self-incrimination Written Waiver filed Plea / Absentia filed
 COP GUILTY NOLO CONTENDERE to charges & admits enhancements / allegations / priors PC17 Arbuckle Factual Basis found Findings stated
 Prop 36 Granted / Unamenable / Refused / Term DEJ Eligibility Filed DEJ Granted / Rein / Term Fee \$ _____ Guilty Plea Rendered
 Waives Referral APO Full Rpt CR110 issued **Fines/Fees Pay to:** DOR Traffic Court Today Audit # _____

Sent Suspended _____ PROBATION DENIED
PROBATION Execution Imposition of sentence suspended for probation period
 COURT FORMAL PROBATION GRANTED for _____ Days / Mos / Yrs
 Report to APO within _____ Days Terminated Upon Release
 Perform _____ Hrs Volunteer Work as directed PO / SAP in lieu of fine/Jail
 Not drive w/o valid DL & Ins Adv VC23600 HTO Re-refer
 MOP FOP 12 hrs 3 mos 9 mos Enroll within _____ days
 DL Susp/ Restr'd/ Rvk'd for _____ IID Not/Ordered/ Rmv'd Term _____ Yrs
 No contact with victim or family / co-defts unless appr by APO PC1202.05
 DVPO issued / mod / term'd Exp _____ Victim Present
 No Contact Peaceful Contact DSA thru APO / DOR / CRT Filed
 Not own/possess deadly weapons Destroy/return weapon _____
 Stay away from _____
 Submit Search/Testing Educ/Voc Trng/Empl No alcohol / drugs or where sold
 Substance Abuse, Psych, Theft, Anger Mgmt, DV, Parenting cnsl / prgm
 PC296 (DNA) PC1202.1 HIV Test / Education
VOP: Wav Arr'd _____ Admits/Denies Viol Court Finds VOP / No VOP
Prob Rein / Mod / Term'd / Revoked / Remains Revoked / Ext to _____
 Original Terms & Conditions Except as Amended herein
 Co-terminous with _____ No Further Penalties / Reviews
Other: _____

COUNT	\$ _____	+ PA \$ _____	<input type="checkbox"/> Purs HS11350d
COUNT	\$ _____	+ PA \$ _____	<input type="checkbox"/> PC290.3
AIDS / CPP	\$ _____	+ PA \$ _____	SORP _____
DPF	\$ _____	+ PA \$ _____	EMAT \$ _____
LAB	\$ _____	+ PA \$ _____	
DRF /RF	\$ _____	Add'l RF \$ _____	Susp'd PC1202.44/45
AEF	\$ _____	Original Fine \$ _____	
SECA/COPA	\$ _____	CTS PC2900.5	\$ _____
ICMF	\$ _____	TOTAL DUE	\$ _____
ICIN	\$ _____	Payments Granted / Modified	
AR	\$ _____	\$ _____ / Mo beginning _____	
SHELTER	\$ _____	FINE STAYED	
DV	\$ _____	Committed @ \$ _____ / day	<input type="checkbox"/> May Pay Out
ATTY	\$ _____	Consec/Conc to _____	
ASF\$25/CPF\$10	\$ _____	Fine / Fees <input type="checkbox"/> Deemed Satisfied <input type="checkbox"/> Commuted	
P/INVEST	\$ _____	<input type="checkbox"/> P/SUP \$ _____ / Mo <input type="checkbox"/> Waived	
CJAF \$129.75/\$259.50	\$ _____	<input type="checkbox"/> Add'l Fees Waived	
		<input type="checkbox"/> SECA, ICMF, ICIN, CJAF, PINVEST, PSUP FEES NOT COND. OF PROB	
		<input type="checkbox"/> Restit <input type="checkbox"/> Gen \$ _____ to _____	
		<input type="checkbox"/> As determined by APO/Court <input type="checkbox"/> Referred to VWAC <input type="checkbox"/> Collect Civilly	

JAIL/PRISON See Attachm't Pg CDCR/Parole collect restit from Def's earnings Blended Sentence County Jail

Count	F/M	Violation	Prison Term / Yrs	Enhancement / Priors	Yrs / Styd / Strkn	HRS / DAYS / MOS

Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Total

CTS = _____ ACT + _____ 4019 1/2 1/3 PC2933.1 Total Total term _____ CDCR / PC 1170h
 Straight time In Camp WWP PC1209 Fees Waived Court Rec. All / Except EMP/PSP/ERP/DRP/Co Parole/NP
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 Bal CJ Susp All but _____ Hrs/Days/Mos On Cond Complete Residential Treatment Prgm Serve Consec MO/TU/WE/TH/FR/SA/SU
 Pre-process _____ AM/PM Stay / Surrender / Transport to _____ @ _____ AM/PM or Sooner

REMANDED-BAIL \$ _____ REMAIN AS SET NO BAIL COMMITTED RELEASED OR SORP JAC PHONE ASSMT P36
 AS COND OF SORP BAIL INCREASED / REDUCED TO PRGM AS REC BY JAC DOC TO ARRANGE TRANSPORT UPON AVAIL BED

Exhibit D

Loisel, Meghan

From: Stevens, Cheryl
Sent: Wednesday, October 07, 2015 5:37 PM
To: Loisel, Meghan
Subject: FW: PRA for SHANE MILLER lawsuit documents and DVDs, AND my previous request about # and outcome of use of force jail incidents

CPRa request

From: Tracey Kaplan [mailto:tkaplan@mercurynews.com]
Sent: Wednesday, October 07, 2015 4:15 PM
To: Johanna Luerra
Cc: Stevens, Cheryl
Subject: Re: PRA for SHANE MILLER lawsuit documents and DVDs, AND my previous request about # and outcome of use of force jail incidents

Thanks. I need clarity on the difference between a grievance and a complaint. Are the complaints a subset of the grievances, ie of xxxx number of grievances, xx were use of force complaints? Also, there doesnt appear to be any attatchment. do u have the OUTCOME of these use of force complaints - eg, wdre they found valid or not, or whatever jargon is used. Where is the info abt the number of reports filed by correctional deputies abt use of force? Please respond. Ive cc'd my colleaugues with this info and with these questions

Sent from my iPhone

On Oct 7, 2015, at 2:38 PM, Johanna Luerra <Johanna.Luerra@sheriff.sccgov.org> wrote:

Greetings Ms. Kaplan,
Please find the statistic information you were looking for in regards to number of use of force reports, number of grievances/complaints, and outcomes of those complaints.

Regards,

ITEM A)

TOTAL # OF INMATE UOF
COMPLAINTS

By FACILITY - From 2008-2015

	MJ	ELM	CCW
2008	24	8	4
2009	28	2	2
2010	26	4	1
2011	51	4	4
2012	51	2	0
2013	44	1	0
2014	41	1	5
2015	41	3	5

ITEM B)

TOTAL # OF INMATE GRIEVANCES FILED
By FACILITY - From 2008-2015

	2008	2009	2010	2011	2012	2013	2014	2015
ELM MENS	915	1221	635	729	797	939	845	480
ELM WOMENS	881	660	610	807	802	1122	1217	574
MAIN JAIL SOUTH	577	554	543	424	513	616	615	375
MAIN JAIL NORTH	1573	1696	1230	1401	1217	1487	1298	821

ITEM C)

See attachment.

<image003.jpg>

Notice: This email message and/or attachments may contain information that is confidential or restricted. It is intended only for the individuals named as recipients in the message. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or content to others and must delete the message from your computer. Additionally, unauthorized interception, review, use or disclosure is prohibited and may violate applicable law, including the Electronic Communication Privacy Act. If you have received this message in error, please notify the sender by return email.

From: Stevens, Cheryl [<mailto:Cheryl.Stevens@cco.sccgov.org>]

Sent: Friday, October 02, 2015 2:55 PM

To: tkaplan@mercurynews.com

Subject: FW: PRA for SHANE MILLER lawsuit documents and DVDs, AND my previous request about # and outcome of use of force jail incidents

Ms. Kaplan in response to your previous CPRA request that you posted more than 10 days ago when you actually asked for the reports and not the number of reports as you have done so below, we will send you the number of reports and grievances and the outcomes by Tuesday, October 6th. The question you posed below cannot be responded to under the CPRA because no documents exist that are responsive. We will provide a response to your other request listed below by October 9, 2015.

Cheryl A. Stevens
Deputy County Counsel
Santa Clara County County Counsel Office
70 West Hedding Street, East Wing, 9th Floor
San Jose, CA 95110
(408) 299-5934
(408) 299-7240 (fax)

From: Tracey Kaplan <tkaplan@mercurynews.com>
Date: September 30, 2015 at 6:53:07 PM PDT
To: "Korb, Orry" <orry.korb@cco.sccgov.org>, "Leung, Luke" <luke.leung@esa.sccgov.org>, Robert Coelho <robert.coelho@cco.sccgov.org>, John Hirokawa <john.hirokawa@sheriff.sccgov.org>, David Snyder <DSnyder@sheppardmullin.com>, "Smith, Jeff" <jeff.smith@ceo.sccgov.org>, Tracey Kaplan <tkaplan@mercurynews.com>
Subject: PRA for SHANE MILLER lawsuit documents and DVDs, AND my previous request about # and outcome of use of force jail incidents

The Mercury News requests the following under the California Public Records Act:

----Any DVD(s), use-of-force reports filed by sheriff's personnel regarding inmate **SHANE MILLER** and any excessive force grievances filed by inmate Shane Miller that pertain to incidents on June 26, 2014; July 17,2014; Aug. 4, 2014.

----The answer to the following question: Was **Deputy County Counsel Cheryl A. Stevens** in the jail on July 17, 2014, in the wing where inmate Shane Miller was housed?

-----**The answer to the following questions I posed more than 10 days ago:**

- a) How many use of force reports were filed by jail personnel in each of the past five years and year to date?
- b) How many grievances and/or complaints were filed by inmates over use of force for the same time period?
- c) The outcome of those complaints -- how many were sustained, how many rejected as untrue, etc.

--

Warm regards,
Tracey Kaplan
San Jose Mercury News Staff Writer
email: tkaplan@mercurynews.com
cell/text: 831.227.7166

Exhibit E

To: "Jose Cardoza (jose.cardoza@sheriff.sccgov.org)" <jose.cardoza@sheriff.sccgov.org>
Subject: NBC Bay Area Public Records Request

Hello,

Below you'll find a public records act request from NBC Bay Area. Please call me at 408-582-8909 with any questions.

Regards,

Michael Bott
NBC Bay Area Investigative Producer
408-582-8909

Dear Custodian of Records,

Pursuant to my rights under the California Public Records Act, I am requesting access to and copies of any and all of the following records held by your agency.

- **It is my understanding that Shane D. Miller has been an inmate at the Santa Clara County Jail since September, 2013. We are requesting any and all surveillance video or any other type of video showing deputies and jail staff entering Miller's cell, interacting with Miller, transporting Miller to a different part of the jail, or exiting Miller's cell on the following dates: 3/26/2014, 6/26/2014, 7/17/2014, 8/4/2014, and/or 1/3/15.**
- **Any/all emails sent to or from employees of the Santa Clara County Sheriff's Department mentioning or in regards inmate Shane D. Miller from 9/1/2013 – present**
- **Any/all reports, memos or other written records discussing inmate Shane D. Miller from 9/1/2013 – present.**

I ask that the responsive materials should be made available in electronic format where possible.

I am seeking a fee waiver for this as a working journalist, and the records I'm seeking are not for commercial purposes.

However, if you don't grant my fee waiver, I agree to pay reasonable duplication fees for the processing of this request. Please notify me prior to your incurring any expenses in excess of \$100.

If my request is denied in whole or part, I ask that you justify all deletions/redactions by reference to specific exemptions of the California Public Records Act. If you deem parts of this request to be exempt from disclosure, please redact those portions and send the rest of the records in their entirety. Given the current allegations of mistreatment of inmates at the jail, including homicide allegations against three correctional deputies serving at the jail, the public interest in disclosing these records far outweighs any right to privacy of any jail staff member who may be captured in the video.

Please confirm you receipt of this request. Thank you for your time and assistance on this matter. Don't hesitate to contact me at (408) 582-8909 with any questions.

Sincerely,

Michael Bott
NBC Bay Area Investigative Producer
(408) 582-8909
2450 N. 1st Street
San Jose, CA 95131

Michael Bott
Investigative Producer
NBC Bay Area

(408) 582-8909
Michael.bott@nbcuni.com
[@TweetBottNBC](#)
nbcbayarea.com

1 ORRY P. KORB, County Counsel (S.B. #114399)
MEGHAN F. LOISEL, Deputy County Counsel (S.B. #291400)
2 OFFICE OF THE COUNTY COUNSEL
70 West Hedding Street, East Wing, Ninth Floor
3 San Jose, California 95110-1770
Telephone: (408) 299-5900
4 Facsimile: (408) 292-7240

5 Attorneys for COUNTY OF SANTA CLARA

6
7
8 SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY
(CRIMINAL)
9

10
11 THE PEOPLE,
12 V.
13 SHANE MILLER,
14 Defendant.

No. C1366347

**DECLARATION OF UNDERSHERIFF
JOHN HIROKAWA**

15
16 I, JOHN HIROKAWA, declare as follows:

17 1. The facts set forth herein are true of my own personal knowledge, and if called upon
18 to testify thereto, I could and would competently do so under oath.

19 2. I am the Undersheriff for the County of Santa Clara. I report to the Sheriff and have
20 operational responsibility for the Office of the Sheriff including enforcement, administration, and
21 custody. I also serve as Chief of Correction for the Department of Correction (DOC).

22 3. I have personally reviewed the video recordings of Shane Miller described in Troy
23 Beliveau's October 3, 2014 Declaration of Records Certification.

24 4. These videos contain images of the Santa Clara County Main Jail. They also show
25 the techniques that correctional officers use to transfer inmates in and out of their cells. Based on
26 my training and experience, I believe that releasing these videos would pose a severe and specific
27 risk to the order, safety, and security of DOC staff, its inmates, and the facility, in that such
28 information could allow inmates to gain insight into the methods of supervision and security that are

1 essential for the orderly operation of DOC facilities and the safety of its inmates, staff, and visitors.
2 This information is highly confidential in that if it were disclosed, current and future inmates could
3 obtain sufficient knowledge to manipulate security measures, for example, to plan and carry out
4 assaults on other inmates and on DOC staff.

5 5. I believe that a court order requiring parties in possession of these video recordings to
6 return them to the DOC is the only way to prevent disseminating the information. Disclosure by the
7 media would be tantamount to disseminating the information to the public and the entire jail
8 population, increasing the potential risks to the safety and order of DOC facilities, and to possibly
9 deadly repercussions in penal facilities outside of Santa Clara County.

10 6. These videos contain explicit and private images of Shane Miller and possibly other
11 inmates. Disclosure of these video would jeopardize their privacy right protected by Article 1,
12 Section 1 of the California Constitution.

13 7. In the videos, correctional staff are responding to Shane Miller's mental health
14 episodes and disclosure would expose his private medical information protected by the Health
15 Insurance Portability and Accountability Act of 1996 (HIPAA).

16 8. I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed on October 8, 2015 at San Jose, California.

18  JHirokawa #1357

19 _____
20 UNDERSHERIFF JOHN HIROKAWA
21
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