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

UNITED STATES OF AMERICA, : 1:07-CR-00070 DAK
 :
 Plaintiff, :
 :
 vs. : ORDER EXCLUDING TIME UNDER
 : THE SPEEDY TRIAL ACT
 JACK ALAN TYLER, :
 :
 Defendant. :

On August 20, 2008 the defendant filed a motion for new counsel. On September 4, 2008 a hearing was held before this court wherein Mr. Robin Ljungberg was allowed to withdraw from the case. In a subsequent hearing, on September 9, 2008 the defendant was appointed Mr. Parker Douglas to represent him. At the time of reappointment the defendant requested an additional 70 days to prepare for trial. The court, therefore, scheduled a two-day jury trial to commence on November 18, 2008.

IT IS HEREBY ORDERED:

In accordance with the provisions of 18 U.S.C. § 3161(h)(1)(F), the period of delay from August 20, 2008 through November 18, 2008 is excluded from the computation of time under the Speedy Trial Act. The Court finds the ends of justice in granting a continuance of the trial

date outweigh the best interests of the public and the defendant in a speedy trial.

SO ORDERED.

DATED this 10th day of September, 2008.

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

DAVID NUFFER

United States Magistrate Judge

FILED
U.S. DISTRICT COURT

2008 SEP 10 P 4: 10

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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

UNITED STATES OF AMERICA, : 1:08cr00070 DB
Plaintiff, : ORDER CONTINUING TRIAL AND
EXCLUDING TIME
vs. :
JUDGE DEE BENSON
ISREAL TRUJILLO-TRUJILLO, aka :
"GRINGO", :
Defendant.

Based upon the motion of the United States of America, and for good cause appearing, the Court hereby grants the Government's motion to continue the trial in the above referenced case until Nov 10, 2008 @ 8:30 AM., 2008.

It is further ordered pursuant to 18 U.S.C. § 3161(8)(h)(A) that all time between September 15, 2008, and the new date be excluded from computation of time under the Speedy Trial Act.

DATED this 10th day of September, 2008


DEE BENSON
United States District Judge

FILED
 U.S. DISTRICT COURT
RECEIVED
 2008 SEP -9 A 10:31
 SEP 08 2008
 DISTRICT OF UTAH
 BY: _____
 DEPUTY CLERK
**OFFICE OF
 JUDGE TENA CAMPBELL**

David K. Broadbent, 0442
 Katherine N. Hansen, 9573
 HOLLAND & HART LLP
 60 E. South Temple, Suite 2000
 Salt Lake City, Utah 84111-1031
 Telephone (801) 799-5800
 Facsimile (801) 799-5700

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

SECURITIES AND EXCHANGE)
 COMMISSION,)
)
 Plaintiff and Intervention Defendant,)
)
 V.)
)
 MERRILL SCOTT & ASSOCIATES, LTD.;)
 MERRILL SCOTT & ASSOCIATES, INC.;)
 PHOENIX OVERSEAS ADVISERS, LTD.;)
 GIBRALTAR PERMANENTE ASSURANCE,)
 LTD.; PATRICK M. BRODY; DAVID E. ROSS)
 II and MICHAEL G. LICOPANTIS,)
)
 Defendants.)

DAVID K. BROADBENT, ESQ., as RECEIVER)
 for MERRILL SCOTT & ASSOCIATES, LTD.;)
 MERRILL SCOTT & ASSOCIATES, INC.;)
 PHOENIX OVERSEAS ADVISERS, LTD.;)
 GIBRALTAR PERMANENTE ASSURANCE,)
 LTD.; and each of their respective)
 SUBSIDIARIES and AFFILIATED ENTITIES,)

Third-Party Plaintiff,)

V.)
)
 CERTAIN UNDERWRITERS AT LLOYDS,)
 LONDON; and JAMES P. LANDIS,)

Third-Party Defendants.)

ORDER

Civil No. 2:02CV-0039C

Judge Tena Campbell
 Magistrate Judge David Nuffer

Whereas by this Court's January 23, 2002 Order Appointing Receiver, the Court appointed David K. Broadbent as Receiver for defendants Merrill Scott & Associates, Ltd., Merrill Scott & Associates, Inc. and Phoenix Overseas Advisors, Ltd., and all subsidiaries and affiliated entities (collectively "Merrill Scott");

WHEREAS, the Receiver, by Declaration and Twenty-Seventh Report of Receiver filed September 8, 2008, seeks permission to pay the reasonable fees and expenses of the Receiver and Holland & Hart LLP as permitted under Section II(i) of the Order Appointing Receiver, it is hereby

ORDERED that the Declaration and Twenty-Seventh Report of Receiver filed September 8, 2008, is hereby accepted and approved; and it is further

ORDERED that the Receiver may, pursuant to the Order Appointing Receiver, pay from the assets of Merrill Scott or the Receivership Estate: \$216,971.68 consisting of:

- A. the invoice of the Receiver dated August 27, 2008, for fees and expenses incurred in December 2007 through July 2008, in the amount of \$45,017.00; and
- B. the invoice of Holland & Hart LLP dated August 27, 2008, for fees and expenses incurred in December 2007 through July 2008, in the amount of \$171,954.68.

Dated September 9, 2008.



The Honorable Judge Tena Campbell
United States District Court for the
District Of Utah

RECEIVED

DAVID K. BROADBENT, 0442
MATTHEW T. WIRTHLIN, 8291
HOLLAND & HART LLP
60 East South Temple, Suite 2000
Salt Lake City, Utah 84111-1031
(801) 595-7800

FILED SEP 09 2008
U.S. DISTRICT COURT OFFICE OF
JUDGE TENA CAMPBELL
2008 SEP -9 A 10:32
DISTRICT OF UTAH

BY: _____
Attorneys for David K. Broadbent, Receiver for Merrill Scott & Associates, Ltd.;
Merrill Scott & Associates, Inc.; Phoenix Overseas Advisors, Ltd.; Gibraltar
Permanente Assurance, Ltd.; and each of their respective Subsidiaries and Affiliated
Entities

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

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff and Intervention Defendant,)

v.)

MERRILL SCOTT & ASSOCIATES, LTD.;)
MERRILL SCOTT & ASSOCIATES, INC.;)
PHOENIX OVERSEAS ADVISORS, LTD.;)
GIBRALTAR PERMANENTE ASSURANCE,)
LTD.; PATRICK M. BRODY; DAVID E. ROSS)
II and MICHAEL G. LICOPANTIS,)
)
Defendants.)

**ORDER CONFIRMING PRIVATE
SALE OF SODA SPRINGS
PROPERTY**

Civil No. 2:02CV-0039C

DAVID K. BROADBENT, ESQ., as RECEIVER)
for MERRILL SCOTT & ASSOCIATES, LTD.;)
MERRILL SCOTT & ASSOCIATES, INC.;)
PHOENIX OVERSEAS ADVISORS, LTD.;)
GIBRALTAR PERMANENTE ASSURANCE,)
LTD.; and each of their respective)
SUBSIDIARIES and AFFILIATED ENTITIES,)
)
Third-Party Plaintiff,)

Judge Tena Campbell
Magistrate Judge David Nuffer

v.)

CERTAIN UNDERWRITERS AT LLOYDS,)
LONDON; and JAMES P. LANDIS,)
)
Third-Party Defendants.)

Based upon the pleadings, the matters coming before the Court at the hearing on September 8, 2008 at 3:30 p.m. and being otherwise informed in the premises, the Court HEREBY FINDS AND ORDERS that:

1. David K. Broadbent is the Receiver of Legacy Capital, LLC, which is an affiliate of Merrill Scott & Associates, Ltd.
2. The Receiver's notice and procedure for proposing the private sale to the Court of the Receivership's property of approximately 815 acres located in Soda Springs County, Idaho (the "Property") is approved and confirmed;
3. The private sale of the Property is in the best interest of the Receivership; and
4. The Receiver is authorized and directed to finalize the private sale of the Property under the terms of the proposed private sale outlined in the pleadings and at the hearing and such sale is hereby confirmed by the Court.

DATED this 9th day of September, 2008.



The Honorable Judge Tena Campbell
United States District Court for the
District of Utah

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MARTIN ARNOLDINI and JERROLD
BOSCHMA,
Defendants.

ORDER ON RESTITUTION

Case No. 2:04-CR-226 TS

Having considered the sealed Suggestion of Death of Josephine A. Burich, and good cause appearing, it is therefore

ORDERED that the joint and several restitution formerly ordered for payee Josephine A. Burich shall be changed and the payee shall be William M. Burich.

DATED September 11, 2008.

BY THE COURT:



TED STEWART
United States District Judge

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

KENNETH G. HANSEN, et al.,

Plaintiffs,

vs.

MARC S. JENSON, et al.,

Defendants.

ORDER DENYING DEFENDANT
ROBBINS' MOTION IN LIMINE AS
MOOT

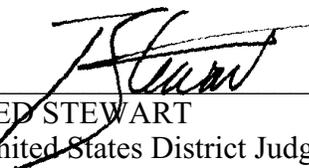
Case No. 2:04-CV-867 TS

Based on the Order of Dismissal of Plaintiffs' claims against Defendant Robbins, it is hereby

ORDERED that Defendant Robbins' Motion in Limine (Docket No. 184) is DENIED AS MOOT.

DATED September 11, 2008.

BY THE COURT:



TED STEWART
United States District Judge

CHRISTOPHER J. CANNON, State Bar No. 88034
Sugarman & Cannon
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San Francisco, CA 94104
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Facsimile: (801) 364-5014

Attorneys for GRAHAM TAYLOR

FILED
U.S. DISTRICT COURT

2008 SEP 10 A 9:50

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DENNIS B. EVANSON,
BRENT H. METCALF,
STEPHEN F. PETERSEN,
REED H. BARKER,
WAYNE F. DEMEESTER,
GRAHAM R. TAYLOR,

Defendants.


~~PROPOSED~~ ORDER
ALLOWING TRAVEL

Case No. 2:05CR00805 TC

IT IS HEREBY ORDERED THAT:

Graham Taylor may travel to Australia, departing Friday, September 19, 2008, and returning Sunday, October 12, 2008.

DATE: 8 Sept 2008


The Honorable David Nuffer
United States Magistrate Judge

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

UNITED STATES OF AMERICA,

 Plaintiff,

 v.

JEFFERY ANTONIO SALAS,

 Defendant.

ORDER TO CONTINUE

Case No. 2:05 CR 889 DAK

Honorable Dale A. Kimball

Based upon the motion of the defendant, Jeffery Antonio Salas, and good cause appearing;

IT IS HEREBY ORDERED that the above-entitled matter is continued for a jury trial on the 27th day of October, 2008, at 8:30 a.m.

IT IS FURTHER ORDERED, based on the motion to continue filed in this matter, that the time between September 15, 2008, and the trial date listed above is excluded from calculation under the Speedy Trial Act, 18 U.S.C. § 3161 (h)(8)(A), in order to grant defendant and his counsel additional time to consider a settlement offer, or 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.

SIGNED BY MY HAND this 11th day of September, 2008.

BY THE COURT:


HONORABLE DALE A. KIMBALL
United States District Court Judge

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

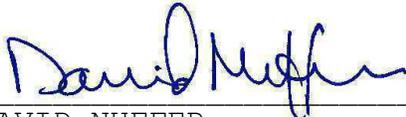
RORY J. SCHULTZ,)
)
 Petitioner,) Case No. 2:05-CV-1003 TS
)
 v.) District Judge Ted Stewart
)
 STATE OF UTAH,) **ORDER**
)
 Respondent.) Magistrate Judge David Nuffer

Petitioner, Rory J. Schultz, has filed a *habeas corpus* petition.¹ On June 12, 2008, the State filed a second response to his petition, urging the Court to deny his claims. Petitioner has not replied.

IT IS HEREBY ORDERED that, within thirty days, Petitioner must reply to the State's second response.

DATED this 10th day of September, 2008.

BY THE COURT:



DAVID NUFFER
United States Magistrate Judge

¹See 28 U.S.C.S. § 2254 (2007).

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

STEPHEN DURRANT,)
)
 Petitioner,) Case No. 2:05-CV-1034 TC
)
 v.) District Judge Tena Campbell
)
 DARRYL CASH,) **O R D E R**
)
 Respondent.) Magistrate Judge David Nuffer

Petitioner, Stephen Durrant, filed a *habeas corpus* petition.¹ Respondent then filed a response to his petition, urging the Court to deny his claims. Petitioner has not replied. Respondent has since notified the Court of Petitioner's release from custody.

IT IS HEREBY ORDERED that, within thirty days, Petitioner must reply to the response.

DATED this 10th day of September, 2008.

BY THE COURT:



DAVID NUFFER
United States Magistrate Judge

¹See 28 U.S.C.S. § 2254 (2008).

United States Probation Office
for the District of Utah

Request for International Travel

FILED
U.S. DISTRICT COURT

Name of Offender: **Isaac Ibarra Mireles**

Docket Number: **2:06-CR-00192-002-TS**

Name of Sentencing Judicial Officer:

Honorable Paul G. Cassell
United States District Judge

DISTRICT OF UTAH

Date of Original Sentence: **November 7, 2006**

BY: _____
DEPUTY CLERK

Original Offense: **Attempted Bank Robbery [18 U.S.C. § 2113(a)]**

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

Type of Supervision: **Supervised Release**

Supervision Began: **May 19, 2008**

SUPERVISION SUMMARY

Mr. Mireles is requesting permission to travel to San Cristobal Ecatepec, Mexico, for the purpose of visiting his wife and two daughters, who are not citizens of the United States. If approved, he plans to leave on or about October 1, 2008, and would return on or/about October 20, 2008. Mr. Mireles anticipates travel costs of approximately \$800. Mr. Mireles reports he has applied for a passport and expects to have a passport within the next three weeks.

Mr. Mireles' term of supervised release began on May 19, 2008. He lives with a friend, his friend's family, and shares monthly living expenses. Mr. Mireles is making monthly restitution payments of \$25 and still owes approximately \$53,700 (joint & several). He has maintained full-time employment at Harper Contracting and his monthly income averages \$1,500. He has discussed his travel plans with his employer and has been assured that upon his return he can resume his employment. Mr. Mireles has refrained from the use of controlled substances as evidenced by negative urine specimens.

Mr. Mireles seemingly can afford this trip and if the Court approves his travel request, the probation officer will increase Mr. Mireles' future minimum monthly restitution payments. If the Court desires more information, please contact me at 535-2764.

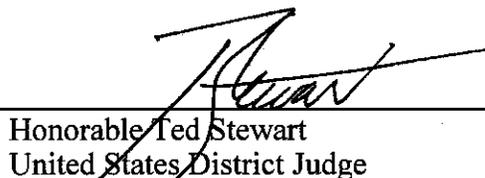
I declare under penalty of perjury that the foregoing is true and correct.



Shelley Mangum
United States Probation Officer
Date: September 9, 2008

THE COURT:

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


Honorable Ted Stewart
United States District Judge

Date: _____

9/10/08

TERRY M. PLANT, #2610
JOHN H. ROMNEY, #9160
PLANT, CHRISTENSEN & KANELL
Attorneys for Defendant City of South Salt Lake
136 East South Temple, Suite 1700
Salt Lake City, Utah 84111
Telephone: (801) 363-7611

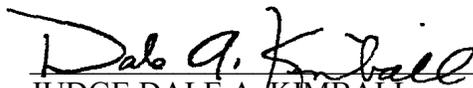
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ERIN V. NIELSON,)	
)	ORDER CONTINUING TRIAL DATE
Plaintiff,)	AND STRIKING CURRENTLY SET
)	PRETRIAL DATE
v.)	
)	
THE CITY OF SOUTH SALT LAKE and)	Civil No: 2:06-cv-335
OFFICER GARY JASON BURNHAM,)	
)	Judge Dale A. Kimball
Defendants)	

Based upon the stipulation of the parties, and good cause appearing therefore, the Court hereby strikes the trial date currently set to begin on November 17, 2008, as well as the pre-trial date set for November 3, 2008. A new date will be set at the convenience of the Court and the parties thereto. The Court directs counsel for both parties to submit a proposed scheduling order for the Court's consideration.

DATED this 11th day of September, 2008.

BY THE COURT:



JUDGE DALE A. KIMBALL
U.S. Federal District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this ____ th day of _____, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Alan W. Mortensen
Dewsnup, King & Olsen
2020 Beneficial Life Tower
26 South State Street
Salt Lake City, UT 84111
Attorney for Plaintiff

Jerrald D. Conder
341 South Main Street, Suite 406
Salt Lake City, Utah 84111

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

MARY CRABTREE, ANDREW
CRABTREE, and JUSTIN HUBERD,

Plaintiffs,

vs.

JAMES WOODMAN, LANITA
WOODMAN, and JESSE ARCHULETA,

Defendants.

ORDER and MEMORANDUM
DECISION

Case No. 2:06-CV-946 TC

In this action, Mary Crabtree, Andrew Crabtree and Justin Huberd (the “Plaintiffs”) have sued Jesse Archuleta, James Woodman and Lanita Woodman (the “Defendants”) for causing an accident in which Ms. Crabtree was seriously injured. Now before the court are Mr. Archuleta’s motions to dismiss (Dkt. Nos. 50 & 52). Mr. Archuleta has moved to dismiss all of Ms. Crabtree’s claims and Mr. Crabtree’s loss of consortium claim. Mr. Archuleta argues that Ms. Crabtree released all of her claims relating to the accident, precluding her suit here. Mr. Archuleta further maintains that, under Utah statute, Ms. Crabtree’s agreement also released Mr. Crabtree’s loss of consortium claim.

The Plaintiffs respond that Ms. Crabtree’s release is voidable due to fraud in the inducement. The Plaintiffs contend that Ms. Crabtree agreed to release her claims based on a misrepresentation by the Woodman’s insurance company, American Family Insurance Group (“American Family”). Specifically, Plaintiffs allege that American Family promised Ms.

Crabtree that if she released her claims, all of Mr. Crabtree's claims, including his loss of consortium claim, would be honored. American Family has refused, however, to pay Mr. Crabtree's loss of consortium claim. The Plaintiffs argue that this refusal makes American Family's promise to honor Mr. Crabtree's claim a falsehood. The Plaintiffs further argue that even if Ms. Crabtree's release of her claims is enforceable, that release did not release Mr. Crabtree's loss of consortium claim.

To resolve this dispute, the court initially answers a question that is a matter of first impression in Utah. That is, does an injured person who releases all claims against a tortfeasor also release a loss of consortium claim by his or her spouse? While Utah courts have not yet considered this issue, several other states have done so, giving guidance as to what the Utah Supreme Court might rule. For the reasons below, the court concludes that as a matter of Utah law, an injured person who releases his or her claims does not release his or her spouse's claim for loss of consortium.

Next, the court examines the effect of American Family's alleged promise to honor Mr. Crabtree's loss of consortium claim on Ms. Crabtree's release. As explained further below, the Plaintiffs have raised disputed issues of fact about whether Ms. Crabtree was fraudulently induced to release her claims against Mr. Archuleta. Accordingly, both of Mr. Archuleta's motions are DENIED.

BACKGROUND

On September 18, 2006, the Plaintiffs brought this action against the Defendants in Utah state court. The Plaintiffs alleged that Mr. Archuleta negligently caused a car accident in which Ms. Crabtree was badly injured. Mr. Crabtree and Mr. Huberd (Ms. Crabtree's son) were not in the same car as Ms. Crabtree but were also involved in the accident. They were not seriously

hurt. The Woodmans, Mr. Archuleta's grandparents, lent Mr. Archuleta the vehicle he was driving when he allegedly caused the accident. Each of the Plaintiffs alleges claims for negligence and negligent infliction of emotional distress. Mr. Crabtree also alleges a claim for loss of consortium.

The accident occurred on August 8, 2005. Not long after, Ms. Crabtree's attorney, Matthew Harris, began to pursue her possible claims against Mr. Archuleta and the Woodmans. Because Mr. Archuleta apparently had no assets aside from the Woodman's American Family insurance policy covering the vehicle involved in the accident, Mr. Harris communicated with Marianne Criswell, an American Family representative.

Mr. Harris states that during his settlement negotiations with Ms. Criswell, he expressed concerns to Ms. Criswell that if Ms. Crabtree released her claims, she might also release Mr. Crabtree's loss of consortium claim. According to Mr. Harris, "Ms. Criswell assured me that Andy Crabtree's loss of consortium claim would be honored at a later date." (Harris Aff. ¶ 12, attached as Ex. A to Memo in Opp'n to SJ as to Ms. Crabtree.)

On September 12, 2005, Ms. Crabtree signed an agreement to release Mr. Archuleta and the Woodmans from all liability arising from the accident. In return, Ms. Crabtree received \$100,000, the per-person limit of the American Family policy. The release agreement included an integration clause, stating that the release "contains the entire agreement between the parties."

Mr. Harris faxed the signed release to American Family on September 12, 2005. In his fax cover sheet, Mr. Harris stated that "[i]n making this release, we have relied on certain representations from your office." (Ex. C to Memo in Opp'n to Summ. J. as to Ms. Crabtree.) Mr. Harris continued that "[i]t has been represented that. . . This release will not release. . . any claims from Andrew Crabtree or Justin Huberd against your insured or American Family." (Id.)

After Ms. Crabtree signed the release, American Family paid her the full settlement amount. Later, Mr. Harris's office submitted a demand to American Family that it pay on Mr. Crabtree's loss of consortium claim. American Family refused that claim, reasoning that Ms. Crabtree had released Mr. Crabtree's claim as a matter of Utah law.

In response, the Plaintiffs filed the present suit. Defendants removed the suit to this court on November 13, 2006, based on diversity jurisdiction. The Woodmans were dismissed from this action in June, 2007. On November 26, 2007, after discovery, Mr. Archuleta moved for summary judgment as to all of Ms. Crabtree's claims and partial summary judgment as to Mr. Crabtree's loss of consortium claim. Mr. Archuleta did not move for summary judgment of any of Mr. Crabtree's other claims, or any of Mr. Huberd's claims. Trial in this matter is set for January 12, 2009.

There are two questions that the court views as relevant here. First, assuming Ms. Crabtree's release is enforceable, did she also waive Mr. Crabtree's loss of consortium claim when she released all Defendants from all possible claims? Second, is there a factual dispute as to whether Ms. Crabtree was fraudulently induced into agreeing to the release? As explained further below, the court first holds that even assuming Ms. Crabtree's release was valid, she did not release Mr. Crabtree's loss of consortium claim. Second, the court finds that, in any event, there are disputed material facts on the issue of whether Ms. Crabtree's release is enforceable.

ANALYSIS

Federal Rule of Civil Procedure 56 allows a court to grant summary judgment "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 judgment as a matter of law." Fed. R. Civ. P. 56(c); see Anderson v. Liberty

Lobby, Inc., 477 U.S. 242, 250-51 (1986); Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 670 (10th Cir. 1998). Courts must “examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.” Applied Genetics Int’l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990).

I. Mr. Crabtree’s Loss of Consortium Claim

Turning to Mr. Crabtree’s loss of consortium claim, Mr. Archuleta argues that Ms. Crabtree waived this claim against Mr. Archuleta by waiving all of her claims relating to her injuries. Mr. Archuleta cites Utah Code Ann. § 30-2-11 in support of this proposition, which reads in relevant part as follows:

(4) A claim for the spouse’s loss of consortium shall be:

(a) made at the time the claim of the injured person is made and joinder of actions shall be compulsory; and

(b) subject to the same defenses, limitations, immunities, and provisions applicable to the claims of the injured person.

(5) The spouse’s action for loss of consortium:

(a) shall be derivative from the cause of action existing in behalf of the injured person; and

(b) may not exist in cases where the injured person would not have a cause of action.

Nothing in § 30-2-11 directly addresses the question of the effect of a non-injured spouse’s release of his or her claims on the non-injured spouse’s loss of consortium claim.

Nonetheless, Mr. Archuleta interprets several parts of this statute to mean that by releasing her personal injury claims, Ms. Crabtree also extinguished Mr. Crabtree’s loss of consortium claims. First, Mr. Archuleta points to 4(a)’s requirement that an action for loss of consortium must be joined with the claim for injury to assert that the claims are interdependent and not separate. Mr. Archuleta views 5(a)’s instruction that a loss of consortium “shall be derivative” of the injury claim as further support for the concept that a loss of consortium claim

cannot survive the release of a spouse's injury claims. Finally, Mr. Archuleta argues that Ms. Crabtree does not have a cause of action any more because she waived her claims, meaning that under 5(b), Mr. Crabtree does not have a claim either.

The Plaintiffs dispute Mr. Archuleta's reading of § 30-2-11. They argue that the loss of consortium claim belongs to the non-injured spouse, and that though this claim is derived from the claims of the injured spouse, it is nonetheless a separate claim. Moreover, they assert that 4(a)'s requirement that the spouses' actions be joined does not apply when the injured spouse decides not to bring an action. Finally, the Plaintiffs contend that under 5(b), the loss of consortium action may exist whenever the injured spouse "would" have a cause of action. Here, they maintain, Ms. Crabtree "would" have a cause of action if she had not allegedly released it, because she was injured by Mr. Archuleta. Accordingly, Plaintiffs conclude, the injured spouse does not have any legal ability to waive the non-injured spouse's claim, and Ms. Crabtree did not waive Mr. Crabtree's claim here.

As explained further below, the court agrees with the Plaintiffs on this question. The court is unaware of any Utah court that has addressed this question of statutory construction, leaving the court to determine how it believes the Utah Supreme Court would resolve it. See Hartford Acc. & Indem. Co. v. U.S. Fidelity and Guar. Co., 962 F.2d 1484, 1487 (10th Cir. 1992). The court looks to Utah law and relevant law from other jurisdictions for guidance.

As the court pointed out in an earlier order in this case, there is a split among the other jurisdictions that have addressed this issue. (See Dkt. No. 67.) The American Law Reports describes the competing positions as follows:

Where the action for loss of consortium is seen as purely derivative of the original cause of action for the injury, it has been held that once the original cause of action has been released, the action for loss of consortium is also barred. However, the more prevalent view seems to be that the loss of consortium suit is not barred as it is a separate and

independent cause of action which is the property of the spouse and cannot be controlled by the injured person.

29 A.L.R. 4th 1200 (emphasis added). Upon reviewing the authority cited in this treatise, the court agrees that the key issue in resolving this dispute is whether Utah law treats a loss of consortium claim as a separate claim owned by the non-injured spouse or one that is so tied to the underlying claim that it can be said that the injured spouse controls it. The court believes that Utah cases are more consistent with the former view.

It is first worth noting that § 30-2-11 stating that loss of consortium claims are “derivative” of the injured spouse’s claim does not necessarily mean that they are “purely derivative” to the point that they are controlled by the injured spouse. Many of the jurisdictions following the majority view of no waiver are states where case law define loss of consortium claims as “derivative.” See, e.g., Huffer v. Kozitza, 375 N.W.2d 480, 482 (Minn. 1985 (“The loss of consortium claim is said to be a derivative claim. . . . Both claims use the same liability but they are separate claims with separate injuries.”) and Brown v. Metzger, 455 N.E.2d 834, 837-38 (Ill. App. Ct. 1983) (“Though derivative, the loss of consortium claim is still a separate cause of action.”).

On a review of Utah cases, it appears that Utah treats a loss of consortium claim as a separate claim belonging to the non-injured spouse. For example, in Progressive Cas. Ins. Co. v. Ewart, 167 P.3d 1011 (Utah 2007), the Utah Supreme Court addressed the question of whether an insurer was required by Utah insurance statute to provide separate coverage for a non-injured spouse’s loss of consortium claim. Ultimately, the court rejected the plaintiff’s contention that a loss of consortium claim was one for “bodily injury,” so that such a claim did not require a separate statutory limit. See id. at 1014-15. But nowhere in Ewart did the court rule that the loss of consortium claim was not its own separate claim, failing to reject Justice Durham’s definition

of a loss of consortium claim as “a separate and distinct injury” in her dissenting opinion. Id. at 1015 (Justice Durham dissenting). Further, if loss of consortium was not a separate claim under Utah law, there would have been no need for the Ewart court to determine whether that claim was one for “bodily injury.” The clear implication from Ewart, then, is that under Utah law, a loss of consortium claim is separate one that belongs to the non-injured spouse.

The Utah Court of Appeals’ decision in Fox v. Brigham Young Univ., 176 P.3d 446 (Utah Ct. App. 2007) does not change this conclusion. In Fox, the court upheld the trial court’s summary judgment against a plaintiff on his loss of consortium claim because the court had found that the plaintiff’s wife did not have enough evidence on the record to prove her negligent injury claim. See id. at 452. The court reasoned that plaintiff’s “claim for loss of consortium failed because it was dependent on the success of [the injured spouse’s] negligence claim. . . . [Plaintiff’s] loss of consortium claim ceased to exist when [his spouse’s] negligence claim failed.” Id. The decision in Fox does not dispel the notion that the loss of consortium is a separate claim. Instead, it acknowledges that the a loss of consortium claim cannot succeed against a defendants if the injury claim fails against the same defendant.

Because Utah appears to be among the jurisdictions which see loss of consortium as its own claim, it comfortably follows that it would also adopt the majority rule that a spouse’s release of his or her injury claims does not release the loss of consortium claim. The court agrees, in other words, with the Plaintiffs’ reading of § 30-2-11 as set out above. This conclusion is bolstered by other courts that have adopted reasoning similar to Plaintiffs’. See, e.g., Huffer, 375 N.W.2d at 481-482 (ruling, among other things, that requirement that loss of consortium claim be brought at the time of trial did not apply to bar the non-injured spouses claim when the injured spouse had settled). Accordingly, assuming Ms. Crabtree’s release is a binding contract, she did

not release Mr. Crabtree's claim.

II. The Validity of Ms. Crabtree's Release

Although the previous section is premised on the assumption that Ms. Crabtree's release was valid, the court finds that this is not a settled question at this point. That is because the court agrees with Ms. Crabtree that there is a triable issue of fact on the question of whether her agreement to release her claims was obtained by fraud.

Simply put, if Ms. Crabtree can prove American Family made a false promise to her to induce her to sign the release, her release would be voidable. See, e.g., Peterson v. Coca-Cola USA 48 P.3d 941, 946. Mr. Harris submitted an affidavit in which he asserts that an American Family representative "assured me that Andy Crabtree's loss of consortium claim would be honored at a later date." (Harris Aff. ¶ 12, attached as Ex. A to Memo in Opp'n to SJ as to Ms. Crabtree.) But American Family has not paid Mr. Crabtree's loss of consortium claim, meaning that if what Mr. Harris states is true, American Family made a false promise.

Mr. Archuleta has moved to strike Mr. Harris' statement as barred by Utah's parol evidence rule, especially given the release's integration clause. (See Dkt. No. 60.) But this rule excludes only extrinsic evidence purporting to vary the contract: it does not work to exclude evidence relevant to fraudulent inducement. See Tangren Family Trust v. Tangren, 182 P.3d 326, 330-31 (Utah 2008) ("[E]xtrinsic evidence is appropriately considered, even in the face of a clear integration clause . . . where a contract is voidable for fraud. . .") (emphasis added). Accordingly, the court denies Mr. Archuleta's motion and will consider Mr. Harris' affidavit. Based on that affidavit, summary judgment is inappropriate.

ORDER

For the foregoing reasons, Mr. Archuleta's motions for summary judgment (Dkt Nos. 50

& 52) are DENIED. Mr. Archuleta's motion to strike Mr. Harris' affidavit (Dkt. No. 60) is DENIED as specified and as moot.

IT IS SO ORDERED this 11th day of September, 2008.

BY THE COURT:

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

TENA CAMPBELL
Chief District Judge

FILED
U.S. DISTRICT COURT

2008 SEP 10 A 10: 28

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

CANDICE A. JOHNSON (#4745)
Attorney for Defendant
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

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

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>v.</p> <p>DANNY DUTTON,</p> <p>Defendant.</p>	<p>ORDER GRANTING DEFENSE COUNSEL'S MOTION TO WITHDRAW, NEW TRIAL DATE, AND EXCLUSION OF TIME PURSUANT TO THE SPEEDY TRIAL ACT</p> <p>Case No. 2:07-CR-000371-001 TC (Judge Tena Campbell)</p>
---	--

Based upon motion of defense counsel and good cause shown;

1. The court grants defense counsel's request to withdraw as counsel;
2. Additionally, the court grants new counsel additional time to prepare for trial which is now set for October 14, 2008;
3. The court also finds pursuant to U.S.C. § 3161 (h)(A)(8) that the ends of justice served by granting additional time for new counsel to prepare for trial are outweighed by the public interest and defendant's interest in a speedy trial. The court orders that the delay in trial resulting

from this continuance be excluded from the calculation under the Speedy Trial Act.

DATED this 9 day of ~~August~~ ^{September} 2008.

Tena Campbell

TENA CAMPBELL
U.S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 14th 2008, I electronically filed the foregoing Order Granting Defense Counsel's Motion to Withdraw, New Trial Date, and Exclusion of Time pursuant to the Speedy Trial Act with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Richard Daynes
U.S. Attorney's Office

/s/Jennifer Boyd

FILED
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

2008 SEP 11 P 4: 25

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA

v.

**ORDER OF DISCHARGE
AND DISMISSAL**

STEVEN TERRANCE ROTH

CASE NUMBER: 2:07-CR-00547-001

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

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



Paul M. Warner
United States Magistrate Judge

10 September 2008

Date

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ALFREDO RIOS-GUERRERO and
ARTURO SORIANO-ESQUEDA,
Defendants.

SCHEDULING ORDER

Case No. 2:07-CR-572 TS

The Court held a *James*¹ hearing on May 23, 2008, that addressed issues related to the admissibility of coconspirator statements under Federal Rule of Evidence 801(d)(2)(E). Pursuant to a May 12, 2008, Order of the Court,² 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 first two inquiries of a *James* hearing: 1) whether a conspiracy existed; and 2) whether each defendant was a member of the conspiracy. Pursuant to a September 10, 2008, Order of the Court,³ the Court found that the first two inquiries are met with regard to Defendants Alfredo

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

²Docket No. 233.

³Docket No. 355.

Rios-Guerrero and Arturo Soriano-Esqueda. The government has turned over to the defendants the co-conspirator statements for which it seeks admission under Federal Rule of Evidence 801(d)(2)(E), and has indicated that it is prepared to proceed with the final inquiry of a *James* hearing, whether the statements were made in the course of, and in furtherance of, the conspiracy.

The Court hereby establishes the following scheduling order for the purpose of briefing the final inquiry of a *James* hearing for Defendants Alfredo Rios-Guerrero and Arturo Soriano-Esqueda:

1. The government's memorandum shall be filed by October 10, 2008.
2. The defendants' responses, if any, shall be filed by October 24, 2008.
3. Oral argument will be held on November 6, 2008 at 2:00 p.m.

DATED September 11, 2008.

BY THE COURT:



TED STEWART
United States District Judge

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT
UTAH

CENTRAL DIVISION

District of

2008 SEP 10 P 1:35

DISTRICT OF UTAH

UNITED STATES OF AMERICA
V.
ALEJANDRO MORANTES-MARTINEZ

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX208CR000420-001

USM Number: 15529-081

Spencer Rice
Defendant's Attorney

DEPUTY CLERK

THE DEFENDANT:

pleaded guilty to count(s) 1 of the indictment

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

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

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 9 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.

9/9/2008

Date of Imposition of Judgment

Signature of Judge

The Honorable Ted Stewart

U. S. District Judge

Name of Judge

Title of Judge

9/10/2008

Date

DEFENDANT: ALEJANDRO MORANTES-MARTINEZ
CASE NUMBER: DUTX208CR000420-001

IMPRISONMENT

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

TIME-SERVED

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

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

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

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

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

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ALEJANDRO MORANTES-MARTINEZ

CASE NUMBER: DUTX208CR000420-001

SUPERVISED RELEASE

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

12 MONTHS

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

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

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

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

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

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

STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: ALEJANDRO MORANTES-MARTINEZ
CASE NUMBER: DUTX208CR000420-001

SPECIAL CONDITIONS OF SUPERVISION

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

DEFENDANT: ALEJANDRO MORANTES-MARTINEZ
CASE NUMBER: DUTX208CR000420-001

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ _____ 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:
THE FINE AND SPECIAL ASSESSMENT FEE ARE WAIVED.

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 6 - 11

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

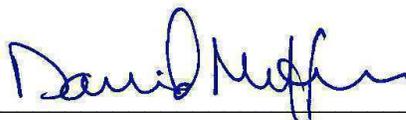
**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION**

<p style="text-align:center">DESERET SKY DEVELOPMENT</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">vs.</p> <p style="text-align:center">ANB FINANCIAL NA</p> <p style="text-align:center">Defendant.</p>	<p style="text-align:center">ORDER TO SHOW CAUSE</p> <p style="text-align:center">Case No. 2:08-CV-350 DN</p>
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Plaintiffs are hereby ordered to show cause why the above captioned case should not be dismissed, as service of process has not been completed within 120 days as required by Rule 4(m) of F.R.C.P. The file indicated no activity since May 5, 2008.

Plaintiffs are directed to respond in writing within 20 days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case without prejudice.

Dated this 9th day of September, 2008.

By  _____
David Nuffer
United States Magistrate Judge

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

FILED
U.S. DISTRICT COURT

DOROTHA JILL WEIGHT,

Plaintiff,

vs.

MONTICELLO ACADEMY, INC.,

Defendant.

2008 SEP 11 A 11:39

DISTRICT OF UTAH

BY: Ce
DEPUTY CLERK

SCHEDULING ORDER

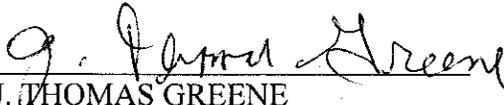
Case No. 2:08-CV-359

The Court met with Counsel on September 9, 2008 and discussed at some length the Attorney's Planning Meeting Report which had been lodged with the Court, indicating that certain changes would be adopted. Accordingly, the Court now issues its interim Scheduling Order, as follows:

1. Discovery Cut-off re fact witnesses to be completed by noon on December 1, 2008. Interrogatories shall be limited to 10, including sub-parts; requests for admissions shall be limited to 5, including sub-parts; requests for admission of documents shall be limited to 10.
2. Expert discovery: reports to be submitted by plaintiffs by December 1, 2008, by defendant by December 31, 2008, and counter reports by January 31, 2009.
3. Deadline for filing dispositive or potentially dispositive motions shall be December 5, 2008.
4. Further Status & Scheduling conference set for December 15, 2008 at 11:30am. Any motions or other documents relative to the Status & Scheduling conference shall be delivered to Chambers in hard copy by 12 noon, December 12, 2008.

Discovery may be commenced forthwith.

DATED this 10th day of September, 2008


J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

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

PAULA SELF, LINDA DUNCAN,
SHERI KIDDY, LESLIE DEMULL,
AND TIMOTHY VAN HOOSE,
individually and on behalf of others
similarly situated,

Plaintiffs,

v.

TPUSA, INC.; AND
TELEPERFORMANCE GROUP, INC.;

Defendants.

ORDER GRANTING MOTION FOR
LEAVE TO FILE A SECOND
AMENDED COMPLAINT

Case No. 2:08cv395

Magistrate Judge Paul M. Warner

Before the court is Plaintiffs' motion for leave to file a second amended complaint.¹

Defendants have indicated that they do not object to the motion.²

Under rule 15(a) of the Federal Rules of Civil Procedure, leave to amend pleadings "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (stating that the mandate of rule 15(a) "is to be heeded" and that "[i]n the absence of any apparent or declared reason . . . the leave sought should, as the rules require, be 'freely given.'" (quoting Fed. R. Civ. P. 15(a)). Based upon this lenient standard and the lack of

¹ *See* docket no. 39.

² *See* docket no. 42.

any objection to the motion by Defendants, Plaintiffs' motion for leave to file an amended complaint is GRANTED.

IT IS SO ORDERED.

DATED this 11th day of September, 2008.

BY THE COURT:

A handwritten signature in black ink, reading "Paul M. Warner", is written over a light blue rectangular background. The signature is cursive and fluid.

PAUL M. WARNER
United States Magistrate Judge

FILED
U.S. DISTRICT COURT

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

2008 SEP 10 P 1:39

MARCELLA LOVELL,

Plaintiff,

vs.

DR. DEERING et al.,

Defendants.

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

ORDER

Case No. 2:08-cv-400 DB

Judge Dee Benson

On July 17, 2008, this Court dismissed Plaintiff's civil right complaint against Defendants without prejudice. Subsequently, Plaintiff submitted a letter dated August 7, 2008, requesting this Court to "reinstate [her] civil suit." As *pro se* litigant's pleadings must be liberally construed, *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991), the Court finds that Plaintiff has filed a motion to reconsider pursuant to Fed. R. Civ. P. 60(b).

Rule 60(b) directs the Court to relieve a party from final judgment or order for "any . . . reason that justifies relief." *Id.* § (b)(6). While Rule 60(b) relief is only appropriate in extraordinary circumstances. *Massengale v. Oklahoma Bd. of Examiners in Optometry*, 30 F.3d 1325, 1330 (10th Cir. 1994) (citing *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863-64 (1988)), the Court finds that Plaintiff has met her burden.

Plaintiff's case was originally dismissed because Plaintiff failed to provide a certified copy of her trust fund account statements within thirty days of the Court's May 15, 2008, order. According to Plaintiff, however, her paperwork was late due to circumstances beyond her control. Plaintiff states that she was forced to wait for the Utah State Prison contract attorney to

send her the proper form, which took weeks. Moreover, the process of sending the form to the business office and having the paperwork returned again took weeks. Finally, Plaintiff states, the paperwork was sent back to her once again for postage due. Ultimately, Plaintiff's Prisoner Trust Fund Account Statement was received by the Court on July 27, 2008.

The Court finds that Plaintiff has adequately explained her failure to comply with its May 15, 2008, order, thus justifying relief under Fed. R. Civ. P. 60(b). Accordingly, the Court GRANTS Plaintiff's motion to reconsider and re-opens Plaintiff's civil suit.

IT IS SO ORDERED.

Dated this 9th day of September, 2008.



Dee Benson
United States District Judge

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

BRUCE LEWIS, an individual,

Plaintiff,

vs.

ABBOTT LABORATORIES, INC., a
Delaware corporation,

Defendant.

SCHEDULING ORDER

Case No. 2:08-CV-517

FILED
U.S. DISTRICT COURT

2008 SEP 11 A 11:39

DISTRICT OF UTAH

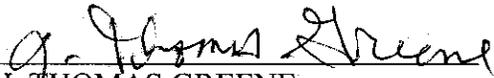
BY: Ce
DEPUTY CLERK

The Court met with Counsel on September 9, 2008 and discussed at some length the Attorney's Planning Meeting Report which had been lodged with the Court, indicating that certain changes would be adopted. Accordingly, the Court now issues its interim Scheduling Order, as follows:

1. Discovery Cut-off re fact witnesses to be completed by noon on December 1, 2008. Interrogatories shall be limited to 10, including sub-parts; requests for admissions shall be limited to 5, including sub-parts; requests for admission of documents shall be limited to 10.
2. Expert discovery: reports to be submitted by plaintiffs by December 1, 2008, by defendant by December 31, 2008, and counter reports by January 31, 2009.
3. Deadline for filing dispositive or potentially dispositive motions shall be December 5, 2008.
4. Further Status & Scheduling conference set for December 15, 2008 at 11:00am. Any motions or other documents relative to the Status & Scheduling conference shall be delivered to Chambers in hard copy by 12 noon, December 12, 2008.

Discovery may be commenced forthwith.

DATED this 10th day of September, 2008


J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

Daniel L. Steele (6336)
STUCKI STEELE PIA & ANDERSON
City Center I, Suite 900
175 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 578-3251
Email: dan@sspafirm.com

Attorney for Defendants Melissa Wright and Axiom Financial, LLC

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

BART N. CHRISTOFFERSON, an
individual,

Plaintiff,

vs.

AURORA LOAN SERVICES, an individual,
CAL WESTERN RECONVEYANCE, a
Utah Corporation, JAMES H. WOODALL,
an individual, WOODALL & WESTERN, a
Utah Corporation, LEHMAN BROTHERS
BANK, a Utah Corporation, FSB LEHMAN
BROTHERS, a Utah Corporation, AXIOM
FINANCIAL, a Utah Limited Liability
Company, MELISSA WRIGHT, an
individual, INWEST TITLE SERVICE, a
Utah Corporation, MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, a Foreign Corporation, PETE
VELLA, an individual, and GERALD R.
MOSS, an individual

Defendants.

**ORDER GRANTING
STIPULATED MOTION FOR
ENLARGEMENT OF TIME FOR
DEFENDANTS TO ANSWER
PLAINTIFF'S COMPLAINT**

Civil Case No.: 2:08-cv-00663-DAK

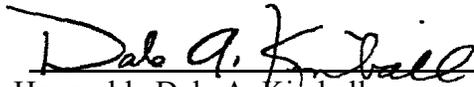
Judge: Dale A. Kimball

Based upon the stipulated motion of Plaintiff Bart N. Christofferson and Defendants
Melissa Wright and Axiom Financial, LLC,

IT IS HEREBY ORDERED that Defendants shall respond to the Complaint before or on
October 5, 2008.

DATED this 11th day of September, 2008

BY THE COURT:



Honorable Dale A. Kimball
United States District Court

APPROVED AS TO FORM:

/S/ _____
Bart N. Chistofferson

STUCKI STEELE PIA & ANDERSON

/S/ _____ Daniel L. Steele
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served via ECF and U.S. Mail the above-captioned **ORDER GRANTING STIPULATED MOTION FOR ENLARGEMENT OF TIME FOR DEFENDANTS TO ANSWER PLAINTIFF'S AMENDED COMPLAINT** this 8th day of September, 2008, to the following:

Bart N. Christofferson
407 South 300 East
Lehi, Utah 84043

DATED this 8th day of September, 2008.

STUCKI STEELE PIA & ANDERSON

/S/ _____
Daniel L. Steele
Attorneys for Defendants

FILED

United States District Court
District of Utah

U.S. DISTRICT COURT

2008 SEP 11 P 3:36

UNITED STATES OF AMERICA

vs.

Jonathan G. McKay

JUDGMENT IN A CRIMINAL CASE UTAH

(For Offenses Committed On or After November 1, 1987)

BY: DEPUTY CLERK

Case Number: DUTX 208PO000483-001

Plaintiff Attorney: Stanley H. Olsen

Defendant Attorney: Pro Se

Atty: CJA ___ Ret ___ FPD ___

Defendant's Soc. Sec. No.: XXX-XX-XXXX

Defendant's Date of Birth: XX-XX-1989

Defendant's USM No.: N/A

Defendant's Residence Address:

Springville, UT 84663
Country USA

8/28/2008
Date of Imposition of Sentence

Defendant's Mailing Address:

Springville, UT 84663
Country USA

THE DEFENDANT:

- [X] pleaded guilty to count(s)
[] pleaded nolo contendere to count(s) which was accepted by the court.
[] was found guilty on count(s)

COP _____ Verdict _____

1 of Misdemeanor Information

Table with 3 columns: Title & Section, Nature of Offense, Count Number(s). Row 1: 16 U.S.C. §551, Dumping Hazardous Material in and Adjacent to a Stream (36 C.F.R. 261.11(C)), 1

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

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

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

- [X] The defendant is placed on Probation for a period of 12 Months Bench. The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ 250.00 , payable as follows:

- forthwith.
- in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- other:
\$500 with \$250 Suspended= \$250.00 due 4/28/2009
- The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- The interest requirement is waived.
- The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
Uinta National Forest Attn: Kathy Christensen 88 West 100 North Provo, UT 84601	\$440.00	\$440.00

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
	Totals: \$ <u>440.00</u>	\$ <u>440.00</u>

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

Restitution is payable as follows:

in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

other:

To be paid Joint and Several with Case 2:08po484

The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 25.00, payable as follows:

forthwith.

Due 4/28/2009

IT IS ORDERED that the defendant shall 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.

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

DEPARTURE

The Court grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure:

RECOMMENDATION

Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Defendant: Jonathan G. McKay
Case Number: 208PO000483-001

CUSTODY/SURRENDER

- 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 _____ on _____.
- The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE: 9/11/2008



Robert T. Braithwaite
United States Magistrate Judge

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 U.S. Marshal

FILED
U.S. DISTRICT COURT

United States District Court
District of Utah

2008 SEP 11 P 3:36

UNITED STATES OF AMERICA

vs.

Kyle T. Ottesen

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

BY: DEPUTY CLERK

Case Number: **DUTX 208PO000484-001**

Plaintiff Attorney: Stanley H. Olsen

Defendant Attorney: Pro Se

Atty: CJA ___ Ret ___ FPD ___

Defendant's Soc. Sec. No.: XXX-XX-XXXX

Defendant's Date of Birth: XX-XX-1990

Defendant's USM No.: N/A

Defendant's Residence Address:

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Country USA

8/28/2008
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1 of Misdemeanor Information

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
16 U.S.C. §551	Dumping Hazardous Material in and Adjacent to a Stream (36 C.F.R. 261.11(c))	I

- The defendant has been found not guilty on count(s) _____
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Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of _____

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The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

- The interest requirement is waived.
- The interest requirement is modified as follows:

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	Totals: \$ <u>440.00</u>	\$ <u>440.00</u>

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The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

DEPARTURE

The Court grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure:

RECOMMENDATION

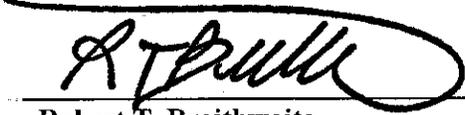
Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Defendant: Kyle T. Ottesen
Case Number: 208PO000484-001

CUSTODY/SURRENDER

- 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 _____ on _____.
- The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE: 9/11/2008



Robert T. Braithwaite
United States Magistrate Judge

Defendant: Kyle T. Ottesen
Case Number: 208PO000484-001

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 U.S. Marshal