

Randy S. Ludlow, Utah Bar No. 2011
Attorney for Defendant
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Salt Lake City, Utah 84111
Phone Number: (801) 531-1300
Fax: (801) 328-0173

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	ORDER REQUIRING
	)	PRE-PLEA PRE-SENTENCE
v.	)	REPORT
	)	Case No. 1:07cr00104 TS
CHRISTIAN JON DUCREST,	)	Judge Ted Stewart
)	
Defendant.)	

THE ABOVE ENTITLED MATTER CAME BEFORE THE COURT ON Motion of the defendant to require the United States Probation Office to prepare a pre-plea pre-sentence report and the Court having found the same to be appropriate and based upon such,

IT IS HEREBY ORDERED AS FOLLOWS:

The United States Probation Office is to prepare and release to the defendant a pre-plea pre-sentence report which is to specifically identify the guideline range and consequences of the defendant pleading to an Amended Information of one count of 21 USC 841.

DATED this 10th day of September, 2008.

BY THE COURT:



JUDGE TED STEWART

UNITED STATES DISTRICT COURT

FILED
2008 SEP 10 A 10:57
CLERK

Central

District of

Utah

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

DISTRICT OF UTAH

V.

Edin Ralda-Hernandez
aka Reuben Salazar-Alacontra
aka Eduardo Dein Ralda
aka Edwardo A. Ralda

BY: Case Number: DUTX 1:08CR00038-001TC

USM Number: 06417-081

Spencer Rice

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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC § 1326	Reentry of a 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.

9/8/2008

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell

Chief, United States District Court Judge

Name and Title of Judge

9-9-2008

Date

DEFENDANT: Edin Ralda-Hernandez
CASE NUMBER: 1:08CR00038-001 TC

IMPRISONMENT

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

63 Months

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

The Court recommends the defendant serve his sentence at FCI Fort Dix, New Jersey.

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: Edin Ralda-Hernandez
CASE NUMBER: 1:08CR00038-001 TC

SUPERVISED RELEASE

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

36 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: Edin Ralda-Hernandez
CASE NUMBER: 1:08CR00038-001TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States.

DEFENDANT: Edin Ralda-Hernandez
CASE NUMBER: 1:08R00038-001 TC

CRIMINAL MONETARY PENALTIES

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

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 \$ _____ 0

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: Edin Ralda-Hernandez
CASE NUMBER: 1:08CR00038-001 TC

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

UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

2008 SEP -9 A 10:54

JUDGMENT IN A CRIMINAL CASE

V.

Joel Romero-Sierra
aka Rene Bautista

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Case Number:

DUTX 1:08CR00073-001 TC

USM Number:

15541-081

Kris Angelos

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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC § 1326	Reentry of a 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.

09/04/2008

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Name and Title of Judge

Chief, United States District Court Judge

9-9-2008

Date

DEFENDANT: Joel Romero-Sierra
CASE NUMBER: 1:08cr000073-001 TC

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

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

The Court recommends the defendant serve his sentence at the Victorville, California facility and participate in educational/vocational treatment programs, while incarcerated.

✱ 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: Joel Romero-Sierra
CASE NUMBER: 1:08CR000073-001 TC

SUPERVISED RELEASE

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

36 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: Joel Romero-Sierra
CASE NUMBER: 1:08CR00073-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States.

DEFENDANT: Joel Romero-Sierra
CASE NUMBER: 1:08CR00073-001 TC

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>		<u>Fine</u>		<u>Restitution</u>
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.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0	\$ _____ 0
---------------	------------	------------

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: Joel Romero-Sierra
CASE NUMBER: 1:08CR00073-001 TC

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

**INTERSTATE FIRE & CASUALTY
COMPANY,**

Plaintiff,

v.

**TRAVELERS PROPERTY &
CASUALTY COMPANY OF AMERICA,
et al.,**

Defendants.

**ORDER FOR
PRO HAC VICE ADMISSION**

Case No. 1:08-cv-91-PMW

Magistrate Judge Paul M. Warner

It appearing to the court that the petitioner meets the pro hac vice admission requirements of rule 83-1.1(d) of the Rules of Practice for the United States District Court for the District of Utah, *see* DUCivR 83-1.1(d), the motion for admission pro hac vice of Ellen Van Meir in the United States District Court for the District of Utah in the above-referenced case is **GRANTED**.

IT IS SO ORDERED.

DATED this 10th day of September, 2008.

BY THE COURT:



PAUL M. WARNER
United States Magistrate Judge

United States Probation Office
for the District of Utah

Report on Offender Under Supervision

FILED
U.S. DISTRICT COURT
2008 SEP 10 A 11:31

Name of Offender: **Michael A. Fellows**

Docket Number: **2:02-CR-00060-001-DS**

Name of Sentencing Judicial Officer: **Honorable David Sam**

Senior United States District Judge

BY: _____
DEPUTY CLERK

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

Original Offense: **Possession of a Firearm by a Convicted Felon**

Original Sentence: **70 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release** Supervision Began: **January 5, 2005**

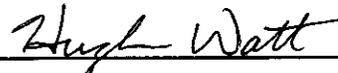
SUPERVISION SUMMARY

Pursuant to Mr. Fellow's pro se Motion for Early Termination of Supervision, the following summary is submitted for the Court's consideration.

Mr. Fellow's term of supervised release began on January 5, 2007, and is scheduled to expire on January 5, 2009. Thus far, Mr. Fellows has been cooperative with the United States Probation Office and has fully complied with the conditions of his supervision. Mr. Fellows has satisfied his court-ordered obligations and has maintained full-time employment. Upon his release from federal prison, he successfully completed outpatient substance-abuse treatment at Clinical Consultants. Mr. Fellows has abstained from the use of illicit substances, as evidenced by negative urine specimens. During unannounced home visits, there has been no obvious signs of firearms, drugs, or criminal activity. Assistant United States Attorney Robert Lund does not object to an early termination of supervision. If the Court concurs, a Form 35 is attached for signature.

If the Court desires more information or another course of action, please contact me at (801) 535-2792.

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



Hugh Watt

U.S. Probation Officer

Date: September 4, 2008

**Report and Order Terminating Supervised Release
Prior to Original Expiration Date**

UNITED STATES DISTRICT COURT

for the

DISTRICT OF UTAH

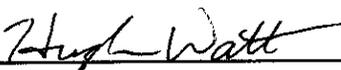
UNITED STATES OF AMERICA

v. Criminal No. 2:02-CR-00060-001-DS

MICHAEL A. FELLOWS

On January 5, 2007, the above named was placed on Supervised Release for a period of three years. The defendant has complied with the rules and regulations of Supervised Release and is no longer in need of supervision. It is accordingly recommended that the defendant be discharged from supervision.

Respectfully submitted,



Hugh D. Watt
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision and that the proceedings in the case be terminated.

Dated this 9th day of September, 2008.



David Sam
Senior United States District Judge

RECEIVED

SEP 08 2008

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

FILED
U.S. DISTRICT COURT

2008 SEP 10 A 9:38

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Rodney G. Snow (Bar No. 3028)
Neil A. Kaplan (Bar No. 3974)
Walter A. Romney, Jr. (Bar No. 7975)
Christopher B. Snow (Bar No. 8858)
CLYDE SNOW SESSIONS & SWENSON
One Utah Center, 13th Floor
201 South Main Street
Salt Lake City, Utah 84111-2216
Telephone: (801) 322-2516

Attorneys for Defendant Envirocare of Utah

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

UNITED STATES OF AMERICA ex rel.
Jolene Lemmon, as Personal Representative
of the Estate of Roger Lemmon, deceased;
Patrick Cole and Kyle Gunderson,

Plaintiffs,

v.

ENVIROCARE OF UTAH, nka
ENERGYSOLUTIONS,

Defendant.

ORDER WITHDRAWING EARL
SILBERT, ROBERT HUFFMAN AND
DON LEWIS AS ATTORNEYS OF
RECORD

Case No. 2:02-CV-904BSJ

Based on Defendant Envirocare of Utah n/k/a Energy Solutions' ("Envirocare") motion for an order allowing the withdrawal of Earl L. Silbert and Don Charles Lewis, with the law firm of DLA Piper US LLC, and Robert K. Huffman, with the law firm of Akin Gump Strauss Hauer & Field,

IT IS HEREBY ORDERED that said attorneys are withdrawn as counsel for Envirocare in this matter. Clyde Snow Sessions & Swenson will remain the law firm of record for Envirocare.

Dated this 9th day of September 2008.

BY THE COURT:



BRUCE S. JENKINS
United States District Court Judge

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

STEPHEN KINGSTON and TED KINGSTON,

Plaintiffs,

v.

MARY ANN NELSON, et al.,

Defendants.

**ORDER GRANTING
MOTION FOR TEMPORARY STAY**

Case No. 2:04-cv-156-DB-PMW

District Judge Dee Benson

Magistrate Judge Paul M. Warner

This case was referred to Magistrate Judge Paul M. Warner by District Judge Dee Benson pursuant to 28 U.S.C. § 636(b)(1)(A).¹ Before the court is Carl E. Kingston's ("Carl") third-party motion for a temporary stay of this court's August 1, 2008 memorandum decision and order.² *See* DUCivR 72-3(b). On August 11, 2008, Carl filed objections to and a motion to strike or revise that memorandum decision and order,³ which are currently pending before Judge Benson.

For the reasons set forth in Carl's motion for a temporary stay, and for good cause appearing, the motion is **GRANTED**. Accordingly, **IT IS HEREBY ORDERED** that this

¹ *See* docket no. 109.

² *See* docket no. 142.

³ *See* docket no. 137.

court's August 1, 2008 memorandum decision and order⁴ is **STAYED** pending Judge Benson's resolution of Carl's objections to and motion to strike or revise that memorandum decision and order.

IT IS SO ORDERED.

DATED this 10th day of September, 2008.

BY THE COURT:

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

PAUL M. WARNER
United States Magistrate Judge

⁴ See docket no. 134.

FILED
U.S. DISTRICT COURT

2008 SEP 10 A 8:56

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Stephen J. Hill (1493)
Robert B. Lochhead (1986)
Jenifer L. Tomchak (10127)
PARR WADDOUPS BROWN GEE & LOVELESS
Attorneys for Plaintiffs
185 South State Street, Suite 1300
Salt Lake City, Utah 84111-1537
Telephone: (801) 532-7840

Attorneys for Plaintiffs

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

KENNETH G. HANSEN, an individual, DAVID
RUTTER, an individual, TODD FISHER, an
individual, FIBERTEL, INC., a Utah
corporation, K&D DEVELOPMENT, LC, a
Utah limited liability company, and DOUGLAS
A. SMITH, an individual

Plaintiffs,

vs.

MARC S. JENSON, an individual, MSF
PROPERTIES, LC, a Utah limited liability
company, BANK ONE, NA, a national banking
association, MARK ROBBINS, an individual,
MADTRAX GROUP, LLC, a Utah limited
liability company, SPENCER BRANNAN, an
individual, FIRST WASATCH
DEVELOPMENT, INC., a Nevada
corporation, and DOES 1-50,

Defendants.

**ORDER OF DISMISSAL WITH
PREJUDICE OF CLAIMS AGAINST
DEFENDANTS MARC S. JENSON AND
MSF PROPERTIES, LC, AND TO
ADMINISTRATIVELY CLOSE CASE
PENDING PAYMENT OF AGREED
SETTLEMENT AMOUNT OR ENTRY
OF JUDGMENT BY CONFESSION**

Case No. 2:04-CV-00867 TS
Honorable Ted Stewart
Magistrate Judge Brooke C. Wells

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure and the joint motion of
Plaintiffs David Rutter, Todd Fisher, Fibertel, Inc., K&D Development, LC, and Douglas A.

Smith (collectively referred to as "Plaintiffs") and Defendants Marc S. Jenson and MSF Properties, LC (collectively the "Jenson Defendants") (Plaintiffs and the Jenson Defendants collectively referred to herein as the "Parties"), for dismissal with prejudice and to administratively close Plaintiffs' case against the Jenson Defendants pending payment of the Settlement Amount pursuant to the Parties' Settlement Agreement dated September 5, 2008, or the entry of judgment by confession against the Jenson Defendants and in favor of Plaintiffs, and good cause appearing,

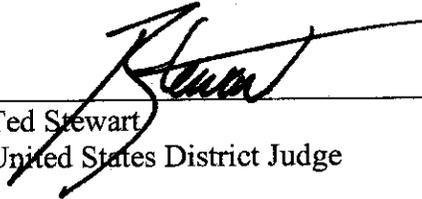
IT IS HEREBY ORDERED:

1. That all claims against the Jenson Defendants be and hereby are dismissed with prejudice, the respective parties to bear their own costs and attorneys' fees;
2. That the case against the Jenson Defendants shall be and is administratively closed but remains subject to the Court's jurisdiction for a period of at least one year from the date hereof, pending payment by the Jenson Defendants of the agreed settlement amount in a series of payments as provided in the Parties' Settlement Agreement;
3. That in the event the Jenson Defendants fail to make any payment as scheduled, Plaintiffs shall be entitled to the entry of judgment by confession in the amount provided in the parties' Settlement Agreement based upon Plaintiffs' counsel filing a declaration describing the circumstances of default, submitting to the Court under seal a copy of the Settlement Agreement, and providing prior notice to the Jenson Defendants; and
4. That upon payment in full of the settlement amount, counsel for the Plaintiffs will notify the Court and the Court shall permanently close the case.

This order does not apply to or affect the claims of Plaintiffs against any Defendants other than the Jenson Defendants or to any claims or defenses of any types of either of the Jenson Defendants against any person or entity other than Plaintiffs.

Dated: September 10th 2008.

BY THE COURT:



Ted Stewart
United States District Judge

Approved as to form:

HATCH JAMES & DODGE

/s/ Mark F. James
Mark F. James
Attorneys for Jenson Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of September, 2008, served the foregoing via email, which sent notification of such filing to the following:

Mark F. James, mjames@hjdllaw.com
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

James E. Magleby, magleby@mgpclaw.com
Christopher M. Von Maack, vonmaack@mgpclaw.com
MAGLEBY & GREENWOOD, P.C.
170 South Main Street, Suite 350
Salt Lake City, Utah 84101

Andrew G. Deiss, adeiss@joneswaldo.com
Billie J. Siddoway, bsiddoway@joneswaldo.com
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Spencer Brannan
6429 South Trophy Ct.
Gilbert, AZ 85297

/s/ Stephen J. Hill

UNITED STATES DISTRICT COURT

CENTRAL

UTAH

FILED
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

SECOND AMENDED JUDGMENT IN A CRIMINAL CASE

V.

2008 SEP -9

Case Number: A 7:01

DUTX 2:05CR00805-001 TC

Dennis B. Evanson

DISTR. OF UTAH

USM Number: 13115-081

13115-081

Date of Original Judgment: 8/15/2008
(Or Date of Last Amended Judgment)

BY: Charles J. Muller
Defendant's Attorney

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(d)(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) _____
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) 1, 2-8, 28-36 and 39-49 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 371	Conspiracy to Commit Tax Fraud		1
26 USC § 7201	Tax Evasion		2-8
26 USC § 7206(2)	Aiding and Assisting in the Preparation of a False Income Tax Return		28-36,39-49

The defendant is sentenced as provided in pages 2 to page 6 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) 37 and 38 of the Indictment
- 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.

8/15/2008
Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell Chief, United States District Court Judge
Name and Title of Judge

9-8-2008
Date

DEFENDANT: Dennis B. Evanson
CASE NUMBER: 2:05CR00805-001 TC

IMPRISONMENT

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

120 Months

The court makes the following recommendations to the Bureau of Prisons:
The Court recommends the defendant serve his sentence at an appropriate level facility in Colorado, to allow 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 12 p.m. on 9/26/2008 at 12:00 Noon

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 _____

a _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Dennis B. Evanson
CASE NUMBER: 2:05CR00805-001 TC

SUPERVISED RELEASE

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

36 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, 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: Dennis B. Evanson
CASE NUMBER: 2:05CR00805-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time, verifiable employment throughout the term of supervision as deemed appropriate by the probation office.
2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit, unless he is in compliance with any established payment schedule and obtains the approval of the probation office.
3. The defendant shall provide the probation office access to all requested financial information.
4. The defendant shall file all delinquent tax returns with the IRS case investigator within 30 days of the date of sentencing.
5. The defendant shall establish a payment schedule with the IRS for the payment of his delinquent tax obligations within 30 days from the date of sentencing.
6. During the 30 days prior to his self surrender date, the defendant shall fully cooperate with the IRS to prepare a assessment of all delinquent tax returns and be in full compliance with a payment schedule. Payment schedule will be made available by the IRS to the Probation Office to ensure compliance.

DEFENDANT: Dennis B. Evanson
CASE NUMBER: 2:05CR00805-001 TC

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>		<u>Fine</u>		<u>Restitution</u>
TOTALS	\$ 2800.00		\$		\$

- 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.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____	\$ _____
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- 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 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: Dennis B. Evanson
CASE NUMBER: 2:05CR00805-001 TC

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 \$ 2800.00 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:
Restitution payments shall begin upon release from incarcerations, payments shall be made in accordance with a schedule established with the IRS, as directed by the United States Probation Office.

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:

Property forfeited and a money judgment in the amount of \$2,774,133.04, pursuant to the Preliminary Order of Forfeiture filed August 4, 2008 (Docket No. 556), included herein.

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.

FILED
U.S. DISTRICT COURT
UNITED STATES DISTRICT COURT

Central

District of

Utah

2008 SEP -9 A 7:01
UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

Stephen F. Petersen

BY: _____
DEPUTY CLERK

Case Number:

DUTX 2:05CR00805-003 TC

USM Number:

13117-081

Robert Hunt

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 and 32 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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 371	Conspiracy to Commit Tax Fraud		1
26 USC § 7206(2)	Assisting in the Preparation of a False Tax Return		32

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) 14-18, 28-31, 33-49 of Indictment 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.

09/03/2008

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell

Chief, United States District Court Judge

Name and Title of Judge

9-8-2008

Date

DEFENDANT: Stephen F. Petersen
CASE NUMBER: 2:05CR00805-003 TC

IMPRISONMENT

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

35 Months

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

The Court recommends the defendant serve his sentence at an appropriate level facility in Colorado.

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 12:00 p.m. on October 14, 2008

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: Stephen F. Petersen
CASE NUMBER: 2:05CR00805-003 TC

SUPERVISED RELEASE

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

36 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: Stephen F. Petersen
CASE NUMBER: 2:05CR00805-003 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time verifiable employment throughout the term of supervision **as deemed appropriate by the USPO.**
2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit, unless he is in compliance with any established payment schedule and obtains the approval of the USPO.
3. *The defendant shall provide the USPO access to all requested financial information.*
4. The defendant shall file all delinquent tax returns with the IRS case investigator within 30 days from the date of sentencing.
5. The defendant shall establish a payment schedule with the IRS for the payment of his delinquent tax obligations within 30 days from the date of sentencing.

DEFENDANT: Stephen F. Petersen
CASE NUMBER: 2:05CR00805-003 TC

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$ 194,622.00

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.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Internal Revenue Service Attn: MPU, STOP 151 P.O. Box 47-421 Doraville, GA 30362		194,622.00	

TOTALS	\$ _____	0	\$ _____	194622.
---------------	----------	---	----------	---------

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: Stephen F. Petersen
CASE NUMBER: 2:05CR00805-003 TC

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 \$ 200.00 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:
Restitution payments shall begin upon the defendant's release from incarceration. Payments shall be made in accordance with a schedule established with the IRS as directed by the United States Probation Office.

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:

Property forfeited and a money judgment in the amount of \$1,166,185.46, pursuant to the Preliminary Order of Forfeiture filed August 4, 2008 (Docket No. 556), included herein.

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

UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

2008 SEP -9 4 10 51 AM

JUDGMENT IN A CRIMINAL CASE

V.

Brent H. Metcalf

DISTRICT OF UTAH

BY: DEPUTY CLERK

Case Number:

DUTX 2:05CR00805-002 TC

USM Number:

13116-081

Neil Kaplan

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 and 49 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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 371	Conspiracy to Commit Tax Fraud		1
26 USC § 7206(2)	Assisting in the Preparation of a False Tax Return		49

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) 9-13, 28-48 of the Indictment 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.

09/03/2008

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Name and Title of Judge

Chief, United States District Court Judge

9-9-2008

Date

DEFENDANT: Brent H. Metcalf
CASE NUMBER: 2:05CR00805-002 TC

IMPRISONMENT

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

24 Months

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

The Court recommends the defendant serve his sentence at an appropriate level facility in the State of Colorado.

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 12:00 p.m. on 10/14/2008

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: Brent H. Metcalf
CASE NUMBER: 2:05CR00805-002 TC

SUPERVISED RELEASE

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

36 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: Brent H. Metcalf
CASE NUMBER: 2:05CR00805-002 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time verifiable employment throughout the term of supervision **as deemed appropriate by the USPO.**
2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit, unless he is in compliance with any established payment schedule and obtains the approval of the USPO.
3. The defendant shall provide the USPO access to all requested financial information.
4. The defendant shall establish a payment schedule with the IRS for the payment of his delinquent tax obligations within 30 days from the date of sentencing, and make all payments to the IRS, following release from incarceration. The defendant shall cooperate with the IRS in the ascertainment of his correct tax liabilities and shall establish a payment schedule.

DEFENDANT: Brent H. Metcalf
CASE NUMBER: 2:05CR00805-002 TC

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 \$ 200.00 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

UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

2008 SEP -9 A 10: 54

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

Reed H. Barker

BY: _____
DEPUTY CLERK

Case Number:

DUTX 2:05CR00805-004 TC

USM Number:

13111-081

Stephen McCaughey

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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 371	Conspiracy to Commit Tax Fraud		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) 19-21, 42-49 of the Indictment 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.

09/04/2008

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell

Name and Title of Judge

Chief United States Court District Judge

9-9-2008

Date

DEFENDANT: Reed H. Barker
CASE NUMBER: 2:05CR00805-004 TC

IMPRISONMENT

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

18 Months

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

The Court recommends the defendant serve his sentence at an appropriate level facility in Colorado.

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 12:00 p.m. on 10/15/2008.

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: Reed H. Barker
CASE NUMBER: 2:05CR00805-004 TC

SUPERVISED RELEASE

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

36 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: Reed H. Barker
CASE NUMBER: 2:05CR00805-004 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time verifiable employment throughout the term of supervision **as deemed appropriate by the USPO.**
2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit, unless he is in compliance with any established payment schedule and obtains the approval of the USPO.
3. The defendant shall provide the USPO access to all requested financial information.
4. The defendant shall file all delinquent tax returns with the IRS case investigator within 30 days from the date of sentencing.
5. The defendant shall establish a payment schedule with the IRS for the payment of his delinquent tax obligations within 30 days from the date of sentencing.

DEFENDANT: Reed H. Barker
CASE NUMBER: 2:05CR00805-004 TC

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>		<u>Fine</u>		<u>Restitution</u>
TOTALS	\$ 100.00		\$		\$ 167,608.00

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.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Internal Revenue Service Attn: MPU, STOP 151 (Restitution) P.O. Box 47-421 Doraville, GA 30362		167,608.00	

TOTALS	\$ _____	0	\$ _____	167608
---------------	----------	---	----------	--------

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: Reed H. Barker
CASE NUMBER: 2:05CR00805-004 TC

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:

Restitution payments shall begin upon release from incarcerations, payments shall be made in accordance with a schedule established with the IRS, as directed by the United States Probation Office.

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

2008 SEP 10 P 1:39

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

DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff,

vs.

RICHARD GATT

Defendant.

ORDER

Case No. 2:06-CR-00619-001

Judge Dee Benson

On April 23, 2007, defendant Richard Gatt appeared before this Court and was sentenced to a thirty-six-month term of probation for unlawful transportation of a firearm. On April 23, 2008, Mr. Gatt moved this Court to terminate his term of probation pursuant to 18 U.S.C. §§ 3553, 3563(c). The United States Attorney's Office and the United States Probation Office do not oppose Mr. Gatt's motion. Having considered the factors set forth in § 3553, the Court GRANTS Mr. Gatt's motion and hereby orders that his term of probation be terminated.

IT IS SO ORDERED.

Dated this 8th day of September, 2008.



Dee Benson
United States District Judge

FILED
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

Plaintiff,

vs.

RICHARD GATT

Defendant

PRO SE MOTION JUN 17 P 4:41

FOR EARLY TERMINATION OF

SUPERVISED PROBATION BY: [Signature]

2:06 - CR - 00619-001 - DB

On April 23, 2007 Richard Gatt appeared before the Honorable Dee Benson and was sentenced to a term of 36 months probation for unlawful transportation of a firearm. Richard has been clean and sober since June 1, 2005 which is exemplified by the fact that he hasn't had any positive UA's during the time of his probation. He has maintained gainful employment in accounting and Human Resources, he pays child support regularly and he has maintained close contact and communication with his probation officer Jennifer Johnson regarding all aspects of his life. In addition, he asks the court to consider that he is going through divorce with his current wife who is trying to get full legal custody of their 3 year old daughter Natasha. The fact that he is still on probation makes it difficult if not impossible for him to seek and get joint custody of the child. Furthermore, his wife has taken their daughter out of the country to Brazil and left her with the child's grandparents. It may be likely that Richard would need to travel to Brazil and bring her back to the United States which he would not be able to do if he is still on probation. Pursuant to Title 18 United States Code, Section 3583(e)(1), The Court, after considering the factors set forth in 18 U.S.C. §§ 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5) and (a)(6), may terminate a term of supervised probation and discharge the defendant released at any time after the expiration of one year of supervised probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice.

DATED this 23rd day of April 2008

BY THE DEFFENDANT:



RICHARD GATT

cc: Wade A. Farraway, Assistant United States Attorney
Jennifer Johnson, United States Probation Officer

UNITED STATES OF AMERICA

Plaintiff,

vs.

RICHARD GATT

Defendant

PRO SE MOTION

FOR EARLY TERMINATION OF

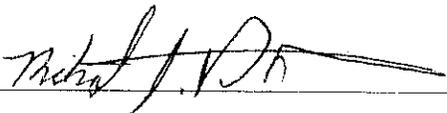
SUPERVISED PROBATION

2:06 - CR - 00619-001 - DB

On April 23, 2007 Richard Gatt appeared before the Honorable Dee Benson and was sentenced to a term of 36 months probation for unlawful transportation of a firearm. Richard has been clean and sober since June 1, 2005 which is exemplified by the fact that he hasn't had any positive UA's during the time of his probation. He has maintained gainful employment in accounting and Human Resources, he pays child support regularly and he has maintained close contact and communication with his probation officer Jennifer Johnson regarding all aspects of his life. In addition, he asks the court to consider that he is going through divorce with his current wife who is trying to get full legal custody of their 3 year old daughter Natasha. The fact that he is still on probation makes it difficult if not impossible for him to seek and get joint custody of the child. Furthermore, his wife has taken their daughter out of the country to Brazil and left her with the child's grandparents. It may be likely that Richard would need to travel to Brazil and bring her back to the United States which he would not be able to do if he is still on probation. Pursuant to Title 18 United States Code, Section 3583(e)(1), The Court, after considering the factors set forth in 18 U.S.C. §§ 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5) and (a)(6), may terminate a term of supervised probation and discharge the defendant released at any time after the expiration of one year of supervised probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice.

DATED this 23rd day of April 2008

BY THE DEFFENDANT:



RICHARD GATT

cc: Wade A. Farroway, Assistant United States Attorney

Jennifer Johnson, United States Probation Officer

Richard A. Rappaport (2690)
Jeffrey L. Silvestrini (2959)
COHNE, RAPPAPORT & SEGAL, P.C.
257 East 200 South, Suite 700
Salt Lake City, UT 84111
Telephone: (801) 532-2666
Jeff@crslaw.com
Attorneys for Defendant Atlantis Enterprises Inc.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION	
EDJE, INC., a Nevada Corporation, Plaintiff, v. ATLANTIS ENTERPRISES, INC., a California Corporation, dba ATLANTIS TIME-LINE, a California Corporation, Defendant.	Civil Action No: 2:06cv00319 DAK ORDER PERMITTING WITHDRAWAL OF COUNSEL Judge Dale A. Kimball

Based upon the motion of Jeffrey L. Silvestrini, of and for the firm of Cohne Rappaport & Segal, for leave to withdraw as counsel for Defendant and the supporting memorandum and the stipulation of counsel for Plaintiff, the Court finds good cause to permit the withdrawal of Jeffrey L. Silvestrini and Cohne Rappaport & Segal, PC as counsel for Defendant. The withdrawal of Jeffrey L. Silvestrini and Cohne Rappaport & Segal, PC will be accepted and Defendant is directed to obtain successor counsel in advance of the trial in this matter set to commence on November 4, 2008.

DATED this 10th day of September, 2008.

BY THE COURT:


HONORABLE DALE KIMBALL
UNITED STATES DISTRICT JUDGE

Approved as to Form:

/s/ Craig J. Madson
Craig J. Madson
Madson & Austin
Attorneys for Plaintiff

RECEIVED

SEP 09 2008

FILED
U.S. DISTRICT COURT

2008 SEP 10 A 9:38

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

RONALD ADY, PLLC (USB 3694)
8 E. Broadway, Ste. 710
Salt Lake City, UT 84111
(801) 530-3122
(801) 746-3501 fax

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

Attorney for Plaintiff

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

RAY BIRMINGHAM,

Plaintiff,

v.

EQUIFAX INC.; TRANSUNION LLC;
EXPERIAN INFORMATION SOLUTIONS,
INC.; VERIZON COMMUNICATIONS,
INC. and VODAFONE GROUP, PLC, a joint
venture dba VERIZON WIRELESS;
CELLULAR INC. NETWORK
CORPORATION, UTAH RSA 6 LIMITED
PARTNERSHIP, VERIZON POWER
PARTNERS INC. AND WASATCH UTAH
RSA NO. 2 LIMITED PARTNERSHIP dba
VERIZON WIRELESS; VERIZON
WIRELESS UTAH, LLC operating under the
name and style of VERIZON WIRELESS;
VERIZON WIRELESS (VAW) LLC,
operating under the name and style of
VERIZON WIRELESS,

Defendants.

**ORDER EXTENDING THE TIME FOR
PLAINTIFF'S MEMORANDA
OPPOSING THE VERIZONS
DEFENANTS' MOTIONS TO DISMISS**

Case No. 2:06-cv-00702 BSJ

Judge Bruce S. Jenkins

Magistrate Judge

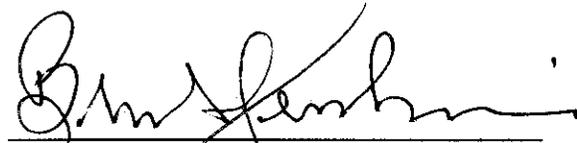
On the motion of Plaintiff for an order extending the time within which he may respond

to the Verizon Defendants motions to dismiss filed in this case, and sufficient cause for the extension having been shown; therefore,

It is ordered that the motion be granted and that the time in which Plaintiffs may serve memoranda in opposition to the Verizon Defendants motions to dismiss is extended to and including September 26, 2008.

DATED this 9th day of September, 2008.

BY THE COURT:


UNITED STATES DISTRICT JUDGE

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

FILED
U.S. DISTRICT COURT
2008 SEP 10 P 1:39

FRANK M. DARDEN, d/b/a DARDEN AND
ASSOCIATES,

Plaintiff,

vs.

COST MANAGEMENT SERVICES, INC., a
Pennsylvania Corporation,

Defendant.

Case No.: 2:06-cv-975-PGC

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

**ORDER GRANTING JOINT MOTION
TO EXTEND FACT DISCOVERY
DEADLINE**

District Judge Dee Benson
Magistrate Judge David Nuffer

THIS CAUSE came before the Court this 10th day of September, 2008, upon the parties' Joint Motion to Extend Fact Discovery Deadline and the Court having reviewed the pleadings and papers filed, and being otherwise fully advised in the premises, it is hereupon

ORDERED AND ADJUDGED as follows:

1. The parties' Joint Motion to Extend Fact Discovery Deadline is hereby GRANTED.

2. The fact discovery deadline is extended until October 20, 2008. The remainder of this Court's February 21, 2007 Scheduling Order & Order Vacating Hearing and March 26, 2008 Order Granting Stipulated Motion to Amend and Amended Scheduling Order are unchanged.

DONE AND ORDERED in Chambers in Salt Lake City, Utah this 10th day of September, 2008.



Judge Dee Benson
U.S. District Court Judge

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic/U.S. Mail delivery to KIM R. WILSON, ESQ. (krw@scmlaw.com) / P.

MATTHEW COX, ESQ. (pmc@scmlaw.com), Snow, Christensen & Martineau, 10 Exchange Place, Eleventh Floor, Salt Lake City, UT 84145; RAUL A. TABORA, JR., ESQ. (rtabor@ruffotabora.com), Ruffo Tabora Mainello & McKay, P.C., 300 Great Oaks Blvd., Suite 311, Albany, NY 12203 and WILLIAM G. OSBORNE, ESQ. (wgo_pa@hotmail.com), 538 E. Washington St., Orlando, FL 32801 this _____ day of September, 2008.

Judicial Assistant

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CLODOALDO GARCIA-RAMIREZ, et al.,
Defendants.

MEMORANDUM DECISION AND
ORDER ON *JAMES* ISSUES

Case No. 2:07-CR-572 TS

This matter comes before the Court subsequent to a *James*¹ hearing that addressed issues related to the admissibility of coconspirator statements under Federal Rule of Evidence 801(d)(2)(E). As discussed below, the Court finds that a conspiracy existed and that Defendant Alfredo Rios-Guerrero and Defendant Arturo Soriano-Esqueda were members of the conspiracy.

I. BACKGROUND

In addition to other substantive offenses, Defendants in this case are charged with conspiracy to distribute heroin in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 846.

This Court held a *James* hearing on May 23, 2008, for the purpose of determining whether a conspiracy existed and, if so, who the members of that conspiracy were. The

¹*United States v. James*, 590 F.2d 575 (5th Cir.), cert. denied, 442 U.S. 917 (1979).

Government submitted a written proffer prior to the hearing. At the hearing, the Government submitted an oral proffer and called DEA Special Agent Crosby to testify regarding the Government's investigation. After hearing Special Agent Crosby's testimony, the Court set a briefing schedule on the conspiracy issues. The Government and Defendants Arturo Soriano-Esqueda and Pedro Juan Delacruz filed memoranda.² Defendant Alfredo Rios-Guerrero was granted an extension of time to file a Response, which he failed to do prior to the August 8, 2008 deadline.

II. FINDINGS OF FACT

For purposes of determining the admissibility of coconspirator statements under Rule 801(d)(2)(E) only, the Court enters the following findings of fact:

At some point prior to the summer of 2006, Clodoaldo Garcia-Ramirez began functioning as a dispatcher for a heroin and cocaine distribution system in the area surrounding Salt Lake City, Utah. Garcia-Ramirez would receive multiple calls each day from heroin and cocaine customers, after which Garcia-Ramirez would contact distributors to meet with and supply drugs to the customers. Garcia-Ramirez determined the prices his distributors would charge to customers and paid each distributor a salary. Cesar Preciado-Gonzalez, one of Garcia-Ramirez's full-time distributors, was arrested in July 2007 with a quantity of drugs in his possession.

Garcia-Ramirez and his distributors sold approximately three and a half kilograms of heroin every three weeks, which was the frequency at which he would receive shipments of heroin. Garcia-Ramirez also maintained contact with a heroin source in Mexico, negotiating

²Defendants Clodoaldo Garcia-Ramirez and Cesar Preciado-Gonzalez were in attendance at the hearing, but have since withdrawn. Defendant Anthony Alfred Sublasky filed a Reply and Withdrawal on July 14, 2008.

prices and amounts for shipments of heroin into the Salt Lake City area, and with the couriers who transported the shipments of heroin.

When Garcia-Ramirez received heroin from sources in Mexico, the drugs were kept at a single location in Magna, Utah, known as the “stash location,” where distributors would receive the drugs they were to distribute to customers.³ Couriers would arrive at the stash location with the drug shipments secreted within various compartments of cars. The drugs would be removed, money would be placed into the same compartments, and the couriers would leave. Alfredo Rios-Guerrero was responsible for maintaining the stash location, and for making sure the distributors were supplied with drugs. Rios-Guerrero would also meet with local sources to purchase cocaine, which he would then bring to the stash location for distribution.

Defendant Arturo Soriano-Esqueda ran a separate heroin distribution operation in Salt Lake City, Utah. He purchased heroin from the same source in Mexico as Garcia-Ramirez and used the same couriers to transport the drugs to the Salt Lake City area. Soriano-Esqueda was in communication with Garcia-Ramirez regarding shipments of heroin and payments for those shipments. Soriano-Esqueda would receive his heroin and make payments for the heroin through Rios-Guerrero, who was acting on behalf of Garcia-Ramirez.

In July 2007, one hundred thousand dollars, as payment for heroin received by Garcia-Ramirez and Soriano-Esqueda, was seized en route to the heroin supplier in Mexico. The money was marked with the name of Garcia-Ramirez, the nickname of Soriano-Esqueda, and the name of a third person. Moreover, those payments were not separated into separate amounts for Soriano-Esqueda and Garcia-Ramirez.

³April 14, 2008 Hearing Transcript [hereinafter *Transcript*], 10-11.

On August 17, 2007, Defendants Anthony Alfred Sublasky and Pedro Juan Delacruz arrived in the Salt Lake City and Sublasky contacted Garcia-Ramirez. These and other phone calls were entirely in Spanish and Delacruz was not identified in any phone calls. Sublasky was instructed to drive to a convenience store, where Rios-Guerrero instructed Sublasky to follow Rios-Guerrero to the stash location. After two hours, Sublasky and Delacruz left. They stayed at a hotel that night and were arrested the next day, on August 18, 2007. Upon being arrested, Sublasky stated to police that Delacruz had no knowledge of any drug shipment. After the arrest, police discovered a large amount of money hidden in the car and 3.5 kilograms of heroin was discovered at the stash location. An additional kilogram of heroin was found in the possession of Soriano-Esqueda shortly after the arrest of Sublasky and Delacruz.

III. ANALYSIS

Under Fed. R. Evid. 801(d)(2)(E), statements by co-conspirators are properly admissible as non-hearsay at trial if the Court determines, by a preponderance of the evidence, that (1) a conspiracy existed; (2) the declarant and the defendant were both members of the conspiracy; and (3) the statements were made in the course of and in furtherance of the conspiracy.⁴ It is the burden of the government to prove each of the elements by a preponderance of the evidence and it is the trial court that determines admissibility.⁵ In deciding whether the prerequisites for admission of the co-conspirator statements have been satisfied, the Court may consider the co-conspirator statements sought to be admitted as evidence of the conspiracy.⁶ The Tenth Circuit

⁴*United States v. Urena*, 27 F.3d 1487, 1490 (10th Cir. 1994).

⁵*Bourjaily v. United States*, 483 U.S. 171, 175-76 (1987); *United States v. Owens*, 70 F.3d 1118, 1123 (10th Cir. 1995).

⁶*United States v. Lopez-Gutierrez*, 83 F.3d 1235, 1242 (10th Cir. 1996).

has held, however, that “there need . . . be some independent evidence linking the defendant to the conspiracy.”⁷ “Such independent evidence may be sufficient even when it is not ‘substantial.’”⁸ The Tenth Circuit has defined “independent evidence” as “evidence other than the proffered [co-conspirator] statements themselves.”⁹

1. *Existence of a Conspiracy*

The first element the Court must consider is the existence of a conspiracy. “To prove conspiracy, the government must show (1) two or more persons agreed to violate the law, (2) the defendant knew the essential objectives of the conspiracy, (3) the defendant knowingly and voluntarily participated in the conspiracy, and (4) the alleged coconspirators were interdependent.”¹⁰

A. Agreement

“To prove an agreement, the government need not offer direct proof of an express agreement on the part of the defendant. Instead the agreement may be informal and may be inferred entirely from circumstantial evidence.”¹¹ However, it is not enough for the government to show only mere association with conspirators known to be involved in crime; casual

⁷*United States v. Martinez*, 825 F.2d 1451, 1453 (10th Cir. 1987).

⁸*Lopez-Gutierrez*, 83 F.3d at 1242.

⁹*Martinez*, 825 F.2d at 1451.

¹⁰*United States v. Yehling*, 456 F.3d 1236, 1240 (10th Cir. 2006).

¹¹*United States v. Pulido-Jacobo*, 377 F.3d 1124, 1129 (10th Cir. 2004) (quoting *United States v. Lang*, 364 F.3d 1210, 1223 (10th Cir. 2004)).

transactions between the defendant and conspirators known to be involved in the crime; or a buyer-seller relationship between the defendant and a member of the conspiracy.¹²

The government has presented sufficient evidence to show that there was an agreement to violate the law in this case. The essential objectives of the conspiracy in this case was the use of couriers to transport heroin from Mexico to the Salt Lake City area, where it would then be distributed through members of the conspiracy to customers in the general public. The government has presented sufficient evidence to show that multiple individuals, including Clodoaldo Garcia-Ramirez, Alfredo Rios-Guerrero, and Arturo Soriano-Esqueda knew of the essential objectives of the conspiracy. When the heroin arrived in the Salt Lake Area, Rios-Guerrero arranged for its storing, packaging, and distribution through the Magna stash location. Soriano-Esqueda was aware of the means of transporting heroin to the Salt Lake City area, as he utilized them himself for the purpose of receiving heroin for his own distribution. Soriano-Esqueda also was aware of Garcia-Ramirez's internal distribution mechanisms, and utilized them in receiving his drug shipments and making payments for them.

The government has failed, however, to offer sufficient evidence to show that Pedro Juan Delacruz knew of the conspiracy. The government has established only that he was within the car that later was found with money hidden in secret compartments. While the government has provided sufficient evidence that the money likely replaced a shipment of heroin, the government has not provided sufficient evidence that Delacruz was aware of the presence of the heroin. In fact, Sublasky, after his arrest, told police that Delacruz knew nothing about the operation and the government has provided no evidence to contradict that assertion.

¹²*United States v. Evans*, 970 F.2d 663, 669 (10th Cir. 1992).

B. Knowledge and Voluntary Participation

“A defendant may be convicted of a conspiracy only if the government proves that the defendant had knowledge of the conspiracy and voluntarily participated therein. A conspirator need not know of the existence or identify of the other members of the conspiracy or the full extent of the conspiracy, but he or she must have a general awareness of both the scope and the objective of the enterprise to be regarded as a coconspirator.”¹³

The government has presented sufficient evidence to show that Arturo Soriano-Esqueda and Alfredo Rios-Guerrero knowingly and voluntarily took part in the conspiracy. As discussed above, Soriano-Esqueda knew of and utilized the supply conduits established by the conspiracy for obtaining heroin for distribution in the Salt Lake City area and Rios-Guerrero received the heroin when it arrived and arranged for its storage and distribution. However, the government has not presented sufficient evidence that Pedro Juan Delacruz had an awareness of either the scope or the objective of the enterprise.

C. Interdependence

“Interdependence exists when ‘each alleged coconspirator . . . depend[s] on the successful operation of each ‘link’ in the chain to achieve the common goal.’”¹⁴ “In other words, each coconspirator’s ‘actions must facilitate the endeavors of other alleged coconspirators or facilitate the venture as a whole.’”¹⁵

¹³*Evans*, 970 F.2d at 669–70 (internal quotation marks and citation omitted).

¹⁴*Yehling*, 456 F.3d at 1241 (quoting *United States v. Dickey*, 736 F.2d 571, 582 (10th Cir. 1984)).

¹⁵*Id.* (quoting *Evans*, 970 F.2d at 670).

The government has provided sufficient evidence of interdependence with regard to Alfredo Rios-Guerrero and Arturo Soriano-Esqueda. Rios-Guerrero played an essential role in receiving the heroin from couriers and assuring that distributors had sufficient drugs to provide to customers. Other members of the venture relied upon Rios-Guerrero's services, and he, in turn, relied on couriers to supply the drugs, and distributors to sell the drugs to customers.

Arturo Soriano-Esqueda relied completely upon Garcia-Ramirez and Rios-Guerrero for provision of heroin. Soriano-Esqueda was in communication with Garcia-Ramirez regarding provision of heroin, and met with Rios-Guerrero to receive actual shipments of heroin and to make payment. Soriano-Esqueda argues that his only connection with the larger conspiracy is a shared supplier.¹⁶ However, the government has shown that “‘but for’ Garcia-Ramirez acting as a conduit source, Soriano-Esqueda has no heroin to distribute to customers.”¹⁷ Moreover, the fact that Soriano-Esqueda received his shipments of heroin in the same way and from the same individual (Rios-Guerrero) as the remainder of Garcia-Ramirez's distributors is clear evidence that Soriano-Esqueda's connection to Garcia-Ramirez and Rios-Guerrero went beyond occasional or sporadic contact, as alleged by Soriano-Esqueda.¹⁸ Moreover, the evidence presented by the government that Soriano-Esqueda also operated a separate drug distribution operation does not preclude his inclusion in the general conspiracy to distribute heroin in the area surrounding Salt Lake City, Utah.

¹⁶Reply Memorandum of Defendant Arturo Soriano-Esqueda [hereinafter *Reply*], 6.

¹⁷Government's Response Memorandum [hereinafter *Response*], 6.

¹⁸*Reply* at 6.

The government has failed, however, to provide sufficient evidence that Pedro Juan Delacruz was interdependent with other co-conspirators. The government claims that Delacruz was a courier employed to transport heroin to Garcia-Ramirez and then return money to the supplier of the heroin.¹⁹ While the government has provided evidence that Delacruz was at least a passenger in a car that allegedly transported heroin to Utah on behalf of the conspiracy, the government has failed to provide sufficient evidence of the existence of interdependence between Delacruz and the other links in the conspiracy. Sublasky, who also arrived in Utah in the car that allegedly transported the heroin, stated to police after arrest that Delacruz had no knowledge of the drugs in the car. The government has been unable to identify Delacruz on any phone calls related to the conspiracy, and the government admits that Delacruz was unknown to their investigation prior to August 17, 2007. Moreover, the government has failed to provide sufficient evidence that the conspiracy depended upon Delacruz's actions to achieve its goals or that Delacruz relied upon any other member of the conspiracy for anything.

Based on the above, the government has shown, by a preponderance of the evidence, the existence of a conspiracy. The government has shown that a conspiracy existed between Clodoaldo Garcia-Ramirez, Alfredo Rios-Guerrero, Arturo Soriano-Esqueda, Cesar Preciado-Gonzalez, and Anthony Alfred Sublasky. The objective of the conspiracy was to transport in interstate commerce, and then sell, heroin. The Court bases this conclusion on both the statements of the co-conspirators and the other supporting independent evidence presented by the government. This independent evidence includes eyewitness accounts and surveillance video of

¹⁹*Response* at 7.

activities related to the conspiracy, as well as physical evidence obtained during the arrest of various members of the conspiracy.

2. *Members of the Conspiracy*

The second element the Court must consider is whether the Defendants were members of the conspiracy. Based on this and the discussion set forth above, the Court finds that the government has proven by a preponderance of the evidence that Clodoaldo Garcia-Ramirez, Alfredo Rios-Guerrero, and Arturo Soriano-Esqueda were members of the conspiracy. The Court also finds that the government has failed to prove by a preponderance of the evidence that Pedro Juan Delacruz was a member of the conspiracy.

3. *In Furtherance of the Conspiracy*

The third element the Court must consider is whether the statements were made in the course of and in furtherance of the conspiracy. Pursuant to a May 12, 2008, Order of the Court,²⁰ the government was instructed to turn over to each defendant a list of the statements allegedly made by each defendant in furtherance of the conspiracy. Also pursuant to that Order, the May 23, 2008 *James* Hearing addressed only the issues of whether a conspiracy existed and whether the defendants were part of the conspiracy. The Court therefore reserves judgment on whether the statements made were in the course of and in furtherance of the conspiracy.

IV. CONCLUSION

For purposes of determining the admissibility of statements under Federal Rule of Evidence 801(d)(2)(E), the Court finds that a conspiracy existed for the purpose of transporting and distributing heroin. The Court also finds that Clodoaldo Garcia-Ramirez, Alfredo Rios-

²⁰Docket No. 233.

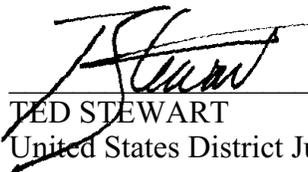
Guerrero and Arturo Soriano-Esqueda were members of that conspiracy. The Court finds that the government has not shown that Pedro Juan Delacruz was a member of that conspiracy.

SO ORDERED. It is further

ORDERED that the Motions for *James* Hearings filed by Sandra L. Romero Ruvalcaba (Docket No. 117), Gustavo Hernandez-Lopez (Docket No. 124), Julio Soto-Medina (Docket No. 125), Oscar Eduardo Isiodia (Docket No. 133), Rolando Torres-Silvas (Docket No. 134), Cesar Preciado-Gonzalez (Docket No. 139), Clodoaldo Garcia-Ramirez (Docket No. 145), Arturo Soriano-Esqueda (Docket No. 148), and Anthony Alfred Sublasky (Docket No. 214) are dismissed as moot.

DATED September 10, 2008.

BY THE COURT:



TED STEWART
United States District Judge

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALLEN ALBERT CHRISTENSEN,

Defendant.

:
:
:
:
:
:
:

ORDER TO CONTINUE JURY
TRIAL

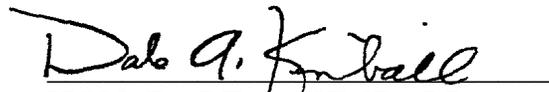
Case No. 2:08CR 126 DAK
Hon. Dale A. Kimball

IT IS FURTHER ORDERED: because of the complexity of this matter, the ongoing discussions, the need for defense counsel to further prepare this matter, and based on the stipulated motion to continue filed in this matter, the time between August 27, 2008, and the new trial date of October 28, 2008, at 8:30 a.m. is excluded from the calculation under the Speedy Trial Act in order to grant defense counsel and the government sufficient time to prepare for trial. The Court finds that such a continuance is required for effective preparation for trial taking

into account the exercise of due diligence. The court further finds that this additional time outweighs the best interest of the public and the defendant in a speedy trial pursuant to 18 U.S.C. § 3161(h)(8)(A).

DATED this 10th day of September, 2008.

BY THE COURT:


HON. DALE A. KIMBALL
U.S. DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Mark Vincent
Assistant United States Attorney
185 South State Street, Suite 400
Salt Lake City, Utah 84111

/s/ Heather M. Stokes

FILED
U.S. DISTRICT COURT
UNITED STATES DISTRICT COURT

Central

District of

Utah

2008 SEP -9 A 10:54
UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

Jesus Romero-Rosalas
aka Jesus Gonzalez-Rosales
aka Angel Sanchez-Rosales

BY: DEPUTY CLERK

Case Number: DUTX 2:08cr00421-001 TC

USM Number: 15530-081

Ben Hamilton
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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC § 1326	Reentry of a 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.

09/05/2008
Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell Chief, United States District Court Judge
Name and Title of Judge

9-9-2008
Date

DEFENDANT: Jesus Romero-Rosales
CASE NUMBER: 2:08CR0421-001 TC

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: Jesus Romero-Rosales
CASE NUMBER: 2:08CR00421-001 TC

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: Jesus Romero-Rosales
CASE NUMBER: 2:08CR00421-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States.

DEFENDANT: Jesus Romero-Rosales
CASE NUMBER: 2:08CR00421-001 TC

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 COURT FOR THE DISTRICT OF UTAH
CENTRAL DISTRICT

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HECTOR SANTANA-ILLAN,
Defendant.

ORDER FOR BRIEFING

Case No. 2:08-CR-422 TS

Defendant Santana-Illan's sentencing has been rescheduled and an amended presentence report prepared. It is

ORDERED that the parties shall file Positions on Sentencing Factors no later than Friday, September 19, 2008, and include their position on any enhancement.

DATED September 10, 2008.

BY THE COURT:



TED STEWART
United States District Judge

FILED
UNITED STATES DISTRICT COURT

Central

2008 SEP - 9 District 5 of

Utah

UNITED STATES OF AMERICA
V.

DISTRICT OF UTAH

JUDGMENT IN A CRIMINAL CASE

Fernando Vasquez-Murillo
aka Fernando Vasquez-Moreo
aka Fernando Vasquez
aka Hosea Cervantes

BY: _____
DEPUTY CLERK

Case Number:

DUTX 2:08cr00425-001 TC

USM Number:

15524-081

Ben Hamilton

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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC § 1326	Reentry of a 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.

09/05/2008

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell

Name and Title of Judge

Chief, United States District Court Judge

9-9-2008
Date

DEFENDANT: Fernando Vasquez-Murillo
CASE NUMBER: 2:08CR0425-001 TC

IMPRISONMENT

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

33 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: Fernando Vasquez Murillo
CASE NUMBER: 2:08CR00425-001 TC

SUPERVISED RELEASE

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

36 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: Fernando Vasquez-Murillo
CASE NUMBER: 2:08CR00425-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States.

DEFENDANT: Fernando Vasquez-Murillo
CASE NUMBER: 2:08CR00425-001 TC

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>		<u>Fine</u>		<u>Restitution</u>
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.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0	\$ _____ 0
---------------	------------	------------

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: Fernando Vasquez-Murillo
CASE NUMBER: 2:08CR00425-001 TC

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

UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

2008 SEP 10 A 10:57

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

Saul Martinez-Gonzalez

BY:

Case Number:

DUTX 2:08CR00444-001 TC

DEPUTY CLERK

USM Number:

14859-081

LaMar Winward

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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC § 1326	Reentry of a 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.

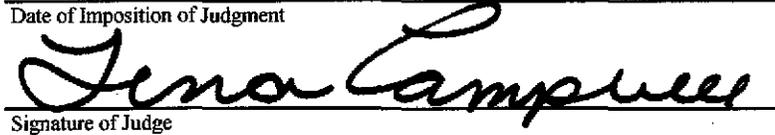
The defendant has been found not guilty on count(s) _____

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.

09/05/2008

Date of Imposition of Judgment


Signature of Judge

Tena Campbell

Chief, United States District Court Judge

Name and Title of Judge

9-9-2008

Date

DEFENDANT: Saul Martinez-Gonzalez
CASE NUMBER: 2:08CR00444-001 TC

IMPRISONMENT

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

40 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: Saul Martinez-Gonzalez
CASE NUMBER: 2:08CR00444-001 TC

SUPERVISED RELEASE

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

36 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: Saul Martinez-Gonzalez
CASE NUMBER: 2:08CR00444-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States.

DEFENDANT: Saul Martinez-Gonzalez
CASE NUMBER: 2:08CR00444-001 TC

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

Edwin S. Wall, Esq. A7446
EDWIN S. WALL, P.C.
341 South Main Street, Ste. 406
Salt Lake City, Utah 84111
Telephone: (801) 523-3445
Facsimile: (801) 746-5613
Electronic Notice: wallsec@xmission.com

FILED
U.S. DISTRICT COURT

2008 SEP 10 P 1:39

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

JONATHON BIZZLE,)

Defendant.)

Case No. 2:08-CR-515-2 DB

Hon. Dee Benson

ORDER GRANTING MOTION TO EXTEND TIME TO FILE MOTIONS

THIS MATTER having come before the Court on the Defendant's *Motion to Extend Time to File Motions*, the Court having reviewed the pleadings and being thus informed; now therefore,

Factors

The Court finds the following factors:

1. The defendant is charged with Bank Robbery By Force or Violence pursuant to 18 U.S.C. § 2113(a) and a Violent Crime Involving the use of a Gun pursuant to 18 U.S.C § 924(c). Each of these charges are serious felony offenses.
2. The defense has been reviewing the discovery and will need further time to pursue

the investigation of the alleged acts and events, information regarding the potential defenses and to have sufficient time to engage the United States in negotiations regarding the potential resolution of the charges in this case.

3. Pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), the failure to grant a continuance in the case, which taken as a whole, is not so unusual or complex as to fall within the provisions of 18 U.S.C. § 3161(h)(8)(B)(ii), would deny the defendant reasonable time to have appointed defense counsel defense counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence particularly in light of the seriousness of the case, the potential consequences, and the potential penalties.

4. The defense does not perceive that there would be any prejudice to either the Defendant or the government if the Court were to extend the time for the trial of the above-entitled matter.

5. The defense has not been able to discuss this motion with the prosecuting attorney and is not in a position to be able to advise the court as to the position the government would take with respect to this motion.

6. The Defendant is presently in custody.

7. Further, pursuant to the filing of additional motions and requests, this motion, and the need for further investigation it is understood that the time granted by the Court extending the time to file motions in this matter shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A) and (B)(i) & (iv), as the ends of justice served by the exclusion outweigh the best interest of the public and the defendant in a speedy trial.

Order

IT IS ORDERED that the Defendant's *Motion to Extend Time to File Motions* is granted.

IT IS FURTHER ORDERED that the Defendant shall have until the 20th day of October, 2008, to file motions in the above-entitled matter.

IT IS FURTHER ORDERED that the time extending the deadline for filing motions in this matter shall be excluded pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A) and (B)(i) & (iv).

Done in chambers this 10th day of September, 2008.

BY THE COURT:

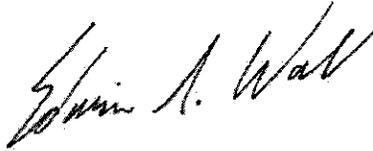


Hon. Dee Benson
Federal District Court Judge

CERTIFICATE OF SERVICE

I, Edwin S. Wall, hereby certify that on August 29, 2008, I served a copy of the foregoing upon the counsel for the Plaintiff in this matter, by mailing it by CM/ECF first class mail with sufficient postage prepaid to the following address:

Carlos A. Esqueda, Esq. AUSA
United States Attorneys Office
185 South State Street, Ste. 400
Salt Lake City, Utah 84111



Edwin S. Wall, Esq.
Attorney for the Defendant

Dee Benson

Honorable Judge Dee Benson
Federal District Court Judge

Shannon K. Emmons, OBA No. 14272
PHILLIPS MCFALL MCCAFFREY MCVAY & MURRAH, P.C.
Corporate Center, Thirteenth Floor
101 North Robinson
Oklahoma City, OK 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4133

Attorneys for Defendant H. Thomas Moran, II,
Court-Appointed Receiver of Lydia Capital, LLC

RECEIVED

SEP 09 2008

FILED
U.S. DISTRICT COURT

OFFICE OF U.S. DISTRICT JUDGE SEP 10 A 9:38
BRUCE S. JENKINS

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

AXA EQUITABLE LIFE INSURANCE
COMPANY,

Plaintiff,

v.

H. THOMAS MORAN, II, Court-Appointed
Receiver of LYDIA CAPITAL, LLC, and
GEORGE WILLIAMSON, as Trustee of
Morningside Developers, LLC,

Defendants.

**ORDER GRANTING DEFENDANT
EXTENSION OF TIME TO
ANSWER, REPLY, OR
OTHERWISE PLEAD TO
PLAINTIFF'S COMPLAINT**

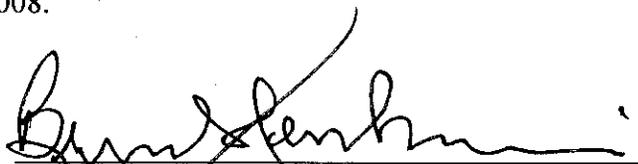
Case No. 2:08CV00206

The Honorable Bruce S. Jenkins

THIS MATTER having come before the Court upon the parties' Amended Stipulated Motion to Extend Time for Defendant to Answer, Reply, or otherwise plead to Plaintiff's Complaint, and the Court having fully considered the matter, the Court finds that the motion is well-taken and should be granted.

It is hereby ORDERED that the deadline for Defendant H. Thomas Moran, II's response to Plaintiff's Complaint is extended until September 30, 2008.

Dated this 9th day of Sept, 2008.


BRUCE S. JENKINS
United States District Judge

FILED
U.S. DISTRICT COURT

2008 SEP 10 P 1:39

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

PETER STIRBA (Bar No. 3118)
MEB W. ANDERSON (Bar No. 10227)
STIRBA & ASSOCIATES
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, Utah 84110-0810
Telephone: (801) 364-8300
Facsimile: (801) 364-8355
E-mail: manderson@stirbalaw.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT	
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION	
PLANTRONICS, INC.,	: MEMORANDUM IN SUPPORT OF
Plaintiff,	: DUCivR 69-1 MOTION TO HAVE
v.	: GARY K. DUPAIX APPEAR IN
TELCOMM DISTRIBUTING, INC.,	: COURT AND ANSWER
Defendant.	: CONCERNING PROPERTY OR
	: ASSETS
	: Civil No. 2:08-CV-383
	: Judge: Dee Benson

Plaintiff Plantronics, Inc., by and through undersigned counsel, hereby submits the following Memorandum In Support Of DUCivR 69-1 Motion To Have Gary K. Dupaix Appear In Court And Answer Concerning Property Or Assets.

1. On June 18, 2008, this Court issued an Order Granting Plantronic's Motion for Confirmation of Arbitration Award and entered judgment confirming an arbitration award against Telcomm Distributing, Inc. ("Telcomm"), and in favor of Plantronics, Inc. ("Plantronics"), in the amount of \$620,994.94.

2. Telcomm and/or Gary K. Dupaix are in possession of, or have information relating to, property or other assets that may be subject to execution or distraint.

3. Plantronics is informed that Telcomm may have essentially dispersed or liquidated its assets and may be conducting business operations under another name and/or alter ego.

4. In order to preserve and protect or to determine the current location of the assets of Telcomm and/or Gary K. Dupaix it is essential to conduct an examination of Gary K. Dupaix.

5. Because of the necessity to preserve and protect the assets of Telcomm and/or Gary K. Dupaix, Plantronics must review business records indicating the location, existence of, sale, dispersal, or liquidation of all assets, bank accounts, real property, leases, equipment, or supplies, of either Telcomm, Gary K. Dupaix, or any alter ego of Telcomm. Plantronics respectfully requests that Gary K. Dupaix be ordered to appear in court with copies of these requested.

6. Plantronics respectfully requests this Court order that no witness fee and/or mileage payment is required to compel Gary K. Dupaix to appear in court as Mr. Dupaix is essentially the judgment debtor.

7. Plantronics will attempt service of any order of this court requiring Gary K. Dupaix to appear in court on Mr. Dupaix and will include any witness fee and/or mileage as required by DUCivR 69-1 or this Court.

8. Pursuant to DUCivR 69-1, “[s]hould the debtor or other person fail to appear as directed, the magistrate judge may issue such process as is necessary and appropriate, including arrest, to bring the person before the court.”

WHEREFORE, pursuant to DUCivR 69-1 Plantronics respectfully requests this Court order Gary K. Dupaix to appear in court to answer questions and turn over copies of information regarding property or other assets that may be subject to execution or distraint.

DATED this 8th day of August 2008.

STIRBA & ASSOCIATES

By: /s/ Meb W. Anderson
PETER STIRBA
MEB W. ANDERSON
Attorneys for Plaintiff Plantronics, Inc.

SO ORDERED



MEB W. ANDERSON
United States District Judge

Date Sept. 7, 2008

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

A. PAUL SCHWENKE,)	
Petitioner,	)	Case No. 2:08-CV-467 TS
v.	)	District Judge Ted Stewart
STATE OF UTAH,	)	ORDER
Respondent.	)	Magistrate Judge Brooke Wells

Petitioner, A. Paul Schwenke, filed a *habeas corpus* petition.¹ In it, he challenges his state conviction on several grounds. He further raises issues related to the conditions of his confinement--i.e., lack of access to a law library and his legal files.

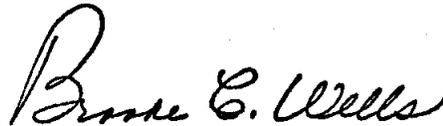
IT IS HEREBY ORDERED that the conditions-of-confinement claims are dismissed as inappropriately raised in this federal habeas corpus petition. If Petitioner wishes, he may bring them in a federal civil rights case. IT IS FURTHER ORDERED that the Clerk of Court shall mail Petitioner a packet containing a blank civil rights complaint, along with information about how to proceed with it.

¹See [28 U.S.C.S. § 2254 \(2008\)](#).

IT IS FINALLY ORDERED that, by October 23, 2008, Respondent must respond to the petition.² The Clerk of Court must serve upon Respondent copies of this Order and the petition (Docket Entry # 3).

DATED this 10th day of September, 2008.

BY THE COURT:



BROOKE C. WELLS
United States Magistrate Judge

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

United States District Court
for the
District of Utah
September 10, 2008

*****MAILING CERTIFICATE OF THE CLERK*****

RE: Schwenke v. State of Utah
2:08-cv-00467-TS-BCW

UTAH ATTORNEY GENERAL'S OFFICE
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856

Aaron Paskins, Deputy Clerk

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

ROBERT T. WELLS,

Plaintiff,

v.

FARM BUREAU,

Defendant.

ORDER

Case No. 2:08-cv-524-TS-PMW

District Judge Ted Stewart

Magistrate Judge Paul M. Warner

This case was referred to Magistrate Judge Paul M. Warner by District Judge Ted Stewart pursuant to 28 U.S.C. § 636(b)(1)(A).¹ Before the court are two motions filed by counsel for Robert T. Wells (“Plaintiff”) to withdraw as counsel of record and to stay the time for Plaintiff to respond to Farm Bureau’s (“Defendant”) counterclaim.²

Civil rule 83-1.4(a) of the Rules of Practice for the United States District Court for the District of Utah governs withdrawal of counsel in this court. *See* DUCivR 83-1.4(a). In relevant part, that rule provides: “No attorney will be permitted to withdraw as attorney of record in any pending action, thereby leaving a party without representation, except by written application and by order of the court. All applications for withdrawal must set forth the reasons therefor[.]” DUCivR 83-1.4(a). In addition, rule 83-1.4(a) contains three subsections that set forth different requirements for a motion to withdraw depending upon whether the withdrawal is sought with or

¹ *See* docket no. 13.

² *See* docket nos. 10, 12.

without the client's consent and after a trial date has been scheduled. *See* DUCivR 83-1.4(a)(1)–(3).

Plaintiff's counsel's motion to withdraw does not comply with rule 83-1.4. While it does provide some reason for the requested withdrawal, it fails to track the requirements of any of the three different subsections of rule 83-1.4(a). *See* DUCivR 83-1.4(a)(1)–(3). Therefore, Plaintiff's counsel's motion to withdraw is **DENIED**. If Plaintiff's counsel still wishes to withdraw as counsel of record, he is directed to file a motion in compliance with rule 83-1.4(a). Alternatively, if Plaintiff has already retained new counsel, Plaintiff's current counsel and new counsel may simply file a notice of substitution in compliance with the requirements of rule 83-1.4(c). *See* DUCivR 83-1.4(c).

Plaintiff's counsel also moves the court to stay the time for Plaintiff to respond to Defendant's counterclaim. Because it appears that Plaintiff is experiencing some problems related to counsel in this case, that portion of Plaintiff's counsel's motion is **GRANTED**. The court will address a specific deadline for Plaintiff's response to Defendant's counterclaim once Plaintiff's issues relative to counsel are resolved.

IT IS SO ORDERED.

DATED this 10th day of September, 2008.

BY THE COURT:



PAUL M. WARNER
United States Magistrate Judge

FILED
U.S. DISTRICT COURT

2008 SEP 10 P 1:39

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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

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

Plaintiffs,)

v.)

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

Defendants, and)

BILL BARRETT CORPORATION,)

Proposed Intervenor-Defendant.)

Case No. 2:08cv00586 DB

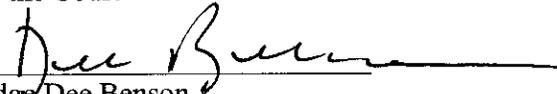
ORDER GRANTING BILL
BARRETT CORPORATION'S
MOTION TO INTERVENE

THIS MATTER having come before the Court upon that Motion to Intervene by the Bill Barrett Corporation, and for the good cause shown therein, it is hereby Ordered,

Bill Barrett Corporation's Motion for Leave to Intervene is hereby GRANTED. Bill Barrett Corporation shall file its Answer to plaintiff's complaint within ten (10) days of this Order.

Dated this 10th day of September, 2008.

By the Court



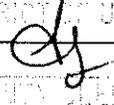
Judge Dee Benson
District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

2008 SEP 10 A 9:47

CENTRAL DIVISION

DISTRICT OF UTAH

BY:  DEPUTY CLERK

MICHAEL L. MAEZ,)	
)	
Plaintiff,	)	Case No. 2:08-CV-618 DB
)	
v.	)	District Judge Dee Benson
)	
DET. THOMPSON et al.,	)	O R D E R
)	
Defendants.	)	Magistrate Judge Samuel Alba

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

Even so, Plaintiff must eventually pay the full \$350.00 filing fee required.² Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."³ Under this formula, Plaintiff must pay \$0.68. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

¹See 42 U.S.C.S. § 1983 (2008).

²See 28 *id.* § 1915(b)(1).

³*Id.*

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

IT IS THEREFORE ORDERED that:

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

(2) Plaintiff must pay an initial partial filing fee of \$0.68 within thirty days of the date of this Order, or his complaint will be dismissed.

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

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

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

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

DATED this 9th day of September, 2008.

BY THE COURT:

A handwritten signature in cursive script, appearing to read 'S. Alba', written over a horizontal line.

SAMUEL ALBA
United States Chief Magistrate Judge

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

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Michael L. Maez (Case No. 2:08-CV-618 DB), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Michael L. Maez, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$0.68, which is 20% of the greater of:

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

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

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

Signature of Inmate
Michael L. Maez

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

EDWIN MITCHELL PIRELA,

Plaintiff,

vs.

SCOTT CARVER, et al.,

Defendants.

ORDER OF REFERENCE

Civil No. 2:08-CV-651

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 Magistrate Judge Judge David Nuffer. The magistrate judge 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 9th day of September, 2008.

BY THE COURT:



TED STEWART
United States District Judge

FILED
U.S. DISTRICT COURT
UNITED STATES DISTRICT COURT

Central

District of

Utah

2008 SEP -9 A 10: 54

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH (For Revocation of Probation or Supervised Release)

BY: _____
DEPUTY CLERK

Richard Anthony Graham

Case Number:

DUTX 2: 99R00160-001 TC

USM Number:

07434-081

Rebecca Hyde

Defendant's Attorney

THE DEFENDANT:

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

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

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1.	On or about 8/15/2008, the defendant possessed and/or consumed alcohol.	

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) 2-3 of the Petition 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.: _____

09/04/2008

Date of Imposition of Judgment

Defendant's Date of Birth: _____


Signature of Judge

Defendant's Residence Address: _____

Tena Campbell Chief, United States District Court Judge

Name and Title of Judge

Defendant's Mailing Address: _____

9-9-2008
Date

DEFENDANT: Richard Anthony Graham
CASE NUMBER: 2:99CR00160-001 TC

IMPRISONMENT

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

1 Months

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

The Court recommends the defendant serve his sentence at a local facility.

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 _____

a _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Richard Anthony Graham
CASE NUMBER: 2:99CR00160-001 TC

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 be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: Richard Anthony Graham
CASE NUMBER: 2:99CR00160-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not consume or possess alcohol.
2. The defendant shall participate in drug and/or alcohol aftercare treatment , under a copay plan , as directed by the USPO.
3. The defendant shall participate in a mental health trmt program under a copay plan, as directed by the USPO.
4. The defendant shall submit to drug and/or alcohol testing, as directed by the USPO, and contribute a \$70 fee to partially defer the cost of collection and testing.
5. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a United States Probation Officer 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.
6. The defendant shall successfully complete the residential treatment program.

DEFENDANT: Richard Anthony Graham
CASE NUMBER: 2:99CR00160-001 TC

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200 (reinstated)	\$ 1500.00 (restated)	\$

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.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS \$ _____ \$ _____

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution or a fine 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: Richard Anthony Graham
CASE NUMBER: 2:99CR00160-001 TC

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 that the \$1500.00 Fine and Special Assessment Fee of \$200.00 ordered on August 23, 1999, 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 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.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

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

Plaintiffs,

vs.

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

Defendants.

MEMORANDUM DECISION AND
ORDER

Case No. 2:99-CV-00503DAK

Judge Dale A. Kimball

This matter comes before the court on Defendants The Metal Ware Corporation and Newco of Two Rivers, Inc.'s (Metal Ware) motion for summary judgment. The court held a hearing on the motion on August 5, 2008. At the hearing, Ted Kannell and Gerry Holman represented Plaintiffs Timothy A. Tabor, Debra J. Tabor, and Farmers Insurance Group, and Michael Woolley represented Metal Ware. Following the hearing, the court took the matter under advisement. Now, having carefully considered the memoranda and additional materials submitted by the parties, as well as the relevant law and facts relating to the motion, the court renders the following Memorandum Decision and Order.

BACKGROUND

Factual Background

In 1995, Nesco/American Harvest (American Harvest) manufactured and distributed a line of home food dehydrators. In August 1995, the United States Consumer Product Safety Commission (the Commission) issued a manufacturer's recall for 56,843 of these home food dehydrators, and American Harvest informed distributors that the dehydrators presented a potential fire hazard.

In 1996, the Tabors purchased one of these American Harvest home food dehydrators from ShopKo. The recall was not in effect at the time the Tabors purchased the product.¹ In November 1998, the food dehydrator caused a fire in the Tabors' home.

The Tabors paid cash for the home food dehydrator and have no record of their purchase. Mr. Tabor testified, however, that “[w]ithin one month of the purchase of [the dehydrator] . . . , [he] completed a product registration card and returned the same to American Harvest. The address [he] listed on the product registration card is the same” as his current address and he has “not moved or stopped receiv[ing] mail at [this] . . . address” from the time he returned the registration card. Mr. Tabor also stated that in return for sending in the product registration card, the Tabors received a package of beef jerky flavoring from American Harvest.

In 1997, two years after the government recall and one year after the Tabors bought their home food dehydrator, Metal Ware purchased certain assets from American Harvest.² According

¹ ShopKo and its distributor Englewood eventually entered into a settlement agreement with the Tabors and are not subject to this lawsuit.

² More precisely, Newco, a subsidiary of Metal Ware, purchased American Harvest's assets. Metal Ware, however, formed Newco for the sole purpose of purchasing the assets, and after the transaction was complete, Newco merged

to Metal Ware, the company's primary purpose in making the acquisition was to obtain rights to American Harvest's line of home food dehydrators. Following the acquisition, Metal Ware continued to sell food dehydrators under the American Harvest trade name, including the model purchased by the Tabors. Metal Ware never manufactured, sold, or otherwise distributed the Tabors' food dehydrator unit.

Following the acquisition, Metal Ware sent a letter to retailers that had carried American Harvest products, advising that Metal Ware "will soon be filling your product needs with the American Harvest brand of the finest in [e]lectric [d]ehydrators and [a]ccessories." On July 1, 1997, Metal Ware, operating under the American Harvest trade name, sent a letter to service centers that had previously serviced American Harvest products. The letter informed the service centers of American Harvest's new ownership and advised that "[w]arranties for all products produced by American Harvest will be honored." The letter also stated that all claims should "be processed in the same manner" and service centers should "use all service repair manuals and price sheets issued previously."

Under the service center agreement (Service Agreement), attached to the July 1, 1997 letter, contracting service centers agreed to appointment as authorized service centers for American Harvest products and agreed to provide maintenance and repair service for products manufactured and distributed by American Harvest. The Service Agreement further stated that "[a]ll repairs, maintenance[,] and servicing provided [by the contracting service centers would] be in full and complete compliance with all directives, recommendation[s,] and procedures that [American Harvest] establishe[d]" and American Harvest "agree[d] to sell to [the service center]

with Metal Ware and ceased to exist.

. . . repair parts and attachments at prices contained in [the company's master parts price list].”

Linda Youngchild, the corporate secretary, treasurer, and record keeper for Metal Ware, testified that Metal Ware was not responsible for American Harvest products remaining on store shelves at the time of the acquisition but that “there may have been cases where someone sent a product in that needed a warranty repair that [the company] may have done something with, repaired it at no charge or replaced it at [Metal Ware's] option. . . . But [the company] assumed no liabilities so [it] didn't have to do anything with product that was already on store shelves.” Youngchild also explained that Metal Ware stood behind American Harvest goods that were in inventory at the time of the acquisition and were later sold by Metal Ware.

According to Youngchild, American Harvest had maintained a consumer data base and this data base was part of the asset purchase agreement between American Harvest and Metal Ware. The two companies combined had maintained the database from 1992 until 2004. The consumer data base records were primarily based on warranty or product registration cards sent in by consumer purchasers. The data base also had records for those consumers who had made phone contact with the companies. Although Youngchild testified that the Tabors should have been listed on the database, the database has no record of the Tabors. Nor does the database reflect that the Tabors and Farmers Insurance made a number of phone calls and sent correspondence to Metal Ware between December 30, 1998, and February 2, 1999.

Youngchild testified that she had not reviewed all the hard copy sales files that American Harvest gave to Metal Ware at the time of the acquisition and did not know what information might be contained in these files.

In 1997, Metal Ware was notified of a fire in an Oklahoma home involving the same model of home food dehydrator that caused the Tabors' house fire. Metal Ware did not warn ShopKo of the potentially hazardous nature of the food dehydrator, despite knowing that, as of August 1998, ShopKo and its distributor, Englewood, had inventories containing approximately 2000 of the potentially defective American Harvest home food dehydrators. Nor did Metal Ware notify the Commission or contact purchasers.

Procedural History

Federal District Court

The Tabors filed their original products liability complaint against Metal Ware in federal court in 1999. In 2003, Judge Campbell granted summary judgment in favor of Metal Ware as to any claim of liability under a distribution theory because the undisputed facts demonstrated that Metal Ware was not in the chain of distribution. She also granted summary judgment as to the Tabors' two claimed exceptions to the general rule of successor nonliability for defective products of a predecessor company—the continuity of enterprise exception and the product line exception—because Judge Campbell determined that Utah law only allowed for four exceptions, none of which the Tabors had argued, and did not include the Tabors' two claimed exceptions. Judge Campbell, however, denied summary judgment as to any claim of liability under a duty to warn theory, concluding that Utah law would impose an independent post-sale duty to warn on successor corporations and that a genuine issue of material fact existed regarding this issue.³

In 2005, Metal Ware again moved for summary judgment on the issue of causation and

³ Judge Campbell also denied Metal Ware summary judgment to the extent it relied on the No Assumption of

damages. The Tabors filed a motion for partial summary judgment on the issue of liability. In its motion for summary judgment, Metal Ware argued that the evidence showed that, even if a warning had been provided to ShopKo by Metal Ware, the warning would not have reached the Tabors, and therefore, Metal Ware's failure to warn ShopKo could not be the proximate cause of any damages to the Tabors.

Metal Ware based its lack of causation argument on the deposition testimony of Shelley Schroeder, the only ShopKo witness. At the time of the deposition, and for three years prior, Schroeder worked as ShopKo's director of vendor compliance and oversaw recall procedures for the retailer. Prior to becoming director, Schroeder worked as a product compliance coordinator for ShopKo. Schroeder testified that over the course of her seven years with the company, she had dealt with approximately one-hundred recalls and approximately twenty product warnings not involving recalls. Schroeder testified as to ShopKo's product recall procedures. She testified that she "did not know" what ShopKo would have done if Metal Ware had provided direct notice to ShopKo because ShopKo had no written policies or procedures for handling such a direct warning. According to Schroeder, the retailer does not have a separate procedure from that applicable to recalls, and she could not recall ShopKo ever posting warnings without the Commission actually issuing a product recall. Schroeder described ShopKo's procedure for handling recalls as the following: when a vendor contacts Schroeder concerning a products safety issue, she first asks if the vendor has contacted the Commission, and, if not, when the vendor will contact the Commission; if the vendor does not contact the Commission after a given period of time, Schroeder will contact the Commission directly; and once the vendor, or

Schroeder, has contacted the Commission, ShopKo waits to hear from the Commission regarding the proper course of action. Schroeder also testified that if she had received notice from Metal Ware regarding the defective home food dehydrator, she would have, in adherence to ShopKo procedure, met with corporate counsel to discuss the company's future actions, including determining the severity of the safety issue. According to Schroeder, if she and corporate counsel determined there was a "severe quality issue" or "if there was injury or death," they would decide "whether or not the product should be pulled from [ShopKo] shelves or not before the [Commission] issued a recall." Schroeder testified that if ShopKo had received a warning from Metal Ware concerning the food dehydrator's fire danger, the retailer would have pulled the product from the shelves. She did not indicate that the company would have posted warnings.

Judge Campbell granted summary judgment in favor of Metal Ware as to causation, ruling that the Tabors had failed to establish that their damages resulted from Metal Ware's failure to warn. Judge Campbell determined that, even assuming that Metal Ware owed a duty to warn to ShopKo, any failure by ShopKo to warn could not be the proximate cause of the Tabors' damages because there is no evidence that such a warning would have reached the Tabors, and the inferences required to find causation constituted speculation and conjecture. Specifically, Judge Campbell stated that

The effect of . . . Schroeder's testimony, taken in a light most favorable to Plaintiffs, is the inference that if Metal Ware had contacted ShopKo, ShopKo would have told Metal Ware to contact the [Commission] and pulled the [dehydrator] from the shelves. Metal Ware would have then initiated a second recall and notified ShopKo that it should post notices. ShopKo would then have posted notices which would have been seen and heeded by the Tabors. Pulling the [product] from the shelves would have

been sufficient to alert the Tabors to the potential fire danger and the inferences required to find causation necessitate a great deal of speculation and conjecture without facts sufficient to create a genuine issue of material fact.⁴

Judge Campbell also concluded that there were only speculative facts to support the Tabors' assertion that Metal Ware's failure to warn the Tabors directly was the proximate cause of the fire. Judge Campbell acknowledged that American Harvest maintained a consumer data base that Metal Ware acquired as part of the asset purchase agreement; that the data base records were primarily based on warranty or product registration cards that buyers had mailed in; that these records had been maintained from 1992 until 2004; that the Tabors registered their purchase of the home food dehydrator and contacted Metal Ware directly; and that the Tabors should have been included in this database. Judge Campbell noted that while Metal Ware's lack of record of the Tabors raised questions as to why the Tabors were not included in the consumer database, such questions were ultimately immaterial as to whether Metal Ware could have warned the Tabors prior to the fire that occurred on November 19, 1998.

Tenth Circuit and Utah Supreme Court Rulings

The Tabors appealed these federal court decisions to the Tenth Circuit Court of Appeals. The Tenth Circuit stayed the appeal pending resolution of the following questions that it certified to the Utah Supreme Court: (1) "Does Utah law recognize an exception to the general rule of successor nonliability under the circumstances of this case?"; (2) "Does Utah law impose on successor corporations a post-sale duty to warn customers of defects in products

⁴ Additionally, Judge Campbell noted that the Tabors failed to assert any fact that indicated what the Commission would have done if it had received word of the 1997 fire, concluding that the asserted "[c]hain of logic [was] simply too speculative."

manufactured and sold by the predecessor corporation?"; and (3) if a post-sale duty to warn exists, "What factors are considered in determining whether a successor has discharged that duty?" *Tabor v. The Metal Ware Corporation, et al.*, 2007 UT 71, ¶ 1, 168 P.3d 814. Upon review, the Utah Supreme Court "conclude[d] that Utah adheres to the traditional rule of successor nonliability, subject to four exceptions, as set forth in section 12 of the Restatement (Third) of Torts." *Id.* at ¶ 6. Section 12 of the Restatement provides:

A successor corporation or other business entity that acquires assets of a predecessor corporation or other business entity is subject to liability for harm to persons or property caused by a defective product sold or otherwise distributed commercially by the predecessor if the acquisition:

- (a) is accompanied by an agreement for the successor to assume such liability; or
- (b) results from a fraudulent conveyance to escape liability for the debts or liabilities of the predecessor; or
- (c) constitutes a consolidation or merger with the predecessor; or
- (d) results in the successor becoming a continuation of the predecessor.

Restatement (Third) of Torts: Products Liability § 12 (1998). The Utah Supreme Court refused to adopt the Tabors' two claimed exceptions to the general rule of successor non-liability: the product line exception and the continuity of enterprise exception. *See id.* at ¶ 11.

The Utah Supreme Court also determined that "Utah imposes on a successor corporation an independent post-sale duty to warn of a predecessor corporation's product defects under the conditions outlined in section 13 of the Restatement (Third) of Torts." *Id.* Section 13 provides that

(a) A successor corporation or other business entity that acquires assets of a predecessor corporation or other business entity, whether or not liable under the rule stated in § 12, is subject to liability for harm to persons or property caused by the successor's failure to warn of a risk created by a product sold or

distributed by the predecessor if:

(1) the successor undertakes or agrees to provide services for maintenance or repair of the product or enters into a similar relationship with purchasers of the predecessor's products giving rise to actual or potential economic advantage to the successor, and

(2) a reasonable person in the position of the successor would provide a warning.

(b) A reasonable person in the position of the successor would provide a warning if:

(1) the successor knows or reasonably should know that the product poses a substantial risk of harm to persons or property; and

(2) those to whom a warning might be provided can be identified and can reasonably be assumed to be unaware of the risk of harm; and

(3) a warning can be effectively communicated to and acted on by those to whom a warning might be provided; and

(4) the risk of harm is sufficiently great to justify the burden of providing a warning.

Restatement (Third) of Torts: Products Liability § 13 (1998). The Utah Supreme Court left it to the federal court to apply the duty to warn standard outlined above to the facts of this case. The court stated that

[i]f a successor corporation has a duty to warn under section 13, one factor in determining whether a successor corporation has discharged its duty to warn is whether it provided warning to the end user, not just an intermediate like a distributor or retailer. In making this determination, the successor has a duty to only warn the end user if it has a reasonable means of doing so. Another factor to consider in this case might be the effect of the closed . . . recall. Other factors may be relevant, but the factual development of this case is insufficient for [the court] to identify them.

Tabor, 2007 UT 71 at ¶ 13.

Following the Utah Supreme Court decision, the Tenth Circuit received and considered supplemental briefing regarding the impact of the Utah Supreme Court decision. On October 18, 2007, the Tenth Circuit issued the following order:

Upon consideration of the response to our certified questions and the briefs filed in response to our order dated September 12, 2007, we VACATE the district court's order entered May 20, 2005[,] and the judgment entered that same day, and REMAND for additional proceedings consistent with the opinion of the Utah Supreme Court. We make no comment on the outcome of those proceedings, and defer to the district court with respect to the appropriate scope of the proceedings. The mandate shall issue forthwith.

Tabor v. Metal Ware Corp., 251 Fed.Appx. 577, 2007 WL 3046317, at *1 (10th Cir. 2007).

Current Procedural Posture

Following the Tenth Circuit remand to the federal district court, Judge Campbell recused. On February 19, 2008, Metal Ware filed for summary judgment on the issues of duty and causation.

DISCUSSION

Pursuant to Federal Rule of Civil Procedure 56(c), Metal Ware moves for summary judgment against the Tabors. *See* Fed. R. Civ. P. 56(c). Metal Ware argues that it is entitled to summary judgment on several grounds. First, Metal Ware claims that summary judgment is appropriate because this court is obligated, pursuant to the law of the case doctrine, to adhere to Judge Campbell's prior ruling on causation. Second, Metal Ware contends that regardless of the law of the case doctrine, summary judgment is nonetheless proper because, as Judge Campbell ruled, the Tabors proffer no evidence to support causation. Finally, Metal Ware argues that it is entitled to summary judgment because under recently defined Utah law regarding successor liability for failure to warn of risks created by a product sold or distributed by the predecessor, the undisputed facts demonstrate that Metal Ware had no duty in this case to warn of the

defective home food dehydrator.

I. Legal Standard

Summary judgment is only proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). In reviewing a motion for summary judgment, the relevant inquiry for the court is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. . . . [S]ummary judgment will not lie if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Simpson v. Univ. of Colorado Boulder*, 500 F.3d 1170, 1179 (10th Cir. 2007) (alterations in original) (quoting *Bingaman v. Kan. City Power & Light Co.*, 1 F.3d 976, 980-81 (10th Cir. 1993)). When applying the summary judgment standard, the court “view[s] the record in the light most favorable to the nonmoving party.” *Mercer Transp. Co. v. Greentree. Transp. Co.*, 341 F.3d 1192, 1194 (10th Cir. 2003).

II. Law of the Case Doctrine

The court refuses to grant summary judgment to Metal Ware on the basis that, pursuant to the law of the case doctrine, this court must adhere to Judge Campbell’s prior ruling that no causation exists. The law of the case doctrine provides that, “once a court decides an issue, the same issue may not be relitigated in subsequent proceedings in the same case.” *Grigsby v. Barnhart*, 294 F.3d 1215, 1218 (10th Cir. 2002) (quotations and citation omitted). As correctly noted by the Tabors, the doctrine is inapplicable in cases, such as here, where an appellate court vacates a court’s prior decision. *See Johnson v. Bd. of Educ. of City of Chicago*, 457 U.S. 52,

53-54 (1982); *Franklin Savings Ass'n v. Office of Thrift Supervision*, 35 F.3d 1466, 1469 (10th Cir. 1994) (“A judgment that has been vacated, reversed, or set aside on appeal is thereby deprived of all conclusive effect, both as res judicata and as collateral estoppel.”); *Mason v. Texaco, Inc.*, 741 F. Supp. 1472, 1492 (D. Kan. 1990) (“Normally when an appellate court vacates a judgment, neither a collateral nor direct estoppel, nor the law of the case will give preclusive effect to this judgment.”).

III. Causation

Metal Ware claims that, even disregarding the law of the case doctrine, Judge Campbell correctly ruled that causation in this case was nothing more than speculation and conjecture because the Tabors proffered no evidence that Metal Ware could have provided a warning to the Tabors directly and no evidence that a warning from Shopko would have ultimately reached the Tabors. Upon review, this court concludes that it is not appropriate in this case to determine the issue of causation as a matter of law.

In Utah, the general rule is that causation “cannot be resolved as a matter of law.” *Butterfield v. Okubo*, 831 P.2d 97, 106 (Utah 1992). This rule stands because “caus[ation] is an issue of fact [and therefore the court] refuse[s] to take it from the jury if there is any evidence upon which a reasonable jury could infer causation.” *Id.*; see also *Harline v. Barker*, 854 P.2d 595, 600 (Utah Ct. App. 1993) (“[O]nly if there is no evidence upon which a reasonable jury could infer causation, is summary judgment appropriate.”). “In other words, Utah litigants do not easily dispose of the element of causation on summary judgment.” *Kilpatrick v. Wiley, Rein & Fielding*, 909 P.2d 1283, 1292 (Utah Ct. App. 1996).

Metal Ware first claims that the undisputed facts indicate that the company did not know of the Tabors and did not know that the Tabors had purchased the food dehydrator until after the Tabors' fire occurred, and therefore, the company could not have provided a warning directly to the Tabors. The court does not disregard or minimize Youngchild's testimony that the Tabors were not listed in the company's consumer database, despite having sent in a product registration card for the food dehydrator, and that therefore Metal Ware had no knowledge of the Tabors until they called to complain about the fire. But the court is nonetheless troubled by further testimony from Youngchild that Metal Ware has a hard copy of all sales files that American Harvest gave to Metal Ware at the time of the acquisition; that Metal Ware has not reviewed all these files; and that the company does not know what information might be contained in these files. Although Metal Ware claims that the Tabors were not identified in these sales files, Youngchild's testimony, at the very least, renders such a conclusive claim confusing and undermines the court's confidence that no issues of material fact exist as to whether Metal Ware could have warned the Tabors directly.

Metal Ware's second claim regarding causation is that there is no evidence that, even if Metal Ware had informed ShopKo of the potential fire danger, a warning from Shopko would have ultimately reached the Tabors. In support of this contention, Metal Ware relies on Schroeder's testimony that had ShopKo received a warning from Metal Ware the retailer would have pulled the home food dehydrator from store shelves. Metal Ware reads Schroeder's testimony to mean that Shopko would not have posted a warning and therefore there is no evidence to suggest a warning would have reached the Tabors and prevented their purchase of the damage-causing product. In the court's mind, however, the Tabors' failure to show that a

warning from ShopKo would have reached them does not necessarily close the proximate cause door. The question is not whether ShopKo would have warned the Tabors. Rather, the question is whether the food dehydrator would have caused injury to the Tabors had Metal Ware provided a warning to ShopKo. Schroeder's testimony that ShopKo would have pulled the potentially dangerous dehydrators off store shelves had the retailer received a warning from Metal Ware permits the reasonable inference that these dehydrators would not have been on ShopKo shelves at the time the Tabors made their purchase. If the potentially hazardous food dehydrators were not on ShopKo shelves, and thus unavailable for purchase, it is not so speculative and tenuous for a reasonable juror to assume that the fire in the Tabors' home would not have occurred.

In sum, this court is not comfortably convinced that "there is *no* evidence [in this case] upon which a reasonable jury could infer causation." *Harline*, 854 P.2d at 600 (emphasis added). Accordingly, the appropriate action for the court is to deny summary judgment on the question of causation.

IV. Duty to Warn

Despite this court's decision that summary judgment is improper on the question of causation, the court may nonetheless grant summary judgment in favor of Metal Ware if the court determines that the undisputed facts reveal that Metal Ware owed no duty to warn as a matter of law. As earlier noted, the Utah Supreme Court, upon certification from the Tenth Circuit Court of Appeals, determined in *Tabor v. Metal Ware*, 2007 UT 71, 168 P.3d 814, that "Utah imposes on a successor corporation an independent post-sale duty to warn of a predecessor corporation's product defects under the conditions outlined in section 13 of the Restatement (Third) of Torts." *Id.* at ¶ 13. Section 13 of the Restatement provides that

(a) A successor corporation or other business entity that acquires assets of a predecessor corporation or other business entity, whether or not liable under the rule stated in § 12, is subject to liability for harm to persons or property caused by the successor's failure to warn of a risk created by a product sold or distributed by the predecessor if:

(1) the successor undertakes or agrees to provide services for maintenance or repair of the product or enters into a similar relationship with purchasers of the predecessor's products giving rise to actual or potential economic advantage to the successor, and

(2) a reasonable person in the position of the successor would provide a warning.

(b) A reasonable person in the position of the successor would provide a warning if:

(1) the successor knows or reasonably should know that the product poses a substantial risk of harm to persons or property; and

(2) those to whom a warning might be provided can be identified and can reasonably be assumed to be unaware of the risk of harm; and

(3) a warning can be effectively communicated to and acted on by those to whom a warning might be provided; and

(4) the risk of harm is sufficiently great to justify the burden of providing a warning.

Restatement (Third) of Torts: Products Liability § 13 (1998).

In support of its Motion for Summary Judgment, Metal Ware argues that in applying section 13 to the present case “it is immediately clear that the required independent, ongoing special relationship between Metal Ware and the Tabors that would justify imposing an independent duty of care does not exist.” Specifically, Metal Ware claims that it never agreed to service, maintain, or repair the Tabors’ specific home food dehydrator, and the company did not even know the Tabors existed, much less that they owned the potentially hazardous product. According to Metal Ware, because there is no evidence that it established or maintained a service relationship with the Tabors, there is no indication that it had an independent duty to warn under

section 13 of the Restatement.

In response, the Tabors argue that section 13 of the Restatement does not require Metal Ware to have serviced, or agreed to service, the Tabors' specific home food dehydrator unit and that the undisputed facts show that when Metal Ware acquired the assets of American Harvest, it agreed to honor all American Harvest warranties, guaranteed it would stand behind all American Harvest appliances and maintain all American Harvest service centers, and agreed to repair or replace defective products that needed warranty repair.

As noted by Metal Ware, cases cited in the comments to section 13 of the Restatement look to a number of factors in determining whether a duty to warn exists, "such as the succession to service contracts, coverage of the particular machine by a contract, service of that machine by the successor, and the successor's knowledge of the defect and of the machine owner's location." *Florum v. Elliott Mfg.*, 867 F.2d 570, 577 (10th Cir. 1989) (applying Colorado law); *see also Gee v. Tenneco, Inc.*, 615 F.2d 857, 866 (9th Cir. 1980) (applying California law); *Travis v. Harris Corp.*, 565 F.2d 443, 449 (7th Cir. 1977) (applying Indiana law). Metal Ware is also correct that several of these cited cases have looked to whether the successor's service contracts have covered, and the successor has serviced, the specific defective unit at issue. *See, e.g., Florum*, 867 F.2d at 577 ("Here there is evidence that New Elliott succeeded to Old Elliott's service contracts; provided service and parts to the particular crane involved in [the plaintiff's] injuries; and knew the name of the customer and the location of the machine."); *Gonzalez v. Rock Wool Eng'g & Equip. Co., Inc.*, 453 N.E.2d 792, 795 (Ill. Ct. App. 1983) (explaining that there was no evidence of "coverage of the particular battline machine in question under a service

contract . . . [in contrast, the evidence reveals] that [the] defendant . . . did not service, maintain, or repair the battline equipment located at Forty-Eight Insulations”).

Several of these cited cases, however, do not appear to read the factors so literally as to require coverage of the very unit at issue and instead look to whether the successor covered the type of machine that caused the injury. *See, e.g., Gee*, 615 F.2d at 866 (stating that there were no facts in the record to suggest that the successor company had any relationship with users of the type of product alleged to be defective); *Tucker v. Paxson Mach. Co.*, 645 F.2d 620, 626-27 (8th Cir. 1981) (applying Missouri law) (“[The successor defendant] never agreed to assume responsibility for the servicing of the [type of defective] machines.”). Courts have also emphasized that “[t]he crucial element necessary to establish a duty to warn is the ‘continuation of the relationship between the successor and *the customers* of the predecessor.’” *Tucker*, 645 F.2d at 626 (quoting *Gee*, 615 F.2d at 866) (emphasis added); *see also Florom*, 867 F.2d at 577.

But, irrespective of these cases, the Utah Supreme Court has expressly directed this court that “Utah imposes on a successor corporation an independent post-sale duty to warn of a predecessor corporation’s product defects *under the conditions outlined in section 13 of the Restatement (Third) of Torts.*” *Tabor v. Metal Ware*, 2007 UT 71, ¶ 13, 168 P.3d 814 (emphasis added). Section 13 provides that a duty to warn lies when

- (1) the successor undertakes or agrees to provide services for maintenance or repair of the product or enters into a similar relationship with purchasers of the predecessor's products giving rise to actual or potential economic advantage to the successor, and
- (2) a reasonable person in the position of the successor would provide a warning.

Restatement (Third) of Torts: Products Liability § 13 (1998).

Thus, even assuming, as *Metal Ware* contends, that section 13 asks whether the successor

company provided maintenance or repair services for the specific product unit, the language of section 13 is quite clear that a duty to warn may still exist, even if no such service has occurred, if the successor has entered into “a similar relationship with purchasers of the predecessor’s products giving rise to actual or potential economic advantage to the successor.” *Id.*; *see also id.* cmt. a (“This Section does not make the existence of a service contract a *sine qua non* for the imposition of a duty to warn on a successor corporation. Other similar relationships with purchasers of the predecessor's products giving rise to actual or potential economic advantage to the successor may suffice to create a duty to act reasonably and provide warnings.”).

On the question of whether Metal Ware entered into a relationship with purchasers of American Harvest’s products that was actually or potentially economically advantageous to the company, the court concludes that a genuine issue of material fact exists, precluding summary judgment. Here, the record indicates that Metal Ware sent a Service Agreement to potential contracting service centers. The Service Agreement provided that contracting service centers agreed to appointment as an authorized service center for American Harvest products and agreed to provide maintenance and repair service for products manufactured and distributed by American Harvest. The Service Agreement further stated that “[a]ll repairs, maintenance[,] and servicing provided [by the contracting service centers would] be in full and complete compliance with all directives, recommendation[,] and procedures that [American Harvest] establishe[d]” and American Harvest “agree[d] to sell to [the service center] . . . repair parts and attachments at prices contained in [the company’s m]aster [p]arts [p]rice [l]ist.” The record also indicates that attached to the Service Agreement was a letter, dated July 1, 1997, in which Metal Ware, operating under the American Harvest trade name, informed American Harvest’s former service

centers that the company had changed ownership and advised them that “[w]arranties for all products produced by American Harvest [would] be honored.” The letter also stated that all claims should “be processed in the same manner” and service centers should “use all service repair manuals and price sheets issued previously.”

Additionally, Youngchild’s testimony suggests the possibility that some American Harvest products sold prior to the acquisition, including the model of food dehydrator purchased by the Tabors, may have been subject to, or repaired under, this warranty. And the Service Agreement indicates coverage for the type of food dehydrator purchased by the Tabors.

Moreover, the Service Agreement indicates that Metal Ware would supply spare or repair parts. The comment to section 13 of the Restatement provides that

a contract is not the only method of establishing a relationship with a predecessor's customers. For example, a successor may sell or offer to sell spare parts to the predecessor’s customers for machinery sold by the predecessor when the successor knows or should know the machinery is defective. Such conduct should be considered by courts in deciding whether sufficient actual or potential economic advantage has accrued to the successor to warrant the imposition of a duty to warn the predecessor's customers.

Restatement (Third) of Torts: Products Liability § 13.

Assuming that the Tabors can successfully establish that Metal Ware entered into a relationship with purchasers of American Harvest products that was actually or potentially economically advantageous to Metal Ware, the court further determines that a genuine issue of material fact exists as to whether a reasonable person in Metal Ware’s position would have provided a warning. The parties disagree as to whether Metal Ware, as a result of the 1997 fire

involving the same food dehydrator model as the Tabors', knew or should have known that the home food dehydrator posed a substantial risk of harm.

Additionally, as this court previously touched on in its discussion of causation, the evidence is not so one-sided as to definitely suggest that Metal Ware could not have identified those to whom a warning might be provided. Notably, in discussing the considerations relevant to whether a reasonable person in the successor's position would have provided a warning, section 13 of the Restatement directs attention to the comments following section 10 of the Restatement. *See id.* cmt. c ("Whether a reasonable person in the successor's position would provide a warning is governed by the same requirements that determine whether a reasonable seller should provide a post-sale warning under § 10 . . . and are explained in the [c]omments to section § 10."). Section 10 does not, as the parties do here, focus narrowly on whether the particular plaintiff could have been identified. *See* Restatement (Third) of Torts: Products Liability § 10 cmt. e ("In some instances, customer records may identify the population to whom warnings should be provided. Individual names and addresses are not necessarily required. Records may indicate classes of product users, or geographically limited markets. But when no such records are available, the seller's inability to identify those for whom warnings would be useful may properly prevent a post-sale duty to warn from arising.").

Likewise, section 10 does not indicate that it is necessary for the inquiry into whether a warning can be effectively communicated, to revolve solely around the plaintiff:

When original customer sales records indicate which individuals are probably using and consuming the product in question, direct communication of a warning may be feasible. When direct communication is not feasible, it may be necessary to utilize the public media to disseminate information regarding risks of substantial harm. As the group to whom warnings might be

provided increases in size, costs of communicating warnings may increase and their effectiveness may decrease.

Restatement (Third) of Torts: Products Liability § 10.

In brief, the court concludes that a genuine issue of material fact exists as to whether Metal Ware entered into a relationship with purchasers of American Harvest products that was actually or potentially economically advantageous to Metal Ware. Similarly, the court concludes that a genuine issue of material fact exists as to whether a reasonable person in Metal Ware's position would have provided a warning. Such disputed issues of material fact prohibit the court from granting Metal Ware summary judgment on the issue of duty to warn.

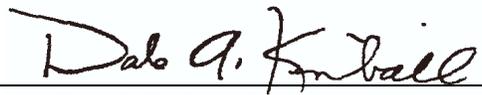
CONCLUSION

The court determines that disposal of this case on summary judgment is improper. Both the parties' briefing and the record evidence before the court reveal that disputed issues of material fact exist both to causation and to whether Metal Ware had a duty to warn of the defective home food dehydrator.

Accordingly, the court DENIES Metal Ware's Motion for Summary Judgment.

DATED this 9th day of September, 2008.⁵

BY THE COURT:



DALE A. KIMBALL

⁵ The court had previously vacated the trial date scheduled for August 17, 2008, pending resolution of Metal Ware's Motion for Summary Judgment. Because the court denies Metal Ware's motion it will proceed to set a new trial date.

United States District Judge