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FILED
U.S. DISTRICT COURT
2008 SEP 15 A 9:58
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

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

THE UNITED STATES OF AMERICA,	:	
Plaintiff,	:	**ORDER EXTENDING SURRENDER DATE**
v.	:	
RUSSELL WAGHER,		**Case No. 1:06-CR-027 DB**
Defendant.	:	

Based on the motion of the defendant and no objection by the government and because of his medical condition, it is hereby;

ORDERED that his date to report to the Bureau of Prisons is extended and the Court will review this matter in 60 days.

It is further ORDERED that the defendant inform the Court, as soon as it is known, but in no event more than two weeks from this date, the starting and completion date of the radiation therapy referred to in his motion.

DATED this 12th day of September, 2008.

BY THE COURT:

Dee Benson

Honorable DEE BENSON
U. S. District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which sent notification of such filing to the following:

Richard W. Daynes (E-Filer)
Richard.Daynes@usdoj.gov lisa.wuest2@usdoj.gov

/s/ Brittany Bagley

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

UNITED STATES OF AMERICA, Plaintiff, vs. JESUS TAFOLLA-BRINA, Defendant.	MEMORANDUM DECISION AND ORDER NOTIFYING PETITIONER HIS PRO SE MOTION WILL BE CONSTRUED AS A MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE, PURSUANT TO 28 U.S.C. § 2255, IF NOT WITHDRAWN; SETTING RESPONSE TIME; AND ORDERING MAILING OF INFORMATION Case No. 1:06-CR-106 TS

This matter is before the Court on Defendant's *pro se* document styled "Appeal Pursuant to Rule 60-B(4)" (the Motion). In his Motion, Defendant seeks a determination from this Court that his sentence is void for the following reasons: lack of jurisdiction over the Indictment and plea; ineffective assistance of counsel; and improper venue. Among other things, he asserts that the federal habeas statutes, 28 U.S.C. § 2241 and § 2255, are

nullities, unconstitutional on their face, and void. Defendant also sent a document styled "Order to Show Cause." This last document was lodged in the case as it is not possible for a party to file orders.[1]

In construing a motion filed in a criminal case which requests relief as outlined in 28 U.S.C. § 2255, the Court is required to make Defendant "aware of the risk associated with recharacterization" as a § 2255 motion, and obtain Defendant's assent or, the court must "conclude[] that the [defendant's] motion can only be considered under § 2255 and offer[] the movant the opportunity to withdraw the motion rather than have it so recharacterized."[2] Defendant must be given an "opportunity to contest the recharacterization, or to withdraw or amend the motion."[3]

Having considered the document and the relief requested therein – relief expressly covered by § 2255 – the Court hereby notifies Defendant that his Motion can only be considered as a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. Because it expressly seeks a ruling by this Court, his Motion cannot be construed as an appeal. Further, the time for filing a direct appeal expired prior to the filing of the present Motion. Defendant will be granted until October 30, 2008, to withdraw the Motion rather than have it recharacterized.

---

[1]Docket No. 22 (lodged document).

[2]*United States v. Nelson*, 463 F.3d 1145, 1149 (10th Cir. 2006).

[3]*Castro v. United States*, 540 U.S. 375, 381 (2003).

Defendant is cautioned that the recharacterization of his Motion as one under § 2255 would likely prevent the filing of a successive petition under the provisions of § 2255(h).[4] Defendant is further cautioned that the time for filing a new § 2255 Motion expired one year after his May 16, 2007 judgment and commitment.[5] Therefore, if Defendant withdraws his motion, he may not be able to timely file a new § 2255 Motion.

The Court will grant Petitioner until October 30, 2008, to file one of the following: (1) a § 2255 motion using the official form that will be mailed to him; (2) an objection to the Court's recharacterization of his Motion as a § 2255 motion; or (3) a request to withdraw the Motion. If Defendant objects to the recharacterization, the Court will rule on the characterization issue based on such objection without further briefing. If Defendant files a § 2255 Motion using the official form he may also file a supporting memorandum.

Based upon the above, it is hereby

ORDERED that Petitioner shall have until October 30, 2008, to file (1) a § 2255 motion set forth in the official form that will be mailed to him; (2) an objection to the Court's recharacterization of his Motion as a § 2255 motion; or (3) a request to withdraw his Motion. It is further

---

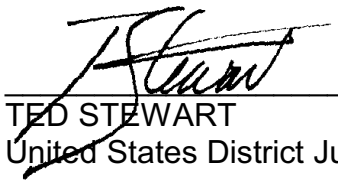
[4]28 U.S.C. § 2255(h) (requiring court of appeals certification for second or successive motions under § 2255) and Rule 9, Rules Governing Section 2255 Proceedings for the United States District Courts (requiring Defendant to obtain an order from the appropriate court of appeals prior to filing a second or successive motion under § 2255).

[5]28 U.S.C. § 2255(f) (imposing one-year statute of limitations for filing § 2255 motions).

ORDERED that the Clerk of Court mail a § 2255 pleading packet to Petitioner at the address listed on his Motion. If Petitioner chooses to utilize this packet, the Motion shall also be filed by October 30, 2008.

DATED this 15th day of September, 2008.

BY THE COURT:



TED STEWART
United States District Judge

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

MICHAEL WEAVER, Plaintiff, v. STATE OF UTAH et al., Defendants.	Case No. 1:06-CV-82 TS **MEMORANDUM DECISION AND ORDER DISMISSING IMPROPER DEFENDANTS; GRANTING SERVICE ON REMAINING DEFENDANTS; DENYING APPOINTED COUNSEL**

Plaintiff, Michael Weaver, an inmate at the Utah State Prison, filed this *pro se* civil rights suit under 42 U.S.C. § 1983. *See* 42 U.S.C.A. § 1983 (West 2008). Plaintiff was granted leave to proceed *in forma pauperis* under 28 U.S.C. § 1915. *See* 28 *id.* 1915. On January 14, 2008, the Court dismissed Plaintiff's original Complaint for failure to state a claim on which relief could be granted. Plaintiff subsequently filed an Amended Complaint which is now before the Court for screening under 28 U.S.C. § 1915(e). Plaintiff's motion to waive sovereign immunity, motion for service of process and motion for appointment of counsel are also before the Court at this time.

I. Screening Analysis

A. Standard of Review

Under 28 U.S.C. § 1915(e)(2)(B), a court shall dismiss any claims in a complaint filed *in forma pauperis* if they are frivolous, malicious or fail to state a claim upon which relief may be granted. "Dismissal of a pro se complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend." *Perkins v. Kan. Dep't of Corr.*, 165 F.3d 803, 806 (10th Cir. 1999). When reviewing the sufficiency of a complaint the Court "presumes all of plaintiff's factual allegations are true and construes them in the light most favorable to the plaintiff." *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991). "The burden is on the plaintiff to frame a 'complaint with enough factual matter (taken as true) to suggest' that he or she is entitled to relief." *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008)(quoting *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007)). "Factual allegations must be enough to raise a right to relief above the speculative level." Id. (quoting *Twombly*, 127 S.Ct. At 1965).

Because Plaintiff is proceeding pro se the Court must

construe his pleadings liberally and hold them to a less stringent standard than formal pleadings drafted by lawyers. *Hall, 935 F.2d at 1139*. However, "[t]he broad reading of the plaintiff's complaint does not relieve [him] of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Id.* While Plaintiff need not describe every fact in specific detail, "conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based." *Id.*

B. Plaintiff's Allegations

Plaintiff's Amended Complaint alleges that Defendants denied Plaintiff due process guaranteed under the Fifth and Fourteenth Amendments by wrongfully interfering with Plaintiff's parental rights. Plaintiff's claims stem from the Utah Division of Child and Family Services (DCFS) removal of Plaintiff's children from his custody and the subsequent termination of Plaintiff's parental rights.

Plaintiff alleges that on April 1, 2005, he was arrested and spent approximately two hours in jail. During that time Plaintiff's two children were taken into custody by DCFS agents and placed in a temporary shelter. A "shelter hearing" was subsequently held to determine whether the children would be returned to Plaintiff's custody. Plaintiff alleges that based on false statements and allegations made at the hearing it was

determined that the children should remain in DCFS custody. The children were subsequently placed by DCFS in the custody of various foster care providers including Annett Vandersteen and Craig and Shannon Kehl. Plaintiff alleges that these foster parents interfered with Plaintiff's relations with his children, ultimately contributing to the termination of Plaintiff's parental rights. Finally, Plaintiff alleges that DCFS agents prevented Plaintiff from having unsupervised visitation with his children and interfered with his court-ordered supervised visitation.

In addition to the loss of his parental rights Plaintiff alleges that he suffered severe mental trauma as a result of Defendants' actions. Plaintiff's Complaint seeks unspecified monetary damages and injunctive relief in the form of an independent investigation of his case, an impartial hearing, and the return of Plaintiff's children to the custody of Plaintiff or a family member.

C. Improper Defendants

To establish a cause of action under section 1983, a plaintiff must allege (1) the deprivation of a federal right by (2) a person acting under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640, 100 S. Ct. 1920, 1923-24, 64 L. Ed.2d 572 (1980); *Watson v. City of Kansas City, Kansas*, 857 F.2d 690, 694 (10th Cir. 1988). Moreover, liability for a civil rights

violation cannot be based on *respondeat superior*. *See* West v. Atkins, 487 U.S. 42, 54 n.12, 108 S. Ct. 2250, 2258 n.12 (1988); *Mitchell v. Maynard*, 80 F.3d 1433, 1441 (10th Cir. 1996) ("[S]upervisor status by itself is insufficient to support liability. Rather, '[p]ersonal participation is an essential allegation in a § 1983 claim.'") (citations omitted) (second alteration in original). Thus, Plaintiff must allege facts showing an "'affirmative link'" between the alleged harm he suffered and the actions of each defendant. *See* *Anaya v. Crossroads Managed Care Sys. Inc.*, 973 F. Supp. 1228, 1248 (D. Colo. 1997) (citation omitted), *rev'd on other grounds*, 195 F.3d 584 (10th Cir. 1999).

i. Andria Burton

The Amended Complaint names Andria Burton as a defendant based on her role as a DCFS supervisor. Plaintiff alleges that Burton "failed to properly perform her function as supervisor thus causing [Plaintiff's] children and [Plaintiff] to suffer abuse." (Am. Compl. at 2.) Plaintiff further alleges that Burton's failure to intervene "allowed" the assigned caseworkers to take certain inappropriate actions. (Am. Compl. at 14.)

Plaintiff's allegations regarding Burton are entirely based on a *respondeat superior* theory of liability. Plaintiff's Amended Complaint does not allege specific facts showing that Burton personally violated Plaintiff's civil rights. Instead,

Plaintiff seeks to hold Burton liable merely because she failed to intervene or prevent the alleged violations committed by others. Because such *respondeat superior* claims are not cognizable under § 1983 the Court concludes that the Amended Complaint fails to state a claim against Burton. Burton is, therefore, dismissed from this case.

ii. Jim Mitchie

The Amended Complaint identifies Jim Mitchie as the court appointed guardian ad litem for Plaintiff's children. Plaintiff alleges that Mitchie violated Plaintiff's rights by allowing Plaintiff's children to be kept from their court-ordered visitation. Plaintiff also alleges that Michie failed to adequately represent the children's best interests throughout the custody proceedings.

As previously explained, § 1983 provides a cause of action only for civil rights violations committed by persons acting under color of state law. Under controlling Tenth Circuit precedent "guardian ad litems do not act under color of law for purposes of § 1983 because they have duties of undivided loyalty to their clients and must be allowed to satisfy their ethical obligations to exercise independent judgment on behalf of their clients." *Schaffrath on Behalf of R.J.J. v. Thomas*, 993 F. Supp. 842, 846 (D. Utah, 1998) (citing *Meeker v. Kercher*, 782 F.2d 153, 155 (10th Cir. 1986).

Plaintiff does not allege any facts showing that Mitchie failed to exercise independent, professional judgment on behalf of Plaintiff's children, thereby making him an agent of the state. Moreover, as discussed in the Court's previous screening order, Plaintiff does not have standing at this point to assert claims on behalf of his children. Thus, the Court concludes that the Amended Complaint fails to state a claim against Jim Mitchie.

iii. Gary Bell

Gary Bell is identified as Plaintiff's court appointed attorney in the custody proceedings. The Amended Complaint alleges that Bell violated Plaintiff's rights by failing to remedy the problems Plaintiff encountered with DCFS, the foster care providers and the courts. Plaintiff states that "Bell was [Plaintiff's] only 'line of defense'" and that "Bell committed a breach of duty" by failing to adequately research Plaintiff's paternity case, follow Plaintiff's instructions, file a proper appeal and keep Plaintiff informed. Plaintiff generally asserts that Bell's "violation of duty caused injury to [Plaintiff's] children as well as [Plaintiff]." (Am. Compl. at 25.)

As an initial matter, Plaintiff fails to allege that Bell violated any right guaranteed by the Constitution or federal law. Plaintiff's allegations against Bell, even if proven, would amount only to a state tort claim of legal malpractice which is not cognizable under § 1983. More importantly, even if Plaintiff

could allege a constitutional violation, Plaintiff cannot show that Bell was a state actor for purposes of § 1983. As with a guardian ad litem, an attorney retained or appointed to represent an individual in a state custody proceeding is not considered a state actor and is not subject to liability under § 1983. *See* *Espinoza v. Rogers*, 470 F.2d 1174, 1175 (10th Cir. 1972). Thus, the Court finds that Plaintiff's Amended Complaint fails to state a claim against Gary Bell.

iv. Foster Parents

The Amended Complaint also names as defendants Annett Vandersteen, and Craig and Shannon Kehl, each of whom provided foster care to Plaintiff's children. Plaintiff alleges that Vandersteen "perpetrated emotional abuse" on Plaintiff's children, interfered with Plaintiff's visitation rights and created an incident which caused the courts to restrict Plaintiff's visitation. Regarding the Kehls, Plaintiff alleges that they began caring for Plaintiff's children before being officially licensed as foster care providers, that they took Plaintiff's daughter to the doctor for an unnecessary "sexual exam," and that they intentionally undermined reunification efforts because they wanted to adopt Plaintiff's children.

Numerous courts have concluded that foster parents are not state actors subject to liability under § 1983. *See, e.g.*, *Rayburn v. Hogue*, 241 F.3d 1341, 1347-48 (11th Cir. 2001);

Milburn v. Anne Arundel County Dep't of Social Services, 871 F.2d 474, 479 (4th Cir. 1989); *P.G. v. Ramsey County*, 141 F. Supp.2d 1220, 1226 (D. Minn. 2001); *Walker v. Johnson*, 891 F. Supp. 1040, 1051 (M.D. Pa. 1995); *Lintz v. Skipski*, 807 F. Supp. 1299, 1307 (W.D.Mich. 1992); *McCrum v. Elkhart County Dep't of Pub. Welfare*, 806 F. Supp. 203, 208 (N.D. Ind. 1992); *Pfoltzer v. County of Fairfax*, 775 F. Supp. 874, 891 (E.D. Va. 1991). Other courts have indicated that foster parents may be state actors but only when the foster parents act in concert with other state actors or where the state knew or should have known that the placement with the foster parent posed a danger to the child. *See, e.g.*, *K.H. v. Morgan*, 914 F.2d 846, 852 (7th Cir. 1990) (foster parent is state actor only when state knows or suspects foster parent is a child abuser); *Hawley v. Nelson*, 968 F. Supp. 1372, 1388 (E.D. Mo. 1997) (without allegations that they acted in concert with other state actors, defendants "standing alone in positions of foster parents" were not state actors); *Del A. v. Roemer*, 777 F. Supp. 1297, 1318 (E.D. La. 1991) ("[T]he foster parent is deemed a 'state instrument' only if the State places the child in a setting it knows or should have known was unsafe.").

As previously noted, to the extent that Plaintiff challenges the treatment of his children while in foster care, Plaintiff does not have standing to assert claims on their behalf. More importantly, even if Plaintiff had standing to sue on his

children's behalf, Plaintiff does not allege any facts showing that either Vandersteen or the Kehls colluded with the state to abuse Plaintiff's children, or that the state knew or should have known that placement with Vandersteen or the Kehls placed Plaintiff's children in substantial danger. In fact, Plaintiff fails to allege any concrete injury suffered by his children while in foster care. Because Annett Vandersteen and Craig and Shannon Kehl cannot be deemed state actors subject to liability under § 1983 the Court concludes that Plaintiff's claims against them must be dismissed.

v. Official Defendants

Plaintiff's original Complaint named the State of Utah, DCFS and several DCFS agents in their official capacities as defendants. In its previous screening order the Court dismissed these defendants because they are immune from suit under the doctrine of sovereign immunity. Plaintiff subsequently filed a document styled "Request to Wave (sic) Sovereign Immunity" which was docketed as a motion in this case. (Doc no. 26.) Plaintiff's motion does not allege that these official defendants have effectively waived their sovereign immunity, nor does it offer any legal basis for denying them immunity in this case. Thus, Plaintiff's motion to waive sovereign immunity is denied.

D. Remaining Defendants

The Amended Complaint also names two DCFS agents, Jaclyn Lee

and Nicole Oyler, in their personal capacities. Each of these agents were allegedly directly involved with the initiation of custody proceedings and eventual termination of Plaintiff's parental rights. Plaintiff alleges that these individuals violated Plaintiff's Fifth and Fourteenth Amendment due process rights by failing to follow DCFS policies, making false allegations against Plaintiff and interfering with Plaintiff's visitation rights.

For screening purposes the Court finds the Amended Complaint sufficient to state a claim against Lee and Oyler in their individual capacities. Thus, the Court will direct the United States Marshals Service to complete service of process upon Jaclyn Lee and Nicole Oyler.

II. Motion for Appointed Counsel

In conjunction with his Amended Complaint Plaintiff also renewed his motion for appointed counsel. Plaintiff's motion consists of the standard fill-in-the-blank form included in the Court's prisoner litigation guide. The motion does not include a supporting memorandum stating the specific grounds for his request at this time.

It is well established that Plaintiffs in civil cases do not have a constitutional right to counsel. *See* *Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995); *Bee v. Utah State*

Prison, 823 F.2d 397, 399 (10th Cir. 1987). However, the court may, in its discretion, appoint counsel for indigent inmates under 28 U.S.C. § 1915(e)(1). *See* 28 U.S.C.A. § 1915(e)(1) (West 2005); *Carper*, 54 F.3d at 617; *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991). When deciding whether to appoint counsel the district court considers a variety of factors "including 'the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.'" *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quoting *Williams*, 926 F.2d at 996); *accord* *McCarthy*, 753 F.2d at 838-39. "The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel." *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

Given the early stage of this litigation and Plaintiff's demonstrated ability to adequately plead his claims, the Court finds that appointment of counsel would be premature at this time. At this point the primary issue before the Court is the legal sufficiency of Plaintiff's allegations. As the Tenth Circuit has noted, "a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which relief can be granted." *See* *Hall*

v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991). There is no indication that Plaintiff has been prejudiced by the lack of counsel in presenting his claims thus far. Indeed, Plaintiff's Amended Complaint, which consists of over thirty-two handwritten pages plus numerous exhibits, clearly sets out the legal and factual basis for Plaintiff's claims. The Court has liberally construed Plaintiff's allegations and concluded that Plaintiff alleges sufficient facts to proceed against the individuals directly linked to Plaintiff's alleged injuries. Moreover, at this stage of the litigation there are no complex legal or factual issues to be addressed. Once Defendants have been served and an answer or dispositive motion has been filed the Court will be in a better position to evaluate the merits of Plaintiff's claims and the need for appointed counsel going forward.

Thus, Plaintiff's motion for appointed counsel is denied at this time. However, as this case progresses, if it appears that appointed counsel is warranted the court will address the issue *sua sponte*. No further motion by Plaintiff is necessary.

ORDER

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

(1) Andria Burton, Jim Mitchie, Gary Bell, Annett Vandersteen, Craig Kehl and Shannon Kehl are **dismisse**d as defendants in this case;

(2) Plaintiff's motion to waive sovereign immunity is **denied**;

(3) Plaintiff's motion for appointed counsel is **denied** at this time; and,

(4) the United States Marshals Service shall serve a summons and copy of Plaintiff's Amended Complaint upon Nicole Oyler and Jaclyn Lee, c/o Duane Betournay, Director, Utah Department of Child and Family Services, 120 North 200 West #225, Salt Lake City, Utah, 84103.

DATED this 15th day of September, 2008.

BY THE COURT:

TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

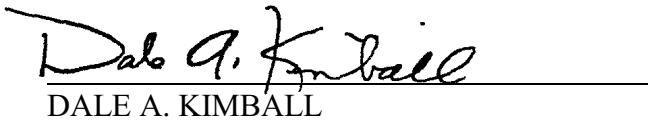
NORTHERN DIVISION

TESORO REFINING AND MARKETING COMPANY, **Plaintiff,** **vs.** **LYLE TUCKER DISTRIBUTING, INC., KERRY TUCKER, and TAB TUCKER,** **Defendants.**	**ORDER** **Case No. 1:06CV116DAK**

Before the court are four Motions for Withdrawal of Counsel, which were incorrectly styled as notices of withdrawal as counsel. For good cause appearing, IT IS HEREBY ORDERED that the motions of R. Scott Waterfall and Scott P. Nickle of Helgesen, Waterfall & Jones, PC for withdrawal of counsel for Lyle Tucker Distributing, Inc., Kerry Tucker, and Tab Tucker [docket ## 99-102] are GRANTED.

DATED this 15th day of September, 2008.

BY THE COURT:



DALE A. KIMBALL
United States District Judge

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

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DISTRICT OF UTAH

BY:_____
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

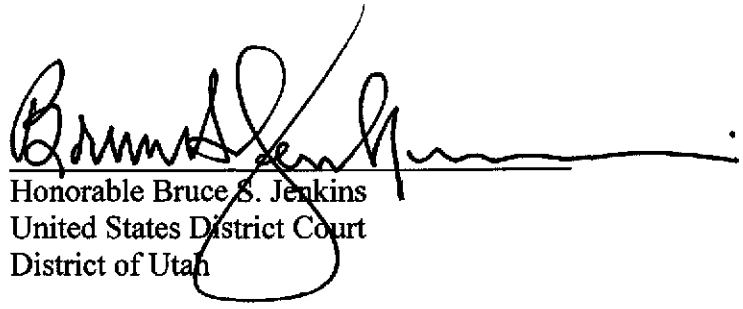
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION Plaintiff, v. ADECCO USA, INC., Defendant.	**ORDER REFERRING CASE TO ADR PROGRAM FOR MEDIATION** Case No. 1:06-cv-00124-BSJ District Judge Bruce S. Jenkins

A hearing was held on September 9, 2008, on the parties' motion to refer this matter to the court-annexed Alternative Dispute Resolution Program for mediation, pursuant to DUCivR-16-2 and the Court's ADR Plan (Docket No. 67). The Court having considered the parties' request, orders as follows:

1. The above-entitled matter is hereby referred to the court-annexed Alternative Dispute Resolution Program for mediation. Further proceedings in this matter will be governed by the provisions of DUCivR 16-2 and the Court's ADR Plan.

2. A status conference will be held in this matter on December 19, 2008, at 1:30 p.m.



Honorable Bruce S. Jenkins
United States District Court
District of Utah

Submitted and approved by:

/s/ Veronica A. Molina
Veronica A. Molina , Trial Attorney
Equal Employment Opportunity Commission
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Approved by:

/s/ Mathew Durham, Esq., 09/12/2008
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BRUCE S. JENKINS

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DISTRICT OF UTAH
BY: DEPUTY CLERK

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

WILLIAM K., and **DAYNA K.**, et al.,	:	
Plaintiffs,	:	**ORDER GRANTING MOTION FOR LEAVE TO WITHDRAW AS ATTORNEY**
vs.	:	**Civil No. 1:07-CV-147 BSJ**
BLUECROSS OF CALIFORNIA; and, **THE CHRISTOPHER ELECTRIC CO. WELFARE BENEFITS PLAN**	:	
Defendants.	:	

Based upon the motion of James L. Harris, Jr., and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED and DECREED:

James L. Harris, Jr., is granted leave to withdraw as Plaintiffs' counsel and is hereby deemed withdrawn as counsel.

DATED this 11 day of SEPTEMBER, 2008.

BY THE COURT:

BRUCE S. JENKINS
United States District Court Judge

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OFFICE OF
JUDGE TENA CAMPBELL

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

UNITED STATES OF AMERICA, Plaintiff, v. LEONEL GUZMAN, Defendant.	**ORDER TO CONTINUE JURY TRIAL** Case No. 1:08 CR 74 TC

Based on the motion to continue trial filed by defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the trial previously scheduled for September 17, , 2008, is hereby continued to the 19 day of November, 2008, at 830 a.m. Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date is excluded from speedy trial computation.

Dated this 12th day of Sept, 2008.

BY THE COURT:

Tena Campbell

HONORABLE TENA CAMPBELL
United States District Court Judge

FILED
U.S. DISTRICT COURT

2008 SEP 15 A 11: 00

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. FERNANDO DIAZ OLVERA, Defendant.	**ORDER TO CONTINUE JURY TRIAL** Case No. 1:08 CR-74 TC

Based on the motion to continue trial filed by defendant in the above-entitled case, and good cause appearing:

It is hereby ORDERED that the trial previously scheduled for September 17, 2008, is hereby continued to the 19 day of November, 2008, at 8:30 a.m.

Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date is excluded from speedy trial computation.

DATED this 12th day of Sept, 2008.

BY THE COURT:

Tena Campbell

HONORABLE TENA CAMPBELL
United States District Court Judge

Sally B. McMinimee (5316)
Jared N. Parrish (11743)
PRINCE, YEATES & GELDZAHLER
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(801) 524-1000

Attorneys for the Receiver Robert G. Wing

FILED
U.S. DISTRICT COURT

2008 SEP 15 P 2: 08

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION Plaintiff, vs. VESCOR CAPITAL CORP., a Nevada corporation, VESCOR CAPITAL, INC., a Nevada corporation, VESCORP CAPITAL, LLC, a Nevada limited liability company, VESCORP CAPITAL IV-A, LLC, a Nevada limited liability company, VESCORP CAPITAL IV-M, LLC, a Nevada limited liability company, and VAL E. SOUTHWICK, Defendants.	**ORDER GRANTING EXTENSION OF TIME TO FILE REPLY** Civil No. 1:08cv00012 Judge Dee Benson

The Court, having reviewed the Stipulation to Extension of Time to File Reply, stipulating to an extension of time for the Covenant Group to file a response to the

Receiver's Memorandum in Opposition to Covenant's Motion to Clarify the Scope of the Stay, and, if Necessary, to Lift the Stay to September 22, 2008, it is hereby:

ORDERED that Movants, the Covenant Group, shall be granted an extension to file a response to the Receiver's Memorandum in Opposition to Covenant's Motion to Clarify the Scope of the Stay, and, if Necessary, to Lift the Stay to September 22, 2008.

DATED this 15th day of September, 2008.

BY THE COURT:

Judge Dee Benson

Sally B. McMinimee (5316)
Jared N. Parrish (11743)
PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City, Utah 84111
(801) 524-1000

Attorneys for the Receiver Robert G. Wing

FILED
U.S. DISTRICT COURT

2008 SEP 15 P 2:08

DISTRICT OF UTAH

BY:_____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION Plaintiff, vs. VESCOR CAPITAL CORP., a Nevada corporation, VESCOR CAPITAL, INC., a Nevada corporation, VESCORP CAPITAL, LLC, a Nevada limited liability company, VESCORP CAPITAL IV-A, LLC, a Nevada limited liability company, VESCORP CAPITAL IV-M, LLC, a Nevada limited liability company, and VAL E. SOUTHWICK, Defendants.	**ORDER GRANTING RECEIVER'S STIPULATED MOTION FOR CONTINUANCE OF MOTION HEARING** Civil No. 1:08cv00012 Judge Dee Benson

The Court, having reviewed the Receiver's Stipulated Motion for Continuance of Motion Hearing requesting a continuance of the September 18, 2008 Motion Hearing to October 3, 2008 at 2:30 P.M., and pursuant to stipulation of the parties, it is hereby:

ORDERED that the Motion be, and the same hereby is, granted; and it is further

ORDERED that the Motion Hearing shall be continued to October 3, 2008 at 2:30 P.M.

DATED this 15th day of September, 2008.

BY THE COURT:

Judge Dee Benson

RECEIVED CLERK
SEP 11 2008
U.S. DISTRICT COURT

FILED
U.S. DISTRICT COURT
2008 SEP 05 A 8:34
DISTRICT OF UTAH
BY: DEPUTY CLERK

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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, MARTI HALL, Applicant in Intervention/Proposed Intervening Plaintiff, v. HONKS, INC., d/b/a HONKS 1$ STORE, Defendant.	ORDER Case No. 1:08-CV-00021-TS Judge Ted Stewart

The Court having considered the Motion of the Applicant in Intervention, the Memorandum in Support thereof, and for good cause appearing, hereby enters its order as follows:

IT IS HEREBY ORDERED that Applicant in Intervention, Marti Hall, is:

1. Granted leave to intervene herein; and

2. Allowed to file a Complaint herein on her behalf.

DATED this 15th day of September, 2008.

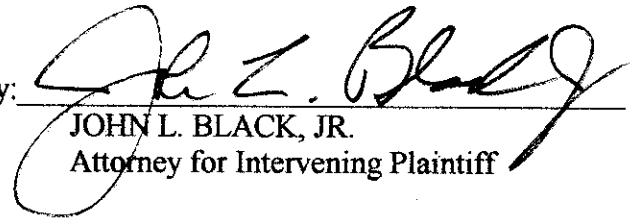
BY THE COURT:

HONORABLE TED STEWART
District Court Judge

APPROVED AS TO FORM:

DATED this 11 day of September, 2008

JOHN L. BLACK, JR.

By: 
JOHN L. BLACK, JR.
Attorney for Intervening Plaintiff

DATED this 11 day of September, 2008

SNOW, CHRISTENSEN & MARTINEAU

By: /S/ *Kara Pettit*
KARA L. PETTIT
Attorneys for Defendant
Approval for signature provided by Kara L. Pettit, via e-mail

DATED this 11 day of September, 2008

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

By: /S/ *P. David Lopez*
MARY JO O'NEILL
SALLY C. SHANLEY
P. DAVID LOPEZ
Attorney for Plaintiff, EEOC
Approval for signature provided by P. David Lopez, via email

United States Probation Office
for the District of Utah

Report on Offender Under Supervision

FILED
IN THE UNITED STATES DISTRICT COURT
2008 SEP 15 A 9:57
DISTRICT OF UTAH
BY: DEPUTY CLERK

Name of Offender: **Gary R. Booker Jr.** Docket Number: **2:02-CR-00509-001-DB**

Name of Sentencing Judicial Officer: **Honorable Dee V. Benson**
United States District Judge

Date of Original Sentence: **August 20, 2003**

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

Original Sentence: **41 months BOP/36 months Supervised Release**

Type of Supervision: **Supervised Release** Supervision began: **October 6, 2006**

SUPERVISION SUMMARY

The Probation Office requests the defendant's presentence report be released to Adult Probation and Parole for a hearing before the Board of Pardons.

If the Court desires more information or another course of action, please contact me at 535-2734.

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

Matthew Morrill
U.S. Probation Officer
Date: September 11, 2008

THE COURT:
[✓] Approves the request noted above
[ ] Denies the request noted above
[ ] Other

Honorable Dee V. Benson
United States District Judge

Date: 9/12/08

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

BC TECHNICAL, INC., Plaintiff, vs. ENSIL INTERNATIONAL CORP., Defendant.	MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW Case No. 2:02-CV-700 TS

This matter is before the Court on Defendant's Renewed Motion for Judgment as a Matter of Law. Defendant argues that it is entitled to judgement as a matter of law on Plaintiff's claim for breach of contract because the contract required Defendant to violate the federal Copyright Act. After carefully reviewing the parties' memoranda and having heard oral argument, the Court will deny Defendant's Motion for the reasons set forth below.

I. BACKGROUND

This case was tried before a jury on July 14-18, 2008. The parties presented evidence and argument on Plaintiff's two causes of action, breach of contract and conversion. The jury returned a verdict in favor of Plaintiff on both claims and awarded damages in the amount of $159,100.

Defendant moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(a) before the jury began its deliberations, arguing that any contract between the parties that would require Defendant to copy third-party firmware/software in order to fix the boards was illegal and unenforceable. The Court denied Defendant's Rule 50(a) motion, which Defendant timely renewed under Rule 50(b) after the jury reached its verdict.

The parties agree that the evidence at trial established the following: The parties contracted for the repair of Plaintiff's circuit boards, which consisted of 26 ACP boards and 2 MPU boards. These circuit boards were manufactured for use in gamma cameras. At least some of Plaintiff's boards contained malfunctioning integrated circuits—referred to as PROMs (programmable read only memory), PALs (programmable array logic), and GALs (gate array logic). Fixing Plaintiff's circuit boards pursuant to the contract required Defendant to replace defective PROMS by copying the firmware/software located on a fully-functional PROM of the same type, burning that software onto a new blank PROM, and installing the new PROM in place of a defective one. The PROM firmware/software was written by the third-party manufacturer of the boards, ADAC/Philips.

Defendant submitted the following evidence at trial in support of its contention that the PROM firmware/software is entitled to copyright protection: (1) ADAC/Philips Technical Field Services manuals pertaining to the circuit boards contained a copyright warning on each page indicating that the information contained therein was proprietary and could not be used or duplicated without written consent; and (2) Mr. Koops, an employee of ADAC/Philips and Defendant's expert, testified that he wrote the firmware/software, that the firmware/software is

copyrighted and proprietary, that the source code contains a statement to this effect,[1] and that ADAC/Philips does not release the code to others or separately sell programmed chips.[2]

II. STANDARD

Under Fed. R. Civ. P. 50(b),

> No later than 10 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 10 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:
>
> (1) allow judgment on the verdict, if the jury returned a verdict;
>
> (2) order a new trial; or
>
> (3) direct the entry of judgment as a matter of law.

"A party is entitled to judgment as a matter of law 'only if the evidence points but one way and is susceptible to no reasonable inferences which may support the opposing party's position.'"[3] "Judgment as a matter of law is only appropriate if, after reviewing all of the evidence in the record, there is no legally sufficient evidentiary basis for a claim under the controlling law."[4]

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[1]Notably, the object code actually found on the PROMs did not contain this statement.

[2]Defendant also submits an affidavit from the in-house legal counsel of Philips, which was prepared and filed in the case of *Philips Electronics North America Corporation v. BC Technical*, Civil Case No. 2:08-CV-639 DAK. This evidence was not submitted at trial and, therefore, will not be considered for purposes of Defendants' Renewed Motion for Judgment as a Matter of Law. Moreover, this evidence would not affect the Court's ruling on this matter in any event, as demonstrated below in Part III.C.

[3]*Hysten v. Burlington N. Santa Fe Ry. Co.*, 530 F.3d 1260, 1269 (10th Cir. 2008) (quoting *Tyler v. RE/MAX Mountain States, Inc.*, 232 F.3d 808, 812 (10th Cir. 2000)).

[4]*Id.*

III. DISCUSSION

As declared by the Supreme Court of Utah in *Peterson v. Sunrider Corporation*,[5] whether a contract is unenforceable under the illegality defense requires a three-step analysis.[6] "The court must determine (1) what the terms of the contract are; (2) what the statute prohibits; and (3) whether the statute or public policy demands that the contract be deemed unenforceable."[7]

A. Terms of the Contract

For purposes of this motion, the parties agree that the contract required Defendant to fix Plaintiff's circuit boards, which included replacing defective PROMs with functioning PROMS onto which Defendant would copy the PROM firmware/software.

B. Statutory Prohibition

Defendant contends that the performance contemplated under the contract required it to commit criminal copyright infringement under the Copyright Act.[8]

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[5]48 P.3d 918 (Utah 2002).

[6]*Id.* at 928.

[7]*Id.*

[8]Defendant also contends that the copying required by the contract would violate Utah's criminal theft statute. Under Utah Code Ann. § 76-6-404, "[a] person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof." There was no evidence presented at trial that the parties' contract required Defendant to copy the firmware/software with a "purpose to deprive" ADAC/Philips of its copyright. To the extent unauthorized copying of software could, of itself, satisfy the "purpose" requirement, the theft statute would be preempted by § 301(a) of the Copyright Act. *See Gates Rubber Co. v. Bando Chem. Indus., Ltd.*, 9 F.3d 823, 847 (10th Cir. 1993) ("Federal law will preempt a state-created right if that right may be abridged by an act which, in and of itself, would infringe one of the exclusive rights established by federal law.") (quoting *G.S. Rasmussen & Assoc. v. Kalitta Flying Serv., Inc.*, 958 F.2d 896, 904 (9th Cir. 1992)); *see also Ohio v. Perry*, 697 N.E.2d 624, 626 (Ohio 1998) (holding that state criminal statutes were preempted by federal copyright law insofar as they were "based solely upon the unauthorized uploading, downloading, and posting of computer software on a computer bulletin board").

The Copyright Act contains both civil and criminal provisions. "In order to prevail on a [civil] claim of copyright infringement, the plaintiff must show: (1) ownership of a valid copyright, and (2) copying by the defendant of *protected* components of the copyrighted material."[9] The criminal provision is found in 17 U.S.C. § 506(a):

> Any person who willfully infringes a copyright shall be punished under section 2319 of title 18, if the infringement was committed
>
> > (A) for purposes of commercial advantage or private financial gain;
> >
> > (B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000; or
> >
> > (C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

Criminal infringement is distinguished from civil infringement by the requirement that the acts of infringement be performed "willfully." The parties have not cited, nor has the Court's research revealed, any Tenth Circuit precedent interpreting the term "willfully" for purposes of criminal copyright infringement. However, a majority of courts have found that "willfully" is not satisfied by a showing of mere intent to copy, but requires the government to prove that "the defendant specifically intended to violate copyright law."[10] For example, in *United States v. Moran*,[11] the court held that "'willfully,' when used in 17 U.S.C. § 506(a), means a 'voluntary,

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[9] *Gates Rubber Co.*, 9 F.3d at 831 (emphasis added).

[10] Min Ae Yu et al., *Intellectual Property Crimes*, 45 Am. Crim. L. Rev. 665, 692 (2008).

[11] 757 F. Supp. 1046 (D. Neb. 1991).

intentional violation of a known legal duty.'"[12] In reaching this conclusion, the court examined the damages provisions of the Copyright Act for civil infringement, which allow enhanced statutory damages where infringement is committed "willfully."[13] Citing a number of cases and a leading copyright treatise, the court concluded that "the term 'willful,' when used in the civil statutory damages statute, has consistently been interpreted to mean that the infringement must be 'with knowledge that the defendant's conduct constitutes copyright infringement.'"[14] The court also compared criminal copyright infringement to other "complex statutory schemes, such as the federal criminal tax statutes," which likewise require a showing of intentional violation of a known legal duty.[15] Accordingly, the court determined that "willfully" requires proof that the defendant specifically intended to violate copyright law.[16]

Finding this reasoning persuasive, the Court will apply the majority approach, which in this case requires Defendant to prove not only that the contract contemplated Defendant infringing on a valid copyright, but also that Defendant would do so intentionally, with knowledge that its actions would violate copyright law. The Court finds that Defendant simply did not make this showing at trial. Therefore, the Court finds that the contract did not violate 17 U.S.C. § 506(a).

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[12] *Id.* at 1050-51 (quoting *Cheek v. United States*, 498 U.S. 192, 200-02 (1991)).

[13] *Id.* at 1050.

[14] *Id.* (quoting M. Nimmer & D. Nimmer, *Nimmer on Copyright*, § 14.04[B][3] at 14-40.3–14-40.4 (1990)).

[15] *Id.* at 1049.

[16] *Id.* at 1050-51.

At most, the evidence presented by Defendant at trial establishes civil infringement. Yet, even under the civil provisions of the Copyright Act, the contemplated copying is only infringement if the firmware/software contains material that is actually protected by the Act. "[E]ven if generalized copying is established in the first instance, it will ultimately still be necessary to establish copying of *precisely identified protected elements* of a program before copyright infringement can be established."[17] Defendant has not made this showing. At trial, Defendant's evidence on this point consisted entirely of Mr. Koops's testimony that he wrote the firmware/software located on the boot PROMS of MPU boards, that the firmware/software was copyrighted, and that the source code files—but not the object code actually found on the PROMs—contained a copyright warning. Beyond this, Defendant offered no evidence regarding the contents of the firmware/software. Of course, it seems highly likely that the firmware/software contains elements that are entitled to copyright protection. However, without any evidence concerning the substance of the firmware/software, the Court cannot simply assume that it contained protected material. Consequently, the Court finds that Defendant has not shown that the contract required it to commit civil copyright infringement.

Nonetheless, even assuming Defendant's evidence established that the contemplated copying constituted civil copyright infringement, neither the Copyright Act nor principles of equity require that the contract be held unenforceable in this case.

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[17] *Gates Rubber Co.*, 9 F.3d at 833 (emphasis added).

C. Enforceability

Under Utah law, "the fact that a contract serves a prohibited purpose does not necessarily make the contract unenforceable."[18] An illegal contract will generally be enforced, unless "a statute or public policy demands that the contract be held unenforceable."[19] To determine whether nonenforcement is demanded by a statute, a court considers "whether the underlying purpose of the statute mandates holding the contract unenforceable, . . . whether the penalties and remedies provided in the statute are intended to be exclusive," and "whether holding the contract unenforceable is to the benefit or detriment of the parties the statute is designed to protect."[20]

Even if the contract in this case required Defendant to commit copyright infringement, the Court finds that such illegality does not render the contract unenforceable. In 17 U.S.C. § 301, the Copyright Act contains the following express preemption provision:

> (a) On or after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

In § 301, Congress exhibited the express intention that the Copyright Act govern all legal and equitable rights that are equivalent to the exclusive rights afforded copyright holders in their copyrighted works. Accordingly, all state law claims are expressly preempted by the Copyright

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[18] *Peterson*, 48 P.3d at 930.

[19] *Id.*

[20] *Id.* at 931 (citing Restatement (Second) of Contracts § 179 cmt. b; 6A Corbin on Contacts §§ 1512-13).

Act insofar as they govern the rights protected thereunder.[21] The parties have not cited any provision in the Copyright Act that would invalidate a contract which requires a copyright violation. Accordingly, the Court finds that the penalties and remedies set forth in the Copyright Act, were meant to be exclusive of state remedies governing the same rights, including an illegality defense based thereon. Arguably, enforcing the contract in this case would encourage similar contracts to the determent of copyright holders in general. However, this potential detriment may be largely mitigated by vigorous enforcement of the civil remedies available to copyright holders under the Copyright Act. Indeed, it appears that ADAC/Philips is attempting to do just that by its filing an infringement suit against Plaintiff.[22] Moreover, as awarding damages to Plaintiff for breach of the contract would not prospectively require Defendant to infringe ADAC/Philip's alleged copyright, enforcing the contract in this case would not be to ADAC/Philip's detriment. Therefore, the Court finds the Copyright Act does not mandate that the contract be held unenforceable.

Finally, the Court finds that the contract also remains enforceable under the principles of equity. The parties in this case were of equal sophistication and bargaining power during the formation process. There is no evidence of coercion or that the contract was not freely entered into by both parties. The purpose of the contract was to fix Plaintiff's circuit boards, not to violate copyright law. Consequently, equity does not dictate that the Court refuse to enforce the contract, which was found to exist by a duly empaneled jury.

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[21] *Gates Rubber Co.*, 9 F.3d at 846-48.

[22] *See Philips Electronics North America Corporation v. BC Technical*, Civil Case No. 2:08-CV-639 DAK.

IV. CONCLUSION

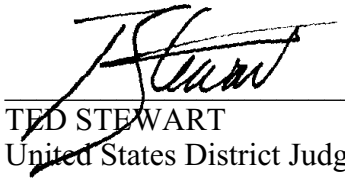
For all of the reasons set forth above, it is hereby

ORDERED that Defendant's Renewed Motion for Judgment as a Matter of Law is DENIED. It is further

ORDERED that the Clerk of the Court ENTER JUDGMENT in favor of Plaintiff on the jury's verdict.

DATED September 15, 2008.

BY THE COURT:



TED STEWART
United States District Judge

FILED
U.S. DISTRICT COURT

2008 SEP 15 A 9: 55

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DONALD L. RIVERA and DAN TRUJILLO, et al., Plaintiffs, vs. SALT LAKE COMMUNITY COLLEGE, a political subdivision of the State of Utah, LARRY MAUGHN, individually, DONALD PORTER, individually, CRAIG GARDNER, individually, ROBERT PRADO, individually, CYNTHIA BIOTEAU, individually and in her capacity as the President of SLCC, LYNN CUNDIFF, individually, JUDD MORGAN, individually and COLLEGIS, INC., a private Corporation and CASEY MOORE, Defendants.	**ORDER DISMISSING CLAIMS OF DONALD L. RIVERA AND DAN TRUJILLO AGAINST CERTAIN DEFENDANTS** Case No. 2:03CV00764DB (Lead Case) Case No. 2:03CV00765 (Consolidated Case) Case No. 2:03CV01050 (Consolidated Case) Case No. 2:04CV00198 (Consolidated Case) Judge Dee Benson Magistrate Judge Paul M. Warner

Based upon the Joint Stipulation and Motion of the Plaintiffs Donald L. Rivera and Dan Trujillo and the Defendants Salt Lake Community College, Cynthia Bioteau, Larry Maughan and Craig Gardner, and good appearing therefore, the Court does hereby enter the following Order:

It is hereby ordered that all claims of the Plaintiffs Donald L. Rivera and Dan Trujillo against the Defendants Salt Lake Community College, Cynthia Bioteau, Larry Maughan, Craig Gardner, Donald Porter, Robert Prado, Lynn Cundiff and Judd Morgan are hereby dismissed with prejudice, each party to bear its own costs. All claims of the Plaintiff Donald L. Rivera against the Defendant Colleges, Inc. are hereby reserved and not affected by this Order.

Dated this 12th day of September, 2008.

BY THE COURT:

DEE BENSON
United States District Court Judge

Approved as to Form:

MYLAR LAW, P.C.

FRANK MYLAR
Attorney for Plaintiffs Donald L. Rivera and Dan Trujillo

Dated this 9th day of September, 2008.

MARK L. SHURTLEFF
Utah Attorney General

GLEN E. DAVIES
Assistant Utah Attorney General
Attorney for Defendants Salt Lake Community College and Cynthia Bioteau

Dated this 11th day of September, 2008.

TIMOTHY D. EVANS
Assistant Utah Attorney General
Attorney for Defendant Larry Maughan

Dated this 11th day of September, 2008.

BRUCE R. GARNER
Assistant Utah Attorney General
Attorney for Defendant Craig Gardner

Dated this 11 day of September, 2008.

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

FILED
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT

2008 SEP 1 P 12:08

District of UTAH

UNITED STATES OF AMERICA
V.

DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

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

ALBERT GEORGE MOYE

Case Number: **2:04-CR-00118 BSJ**

USM Number: **11540-081**

Jeremy M. Delicino
Defendant's Attorney

THE DEFENDANT:

■ admitted guilt to violation of condition(s) 2, 3 & 6 of the term of supervision.

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

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
1	*use of methamphetamine*	
2	failure to submit to drug testing	
3	failure to participate in drug abuse treatment	

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

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

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

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's Residence Address:

Salt Lake City UT

Defendant's Mailing Address:

Salt Lake City UT

August 18, 2008
Date of Imposition of Judgment

Signature of Judge

Bruce S. Jenkins, United States Senior District Judge
Name and Title of Judge

9/12/08
Date

DEFENDANT:
CASE NUMBER:

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :
twelve (12) months and one (1) day

☐ 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 _____

a _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT:
CASE NUMBER:

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
six (6) 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: **ALBERT GEORGE MOYE**
CASE NUMBER: **2:04-CR-00118 BSJ**

SPECIAL CONDITIONS OF SUPERVISION

1. Defendant shall submit upon request to drug testing, day or night, and shall bear a portion of the cost of such testing pursuant to an authorized co-payment plan as directed by the U.S. Probation Office.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH - CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2008 SEP 15 A 9:55
DISTRICT OF UTAH
BY: DEPUTY CLERK

STEPHEN KINGSTON and TED KINGSTON, Plaintiffs, vs. MARY ANN NELSON, et al., Defendants.	**ORDER** Judge Dee Benson Case No.: 2:04-CV-156

Before the Court is Carl E. Kingston's objection to the magistrate judge's August 1, 2008 Memorandum Decision and Order granting Defendants' motion to compel and for sanctions and for additional time to respond to Plaintiffs' motion for partial summary judgment, and denying Carl E. Kingston's third-party motion for protective order. Dkt. No. 134.

Background

Carl E. Kingston is both a nonparty witness in this case and an attorney of record representing Plaintiffs. On April 8, 2008, Defendants' attorney John Morris attempted to depose Mr. Kingston as a nonparty witness. This deposition was cut short, however, when after only fourteen minutes of questioning, Mr. Kingston and his attorney accused Mr. Morris of asking questions that were beyond the scope of permissible discovery. Carl E. Kingston Deposition Transcript, Dkt. No. 128, Exhibit 2, at 9-11. After asking Mr. Kingston several questions about his siblings, their spouses and their children, Mr. Morris asked:

Q. Your sister Carolyn, who's deceased, does she have children?
A. Yes.
....

Q. Do you know who the father of those children is?
A. I do.
Q. Who is that?
A. That I think is going beyond the scope of your discovery. Permissible discovery.
Q. Are you refusing to answer that question?
A. I will, and will seek a protective order if you insist on an answer or a protective order.

Id. at 8-9.

Mr. Kingston and his attorney explained that based on an earlier order of the court and Rule 30 of the Federal Rules of Civil Procedure, when asked a question that goes beyond the permissible scope of discovery, they are faced with only two options: (1) answer the question after lodging an objection; or (2) terminate the deposition and seek a protective order. *Id.* at 9-11. Because Mr. Kingston did not want to answer the question, he and his counsel chose the latter option and informed Mr. Morris that the deposition was over. *Id.* at 11.

On May 5, 2008, Mr. Kingston filed a motion for protective order against having to disclose the name of the father of the children of Carolyn Kingston. Dkt. No. 127. Defendants responded by filing a motion to compel Mr. Kingston's appearance at another deposition to answer questions related to the following areas: "(1) his family (which is the family of Stephen Kingston)[;] (2) his financial affairs[;] (3) his involvement in the organization known as the Order or Co-op[;] (4) his knowledge of practices alleged in Mary Ann's complaint including sexual abuse, incest, and polygamy[;] (5) his knowledge of people in the Order[;] and ([6]) his knowledge of the goals, purposes, practices, procedures, beliefs, and customs of the people in the Order / Co-op." Defendants' Memo in Support of Motion to Compel, Dkt. No. 130, at 3. Defendants also sought sanctions to be imposed on Mr. Kingston and additional time to respond to Plaintiffs' motion for partial summary judgment. Defendants' Motion to Compel and for Sanctions and to Extend the Time to Respond to Plaintiffs' Motion for Summary Judgment, Dkt.

No. 129.

These motions were referred to the magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A). After reviewing the motions, the magistrate judge denied Plaintiffs' motion for protective order and granted Defendants' motion to compel and for sanctions. The magistrate judge also granted Defendants additional time to respond to Plaintiffs' original motion for summary judgment until 120 days after they were able to complete the deposition of Mr. Kingston. Memorandum Decision and Order, Dkt. No. 134, at 8.

Mr. Kingston objects to the order of the magistrate judge and now seeks a review of that decision by the court. Objection to Memorandum Decision and Order, Dkt. No. 137. Although Mr. Kingston has requested oral argument in this matter, the court finds that such argument will not aid or benefit the court in reaching a decision. Accordingly, the court will rule on Mr. Kingston's objection from the written memoranda. *See* DUCivR 7-1(f).

Legal Standard

When reviewing nondispositive orders of a magistrate judge, a district judge should set aside only those orders found to be clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a). The Court must affirm the magistrate judge's order unless the entire evidence leaves it "with the definite and firm conviction that a mistake has been committed." *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Analysis

Rule 30 of the Federal Rules of Civil Procedure explains that any objection during a deposition "must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection.... A person may instruct a deponent not to answer only when

necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)." Fed. R. Civ. P. 30(c)(2). Rule 30(d)(3) provides that a deposition may be terminated when it is "being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent." Fed. R. Civ. P. 30(d)(3)(A).

Mr. Kingston does not contend that in terminating the deposition he was attempting to preserve a privilege or enforce a limitation ordered by the court. Rather, he argues that the deposition was properly terminated under Rule 30(d)(3) because the questions being asked about his family were irrelevant and were thus being pursued "in bad faith or in a way that unreasonably annoyed, embarrassed, or oppressed him." Third Party Memo in Support, Dkt. No. 128, at 12.

Mr. Kingston's argument founders on several grounds. First and foremost, the questions regarding Mr. Kingston's family are relevant to the present case. "'Relevant Evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Plaintiffs have sued Defendants for libel and slander for statements made to the press that Plaintiffs were complicit – either through aiding and abetting or through failing to act – in the sexual and physical abuse of Defendant Nelson by David Kingston. This alleged abuse included incest and polygamy. Defendants' defense to this lawsuit is truth. In other words, Defendants must show that Plaintiffs were aware of the abuse being inflicted on Nelson by David Kingston. Therefore, the relationship of Plaintiffs with David Kingston and other Order members is relevant to show such knowledge. It is not guilt by association, as Plaintiffs contend, it is relevant evidence, which may be rebutted, that has the tendency to make the existence of such knowledge more or less probable. *See* Fed. R. Evid. 401.

Second, whether evidence is relevant is not grounds to terminate a deposition. Mr. Kingston's counsel was free to lodge an objection to the question, but under Rule 30(c)(2) Mr. Kingston was still required to answer.

Finally, having found that the questions being asked are relevant to the case, it strains logic to contend that they were being asked in bad faith or in an effort to embarrass Mr. Kingston. They were background questions intended to establish the relationships of the Kingston family and other members of the Order. The Court finds nothing about them that could be construed as unreasonably annoying, embarrassing, or oppressive to Mr. Kingston. Fed. R. Civ. P. 30(d)(3)(A). Accordingly, the magistrate judge's order denying Mr. Kingston's motion for protective order is neither clearly erroneous nor contrary to law. Fed. R. Civ. P. 72(a).

The court does find bad faith, however, on the part of Mr. Kingston and his attorney for the manner in which they unreasonably terminated the deposition. Although in general terms, Mr. Kingston's attorney accurately stated the requirements of Rule 30, *see* Carl E. Kingston Deposition Transcript, Dkt. No. 128, Exhibit 2, at 10, his application of the rule was absurd and illogical. By refusing to answer a simple relevant background question, and then using that question as a basis to terminate the deposition, Mr. Kingston and his attorney have demonstrated their intent to hinder discovery. The court finds, therefore, that the magistrate judge properly granted Defendants' motion to compel and for sanctions and for additional time to respond to Plaintiffs' motion for partial summary judgment.

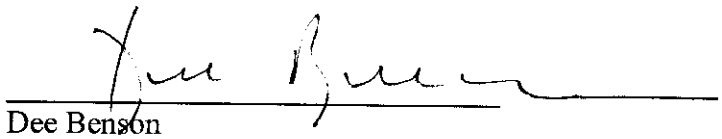
Conclusion

For the foregoing reasons, Mr. Kingston's objection is DENIED. The magistrate judge's Order denying Mr. Kingston's motion for protective order, and granting Defendants' motion to compel and for sanctions and for additional time to respond to Plaintiffs' motion for partial

summary judgment stands.

IT IS SO ORDERED.

DATED this 13th day of September, 2008.



Dee Benson
United States District Judge

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

LOUIS BARLOW Plaintiff	*	
	*	ORDER FOR PRO HAC VICE ADMISSION
v.	*	
HEALTHEXTRAS INSURANCE AGENCY, INC., FEDERAL INSURANCE COMPANY, And THE SKLOVER GROUP, Defendant.	*	Case No. 2:05cv00189 ~~TC~~ DB

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

Dated: this 12 day of Sept, 2008.

Dee Benson
U.S. District Judge

FEE PAID

Steve K. Gordon (5958)
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BRUCE S. JENKINS

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

CHARLES HO, et al Plaintiffs, vs. INTERNATIONAL EDGE, INC., et al Defendant.	ORDER OF DISMISSAL Civil No. 2:05CV413BSJ Judge Bruce S. Jenkins

Based on the stipulation of the parties, the Court hereby dismisses all claims of plaintiffs Charles Ho and UKing Systems Industry Co., Ltd. against defendants David Hayek and HIPMG, Inc., with prejudice.

Dated this 12 day of September, 2008.

BY THE COURT:

Honorable Bruce S. Jenkins
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

WBLESTER GARCIA-RODRIGUEZ **Plaintiff,** **v.** **UNITED STATES OF AMERICA,** **Defendants.**	**ORDER DISMISSING CASE** **Case No. 2:05-CV-651 DAK** **Judge Dale A. Kimball**

This case was transferred to this court by the United States District Court for the Central District of California on August 1, 2005. No activity occurred on the case from that date to an Order entered by the court on July 10, 2008. The court's order was returned as undeliverable. The court has searched the Bureau of Prisons' directory and it states that Plaintiff was released from custody. Plaintiff has not kept this court apprised of his address. *See* DUCivR 83-1.3(b) ("In all cases, counsel and parties appearing pro se must notify the clerk's office immediately of any change in address, email address, or telephone number." Accordingly, this court has no means of communicating with Plaintiff and Plaintiff has failed to pursue the case for over three years. The court, therefore, dismisses the case without prejudice.

DATED this 15th day of September, 2008.

BY THE COURT:

Dale A. Kimball

DALE A. KIMBALL
United States District Judge

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2008 SEP 15 A

G. FRED METOS- 2250
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE UNITED STATES OF AMERICA,	:	
Plaintiff,	:	**ORDER**
v.	:	
DAVID MICHAEL WOLFSON,	:	**Case No. 2:06 CR 280 DB**
Defendant.		

Based on the notices of appearance of counsel filed by Matthew Lewis and Mark Pugsley and motion of counsel of record;

It is hereby ORDERED that G. Fred Metos is allowed to withdraw as counsel of record for the defendant David Michael Wolfson in the above-entitled case.

DATED this 12th day of September, 2008

Dee Benson

DEE BENSON
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

Mark Y. Hirata (E-Filer)
Mark.Hirata@usdoj.gov, erica.suarez@usdoj.gov

Matthew R. Lewis
mlewis@rqn.com,arollins@rqn.com,docket@rqn.com

Mark W. Pugsley
mpugsley@rqn.com,kpickering@rqn.com,docket@rqn.com

s/ Suzanna Moore

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

UNITED STATES OF AMERICA, Plaintiff, vs. ROCHELLE WRIGHT, Defendant.	MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO CHANGE METHOD BY WHICH BALANCE OF SENTENCE IS SERVED Case No. 2:06-CR-834 TS

Defendant moves to change the method by which the balance of her sentence is served. She proffers that she has served 19 months of the 34-month sentence imposed on May 7, 2007, and requests that she be released to home confinement or a halfway house-like facility for the remainder of her term. She argues the Bureau of Prisons (BOP) has failed to set up a Family Unity Demonstration Project of halfway house-like facilities for mothers of young children as authorized by 42 U.S.C. § 13882,[1] and, therefore, the

[1] *See* Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §§ 13881-1390 (Family Unity Demonstration Project) (authorizing certain demonstration projects, in which certain eligible offenders would be able to live in community correctional facilities with their young children).

Court is empowered to fashion an effective alternative remedy to effectuate the goal of § 13882. The government opposes the Motion on the ground that Defendant has not shown any statutory authority that would allow the Court to modify her sentence.

A federal sentencing court has only very limited authority to modify a previous sentence. Where, as in the present case, there was neither a direct appeal or collateral challenge to the sentence: "A district court does not have inherent authority to modify a previously imposed sentence; it may do so only pursuant to statutory authorization."[2]

Defendant bases her request on 18 U.S.C. § 3553 and 42 U.S.C. § 13882. The Court finds § 3553 does not authorize modification of a sentence once it is imposed. Similarly, neither § 13882 nor any other any section of the Family Unity Demonstration Project authorizes the sentencing court to modify a federal sentence after it has been imposed.

Instead, the controlling law is found at 18 U.S.C. § 3582(c) expressly providing: "the court may *not* modify a term of imprisonment once it has been imposed except"[3] in three limited circumstances. Those circumstances are "(1) upon a motion by the Director of the Bureau of Prisons; (2) if such modification is otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; or (3) if a sentencing range has subsequently been lowered by the Sentencing Commission.[4]

---

[2]*United States v. Smartt,* 129 F.3d 539, 540 (10th Cir. 1997) (quoting *United States v. Mendoza*, 118 F.3d 707, 709 (10th Cir. 1997)).

[3]Emphasis added.

[4]*United States v. Green*, 405 F.3d 1180, 1184 (10th Cir. 2005).

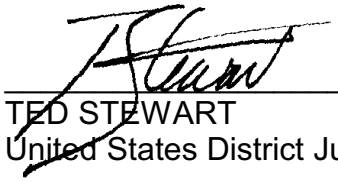
Defendant shows none of the three limited circumstances. There is no motion by the BOP's director. As stated above, no section contained in the Family Unity Demonstration Project is a statute that authorizes modification by the Court.[5] There has been no subsequent lowering of sentencing range applied to Defendant by the Sentencing Commission. As to the Rule 35 provisions, now that it has been more than one year since Defendant's sentencing: it authorizes corrections or reduction of sentences only for substantial assistance upon motion of the government—not the situation in this case.

Defendant having failed to show grounds to modify her sentence, it is therefore

ORDERED that Defendant's Motion to Change Method by Which Balance of Sentence is Served (Docket No. 22) is DENIED.

DATED September 15, 2008.

BY THE COURT:



TED STEWART
United States District Judge

[5]42 U.S.C. § 13901(a) authorizes only the Attorney General, acting through the BOP's Director, to select eligible prisoners for the program.

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Attorneys for Defendant
UPEK, INC.

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2008 SEP 15 P 2: 16

DISTRICT OF UTAH

BY: _____
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in the UNITeD STATES DISTRICT COURT
district of utah, central division

INTERNATIONAL AUTOMATED SYSTEMS, INC., Plaintiff, v. DIGITAL PERSONA, INC.; IBM; IBM CORPORATION; IBM PERSONAL COMPUTING DIVISION; LENOVO (UNITED STATES) INC.; LENOVO GROUP LTD.; UPEK, INC. and JOHN DOES 1-20, Defendants.	[~~PROPOSED~~] ORDER GRANTING DEFENDANT UPEK, INC.'S MOTION FOR LEAVE TO FILE OVERLENGTH BRIEF Case No.: 2:06-CV-00072-DB Judge: Dee Benson

Finding good cause, the Court hereby GRANTS Defendant, UPEK, Inc.'s Motion for leave to file an overlength Reply Memorandum in Support of its Motion for Summary Judgment that the patent in suit is unenforceable due to Neldon Johnson's Inequitable Conduct and that this case is exceptional under 35 U.S.C. Section 285, filed 6/24/08 (dkt. no. 115).

SO ORDERED.

DATED this 15th day of September, 2008.

By Dee Benson
Honorable Judge Dee Benson

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

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

GENERAL MOTORS CORPORATION, Plaintiff, v. **URBAN GORILLA LLC,** Defendant.	**PRETRIAL ORDER** Civ. No. 2:06 CV 00133 Honorable Bruce S. Jenkins

This matter having come before the court on ~~March 28, 2008~~ Sept 12, 2008, at a pretrial conference held before the Honorable Bruce S. Jenkins, pursuant to FED. R. CIV. P. 16; and Scott R. Ryther and Thomas R. Lee having appeared as counsel for Plaintiff General Motors Corporation, and Stephen J. Trayner, Peter H. Barlow, and Jeremy G. Knight having appeared as counsel for Defendant Urban Gorilla LLC, the following action was taken:

1. **JURISDICTION AND VENUE.** This is an action for (1) federal trademark and trade dress infringement, (2) federal trademark and trade dress dilution, (3) false designation of origin and false advertising, and (4) common law trademark infringement and unfair competition. Jurisdiction of the court is invoked under 28 U.S.C. § 1331 ("federal question" jurisdiction),

Section 39 of the Lanham Act, 15 U.S.C. § 1121 (federal jurisdiction over actions arising under the Lanham Act), 28 U.S.C. § 1338(a) (conferring federal jurisdiction over actions arising under federal trademark laws), 28 U.S.C. § 1338(b) (jurisdiction over claims of unfair competition "joined with a substantial and related claim under the ... trademark laws"), and 28 U.S.C. § 1367 (supplemental jurisdiction over the state law claims in this action).

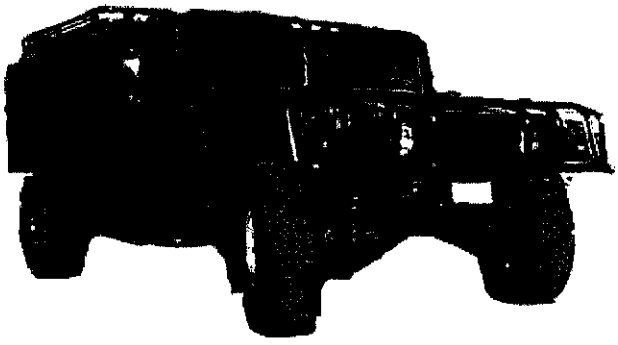
The jurisdiction of the court is not disputed and is hereby determined to be present.

Venue was determined to be proper under 28 U.S.C. § 1391 in that a substantial part of the events giving rise to the claims occurred in this district and Defendant Urban Gorilla LLC resides here. Venue is laid in the Central Division of the District of Utah. *See* 28 U.S.C. § 125.

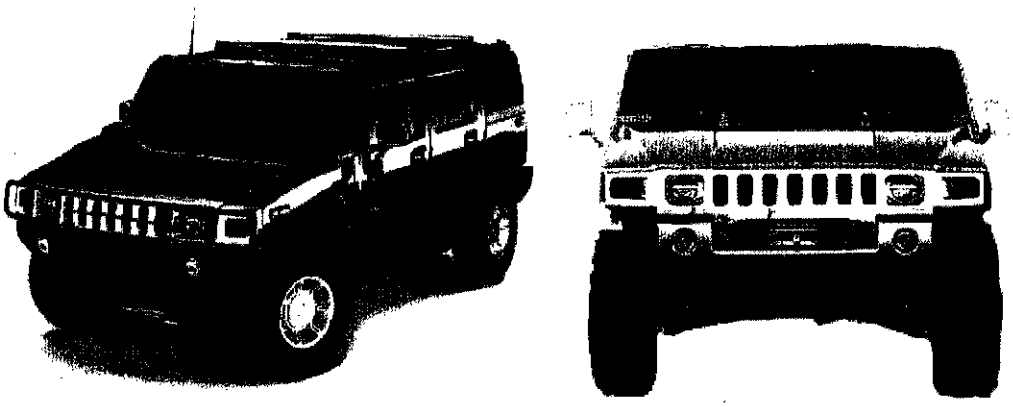
2. GENERAL NATURE OF THE CLAIMS OF THE PARTIES

(a) Plaintiff GM's claims:

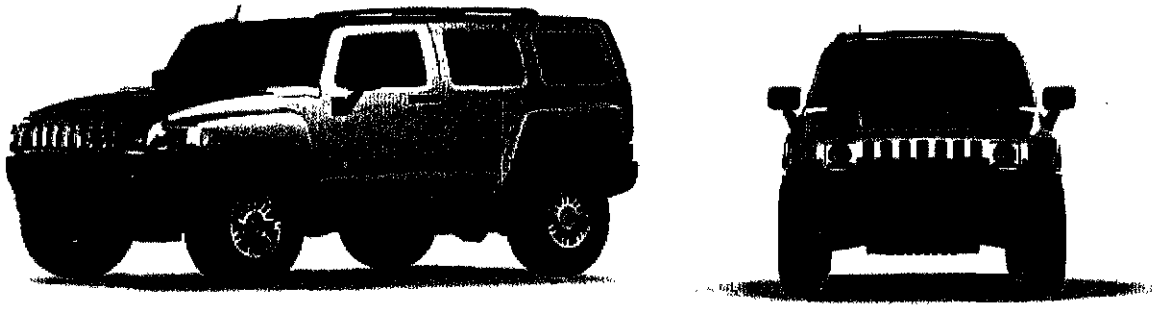
Plaintiff GM has protected trademark rights in the word mark HUMMER®, and in the body shape and design of the HUMMER® H1®, H2® and H3® vehicles. The HUMMER® H1® body shape and design is the civilian version of the U.S. Army's Humvee, which gained fame during the Gulf War and was later brought to the market at the urging of actor and now Governor of California, Arnold Schwarzenegger. The HUMMER® H1 is depicted below:



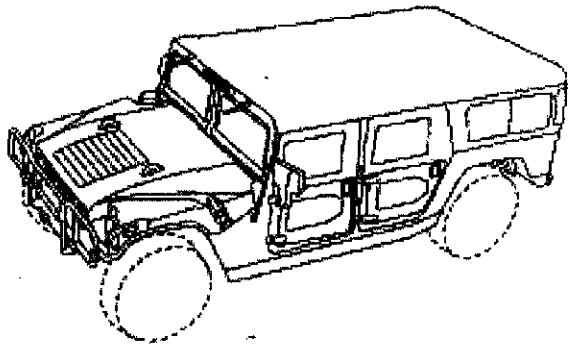
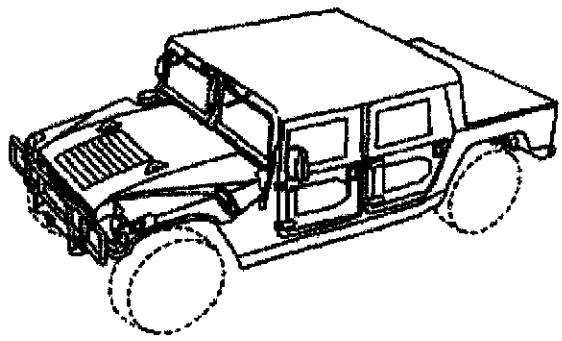
GM also produces and markets the HUMMER® H2®, a newer generation and modernized HUMMER®, which is depicted below:



More recently, GM began to produce and market the HUMMER® H3®, depicted below:



The distinctive shapes and body designs of the HUMMER® vehicles function as trademarks. GM has obtained a Design Trademark for the design and shape of the HUMMER® H1® as depicted below:

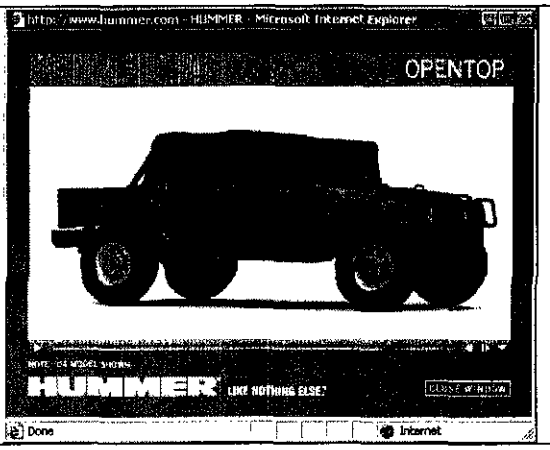
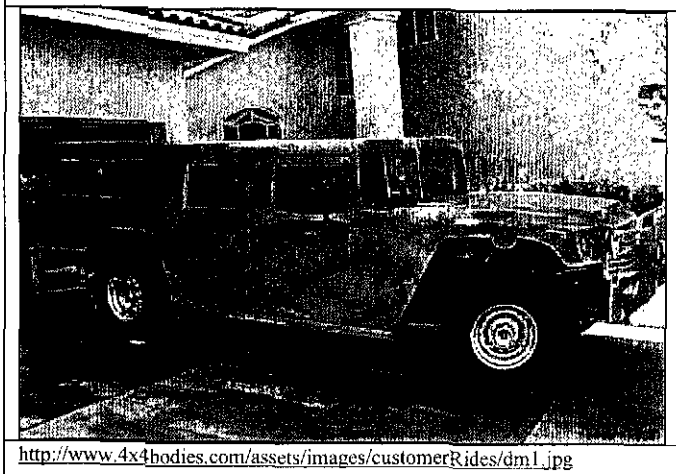
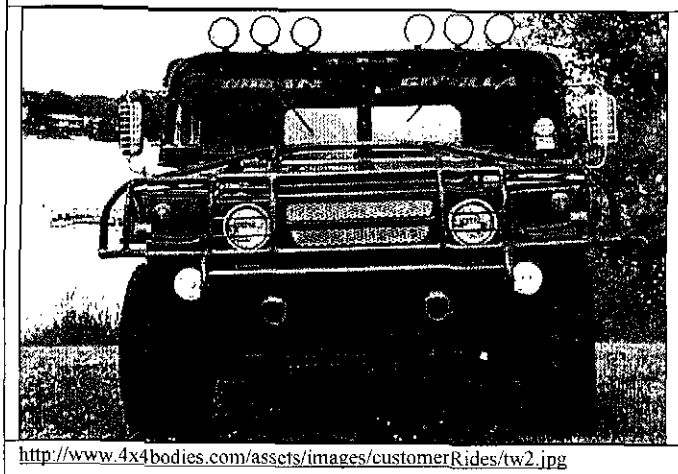
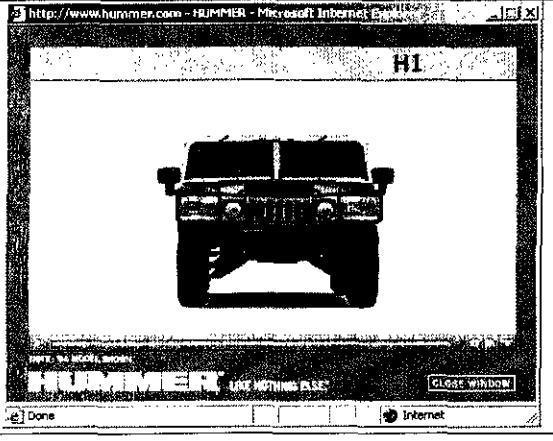
	
U.S. Trademark Reg. No. 2,969,972	U.S. Trademark Reg. No. 3,070,072

The HUMMER® H1® and the other HUMMER® models bear a distinctive nose and grill, for which GM owns a trademark registration, U.S. Registration No. 1,959,544. The distinctive shape and non-functional design of the nose of HUMMER® vehicles as depicted below:

[U.S. Trademark Reg. No. 1,959,544] Also at issue in this case are GM's registered trademarks HUMMER®, and the trademarked slogan LIKE NOTHING ELSE®. These trademarks are collectively referred to as the "Hummer Marks." Through extensive use and promotion by GM and its predecessor, the Hummer Marks have become famous, distinctive, and immediately identifiable by the general public all over the world.

Defendant Urban Gorilla has based its business on the unauthorized use and copying of the Hummer Marks and trade dress in connection with the manufacture, sale, and advertising of body kits, which are designed to turn a "donor chassis" into a vehicle that appears to be a

HUMMER® H1®. Examples of Defendant's "Urban Gorilla" body kits (below left) are depicted alongside GM's HUMMER® H1® (below right).

	
http://www.4x4bodies.com/assets/images/customerRides/bm1.jpg	Image taken from Hummer.com
	
http://www.4x4bodies.com/assets/images/customerRides/dm1.jpg	Image taken from Hummer.com
	
http://www.4x4bodies.com/assets/images/customerRides/tw2.jpg	Image taken from Hummer.com

Defendant's kits are marketed to civilian members of the public (as are GM's HUMMER® vehicles) for use in creating an SUV for use on and off roads. GM contends that Defendant could have designed and styled its body kits in any number of ways without copying the distinctive and famous HUMMER® design and trade dress, as evidenced by the many examples of civilian SUVs on the market that perform the same function as SUVs bearing Defendant's body kits. Defendant's body kits were designed and are marketed as a deliberate knockoff of the distinctive and registered HUMMER® H1® body design and trade dress. Indeed, the "Urban Gorilla" body design is a "replica" whose design was originally built using surplus Humvee doors, tops, and hoods.

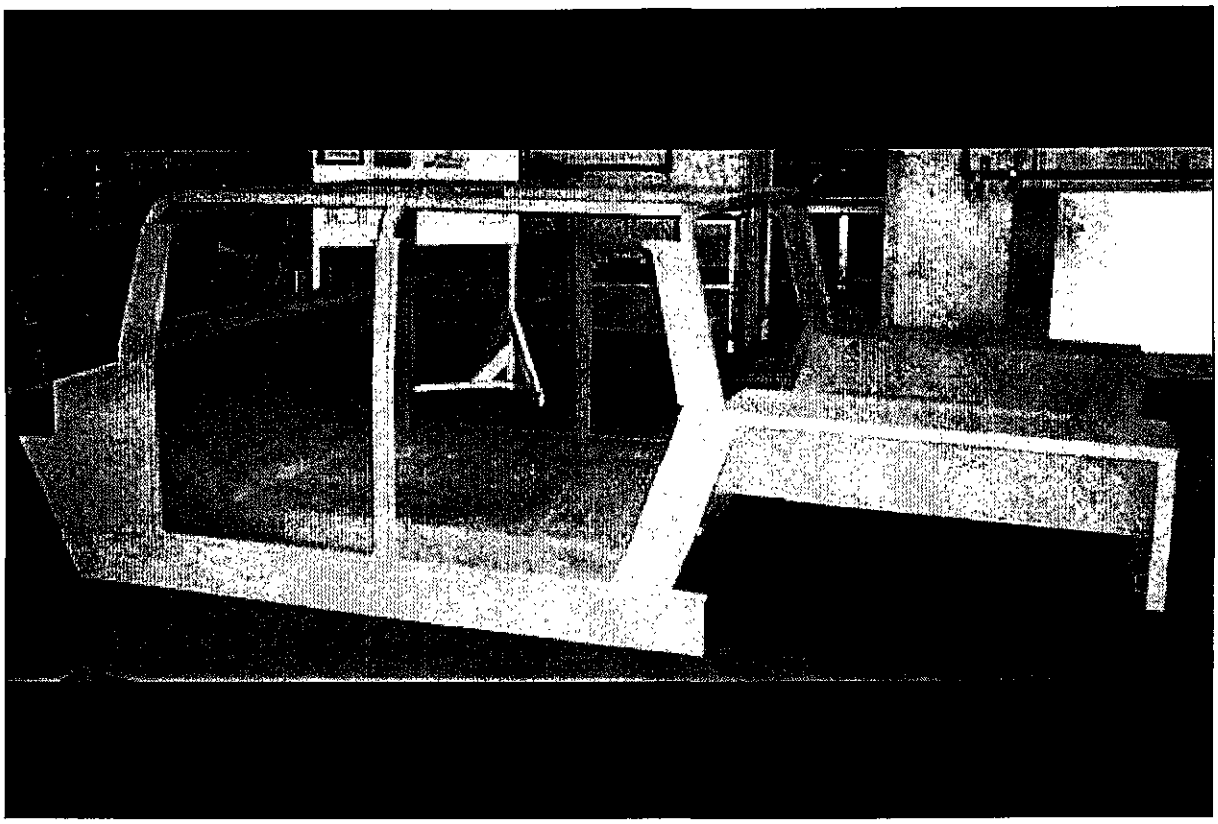
As further evidence of Defendant's intentional copying of GM's HUMMER® H1®, Defendant has made pervasive use of GM's word mark HUMMER® in marketing Defendant's body kits. Defendant also routinely receives communications from its customers and members of the public, which openly and tellingly refer to Defendant's body kits as "Hummer kits," "H1 kits," or that make similar references to the Hummer Marks in describing Defendant's products. Defendant also misappropriates GM's registered trademark LIKE NOTHING ELSE® by using an obvious play off of that mark with the tag-line "WHEN NOTHING ELSE WILL DO."

(b) Defendant's claims:

Urban Gorilla is a small manufacturer of customized, military-style, body kits that are purchased by hobbyists, mechanics and car enthusiasts. These body-kits are just that, bodies or shells that are attached to the chassis of a used vehicle, upon which the purchaser then builds and designs himself, if he so chooses, a fully functioning vehicle. Indeed, because each body kit is sold to and built by a different consumer, each project emerges as a unique, customized vehicle.

Contrary to Plaintiff's allegations, Urban Gorilla does not manufacture vehicles.

Urban Gorilla's kit bears no resemblance to Plaintiff's vehicles. One style of the Urban Gorilla body appears as follows:



None of the photos included in Plaintiff's description of its claims is representative of Urban Gorilla's product, as each of the photos shows an Urban Gorilla kit which has been modified by third-parties over whom Urban Gorilla has no control. As can readily be seen by the photograph of the Urban Gorilla, above, no reasonable consumer would mistake an Urban Gorilla body kit for a Hummer vehicle.

Plaintiff currently manufactures two vehicles under the Hummer brand: the H2 and H3. Up until June of 2006, Plaintiff manufactured the H1, but stopped manufacturing that product.

GMC does not manufacture or sell Hummer body-kits, military body-kits or any other type of body-kit.

The exterior features of the kits manufactured and sold by Urban Gorilla and the bodies of the Hummer H1, H2 and H3 are far from similar. In fact, there are relatively no similarities between the Urban Gorilla body-kit and the H2 and H3. Moreover, once purchased, a consumer has the choice regarding how to style the kit. A consumer's choice to modify his body-kit to look like a Hummer or any other military style SUV, is not a choice that can be imputed to Urban Gorilla. Indeed, many customers have chosen not to turn their Urban Gorilla bodies into vehicles, but use them as military training simulators instead.

Urban Gorilla does not market or advertise its product like Plaintiff GMC. GMC sells through dedicated dealerships with a "quonset hut setting with the track next door." The Hummer is also advertised on television and magazines. On the other hand, the Urban Gorilla is mainly marketed through word of mouth and a website found at www.4x4bodies.com. Under the circumstances, a reasonable consumer would not be confused regarding the manner in which the kit is marketed.

Urban Gorilla does not market its kit as a Hummer, nor does Urban Gorilla refer to its product as a Hummer. In fact, Urban Gorilla's website at www.4x4bodies.com contains the following Notice:

> Urban Gorilla sells superior-quality, steel bodies for customers to use to build their own vehicle/kit car/re-body. These body packages are not GM® Kits, Dodge® Kits, Ford® Kits, Chevrolet® Kits, Land Rover® Kits, HMMWV Kits, Humvee® Kits, Hummer® Kits, H1® Kits, H2® Kits... kit cars, replicas, replicars... Urban Gorilla LLC is not associated with any of these companies, their subsidiaries, their owners, or any other company in any way. These names are registered trademarks of their prospective owners.

Urban Gorilla contends that GMC and its predecessor in interest, AM General, has waived any right to contest Urban Gorilla's production of its kit car. As early as October, 1998, before GMC began producing the H1, AM General, through counsel, notified Urban Gorilla's manufacturer, Active Power, Inc., of its belief that the kits infringed on the trademark and trade dress AM General had on the HUMMER® and requested certain design changes be made. Urban Gorilla responded by making certain design changes to the bodies. These design changes were forwarded to AM General for its review and were implemented shortly thereafter. At no time did AM General object to these design changes, nor request further changes. Indeed, AM General had no further contact with Urban Gorilla at all after March, 1999. Urban Gorilla reasonably assumed from AM General's silence that the design changes were satisfactory to AM General. In reliance on that silence, Urban Gorilla continued to market and sell products and expand its business operations.

3. **UNCONTROVERTED FACTS.** The following facts are established by admissions in the pleadings, by order pursuant to FED. R. CIV. P. 56(d), or by stipulation of counsel (Urban Gorilla, however, does not stipulate that all the following facts are relevant):

(1) GM acquired rights to the trademark HUMMER® and to the trade dress of the HUMMER® H1 vehicle in December, 1999.

(2) The HUMMER® H1® body design and trade dress are the civilian version of the U.S. Army's Humvee.

(3) GM has obtained two design trademark registrations for the HUMMER® H1®; U.S. Trademark Registration Nos. 2,969,972 and 3,070,072.

(4) GM owns a trademark registration for the nose and grill design reflected in U.S.

Registration No. 1,959,544.

(5) GM owns numerous trademark registrations for the word marks HUMMER®, H1®, and two registrations for the trademarked slogan LIKE NOTHING ELSE®.

(6) GM has advertised and promoted authorized HUMMER® vehicles and services throughout the world.

(7) GM displays the Hummer Marks in its advertisements.

(8) Defendant Urban Gorilla manufactures, markets, and sells "body kits," which are designed to be installed on a "donor chassis."

(9) The designer of the original "Urban Gorilla" body kit was Christopher Ardern and Active Power.

4. CONTESTED ISSUES OF FACT. The contested issues of fact remaining for decision are:

(1) Whether the Hummer Marks and trade dress have become widely known and recognized throughout the world.

(2) Whether the registered body shape and design for the HUMMER® H1® vehicles is non-functional.

(3) Whether the registered body shape and design for the HUMMER® H1® vehicles is distinctive and/or has acquired secondary meaning.

(4) Whether Defendant Urban Gorilla LLC purchased the "Urban Gorilla" design and assets from Christopher Ardern in February 2004.

(5) Whether, in designing the original "Urban Gorilla" body kits, Christopher Ardern

used actual surplus HUMMER® parts, including HUMMER® doors, tops, and hoods, and whether Merrick Maxfield subsequently modified and changed the design of the Urban Gorilla.

(6) Whether Defendant Urban Gorilla has intentionally made its body kits to appear similar to the registered HUMMER® H1® shape and body design.

(7) Whether Defendant Urban Gorilla has marketed and promoted its body kits as being an inexpensive, but similar version of the HUMMER® H1® body design.

(8) Whether Defendant Urban Gorilla has used GM's word marks HUMMER® and H1® in promoting its body kits.

(9) Whether evidence of actual, post-sale confusion has surfaced as a result of Defendant Urban Gorilla's sale of its body kits.

(10) Whether Defendant's marketing, promotion, and sale of its body kits is likely to cause confusion (including initial-interest and post-sale confusion) as to whether Defendant's body kits are sold, sponsored, approved by or affiliated with GM or HUMMER.

Sub-issues relevant to the disputed factual issue of likelihood of confusion include:

(a) Whether and to what degree the two parties' products are similar;

(b) Whether Defendant intended to copy the HUMMER® H1® body design;

(c) Whether there is evidence of actual confusion in the marketplace caused by Defendant's use of its "Urban Gorilla" body kit design;

(d) Whether the parties' products and manner of marketing are similar or related;

(e) Whether the degree of care likely to be exercised by purchasers affects

likelihood of confusion; and

(f) Whether GM's registered HUMMER® H1® body design is a strong mark.

(11) Whether Defendant used the word marks HUMMER® and H1®, and if so, whether it is likely to cause confusion (including initial-interest and post-sale confusion) as to whether Defendant's body kits are sold, sponsored, approved by or affiliated with GM or HUMMER.

(12) Whether Defendant's use of "When Nothing Else Will Do…" in connection with marketing is likely to cause confusion (including initial-interest and post-sale confusion) as to whether Defendant's body kits are sold, sponsored, approved by or affiliated with GM or HUMMER.

Sub-issues relevant to the disputed factual issue of likelihood of confusion raised by Defendant's alleged use of the word marks HUMMER® and H1® and the phrase "When Nothing Else Will Do…" include:

(a) Whether the marks used by the respective parties are similar;

(b) Whether Defendant intended to copy the marks HUMMER® and H1® and the trademarked phrase LIKE NOTHING ELSE®;

(c) Whether there is evidence of actual confusion in the marketplace caused by Defendant's alleged use of the marks HUMMER® and H1® and the phrase "When Nothing Else Will Do…";

(d) Whether the parties' products and the alleged manner of marketing the parties' products using the marks HUMMER® and H1® and the phrase "When Nothing Else Will Do…" are similar or related;

(e) Whether the degree of care likely to be exercised by relevant purchasers affects the likelihood of confusion; and

(f) Whether GM's registered marks HUMMER® and H1® and the trademarked slogan LIKE NOTHING ELSE® are strong marks.

(13) Whether GM's registered body shape and design for the HUMMER® H1® vehicle, as well as the word the marks HUMMER® and H1® and the trademarked slogan LIKE NOTHING ELSE® have become famous.

(14) Whether GM's registered body shape and design for the HUMMER® H1® vehicle, as well as the word marks HUMMER® and H1® and the trademarked slogan LIKE NOTHING ELSE® were famous before Defendant Urban Gorilla LLC allegedly began to use the "Urban Gorilla" body kit design and the word marks HUMMER® and H1®.

(15) Whether Defendant's marketing, promotion, and sale of its "Urban Gorilla" body kits, as well as Defendant's alleged use of the word marks HUMMER® and H1® and use of the phrase "When Nothing Else Will Do…" is likely to cause dilution of the distinctiveness of GM's registered body shape and design for the HUMMER® H1® vehicles and of the word marks HUMMER® and H1® and the trademarked slogan LIKE NOTHING ELSE®.

(16) Whether Defendant's advertisement of its "Urban Gorilla" body kits allegedly using GM's registered word marks HUMMER® and H1® and use of the phrase "When Nothing Else Will Do…" constitutes a literally false statement in advertising or, if not literally false, whether these uses are misleading.

(17) Whether Defendant's alleged use of the word marks HUMMER® and H1® and use of the phrase "When Nothing Else Will Do…" in the marketing and promotion of its body

kits, as well as Defendant's use of its body kit constitutes "willful" infringement and dilution of GM's trademarks.

(18) Whether the body shape and design for the Urban Gorilla body kit was designed and is patterned after a genre of militaristic vehicles which are neither non-distinctive nor subject to trademark or trade dress rights held by Plaintiff in connection with the HUMMER® H1® vehicles.

(19) Whether Urban Gorilla responded to AM General's concerns about trademark infringement by making certain design changes to its body kits and whether these design changes were forwarded to AM General for its review and were implemented shortly thereafter.

(20) Whether AM General objected to the design changes to the Urban Gorilla implemented by Active Power, or requested further changes.

5. CONTESTED ISSUES OF LAW. In addition to the contested issues of law implicit in the contested issues of fact set forth above, the parties list the following:

(1) Whether GM enjoys a presumption, based on its U.S. Trademark Registrations, that the registered body shape and design for the HUMMER® H1® vehicles is non-functional.

(2) Whether GM enjoys a presumption, based on its U.S. Trademark Registrations, that the registered body shape and design for the HUMMER® H1® vehicles is distinctive and/or has acquired secondary meaning.

(3) Whether GM enjoys a presumption, based on its U.S. Trademark Registrations, that the registered trademarks HUMMER®, H1®, and LIKE NOTHING ELSE® are distinctive and/or have acquired secondary meaning.

(4) Whether GM has waived or is estopped from asserting trademark violations

against Urban Gorilla due to GM's, or its predecessor in interest's, actions or omissions to act.

6. **EXHIBITS.** The parties have met, conferred, and exchanged their proposed exhibits. The parties' proposed joint exhibits are set forth on the Exhibit List, which is annexed hereto as Exhibit "A."

Also attached hereto as Exhibit "B" is the parties' complete list of exhibits. Attached hereto as Exhibits "C" and "D" are Plaintiff GM's Objections to Defendant Urban Gorilla's proposed exhibits, and Defendant Urban Gorilla's Objections to Plaintiff GM's proposed exhibits, respectively. If other exhibits are to be offered, the necessity for which reasonably cannot now be anticipated, they will be submitted to opposing counsel at least 10 days prior to trial.

7. **WITNESSES.**

(a) In the absence of reasonable notice to opposing counsel to the contrary:

(i) Plaintiff GM <u>will</u> call as witnesses:

Charles H. Ellerbrock

Jared Cherry

Glenn L. Christensen, Ph.D.

Merrick Maxfield

Joseph Benson (by deposition or in person)

(ii) Plaintiff GM will use the following depositions:

Michael DiGiovanni	April 19, 2006
Jared Carlow	June 13, 2006
Christopher Ardern	June 14, 2006

James O'Leary	June 14, 2006
Michael Lundgreen	December 12, 2006
Cody Jarrett	May 11, 2007
Ian Johnson	May 18, 2007
Joseph St. Lawrence	May 18, 2007
Paul Hunt	May 21, 2007
Erin M. Villeneuve	May 22, 2007
Ronald Nabozny	May 23, 2007

(b) In the absence of reasonable notice to opposing counsel to the contrary:

(i) Defendant Urban Gorilla <u>will</u> call as witnesses:

Merrick Maxfield

James O'Leary (Live or via deposition (6/14/06))

Cody Jarrett

(ii) Defendant Urban Gorilla will use the following depositions:

Deposition of Christopher Ardern	June 14, 2006
Deposition of Michael Digiovanni	April 19, 2006
Deposition of Jared Carlow	June 13, 2006
Deposition of Cody Jarrett	May 11, 2007
Deposition of Ian Johnson	May 18, 2007
Deposition of Joseph St. Lawrence	May 18, 2007
Deposition of Ronald Nabozny	May 23, 2007

Deposition of Paul B. Hunt	May 21, 2007
Deposition of Erin Villeneuve	May 22, 2007

(c) Either party my call a witness or witnesses not listed above if solely for rebuttal purposes.

8. REQUESTS FOR INSTRUCTIONS. None. See Sections 9 and 12 below.

9. AMENDMENTS TO PLEADINGS. There were no requests to amend pleadings. However, Plaintiff GM has informed the Court at a previous conference on December 13, 2007 that GM is dropping that portion of GM's prayer for relief in which GM originally sought an award of damages, treble damages, and an accounting of Urban Gorilla's revenues and profits (paragraphs 7, 8 and 9 of the Prayer for Relief). GM is seeking only equitable remedies in this action, including injunctive relief and an award of GM's attorneys' fees and costs pursuant to 15 U.S.C. § 1117. The parties therefore agreed on the record that there is no right to a jury trial in this action. The Court has therefore determined that the trial shall be a non-jury trial.

10. DISCOVERY. Discovery has been completed.

(a) **Depositions**. If any party intends to call a witness at trial who has not previously been made available for deposition, that witness must be made available for deposition no less than 14 days prior to trial.

(b) **Supplementation**. The parties must supplement their answers and responses to written discovery requests as required pursuant to FED. R. CIV. P. 26(e), and furnish all supplementation to the requesting parties prior to the commencement of trial.

11. TRIAL BRIEFS AND PROPOSED FINDINGS AND CONCLUSIONS.

(a) **Trial Briefs & Memoranda**. Counsel for the parties may submit trial

briefs and memoranda addressing questions of law relevant to the issues to be tried in this action, *provided that* copies of the same must be served upon all counsel at or before the time that they are submitted to the Court.

(b) **Proposed Findings of Fact & Conclusions of Law.** Counsel for the parties may submit proposed Findings of Fact & Conclusions of Law to the Court at the close of trial, *provided that* copies of the same must be served upon all counsel at or before the time that they are submitted to the Court.

12. TRIAL SETTING. This case is set for trial without a jury on September 22, 2008 at 9:30 a.m. The estimated length of trial is five days.

13. POSSIBILITY OF SETTLEMENT. Possibility of settlement is unlikely.

DATED: 9/15/ 2008.

BY THE COURT:

BRUCE S. JENKINS
UNITED STATES DISTRICT JUDGE

The foregoing proposed pretrial order (prior to execution by the court) is hereby adopted this 11th day of April, 2008.

HOWARD, PHILLIPS & ANDERSEN

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Attorneys for Defendant

EXHIBIT A

United States District Court
District Of Utah, Central Division

JOINT EXHIBIT LIST

General Motors Corp. v. Urban Gorilla LLC

CASE NUMBER: 2:06-CV-00133

PRESIDING JUDGE	PLAINTIFF'S ATTORNEYS	DEFENDANT'S ATTORNEYS
Bruce S. Jenkins	Gregory D. Phillips, Scott R. Ryther, and Thomas R. Lee	Steven J. Trayner, Peter H. Barlow and Jeremy G. Knight
TRIAL DATE(S)	COURT REPORTER	COURTROOM DEPUTY

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS*
P1					U.S. Trademark Registrations for Hummer H1 body shape, style, Hummer, H1, Like Nothing Else
P2					Website pages from Urban Gorilla website(s) at 4x4bodies.com, urbgorilla.com
P3					Hummer® website pages from GM's website at www.hummer.com (worldwide)
P5					Agreement—GM Acquisition of Hummer® trademarks, trade dress (GMUG00086-98, 131-140)
P7-1					Archived copy of website pages from www.4x4bodies.com
P7-2					Website page at www.4x4bodies.com/kit-car-winner.php recorded 4/1/2006
P7-3					Website page at www.4x4bodies.com/company.php recorded 3/31/2006
P7-4					Website page from www.4x4bodies.com/company/php dated 3/5/2006
P7-5					Website page at www.4x4bodies.com/productscombat.php recorded 3/30/2006
P7-6					Article published at http://www.canada.com copied 4/6/2006 (Lowell Conn)
P8					Article published in Canada's *National Post* (author Lowell Conn)
P9					Urban Gorilla brochure (color version of P43)
P10					Affidavit of Lowell Conn (Exhibit V submitted by Defendant on 4/24/2006)
P11					Def. Urban Gorilla's Responses to GM's First Interrogatories, 4/18/2006
P28					Archived website page from Urban Gorilla website dated July 11, 2004 containing "testimonials page" originally posted at www.4x4bodies.com/hummer-kit-car.php [MSJ 26]
P34					U.S. Trademark Registrations for trademark HUMVEE [MSJ 32]
P36					Urban Gorilla customer list (UG00009-UG00076) [Maxfield Depo. Ex. 4]
P37					Urban Gorilla employee list (UG00172) [Maxfield Depo. Ex. 2]
P38					Urban Gorilla "Production Schedule" (UG00173) [Maxfield Depo. Ex. 5]
P39					Asset Purchase Agreement (UG00157-158) [Maxfield Depo. Ex. 6]
P41					Promissory Note (UG00205) [Maxfield Depo. Ex. 10]
P45					Correspondence between AM General and Christopher Ardern/Active Power, Inc. [O'Leary Depo. Ex. 4]

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

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JOINT EXHIBIT LIST – CONTINUATION

General Motors Corp. v. Urban Gorilla LLC **CASE NUMBER: 2:06-CV-00133**

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS
P46					Urban Gorilla brochure (by Active Power, Inc.), Dec. 1997 [Ardern Depo. Ex. 9]
P47					Urban Gorilla Sales Agreement Form (by Active Power, Inc.) [Ardern Depo. Ex. 10]
P48					Financial Statements of Urban Gorilla [Lundgreen Depo. Ex. 2] [Jarrett Depo. Ex. 13]
P49					Copies of Correspondence between AM General and Active Power 1998-1999 [Miller Depo. Exs.1, 2]
P50					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P51					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P52					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P53					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P54					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P55					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P56					Photo of Urban Gorilla "6-Door" taken from Urban Gorilla website
P57					Photo of Urban Gorilla "6-Door" taken from Urban Gorilla website
P58					Photo of Urban Gorilla "6-Door" taken from Urban Gorilla website
P62					RTM "Powerblock Marketplace Contract" for Urban Gorilla and Proposed Ad (RTM00059-61) and cover letter from RTM counsel dated 5/22/2007
P66					Documents produced by Paul Hunt of Barnes & Thornburg (BT (AMG) 0001-0033) [Hunt Depo. Ex. 1]
P67					Correspondence re Urban Gorilla produced by Ronald M. Nabozny and law firm of Brooks Kushman [Nabozny Depo. Ex. 1]
P68					Correspondence between AM General counsel and Urban Gorilla/Active Power 1998-1999 (BT (AMG) 0012-17) [Nabozny Depo. Ex. 2]
P83					Jarrett Deposition Exhibit No. 6
	D1				11/30/98 Correspondence between James O'Leary and Ronald Nabozny
	D2				Reporters Transcript; Preliminary Injunction Hearing dated 4/24/06
	D3				Reporters Transcript: Preliminary Injunction Hearing dated 4/26/06
	D4				Reporters Transcript: Preliminary Injunction Hearing dated 4/27/06
	D5				Reporters Transcript: Preliminary Injunction Hearing dated 6/4/06
	D6				Asset Purchase Agreement and Schedule A to Asset Purchase Agreement (UG000157-000158)
	D7				GMC Announcement of Discontinuation of H1 (UG705-08.)
	D8				E-mails from eBay to Urban Gorilla denying postings or listings. (UG709-722.)
	D9				All customer testimonials posted on Urban Gorilla's website (full text) (UG723-24.)
	D10				E-mails between Urban Gorilla and Honeydew Design (full text) (UG00237- 00705)
	D11				Urban Gorilla Workbook
	D12				Resume of Merrick Maxfield

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JOINT EXHIBIT LIST – CONTINUATION

General Motors Corp. v. Urban Gorilla LLC **CASE NUMBER: 2:06-CV-00133**

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS
	D13				2007 Urban Gorilla Advertisement No. 1 (UG's 2nd supplemental responses to GM's requests for production of documents)
	D14				2007 Urban Gorilla Advertisement No. 2 (UG's 2nd supplemental responses to GM's requests for production of documents)
	D15				2007 Urban Gorilla Advertisement No. 3 (UG's 2nd supplemental responses to GM's requests for production of documents)
	D16				Urban Gorilla Pamphlet (UG 00001-00008)
	D17				Urban Manufacturing- off road body conversions web pages (UG 00080- 00082)
	D18				Urban Gorilla Articles of Organization, State of Ohio (UG 00159-00161)
	D19				Check 1191 from Urban Gorilla, LLC to State of Ohio, dated 2/7/05 (UG 000162)
	D20				Urban Gorilla LLC's Utah Articles of Organization (UG 00163-00164)
	D21				Urban Gorilla Plans/Dimensions (UG 00184-00202)
	D23				Letter from Ronald Nabozny, dated October 6, 1998.
	D24				Letter from Ronald Nabozny, dated November 30, 1998.
	D25				Urban Gorilla by Active Power Advertisements, attached as Exhibit 9 to Christopher Ardern Deposition.
	D26				Exhibits 9 & 10 to deposition of Christopher Ardern
	D28				Letter from James O'Leary, dated December 3, 1998.
	D29				Fax Cover Sheet from James O'Leary, dated November 7, 1998
	D30				Fax Cover Sheet from Ronald Nabozny, dated November 9, 1998 with Vehicle Nose Registration
	D31				Letter from Paul B. Hunt dated March 22, 1999
	D39				H1 FORUM.COM WEBSITE from 4/18/06 (UG757-67.)
	D41				PETERSEN'S 4WHEEL & OFF-ROAD MAGAZINE - DECEMBER, 1997 (UG772-75.)
	D42				PETERSEN' S 4WHEEL & OFF-ROAD MAGAZINE - SEPTEMBER, 1998 (UG776-82.)
	D43				URBAN GORILLA ADS ON KITCAR.COM (2000 - 2004)
	D44				PETERSEN'S 4 WHEEL & OFF-ROAD MAGAZINE - AUGUST, 2004 (UG783-85.)
	D45				FOUR WHEELER MAGAZINE - AUGUST, 2004 (UG786-90.)
	D46				FOUR WHEELER MAGAZINE - DECEMBER, 2004 (UG791-95.)
	D47				Cad Drawings of Urban Gorilla from Active Power
	D48				Documents Produced by RTM including correspondence between RTM and Urban Gorilla (RTM002-00046).
	D49				Photos from RTM (RTM 00049-00050)
	D50				10 DVDs Produced by RTM of Extreme 4x4 Show.
	D51				Urban Gorilla 2007 Powerblock Marketplace Contract (RTM 00059-00061)

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JOINT EXHIBIT LIST – CONTINUATION

General Motors Corp. v. Urban Gorilla LLC **CASE NUMBER: 2:06-CV-00133**

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS
	D53				Exhibit 1 to deposition of Erin Villeneuve
	D55				RTM Media Recap Nielsen Cable Index Ratings
	D57				Exhibits 1 and 2 to deposition of Ronald Nabozny
	D58				Exhibits 1 and 2 to deposition of Paul B. Hunt.
	D59				Photographic images depicting Urban Gorilla body kits. (Produced by Urban Gorilla in response to Request No. 11 of GM's First Set of Requests for Production of Documents) (UG864-1013.)
	D60				Urban Gorilla Assembly Guide (UG001014-1049.)
	D61				All pages from Urban Gorilla's website, located at www.4x4bodies.com
	D62				All electronic documents produced by Urban Gorilla on January 19, 2007; February 13, 2007 and October 8, 2007.
	D63				All hard documents produced by Urban Gorilla to Plaintiff on February 13, 2007.
	D64				Photograph of H2 (GMUG00617)
	D67				History of HMMWV , (GMUG00718-721)
	D69				Correspondence from D. Michael Anderson to Charles Ellerbrock of Feb 15, 2001, (GMUG00837)
	D72				Documents produced by Paul Hunt in response to subpoena (BT(AMG) 0004-0033)
	D73				Correspondence from Anderson to O'Leary of September 13, 1999

EXHIBIT B

United States District Court
District Of Utah, Central Division

EXHIBIT LIST

General Motors Corp. v. Urban Gorilla LLC **CASE NUMBER: 2:06-CV-00133**

PRESIDING JUDGE	PLAINTIFF'S ATTORNEYS	DEFENDANT'S ATTORNEYS
Bruce S. Jenkins	Gregory D. Phillips, Scott R. Ryther, and Thomas R. Lee	Steven J. Trayner, Peter H. Barlow and Jeremy G. Knight
TRIAL DATE(S)	COURT REPORTER	COURTROOM DEPUTY

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P3					Hummer® website pages from GM's website at www.hummer.com (worldwide)
P4					Email chain from GM regarding Urban Gorilla (GMUG 00084-85)
P5					Agreement—GM Acquisition of Hummer® trademarks, trade dress (GMUG00086-98, 131-140)
P6					Comparison of Urban Gorilla bodies from 4x4bodies.com with Hummer® vehicles
P7-1					Archived copy of website pages from www.4x4bodies.com
P7-2					Website page at www.4x4bodies.com/kit-car-winner.php recorded 4/1/2006
P7-3					Website page at www.4x4bodies.com/company.php recorded 3/31/2006
P7-4					Website page from www.4x4bodies.com/company/php dated 3/5/2006
P7-5					Website page at www.4x4bodies.com/productscombat.php recorded 3/30/2006
P7-6					Article published at http://www.canada.com copied 4/6/2006 (Lowell Conn)
P8					Article published in Canada's *National Post* (author Lowell Conn)
P9					Urban Gorilla brochure (color version of P43)
P10					Affidavit of Lowell Conn (Exhibit V submitted by Defendant on 4/24/2006)
P11					Def. Urban Gorilla's Responses to GM's First Interrogatories, 4/18/2006
P12					Report of Glenn L. Christensen (survey report) with attachments
P13					Email correspondence produced by Urban Gorilla on January 19, 2007 (DVD) in "ACT! 04" Format (hereafter "First Production of Emails by Urban Gorilla")
P14					Email correspondence produced by Urban Gorilla on January 19, 2007 (DVD) ("First Production of Emails by Urban Gorilla") converted from "ACT! 04" Format to Microsoft Outlook Format
P15					Email correspondence produced by Urban Gorilla on February 13, 2007 (DVD) in "ACT! 04" Format (hereafter "Second Production of Emails by Urban Gorilla")
P16					Email correspondence produced by Urban Gorilla on February 13 2007 (DVD) ("Second Production of Emails by Urban Gorilla") converted from "ACT! 04" Format to Microsoft Outlook
P17					Email correspondence produced by Urban Gorilla on October 8, 2007 (CD ROM) in "ACT! 04" Format (hereafter "Third Production of Emails by Urban Gorilla")
P18					Email correspondence produced by Urban Gorilla on October 8, 2007 (CD ROM) ("Third Production of Emails by Urban Gorilla")converted from "ACT! 04" Format to Microsoft Outlook

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

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EXHIBIT LIST – CONTINUATION

General Motors Corp. v. Urban Gorilla LLC **CASE NUMBER: 2:06-CV-00133**

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS
P19					Email correspondence produced by Urban Gorilla on October 8, 2007 (CD ROM) in "ACT! 06" Format (hereafter "Fourth Production of Emails by Urban Gorilla")
P20					Email correspondence produced by Urban Gorilla on October 8, 2007 (CD ROM) ("Fourth Production of Emails by Urban Gorilla") converted from "ACT! 06" Format to Microsoft Outlook
P21					Email messages contained within First Production of Emails by Urban Gorilla that contain or make reference to the trademarked word HUMMER [MSJ 18]
P22					Email messages selected from First through Fourth Productions of Emails by Urban Gorilla referring to "Brian's Hummer Page" [MSJ 20]
P23					Email messages selected from First Production Emails by Urban Gorilla describing Urban Gorilla's products using the trademarked word HUMMER [MSJ 21]
P24					Email messages selected from First through Fourth Productions of Emails by Urban Gorilla referring to trademarked word HUMMER [MSJ 22]
P25					Email messages selected from First and Second Productions of Emails by Urban Gorilla that contain the trademarked word HUMMER within the "Subject" line [MSJ 23]
P26					Email messages contained within First and Second Productions of Emails by Urban Gorilla that contain the trademarked terms HUMMER, H1, H2, or H3 within the message body [MSJ 24]
P27					Email messages contained within the Third and Fourth Productions of Emails by Urban Gorilla that contain the trademarked terms HUMMER, H1, H2, or H3 within the message body [MSJ 25]
P28					Archived website page from Urban Gorilla website dated July 11, 2004 containing "testimonials page" originally posted at www.4x4bodies.com/hummer-kit-car.php [MSJ 26]
P29					Page from website at www.H1Forum.com downloaded on October 9, 2007 containing discussion of Urban Gorilla project by "Madrake51" [MSJ 27]
P30					*Kit Car Buyer's Guide* (2006 ed.) with Urban Gorilla LLC advertisement [MSJ 28]
P31					Photo images depicting SUVs marketed by various manufacturers for civilian on- and off-road use, collected from manufacturers' websites [MSJ 29]
P32					Email messages contained within First and Second Productions of Emails by Urban Gorilla exchanged between Urban Gorilla and Phil Borgmann re "Brian's Hummer Page" [MSJ 30]
P33					"Hummer Kit Chronicles" website pages sent by Merrick Maxfield to Phil Borgmann as email attachments [MSJ 31]
P34					U.S. Trademark Registrations for trademark HUMVEE [MSJ 32]
P35					Email message chain contained within the Third Production of Emails by Urban Gorilla in which Merrick Maxfield states: "I don't know much about the H1."
P36					Urban Gorilla customer list (UG00009-UG00076) [Maxfield Depo. Ex. 4]
P37					Urban Gorilla employee list (UG00172) [Maxfield Depo. Ex. 2]
P38					Urban Gorilla "Production Schedule" (UG00173) [Maxfield Depo. Ex. 5]
P39					Asset Purchase Agreement (UG00157-158) [Maxfield Depo. Ex. 6]
P40					CD ROM produced by Urban Gorilla containing photographs [Maxfield Depo. Ex. 7]
P41					Promissory Note (UG00205) [Maxfield Depo. Ex. 10]
P42					Correspondence between Urban Gorilla and Utah Industrial Management, Inc. (UG00177-180) [Maxfield Depo. Ex. 11]
P43					Urban Gorilla brochure (UG00001-8) [Maxfield Depo. Ex. 12]
P44					Emails produced by Honeydew Design and its owner, Jared Carlow [Carlow Depo. Ex. 2]
P45					Correspondence between AM General and Christopher Ardern/Active Power, Inc. [O'Leary Depo. Ex. 4]

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EXHIBIT LIST – CONTINUATION

General Motors Corp. v. Urban Gorilla LLC **CASE NUMBER: 2:06-CV-00133**

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS
P46					Urban Gorilla brochure (by Active Power, Inc.), Dec. 1997 [Ardern Depo. Ex. 9]
P47					Urban Gorilla Sales Agreement Form (by Active Power, Inc.) [Ardern Depo. Ex. 10]
P48					Financial Statements of Urban Gorilla [Lundgreen Depo. Ex. 2] [Jarrett Depo. Ex. 13]
P49					Copies of Correspondence between AM General and Active Power 1998-1999 [Miller Depo. Exs.1, 2]
P50					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P51					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P52					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P53					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P54					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P55					Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website
P56					Photo of Urban Gorilla "6-Door" taken from Urban Gorilla website
P57					Photo of Urban Gorilla "6-Door" taken from Urban Gorilla website
P58					Photo of Urban Gorilla "6-Door" taken from Urban Gorilla website
P59					Associated Press article entitled "Hummer Lovers Having A Blast—Despite Gas" dated July 27, 2008 and reprinted in *The Deseret Morning News*
P60					[Reserved]
P61					DVD excerpts from *XTREME4x4* television show episodes [Johnson Depo. Ex. 13]
P62					RTM "Powerblock Marketplace Contract" for Urban Gorilla and Proposed Ad (RTM00059-61) and cover letter from RTM counsel dated 5/22/2007
P63					Nielsen Cable Index Ratings summary [St. Lawrence Depo. Ex. 1]
P64					Email communications between RTM Productions and Urban Gorilla (RTM0001-50) [Johnson Depo. Ex. 11]
P65					Email communications between Tom Spychalski of RTM Productions and Merrick Maxfield of Urban Gorilla [Johnson Depo. Ex. 12]
P66					Documents produced by Paul Hunt of Barnes & Thornburg (BT (AMG) 0001-0033) [Hunt Depo. Ex. 1]
P67					Correspondence re Urban Gorilla produced by Ronald M. Nabozny and law firm of Brooks Kushman [Nabozny Depo. Ex. 1]
P68					Correspondence between AM General counsel and Urban Gorilla/Active Power 1998-1999 (BT (AMG) 0012-17) [Nabozny Depo. Ex. 2]
P69-73					Magazine Advertisements in nationally distributed publications in U.S. promoting Hummer H1
P74					Samples of television advertisements promoting Hummer H1 (DVDs)
P75					Hummer H1 brochures
P76					Urban Gorilla website pages dated November 27, 2007 and April 24, 2006 [MSJ Exs 40, 41]
P77					H1Forum.com website pages offered by Urban Gorilla at Prelim. Inj. Hearing [MSJ Ex. 41; UG Ex H]
P78					Sacramento Hummer Dealership Website Pages [MSJ Ex. 43]
P79					All documents produced by Urban Gorilla on February 13, 2007

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EXHIBIT LIST – CONTINUATION

General Motors Corp. v. Urban Gorilla LLC **CASE NUMBER: 2:06-CV-00133**

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS
P80					Kitcarmag.com website pages, including Urban Gorilla advertisement
P81					Photographic images of Hummer H1 vehicles
P82					Supplemental Declaration of Dr. Glenn Christensen dated December 7, 2007
P83					Jarrett Deposition Exhibit No. 6
	D1				11/30/98 Correspondence between James O'Leary and Ronald Nabozny
	D2				Reporters Transcript; Preliminary Injunction Hearing dated 4/24/06
	D3				Reporters Transcript: Preliminary Injunction Hearing dated 4/26/06
	D4				Reporters Transcript: Preliminary Injunction Hearing dated 4/27/06
	D5				Reporters Transcript: Preliminary Injunction Hearing dated 6/4/06
	D6				Asset Purchase Agreement and Schedule A to Asset Purchase Agreement (UG000157-000158)
	D7				GMC Announcement of Discontinuation of H1 (UG705-08.)
	D8				E-mails from eBay to Urban Gorilla denying postings or listings. (UG709-722.)
	D9				All customer testimonials posted on Urban Gorilla's website (full text) (UG723-24.)
	D10				E-mails between Urban Gorilla and Honeydew Design (full text) (UG00237- 00705)
	D11				Urban Gorilla Workbook
	D12				Resume of Merrick Maxfield
	D13				2007 Urban Gorilla Advertisement No. 1 (UG's 2nd supplemental responses to GM's requests for production of documents)
	D14				2007 Urban Gorilla Advertisement No. 2 (UG's 2nd supplemental responses to GM's requests for production of documents)
	D15				2007 Urban Gorilla Advertisement No. 3 (UG's 2nd supplemental responses to GM's requests for production of documents)
	D16				Urban Gorilla Pamphlet (UG 00001-00008)
	D17				Urban Manufacturing- off road body conversions web pages (UG 00080- 00082)
	D18				Urban Gorilla Articles of Organization, State of Ohio (UG 00159-00161)
	D19				Check 1191 from Urban Gorilla, LLC to State of Ohio, dated 2/7/05 (UG 000162)
	D20				Urban Gorilla LLC's Utah Articles of Organization (UG 00163-00164)
	D21				Urban Gorilla Plans/Dimensions (UG 00184-00202)
	D22				Secured Promissory Note, dated June 28, 2005 (UG00205-00206)
	D23				Letter from Ronald Nabozny, dated October 6, 1998.
	D24				Letter from Ronald Nabozny, dated November 30, 1998.

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EXHIBIT LIST – CONTINUATION

General Motors Corp. v. Urban Gorilla LLC **CASE NUMBER: 2:06-CV-00133**

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS
	D25				Urban Gorilla by Active Power Advertisements, attached as Exhibit 9 to Christopher Ardern Deposition.
	D26				Exhibits 9 & 10 to deposition of Christopher Ardern
	D27				Exhibits 2, 4 & 5 to deposition of James O'Leary
	D28				Letter from James O'Leary, dated December 3, 1998.
	D29				Fax Cover Sheet from James O'Leary, dated November 7, 1998
	D30				Fax Cover Sheet from Ronald Nabozny, dated November 9, 1998 with Vehicle Nose Registration
	D31				Letter from Paul B. Hunt dated March 22, 1999
	D32				All Exhibits entered by Urban Gorilla in Preliminary Injunction Hearing
	D33				CORRESPONDENCE FROM RONALD M. NABOZNY TO TATONKA PRODUCTS DATED JANUARY 15, 1999
	D34				CORRESPONDENCE FROM PAUL B. HUNT TO TATONKA PRODUCTS DATED MARCH 22, 1999
	D35				CORRESPONDENCE FROM D. MICHAEL ANDERSON TO TATONKA PRODUCTS DATED NOVEMBER 23, 1999
	D36				KIT CAR MAGAZINE ARTICLE DATED SEPTEMBER, 1998 (UG747-52.)
	D37				SAM'S SURPLUS WEBSITE - ALLEY CAT KIT (UG753-56.)
	D38				CORRESPONDENCE FROM D. MICHAEL ANDERSON TO RICHARD TOLBERT AT TATONKA PRODUCTS DATED FEBRUARY 16, 2001
	D39				H1 FORUM.COM WEBSITE from 4/18/06 (UG757-67.)
	D40				CLASSIC ROADSTERS II WEBSITE (UG768-71.)
	D41				PETERSEN'S 4WHEEL & OFF-ROAD MAGAZINE - DECEMBER, 1997 (UG772-75.)
	D42				PETERSEN' S 4WHEEL & OFF-ROAD MAGAZINE - SEPTEMBER, 1998 (UG776-82.)
	D43				URBAN GORILLA ADS ON KITCAR.COM (2000 - 2004)
	D44				PETERSEN'S 4 WHEEL & OFF-ROAD MAGAZINE - AUGUST, 2004 (UG783-85.)
	D45				FOUR WHEELER MAGAZINE - AUGUST, 2004 (UG786-90.)
	D46				FOUR WHEELER MAGAZINE - DECEMBER, 2004 (UG791-95.)
	D47				Cad Drawings of Urban Gorilla from Active Power
	D48				Documents Produced by RTM including correspondence between RTM and Urban Gorilla (RTM002-00046).
	D49				Photos from RTM (RTM 00049-00050)
	D50				10 DVDs Produced by RTM of Extreme 4x4 Show.
	D51				Urban Gorilla 2007 Powerblock Marketplace Contract (RTM 00059-00061)

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EXHIBIT LIST – CONTINUATION

General Motors Corp. v. Urban Gorilla LLC **CASE NUMBER: 2:06-CV-00133**

PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS
	D52				Exhibits 1, 2, 7, 9, 10,11 and 14 to deposition of Cody Jarrett
	D53				Exhibit 1 to deposition of Erin Villeneuve
	D54				Exhibits 1 and 2 to deposition of Jim Miller
	D55				RTM Media Recap Nielsen Cable Index Ratings
	D56				Defendant's DVD excerpts from *XTREME4x4* television show episodes
	D57				Exhibits 1 and 2 to deposition of Ronald Nabozny
	D58				Exhibits 1 and 2 to deposition of Paul B. Hunt.
	D59				Photographic images depicting Urban Gorilla body kits. (Produced by Urban Gorilla in response to Request No. 11 of GM's First Set of Requests for Production of Documents) (UG864-1013.)
	D60				Urban Gorilla Assembly Guide (UG001014-1049.)
	D61				All pages from Urban Gorilla's website, located at www.4x4bodies.com
	D62				All electronic documents produced by Urban Gorilla on January 19, 2007; February 13, 2007 and October 8, 2007.
	D63				All hard documents produced by Urban Gorilla to Plaintiff on February 13, 2007.
	D64				Photograph of H2 (GMUG00617)
	D65				Kit Car Magazine, February 2001 (GMUG00692-698)
	D66				Correspondence from Paul Hunt to Tatonka Products of April 2, 1999, (GMUG00706-07)
	D67				History of HMMWV , (GMUG00718-721)
	D68				Article regarding Daimler Chrysler v. GM , (GMUG00722)
	D69				Correspondence from D. Michael Anderson to Charles Ellerbrock of Feb 15, 2001, (GMUG00837)
	D70				Correspondence from Richard Tolbert to Scott Ryther of Jan. 31, 2001, (GMUG00855-56)
	D71				United States Patent 432,475, October 24, 2000
	D72				Documents produced by Paul Hunt in response to subpoena (BT(AMG) 0004-0033)
	D73				Correspondence from Anderson to O'Leary of September 13, 1999
	D74				BBC Article entitled "GM discusses sale of Hummer brand"

EXHIBIT C

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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

GENERAL MOTORS CORPORATION, Plaintiff, v. **URBAN GORILLA LLC,** Defendant.	**GM'S AMENDED OBJECTIONS TO DEFENDANT URBAN GORILLA'S PROPOSED TRIAL EXHIBITS (D1-D74)** Civ. No. 2:06 CV 00133 Honorable Bruce S. Jenkins

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Pursuant to Rule 26(a)(3)(B), Plaintiff General Motors Corporation ("GM") respectfully submits the following objections and/or responses to the trial exhibits listed by Defendant Urban Gorilla in conjunction with the Joint Final Pretrial Order.

Ex. No.	Description	GM Position/Objections
D1	11/30/98 Correspondence between James O'Leary and Ronald Nabozny	Stip. to Admissibility
D2	Reporters Transcript; Preliminary Injunction Hearing dated 4/24/06	Stip. to Admissibility
D3	Reporters Transcript: Preliminary Injunction Hearing dated 4/26/06	Stip. to Admissibility
D4	Reporters Transcript: Preliminary Injunction Hearing dated 4/27/06	Stip. to Admissibility
D5	Reporters Transcript: Preliminary Injunction Hearing dated 6/4/06	Stip. to Admissibility
D6	Asset Purchase Agreement and Schedule A to Asset Purchase Agreement (UG000157-000158)	Stip. to Admissibility
D7	GMC Announcement of Discontinuation of H1	Stip. to Admissibility
D8	E-mails from eBay to Urban Gorilla denying postings or listings	Stip. to Admissibility
D9	All customer testimonials posted on Urban Gorilla's website (full text)	Stip. to Admissibility
D10	E-mails produced by Urban Gorilla (full text) (UG00237- 00705) (This designation is contingent upon the court's ruling to Urban Gorilla's objection; if the court denies Urban Gorilla's motion, then all documents should be identified)	Stip. to Admissibility
D11	Urban Gorilla Workbook	Stip. to Admissibility
D12	Resume of Merrick Maxfield	Stip. to Admissibility
D13	2007 Urban Gorilla Advertisement No. 1 (UG's 2nd supplemental responses to GM's requests for production of documents)	Stip. to Admissibility
D14	2007 Urban Gorilla Advertisement No. 2 (UG's 2nd supplemental responses to GM's requests for production of documents)	Stip. to Admissibility
D15	2007 Urban Gorilla Advertisement No. 3 (UG's 2nd supplemental responses to GM's requests for production of documents)	Stip. to Admissibility
D16	Urban Gorilla Pamphlet (UG 00001-00008)	Stip. to Admissibility
D17	Urban Manufacturing- off road body conversions web pages (UG 00080- 00082)	Stip. to Admissibility
D18	Urban Gorilla Articles of Organization, State of Ohio (UG 00159-00161)	Stip. to Admissibility
D19	Check 1191 from Urban Gorilla, LLC to State of Ohio, dated 2/7/05 (UG 000162)	Stip. to Admissibility
D20	Urban Gorilla LLC's Utah Articles of Organization (UG 00163-00164)	Stip. to Admissibility

D21	Urban Gorilla Plans/Dimensions (UG 00184-00202)	Stip. to Admissibility
D22	Secured Promissory Note, dated June 28, 2005 (UG00205-00206)	Objection: Lack of relevance
D23	Letter from Ronald Nabozny, dated October 6, 1998.	Stip. to Admissibility
D24	Letter from Ronald Nabozny, dated November 30, 1998.	Stip. to Admissibility
D25	Urban Gorilla by Active Power Advertisements, attached as Exhibit 9 to Christopher Ardern Deposition.	Stip. to Admissibility
D26	Exhibits 9 and 10 to Deposition of Christopher Ardern	Stip. to Admissibility
D27	Exhibits 2, 4, and 5 to Deposition of James O'Leary	Objection as to O'Leary Depo. Exhibit 2: Irrelevant portions; Stip. to Admissibility of O'Leary Depo. Exhibits 4, 5
D28	Letter from James O'Leary, dated December 3, 1998.	Stip. to Admissibility
D29	Fax Cover Sheet from James O'Leary, dated November 7, 1998	Stip. to Admissibility
D30	Fax Cover Sheet from Ronald Nabozny, dated November 9, 1998 with Vehicle Nose Registration	Stip. to Admissibility
D31	Letter from Paul B. Hunt dated March 22, 1999	Stip. to Admissibility
D32	All Exhibits entered by Urban Gorilla in Preliminary Injunction Hearing	Objections: Various, including: (1) Inappropriate designation, each exhibit should be separately identified; (2) lack of authenticity; (3) lack of relevance; (4) hearsay; (5) GM reserves right to assert additional objections depending on specific items offered
D33	Correspondence from Ronald M. Nabozny to Tatonka Products Dated January 15, 1999	Objection: Lack of Relevance
D34	Correspondence from Paul B. Hunt to Tatonka Products dated March 22, 1999	Objection: Lack of Relevance
D35	Correspondence from D. Michael Anderson to Tatonka Products dated November 23, 1999	Objection: Lack of Relevance

D36	Kit car magazine article dated September, 1998 (UG 747-52.)	Objection: Lack of Relevance
D37	Sam's surplus website - alley cat kit (UG753-56.)	Objection: Lack of Relevance
D38	Correspondence from D. Michael Anderson to Richard Tolbert at Tatonka Products dated February 16, 2001	Objection: Lack of Relevance
D39	H1FORUM.COM website from 4/18/06 (UG757-67.)	Stip. to Admissibility
D40	Classic Roadsters II website (UG 768-71.)	Objection: Lack of Relevance
D41	Petersen's 4 Wheel & Off-Road Magazine - December, 1997 (UG 772-75.)	Stip. to Admissibility
D42	Petersen' s 4 Wheel & Off-Road Magazine - September, 1998 (UG 776-82.)	Stip. to Admissibility
D43	Urban gorilla ads on Kitcar.com (2000 - 2004)	Stip. to Admissibility
D44	Petersen's 4 wheel & Off-Road magazine - August, 2004 (UG 783-85.)	Stip. to Admissibility
D45	Four Wheeler Magazine - August, 2004 (UG 786-90.)	Stip. to Admissibility
D46	Four Wheeler Magazine - December, 2004 (UG 791-95.)	Stip. to Admissibility
D47	Cad Drawings of Urban Gorilla	Stip. to Admissibility
D48	Documents Produced by RTM including correspondence between RTM and Urban Gorilla (RTM002-00046).	Stip. to Admissibility
D49	Photos from RTM (RTM 00049-00050)	Stip. to Admissibility
D50	10 DVDs Produced by RTM of Extreme 4x4 Show.	Stip. to Admissibility
D51	Urban Gorilla 2007 Powerblock Marketplace Contract (RTM 00059-00061)	Stip. to Admissibility
D52	Exhibits 1, 2, 7, 9, 10, 11, and 14 to Deposition of Cody Jarrett	Objection as to Jarret Depo Exhibit 14: Irrelevant—Jarrett did not make lending decision, therefore this Exhbit lacks relevance; Stip. to Admissibility of Jarrett Depo. Exhibits 1, 2, 7, 9, 10, and 11
D53	Exhibit 1 to Deposition of Erin Villeneuve	Stip. to Admissibility
D54	Exhibits 1, 2 to Deposition of Jim Miller	Objection: Defendant not designating Miller deposition for trial, therefore depo. exhibits not appropriate
D55	RTM Media Recap Nielsen Cable Index Ratings	Stip. to Admissibility

D56	Defendant's DVD excerpts from XTreme 4x4 episodes	GM Reserves right to object pending review of proposed exhibit
D57	Exhibits 1 and 2 to Deposition of Ronald Nabozny	Stip. to Admissibility
D58	Exhibits 1 and 2 to Deposition of Paul Hunt	Stip. to Admissibility
D59	Photographic images depicting Urban Gorilla body kits. (Produced by Urban Gorilla in response to Request No. 11 of GM's First Set of Requests for Production of Documents) (UG864-1013.)	Stip. to Admissibility
D60	Urban Gorilla Assembly Guide (UG001014-1049.)	Stip. to Admissibility
D61	All pages from Urban Gorilla's website, located at www.4x4bodies.com	Stip. to Admissibility
D62	All electronic documents (e-mails) produced by Urban Gorilla on January 19, 2007; February 13, 2007 and October 8, 2007.	Stip. to Admissibility
D63	All hard documents produced by Urban Gorilla to Plaintiff on February 13, 2007.	Stip. to Admissibility
D64	Photograph of H2 (GMUG00617)	Stip. to Admissibility
D65	Kit Car Magazine, February 2001 (GMUG00692-698)	Objections: Authenticity, relevance
D66	Correspondence from Paul Hunt to Tatonka Products of April 2, 1999, (GMUG00706-07)	Objection: Relevance
D67	History of HMMWV , (GMUG00718-721)	Stip. to Admissibility
D68	Article regarding Daimler Chrysler v. GM , (GMUG00722)	Objections: Relevance, Hearsay
D69	Correspondence from D. Michael Anderson to Charles Ellerbrock of Feb 15, 2001, (GMUG00837)	Stip. to Admissibility
D70	Correspondence from Richard Tolbert to Scott Ryther of Jan. 31, 2001, (GMUG00855-56)	Objection: Relevance
D71	United States Patent 432,475, October 24, 2000	Objection: Relevance
D72	Documents produced by Paul Hunt in response to subpoena (BT(AMG) 0004-0033)	Stip. to Admissibility
D73	Correspondence from Anderson to O'Leary of September 13, 1999	Stip. to Admissibility
D74	BBC Article entitled "GM discusses sale ..."	Objections: Relevance, Hearsay

Respectfully submitted this 21st day of August, 2008.

HOWARD, PHILLIPS & ANDERSEN

s/Scott R. Ryther

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following via the ECF Filing system on this 21st day of August, 2008:

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EXHIBIT D

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Attorneys for Defendant Urban Gorilla, LLC

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

GENERAL MOTORS CORPORATION, Plaintiff, vs. URBAN GORILLA, L.L.C., Defendant.	**DEFENDANT'S AMENDED OBJECTIONS TO PLAINTIFF'S REVISED EXHIBITS LIST** Civil No. 2:06CV00133 Judge Bruce S. Jenkins

Urban Gorilla, by and through counsel of record, file objections to Plaintiff's exhibit list, pursuant to Rule 26 (a)(3)(C) of the Federal Rules of Civil Procedure as follows:

Defendant's Objections:

F = Lack of Proper Foundation.

R = Irrelevant (Defendant reserves the right to raise any relevancy objections at the appropriate time during trial, pursuant to FRCP 26 (a)(3)(C).)

P = Any possible Relevance is Substantially Outweighed by Unfair Prejudice, Confusion of the Issues, Misleading the Finder of Fact, Undue Delay, or Needless Presentation; FRE

403 (Defendant reserves the right to raise any Rule 403 objections at the appropriate time during trial, pursuant to FRCP 26 (a)(3)(C).)

H = Inadmissible Hearsay, FRE 801- 807.

I = Incomplete/Not to scale or Not an Accurate Representation.

ID = Inappropriate designation; need to identify specific documents intend to use at trial.

AV = All objections reserved until exhibit is viewed.

P1	U.S. Trademark Registrations for Hummer H1 body shape, style, Hummer, H1, Like Nothing Else	Stip to Admissibility.
P2	Website pages from Urban Gorilla website(s) at 4x4bodies.com, urbgorilla.com	Stip to Admissibility.
P3	Hummer® website pages from GM's website at www.hummer.com (worldwide)	Stip to Admissibility.
P4	Email chain from GM regarding Urban Gorilla (GMUG 00084-85)	OBJECTION: H.
P5	Agreement—GM Acquisition of Hummer® trademarks, trade dress (GMUG00086-98, 131-140)	Stip to Admissibility.
P6	Comparison of Urban Gorilla bodies from 4x4bodies.com with Hummer® vehicles	OBJECTION: P, I.
P7-1	Archived copy of website pages from www.4x4bodies.com	Stip to Admissibility.
P7-2	Website page at www.4x4bodies.com/kit-car-winner.php recorded 4/1/2006	Stip to Admissibility.
P7-3	Website page at www.4x4bodies.com/company.php recorded 3/31/2006	Stip to Admissibility.
P7-4	Website page from www.4x4bodies.com/company/php dated 3/5/2006	Stip to Admissibility.
P7-5	Website page at www.4x4bodies.com/productscombat.php recorded	Stip to Admissibility.

	3/30/2006	
P7-6	Article published at http://www.canada.com copied 4/6/2006 (Lowell Conn)	Stip to Admissibility.
P8	Article published in Canada's National Post (author Lowell Conn)	Stip to Admissibility.
P9	Urban Gorilla brochure (color version of P43)	Stip to Admissibility.
P10	Affidavit of Lowell Conn (Exhibit V submitted by Defendant on 4/24/2006)	Stip to Admissibility.
P11	Def. Urban Gorilla's Responses to GM's First Interrogatories, 4/18/2006	Stip to Admissibility.
P12	Report of Glenn L. Christensen (survey report) with attachments	OBJECTION: Fails to satisfy Fed. R. Evid. 702 and 703. See Defendant's Motion to Strike the Expert Report and Survey of Dr. Glenn Christensen. Cumulative of in court testimony, unfairly prejudicial under Rule 403.
P13	Email correspondence produced by Urban Gorilla on January 19, 2007 (DVD) in "ACT! 04" Format (hereafter "First Production of Emails by Urban Gorilla")	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P14	Email correspondence produced by Urban Gorilla on January 19, 2007 (DVD) ("First Production of Emails by Urban Gorilla") converted from "ACT! 04" Format to Microsoft Outlook Format	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P15	Email correspondence produced by Urban Gorilla on February 13, 2007 (DVD) in "ACT! 04" Format (hereafter "Second Production of Emails by Urban Gorilla")	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P16	Email correspondence produced by Urban Gorilla on February 13 2007 (DVD) ("Second Production of Emails by Urban Gorilla") converted from "ACT! 04" Format to Microsoft Outlook	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.

P17	Email correspondence produced by Urban Gorilla on October 8, 2007 (CD ROM) in "ACT! 04" Format (hereafter "Third Production of Emails by Urban Gorilla")	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P18	Email correspondence produced by Urban Gorilla on October 8, 2007 (CD ROM) ("Third Production of Emails by Urban Gorilla")converted from "ACT! 04" Format to Microsoft Outlook	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P19	Email correspondence produced by Urban Gorilla on October 8, 2007 (CD ROM) in "ACT! 06" Format (hereafter "Fourth Production of Emails by Urban Gorilla")	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P20	Email correspondence produced by Urban Gorilla on October 8, 2007 (CD ROM) ("Fourth Production of Emails by Urban Gorilla") converted from "ACT! 06" Format to Microsoft Outlook	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P21	Email messages contained within First Production of Emails by Urban Gorilla that contain or make reference to the trademarked word HUMMER [MSJ 18]	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P22	Email messages selected from First through Fourth Productions of Emails by Urban Gorilla referring to "Brian's Hummer Page" [MSJ 20]	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P23	Email messages selected from First Production Emails by Urban Gorilla describing Urban Gorilla's products using the trademarked word HUMMER [MSJ 21]	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P24	Email messages selected from First through Fourth Productions of Emails by Urban Gorilla referring to trademarked word HUMMER [MSJ 22]	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P25	Email messages selected from First and Second Productions of Emails by Urban Gorilla that contain the trademarked word HUMMER within the "Subject" line [MSJ 23]	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P26	Email messages contained within First and Second Productions of Emails by Urban Gorilla that contain the trademarked terms HUMMER, H1, H2, or H3 within the	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.

	message body [MSJ 24]	
P27	Email messages contained within the Third and Fourth Productions of Emails by Urban Gorilla that contain the trademarked terms HUMMER, H1, H2, or H3 within the message body [MSJ 25]	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P28	Archived website page from Urban Gorilla website dated July 11, 2004 containing "testimonials page" originally posted at www.4x4bodies.com/hummer-kit-car.php [MSJ 26]	Stip to Admissibility.
P29	Page from website at www.H1Forum.com downloaded on October 9, 2007 containing discussion of Urban Gorilla project by "Madrake51" [MSJ 27]	OBJECTION: H, F.
P30	Kit Car Buyer's Guide (2006 ed.) with Urban Gorilla LLC advertisement [MSJ 28]	OBJECTION: H, F (Last Page).
P31	Photo images depicting SUVs marketed by various manufacturers for civilian on- and off-road use, collected from manufacturers' websites [MSJ 29]	OBJECTION: I.
P32	Email messages contained within First and Second Productions of Emails by Urban Gorilla exchanged between Urban Gorilla and Phil Borgmann re "Brian's Hummer Page" [MSJ 30]	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P33	"Hummer Kit Chronicles" website pages sent by Merrick Maxfield to Phil Borgmann as email attachments [MSJ 31]	OBJECTION: H, F.
P34	U.S. Trademark Registrations for trademark HUMVEE [MSJ 32]	Stip to Admissibility.
P35	Email message chain contained within the Third Production of Emails by Urban Gorilla in which Merrick Maxfield states: "I don't know much about the H1."	OBJECTION: H (no objection to emails sent from Urban Gorilla), ID, F.
P36	Urban Gorilla customer list (UG00009-UG00076) [Maxfield Depo. Ex. 4]	Stip to Admissibility.
P37	Urban Gorilla employee list (UG00172) [Maxfield Depo. Ex. 2]	Stip to Admissibility.

P38	Urban Gorilla "Production Schedule" (UG00173) [Maxfield Depo. Ex. 5]	Stip to Admissibility.
P39	Asset Purchase Agreement (UG00157-158) [Maxfield Depo. Ex. 6]	Stip to Admissibility.
P40	CD ROM produced by Urban Gorilla containing photographs [Maxfield Depo. Ex. 7]	OBJECTION: ID.
P41	Promissory Note (UG00205) [Maxfield Depo. Ex. 10]	Stip to Admissibility.
P42	Correspondence between Urban Gorilla and Utah Industrial Management, Inc. (UG00177-180) [Maxfield Depo. Ex. 11]	OBJECTION: H (no objection to emails sent from Urban Gorilla), F.
P43	Urban Gorilla brochure (UG00001-8) [Maxfield Depo. Ex. 12]	OBJECTION: Duplicate of P9.
P44	Emails produced by Honeydew Design and its owner, Jared Carlow [Carlow Depo. Ex. 2]	OBJECTION: H, F.
P45	Correspondence between AM General and Christopher Ardern/Active Power, Inc. [O'Leary Depo. Ex. 4]	Stip to Admissibility.
P46	Urban Gorilla brochure (by Active Power, Inc.), Dec. 1997 [Ardern Depo. Ex. 9]	Stip to Admissibility.
P47	Urban Gorilla Sales Agreement Form (by Active Power, Inc.) [Ardern Depo. Ex. 10]	Stip to Admissibility.
P48	Financial Statements of Urban Gorilla [Lundgreen Depo. Ex. 2] [Jarrett Depo. Ex. 13]	Stip to Admissibility.
P49	Copies of Correspondence between AM General and Active Power 1998-1999 [Miller Depo. Exs.1, 2]	Stip to Admissibility.
P50	Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website	Stip to Admissibility.
P51	Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website	Stip to Admissibility.
P52	Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website	Stip to Admissibility.

P53	Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website	Stip to Admissibility.
P54	Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website	Stip to Admissibility.
P55	Photo of Urban Gorilla "Sport Prototype" taken from Urban Gorilla website	Stip to Admissibility.
P56	Photo of Urban Gorilla "6-Door" taken from Urban Gorilla website	Stip to Admissibility.
P57	Photo of Urban Gorilla "6-Door" taken from Urban Gorilla website	Stip to Admissibility.
P58	Photo of Urban Gorilla "6-Door" taken from Urban Gorilla website	Stip to Admissibility.
P59	Associated Press article entitled "Hummer Lovers Having A Blast-Despite Gas" dated July 27, 2008 and reprinted in The Deseret Morning News	OBJECTION: H, F.
P60	Reserved.	
P61	DVD excerpts from XTREME4x4 television show episodes [Johnson Depo. Ex. 13]	OBJECTION: H, F (except statements authenticated by Ian Johnson in his dep.). (Defendant reserves the right to raise additional objections in the event additional excerpts are added to this exhibit).
P62	RTM "Powerblock Marketplace Contract" for Urban Gorilla and Proposed Ad (RTM00059-61) and cover letter from RTM counsel dated 5/22/2007	Stip to Admissibility.
P63	Nielsen Cable Index Ratings summary [St. Lawrence Depo. Ex. 1]	OBJECTION: H, F.
P64	Email communications between RTM Productions and Urban Gorilla (RTM0001-50) [Johnson Depo. Ex. 11]	OBJECTION: H, F (except documents authenticated by Ian Johnson in his dep.).
P65	Email communications between Tom Spychalski of	OBJECTION: H, F.

	RTM Productions and Merrick Maxfield of Urban Gorilla [Johnson Depo. Ex. 12]	
P66	Documents produced by Paul Hunt of Barnes & Thornburg (BT (AMG) 0001-0033) [Hunt Depo. Ex. 1]	Stip to Admissibility.
P67	Correspondence re Urban Gorilla produced by Ronald M. Nabozny and law firm of Brooks Kushman [Nabozny Depo. Ex. 1]	Stip to Admissibility.
P68	Correspondence between AM General counsel and Urban Gorilla/Active Power 1998-1999 (BT (AMG) 0012-17) [Nabozny Depo. Ex. 2]	Stip to Admissibility.
P69	Magazine Advertisements in nationally distributed publications in U.S. promoting Hummer H1	AV
P70	Magazine Advertisements in nationally distributed publications in U.S. promoting Hummer H1	AV
P71	Magazine Advertisements in nationally distributed publications in U.S. promoting Hummer H1	AV
P72	Magazine Advertisements in nationally distributed publications in U.S. promoting Hummer H1	AV
P73	Magazine Advertisements in nationally distributed publications in U.S. promoting Hummer H1	AV
P74	Samples of television advertisements promoting Hummer H1 (DVDs)	AV
P75	Hummer H1 brochures	AV
P76	Urban Gorilla website pages dated November 27, 2007 and April 24, 2006 [MSJ Exs 40, 41]	AV
P77	H1Forum.com website pages offered by Urban Gorilla at Prelim. Inj. Hearing [MSJ Ex. 41; UG Ex H]	AV
P78	Sacramento Hummer Dealership Website Pages [MSJ Ex. 43]	AV
P79	All documents produced by Urban Gorilla on February 13, 2007	AV

P80	Kitcarmag.com website pages, including Urban Gorilla advertisement	OBJECTION: H, F.
P81	Photographic images of Hummer H1 vehicles	AV
P82	Supplemental Declaration of Dr. Glenn Christensen dated December 7, 2007	OBJECTION: Fails to satisfy Fed. R. Evid. 702 and 703. See Defendant's Motion to Strike the Expert Report and Survey of Dr. Glenn Christensen. Cumulative of in court testimony, unfairly prejudicial under Rule 403.
P83	Jarret Deposition Exhibit No. 6	Stip to admissibility

DATED this 21st day of August, 2008.

STRONG & HANNI

By: s/Peter H. Barlow
Steven J. Trayner
Peter H. Barlow
Jeremy G. Knight
Attorneys for Defendant Urban Gorilla, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2008, a true and correct copy of the foregoing document was served by the method indicated below, to the following:

Gregory D. Phillips Howard, Phillips & Andersen 560 East 200 South Suite 230 Salt Lake City, UT 84102	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (X) Facsimile (X) CM/ECF Notification
Erik Child BEYER, PONGRATZ & ROSEN 3230 Ramos Circle Sacramento, CA 95827 Attorneys for Defendant	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (X) Facsimile (X) CM/ECF Notification

s/Peter H. Barlow

005090.00089
United States District Court
Attn: Judge Bruce Jenkins
350 South Main Street, #150
Salt Lake City, Utah 84101

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

UNITED STATES OF AMERICA, Plaintiff, vs. THOMAS SAY TANG, Defendant.	MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION IN LIMINE Case No. 2:07-CR-161 TS

This matter is before the Court for consideration of Defendant's Motion in Limine,[1] wherein he seeks the exclusion of a "California Compassionate Use Act"[2] card (the "Card"), issued to the Defendant by the Oakland Cannabis Buyer's Cooperative pursuant to the California Compassionate Use Act. The Government filed an Opposition to this Motion.[3]

Defendant argues that the Card is irrelevant under Rule 402 of the Federal Rules of Evidence, or in the alternative that the Card should be excluded pursuant to Rule 403 because any probative value will be substantially outweighed by unfair prejudice to the Defendant.

[1]Docket No. 67.

[2]Ann. Cal. Health & Safety Code § 11362.5.

[3]Docket No. 74.

Defendant agrees that neither California law nor possession of the Card offers any defense against criminal prosecution. Defendant also argues that the Card will have a tendency to confuse the jury, and prejudice the jury against the Defendant, due to an inference that the Defendant is involved in the "marijuana culture,"[4] when the card only exempts personal, medical marijuana use by the holder. The Government responds that the card is probative of whether or not Defendant could smell and recognize marijuana, which in turn is relevant because the arresting officer will testify that the smell of marijuana was very strong near the passenger side window of the truck. The government also argues that the card shows that the Defendant was "familiar with and comfortable with the use, sale and purchase of marijuana."[5] Rule 401 of the Federal Rules of Evidence defines as relevant any evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[6] All relevant evidence is admissible under Rule 402 unless otherwise excluded, such as by the provisions of Rule 403, which excludes any evidence for which the probative value is "substantially outweighed"[7] by the tendency of the evidence to, among other things, prejudice the jury or confuse the issues.

Based on the evidence presently before the Court, the Court finds that the Card is probative evidence of an element that the government must prove – that the Defendant knew that he was in possession of a controlled substance, specifically marijuana. The fact that the

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[4]Def.'s Mot. in Limine [hereinafter *Motion*] at 5.

[5]Government's Mem. Opp. [hereinafter *Opposition*] at 5.

[6]Fed. R. Evid. 401.

[7]Fed. R. Evid. 403.

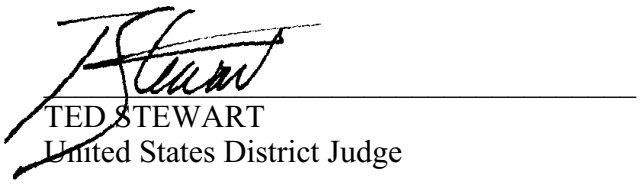
Defendant had been issued a card which enabled him to buy and possess marijuana under California law is relevant to Defendant's familiarity, knowledge and association with marijuana.[8] The Card thus meets the requirements of Rule 401. The Court also finds that the probative value of the Card is substantially outweighed by the tendency of the Card to prejudice the jury and confuse the issues.

Based upon the record before the Court at this time, it is therefore

ORDERED that Defendant's Motion in Limine to Exclude Evidence of Defendant's California Health and Safety Code Sec. 11362.5 Card is GRANTED. The Court will revisit the Motion during trial should the government provide more evidence regarding the probative nature of the evidence excluded by this Order.

DATED September 15, 2008.

BY THE COURT:



TED STEWART
United States District Judge

[8] *Opposition* at 1.

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

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT
2008 SEP 11 P 2:08
DEPUTY CLERK

Central District of Utah

UNITED STATES OF AMERICA
V.
Francisco Antonio Colon

JUDGMENT IN A CRIMINAL CASE

AMENDED

Case Number: DUTX2:07-cr-000300-001

USM Number: 14686-081

A. Chelsea Koch
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) I-Indictment

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

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

The defendant is adjudicated guilty of these offenses:

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

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

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

☑ Count(s) II ☑ 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.

6/4/2008
Date of Imposition of Judgment

Dee Benson
Signature of Judge

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

9/10/2008
Date

DEFENDANT: Francisco Antonio Colon
CASE NUMBER: DUTX 2:07-cr-000300-001

IMPRISONMENT

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

72 months.

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

The Court recommends a Federal Correctional Institution not close to Utah. The Court also recommends that the defendant be placed where he can receive the proper mental health evaluation and care.

☑ 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: Francisco Antonio Colon
CASE NUMBER: DUTX 2:07-cr-000300-001

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: Francisco Antonio Colon
CASE NUMBER: DUTX 2:07-cr-000300-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office and pay a one time $115.00 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment, nor frequent business where alcohol is the chief item of order.

2. The defendant shall participate in a mental health treatment program under a co-payment plan as directed by the probation office, take any mental health medications as prescribed.

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

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

5. The defendant shall not possess materials which give evidence of gang involvement or activity.

DEFENDANT: Francisco Antonio Colon
CASE NUMBER: DUTX 2:07-cr-000300-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

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

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

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

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

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

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

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

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

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

DEFENDANT: Francisco Antonio Colon
CASE NUMBER: DUTX 2:07-cr-000300-001

SCHEDULE OF PAYMENTS

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

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

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

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

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

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

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

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

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

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

☐ Joint and Several

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

☐ The defendant shall pay the cost of prosecution.

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

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

1. Ruger .22 caliber Rifle, Serial Number: 23581509.

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 IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
SEP 17 2008
D. MARK JONES, CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 2:07CR502 DB
	)	
v.	)	**CONSENT TO ENTRY OF PLEA OF GUILTY BEFORE THE MAGISTRATE JUDGE AND ORDER OF REFERENCE**
	)	
JAVIER GARCIA-PEREZ,	)	
	)	
Defendant.	)	

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

The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and accepting the defendant's plea of guilty as indicated above, pursuant to such proceedings.

DATED this 11th day of September, 2008.

Javier Garcia Perez
Defendant

Attorney for Defendant

Assistant United States Attorney

ORDER OF REFERENCE

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

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

DATED this 11th day of September, 2008

BY THE COURT:

Dee Benson

Dee Benson
United States District Judge

FILED
U.S. DISTRICT COURT

2008 SEP 15 A 8:35

DISTRICT OF UTAH

BY:_____
DEPUTY CLERK

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

THE UNITED STATES OF AMERICA, Plaintiff, vs. HUGO ORLANDO-HERNANDEZ, Defendant.	)))))))	ORDER GRANTING THE STIPULATED REQUEST FOR TRIAL CONTINUANCE AND WAIVER F SPEEDY TRIAL Case # 2:07-CR-789 TS JUDGE TED STEWART

Based on the stipulated motion of counsel, the nature of the case and good cause appearing, it is hereby;

Ordered that the trial in this case is continued to a later date to be set by the parties. The defendant is not in custody. He is abiding by all conditions of pre-trial release. He has specifically communicated to counsel his request to continue the trial while counsel finishes preparation of the case. Therefore the Court finds that pursuant to 18 U.S.C. §3161(h)(8)(A) the period of delay in this case is necessary-- in that the ends of justice are served by taking such action and the outweigh the best interest of the public or the defendant in a speedy trial.

DATED this 12th day of September, 2008.

T. Stewart

HONORABLE JUDGE TED STEWART
UNITED STATES DISTRICT JUDGE

FILED
U.S. DISTRICT COURT
2008 SEP 15 A 9:
DISTRICT OF UTAH
BY: DEPUTY CLERK

MARY C. CORPORON #734
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405 South Main Street, Suite #700
Salt Lake City, Utah 84111
Telephone: (801) 328-1162
Facsimile: (801) 328-9565

Attorney for Enrique Escobedo-Hernandez

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

UNITED STATES OF AMERICA,	:	**ORDER CONTINUING SENTENCING**
Plaintiff,	:	
-vs-	:	Case No. 2:07-CR-00896 PMW
MANUEL DE JESUS SANTA CRUZ-ESCOBEDO and ENRIQUE ESCOBEDO-HERNANDEZ,	:	Judge Dee Benson Magistrate Judge Paul M.Warner
Defendants.		

BASED UPON THE MOTION of the Defendant, Enrique Escobedo-Hernandez, to continue the sentencing herein, and or good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The sentencing now scheduled in this case on Thursday, September 18, 2008 and following is hereby continued to 10/15/08 @ 2:00 pm

DATED THIS 12 day of Sept, 2008.

BY THE COURT

Dee Benson

HONORABLE DEE BENSON
United States District Court Judge

G:\MCC\Clients\E\Escobedo-Hernandez, Enrique\Pleadings\order continuing sentencing.wpd/jw

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused the foregoing to be provided to:

Brett L. Tolman
Don Brown
Assistant United States Attorney
Office of the U.S. Attorney
348 East South Temple
Salt Lake City, Utah 84111

on the 11th day of September, 2008.

/s/ Jennifer Witherspoon

G:\MCC\Clients\E\Escobedo-Hernandez, Enrique\Pleadings\order continuing sentencing.wpd/jw

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff,	:	2:07-CR-918DAK
vs.	:	ORDER SETTING TRIAL AND EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT
ORFIL JAVIER GARZA, MARIA E. MARTINEZ-GARCIA, JOSE LUIS MARTINEZ-ESQUIVEL and CRUZ DAVID MARTINEZ-MONTES aka PRIMO, Defendants.	:	Judge Dale A. Kimball

Based on a motion by the United States of America, and for good cause appearing,

IT IS HEREBY ORDERED that trial in this matter is set for December 15, 2008 at 8:30 a.m., to continue for five (5) days.

IT IS FURTHER ORDERED that the time between August 27, 2008, until the new trial date is hereby excluded under 18 U.S.C. §§ 3161(h)(8)(A) and (8)(B) of the Speedy Trial Act because the ends of justice served by the exclusion outweigh the best interest of the public and the defendant in a speedy trial. This is based on the fact that the exclusion of time will give all parties the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

IT IS SO ORDERED.

DATED this 15th day of September, 2008.

BY THE COURT:

DALE A. KIMBALL
United States District Court Judge

FILED
U.S. DISTRICT COURT
2008 SEP 15 A 11:00
DISTRICT OF UTAH
BY: DEPUTY CLERK

RECEIVED
SEP 12 2008
OFFICE OF
JUDGE TENA CAMPBELL

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Securities and Exchange Commission, Plaintiff	ORDER FOR PRO HAC VICE ADMISSION
v.	
Novus Technologies, LLC, Defendant	Case Number 2:07-cv-00235 ~~DAK~~ TC

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

Dated: this 12th day of Sept, 2008.

Tena Campbell

U.S. District Judge

FILED
U.S. DISTRICT COURT

2008 SEP 15 A 11: 00

DISTRICT OF UTAH

BY:_____
DEPUTY CLERK

LLOYD R. JONES, Bar # 6757
PETERSEN & ASSOCIATES
230 South 500 East, Suite 400
Salt Lake City, UT 84102
Telephone: (801) 328-5555
Facsimile: (801) 524-0998
Attorneys for STEPHEN DUNCAN

UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICTCOUNTY, STATE OF UTAH

ANNA M. GRIFFIN,	)	ORDER OF DISMISSAL WITH PREJUDICE
Plaintiff,	)	
vs.	)	Case No. 2:07CV00295 TC
STEPHEN DUNCAN,	)	Judge Tena Campbell Magistrate Judge Brooke C. Wells
Defendant.	)	

Upon motion of the above-named parties, by and through their respective counsel of record, and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-entitled case is hereby dismissed, with prejudice, each party to bear their respective costs.

Dated this 12th day of ~~August~~ September, 2008.

BY THE COURT:

Tena Campbell

Tena Campbell,
District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FARHAN MOHAMMED, Plaintiff, v. DAVIS COUNTY, county in Utah, JOSHUA BOUCHER, an individual, Defendants.	ORDER DENYING MOTION TO WITHDRAW AS COUNSEL Case No. 2:07CV637 District Judge Ted Stewart Magistrate Judge Paul M. Warner

This matter 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 is a motion to withdraw as counsel[2] for Farhan Mohammed ("Plaintiff") filed by David K. Smith ("Mr. Smith").

Civil rule 83-1.4 of the United States District Court for the District of Utah Rules of Practice governs withdrawal of counsel in this court. *See* DUCivR 83-1.4. 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). This rule also contains three subsections that set forth different requirements for a written application or motion to withdraw depending upon whether the withdrawal is sought with or

[1] *See* docket no. 2.

[2] *See* docket no. 34.

without the client's consent and after a trial date has been scheduled. *See* DUCivR 83-1.4(a)(1)–(3). The court notes that trial in this matter is currently set for March 15, 2010.[3]

Because Mr. Smith's motion does not comply with rule 83-1.4(a), his motion to withdraw is DENIED without prejudice. Mr. Smith may refile his motion, but said motion will not be granted unless and until he demonstrates that the requirements of rule 83-1.4 have been satisfied.

IT IS SO ORDERED.

DATED this 12th day of September, 2008.

BY THE COURT:

PAUL M. WARNER
United States Magistrate Judge

[3] *See* docket no. 29.

FILED
U.S. DISTRICT COURT

2008 SEP 15 A 11: 00

DISTRICT OF UTAH

BY:_____
DEPUTY CLERK

Randall B. Bateman (USB 6482)
Perry S. Clegg (USB 7831)
BATEMAN IP LAW GROUP
8 East Broadway, Suite 550
P.O. Box 1319
Salt Lake City, Utah 84110
Tel: (801) 533-0320
Fax: (801) 533-0323

Attorneys for Plaintiff,
LANDFORMS DESIGN, INC.

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

LANDFORMS DESIGN, INC, a Utah Corporation Plaintiff, vs. CASTLE ROCK HOMES, INC., a Utah corporation, R. ZACHARY CLYDE, a Utah, individual, ENGINEERING SPECIALITIES, PC, a Utah corporation, and CADD, L.C. a Utah Limited Liability Company, and DOES 1 through 5, Defendants.	**ORDER DISMISSING DEFENDANT CADD, L.C.** Case No. 2:07cv00697 Judge Tena Campbell

The Court, having considered Plaintiff's Motion to Dismiss Defendant CADD, L.C. and no answer having been filed to the Complaint prior to its filing, is hereby ordered that the above-captioned action as to CADD, L.C. shall be dismissed. All other defendants remain.

So ordered this 15th day of ~~October 2007~~ September 2008.

Tena Campbell

The Honorable Tena Campbell
United States District Judge

Daniel L. Steele (6336)
STUCKI STEELE PIA ANDERSON, LLC
City Center I, Suite 900
175 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 524-1000
Email: dan@sspafirm.com

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

* * * * * * *

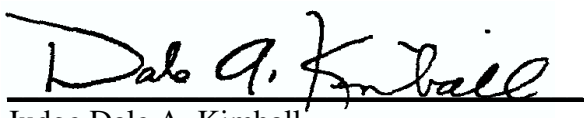
DOUGLAS S., ANN C.S., and LAURA S.,	)	ORDER TO EXTEND DEADLINE FOR DISPOSITIVE MOTION
Plaintiffs,	)	
vs.	)	Case No. 2:07-cv-734-DAK
ALTIUS HEALTH PLANS, INC.,	)	Judge Dale A. Kimball
Defendant.	)	

* * * * * * *

Plaintiffs Douglas S., Ann C.S., and Laura S. and Defendant Altius Health Plans, Inc., having moved and stipulated that the parties shall have an extension of the deadline by forty-five (45) days for Dispositive Motion.

IT IS HEREBY ORDERED that the parties shall have to, and including, November 10, 2008 to file a Dispositive Motion.

DATED: September 15, 2008



Judge Dale A. Kimball

2:07cv734
James L. Harris, Jr., USB #8204
ATTORNEY AT LAW
556 East 2100 South
Salt Lake City, Utah 84106
Telephone: (801) 466-3133
jlharris65@q.com

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

DOUGLAS S.., **ANN S.**, and **LAURA S.**	:	
Plaintiffs	:	**ORDER GRANTING MOTION FOR LEAVE TO WITHDRAW AS ATTORNEY**
vs.	:	**Civil No. 2:07-CV-734 DAK**
ALTIUS HEALTH PLANS, INC.,	:	
Defendant.		

Based upon the motion of James L. Harris, Jr., and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED and DECREED:

James L. Harris, Jr., is granted leave to withdraw as Plaintiffs' counsel and is hereby deemed withdrawn as counsel.

DATED this 15th day of SEPTEMBER, 2008.

BY THE COURT:

DALE A. KIMBALL
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

PEDRO LOERA, Plaintiff, v. TAYLOR'S BOATS, INC., a Utah corporation, Defendant.	ORDER GRANTING MOTIONS TO WITHDRAW AS COUNSEL Case No. 2:07cv975 Magistrate Judge Paul M. Warner

Before the court are renewed motions to withdraw as counsel[1] for Pedro Loera ("Plaintiff") filed by Leslie G. Schaar and Bruce E. Clotworthy of the law firm Hoole & King (collectively, the "Hoole & King attorneys") .

For the reasons set forth in the motions, the court has concluded that the Hoole & King attorneys have satisfied the requirements for withdrawing without Plaintiff's consent by (1) filing motions to withdraw that were "served upon the client and all other parties or their attorneys" and (2) certifying that Plaintiff has "been notified in writing of the status of the case including the dates and times of any scheduled court proceedings, pending compliance with any existing court orders, and the possibility of sanctions." DUCivR 83-1.4(a)(2). The Hoole & King attorneys have also satisfied the requirements for withdrawing after a trial date has been

[1] *See* docket nos. 17, 18.

set. *See* DUCivR 83-1.4(a)(3). Based on the foregoing, the court GRANTS the Hoole & King attorneys' motions to withdraw as counsel for Plaintiff.

Certain responsibilities are imposed upon Plaintiff as a result of the court permitting the Hoole & King attorneys to withdraw. Those responsibilities are set forth in rule 83-1.4(b), which provides:

> Whenever an attorney withdraws or dies, is removed or suspended, or for any other reason ceases to act as attorney of record, the party represented by such attorney must notify the clerk of the appointment of another attorney or of his decision to appear pro se within twenty (20) days or before any further court proceedings are conducted.

DUCivR 83-1.4(b). Accordingly, Plaintiff shall provide the court and all counsel of record in this case with a written notice naming his new counsel or, alternatively, his decision to appear pro se. If Plaintiff retains counsel, said counsel shall promptly file a formal notice of appearance in this case.

In summary, IT IS HEREBY ORDERED:

1. The Hoole & King attorneys' motions to withdraw as counsel for Plaintiff [2] are GRANTED.

2. Plaintiff shall, within twenty (20) days of the date of this order, file a notice with the court naming his new counsel or, alternatively, indicating his decision to appear pro se. If Plaintiff chooses to retain counsel, rather than appear pro se, said counsel shall promptly file a formal notice of appearance in this case.

---

[2] *See* docket nos. 17, 18.

3. In order to ensure that Plaintiff receives notice of these obligations, the Clerk of the Court shall send a copy of this order to Plaintiff by U.S. Mail, first class, postage prepaid, at the following address, which is Plaintiff's last-known mailing address:

Pedro Loera
3575 South Chatterleigh Rd.
West Valley City, Utah 84128

Further, unless and until Plaintiff retains new counsel, any party wishing to effect service upon Plaintiff from this point forward shall serve him at the above-referenced address.

IT IS SO ORDERED.

DATED this 12th day of September, 2008.

BY THE COURT:

PAUL M. WARNER
United States Magistrate Judge

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

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT
2008 SEP 12 P 2:05
DISTRICT OF UTAH
BY: DEPUTY CLERK

CENTRAL DIVISION District of UTAH

UNITED STATES OF AMERICA
V.
COURTNEY HOWARD AMEN

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX208CR000032-001

USM Number: 12885-081

Vanessa Ramos
Defendant's Attorney

THE DEFENDANT:

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

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

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

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 751(a)	Escape		1s

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) 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.

9/11/2008
Date of Imposition of Judgment

T. Stewart
Signature of Judge

The Honorable Ted Stewart — U. S. District Judge
Name of Judge — Title of Judge

9/12/2008
Date

DEFENDANT: COURTNEY HOWARD AMEN
CASE NUMBER: DUTX208CR000032-001

IMPRISONMENT

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

15 months

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

Incarceration in Oxford, WI

☑ 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: COURTNEY HOWARD AMEN
CASE NUMBER: DUTX208CR000032-001

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: COURTNEY HOWARD AMEN
CASE NUMBER: DUTX208CR000032-001

SPECIAL CONDITIONS OF SUPERVISION

1) The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time $115 fee to partially defray the costs of collection and testing. If testing reveals drug use or if the probation office determines that an assessment is necessary, the defendant shall participate in a substance abuse evaluation and treatment as recommended under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.

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

DEFENDANT: COURTNEY HOWARD AMEN
CASE NUMBER: DUTX208CR000032-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

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

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

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

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

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

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

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

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

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

DEFENDANT: COURTNEY HOWARD AMEN
CASE NUMBER: DUTX208CR000032-001

SCHEDULE OF PAYMENTS

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

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

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

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

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

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

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

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

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

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

☐ Joint and Several

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

☐ The defendant shall pay the cost of prosecution.

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

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

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

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

G. FRED METOS - 2250
Attorney for Defendant
10 West Broadway, Suite 650
Salt Lake City, Utah 84101
Telephone: (801) 364-6474
Facsimile: (801) 364-5014

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

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	**FINDINGS AND ORDER**
v.	:	
IRA BURDELL WAKEFIELD,	:	**Case No. 2:08 CR 156**
Defendant.	:	

Based on motion of the defendant and stipulation of the plaintiff, and having considered the entire file, the court enters the following;

FINDINGS

1. If defendant's motion to continue were denied it would deny the defendant continuity of counsel because counsel has a scheduling conflict.

2. Counsel has exercised due diligence in preparing this case.

3. The ends of justice in granting a continuance outweigh the best interests of the public and the defendant in a speedy trial.

ORDER

It is hereby ORDERED that the trial date of September 22, 2008, be stricken and the trial continued.

It is further, ORDERED that the time between September 22, 2008, and the next trial date be excluded from the computation for the time for trial as described in 18 U.S.C. §3161.

DATED this 15th day of September, 2008.

BY THE COURT:

Honorable Ted Stewart
United States District Court Judge

PS 42

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA	)	FILED U.S. DISTRICT COURT
Plaintiff,	)	
	)	**Docket No.:2:08-CR-277-002-DB**
Jodi Hoskins,	)	2008 SEP 12 P 12:00
Defendant	)	DISTRICT OF UTAH
		BY: DEPUTY CLERK

CONSENT TO MODIFY CONDITIONS OF RELEASE

I, Jodi Hoskins, have discussed with Pretrial Services Officer, modification of my release conditions as follows:

- Report to Pretrial Services as directed
- Maintain residence and do not move without prior permission of Pretrial Services
- Actively seek and maintain employment
- Refrain from possessing a firearm, destructive device, or any other dangerous weapons
- No travel outside the state of Utah/Nevada/CALIFORNIA RM without prior permission of Pretrial Services
- Obtain no passport
- Refrain from any use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802 unless prescribed by a licensed medical practitioner
- Submit to substance abuse testing as directed by Pretrial Services; if testing reveals illegal drug use, the defendant shall participate in substance abuse treatment, if deemed advisable by Pretrial Services.

I consent to this modification of my release conditions and agree to abide by this modification.

Jodi Hoskins	B Dillenen
Defendant	**Pretrial Services Officer**
9-5-08	07-16-08
Date	**Date**

I have reviewed the conditions with my client and concur that this modification is appropriate.

Richard P. Mauro	9/8/08
Defense Counsel	**Date**

ORDER OF THE COURT

[✓] The above modification of conditions of release is ordered, to be effective on Sept 8, 2008.

[ ] The above modification of conditions of release is **not** ordered.

Paul M. Warner

Honorable Paul M. Warner,
United States Magistrate Judge

12 September 2008

Date

FILED
U.S. DISTRICT COURT
2008 SEP 12 P 4:04
DISTRICT OF UTAH
BY: DEPUTY CLERK

PS 42

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA **Plaintiff,** **Roy Hoskins,** **Defendant**	**Docket No.:2:08-CR-277-001-DB**

CONSENT TO MODIFY CONDITIONS OF RELEASE

I, Roy Hoskins, have discussed with Pretrial Services Officer, modification of my release conditions as follows:

- Report to Pretrial Services as directed
- Maintain residence and do not move without prior permission of Pretrial Services
- Actively seek and maintain employment
- Refrain from possessing a firearm, destructive device, or any other dangerous weapons
- No travel outside the state of Utah and Nevada without prior permission of Pretrial Services
- Obtain no passport
- Refrain from any use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802 unless prescribed by a licensed medical practitioner
- Submit to substance abuse testing as directed by Pretrial Services; if testing reveals illegal drug use, the defendant shall participate in substance abuse treatment, if deemed advisable by Pretrial Services.

I consent to this modification of my release conditions and agree to abide by this modification.

Roy Hoskins
Defendant

8-26-08
Date

Pretrial Services Officer

07.10.08
Date

I have reviewed the conditions with my client and concur that this modification is appropriate.

Defense Counsel

8/27/06
Date

ORDER OF THE COURT

[✓] The above modification of conditions of release is ordered, to be effective on 8 August, 2008.

[ ] The above modification of conditions of release is not ordered.

Paul M. Warner

Honorable Paul M. Warner,
United States Magistrate Judge

12 Sept 2008
Date

Annie Carr
(801) 535-2807

MAX D. WHEELER (3439)
RICHARD A. VAN WAGONER (4690)
SAM HARKNESS (9448)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

Attorneys for Defendant David Eugene Ross, II

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. PATRICK MERRILL BRODY and DAVID EUGENE ROSS, II, Defendants.	)))))))))))	ORDER FOR TRAVEL No. 2:08-CR-00410 Judge Dale A. Kimball Magistrate Judge David O. Nuffer

Based upon the Motion for Travel and for good cause shown, it is hereby

ORDERED that defendant, David Eugene Ross II, may travel to Japan to visit with his son, ex-daughter-in-law and grandchildren from October 2, 2008 until October 13, 2008.

DATED this 15th day of September, 2008.

BY THE COURT:

Honorable Dale A. Kimball,
United States District Judge

G. FRED METOS - 2250
Attorney at Law
10 West Broadway, Suite 650
Salt Lake City, Utah 84101
Telephone: (801) 364-6474
Facsimile: (801) 364-5014

FILED
U.S. DISTRICT COURT
2008 SEP 15 A 9:
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

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

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	**FINDINGS AND ORDER**
v.	:	
KEVIN FLETCHER,	:	**Case No. 2:08 CR 446 DB**
Defendant.	:	

Based on motion of the defendant and stipulation of the plaintiff, the court enters the following:

FINDINGS

1. A motion to suppress evidence has been filed in this case and has not yet been resolved.

2. It is unreasonable to expect that the motion can be resolved within the time limits established by 18 U.S.C. §3161.

3. The ends of justice in granting a continuance outweigh the best interests of the public and the defendant in a speedy trial.

ORDER

It is hereby ORDERED that the trial date of September 24, 2008, be stricken and the trial rescheduled.

It is further ORDERED that the time between September 24, 2008, and the next trial date be excluded from the computation for the time for trial as described in 18 U.S.C. §3161.

DATED this 12 day of September, 2008.

Dee Benson

DEE BENSON
United States District Court Judge

** NEW TRIAL DATE 12/15/08 **
@ 8:30 AM

CERTIFICATE OF SERVICES

I hereby certify that on this 10th day of September, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

Carol A. Dain
carol.dain@usdoj.gov,laurie.coles@usdoj.gov

/s/ Suzanna Moore

United States District Court

CENTRAL DISTRICT OF UTAH

FILED IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
SEP 11 2008
D. MARK JONES, CLERK
BY DEPUTY CLERK

UNITED STATES OF AMERICA
v.

ORDER SETTING CONDITIONS OF RELEASE

Mark Infanger

Case Number: 2:08cr556 TC

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

(1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.

(2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.

(3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

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

_____ on _____
DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

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

(✔) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.

( ) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

_____ dollars ($) _____

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

Additional Conditions of Release

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

( ) (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)
who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed:_____
Custodian or Proxy

(X) (7) The defendant shall:
(X) (a) maintain or actively seek employment.
( ) (b) maintain or commence an educational program.
(X) (c) abide by the following restrictions on his personal associations, place of abode, or travel:
dft to maintain residence and not change residences without prior permission from USPO
dft to not leave the state of UT without prior permission from USPO
dft will not travel outside the continental U.S. without prior permission from the court
dft to not start any new businesses without prior permission from USPO
no new lines of credit
to not solicit loans from anyone
Buy or sale real estate
(X) (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:

(X) (e) report on a regular basis to the supervising officer as directed. With at least one face to face appointment a month.
( ) (f) comply with the following curfew:
( ) (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
( ) (h) refrain from excessive use of alcohol.
( ) (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C.§802 unless prescribed by a licensed medical practitioner.
( ) (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:

( ) (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property

( ) (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:

( ) (m) execute a bail bond with solvent sureties in the amount of $
( ) (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of) _____ o'clock for employment, schooling or the following limited purpose(s):

(X) (o) surrender any passport to Clerk of Court within 72 hours
( ) (p) obtain no passport
( ) (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. Upon the first test revealing illegal drug use, the pretrial office will notify the court immediately. Upon notification, a warrant for the defendant's arrest will issue.
( ) (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
( ) (s) submit to an electronic monitoring program as directed by the supervising officer.
( ) (t)

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

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

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

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

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

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

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

Acknowledgment of Defendant

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

Mark C

Signature of Defendant

2470 Goodnight

Address

Springville UT 8014735611

City and State Telephone

Directions to the United States Marshal

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

Date: 11 Sept 2008

Signature of Judicial Officer

Magistrate Judge Paul M. Warner

Name and Title of Judicial Officer

Paul C. Drecksel (5946)
Daniel E. Barnett (8579)
John P. Snow (10735)
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
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Attorneys for Sprint Communications Company, L.P.

FILED
U.S. DISTRICT COURT
2008 SEP 15 A 9:
DISTRICT OF UTAH
BY: DEPUTY CLERK

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

BEEHIVE TELEPHONE CO., INC., and BEEHIVE TELEPHONE CO. OF NEVADA, INC., Plaintiffs, v. SPRINT COMMUNICATIONS COMPANY, L.P., Defendant.	**[~~PROPOSED~~]** **ORDER FOR PRO HAC VICE ADMISSION OF MARC A. GOLDMAN** Case No. 2:08cv00380-DB Judge Dee V. Benson

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DU Civ R 83-1.1(d), the Motion For Pro Hac Vice Admission of Marc A. Goldman in the United States District Court, District of Utah in the subject case is GRANTED.

DATED this 12th day of September, 2008.

Dee Benson

Honorable Dee Benson
U.S. District Judge

FILED
U.S. DISTRICT COURT

2008 SEP 15 P 2:08

DISTRICT OF UTAH

BY:_____
DEPUTY CLERK

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kmurphy@erlawoffice.com

Attorneys for Defendants Rachel Cary and Patrice Borne

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

LAURA ROSER and ART INTELLECT, INC.	)	**ORDER OF DISMISSAL WITH PREJUDICE**
Plaintiffs,	)	
v.	)	
	)	Case No. 2:08cv00459
RACHEL CARY and PATRICE BORNE,	)	
	)	Judge Dee Benson
Defendants.	)	

The Court, having considered the stipulation for dismissal with prejudice of the Plaintiffs and being advised as to the record and facts in this case, and otherwise finding good cause therefore,

HEREBY ORDERS, ADJUDGES, AND DECREES that all of Plaintiffs' claims or potential claims against Defendants Rachel Cary and Patrice Borne, are dismissed with prejudice, with each party to bear his or her own costs and attorney fees.

DATED this 15th day of September, 2008.

BY THE COURT:

Dee Benson

Honorable Dee Benson
District Court Judge

Robert L. Janicki, #5493
Lance H. Locke, #9440
STRONG & HANNI
Attorneys for Defendants
3 Triad Center, Suite 500
Salt Lake City, Utah 84180
Telephone: (801) 532-7080
Facsimile: (801) 323-2090

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

DONALD R. FORD and TASHA M. FORD, Plaintiffs, vs. ONTECH DELAWARE, INC., ONTECH OPERATIONS, INC., and WAL-MART STORES, INC., Defendants.	**ORDER OF DISMISSAL WITHOUT PREJUDICE OF DEFENDANT WAL-MART STORES, INC.** Civil No.: 2:08-cv-547 Judge: Dale A. Kimball

The Court having separately received and approved the stipulation of the parties and for good cause shown does now hereby

ORDER, ADJUDGE AND DECREE that Plaintiffs' Complaint, and all claims contained therein against Defendant Wal-Mart Stores, Inc. be and the same hereby is dismissed without prejudice, all parties to bear their own costs and attorney's fees incurred herein. This dismissal does not effect in any manner Plaintiffs' claims against co-defendant Ontech.

DATED this 15th day of September, 2008.

BY THE COURT:

Honorable Dale A. Kimball

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2008, a true and correct copy of the foregoing **ORDER OF DISMISSAL WITHOUT PREJUDICE OF DEFENDANT WAL-MART STORES, INC.** was filed using the court's EM/ECF system, which sent notice to the following:

Daniel Wilkinson
DRIGGS, BILLS & DAY, P.C.
331 South 600 East
Salt Lake City, UT 84102
Attorney for Plaintiff

_____

003735.00079

FILED
U.S. DISTRICT COURT

2008 SEP 15 P 2: 08

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,** **Intervenor-Defendant.**	**Case No. 2:08cv00586 DB** **ORDER GRANTING PRO HAC VICE ADMISSION OF L. POE LEGGETTE**

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

Dated this 15th day of September, 2008.

By the Court

Dee Benson

Judge Dee Benson
District Court Judge

FILED
U.S. DISTRICT COURT
2008 SEP 15 P 2:08
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,** **Intervenor-Defendant.**	**Case No. 2:08cv00586 DB** **ORDER GRANTING PRO HAC VICE ADMISSION OF BRET A. SUMNER**

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

Dated this 15th day of September, 2008.

By the Court

Dee Benson

Judge Dee Benson
District Court Judge

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

FILED
U.S. DISTRICT COURT
2008 SEP 15 A 9:53
DISTRICT OF UTAH
BY DEPUTY CLERK

IRVING KARL BIGELOW, Plaintiff, vs. SOCIAL SECURITY ADMINISTRATION, et al. Defendants.	**ORDER ADOPTING REPORT AND RECOMMENDATION** Case No. 2:08-CV-626 Judge Dee Benson

Before the Court is the Report and Recommendation issued by United States Magistrate Judge David Nuffer on September 8, 2008, recommending that Plaintiff 's motion for temporary restraining order be denied. This recommendation is made on the basis that Plaintiff's motion is procedurally defective. Namely, it is not supported by the necessary documents as required by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 65.

Furthermore, Plaintiff's motion seeks to restrain the state of Utah's courts. Docket No. 10, at 1. The United States Supreme Court has held that federal courts may enjoin proceedings in state courts only in the rarest of circumstances. *Younger v. Harris*, 401 U.S. 37, 45 (1971).

Having reviewed all relevant materials, including the reasoning set forth in the Magistrate Judge's Report and Recommendation, the Court ADOPTS the Report and Recommendation and Plaintiff's motion for temporary restraining order is DENIED.

IT IS SO ORDERED

DATED this 13th day of September, 2008.

Dee Benson
United States District Judge

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Attorneys for Defendant ClearOne Communications, Inc.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

FRANCES M. FLOOD, **Plaintiff,** **v.** **CLEARONE COMMUNICATIONS, INC.,** **Defendant.**	**ORDER FOR PRO HAC VICE ADMISSION** **Civil No. 2:08-cv-00631** **Honorable Dee V. Benson**

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCivR 83-1.1(d), the motion for the admission pro hac vice of Brian S. Cousin in the United States District Court, District of Utah in the subject case is GRANTED.

DATED this 12th day of September 2008.

UNITED STATES DISTRICT COURT

Dee Benson

Honorable Dee V. Benson

FILED
U.S. DISTRICT COURT
2008 SEP 15 A 9:50
DISTRICT OF UTAH
DEPUTY CLERK

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Attorneys for Defendant ClearOne Communications, Inc.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

FRANCES M. FLOOD, **Plaintiff,** **v.** **CLEARONE COMMUNICATIONS, INC.,** **Defendant.**	**ORDER FOR PRO HAC VICE ADMISSION** **Civil No. 2:08-cv-00631** **Honorable Dee V. Benson**

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCivR 83-1.1(d), the motion for the admission pro hac vice of Neil A. Capobianco in the United States District Court, District of Utah in the subject case is GRANTED.

DATED this 12th day of September 2008.

UNITED STATES DISTRICT COURT

Dee Benson

Honorable Dee V. Benson

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Attorneys for Defendants Aurora Loan Services, Cal-Western Reconveyance, James H. Woodall, Woodall & Wasserman, Lehman Brothers Bank, FSB, Lehman Brothers, Mortgage Electronic Registration Systems, Inc. dba MERS, Pete Vella, and Gerald R. Moss

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH - CENTRAL DIVISION

BART N. CHRISTOFFERSON, Plaintiff, v. AURORA LOAN SERVICES, CAL WESTERN RECONVEYANCE, JAMES H. WOODALL & WASSERMAN, LEHMAN BROTHERS BANK, FSB LEHMAN BROTHERS AXIOM FINANCIAL, LLC, a Utah Limited Liability Company, MELISSA WRIGHT, an individual and Director of Axiom Financial INWEST TITLE SERVICES, INC, a Utah for profit Corporation, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, a foreign	Case No. 2:08-cv-00663-DAK **ORDER GRANTING STIPULATED MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO PLAINTIFF'S COMPLAINT**

corporation, DBA MERS, PETE VELLA, an individual and employee of Cal Western Reconveyance GERALD R. MOSS, an individual and CEO of Cal-Western Reconveyance,

Defendants.

Based upon the Stipulated Motion of Defendants Aurora Loan Services, Cal-Western Reconveyance, James H. Woodall, Woodall & Wasserman, Lehman Brothers Bank, FSB, Lehman Brothers, Mortgage Electronic Registration Systems, Inc. dba MERS, Pete Vella, and Gerald R. Moss ("Defendants"), and Plaintiff, *in propria persona*, for an enlargement of time for Defendants to respond to Plaintiff's Complaint, and other good cause appearing,

IT IS ORDERED THAT Defendants shall have until September 30, 2008, to respond to Plaintiff's Complaint.

Dated this 15th day of September, 2008.

Honorable Dale A. Kimball
United States District Court Judge

APPROVED AS TO FORM:

PITE DUNCAN, LLP

/s/ Peter J. Salmon
Peter J. Salmon, Attorneys for Defendants Aurora Loan Services, Cal-Western Reconveyance, James H. Woodall, Woodall & Wasserman, Lehman Brothers Bank, FSB, Lehman Brothers, Mortgage Electronic Registration Systems, Inc. dba MERS, Pete Vella, and Gerald R. Moss

/s/ Bart N. Christofferson
Plaintiff *in propia persona*

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of September, 2008, I electronically filed ORDER GRANTING STIPULATED MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO PLAINTIFF'S COMPLAINT with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following CM/ECF participants:

Daniel L. Steele
Stucki Steele Pia & Anderson
City Center 1, Suite 900
175 East 400 South
Salt Lake City, UT 84111
dan@sspafirm.com

Attorneys for Defendants Melissa Wright and Axiom Financial, LLC

and by Federal Express, placing a true copy in a sealed Federal Express envelope addressed to the following:

Bart N. Christofferson
407 South 300 East
Lehi, UT 84043
Plaintiff *in propia persona*

I am familiar with the firm's practice of collection and processing correspondence for Federal Express delivery and that the documents served are deposited with Federal Express this date for overnight delivery.

/s/ Peter J. Salmon
Peter J. Salmon, Attorneys for Defendants Aurora Loan Services, Cal-Western Reconveyance, James H. Woodall, Woodall & Wasserman, Lehman Brothers Bank, FSB, Lehman Brothers, Mortgage Electronic Registration Systems, Inc. dba MERS, Pete Vella, and Gerald R. Moss

MEMORANDUM

FILED
U.S. DISTRICT COURT

2008 SEP 15 A 11: 01

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

TO: D. Mark Jones
Clerk of the Court

FROM: Bruce S. Jenkins
U.S. Senior District Judge

DATE: September 12, 2008

SUBJECT: Ramos v. Medina
Case No. 2:08-cv-680

I find I must recuse myself from this case.

Would you please see that this case is reassigned to another judge pursuant to our computer program.

BRUCE S. JENKINS
U.S. Senior District Judge

Case: 2:08cv00680
Assigned To : Campbell, Tena
Assign. Date : 9/15/2008
Description: Ramos v. Medina

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

MAJOR BOB MUSIC, WB MUSIC CORP., ELLIOTT/JACOBSEN MUSIC PUBLISHING COMPANY, UNIVERSAL MUSIC CORPORATION, UNIVERSAL-POLYGRAM INTERNATIONAL PUBLISHING INC., EMI VIRGIN MUSIC INC., and SONY/ATV TUNES LLC, Plaintiffs, vs. SOUTH SHORE SPORTS BAR & GRILL, INC. and CREIGHTON G. CHUN, Defendants.	)))))))))))))))))	**ORDER FOR *PRO HAC VICE* ADMISSION OF CONOR F. FARLEY** Civil No. 2:08-cv-689 Judge Dee Benson

It appearing to the Court that Petitioner meets the *pro hac vice* admission requirements of D.U.Civ.R. 83-1.1(d), the Motion for *Pro Hac Vice* Admission of Conor F. Farley in the United States District Court, District of Utah, in the subject case is GRANTED.

DATED this 12th day of September, 2008.

Dee Benson
United States District Court Judge

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