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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

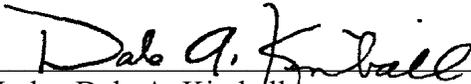
| | | |
|---------------------------------|---|------------------------------------|
| CHRISTINA MATA, |) | |
| |) | |
| Plaintiff, |) | ORDER EXTENDING PLAINTIFF'S |
| |) | TIME TO RESPOND TO |
| vs. |) | DEFENDANTS' FIRST SET OF |
| |) | DISCOVERY |
| |) | |
| KRISTEN COX, EXECUTIVE DIRECTOR |) | |
| of DEPARTMENT of WORKFORCE |) | |
| SERVICES, DAVID SUNDWALL, M.D., |) | |
| EXECUTIVE DIRECTOR of UTAH |) | |
| DEPARTMENT of HEALTH, LINDA |) | Civil No. 1:08-cv-82 |
| WARD, ANTHONY KELLY and JOHN |) | |
| AND JANE DOES 1-10, |) | Judge Dale A. Kimball |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

Based upon the Stipulated Motion of the parties,

IT IS HEREBY ORDERED that Plaintiff shall have until Friday, January 16, 2009
to answer or otherwise respond to Defendants' First Set of Discovery.

DATED this 7th day of January, 2009.

BY THE COURT:



Judge Dale A. Kimball

* * * * *

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge received the Attorneys' Planning Report filed by counsel (docket #18). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for February 4, 2009, at 11:30 a.m. is VACATED.

- | 1. PRELIMINARY MATTERS | <u>DATE</u> |
|---|---|
| Nature of claim(s) and any affirmative defenses: | |
| a. Was Rule 26(f)(1) Conference held? | <u>01/05/09</u> |
| b. Has Attorney Planning Meeting Form been submitted? | <u>Yes.</u> |
| c. Was 26(a)(1) initial disclosure completed? | <u>No.</u> <u>Deadline is</u> <u>1/23/09.</u> |
-
- | 2. DISCOVERY LIMITATIONS | <u>NUMBER</u> |
|---|----------------------|
| a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. Maximum Number of Hours for Each Deposition (unless extended by agreement of parties) | <u>7</u> |
| d. Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. Maximum requests for admissions by any Party to any Party | <u>100</u> |
| f. Maximum requests for production by any Party to any Party | <u>100</u> |
-
- | 3. AMENDMENT OF PLEADINGS/ADDING PARTIES¹ | <u>DATE</u> |
|---|--------------------|
| a. Last Day to File Motion to Amend Pleadings | <u>5/22/09</u> |
| b. Last Day to File Motion to Add Parties | <u>5/22/09</u> |
-
- | 4. RULE 26(a)(2) REPORTS FROM EXPERTS² | |
|--|----------------|
| a. Plaintiff | <u>8/21/09</u> |
| b. Defendant | <u>9/25/09</u> |

c. Counter reports 10/23/09

5. OTHER DEADLINES

- a. Discovery to be completed by:
- Fact discovery 7/24/09
 - Expert discovery 11/20/09
- b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e) None
- c. Deadline for filing dispositive or potentially dispositive motions 11/20/09

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

- a. Referral to Court-Annexed Mediation Yes/No No
- b. Referral to Court-Annexed Arbitration Yes/No No
- c. Evaluate case for Settlement/ADR on 7/24/09
- d. Settlement probability: Poor

7. TRIAL AND PREPARATION FOR TRIAL:

- a. Rule 26(a)(3) Pretrial Disclosures³
- Plaintiff **02/26/10**
 - Defendant **03/12/10**
- b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)
- DATE**
- c. Special Attorney Conference⁵ on or before **03/26/10**
- d. Settlement Conference⁶ on or before 03/26/10
- e. Final Pretrial Conference 2:30 P.M. 04/14/10
- f. Trial Length Time Date
- i. Bench Trial n/a _____

ii. Jury Trial

3 days

8:30 A.M.

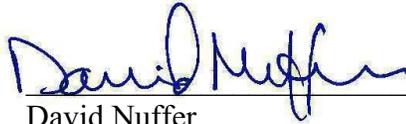
04/27/10

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 6th day of January, 2009.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

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U.S. DISTRICT COURT

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2009 JAN -6 P 2:47

Amy K. Smedley, Utah Bar #9519
Local Counsel for Plaintiff Janice Thompson
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Email: amy_smedley@huntsman.com

DISTRICT CLERK
BY: _____
DEPUTY CLERK

OFFICE OF
JUDGE TENA CAMPBELL

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

JANICE THOMPSON,
Plaintiff

v.

ADMINISTRATIVE OFFICE OF THE
COURTS and DANIEL J. BECKER, in both
his individual and official capacities,
Defendant

ORDER FOR PRO HAC VICE ADMISSION

Case No. 2:04CV00461 TC

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Julie A. Gaisford in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 6th day of January, 2009.

Tena Campbell

U.S. District Judge

LAUREN I. SCHOLNICK (Bar No. 7776)
ERIKA BIRCH (Bar No. 10044)
STRINDBERG & SCHOLNICK, LLC
785 North 400 West
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Telephone: (801) 359-4169
Facsimile: (801) 359-4313
Attorneys for Plaintiff

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U.S. DISTRICT COURT

2009 JAN -6 P 5:25

DISTRICT OF UTAH

BY: DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

RANEE TADEMY

Plaintiff,

vs.

UNION PACIFIC CORPORATION (a Utah
Corporation), and UNION PACIFIC
RAILROAD COMPANY (a Delaware
Corporation)

Defendants.

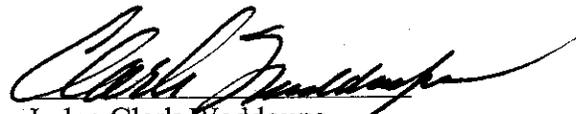
ORDER OF DISMISSAL

Civil No. 2:04-CV-00670CW

Judge: Clark Waddoups

Based upon the Stipulation of Dismissal filed by counsel for both parties, and good cause appearing, it is hereby ORDERED that all claims for relief asserted in the above-captioned matter are dismissed with prejudice. Each of the parties shall bear their own attorneys' fees and costs.

Dated this 6th day of January, 2009


Judge Clark Waddoups

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U.S. DISTRICT COURT

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DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Russell S. Walker (3363)
Anthony M. Grover (10426)
WOODBURY & KESLER, P.C.
265 East 100 South, Suite 300
P.O. Box 3358
Salt Lake City, UT 84110-3358
Telephone: (801) 364-1100

Attorneys for Defendant Parker International, Inc.

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

NGOK GLOBAL CONSULTANTS, INC., a
California corporation,

Plaintiff,

vs.

PARKER INTERNATIONAL, INC., a Utah
corporation,

Defendant.

AMENDED SCHEDULING ORDER

Case No. 2:05-cv-00372 CW

Judge: Clark Waddoups

Pursuant to the Stipulated Joint Motion of the Parties, and for good cause shown, the Amended Scheduling Order, dated October 7, 2008, is amended as follows:

1. Fact discovery deadline is extended from January 30, 2009, to February 27, 2009.
2. The deadline for filing dispositive or potentially dispositive motions is extended from January 30, 2009, to February 27, 2009.

All other deadlines set forth in the October 7, 2008, Scheduling Order remain in effect.

DATED this 6th day of January, 2009
~~December, 2008.~~

BY THE COURT

By: 

Ronald Ady (USB 3694)
RONALD ADY, PLLC
8 E. Broadway, Ste. 725
Salt Lake City, UT 84101
(801) 530-3122
(801) 746-3501 (Fax)

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U.S. DISTRICT COURT

2009 JAN -6 P 5:25

DISTRICT OF UTAH

BY: DEBORA BLENK

O. Randolph Bragg (Ill Bar # 6221983)
Craig M. Shapiro (Ill Bar # 6284475)
HORWITZ, HORWITZ & ASSOCIATES, LTD.
25 East Washington Street, Suite 900
Chicago, Illinois 60602
(312) 372-8822
(312) 372-1673 (Fax)

ATTORNEYS FOR PLAINTIFF

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

LORI KASSUHN BASTA, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

COLLECTION SERVICES LAW CENTER,
P.C., AFS, INC., and CURTIS L. WENGER,

Defendants.

**ORDER EXTENDING THE TIME FOR
PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION TO SET
ATTORNEY FEES**

Jury Trial

Case No. 2:05-cv-00886 TC

Judge Clark Waddoups

Magistrate Judge

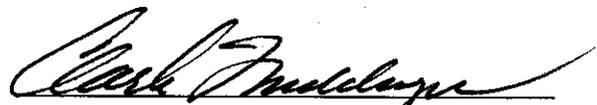
On the motion of the Plaintiff for an order extending the time within which she may respond to the Defendants motion to set the amount of attorney fees, and good cause for the extension having been shown; therefore,

It is ordered that the motion be granted and that the time in which Plaintiff may serve a memorandum in opposition to the Defendants motion to set the amount of attorney fees is

extended to and including January 13, 2009.

DATED this 6th day of January, 2009
~~December, 2008~~

BY THE COURT:


UNITED STATES DISTRICT JUDGE

ERIK STRINDBERG (Bar No. 4154)
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U.S. DISTRICT COURT
2009 JAN -6 P 5:25
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

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april@aprilhollingsworthlaw.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

LAURA CONROY,

Plaintiff,

vs.

EDWARD SCHAFER,
Secretary of Agriculture, United States
Department of Agriculture,

Defendant.

REVISED SCHEDULING ORDER

Civil No. 2:06-CV-00867

Judge Clark Waddoups
Magistrate Judge Brooke C. Wells

A Status Conference was held this 22nd day of December, 2008, before the
Honorable Judge Clark Waddoups. Plaintiff Laura Conroy ("Conroy") was represented

by her attorney, Erik Strindberg of Strindberg & Scholnick, LLC. Defendant Department of Agriculture was represented by John Coleman and Kathryn Wyer of the U.S.

Department of Justice. The parties had previously submitted Status Reports, which were reviewed by the Court prior to the hearing.

IT IS HEREBY ORDERED THAT: 1) Outstanding Discovery is to be completed by January 15, 2009. 2) Plaintiff will have until February 7, 2009, to respond to Defendant's outstanding Motion for Summary Judgment. 3) Defendant will have ten days, as provided for in the local rules, to file a reply pleading in support of its motion.

The court will set a date for hearing the summary judgment motion once briefing is completed.

Dated this 6th day of January, 2009.

BY THE COURT:



Honorable Judge Clark Waddoups

Approved as to form:

/s/ Erik Strindberg with permission of John Coleman
John Coleman
Attorney for Defendant

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U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT—DISTRICT OF UTAH

2009 JAN -7 AM 10:29

JUDGE TENA CAMPBELL

| | | |
|---------------------------|---|----------------------------------|
| UNITED STATES OF AMERICA, | : | |
| | : | |
| PLAINTIFF, | : | ORDER |
| | : | MOTION |
| | : | FOR FURLOUGH TO ATTEND |
| | : | FATHER'S FUNERAL SERVICES |
| | : | |
| AMANDA JO CLAXTON, | : | CASE NO. 2:07-CR-713 TC |
| | : | |
| DEFENDANT. | : | JUDGE TENA CAMPBELL |

BY: CLERK

On Motion of defendant for a furlough of 12 hours to attend the funeral services of her father, and good cause appearing therefore,

IT IS HEREBY ORDERED that the motion is granted.

The United States Marshall Service shall release the defendant for a period of twelve (12) hours from 6:00 AM to 6:00 PM on January 10, 2009, to attend the funeral services.

Defendant shall return to the Davis County Jail or to any location the United States Marshall Service may designate on or before 6:00 PM on January 10, 2009.

DATED this _____ day of January 2009.

*Denied
Tena Campbell
1-8-2009*

TENA CAMPBELL
CHIEF US DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WARREN R. STACK,
Defendant.

ORDER

Case No. 2:07-CR-899-TC

The court has received the supplemental briefing it requested from the parties concerning Defendant Warren Stack's Motion to Suppress and concerning evidence received during the December 5, 2008 evidentiary hearing. Having examined the briefs and evidentiary record, the court finds that oral argument is not necessary to decide the issues before it. Accordingly, the court takes the matter under advisement and will issue an order on the motion to suppress within thirty days, as required by the Speedy Trial Act.

DATED this 7th day of January, 2009.

BY THE COURT:



TENA CAMPBELL
Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

TRUSTEES OF THE UTAH
CARPENTERS' AND CEMENT MASONS'
PENSION TRUST,

Plaintiffs,

vs.

DAW, INC., n/k/a DAW CONSTRUCTION
GROUP, LLC,

Defendant.

ORDER and MEMORANDUM
DECISION

Case No. 2:07-CV-87 TC

Plaintiffs, the Trustees of the Utah Carpenters' and Cement Masons' Pension Trust (the Trustees), are the trustees of a multiemployer pension plan. The plan, which received contributions from employers on behalf of employees covered under collective bargaining agreements, is governed by federal law. The Trustees bring this action against Daw Construction Group, LLC (DCG), claiming that DCG is responsible for withdrawal liability incurred by Daw, Inc. (Daw). The Trustees contend that for purposes of withdrawal liability, DCG should stand in the shoes of Daw. Moreover, the Trustees argue that because DCG did not timely initiate arbitration after the Trustees' asserted a claim of liability, DCG cannot contest any aspect of that liability in court. DCG has counterclaimed against the Trustees, seeking the return of contributions to the plan that DCG claims were unlawful. The Trustees and Daw have both moved for summary judgment on their claims.

For the reasons discussed below, the court finds that DCG is responsible for Daw's withdrawal liability. Moreover, because DCG did not initiate an arbitration challenging the amount of Daw's withdrawal liability, DCG waived the right to contest that liability and a judgment against DCG is appropriate. The only question left to answer is the amount of judgment, as explained more thoroughly below. The court further finds that DCG's argument for summary judgment on its counterclaim has no merit. Accordingly, summary judgment is GRANTED in favor of the Trustees and DCG's motion for summary judgment is DENIED.

BACKGROUND

Daw was a Utah construction company operating in many states, including Utah, for about fifty years. Over the years, Daw was a party to several collective bargaining agreements with its employees who were union members. Early on, various Daw employees belonged to the Mountainwest Regional Council of Carpenters. Later, Daw's employees were members of the Southwest Regional Council of Carpenters (SWRCC).

The SWRCC had an agreement with a multiemployer pension plan known as the "Utah Carpenters' and Cement Mason's Pension Trust" (the Plan) that the Plan would manage SWRCC member pensions. The Trustees managed the Plan. From about 1994 to January 2004, Daw contributed 10¢ per hour worked by its union employees to the Plan.

In mid-February 2004, Daw sold all of its assets to L. D. Bowerman. The purchase price of the assets was the assumption of specified liabilities. Among the assets purchased was "[a]ll the Seller's interest in its contracts or agreements with its employees..." (Ex. D(1) to Pls.' Mem. Supp. Mot. Summ. J. ("Pls.'s Mem. Supp.") at DAW00002.) The liabilities assumed included "[a]ny and all current trade debt such as payables incurred in the ordinary course of business."

(Id. at DAW00003.)

At the time Daw sold its assets, Daw had a collective bargaining agreement with the SWRCC called the Drywall Memorandum Agreement. (Ex. D(13) to Pls.' Mem. Supp.) That agreement was signed by Ryan Daw, one of Daw's principals, and by a representative of the SWRCC on January 19, 2004. The Drywall Memorandum Agreement incorporates the "Trust Agreements," but does not specifically name the Plan. (Id. at SWC001.) Also on January 19, 2004, Ryan Daw signed the Utah Appendix to the Drywall Master Agreement. (Ex. D(14) to Pls.' Mem. Supp.) That appendix specifies that a benefit of "\$1.21 (including 10¢ to Utah Pension Plan)" should be paid to the Plan on behalf of certain employees. (Id. at SWC005.)

In March 2004, after Mr. Bowerman purchased Daw, he formed a holding company called L. D. Bowerman Associates, LLC to hold the assets. In addition, Mr. Bowerman formed a company named Daw Construction Group, LLC ("DCG"), and assigned all the purchased assets to DCG. The following are some, but not all, of the material facts relating to the relationship between DCG and Daw after DCG was assigned Daw's assets:

- DCG used Daw's license for several months on its contracting jobs;
- DCG continued to employ a significant majority of Daw's employees, including SWRCC union members;
- DCG issued a press release saying that it would continue Daw's business and keep Ryan Daw and Gordon Daw as managers (Ex. D(8) to Pl.'s Memo. in Support);
- DCG continued working on Daw's outstanding projects;
- DCG operated from Daw's previous location; and
- Until September 2004, DCG's 10¢ per hour payments were tendered to the Plan

with checks from a bank account in the Daw name and signed by Ryan Daw.

On January 26, 2005, DCG entered into a Memorandum of Understanding with the SWRCC. (Ex. H(16) to Pls.' Mem. Supp.) That agreement stated that the Drywall Memorandum Agreement was amended to increase DCG's contribution to the Plan to 52¢ per hour. From January 2005 to July 2006, DCG paid the Plan contributions of 52¢ per hour. DCG stopped making contributions to the Plan in August 2006.

On July 3, 2006, the Trustees sent a notice to Daw stating that as of January 4, 2004, Daw had withdrawn from the Plan. (Ex. O to Pls.' Mem. Supp.) The Trustees demanded withdrawal liability from Daw of about \$893,000. (Id.) An attorney, who claimed to represent Daw, responded to the Trustees on August 2, 2006, asking why Daw was being assessed withdrawal liability when there was an agreement in place to pay the Plan 52¢ per hour. (Ex. F(5) to Pls.' Mem. Supp.)

On August 18, 2006, DCG itself responded to the Trustees. DCG maintained that DCG was a separate entity from Daw and referred the Trustees to Daw for payment. (See Ex. N. to DCG's Memo. in Support.) On January 8, 2007, the Trustees informed DCG that it was their position that DCG was responsible for Daw's withdrawal liability. (See Ex. R to Pls.' Mem. Supp.) DCG did not demand arbitration or bring any action related to the notice of withdrawal liability to Daw or the Trustees' later assertion that DCG should pay for Daw's liability.

On February 14, 2007, the Trustees filed this action, seeking to collect Daw's withdrawal liability from DCG. On March 12, 2007, DCG filed a counterclaim, alleging that all of the payments it made to the Plan on its own behalf from about January 2005 to August 2006 had been unlawful and demanding them back.

ANALYSIS

I. Summary Judgment Standard

“Summary judgment is proper if the evidence submitted by the parties, viewed in the light most favorable to the non-movant, indicates that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Faustin v. City & County of Denver, Colo., 423 F.3d 1192, 1198 (10th Cir. 2005) (citations and internal quotation marks omitted). See also Fed R. Civ. P. 56(c). “A ‘material fact’ is one which could have an impact on the outcome of the lawsuit, while a ‘genuine issue’ of such a material fact exists if a rational jury could find in favor of the non-moving party based on the evidence presented.” Chasteen v. UNISIA JECS Corp., 216 F.3d 1212, 1216 (10th Cir. 2000). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The parties are well acquainted with the Multiemployer Pension Plan Amendments Act, 94 Stat. 1208 (1980), which governs this dispute. Accordingly, the court will not engage in a detailed discussion of that statute and its purposes. Instead, the court will discuss the specific issues raised by the parties’ motions.

II. Is DCG Responsible for Daw’s Withdrawal Liability?

The first question in deciding the Trustees’ motion for summary judgment is whether DCG is responsible for Daw’s withdrawal liability.¹ A successor company may be charged with

¹ The Trustees argue that this question should be resolved in arbitration, while DCG argues that an arbitrator has no power to decide this question. The court clearly has the power to

the predecessor's withdrawal liability. See Artistic Carton Co. v. Paper Indus. Union-Mgmt. Pension Fund, 971 F.2d 1346, 1352-53 (7th Cir. 1992). To show that a company is the successor of a purchased company for purposes of liabilities incurred under the purchased company's collective bargaining agreements, courts look at various factors. See National Labor Relations Bd. v. Tricor Prods., Inc., 633 F.2d 266, 269 (10th Cir. 1980). These include (1) anti-union motivation; (2) continuity of workforce; (3) continuity in management; (4) continuity of equipment and location; (5) retention by the successor of accounts and customers; (6) changes in the type and amount of work performed; and (7) the successor's assumption of the predecessor's liabilities. See id. at 269-70.

In light of the above factors, the court finds the following facts significant: nothing in the record indicates that Daw sold its assets to Mr. Bowerman to avoid Daw's collective bargaining agreement; DCG continued to employ substantially the same workforce as Daw; there is no actual dispute (DCG's conclusory assertions are not evidence) that Ryan Daw continued as a management level employee at DCG; DCG represented to the public that Ryan Daw would stay at DCG as a manager; for several months after DCG purchased Daw, Ryan Daw signed checks to the Plan on behalf of DCG (the fact that the Trustees might not have cashed these checks is immaterial); Ryan Daw attended Plan meetings on DCG's behalf after DCG acquired Daw; DCG continued to use Daw's business license, stayed at Daw's location, retained Daw's customers and took over Daw's new and existing projects; DCG remained in the same line of

decide this question and will do so now. See, e.g., Transpersonnel, Inc. v. Roadway Exp., Inc., 422 F.3d 456, 459 n.1 (7th Cir. 2005) (collecting cases finding that the question of whether an entity is an "employer" should be decided by the court.)

business that Daw was in; DCG contractually assumed substantially all of Daw's liabilities; and when DCG bargained with the SWRCC, it did not draw up an entirely new agreement, but instead amended the agreement between Daw and the SWRCC.

Various other undisputed facts are relevant to this analysis but the court views the facts highlighted above as sufficient to support its conclusion. In sum, there is no dispute of material fact on the issue of whether DCG is a successor to Daw. As Daw's successor, DCG is responsible for Daw's withdrawal liability.

III. Has DCG Waived Its Right To Challenge Its Withdrawal Liability?

The Trustees argue that by failing to demand arbitration, DCG waived any objections to the Trustees' determination of Daw's withdrawal liability. Under 29 U.S.C. § 1401 (a)(1), an employer must initiate arbitration within 60 days after the earlier of (1) a plan's notification to the employer; or (2) 120 days after the employer responds to the notification. If the employer does not seek arbitration within that time, it "waives any defenses to collection actions that could properly have been heard before the arbitrator" and "the amount demanded by the pension plan sponsor becomes due and owing." Trustees of Colo. Pipe Indus. Pension Trust v. Howard Elec. & Mech. Inc., 909 F.2d 1379, 1385-86 (10th Cir. 1990).

DCG does not dispute that it did not seek arbitration within 120 days after initially contesting that it should pay Daw's withdrawal liability. Nor does DCG dispute that an arbitrator would have the power to hear its challenges to withdrawal liability, with the exception of the question of whether DCG is Daw's successor. But DCG argues that because it had no notice until the present Order that it was Daw's successor, DCG's deadline to seek arbitration should be equitably tolled.

The Seventh Circuit addressed a similar argument in Central States, Southeast & Southwest Areas Pension Fund v. Slotky, 956 F.2d 1369 (7th Cir. 1992). In Slotky, Burton Slotky, an individual, disputed that he was a member of a commonly controlled group with a bankrupt employer and was therefore liable for the employer's withdrawal liability. See id. at 1372-73. The court ruled that Mr. Slotky was a member of the commonly controlled group and concluded that he could not dispute the amount of withdrawal liability assessed to the employer because he had failed to arbitrate in time. See id. at 1374-75. In response Mr. Slotky's assertion that the arbitration deadline should be equitably tolled, the court responded that:

Slotky neither invoked the statutory procedure for conciliation and arbitration nor sought a judicial declaration that he was not liable because he was not a member of the controlled group. He waited until he was sued—having till then emitted nary a peep to suggest that he was contesting the assessment of withdrawal liability. He thus failed to display due diligence, a precondition of equitable tolling. He who wants equity must do equity.

Id. at 1377 (internal citation omitted).

Likewise, DCG failed to preserve its right to arbitration. DCG has never sought arbitration on any question concerning its withdrawal liability. As a consequence, equitable tolling does not apply here, and summary judgment in the Trustees' favor is, accordingly, appropriate.

The only remaining question is the amount due and owing from DCG to the Plan. The Trustees insist that the Plan is entitled to \$1.3 million because they updated their initial demand for \$893,000 during discovery. But the court's initial impression is that a calculation of withdrawal attached to discovery responses does not qualify as a "demand" under 28 U.S.C. § 1399(b)(1). The Trustees' citation to Chicago Truck Drivers, Helpers, & Warehouse Workers

Union (Indep.) Pension Fund v. Loyal Casket Co., Civ. Action No. 06 C 5987, 2008 WL 938409, *4 (N.D. Ill. Apr. 7, 2008) is not persuasive. The Trustees are accordingly ordered to provide supplemental briefing on the amount they “demanded” under the meaning of 28 U.S.C. § 1399(b)(1) within 30 days of entry of this Order. DCG will have 30 days to respond.

IV. Were DCG’s Payments Unlawful?

DCG argues that because it did not have a written agreement mandating payments to the Plan, its payments into the Plan were unlawful. The undisputed facts do not support this conclusion. DCG was a party to the Drywall Memorandum Agreement, and that agreement incorporated unspecified “Trust Agreements.” And although the Drywall Memorandum Agreement does not specifically name the Plan, the course of dealings between DCG and the Trustees makes it clear that DCG understood that “Trust Agreements” referred to the Plan. Specifically, DCG tendered numerous contributions to the Plan pursuant to the Drywall Memorandum Agreement. Consequently, DCG’s motion for summary judgment is DENIED.

ORDER

For the reasons stated above, the Trustee’s Motion for Summary Judgment (Dkt. No. 45) is GRANTED. The parties are instructed to brief the issue of the amount due as directed above. DCG’s Motion for Summary Judgment (Dkt. No. 56) is DENIED.

SO ORDERED this 7th day of January, 2009.

BY THE COURT:



TENA CAMPBELL
Chief Judge

Daniel L. Steele (6336)
STUCKI STEELE PIA ANDERSON, LLC

Wells Fargo Building

299 South Main Street, Suite 2200

Salt Lake City, Utah 84111

Telephone: (801) 961-1300

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Tracy A. Miller, SBN 015920 (AZ)
Christopher J. Meister, SBN 024974 (AZ)
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C., SBN 00504800
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E-mail: tracy.miller@ogletreedeakins.com

E-mail: christopher.meister@ogletreedeakins.com

Attorneys for Defendant

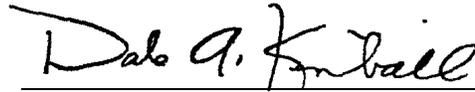
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

| | | |
|----------------------------|---|--------------------------------|
| JANE ROBINSON, | : | ORDER |
| | : | |
| Plaintiff, | : | Case No. 2:07-cv-00151-DAK |
| | : | |
| v. | : | District Judge Dale A. Kimball |
| | : | |
| ALTIUS HEALTH PLANS, INC., | : | |
| | : | |
| Defendant. | : | |

Plaintiff Jane Robinson and Defendant Altius Health Plans, Inc., having moved and stipulated that Defendant shall have an extension to and including February 27, 2009 to file its Reply in support of its Motion for Summary Judgment and good cause appearing therefore,

IT IS HEREBY ORDERED that Defendant shall have up to and including February 27, 2009 to file a Reply in support of its Motion for Summary Judgment.

DATED this 7th day of January, 2009.

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive style with a horizontal line underneath it.

U. S. District Judge Dale A. Kimball

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

| | | |
|---------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, | : | Case No.: 2:08CR00155 TS |
| | : | |
| Plaintiff, | : | FINAL ORDER OF FORFEITURE |
| | : | |
| vs. | : | |
| | : | |
| SHANE MEYER KENDALL, | : | JUDGE: Ted Stewart |
| | : | |
| Defendant. | : | |

WHEREAS, on May 23, 2008, this Court entered a Preliminary Order of Forfeiture, ordering the Defendant to forfeit the .22 Caliber Marlin Rifle, Serial Number 14387198; and

WHEREAS, pursuant to Rule G(4)(a)(i)(A), Federal Rules of Civil Procedure, the United States was not required to publish notice of its intent to seek forfeiture of the .22 Caliber Marlin Rifle, Serial Number 14387198; and

WHEREAS, notice was served upon Shane Meyer Kendall; and

WHEREAS, no timely petition has been filed; and

WHEREAS, the Court finds that Defendant(s) had an interest in the property that is subject to forfeiture pursuant to 18 U.S.C. § 924 (d)(1);

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

1. .22 Caliber Marlin Rifle, Serial Number 14387198

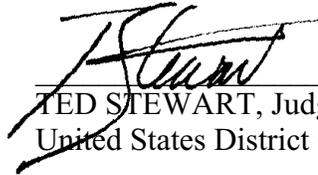
is hereby forfeited to the United States of America pursuant to 18 U.S.C. § 924 (d)(1).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all right, title and interest to the property described above is hereby condemned, forfeited and vested in the United States of America, and shall be disposed of according to law.

IT IS FURTHER ORDERED that the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order.

SO ORDERED; Dated this 6th day of January, 2009.

BY THE COURT:



TED STEWART, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

| | | |
|---------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, | : | Case No.: 2:08CR00236 DAK |
| | : | |
| Plaintiff, | : | |
| | : | PRELIMINARY ORDER OF |
| vs. | : | FORFEITURE |
| | : | |
| VAIKALAFI LUTUI, | : | |
| | : | JUDGE: Dale A. Kimball |
| Defendant. | : | |

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count 1 of the Indictment for which the government sought forfeiture pursuant to 26 U.S.C. § 5872(a) the defendant Vaikalafi Lutui shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 26 U.S.C. § 5861(d), including but not limited to:

- Mossberg 20 Gauge Shotgun

2. The Court has determined that based on a guilty plea of Possession of Unregistered Sawed-off Shotgun, that the above-named properties is subject to forfeiture, that the defendant had an interest in the properties, and that the government has established the requisite nexus between such properties and such offense.

3. Upon entry of this Order the Attorney General, or its designee is authorized to

seize and conduct any discovery proper in identifying, locating, or disposing of the properties subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

4. Upon entry of this Order the Attorney General or its designee is authorized to commence any applicable proceeding to comply with statutes governing third party interests, including giving notice of this Order.

5. The United States shall publish notice of this Order on its intent to dispose of the property in such a manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the subject currency and property.

6. Any person, other than the above named defendants, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and amendment of the order of forfeiture pursuant to 21 U.S.C. § 853.

7. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendants at the time of sentencing and shall be made part of the sentence and included in the judgment.

8. Any petition filed by a third party asserting an interest in the subject currency and property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

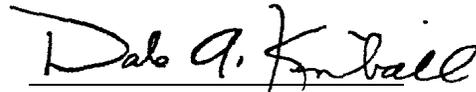
9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

10. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

11. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 7th day of January, 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Dale A. Kimball". The signature is written in a cursive style with a horizontal line underneath the name.

DALE A. KIMBALL, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RICHARD NORRIS,)
)
 Petitioner,) Case No. 2:08-CV-44 DN
)
 v.) Magistrate Judge David Nuffer
)
 FOURTH DISTRICT COURT et al.,) O R D E R
)
 Respondents.)

On May 31, 2008, the Court granted the Utah Attorney General Office's (AG's) request for an extension of time in which to respond to the habeas corpus petition in this case. The Court ordered the AG to file its response "thirty days after receipt of the record from the underlying criminal case." The Court has yet to receive the response.

IT IS HEREBY ORDERED that within thirty days the AG must file with the Court a status report, notifying the Court of its attempts to obtain the record from the underlying criminal case and estimating when it may respond.

DATED this 6th day of January, 2009.

BY THE COURT:



DAVID NUFFER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

KENNETH E. PONTIOUS NON-GST
MARITAL TRUST,

Plaintiff,

vs.

ROBERT MCKEE, et al.,

Defendants.

Case No. 2:08 cv 47 BCW

ORDER DISMISSING CASE

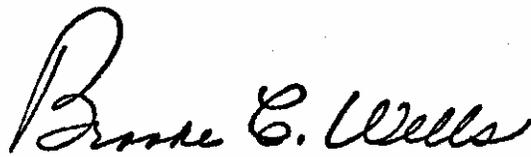
Magistrate Judge Brooke C. Wells

An Order to Show Cause was entered in this case on December 8, 2008. In that order, the court directed the plaintiff to notify the court within twenty-one days of its intentions to proceed with this litigation. Plaintiff has failed to so notify the court.

Accordingly, the court DISMISSES this case. The clerk is directed to close the case.

SO ORDERED.

DATED this 7th day of January, 2009.



Brooke C. Wells
United States Magistrate Judge

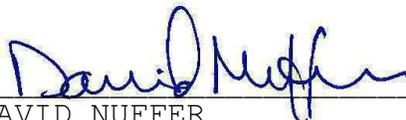
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

| | | |
|-----------------------|---|--------------------------------|
| TEX WILLIAM ATKINS, |) | |
| |) | |
| Petitioner, |) | Case No. 2:08-CV-52 DAK |
| |) | |
| v. |) | District Judge Dale A. Kimball |
| |) | |
| A. LYNN PAYNE et al., |) | ORDER |
| |) | |
| Respondents. |) | Magistrate Judge David Nuffer |

Petitioner, Tex William Atkins, filed a *habeas corpus* petition.¹ IT IS HEREBY ORDERED that, by February 19, 2009, Respondents must respond to Petitioner's arguments.² The Clerk of Court must serve upon Respondents copies of this Order and the amended petition (Docket Entry # 4).

DATED this 6th day of January, 2009.

BY THE COURT:



DAVID NUFFER
United States Magistrate Judge

¹See 28 U.S.C.S. § 2254 (2008).

²The Court notes that untimeliness has been ruled by the Tenth Circuit to be an affirmative defense. *Kilgore v. Attorney Gen.*, No. 07-1014, 2008 WL 638727, at *1 (10th Cir. Mar. 11, 2008).

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

JAN 07 2009

BY D. MARK JONES, CLERK
DEPUTY CLERK

Earl Jay Peck (#2562)
R. Christopher Preston (9195)
SMITH HARTVIGSEN, PLLC
215 South State Street, Suite 650
Salt Lake City, Utah 84111
Telephone: (801) 413-1600
Facsimile: (801) 413-1620

*Attorneys for Defendants
J. Neal Jorgensen and Diane Jorgensen*

**IN THE UNITED STATES JUDICIAL DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

INTERMOUNTAIN RESOURCES, LLC,
A COLORADO LIMITED LIABILITY COMPANY

Plaintiff,

v.

J. NEAL JORGENSEN AND DIANE
JORGENSEN, individuals;
RECREATIONAL LANDS UNLIMITED,
INC. dba WHISPERING PINES RANCH,
a Utah corporation.

Defendants.

J. NEAL JORGENSEN AND DIANE
JORGENSEN,

Counterclaimants,

v.

INTERMOUNTAIN RESOURCES, LLC,

Counter Defendant.

**ORDER GRANTING ADDITIONAL TIME
TO FILE THE REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO BIFURCATE
THE TRIAL OF CLAIMS AGAINST, AND
ASSERTED BY DEFENDANTS
JORGENSEN**

Case No. 2:08-CV-80

Judge: Honorable Ted Stewart

Magistrate Judge Samuel Alba

RECREATIONAL LANDS UNLIMITED,
INC. d.b.a. WHISPERING PINES RANCH, a
Utah Corporation,

Third Party Plaintiff,

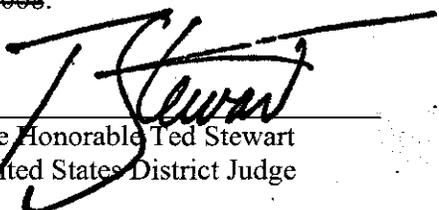
v.

PINE CREEK RANCH PROPERTY
OWNERS ASSOCIATION, a Utah
Corporation,

Third-Party Defendant.

Pursuant to the stipulation of Plaintiff IMR and Defendants Jorgensen and for good cause shown, it is HEREBY ORDERED THAT Defendants Jorgensen may have until January 16, 2009, in which to file their Reply Memorandum in Support of the Motion to Bifurcate the Trial of Claims Against and Asserted by Defendants Jorgensen

DATED this 7th day of January, 2009
~~December, 2008.~~


The Honorable Ted Stewart
United States District Judge

APPROVED AS TO FORM AND CONTENT:

/s/ R. Christopher Preston
Earl Jay Peck
R. Christopher Preston
SMITH HARTVIGSEN, PLLC
Attorneys for Plaintiff

/s/ Kendra L. Shirey
E. Blaine Rawson
Kendra L. Shirey
Home Roberts & Owen, LLP
Attorneys for Plaintiff
(Signed with Permission of Kendra L. Shirey)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**GULDYN PLATINUM, SDI &
COMPANY, and STEPHEN DUXLER,**

Plaintiffs,

vs.

**UNITED STATES DEPARTMENT OF
JUSTICE,**

Defendants.

ORDER OF DISMISSAL

Case No. 2:08CV332 DAK

Based upon the Stipulation of the parties and the prior Order of this court, IT IS
HEREBY ORDERED:

That the above captioned matter is dismissed without prejudice, each part to bear their
own fees and costs.

DATED this 7th day of January, 2009.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

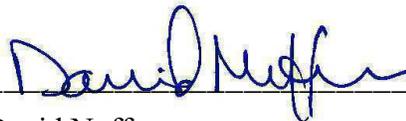
JACQUELYN TANNER :
 : Court No. 2:08CV00429DN
Plaintiff, :
 :
vs. : ORDER
 :
MICHAEL J. ASTRUE, :
Commissioner Of Social Security, :
 :
Defendant. :

Based upon Defendant's Unopposed Motion for Enlargement of Time and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendant may have up to and including January 22, 2009, to respond to Plaintiff's Opening Brief. Plaintiff's Reply Memorandum will then be due February 5, 2009.

DATED this 6th day of January, 2009.

BY THE COURT:



David Nuffer
United States Magistrate Judge

A. Paul Schwenke,
Petitioner Pro Se
2171 E. 575 N.
St. George, Utah 84790
Telephone: 435 986 3829
Fax: 435 986 3829

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U.S. DISTRICT COURT
2009 JAN -5 P 3:13
2008 DEC 26 P 1:37
U.S. DISTRICT COURT
DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

A. Paul Schwenke, :
Petitioner, :
vs. : Case No. 2:08-CV-467 TS
State of Utah, : Honorable Ted Stewart
Respondent. : Magistrate Brooke Wells

MOTION FOR TIME TO FILE A REPLY INCLUDING A STATEMENT OF CAUSE AND PREJUDICE TO THE STATE'S RESPONSE TO THE PETITION FOR A WRIT OF HABEAS CORPUS.

Petitioner, A. Paul Schwenke, appearing pro se, respectfully moves the honorable court to grant petitioner time to file a Reply, including a Statement of cause and prejudice if necessary, to the State's Response to the Petition for a Writ of Habeas Corpus. The grounds for this motion is the fact that the Response filed by the State fails to address any of the claims of the petition, but instead raises only procedural issues which petitioner must address. Petitioner hereby requests 10 business days or no later than January 12, 2009 to file his Reply.

Respectfully submitted this 26th day of December, 2008.

SO ORDERED


BROOKE C. WELLS
U.S. Magistrate Judge


A. Paul Schwenke, Petitioner Pro se

Date 1/05/09

SCANNED

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

EUGENE K. MCCRARY,)
)
 Petitioner,) Case No. 2:08-CV-600 JTG
)
 v.) District Judge Thomas Greene
)
 STEVEN TURLEY et al.,) **O R D E R**
)
 Respondents.) Magistrate Judge David Nuffer

Petitioner, Eugene K. McCrary, filed a § 2254 *habeas corpus* petition.¹ Under § 2254, a state prisoner challenges the constitutionality of his conviction and/or sentencing. It seems, however, that Petitioner also attacks the execution of his sentence, which is more properly done under § 2241.² The Court thus construes this petition to be brought under both sections.

On that basis, IT IS HEREBY ORDERED that, by March 5, 2009, Respondents must respond to the petition.³ IT IS FURTHER ORDERED that Petitioner's motion for permission to supplement is GRANTED.

¹See 28 U.S.C. § 2254 (2008).

²See *id.* § 2241.

³The Court notes that untimeliness has been ruled by the Tenth Circuit to be an affirmative defense. *Kilgore v. Attorney Gen.*, No. 07-1014, 2008 WL 638727, at *1 (10th Cir. Mar. 11, 2008).

(See File Entry # 7.) The Clerk of Court must serve upon Respondents copies of this Order, the petition, and supplement (File Entry # 8).

DATED this 6th day of January, 2009.

BY THE COURT:

A handwritten signature in blue ink that reads "David Nuffer". The signature is written in a cursive style with a horizontal line underneath it.

DAVID NUFFER
United States Magistrate Judge

Richard F. Ensor (10877)
Young, Hoffman, Strassberg & Ensor, LLP
170 South Main Street, Suite 1125
Salt Lake City, Utah 84101
Phone: (801) 359-1900
Facsimile: (801) 359-1980

Attorneys for Plaintiffs HI&J Investments, LLC and BTN Tracker, LLC

FILED
U.S. DISTRICT COURT

2009 JAN -6 P 5:25

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION**

HI&J INVESTMENTS LLC, a Utah Limited
Liability Corporation, and BTN TRACKER,
LLC, a Utah Limited Liability Corporation,

Plaintiffs,

vs.

BURSAR-CAMBIST, INC. a Texas Corporation)
d/b/a MORTGAGE XPRESS, and VINCENT)
CURRY, a Texas Resident,)

Defendants.)

ORDER

Case No. 2:08-cv-633

Judge Waddoups

Pursuant to the Motion to Withdraw as Counsel, submitted by Richard F. Ensor of the law firm Young, Hoffman, Strassberg & Ensor, LLP, and local rule DUCivR 83-1.4(a)(1), and for good cause shown, the Motion to Withdraw as Counsel is hereby GRANTED, and it is FURTHER ORDERED that Mr. Ensor shall immediately notify Plaintiff BTN Tracker LLC in writing of its obligations under Rule 83-1.4(b) and that Plaintiff BTN Tracker LLC shall, within twenty (20) days of the date of the Order, file a notice with the Court naming its new counsel.

DATED this 6th day of January 2009.

UNITED STATES DISTRICT COURT


Judge Waddoups

FILED
U.S. DISTRICT COURT

2009 JAN -6 P 5:25

DISTRICT CLERK

BY: _____
DEPUTY CLERK

James E. Magleby (7247)
magleby@mgpclaw.com

Jason A. McNeill (9711)
mcneill@mgpclaw.com

MAGLEBY & GREENWOOD, P.C.
170 South Main Street, Suite 350
Salt Lake City, Utah 84101-3605
Telephone: 801.359.9000
Facsimile: 801.359.9011

Attorneys for Defendant Codale Electric Supply, Inc.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**MP NEXLEVEL, LLC, a Minnesota
limited liability company,**

Plaintiff,

v.

**CODALE ELECTRIC SUPPLY, INC., a
Utah corporation, and YUCCA
TELECOMMUNICATIONS
SYSTEMS, INC., a New Mexico
corporation, FURUKAWA ELECTRIC
NORTH AMERICA, INC., a Delaware
corporation, and SUPERIOR ESSEX,
INC., a Delaware corporation,**

Defendants.

**ORDER GRANTING EX PARTE
APPLICATION FOR ENLARGEMENT
OF TIME FOR CODALE TO FILE
REPLY**

Civil No. 08-CV-00727

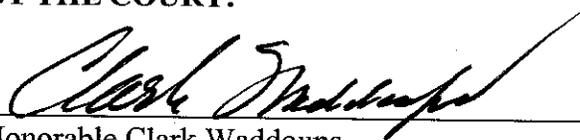
Honorable Clark Waddoups

Based upon the *Ex Parte* Application for Enlargement of Time for Codale to File its Reply Memorandum in Support of Motion to Dismiss or Alternatively for Summary Judgment, and for good cause shown, the Court orders:

Codale shall have through Thursday, January 8, 2009 to file its Reply in Support of Motion to Dismiss or Alternatively for Summary Judgment.

DATED this 6th day of January, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Clark Waddoups", written over a horizontal line.

Honorable Clark Waddoups
U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

CHRISTOPHER A. RUSSELL,

Plaintiff,

vs.

CANYON VIEW TITLE
INSURANCE AGENCY, et al.

Defendants.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:08cv00808

District Judge Ted Stewart

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel (docket #12). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for **February 4, 2009, at 10:30 a.m.** is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | 1. PRELIMINARY MATTERS | <u>DATE</u> |
|---|--------------------|
| Nature of claim(s) and any affirmative defenses: | |
| a. Was Rule 26(f)(1) Conference held? | <u>12/30/2008</u> |
| b. Has Attorney Planning Meeting Form been submitted? | <u>12/31/2008</u> |
| c. Was 26(a)(1) initial disclosure completed? | <u>1/30/2009</u> |
-
- | 2. DISCOVERY LIMITATIONS | <u>NUMBER</u> |
|---|----------------------|
| a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. Maximum Number of Hours for Each Deposition (unless extended by agreement of parties) | <u>No limit</u> |

| | | |
|-----------|---|---------------------|
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>No limit</u> |
| f. | Maximum requests for production by any Party to any Party | <u>No limit</u> |
| 3. | AMENDMENT OF PLEADINGS/ADDING PARTIES² | |
| a. | Last Day to File Motion to Amend Pleadings | 3/31/2009 |
| b. | Last Day to File Motion to Add Parties | 3/31/2009 |
| 4. | RULE 26(a)(2) REPORTS FROM EXPERTS³ | |
| a. | Plaintiff | 8/31/2009 |
| b. | Defendant | 9/30/2009 |
| c. | Counter reports | 10/30/2009 |
| 5. | OTHER DEADLINES | |
| a. | Discovery to be completed by: | |
| | Fact discovery | 7/31/2009 |
| | Expert discovery | 11/30/2009 |
| b. | <i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e) | _____ |
| c. | Deadline for filing dispositive or potentially dispositive motions | 12/31/2009 |
| 6. | SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION | |
| a. | Referral to Court-Annexed Mediation | <u>Yes/No</u> _____ |
| b. | Referral to Court-Annexed Arbitration | <u>Yes/No</u> _____ |
| c. | Evaluate case for Settlement/ADR on | _____ |
| d. | Settlement probability: | Uncertain |

7. TRIAL AND PREPARATION FOR TRIAL:

- a. Rule 26(a)(3) Pretrial Disclosures⁴
- | | | | |
|-----------|--|--|-----------------|
| Plaintiff | | | 04/02/10 |
| Defendant | | | 04/16/10 |
- b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)
- DATE**
- c. Special Attorney Conference⁵ on or before **04/30/10**
- d. Settlement Conference⁶ on or before 04/30/10
- e. Final Pretrial Conference 2:30 p.m. 05/18/10
- f. Trial
- | | <u>Length</u> | <u>Time</u> | <u>Date</u> |
|----------------|---------------|------------------|-----------------|
| i. Bench Trial | 3 days | <u>8:30 a.m.</u> | <u>06/01/10</u> |
| ii. Jury Trial | | | _____ |

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 6th day of January, 2009.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should

appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOSEPH LUCERO,)
)
 Plaintiff,) Case No. 2:08-CV-918 TC
)
 v.) District Judge Tena Campbell
)
 UTAH STATE PRISON et al.,) **ORDER**
)
 Defendants.) Magistrate Judge Paul Warner

Plaintiff, Joseph Lucero, filed a *pro se* prisoner civil rights complaint.¹ The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full \$350.00 filing fee required.² Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."³ Under this formula, Plaintiff must pay \$18.73. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

¹ See 42 U.S.C.S. § 1983 (2008).

² See 28 U.S.C.S. § 1915(b)(1) (2008).

³ *Id.*

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of \$18.73 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

IT IS SO ORDERED.

DATED this 6th day of January, 2009.

BY THE COURT:

A handwritten signature in cursive script that reads "Paul M. Warner". The signature is written in black ink and is positioned above a horizontal line.

PAUL M. WARNER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Joseph Lucero (Case No. 2:08-CV-918 TC), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Joseph Lucero, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$18.73, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

Signature of Inmate
Joseph Lucero

Michael N. Zundel, Esq. (#3755)
James A. Boevers, Esq. (#0371)
PRINCE, YEATES & GELDZAHLER
A Professional Corporation
City Centre I, Suite 900
175 East 400 South
Salt Lake City, UT 84111
Telephone: (801) 524-1000
mnz@princeyeates.com
jab@princeyeates.com

Attorneys for Plaintiff Republic Bank, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

REPUBLIC BANK, INC., a Utah Industrial
Bank,

Plaintiff,

vs.

WEST PENN ALLEGHENY HEALTH
SYSTEM, INC., a Pennsylvania
Corporation,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:08-cv-934-DAK

Judge Dale A. Kimball

Pursuant to *Fed. R. Civ. P.* 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel (docket #9). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for February 4, 2009, at 11:00 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

| | |
|---|----------------|
| 1. PRELIMINARY MATTERS: | DATE |
| Nature of claims and any affirmative defenses: Plaintiff's claim is for breach of contract. Defendant's main defenses are no meeting of minds for contract formation and absence of authority to enter into contract. | |
| a. Was Rule 26(f)(1) Conference held? Yes | 12/29/08 |
| b. Has Attorney Planning Meeting Form been submitted? Yes | 12/31/08 |
| c. Was 26(a)(1) initial disclosure completed? No | 1/30/09 |
| 2. DISCOVERY LIMITATIONS: | NUMBER |
| a. Maximum Number of Depositions by Plaintiff | 10 |
| b. Maximum Number of Depositions by Defendant | 10 |
| c. Maximum Number of Hours for Each Deposition | 7 |
| d. Maximum Interrogatories by any Party to any Party | 25 |
| e. Maximum requests for admissions by any Party to any Party | 25 |
| f. Maximum requests for production by any Party to any Party | 25 |
| 3. AMENDMENT OF PLEADINGS/ADDING OF PARTIES² | DATE |
| a. Last Day to File Motion to Amend Pleadings | 3/2/09 |
| b. Last Day to File Motion to Add Parties | 3/2/09 |
| 4. RULE 26(a)(2) REPORTS FROM EXPERTS³ | Not Applicable |
| 5. OTHER DEADLINES | DATE |
| a. Discovery to be completed by: | |
| Fact discovery | 5/29/09 |
| Expert discovery | not applicable |

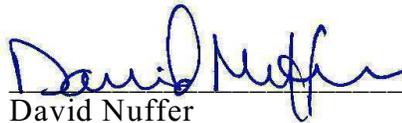
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|-----------|--|---------------|--------------------------------------|
| b. | Deadline for filing dispositive or potentially dispositive motions | | 6/29/09 |
| 6. | ADR/SETTLEMENT | DATE | |
| a. | Referral to Court-Annexed Mediation: Yes | | after 4/27/09 |
| b. | Referral to Court-Annexed Arbitration: No | | |
| c. | Settlement probability: unknown | | |
| 7. | TRIAL AND PREPARATION FOR TRIAL | TIME | DATE |
| a. | Rule 26(a)(3) Pretrial Disclosures ⁴ | | |
| | Plaintiff | | 10/09/09 |
| | Defendant | | 10/23/09 |
| b. | Objections to Rule 26(a)(3) Disclosures | | 14 days after service of disclosures |
| c. | Special Attorney Conference ⁵ on or before | | 11/06/09 |
| d. | Settlement Conference ⁶ on or before | | 11/06/09 |
| e. | Final Pretrial Conference | 2:30 p.m. | 11/25/09 |
| f. | Trial | <u>Length</u> | |
| | Bench Trial | 3 days | 8:30 a.m. 12/09/09 |
| 8. | OTHER MATTERS | | |

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any

challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

DATED this 6th day of January, 2009.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2(b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2(c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2(b) or (c) should appear on the caption as required under DUCivR 10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

Peggy A. Tomsic (3879)
Brandon G. Myers (11079)
TOMSIC & PECK, LLC
136 E. South Temple, Suite 800
Salt Lake City, Utah 84111
Telephone: (801) 532-1995

Attorneys for Defendants Duane M. Moss, Joseph Dunbeck
and Dunbeck & Moss, P.C.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

WHITNEY LOVEJOY,

Plaintiff,

v.

CHRIS PATTON; ALISON, PATTON;
JERRY KEE; DUANE W. MOSS;
JOSEPH DUNBECK; DUNBECK &
MOSS, P.C.; WEST COAST
RECOVERY SERVICE OF UTAH, INC,
d/b/a WEST COAST RECOVERY
SERVICE; DOES 1-100,

Defendants.

)
)
) **[PROPOSED] ORDER GRANTING**
) **EX PARTE MOTION FOR**
) **EXTENSION OF TIME TO RESPOND**
) **TO COMPLAINT**
)
)

Case No. 2:08cv00936

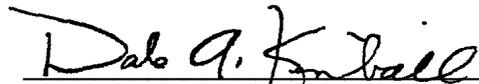
Honorable Dale A. Kimball

Having considered Defendants Duane M. Moss, Joseph Dunbeck, and Dunbeck and Moss, P.C.'s *Ex Parte Motion for Extension of Time to Respond to Complaint* and for good cause shown, IT IS HEREBY ORDERED:

Defendants Duane Moss and Joseph Dunbeck, and Dunbeck and Moss, P.C. shall have until and including January 28, 2009 to respond to the Complaint in this matter.

DATED this 7th day of January, 2009.

BY THE COURT:



Honorable Dale A. Kimball
U.S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2009 I caused a true and correct copy of the foregoing **[PROPOSED] ORDER GRANTING EX PARTE MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT** to be mailed postage prepaid to the following:

Brian W. Steffensen
2159 South 700 E., Suite 240
Salt Lake City, Utah 84106

/s/ _____

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

YEARSLEY, ADRIAN.,

Plaintiff,

vs.

YEARSLEY, STEVEN

Defendant.

**ORDER
TO SHOW CAUSE**

Case No. 2:08-CV-01005-TC

Pro se Plaintiff Adrian Yearsley moves the court to enforce custody rights created by Utah state court decree regarding three minor children, whom she believes are located in Idaho or North Dakota. Ms. Yearsely has brought this action court pursuant to the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C. § 1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Case law suggests that the PKPA does not create a private cause of action in federal court. Thompson v. Thompson, 484 U.S. 174 (1988); Smith ex rel. Smith v. Pines Treatment Ctr., 472 F. Supp. 2d 784, 786 (E.D. Va. 2007); Cahill v. Kendall, 202 F. Supp. 2d 1322, 1328-29; Sipka v. Soet, 761 F. Supp. 761, 767 (D. Kan. 1991); Eberhardt v. Eberhardt, 672 F. Supp. 464 (D. Colo. 1987). Case law also suggests that the UCCJEA, which is a procedural statute adopted by various states, does not confer jurisdiction on federal courts. Smith, 472 F. Supp. 2d at 786-87; Cahill, 202 F. Supp. 2d at 1328-29. Moreover, federal courts generally lack jurisdiction over domestic relations issues such as child custody decrees. Ankenbrandt v.

Richards, 504 U.S. 689, 702 (1992); Vaughan v. Smithson, 883 F.2d 63, 64 (10th Cir. 1989).

Because Ms. Yearsley has failed to show a valid federal statute upon which federal question jurisdiction can be raised, Plaintiff is ordered to file a Response to this Order to Show Cause why the court has subject matter jurisdiction in this case by January 28, 2009.

SO ORDERED this 7 day of January, 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
Chief Judge