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

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**UNITED STATES OF AMERICA *ex rel.***  
**CHRISTOPHER A. WICKLIFFE and**  
**MARK J. HANSON,**

**Plaintiffs,**

**vs.**

**EMC CORPORATION,**

**Defendant.**

**ORDER**

**Case No. 1:06CV64 DAK**

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This matter is before the court on (1) the issue of the remaining sealed documents in this case, as discussed in the court's Memorandum Decision and Order dated March 30, 2009; (2) Relators' Motion for Hearing and for Leave to File Supplemental Briefing, and to Withdraw Entry of Final Judgment Until Resolution of the Parties' Pending Motions; and (3) the United States' Motion for Reconsideration. The United States does not object to Relators' Motion, except for the format proposed by Relators for filing Supplemental Briefs.

Therefore, IT IS HEREBY ORDERED that

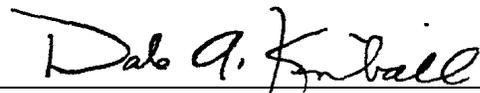
- (1) Relator's Motion [Docket ## 46 & 48] is GRANTED. The final Judgment in this case [Docket #43] is WITHDRAWN, and entry of final Judgment is STAYED pending resolution of the pending motions;
- (2) Because of the withdrawal of the Judgment, the United States' Motion for

Reconsideration [docket # 43] is MOOT at this time, but the issue raised by the United States will be addressed in conjunction with the court's Order pertaining to the supplemental briefing requested by Relators;

- (3) Relators are direct to file their Supplemental Brief by no later than May 21, 2009. The United States may file a Response Brief by no later than June 18, 2009, and Relators may file a Reply Brief by no later than June 30, 2009. The court will notify the parties if oral argument would assist the court; and
- (4) The because the United States has not objected to the unsealing of certain documents in this case, the court directs the Clerk of Court to unseal the content of all Docket entries in this action, except for Docket #31 and #35, which shall remain under seal.

DATED this 1<sup>st</sup> day of May, 2009.

BY THE COURT:



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DALE A. KIMBALL  
United States District Judge

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

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UNITED STATES OF AMERICA,  
Plaintiff,

vs.

FELIX GUZMAN,  
Defendant.

AMENDED ORDER FOR  
COMPETENCY DETERMINATION  
PURSUANT TO 18 U.S.C. § 4241

Case No. 1:08-CR-74-TC

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Defendant Felix Guzman, through counsel, filed a Motion for Competency Hearing based on the procedures set forth in 18 U.S.C. § 4241. The Motion provides information, including a diagnosis obtained by Mr. Guzman’s counsel from a clinical psychologist who evaluated Mr. Guzman, that provides reasonable cause to believe that Mr. Guzman “may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.” 18 U.S.C. § 4241(a).

However, before the court holds a competency hearing, the court finds, for the following reasons, that a second diagnosis and evaluation of Mr. Guzman’s competency to stand trial should be obtained. See 18 U.S.C. §§ 4241(b), 4247(b) (giving court discretion to order more than one examination of defendant, “if appropriate”). First, the United States seeks a separate evaluation of Mr. Guzman by experts at a federal facility, and the government is entitled to

present its own expert witness evidence in what may be an adversarial hearing. Second, having more than one expert opinion would be helpful to the court. See also 18 U.S.C. § 4247(b).

Accordingly, the court FINDS and ORDERS as follows:

1. The Motion for Competency Hearing (Dkt # 75) is DENIED WITHOUT PREJUDICE.

2. As required by 18 U.S.C. § 4241(a), the court finds there is reasonable cause to believe that Defendant Felix Guzman may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

3. Based on the provisions of 18 U.S.C. §§ 4241, 4247(b), and 4247(c), before setting a hearing to determine Mr. Guzman's competency, the court orders that a psychological examination of Mr. Guzman be conducted, inquiring into the issues of the competency of Mr. Guzman presently to proceed and that a written report of such examination be prepared and filed with the court.

4. The report shall include: (a) Mr. Guzman's history and present symptoms; (b) a description of the psychiatric, psychological, and medical tests that were employed, and the results of those tests; (c) the examiner's findings; and (d) a conclusion about whether Mr. Guzman is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

5. For the purpose of conducting the psychological examination, the United States Marshal is directed to transport Defendant Felix Guzman, without unnecessary delay, to a federal

facility as determined by the Bureau of Prisons, and, unless otherwise ordered, to return Mr. Guzman to the District of Utah upon completion of the psychological examination.

5. The examiner's report shall be completed within a reasonable period, not to exceed thirty (30) days, but an extension of time (not to exceed fifteen (15) days) may be granted upon request by the examiner and upon a showing of good cause that additional time is necessary to observe and evaluate the Defendant.

6. Upon completion of the examination, the examiner shall file with this court a report in accordance with 18 U.S.C. § 4247 and provide copies to both counsel.

7. IT IS FURTHER ORDERED that the trial for Felix Guzman is hereby severed from the trial of his co-defendants Leonel Guzman and Efran Garcia. The trial of Leonel Guzman and Efran Garcia will go on as scheduled, with such trial beginning June 22, 2009.

8. In accordance with the provisions of 18 U.S.C. § 3161, the period of delay caused by the examination directed shall be excluded, for Felix Guzman only, in computing the time within which trial in this matter must commence under the Speedy Trial Act and that such period shall be excluded nunc pro tunc from April 21, 2009, until the date of determination of Felix Guzman's competency.

DATED this 1st day of May, 2009.

BY THE COURT:



TENA CAMPBELL  
Chief Judge

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U.S. DISTRICT COURT  
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MAY 01 2009  
DISTRICT OF UTAH  
OFFICE OF  
BY: ~~DEPUTY CLERK~~ JUDGE TENA CAMPBELL

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*Attorneys for Travelers Property & Casualty Company of America*

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

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INTERSTATE FIRE & CASUALTY  
COMPANY, a corporation,

Plaintiff,

v.

TRAVELERS PROPERTY & CASUALTY  
COMPANY OF AMERICA, a corporation;  
NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH,  
PENNSYLVANIA, a corporation,

Defendants.

**ORDER GRANTING  
DISCOVERY CUT-OFF EXTENSION**

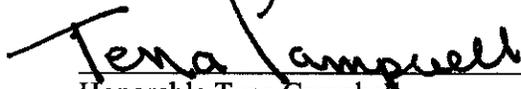
Case No. 1:08-cv-00091

Judge Tena Campbell  
Magistrate Paul M. Warner

BASED UPON the stipulation of the parties, and good cause appearing,

IT IS HEREBY ORDERED that the current discovery cut-off date of May 22, 2009 is extended to July 21, 2009.

DATED this 1 day of May, 2009.



Honorable Tena Campbell  
U.S. District Court Judge

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*Attorneys for Plaintiff*

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

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NATASHA CHILD,	)	
	)	<b>SCHEDULING ORDER</b>
Plaintiff,	)	<b>AND ORDER VACATING</b>
	)	<b>HEARING</b>
vs.	)	
	)	Case No. 1:08-cv-147
KENNETH HAMMOND, an Ogden City Police	)	
Officer; JON GREINER, Ogden City Chief of Police;	)	
OGDEN CITY, and JOHN and JANE DOES 1-15,	)	Judge Tena Campbell
	)	
Defendants.	)	Magistrate Judge David Nuffer
	)	
	)	

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Pursuant to Fed.R. Civ P. 16(b), Magistrate Judge David Nuffer received the Attorneys' Planning Report filed by counsel. 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 May 1, 2009, at 11:30 a.m. is VACATED.

Deadlines are at 11:59p.m. on the dates below:

<b>1.</b>	<b>PRELIMINARY MATTERS</b>	<b><u>DATE</u></b>
	Nature of claim(s) and any affirmative defenses:	<i>As expressed in Complaint and Answer</i>
	a. Was Rule 26(f)(1) Conference held?	<u>April 20, 2009</u>
	b. Has Atty. Planning Meeting Form been submitted?	<u>Yes</u>
	c. Was 26(a)(1) initial disclosure completed?	<u>May 15, 2009</u>
<b>2.</b>	<b>DISCOVERY LIMITATIONS</b>	<b><u>NUMBER</u></b>
	a. Maximum Number of Depositions by Plaintiff (excluding experts)	<u>10</u>
	b. Maximum Number of Depositions by Defendants (excluding experts)	<u>10</u>
	c. Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>7 for parties</u> <u>4 for others</u>
	d. Maximum Interrogatories by any Party to any Party	<u>50</u>
	e. Maximum requests for admissions by any Party to any Party	<u>50</u>
	f. Maximum requests for production by any Party to any Party	<u>50</u>
		<b><u>DATE</u></b>
<b>3.</b>	<b>AMENDMENT OF PLEADINGS/ADDING PARTIES</b>	
	a. Last Day to File Motion to Amend Pleadings	<u>05/15/09</u>
	b. Last Day to File Motion to Add Parties	<u>05/15/09</u>
<b>4.</b>	<b>RULE 26(a)(2) REPORTS FROM EXPERTS</b>	
	a. Plaintiff's experts	<u>10/30/09</u>
	b. Defendants' experts	<u>11/30/09</u>
	c. Counter reports	<u>12/15/09</u>

**5. OTHER DEADLINES**

- a. Discovery to be completed by:
  - Fact discovery 10/30/09
  - Expert discovery 01/15/10
- b. Deadline for filing dispositive or potentially dispositive motions 01/30/10

**6. SETTLEMENT/ ADR**

- a. Referral to Court-Annexed Mediation No
- b. Referral to Court-Annexed Arbitration No
- c. Evaluate case for Settlement/ADR on... After dispositive motions decided
- d. Settlement probability: poor

**7. TRIAL AND PREPARATION FOR TRIAL:**

- a. Rule 26(a)(3) Pretrial Disclosures:
  - Plaintiff 5/14/10
  - Defendant 5/28/10
- b. Objections to Rule 26(a)(3) Disclosures 10 days from date of service
- c. Special Attorney Conference on or before 6/11/10
- d. Settlement Conference on or before 6/11/10
- e. Final Pretrial Conference 3:00 pm 6/22/10

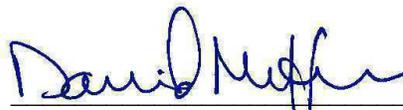
f.	Trial	<u>Length</u>	<u>Time</u>	<u>Date</u>
	Jury Trial	<u>4 days</u>	<u>8:30am</u>	<u>7/12/10</u>

8. **OTHER MATTERS:**

- A. Pursuant to Fed. R. Civ. P. 5(b)(2)(D), the parties agree to receive all items required to be served under Fed.R.Civ.P. 5(a) by either (i) notice of electronic filing, or (ii) e-mail transmission. Such electronic service will constitute service and notice of entry as required by those rules. Any right to service by USPS mail is waived.
- B. Unless otherwise specified in an order, filing time is anytime prior to midnight on the date of deadline.
- C. Counsel should contact chambers staff regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions should be filed well in advance of the Final Pretrial Conference. 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 Pretrial Conference.

DATED this 30th day of April, 2009.

**BY THE COURT:**




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US Magistrate Judge David Nuffer

FILED  
U.S. DISTRICT COURT

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DISTRICT OF UTAH

BY: \_\_\_\_\_  
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OFFICE OF  
JUDGE TENA CAMPBELL

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*Attorney for David K. Broadbent  
Receiver for Merrill Scott & Associates, Ltd. et al.*

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

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

MERRILL SCOTT & ASSOCIATES,  
LTD.; MERRILL SCOTT &  
ASSOCIATES, INC.; PHOENIX  
OVERSEAS ADVISERS, LTD.;  
PATRICK M. BRODY;  
DAVID E. ROSS II; and  
MICHAEL G. LICOPANTIS,

Defendants.

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DAVID K. BROADBENT , as RECEIVER  
FOR MERRILL SCOTT & ASSOCIATES,  
LTD., et al.

Plaintiff,

v.

JEREMY THORNE and SINGULARITY  
SOFTWARE, INC., a Florida Corporation,

Defendants.

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**ORDER FOR ENLARGEMENT OF  
TIME**

CIVIL NO: 2:02CV 0039C

Judge Tena Campbell  
Magistrate Judge David Nuffer

Based upon the stipulation of the Parties Plaintiff David K. Broadbent, as Receiver (the "Receiver") for Merrill Scott and Associates, Ltd., et al. ("Merrill Scott") and Defendants Jeremy Thorne and Singularity Software, Inc. ("Defendants") it is hereby ordered that:

1. The Receiver will have up to and including May 11, 2009 to file a response to Defendants' motion for summary judgment;

2. DATED this 30<sup>th</sup> day of May, 2009.

15x  
rc  
  
\_\_\_\_\_  
Tena Campbell  
District Court Judge

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

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AHMAD R. SHAYESTEH,  
  
Plaintiff,  
  
v.  
  
CENTRAL BANK et al.,  
  
Defendants.

**SCHEDULING ORDER**

Case No. 2:04-CV-488 CW

District Judge Clark Waddoups

Magistrate Judge Brooke Wells

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Plaintiff, Ahmad R. Shayesteh, an inmate at the Federal Correctional Institution in Fort Dix, New Jersey, proceeding *pro se*, filed this suit under the Right to Financial Privacy Act of 1978. See 12 U.S.C.A. §§ 3401-3422 (West 2009). On May 1, 2009, a Scheduling Conference was held before the undersigned Magistrate Judge with counsel for Defendants, Thomas W. Seiler, present in chambers and Plaintiff appearing via telephone. The parties stipulated that all discovery in this case is complete. Defendant's counsel was instructed to promptly mail to Plaintiff, without charge, a copy of the transcript of Plaintiff's deposition taken on November 9, 2007. The Court now enters the following deadlines for further proceedings which may only be modified with Court approval and on a showing of good cause.

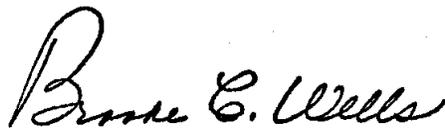
- |   |               |                   |
|---|---------------|-------------------|
| 1. DISPOSITIVE MOTION BRIEFING SCHEDULE   |               | <u>DATE</u>       |
| a. Summary Judgment Motions/Memoranda Due |               | 6/15/09           |
| b. Response Briefs Due                    |               | 7/10/09           |
| c. Reply Briefs Due                       |               | 7/31/09           |
| 2. OTHER DEADLINES:                       |               | <u>DATE</u>       |
| a. Motions In Limine Due                  |               | 12/7/09           |
| 3. TRIAL AND PREPARATION FOR TRIAL:       |               | <u>DATE</u>       |
| a. Final Pretrial Conference              | 2:30 p.m.     | 1/11/10           |
| b. Trial                                  | <u>Length</u> | <u>Time</u>       |
| i. Jury Trial                             | 4 days        | 8:30 a.m.         |
|   |               | <u>Start Date</u> |
|   |               | 1/25/10           |

If necessary, after a ruling is entered on any dispositive motions the Court will issue appropriate orders for transportation of Plaintiff, with his legal materials, to the District of Utah for trial.

**IT IS SO ORDERED.**

DATED this 1st day of May, 2009.

BY THE COURT:



\_\_\_\_\_  
 BROOKE C. WELLS  
 United States Magistrate Judge

UNITED STATES DISTRICT COURT **FILED**  
DISTRICT COURT

Central

District of

UTAH  
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UNITED STATES OF AMERICA  
V.  
Skylar Anderson

**JUDGMENT IN A CRIMINAL CASE**  
(For Revocation of Probation or Supervised Release)

**AMENDED**

Case Number: DUTX 2:05-cr-000679-002

USM Number: 13002-081

Tiffany Johnson  
Defendant's Attorney

**THE DEFENDANT:**

admitted guilt to violation of condition(s) 1 of the term of supervision.

was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
I.	Burglarized a Building	3/28/2007

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has not violated condition(s) \_\_\_\_\_ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: \_\_\_\_\_

6/14/2007

Defendant's Date of Birth: \_\_\_\_\_

Date of Imposition of Judgment

*Dee Benson*

Signature of Judge

Defendant's Residence Address: \_\_\_\_\_

Dee Benson

U.S. District Judge

Name of Judge

Title of Judge

4/30/2009

Date

Defendant's Mailing Address: \_\_\_\_\_

DEFENDANT: Skylar Anderson  
CASE NUMBER: DUTX 2:05-cr-000679-002

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

18 months. This sentence is to run concurrent with the state sentence imposed for the same conduct which warranted the federal sentence in this case.

The court makes the following recommendations to the Bureau of Prisons:

The Court also recommends that the defendant be incarcerated at Lompoc, CA., for family visitations. The Court strongly recommends that the defendant NOT be incarcerated in Florence, CO.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Skylar Anderson  
CASE NUMBER: DUTX 2:05-cr-000679-002

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
18 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Skylar Anderson  
CASE NUMBER: DUTX 2:05-cr-000679-002

### **SPECIAL CONDITIONS OF SUPERVISION**

THE RESTITUTIN FEE IS WAIVED AS WELL AS THE FEE FOR THE DRUG ABUSE PROGRAM.

All previous conditions are reimposed. In addition, the Court orders the following special conditions:

1. The defendant will submit to drug/alcohol testing as directed by the probation office and pay a one-time \$115.00 to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive alcohol and/or illegal consumption of alcohol, such as alcohol related criminal or traffic offenses, the defendant shall participate in drug/and or alcohol abuse treatment under a co-payment plan as directed by the probation office.
2. The defendant shall participate in a mental health treatment program under a co-payment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the chief item of order. during the course of treatment or medication.

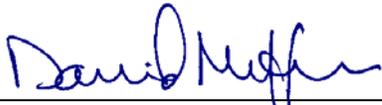
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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

<p>MARK S. BOUCHER, an individual, LINDA B. BOUCHER, an individual, and as husband and wife,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>ZIMMER, INC., a Delaware corporation,</p> <p>Defendant.</p>	<p>ORDER GRANTING PLAINTIFFS LEAVE TO AMEND COMPLAINT</p> <p>Case No: 2:06-cv-380</p> <p>Judge Dale A. Kimball Magistrate Judge David Nuffer</p>
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The Court, having received Plaintiffs' Motion for Leave to Amend Complaint, having received consent from Defendant, and other good cause appearing therefore, hereby ORDERS, that Plaintiffs are granted leave to file the Amended Complaint attached as an Exhibit to their Motion for Leave to Amend Complaint.

ORDERED this 1<sup>st</sup> day of May, 2009.

  
\_\_\_\_\_  
HONORABLE DAVID NUFFER

RICHARD D BISSELL - 10339  
Assistant Utah Attorney General  
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P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
Telephone: (801) 366-0100

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

MICHAEL T. SABOURIN,

Plaintiff,

vs.

UNIVERSITY OF UTAH, JOHN DOES I-X,

Defendant.

**ORDER GRANTING STIPULATED  
MOTION TO AMEND SCHEDULING  
ORDER AND AMENDED SCHEDULING  
ORDER**

Case No.: 2:06CV1017 TS

Judge: Ted Stewart

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Pursuant to the Joint Motion/Stipulation of the Parties (docket #21 & 22), the court  
GRANTS Stipulated motion and the following matters are set:

1. Fact Discovery shall be extended but limited to finalizing responses to outstanding discovery requests and shall be completed by: May 18, 2009.
2. The cutoff date for filing dispositive or potentially dispositive motions is extended to: August 11, 2009.

3. The parties should have 15 days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).
4. Rule 26(a)(3) Pretrial Disclosures
 

Plaintiff		12/04/09
Defendant		12/18/09
5. Special Attorney Conference on or before 01/08/10
6. Settlement Conference on or before 01/08/10
7. Final Pretrial Conference 2:30 p.m. 01/19/10
8. Jury Trial Five Days 8:30 a.m. 02/01/10

Dated this 28<sup>th</sup> day of April, 2009.

BY THE COURT:

\_\_\_\_s/David Nuffer\_\_\_\_\_  
 David Nuffer  
 U.S. Magistrate Judge

Dated this 17<sup>th</sup> day of April 2009.

MARK L. SHURTLEFF  
 Utah Attorney General

/S/RICHARD D. BISSELL  
 Assistant Attorney General  
 Attorney for Defendant  
*(Signed by filing Attorney with  
 permission of Defendant's Attorney)*

/S/DAVID HOLDSWORTH

DAVID HOLDSWORTH  
Attorney for Plaintiff, Michael Sabourin

FILED  
U.S. DISTRICT COURT **RECEIVED**

2009 MAY -1 P 2: 26 APR 30 2009

DISTRICT OF UTAH OFFICE OF  
**JUDGE TENA CAMPBELL**

BY: \_\_\_\_\_  
DEPUTY CLERK

RONALD J. YENGICH (#3580)  
YENGICH, RICH & XAIZ  
Attorneys for Defendant  
175 East 400 South, Suite 400  
Salt Lake City, Utah 84111  
Telephone: (801) 355-0320

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

<p>UNITED STATES OF AMERICA,  Plaintiff,  v.  WARREN STACK,  Defendant.</p>	<p>ORDER TO CONTINUE HEARING  Case No. 2:07CR899  Judge Tena Campbell</p>
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BASED upon motion of counsel, and with good cause having been shown;

IT IS HEREBY ORDERED that the hearing in the above-entitled matter, currently set for May 1, 2009, be continued.

IT IS FURTHER ORDERED that the hearing in the above-entitled matter be set for May <sup>8</sup> 2, 2009, at 10<sup>00</sup> a m., before the Honorable Tena Campbell.

SIGNED BY MY HAND this 1 day of <sup>May</sup> ~~April~~, 2009.

BY THE COURT:

  
HONORABLE TENA CAMPBELL  
United States District Court Judge

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

---

CLEARONE COMMUNICATIONS, INC.,

Plaintiff,

vs.

ANDREW CHIANG; JUN YANG; LONNY  
BOWERS; WIDEBAND SOLUTIONS,  
INC.; VERSATILE DSP, INC.; and BIAMP  
SYSTEMS CORPORATION,

Defendants.

AMENDED ORDER<sup>1</sup>

Case No. 2:07-CV-37-TC

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ClearOne filed an *ex parte* motion to reschedule the hearing on the court's First and Second Orders to Show Cause (see Dkt # 1506).<sup>2</sup> Pro se Defendant Lonny Bowers opposed ClearOne's motion.

For the reasons set forth below, ClearOne's Motion is granted in part and denied in part. Specifically, now that the court has resolved the substantive issues arising out of the trade secret trial and jury verdict, the court re-schedules the hearing concerning the court's First Order To Show Cause (Docket # 1407). But the court declines to pursue further inquiry concerning the Second Order To Show Cause (Docket # 1423), and so that Order is hereby VACATED.

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<sup>1</sup>The original order is amended by revising language in Paragraph 5 concerning service of the court's order on three individuals.

<sup>2</sup>The court's February 24, 2009 Order (Dkt # 1475) originally set a "show cause" hearing for March 13, 2009, but the court subsequently vacated that hearing on March 5, 2009.

## THE SECOND ORDER TO SHOW CAUSE

For the reasons set forth below, the court VACATES its SECOND ORDER TO SHOW CAUSE (Dkt # 1423).

The Second OSC ordered the WideBand Defendants (collectively Andrew Chiang, Jun Yang, Lonny Bowers, WideBand Solutions, Inc. (“WideBand Massachusetts”), and Versatile DSP, Inc. (“Versatile”)) to appear and show cause why they should not be held in contempt for allegedly violating the court’s March 9, 2007 Confidentiality Order.<sup>3</sup> Specifically, the court focused, during the February 10, 2009 contempt hearing, on alleged disclosure by one or more of the WideBand Defendants of information protected by the court’s Confidentiality Order. After hearing evidence on the issue, the court continued the hearing, but concluded that it is likely that Lonny Bowers disclosed protected information to his father, Don Bowers, and one of the two posted that information in some form on a public Internet forum.

The court has reviewed the evidence presented during the hearing, the transcript of that hearing, and further information provided by ClearOne in its motion to reschedule the hearing on the two orders to show cause. It does appear that Lonny Bowers disclosed some confidential information to Don Bowers and that such information was later posted in a vague form on the Internet. But, given the court’s discretion concerning contempt proceedings, the court has determined that ClearOne has not and cannot point to any harm that can be rectified by this court by a finding of contempt or any reasonable exercise of judicial power against Lonny Bowers (Don Bowers is not subject to the Confidentiality Order). See, e.g., Spallone v. United States,

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<sup>3</sup>(Dkt # 74.)

493 U.S. 265, 276 (1990) (court's inherent civil contempt power is discretionary); United Int'l Holdings, Inc. v. Wharf (Holdings) Ltd., 210 F.3d 1207, 1232 (10th Cir. 2000) ("A district court has broad discretion in using its contempt power to require adherence to court orders.").

In other words, further contempt proceedings on this matter would be futile. Monetary sanctions above and beyond what have already been imposed against Lonny Bowers would be ineffective in light of his claimed impecuniosity. And the court is not going to exercise its power to hold Mr. Bowers in custody for something that cannot be undone and for which ClearOne has not demonstrated concrete harm. See, e.g., Pounders v. Watson, 521 U.S. 982, 990 (1997) (reciting the "equitable principle that only the least possible power adequate to the end proposed should be used in contempt cases") (internal quotations marks and citations omitted). The deterrence that may or may not be accomplished is outweighed by the cost to the court and the parties of money, time, and energy. Accordingly, the court VACATES its Second Order to Show Cause (Dkt # 1423).

### **FIRST ORDER TO SHOW CAUSE**

For the reasons set forth below, **LONNY BOWERS, DONALD BOWERS, and RANDOLPH FRAILS** are hereby **ORDERED TO APPEAR AND TESTIFY BY TELEPHONE** at an evidentiary hearing to be held on **Wednesday, June 3, 2009, at 2:30 p.m.,<sup>4</sup> AND TO SHOW CAUSE why they should not be held in contempt for violation of the June 26, 2008 Order and for possible fraud on the court concerning issues discussed during the hearings which prompted issuance of that June 2008 Order.** The evidentiary

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<sup>4</sup>The court finds that the presence of Defendants Andrew Chiang and Jun Yang is not necessary because it would not be helpful.

hearing will be a continuation of the hearing held on February 10, 2009. **The three listed individuals are ordered to call the court through an operator-assisted conference call (or other conference call mechanism) a few minutes before the hearing is scheduled to begin. The court's telephone number is 1-801-524-6170.**

### **BACKGROUND**

On February 10, 2009, the court held an evidentiary hearing to address the court's January 26, 2009 Order to Show Cause<sup>5</sup> (First OSC). In the First OSC, the court ordered Defendant Lonny Bowers, his father Donald Bowers,<sup>6</sup> and others to appear and show cause why they should not be held in contempt of court for alleged violations of the court's June 26, 2008 Order.<sup>7</sup> Specifically, the First OSC focused on a November 6, 2008 UCC Statement filed by Donald Bowers, which encumbered (and signified the existence of an agreement encumbering) the assets of WideBand Massachusetts, in violation of the court's June 26, 2008 Order.

The WideBand Defendants appeared at the hearing, individually and through counsel. Donald Bowers, however, did not appear (nor did he contact the court) despite evidence that he was properly served with the First OSC, had notice of the hearing date, and was ordered to

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<sup>5</sup>Docket Entry No. 1407.

<sup>6</sup>Donald Bowers is not a defendant in this case, but he is subject to the court's June 26, 2008 Order, and, through his violation of that order, is subject to the court's jurisdiction, as will be described in detail below. The same is true of Mr. Frails, who appeared as an officer of the court in the proceedings relating to the June 2008 order and had actual knowledge of the court's bar against encumbrance of WideBand Massachusetts assets and his role in addressing the problem.

<sup>7</sup>Docket Entry No. 908.

appear in person.<sup>8</sup>

During the hearing, Jun Yang and Lonny Bowers testified under oath. Andrew Chiang, who did not testify, made certain representations to the court, which are on the record. The court also received the testimony of former counsel for WideBand Defendants, Ms. Karra Porter.<sup>9</sup> Furthermore, counsel for Plaintiff ClearOne Communications, Inc. (“ClearOne”) presented documentary evidence that was discussed during the testimony.

### **FINDINGS AND ORDER**

Based on the pleadings and papers on file with the court, the testimony and events of the February 10, 2009 hearing, presentations by counsel for ClearOne and the WideBand Defendants, and for good cause shown, the court hereby FINDS and ORDERS as follows:

#### **The Court’s June 26, 2008 Order and the WideBand Georgia Case**

The June 26, 2008 Order is a restraining order entered with notice to all pertinent parties in an effort to preserve the status quo and prevent the sale or transfer of WideBand Massachusetts’s assets. It applies “not only to the WideBand Defendants, but also each and every one of their agents, servants, officers, employees, entities, attorneys, and those acting under their direction or control and any other persons who are in active concert or participation with any of the WideBand Defendants.” (Docket Entry No. 908 at 2.)

Donald Bowers, as a person “in active concert or participation” with the WideBand

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<sup>8</sup>See Proof of Service (Docket Entry No. 1450); Tr. of Feb. 10, 2009 Hr’g on Pl.’s Mots. Re Order[s] to Show Cause (Docket Entry No. 1463) at 58-59.

<sup>9</sup>Pro se defendant Lonny Bowers contends, in a letter to the court, that Ms. Porter committed perjury on the stand. He submitted documents to support his claim. The court has reviewed the documentation and his arguments and finds them unconvincing. Everything submitted is consistent with Ms. Porter’s testimony, which the court found very credible.

Defendants and who received notice of the order, is subject to that order and the court's jurisdiction.

Nonparties who reside outside the territorial jurisdiction of a district court may be subject to that court's jurisdiction if, with actual notice of the court's order, they actively aid and abet a party in violating that order. This is so despite the absence of other contacts with the forum.

Waffenschmidt v. MacKay, 763 F.2d 711, 714 (5th Cir. 1985). See also SEC v. Homa, 514 F.3d 661, 673 (7th Cir. 2008) (quoting Waffenschmidt for same proposition); Reliance Ins. Co. v. Mast Constr. Co., 159 F.3d 1311, 1317 (recognizing that nonparty may be subject to court's jurisdiction under Federal Rule of Civil Procedure 65(d) in contempt proceedings); Fed. R. Civ. P. 65(d)(2)(c) (injunctive order binds "persons who are in active concert or participation" with the parties and "who receive actual notice" of order).

In particular, in June 2008, Donald Bowers and his company WideBand Solutions (a Georgia Corporation) ("WideBand Georgia") entered into an agreement with the WideBand Defendants to transfer WideBand Massachusetts's assets to WideBand Georgia. That agreement prompted ClearOne to file a separate lawsuit on June 19, 2008, in this court, against WideBand Georgia and Donald Bowers alleging fraudulent transfer. (See ClearOne Comm'ns, Inc. v. Wideband Solutions, Inc. (a Georgia corporation) & Donald Bowers, Case No. 2:08-CV-474 (D. Utah) [hereinafter the "WideBand Georgia Case"].) It also prompted ClearOne's motion for a preliminary injunction concerning the transaction, which was filed in this case and in the WideBand Georgia Case.

During the July 10, 2008 hearing on that motion, Mr. Randolph Frails, who appeared before the court as the attorney representing WideBand Georgia and Don Bowers, stated that the

sales agreement had been rescinded, thereby mooting the basis for ClearOne's motion.<sup>10</sup> (See Tr. of July 10, 2008 Hr'g on Pl.'s Mot. for Injunctive Relief (Docket Entry No. 966) at 4-5.) The court and ClearOne's counsel agreed, and the motion was denied as moot. (See July 10, 2008 Order (Docket Entry No. 11 in WideBand Georgia Case); July 10, 2008 Order (Docket Entry No. 922 in this case).)

In October 2008, the court granted Don Bowers's motion to dismiss the WideBand Georgia Case without prejudice on the same basis (that the claims, all of which concerned the rescinded sales agreement, were moot). (See Oct. 20, 2008 Order (Docket Entry No. 23) in WideBand Georgia Case; Defs.' Mot. to Dismiss Without Prej. (Docket Entry No. 21 in WideBand Georgia Case) at 2 (noting that ClearOne's claims in WideBand Georgia Case were "based [entirely] on an asset purchase transaction that was rescinded").<sup>11</sup>)

On November 6, 2008, one day after the jury issued its verdict for ClearOne against WideBand Massachusetts and the rest of the Defendants, Donald Bowers filed a UCC Statement in Massachusetts listing WideBand Massachusetts as a debtor to Secured Party Donald Bowers. (See Ex. 4 of Feb. 10, 2009 Hr'g Binder; Tr. of Feb. 10, 2009 Hr'g on Pl.'s Mots. Re Order[s] to Show Cause (Docket Entry No. 1463) at 44-45, 84.) The collateral was described as follows: "All the trade and good-will of the Business, and the stock-in-trade, equipment, furniture and fixture, software, computers, test equipment, all intellectual assets, intellectual property, patents, royalties, licenses of the Business, inventory, accounts receivable, cash in banks." (Ex. 4 of Feb.

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<sup>10</sup>Don Bowers later confirmed this by filing a copy of the Agreement to Rescind. (See Ex. B to Don Bowers' Answer (Docket Entry No. 12) in WideBand Georgia Case.)

<sup>11</sup>The court recently re-opened the WideBand Georgia case after determining that the basis for dismissal was no longer valid.

10, 2009 Hr'g Binder.)

The act of filing the UCC Statement encumbered assets of WideBand Massachusetts and was circumstantial evidence that an agreement encumbering WideBand Massachusetts's assets still existed or had been executed since the court's June 26, 2008 Order, the July 7, 2008 Agreement To Rescind, and the court's October 20, 2008 dismissal of the WideBand Georgia Case. Ultimately, ClearOne's discovery that Don Bowers had filed a UCC Statement concerning the assets of WideBand Massachusetts prompted a motion which led to issuance of the First OSC.

The WideBand Defendants, in response to ClearOne's motion for an order to show cause, attempted to justify the UCC filing. They contended that the UCC filing was meant to secure WideBand Massachusetts's assets based on an April 2008 Loan Agreement and an April 2008 Security Agreement between Donald Bowers and WideBand Massachusetts, in which Don Bowers had agreed to pay a certain amount of attorneys' fees incurred by the WideBand Defendants in this case.

On February 10, 2009, the court held an evidentiary hearing concerning the First OSC. During the hearing, the court received evidence that the WideBand Defendants did not disclose the April 2008 documents to ClearOne until a few days before the hearing on the First OSC. Lonny Bowers testified that he relied on Donald Bowers (his father) and Randolph Frails (Don Bowers' transaction attorney) to produce those documents to the WideBand Defendants' attorneys. He also testified that Mr. Frails may have drafted the April 2008 documents. The court noted during the hearing that it is possible those documents were either not produced, in violation of a discovery order, or, arguably, not legitimate but were fraudulently created and

submitted to the court to justify actions prompting the OSC. (See Tr. of Feb. 10, 2009 Hr'g on Pl.'s Mots. Re Order[s] to Show Cause (Docket Entry No. 1463) at 41, 44, 87-88.)

After listening to testimony during the February 10, 2009 hearing on the First OSC, and after considering the documentary evidence discussed and arguments made by counsel, the court has determined that it must continue to address the issues raised in the court's order to Don Bowers and Lonny Bowers to show cause why they should not be held in contempt for violating the June 26, 2008 Order. (The hearing could not be concluded because Don Bowers failed to appear.)

#### **Hearing on First OSC and Document Production**

The court finds that there is evidence that Don Bowers and Lonny Bowers violated the June 26, 2008 Order, and that Randolph Frails may have assisted them in doing so, but because Don Bowers did not appear at the February 10, 2009 hearing, the court now proceeds with the matter as follows:

- 1. DONALD BOWERS, LONNY BOWERS, and RANDOLPH FRAILS are each ORDERED TO APPEAR TELEPHONICALLY before the court by calling the court (THROUGH A CONFERENCE CALL) at 1-801-524-6170 on Wednesday, June 3, 2009, at 2:30 p.m. (Mountain Time) to SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT for violating the June 26, 2008 Order and for possible fraud on the court.**
- 2. DONALD BOWERS is further ORDERED TO SHOW CAUSE why he should not be held in contempt for failure to appear at the February 10, 2009 hearing.**
- 3. RANDOLPH FRAILS is hereby ORDERED to testify under oath concerning the genesis of and his familiarity, if any, with the April 18, 2008 Loan Agreement and April 18,**

2008 Security Agreement, and his representation in June 2008 that he would produce documents relating to the sales agreement he drafted on behalf of Donald Bowers.

4. The court **FURTHER ORDERS** that **if any of the individuals listed above does not appear telephonically at the June 3, 2009 hearing, the court will take further steps to bring him before the court.**

5. In addition to the service that shall be accomplished by the ECF system upon the issuance of this order, **CLEARONE is ORDERED TO SERVE Lonny Bowers, Don Bowers, and Randolph Frails with this Order (with a copy of the April 18, 2008 Loan Agreement and April 18, 2008 Security Agreement attached) by electronic mail, if the person has a known e-mail address, and in accordance with the service procedures set forth in Rule 4(e) of the Federal Rules of Civil Procedure.** Although the two April 2008 documents have been designated “Highly Confidential,” the court finds that no prejudice will occur if Lonny Bowers, Don Bowers, and Mr. Frails reviews them, because Lonny Bowers testified that Mr. Frails has seen, if not actually drafted, the April 2008 documents, which both Lonny Bowers and Donald Bowers signed.

6. **ANY PAPERS** that Donald Bowers, Lonny Bowers, or Randolph Frails wishes to **FILE IN RESPONSE** to the court’s First OSC or this Order must be filed with the Court and served on ClearOne (through its counsel) **NO LATER THAN FRIDAY, MAY 22, 2009.**

7. **On or before May 15, 2009, DONALD BOWERS and RANDOLPH FRAILS SHALL PRODUCE (and LONNY BOWERS to the extent he has not already produced) to**

ClearOne's counsel all documents<sup>12</sup> in his possession relating in any way to the following:

- a. The Uniform Commercial Code ("UCC") filing made with the State of Massachusetts on or about November 6, 2008; and
- b. The Loan Agreement and Security Agreement between WideBand Massachusetts and Donald Bowers, which were purportedly executed on April 18, 2008 (see Ex. 5 of Feb. 10, 2009 Hr'g Binder).

SO ORDERED this 27th day of April, 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

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<sup>12</sup>All documents includes, without limitation, any and all agreements, draft agreements, and e-mail or other communication (such as letters, facsimile transmissions, instant messages, and text messages) relating to the topics listed here.

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

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**BRENDA SOKOLOWSKI,**  
**Plaintiff,**

**vs.**

**PIUTE ATV RENTALS,**  
**Defendant.**

**ORDER**

**Case No. 2:07CV160 DAK**

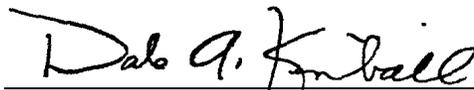
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This matter is before the court on Defendant's Motion to Strike Trial Date and to Extend Discovery Period. Plaintiff does not oppose this motion.

Therefore, IT IS HEREBY ORDERED that Defendant's motion is GRANTED. The parties may extend the discovery deadline, and the June 1, 2009 trial setting is VACATED, as are all remaining deadlines set forth in the Scheduling Order dated July 10, 2007 and in the Trial Order, dated January 26, 2009. Counsel are directed to contact chambers (on a conference call) to obtain a new trial date, and then to submit a proposed Stipulated Amended Scheduling Order.

DATED this 30<sup>th</sup> day of April, 2009.

BY THE COURT:



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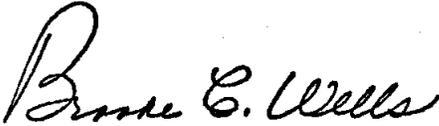
DALE A. KIMBALL  
United States District Judge

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

<p><b>Philip Klein</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>vs.</b></p> <p><b>State of Utah et al.,</b></p> <p style="text-align: center;"><b>Defendants.</b></p>	<p style="text-align: center;"><b>ORDER TO SHOW CAUSE</b></p> <p style="text-align: center;"><b>Case No. 2:07-cv-248 DAK</b></p>
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Plaintiff's complaint was filed on April 17, 2007.<sup>1</sup> Service has not been effected upon the defendants. Unless Plaintiff is able to show good cause within 15 days from the date of this order why service was not made within 120 days following the filing of the complaint, the court will, on its own motion, dismiss this action without prejudice pursuant to rule 4(m).<sup>2</sup>

Dated this 30th day of April, 2009.

By   
\_\_\_\_\_  
Brooke C. Wells  
United States Magistrate Judge

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<sup>1</sup>Docket no. 3.

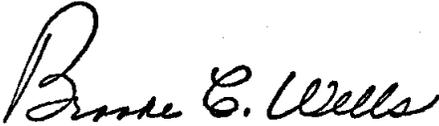
<sup>2</sup>See Fed.R.Civ.P. 4(m)

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

<p><b>Yaslam M. Issa</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>vs.</b></p> <p><b>CR England</b></p> <p style="text-align: center;"><b>Defendant.</b></p>	<p style="text-align: center;"><b>ORDER TO SHOW CAUSE</b></p> <p style="text-align: center;"><b>Case No. 2:07-cv-451 DB</b></p>
---	--

Plaintiff's complaint was filed on July 5, 2007.<sup>1</sup> Service has not been effected upon the defendant. Unless Plaintiff is able to show good cause within 15 days from the date of this order why service was not made within 120 days following the filing of the complaint, the court will, on its own motion, dismiss this action without prejudice pursuant to rule 4(m).<sup>2</sup>

Dated this 30th day of April, 2009.

By   
\_\_\_\_\_  
Brooke C. Wells  
United States Magistrate Judge

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<sup>1</sup>Docket no. 3.

<sup>2</sup>See Fed.R.Civ.P. 4(m)

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

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**Constitutional Concepts Foundation  
and James C. Arrus, Jr.**

**Plaintiffs,**

**vs.**

**Bridgeline Capital et al.**

**Defendants.**

**ORDER TO SHOW CAUSE**

**Case No. 2:07-cv-641 DB**

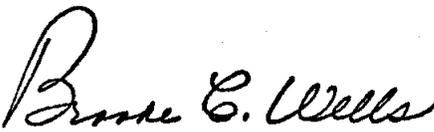
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There has been no activity in this case following the order of this Court denying Plaintiffs' motion to stay and amended motion to stay.<sup>1</sup> In this order Plaintiffs were directed to properly serve the Defendants. There is nothing in the record indicating that Plaintiffs have effectuated proper service of the complaint.

Therefore, Plaintiffs are hereby ordered to show cause why the above captioned case should not be dismissed. Plaintiffs are directed to respond in writing within 15 days from the date of this order and inform the Court of the status of the case and intentions to proceed.

Failure to do so will result in dismissal of the case.

Dated this 30th day of April, 2009.

By   
\_\_\_\_\_  
Brooke C. Wells  
United States Magistrate Judge

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<sup>1</sup>Order dated October 12, 2007, docket no. 8.

FILED  
U.S. DISTRICT COURT

2009 APR 31 A 8:32

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

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YENGICH, RICH & XAIZ  
Attorneys for Defendant  
175 East 400 South, Suite 400  
Salt Lake City, Utah 84111  
Telephone: (801) 355-0320

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

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UNITED STATES OF AMERICA,	)	
	)	ORDER CONTINUING
	)	JURY TRIAL
Plaintiff,	)	
	)	
v.	)	
	)	Case No. 2:08 CR 73
NELSON MORALES,	)	
	)	Honorable Dee Benson
Defendant.	)	

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Based upon the motion and stipulation of counsel and for good cause shown;

THIS COURT HEREBY FINDS that the ends of justice served in granting a continuance in the above-entitled matter outweigh the best interests of the public and the defendants in a speedy trial. The Court further finds that the parties have, despite the exercise, of due diligence, not yet completed plea negotiations.

Pursuant to Title 18, § 3161(8)(A) and (B)(iv) of the Speedy Trial Act, the Jury Trial date in this matter, currently set for May 4<sup>th</sup>, 2009, is hereby continued. The period of delay resulting from this continuance is hereby ordered excludable pursuant to the Act.

IT IS FURTHER ORDERED that the Jury Trial is to be set on the 20<sup>th</sup> day of July, 2009, at the hour of 8:30 a.m., before Judge Benson.

SIGNED BY MY HAND this \_\_\_\_\_ day of April, 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive style with a long horizontal flourish at the end.

---

HONORABLE DEE BENSON  
United States District Court Judge

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

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UNITED STATES OF AMERICA,  
Plaintiff,

vs.

EDUARDO JIMENEZ-VALENIA,  
Defendant.

ORDER AND  
MEMORANDUM DECISION

Case No. 2:08 CR 395 (TC)

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Defendant Eduardo Jimenez-Valencia<sup>1</sup> asks the court to suppress evidence seized during a traffic stop. Although Mr. Jimenez-Valencia was driving a truck that did not belong to him, he argues that he has standing to challenge the search. Mr. Jimenez-Valencia contends that the search was invalid because the law enforcement officer exceeded the scope of the traffic stop when he searched the truck without Mr. Jimenez-Valencia's valid consent and because Mr. Jimenez-Valencia was prevented from limiting or withdrawing that consent. Even assuming that Mr. Jimenez-Valencia has standing, the court concludes that the search was proper, and the Motion to Suppress is denied.

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<sup>1</sup>The court will refer to the Defendant here as Mr. Jimenez-Valencia even though his last name appears in several places in the record as Jimenez-Valenia. During the evidentiary hearing, his attorney explained that the Defendant's name is "Valencia." But according to the United States, the Defendant was indicted under the name Valenia because that is the name that appears in his U.S. Immigration and Customs file and that is the name that was on the identification that the Defendant provided during the traffic stop.

## FINDINGS OF FACT

Utah Highway Patrol Trooper Jared Withers was parked in his police car on June 3, 2008, in the median of I-70 in Emery County, Utah. He was monitoring the speed of traffic in the eastbound travel lanes with his radar device when, in the distance, he saw a white Ford truck, the only vehicle in either lane, traveling at a high rate of speed. Trooper Withers estimated that the truck was traveling at about seventy-eight miles per hour, far exceeding the sixty miles per hour posted speed limit. He used his radar to confirm that the truck was speeding, traveling at seventy-three miles per hour.

As the truck approached, Trooper Withers could see that a crack ran “almost the entire way across the windshield.” (Tr. of Hr’g on Feb. 4, 2008 (“Tr.”), 12.) Trooper Withers also noticed that the truck “appeared to be taller than the normal little Ford Ranger truck that I’ve pulled over before.” (Tr. 12.) Trooper Withers turned on the police car’s emergency lights and followed behind the car.<sup>2</sup>

The truck pulled over to the side of the road and stopped. Trooper Withers parked his police car several feet behind the truck;<sup>3</sup> he saw that the truck had a Missouri license plate. He approached the truck on the passenger side and noticed that the tires seemed to be larger than normal, which he thought could be evidence that the body of the truck had been lifted.<sup>4</sup> Trooper

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<sup>2</sup>Although there is a video recording of the traffic stop, the video does not show the date or time. Trooper Withers explained that at the time of the traffic stop, he had just gotten the police car from another officer, and this officer had “erased all the information off the video system. This video system was a different model than I had had, and I didn’t know how to program the date and time into it.” (Tr. 48.)

<sup>3</sup>Although Trooper Withers had a drug dog with him in the car, the dog played no part in the events.

<sup>4</sup>At the time of the traffic stop, Trooper Withers had received specialized training in narcotics interdiction, which taught him, among other things, how to recognize various indicators of criminal activity in passenger vehicles. This included signs that a vehicle had been altered.

Withers explained to the driver, the Defendant, why he had been stopped. Mr. Jiminez-Valencia was the only person in the truck. Trooper Withers asked Mr. Jiminez-Valencia for a driver's license, registration for the vehicle, and proof of insurance.

As Mr. Jiminez-Valencia gathered the documents, Trooper Withers asked him where he was coming from and where he was going. Mr. Jiminez-Valencia told him he was coming from California, where he lived, and he was traveling to Kansas. Mr. Jiminez-Valencia told Trooper Withers that he was going to see a friend in Kansas for a week.

During the conversation, Trooper Withers noticed a small black bag on the front seat of the truck, which seemed like a small amount of "luggage for the length of stay. I would expect more luggage . . . [if] he was going to be there for a week." (Tr. 16.) He also saw a "single key in the ignition" with no other personal keys on the key ring. (Tr. 32.) There were food wrappers and coffee cups in the car.

Mr. Jiminez-Valencia gave Trooper Withers an Oregon driver's license with his photo and the name Eduardo Jimenez-Valenia. When he handed the license to Trooper Withers, Mr. Jiminez-Valencia's hand was "slightly shaking." (Tr. 19.) Mr. Jiminez-Valencia did not have a registration document nor proof of insurance, but he gave Trooper Withers the title for the

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Moreover, Trooper Withers grew up working on cars and trucks, and on at least one occasion, he has installed a lift on a truck himself.

Although there are reasons for lifting the body of a truck that have nothing to do with criminal activity, Trooper Withers explained that a so-called body lift "leaves the frame at its normal height and it raises the body—separates the body from the frame, creating a void there." (Tr. 14.) Based on his training and experience, Trooper Withers knew that this void is often used to create a hidden compartment for concealing contraband.

Because the truck lacked a "shifter on the transmission or near the transmission for activating into a four-wheel-drive position" or a "button on the dash," Trooper Withers suspected that this was only a two-wheel-drive truck. (Tr. 15.) The usual presence of larger tires on such a truck was "very, very unlikely" and was a possible indication that the body had "been raised, the suspension or body has been altered. (Tr. 14.)

vehicle. The title featured a VIN number, the name Juan Torrez Chavez, and the location of Kansas City, Missouri.<sup>5</sup> When Trooper Withers asked who owned the truck, Mr. Jimenez-Valencia said that the truck belonged to a friend named Juan.

Trooper Withers asked Mr. Jimenez-Valencia if he would come back to the police car while Trooper Withers checked the documents. Mr. Jimenez-Valencia agreed, got out of his truck, and walked back with Trooper Withers to the police car. As the two men were walking, Trooper Withers quickly bent over and glanced under the passenger's side of the truck. Trooper Withers asked Mr. Jimenez-Valencia to sit in the front passenger seat of the patrol car.

In the patrol car and with the Oregon driver's license in hand, Trooper Withers asked Mr. Jimenez-Valencia if the address listed was current. Mr. Jimenez-Valencia said that it was not and provided an address in Santa Rosa, California. Trooper Withers contacted dispatch and asked them to check the driver's license and criminal history for Mr. Jimenez-Valencia. He specifically asked dispatch to run a check of the Oregon driver's license by number.

While waiting in the patrol car, Trooper Withers started to write a warning citation for Mr. Jimenez-Valencia. He asked Mr. Jimenez-Valencia what he was planning on doing in Kansas. Mr. Jimenez-Valencia explained that he was just going for a visit and immediately volunteered that he worked in many states on cooling towers for electric power plants. Trooper Withers asked Mr. Jimenez-Valencia if he had taken a week off of work to travel to Kansas. Mr. Jimenez-Valencia explained that sometimes he just moves to different places.

When Trooper Withers asked Mr. Jimenez-Valencia where he was going in Kansas, Mr. Jimenez-Valencia struggled for a while with the word "Topedo." Trooper Withers asked whether

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<sup>5</sup>Because it is "very easy to transfer ownership if you have the title" for a vehicle, Trooper Withers thought it was unusual that Mr. Jimenez-Valencia had the title. (Tr. 17.)

Mr. Jimenez-Valencia did not know the name of the town and then asked, "Topeka?" (Tr. 21.)

Mr. Jimenez-Valencia immediately agreed.

While still drafting the warning citation, Trooper Withers asked Mr. Jimenez-Valencia for his Social Security Number and address. Mr. Jimenez-Valencia "rattled off a number that was one more than your Social Security number should have." (Tr. 22.) Trooper Withers asked Mr. Jimenez-Valencia again, and he "rattled off another number. He tried three different times to give me a number." (Tr. 22.) Finally Trooper Withers said, "Don't worry about it." (Tr. 22.)

The dispatch operator told Trooper Withers that Mr. Jimenez-Valencia's Oregon driver's license was valid, that he had no outstanding warrants for his arrest, and that he had no criminal history. Because Trooper Withers had previously forgotten, he asked the operator to check the truck's VIN number, registration and license plate.

As the two waited in the police car, Trooper Withers asked Mr. Jimenez-Valencia more details about his trip. Mr. Jimenez-Valencia explained that he was going to Kansas to visit Juan, the owner of the truck. He said that Juan, whom he had known for two years, had driven the truck to California with another person. They had left the truck with Mr. Jimenez-Valencia in California because it needed an oil change and other basic servicing. Once Mr. Jimenez-Valencia returned the truck to Juan in Topeka, he said that he would fly home to California.

Mr. Jimenez-Valencia told Trooper Withers that he was in between jobs and volunteered information about jobs in his field that he had heard about. He initially hesitated when Trooper Withers asked what Juan did for work. Then Mr. Jimenez-Valencia explained that he was unsure. He finally said that Juan worked in construction. Throughout the entire conversation in the car, Mr. Jimenez-Valencia seemed calm and friendly.

After the dispatch operator reported that neither the license plate nor the VIN number was

on file in Missouri, Trooper Withers said that he was going to check the VIN number on the truck.<sup>6</sup> Mr. Jimenez-Valencia said nothing and remained in the police car as Trooper Withers walked to the truck and looked through the windshield at the VIN number on the dashboard. As Trooper Withers was walking back to the patrol car, he glanced under the driver's side of the truck.

After Trooper Withers got back in the car, he asked Mr. Jimenez-Valencia if the truck could have been registered anywhere besides Missouri. Mr. Jimenez-Valencia said that he didn't know. Trooper Withers explained that he needed to look at the VIN number on the door of the truck. He asked Mr. Jimenez-Valencia to come with him and open the door.

As the two stood near the truck, Mr. Jimenez-Valencia told Trooper Withers that Juan had never lived in another state and that he did not know how long Juan had owned the truck. After Trooper Withers checked the VIN number, the two men walked back to the police car. Trooper Withers told Mr. Jimenez-Valencia to wait in front of the police car. Trooper Withers got in the car and asked the dispatch operator to check the VIN number against California records. The VIN number on the title, windshield and the door of the truck were the same, but the operator reported that the number was not on record in California either.

Trooper Withers printed out the warning form, got out of his car, and approached Mr. Jimenez-Valencia, who was still standing in front of the police car. Trooper Withers explained that he was only going to issue a warning for the traffic violations. Visibly relieved, Mr. Jimenez-Valencia explained that this was good because he had recently received another citation

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<sup>6</sup>Trooper Withers testified at the evidentiary hearing that when a license plate is not on file it could mean that the plate is no longer in circulation, that the car was recently registered, or that the license plate is false.

for speeding. Trooper Withers handed Mr. Jimenez-Valencia the warning and explained that he did not need to contact anyone about it. Mr. Jimenez-Valencia made a joke about needing to contact his insurance. Trooper Withers told Mr. Jimenez-Valencia to have a nice day.<sup>7</sup>

As Mr. Jimenez-Valencia started to walk back to his truck, Trooper Withers turned away from Mr. Jimenez-Valencia and towards his police car. A moment later, Trooper Withers called in a friendly and casual tone, “Hey Eduardo. Can I ask you a couple more questions about your trip?”

Mr. Jimenez-Valencia stopped, walked over to meet Trooper Withers between the two vehicles, and agreed to further questioning. In response to Trooper Withers’s questions, Mr. Jimenez-Valencia explained that he was planning on paying for all of the gas and other expenses for the trip. He suggested that he was close to Juan and that was just the nature of their relationship. Mr. Jimenez-Valencia explained that although he had not yet purchased the airline ticket to return to California, he expected that it would cost about \$300. During the entire conversation, Trooper Withers was standing near the right edge of the road, a few feet away from Mr. Jimenez-Valencia.

Trooper Withers asked Mr. Jimenez-Valencia if there was anything illegal in the truck. Mr. Jimenez-Valencia shook his head no. Trooper Withers specifically asked about marijuana and cocaine. Mr. Jimenez-Valencia shook his head. Trooper Withers told Mr. Jimenez-Valencia to look at him when answering. Again, Trooper Withers asked whether there was marijuana and cocaine in the truck. While looking at Trooper Withers, Mr. Jimenez-Valencia shook his head and said no. Trooper Withers asked about heroin, and Mr. Jimenez-Valencia

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<sup>7</sup>These facts are taken from the court’s review of the video recording.

asked what that was. Trooper Withers explained that it was another drug. While directly looking at Trooper Withers, Mr. Jimenez-Valencia said no. Finally, Trooper Withers asked about methamphetamine. Mr. Jimenez-Valencia repeated the word and, while looking away, said no.

Trooper Withers asked, “Is it okay if I search the truck?” Mr. Jimenez-Valencia nodded his head affirmatively, gestured to the truck, and said, “Yea, yea.” Trooper Withers said, “I can? Okay.”

As he was walking towards the truck, Trooper Withers motioned to the side of the road near the passenger side and said, “For my safety, would you just go up there by the bushes. If you need anything, my name is Jared . . . just yell my name.” Mr. Jimenez-Valencia put the warning paper in his truck and, as requested, went to stand about 100 feet in front of the truck. From where Mr. Jimenez-Valencia was standing, he should have been able to clearly see the truck.

Trooper Withers proceeded to search the truck beginning with the bed. He moved on to search the body, then the interior of the truck, including Mr. Jimenez-Valencia’s black bag, before he crawled underneath the vehicle. Throughout his search, Trooper Withers noticed various indications—including unusual welding marks, rust, and obvious structural changes—that the truck had been lifted and a hidden compartment had been installed. At some point during the search, Trooper Withers noticed a rubber mat had been stuffed in a gap in the wheel well that was created by the lift. In Trooper Withers’ opinion, the rubber mat was used “to make it look like there [hadn’t] been a lift put in the vehicle.” (Tr. 92.) Underneath the console inside the truck, he located the access door that led to the hidden compartment. Mr. Jimenez-Valencia never attempted to withdraw or modify his consent at any time during the search.

After finding the access door, Trooper Withers called to Mr. Jimenez-Valencia and asked

him to come back to the truck. Trooper Withers said, “I know there is a compartment in this truck,” placed Mr. Jimenez-Valencia in handcuffs, and explained that although he was not under arrest, he was being detained until the contents of the compartment could be identified. Trooper Withers pointed to the brush off the right side of the road near the truck and asked him to wait. As Mr. Jimenez-Valencia looked on, Trooper Withers returned to the truck and found nineteen large white packages containing methamphetamine inside the hidden compartment.

Trooper Withers placed Mr. Jimenez-Valencia under arrest, put him in the police car, and went back to the truck. A few minutes later, Trooper Withers returned and read Mr. Jimenez-Valencia his Miranda rights. After indicating that he understood those rights, Mr. Jimenez-Valencia immediately said, “Can I get all my personal stuff? My medication and everything?” Trooper Withers responded, “We can worry about that . . . I’m interested in the drugs in the truck.”

## ANALYSIS

### **Standing to Contest the Search<sup>8</sup>**

Mr. Jimenez-Valencia argues that he has standing to contest the search because he told Trooper Withers that the truck belonged to his friend Juan who was living in Kansas and implicitly explained that Juan had given him permission to drive the truck. Mr. Jimenez-Valencia also points to the fact that he had the title to the truck which, according to Mr. Jimenez-Valencia, confirmed that the owner was Juan Torrez Chavez. The government disagrees and

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<sup>8</sup>Although the court is aware that the U.S. Court of Appeals for the Tenth Circuit would prefer courts “‘not use the term ‘standing’ as shorthand for a defendant’s capacity to challenge a search,’” the court does so here for clarity. United States v. Smith, 531 F.3d 1261, 1266 n. 2 (10th Cir. 2008) (quoting United States v. Higgins, 282 F.3d 1261, 1270 n.3 (10th Cir. 2002)). This is the term used by the United States, Mr. Jimenez-Valencia and a great deal of the relevant case law. E.g., United States v. Worthon, 520 F.3d 1173, 1177-78 (10th Cir. 2008).

contends that this evidence is not sufficient. The government points to the fact that Mr. Jimenez-Valencia did not testify at the hearing.

Because the Fourth Amendment “is a personal right that must be invoked by an individual,” a defendant seeking to challenge a search must first demonstrate standing. United States v. Poe, 556 F.3d 1113, 1121 (10th Cir. 2009) (quoting Minnesota v. Carter, 525 U.S. 83, 88 (1998)). To have standing, a defendant must show “that he had a subjective expectation of privacy in the premises searched and that society is prepared to recognize that expectation as reasonable.” Id. (quoting United States v. Rhiger, 315 F.3d 1283, 1285 (10th Cir. 2003)).

In the context of an automobile search, this means that a defendant “bears the burden of showing that he had a ‘legitimate possessory interest in or . . . lawful control over the car.’” United States v. Hock, 333 F.3d 1206, 1209 (10th Cir. 2003) (quoting United States v. Allen, 235 F.3d 482, 489 (10th Cir. 2000)). Because “a defendant need not submit legal documentation showing a chain of lawful custody,” a court will consider such factors as “(1) whether the defendant asserted ownership over the items seized from the vehicle; (2) whether the defendant testified to his expectation of privacy at the suppression hearing; and (3) whether the defendant presented any testimony at the suppression hearing that he had a legitimate possessory interest in the vehicle.” Id. (quoting Allen, 235 F.3d at 489.)

The court agrees with Mr. Jimenez-Valencia that he has produced some evidence showing that he might have had a legitimate possessory interest in the truck. But the court is not going to decide this motion on the question of standing because, even assuming that Mr. Jimenez-Valencia does have standing to challenge the search, the court concludes that the challenged search was lawful.

### **Consent to Further Questioning**

Mr. Jimenez-Valencia concedes that the initial traffic stop and questioning was lawful. But he contends that Trooper Withers, after returning all the documents to him, exceeded the scope of the stop by almost immediately asking Mr. Jimenez-Valencia if he could ask more questions.

A traffic stop must be “reasonably related in scope to the circumstances which justified the interference in the first place” and must not last any longer than is necessary to effectuate the purpose of the stop. United States v. Chavez, 534 F.3d 1338, 1343 (10th Cir. 2008). This means that absent a driver’s consent or an objectively reasonable and articulable suspicion of illegal activity, an officer “ordinarily may not do more than ask to see a driver’s license and registration and insurance documents, run a computer check on the car and driver, inquire about the driver’s travel plans, and write out a citation.” United States v. Vazquez, 555 F.3d 923, 928 (10th Cir. 2009). Ordinarily once “an officer has returned the motorist’s license and other papers and issued any citation he intends to give, he must usually allow her to proceed on her way without additional questioning.” United States v. Contreras, 506 F.3d 1031, 1035 (10th Cir. 2007).

But a continued encounter with law enforcement may become consensual if the officer has returned “the license and registration and asks questions without further constraining the driver by an overbearing show of authority.” United States v. Villegas, 554 F.3d 894, 898 (10th Cir. 2009) (quoting United States v. West, 219 F.3d 1171, 1176 (10th Cir. 2000)). Whether an encounter becomes consensual ““depends on whether the police conduct would have conveyed to a reasonable person that he or she was not free to decline the officer’s requests or otherwise terminate the encounter.”” Id. (quoting West, 219 F.3d at 1176).

When Trooper Withers explained that he was going to issue a warning for the traffic

violations, Mr. Jimenez-Valencia was visibly relieved. With all of his documents in hand, Mr. Jimenez-Valencia made a joke and even smiled as he shook hands with Trooper Withers. Trooper Withers even told Mr. Jimenez-Valencia to have a nice day, a clear indication that Mr. Jimenez-Valencia was free to leave. See United States v. Ledesma, 447 F.3d 1307, 1315 (10th Cir. 2006) (noting that “[p]hrases like ‘thank you’ and ‘have a safe one’ signal the end of an encounter, and afford a defendant an opportunity to depart”).

After Mr. Jimenez-Valencia had started walking back to the truck, Trooper Withers called in a friendly tone, “Hey Eduardo. Can I ask you a couple more questions about your trip?” Mr. Jimenez-Valencia voluntarily started walking back to meet Trooper Withers and agreed to answer more questions. Nothing in the evidence, including the video recording, demonstrates that Trooper Withers displayed an overbearing show of authority.

And although the lapse in time before Trooper Withers called to Mr. Jimenez-Valencia might have been brief, nothing about the circumstances of the encounter would have conveyed to a reasonable person that he or she was not free to refuse the request and to terminate the encounter. Cf. Villegas, 554 F.3d at 899 (concluding consent to further questioning was voluntary where defendant was in the police car and had the door open to leave when the officer requested); United States v. Bradford, 423 F.3d 1149, 1159 (10th Cir. 2005) (concluding consent to further questioning was voluntary where defendant was in the police car, was in possession of her documents, and there was no coercive show of authority).

Because the court concludes that the encounter was consensual, it does not consider whether Trooper Withers had reasonable articulable suspicion of criminal activity.

### **The Search**

Mr. Jimenez-Valencia does not challenge the validity of his consent to the search.

Instead, he argues that he was effectively prevented from limiting or withdrawing that consent when he was allegedly made to wait where he could not watch the search. In support of this argument, Mr. Jimenez-Valencia directs the court to United States v. McWeeney, 454 F.3d 1030 (9th Cir. 2006), a case in which the U.S. Court of Appeals for the Ninth Circuit suggested that law enforcement’s failure to allow an individual to witness a search might be evidence of coercion.<sup>9</sup>

In determining whether the consent to a search “was the product of an ‘essentially free and unconstrained choice by [the] maker’ or whether the consent was the product of ‘duress or coercion, express or implied,’” a court must make a factual determination based on the totality of the circumstances. United States v. Sawyer, 441 F.3d 890, 895 (10th Cir. 2006) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 225, 227 (1973)). Factors to consider “include physical mistreatment, use of violence, threats, promises, inducements, deception, trickery, or an aggressive tone, the physical and mental condition and capacity of the defendant, the number of officers on the scene, and the display of police weapons.” Id.; see also United States v. Manjarrez, 348 F.3d 881, 887 (10th Cir. 2003) (considering whether defendant was unable to withdraw his previous consent to the search of a car where the “record . . . is devoid of any evidence” that law enforcement intimidated or coerced the defendant).

Here, Trooper Withers asked Mr. Jimenez-Valencia to wait in front of the truck for

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<sup>9</sup>The defendants in McWeeney consented to the search of a car, but were not actually allowed to observe the search. Considering this fact, the Ninth Circuit remanded the case to the district court to determine after an evidentiary hearing whether law enforcement had coerced the defendants into believing that they had no right to limit or withdraw their consent to a search. To provide guidance on remand, the Ninth Circuit held that the district court’s inquiry should be “whether the officers created a setting in which the reasonable person would believe that he or she had no authority to limit or withdraw their consent.” McWeeney, 454 F.3d at 1036.

officer safety purposes, a reasonable request considering the circumstances. Mr. Jimenez-Valencia was not under the supervision of any other officer. Trooper Withers never drew a weapon, he never raised his voice, and he never acted in a threatening manner.

Before the search, Trooper Withers invited Mr. Jimenez-Valencia to yell out if he needed anything. From where Mr. Jimenez-Valencia was waiting, approximately 100 feet in front of the truck, he should have been able to clearly see what was happening. Mr. Jimenez-Valencia was close enough to the truck that, even considering the noise from the freeway, he could hear Trooper Withers call to him and tell him to come back to the truck after the access door was found .

Considering these facts, the court concludes that Mr. Jimenez-Valencia's failure to limit or withdraw his consent was not the product of coercion. Even assuming the Ninth Circuit's rule from McWeeney is relevant or applicable here, there is no evidence that Trooper Withers deliberately prevented Mr. Jimenez-Valencia from witnessing the search so as to coerce him into believing that he could not withdraw or limit his consent.

#### **ORDER**

For the reasons explained, Mr. Jimenez-Valencia's Motion to Suppress is DENIED.

(Docket No. 25.)

DATED this 1st day of May 2009.

BY THE COURT:



TENA CAMPBELL  
Chief Judge

FILED  
U.S. DISTRICT COURT

United States District Court  
DISTRICT OF UTAH

2009 MAY -1 A 11: 34

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES OF AMERICA

v.

ORDER OF DISCHARGE  
AND DISMISSAL

JONATHAN A. SHELTON

CASE NUMBER: 2:08-CR-00474-001-RTB

WHEREAS, the above-named defendant having previously been placed on probation under 18 U.S.C. § 3607 for a period not exceeding one year, and the Court having determined that said defendant has completed the period of probation without violation,

IT IS ORDERED that pursuant to 18 U.S.C. § 3607(a), the Court, without entry of judgment, hereby discharges the defendant from probation and dismisses those proceedings for which probation had been ordered.



Honorable Robert T. Braithwaite  
United States Magistrate Judge

5/1/2009

Date



2.	DISCOVERY LIMITATIONS	NUMBER
a.	Maximum Number of Depositions by Plaintiff(s)	<u>20</u>
b.	Maximum Number of Depositions by Defendant(s)	<u>20</u>
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>8</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>25</u>
f.	Maximum requests for production by any Party to any Party	<u>25</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES	DATE
a.	Last Day to File Motion to Amend Pleadings	<u>08/17/09</u>
b.	Last Day to File Motion to Add Parties	<u>08/17/09</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS	DATE
a.	Plaintiff	<u>09/14/09</u>
b.	Defendant	<u>09/14/09</u>
c.	Counter reports	<u>10/14/09</u>
5.	OTHER DEADLINES	DATE
a.	Discovery to be completed by:	
	Fact discovery	<u>09/01/09</u>
	Expert discovery	<u>10/14/09</u>

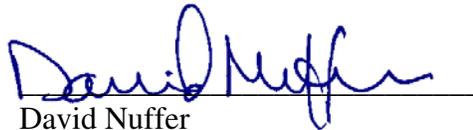
b.	( <i>optional</i> ) Final date for supplementation of disclosures and discovery under Rule 26 (e)		<u>11/13/09</u>
c.	Deadline for filing dispositive or potentially dispositive motions		<u>11/30/09</u>
6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION		DATE
a.	Referral to Court-Annexed Mediation:	<u>No</u>	
b.	Referral to Court-Annexed Arbitration	<u>No</u>	
c.	Evaluate case for Settlement/ADR on		<u>00/00/00</u>
d.	Settlement probability:		
7.	TRIAL AND PREPARATION FOR TRIAL		DATE
a.	Rule 26(a)(3) Pretrial Disclosures		
	Plaintiff		<u>03/26/10</u>
	Defendant		<u>04/09/10</u>
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		<u>00/00/00</u>
c.	Special Attorney Conference on or before		<u>04/23/10</u>
d.	Settlement Conference on or before		<u>04/23/10</u>
e.	Final Pretrial Conference	2:30 p.m.	<u>05/11/10</u>
f.	Trial	<u>Length</u>	
	i. Bench Trial	<u># days</u>	___:___ .m. <u>00/00/00</u>
	ii. Jury Trial	<u>Four days</u>	8:30 a.m. <u>05/25/10</u>

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 27th day of April, 2009.

BY THE COURT:



David Nuffer  
U.S. Magistrate Judge

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

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David E. Brown,

Plaintiff,

vs.

Southern Utah University, et al.

Defendant.

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**SCHEDULING ORDER AND  
ORDER VACATING HEARING**

Case No. 2:08 cv 00542

District Judge Tena Campbell

Magistrate Judge Brooke C. Wells

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel (docket #51). 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 May 20, 2009, at 11:00 a. m. is VACATED.

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

<b>1. PRELIMINARY MATTERS</b>	<b><u>DATE</u></b>
Nature of claim(s) and any affirmative defenses:	
a. Was Rule 26(f)(1) Conference held?	<u>04/21/09</u>
b. Has Attorney Planning Meeting Form been submitted?	<u>04/22/09</u>
c. Was 26(a)(1) initial disclosure completed?	<u>05/25/09</u>

<b>2. DISCOVERY LIMITATIONS</b>	<b><u>NUMBER</u></b>
a. Maximum Number of Depositions by Plaintiff(s)	<u>6</u>
b. Maximum Number of Depositions by Defendant(s)	<u>6</u>
c. Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>8</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>15</u>

f.	Maximum requests for production by any Party to any Party	<u>25</u>
		<b><u>DATE</u></b>
<b>3.</b>	<b>AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>2</sup></b>	
a.	Last Day to File Motion to Amend Pleadings	<u>P 06/25/09</u> <u>D 07/23/09</u>
b.	Last Day to File Motion to Add Parties	<u>P 06/25/09</u> <u>D 07/23/09</u>
<b>4.</b>	<b>RULE 26(a)(2) REPORTS FROM EXPERTS<sup>3</sup></b>	
a.	Plaintiff	<u>08/10/09</u>
b.	Defendant	<u>09/10/09</u>
c.	Counter reports	<u>10/12/09</u>
<b>5.</b>	<b>OTHER DEADLINES</b>	
a.	Discovery to be completed by:	
	Fact discovery	<u>11/20/09</u>
	Expert discovery	<u>11/20/09</u>
b.	<i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	<u>00/00/00</u>
c.	Deadline for filing dispositive or potentially dispositive motions	<u>01/04/10</u>
<b>6.</b>	<b>SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION</b>	
a.	Referral to Court-Annexed Mediation	<u>Yes</u>
b.	Referral to Court-Annexed Arbitration	<u>No</u>
c.	Evaluate case for Settlement/ADR on	<u>12/10/09</u>
d.	Settlement probability:	
<b>7.</b>	<b>TRIAL AND PREPARATION FOR TRIAL:</b>	
a.	Rule 26(a)(3) Pretrial Disclosures <sup>4</sup>	
	Plaintiff	<b>04/16/10</b>
	Defendant	<b>04/30/10</b>

- b. Objections to Rule 26(a)(3) Disclosures  
(if different than 14 days provided in Rule)

**DATE**

- |    |   |               |                                  |
|----|---|---------------|----------------------------------|
| c. | Special Attorney Conference <sup>5</sup> on or before |               | <b>05/14/10</b>                  |
| d. | Settlement Conference <sup>6</sup> on or before       |               | 05/14/10                         |
| e. | Final Pretrial Conference                             | 3:00 p.m.     | 06/01/10                         |
| f. | Trial   | <u>Length</u> | <u>Time</u>                      |
|    | i. Bench Trial  | <u># days</u> | <u>Date</u>                      |
|    | ii. Jury Trial  | <u>3 days</u> | <u>8:30 a.m.</u> <u>06/21/10</u> |

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 28th day of April, 2009.

BY THE COURT:

\_\_\_\_\_/s/David Nuffer\_\_\_\_\_  
David Nuffer  
U.S. Magistrate Judge

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

S:\IPT\2009\Brown v. Southern Utah University 208cv542TC 0427 tb.wpd

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

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SYMBIOT BUSINESS GROUP INC, et al.

Plaintiffs,

v.

JOHN ALLIN, et al.

Defendants.

SCHEDULING ORDER AND  
ORDER VACATING HEARING

Case No. 2:08-cv-624 DAK

District Judge Dale A. Kimball

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Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel (docket #13). 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 May 20, 2009, at 11:30 a.m is VACATED.

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

- | 1. | PRELIMINARY MATTERS  | DATE    |
|----|--|---------|
|    | Nature of claims and any affirmative defenses: The claims asserted by Plaintiffs and Counterclaim Plaintiffs sound in breach of contract, breach of fiduciary duty, unjust enrichment and fraud. |         |
| a. | Was Rule 26(f)(1) Conference held?   | 4/24/09 |
| b. | Has Attorney Planning Meeting Form been submitted?   | 4/24/09 |
| c. | Was 26(a)(1) initial disclosure completed?   | 5/8/09  |
| 2. | DISCOVERY LIMITATIONS  | NUMBER  |
| a. | Maximum Number of Depositions by Plaintiff(s)  | 10      |
| b. | Maximum Number of Depositions by Defendant(s)  | 10      |

c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	7
d.	Maximum Interrogatories by any Side to any Side	30
e.	Maximum requests for admissions by any Side to any Side	30
f.	Maximum requests for production by any Party to any Party	
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES <sup>2</sup>	DATE
a.	Last Day to File Motion to Amend Pleadings	6/15/2009
b.	Last Day to File Motion to Add Parties	6/15/2009
4.	RULE 26(a)(2) REPORTS FROM EXPERTS <sup>3</sup>	DATE
a.	Plaintiff	2/12/10
b.	Defendant	3/5/10
c.	Counter reports	
5.	OTHER DEADLINES	DATE
a.	Discovery to be completed by:	
	Fact discovery	12/11/09
	Expert discovery	4/9/10
b.	(optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)	
c.	Deadline for filing dispositive or potentially dispositive motions	4/16/10

- |    |   |      |
|----|---|------|
| 6. | SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION | DATE |
| a. | Referral to Court-Annexed Mediation:      |      |
| b. | Referral to Court-Annexed Arbitration     |      |
| c. | Evaluate case for Settlement/ADR on       |      |
| d. | Settlement probability: Fair              |      |

- |    |   |               |                           |
|----|---|---------------|---------------------------|
| 7. | TRIAL AND PREPARATION FOR TRIAL   | TIME          | DATE                      |
| a. | Rule 26(a)(3) Pretrial Disclosures <sup>4</sup>   |               |                           |
|    | Plaintiff   |               | 07/30/10                  |
|    | Defendant   |               | <u>08/13/10</u>           |
| b. | Objections to Rule 26(a)(3) Disclosures<br>(if different than 14 days provided in Rule) |               |                           |
| c. | Special Attorney Conference <sup>5</sup> on or before                                   |               | <u>08/27/10</u>           |
| d. | Settlement Conference <sup>6</sup> on or before   |               | <u>08/27/10</u>           |
| e. | Final Pretrial Conference   | 2:30 p.m.     | <u>09/13/10</u>           |
| f. | Trial   | <u>Length</u> |                           |
|    | i. Bench Trial  | ___:___ .m.   |                           |
|    | ii. Jury Trial  | 4 days        | 8:30 a.m. <u>09/27/10</u> |

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 28th day of April 2009.

BY THE COURT:

\_\_\_\_\_/s/David Nuffer\_\_\_\_\_  
David Nuffer  
U.S. Magistrate Judge

---

<sup>1</sup> 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).

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

<sup>3</sup> 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.

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

<sup>5</sup> 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.

<sup>6</sup> 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.

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

---

**TANA GILES, an individual and  
parent to minor children,**

**Plaintiff,**

**vs.**

**PACIFIC TRIAD  
DEVELOPMENT, et al.,**

**Defendants.**

**ORDER TO SHOW CAUSE**

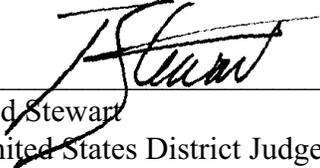
**Case No. 2:08-CV-754 TS**

---

Plaintiffs are hereby ordered to show cause why the above captioned case should not be dismissed. Plaintiffs are directed to respond in writing within ten days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

Dated this 1st day of May, 2009.

By \_\_\_\_\_

  
Ted Stewart  
United States District Judge

FILED  
U.S. DISTRICT COURT

2009 APR 31 A 8:32

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

**STEVEN B. KILLPACK, Federal Defender (#1808)**  
**WENDY M. LEWIS, Assistant Federal Defender (#5993)**  
**UTAH FEDERAL DEFENDER OFFICE**  
**46 West Broadway, Suite 110**  
**Salt Lake City, Utah 84101**  
**Telephone: (801) 524-4010**  
**Facsimile: (801) 524-4060**  
**Attorney for Defendant**

**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALEX JASON HALL,

Defendant.

**ORDER GRANTING MOTION TO  
WITHDRAW AS COUNSEL**

Case No. 2:09 CR 119 DB  
Judge Benson

This matter has been reviewed by the Court on a Motion to Withdraw as Counsel, filed by Wendy M. Lewis, Assistant Federal Defender; the Court being fully advised and good cause appearing, IT IS HEREBY ORDERED:

Wendy M. Lewis, Assistant Federal Defender, is hereby granted leave to withdraw as counsel of record for Defendant and Defendant is to be appointed new counsel in the above entitled matter.

Dated this 30<sup>th</sup> day of April, 2009.

BY THE COURT:



DEE BENSON  
United States District Judge

# United States District Court

## CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

v.

### ORDER SETTING CONDITIONS OF RELEASE

ANTHONY BOY

Case Number: 2:09-CR-201 TS

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

\_\_\_\_\_ PLACE

on \_\_\_\_\_

DATE AND TIME

### Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

\_\_\_\_\_ dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

### Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ( ) (6) The defendant is placed in the custody of:  
 (Name of person or organization)  
 (Address)  
 (City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: \_\_\_\_\_

Custodian or Proxy

- (✓)(7) The defendant shall:
- (✓)(a) actively seek employment.
  - ( ) (b) maintain or commence an educational program.
  - (✓)(c) abide by the following restrictions on his personal associations, place of abode, or travel:  
 maintain residence at Cornell Community Corrections Center (1585 W. 2100 S. SLC, UT) under 24 hour supervision. Defendant allowed release for work search, medical employments, court/attorney appointments. If work is found, motion to be filed with the Court for further review. Upon approval by PTS, the defendant may have day passes for visits with his grandmother and aunt.
  - (✓)(d) avoid all contact with persons, who are considered either alleged victims or potential witnesses.
  - (✓)(e) report on a regular basis to the supervising officer as directed.
  - ( ) (f) comply with the following curfew:
  - (✓)(g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
  - (✓)(h) refrain from any use or possession of alcohol.
  - (✓)(i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
  - (✓)(j) undergo medical or psychiatric treatment and/or remain in an institution, as follows: as required by the Adams Walsh Act and as directed by PTS.
  - ( ) (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
  - ( ) (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
  - ( ) (m) execute a bail bond with solvent sureties in the amount of \$
  - ( ) (n) return to custody each (week)day as of \_\_\_\_\_ o'clock after being released each (week)day as of \_\_\_\_\_ o'clock for employment, schooling or the following limited purpose(s):
  - ( ) (o) surrender any passport to
  - ( ) (p) obtain no passport
  - (✓)(q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
  - (✓)(r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
  - ( ) (s) submit to an electronic monitoring program as directed by the supervising officer.
  - (✓)(t) no unsupervised contact with persons under the age of 18 years.

**Advice of Penalties and Sanctions**

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

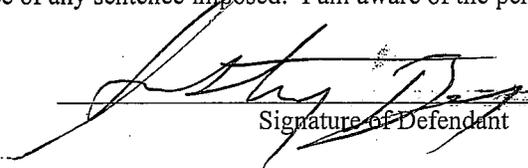
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

  
\_\_\_\_\_  
Signature of Defendant

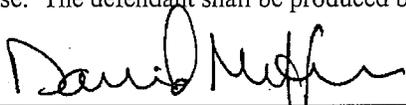
\_\_\_\_\_  
Address

\_\_\_\_\_  
City and State Telephone

**Directions to the United States Marshal**

- The defendant is ORDERED released after processing.
- The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: May 1, 2009

  
\_\_\_\_\_  
Signature of Judicial Officer

**Magistrate Judge David Nuffer**  
\_\_\_\_\_  
Name and Title of Judicial Officer

Brett D. Ekins (USB # 11472)  
JONES, WALDO, HOLBROOK & MCDONOUGH, PC  
301 North 200 East, Suite 3A  
St. George, UT 84770-2978  
Telephone: (435) 628-1627  
Facsimile: (435) 628-5225  
[bekins@joneswaldo.com](mailto:bekins@joneswaldo.com)

Attorneys for Plaintiff Intermountain Electronics, Inc.

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH  
CENTRAL DIVISION

INTERMOUNTAIN ELECTRONICS, INC., a  
Utah corporation,

Plaintiff,

vs.

CONSPEC CONTROLS, INC., a New York  
corporation, PILLAR INNOVATIONS, LLC,  
a Maryland limited liability company, and  
THOMAS WOJCIK, an individual,

Defendants.

Case No. 2:09-CV-00020

SCHEDULING ORDER

Judge Clark Waddoups

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge<sup>i</sup> received the Attorneys' Planning Report filed by counsel (docket 52). 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.

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

1. PRELIMINARY MATTERS DATE

	Nature of claims and any affirmative defenses:	
a.	Was Rule 26(f)(1) Conference held?	<u>04/07/09</u>
b.	Has Attorney Planning Meeting Form been submitted?	<u>04/21/09</u>
c.	Was 26(a)(1) initial disclosure completed?	<u>04/28/09</u>
2.	DISCOVERY LIMITATIONS	NUMBER
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>30</u>
e.	Maximum requests for admissions by any Party to any Party	<u>50</u>
f.	Maximum requests for production by any Party to any Party	<u>none</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES <sup>ii</sup>	DATE
a.	Last Day to File Motion to Amend Pleadings	<u>09/03/09</u>
b.	Last Day to File Motion to Add Parties	<u>09/03/09</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS <sup>iii</sup>	DATE
a.	Plaintiff	<u>01/08/10</u>
b.	Defendant	<u>01/08/10</u>
c.	Counter reports	<u>02/12/10</u>
5.	OTHER DEADLINES	DATE
a.	Discovery to be completed by:	
	Fact discovery	<u>12/03/09</u>
	Expert discovery	<u>3/12/10</u>
b.	(optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)	<u>00/00/00</u>
c.	Deadline for filing dispositive or potentially dispositive motions	<u>03/12/10</u>

- |    |   |                 |
|----|---|-----------------|
| 6. | SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION | DATE            |
| a. | Referral to Court-Annexed Mediation:      | <u>Yes</u>      |
| b. | Referral to Court-Annexed Arbitration     | <u>No</u>       |
| c. | Evaluate case for Settlement/ADR on       | <u>00/00/00</u> |
| d. | Settlement probability:                   |                 |

- |    |   |                 |                           |
|----|---|-----------------|---------------------------|
| 7. | TRIAL AND PREPARATION FOR TRIAL   | TIME            | DATE                      |
| a. | Rule 26(a)(3) Pretrial Disclosures <sup>iv</sup>  |                 |                           |
|    | Plaintiff   |                 | <u>06/18/10</u>           |
|    | Defendant   |                 | <u>07/02/10</u>           |
| b. | Objections to Rule 26(a)(3) Disclosures<br>(if different than 14 days provided in Rule) |                 | <u>00/00/00</u>           |
| c. | Special Attorney Conference <sup>v</sup> on or before                                   |                 | <u>07/16/10</u>           |
| d. | Settlement Conference <sup>vi</sup> on or before  |                 | <u>07/16/10</u>           |
| e. | Final Pretrial Conference   | 2:30 p.m.       | <u>08/02/10</u>           |
| f. | Trial   | <u>Length</u>   |                           |
|    | i. Bench Trial  | <u># days</u>   | __:__ .m. <u>00/00/00</u> |
|    | ii. Jury Trial  | <u>Ten days</u> | 8:30 a.m. <u>08/16/10</u> |

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 28th day of April, 2009.

BY THE COURT:

\_\_\_\_\_/s/David Nuffer\_\_\_\_\_  
 David Nuffer  
 U.S. Magistrate Judge

---

<sup>i</sup> 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).

<sup>ii</sup> Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

<sup>iii</sup> 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.

<sup>iv</sup> Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

<sup>v</sup> 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.

<sup>vi</sup> 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.

FILED  
U.S. DISTRICT COURT

2009 APR 30 P 2:21

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

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

UNIVERSITY OF UTAH,  
UNIVERSITY HEALTHCARE  
Plaintiff,

v.

CABINETEC, INC, a Nevada Corporation,  
CABINETEC HEALTH AND DENTAL PLAN,  
an ERISA governed health plan, AND GREAT-  
WEST LIFE AND ANNUITY INSURANCE  
COMPANY, a Colorado Corporation

Defendants.

ORDER GRANTING  
STIPULATION TO AMEND  
PLAINTIFF'S COMPLAINT

Civil No: 2:09-cv-37

Judge: Clark Waddoups

The Court having considered the stipulation to Amend, hereby orders that the plaintiff's complaint may be amended as described in the accompanying stipulation.

Dated this 30<sup>th</sup> day of April, 2009.

  
CLARK WADDOUPS  
U.S. District Judge

Approved as to form:

By: /s/ Julie Ewing  
JULIE EWING  
Attorney for the Plaintiff

By: /s/ Lewis R. Reece  
LEWIS R. REECE  
Attorney for the Defendant  
(Signed by Filing Attorney with Permission  
of Lewis R. Reece)

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

---

VALUE MORTGAGE INVESTORS, LLC, a  
Utah limited liability company,

Plaintiff,

vs.

RICHARD BOSWORTH, an individual;  
ETHAN S. DAY, an individual,

Defendants.

**ORDER**

Case No. 2:09-CV-48 CW

Judge Clark Waddoups

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This matter is before the court on Plaintiff's Motion for Default Judgment against Defendant Richard Bosworth (Dkt. No. 5). On February 25, 2009, Plaintiff filed a Proof of Service declaring that on February 3, 2009 a process server had delivered a copy of the summons on "Steve Sirang, President of Wilshire Capital Holdings, LLC." The process server indicated that Mr. Sirang was "an agent authorized by appointment or by law to receive" the summons for Mr. Bosworth. After Mr. Bosworth did not file an answer, Plaintiff filed the present motion.

Plaintiff has not substantiated the process server's claim that Mr. Sirang was authorized to receive service for Mr. Bosworth. Accordingly, Plaintiff's Motion for Default Judgment is DENIED without prejudice. Should Plaintiff wish to renew its Motion for Default Judgment, Plaintiff must provide evidence that service was properly made on Mr. Bosworth.

DATED this 1st day of May, 2009.

BY THE COURT:

A handwritten signature in cursive script, reading "Clark Waddoups".

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Clark Waddoups  
United States District Judge

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UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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ALLEN BOSSHARDT,	)	
	)	Case No. 2:09CV 00132-DAK
Plaintiff	)	
	)	
v.	)	
	)	ORDER
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	Honorable Dale A. Kimball
Defendant.	)	

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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 Carolyn Cooper in the United States District Court, District of Utah in the subject case is GRANTED.

DATED this 1<sup>st</sup> day of May, 2009.

  
Honorable Dale A. Kimball  
United States District Court

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

<p>SOLID WASTE SPECIAL SERVICE DISTRICT #1, fka GRAND COUNTY SOLID WASTE MANAGEMENT SPECIAL SERVICE DISTRICT #1,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>HDR ENGINEERING, INC.</p> <p style="text-align: center;">Defendant.</p>	<p>SCHEDULING ORDER AND ORDER VACATING HEARING</p>  <p>Case No. <u>2:09-cv-178</u>.</p> <p>District Judge <u>Dale A. Kimball</u></p>
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Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel (docket #16). 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 May 20, 2009, at 11:30 a.m. is VACATED.

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

1.	PRELIMINARY MATTERS	DATE
	Nature of claims and any affirmative defenses:	
	a. Was Rule 26(f)(1) Conference held?	<u>4/23/2009</u>
	b. Has Attorney Planning Meeting Form been submitted?	<u>4/24/2009</u>
	c. Was 26(a)(1) initial disclosure completed?	<u>5/29/2009</u>
2.	DISCOVERY LIMITATIONS	NUMBER
	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	<u>8</u>

(unless extended by agreement of parties)

d.	Maximum Interrogatories by any Party to any Party		<u>25</u>
e.	Maximum requests for admissions by any Party to any Party		<u>25</u>
f.	Maximum requests for production by any Party to any Party		<u>25</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES <sup>2</sup>		DATE
a.	Last Day to File Motion to Amend Pleadings	Plaintiff	<u>6/30/2009</u>
		Defendant	<u>7/17/2009</u>
b.	Last Day to File Motion to Add Parties	Plaintiff	<u>6/30/2009</u>
		Defendant	<u>7/17/2009</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS <sup>3</sup>		DATE
a.	Plaintiff		<u>10/16/2009</u>
b.	Defendant		<u>11/16/2009</u>
c.	Counter reports		<u>12/4/2009</u>
5.	OTHER DEADLINES		DATE
a.	Discovery to be completed by:		
	Fact discovery		<u>10/30/2009</u>
	Expert discovery		<u>12/18/2009</u>
b.	<i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)		<u>00/00/00</u>
c.	Deadline for filing dispositive or potentially dispositive motions		<u>12/31/2009</u>
6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION		DATE
a.	Referral to Court-Annexed Mediation:	<u>Yes</u>	

- |    |                                       |  |                   |
|----|---------------------------------------|--|-------------------|
| b. | Referral to Court-Annexed Arbitration |  | <u>No</u>         |
| c. | Evaluate case for Settlement/ADR on   |  | <u>10/30/2009</u> |
| d. | Settlement probability:               |  | POOR              |
7. TRIAL AND PREPARATION FOR TRIAL
- |    |   | TIME          | DATE                        |
|----|---|---------------|-----------------------------|
| a. | Rule 26(a)(3) Pretrial Disclosures <sup>4</sup>   |               |                             |
|    | Plaintiff   |               | <u>04/01/10</u>             |
|    | Defendant   |               | <u>04/16/10</u>             |
| b. | Objections to Rule 26(a)(3) Disclosures<br>(if different than 14 days provided in Rule) |               | <u>00/00/00</u>             |
| c. | Special Attorney Conference <sup>5</sup> on or before                                   |               | <u>04/30/10</u>             |
| d. | Settlement Conference <sup>6</sup> on or before   |               | <u>04/30/10</u>             |
| e. | Final Pretrial Conference   | 2:30 p.m.     | <u>05/17/10</u>             |
| f. | Trial   | <u>Length</u> |                             |
|    | i. Bench Trial  | <u>3 days</u> | ___:___ .m. <u>00/00/00</u> |
|    | ii. Jury Trial  | <u># days</u> | 8:30 a.m. <u>06/01/10</u>   |

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 28th day of April, 2009.

BY THE COURT:  
S/David Nuffer  
 DAVID NUFFER  
 U.S. Magistrate Judge

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<sup>1</sup> 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,

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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).

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

<sup>3</sup> 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.

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

<sup>5</sup> 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.

<sup>6</sup> 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.

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

FILED  
DISTRICT COURT

2009 APR 31 A 8:32

CITY OF UTAH

374  
CLERK OF COURT

UNITED STATES OF AMERICA,  
Plaintiff,

v.

JON MCBRIDE,  
Defendant.

Case Number: 2:09CV378DB

ORDER FOR PRO HAC VICE  
ADMISSION

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 Amy T. Matchison in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 30<sup>th</sup> day of April, 2009.



DEE BENSON, Judge  
United States District Court

FILED  
U.S. DISTRICT COURT

2009 APR 30 P 2:21

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF UTAH, CENTRAL DIVISION**

TIMOTHY A. TABOR, DEBRA J. TABOR,  
and FARMERS INSURANCE GROUP,

Plaintiffs,

vs.

THE METAL WARE CORPORATION, a  
Wisconsin corporation; NESCO/AMERICAN  
HARVEST, CORP., a Wisconsin corporation;  
NEWCO OF TWO RIVERS, INC., a  
Wisconsin corporation, UVALKO SHOPKO  
STORES, INC., a Minnesota corporation, and  
AMERICAN HARVEST, INC., a Minnesota  
corporation,

Defendants.

**ORDER OF DISMISSAL WITH  
PREJUDICE**

Civil No. 2-99CV503-CW

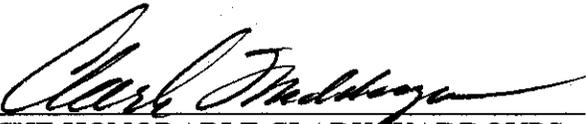
Judge Clark Waddoups

Upon stipulation and motion of the parties, and it appearing to the Court that the above-entitled action has been fully compromised and settled as to the claims between plaintiffs and defendants The Metal Ware Corp., Newco of Two Rivers, Inc., and Nesco/American Harvest Corp. (collectively, the "Settling Defendants") and it appearing that said settlement is fair and reasonable, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that the above-entitled action be, and the same is hereby, dismissed with prejudice and upon the merits, against the Settling Defendants, each party to bear its own costs.

DATED this 30<sup>th</sup> day of April, 2009.

BY THE COURT:

  
\_\_\_\_\_  
THE HONORABLE CLARK WADDOUPS  
United States District Court Judge

*APPROVED AS TO FORM:*

DUNN & DUNN

/s/ Gerry B. Holman  
Gerry B. Holman  
*(original signature on file with counsel for Metal Ware)*  
*Attorneys for Plaintiff Farmers Insurance Group*

PLANT CHRISTENSEN & KANELL

/s/ Theodore E. Kannell  
Theodore E. Kannell  
*(original signature on file with counsel for Metal Ware)*  
*Attorneys for Plaintiffs Timothy & Debra Tabor*