UNITED STATES DISTRICT COURT

Northern District of Utah

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 2:28
DISTRICT OF UTAH
BY: DEPUTY CLERK

UNITED STATES OF AMERICA
V.
Russell Muir

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX1:03CR000162-001

USM Number: 111660-081

Ronald Yengich
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §922(g)(9)	Possession of a Firearm Following a Domestic Violence Conviction		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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.

9/5/2006
Date of Imposition of Judgment

Dale A. Kimball
Signature of Judge

Dale A. Kimball — U.S. District Judge
Name of Judge — Title of Judge

September 6, 2006
Date

DEFENDANT: Russell Muir
CASE NUMBER: DUTX1:03CR000162-001

IMPRISONMENT

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

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: Russell Muir
CASE NUMBER: DUTX1:03CR000162-001

SUPERVISED RELEASE

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

24 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 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: Russell Muir
CASE NUMBER: DUTX1:03CR000162-001

SPECIAL CONDITIONS OF SUPERVISION

1. *The defendant shall submit to drug/alcohol testing as directed by the U. S. Probation Office and pay a one-time* $115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive 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 copayment plan as directed by the U. S. Probation Office and shall not possess or* consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.

2. *The defendant shall participate in a mental health* treatment program under a copayment plan as directed by the U. S. Probation Office and shall take any mental health medications as prescribed.

3. The defendant shall not have any contact with his ex-wife, Lori Ann Muir.

DEFENDANT: Russell Muir
CASE NUMBER: DUTX1:03CR000162-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Russell Muir
CASE NUMBER: DUTX1:03CR000162-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
U.S. DISTRICT COURT
2006 SEP -7 A 11: 23
DISTRICT OF UTAH
BY: DEPUTY CLERK

JONI J. JONES (7562)
Assistant Utah Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Attorneys for Defendants Elizabeth Bowman, Debbie Harry, J. Craig Jackson, Irene Gayheart, Del Mortensen, Gary Bowen, Gail Oliver, Bridget Romano and Laura DuPaix
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

ROBERT WEITZEL, MD, Plaintiff, v. MELVIN WILSON; STEVE MAJOR; ELIZABETH BOWMAN; CHARLENE BARLOW; GARY MCKEAN; DAVIS COUNT, UTAH; JOE MORRISON; CITY OF LAYTON, UTAH; CITY OF LAYTON POLICE DEPARTMENT; GARY BOWEN; GAIL OLIVER; DEL MORTENSEN; J. CRAIG JACKSON; KIM MORRIS; IRENE GAYHEART; LAURA DUPAIX; JAN GRAHAM; MARK SHURTLEFF; DEBBIE HARRY; BRIDGET ROMANO; UTAH DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING; STATE OF UTAH; ROBERT JOHNSON; ASA HUTCHINSON; DRUG ENFORCEMENT AGENCY; DEPARTMENT OF JUSTICE; STEWART WALZ; PAUL WARNER;	**ORDER OF DISMISSAL WITH PREJUDICE** Case No. 1:04CV00115 Judge William F. Downes

JOHN DOES I-XXV; AND JANE DOES I-XXV, Defendants.	

Based upon the Stipulation and Joint Motion for Voluntary Dismissal With Prejudice entered into between Pro se Plaintiff Robert Weitzel and Defendants Debbie Harry, Craig Jackson, Irene Gayheart, Del Mortensen, Bridget Romano, Gary Bowen, Laura Dupaix and Gail Oliver it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiff's complaint against these defendants is dismissed with prejudice, with the parties to bear their own costs.

SO ORDERED this 5th day of August, 2006.

BY THE COURT:

Judge William F. Downes
United States District Court Judge

APPROVED AS TO FORM AND CONTENT:

Robert Weitzel
Plaintiff, *pro se*

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2006, I caused to be served by U.S. mail, postage pre-paid, a true and correct copy of the foregoing **ORDER OF DISMISSAL WITH PREJUDICE**, to the following:

Robert Weitzel
2914 Raleigh
Dallas, Texas 75219
Plaintiff Pro Se

Robert Weitzel
8410 Midway Road
Dallas, TX 75209

Allan L. Larson
Heather S. White
Snow Christensen & Martineau
10 Exchange Place, P.O. Box 45000
Salt Lake City, Utah 84145-5000
Attorneys for Defendants Joe Morrison, Layton City and Layton City Police Department
Attorney for Defendants Wilson, McKean and Major

Honorable William F. Downes
United States District Court Judge
District of Wyoming
111 South Wolcott
Casper, Wyoming 82601-2534

Frank D. Mylar
6925 S Union Park Center, Suite 600
Midvale, Utah 84047

Jared C. Bennett
Carlie Christensen
185 South State Street, Suite 400
Salt Lake City, Utah 84111
Attorney for Defendants Stephen Walz and Paul Warner

and by hand delivery to:

Peter L. Rognlie
Assistant Attorney General
Office of the Utah Attorney General
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Attorneys for Defendants Mark Shurtleff and State of Utah

Peggy E. Stone
Assistant Attorney General
Office of the Utah Attorney General
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Attorneys for Defendant Jan Graham

Jessica Atkinson

AO 245B (Rev. 06/05) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central District of Utah

2006 SEP -6 A 10: 50

DISTRICT OF UTAH

UNITED STATES OF AMERICA
V.
Martin Haro Treto

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 1:05CR000085-001

DEPUTY CLERK

USM Number: 06019-081

Roy D. Cole
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) Is - Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21USC§841 (a)(1)	Possession with Intent to Distribute a Controlled Substance		Is

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) 2s and 3s ☐ is ☑ are dismissed on the motion of the United States.

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.

8/31/2006
Date of Imposition of Judgment

Dee Benson
Signature of Judge

Dee Benson — U.S. District Judge
Name of Judge — Title of Judge

9/6/2006
Date

DEFENDANT: Martin Haro Treto
CASE NUMBER: DUTX 1:05CR000085-001

IMPRISONMENT

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

262 months.

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

The Court recommends a Federal Correctional Institution as close to Utah as possible, for family visitations.

☑ 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: Martin Haro Treto
CASE NUMBER: DUTX 1:05CR000085-001

SUPERVISED RELEASE

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

60 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 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: Martin Haro Treto
CASE NUMBER: DUTX 1:05CR000085-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not reenter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of his arrival in the United States.

DEFENDANT: Martín Haro Treto
CASE NUMBER: DUTX 1:05CR000085-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ *the interest requirement for the* ☐ *fine* ☐ *restitution is modified as follows:*

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Martin Haro Treto
CASE NUMBER: DUTX 1:05CR000085-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT

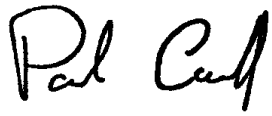
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

LELAND HOLD, Plaintiff, vs. AUTOLIV ASP, INC., an Indiana corporation, Defendant.	**ORDER GRANTING MOTION TO DISMISS WITH PREJUDICE** Case No.: 1:05-CV-00017 Judge: Paul G. Cassell

Based upon the Joint Stipulation submitted by the parties, the Court ORDERS that the above-referenced matter is dismissed with prejudice, each side to bear its own costs and attorneys' fees. The clerk's office is directed to close the case.

DATED this 7th day of September, 2006.

BY THE COURT:



The Honorable Paul G. Cassell
United States District Court Judge

APPROVED AS TO FORM:

STEVENSON & SMITH, P.C.

/s/ Benjamin C. Rasmussen
Brad C. Smith
Benjamin C. Rasmussen

(Signed copy of document bearing signature of Benjamin C. Rasmussen is being maintained in the office of Ray Quinney & Nebeker P.C.)

FILED
U.S. DISTRICT COURT
2006 SEP -7 A 10: 10
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

RECEIVED
SEP 06 2006
OFFICE OF
JUDGE TENA CAMPBELL

Ray R. Christensen, No. 0647
Rebecca L. Hill, No. 6246
CHRISTENSEN & JENSEN, P.C.
50 South Main Street, Suite 1500
Salt Lake City, Utah 84144
Telephone (801) 323-5000
Facsimile (801) 355-3472
Attorneys for Intervenor
Unigard Insurance Company

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

THE OHIO CASUALTY INSURANCE COMPANY, an Ohio corporation; and WEST AMERICAN INSURANCE COMPANY, an Indiana corporation,

Plaintiffs and Cross Defendants,

vs.

CLOUD NINE, LLC, a Utah corporation; EASY SEAT, LLC, a Utah corporation; RODNEY FORD, a New York resident, individually; BLAINE FORD, a Utah resident, individually; REX HADDOCK, a Utah resident, individually,

Defendants,

UNIGARD INSURANCE COMPANY, a Washington corporation,

Plaintiff/Intervenor and Cross Claimant.

ORDER GRANTING UNIGARD INSURANCE COMPANY'S MOTION FOR LEAVE TO FILE OVER LENGTH REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

Civil No.: 1:05CV00088 TC

Judge Tena Campbell

Based upon Unigard Insurance Company's Motion for Leave to File an Over Length reply memorandum in support of its Motion for Partial Summary Judgment Regarding Defense Obligations, and good cause appearing therein, it is hereby:

ORDERED, that Unigard's Motion to File an Over Length Reply Memorandum is granted and it is FURTHER ORDERED, that the Reply Memorandum shall not exceed more than five (5) additional pages of argument.

DATED this 6 day of September, 2006.

BY THE COURT

THE HONORABLE TENA CAMPBELL
UNITED STATES DISTRICT COURT JUDGE

United States District Court

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
SEP 05 2006
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

NORTHERN DISTRICT OF UTAH

UNITED STATES OF AMERICA
V.

ORDER SETTING CONDITIONS OF RELEASE

ARTHUR ERSKINE

Case Number: **1:06-CR-13 TC**

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) United States District Court
PLACE

350 South Main on **As Directed**
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) maintain or 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: Defendant must reside at the CCCC under 24 hour supervision and abide by all rules and regulations of such.

( ) (d) avoid all contact with the following named 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 excessive use 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:

( ) (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)

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 of 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 tem 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

Cornell

Address

SLC UT

City and State Telephone

Directions to the United States Marshal

(X) 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: 9/05/08

Signature of Judicial Officer

Chief Magistrate Judge Samuel Alba

Name and Title of Judicial Officer

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
AUG 31 2006
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. RUBEN ALVARADO NAVA, Defendant.	)))))))))	Case No. 1:06CR 47 TC **CONSENT TO ENTRY OF PLEA OF GUILTY BEFORE THE MAGISTRATE JUDGE AND ORDER OF REFERENCE**

Pursuant to 28 U.S.C. § 636(b)(3), the defendant, RUBEN ALVARADO NAVA, after consultation and agreement with counsel, consents to United States Magistrate Judge Brooke C. Wells accepting defendant's plea of guilty and to the Magistrate Judge conducting proceedings pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The defendant also acknowledges and understands that sentencing on his plea of guilty will be before the assigned District Judge after a pre-sentence investigation and report, and compliance with Fed.R.Crim.P. 32.

The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and

accepting the defendant's plea of guilty as indicated above, pursuant to such proceedings.

DATED this 31st day of August, 2006.

Defendant

Attorney for Defendant

Assistant United States Attorney

ORDER OF REFERENCE

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

IT IS HEREBY ORDERED that United States Magistrate Judge Brooke C. Wells shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 29th day of August, 2006

BY THE COURT:

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT,

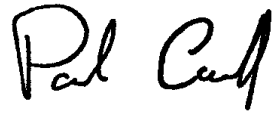
IN AND FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

TRUGREEN COMPANIES, L.L.C., a Delaware limited liability company, at al., Plaintiffs, vs. MOWER BROTHERS, INC., a Utah corporation, et al. Defendants.	**ORDER RE: JOINT MOTION AND STIPULATION FOR ENTRY OF ORDER EXTENDING TIME FOR RULE 26 DISCLOSURES AND EXCHANGE OF DISCOVERY** Case No. 1:06CV00024 PGC

This matter came before the court pursuant to the joint motion and stipulation of Plaintiffs and Defendants for an order extending the August 31, 2006, deadline for Rule 26 disclosures and the exchange of additional discovery to September 8, 2006. Based on the joint motion and stipulation, and good cause appearing, the court extends the deadline for the parties to submit Rule 26 disclosures and exchange additional discovery to September 8, 2006.

DATED this 7th day of September, 2006.

BY THE COURT:



Honorable Paul G. Cassell
United States District Judge

PROB 12C (1/05)

United States District Court
for the District of Utah

Request and Order to Amend Previous Petition

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 2:45
DISTRICT OF UTAH
BY: DEPUTY CLERK

Name of Offender: **JOSE LORENZO ANDINO** Docket Number: **2:00-CR-00153-TS**

Name of Sentencing Judicial Officer: **Honorable Ted Stewart, United States District Judge**

Date of Original Sentence: **January 23, 2001**

Original Offense: **Felon in Possession of a Firearm**
Original Sentence: **Commitment to Bureau of Prisons 58 months, 36 months supervised release**
Type of Supervision: **Supervised Release** Supervision Began: **April 11, 2005**

PETITIONING THE COURT

[X] To amend the petition signed on May 10, 2006 as follows:

CAUSE

Allegations on May 10, 2006 petition:

Allegation No. 1: On November 15, 2005, the defendant submitted a urine sample that tested positive for Marijuana (THC) and Cocaine.

Allegation No. 2: The defendant failed to submit to random urinalysis testing, as directed, on the following dates: January 19, 2006; March 18, 2006; March 23, 2006; and March 30, 2006.

Allegation No. 3: The defendant has failed to submit monthly supervision reports by the stated due date for the months of February 2006, and March 2006.

Allegation No. 4: The defendant has failed to comply with his financial payment agreement as directed by the United States Probation Office.

Allegation No. 5: The defendant failed to attend treatment on February 1, 2006, and March 1, 2006, as directed.

Allegation No. 6: The defendant failed to contact the United States Probation Officer, Maria Sanchez, on March 27, 2006, as instructed.

Allegation No. 7: The defendant failed to report to the United States Probation Office, Salt Lake City, Utah, on April 5, 2006, as instructed.

Allegation No. 8: The defendant failed to submit to random urinalysis testing, as directed, on the following dates: April 7, 2006; April 12, 2006; April 18, 2006; April 24, 2006; April 26, 2006; and May 6, 2006.

Allegation No. 9: The defendant failed to attend treatment on April 12, 2006; April 19, 2006; and April 26, 2006, as directed.

Allegation No. 10: On or about April 4, 2006, the defendant violated an existing protective order by contacting the petitioner via telephone, and threatening, or otherwise harassing the petitioner as evidenced by Salt Lake City Police Department Case No. 2006-56715.

Allegation No. 11: On or about April 24, 2006, the defendant provided false personal information to a police officer as evidenced by Salt Lake City Police Department Case No. 06069342.

Additional allegations:

Allegation No. 12: On August 8, 2006, in the Salt Lake City Justice Court, Salt Lake City, Utah, the defendant pled guilty to one (1) count of Battery, Domestic Violence, a Class B Misdemeanor.

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

Maria EA Sanchez, U.S. Probation Officer
Date: September 6, 2006

THE COURT ORDERS:

[X] That the original petition be amended to include all allegations outlined
[ ] No action
[ ] Other

for Honorable Ted Stewart
United States District Judge

Date: 9/6/06

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 3: 06
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

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

UNITED STATES OF AMERICA, Plaintiff, vs. JACOB ALMA FIEDLER, Defendant.	ORDER Case No. 2:01 CR 140 TC

Before the court is defendant Jacob Alma Fiedler's Motion for Early Termination of Supervised Release. The court having reviewed the motion and having verified the information with the United States Probation Office, and good cause appearing,

IT IS HEREBY ORDERED THAT defendant's motion is GRANTED.

DATED this 6 day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

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U.S. DISTRICT COURT
OFFICE OF
JUDGE TENA CAMPBELL
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SEP 05 2006
U.S. DISTRICT COURT
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA Plaintiff v. ROBERT B. JONES; PAMELA G. HALLY JONES and DAVID J. SMITH, Defendants.	ORDER FOR PRO HAC VICE ADMISSION Case Number: 2:01 CV 945C TC

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

Dated: this 6 day of Sept, 2006.

Tena Campbell
U.S. District Judge

FILED
U.S. DISTRICT COURT

2006 SEP -7 A 10: 17

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

OWNER-OPERATOR IND, et al, Plaintiffs, vs. CR ENGLAND, Defendant.	TRIAL ORDER Civil No. 2:02-CV-000950 TS

The final pretrial conference in this matter is scheduled for September 25, 2006, at 2:30 p.m.

This case is set for a 10-day trial to begin on October 16, 2006, at 8:30 a.m. The attorneys are expected to appear in court at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

1. Court-Imposed Deadlines.

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

2. Pretrial Order.

At the pretrial conference, plaintiff is to file a joint proposed pretrial order which has been approved by all counsel. The pretrial order should conform generally to the requirements of DuCivR 16-1and to the approved form of pretrial order which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah.

In addition to the provisions in the final pretrial order thus called for, the following special provisions will apply:

(a) The statement of uncontroverted facts called for in Section 3 of the General Form of the Pretrial Order shall be in narrative form. Such facts shall be considered substantive evidence in the case and shall be marked as Exhibit 1. Upon commencement of the trial, Exhibit 1 shall be read into evidence. Except as set forth in Exhibit 1, no further evidence as to the agreed facts may be entered into the record at trial.

(b) In reference to Section 7 of the General Form of the Pretrial Order, regarding all witnesses that propose to be expert witnesses, the parties are directed to append to Exhibit 1 copies of the curriculum vitae of each such expert. Absent specific leave of Court, the expert may not present more than five (5) minutes of professional qualification. It is anticipated that in most cases, the parties will stipulate to expertise, although in appropriate cases, voir dire or cross-examination of an expert's qualification may be permitted; said examination may go beyond the direct oral testimony as to qualification.

3. Jury Instructions

The court has adopted its own standard general jury instructions, copies of which may be obtained from the court prior to trial. The procedure for submitting proposed jury instructions is as follows:

(a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.

(c) The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:

(i) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the

instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.

(ii) A 3.5" high density computer diskette containing the proposed instructions (and any proposed special verdict form), without citation to authority, formatted for Wordperfect 6.1 through 8.0. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 3(c)(i) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Federal Jury Practice and Instructions) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

4. Special Verdict Form

The procedure outlined for proposed jury instructions will also apply to special verdict forms.

5. Requests for Voir Dire Examination of the Venire.

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. Any such request should be submitted in writing to the court and served upon opposing counsel **at least ten business days before trial**.

6. Findings of Fact and Conclusions of Law

At the conclusion of all non-jury trials, counsel for each party will be instructed to file with the court proposed findings of fact and conclusions of law. The date of submission will vary, depending upon the need for and availability of a transcript of trial and the schedule of court and counsel. Findings of fact should be supported, if possible, by reference to the record. For that reason, the parties are urged to make arrangements with Ms. Patti Walker, the Court Reporter, for the preparation of a trial transcript. Conclusions of law must be accompanied by citations to supporting legal authority.

As with proposed jury instructions and special verdict forms, the proposed findings of fact and conclusions of law should be submitted to chambers both in hard copy and on a 3.5" high density computer diskette formatted for WordPerfect 6.1 through 8.0.

7. Trial Briefs

Each party should file a Trial Brief no later than five business days before trial. Such brief shall include a list of all witnesses to be called and a short statement as to the substance of that witness' testimony.

8. Motions in Limine

All motions in limine are to be filed with the court at **least five business days before trial**, unless otherwise ordered by the court. Each such motion shall specifically identify the relief sought, and shall be accompanied by a memorandum of law and a proposed order. No brief in support of, or in opposition to, such motion shall be longer than three (3) pages in length.

9. Exhibit Lists/Marking Exhibits

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Sandy Malley, at 524-6617. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

10. In Case of Settlement

Pursuant to DUCivR 41-1, the court will tax all jury costs incurred as a result of the parties' failure to give the court adequate notice of settlement. Leaving a message on an

answering machine or sending a notice by fax is not considered sufficient notice to the court. If the case is settled, counsel must advise the jury administrator or a member of the court's staff by means of a personal visit or by person-to-person telephonic communication.

11. Courtroom Conduct

In addition to the rules outlined in DUCivR 43-1, the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:30 a.m. until 1:30 p.m., with two short (fifteen minute) breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections and responding to objections to evidence, counsel should state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, "Objection . . . irrelevant and inadmissible under Rule 402." or "Objection . . . hearsay and inadmissible under Rule 802."

(f) Sidebar conferences are discouraged. Most matters requiring argument should be raised during recess. Please plan accordingly.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and NOT by their first or given names.

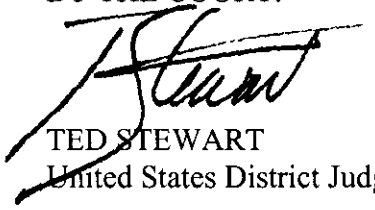
(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(k) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

(l) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

DATED this 6th day of September, 2006.

BY THE COURT:



TED STEWART
United States District Judge

FILED
U.S. DISTRICT COURT

2006 SEP -6 P 1:45

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

SHARON PRESTON (7960)
Attorney for Defendant
716 East 4500 South, Suite N142
Salt Lake City, UT 84107
Telephone (801) 269-9541
Fax: (801) 269-9581

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

UNITED STATES OF AMERICA,	)	**ORDER**
Plaintiff,	)	
v.	)	
MARIO BOYD ROMERO,	)	**Case No. 2:05-CR-828 and Case No. 2:03-CR-258**
Defendant.	)	

Based on Defendant's motion and good cause appearing; IT IS HEREBY ORDERED that the sentencing hearing is Continued and will resume on the 18 day Oct, 2006 at 3:00 a.m./p.m.

DATED this 6 day of ~~August~~ Sept, 2006.

BY THE COURT:

Dee Benson

JUDGE DEE BENSON
US District Court

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

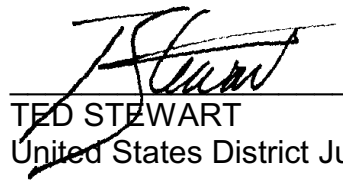
OHIO NATIONAL LIFE ASSURANCE CORPORATION, an Ohio Corp., Plaintiff, vs. DAVID J. MORRIS, M.D., Defendant.	ORDER DENYING PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF ROBERT WILCOX AS MOOT Case No. 2:03-CV-496 TS

Plaintiff Ohio National seeks to exclude the testimony of Defendant's expert, Robert Wilcox. According to Defendant, the testimony is relevant to the issues raised in his counterclaim for breach of the implied covenant of good faith and fair dealing. By separate Order, the Court has granted summary judgment in favor of Ohio National on that coounterclaim, thereby rendering the present Motion moot. It is therefore

ORDERED that Plaintiff's Motion in Limine to Exclude the Testimony of Robert Wilcox (Docket No. 124) is DENIED AS MOOT.

DATED September 6, 2006.

BY THE COURT:



TED STEWART
United States District Judge

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

OHIO NATIONAL LIFE ASSURANCE CORPORATION, an Ohio Corp., Plaintiff, vs. DAVID J. MORRIS, M.D. , Defendant.	ORDER GRANTING DEFENDANT'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT Case No. 2:03-CV-496 TS

I. INTRODUCTION

Plaintiff Ohio National moves for partial summary judgment on the counterclaims of Defendant Morris (Dr. Morris) for breach of contract and for breach of the implied covenant of good faith and fair dealing. Ohio National does not seek summary judgment on Morris' counterclaim for declaratory relief that he is disabled within the meaning of Ohio National's three disability insurance policies nor on its own six causes of action.

The Court finds that Morris has failed to meet his burden of showing a material issue of fact on his claim of breach of contract, and that, as a matter of law, Ohio National has

shown a fairly debatable defense to the breach of the implied covenant of good faith and fair dealing. Therefore, summary judgment will be granted on these counterclaims.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is proper if the moving party can demonstrate that there is no genuine issue of material fact and it is entitled to judgment as a matter of law.[1] In considering whether genuine issues of material fact exist, the Court determines whether a reasonable jury could return a verdict for the nonmoving party in the face of all the evidence presented.[2] The Court is required to construe all facts and reasonable inferences in the light most favorable to the nonmoving party.[3]

> As the moving parties, defendants shoulder the "initial burden to show that there is an absence of evidence to support the nonmoving party's case." (internal quotation marks and citation omitted). If defendants meet this burden, it falls to plaintiff to "identify specific facts that show the existence of a genuine issue of material fact." "The party opposing the motion must present sufficient evidence in specific, factual form for a jury to return a verdict in that party's favor."[4]

---

[1] *See* Fed. R. Civ. P. 56(c).

[2] *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Clifton v. Craig*, 924 F.2d 182, 183 (10th Cir. 1991).

[3] *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Wright v. Southwestern Bell Tel. Co.,* 925 F.2d 1288, 1292 (10th Cir. 1991).

[4] *Clinger v. New Mexico Highlands Univ. Bd. of Regents*, 215 F.3d 1162, 1165 (10th Cir. 2000) (quoting *Thomas v. IBM*, 48 F.3d 478, 484 (10th Cir.1995))

III. UNDISPUTED FACTS

Early in 2001, Dr. Morris, an anesthesiologist then working in a Utah hospital, applied for and received disability benefits under three individual disability income insurance policies issued by Ohio National.

The policies define total, partial, and residual disability by reference to the insured's inability to do some or all of the "substantial and material tasks" of the insured's "own job" or "regular occupation."[5]

The basis of Dr. Morris' claim of disability was that he was suffering from disabling major depression. At the time he applied for disability, he was listed as the hospital's Director of Pain Management.

From July 1, 2001 to June 30, 2002, after he was being paid under the disability policies, Dr. Morris completed a one-year post doctoral clinical fellowship in pain management at a hospital in California (fellowship). During his fellowship, he worked seven days a week, often working 12-hour days[6] on weekdays. He examined, diagnosed and treated patients. He received ratings from high satisfactory to superior. However, Dr. Morris contends that during this time he was not well and had difficulty completing his duties in a timely manner. In September 2002, Dr. Morris returned to Utah and worked in pain management on a limited basis.

---

[5]*E.g.* Ex. A, at 6 ("You . . . have a Total Disability if: (a) you are not able to perform all of the substantial and material duties of your own job due to Injury or Sickness").

[6]Also working five to seven hours per day on weekends.

During his fellowship, Dr. Morris' psychiatrist wrote a letter to his medical malpractice policy insurer in support of Dr. Morris' request to reinstate his malpractice insurance. The psychiatrist opined that Dr. Morris continued to be disabled and should not return to his previous anesthesia practice. That letter, dated September 7, 2001, also stated:

> However, Dr. Morris has recovered sufficiently to begin work as a post-doctoral fellow in pain management in the anesthesiology department of Stanford University. He functions in a restricted, supervised training program, which he will compete in June 2002. This involves full time medical practice. It is my opinion that he is fully capable of this type of practice at this time, and I anticipate that by the end of this fellowship training he will be able to practice both anesthesiology and pain management.
>
> Therefore the answer to your question is yes, Dr. Morris is able to and in fact has resumed his medical practice, but in a different setting and without the stresses and problems of the operating room environment. His involvement in pain management should still be considered the practice of anesthesiology.[7]

As a result of the fellowship, in January 2002, Ohio National began to investigate whether Dr. Morris was disabled within the meaning of the policies by sending an investigator to interview him. Dr. Morris took offense at what he characterizes as the inappropriately intimate nature of the subject of the interviewer's questions, but says that he now cannot remember any of those questions, other than the investigator asked about his physical relationship with his wife.

Thereafter, Ohio National sought information from Dr. Morris, including codes of the procedures that he had performed prior to his disability. Dr. Morris resisted the request but eventually provided the information with a demand for reimbursement for the cost of

---

[7]Pl.'s Ex. 12 (emphasis added).

providing the information. Ohio National refused. On September 29, 2002, Ohio National obtained a report from its Independent Medical Examiner (IME) that opined that Dr. Morris was disabled and unable to practice "hospital-based anesthesia," was able to practice part-time pain medicine and should be able to work towards full-time" within six months. However, the expert declined to opine on whether pain management is a "new job for Dr. Morris or part of his former job . . ."[8]

Ohio National also sought release of various records over the next several years, requests that Dr. Morris generally resisted.

In October 2002, Ohio National informed Dr. Morris that its information indicated that prior to his disability he "performed pain management as part of his anesthesiology practice and it would therefore evaluate his claim under in accordance with the partial residual provisions of the policies and requested information, including an Insured's Statement of Earnings."[9] At the time, it had the letter from Dr. Morris' psychiatrist opining that the area of work he had recently returned to (pain management) was an area that was part of the practice of Dr. Morris' prior profession (anesthesiology). It also had the information that he had been the Director of Pain Management and had recently returned to Utah to work in pain management, although on a limited basis. Ohio National did not pay the payment ordinarily due for October pending receipt of the Statement of Earnings necessary to determine eligibility under the partial disability provisions.

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[8]Pl.'s Ex. GG.

[9]Pl.'s Ex. AA.

On October 22, 2002, Dr. Morris' lawyer contacted Ohio National to demand reinstatement of the full disability payments. Ohio National sent the October check the same day, under a reservation of rights. Ohio National has paid Dr. Morris disability income payments under the policy every month, under a continuing reservation of rights.

In October 2002, Dr. Morris' counsel suggested the parties jointly initiate a declaratory judgment action seeking construction of the terms of the policy as part of an offer of how to handle the dispute.[10]

In December 2002, another doctor examined the file at Ohio National's request. Ohio National's December 31, 2002, phone documentation of that doctor's beginning review of the claims file reports that he felt "pain management (PM) and anesthesiology are truly separate practices, however PM is considered a subspecialty of anesthesiology."[11] He also opined that the title of "Director of Pain Clinic is not necessarily indicative of the amount of time spent in PM. . . . However, [he] would expect that as 'Director' a significant amount of time would be spent on PM."[12]

In February 2003, Dr. Morris' counsel sent the following response to a request for information: "[W]e are unable to assist you with respect to any information which you require from . . . the Hospital. I suggest that we initiate a friendly declaratory judgment

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[10]Pl.'s Ex. DD.

[11]Docket No. 65, Ex. H. (Morris' Memorandum refers to some exhibits attached to its memorandum submitted in connection with the prior summary judgment motion).

[12]*Id.*

action and that thereafter you could have a subpoena issued to the Hospital for the information you need."[13]

In February 2003, Dr. Morris' counsel wrote that he considered that Ohio National's action in pursuing the issue of partial or residual disability "without obtaining any resolution of this disputed point since November . . . ,[14] by a declaratory judgment of a local Utah court, reflect[ed] Ohio National's current and historical aggressive approach (if not bad faith) with respect to" Dr. Morris' claims and benefits.[15]

Ohio National filed the present action on May 28, 2003, seeking declaratory relief on the meaning of the policies' disability provisions, whether Dr. Morris had met the requirements for disability under the policy, whether it was required to pay benefits to Dr. Morris and whether Dr. Morris was required to return benefits paid.[16]

The parties' discovery disputes have continued through most of this action.

In May 2003 and June 2004, Dr. Morris was charged in two separate state criminal cases involving controlled substance charges. In the first, he pleaded guilty and the charges were held in abeyance while he completed a year-long drug court. Those charges were dismissed at the end of that time. In the second, he pleaded guilty but mentally ill. In June 2003, he entered into an agreement with the Utah Department of Professional

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[13]Pl.'s Ex. EE.

[14]The exhibit appears to contain a typographical error "November 2003" instead of November 2002.

[15]Pl.'s Ex. FF.

[16]Docket No. 1, at 6-7.

Licencing (DOPL) to cease "splitting scrips"[17] with patients and cease prescribing controlled substance subscriptions. In April 2004, DOPL issued an Emergency Order suspending Dr. Morris' license pending hearing on allegations involving prescriptions for controlled substances. He is contesting the script-splitting allegations and the suspension of his Utah license. His California license has also been suspended pending the outcome of the Utah proceedings.

In December 2004, Dr. Morris moved to dismiss this action for lack of jurisdiction for lack of controversy because Ohio National had not alleged that he was not disabled within the meaning of the policy. Ohio National responded that (1) it had been invited to file the action to resolve the parties' dispute over policy language and its application to Dr. Morris and (2) it could not determine if Dr. Morris was disabled because the on-going discovery disputes had prevented it from obtaining all of Dr. Morris' medical records.

The Court agreed with Dr. Morris that there was not an actual controversy, absent Ohio National taking the position that Dr. Morris was not disabled under the policies and granted the Motion to Dismiss in April 2005. But in view of the fact that Ohio National had been invited to file the action, the Court allowed Ohio National to file an amended complaint. Ohio National timely filed its Amended Complaint on April 14, 2005, seeking, among its other claims, a declaration that Dr. Morris is not disabled within the meaning of the policies. At the time of filing the Amended Complaint, Ohio National had a revised expert report from its IME, who opined that in view of new information, including the recent

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[17]Script splitting occurs when a doctor writes a prescription for a patient and has the patient give part of the subscribed substance to the doctor. Pl.'s Ex. B at 63-64.

controlled substances charges and information about the nature of the fellowship, he had changed his earlier opinion. The IME now opines that Dr. Morris is malingering or using controlled substances and is able to function as a pain management physician and may be able to return to hospital anesthesiology.[18] Ohio National's diabetes expert opines that there is no functional reason that Dr. Morris is not able to return to work as an operating room anesthesiologist.[19]

Sometime in 2005, Dr. Morris changed the basis of his claim of disability from depression to the effects of Type II diabetes.

IV. ANALYSIS

A. Breach of Contract

Ohio National seeks summary judgment on the grounds that there is an absence of evidence on two of the elements of the breach of contract claim. First, because there is no breach of contract where Dr. Morris has received his full disability check every month since his claim was initially approved. Second, because even if the single payment that was made late is considered a breach, Dr. Morris has no damages because his only claimed damages are attorney fees which are not recoverable damages.

Dr. Morris opposes summary judgment on his breach of contract claim because he contends that there is an issue of fact on whether Ohio National stopped the benefits and whether it also failed to pay for accounting services it requested and promised to pay. He

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[18]Pl.'s Ex. HH (IME's Letter dated October 10, 2004).

[19]Pl's Ex. PP.

also contends that he has shown issues of fact on damages in the form of consequential damages consisting of exacerbation of his physical condition and attorney fees relating to the October 2002 payment.

"The elements of a prima facie case for breach of contract are (1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages."[20] "[W]ithout a claim for damages, [Dr. Morris] ha[s] no breach of contract action."[21]

The Court finds no material issue of fact on the breach of contract claim. The undisputed facts show that Dr. Morris received a check every month in the full amount he claims. The fact that he received one payment late pursuant to a reservation of rights after having his attorney contact the insurer does not negate that the fact that the company has nonetheless paid all payments in full for each month.

Neither the insurance contracts nor the letter relied upon by Dr. Morris shows an issue of fact that Ohio National was contractually obligated to reimburse Dr. Morris for the cost of obtaining the type of proof of loss that it requested. The insurance contracts provide that the insured has an obligation to provide certain types of information[22] and the letter request for the information states that, if an accountant were involved, Ohio National

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[20] *Bair v. Axiom Design*, L.L.C. 20 P.3d 388, 392 (Utah 2001).

[21] *West v. Inter-Financial, Inc.*, 139 P.3d 1059, 1061 n.1 (Utah App. 2006); *see also Eleopulos v. McFarland and Hullinger, LLC.*, __ P.3d __, 2006 WL 2506477 (Utah App. 2006) (holding that to preclude entry of summary judgment on claim for breach of contract plaintiff must raise material issue of fact pertaining to actual damages, an essential element of proof of breach of contract).

[22] *E.g.* Pl.'s Ex. A, at 9.

would conduct its own audit at its own expense.[23] But Dr. Morris has not shown an issue of fact that would establish that an audit was conducted, or that it was authorized by Ohio National.[24]

On the issue of damages, Dr. Morris does not assert any statutory or contractual basis for his claim of attorneys fees.[25] Absent such a statutory or contractual basis, attorney fees and other consequential damages such as exacerbation of his condition, are not recoverable by an insured on a claim of breach of an insurance contract.[26] For the reasons stated below, the Court need not address Dr. Morris' argument that attorney fees are recoverable as consequential damages for breach of contract where there is also a breach of the implied covenant of good faith and fair dealing.

The Court finds that there is no material issue of fact on the breach of contract claim because Dr. Morris has failed to show a material issue of fact on the elements of breach of the contract by the insurer and damages.

B. Breach of Implied Covenant of Good Faith and Fair Dealing

Ohio National seeks summary judgment on the claim of breach of the implied covenant of good faith and fair dealing on the ground that the undisputed facts show that the claim was fairly debatable.

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[23] Pl'.s Ex. S.

[24] *See* Attachment to Pl.'s Ex. T (billing service's analysis with list of codes).

[25] *See Salah v. Farmers Ins. Exch.*, 133 P.3d 428, 435 (Utah 2006) ("in order to recover attorney fees for breach of contract, they must be authorized by a statute or a contract provision.").

[26] *Salah*, 133 P.3d at 435 and n.4.

Dr. Morris contends that the point at which the reasonableness of filing this action should be examined is when it was originally filed. Dr. Morris concedes that it was not unreasonable for Ohio National to investigate his claim, but contends that there are material issues of fact that the investigation was not reasonably conducted. He contends that because his claim was submitted in 2001, and yet Ohio National did not take the definite position in this litigation that he was not disabled until April 2005, that Ohio did not act diligently in investigation of the claim. Dr. Morris also contends that Ohio National did not fairly evaluate the claim because it sued him when its own medical experts opined that he was disabled. He also contends that during certain important time periods[27] that Ohio National did not fairly evaluate the claim. Finally, Dr. Morris contends Ohio National did not act promptly and reasonably in handling the claim because it subjected him to this lawsuit when it did not know if he was disabled until 2005.

The Utah Supreme Court has explained the nature of the duties imposed on an insurer by the implied covenant of good faith and fair dealing:

> [W]hether an insurer has acted reasonably is an objective question to be determined without considering the insurer's subjective state of mind.
>
> * * *
>
> [W]hen confronted with a claim for benefits by a first-party insured, the insurer must " *diligently* investigate the facts . . . , *fairly* evaluate the claim, and . . . act *promptly* and *reasonably* in rejecting or settling the claim." The terms used to characterize these duties plainly indicate that the overriding requirement imposed by the implied covenant is that insurers act reasonably, as an objective matter, in dealing with their insureds. It is entirely consistent

[27]The time periods being when the Complaint was filed and when the case was dismissed with leave to file an Amended Complaint.

> with this overall approach to hold that when an insured's claim is fairly debatable, the insurer is entitled to debate it and cannot be held to have breached the implied covenant if it chooses to do so.
>
> "Whether an insured's claim is fairly debatable under a given set of facts is also a question of law."[28]

The undisputed facts show that within two weeks of originally receiving the disability claim, Ohio National had considered the claim and notified Dr. Morris it was allowing his claim. Thereafter, he applied for and accepted a full-time fellowship in pain management. Although he disputes the extent of his duties as Director of Pain Management at the hospital before his alleged disability onset date, it is undisputed that he held that position at the hospital and also listed that position on his application in support of the fellowship.

Ohio National began to investigate the claim in 2002, after learning of the fellowship. Thereafter, Ohio National steadily worked to obtain information about Dr. Morris' past work, current work and condition. Dr. Morris resisted the efforts. In October 2002, Ohio National agreed to continue to pay full disability only under a reservation of rights. Dr. Morris invited Ohio National to file a declaratory judgment action on the major issue between the parties. On May 28, 2003, Ohio National did so, although Morris now claims that the relief sought was broader than he had invited.

At the time of filing the action, the medical experts agreed that Dr. Morris was depressed and could not return to practicing anesthesiology in an operating room setting. But Ohio National also had information from its expert that pain management was a subset

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[28] *Billings v. Union Bankers Ins. Co.*, 918 P.2d 461, 464-65 and n.2 (Utah 1996) (quoting *Beck v. Farmers Ins. Exch.*, 701 P.2 795, 800 (Utah 1985) (emphasis added by *Billings*).

of anesthesiology and from Dr. Morris's treating psychiatrist that his "involvement in pain management should still be considered the practice of anesthesiology." Although Dr. Morris now contends[29] that his treating physician so opined in 2001 only for the purpose of saving him money in obtaining malpractice insurance, what is relevant for this motion is that it is undisputed that the 2001 letter was information that Ohio National had when it filed this case.

Dr. Morris now seeks to qualify and limit his three invitations to file this action as merely one part of a larger proposal to file a "limited" action on the "narrow" dispute on whether pain management was part of the practice of anesthesiology,[30] or to obtain records from third parties. The Court finds that the plain language of the last of these invitations[31] is that Ohio National should file a declaratory judgment action if it wanted to pursue any issue that Dr. Morris was less than totally disabled under the policies.

Based upon the information that Ohio National had at the time it accepted the invitation to file a declaratory judgment action, the Court finds that, as a matter of law, those facts establish a fairly debatable defense to the claim of breach of the implied covenant of good faith and fair dealing based upon filing of this action on May 28, 2003. If the issue that divided the parties at that time this action was filed–whether pain management was part of the practice of anesthesiology–were decided in favor of Ohio

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[29]Dr. Morris cites his treating psychiatrist's August 2005 deposition for this proposition. *See* Pl.'s Ex. J.

[30]Def.'s Mem. at 11-12.

[31]Ex. FF. at 4.

National in the declaratory judgment action, then its expert's report would not support his claim of total disability as it opined he was inability to practice "hospital-based" anesthesia,"[32] not pain medicine.[33] Thus, it was not a failure to fairly evaluate his claim to file the declaratory judgment action in view of the then-existing medical opinions.

This finding that the action was fairly debabable at the time it filed this action means that, as a matter of law, Ohio National is entitled to judgment on Dr. Morris' claim that he has established that it did not act diligently in promptly and reasonably in handling the claim and did not fairly evaluate his claim merely because it filed the action even though it did not take a position that he was not disabled until 2005. Having chosen to debate the claim by filing this action, Ohio National cannot be held to have breached the implied covenant for having done so.

Similarly, the fairly debatable defense applies to Dr. Morris' claim that Ohio National did not diligently investigate or fairly evaluate his claim because it did not know if he was disabled when Dr. Morris moved to dismiss the case. Ohio National was debating the claim, Dr. Morris was actively defending this action, Ohio National's expert had recently changed his opinion based on the on-going discovery, Dr. Morris' professional license had been suspended, and by a then-recent[34] stipulation of the parties, discovery was still on-

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[32]Ex. GG at 12 and 15-16.

[33]That report also opined that he could at that time work part-time in pain medicine and "may be able to work towards full-time status within the next six months." *Id*. at 15.

[34]Docket No. 51, filed on March 31, 2005 (setting fact discovery cutoff for November 30, 2005, expert discovery cutoff for March 31, 2006, and the date for filing amended pleadings on August 1, 2005).

going. There is no evidence that during these two years of litigation that Ohio National failed to diligently continue to investigate the claim. Having chosen to debate a fairly debatable claim by filing an action, Ohio National does not incur liability for breach of the implied covenant and fair dealing for alleged failure to "fairly evaluate" the claim during the discovery phrase of the litigation. Otherwise, the insurance company's every decision during the litigation on timing, strategy and theory of the case would be subject to continual attack by opposing counsel on the grounds that it was a "failure to fairly evaluate the claim."

This is especially true, as in the present case, where the insured subsequently notified the insurance company that he was changing the entire basis of his claim of disability. Ohio National can hardly be faulted for the failure to diligently investigate and evaluate the claim during a period when Plaintiff's own theory of disability was evolving.

V. CONCLUSIONS AND ORDER

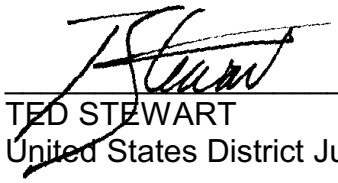
Dr. Morris has not meet his burden in opposing summary judgment. Although he disputes many facts, they are not material to the elements of his counterclaims for breach of contract or breach of the implied covenant of good faith and fair dealing. Ohio National has shown that it is entitled to judgment as a matter of law on those claims. The parties' remaining claims and counterclaim are set for resolution at the five-day bench trial set to begin on October 2, 2006. Based upon the foregoing, it is therefore

ORDERED that Defendant's Second Motion for Partial Summary Judgment (Docket No. 118) is GRANTED and summary judgment is granted in favor of Defendant and

against Plaintiff on Plaintiff's counterclaims for breach of contract and for breach of the implied covenant of good faith and fair dealing.

DATED September 6, 2006.

BY THE COURT:



TED STEWART
United States District Judge

FILED
U.S DISTRICT COURT

2006 AUG 28 P 12: 07

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

IGNACIO ESCOBAR aka IGNACIO ESCOBAR GODINEZ- "NACHO",

Defendant.

Case No. A-03-07M

ORDER GRANTING LEAVE OF COURT To File A Dismissal of the UFAP Complaint

Based upon the motion of the United States of America, and for good cause appearing, the court hereby grants leave under Rule 48(a) of the Federal Rules of Criminal Procedure for the United States District Courts for the dismissal of the UFAP complaint against the defendant, IGNACIO ESCOBAR aka IGNACIO ESCOBAR GODINEZ- "NACHO".

DATED this 28th day of August, 2006.

BY THE COURT:

United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 2:40
DISTRICT OF UTAH
BY: DEPUTY CLERK

UNITED STATES OF AMERICA	:	**ORDER**
Plaintiff,	:	
MAXWELL POWELL	:	**2:04-CR-00112-001-PGC**
Defendant	:	

It is hereby ordered that the presentence report prepared in this case be released to the state court through his attorney of record following the completion of it by the United States Probation Officer.

DATED this 6th day of September, 2006

BY THE COURT:

Paul G. Cassell
United States District Judge

FILED
U.S. DISTRICT COURT

2006 SEP -7 A 10: 29

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

MARY C. CORPORON #734
Attorney for Defendant
CORPORON, WILLIAMS & BRADFORD, P.C.
405 South Main Street, Suite #700
Salt Lake City, Utah 84111
Telephone: (801) 328-1162

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

UNITED STATES OF AMERICA,	:	**ORDER CONTINUING TRIAL**
Plaintiff,	:	
-vs-	:	
JAMES FRED GORDON, JOHN VINCENT ALLEN, and DANELLE DECEW,	:	Case No. 2:04 CR 00688 DB
	:	Judge Dee Benson
Defendants.	:	Magistrate Judge David O. Nuffer

Based upon Defendant's Motion to Continue Trial and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the trial previously rescheduled from August 7, 2006 to October 10, 2006 is continued to Nov 13, 2006. The time from the previous date to the new date shall be excluded from the time allowed for trial under the Speedy Trial Act, 18 U.S.C., § 3161, due to the need to maintain continuity of counsel.

DATED this 6 day of September, 2006.

BY THE COURT:

Dee Benson

HONORABLE DEE BENSON
United States District Court Judge

FILED
U.S. DISTRICT COURT

2006 SEP -1 A 10: 29

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	2:04 CR 841 DB
Plaintiff,	:	
		ORDER
vs.	:	
STEPHEN ANTHONY MENDEZ, MARCELINO JUNIOR MONTES, and ISIDORE THEODORE BARRERA,	:	
	:	Judge Dee Benson
Defendants.	:	

Based upon the foregoing motion of the government and for good cause appearing,

The court finds that:

1. One of the co-defendants in this case, Steven Mendez, has absconded from the Cornell Correction Facility, and his presence is required for trial;
2. For purposes of continuity of counsel, judicial economy, and to allow time for adequate preparation for trial, a continuance is necessary;
3. The ends of justice served by a continuance outweigh the best interests of the public and the defendants in a speedy trial;

IT IS HEREBY ORDERED that the trial be continued until ~~October 23, 2006~~ 11/6/2006.

IT IS FURTHER ORDERED that all time between September 6, 2006 and ~~October 23, 2006~~ 11/6/2006 be excluded from the calculation of the Speedy Trial Act pursuant to

18 U.S.C. § 3161(h)(3)(A); (h)(8)(A); (h)(8)(B)(iv).

DATED this 26 day of September, 2006.

BY THE COURT:

DEE BENSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

SOUTHERN UTAH WILDERNESS ALLIANCE *et al.*	)	Case No. 2:04CV574 (DAK)
Plaintiffs,	)	Honorable Dale A. Kimball
vs.	)	
GALE NORTON, in her official capacity as Secretary of the Interior, *et al.*,	)	
Defendants.	)	

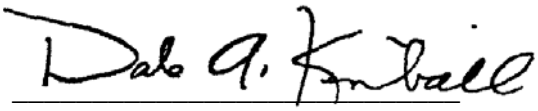
ORDER

The Court having received plaintiff Southern Utah Wilderness Alliance *et al.'s* Unopposed Motion for Extension of Time, and good cause appearing therefore, it is hereby

ORDERED, that plaintiffs Southern Utah Wilderness Alliance *et al.* shall have until September 8, 2006, to file its Opposition to Dominion and EOG's Motion to Intervene in the above captioned matter.

Dated this 7th day of September, 2006.

BY THE COURT



The Honorable Dale A. Kimball
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

ADAM MERCE, an individual, and EMILY DEMONG, an individual, Plaintiffs, vs. MARK W. GREENWOOD, M.D.; DAVID M. POPE, M.D.; KIRK R. ANDERSON, M.D.; IHC HEALTH SERVICES, INC., a Utah Corporation, dba SEVIER VALLEY HOSPITAL; and IHC HEALTH SERVICES, INC., a Utah Corporation dba UTAH VALLEY REGIONAL MEDICAL CENTER, Defendants.	ORDER SCHEDULING DAUBERT BRIEFING AND HEARING Case No. 2:04-CV-00610 PGC

The court HEREBY ORDERS that the parties shall file any *Daubert* motions challenging the reliability of any disputed expert testimony on or before October 6, 2006. Any opposition to such motions shall be filed on or before October 23, 2006. Any reply to such opposition shall be filed on or before November 1, 2006. The court FURTHER ORDERS that this matter is

HEREBY set for a hearing on such motions before Judge Cassell in Room 103 on November 6, 2006 at 1:30 p.m. The court anticipates resolving any *Daubert* challenges on the basis of the written pleadings submitted by the parties. Therefore the parties are advised to include sufficient information, including affidavits and excerpts from depositions, to fully advise the court.

SO ORDERED.

Dated this 7th day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

TERRY H. FULLWILEY Plaintiff, vs. UNION PACIFIC CORPORATION (a Utah Corporation), and UNION PACIFIC RAILROAD COMPANY (a Delaware Corporation), Defendants.	**MEMORANDUM DECISION AND ORDER GRANTING MOTIONS FOR STAY AND GRANTING MOTION TO STRIKE** Civil No. 2:04-CV-00671 TS District Judge: Ted Stewart Magistrate Judge: David Nuffer

Plaintiff, having lost at summary judgment,[1] has had costs awarded against him.[2] He appeals, and desires a stay of Defendants' right to collect the cost award pending appeal.[3] He appeals to the discretion of the court under its inherent powers[4] and under Fed. R. Civ. P. 62(d)[5] which governs stay of enforcement of cost awards.

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[1] Docket no. 195, filed February 1, 2006.

[2] Docket no. 213, filed May 16, 2006.

[3] Docket nos. 202; 216. The document filed as docket no. 216 is entitled Plaintiff's Motion to Renew Motion Stay Costs Pending Outcome of Appeal.

[4] *In re Wymer,* 5 B.R. 802, 804 (B.A.P. 9th Cir. 1980).

[5]

> When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Plaintiff has cited[6] cases which stayed the award of costs pending appeal,[7] but costs have already been awarded in this case, so the cases are not directly applicable to a motion to stay. While there are some cases dispensing with supersedeas bonds as a condition of a stay of execution, they usually do so because the financial strength of the obligated party is not in question.[8] Here, Plaintiff notes that "UP is a multibillion dollar company and Mr. Fullwiley is an individual wage earner."[9] The need for the security of a bond is *heightened* rather than *minimized* by the present circumstances.

Plaintiff suggests that a balance-of-harm test is appropriate: "[T]he harm to Mr. Fullwiley in having to post a bond substantially outweighs any possible harm to UP . . . ."[10] Plaintiff warns of a potential conundrum: "[S]hould the costs be allowed to the defendant now, if the Court of Appeals reversed the judgment of this Court on appeal, it would appear the plaintiffs might be barred illogically and contrary to the statute, from taxing the costs against the defendant."[11] But since a trial court must modify its judgment in response to a reversal, the cost award is also subject to modification. And collectibility of any "refund" of costs is not an issue, with a multi-billion dollar defendant.

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[6] Plaintiff's Memorandum in Support of Motion to Stay Costs Pending Outcome of Appeal at 2, docket no. 203, filed March 13, 2006.

[7] *Brown v. America Enka Corp.*, 452 F. Supp 154 (E.D. Tenn. 1976); *Georgia Ass'n of Retarded Citizens v. McDaniels,* 855 F.2d 794 (11th Cir. 1988).

[8] Cases collected at 11 Charles Alan Wright et al., *Federal Practice and Procedure* §2905, n.12 (2nd ed. 1995).

[9] Plaintiff's Reply Memorandum in Further Support of Motion to Renew Motion to Stay Costs Pending Outcome of Appeal (Reply Memorandum) at 3, docket no. 218, filed July 11, 2006.

[10] *Id.*

[11] Reply Memorandum at 3 (quoting Supporting Memorandum at 2 (quoting *Brown v. American Enka Corp.,* 452 F. Supp. 154, 160 (D. Tenn. 1976) (citing *Fleischer v. A. A. P., Inc.*, , 36 F.R.D. 31, 33-34(1) (S.D.N.Y. 1964) and *American Infra-Red Radiant Co. v. Lambert Industries, Inc.*, 41 F.R.D. 161, 163 (D. Minn. 1966)))).

Plaintiff also points out that there is precedent for reducing a cost award because of a party's financial status. But here, as in the case cited, Plaintiff "has offered this court little assistance in determining what amount of defendants' costs [he] can afford to pay. Instead [he] argues only that it would be a financial hardship to pay the full amount."[12] On the other hand, there is no evidence that Plaintiff's financial condition will worsen during the appeal, making the recovery of the costs less likely with the passage of time. That factor would heighten the need for a bond.

ORDER

On the information before the court,

IT IS HEREBY ORDERED that the motions to stay[13] are GRANTED IN PART. Execution on the cost award shall be stayed on the condition that Plaintiff places funds in trust with his counsel in the amount of one-half of the cost award on or before September 29, 2006, and thereafter on the last business day of each month deposits an additional amount in that account equal to 5% of the cost award, until the balance of the account equals the entire cost award, with any accrued interest. The trust account funds shall be held for the sole purpose of securing the award of costs and no other purpose.

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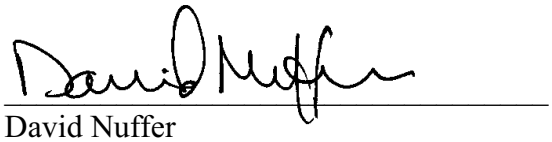
[12] *Kibbee v. City of Portland*, No. CV-98-675-ST, 2000 WL 1643535, at *7 (D. Or. October 12, 2000).

[13] Docket nos. 202; 216.

IT IS FURTHER ORDERED that Plaintiff's motion to strike[14] an erroneously filed paper is GRANTED. The paper filed as docket no. 214 is STRICKEN.

Dated this 6th day of September, 2006.

BY THE COURT



David Nuffer
United States Magistrate Judge

[14] Docket no. 215, filed June 21, 2006.

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

FILED
U.S. DISTRICT COURT
2006 SEP -5 P 3:53
DISTRICT OF UTAH
BY: DEPUTY CLERK

KEVIN K. KING, Plaintiff, v. DAVE PATT et al., Defendants.	Case No. 2:04-CV-829-TC O R D E R

Plaintiff, Kevin K. King, an inmate at the Central Utah Correctional Facility, filed this pro se civil rights suit under 42 U.S.C. § 1983. *See* 42 U.S.C.S. § 1983 (West 2006). Plaintiff was granted leave to proceed *in forma pauperis* under 28 U.S.C. § 1915(b), and his complaint is now before the Court for screening under 28 U.S.C. § 1915(e). *See* 28 *id.* § 1915.

ANALYSIS

I. Screening Standard of Review

Under 28 U.S.C. § 1915(e)(2)(B), a court shall dismiss any claims in a complaint filed *in forma pauperis* if they are frivolous, malicious or fail to state a claim upon which relief may be granted. *Id.* "Dismissal of a pro se complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend." *Perkins v. Kan. Dep't of Corr.*, 165 F.3d 803, 806 (10th Cir. 1999).

When reviewing the sufficiency of a complaint the Court "presumes all of plaintiff's factual allegations are true and construes them in the light most favorable to the plaintiff." *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991). Because Plaintiff is proceeding pro se the Court must also construe his pleadings liberally and hold them to a less stringent standard than formal pleadings drafted by lawyers. *Id.* at 1110. However, "[t]he broad reading of the plaintiff's complaint does not relieve [him] of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Id.*

II. Plaintiff's Allegations

Although Plaintiff's Complaint lists ten separate "counts" of civil rights violations, all of the allegations in the Complaint appear to stem from two distinct instances in which Plaintiff was allegedly denied adequate medical care. Regarding the first instance, Plaintiff alleges that jail officials failed to provide recommended followup treatment for a broken wrist which Plaintiff suffered prior to being booked into the Washington County Jail on May 29, 2002. Plaintiff alleges that due to the lack of followup care his wrist healed in the wrong position causing him pain and numbness in his left hand. Regarding the second instance, Plaintiff alleges that Defendants intentionally delayed diagnosis and treatment of a detached retina which allegedly occurred while Plaintiff was incarcerated.

Plaintiff alleges that due to the long delay the surgery he eventually received was unsuccessful and he is now without any sight in his right eye. Plaintiff's Complaint seeks compensatory and punitive damages totaling $2,500,000.00, job training to help him deal with his disabilities, and an award of legal fees.

III. Exhaustion of Administrative Remedies

A. Exhaustion Standard

Section 1997e(a) of the Prisoner Litigation Reform Act, states that "[n]o action shall be brought with respect to prison conditions under section 1983 . . ., or any other Federal Law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." *See* 42 U.S.C. § 1997e(a) (West 2005). To satisfy this exhaustion requirement a prisoner must include with his complaint "a comprehensible statement of his claim and also either attach copies of administrative proceedings or describe their disposition with specificity." Steele v. Fed. Bureau of Prisons, 355 F.3d 1204, 1211 (10th Cir. 2003). "'In the absence of particularized averments concerning exhaustion showing the nature of the administrative proceeding and its outcome, the action must be dismissed under § 1997e.'" *Id.* (quoting Knuckles El v. Toombs, 215 F.3d 640, 642 (6th Cir. 2000)).

The Tenth Circuit interprets the PLRA's exhaustion provision as a "total exhaustion requirement," meaning that "'when multiple

prison condition claims have been joined . . . § 1997e(a) requires that all available prison grievance remedies must be exhausted as to all of the claims.'" *Ross v. County of Bernalillo*, 365 F.3d 1181, 1184 (10th Cir. 2004). "[A] complaint 'that fails to allege the requisite exhaustion of remedies is tantamount to one that fails to state a claim upon which relief may be granted.'" *Id.* (quoting *Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir.1998)).

B. Sufficiency of Exhaustion Allegations

The allegations of Plaintiff's complaint, and the attached documentary evidence, show that Plaintiff properly exhausted available administrative remedies with regard to his request for eye treatment. Plaintiff's Complaint alleges numerous attempts to resolve this issue informally with both jail officials and medical personnel. Plaintiff has also included with his complaint copies of grievance documents showing that he properly pursued this issue through all levels of the jail's formal administrative grievance process without success. Thus, the Court finds that Plaintiff has properly exhausted available administrative remedies regarding his requests for eye treatment.

Although Plaintiff has provided evidence showing that certain followup care was recommended for his wrist injury, he does not allege that he ever raised this issue informally with jail officials or medical personnel. Nor has Plaintiff submitted

any grievance forms or other documentation showing that this issue was properly pursued through the jail's formal administrative grievance process. Thus, the Court concludes that Plaintiff's Complaint does not allege proper exhaustion of administrative remedies regarding the alleged denial of treatment for Plaintiff's wrist injury.

C. Mixed Complaint

Because Plaintiff has not demonstrated proper exhaustion of administrative remedies regarding one of his claims the Court finds that Plaintiff's Complaint is a "mixed complaint." The PLRA's "total exhaustion requirement," demands that Plaintiff present evidence showing that each and every claim set forth in his complaint has been fully exhausted before his case can proceed. *See* Ross, 365 F.3d at 1184. According to Tenth Circuit precedent, "if a prisoner's complaint is a mixed complaint, or if it contains no exhausted claims, an appropriate remedy is dismissal of the entire action without prejudice." *Alloway v. Booher*, No. 04-7060, 2005 WL 852714, at **1 (10th Cir. Apr. 14, 2005) (citing *Ross*, 365 F.3d at 1189-90). However, if Plaintiff is ultimately able to exhaust the remaining administrative remedies for his unexhausted claim he may refile his complaint in a new case.

Alternatively, within thirty days of this order, Plaintiff may move to voluntarily dismiss the unexhausted wrist-injury

claim and proceed with only his claims regarding denial of eye treatment. "However, the voluntarily dismissal of unexhausted claims is a dismissal with prejudice such that plaintiff will not be permitted to exhaust those claims and then refile a complaint asserting those claims. In other words, the claims that plaintiff has voluntarily dismissed cannot be revived at some later date." *Williams v. U.S.*, No. 04-3003, 2005 WL 318766, at *1 (D. Kan. Feb. 9, 2005) (citing West v. Kolar, 2004 WL 1834634, at *2 (10th Cir. Aug. 17, 2004).

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff's Complaint is **dismissed** without prejudice under 42 U.S.C. § 1997e. If Plaintiff wishes to voluntarily dismiss his unexhausted claim with prejudice and proceed only on his claims regarding denial of eye treatment he may file an appropriate motion within thirty days. If not, this case will be closed.

BY THE COURT:

DATED this 5th day of ~~August~~ September, 2006.

Tena Campbell

Tena Campbell
United States District Judge

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
SEP - 7 2006
MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

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

DAN HENRY TIJERINA, SR., Plaintiff, v. SCOTT V. CARVER, Defendant.	Case No. 2:04-CV-935 PGC O R D E R

Plaintiff, Dan Henry Tijerina, Sr., 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.S. § 1983 (2006). Plaintiff was granted leave to proceed *in forma pauperis* under 28 U.S.C. § 1915(b), but has since paid the filing fee in full. *See* 28 *id.* § 1915. This case is now before the Court on Defendant's Motion for Summary Judgment.

ANALYSIS

I. Background

The only claim remaining in this case was first raised by Plaintiff in a previous lawsuit filed in 2002. *See Tijerina, Sr. v. Offender Mgmt. Review Comm.*, No. 2:02cv1066 PGC (filed September 25, 2002). On February 6, 2003, that case was dismissed in its entirety for failure to state a claim on which relief could be granted. On appeal to the Tenth Circuit the dismissal was affirmed as to all but one claim, which was

remanded for dismissal without prejudice based on Plaintiff's failure to exhaust administrative remedies. *Tijerina v. Offender Management Review Committee*, Nos. 03-4054, 03-4134, 2004 WL 161540, *4 (10th Cir. January 28, 2004). As mandated, on remand the Court dismissed the remaining claim without prejudice. Plaintiff then pursued the unexhausted claim through the prison's administrative grievance process but was denied relief. After fully exhausting available administrative remedies Plaintiff renewed his claim in this case.

On screening under 28 U.S.C. § 1915 the Court dismissed all but one Defendant, Scott Carver, on whom official service of process was ordered. The Court also directed that Carver submit a *Martinez* report addressing Plaintiff's remaining claim.[1] On August 8, 2005, Defendant filed a *Martinez* Report and Motion for Summary Judgment with supporting affidavits and other documentary evidence. Plaintiff then filed a motion for extension of time to respond to the report and motion; the Court granted the motion giving Plaintiff until October 7, 2005, to file his response.

On September 23, 2005, the Court addressed a motion filed by Plaintiff for an injunction prohibiting prison officials from withholding his legal materials. Plaintiff alleged that he was

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[1] In *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978), the Tenth Circuit approved the district court's practice of directing corrections officials to prepare a report to be included in the pleadings in cases where a prisoner has filed suit alleging a constitutional violation.

unable to respond to Defendant's summary judgment motion because prison officials would only allow him access to a limited amount of legal material at one time. The Court denied Plaintiff's motion, finding that the prison's policy regarding excessive legal materials was justified by valid security concerns; however, in light of the inconvenience caused by the restriction Plaintiff was granted an additional thirty days to file his summary judgment response. Plaintiff then filed an interlocutory appeal to the Tenth Circuit challenging the denial of his motion for injunctive relief.

Following a lengthy appeals process, on April 14, 2006, the Tenth Circuit affirmed the denial of injunctive relief "for substantially the same reasons set forth by the district court . . . ." Mandate of USCA at 3, *Tijerina v. Carver*, No. 05-4276, 2006 WL 979307, *3 (10th Cir. Apr. 14, 2006). Shortly after the appellate mandate was docketed on May 26, 2006, Plaintiff called the Court from the Central Utah Correctional Facility to ascertain the status of his case. Plaintiff was informed that Defendant's motion for summary judgment was still pending and that Plaintiff must promptly file a substantive response or the Court would proceed to rule on the motion based on the existing record. Plaintiff was also instructed that to survive summary judgment he could not rest upon the mere allegations in his pleadings but must instead submit admissible evidence supporting

his allegations as required under Rule 56(e). *See* Fed. R. Civ. P. 56(c).

On July 6, 2006, more than thirty days after the appellate mandate was docketed, Plaintiff filed yet another motion for additional time. Finally, on July 25, 2006, almost one year after Defendant first moved for summary judgment, Plaintiff filed a document styled "Motion to Respond to Defendant's Request for Summary Judgment." (Docket no. 66) Although purportedly a motion, this document actually appears to be a substantive response to Defendant's motion summary judgment, however, it is not accompanied by any supporting affidavits or other admissible evidence.

In sum, the history of this case shows a pattern by Plaintiff of failing to timely respond to dispositive motions and instead employing various dilatory tactics to needlessly prolong this litigation. These tactics include filing frivolous motions for injunctive relief, taking meritless appeals, attempting to shift the focus from the issues at bar to new or previously dismissed claims, and filing numerous successive motions for extensions of time. Having given Plaintiff ample warning and opportunity to properly respond to Defendant's summary judgment motion, the Court now finds that any further accommodations are unwarranted and would be unduly burdensome to Defendant. Thus, the Court summarily denies Plaintiff's pending motions for

additional time, or other miscellaneous relief, and proceeds to rule on Defendant's motion for summary judgment based on the record as it now stands.

II. Summary Judgment Analysis

A. Standard of Review

Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. civ. P. 56(c). The moving party bears the initial burden of showing "that there is an absence of evidence to support the non-moving party's case." *Cellotex v. Catrett*, 477 U.S. 317, 325 (1986). This burden may be met merely by identifying portions of the record which show an absence of evidence to support an essential element of the opposing party's case. *Johnson v. City of Bountiful*, 996 F. Supp 1100, 1102 (D. Utah 1998)

Once the moving party satisfies its initial burden "the burden then shifts to the nonmoving party to make a showing sufficient to establish that there is a genuine issue of material fact regarding the existence of [the disputed] element." *Id.* Federal Rule of Civil Procedure 56(e) requires a nonmovant "that would bear the burden of persuasion at trial" to "go beyond the pleadings and 'set forth specific facts' that would be admissible in evidence in the event of a trial from which a rational trier of fact could find for the nonmovant." *Adler v. Wal-Mart Stores,*

144 F.3d 664, 671 (10th Cir. 1998). The specific facts put forth by the nonmovant "must be identified by reference to an affidavit, a deposition transcript or a specific exhibit incorporated therein." *Thomas v. Wichita Coca-Cola Bottling*, 968 F.2d 1022, 1024 (10th Cir. 1992). Mere allegations and references to the pleadings will not suffice. However, the Court must "examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing the motion." *Lopez v. LeMaster*, 172 F.3d 756, 759 (10th Cir. 1999).

B. Plaintiff's Claim

Plaintiff's sole remaining claim asserts that the Utah Board of Pardons and Parole (Board) violates the Fifth Amendment's prohibition against compelled self-incrimination by considering in its parole determinations whether an inmate convicted of a sexual offense has completed the Sex Offender Treatment Program (SOTP). Plaintiff's claim is comprised of two essential factual allegations: First, that in order to complete SOTP Plaintiff will be required to admit prior bad acts, thereby potentially exposing himself to further criminal charges. And second, that the Board's decision to grant parole to convicted sex offenders is substantially based on whether they have completed SOTP, thus, if Plaintiff refuses to complete the program he will be denied parole or have his parole date delayed. Based on these allegations Plaintiff asserts that the Board's policies amount to

compulsion of incriminating testimony in violation of the Fifth Amendment. Plaintiff's complaint seeks compensatory and punitive damages, as well as an injunction prohibiting the Board from considering an inmate's participation in SOTP when making its parole decisions.

C. Evidentiary Record

The evidentiary record in this case is essentially limited to Defendant's *Martinez* Report (doc. no. 35), which includes sworn affidavits of corrections officials responsible for the prison's Offender Management Review (OMR) program and SOTP; it also includes copies of documents and regulations relevant to those programs. Plaintiff has not challenged the admissibility of the evidence submitted by Defendant, nor has he come forward with any evidence in rebuttal. In fact, Plaintiff's meager response to Defendant's motion appears to misapprehend the nature of the summary judgment inquiry. Rather than focus on the sufficiency of the evidence presented, and whether there are genuine issues of fact remaining for trial, Plaintiff's response focuses primarily the purely legal issue identified by the appeals court in Plaintiff's previous case. There, the appeals court observed that "whether linking eligibility for parole to participation in sex therapy constitutes compulsion for purposes of the Fifth Amendment" was a question of first impression which was not decided by the Supreme Court's holding in *McKune v. Lile,*

536 U.S. 24 (2002). *Tijerina v. Offender Management Review Committee*, Nos. 03-4054, 03-4134, 2004 WL 161540, *4 (10th Cir. January 28, 2004). However, the appeals court declined to address whether Plaintiff's allegations, even if proven, would be sufficient to state a claim for relief and chose instead to remand the case for dismissal based on Plaintiff's failure to exhaust administrative remedies.

In its order directing the Utah Department of Corrections to file a *Martínez* report, this Court also summarized the underlying legal issue presented as "whether conditioning eligibility for parole on participation in sex therapy, in which the participant will be required to admit prior bad acts and risk being subjected to new criminal charges, amounts to unconstitutional compulsion." (Doc. no. 12 at 13-14.) However, the Court noted that due to the lack of evidence it was not even clear whether SOTP requirements, or the Board's policies, gave rise to any Fifth Amendment concerns. Hence, the Court directed the UDOC to file a *Martinez* report addressing Plaintiff's factual allegations and the underlying legal issue. In the present motion for summary judgment Defendant focuses primarily on Plaintiff's factual allegations regarding SOTP requirements and the Board's policies for making parole determinations. Defendant's present motion rests on this factual basis, rather than on the legal determination of what constitutes compulsion under the Fifth

Amendment.

D. Legal Standard

The Fifth Amendment prohibits any person from being "compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. This prohibition "not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also 'privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *Minnesota v. Murphy*, 465 U.S. 420, 426, 104 S. Ct. 1136 (1984) (quoting *Lekowitz v. Turley*, 414 U.S. 70, 77, 94 S. Ct. 316, (1973)). In addition, it is well settled that prisoners do not forfeit their privilege against compelled self-incrimination as a result of their conviction or confinement. *Id.* at 426.

Two criteria must be met in order for the privilege against self-incrimination to apply: First, the witness must reasonably believe that his statements may be used to incriminate him. *Hoffman v. United States*, 341 U.S. 479, 486, 71 S. Ct. 814 (1951). And, second, the statements must be compelled. *Lefkowitz v. Cunningham*, 431 U.S. 801, 806, 97 S. Ct. 2132 (1977). Compulsion exists when some factor denies the individual the "free choice to admit, to deny, or to refuse to answer." *Lisenba v. California*, 314 U.S. 219, 241, 62 S. Ct. 280 (1941).

E. Evidentiary Sufficiency

Defendant's motion asserts that the evidence presented does not support the conclusion that UDOC or the Board's policies regarding sex offender therapy involve either self-incrimination or compulsion. Thus, Defendant argues that there is no genuine issue of material fact remaining for trial and Defendant is entitled to judgment as a matter of law.

i. Incrimination

Regarding the first prong of the Fifth Amendment test, Defendant has come forward with evidence showing that participation in SOTP does not require inmates to make incriminating statements which could conceivably be used against them in future criminal proceedings. According to the Affidavit of Ron Sanchez, Director of SOTP, all inmates who participate in the program are required prior to enrollment to sign a document entitled "Sex Offender Program Treatment Agreement." This document includes the following statement which must be separately initialed by the participant:

> I understand that as part of my treatment I am expected to discuss in general terms all of my past, as well as, current offenses. I understand that **I am not** required or expected to tell specific dates, times, locations, and/or identities of victims regarding crimes for which I have not been charged or convicted. However, if I choose to reveal specific information I understand staff members will be required by law to report those specifics to law enforcement agencies, and that I could be subject to prosecution for these crimes.

(Martinez Rpt. Ex. 1 at 1.) Sanchez also states that there are

other safeguards built into the program to prevent inmates from making incriminating statements. According to Sanchez:

> In those instances where a sex offender begins to provide specific information regarding uncharged offenses, staff members stop them, and verbally remind them that by law providing such specific information requires the staff member to report those specifics to law enforcement agencies, and the offender could be subject to prosecution for those crimes.

(Sanchez Aff. at 3.) Finally, Sanchez states that he is "not aware of any offender who has been prosecuted during the 15 years [he has] been associated with the Sex Offender Treatment program, based on the general information required as part of sex offender treatment." (Sanchez Aff. at 2.)

Based on this evidence the Court concludes that Defendant has satisfied his initial summary judgment burden of showing that there is an absence of evidence to support Plaintiff's allegation that participation in SOTP requires inmates to make self-incriminating statements. By satisfying his burden on this issue Defendant successfully shifts to Plaintiff the burden of presenting admissible evidence showing a genuine issue of material fact regarding this element of his claim. Plaintiff has not made any such showing. Thus, Defendant is entitled to summary judgment.

ii. Compulsion

On the issue of compulsion Defendant has submitted evidence showing that the Board's parole decisions are not directly linked

to participation in SOTP, thus, sex offenders are not compelled to participate in the program in order to obtain parole. According to the affidavit of Blake Nielson, Deputy Warden of Utah State Prison's Wasatch Facilities, participation in SOTP is monitored by the Offender Management Review (OMR) committee as part of an inmate's Offender Management Programming (OMP). The OMR committee may report to the board on whether SOTP has been recommended as part of an inmate's OMP plan and whether the inmate has complied with the plan. However, Nielson states that "OMR does not make parole decisions. It merely provides information and recommendations to the Board that may be considered in determining parole options." In addition, "[t]he board often reminds OMR staff that the provided recommendations are merely that. The Board has absolutely no obligation to accept and/or act upon such, and final parole decisions are made solely and exclusively by the Board." (Nielson Aff. at 6.)

Defendant admits that an inmate's compliance with his OMP plan, including participation in SOTP if recommended, does have a direct impact on the offender's privilege level and the programming options available to them while in prison. However, it is well established that withholding such ordinary privileges based on failure to participate in sex offender therapy does not amount to compulsion under the Fifth Amendment. *McKune*, 536 U.S. at 37; *Searcy v. Simmons*, 299 F.3d 1220, 1225 (10th Cir. 2002).

Furthermore, according to Ron Sanchez, sex offenders who have refused to participate in SOTP and have received adverse recommendations based on their failure to comply with their OMP plan have nevertheless been granted parole in the past. (Sanchez Aff. at 4-5.)

Based on this evidence the Court concludes that Defendant has satisfied his initial summary judgment burden of showing that there is an absence of evidence to support Plaintiff's allegation that inmates are compelled to participate in SOTP by the likelihood that failure to do so will cause them to be denied parole. Plaintiff has not submitted any evidence challenging Defendant's explanation of the OMR program, or its indirect relationship to the Board's decision making process. Thus, the Court concludes that there is no genuine issue of material fact concerning this element of Plaintiff's claim and Defendant is entitled to summary judgment.

CONCLUSION

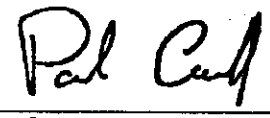
The history of this case shows a pattern by Plaintiff of refusing to address dispositive motions and employing various dilatory tactics to unnecessarily prolong this litigation. After a addressing Plaintiff's legal access concerns the Court concluded that Plaintiff has sufficient access to his legal materials to allow him to respond to Defendant's summary judgment motion. Despite numerous warnings and several generous time

extensions Plaintiff has failed to properly respond to Defendant's motion. Based on the record before the Court it is clear that Plaintiff has not satisfied his burden on summary judgment of producing evidence showing a genuine issue of fact regarding whether the Board's policies amount to compulsion under the Fifth Amendment. Instead, the record clearly shows that participation in SOTP does not require inmates to incriminate themselves, nor does the failure to participate weigh so heavily in the Board's parole determinations as to amount to compulsion under the Fifth Amendment. Thus, the Court concludes that there is no genuine issue of material fact remaining and Defendant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56.

Accordingly, **IT IS HEREBY ORDERED** that Defendant's motion for summary judgment is **granted**.

DATED this 5th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

AO 245D (Rev. 12/03) Judgment in a Criminal Case for Revocations
Sheet 1

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
Lisa Garrett Mickelsen

2006 SEP -7 P 3:16

DISTRICT OF UTAH

BY: DEPUTY CLERK

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

Case Number: DUTX 2:05CR000070-001
USM Number: 12383-081
Jamie Zenger
Defendant's Attorney

THE DEFENDANT:

☑ admitted guilt to violation of condition(s) Violations 1-8 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 has failed to mantain employment since 5/2006	
2.	The defendant has failed to maintain her residence and her whereabouts have been in question since 4/2006.	
3.	The defendant has failed to submit to scheduled drug testing	

The defendant is sentenced as provided in pages 2 through 6 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.: _____

Defendant's Date of Birth: _____

8/31/2006
Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Defendant's Residence Address:

Tena Campbell — U.S. District Judge
Name of Judge — Title of Judge

9-7-2006
Date

Defendant's Mailing Address:

DEFENDANT: Lisa Garrett Mickelsen
CASE NUMBER: DUTX 2:05CR000070-001

ADDITIONAL VIOLATIONS

Violation Number	Nature of Violation	Violation Concluded
(continued)		
3.	throughout the months of April and May of 2006.	
4.	The defendant has failed to participate in mental health treatment.	
5.	The defendant has failed to pay financial obligations as ordered by the Court.	
6.	The defendant admitted to using methamphetamine and marijuana to a United States Probation Officer on 5/22/2006.	
7.	The defendant failed to report in person to the United States Probation Office on 5/23/2006, as directed.	
8.	The defendant failed to submit her Monthly Supervision Report for month of April 2006.	

DEFENDANT: Lisa Garrett Mickelsen
CASE NUMBER: DUTX 2:05CR000070-001

IMPRISONMENT

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

☐ 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: Lisa Garrett Mickelsen
CASE NUMBER: DUTX 2:05CR000070-001

SUPERVISED RELEASE

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

36 Months -- The Court revokes and reinstates the original term of supervision

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.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time $115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the USPO.

2. The defendant shall submit her person, residence, office, or vehicle to a search conducted by a USPO at a reasonable time and in a reasonable manner based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

3. The defendant shall participate in a mental health treatment program under a co-payment plan, as directed by the USPO.

4. The defendant shall take any mental health medications as prescribed, and shall not possess or consume alcohol.

5. The defendant shall submit to the collection of a DNA sample at the direction of the USPO or the Bureau of Prisons.

DEFENDANT: Lisa Garrett Mickelsen
CASE NUMBER: DUTX 2:05CR000070-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below); or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay.

F ☑ Special instructions regarding the payment of criminal monetary penalties:

The Court orders the outstanding balance of $75.00 for the Special Assessment Fee ordered on June 15, 2005, for the original offense be reinstated.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes imprisonment, payment of criminal monetary penalties is be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

(NOTE: Identify Changes with Asterisks (*))

UNITED STATES DISTRICT COURT

Central District of Utah

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 3: 06
DISTRICT OF UTAH
BY: DEPUTY CLERK

UNITED STATES OF AMERICA
V.
Kenneth L. Weeks

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:05CR000240-001
USM Number: 07889-081
Walter F. Bugden
Defendant's Attorney

Date of Original Judgment: 8/30/2006
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ☑ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☑ pleaded guilty to count(s) 1 of the Indictment
- ☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
- ☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 1348	Securities Fraud		1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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.

8/25/2006
Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell — U.S. District Judge
Name of Judge — Title of Judge

9-6-2007
Date

DEFENDANT: Kenneth L. Weeks
CASE NUMBER: DUTX 2:05CR000240-001

IMPRISONMENT

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

7 Months, which shall run consecutive with Sentence imposed in Case No. DUTX 2:98CR000278-007 TC

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

The Court recommends to the BOP that the defendant serve his sentence at FCI Morgantown, West Virginia.

☐ 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 10/6/2006 .

☐ 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: Kenneth L. Weeks
CASE NUMBER: DUTX 2:05CR000240-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of

60 Months which shall run concurrent with Supervised Release term imposed in case DUTX 2:98CR000278-007 TC

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 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, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

DEFENDANT: Kenneth L. Weeks
CASE NUMBER: DUTX 2:05CR000240-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time, verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the USPO.

2. The defendant shall inform any employer or prospective employer of his current convictions and supervision status.

3. The defendant shall abide by the following occupational restrictions:

   A) The defendant shall not have direct or indirect control over the assets or funds of others,
   B) The defendant shall not be involved in the promotion, sale or solicitation of stocks or investment instruments,
   C) The defendant shall not be self-employed.

4. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with the established payment schedule and obtains the approval of the USPO.

5. The defendant shall provide the probation officer access to all requested financial information.

DEFENDANT: Kenneth L. Weeks
CASE NUMBER: DUTX 2:05CR000240-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$	$	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Kenneth L. Weeks
CASE NUMBER: DUTX 2:05CR000240-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

The Statement of Reasons filed with the original J&C has not been altered and so will not be re-submitted with this amended J&C

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 5: 03
DISTRICT OF UTAH
DEPUTY CLERK

Central District of Utah

UNITED STATES OF AMERICA
V.
Scott Thomas Lesser

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX205CR000352-001

USM Number: 12702-081

Manny Garcia
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 841(a)(1)	Possession of 50 Grams or More of Methamphetamine (Actual) With Intent to Distribute		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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.

9/5/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

9/6/06
Date

DEFENDANT: Scott Thomas Lesser
CASE NUMBER: DUTX205CR000352-001

IMPRISONMENT

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

81 months

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

Drug Abuse Treatment and placement as close to the Victorville, Ca. facility as possible to facilitate family visitation.

☑ 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: Scott Thomas Lesser
CASE NUMBER: DUTX205CR000352-001

SUPERVISED RELEASE

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

60 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 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: Scott Thomas Lesser
CASE NUMBER: DUTX205CR000352-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time $115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive 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 copayment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.

2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Scott Thomas Lesser
CASE NUMBER: DUTX205CR000352-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Scott Thomas Lesser
CASE NUMBER: DUTX205CR000352-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

DAVID V. FINLAYSON (6540)
ATTORNEY FOR DEFENDANT
43 East 400 South
Salt Lake City, Utah 84lll
Telephone: (801) 220-0700
Facsimile: (801) 364-3232

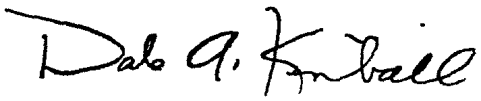
IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	**EX PARTE SEALED ORDER FOR FUNDS TO RETAIN EXPERT NEUROPSYCHOLOGIST**
Plaintiff,	:	
v.	:	
JEROMY JACKSON,	:	Case No. 2:05 CR 639 DAK
Defendant.	:	Honorable Dale A. Kimball

Based upon the ex parte motion of counsel and good cause appearing therefor, this Court hereby authorizes the defense to retain neuropsychologist, Dr. Linda Gummow to conduct neuropsychological testing and mental health assessment of the defendant. The Court finds that payment in excess of the statutory cap of $1,000 is "necessary to provide fair compensation for services of an unusual character or duration. . . . 18 U.S.C. § 3006A(e)(3). The Court therefor authorizes payment of up to $3,000 for Dr. Gummow's services.

DATED this 7th day of September, 2006.



THE HONORABLE DALE A. KIMBALL
UNITED STATES DISTRICT COURT JUDGE

FILED
U.S. DISTRICT COURT

2006 SEP -6 P 1:45

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

SHARON PRESTON (7960)
Attorney for Defendant
716 East 4500 South, Suite N142
Salt Lake City, UT 84107
Telephone (801) 269-9541
Fax: (801) 269-9581

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

UNITED STATES OF AMERICA,	)	**ORDER**
Plaintiff,	)	
v.	)	
MARIO BOYD ROMERO,	)	**Case No. 2:05-CR-828 and Case No. 2:03-CR-258**
Defendant.	)	

Based on Defendant's motion and good cause appearing; IT IS HEREBY ORDERED that the sentencing hearing is Continued and will resume on the 18 day Oct, 2006 at 3:00 a.m./p.m.

DATED this 6 day of ~~August~~ Sept, 2006.

BY THE COURT:

Dee Benson

JUDGE DEE BENSON
US District Court

AO 245B (Rev. 06/05) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central District of Utah

UNITED STATES OF AMERICA
V.
MICHAEL E. BRANNON

JUDGMENT IN A CRIMINAL CASE

2006 SEP -6 P 5: 03

DISTRICT OF UTAH

Case Number: DUTX205CR000886-001

BY: DEPUTY CLERK

USM Number: 13286-081

Kristen Angelos
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) One of the Indictment

☐ pleaded *nolo contendere to count(s)* which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 922(g)(3)	Drug User in Possession of Firearms and Ammunition		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

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.

8/30/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

9/6/06
Date

DEFENDANT: MICHAEL E. BRANNON
CASE NUMBER: DUTX205CR000886-001

IMPRISONMENT

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

12 months and 1 day

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

Placement in a facility as close to Utah as possible to facilitate family visitation and drug abuse treatment

☐ 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 10/2/2006.

☐ 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: MICHAEL E. BRANNON
CASE NUMBER: DUTX205CR000886-001

SUPERVISED RELEASE

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

24 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 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: MICHAEL E. BRANNON
CASE NUMBER: DUTX205CR000886-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

2. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time $115 fee to partially defer the costs of collection and testing.

3. The defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.

4. The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.

DEFENDANT: MICHAEL E. BRANNON
CASE NUMBER: DUTX205CR000886-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS $ 0.00 $ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ *The court determined that the defendant does not have the ability to pay interest and it is ordered that:*

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ *restitution is modified as follows:*

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MICHAEL E. BRANNON
CASE NUMBER: DUTX205CR000886-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:

See Attached Judgment of Forfeiture

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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

UNITED STATES OF AMERICA, Plaintiff, vs. MICHAEL BRANNON, Defendant.	Case #: 2:05CR00886-PGC JUDGMENT OF FORFEITURE JUDGE: PAUL G. CASSELL

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 Michael Brannon 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)(3), including but not limited to:

- Winchester Shotgun, Serial # L2851115
- Glenfield .22 caliber Rifle, Serial #26576188
- Savage Arms .22 caliber Rifle, Serial # 92308
- Springfield .22 caliber Rifle, Serial # Unknown
- Amadeo Rossi 20 gauge shotgun, Serial # Unknown

2. The Court has determined that based on a guilty plea of unlawful user of controlled substances in possession of firearms, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

IT IS FURTHER ORDERED:

3. Pursuant to Fed. R. Crim. P. 32.2(b)(3), the Preliminary Order of Forfeiture is made final as to the defendant and the Judgment of Forfeiture shall be made part of the sentence and included in the judgment.

4. Any petition filed by a third party asserting an interest in the subject 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.

5. 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.

6. 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.

7. 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 5th day of September, 2006.

BY THE COURT:

PAUL G. CASSELL, Judge
United States District Court

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

AO 245B (Rev. 06/05) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT
2006 SEP -6 A 10: 51
DISTRICT OF UTAH
DEPUTY CLERK

Central District of Utah

UNITED STATES OF AMERICA
V.
Gerald Glenn Bell

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:05CR000888-001

USM Number: 07904-081

Jamie Zenger
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) I-Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18USC§922(g)(1)	Felon in Possession of a Firearm by a Convicted Felon		I

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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.

8/31/2006
Date of Imposition of Judgment

Dee Benson
Signature of Judge

Dee Benson — U.S. District Judge
Name of Judge — Title of Judge

9-6-2006
Date

DEFENDANT: Gerald Glenn Bell
CASE NUMBER: DUTX 2:05CR000888-001

IMPRISONMENT

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

56 months. This sentence will run concurrent with the defendants state sentence.

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

The Court recommends a Federal Correctional Institution at Lompoc, California.

☑ 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: Gerald Glenn Bell
CASE NUMBER: DUTX 2:05CR000888-001

SUPERVISED RELEASE

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

24 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 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: Gerald Glenn Bell
CASE NUMBER: DUTX 2:05CR000888-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office.

2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

3.The defendant shall not be a member of a gang nor associate with any known gang member.

DEFENDANT: Gerald Glenn Bell
CASE NUMBER: DUTX 2:05CR000888-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Gerald Glenn Bell
CASE NUMBER: DUTX 2:05CR000888-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
U.S. DISTRICT COURT
2006 SEP -7 A 11: 39
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

Brad H. Bearnson (#3633)
Daniel K. Dygert (#8467)
BEARNSON & PECK, L.C.
Attorneys for Plaintiff
74 West 100 North
P.O. Box 675
Logan, Utah 84321
Telephone: (435)787-9700
Facsimile: (435)787-2455

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

JENNIFER HAVLAN, as parent and guardian for and on behalf of JEREMY HAVLAN, a minor, Plaintiff, vs. WORLD WIDE ASSOCIATION OF SPECIALTY PROGRAMS AND SCHOOLS, INC.; MAJESTIC RANCH ACADEMY, INC.; PEART RANCH, LLC; SEAN E. COOMBS; and JOHN DOES I - X, Defendants.	**ENTRY OF DEFAULT** Civil No. 2:05-CV-364 Judge: Benson Magistrate: Brooke Wells
MAJESTIC RANCH ACADEMY, INC., Third Party Plaintiff, vs. JENNIFER HAVLAN, Third Party Defendant.	

Defendant SEAN E. COOMBS having been regularly served with process, and having failed to appear and answer the Plaintiff's Complaint, and the time allowed by law for answering having expired, the default of Defendant SEAN E. COOMBS in the premises, is hereby duly entered according to Rule 55(a), Fed.R.Civ.P.

DATED this 7th day of September 2006.

BY THE COURT:

MARKUS B. ZIMMER

by: Laurie Gill Yoak

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

CHASE HOME FINANCE, LLC, a Delaware Limited Liability Company, Plaintiff, vs. ATTORNEYS' TITLE INSURANCE FUND, a Florida business trust; and ATTORNEYS' TITLE INSURANCE FUND, INC., a Florida corporation, Defendants.	ORDER GRANTING MOTION TO EXTEND THE DUE DATE FOR PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT Case No. 2:05-CV-00697

This matter is before the court on the plaintiff's Motion to Extend the Due Date for Plaintiff's Opposition to Defendants' Motion for Partial Summary Judgment. The plaintiff argues the court should grant its motion because the plaintiff needs additional time to conduct relevant discovery and because a motion to consolidate this case with *Albright et al. v. Attorneys' Title Guaranty Fund et al.*,[1] is pending in front of Judge Benson.

Upon reviewing the plaintiff's motion, the court agrees an extension is warranted.

[1]Case No. 2:03-cv-010517.

Considering the seeming similarity of the factual and legal issues presented in this case with those of *Albright*, the court believes an extension is necessary to enable Judge Benson to decide whether to consolidate the cases. Additionally, the plaintiff has made a good showing that, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure, the court should order a continuance to permit further discovery. The discovery in this case is in its infancy. The defendant moved for partial summary judgment less than three months after the plaintiff filed its Amended Complaint.[2] Additionally, in accordance with the requirements outlined in *Burke v. Utah Transit Authority*,[3] the plaintiff has specifically listed the probable information not available to it at this time, as well as the steps necessary to obtain the information and way in which this probable information will likely affect the summary judgment motion.[4]

The court, therefore, GRANTS the plaintiff's motion for an extension of time in which to respond to the defendants' motion for summary judgment [#33] until Judge Benson has determined whether to consolidate this case with *Albright*. In the event Judge Benson does not consolidate this case with *Albright*, the plaintiff shall file its response to the partial summary judgment motion within thirty days of the date of Judge Benson's order denying consolidation.

DATED this 7th day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

---

[2]*See* Docket Nos. 23, 26.

[3]2006 U.S. App. LEXIS 22450, *26–27 (10th Cir. Sept. 1, 2006).

[4]*See* Affidavit of Chris R. Hogle in Support of Motion for Extension of Time, Docket No. 34, at ¶¶ 15–26.

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

DISABLED RIGHTS ACTION COMMITTEE, a Utah nonprofit corporation; and BARBARA TOOMER, Plaintiffs, vs. TROPHY HOMES, L.C, a Utah Limited Liability Company; DOES I-L; and ROE ENTITIES I-L, Defendants.	**ORDER GRANTING LEAVE TO FILE THIRD-PARTY COMPLAINT** Civil No. 2:05CV00737

This matter is before the court on defendant Trophy Homes' motion for leave to file a third-party complaint, pursuant to Rule 14 of the Federal Rules of Civil Procedure. Based upon the stipulation of the parties and for good cause appearing, the court GRANTS the defendant's motion [#17]. Trophy Homes has leave to file its proposed third-party complaint.

DATED this 7th day of September, 2006.

BY THE COURT:

Hon. Paul G. Cassell
United States District Court Judge

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

LANNY L. JOKERS, Plaintiff, vs. SUNNEY'S TROPICAL CHICKEN, LLC; DEL SOL INTERNATIONAL, LLC; RENE SORIANO; and DAVID PALMER, Defendants.	ORDER DENYING REQUEST TO STAY AS MOOT Case No. 2:05-CV-00750 PGC

This matter is before the court on defendant Rene Soriano's request to stay and the court's July 31, 2006 order to show cause. Mr. Soriano filed pro se a notice of an automatic stay due to bankruptcy proceeding (#4). Mr. Soriano, however, then filed a Discharge of Debtor dated January 12, 2006. Concerned that the bankruptcy proceeding had terminated, the court issued the order to show cause directing the parties to explain why this matter should not proceed as to Mr. Soriano.

Mr. Soriano responded that his request for a stay should be turned into a permanent injunction due to the discharge.[1] Plaintiff Lanny Jokers did not respond to the order to show cause.

Because of the termination of bankruptcy proceedings, Mr. Soriano's request for a stay of this matter based upon the automatic stay is moot. Based upon the materials filed by Mr. Soriano, however, this court cannot determine whether any debt Mr. Jokers claims Mr. Soriano is owed in this action was discharged in the bankruptcy proceeding. The court, therefore, cannot determine whether it may properly issue a permanent injunction.

Accordingly, the court hereby ORDERS that the request for a stay (#4) is DENIED AS MOOT. The court further ORDERS that on or before September 26, 2006, Mr. Soriano shall file with the court a memorandum supported by documentation showing that the discharge entitles him to a permanent injunction in this case. Mr. Jokers shall file any response on or before October 11, 2006. The parties are advised that the failure to respond to this order may result in an order in favor of the other party.

SO ORDERED.

DATED this 7th day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

[1] *See* 11 U.S.C. § 524.

FILED
U.S. DISTRICT COURT
2006 SEP -7 A 10: 16
DISTRICT OF UTAH
BY: DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Megan Litster, et al.
Plaintiffs

ORDER FOR PRO HAC VICE ADMISSION

v.

Janssen Pharmaceutica Products, LP, et al.
Defendants : Case Number 2:05-cv-1077 TS

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of D.U. Civ R 83-1.1(d), the motion for the admission pro hac vice of Michaels C. Zellers in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 7th day of September, 2006

T. Stewart
U.S. District Judge

UNITED STATES DISTRICT COURT

Central District of Utah

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 5: 03
DISTRICT OF UTAH
BY: DEPUTY CLERK

UNITED STATES OF AMERICA
V.
RAFAEL SOLIS-MEDINA

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000019-004

USM Number: 13214-081

Robin K. Ljungberg
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 841(a)(1)	Possession of 500 Grams or More of a Mixture or Substance Containing Methamphetamine With Intent to Distribute		

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ *Count(s)* _____ ☐ *is* ☐ *are dismissed on the motion of the United States.*

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.

9/5/2006
Date of Imposition of Judgment

Signature of Judge

Paul Cassell — US District Judge
Name of Judge — Title of Judge

9/6/06
Date

DEFENDANT: RAFAEL SOLIS-MEDINA
CASE NUMBER: DUTX206CR000019-004

IMPRISONMENT

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

120 months

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

that defendant serve in Lompoc, Terminal Island, or as close to San Diego, CA as possible for family visitation.

☑ 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: RAFAEL SOLIS-MEDINA
CASE NUMBER: DUTX206CR000019-004

SUPERVISED RELEASE

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

60 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 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: RAFAEL SOLIS-MEDINA
CASE NUMBER: DUTX206CR000019-004

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he/she is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: RAFAEL SOLIS-MEDINA
CASE NUMBER: DUTX206CR000019-004

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: RAFAEL SOLIS-MEDINA
CASE NUMBER: DUTX206CR000019-004

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
U.S. DISTRICT COURT

2006 SEP -7 A 10: 17

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DANA GORRA and TEXMO OIL COMPANY JOBBERS, INC., an Arizona corporation, Defendants.	ORDER CONTINUING MOTION HEARING Case No. 2:06CR-027TS

Based upon motion of the defendants and good cause appearing,

IT IS HEREBY ORDERED that the hearing on defendants' Motion to Sever scheduled for September 28, 2006, is stricken and the matter is reset for hearing on the 29th day of Sept 2006, at 11:00 am

DATED this 6 day of September 2006.

BY THE COURT:

TED STEWART
U.S. District Court Judge

FILED
U.S. DISTRICT COURT
2006 SEP -7 A 10: 29
DISTRICT OF UTAH
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	2:05 CR 32 DB
Plaintiff,	:	ORDER
vs.	:	
TODD ALLEN EVERSEN, et. al.	:	
Defendants.	:	Judge Dee Benson

Based upon the review of the pro se motion filed by defendant Todd Allen Eversen, the position of the government relative to continuance of the trial, the governments motion to continue trial, and the motion to continue trial submitted by defendant Roger Hansen, the court makes the following order:

The court finds that the trial, currently scheduled to begin on September 11, 2006, be continued for the following reasons:

1. The Court needs adequate time to address the pro se motion for new counsel submitted by defendant Todd Allen Eversen;
2. Defendant, Roger Hansen, requires additional time in which to locate key witnesses and obtain additional discovery;
3. Defendant, Roger Hansen, has not had adequate time to interview co-defendants who have pled guilty;
4. This case is complex in nature and requires that defense counsel be adequately

prepared for trial;

5. Counsel for the government is the only Assistant United States Attorney who is familiar with the circumstances of this case and will be unavailable for the beginning of trial on September 11, 2006;

6. Failure to grant a continuance of the trial would likely result in a miscarriage of justice and deny both defendants and the government continuity of counsel;

7. The ends of justice served by a continuance outweigh the best interests of the public and the defendants in a speedy trial.

Based upon the foregoing, the Court HEREBY ORDERS:

1 The trial, scheduled to begin September 11, 2006, be continued to November 13, 2006.

The Court further ORDERS that:

1. The pro se motion filed by defendant Todd Allen Eversen be schedule for hearing before the Court on Sept 13, 2006; @ 1:00 p.m.

2. Pursuant to 18 U.S.C. § 3161(h)(1)(F); (8)(A); (8)(B)(ii), and (iv); all time from the filing of defendant Todd Allen Eversen's pro se motion for new counsel up to and including the date of trial be excluded from the calculation of the Speedy Trial Act.

The ends of justice served by a continuance outweigh the best interests of the public and the defendants in a speedy trial;

DATED this 6 day of September, 2006.

BY THE COURT:

DEE BENSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

2006 SEP -6 P 4: 54

DISTRICT OF UTAH
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	ORDER OF RECUSAL
vs.	:	
CHAD L. MERICA,	:	Case No. 2:06-CR-00055 PGC
Defendant.	:	

I recuse myself in this case, and ask that the appropriate assignment card equalization be drawn by the clerk's office.

DATED this 6th day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

Judge Dee Benson
DECK TYPE: Criminal
DATE STAMP: 09/06/2006 @ 15:28:12
CASE NUMBER: 2:06CR00055 DB

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

UNITED STATES OF AMERICA, Plaintiff, vs. RAMIRO ESQUIVEL, Defendant.	ORDER AND MEMORANDUM DECISION Case No. 2:06 CR 231

Defendant Ramiro Esquivel seeks to suppress evidence obtained during the execution of a search warrant. Mr. Esquivel claims that the affidavit submitted in support of the search warrant omitted material information, the presence of which would have altered the magistrate's conclusion that the warrant was supported by probable cause. Mr. Esquivel requests an evidentiary hearing under Franks v. Delaware, 438 U.S. 154 (1978), at which the sufficiency of the affidavit can be examined more thoroughly. No hearing is necessary, however, because even if the omitted information identified by Mr. Esquivel had been included in the affidavit, probable cause would still justify the issuance of the warrant.

Background

After reviewing an affidavit submitted by Detective Randy S. Chandler, a Utah state court judge issued a warrant authorizing the search of a residence in Magna, Utah. In his affidavit, Detective Chandler first outlined his training and experience in matters relating to drug

investigation and interdiction before turning to the facts that he claimed justified a search of the Magna residence.

Detective Chandler represented in his affidavit that, about two months earlier, police had been contacted by an anonymous informant claiming that there was short-term traffic at the Magna home. According to the informant, individuals at the residence were passing out baggies containing an unknown substance. Police later received another anonymous complaint making a nearly identical allegation. A little over a month later, police received yet another anonymous call. The caller told police that he had a son that was buying drugs from the Magna residence form an individual named Benji. The caller stated that Benji carried large amounts of cash on his person.

In addition to information related to the anonymous calls, Detective Chandler, in his affidavit, detailed the results of an interview conducted by the Utah Division of Child and Family Services with a seven-year-old boy who was living in the Magna residence. The child told the interviewer that a man named "Candy" was living in the home. The child stated that he had watched Candy cut white powder on a table in the home and then place the powder into bags. During the interview, the child indicated that he had witnessed Candy using a scale when cutting the white powder. The child also informed the interviewer that he had seen two pipes in the home. One of the pipes was described as a colorful glass pipe about one foot tall. The child described the other pipe as smaller, and containing a white and brown substance.

Based on those facts, the reviewing state court judge determined that probable cause supported the issuance of a search warrant. But Mr. Esquivel maintains that Detective Chandler omitted material information from his affidavit. Specifically, Mr. Esquivel argues that Detective Chandler had already followed up on the anonymous phone calls and had not uncovered any

information supporting further police action.

Mr. Esquivel, in support of his contention attaches two police reports that detail Detective Chandler's investigation of the final two anonymous phone calls. According to those reports, Detective Chandler visited the Magna residence after the second complaint about the passing of baggies on the residence. Once there, he spoke with Maria Lopez and Mr. Esquivel who lived at the residence. While speaking with them, he observed children passing baggies filled with chips and candy. After speaking with Ms. Lopez and Mr. Esquivel for a short time, Detective Chandler left the residence without taking any further action.

After receiving the complaint referencing Benji, Detective Chandler's police report indicates that he contacted Ms. Lopez, Benji's mother, at the Magna residence. Ms. Lopez told Detective Chandler that she was separated from her husband and that her husband had previously made allegations implicating Benji in drug activity in an effort to antagonize her. Detective Chandler spoke to Benji when he later returned home. Benji denied selling drugs and echoed Ms. Lopez's sentiment that her estranged husband had previously made similar allegations. The record also indicates that before Detective Chandler submitted his affidavit, he was aware that a search of Benji's locker at school had not turned up any evidence of drug-related activity.

Finally, Mr. Esquivel states that Detective Chandler was aware that the seven-year-old child interviewed by DCFS had a history of pitting his parents, Ms. Lopez and her estranged husband, against one another. Detective Chandler did not include any information about his follow-up investigation into these matters, confining his affidavit to the tips and allegations the police had received that indicated that drug-related activity was occurring at the Magna home.

Analysis

There is a presumption of validity that attaches to affidavits supporting a search warrant.

United States v. Barrera, 843 F.2d 1576, 1579 (10th Cir 1988). To challenge the probable cause finding made by a judge in support of a search warrant by claiming that there were false statements in the affidavit supporting the warrant, a defendant must make a substantial preliminary showing that: (1) the affidavit contains intentional or reckless false statements; and (2) if purged of its falsities, the affidavit would not be sufficient to support a finding of probable cause. United States v. Kennedy, 131 F.3d 1371, 1376 (10th Cir. 1997) (citing Franks, 438 U.S. at155-56). The standard announced in Franks, "likewise applies to intentional or reckless omissions of material facts, which, if included, would vitiate probable cause." United States v. Basham, 268 F.3d 1199, 1204 (10th Cir. 2001) (citations omitted).

Omitted information is only "material" if it is "so probative as to negate probable cause" when revealed at the suppression hearing. Stewart v. Donges, 915 F.2d 572, 581-83 (10th Cir. 1990) (citation omitted). In order to determine if an affidavit sufficiently establishes probable cause regardless of omissions, the reviewing court should "delete false or misleading statements and insert the omitted truths." Id. at 582 n.13. If the inclusion of the omitted information "would not have altered the . . . judge's decision to authorize the search, then the fruits of the challenged search need not be suppressed." United States v. Avery, 295 F.3d 1158, 1167 (10th Cir. 2002) (citations omitted). While a preliminary showing that an affidavit contains material omissions may entitle a defendant to an evidentiary hearing, there is no need for an evidentiary hearing here because all of the omissions at issue are known and stated in Mr. Esquivel's brief. To mandate an evidentiary hearing, the challenger's attack "must be more than conclusory and must be supported by more than a mere desire to cross-examine." United States v. Ross, 920 F.2d 1530, 1533 (10th Cir.1990), (citing Franks at154).

In this case, Mr. Esquivel does not allege that the statements in Detective Chandler's

affidavit were intentionally or recklessly false. Rather, Mr. Esquivel claims that Detective Chandler omitted material information from his affidavit by failing to inform the state court judge that he had followed up on some of the anonymous tips detailed in the affidavit. In essence, Mr. Esquivel claims that had Detective Chandler included information regarding his follow-up investigation in his affidavit, the state court judge could not have concluded that probable cause existed. Accordingly, the question presented by Mr. Esquivel's motion to suppress is whether Detective Chandler's affidavit establishes probable cause justifying a search of the Magna residence if that affidavit is augmented with the omitted information identified by Mr. Esquivel.

"In determining whether an affidavit contains sufficient information to support a finding of probable cause for the issuance of a search warrant, . . . the issuing judge or magistrate[] must consider the totality of the circumstances and determine whether the affidavit established the probability that evidence of criminal activity would be located in the desired search area." United States v. Wittgenstein, 163 F.3d 1164, 1172 (10th Cir. 1998).

The affidavit in this case, even with the inclusion of the omissions identified by Mr. Esquivel, meets the probable cause standard. Detective Chandler received two anonymous tips about short-term traffic at the Magna residence that also indicated that baggies were being distributed at the home. Later, he received another tip directly alleging that a resident of the Magna home was dealing drugs. Finally, Detective Chandler learned from a resident of the home, although admittedly a young child, that significant drug activity was occurring within the residence. Even if Detective Chandler had included the information identified by Mr. Esquivel as material, the inclusion of that information would not have disturbed the core facts supporting the state court judge's probable cause determination.

It is true that Detective Chandler's follow-up investigation did not reveal any further evidence of drug-related activity. It is also true that Detective Chandler uncovered innocent conduct that may have explained some of the suspicious behavior complained of in the anonymous phone calls. Detective Chandler also learned that Ms. Lopez's estranged husband was apparently motivated to cause her strife. But these facts do not change the reality that the Magna residence was repeatedly being implicated in drug-related activity. In fact, as time went on, the information Detective Chandler received in this regard grew more and more specific.

The possibility that facts submitted in support of search warrant affidavit might be explained by innocent activity does not preclude a finding of probable cause. See United States v. Fama, 758 F.2d 834, 838 (2d Cir. 1985) (even though an innocent explanation might be consistent with facts alleged in a search warrant affidavit, those facts may still support a probable cause determination); see also United States v. Martinson, 811 F. Supp. 1097, 1105 (E.D. Pa. 1993) ("To provide probable cause . . . a complaint for a search warrant 'need only allege specific facts establishing a reasonable probability that the items sought are likely to be at the locations designated; the [complaint] need not also negate every argument that can be asserted against that probability.'" (quoting United States v. Rambis, 686 F.2d 620, 623 (7th Cir. 1982)); United States v. Badalmenti, No. S.S. 84 Cr. 236 (PNL), 1985 WL 2572, at *5 (S.D.N.Y. Sept. 19, 1985) ("The attesting agents' belief that these actions were part of a pattern of concealed narcotics dealing and money laundering, was reasonable, even if it should turn out as to any or all the defendants that an innocent explanation was the correct one.").

Further, although Detective Chandler was aware that Ms. Lopez's estranged husband may have been motivated to make allegations that would cause her trouble, Detective Chandler did not know if any of the tips actually originated from Ms. Lopez's husband. Considering this

information a material omission would preclude law enforcement's reliance on anonymous tips in situations where investigators are aware that there is an individual or individuals that bear ill-will toward the suspect.

Finally, although a substantial portion of the information contained in the affidavit was obtained from a seven-year-old boy, the age of the informant does not necessarily preclude reliance on his statements. See Easton v. City of Boulder, 776 F.2d 1441, 1450 (10th Cir. 1985) ("[E]ven if [the children's testimony] was inadmissible in court, perhaps because of an inability to understand the oath, or for whatever reason, their statements could nonetheless be used as a basis for a probable cause determination to support the issuance of a warrant."). Here, the child provided dramatically detailed testimony about the presence of drugs in the residence. While Detective Chandler was presumably aware that the child had a history of pitting his parents against one another, that fact does not reduce the probative value of the child's statements to such an extent that those statements cannot be relied upon to make a probable cause determination.

Without a doubt, Detective Chandler was aware of relevant information pertaining to the Magna residence that he did not include in his affidavit. But while the facts that Detective Chandler omitted may have been relevant to the state court judge's probable cause analysis, those facts were not material to that analysis. The search warrant in this case was supported by repeated tips connecting the Magna residence to drug use and trafficking. Further, Detective Chandler received information from an actual resident of the home who observed facts consistent with drug use and distribution. The omitted information identified by Mr. Esquivel does not negate the reality that the affidavit contained sufficient facts to establish the probability that contraband would be found within the Magna residence.

Conclusion

The affidavit submitted by Detective Chandler in support of his request for a search warrant established probable cause to search the Magna residence. Even when the omitted material identified by Mr. Esquivel is included in that affidavit, the core facts still justify the state court judge's decision to issue a search warrant covering the residence. Therefore, Mr. Esquivel's Motion to Suppress (dkt. #12) is DENIED.

DATED this 7th day of September, 2006.

BY THE COURT:

TENA CAMPBELL
United States District Judge

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 1:45
DISTRICT OF UTAH
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. PAMELA ACKERMAN, Defendant.	**ORDER CONTINUING TRIAL** Case No. 2:06CR240 DB Honorable Dee Benson

Based upon the motion of the Defendant, Pamela Ackerman, through her attorney of record, Robert L. Steele, the Court finds as follows:

1. That the parties need additional time to negotiate a resolution of this matter;

2. That the failure to continue trial would deny counsel for Defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence; and

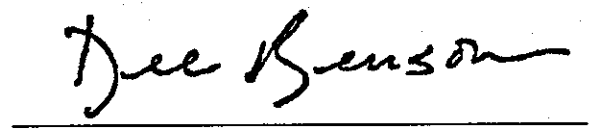
3. That the ends of justice served by continuing the trial in this matter outweigh the interest of the public and Defendant in a speedy trial.

IT IS HEREBY ORDERED that the 3-day trial date currently set for September 5, 2006, in the above-entitled matter is continued until the 6 day of Nov, 2006, at 8:30 a.m.

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3161(h)(8)(A), that the time between September 5, 2006, and the new trial date listed above is excluded from the computation of time within which the trial must commence pursuant to the Speedy Trial Act.

DATED this 6 day of September, 2006.

BY THE COURT:



HONORABLE DEE BENSON
United States District Court Judge

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 2: 28
DISTRICT OF UTAH
BY: DEPUTY CLERK

Central District of Utah

UNITED STATES OF AMERICA
V.
DEMITRIO NUNEZ-CARANZA

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000262-001

USM Number: 13574-081

Robert Hunt
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 *of this judgment. The sentence is imposed pursuant to* the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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.

9/1/2006
Date of Imposition of Judgment

Dale A. Kimball
Signature of Judge

Dale A. Kimball — US District Judge
Name of Judge — Title of Judge

September 6, 2006
Date

DEFENDANT: DEMITRIO NUNEZ-CARANZA
CASE NUMBER: DUTX206CR000262-001

IMPRISONMENT

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

8 months

☐ 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: DEMITRIO NUNEZ-CARANZA
CASE NUMBER: DUTX206CR000262-001

SUPERVISED RELEASE

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

12 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 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: DEMITRIO NUNEZ-CARANZA
CASE NUMBER: DUTX206CR000262-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: DEMITRIO NUNEZ-CARANZA
CASE NUMBER: DUTX206CR000262-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DEMITRIO NUNEZ-CARANZA
CASE NUMBER: DUTX206CR000262-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
AUG 31 2006
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ISMAEL BERNARDINO LOPEZ, Defendant.	)))))))))	Case No. 2:06CR 443 TC **CONSENT TO ENTRY OF PLEA OF GUILTY BEFORE THE MAGISTRATE JUDGE AND ORDER OF REFERENCE**

Pursuant to 28 U.S.C. § 636(b)(3), the defendant, ISMAEL BERNARDINO LOPEZ, after consultation and agreement with counsel, consents to United States Magistrate Judge Brooke C. Wells accepting defendant's plea of guilty and to the Magistrate Judge conducting proceedings pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The defendant also acknowledges and understands that sentencing on his plea of guilty will be before the assigned District Judge after a pre-sentence investigation and report, and compliance with Fed.R.Crim.P. 32.

The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and

accepting the defendant's plea of guilty as indicated above, pursuant to such proceedings.

DATED this 31st day of August, 2006.

Ismael Bernardino
Defendant

Attorney for Defendant

Assistant United States Attorney

ORDER OF REFERENCE

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

IT IS HEREBY ORDERED that United States Magistrate Judge Brooke C. Wells shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 29th day of August, 2006

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

FILED
U.S. DISTRICT COURT

2006 SEP -1 P 12: 25

DISTRICT OF UTAH

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
Fax: (801) 364-6026

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

UNITED STATES OF AMERICA, Plaintiff, vs. WILLIAM MATHIPANNHA, Defendant.	**ORDER ALLOWING WITHDRAWAL AS COUNSEL** Case No. 2:06-CR-00460TC Judge Samuel Alba

Based upon Motion of counsel and good cause appearing therefore;

IT IS HEREBY ORDERED that Ronald J.Yengich and the law firm of YENGICH, RICH & XAIZ are hereby allowed to withdraw from representation of the Defendant, William Mathipannha, in connection with the above-entitled matter.

SIGNED BY MY HAND this 28th day of August, 2006.

SAMUEL ALBA
United Stated District Court Judge

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
AUG 31 2006
MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. FELICIANO GONZALEZ-CUEVAS, Defendant.	)))))))))	Case No. 2:06CR 522 TC **CONSENT TO ENTRY OF PLEA OF GUILTY BEFORE THE MAGISTRATE JUDGE AND ORDER OF REFERENCE**

Pursuant to 28 U.S.C. § 636(b)(3), the defendant, FELICIANO GONZALEZ-CUEVAS, after consultation and agreement with counsel, consents to United States Magistrate Judge Brooke C. Wells accepting defendant's plea of guilty and to the Magistrate Judge conducting proceedings pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The defendant also acknowledges and understands that sentencing on his plea of guilty will be before the assigned District Judge after a pre-sentence investigation and report, and compliance with Fed.R.Crim.P. 32.

The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and

accepting the defendant's plea of guilty as indicated above, pursuant to such proceedings.

DATED this 31 day of August, 2006.

Feliciano Gonzalez
Defendant

Attorney for Defendant

Assistant United States Attorney

ORDER OF REFERENCE

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

IT IS HEREBY ORDERED that United States Magistrate Judge Brooke C. Wells shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 29th day of August, 2006

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

United States District Court

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
SEP 05 2006
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

NORTHERN DISTRICT OF UTAH

UNITED STATES OF AMERICA
v.

ORDER SETTING CONDITIONS OF RELEASE

JOHN HARRIS

Case Number: **2:06-CR-566 TC**

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) United States District Court
PLACE

350 South Main on **As Directed**
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) maintain or 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: Defendant must reside at the CCCC under 24 hours supervision and abide by all rules and regulations of such.

( ) (d) avoid all contact with the following named 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 excessive use 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:

( ) (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) defendant to abide by all state supervision requirements

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 of 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 tem 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.

John Harris
Signature of Defendant

Cornell
Address

SLC UT
City and State Telephone

Directions to the United States Marshal

(X) 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: 9/05/02

Signature of Judicial Officer

Chief Magistrate Judge Samuel Alba

Name and Title of Judicial Officer

MARY C. CORPORON #734
Attorney for Defendant, Michelle Wilcox
CORPORON, WILLIAMS & BRADFORD, P.C.
405 South Main Street, Suite #700
Salt Lake City, Utah 84111
Telephone: (801) 328-1162
Facsimile: (801) 328-9565

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

UNITED STATES OF AMERICA,	:	**ORDER CONTINUING TRIAL**
	:	
Plaintiff,	:	
	:	
-vs-	:	
	:	
CHARLES E. HOPE and MICHELLE DENISE WILCOX,	:	Case No. 2:06 CR 00571 DAK
	:	
	:	Judge Dale A. Kimball
Defendant.	:	Magistrate Judge Alba

BASED UPON the Defendant's Motion to Continue Trial and for good cause appearing;

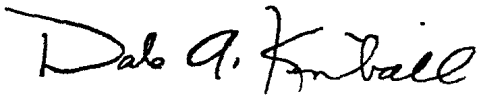
IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The trial presently scheduled to go forward in this case on October 30, 2006 is continued to December 13, 2006 at 8:30 a.m..

2. The time from this order until resolution of the pending defense motions is excluded under the Speedy Trial Act, due to the tolling of the Act by pending defense motions.

DATED this 7th day of September, 2006.

BY THE COURT:



DALE A. KIMBALL
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

THEODORE L. HANSEN; INTERSTATE ENERGY CORP.; TRIPLE M, L.L.C., **Plaintiffs,** **vs.** **NATIVE AMERICAN REFINERY COMPANY aka NATIVE AMERICAN REFINERY COMPANY, INC.; PT. BANK NEGARA INDONESIA (PERSERO) TBK; EKO BUDIWIYONO; DRS. FIRMANSYAH; GATOT SISMOYO; RACHMAT WIRIATMAJA; YOPIE LAMONGE; MAX NIODE; LILLES HANDAYANI; UTTI KARIAYAM; MUBARIK AS DJATIMUDA; STEVE O.Z. FINKEL-MINKIN aka STEVE FINKEL; ROBERT McKEE; FRED NEWCOMB; NEWCOMB & COMPANY; AND DOES 1-20,** **Defendants.**	**ORDER** **Case No. 2:06-cv-00109-PGC-PMW** **Judge Paul G. Cassell** **Magistrate Judge Paul M. Warner**

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Paul G. Cassell pursuant to 28 U.S.C. § 636(b)(1)(A). Before the court is Theodore L. Hansen, et al.'s ("Plaintiffs") motion for (1) leave to serve Steve O.Z. Finkel-Minkin aka Steve Finkel ("Finkel-Minkin") by publication and (2) an extension of time to serve Eko Budiwiyono, Drs. Firmansyah,

Gatot Sismoyo, Rachmat Wiriatmaja, Yopie Lamonge, Max Niode, Lilles Handayani, Utti Kariayam, and Mubarik As Djatimuda (collectively, the "Indonesian Defendants").[1]

I. Service by Publication

In relevant part, rule 4(e)(1) of the Federal Rules of Civil Procedure provides: "Unless otherwise provided by federal law, service upon an individual . . . may be effected in any judicial district of the United States . . . pursuant to the law of the state in which the district court is located . . . ." Fed. R. Civ. P. 4(e)(1). Accordingly, Plaintiffs are entitled to serve Finkel-Minkin pursuant to Utah law.

Rule 4(d)(4)(A) of the Utah Rules of Civil Procedure provides:

> Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service upon all of the individual parties is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process, the party seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication or by some other means. The supporting affidavit shall set forth the efforts made to identify, locate or serve the party to be served, or the circumstances which make it impracticable to serve all of the individual parties.

Utah R. Civ. P. 4(d)(4)(A).

The affidavits accompanying Plaintiffs' motion show that Plaintiffs have exercised due diligence in attempting to locate and serve Finkel-Minkin and that Plaintiffs have good cause to

[1] Docket no. 38.

believe that Finkel-Minkin is avoiding service of process. For these reasons, Plaintiffs' motion to serve Finkel-Minkin by publication is GRANTED.

Because the court is permitting Plaintiffs to serve Finkel-Minkin by publication, the court must adhere to rule 4(d)(4)(B) of the Utah Rules of Civil Procedure, which provides:

> If the motion is granted, the court shall order service of process by publication or by other means, provided that the means of notice employed shall be reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable. The court's order shall also specify the content of the process to be served and the event or events as of which service shall be deemed complete. Unless service is by publication, a copy of the court's order shall be served upon the defendant with the process specified by the court.

Utah R. Civ. P. 4(d)(4)(B).

Accordingly, the court orders that the notice published by Plaintiffs (the "Notice") "shall be reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable." *Id.* The content of the Notice, which Plaintiffs submitted to the court with their motion, shall be as follows:

30 DAY SUMMONS BY PUBLICATION
Civil No. 2:06CV00109
Judge: Paul G. Cassell
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THEODORE L. HANSEN; INTERSTATE ENERGY CORP.; TRIPLE M, L.L.C., Plaintiffs
v.
NATIVE AMERICAN REFINERY COMPANY, aka NATIVE AMERICAN REFINERY COMPANY, INC.; PT. BANK NEGARA INDONESIA (PERSERO) TBK; EKO BUDIWIYONO; DRS. FIRMANSYAH; GATOT SISMOYO; RACHMAT WIRIATMAJA; YOPIE LAMONGE; MAX NIODE; LILLES HANDAYANI; UTTI KARIAYAM; MUBARIK AS DJATIMUDA; STEVE O.Z. FINKEL-MINKIN, aka STEVE FINKEL; ROBERT MCKEE; FRED NEWCOMB; NEWCOMB & COMPANY; and DOES 1-20,

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH TO DEFENDANT STEVE O.Z. FINKEL-MINKIN, aka STEVE FINKEL:

Plaintiffs filed a First Amended Complaint with the Clerk of the above-entitled Court, 350 South Main Street, Salt Lake City, Utah 84101, seeking compensatory and punitive damages related to breach of contract, fraud, conspiracy, and other legal violations.

You are hereby summoned and required to file an answer in writing to the First Amended Complaint on record with the Clerk of the above-entitled Court and to serve upon or mail to David M. Wahlquist of Kirton & McConkie, Plaintiffs' attorneys, 60 E. South Temple #1800, Salt Lake City, Utah 84111, telephone: (801) 328-3600, a copy of said answer within thirty (30) days after the date of last publication of this Summons. If you fail to do so, judgment by default will be taken against you for the relief demanded in said First Amended Complaint, a copy of which can be inspected at said Court or at the office of Kirton & McConkie, Plaintiffs' attorneys.

Dated this _____ day of, 2006.

Kirton & McConkie
/s/ David M. Wahlquist
Attorneys for Plaintiffs

In addition, service upon Finkel-Minkin shall be deemed complete upon (1) publication of the Notice in a newspaper of general circulation in the county of Finkel-Minkin's last known address once a week for three weeks, together with Plaintiffs' filing with the court an affidavit of the publisher or printer of the newspaper, or that person's designated agent, showing publication and specifying the date of the first and last publications of the Notice; and (2) Plaintiffs mailing a copy of the Notice and the First Amended Complaint to Glen Grant, who Plaintiffs believe is able to contact Finkel-Minkin.

II. Extension of Time to Serve Indonesian Defendants

In a June 29, 2006 order, the court already granted Plaintiffs an extension of time for service of process and ordered that Plaintiffs were required to serve any named, unserved parties on or before August 22, 2006.[2] This notwithstanding, Plaintiffs assert that they have not yet been able to locate the Indonesian Defendants, but believe they will be able to do so during fact discovery. As a result, Plaintiffs request an additional extension of time to serve the Indonesian Defendants until ninety (90) days after fact discovery reveals their residences.

Although the court understands the potential difficulty in locating the Indonesian Defendants, the court is not willing to provide Plaintiffs with such an open-ended deadline for serving the Indonesian Defendants. The court is willing to grant Plaintiffs another extension of sixty (60) days to serve all named, unserved parties. Accordingly, Plaintiffs' motion for an extension of time to serve the Indonesian Defendants is GRANTED; however, Plaintiffs shall not

[2] Docket no. 20.

have the extension they requested, but instead shall have up to and including November 6, 2006, to serve any remaining named, unserved parties. Plaintiffs' failure to do so may result in dismissal of any remaining named, unserved parties.

DATED this 7th day of September, 2006.

BY THE COURT:

PAUL M. WARNER
United States Magistrate Judge

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OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

FILED
U.S. DISTRICT COURT
2006 SEP -6 A 10: 2
DISTRICT OF UTAH
BY: DEPUTY CLERK

J. David Nelson (USB No. 2385)
Robert D. Dahle (USB No. 4819)
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275 Battery Street, 16th Floor
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Attorneys for Plaintiff
INTERNATIONAL AUTOMATED SYSTEMS, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

INTERNATIONAL AUTOMATED SYSTEMS INC.; Plaintiff, vs. IBM; IBM CORPORATION; IBM PERSONAL COMPUTING DIVISION; LENOVO (UNITED STATES) INC.; LENOVO GROUP LTD; UPEK, INC.; and JOHN DOES 1-20; Defendants.	Case Number: 2:06CV0115 BSJ **[~~PROPOSE~~D] SCHEDULING ORDER AFTER CASE MANAGEMENT CONFERENCE** Hon. Bruce S. Jenkins

Pursuant to the schedule set by the Court at the hearing on July 20, 2006, the parties propose that the schedule set forth below be adopted and ordered by the Court.

Proposed Date	**Item**
Tuesday, August 1, 2006	The parties held a telephone conference pursuant to Fed. R. Civ. P. 26(f). In attendance were Jeffrey Miller, counsel for UPEK, Inc., and Bryan Kohm, counsel for International Automated Systems, Inc.
Tuesday, August 15, 2006	International Automated Systems, Inc. and UPEK, Inc. exchanged initial disclosures pursuant to Fed. R. Civ. P. 26(a).
Friday, September 1, 2006	Deadline for addition of new parties.
Monday, April 30, 2007	Deadline for completion of fact discovery.
Friday, June 15, 2007[1]	Deadline to file and serve opening expert reports on issues for which party bears burden of proof.
Wednesday, June 27, 2007	Deadline to file and serve dispositive motions.
Friday, July 13, 2007	Deadline to file and serve opening claim construction briefs.
Monday, July 16, 2007	Deadline to file and serve rebuttal expert reports.
Tuesday, July 17, 2007	Deadline for UPEK, Inc. and International Automated Systems, Inc. to meet and confer regarding draft pretrial order.
Friday, July 27, 2007	Deadline for International Automated Systems, Inc. to provide a draft pretrial order to UPEK, Inc.
Friday, July 27, 2007	Deadline for filing and service of any oppositions to any dispositive motions.
Monday, July 30, 2007	Deadline for filing and service of responsive claim construction briefs.
Tuesday, July 31, 2007	Deadline for completion of expert discovery.

[1] A discrepancy exists between the Minute Order entered by the Court on July 20, 2006 and the matters discussed during that conference on July 20. The Minute Order states that the date for expert discovery cutoff is June 15, 2007. However, the transcript of the scheduling conference indicates that June 15 was intended to be the deadline to file expert reports, not the deadline for expert discovery cutoff. The schedule above is based upon expert reports being filed on June 15, 2007 and expert discovery closing on July 31, 2007.

Proposed Date	Item
Friday, August 3, 2007	Deadline for UPEK, Inc. to provide comments to International Automated Systems, Inc. on the draft pretrial order.
Monday, August 6, 2007	Deadline for filing and service of any reply briefs regarding any dispositive motions.
Friday, August 10, 2007	Deadline to file and serve joint pretrial order.
August 15-17, 2007	Pretrial conference.

Pursuant to Fed. R. Civ. P. 26(f) and DUCivR 16-1(a), the parties have stated as follows:

Trial Counsel

For plaintiff International Automated Systems, Inc.:

J. David Nelson (USB No. 2385)
Robert D. Dahle (USB No. 4819)
NELSON, SNUFFER, DAHLE & POULSEN, P.C.
10885 South State Street
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(801) 576-1400

Darryl M. Woo (Admitted *Pro Hac Vice*)
Bryan A. Kohm (Admitted *Pro Hac Vice*)
FENWICK & WEST LLP
275 Battery Street, 16th Floor
San Francisco, CA 94111
Telephone: (415) 875-2300
Facsimile: (415) 281-1350

For defendant UPEK, Inc.:

Max D. Wheeler
Joseph P. Barrett
P. Matthew Cox
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ADR:

The parties have discussed the potential for resolution before trial.

Defendant UPEK, Inc. proposed to include in this stipulated Proposed Order a deadline for conducting a Court-ordered settlement conference pursuant to DUCivR 16-1, 16-3, to be held before the Court, a Court-appointed magistrate, or other Court appointee.

Plaintiff International Automated Systems, Inc. is of the view that a deadline for conducting a Court-ordered settlement conference is unnecessary, but has stated that it is willing to engage in settlement discussions if UPEK submitted a settlement proposal.

IT IS SO ORDERED.

Dated: 9/1, 2006

The Honorable Bruce S. Jenkins
United States Senior District Judge
District of Utah

APPROVED AS TO FORM:

Dated: August 31, 2006

FENWICK & WEST LLP

/s/ Darryl M. Woo
Darryl M. Woo

Attorneys for Plaintiff
INTERNATIONAL AUTOMATED SYSTEMS, INC.

Dated: August 30, 2006

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Jeffrey A. Miller
Jeffrey A. Miller

Attorneys for Defendant
UPEK, INC.

FILED
U.S. DISTRICT COURT

2006 SEP -6 P 2: 28

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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Bradford D. Myler (7089)
Attorney for Plaintiff
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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANDY LOSSI, Plaintiff, vs JO ANNE B. BARNHART, Commissioner of the Social Security Administration, Defendant.	))))))))))))	**CIVIL NO. 2:06-cv-146** **ORDER**

Based upon Plaintiff's Petition, Memorandum and Affidavit in Support EAJA Fees, and upon review of the record in the above referenced case; the Court now finds that the position of the United States was not substantially justified, that Plaintiff is the prevailing party, that plaintiff is eligible to receive an attorney fee award, and that the amount of requested Fees is reasonable. The court therefore orders that EAJA fees be paid to Plaintiff's lawyer in accordance with Plaintiff's petition, in the amount of $2,334.60. Payment shall be made to Plaintiff's lawyer on behalf of Plaintiff.

DATED this ~~5th~~ 6th day of September 2006.

UNITED STATES FEDERAL JUDGE

Presented by:

JAY BARNES (9874)
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

MARLA C. HALL, Plaintiff, vs. JO ANNE B. BARNHART, Commissioner of the Social Security Administration Defendant.	REVISED SCHEDULING ORDER Civil No. 2:06CV00194 Judge Dale A. Kimball

The court revises the scheduling order in the above captioned case as follows:

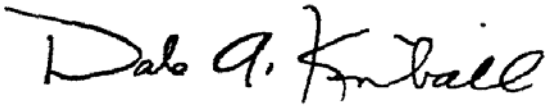
1. Plaintiff's motion for review of the Commissioner's decision and accompanying memorandum should be filed by October 12, 2006.

2. Defendant's memorandum in opposition should be filed by November 13, 2006.

3. Plaintiff may file a reply memorandum by November 27, 2006.

DATED this 7th day of September, 2006.

BY THE COURT



Honorable Dale A. Kimball

FILED
U.S. DISTRICT COURT
2006 SEP -7 P 3: 18
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

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

LEROY A. TRUJILLO, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	ORDER Case No. 2:06 CV 268 TC

Mr. Leroy A. Trujillo was convicted by a jury of one count of possession of a firearm by a convicted felon and one count of possession of ammunition by a convicted felon. Before trial, Mr. Trujillo filed a motion challenging the search of his home. The district court denied the motion.

Mr. Trujillo appealed the decision of the district court denying Mr. Trujillo's motion to suppress. The Tenth Circuit Court of Appeals affirmed the district court's decision. United States v. Trujillo, 404 F.3d 1238 (10th Cir. 2005).

Mr. Trujillo has now filed a petition under 28 U.S.C. § 2255. In his petition, he again challenges the validity of the search, raising essentially the same grounds raised in his direct appeal.

Because Mr. Trujillo had a "full and fair" opportunity to litigate his Fourth Amendment claim in pre-trial proceedings and through direct appeal, collateral review of his claim is barred.

United States v. Ishmael, 343 F.3d 741, 742 (5th Cir. 2003).

DATED this 7 day of September, 2006.

BY THE COURT:

TENA CAMPBELL
United States District Judge

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

REMOTEMDX, INC., Plaintiff, vs. STRATEGIC GROWTH INTERNATIONAL, INC., Defendant.	ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION Case No. 2:06cv00331

Defendant, Strategic Growth International, Inc., has filed a motion to dismiss for lack of personal jurisdiction or, in the alternative, a motion to transfer venue. Plaintiff RemoteMDx, Inc., opposes these motions. Having reviewed the pleadings, the court concludes oral argument would not be helpful. The court finds SGI is not subject to personal jurisdiction in this court because it has insufficient minimum contacts with Utah and the transaction in question does not have a sufficient nexus to Utah. The court, therefore, grants SGI's motion to dismiss for lack of personal jurisdiction.

BACKGROUND

For purposes of this motion, the court construes the facts in favor of the plaintiff,[1] and finds the following facts.

RemoteMDx, a Utah corporation with its place of business in Salt Lake City, sued SGI, a Delaware corporation with its place of business in New York, for breach of contract. SGI relies exclusively on referrals for its business — its does not solicit business. RemoteMDx is SGI's only client in Utah. The first contact between SGI and RemoteMDx occurred in early 2005, when Barry Pomerance and Robert Rubin, investors and consultants of RemoteMDx, solicited SGI by reaching out to SGI in New York. After this initial contact, Pomerance and Rubin arranged a meeting between RemoteMDx and SGI at SGI's New York offices. At the meeting, SGI learned RemoteMDx wished to retain SGI because of SGI's relationships with financial institutions and its associations with New York financial markets and professionals. Afterward, SGI communicated with RemoteMDx by telephone and written communications in an attempt to negotiate a contract. Although SGI sent a proposal to RemoteMDx, the parties did not enter into a contract at this time.

Subsequently, RemoteMDx met with SGI again at SGI's New York offices. On or about March 2, 2005, after this second meeting, David Derrick, RemoteMDx's chairperson and CEO negotiated and executed the contract in New York with SGI. The contract called for SGI to develop a financial relation strategy for RemoteMDx. The claim before the court revolves around the degree to which SGI fulfilled its obligations under the contract. It is undisputed that

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[1] *See Rambo v. Am. So. Ins. Co.*, 839 F.2d 1415, 1417 (10th Cir. 1988) (citing *Behagen v. Amateur Basketball Ass'n*, 744 F.2d 731, 733 (10th Cir. 1984)).

any performance SGI actually completed occurred in New York. For example, SGI arranged meetings with five companies in New York, planned an event celebrating the launch of RemoteMDx as a publicly traded company in New York, and facilitated RemoteMDx's board meeting in New York at SGI's offices. Further, press releases directed all potential and current investors of RemoteMDx to contact SGI in New York.

The only time an SGI representative visited Utah was for a single, overnight visit as a guest of RemoteMDx. It appears that this visit was as part of a social event, but RemoteMDx characterizes it as a "business trip" and the court will proceed on this assumption. SGI's president, Stanley Altschuler, made this trip. During the trip, he met with Alpine Securities, a Utah company. Although Alpine Securities ultimately invested in RemoteMDx, by RemoteMDx's own admission, this decision had nothing to do with SGI or the contact with Altschuler.

RemoteMDx brought this suit against SGI on April 20, 2006. On or about May 23, 2006, SGI sued RemoteMDx in New York to recover damages and unpaid fees under this same contract.

DISCUSSION

I. Standard of Review

RemoteMDx bears the burden of establishing personal jurisdiction over SGI, a nonresident third-party defendant it seeks to pursue in this court.[2] To establish jurisdiction, RemoteMDx must make a prima facie showing by demonstrating, via written evidence such as

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[2]*See OMI Holdings, Inc. v. Royal Ins. Co. of Can.*, 149 F.3d 1086, 1091 (10th Cir. 1998).

affidavits, facts that would support jurisdiction.[3] At this juncture, the court resolves all factual disputes in the plaintiff's favor.[4]

II. Specific Personal Jurisdiction

RemoteMDx does not contend SGI is subject to general personal jurisdiction in Utah, but alleges that the facts are sufficient to establish specific personal jurisdiction. Specific personal jurisdiction exists in a diversity action when a non-resident defendant purposefully establishes sufficient minimum contacts with the forum state, the cause of action arises out of these contacts, and jurisdiction is constitutionally reasonable.[5] Specific personal jurisdiction requires that (1) the defendant's acts implicate Utah's long-arm statute; (2) a nexus exist between the plaintiff's claims, the defendant's contacts, and the State of Utah; and (3) the application of Utah's long-arm statute meet federal due process requirements.[6] Utah's long-arm statute asserts jurisdiction to the extent allowed by the due process clause;[7] thus, the court begins by analyzing due process.

A. Minimum Contacts

First in the due process analysis, the court considers whether the defendant has sufficient minimum contacts with the forum state by evaluating the relationship between the defendant, the

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[3]*Id.* at 1091; *Rambo*, 839 F.2d at 1417.

[4]*Rambo*, 839 F.2d at 1417 (citing *Behagen*, 744 F.2d at 733).

[5]*See System Designs, Inc. v. New Customware Co., Inc.*, 248 F. Supp. 2d 1093, 1096 (D. Utah 2003) (citing *iAccess v. WEBcard Technologies, Inc.*, 182 F. Supp. 2d 1182, 1186 (D. Utah 2002)).

[6]*Id.* at 1096 (citing *Soma Med. Int'l v. Standard Chartered Bank*, 196 F.3d 1292, 1297 (10th Cir. 1999)).

[7]*See* Utah Code Ann. § 78-77-22; *Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1075 (10th Cir. 1995).

forum state, and the cause of action.[8] The requirement of "purposeful availment" prevents a defendant from being haled into a forum based on random, attenuated, or fortuitous contacts.[9] Rather, the defendants must purposefully act so as to avail themselves of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of its laws.[10] The question before this court is whether SGI deliberately created a relationship with Utah such that Utah's exercise of jurisdiction was foreseeable. When evaluating personal jurisdiction arising from contract claims, the court looks to where the contract was negotiated, created, performed, and breached.[11]

The only contacts RemoteMDx alleges between SGI and Utah are solicitation of the contract, negotiation communications, and an overnight visit. Although solicitation can suggest purposeful availment,[12] RemoteMDx has not demonstrated SGI solicited its business. As a rule, SGI does not solicit business, but relies on referrals instead. Moreover, RemoteMDx itself contacted SGI initially, by reaching out to SGI in New York via its consultants, Pomerance and Rubin. Pomerance and Rubin then arranged a meeting between RemoteMDx and SGI at SGI's offices in New York. RemoteMDx and SGI ultimately entered into a business relationship pursuant to this unilateral choice by RemoteMDx to contact and retain SGI. Any presence of SGI in Utah arose from these acts of RemoteMDx, not from acts of SGI.

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[8] *See OMI Holdings*, 149 F.3d at 1091.

[9] *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–77 (1985).

[10] *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

[11] *Far West Capital*, 46 F.3d at 1078.

[12] *Id.* at 1076.

The bulk of SGI's remaining contact with Utah consisted of a limited number of phone calls and e-mail messages relating to negotiations and the ultimate contract. However, phone calls and letters themselves are not necessarily sufficient to establish minimum contacts.[13] Further, "random use of interstate commerce to negotiate and close a particular deal is, by itself, insufficient" to support jurisdiction.[14] In this case, the contacts are not sufficient to establish minimum contacts, especially because SGI's communications directed to RemoteMDx in Utah resulted from SGI's original, unilateral decision to pursue SGI.

Even when considering these phone and written communications together with Altschuler's overnight visit, SGI is not subject to this court's jurisdiction. Altschuler stayed in Utah for only one night as a guest of RemoteMDx. RemoteMDX calls this a "business trip," but the limited "business" was to attend a social event in celebration of the grand opening of one of RemoteMDx's monitoring centers. Although Altschuler contacted Alpine Securities while in Utah, the owner of Alpine chose to invest in RemoteMDx for reasons entirely unrelated to SGI. In fact, the contact between SGI and Alpine was so insubstantial, Alpine's owner could not even recall who SGI or Altschuler were. Therefore, Altschuler's visit did not further the parties' contract, and was generally inconsequential.

SGI's only link to Utah is that it happened to enter into a contract to perform services in New York for a Utah company that had itself approached SGI. "[F]ormation of a contact with an out-of-state party, by itself, is not sufficient to support jurisdiction in the other party's home

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[13] *Soma Med. Int'l*, 196 F.3d at 1299 (citing *Far West*, 46 F.3d at 1077).

[14] *Rainbow Travel Serv., Inc. v. Hilton Hotels Corp.*, 896 F.2d 1233, 1238 (10th Cir. 1990).

forum."[15] Plainly, the focal point of this relationship was New York, not Utah. Negotiations which led to the ultimate contract took place in New York and the contract was executed and performed in New York. Regarding contemplated place of performance, RemoteMDx claims both that "SGI was to perform [its contractual] services on a nationwide and international level"[16] and that the contract "was to be performed in Utah."[17] Nothing in the record supports that SGI was to perform the contract in Utah. At its meetings with Pomerance and Rubin, SGI learned RemoteMDx wished to retain SGI because of SGI's relationships with New York financial markets and professionals, as well as with financial institutions generally. The subject matter of the contract—development of a financial relations strategy—also supports this view. Together, these facts demonstrate the contract was designed to allow RemoteMDx to use the resources of a New York firm and its links to the New York market. Indeed, all of SGI's actions pursuant to the contract occurred in New York; SGI completed none of its obligations in Utah. If anything, Utah had but a fortuitous role in the parties' initial dealings and there is no indication Utah was to have any role in their later relationship.

RemoteMDx also posits that SGI occupied a role similar to that of an agent or an employee because the contract required SGI to perform services most companies provide for themselves. This argument is inapposite and factually flawed. Regardless of whether other companies provide such services for themselves, RemoteMDx decided to contract with SGI for

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[15] *Id.*

[16] RemoteMDx Memo. in Opposition to Motion to Dismiss, Docket No. 15, at 6 (August 8, 2006).

[17] *Id.* at 9.

those services. There is no dispute as to this contractual status, so this argument does not bear on the personal jurisdiction analysis.

In this case, Utah's exercise of jurisdiction over SGI was not foreseeable because SGI did not "expressly aim[]" or "intentionally direct[]" its activities at Utah residents.[18] Even taken together, SGI's scattered contacts while negotiating the contract and its single, overnight visit fail to establish the necessary minimum contacts in terms of both "quantity and quality."[19]

B. Fairness

Although the court has concluded SGI's contacts with Utah are not sufficient for the court to claim specific personal jurisdiction, the court also finds the exercise of jurisdiction would offend "'traditional notions of fair play and substantial justice.'"[20] The court must evaluate the fairness of requiring SGI to respond to this suit in Utah and must ensure the reasonableness of exercising jurisdiction in light of the circumstances of the case.[21] Accordingly, the court focuses on the following factors: (1) the burden on the defendant; (2) the forum state's interest in resolving the dispute; (3) the plaintiff's interest in receiving convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest in the several states in furthering fundamental substantive social

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[18]*Hanson*, 357 U.S. at 352 (citing *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987); *Calder v. Jones*, 465 U.S. 783, 789–90 (1984)).

[19]*Soma Med. Int'l*, 196 F.3d at 1298 (citing *Burger King*, 471 U.S. at 479).

[20]*Burger King*, 471 U.S. at 476 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945)).

[21]*Id.*

policies.[22]

SGI will bear a significant burden if made to defend this case in Utah. SGI maintains its business offices in New York, and all books, records, and bank accounts which may be relevant to this litigation are located in New York. The key employees and representatives of SGI, who will likely be called as witnesses, all reside in New York. Additionally, most third parties who would be called to testify regarding SGI's performance under the contract reside in New York. It is unreasonable to require SGI and all of its witnesses to come to Utah with its defenses. Utah has a legitimate and significant interest in resolving a dispute regarding a contract involving a Utah company, but New York has a similar interest in resolving disputes regarding a contract involving a company doing business in New York, especially since the alleged wrong underlying the lawsuit occurred in the New York. Because New York has the most significant ties to the litigation, New York is the most efficient forum in which to litigate the dispute, even if not the most convenient for RemoteMDx. It is not clear whether New York's substantive policy interests would be affected if this court exercised jurisdiction over this case; regardless, exercise of jurisdiction in this case is unreasonable.

For all these reasons, the exercise of personal jurisdiction over SGI fails to comport with due process.

C. Nexus and Utah's Long-Arm Statute

Although due process alone is a sufficient basis on which to decide the court lacks jurisdiction, the plaintiff's claim of jurisdiction fails on additional grounds. The plaintiff has not shown a nexus between the plaintiff's claims, the defendant's contacts, and the State of Utah.

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[22]*See World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

Under Utah's long-arm statute, the court must consider nexus and the causing of any injury within the state. Utah's long arm statute provides, in pertinent part:

> Any person . . . who in person or through an agent does any of the following enumerated acts, submits himself to the jurisdiction of the courts of this state as to any claim arising out of or related to:
>
> 1) the transaction of any business within this state;
> 2) contracting to supply goods or services to the state;
> 3) the causing of any injury within this state whether tortious or by breach of warranty . . . .[23]

RemoteMDx has not shown a nexus between SGI's performance in New York and its alleged injuries in Utah, other than its statement that it is located in Utah. RemoteMDx's injuries arose from a contract, but it was not a contract executed or performed within this state; thus, the nexus is insufficient. Unquestionably, RemoteMDx's mere presence in Utah does not provide a basis for personal jurisdiction over SGI.[24] RemoteMDx does not allege SGI's acts constitute the transaction of business within the state sufficient to bring SGI within the reach of Utah's long-arm statute. With respect to causing injury within the state, essentially, the plaintiff argues that because of the defendant's conduct, the plaintiff suffered financial injury in Utah. However, causing financial injury to a Utah business has been "flatly rejected by the Utah courts as a basis for exercising specific personal jurisdiction."[25] Thus, under Utah law, the requirements for personal jurisdiction have not been satisfied.

The court finds, therefore, that it cannot properly exercise specific personal jurisdiction

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[23]Utah Code Ann. § 78-27-23.

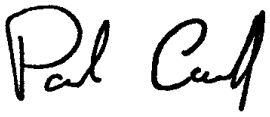
[24]*See Far West Capital*, 46 F.3d at 1078.

[25]*Patriot Sys., Inc. v. C-Cubed Corp.*, 21 F. Supp. 2d 1318, 1321 (D. Utah 1998).

over SGI. Because the court concludes it has no specific personal jurisdiction over SGI, the court does not reach SGI's motion to transfer venue. The defendant's motion to dismiss for lack of personal jurisdiction is GRANTED [#8]. The hearing scheduled for September 22, 2006, is stricken. The clerk's office is directed to close this case.

DATED this 7th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

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

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 2:10
DISTRICT OF UTAH
BY: DEPUTY CLERK

RUSSELL EUGENE BISNER,	)	
	)	
Petitioner,	)	Case No. 2:06-CV-417 TS
	)	
v.	)	Chief Judge Ted Stewart
	)	
WARDEN LOWELL CLARK,	)	**O R D E R**
	)	
Respondent.	)	Magistrate Judge Paul Warner

In his habeas corpus petition to this Court, Petitioner, Russell Eugene Bisner, concedes that he has filed past the applicable period of limitation.[1] He argues, however, that equitable tolling excuses his tardiness. Specifically, he contends that he lacked a law library, legal training, and knowledge of the period of limitation, as well as that he had only limited help of prison contract attorneys.

"Equitable tolling will not be available in most cases, as extensions of time will only be granted if 'extraordinary circumstances' beyond a prisoner's control make it impossible to file a petition on time."[2] Those circumstances include times "when a prisoner is actually innocent" or "when an adversary's conduct--or other uncontrollable circumstances--prevents a prisoner from timely filing, or when a prisoner actively pursues judicial remedies but files a defective pleading during the

[1]See 28 U.S.C.S. §§ 2254, 2244(d) (2006).

[2]*Calderon v. United States Dist. Court*, 128 F.3d 1283, 1288 (9th Cir. 1997) (citation omitted).

statutory period."[3] And, Petitioner "has the burden of demonstrating that equitable tolling should apply."[4]

With these general principles in mind, the Court considers Petitioner's particular argument that his lateness should be overlooked because he lacked a law library, legal training, and knowledge of the period of limitation, as well as because he had only limited help from prison contract attorneys. The argument that a prisoner "had inadequate law library facilities" does not support equitable tolling.[5] Further, it is well settled that "'ignorance of the law, even for an incarcerated pro se petitioner, generally does not excuse prompt filing.'"[6]

IT IS THEREFORE ORDERED that Petitioner's petition is denied as untimely.[7]

DATED this 6th day of ~~August~~ September, 2006.

BY THE COURT:

TED STEWART
United States District Court

---

[3] *Gibson v. Klinger*, 232 F.3d 799, 808 (10th Cir. 2000) (citation omitted).

[4] *Lovato v. Suthers*, No. 02-1132, 2002 WL 1500844, at *2 (10th Cir. July 15, 2002) (unpublished).

[5] *McCarley v. Ward*, Nos. 04-7114, 04-7134, 2005 U.S. App. LEXIS 14335, at *3-4 (10th Cir. July 15, 2005) (unpublished); *see also Miller v. Marr*, 141 F.3d 976, 978 (10th Cir. 1998) ("It is not enough to say that the . . . facility lacked all relevant statutes and case law or that the procedure to request specific materials was inadequate.").

[6] *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000).

[7] *See* 28 U.S.C.S. § 2244(d) (2005).

United States District Court
for the
District of Utah
September 7, 2006

******MAILING CERTIFICATE OF THE CLERK******

RE: Russell Eugene Bisner v Warden Lowell Clark
2:06cv417

Inmate Russell Eugene Bisner, # 29334
Central Utah Correctional Facility
P.O. Box 550
Gunnison, UT 84634

Kim Forsgren,

FILED
U.S. DISTRICT COURT
2006 SEP -7 A 10: 17
DISTRICT OF UTAH
BY: DEPUTY CLERK

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

DIGECOR, INC., a Washington corporation, Plaintiff, vs. E.DIGITAL CORPORATION, a Delaware corporation; DOES 1 to 20, individuals; Defendants.	STIPULATED ORDER FOR AN EXTENSION OF TIME IN WHICH TO FILE BRIEFS Case No. 2:06-cv-437 TS

Based on the application of Defendant e.Digital Corporation ("e.Digital"), and good cause appearing therefore,

IT IS HEREBY ORDERED that e.Digital shall have until and including August 28, 2006, in which to file its Reply Memorandum in Support of Its Motion to Dismiss, until and including Friday, September 1, 2006, in which to file its Memorandum in Opposition to digEcor's Motion for Partial Summary Judgment.

DATED September 6, 2006.

BY THE COURT:

TED STEWART
United States District Judge

FILED
U.S. DISTRICT COURT
2006 SEP -6 P 3: 06
DISTRICT OF UTAH
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

CALVIN PAUL STEWART, Plaintiff, vs. LOWELL CLARK, Defendant.	ORDER OF REFERENCE Civil No. 2:06 CV 464 TC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this court, the above entitled case is referred to United States Magistrate Judge Samuel Alba. Judge Alba is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 6th day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

FILED
U.S. DISTRICT COURT

2006 SEP -7 A 10: 17

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

CirTran Corporation, Plaintiff	
v.	ORDER FOR PRO HAC VICE ADMISSION
Guthy-Renker Corporation and Ben Van De Bunt, Defendant	Case Number 2:06cv543

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 Steven D. Atlee in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 7th day of September, 2006.

T. Stewart
U.S. District Judge

408180.1

FILED
U.S. DISTRICT COURT

2006 SEP -7 A 10: 16

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

CirTran Corporation,
Plaintiff

v.

Guthy-Renker Corporation and
Ben Van De Bunt ,
Defendant

: ORDER FOR PRO HAC VICE ADMISSION

: Case Number 2:06cv543

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 Gregory Shea in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 7th day of September, 2006.

U.S. District Judge

408162.1

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

COLUMBIA CASUALTY COMPANY, Appellant, vs. JAMES T. MARKUS, TRUSTEE, Appellee.	ORDER DENYING COLUMBIA CASUALTY'S APPEAL Case No. 2:06-CV-00590 PGC

On May 15, 2006, Appellant Columbia Casualty Company filed a motion for a determination that the automatic stay did not apply to the proceeds of a Directors and Officers policy in favor of covered directors and officers or, alternatively, for relief from the automatic stay to the extent necessary to advance defense costs [Bankr. #2646]. Without reaching the proceeds question, the Bankruptcy Court granted Columbia's motion for relief from the stay. After receiving its requested relief from the bankruptcy court, Columbia now appeals the bankruptcy court's order under 28 U.S.C. § 158(a). Columbia now seeks an order by this court that the bankruptcy court erred when it failed to grant Columbia's motion for a determination that the automatic stay did not apply to the policy proceeds because the policy proceeds were not property of the estate. Appellee James T. Markus, the Trustee of the Geneva Steel Chapter 11 litigation, opposes this motion because, among other things, Columbia lacks standing to bring

this appeal because it is not aggrieved by the Bankruptcy Court's order. The court agrees that Columbia cannot challenge an order of the Bankruptcy Court providing relief that it sought. Accordingly, the court DENIES Columbia's appeal of the bankruptcy court's order [#1].

FINDINGS OF FACT

For the purposes of this appeal, the court finds the following facts. On January 25, 2002, Geneva Steel LLC filed a voluntary petition under chapter 11 of the bankruptcy code. Other companies, including Geneva Steel Holdings, Williams Farm LLC, and Iron Ore Mines, followed suit almost nine months later. On April 18, 2005, James T. Markus, the appellee, was appointed the chapter 11 trustee for each of these debtors.

For the period of March 1, 2003 through March 1, 2006, Columbia issued an insurance policy for coverage to Geneva Steel Holdings. That policy provided liability coverage to directors and officers of Holdings and its subsidiaries to the extent the claims against them arose from their actions as officers or directors of the debtors. The policy also provided coverage to the debtors for any loss for which the debtors were required to indemnify the directors or officers of Holdings and its subsidiaries.

During the bankruptcy proceedings, the trustee filed adversary proceedings against certain defendants, including former directors and officers of the debtors. Each of these defendants filed claims for indemnification against the debtors' bankruptcy estates for their costs and potential damages in defending the litigation against them.

In the process of the bankruptcy proceedings and the litigation filed by the trustee, Columbia filed a motion for a determination that the automatic stay did not apply to policy

proceeds, or in the alternative, for relief from the automatic stay to the extent necessary to advance defense costs. To be clear, Columbia sought two alternative forms of relief in that motion. First, it asked the bankruptcy court to find that the automatic stay did not apply to the policy proceeds because the proceeds were not property of the estate. Second, it alternatively sought relief from the automatic stay to the extent necessary to advance defense costs for certain covered directors and officers of Geneva Steel.

After hearing oral arguments and considering the briefs submitted by Columbia and the Trustee, the bankruptcy court issued its decision on June 15, 2006. The bankruptcy court did not explicitly find the policy proceeds to be part of the estate and therefore subject to the stay. The court did order the automatic stay terminated to permit Columbia to advance reasonable defense costs, thereby explicitly granting Columbia's alternative motion.

The bankruptcy court's order specifically states that the trustee "argues that the insurance proceeds from the Policy are property of the bankruptcy estate, are subject to the automatic stay, and that any order granting relief from the automatic stay should be conditioned in order to protect the estate's interest in the insurance proceeds by establishing a review procedure . . . ."[1] After the bankruptcy court suggested that parties cooperate to develop a procedure to protect all parties through a shared monitoring of defense costs, Columbia rejected this suggestion and assured the bankruptcy court that it fully scrutinizes the expenditure of defense costs. Therefore, the bankruptcy court ordered "the automatic stay terminated to permit Columbia to advance reasonable and necessary fees and expenses in defense of those claims that are defined under the

[1] Bankr. Court Order, at 3, Docket No. 1, Ex. 4 (July 18, 2006).

terms of the Policy as covered claims."[2] The bankruptcy court granted this order based on three separate grounds:

> (1) Columbia's assurances that it scrutinizes the expenditures of defense costs, (2) Columbia's acknowledgment that it has a duty to allocate between costs which are covered and costs which are not covered under the terms of the Policy, and (3) the available claim that may be asserted by the Trustee if he prevails in his adversary proceedings and it is discovered that Columbia disbursed defense costs that were unreasonable, unnecessary, or not allocated to a matter covered under the terms of the Policy.[3]

Columbia now appeals this order, arguing that the Bankruptcy Court erred by implying that the policy proceeds are property of the estate.

DISCUSSION

A. Standard of Review

The court reviews the bankruptcy court's findings of fact for clear error, and reviews conclusions of law *de novo*.[4]

B. Either This is an Interlocutory Appeal, or Columbia Lacks Standing to Appeal

Although the Bankruptcy Court did not explicitly hold that the policy proceeds are property of the estate, Columbia argues that the bankruptcy court *implicitly* made this finding by granting its motion in the alternative. Columbia argues that "[i]mplicit in the [bankruptcy court's] determination of the stay is its legal conclusion that the proceeds were part of the estate. The automatic stay applies *only* to property of the estate, and therefore the [bankruptcy court]

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[2] *Id*.

[3] *Id*.

[4] *United States v. Murdock Mach. & Eng'g Co.*, 81 F.3d 922, 929 (10th Cir. 1996).

would order the stay terminated only if it concluded . . . that the policy proceeds were estate property."[5] Columbia then cites a number of Bankruptcy Court cases outside of this circuit to support its argument that the policy proceeds are not property of the estate, especially because indemnification by the trustee has not occurred, is hypothetical, or speculative. Columbia therefore requests this court, as a matter of law, find that the policy proceeds are not part of the estate in this case and reverse that *implicit* part of the bankruptcy court's order. Columbia believes that the bankruptcy court made this legal conclusion, but it does *not* appeal the potion of the bankruptcy court's order that lifts the automatic stay.

The trustee responds that Columbia is not an "aggrieved person" and lacks standing to appeal the Bankruptcy Court's order granting at least one of Columbia's sought-after remedies. The trustee argues first that Columbia is not an aggrieved party and lacks standing to appeal the bankruptcy court's order. Because Columbia filed it motion with two parts of requested relief (one in the alternative), and because the bankruptcy court granted the alternative requested relief, the trustee maintains that Columbia has no standing to appeal the bankruptcy court's order. The trustee further argues that a determination that the policy proceeds were property of the bankruptcy estate was not necessary to the court's ruling. Finally, on the merits, the trustee argues that the policy proceeds are property of the estate, and that the bankruptcy court did not err by lifting the automatic stay to allow directors and officers to receive access to those proceeds to pay their defense costs.

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[5] Columbia Opening Brief, Docket No. 1, at 2 (Aug. 2, 2006).

A review of the Bankruptcy Court's order fails to provide a reason for believing that Columbia is an aggrieved party. The Bankruptcy Court's order states that it *grants* Columbia's motion for relief from the automatic stay to advance necessary defense costs. At no point does the order indicate that the Bankruptcy Court has denied Columbia's motion for a determination that the automatic stay does not apply to policy proceeds. The curious result is that the trustee (who opposed a blanket granting of the motion) is now in the position of *defending* the bankruptcy court's *granting* of Columbia's own motion. To say that the positions of the parties at this juncture seem slightly askew is an understatement.

Nonetheless, if Columbia is correct that the bankruptcy court has implicitly denied its motion, then this appeal is an interlocutory appeal – which is not appropriate. And if Columbia is incorrect by arguing that the bankruptcy court implicitly denied its motion, then Columbia's motion has been granted by the bankruptcy court and it has no standing to appeal. Either way, Columbia's motion must fail.

1. Interlocutory Appeals of Bankruptcy Court Orders

Federal law authorizes interlocutory appeals from bankruptcy courts only where the district court grants leave to appeal.[6] In seeking leave for such an appeal, the moving party must explain, among other things, "the reasons why an appeal should be granted."[7] Accordingly, the issue in a motion for leave to appeal from an interlocutory order in bankruptcy court is not whether the bankruptcy court "got it wrong," but whether an appeal is proper.

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[6] *See* 28 U.S.C. § 158(a)(3); Bankr. Rule 8003.

[7] Bankr. Rule 8003(a)(3).

Because federal law is silent as to the standards for granting leave to appeal an interlocutory order from bankruptcy court, courts have looked to the standards governing interlocutory appeals from district court, which are found in 28 U.S.C. § 1292(b).[8] Under that section, appellate review is proper where there is "(1) a controlling question of law (2) as to which there is substantial ground for difference of opinion and [where] (3) an immediate appeal from the order may materially advance the ultimate termination of the litigation."[9] Such appeals should be limited to extraordinary cases,[10] and the party seeking review has the burden of persuading the court that exceptional circumstances justify deviating from the policy of postponing appellate review until a final judgment has been entered in the case.[11]

At no point in its memoranda has Columbia demonstrated the reasons why interlocutory appeal of the bankruptcy court's order *granting* Columbia's own motion in the alternative is appropriate. Columbia sets forth a number of cases from districts in other circuits for its argument that the policy proceeds are not property of the estate until indemnification has occurred. But Columbia has not set forth that there is "a controlling question of law . . . as to which there is substantial ground for difference of opinion[, nor has it shown that] an immediate appeal from the [bankruptcy court's] order may materially advance the ultimate termination of

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[8] *See, e.g., In re American Freight System, Inc., et al.*, 194 B.R. 659, 661 (D. Kan. 1996); *In re Universal Clearing House Co.*, 1984 U.S. Dist. LEXIS 23917, at 5 (D. Utah 1984).

[9] 2 8 U.S.C. § 1292(b).

[10] *See Utah State Dept. of Health v. Kennecott Corp.*, 14 F.3d 1489, 1495 (10th Cir. 1994).

[11] *See Fisons Ltd. v. United States*, 458 F.2d 1241, 1248 (7th Cir. 1972).

the litigation."[12] The court is not inclined to grant Columbia's interlocutory appeal on any grounds, especially because Columbia has not shown that immediate appeal from this order may materially advance the ultimate termination of this litigation. Indeed, the reverse may be true.

Therefore, if Columbia seeks appellate review from the bankruptcy court's implicit *denial* of its motion, this is clearly an interlocutory appeal. Columbia has not demonstrated that interlocutory appeal is proper or appropriate, nor has it even filed a motion for interlocutory appeal to this court.

2. Columbia is Not an Aggrieved Party

If Columbia argues that this is not an interlocutory appeal of a denial of its motion, then Columbia's motion has been granted and it cannot be an aggrieved party. Columbia sought relief through its own motion when it chose to file that motion with two alternative requests. The bankruptcy court did not state that it explicitly denied the first request, but it did explicitly state that it granted the alternative request.

The trustee's arguments citing standing to appeal an order of the bankruptcy court are instructive.[13] To appeal, Columbia must be "adversely affected, pecuniarily or otherwise, by the actions of the bankruptcy . . . courts."[14] Columbia itself sought relief from the automatic stay and received that relief, and now seeks further relief from the bankruptcy court. But the bankruptcy

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[12] 2 8 U.S.C. § 1292(b).

[13] *See, e.g.*, *Cornelius v. Elliot (In re Elliot)*, 94 F.3d 655, 1996 WL 460026, at *1 (10th Cir. 1996); *Lopez v. Behles (In re Am. Ready Mix, Inc.)*, 14 F.3d 1497, 1500 (10th Cir. 1994); *Holmes v. Silver Wings Aviation, Inc.*, 881 F.2d 939, 940 (10th Cir. 1989).

[14] *Conelius*, at *1.

court clearly granted Columbia's motion and terminated the automatic stay – the relief that Columbia itself sought. The court truly questions whether Columbia is now an aggrieved party after receiving the exact relief that it sought – termination of the automatic stay.

The trustee, if anyone, appears to be a person aggrieved because it opposed the bankruptcy court's order, at least in part. But the trustee is now in the position of *defending* the bankruptcy court's *granting* of Columbia's own motion. The odd posture of the parties, especially given that the trustee is now defending the bankruptcy court's order, reasonably demonstrates that Columbia itself is not an aggrieved party after receiving the relief that it sought. Therefore, Columbia does not have standing to appeal the bankruptcy court's order *granting* the relief that it initially sought.

CONCLUSION

Either way the court reads Columbia's appeal, the appeal must be DENIED. Therefore, the court DENIES Columbia's appeal. The Clerk's Office is directed to close this case.

SO ORDERED.

DATED this 7th day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNIVERSITY OF UTAH, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	**ORDER FOR** **PRO HAC VICE ADMISSION** Civil No. 2:06-cv-00595-DAK Judge Dale A. Kimball

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of D.U.Civ. Rule 83-1.1(d), the Motion for the admission pro hac vice of Thomas F. Carlucci in the United States District Court, District of Utah in the subject case is GRANTED.

DATED this 7th day of September, 2006.

Dale A. Kimball

DALE A. KIMBALL
U.S. District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNIVERSITY OF UTAH, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	**ORDER FOR** **PRO HAC VICE ADMISSION** Civil No. 2:06-cv-00595-DAK Judge Dale A. Kimball

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of D.U.Civ. Rule 83-1.1(d), the Motion for the admission pro hac vice of Robert E. Goldstein in the United States District Court, District of Utah in the subject case is GRANTED.

DATED this 7th day of September, 2006.

Dale A. Kimball

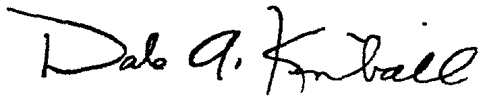
DALE A. KIMBALL
U.S. District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNIVERSITY OF UTAH, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	**ORDER FOR** **PRO HAC VICE ADMISSION** Civil No. 2:06-cv-00595-DAK Judge Dale A. Kimball

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of D.U.Civ. Rule 83-1.1(d), the Motion for the admission pro hac vice of Zhu Lee in the United States District Court, District of Utah in the subject case is GRANTED.

DATED this 7th day of September, 2006.



DALE A. KIMBALL
U.S. District Judge

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

RYAN HYMAS, Plaintiff, vs. SPA DE SOLEIL MANUFACTURING, INC., and RENA REVIVO, Defendants.	ORDER GRANTING STIPULATED MOTION FOR EXTENSION OF TIME Case No. 2:06-cv-00607

The court has considered the Stipulated Motion for Extension of Time filed by the parties. For good cause appearing, the court grants the defendants an extension of time in which to file their reply to the plaintiff's Responding Memorandum in Opposition to Defendant's Motion to Dismiss. The court GRANTS the stipulated motion [#14]; the plaintiff shall have until September 12, 2006, to respond.

DATED this 7th day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

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

NOVEX BIOTECH, L.L.C. and **WESTERN HOLDINGS, L.L.C.,**	)	Case No. 2: 06 CV 00638 PGC
Plaintiffs,	)	ORDER FOR PRO HAC VICE ADMISSION
v.	)	
ENDO PHARMACEUTICALS, INC.,	)	
Defendant.	)	

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 BRUCE A. MCDONALD in the United States District Court, District of Utah in the subject case is *GRANTED.*

Dated: this 7th day of Sept, 20 06.

Paul Cassell
U.S. District Judge

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

CENTRAL DIVISION

DIANE MONETA FRITZ,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-657 TS
	)	
v.	)	District Judge Ted Stewart
	)	
STATE OF UTAH et al.,	)	**O R D E R**
	)	
Defendants.	)	

Plaintiff, Diane Moneta Fritz, filed a prisoner civil rights complaint and asked to proceed *in forma pauperis*.[1] This Court, however, will not let an inmate proceed *in forma pauperis* if the inmate has, at three or more prior times while incarcerated, brought an action that was dismissed as "frivolous or malicious or fail[ing] to state a claim upon which relief may be granted."[2] The only exception is if the inmate can show that he or she is "under imminent danger of serious physical injury."[3]

Plaintiff has filed several previous civil actions with the federal courts, many of which have been dismissed as frivolous or failing to state a claim.[4] Plaintiff therefore may not maintain

[1]*See* 42 U.S.C.S. § 1983 (2006); 28 *id.* § 1915.

[2]28 *id.* § 1915(g).

[3]*Id.*

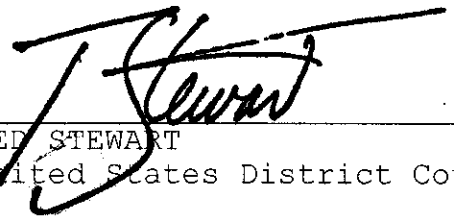
[4]*See Fritz v. Fritz*, No. 2:04-CV-330-TS (D. Utah Nov. 18, 2004) (unpublished); *Fritz v. Larson*, No. 2:04-CV-361-TS (D. Utah June 22, 2004) (unpublished); *Fritz v. Olverson*, No. 2:04-CV-377-TS (D. Utah June 9, 2004)

this action without paying the filing fee unless she can show an imminent danger of serious physical injury.[5] She has made no such allegation or showing.

IT IS THEREFORE ORDERED that this complaint be dismissed under 28 U.S.C. § 1915(g) with no further notice to Plaintiff unless she pays the full $350 filing fee within thirty days.

DATED this 5th day of ~~August~~ September, 2006.

BY THE COURT:



TED STEWART
United States District Court

(unpublished).

[5]*See* 28 U.S.C.S. § 1915(g) (2006).

United States District Court
for the
District of Utah
September 7, 2006

******MAILING CERTIFICATE OF THE CLERK******

RE: Diane Moneta Fritz v State of Utah
2:06cv657

Diane M. Fritz, #0121447
Salt Lake County Correctional Facility
3415 So 900 West
Salt Lake City, UT 84119

Kim Forsgren,

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

NATURE'S WAY PRODUCTS, INC., Plaintiff, vs. ZILA NUTRACEUTICALS, INC., Defendant.	ORDER GRANTING EXTENSION OF TIME FOR PLAINTIFF TO FILE OPPOSITION TO DEFENDANT'S MOTION TO STAY Case No. 2:06-cv-00667

The court has considered and reviewed the Stipulated Motion for an Extension of Time for Plaintiff to File Its Opposition to Defendant's Motion to Stay. For good cause appearing, the court grants the plaintiff a two-day extension in which to file its opposition. Accordingly, the court GRANTS the stipulated motion [#7]; the plaintiff's opposition to the defendant's motion to stay or transfer is now due September 7, 2006.

DATED this 7th day of September, 2006.

BY THE COURT:

Paul G. Cassell
United States District Judge

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

THE ESTATE OF TODD ALATALO, JULIE ALATALO, an individual, Plaintiffs, vs. STANDARD LIFE INSURANCE COMPANY, and DOES 1-10, Defendants.	ORDER TO SHOW CAUSE Case No. 2:06-CV-00718 PGC

Defendant Standard Insurance Company seeks removal of the action filed by plaintiff Julie Alatalo and her father's estate in the Fifth District Court of Utah. Standard sought removal under federal question jurisdiction asserting Ms. Alatalo's complaint is governed by ERISA claims, 29 U.S.C. §§ 1001, *et seq*. Standard also states that removal is appropriate by asserting that the requirements for diversity jurisdiction under 28 U.S.C. § 1332 have been met. The court questions whether removal is appropriate on these grounds and therefore directs Standard to show why federal jurisdiction is proper.

As an initial matter, the court must determine if it has jurisdiction over this case. If "the parties fail to raise the question of the existence of jurisdiction, the federal court has the duty to

raise and resolve the matter."[1] The causes of action set out in Ms. Alatalo's state complaint discuss claims for breach of contract, breach of the covenant of good faith and fair dealing and unjust enrichment, none of which bestow federal question jurisdiction on this court. The complaint does not allege that Mr. Alatalo purchased the life insurance and insurance coverage for accidental death and dismemberment at issue as part of a company benefits package, nor is any statement made in the state complaint regarding why ERISA governs this situation. And Ms. Atatalo's state complaint does not mention the term "ERISA" or name its statute anywhere on its face.

Additionally, it appears the defendants may have misread Ms. Alatalo's complaint while alleging diversity jurisdiction. Complete diversity of the parties, along with an amount in controversy greater than $75,000, may properly bring the parties to federal court. It appears the parties are completely diverse according to the complaint. Therefore, the court must determine whether the amount in controversy exceeds $75,000.

As the U.S. Supreme Court has held, "determination of the value of the matter in controversy for the purposes of federal jurisdiction is a federal question to be decided under federal standards."[2] As the Tenth Circuit noted in *Watson v. Blankinship*, "the amount in controversy requirement is determined at the time the complaint was filed."[3] For removal

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[1] *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995).

[2] *Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348, 352 (1961); *Hedberg v. State Farm Mut. Auto. Ins. Co.*, 350 F.2d 924 (8th Cir. 1965).

[3] 20 F.3d 383, 387 (10th Cir. 1994) (citing *Klepper v. First Am. Bank*, 916 F.2d 337, 340 (6th Cir. 1990) ("When determining whether the amount in controversy has been satisfied, we examine the complaint at the time it was filed.") and *Emland Builders, Inc. v. Shea*, 359 F.2d

purposes, the amount in controversy may be shown by the allegations in the complaint, "or, where they are not dispositive, by the allegations in the notice of removal."[4] And "[t]here is a strong presumption favoring the amount alleged by the plaintiff."[5] Additionally, because there is a presumption against removal jurisdiction, the burden is on the removing party to establish, by a preponderance of the evidence, that the jurisdictional amount requirement has been met.[6]

The state complaint requests recovery in an amount of $20,000 for breach of contract, an amount of $45,000 for breach of the covenant of good faith and fair dealing, and an amount of $1,200 for unjust enrichment. No attorneys' fees are requested. By the court's calculation, Ms. Alatalo alleges at least $66,200 in controversy, but her complaint does not reach the $75,000 threshold required for diversity actions. Nor does Standard allege any further damages for Ms. Alatalo to bring the threshold up to the required $75,000.

It thus seems clear that diversity jurisdiction is not warranted in this case. And Standard's terse notice of removal does not adequately demonstrate to the court, at the time of removal, that it has met its burden by setting forth the underlying facts supporting its assertions that ERISA applies to and governs this case. Therefore, the court orders Standard to show cause

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927, 929 (10th Cir. 1966) ("It is sufficient to say that the starting place in considering the issue before us is with the plaintiff's allegations.")).

[4] *Laughlin*, 50 F.3d at 873.

[5] *Woodmen of the World Life Ins. Soc'y v. Manganaro*, 342 F.3d 1213, 1216 (10th Cir. 2003).

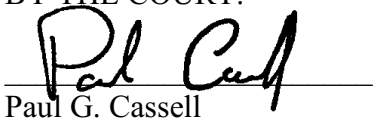
[6] *Laughlin*, 50 F.3d at 873; *see also McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936) ("The Court may demand that the party alleging jurisdiction justify its allegations by a preponderance of the evidence.").

within fourteen days why ERISA applies to this case and why this case is appropriate for removal on federal question jurisdiction. Standard's failure to respond to the order to show cause will result in removal of this case back to the Fifth District Court of Utah.

SO ORDERED.

DATED this 7th day of September, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

FILED
U.S. DISTRICT COURT
2006 SEP -6 A 10:42
DISTRICT OF UTAH
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

RICHARD W. JONES, Plaintiff, vs. LabOne, INC., et al., Defendants.	ORDER OF REFERENCE Civil No. 2:06 CV 735 TC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this court, the above entitled case is referred to United States Magistrate Judge Paul M. Warner. Judge Warner is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 5th day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

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U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA, *Plaintiff*, v. UNITED PARK CITY MINES CO., *et al.* *Defendants*.	ORDER FOR PRO HAC VICE ADMISSION Judge Paul G. Cassell DECK TYPE: Civil DATE STAMP: 09/05/2006 @ 15:07:50 CASE NUMBER: 2:06CV00745 PGC

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 Mark C. Elmer in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 6th day of ~~August,~~ September 2006.

U.S. District Judge