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September 11, 2020

E-FILED

The Honorable William C. Griesbach
United States Courthouse Room 203
125 South Jefferson Street
Green Bay, WI 54301-4541

RE: Estate of Jonathan C. Tubby v. O'Brien, et al.
Case No: 19-CV-00137

Dear Judge Griesbach,

During the Court's August 24, 2020 Telephone Status Conference it was requested that the Defendants provide additional details relating to cell phone capabilities.

Accordingly, please find attached the Defendants Erik O'Brien, Andrew Smith and City Of Green Bay's Supplemental Response to Plaintiffs' First Request For Production of Documents and attachment as well as the simultaneously filed Declaration of Steve Meadow.

If you should have any questions, please do not hesitate to contact our offices.

Very truly yours,


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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Susan Doxtator, Arlie Doxtator and
Sarah Wunderlich, as Special
Administrators of the Estate of
Jonathon C. Tubby,

Plaintiffs,

Case No. 19-CV-137

vs.

Erik O'Brien, Andrew Smith,
Todd J. Delain, Heidi Michel,
City of Green Bay, Brown County,
Joseph P. Mleziva, Nathan K.
Winisterfer, Thomas Zeigle,
Bradley A. Dernbach and John Does 1-5,

Defendants.

**DEFENDANTS ERIK O'BRIEN, ANDREW SMITH AND
CITY OF GREEN BAY'S SUPPLEMENTAL RESPONSE TO PLAINTIFFS'
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO GREEN BAY DEFENDANTS**

Defendants Erik O'Brien, Andrew Smith and City of Green Bay, by their attorneys, Gunta Law Offices, S.C., submit the following Supplemental Response to Plaintiffs' First Request for Production of Documents to Green Bay Defendants.

REQUEST NO. 1: All Documents that you or your attorneys reviewed or identified in answering any Interrogatory propounded in this case, including Plaintiffs' First Set of Interrogatories.

RESPONSE: See attached documents.

REQUEST NO. 2: All documents that refer or relate to the Shooting, including video footage of the circumstances leading up and including Tubby's death, and the response to Tubby's death. This Request includes, without limitation, all body camera video and recorded radio transmissions of leading up to and including the incident, all vehicle dash camera video of the incident, all security camera footage of the incident, any police reports, incident reports, sally port logs, crime lab findings, autopsy reports, emails, text messages, transcripts, voicemails, diaries, journals, and calendar entries.

RESPONSE: See attached Wisconsin Department of Justice (DOJ), Division of Criminal Investigation (DCI) case file relating to the DCI's investigation into the October 19, 2018 shooting of Jonathon Tubby, bates stamped; Green Bay Police Department Case Report, Case # 18-211821 with corresponding attachments, audio and video.

SUPPLEMENTAL RESPONSE: Based on the Court's August 24, 2020 Telephone Status Conference and Judge Griesbach's clarification and recommendation, these Defendants undertook additional investigation into the make, model and capabilities of the cellphones of the Green Bay officers present in the Brown County sally port during the October 19, 2018 incident. Through this additional investigation, these Defendants located and identified Steven Meadowcroft, who is employed by the City of Green Bay Police Department as a Systems Analyst, as a further source of the requested information. Mr. Meadowcroft's Declaration is attached hereto and is being filed simultaneously with the Court in response to Judge Griesbach's request. Please also see the chart attached Exhibit A, which includes an index which lists each Green Bay Police Department employee who was on scene, the make/model of the phone that they were assigned, and the data usage for the time period of October 16, 2018 through November 15, 2018. The index also includes whether or not the individual collected any cellular data at the scene. This information was obtained by directly communicating with each Green Bay Police Department employee who was on scene.

REQUEST NO. 3: All Documents that refer or relate to any investigation undertaken by Green Bay, the United States Department of Justice, Wisconsin Department of Justice, or any other entity following the incident, including any statement, evidence, findings of the investigation and any discipline imposed as a result of the investigation.

RESPONSE: See attached Response to Request No. 2.

REQUEST NO. 4: All Documents that refer or relate to the Arrest, including without limitation any police reports, incident reports, body camera footage, any vehicle camera footage, any security camera footage, and any recorded radio transmissions relating to the Arrest.

RESPONSE: See attached Response to Request No. 2.

REQUEST NO. 5: All policies, procedures, and training materials relating to the use of deadly force.

RESPONSE: See Response to Interrogatory No. 5 and attached Response to Request No. 5.

REQUEST NO. 6: All policies, procedures, and training materials relating to the use of force to remove individuals from vehicles.

RESPONSE: See Response to Interrogatory No. 6 and Response to Request No. 6.

REQUEST NO. 7: All policies, procedures, and training materials relating to the sally port area of the Brown County jail or other similar sally ports.

RESPONSE: See Response to Interrogatory No. 7 and attached Response to Request No. 7.

REQUEST NO. 8: All Documents referring or relating to violent incidents in the sally port that occurred within the last 10 years. This Request includes, without limitation all documents

referring or relating to uses of force by law enforcement within the sally port and all incidents in which an individual in custody acted in a violent manner toward law enforcement personnel or others.

RESPONSE: Objection. This request is vague, overly broad and ambiguous to the extent it relies on the undefined term “violent.” Further answering, there is no search criteria for the police department to identify if there were incidents in which law enforcement officers used force within a sally port within the last 10 years. The sally port is under the control and jurisdiction of the Brown County Sheriff’s Department. As such, this information may be obtained through a third-party, i.e. the Brown County Sheriff’s Department.

REQUEST NO. 9: All Documents referring or relating to violent incidents that occurred within the past 10 years while law enforcement officers were attempting to remove a non-compliant arrestee from a law enforcement vehicle.

RESPONSE: Objection. This request is vague, overly broad and ambiguous to the extent it relies on the undefined term “violent.” Subject to and without waiving the objection, there is no search criteria for the police department to identify if there were “violent” incidents of law enforcement officers attempting to remove a non-compliant arrestee from a law enforcement vehicle that occurred within the last 10 years.

REQUEST NO. 10: All Documents referring or relating to improper uses of deadly force by Green Bay Police Officers within the past 10 years.

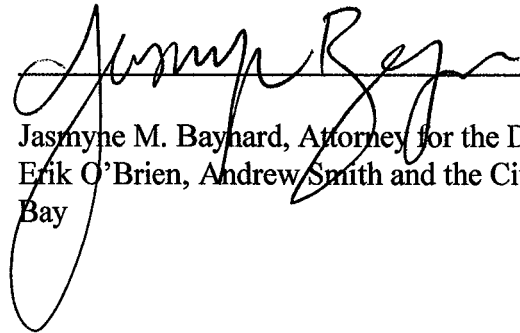
RESPONSE: Objection. This request is vague, overly broad and ambiguous to the extent it relies on the undefined term “improper.” Subject to and without waiving the objection, there

have been no determinations made during that time period that any Green Bay Police Officer's use of deadly force was "improper."

REQUEST NO. 11: The personnel and disciplinary file of Defendant Erik O'Brien.

RESPONSE: See attached Response to Request No. 11.

As to Supplemental Response No. 2:



Jasmyne M. Baynard, Attorney for the Defendants
Erik O'Brien, Andrew Smith and the City of Green
Bay

Exhibit A

Green Bay Police Department Officer	Work Cellphone Information
Erik O'Brien	<p><u>Phone No:</u> 920-370-6337</p> <p><u>Make/Model:</u> Samsung GS8 G950 64GB Black</p> <p><u>Data usage 10/16/18-11/15/18:</u> 1 Text Received 15 Picture Messages</p> <p><u>Plan Type:</u> Business Share Plus Plan Add-A-Line</p> <p>Erik O'Brien did not take any photos or videos of the scene nor did he send any text messages or data through his work phone regarding the October 18, 2018 Jonathon Tubby incident. <i>See</i> (O'Brien Dep. p. 193)</p>
Colton Wernecke	<p><u>Phone No:</u> 920-606-7358</p> <p><u>Make/Model:</u> LG Fluid 2 AN170</p> <p><u>Data usage 10/16/18-11/15/18:</u> None</p> <p><u>Plan Type:</u> Statewide Plus 1100 Add-A-Line</p> <p>Colton Wernecke did not take any photos or videos of the scene nor did he send any text messages or data through his work phone regarding the October 18, 2018 Jonathon Tubby incident. <i>See</i> (Wernecke Dep. p. 126)</p>
Tyler Haack	<p><u>Phone No:</u> 920-370-6357</p> <p><u>Make/Model:</u> LG Fluid 2 AN170</p> <p><u>Data usage 10/16/18-11/15/18:</u> None</p> <p><u>Plan Type:</u> Regional Government</p> <p>Tyler Hack did not take any photos or videos of the scene nor did he send any text messages or data through his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
Thomas Denney	<p><u>Phone No:</u> 920-370-6316</p> <p><u>Make/Model:</u> Samsung GS8 G950 64GB Black</p> <p><u>Data usage 10/16/18-11/15/18:</u> 22 Text Received 7 Text Sent</p>

	<p>8 Picture Messages</p> <p><u>Plan Type</u>: Business Share Plus Plan Add-A-Line</p> <p>Thomas Denney did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
Eric Allen	<p><u>Phone No</u>: 920-639-6697</p> <p><u>Make/Model</u>: Samsung GS7 G930 32GB Black</p> <p><u>Data usage 10/16/18-11/15/18</u>: 273 Text Received 256 Text Sent 114 Picture Messages</p> <p><u>Plan Type</u>: Business Share Plus Plan Add-A-Line</p> <p>Eric Allen did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident. <i>See</i> (E. Allen Dep. p. 107)</p>
Nathan Allen	<p><u>Phone No</u>: 920-370-6353</p> <p><u>Make/Model</u>: LG Fluid 2 AN170</p> <p><u>Data usage 10/16/18-11/15/18</u>: 7 Text Received</p> <p><u>Plan Type</u>: Regional Government</p> <p>Nathan Allen did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident. <i>See</i> (N. Allen Dep. p. 130)</p>
Scott Salzmann	<p><u>Phone No</u>: 920-639-6652 (Listed as Squad 52)</p> <p><u>Make/Model</u>: Apple iPhone 7 32GB Black</p> <p><u>Data usage 10/16/18-11/15/18</u>: None</p> <p><u>Plan Type</u>: Business Share Plus Plan Add-A-Line</p>

	<p>Scott Salzmann did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident. <i>See</i> (Salzmann Dep. p. 128)</p>
Cody Christenson	<p><u>Phone No:</u> 920-370-5242</p> <p><u>Make/Model:</u> LG Fluid AN160</p> <p><u>Data usage 10/16/18-11/15/18:</u> 16 Texts Received</p> <p><u>Plan Type:</u> Statewide Plus 1100 Plan</p> <p>Cody Christenson did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
Joseph Merrill	<p><u>Phone No:</u> 920-639-6657</p> <p><u>Make/Model:</u> Samsung GS7 G930 32GB Gold</p> <p><u>Data usage 10/16/18-11/15/18:</u> 14 Texts Received 4 Text Sent 1 Picture Message</p> <p><u>Plan Type:</u> Business Share Plus Plan Add-A-Line</p> <p>Joseph Merrill did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
Matt Lynch	<p><u>Phone No:</u> 920-370-5037</p> <p><u>Make/Model:</u> Samsung GS7 G930 32GB Gold</p> <p><u>Data usage 10/16/18-11/15/18:</u> 14 Texts Received 4 Text Sent 1 Picture Message</p> <p><u>Plan Type:</u> Business Share Plus Plan Add-A-Line</p> <p>Matt Lynch did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
Nicholas Walvort	<p><u>Phone No:</u> 920-639-3901</p> <p><u>Make/Model:</u> LG Wine II AN430 BLUE</p>

	<p><u>Data usage 10/16/18-11/15/18:</u> 5 Texts Received</p> <p><u>Plan Type:</u> Statewide Plus 1100 Add-A-Line</p> <p>Nicholas Walvort did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
Christy Johnson	<p><u>Phone No:</u> 920-606-1523</p> <p><u>Make/Model:</u> LG Fluid 2 AN160</p> <p><u>Data usage 10/16/18-11/15/18:</u> 1 Text Received</p> <p><u>Plan Type:</u> Statewide Plus 1100 Add-A-Line</p> <p>Christy Johnson did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
Kevin Stevens	<p><u>Phone No:</u> 920-639-6691</p> <p><u>Make/Model:</u> LG Fluid 2 AN170</p> <p><u>Data usage 10/16/18-11/15/18:</u> None</p> <p><u>Plan Type:</u> Regional Government</p> <p>Kevin Stevens did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
Max Waln	<p><u>Phone No:</u> 920-370-6310</p> <p><u>Make/Model:</u> Samsung GS8 G950 64GB Black</p> <p><u>Data usage 10/16/18-11/15/18:</u> 47 Texts Received 40 Text Sent 8 Picture Message</p> <p><u>Plan Type:</u> Business Share Plus Plan Add-A-Line</p> <p>Max Waln did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>

<p>Ben Allen</p>	<p>*GBPD Investigator who responded after the shooting incident</p> <p><u>Phone No:</u> 920-370-6345</p> <p><u>Make/Model:</u> Samsung GS7 G930 32GB Black</p> <p><u>Data usage 10/16/18-11/15/18:</u> None</p> <p><u>Plan Type:</u> Business Share Plus Plan Add-A-Line</p> <p>Ben Allen did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
<p>Jena Luberda</p>	<p>*GBPD Investigator who responded after the shooting incident</p> <p><u>Phone No:</u> 920-639-6655</p> <p><u>Make/Model:</u> Samsung GS5 G900 Black</p> <p><u>Data usage 10/16/18-11/15/18:</u> 47 Text Received 38 Text Sent 12 Picture Messages</p> <p><u>Plan Type:</u> Business Share Plus Plan Add-A-Line</p> <p>Jena Luberda did not take any photos or videos of the scene nor did he send any text messages or data though his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
<p>Dave Steffens</p>	<p>*GBPD Investigator who responded after the shooting incident</p> <p><u>Phone No:</u> 920-609-1273</p> <p><u>Make/Model:</u> Samsung GS5 G950 64GB Black</p> <p><u>Data usage 10/16/18-11/15/18:</u> 167 Text Received 109 Text Sent 20 Picture Messages</p> <p><u>Plan Type:</u> Business Share Plus Plan Add-A-Line</p> <p>Dave Steffens is no longer employed by the City of Green Bay and currently works for Outagamie County. Efforts have been made to contact Mr. Steffens and will be provided once received.</p>

Jason Bamman	<p>*GBPD Investigator who responded after the shooting incident</p> <p><u>Phone No:</u> 920-639-6670</p> <p><u>Make/Model:</u> Apple iPhone 8+ 64GB Space Gray</p> <p><u>Data usage 10/16/18-11/15/18:</u> 90 Text Received 56 Text Sent 3 Picture Messages</p> <p><u>Plan Type:</u> Business Share Plus Plan Add-A-Line</p> <p>Jason Bamman did not take any photos or videos of the scene nor did he send any text messages or data through his work phone regarding the October 18, 2018 Jonathon Tubby incident.</p>
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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Susan Doxtator, Arlie Doxtator, and
Sarah Wunderlich, as Special
Administrators of the Estate of Jonathon
C. Tubby,

Plaintiffs,

Case No. 19-CV-00137

v.

Erik O'Brien, Andrew Smith, Todd J.
Delain, Heidi Michel, City of Green
Bay, Brown County, Joseph P. Mleziva,
Nathan K. Winisterfer, Thomas Zeigle,
Bradley A. Dernbach, and John Does 1-
5,

Defendants.

DECLARATION OF STEVE MEADOWCROFT

STATE OF WISCONSIN)
) ss
BROWN COUNTY)

Steve Meadowcroft, being duly deposed states as follows:

1. My name is Steve Meadowcroft. I am employed by the City of Green Bay Police Department as a Systems Analyst in the IT Division and have been so employed since February 8, of 2000. I make this Declaration on personal knowledge.

2. I was asked to determine the make, model and usage capability of the cellphone issued to each City of Green Bay Police Department Police Officer who was on scene during the October 19, 2018 shooting incident of Jonathon Tubby. I was also asked to provide clarification of the destruction of those cell phones.

3. The Green Bay Police Department provides all sworn officers with a work cellphone. The phones vary in make/model and capabilities.

4. I contacted Cellcom's customer support services asking them to provide data on Eric O'Brien's cell phone account on the date in question. Cellcom provided me this information and I passed it along to John Balza to distribute. After being notified that information on additional accounts were needed, I then recommended that the City of Green Bay's legal office contact Cellcom for a report containing information on the accounts in question. Additionally, I made it aware that Cellcom may need my authorization to release of information to the City of Green Bay's legal department, and therefore asked to be included in the email request to Cellcom for the information.

5. Based on my review of the report obtained from Cellcom, I was able to determine the following:

- a. During the relevant time period, Investigator Jena Luberta was issued the following make/model cellphone: Samsung GS5 G900.
- b. During the relevant time period, Dave Steffens, Erik O'Brien, Thomas Denney and Max Waln were issued the following make/model cellphone: Samsung GS8 G950.
- c. During the relevant time period, Eric Allen, Joseph Merrill, Matt Lynch and Ben Allen were issued the following make/model cellphone: Samsung GS7 G930.
- d. During the relevant time period, Colton Wernecke, Tyler Haack, Nathan Allen, Cody Christenson, and Kevin Stevens were issued the following make/model cellphone: LG Fluid 2 AN170.
- e. During the relevant time period, Christy Johnson was issued the following make/model cellphone: LG Fluid 2 AN160.
- f. During the relevant time period, Nicholas Walvort was issued the following make/model cellphone: LG Wine II AN430.

- g. During the relevant time period, Scott Salzmänn was issued the following make/model cellphone: Apple iPhone 7.
- h. During the relevant time period, Investigator Jason Bamman was issued the following make/model cellphone: Apple iPhone 8plus.

6. It is my understanding that all of the phones had the ability to take photos and videos, and to send and receive text messages.

7. By way of background, prior to January 15, 2019, the City of Green Bay Police Department discussed transitioning cellphone providers from CellCom to AT&T FirstNet. The purpose of this transition was to migrate Green Bay Police Department cell phone services for first responders and first responder support staff to AT&T's FirstNet priority data and voice service. AT&T is the only vendor that offers FirstNet.

8. To my knowledge and recollection, on or about January 15, 2019 the City's Common Council approved the contract with AT&T FirstNet for the issuance of new cellphones and data to the Police and Fire Departments.

9. After the AT&T FirstNet contract was approved, I began the process of collecting all of the old CellCom phones so that they could be physically destroyed. The collection and destruction process took place over the course of a few weeks, during which I kept a box outside of my office for individuals to discard their CellCom phones.

10. In order to comply with the State of Wisconsin's Criminal Justice Information Services (CJIS) Security Policy version 5.8 section 5.8.4, Disposal of Physical Media,(attached hereto as Meadowcroft Exhibit A) the GBPD physically destroys all devices that hold digital data (including cellphones) after the device is taken out of service. Per CJIS Security Policy version 5.8 section 5.8.4, digital data is not held because destruction of physical media minimizes the risk of

sensitive information being compromised by unauthorized individuals or entities. As such, no digital data was preserved from the cellphones prior to their being destroyed.

11. After the cellphones were collected, they were taken by Green Bay Police Department Building Services Supervisor Gary McDermid to Norsec Computer Recyclers LLC and were physically destroyed.

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

Executed on this 3rd day of September 2020.

Steven Meadowcroft

Steve Meadowcroft