

United States District Court
for the District of Utah

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MAY 07 2009

Request and Order for Modifying Conditions of Supervision

OFFICE OF
JUDGE TENA CAMPBELL

Name of Offender: **Warren David Smith**

Docket Number: **1:01-CR-00100-001-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell
Chief United States District Judge**

FILED
U.S. DISTRICT COURT
2009 MAY -7 P 1:14
DISTRICT OF UTAH
BY
DEPUTY CLERK

Date of Original Sentence: **November 13, 2002**

Original Offense: **Possession of a Firearm by a Convicted Felon**
Original Sentence: **27 months custody; 36 months supervised release**

Date of Violation Sentence: **August 28, 2006**
Violation Sentence: **18 months custody; 18 months supervised release**

Date of Violation Sentence: **February 25, 2009**
Violation Sentence: **Time served; 90 days supervised release**

Type of Supervision: **Supervised Release** Current Supervision Began: **February 25, 2009**

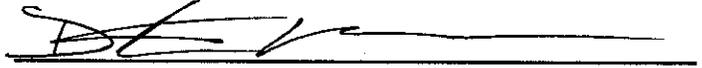
PETITIONING THE COURT

To waive the \$115 fee to defer the costs of drug testing and collection ordered on November 13, 2002.

CAUSE

The defendant suffers with various medical complications which have prevented him from obtaining employment throughout his period of supervision. The defendant receives SSI medical disability of \$606 per month and has several medication needs. The defendant has an outstanding obligation of a \$100 special assessment fee and has signed a payment agreement to pay this \$100 by May 10, 2009. The defendant is due to release from the Residential Reentry Center and complete his term of supervised release on May 24, 2009. Due to the defendant's financial limitations, need to establish a release residence, and support himself on a small fixed income, it is respectfully requested the Court consider this motion to waive the existing \$115 urinalysis fee.

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



Dusten Russell, U.S. Probation Officer

Date: April 30, 2009

THE COURT ORDERS:

- The \$115 drug testing fee be waived
- No action
- Other



Honorable Tena Campbell
Chief United States District Judge

Date: ~~5-8~~ 5-8-2009

David K. Broadbent, #0442
Brent E. Johnson, #7558
Romaine C. Marshall, #9654
Rebecca A. Ryon, #11761
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Attorneys for Plaintiff

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OFFICE OF
JUDGE TENA CAMPBELL

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

JOHN DOE,

Plaintiff,

vs.

MARK SHURTLEFF, Office of the Attorney
General for the State of Utah, in his official
capacity, **SALT LAKE COUNTY**
PROSECUTOR, in their official capacity,
UTAH COUNTY PROSECUTOR AND
SHERIFF, in their official capacity,
TOM PATTERSON, Executive Director,
Utah State Department of Corrections, in his
official capacity,

Defendants.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
OVERLENGTH MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO VACATE ORDERS
ENJOINING, IN PART, ENFORCEMENT
OF STATUTE**

Case No. 1:08-cv-00064

Chief Judge Tena Campbell

Having considered Plaintiff John Doe's Motion for Leave to File an Overlength Memorandum in Opposition to Defendants' Motion to Vacate Orders Enjoining, In Part, Enforcement of Statute, and finding good cause in support thereof, the Court hereby GRANTS the Motion. Plaintiff may file an Overlength Memorandum in Opposition to Defendants' Motion to Vacate Orders Enjoining, In Part, Enforcement of Statute.

DATED this 7 day of May, 2009.

BY THE COURT:



Honorable Tena Campbell
United States District Judge

IN THE UNITED STATES DISTRICT COURT 2009 MAY -8 A 10: 16

DISTRICT OF UTAH, NORTHERN DIVISION DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

STEARNS BANK, N.A.,

Plaintiff,

v.

CRESTMARK BANK,

Defendant.

ORDER

Case No. 1:08-cv-0105 CW

Judge Clark Waddoups

This matter is before the court on Defendant Crestmark Bank's Motion to Dismiss for Lack of Personal Jurisdiction and Motion to Dismiss for Improper Venue or, in the Alternative, to Transfer Venue. A hearing on Defendant's motions was held before the Honorable Clark Waddoups on May 6, 2009. John A. Beckstead appeared on behalf of Plaintiff Stearns Bank, N.A. R. Christopher Cataldo and R. Willis Orton appeared on behalf of Defendant. After due consideration of the parties' filings and oral arguments, and otherwise being fully advised,

IT IS HEREBY ORDERED, for the reasons stated on the record, that Defendant's Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED.¹ Defendant's Motion to Dismiss for Improper Venue or, in the Alternative, to Transfer Venue is DENIED AS MOOT.² This case is dismissed without prejudice.

¹ Docket No. 12.

² Docket No. 14

DATED this 7th day of May, 2009.

BY THE COURT:

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

Clark Waddoups
United States District Judge

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

JOSE A. ORTEGA,
Plaintiff,

v.

SYNAPSE DATA AND TELECOM, INC.
and MATTHEW MOSSBARGER,
Defendants.

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Order for Pro Hac Vice Admission

Case No. 1:09-cv-0048-PMW

Magistrate Judge Paul M. Warner

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCivR 83-1.1(d), the motion for the admission pro hac vice of Hilary J. Funk in the United States District Court, District of Utah, in the subject case¹ is **GRANTED**.

IT IS SO ORDERED.

DATED this 8th day of May, 2009.

BY THE COURT:



PAUL M. WARNER
United States Magistrate Judge

¹ See docket no. 4.

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

2009 MAY -8 A 10:17 APR 15 2009

DISTRICT OF UTAH

OFFICE OF
JUDGE TENA CAMPBELL

BY: _____
DEPUTY CLERK

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Salt Lake City, UT 84111
(801) 799-5800

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

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

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.

**ORDER APPROVING SETTLEMENT
WITH LANCASTER REY ASSOCIATES,
LLC, AND ALLEN JOHNSON**

CIVIL NO: 2:02CV 0039C

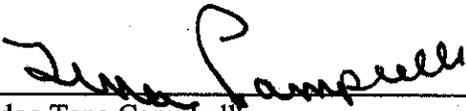
Judge Tena Campbell
Magistrate Judge David Nuffer

Based upon the Motion (the "Motion") by the Receiver to Approve the Settlement with Lancaster Rey Associates, LLC, and Allen Johnson and for good cause showing the Court makes the following Order:

1. The Settlement Agreement with Lancaster Rey Associates, LLC, and Allen Johnson attached as Exhibit A to the Receiver's Motion is hereby APPROVED;

2. The Receiver is authorized to reconvey the subject deed of trust upon payment from Lancaster Rey Associates, LLC, of the settlement amount as detailed in the Settlement Agreement.

DATED this 1 day of ^{May} April, 2009.



Judge Tena Campbell
District Court Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY - 8 2009

BY D. MARK JONES, CLERK
DEPUTY CLERK

KENNETH R. BROWN (#458)
Attorney for Defendant
BROWN, BRADSHAW & MOFFAT, L.L.P.
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Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

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

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM ODELL RANSOM, Defendant.	ORDER TERMINATING PROBATION Case No. 2:04-CR-00283-DKW
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Based upon motion of the defendant and good cause appearing therefore;

IT IS HEREBY ORDERED that the defendant's probation is terminated.

DATED this 7th day of May 2009.

BY THE COURT:

J. Thomas Greene
U.S. District Court Judge

STEVEN B. KILLPACK, Federal Defender (#1808)
HENRI R. SISNEROS, Assistant Federal Defender (#6653)
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

FILED
U.S. DISTRICT COURT

2009 MAY -8 A 8:57

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAMON JUAREZ-MEDINA,

Defendant.

**ORDER GRANTING MOTION TO
WITHDRAW AS COUNSEL**

Case No. 2:05 CR 729 DB
Judge Benson

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

Henri R. Sisneros, Assistant Federal Defender, is hereby granted leave to withdraw as counsel of record for Defendant.

Dated this 8th day of May, 2009.

BY THE COURT:

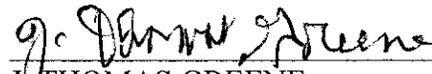


DEE BENSON
United States District Judge

July 13, 2009; the prosecution memorandum is due on or before July 27, 2009;
and the defense reply brief, if any, is due August 3, 2009.

Dated this 7th day of May, 2009.

BY THE COURT:



J. THOMAS GREENE
DISTRICT COURT JUDGE

FILED
U.S. DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
~~CENTRAL DIVISION~~
2008 MAY 25

DISTRICT OF UTAH	
DAVID WAYNE SMITH, Plaintiff, v. SCOTT CARVER et al., Defendants.	BY: _____ DEPUTY CLERK ORDER Case No. 2:05-CV-68 CW District Judge Clark Waddoups Magistrate Judge David Nuffer

Plaintiff, David Wayne Smith, an inmate at the Utah State Prison, filed this *pro se* civil rights suit under 42 U.S.C. § 1983. See 42 U.S.C.A. § 1983 (West 2009). Plaintiff was granted leave to proceed *in forma pauperis* under 28 U.S.C. § 1915. See 28 U.S.C.A. 1915 (West 2009). On December 3, 2007, Defendants filed a *Martinez* Report refuting the allegations in Plaintiff's Complaint and stating their intention to seek summary judgment. On February 28, 2008, Plaintiff filed a motion to compel discovery requiring prison officials to allow Plaintiff to obtain statements from other inmates familiar with the facts of this case. After a drawn out discovery dispute, Plaintiff's motion to compel was granted on July 22, 2008, and Plaintiff was instructed to file his response to the *Martinez* Report by September 12, 2008. On September 23, 2008, Plaintiff filed a motion for extension of time and was given until October 12, 2008, to file

his response.

On March 27, 2009, Magistrate Judge David Nuffer ordered Plaintiff to show cause within twenty days why this case should not be dismissed for failure to prosecute. (Doc. no. 80.) Plaintiff was informed that failure to timely respond would result in dismissal of this case. To date, Plaintiff has not responded to the Order to Show Cause, nor has the Court received any further correspondence from Plaintiff.

Accordingly, **IT IS HEREBY ORDERED** that this case is **DISMISSED** with prejudice under Rule 41(b) based on Plaintiff's failure to prosecute and failure to respond to the Order to Show Cause entered March 27, 2009. See Fed.R.Civ.P. 41(b).

DATED this 7th day of May, 2009.

BY THE COURT:


CLARK WADDOUPS
United States District Judge

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IN THE UNITED STATES DISTRICT COURT MAY 8 2009

2009 MAY -8 A 10 DISTRICT OF UTAH CENTRAL DIVISION OFFICE OF
JUDGE TENA CAMPBELL

DISTRICT OF UTAH	
UNITED STATES OF AMERICA DEPUTY CLERK Plaintiff(s), vs. Ammon R. Wilkinson Defendant(s).	 Case No. 2:06-cr-00197-TC-2 RISE PROGRAM ORDER

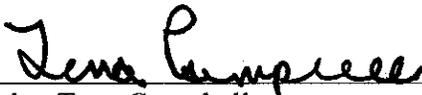
Upon recommendation of the RISE screening committee and the execution of the Rise Program Agreement by the defendant,

It is hereby ordered that Ammon R. Wilkinson be admitted to the RISE program. Further proceedings in this matter will be governed by the RISE program protocol. The management of this defendant is referred to the RISE Program Magistrate Judge Brooke C. Wells , as authorized by 28 U.S.C. 636(b)(1)(A), for all further hearings. The RISE Program Judge may order sanctions which are outlined in the RISE program.

Upon notification by the RISE Program Judge that Ammon R. Wilkinson has failed to meet his/her responsibilities under the program, the defendant will be removed from the program and subject to possible additional sanctions.

DATED this 7 day of May, 2009.

BY THE COURT:



 Judge Tena Campbell
 United States District Judge

United States Probation Office
for the District of Utah

Report on Offender Under Supervision

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Name of Offender: **Robert Alan King**

Docket Number: **2:07-CR-00134-001-TC**

Name of Sentencing Judicial Officer:

Honorable Tena Campbell
Chief United States District Judge

Date of Original Sentence: **November 1, 2007**

Original Offense: **Felon in Possession of a Firearm**

Original Sentence: **30 Months Bureau of Prisons Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **March 30, 2009**

OFFICE OF
JUDGE TENA CAMPBELL
CLERK
MAY 07 2009
U.S. DISTRICT COURT
FILED
MAY - 7 2009
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SUPERVISION SUMMARY

On April 27, 2009, the defendant submitted a urine specimen which tested positive for amphetamine and methamphetamine. The defendant reported to the probation office immediately after submitting the positive specimen. He contributed his use to his girlfriend breaking up with him. He said after he used, he felt guilty and recognized using drugs was not the way to handle the situation. The defendant agreed to participate in substance-abuse treatment and has been referred to Clinical Consultants. Approximately four days after testing positive, he submitted a negative specimen.

On April 30, 2009, a home visit was conducted at the defendant's residence. Contact with the defendant's mother revealed the defendant disclosed the breakup of his relationship and his use of methamphetamine. A walk through of the defendant's bedroom revealed no obvious signs of illicit substances.

The defendant is not viewed as an immediate risk to the community; therefore, it is respectfully recommended that no formal adverse action be taken. The defendant's attendance and participation in substance-abuse treatment will be monitored closely, and the Court will be promptly notified of any further non-compliance.

If the Court desires more information or another course of action, please contact me at 801-535-2764.

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



Shelley Mangum
U.S. Probation Officer
Date: May 5, 2009

THE COURT:

- Approves the request noted above
- Denies the request noted above
- Other



Honorable Tena Campbell
Chief United States District Judge

Date: 5-7-2009

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MAY 08 2009

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT OFFICE OF
FOR THE DISTRICT OF UTAH JUDGE TENA CAMPBELL
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

CLEARONE COMMUNICATIONS, INC.,
a Utah corporation,

Plaintiff,

vs.

ANDREW CHIANG, an individual, JUN
YANG, an individual, WIDEBAND
SOLUTIONS, INC., a Massachusetts
corporation, and BIAMP SYSTEMS
CORPORATION, INC., an Oregon
corporation,

Defendants.

**ORDER GRANTING DEFENDANT BIAMP
SYSTEMS CORPORATION, INC. LEAVE TO FILE
OVERLENGTH MEMORANDUM SUPPORT OF
MOTION FOR JUDGMENT AS A MATTER OF LAW
AND RULE 59(A) MOTION FOR A NEW TRIAL**

Case No. 2:07-cv-37

Judge Tena Campbell

Magistrate Judge David Nuffer

For good cause shown, and pursuant to DUCivR 7-1(e) and Defendant Biamp System Corporation's ("Biamp") *Ex Parte* Motion for Leave to File Overlength Memoranda in support of its Motion For Judgment as a Matter of Law AND its Rule 59(a) Motion for a New Trial, the Court hereby ORDERS that Biamp is granted leave to file its overlength memoranda.

Dated: this 7 day of May, 2009.

United States District Court

Tena Campbell

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Fax: (801) 532-1936

Adam P. Segal, Esq.
Nevada Bar No. 6120
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Telephone: (702) 382-2101
Facsimile: (702) 382-8135

Attorneys for Plaintiffs

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DISTRICT OF UTAH
OFFICE OF
BY: JUDGE TENA CAMPBELL
DEPUTY CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

<p>TRUSTEES OF THE UTAH CARPENTERS' AND CEMENT MASONS' PENSION TRUST,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>DAW, INC., n/k/a DAW CONSTRUCTION GROUP, LLC,</p> <p style="text-align: right;">Defendants.</p>	<p>CASE NO. 2:07-cv-00087-TC-DN</p> <p>ORDER ON MOTION TO STAY PENDING SETTLEMENT</p>
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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiffs Trustees of the Utah Carpenters' and Cement Masons' Pension Trust's ("the Trust") Motion for Stay Pending Settlement is granted. The parties have until May 31, 2009, to submit final papers disposing of this matter.

Dated: May 7, 2009 Tena Campbell

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U.S. DISTRICT COURT

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DISTRICT OF UTAH

MAY 07 2009

BY: _____
DEPUTY CLERK

OFFICE OF
JUDGE TENA CAMPBELL

David R. Olsen (2458)
Paul M. Simmons (4668)
John C. Hansen (5286)
DEWSNUP KING & OLSEN
36 South State Street, Suite 2400
Salt Lake City, Utah 84111.

*Attorneys for Defendants and Counterclaim Plaintiffs
Ray Quinney & Nebeker P.C., Brent D. Wride, David K.
Lauritzen P.C., and David K. Lauritzen*

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

**WESTPORT INSURANCE
CORPORATION,**

Plaintiff,

v.

**RAY QUINNEY & NEBEKER, P.C.;
BRENT D. WRIDE; DAVID K.
LAURITZEN, P.C.; DAVID K.
LAURITZEN; and EDUCATORS
MUTUAL INSURANCE ASSOCIATION
OF UTAH,**

Defendants.

**ORDER FOR EXTENSION OF
TIME**

**Case No. 2:07cv00236-TC
Honorable Tena Campbell**

**RAY QUINNEY & NEBEKER, P.C.;
BRENT D. WRIDE; DAVID K.
LAURITZEN, P.C.; and DAVID K.
LAURITZEN,**

Counterclaim Plaintiffs,

v.

**WESTPORT INSURANCE
CORPORATION,**

Counterclaim Defendant.

**RAY QUINNEY & NEBEKER, P.C.;
BRENT D. WRIDE; and DAVID K.
LAURITZEN,**

Third Party Plaintiffs,

v.

**ST. PAUL FIRE & MARINE
INSURANCE, CO.,**

Third Party Defendant.

Based upon the motion for an extension of time filed by defendants and third-party plaintiffs Ray, Quinney & Nebeker, P.C., Brent D. Wride, David K. Lauritzen, P.C., and David K. Lauritzen and the parties' stipulation and good cause appearing,

IT IS HEREBY ORDERED THAT the defendants and counterclaim plaintiffs Ray, Quinney & Nebeker, P.C., Brent D. Wride, David K. Lauritzen, P.C., and David K. Lauritzen (collectively, the "RQN Defendants") may have an extension of time to and including May 15, 2009, to respond to the Supplemental Brief of St. Paul Fire & Marine Insurance Co. Regarding Notice.

Dated this 7 day of May, 2009.

BY THE COURT



TENA CAMPBELL
CHIEF JUDGE

Approved as to Form:

/s/ Stuart H. Schultz
(Electronically signed with permission of counsel for third-party defendant)
Stuart H. Schultz
STRONG & HANNI
Attorney for Third-Party Defendant St. Paul Fire & Marine Insurance Co.

FILED
U.S. DISTRICT COURT

2009 MAY -8 A 8:57

DISTRICT OF UTAH

BY: DEPUTY CLERK

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

RONALD WATSON LAFFERTY,

Petitioner,

vs.

STEVEN TURLEY, Warden, Utah
State Prison,

Respondent.

No. 2:07-CV-00322-DB

ORDER GRANTING
PETITIONER'S MOTION FOR
LEAVE TO FILE A REPLY

DEATH PENALTY CASE

Pending before the Court is Petitioner's motion for leave to file a reply to his habeas petition under 28 U.S.C. § 2254. Respondent does not oppose the request. Good cause appearing,

IT IS ORDERED permitting Petitioner to file a reply on or before July 31, 2009.

Dated this 7th day of May 2009.



Judge Dee Benson
United States District Judge

**In the United States District Court
for the District of Utah, Central Division**

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAY 08 2009

D. MARK JONES, CLERK
BY  DEPUTY CLERK

EDWARD HELMICK,

Plaintiff,

vs.

UTAH VALLEY STATE COLLEGE; TOM
McFARLAND, and LARRY MARSING,

Defendants.

ORDER

Case No. 2:07CV355

On May 31, 2007, Plaintiff Edward Helmick filed a Complaint in this Court against Utah Valley State College (UVSC) alleging age discrimination in violation of the Age Discrimination in Employment Act (ADEA). On January 25, 2008, Plaintiff, by leave of Court, amended his Complaint in response to Defendant's Motion to Dismiss. In his Amended Complaint, plaintiff alleged violation of 42 U.S.C. § 1983, and named as individually liable UVSC Dean Tom McFarland and Associate Dean Larry Marsing. Defendant UVSC then moved pursuant to F.R.C.P. 12(b)(1) and 12(b)(6) to dismiss both the ADEA claim and the § 1983 claim, alleging that the college and its officials are immune from ADEA claims when acting in their official capacities and that, in the Tenth Circuit, the ADEA is the exclusive remedy for age discrimination and thus the § 1983 claim likewise fails to state a claim upon which relief can be granted as to any of the defendants.

On June 11, 2008, the court heard oral argument on Defendant's Motion to Dismiss. Based upon review of the briefs submitted by both sides, and the parties' oral arguments, the Court took under advisement Defendants' Motion to Dismiss as to all three claims and all three

parties. Defendant's involved the defense of Sovereign Immunity as to all defendants, arguing that sovereign immunity applies to the ADEA claims under the Eleventh Amendment of the US Constitution. The court was urged also to adopt controlling Tenth Circuit precedent governing § 1983 claims for age discrimination, which would reject plaintiff's claim for relief as to those claims. In the course of oral argument it was submitted by defendants that plaintiff's claims in which age was a factor could not be asserted in federal court for the reasons set forth in the legal memorandums. Also discussed was the possibility that Mr. Helmick's case might be a proper subject of future remand to state court for further proceedings.

FACTUAL BACKGROUND

Plaintiff Edward Helmick was 61 years old in May 2007 when he filed his complaint for age discrimination against Utah Valley State College (UVSC), where he had been employed as a flight instructor for over two years. In 2006, Mr. Helmick was not hired to fill a new faculty position for which he had been identified as a finalist by the faculty hiring committee. Also, he was denied the assignment as teacher of certain classes he had specifically requested. Mr. Helmick alleges he was not hired because the department "wanted younger blood," as allegedly recounted to him by Dr. Ron Smart. Mr. Helmick arranged meetings with Nancy Bartlett, UVSC Director of Human Resources, as well as Dr. Bruce Parker, VP for Academic Affairs, and Tom McFarland, Dean of Aviation Sciences, to discuss his concerns about age discrimination. The UVSC representatives told Mr. Helmick that they believed the hiring process was fair, but that if he felt so constrained, he should file a formal complaint with the Utah Anti-Discrimination & Labor Division (UALD). Mr. Helmick subsequently voluntarily resigned his employment with UVSC. However, in June 2006, he filed a Charge of Age Discrimination with both the UALD

and the Equal Employment Opportunity Commission (EEOC). Mr. Helmick received a Right to Sue Letter from the EEOC on 13 March 2007, and timely filed his Complaint with this Court within 90 days thereafter. Mr. Helmick apparently chose to forgo his state administrative law remedies in favor of pursuing his claims in federal court, but this court has not yet ruled on the matter. His decision to pursue his claims in federal court may have been based on a mistake of law, namely, his belief that his claims would be barred by the Eleventh Amendment in federal court, and that his only available remedy would be to pursue his age discrimination claims under Utah state law as set forth in the Utah Anti-Discrimination Act (U.C.A. § 34A-5-101 *et seq.* (1997)). Further, he believed that under the circumstances the federal court likely would act favorably if a Motion to Remand back to state court were to be filed. It was apparent from statements made at oral argument that plaintiff held the aforesaid beliefs and that his apparent intent was to act in accordance therewith.

STANDARD OF REVIEW

A Motion to Dismiss pursuant to FRCP 12(b)(6) should be granted when it appears the plaintiff can prove no set of facts which would entitle him to relief. *Airparts Co, Inc. v. Custom Benefits Services*, 28 F.3d 1062, 1064 (10th Cir. 1994). The court must presume all of the allegations are true and view the complaint in the light most favorable to the nonmoving party. *Albright v. Oliver*, 510 U.S. 266, 267 (1994).

ANALYSIS

I. The ADEA does not validly abrogate Eleventh Amendment sovereign immunity.

The Eleventh Amendment provides:

“The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

U.S. CONST. AMEND. XI.

Even though the explicit language of the Eleventh Amendment does not preclude private suits against a state by that state’s own citizens, the amendment has been interpreted by the Supreme Court to preclude such suits. *Hans v. Louisiana*, 134 U.S. 1 (1890). Pursuant to its enforcement power under § 5 of the Fourteenth Amendment, Congress may abrogate Eleventh Amendment sovereign immunity. *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976). But “Congress may abrogate the States’ constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute.” *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985) (emphasis added).

Congress attempted to abrogate state sovereign immunity in enacting the ADEA. In that legislation, Congress set forth language clearly expressing an intention to make states liable for employment discrimination. However, the Supreme Court found that Congress exceeded its grant of authority under § 5 of the Fourteenth Amendment when it enacted the provisions of the ADEA making states potentially liable. *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000). Congress’ § 5 enforcement power is limited to the substantive provisions of the Fourteenth Amendment. *See Fitzpatrick*, 427 U.S. at 456. Because age is not a protected status under the Fourteenth Amendment, the ADEA is unconstitutional to the extent that it attempts to make states liable for age discrimination claims. *Kimel*, 528 U.S. at 643. Therefore, private citizens may not bring suit against a state alleging age discrimination in violation of the ADEA.

II. Administrators McFarland and Marsing are shielded from claims under the ADEA by qualified immunity.

Government officials performing discretionary functions are shielded from suit for damages under § 1983 if their actions do not violate clearly established law of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Ordinarily, in order for the law to be clearly established in the Tenth Circuit, there must be a Supreme Court or Tenth Circuit decision on point. *Harman v. Northern Oklahoma Board of Regents*, 2007 WL 1674205 (W.D. Okla. 2007). It is not necessary for the plaintiffs to find a case with exact corresponding factual circumstances, and/or contrary or distinguishable authority from other circuits. *Id.* In *Harman*, a female employee of a state college brought suit alleging gender and age discrimination in employment. In evaluating the college's F.R.C.P. 12(b)(6) motion, the court reasoned that a supervisor's sexual harassment of, and discrimination against, a state employee violated the subordinate's right to equal protection of the law and thus she stated a claim upon which relief could be granted. *Id.* at 5. However, with respect to age-based equal protection claims, the court noted that unlike gender, age is not a suspect or protected class and a state may discriminate based on age as long as the act is rationally related to a legitimate state interest. *Id.* at 6. Moreover, in the employment context, the court reasoned that, "the Tenth Circuit has held that there is no cognizable age discrimination claim under the Equal Protection Clause against a supervisor independent of the ADEA." *Id.* (citing *Migneault v. Peck*, 204 F.3d 1003, 1005 n. 1 (10th Cir. 2000)).

Based upon the aforesaid, the law in the Tenth Circuit is clearly established that the ADEA is the exclusive federal remedy for claims of age discrimination. It follows that § 1983 is not

available to plaintiffs as an alternative option to set forth age discrimination claims..

III. Mr. Helmick has failed to show a violation of a clearly established constitutional or statutory right to overcome UVSC administrators' qualified immunity from § 1983 claims.

State officials sued in their individual capacities are "persons" within the meaning of § 1983, and damages suits brought against them are not barred by the Eleventh Amendment. *Hafer v. Melo*, 502 U.S. 21 (1991). Individual capacity defendants may raise absolute or qualified immunity as a defense and the plaintiff need not worry about the Eleventh Amendment. *Id.* at 25. But states and their officials, acting in official capacities, are generally immune from suits under § 1983. See *Quern v. Jordan*, 440 U.S. 332 (1979) (holding § 1983 did not by clear language on its face indicate an intent to abrogate state sovereign immunity); *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989) (holding states and state officials acting in official capacities are not "persons" under the rubric of § 1983).

Individually-named Defendants Tom McFarland and Larry Marsing are entitled to qualified immunity against claims of age discrimination. There is no dispute that Utah Valley State College, as a state institution, is an arm of the State of Utah. Dean Tom McFarland and Associate Dean Larry Marsing are executive officials of the state of Utah by virtue of their management responsibilities at UVSC. "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). The test is one of "objective reasonableness of an official's conduct," designed so that unsubstantial claims may be disposed of by summary judgment. *Id.*

Plaintiff has failed to establish that either Dean McFarland or Associate Dean Marsing violated a clearly established statutory or constitutional right of which a reasonable person would have known. As described in Section 1, the ADEA is unconstitutional to the extent it bars states from using age as a factor in employment decisions. See *Kimel*, 528 U.S. at 635. Additionally, age is not a protected status under the Fourteenth Amendment. *Id.* And the Supreme Court recently held that the government has greater leeway in dealing with its citizen employees under the Fourteenth Amendment Equal Protection Clause than when it regulates citizens at large. See *Engquist v. Oregon Dept. of Agriculture*, 553 U.S. ___ slip op. at 5-6 (2008). Lastly, personal capacity suits are generally not allowed under the ADEA because individuals do not otherwise qualify as “employers” under the statute when they are not acting in their official capacities. See *Griswold v. New Madrid Co. Group Practice, Inc.*, 920 F.Supp.1046 (E.D. Mo. 1996); *Butler v. City of Prairie Village*, 172 F.3d 736, 743 (10th Cir. 1999). Therefore, it is not clearly established that state governments and their officials may not use age as a factor in employment decisions. Age discrimination does not offend the Fourteenth Amendment’s equal protection clause if the age classification in question is rationally related to a legitimate state interest. *Kimel*, 528 U.S. at 83. Accordingly, the individually named defendants are protected from liability under the doctrine of qualified immunity.

IV. Subject-matter jurisdiction cannot be waived by either party.

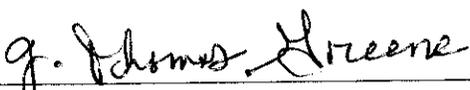
Determination of subject matter jurisdiction is a question for the court and is not one that can be waived by the parties. Erwin Chemerinsky, *Federal Jurisdiction*, 405 (2nd ed. 1994). See also *Seminole Tribe v. Florida*, 517 U.S. 44, 127-28 (Souter, J., dissenting) (“[C]onsent of a party

is in all other instances wholly insufficient to create subject-matter jurisdiction where it would otherwise not exist.”). Even “when a state consents to federal adjudication, it waives not the lack of subject-matter jurisdiction, which a litigant can never waive, but rather the privilege of enforcing a limitation on the exercise of jurisdiction otherwise possessed by the court.” John R. Pagan, *Eleventh Amendment Analysis*, 39 Ark. L. Rev. 447, 488-89 (1986). Thus, Defendant’s admission set forth in the paragraph in the original Complaint alleging subject matter jurisdiction based on federal question (the ADEA claim) is not dispositive, and does not serve as a constructive waiver of Eleventh Amendment sovereign immunity.

Plaintiff’s third claim, requesting prospective injunctive relief in the form of a court-ordered rehiring of Mr. Helmick to the flight-instructor position he voluntarily resigned, rests entirely on the merits of his first two claims based on the ADEA and 42 U.S.C. § 1983. Because Mr. Helmick has failed to state a claim upon which relief can be granted under the ADEA as well as 42 U.S.C. § 1983, his request for prospective injunctive relief must likewise fail.

Based upon the foregoing, Mr. Helmick has not and cannot assert his claims in Federal Court. The Court grants to him, if he so desires, time to file a Motion to Remand for further proceedings in state court. Such motion should be filed within 15 days following the date of this Order. If such a motion is not filed, defendant’s Motion to Dismiss as to all parties and claims is GRANTED.

DATED this 7th day of May, 2009.



J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

FILED
U.S. DISTRICT COURT

2009 MAY -8 A 10: 16

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

DISABILITY LAW CENTER,

Case No: 2:07-cv-511 CW

Plaintiff,

vs.

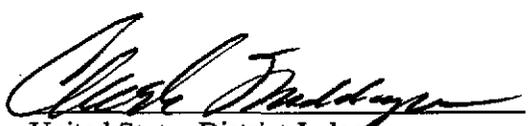
**ORDER GRANTING PRO HAC
VICE ADMISSION AND CONSENT
OF LOCAL COUNSEL**

DISCOVERY ACADEMY et al.,

Defendants.

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 Kathryn L. Wyer in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 7th day of May, 2009.


United States District Judge

FILED
U.S. DISTRICT COURT

2009 MAY 8 A 10:16

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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

FARHAN MOHAMMED,

Plaintiff,

v.

DAVIS COUNTY et al.,

Defendants.

ORDER

Case No. 2:07-CV-637 CW

District Judge Clark Waddoups

Magistrate Judge Paul Warner

Plaintiff, Farhan Mohammed, appearing pro se, brought this lawsuit under 42 U.S.C. § 1983 and Title VII of the Civil Rights Act of 1964. See 42 U.S.C.A. § 1983 (West 2009). Before the Court are the following motions: (1) Plaintiff's motion to amend his Amended Complaint; (2) Defendant Boucher's Motion to Dismiss for failure to state a claim; and (3) Defendant's motion to strike Plaintiff's Rebuttal to Reply for Response Opposing Memorandum in Support of Joshua Boucher's Motion to Dismiss.

I. Motion to Amend

A. Background

Plaintiff's Amended Complaint, filed December 26, 2007, named as defendants Davis County and Joshua Boucher, a Deputy with the Davis County Sheriff's Office, in his individual capacity. The Amended Complaint asserted claims under the Fourth Amendment and Title VII stemming from a routine traffic stop

which resulted in Plaintiff's arrest. On August 26, 2008, the Court dismissed Plaintiff's Title VII claims and dismissed Davis County as a defendant, leaving only Plaintiff's Section 1983 claim against Defendant Boucher remaining. (Doc. No. 30.)

On August 27, 2008, Defendant Boucher filed a Motion to Dismiss for failure to state a claim. (Doc. Nos. 32 and 33.) Plaintiff opposed the motion on September 27, 2008, and Defendant filed a reply brief on October 15, 2008. Then, on October 24, 2008, Plaintiff submitted a document styled "Rebuttal to Reply for Response Opposing Memorandum in Support of Joshua Boucher's Motion to Dismiss," which was docketed as an additional memorandum in opposition to Defendant's motion to dismiss.¹ (Doc. No. 47.)

On September 29, 2008, contemporaneous with his original response in opposition to Defendant's motion to dismiss, Plaintiff filed a motion to amend his Amended Complaint. Defendant promptly opposed the motion on the ground that Plaintiff did not include a copy of his proposed amendment with his motion. Plaintiff subsequently submitted a reply brief along with his proposed Second Amended Complaint which was lodged in

¹ Defendant has moved to strike this document because Plaintiff did not obtain leave of court to file a surreply, as required under local rule 7-1. See DUCivR 7-1.

the file. (Doc. No. 48.) After obtaining leave of court Defendant filed a surreply arguing that Plaintiff's motion to amend should be denied as futile because Defendant Boucher is entitled to qualified immunity. (Doc. No. 56.) Defendant's surreply was supported by several exhibits, including a DVD containing a partial video recording of the challenged traffic stop. Plaintiff subsequently filed a rebuttal to Defendant's surreply disputing Boucher's entitlement to qualified immunity and asserting that the DVD should be stricken as inadmissible.

B. Merits of Motion to Amend

Plaintiff requests leave to amend his pleadings in order to provide "additional details of relevant facts." (Mot. Amend at 1.) Plaintiff asserts that amendment should be permitted because his first Amended Complaint was filed before service of process was effected and because he intends to retain legal counsel to assist him with further amending his pleadings.

Rule 15(a)(2) of the Federal Rules of Civil Procedure states that "the court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). The court may, however, deny leave to amend when it would be futile to allow the plaintiff that opportunity. See Brereton v. Bountiful City Corp., 434 F.3d 1213, 1219 (10th Cir. 2006). Moreover, in determining whether to grant leave to amend, the court may

consider such factors as undue delay on the part of the plaintiff in raising the claim, see Smith v. Aztec Well Serv. Co., 462 F.3d 1274, 1285 (10th Cir. 2006), bad faith on the part of the moving party, and any undue prejudice to the opposing party by virtue of allowance of the amendment, see Minter v. Prime Equip. Co., 451 F.3d 1196, 1204 (10th Cir. 2006). Ultimately, the decision whether to grant leave to amend a complaint is within the discretion of the district court. See Lind v. Aetna Health, Inc., 466 F.3d 1195, 1199 (10th Cir. 2006).

Defendant's sole argument against amendment is that it would be futile. Specifically, Defendant argues that he is entitled to qualified immunity even under the facts alleged in Plaintiff's proposed Second Amended Complaint. To support this argument Defendant included with his brief opposing amendment materials outside the pleadings apparently intended to rebut the factual allegations in Plaintiff's proposed Second Amended Complaint. Such materials, however, can only be considered on a motion for summary judgment. Relying on such evidence to determine that amendment would be futile would deny Plaintiff the opportunity to refute the evidence and to properly respond to Defendant's qualified immunity argument.

Accordingly, the Court finds that limited amendment of the complaint in this case is warranted, thus, Plaintiff's motion for

leave to file an amended complaint is **GRANTED**.

C. Sufficiency of Proposed Second Amended Complaint

In his motion for leave to amend Plaintiff states that his purpose for amendment is merely to provide "additional details of relevant facts . . . to show each of Defendant's actions and omissions which resulted in grievous violations of [Plaintiff's] constitutionally protected rights and privileges." (Mot. Amend at 1.) Plaintiff also states that he intended to retain legal counsel to assist him with revising his Amended Complaint. Contrary to these stated goals, however, Plaintiff has submitted a proposed Second Amended Complaint prepared *pro se* which attempts to add two additional defendants and six new claims.

i. New Defendants

Plaintiff seeks to add as defendants the Davis County Sheriff's Office and its employee, Captain Randy Slagowski, in his official capacity. Plaintiff also seeks to add an official capacity claim against Defendant Boucher. As an initial matter, the Davis County Sheriff's Office is not a proper defendant because it is merely a subordinate agency of Davis County and does not have the authority to sue or be sued independently. See Dean v. Barber, 951 F.2d 1210, 1214 (11th Cir. 1992) (Sheriff's departments and police departments are not usually considered legal entities subject to suit under § 1983). Moreover, a claim

for damages against a county employee in his or her official capacity is no different than a suit against the county itself. Thus, the Court must determine whether addition of Davis County as a defendant here is appropriate.

As mentioned above, the Court previously dismissed Davis County as a defendant in this case after concluding that Plaintiff's allegations were not sufficient to support municipal liability. Plaintiff did not move to amend his pleadings in response to that decision and, instead, chose to proceed only against Defendant Boucher in his individual capacity. Plaintiff only moved to amend his pleadings after Defendant Boucher filed his motion to dismiss, whereupon Plaintiff stated his intention to provide "additional details of relevant facts" showing "violations by the Defendant Boucher" (Mot. Amend at 1.) Based on this history the Court finds that it would be unduly prejudicial to allow Plaintiff to add claims against Davis County or its subordinate agencies or employees at this late stage of the litigation. Thus, Plaintiff may only amend his pleadings at this point to clarify or shore up his claims against Defendant Boucher individually.

ii. New Claims

The Court also notes deficiencies in the new claims alleged in Plaintiff's proposed Second Amended Complaint. Plaintiff's

Amended Complaint included only one constitutional claim under Section 1983 and the Fourth Amendment. Plaintiff's proposed Second Amended Complaint, however, attempts to split this claim into a stand-alone Section 1983 claim and four separate constitutional claims for "Unreasonable Detention," "Unreasonable Search and Seizure," "False Imprisonment," and "[Denial of] Equal Protection." Plaintiff also seeks to add three new state law claims for "Intentional Infliction of Physical Pain," "Intentional Infliction of Emotional Distress," and "Invasion of Privacy."

Initially, the Court points out that "Section 1983 itself does not create any substantive rights, but merely provides relief against those who, acting under color of law, violate federal rights created elsewhere." Reynolds v. School Dist. No. 1, 69 F.3d 1523, 1536 (10th Cir. 1995). Moreover, failure to identify the substantive rights allegedly violated is grounds for dismissal for failure to state a claim. Id. Thus, Count I of the proposed Second Amended Complaint, the stand-alone Section 1983 claim, clearly fails to state a claim.

Regarding Plaintiff's four constitutional causes of action it is not clear from the proposed Second Amended Complaint what specific actions or omissions by Defendant Boucher form the basis for each of these separate claims. For instance, Plaintiff's

"Unreasonable Detention," "Unreasonable Search and Seizure," and "False Imprisonment" claims all appear to challenge the validity of Plaintiff's arrest. If Plaintiff wishes to separately challenge various aspects of his initial detention, arrest, or the incident search and seizure of his property, he must allege specific facts supporting each separate claim. Plaintiff cannot simply allege general facts and then incorporate them wholesale into each of his separate claims. Such an approach fails to give Defendant fair notice of the specific grounds on which each of Plaintiff's claims rest. See Fed. R. Civ. P. 8. Similarly, Plaintiff has not alleged sufficient facts to support his "Equal Protection" claim, which requires specific facts showing that Plaintiff was treated differently because of his race or religion.

Finally, regarding Plaintiff's newly-alleged state law claims, the Court finds that allowing Plaintiff to add such claims at this late stage of the litigation would be unduly prejudicial to Defendant. Thus, under 28 U.S.C. § 1367(c)(4) the Court declines to exercise supplemental jurisdiction over Plaintiff's pendent state law claims. See 28 U.S.C.A. § 1937(c)(4) (West 2009).

iii. Leave to Revise Proposed Second Amended Complaint

The Court will allow Plaintiff thirty days in which to

revise and resubmit his proposed Second Amended Complaint in accordance with the instructions herein. Plaintiff is strongly encouraged to seek professional legal assistance before refiling. If retained counsel enters an appearance for Plaintiff within thirty days of this order the deadline for refiling will automatically be extended until thirty days from the date of Plaintiff's counsel's appearance.

II. Remaining Motions

Having determined that Plaintiff is entitled to amend his claims against Defendant Boucher in his individual capacity, the Court finds that Boucher's motion to dismiss and motion to strike are **MOOT**. Once Plaintiff's Second Amended Complaint has been filed Defendant Boucher shall answer or otherwise respond in accordance with the rules of civil procedure. However, Defendant is instructed not to file a motion to dismiss supported by evidence outside the pleadings. If Defendant wishes to seek dismissal based on such evidence he must file a motion for summary judgment, giving proper notice to Plaintiff. Plaintiff is notified that if Defendant moves for summary judgment Plaintiff cannot rest upon the mere allegations in his pleadings. Instead, Plaintiff must come forward with specific facts, admissible in evidence, showing that there is a genuine issue remaining for trial. See Fed. R. Civ. P. 56(e).

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that:

(1) Plaintiff's Motion to Amend/Correct Amended Complaint is **GRANTED**, however, Plaintiff may amend his pleadings only to state federal claims against Defendant Boucher in his individual capacity;

(2) Plaintiff shall have **THIRTY DAYS** from the date of this order to file his Second Amended Complaint in accordance with the instructions herein, however, if Plaintiff retains counsel within that time the deadline for filing the Second Amended Complaint will be thirty days from the appearance of Plaintiff's counsel; and,

(3) Defendant Boucher's motion to strike and motion to dismiss are **MOOT**.

DATED this 7th day of ~~April~~ ^{May}, 2009.

BY THE COURT:



CLARK WADDOUPS
United States District Judge

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

STORAGECRAFT TECHNOLOGY
CORPORATION,

Plaintiff,

v.

SYMANTEC CORPORATION,

Defendant.

ORDER GRANTING SYMANTEC
CORPORATION'S *EX PARTE*
APPLICATION FOR LEAVE TO
FILE CONFIDENTIAL DOCUMENTS
UNDER SEAL

Case No. 2:07-CV-00856-CW-BCW

District Judge Clark Waddoups
Magistrate Judge Brooke C. Wells

Consolidated for Discovery Purposes with:

SYMANTEC CORPORATION, a Delaware
corporation,

Plaintiff,

v.

STORAGECRAFT TECHNOLOGY
CORPORATION, a Utah corporation,
BRANDON NORDQUIST, an individual,
THOMAS R. SHREEVE, an individual, CURTIS
JAMES, an individual, SCOTT BARNES, an
individual, MICHAEL KUNZ, an individual,
THOMAS J. SHREEVE, an individual,

Defendants.

Case No. 2:07-CV-00856-CW-BCW

District Judge Clark Waddoups
Magistrate Judge Brooke C. Wells

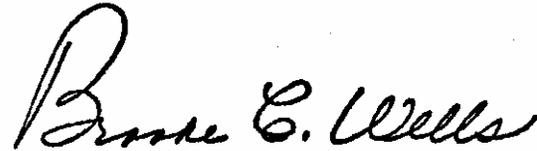
Having considered and finding good cause for Symantec Corporation's *Ex Parte* Application for Leave to File Confidential Documents Under Seal pursuant to DUCivR 5-2,

IT IS ORDERED that Symantec Corporation's Application is GRANTED and that Symantec Corporation may file the following documents under seal:

1. Symantec's Reply in Support of its Motion to Compel StorageCraft to Produce Complete, Unredacted Copies of Relevant Deposition Transcripts;
2. Declaration of Geoffrey M. Godfrey in Support of Symantec's Reply in Support of its Motion to Compel StorageCraft to Produce Complete, Unredacted Copies of Relevant Deposition Transcripts.

IT IS SO ORDERED.

Dated: May 8th, 2009

A handwritten signature in black ink that reads "Brooke C. Wells". The signature is written in a cursive style with a large initial 'B'.

Brooke C. Wells
United States Magistrate Judge

Michael D. Zimmerman (3604)
Troy L. Booher (9419)
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Attorneys for Petitioner Weldon H. Angelos

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

WELDON H. ANGELOS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**~~[PROPOSED]~~ ORDER REGARDING EX
PARTE MOTION REGARDING
PETITIONER'S FILING OF
MEMORANDA IN SUPPORT OF POST-
TRIAL MOTIONS**

Case No. 2:07-cv-00936-TC

Honorable Tena Campbell

Based upon Petitioner Weldon H. Angelos's Ex Parte Motion Regarding Petitioner's Filing of Memoranda in Support of Post-Trial Motions, and for good cause appearing thereon,

THEREFORE, it is hereby ordered AS FOLLOWS:

Petitioner shall be granted an extension until June 6, 2009, to file his memoranda in support of (i) a motion to reconsider, (ii) a motion for relief from the court's December 8 and April 28 orders under Rule 60(b), and (iii) a motion to alter or amend the court's orders under Rule 59(a)(2) and Rule 59(e), all to be filed by May 11, 2009.

Dated this 8th day of May, 2009.



Judge Tena Campbell
Chief District Court Judge

RECEIVED

FILED
U.S. DISTRICT COURT

MAY 05 2009

2009 MAY -8 A 10:17

BRETT L. TOLMAN, United States Attorney, (#8821)
VERNON G. STEJSKAL, Special Assistant United States Attorney (#8434)
Attorneys for the United States of America
348 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 524-3083
Facsimile: (801) 524-4366

OFFICE OF
JUDGE TENA CAMPBELL

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALEJANDRO CASTRO-LOPEZ,

Defendant.

: **SCHEDULING ORDER AND SPEEDY**
: **TRIAL WAIVER**

: Case No. 2:08 CR 747 TC

: Judge Tena Campbell
:

On May 1, 2009, the parties appeared before Honorable Judge Tena Campbell, for a Status Conference. Defendant requested time to obtain new counsel. Defendant requested additional time to adequately prepare for trial, given the issues he has had with his appointed counsel.

IT IS HEREBY ORDERED, that all time between March 16, 2009 and July 8, 2009 is tolled under the Speedy Trial Act pursuant to 18 U.S.C. §3161(h)(8). The Court specifically finds that the ends of justice will be served by the granting of such continuance and that such action

outweighs the best interest of the public and defendant in a speedy trial.

DATED this 7 day of May, 2009.

BY THE COURT:



JUDGE TENA CAMPBELL
UNITED STATES DISTRICT COURT

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U.S. DISTRICT COURT

2009 MAY -8 A 10:16

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Roger J. McConkie (5513)
Robert G. Wing (4445)
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
Telephone: (801) 524-1000
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Electronic Mail: rjm@princeyeates.com
rgw@princeyeates.com

Receiver for Madison Real Estate Group, LLC

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MADISON REAL ESTATE GROUP,
LLC, a Wyoming limited liability
company, RICHARD AMES HIGGINS,
BRANDON S. HIGGINS and ALLAN D.
CHRISTENSEN,

Defendants.

**ORDER AUTHORIZING
PAYMENT**

Case No. 2:08 CV 243 W

Judge: Clark Waddoups

WHEREAS this Court appointed Mr. Roger J. McConkie the Receiver for defendant Madison Real Estate Group, LLC ("Madison Group") on March 28, 2008, and

WHEREAS the Receiver, by Fifth Declaration and Report of Receiver dated April 10, 2008, seeks payment of the reasonable fees and expenses incurred by him, his associates at Prince, Yeates & Geldzahler, Alan V. Funk, P.C. and NAI Commercial Utah, as permitted under Section II(h) of the Order Appointing Receiver for Madison

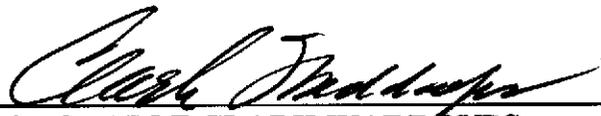
Real Estate Group, L.L.C., the Order for Authorization to Employ Real Estate Advisors employing NAI Utah Commercial as real estate advisors for Receiver and appointing a forensic accountant, dated April 30, 2008, it is hereby

ORDERED that the Fifth Declaration and Report of Receiver dated April 10, 2009, is accepted and approved, and it is further

ORDERED that the Receiver may, pursuant to paragraph II(h) of the Order Appointing Receiver for Madison Real Estate Group, LLC, pay from the assets of Madison Real Estate Group, LLC or the receivership estate the invoices of the Receiver and his associates at Prince, Yeates & Geldzahler dated December 2008 and January and February of 2009, for reasonable fees and expenses totaling \$172,552.82; invoices of Alan V. Funk dated November 2008, December 2008, January of 2009 and February of 2009 for fees and expenses totaling \$14,600.02; invoices of NAI Commercial Utah dated January 9, 2009 and February 23, 2009 for fees and expenses totaling 426,836.25.

Dated this 7th day of May, 2009.

BY THE COURT:


HONORABLE CLARK WADDOUPS
United States District Judge

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

2009 MAY -8 A 10: 16

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MADISON REAL ESTATE GROUP, LLC,
et al.,

Defendants.

ORDER

Case No. 2:08-cv-00243 CW

Judge Clark Waddoups

The matter before this court is a Motion to Intervene filed by Jon Howard Van de Grift and Sharon Ann Dudek-Van de Grift Family Trust; Jon H. Van de Grift, individually; Sharon Ann Dudek-Van de Grift, individually; Marlene J. Walshin as Trustee of the Marlene J. Walshin Trust; Marlene J. Walshin, individually, and Matthew R. Walshin, individually (collectively "Crosby Greene Intervenors"). The Crosby Greene Intervenors seek to assert their rights as tenants in common of the Crosby Greene Apartments and as guarantors of the note to purchase the property.

At a hearing, held on April 29, 2009, Plaintiff Securities and Exchange Commission, Receiver Roger J. McConkie, and each of the prior Intervenors stated they had no objection to the intervention under Rule 24(b)(1)(B) of the *Federal Rules of Civil Procedure*. Accordingly,

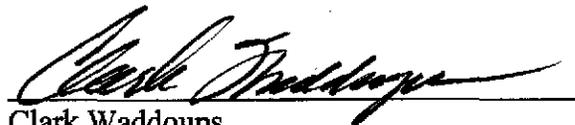
IT IS HEREBY ORDERED that the Crosby Greene Intervenors' Motion to Intervene is GRANTED¹ for the limited purpose of asserting their rights as tenants in common of the Crosby

¹ Docket No. 251.

Greene Apartments and as guarantors of the note to purchase the property.

DATED this 7th day of May, 2009.

BY THE COURT:

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

Clark Waddoups
United States District Judge

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

FILED
DISTRICT COURT
2009 MAY -8 A 8:57
DISTRICT OF UTAH
BY: DEPUTY CLERK

NINE MILE CANYON COALITION,
SOUTHERN UTAH WILDERNESS
ALLIANCE, THE WILDERNESS SOCIETY,

Plaintiffs,

v.

Case No. 2:08cv00586

MIKE STIEWIG, in his official capacity as the
Associate Manager of the Price Field Office of
the Bureau of Land Management; THE
UNITED STATES DEPARTMENT OF THE
INTERIOR; and THE BUREAU OF LAND
MANAGEMENT,

ORDER

Honorable Dee Benson

Defendants, and

BILL BARRETT CORPORATION,

Intervenor-Defendant.

Based upon Bill Barrett Corporation's unopposed motion, and for good cause shown, this Court STRIKES the June 12, 2009 hearing, and CONTINUES it until June 19, 2009 at 10:00 a.m.

DATED this 7th day of May, 2009



DEE BENSON, Judge
United States District Court

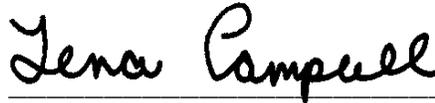
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MICHAEL WEAVER,)	
)	
Petitioner,)	Case No. 2:08-CV-746 TC
)	
v.)	District Judge Tena Campbell
)	
STEVEN TURLEY,)	ORDER TO RESPOND
)	
Respondent.)	

Petitioner, Michael Weaver, filed a *habeas corpus* petition. See [28 U.S.C.S. § 2254 \(2009\)](#). IT IS HEREBY ORDERED that, by July 9, 2009, Respondent must respond to Petitioner's arguments. The Clerk of Court must serve upon Respondent copies of this Order and the petition. (See File Entry # 4.)

DATED this 7th day of May, 2009.

BY THE COURT:



TENA CAMPBELL, CHIEF JUDGE
Chief Judge

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

PAUL C. ALLEN,)
)
 Petitioner,) Case No. 2:08-CV-858 DAK
)
 v.) District Judge Dale A. Kimball
)
 STEVEN TURLEY,) ORDER TO REPLY
)
 Respondent.) Magistrate Judge Paul Warner

IT IS HEREBY ORDERED that Petitioner has thirty days in which reply to the State's response to his habeas corpus petition.

DATED this 7th day of May, 2009.

BY THE COURT:



PAUL M. WARNER
United States Magistrate Judge

BRETT L. TOLMAN, United States Attorney (#8821)
SCOTT B. ROMNEY, Assistant United States Attorney (#10270)
Attorneys for the United States of America
185 South State Street, #300
Salt Lake City, Utah 84111
Telephone: (801) 524-5682

RECEIVED
U.S. DISTRICT COURT
MAY 04 2009
2009 MAY 8 A 10:17
OFFICE OF
JUDGE TENA CAMPBELL
DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT

BY: _____
DEPUTY CLERK

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

2:09CR0000⁴/~~2~~ TC

Plaintiff,

vs.

ORDER TO EXCLUDE TIME
UNDER SPEEDY TRIAL ACT

ANDRES SOLARZANO-OROSCO,

JUDGE TENA CAMPBELL

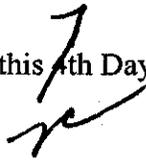
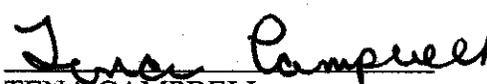
Defendant.

The Court, upon the motion of the parties and with good cause appearing, hereby orders that a 2-day jury trial shall be set in this matter to begin on July 20, 2009 at 8:³⁰~~00~~ A.M.

The Court also orders that pursuant to 18 U.S.C. § 3161(h)(1)(F) & (h)(8)(A), and pursuant to the Fast Track Order (Docket #5), the time from January 15, 2009, through March 5, 2009, is therefore ordered excluded from Speedy Trial Act computation.

IT IS SO ORDERED.

Dated this ⁷th Day of May, 2009.



TENA CAMPBELL
District Court Judge

~~MAY 08 2009~~

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

BY D. MARK JONES, CLERK
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES OTONIEL GARZA,

Defendant.

Case No.: 2:09CR00082 JTG

PRELIMINARY ORDER OF FORFEITURE

JUDGE: J. Thomas Greene

IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count 1 of the Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d)(1) the defendant James Otoniel Garza shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 18 U.S.C. § 922 (g)(1), including but not limited to:

- Phoenix Arms .22 Caliber Handgun

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

3. Upon entry of this Order the Attorney General, or its designee is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the properties

subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

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

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

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

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

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

9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and

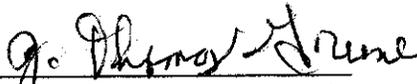
before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

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

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

Dated this 7th day of May, 2009.

BY THE COURT:



J. THOMAS GREENE, Judge
United States District Court

MAY 08 2009

UNITED STATES DISTRICT COURT BY

D. MARK JONES, CLERK DEPUTY CLERK

Central Division

District of

Utah

UNITED STATES OF AMERICA

V.

Conrad Andrew Angelo-Trujillo

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

Case Number: DUTX2:99CR000512-001

USM Number: 07700-081

Stephen R. McCaughey, Esq.

Defendant's Attorney

THE DEFENDANT:

[X] admitted guilt to violation of condition(s) I and II of petition of the term of supervision.

[] was found in violation of condition(s) after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
1	The defendant was charged with Battery, Public Intoxication & Disturbing the Peace	
2	The defendant used/possessed alcohol	

The defendant is sentenced as provided in pages 2 through 3 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.:

4/21/2009

Date of Imposition of Judgment

Defendant's Date of Birth:

J. Thomas Greene

Signature of Judge

Defendant's Residence Address:

J. Thomas Greene

Name of Judge

U.S. District Judge

Title of Judge

5/8/09

Date

Defendant's Mailing Address:

DEFENDANT: Conrad Andrew Angelo-Trujillo
CASE NUMBER: DUTX2:99CR000512-001

IMPRISONMENT

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

13 months, with credit for time served.

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

- 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: Conrad Andrew Angelo-Trujillo
CASE NUMBER: DUTX2:99CR000512-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
none

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.