

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**CIVIL ACTION No. \_\_\_\_\_**

**BRANDON LEE DIAZ DELEON,  
PLAINTIFF,**

**V.**

**AUGUST LINNEMEYER,  
TIFFANY MIZELLE,  
JESSICA LINNEMEYER – SCHLAGEL,  
JOSEPH YANCY,  
HANNAH BEVARD,  
HALEY PHROPER,  
SHANE WHITEMORE,  
JACOB A. STARKOVICH,  
PEOPLE OF THE STATE OF COLORADO,  
COUNTY OF KIT CARSON COLORADO,  
CITY OF BURLINGTON COLORADO,  
13TH JUDICIAL DISTRICT COURT COLORADO,  
STATE OF COLORADO PUBLIC DEFENDER OFFICE,  
SUE CAMBELL,  
BRIAN JOHNSON ATTORNEY NUMBER 46182,  
JUSTIN HEINLEIN,  
MARTY GREEK,  
ELIZABETH DELUCA,  
BRITNEY LEWTON,  
DEBORAH EURICH,  
ADVANTAGE TREATMENT CENTER,  
DOUGLAS CARRIGAN,  
BRIAN LYNCH,  
NOAH MERAZ,  
ETHAN ICE #42430,  
COLORADO LEGAL DEFENSE GROUP,  
COUNTY OF LOGAN COLORADO,  
LOGAN COUNTY SHERIFF,  
LOGAN COUNTY JAIL,  
JENNELYSE BRUNSTING,  
DIANA VENTURA,  
DIRECTOR OF COLORADO DEPARTMENT OF CORRECTIONS,  
WARDEN OF COLORADO TERRITORIAL CORRECTIONAL FACILITY,**

**DEFENDANTS.**

**FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO  
9:11 am, May 28, 2024  
JEFFREY P. COLWELL, CLERK**

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**CIVIL COMPLAINT**

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**A. PARTIES**

- 1. BRANDON LEE DIAZ DELEON**  
**PLAINTIFF**  
**871 THORNTON PARKWAY, STE 271,**  
**THORNTON, CO 80229**  
**719-342-0628**  
**[BRANDON.DIAZ@VREELANDLEGAL.COM](mailto:BRANDON.DIAZ@VREELANDLEGAL.COM)**
- 2. AUGUST LINNEMEYER**  
**DEFENDANT**  
**418 DAWSON, FARNAM, NE 69029-7122**  
**505 MAPLE ST, COZAD, NE 69130-2324**  
**(308) 537-6580**  
**AUGUST.LINNEMEYER32@GMAIL.COM**  
**ALINNEMEYER2021@GMAIL.COM**
- 3. JESSICA LINNEMEYER – SCHLAGEL**  
**DEFENDANT**  
**418 DAWSON, FARNAM, NE 69029-7122**  
**(308) 537-6580**  
**[LINNEMEYERJ@GMAIL.COM](mailto:LINNEMEYERJ@GMAIL.COM)**
- 4. JOSEPH YANCY**  
**DEFENDANT**  
**1521 W. 17 NORTH PLATTE, NE 69101**  
**(719) 343-3126**
- 5. HANNAH BEVARD**  
**DEFENDANT**  
**1112 E. 12TH ST. COZAD, NE 69130**  
**(308) 320-298**
- 6. TIFFANY MIZELLE**  
**DEFENDANT**  
**318 W 11TH ST, COZAD, NE 69130-1405**  
**(719) 342-463**

- 7. HALEY PHROPER**  
**DEFENDANT**  
**41787 HWY 23 EUSTIS, NE 69028**  
**(402) 890-3219**
- 8. SHANE WHITEMORE**  
**DEFENDANT**  
**480 15TH ST, BURLINGTON, CO 80807**  
**(719) 346-8353**
- 9. JACOB A. STARKOVICH**  
**DEFENDANT**  
**280 E 1ST. AVE STE 1242, BROOMFIELD, CO 80038-1242**  
**(720) 937-4293**
- 10. PEOPLE OF THE STATE OF COLORADO**  
**DEFENDANT**  
**1300 BROADWAY, 10TH FLOOR**  
**DENVER, CO 80203**  
**(720) 508-6000**
- 11. SUE CAMBELL**  
**DEFENDANT**  
**595 14TH STREET**  
**BURLINGTON, CO 80807**  
**(719) 346-6060**
- 12. COUNTY OF KIT CARSON COLORADO**  
**DEFENDANT**  
**1650 DONELAN AVENUE, SUITE 203**  
**BURLINGTON, CO 80807**  
**(719) 346-8638**
- 13. CITY OF BURLINGTON COLORADO**  
**DEFENDANT**  
**415 15TH STREET**  
**BURLINGTON, CO 80807**  
**(719)-346-8652**

**14. 13TH JUDICIAL DISTRICT COURT COLORADO**  
**DEFENDANT**  
**1650 DONELAN AVENUE, SUITE 301**  
**BURLINGTON, CO 80807**  
**(719)-346-5524**

**15. STATE OF COLORADO PUBLIC DEFENDER OFFICE**  
**DEFENDANT**  
**1300 BROADWAY SUITE 400**  
**DENVER, COLORADO 80203**  
**(303) 764-1400**

**16. BRIAN JOHNSON NUMBER 46182**  
**DEFENDANT**  
**214 S. 3RD ST.,**  
**STERLING, CO 80751**  
**(970)-522-5032**

**17. JUSTIN HAENLEIN**  
**DEFENDANT**  
**1650 DONELAN, SUITE 301**  
**BURLINGTON CO 80807**  
**(719)-346-5524**

**18. MARTY GREEK**  
**DEFENDANT**  
**110 NORTH RIVERVIEW ROAD**  
**STERLING, CO 80751**  
**(970)-526-3900**

**19. ELIZABETH DELUCA**  
**DEFENDANT**  
**275 6TH ST, BURLINGTON, CO 80807**  
**(719) 343-0809**

**20. BRITNEY LEWTON**  
**DEFENDANT**  
**110 N. RIVERVIEW ROAD RM. 105**  
**STERLING, CO 80751**  
**(970)-522-2973**

**21. DEBORAH EURICH**

**DEFENDANT**

**110 N. RIVERVIEW ROAD RM. 105**

**STERLING, CO 80751**

**(970)-522-2973**

**22. ADVANTAGE TREATMENT CENTER**

**DEFENDANT**

**12220 HIGHWAY 61, STERLING, CO 80751**

**(970) 522-7383**

**23. DOUGLAS CARRIGAN**

**DEFENDANT**

**12220 HIGHWAY 61, STERLING, CO 80751**

**(970) 522-7383**

**24. BRIAN LYNCH**

**DEFENDANT**

**12220 HIGHWAY 61, STERLING, CO 80751**

**(970) 522-7383**

**25. NOAH MERAZ**

**DEFENDANT**

**12220 HIGHWAY 61, STERLING, CO 80751**

**(970) 522-7383**

**26. COUNTY OF LOGAN COLORADO**

**DEFENDANT**

**315 MAIN STREET, STERLING, CO 80751**

**(970) 522-1544**

**27. LOGAN COUNTY SHERIFF**

**DEFENDANT**

**110 N. RIVERVIEW ROAD, STERLING, CO 80751**

**(970) 522-2578**

**28. LOGAN COUNTY JAIL**

**DEFENDANT**

**110 N. RIVERVIEW ROAD, STERLING, CO 80751**

**(970) 522-2578**

**29. JENNELYSE BRUNSTING**  
**DEFENDANT**  
**226 N. 3RD STREET**  
**STERLING, CO 80751**  
**(970) 522-7815**

**30. DIRECTOR OF COLORADO DEPARTMENT OF CORRECTIONS OF 2022**  
**DEFENDANT**  
**1250 ACADEMY PARK LOOP**  
**COLORADO SPRINGS, CO 80910**  
**(719)-579-9580**  
**[CDOC@STATE.CO.US](mailto:CDOC@STATE.CO.US)**

**31. WARDEN OF COLORADO TERRITORIAL CORRECTIONAL FACILITY OF 2022**  
**DEFENDANT**  
**P.O. BOX 1010**  
**CANON CITY, CO, 81215**  
**(719)-275-4181**

**32. ETHAN ICE AND COLORADO LEGAL DEFENSE GROUP**  
**4047 TEJON ST**  
**DENVER, CO 80211**  
**(720)-900-0911**

**32. DIANA VENTURA**  
**418 E J St**  
**RUSSELLVILLE, ARKANSAS 72801-4019**  
**(479)-970-7917**

## **B. JURISDICTION**

Jurisdiction is proper in this court pursuant to 28 USC 1331 and 28 USC 1332 and 42 USC 1983. The defendants named herein are either current or former state employees who were acting under the color of state law at the time the issues alleged in the complaint arose. Alternatively, defendants who are not state actors are private parties who violated the civil rights of the Plaintiff and who either reside in the state of Colorado or reside in the state of Nebraska.

### **C. STATEMENT AS TO EXHAUSTION OF STATE REMEDIES**

As far as the exhaustion of state administrative or judicial remedies is concerned, if there were any exhaustion requirements Plaintiff was required to comply with prior to filing this action, Plaintiff exhausted them all. However, as the Plaintiff is no longer incarcerated, he is not required to exhaust any remedy that may or may not be available.

### **D. PRELIMINARY STATEMENT**

Plaintiff brings this civil complaint against the named defendants, alleging, inter alia, the following:

- A. Specific defendants falsely accused the Plaintiff of criminal acts and used the Plaintiff's mental health crisis against him, tricking him into pleading guilty to a crime he was innocent of.
- B. Specific defendants admitted the criminal allegations were false but only did so after the plea of guilty and sentencing.
- C. Specific defendants entered into a written contract with the Plaintiff, designed as a plea agreement, which the state defendants violated after the plea was signed and entered into.
- D. Specific defendants fabricated evidence to violate a deferred judgment and sentence plea agreement, failed to provide proper legal representation to the Plaintiff, resulting in legal malpractice and ineffective assistance of counsel.
- E. Specific defendants altered the sentencing documents to alter the plea agreement sentence, causing the Plaintiff to be sent to prison after he had served the maximum amount of time allowed under Colorado statute.

- F. Specific defendants caused or allowed the Plaintiff to be subjected to physical and emotional injury, emotional distress, and 8th amendment violations of cruel and unusual punishment and excessive incarceration.
- G. Specific defendants conspired with the Colorado Department of Corrections parole officer to have the Plaintiff arrested once again for a violation of parole that the Plaintiff was not on.
- H. An attorney who was paid to litigate on behalf of the Plaintiff accepted money, appeared at the county jail, entered an appearance in the case, and then never filed any documents, forcing the Plaintiff to hire new counsel.
- I. This civil complaint alleges violations of the Plaintiff's 1st, 4th, 5th, 6th, 8th, and 14th amendment constitutional rights under the US Constitution and the equivalent rights under the Colorado State Constitution.

### **E. STATEMENT OF FACTS**

On November 16, 2017, Defendant MIZELLE, using a telephone where she was located in the state of Nebraska, contacted the Kit Carson County Colorado communication center to report an alleged assault that MIZELLE knowingly falsely asserted occurred on July 24<sup>th</sup>, 2017.

MIZELLE knowingly falsely asserted that her daughter Defendant LINNEMEYER was sexually assaulted by Plaintiff DIAZ DE LEON in the state of Colorado on the evening of July 24<sup>th</sup>, 2017.

Defendant MIZELLE reported this alleged assault to former Colorado law enforcement deputy Defendant WHITEMORE through a telephone he was using in the state of Colorado. The reporting of the alleged assault, and the taking of that report took place across state lines.



According to Defendant WHITEMORE, Defendant MIZELLE told Defendant WHITEMORE the following:

MIZELLE was living in Nebraska at the time of the complaint being made by telephone on the evening of November 16<sup>th</sup>, 2017, but her family lived in Burlington, Colorado, during the summer of 2017.

MIZELLE asserted the alleged assault took place on July 24, 2017, she was positive it was that exact date and MIZELLE asserted that she specifically remembered that night of July 24<sup>th</sup>, 2017, because Defendant LINNEMEYER's brother Defendant YANCY saw Defendant LINNEMEYER come into the house from the backyard that night after two or three AM and that YANCY stated that LINNEMEYER'S hair was messed up when she came inside.

MIZELLE stated that LINNEMEYER told her that she LINNEMEYER was hanging out with Plaintiff in the backyard that evening in Burlington, CO, and that she LINNEMEYER asserted she had made out with Plaintiff, meaning they had been kissing.

MIZELLE asserted that after LINNEMEYER informed her of this kissing, she MIZELLE sent a text message to Plaintiff telling him to stay away from LINNEMEYER and that Plaintiff was not allowed back at that house, four months later that story changed.

While talking to Defendant WHITEMORE on November 16<sup>th</sup>, 2017, MIZELLE stated that after talking to LINNEMEYER earlier that day of November 16<sup>th</sup>, 2017, LINNEMEYER stated to MIZELLE that she, LINNEMEYER, and Plaintiff had sex on July 24<sup>th</sup>, 2017, in the backyard.

MIZELLE stated that LINNEMEYER asserted she had been drinking, was drunk, and did not recall what happened that night at all. But LINNEMEYER also says that she, LINNEMEYER, did remember Plaintiff on top of her in the yard but that she, LINNEMEYER, woke up in the yard but Plaintiff was in fact not even there. MIZELLE stated that LINNEMEYER stated that when she woke up the next morning, she believes she had bruises on her legs.

The facts of this matter, as they pertain to Defendant MIZELLE, are that Defendant MIZELLE knew when she made those statements to the police on November 16<sup>th</sup>, of 2017 that they were in fact not true, the entire story was fabricated. MIZELLE had never had any such conversation with LINNEMEYER prior to calling the police. MIZELLE was also aware that Plaintiff and LINNEMEYER were not together on the evening of July 24<sup>th</sup>, 2017.

Additionally, cellular telephone billing statements from Plaintiff's and MIZELLE's telephone revealed that there were never any such text messages sent to Plaintiff from MIZELLE, advising Plaintiff he was not allowed to come over to that house anymore and or to stay away from LINNEMEYER. Again, LINNEMEYER and Plaintiff had not yet met as of the date MIZELLE alleged she so clearly recalled and sent that text message on.

On November 16<sup>th</sup>, 2017, Defendant WHITEMORE authored a police report based on what he was told by several herein named Defendant(s).

The report prepared by WHITEMORE alleges that after talking to MIZELLE, he then spoke to Defendant SCHLAGEL, who is also known as LINNEMEYER, Defendant LINNEMEYER'S stepmother. WHITEMORE states in his report that it was SCHLAGEL and not MIZELLE who spoke to LINNEMEYER that morning and was told about the alleged assault.

WHITEMORE stated in his report that LINNEMEYER told him the following directly; she, Defendant LINNEMEYER met Plaintiff during the summer of 2017 at the Kit Carson County Fair, contradicting what Defendant MIZELLE and YANCY had stated to police, that is, that they actually met on July 24<sup>th</sup>, 2017, for the first time.

Defendant LINNEMEYER first stated that she met Plaintiff at the Kit Carson County Fair, began communicating with Plaintiff by snapchat for a “*couple of weeks*” after the fair, and then after she waited for her mother, Defendant MIZELLE, and her brother, Defendant YANCY to fall asleep she then asked Plaintiff to come over to the house.

LINNEMEYER stated that Plaintiff and his friend arrived in a red truck and jumped over the backyard fence. LINNEMEYER says that Plaintiff brought with him two full bottles of liquor, one Smirnoff and one Fireball. The friend was drinking wine coolers or Mikes Hard Lemonade.

LINNEMEYER says the friend suggested a three-way, but she declined. LINNEMEYER says she and Plaintiff got up walked around the side of the backyard out of vision of the friend, and that she and Plaintiff consumed the entirety of both bottles of liquor together. LINNEMEYER says she recalled seeing both empty bottles in the trash the next day.

LINNEMEYER next says that Plaintiff told her to lay down on the grass and that Plaintiff pushed her shoulders until she laid down on the grass. LINNEMEYER says Plaintiff took off his shirt, got on top of her, and he then took his pants off. LINNEMEYER says she then felt uncomfortable and nudged Plaintiff to get off her. LINNEMEYER then says she just let it happen and that Plaintiff pulled her sweatpants off entirely and underwear down to her ankles.

LINNEMEYER says she then heard the garage door open, Plaintiff put his pants on and threw his shirt to his friend who was allegedly out of vision of the events. LINNEMEYER says Plaintiff and his friend then jumped the fence ran around the house to the alley and drove off.

LINNEMEYER says she then put her clothes back on. At this point she says YANCY came outside and asked her why she was out there, took her tablet from her and saw Plaintiff chatting on it with her and then told her to go to bed, so they went to bed.

LINNEMEYER says Plaintiff came over the next morning but does not say why or that he was told to leave by anyone. LINNEMEYER says she told her brother and his fiancé Hannah Bevard about two days after the alleged event what had happened and asked her why she was bleeding. Defendant WHITEMORE stated that he called Hannah at some point but did not say when. Defendant WHITEMORE does assert however that Hannah told him that LINNEMEYER never told her anything about any alleged events on July 24<sup>th</sup>, 2017.

After obtaining the contradictory stories, WHITEMORE contacted and met with Defendant YANCY on January 7<sup>th</sup>, 2018, at the Burlington, CO, police station. Defendant WHITEMORE alleges Defendant YANCY told him the following.

He, YANCY, noticed that his sister, LINNEMEYER, had been in the backyard for a long time and it was two or three in the morning. YANCY said he went outside to make a phone call at 2:00 or 3:00 AM. YANCY claims as he walked out his sister LINNEMEYER was walking into the house thereby contradicting what LINNEMEYER, MIZELLE, and SCHLAGEL had already told WHITEMORE.

YANCY further says he heard someone in the backyard at the fence in the alley and that his dog ran to the fence barking. YANCY says he grabbed a broom and went to the fence.

YANCY says he walked up and down the fence and alley but did not see anyone at all. YANCY says he then went to LINNEMEYER'S bedroom, took her iPad, and started yelling at her and noticed that Plaintiff was snapchatting with LINNEMEYER on the iPad. YANCY says he waited two days to tell his mother.

These statements contradict every other statement made by every other Defendant to the police when the police report was made, and even contradict the statement made by the arresting officer Defendant WHITEMORE. The reason the statements are all contradictory is because they are all fabricated.

A fifth story was told to Defendant WHITEMORE by a person named Haily PHROPER, a friend of LINNEMEYER who told WHITEMORE that LINNEMEYER told her that when her mother and brother were asleep at about 2:00 AM that was when, according to LINNEMEYER, LINNEMEYER contacted Plaintiff and asked Plaintiff to come over to the house. PHROPER further stated that LINNEMEYER told her she was very drunk as she had already got drunk at her friend's house before she came home, and that she did not remember anything from that evening and that she allegedly woke up with her pants unbuttoned in the backyard. But she told Defendant WHITEMORE she was wearing sweats, and she told her family she was wearing shorts, so she gave three different versions of what she was wearing.

These are just *some* of the discrepancies in the false allegation storyline just like for instance - LINNEMEYER told Haley that LINNEMEYER and Plaintiff just laid down on grass to look at the stars and she passed out because she was so drunk; or YANCY saying he got the iPad the next day not that night as he first stated.

On January 22<sup>nd</sup>, 2018, based on the six different stories told to Defendant WHITEMORE by the Defendants named herein, Plaintiff was then charged with felony sex assault CRS 18-3-402, sex assault on a child CRS 18-3-405, contributing to a minor CRS 18-6-701.

On March 28<sup>th</sup>, 2018, Defendant STARKOVICH entered the case as Plaintiff's retained defense counsel. Plaintiff asked Defendant STARKOVICH to obtain and review with Plaintiff any and all alleged evidence the police asserted they had against Plaintiff. Plaintiff advised STARKOVICH he was in fact innocent. STARKOVICH advised Plaintiff that if he did not plead guilty, accept a deferred judgment, and sentence Plaintiff would get sent to prison for life.

Defendant STARKOVICH engaged in attorney tactics designed to put fear into Plaintiff in effort to cause the Plaintiff to accept the plea of guilty to the allegations made. Defendant STARKOVICH advised Plaintiff prior to the plea that he, Defendant STARKOVICH, would quit on Plaintiff if Plaintiff refused to accept the plea offer.

On June 11<sup>th</sup>, 2018, Plaintiff entered a plea of guilty to amended count one alleging attempted sex assault under CRS 18-3-405(1), 18-2-101(2018), and unlawful sexual contact CRS 18-3-404(1)(a) (2018). Count two as it is an *attempt*, is a class 5 Colorado felony and carries a maximum penalty of three years in prison. CRS 18-2-101(4), 18-1.3-401(V)(A) (2018). Amended count four was a misdemeanor which carried a maximum of 24 months in the county jail. CRS 18-3-404(1)(a), 18-1.3-501(3).

The plea agreement between Plaintiff and Defendant PEOPLE OF THE STATE OF COLORADO, was a legal and binding contract, and was a four-year deferred judgment sentence.

Plaintiff was to plead guilty, complete probation, and after completion, the agreement, in writing, guaranteed that Plaintiff could withdraw his plea have convictions vacated, charges dismissed, and the case files expunged.

After the plea agreement was entered into and signed by the State, sentencing was put off for several months until the Court finalized sentence on November 13<sup>th</sup>, 2018. Within days of the sentence being passed down the State and Defendant Elizabeth DeLuca contacted the Court and filed a motion to breach the contract asking the Court to add additional conditions to the probation which did not exist in the original written plea agreement contract. The Court granted the State's request, ordered additional conditions of probation, and Defendant STARKOVICH failed to do anything about it and/or to even object to the breach of the plea agreement, the breach of the written contract, and the violation of the rights of due process of Plaintiff. This was just another example of Defendant STARKOVICH ineffective assistance of counsel and legal malpractice.

After sentencing on November 13<sup>th</sup>, 2018, Plaintiff was placed on intensive supervision probation, and was placed in sex offender therapy at First Step Recovery, operated by Defendant CAMBELL in Burlington, CO. Plaintiff maintained his innocence throughout the course of being in sex offender therapy, but by maintaining his innocence, Plaintiff was told he was in "Denial" therefore making Plaintiff non-compliant with probation, using that as an unlawful way to violate Plaintiff for alleged non-compliance of probation.

Defendants willfully violated the plea agreement written contract exactly 25 days after the November 13<sup>th</sup>, 2018, sentencing. After sentencing was complete, Defendant(s) EURICH, LEWTON, and DELUCA, petitioned the Court to violate the deferred judgment and sentence order, and probation, and asked the judge to incarcerate the Plaintiff in Community Corrections Advantage Treatment Center, for no valid reason.

Plaintiff was arrested for the request to revoke the probation, and Defendant STARKOVICH withdrew from the case leaving Plaintiff with no attorney. A new attorney, Defendant JOHNSON Colorado registration number 46182, from the Public Defender office entered an appearance on January 6<sup>th</sup>, 2018. As a result of the request to violate the deferred judgment and sentence, and Defendant STARKOVICH and JOHNSON failing to appear, the Court simply issued an order vacating the original deferred judgment and sentence, and issued a new sentence violating state statute, and issuing a four-year sentence to Community Corrections which Colorado statute does not allow as this was a class 5 felony with a three-year max.

The Court also issued a 24-month county jail sentence on amended count four. The Court made an incorrect finding, that amended count two was an extraordinary risk crime as justification for a four-year sentence.

Plaintiff entered community corrections advantage treatment center ATC on July 18<sup>th</sup>, 2019. At the time Plaintiff entered he had 50 days of pre-sentence confinement.

On January 3<sup>rd</sup>, 2022, Defendant CARRIGAN owner of Advantage Treatment Center, Brian lynch, employed by Advantage Treatment Center authored a letter in which they had Defendant MERAZ sent to the Court, asking the Court to have the Plaintiff sent to prison for the rest of his sentence. In that letter these Defendants asserted that Plaintiff had served 894 days without issue and had earned 229 days of good time for good conduct while at Advantage Treatment Center. Yet on January 12<sup>th</sup>, 2022, Defendant HAENLEIN by minute order and without providing any form of due process altered the plea agreement of the deferred judgment and sentence and Community Correction sentence and issued an order directing Plaintiff to serve four years in the Colorado Department of Corrections with two years of mandatory parole.



At the time Plaintiff's sentence was altered on January 12<sup>th</sup>, 2022, Plaintiff had an additional 15 day's credit for time served. As of the date of sentence, that is, the day the sentence was altered, Plaintiff had 995 days *actually served* with 229 days of *good time credit* for good conduct which was a grand total of *1188 days*. **More than the statutory max of a class five felony allows, which is 1,095 days.**

Plaintiff attempted to object, and advise the Court and Advantage Treatment Center, that as of that date of January 12<sup>th</sup>, 2022, Plaintiff had already completed his entire maximum allowable sentence in full and was supposed to be discharged in December of 2021, but was now being incarcerated in excess of what Colorado Statute allows for a class five felony, which Plaintiff was charged with, and pled guilty to. Defendant HAENLEIN and the Advantage Treatment Center Defendants ignored Plaintiff's objections and sent him to prison anyway.

While in prison, on February 27<sup>th</sup>, 2022, Plaintiff filed a handwritten motion titled Habeas Corpus application under C.R.S 13-45-101 asserting he was illegally incarcerated, in violation of due process of Colorado law. Defendant HAENLEIN set a hearing for April 20<sup>th</sup>, 2022. After receiving a hearing date Plaintiff filed a supplement to his motion on April 10<sup>th</sup>, 2022, advising the Court that not only was Plaintiff illegally incarcerated in violation of due process, but that Plaintiff was also as stated, illegally incarcerated in excess of what Colorado law allowed, and detailed that he was being ordered to serve over four years for a class five felony that only allowed a maximum of three years.

On April 20<sup>th</sup>, 2022, the Court held a hearing and ruled Plaintiff had been improperly sentenced to four years in prison when the maximum was in fact, only three years. Defendant HAENLEIN again, failed to correct the mittimus.

Plaintiff was released on April 20<sup>th</sup>, 2022, and ordered to serve an additional two years of parole even though he had served in excess of the statutory maximum sentence as of that date.

As soon as Plaintiff was released, Plaintiff began the process of litigating the case further because he was being told he was on parole when he was not, Plaintiff had already discharged. However, as soon as Plaintiff was released his ex-girlfriend Defendant VENTURA, conspired with State of Colorado Parole Officer Defendant BRUNSTING and caused Plaintiff to be ordered by Defendant BRUNSTING to report to a parole office for a parole hearing in Sterling, Colorado when Plaintiff was not supposed to be on parole at all.

Upon arrival to the Parole Office, Defendant BRUNSTING conducted an illegal search of Plaintiff's father, Raul Diaz de Leon's automobile. Defendant BRUNSTING then seized the father's cellular telephone and antique pocketknife from the car, and then arrested Plaintiff for an *alleged parole violation* even though Plaintiff was not on parole, and then Defendant BRUNSTING housed Plaintiff at the county jail in Sterling, CO.

When Plaintiff was booked into the county jail in Sterling, CO, which is named herein as Defendant LOGAN COUNTY JAIL and LOGAN COUNTY SHERIFF'S DEPARTMENT, Plaintiff notified the Logan County Sheriff that he was not on any parole, and that his incarceration their jail was in fact unlawful and illegal. Defendant LOGAN COUNTY JAIL and LOGAN COUNTY SHERIFF ignored Plaintiff's statements.

Plaintiff then paid \$50,000 to a different law firm to represent him to get him out of jail, and again clarify the mess made by all the Defendants named in this civil case. On May 24<sup>th</sup>, 2022, Plaintiff filed through council, an *emergency motion for immediate release from the custody* to be released from the Colorado Department of Corrections, the Colorado Parole Board, the Logan County Sheriff's Office, and the Logan County Jail, because he was being illegally confined.

The motion detailed that Plaintiff was charged and pled guilty to a class five felony and had served the entire term, prior to any alleged revocation process being instituted, and as such Plaintiff was entitled to his immediate release and was not supposed to be on parole to begin with. The District Attorney reviewed the pleading and agreed and did not oppose the release or relief requested in that motion. On June 22<sup>nd</sup>, 2022, Defendant HAENLEIN issued an order declaring that as of the date Plaintiff was arrested for alleged revocation of community corrections caused by Defendants ADVANTAGE TREATMENT CENTER, CARRIGAN, LYNCH and MERAZ, Plaintiff had in fact already discharged from the sentence successfully and completed the entire sentence in full. The Court further stated Defendant was illegally issued a four-year prison sentence when he was only allowed by law a three-year sentence and was illegally incarcerated. The Court ordered the immediate release of Plaintiff and ordered that there was no parole or probation on the case to be served, and that the case was closed.

After Defendant HAENLEIN issued his orders on June 22<sup>nd</sup>, of 2022, finding that Plaintiff was in fact unlawfully incarcerated for almost two whole years and after Defendant HAENLEIN issued the June 22<sup>nd</sup>, 2022, order directing Plaintiff be immediate released from prison or any form of incarceration with no probation or parole.

No Defendant named herein appealed that judgment, thereby making that judgment final, and causing collateral estoppel, and issue preclusion to any attempt by any Defendant in this case to make any form of claim that Plaintiff was not unlawfully incarcerated as that order set forth.

Plaintiff suffered in excess of two years of unlawful incarceration. Plaintiff was sent to state prison when no Colorado law or statute allowed him to be sent there. Plaintiff was humiliated, harassed, and picked on and bullied by inmates in the Colorado Department of Corrections, placed in solitary confinement for his safety. Colorado Department of Correction state actors and employees also mistreated Plaintiff. Plaintiff was lied about, bullied, and harassed by Defendants ADVANTAGE TREATMENT CENTER, Defendant CARRIGAN, LYNCH and BRUNSTING. Defendant DELUCA and Defendant GREEK knowingly and falsely prepared revocation of probation documents to violate Plaintiff's probation, even though they knew Plaintiff was not lawfully on probation.

## **F. CLAIMS**

### **Claim 1. False Arrest and Imprisonment**

Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

Plaintiff claims that the Defendants, individually and jointly, acting under color of state law, deprived him of his right to be free from unreasonable seizure of his person, as guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution and Article II, Section 7 of the Colorado Constitution, by arresting and imprisoning him without a lawful basis.

### **Claim 2. Malicious Prosecution**

Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

Plaintiff claims that the Defendants, individually and jointly, acting under color of state law, deprived him of his right to be free from malicious prosecution, as guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution and Article II, Section 7 of the Colorado Constitution, by initiating and continuing criminal charges against him with malice, and for an improper purpose.

The prison sentence issued against Plaintiff was terminated in Plaintiff's favor when the prison sentence was vacated by the state Court, ruled unconstitutional and not allowed by law.

### **Claim 3. Fabrication of Evidence**

Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

Plaintiff claims that the Defendants, individually and jointly, acting under color of state law, deprived him of his right to due process of law, as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and Article II, Sections 16, 18, 20, 23, and 25 of the Colorado Constitution, by fabricating, concealing, and/or destroying evidence that was material to his criminal case, and by using and relying on such evidence to arrest, imprison, and prosecute him.

The fabricated, concealed, and/or destroyed evidence included, but was not limited to, the following: (a) the false and misleading statements of the alleged victim and the eyewitnesses; (b) the false and misleading reports, affidavits, and testimony of the police officers and investigators; (c) the false and misleading forensic and medical evidence which Defendant WHITEMORE lied about the existence of; and (d) the exculpatory and impeachment evidence that was favorable to Plaintiff and that was withheld from him and his counsel.

### **Claim 4. Conspiracy**

Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

Plaintiff claims that the Defendants, individually and jointly, acting under color of state law, conspired among themselves and with others to deprive him of his constitutional rights by engaging in the unlawful acts described above, in violation of 42 U.S.C. § 1983 and 1985.

The Defendants had a meeting of the minds and an agreement to commit the unlawful acts, and they acted in concert and pursuant to their common plan to arrest, imprison, and prosecute Plaintiff with malice, and for an improper purpose, by fabricating, concealing, and/or destroying evidence, and by using and relying on such evidence against him.

The Defendants were aware of each other's unlawful conduct and supported, encouraged, facilitated, ratified, and/or participated in it, either directly or indirectly.

#### **Claim 5. Municipal Liability**

Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

Plaintiff claims that the City of Burlington, acting under color of state law, is liable for the violations of Plaintiff's constitutional rights by its employees, agents, and officials, namely, the police officers, investigators, and prosecutors involved in this case, in violation of 42 U.S.C. § 1983.

The City of Burlington had a policy, practice, or custom of (a) failing to train, supervise, discipline, and control its police officers, investigators, and prosecutors in the proper performance of their duties; (b) tolerating and condoning the fabrication, concealment, and/or destruction of evidence, and the use and reliance on such evidence, by its police officers, investigators, and prosecutors; (c) failing to investigate, review, and correct the misconduct of its police officers, investigators, and prosecutors; (d) creating and maintaining a culture of impunity and indifference towards the constitutional rights of citizens, especially those accused of crimes.

The policy, practice, or custom of the City of Burlington was the moving force behind the violations of Plaintiff's constitutional rights and was the direct and proximate cause of his physical, mental, emotional, and reputational harm.

As a direct and proximate result of the Defendants' conduct, Plaintiff suffered physical, mental, emotional, and reputational harm, and is entitled to compensatory damages, punitive damages, nominal damages, and any other appropriate relief that the Court may deem just and proper.

#### **G. JURY DEMAND AND PRESERVATION**

Plaintiff demands trial by jury on all issues. Plaintiff hereby preserves his right to amend this civil complaint as it pertains to parties, specificity, claims, and damages consistent with the Federal Rules of Civil Procedure and US Constitution.

#### **H. REQUEST FOR RELIEF**

As a direct and proximate result of the Defendants' conduct, Plaintiff suffered physical, mental, emotional, and reputational harm, and is entitled to compensatory damages, punitive damages, nominal damages, and any other appropriate relief that the Court may deem just and proper. Further, Plaintiff is seeking a total damage award in excess of Ten Million Dollars (\$10,000,000) split between all Defendants named herein.



**I. CERTIFICATION AND CLOSING UNDER FED. R. CIV. P. 11**

By signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11. A. For Parties Without an Attorney I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 05/24/2024

Signature of Plaintiff: Brandon Lee DiazdeLeon

Printed Name of Plaintiff: Brandon Lee DiazdeLeon