IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED
CLERK, U.S. DISTRICT COURT
February 22, 2005 (11:44am)
DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. MARK CREW, Defendant.	ORDER DENYING DEFENDANT'S *PRO SE* MOTION TO DISMISS Case No. 2:04-CR-154 TS

This matter is before the court on Defendant Mark Crew's *pro se* Motion to Dismiss. On or about October 21, 2004, Defendant Mark Crew sent a letter to the court seeking a copy of the docket for the purpose of filing a request for final disposition under the Interstate Agreement on Detainers Act (IADA). 18 App. 2. At that time, Defendant Crew was represented by counsel and there were two Motions to Suppress pending, one filed by Defendant Crew and one filed by Defendant McKellips.

On December 3, 2004, Mr. Crew wrote again seeking new counsel and requesting that the case be dismissed based on his 180-day disposition request under the IADA. Defendant Crew's letters were lodged in the file and a hearing was scheduled before the Magistrate Judge.

On December 16, 2004, the government filed a Response to Defendant's Motion to Dismiss. There was not a formal Motion to Dismiss filed at the time. Apparently, the government was responding to Defendant Crew's attachment to his letter asking for a new attorney.

On December 20, 2004, new counsel was appointed for Defendant Crew. On December 30, 2004, the trial date was continued for all three defendants herein to allow Defendant Crew's new counsel sufficient time to prepare for trial. In view of the government's Response, the court construed Defendant Crew's letter as a *pro se* Motion to Dismiss and granted additional time for his newly appointed counsel to respond. The Reply brief filed by Defendant Crew's new counsel asserts, without citation or argument, that the following periods are not excluded for purposes of the Speedy Trial Act or the IADD: April 6, 2004, through June 1, 2004; June 1, 2004, through December 14, 2004; and December 15, 2004 to December 20, 2004.

Defendant's *pro se* Motion notes that his request for disposition was filed in April 2004. The Government represents that it was filed with the court on April 6, 2004.

Defendant Crew moves to dismiss contending that his case has not been resolved within 180 days as required under the IADA. The government contends that the time has not yet run because it was tolled by the delay attributable to the time necessary to resolve Defendant Crew's Motion to Suppress.[1]

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[1]Neither party addresses the scope of Defendant Crew's April 19, 2004 Waiver of Rights under Interstate Agreement on Detainers.

Defendant Crew is currently held at the Utah State Prison and the United States lodged a detainer against him for purposes of the charges in the present case. A "detainer . . . is a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency, or that the agency be advised when the prisoner's release is imminent." *Fex v. Michigan,* 507 U.S. 43, 44-45 (1993). The United States and all of the States are parties to the Interstate Agreement on Detainers (IAD). 18 U.S.C.App. § 1 Statutory Notes (listing jurisdictions).

> The Interstate Agreement on Detainers Act, ("IADA"), 18 U.S.C. .App. pp. 585-620 (1985), provides a procedure by which a prisoner against whom a detainer has been lodged may request the speedy disposition of the charges giving rise to the detainer. Article III(c) of the IADA provides that:
> [t]he warden, . . . having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based. IADA § 2, Art. III(c). If the prisoner requests final disposition of the charges, the jurisdiction that lodged the detainer must bring the prisoner to trial within 180 days. IADA § 2, Art. III(b). If the prisoner is not brought to trial within the 180 day period, the court "shall enter an order dismissing the [indictment] with prejudice." IADA § 2, Art. IV(c). Where the detainer is lodged by the United States, the order dismissing the indictment may be with or without prejudice. IADA § 9(1), 18 U.S.C.A.App. § 9(1).

U.S. v. Tummolo, 822 F.Supp. 1561, 1563 (S.D. Fla.,1993)(citations omitted).

The IADA contains provisions for granting extensions of the 180-period. However, the Circuits are split on whether a Defendant waives the limitation period during the time it takes to resolve matters raised by that Defendant. *See U.S. v. Whiting*, 28 F.3d 1296, 1307 (1st Cir. 1994)(explaining split). In the case *Knox v. Wyoming Dept. of Corrections*, 34 F.3d 964, 966-67 (10th Cir. 1994), the Tenth Circuit examined the split but declined to decide the tolling issue. In the absence of case law in this circuit, this court will follow the

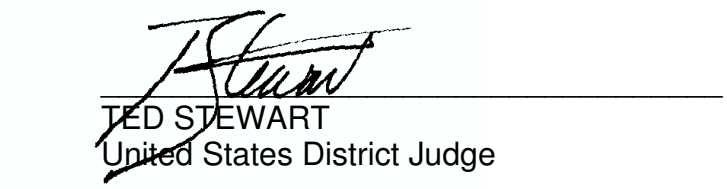
majority position allowing tolling as explained in *U.S. v. Collins*, 90 F.3d 1420, 1426-27 (9th Cir. 1996).

In the present case, Defendant Crew filed a Motion to Suppress on June 2, 2004. The court held an evidentiary motion on the motion, the matter was briefed, and the order was issued on November 19, 2004. Co-defendant McKellip's entirely separate Motion to Suppress was decided on December 14, 2004. Trial is now set to begin on February 22, 2005. Considering that the 180-day period was tolled during the time necessary to resolve Defendant Crew's Motion to Dismiss, the 180-day period has not expired and his Motion to Dismiss pursuant to the IADA will be denied. It is therefore

ORDERED Defendant that Mark Crew's *pro se* Motion to Dismiss is DENIED.

DATED this 22nd day of February, 2005.

BY THE COURT:



TED STEWART
United States District Judge

jmr

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00154

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Vernon G. Stejskal, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Wendy M. Lewis, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
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David O. Leavitt, Esq.
470 E 3900 S STE 200
SALT LAKE CITY, UT 84107
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Robert Breeze, Esq.
402 E 900 S #1
SALT LAKE CITY, UT 84111
EMAIL

Mr. Michael W Jaenish, Esq.
150 S 600 E #5C
SALT LAKE CITY, UT 84102
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

RECEIVED CLERK
FEB 18 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

MARTIN COCOZZA,	:	
		Court No. 2:04CV 00704DB
Plaintiff,	:	
vs.	:	ORDER
JO ANNE B. BARNHART, Commissioner Of Social Security,	:	Judge Dee Benson
	:	Magistrate Judge David Nuffer
Defendant.		

Based upon Defendant's Unopposed Motion for Enlargement of Time and good cause appearing therefore,

IT IS HEREBY ORDERED that Defendant may have up to and including March 21, 2005 to respond to Plaintiff's Brief In Support Of Petition For Review. Plaintiff's Reply Memorandum will then be due April 4, 2005.

DATED this 22nd day of February, 2005.

BY THE COURT:

Dee Benson

Honorable David Nuffer
United States Magistrate Judge

10

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00704

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Bradford D. Myler, Esq.
MYLER LAW OFFICES
1278 S 800 E
PO BOX 970039
OREM, UT 84097
EMAIL

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Craig J. Madson (3663)
Robert S. Rapp (7428)
MADSON & METCALF
15 West South Temple
Suite 900
Salt Lake City, Utah 84101
Telephone: (801) 537-1700

Attorneys for Plaintiff
Handi Quilter Company, Inc.

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 P 1:37
DISTRICT OF UTAH

RECEIVED CLERK
FEB 17 2005
U.S. DISTRICT COURT

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

HANDI QUILTER COMPANY, INC. a Utah corporation, Plaintiff, v. CSM LTD., a foreign Canadian Corporation, 1183056 ONTARIO INC., a foreign Canadian Corporation, and RICHARD DUVAL, a foreign Canadian resident, Defendants.	~~(Proposed)~~ **ORDER GRANTING SECOND MOTION FOR ENLARGEMENT OF TIME TO SERVE PROCESS** Civil Action No 2:04 CV 00884 DB Honorable Judge Dee Benson

Based on the motion of Plaintiff Handi Quilter Company, Inc. ("HQC"), pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and good cause appearing,

5

IT IS HEREBY ORDERED that the time for HQC to effect service of a summons and the Complaint on the Defendants CSM LTD., 1183056 ONTARIO INC., and RICHARD DUVAL is extended through and including March 18, 2005.

DATED this 22nd day of February, 2005

BY THIS COURT:

Honorable Judge Dee Benson
United States District Court Judge

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00884

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Craig J. Madson, Esq.
MADSON & METCALF
900 GATEWAY TOWER WEST
15 W S TEMPLE
SALT LAKE CITY, UT 84101-1605
EMAIL

PROB 12B (1/05)

United States District Court
for the District of Utah

FILED
CLERK, U.S. DISTRICT COURT

Request and Order for Modifying Conditions of Supervision With Consent of the Offender

(Waiver of hearing attached)

Docket Number: 2:02-CR-00743-001-DB
734

Name of Offender: **John Insixiengmy**
Name of Sentencing Judicial Officer: **Honorable Dee V. Benson**
Date of Original Sentence: **May 27, 2003**
Original Offense: **User of Controlled Substance in Possession of Firearm**
Original Sentence: **15 Months BOP, 36 Months Supervised Release**
Type of Supervision: **Supervised Release** Supervision Began: **October 8, 2003**

PETITIONING THE COURT

[X] To modify the conditions of supervision as follows:

The defendant shall reside in a community treatment center for a period of 90 days, with work release, educational release, medical release, release to attend religious services, release to participate in treatment, or other approved leave as deemed appropriate by the probation office or community treatment center.

CAUSE

The defendant's term of supervised release began on October 8, 2003. On November 5, 2003, an Administrative Staffing was conducted to address the fact that on October 14, 2003, and November 5, 2003, the defendant submitted urine specimens which tested positive for methamphetamine and marijuana, respectively. The defendant agreed to successfully complete substance abuse treatment, and to not associate with anyone using, distributing, or possessing a controlled substance. He successfully completed substance abuse treatment in August of 2004.

On February 7, 2004, the defendant was arrested for providing his identification to a minor for the purpose of allowing the minor to enter a bar and consume alcohol. The defendant was charged in the Salt Lake Justice Court, admitted the charges and was assessed a $300 fine.

On December 6, 2004, an Administrative Staffing was conducted following the defendant failing to submit a urine specimen for testing on November 12, 2004, as directed by the United States Probation Office and testing positive for marijuana on November 13, 2004. The defendant agreed to again participate in substance abuse treatment and his drug testing frequency was increased.

Since the Administrative Staffing on December 6, 2004, the defendant has submitted two diluted urine specimens, failed to submit urine specimens as directed three times, and failed to attend substance abuse treatment on one occasion. The defendant admitted that he has continued to use marijuana and that the reason he fails to submit as directed is that he forgets to call to find out if he is scheduled to submit. The defendant states that the reason his missed treatment was that he forgot about it.

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

Shelley Mangum

Shelley Mangum, U.S. Probation Officer
Date: February 17, 2005

THE COURT ORDERS:

[✓] The modification of conditions as noted above
[ ] No action
[ ] Other

Dee Benson

Dee V. Benson
Chief United States District Judge

Date: 2/22/05

PROB 49

John Insixiengmy
2:02-CR-00743-001-DB

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE

WAIVER OF RIGHT TO HEARING PRIOR TO MODIFICATION OF CONDITIONS OF SUPERVISION

I have been advised by United States Probation Officer Shelley Mangum that she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:02-CR-00743-001-DB. The modification would be:

> **The defendant shall reside in a community treatment center for a period of 90 days, with work release, educational release, medical release, release to attend religious services, release to participate in treatment, or other approved leave as deemed appropriate by the probation office or community treatment center.**

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.

John Insixiengmy

02-16-05
Date

Shelley Mangum
Witness: Shelley Mangum
United States Probation Officer

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cr-00734

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Mark S. Kouris, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Michele M. Christiansen, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

A CERTIFIED TRUE COPY

JAN 26 2005

ATTEST
FOR THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 14 P 2:06
DISTRICT OF UTAH

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

JAN 10 2005

FILED
CLERK'S OFFICE

DOCKET NO. 1507

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

FEB 01 2005

JAMES W. McCORMACK, CLERK
By: DEP CLERK

IN RE PREMPRO PRODUCTS LIABILITY LITIGATION

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO-39)

On March 4, 2003, the Panel transferred five civil actions to the United States District Court for the Eastern District of Arkansas for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. Since that time, 1,640 additional actions have been transferred to the Eastern District of Arkansas. With the consent of that court, all such actions have been assigned to the Honorable William R. Wilson, Jr.

It appears that the actions on this conditional transfer order involve questions of fact which are common to the actions previously transferred to the Eastern District of Arkansas and assigned to Judge Wilson.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the Eastern District of Arkansas for the reasons stated in the order of March 4, 2003, 254 F.Supp.2d 1366 (J.P.M.L. 2003), and, with the consent of that court, assigned to the Honorable William R. Wilson, Jr.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Eastern District of Arkansas. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

Michael J. Beck
Michael J. Beck
Clerk of the Panel

MacKenzie v Wyeth et al
1:04cv164DB

Inasmuch as no objection is pending at this time, the stay is lifted.

JAN 26 2005

CLERK'S OFFICE
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

A TRUE COPY I CERTIFY
JAMES W. McCORMACK, CLERK
By Bobbie Mixon D.C.

511

SCHEDULE CTO-39 - TAG ALONG ACTIONS
DOCKET NO. 1507
IN RE PREMPRO PRODUCTS LIABILITY LITIGATION

DISTRICT	DIV.	C.A.#	
ALABAMA MIDDLE			
ALM	2	04-1080	Shirley Waites, et al. v. Wyeth, et al.
ARKANSAS WESTERN			
ARW	1	04-1108	Linda Sinclair v. Wyeth, et al.
ARW	5	04-5306	Linda Reeves v. Wyeth, Inc.
CALIFORNIA CENTRAL			
CAC	2	04-8652	Pushpa Shah, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8653	Sandy Heller, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8654	Helen Epstein, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8656	Barbara Krol, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8657	Leah Alper, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8658	LindaTroutman, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8782	Judith Hawthorne, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8785	Karen Shareff v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8786	Marilyn Steinman v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8787	Betty Andelson v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8788	Willa Weissmer, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8789	Eileen Wasser v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8791	Ferdous Broumandi, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8793	Elaine McMurray v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8794	Virginia Mullikin v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8796	Carolyn Engel, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8797	Miriam Reinhardt v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8798	Judith Kriss v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8799	Barbara McBride, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8800	Klaire Markham, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8803	Rebeca Indyk, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8804	Suzanne Kaplan, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8805	Judy Kravitz, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8806	Ofelia Rodriguez, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8807	Barbara Shelburne, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8808	Janice Gratz, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8809	Sandra Ley, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8810	Joyce Baron v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-8990	Diana Jean May Vogelbaum, et al. v. Wyeth, et al.
CAC	2	04-8993	Peggy Ann Grant, et al. v. Wyeth, et al.
CAC	2	04-8999	Mary Mathews, et al. v. Wyeth, et al.
CAC	2	04-9244	Marie Hadji v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-9246	Kimiko McCown, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CAC	2	04-9248	Louise Magener, et al. v. Wyeth Pharmaceuticals, Inc., et al.
CALIFORNIA NORTHERN			
CAN	3	04-3822	Mildred Rimmer v. Wyeth Pharmaceuticals, Inc., et al.
CONNECTICUT			
CT	3	04-1811	Tina Rich v. Wyeth, et al.

DISTRICT	DIV.	C. A.#	
FLORIDA MIDDLE			
FLM	8	04-2507	Marjorie Bonnett v. Wyeth, Inc., et al.
FLM	8	04-2508	Susan Dye v. Wyeth, Inc., et al.
FLM	8	04-2509	Sandra Danitz v. Wyeth, Inc., et al.
FLM	8	04-2510	Evelyn Gutchman v. Wyeth, Inc., et al.
FLM	8	04-2511	Jeanne Turonis v. Wyeth, Inc., et al.
FLM	8	04-2512	Patricia S. Baldy v. Wyeth, Inc., et al.
FLM	8	04-2513	Mary Lou Wittig v. Wyeth, Inc., et al.
FLM	8	04-2535	Stephanie T. Fowle v. Wyeth, Inc., et al.
FLM	8	04-2553	Joan Supplee v. Wyeth, Inc., et al.
FLM	8	04-2599	Roberta Costa v. Wyeth, Inc., et al.
GEORGIA NORTHERN			
GAN	1	04-2978	Janelle Posey, et al. v. Wyeth, et al.
~~GAN~~	~~1~~	~~04-2980~~	~~June Lewallen v. Wyeth, et al.~~ Opposed 1/26/05
GAN	4	04-266	Betty Matthews v. Wyeth, Inc., et al.
GEORGIA SOUTHERN			
GAS	4	04-199	Mary Brown v. Wyeth, Inc., et al.
IDAHO			
ID	1	04-560	Darlene Lee v. Wyeth, et al.
ILLINOIS NORTHERN			
ILN	1	04-5377	Lynn Leader, et al. v. Wyeth, et al.
KENTUCKY WESTERN			
KYW	3	04-633	Ann Sims Barnes, et al. v. Wyeth, Inc., et al.
MASSACHUSETTS			
MA	1	04-12423	Patricia Lowndes v. Wyeth, et al.
MA	1	04-12424	Arlene Joppru v. Wyeth, et al.
MINNESOTA			
MN	0	04-4293	Eleanor Daly v. Wyeth, et al.
MN	0	04-4888	Beverly Adams v. Wyeth, et al.
MN	0	04-4938	Barbara Handelman v. Wyeth, et al.
MN	0	04-4939	Barbara Vaulet v. Wyeth, et al.
~~MISSISSIPPI~~ NORTHERN			
~~MSN~~	~~1~~	~~04-263~~	~~Jimmie Ann Lambert v. Wyeth, Inc., et al.~~ Opposed 1/21/05
MSN	1	04-361	Virginia Sheffield v. Wyeth, Inc., et al.
MONTANA			
MT	1	04-155	Emily Heth, et al. v. Wyeth, et al.
NEVADA			
~~NV~~	~~2~~	~~04-1592~~	~~Gloria Womack, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1593~~	~~Betty Kruger, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1594~~	~~Elaine Pierce, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1595~~	~~Norma Early, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1596~~	~~Ruselle Campbell, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1597~~	~~Marlene Russing, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1598~~	~~Marion Manausa, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1599~~	~~Darlene Auburn, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1600~~	~~Ruth Albin-Hering, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1601~~	~~Dorene Knowles, et al. v. Wyeth, et al.~~ Opposed 1/26/05

DISTRICT DIV. CIVIL ACTION#

~~NV~~	~~2~~	~~04-1602~~	~~June Brooks, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1606~~	~~Linda Schecht, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1607~~	~~Janice Welsh, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1608~~	~~DollyTucker, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1609~~	~~Valorie Delcontic, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1610~~	~~Permentha Pampe, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1611~~	~~Nancy Mosner, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1612~~	~~Carol Einhorn, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1613~~	~~Vesta Woodhouse, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1614~~	~~Sally Hellman, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1615~~	~~Shirley Wernikove, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1616~~	~~Elizabeth Gerbert, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~2~~	~~04-1617~~	~~Judy Pivar, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~3~~	~~04-672~~	~~Shyrl Bailey, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~3~~	~~04-673~~	~~Linda Baumgardner, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~3~~	~~04-674~~	~~Diane Davis, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~3~~	~~04-675~~	~~Lorraine Van Brocklin, et al. v. Wyeth, et al.~~ Opposed 1/26/05
~~NV~~	~~3~~	~~04-681~~	~~Carol McCreary, et al. v. Wyeth, et al.~~ Opposed 1/26/05

NEW YORK NORTHERN

NYN	1	04-1319	Nina Schilling v. Wyeth, et al.

NEW YORK SOUTHERN

NYS	1	04-8996	Dorothea Bishop v. Wyeth, Inc., et al.
NYS	1	04-9443	Barbara Frank v. Wyeth, et al.

OHIO NORTHERN

OHN	3	04-7679	Cathy Hilkens, et al. v. Wyeth, et al.
OHN	3	04-7708	Donna Toitch, et al. v. Wyeth, Inc., et al.

OREGON

OR	3	04-1706	Rebecca Noyes, et al. v. Wyeth, et al.

SOUTH CAROLINA

SC	3	04-23274	Bette McClure, et al. v. Wyeth, et al.

TEXAS NORTHERN

TXN	3	04-2181	Mary L. Bush v. Wyeth, Inc., et al.

UTAH

UT	1	04-164	Lynda MacKenzie v. Wyeth, et al.

VIRGINIA WESTERN

VAW	1	04-119	Louise Meade, et al. v. Wyeth, Inc., et al.

VERMONT

VT	2	04-328	Pamela Zarra-Redden v. Wyeth, et al.

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cv-00164

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. James Esparza, Esq.
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SALT LAKE CITY, UT 84117
EMAIL

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CLERK, U.S. DISTRICT COURT
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BY: _____
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U.S. DISTRICT COURT
DISTRICT OF UTAH

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Reha Deal (#8487)
HOLLAND & HART LLP
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Salt Lake City, Utah 84111-1031
Telephone: (801) 595-7800
Facsimile: (801) 364-9124

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

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

ORDER

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. MERRILL SCOTT & ASSOCIATES, LTD.; MERRILL SCOTT & ASSOCIATES, INC.; PHOENIX OVERSEAS ADVISORS, LTD.; GIBRALTER PERMANENTE ASSURANCE, LTD.; PATRICK M. BRODY; DAVID E. ROSS II and MICHAEL G. LICOPANTIS, Defendants.	**MOTION TO CONSOLIDATE** Civil No. 2:02CV-0039C LEAD CASE Judge Tena Campbell Magistrate Judge David Nuffer 2:04CV931 TC MEMBER CASE
DAVID K. BROADBENT, ESQ., as RECEIVER for MERRILL SCOTT & ASSOCIATES, LTD.; MERRILL SCOTT & ASSOCIATES, INC.; PHOENIX OVERSEAS ADVISORS, LTD.; GIBRALTER PERMANENTE ASSURANCE, LTD.; and each of their respective SUBSIDIARIES and AFFILIATED ENTITIES, Third-Party Plaintiff, v. CERTAIN UNDERWRITERS AT LLOYD'S, LONDON; and JAMES P. LANDIS, Third-Party Defendants.	So ordered 2-22-2005 Tena Campbell

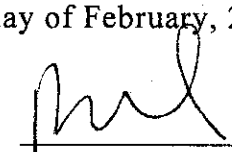
7

CHARLES COZEAN, Intervention Plaintiff, v. DAVID K. BROADBENT, ESQ., as RECEIVER for MERRILL SCOTT & ASSOCIATES, LTD.; MERRILL SCOTT & ASSOCIATES, INC.; PHOENIX OVERSEAS ADVISERS, LTD.; GIBRALTAR PERMANENTE ASSURANCE, LTD.; and each of their respective SUBSIDIARIES and AFFILIATED ENTITIES; and U.S. SECURITIES AND EXCHANGE COMMISSION, Intervention Defendants.	)

David K. Broadbent, as Receiver for Merrill Scott & Associates, Ltd.; Merrill Scott & Associates, Inc.; Phoenix Overseas Advisors, Ltd.; Gibralter Permanente Assurance, Ltd., and each of their respective Subsidiaries and Affiliated Entities (collectively "Merrill Scott"), through counsel, Holland & Hart LLP, and pursuant to Rule 42 of the Federal Rules of Civil Procedure, District of Utah Civil Rule 42-1, and 28 U.S.C.A. § 1651(a), hereby moves this Court to consolidate *Rio de Caballos, L. C., et al. v. Broadbent, et al.*, Case No. 2:04CV00931 (the "Woods Action"), currently pending before Judge Ted Stewart, with the above-captioned action (the "SEC Action"). Consolidation is warranted because the Woods Action and the SEC Action involve common questions of law and fact, and because consolidation will promote judicial economy.

This motion is supported by a memorandum of points and authorities, filed concurrently herewith. Additionally, a proposed order has been submitted for the Court's convenience.

Respectfully submitted this 8th day of February, 2005.



Brent E. Johnson
Reha Deal

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

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2005, I caused a true and correct copy of the foregoing document(s) to be served on the parties involved, listed below, addressed as follows:

- [x] U.S. Mail, postage prepaid
- [ ] Hand Delivery
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William B. McKean, Esq.
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Attorneys for Michael G. Licopantis

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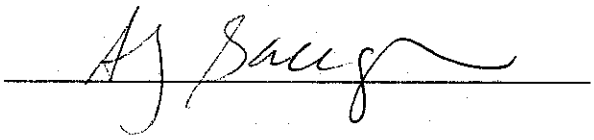

3338268_1.DOC

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00931

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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Courtesy Copy

FILED
CLERK, U.S. DISTRICT COURT
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U.S. DISTRICT COURT
DISTRICT OF UTAH

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Reha Deal (#8487)
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Facsimile: (801) 364-9124

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

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

ORDER

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. MERRILL SCOTT & ASSOCIATES, LTD.; MERRILL SCOTT & ASSOCIATES, INC.; PHOENIX OVERSEAS ADVISORS, LTD.; GIBRALTER PERMANENTE ASSURANCE, LTD.; PATRICK M. BRODY; DAVID E. ROSS II and MICHAEL G. LICOPANTIS, Defendants.	**MOTION TO CONSOLIDATE** Civil No. 2:02CV-0039C LEAD CASE Judge Tena Campbell Magistrate Judge David Nuffer 2:04CV931 TC MEMBER CASE
DAVID K. BROADBENT, ESQ., as RECEIVER for MERRILL SCOTT & ASSOCIATES, LTD.; MERRILL SCOTT & ASSOCIATES, INC.; PHOENIX OVERSEAS ADVISORS, LTD.; GIBRALTER PERMANENTE ASSURANCE, LTD.; and each of their respective SUBSIDIARIES and AFFILIATED ENTITIES, Third-Party Plaintiff, v. CERTAIN UNDERWRITERS AT LLOYD'S, LONDON; and JAMES P. LANDIS, Third-Party Defendants.	So ordered 2-22-2005 Tena Campbell

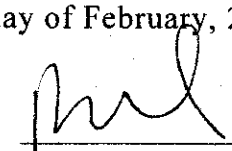
442

CHARLES COZEAN, Intervention Plaintiff, v. DAVID K. BROADBENT, ESQ., as RECEIVER for MERRILL SCOTT & ASSOCIATES, LTD.; MERRILL SCOTT & ASSOCIATES, INC.; PHOENIX OVERSEAS ADVISERS, LTD.; GIBRALTAR PERMANENTE ASSURANCE, LTD.; and each of their respective SUBSIDIARIES and AFFILIATED ENTITIES; and U.S. SECURITIES AND EXCHANGE COMMISSION, Intervention Defendants.	)

David K. Broadbent, as Receiver for Merrill Scott & Associates, Ltd.; Merrill Scott & Associates, Inc.; Phoenix Overseas Advisors, Ltd.; Gibralter Permanente Assurance, Ltd., and each of their respective Subsidiaries and Affiliated Entities (collectively "Merrill Scott"), through counsel, Holland & Hart LLP, and pursuant to Rule 42 of the Federal Rules of Civil Procedure, District of Utah Civil Rule 42-1, and 28 U.S.C.A. § 1651(a), hereby moves this Court to consolidate *Rio de Caballos, L. C., et al. v. Broadbent, et al.*, Case No. 2:04CV00931 (the "Woods Action"), currently pending before Judge Ted Stewart, with the above-captioned action (the "SEC Action"). Consolidation is warranted because the Woods Action and the SEC Action involve common questions of law and fact, and because consolidation will promote judicial economy.

This motion is supported by a memorandum of points and authorities, filed concurrently herewith. Additionally, a proposed order has been submitted for the Court's convenience.

Respectfully submitted this 8th day of February, 2005.



Brent E. Johnson
Reha Deal

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

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2005, I caused a true and correct copy of the foregoing document(s) to be served on the parties involved, listed below, addressed as follows:

- [x] U.S. Mail, postage prepaid
- [ ] Hand Delivery
- [ ] Fax

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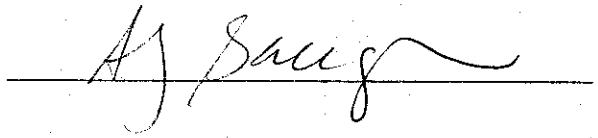

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alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00039

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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SALT LAKE CITY, UT 84101
JFAX 9,3598256

PS8 (1/05)

United States District Court
for the District of Utah

FILED
CLERK, U.S. DISTRICT COURT

Petition and Order for Action on Conditions of Pretrial Release

2:05CR95 TS

Name of Defendant: **Paul Liapis**

Docket Number: ~~**2:05-CR-00091**~~ **TC**

Name of Judicial Officer: **Honorable Tena Campbell**

DY:
DEPUTY CLERK

Date of Release: **February 11, 2005**

~~2:05MJ40 SA~~

PETITIONING THE COURT

[X] To issue a warrant 3469 W. 7625 S. West Jordan, Utah 84084

CAUSE

The pretrial services officer believes that the defendant has violated the conditions of supervision as follows:

Allegation No. One: On February 22, 2005 the defendant submitted a urine sample which tested positive for methamphetamine and he admitted recent use of methamphetamine.

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

Steve Mockli, U.S. Pretrial Services Officer
Date: February 22, 2005

THE COURT ORDERS:

[✓] The issuance of a Warrant

[ ] No action

[ ] Other

Tena Campbell
Honorable Tena Campbell
United States Magistrate Judge

Date: 2-21-2005

12

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00095

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Lana Taylor, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

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CLERK, U.S. DISTRICT COURT
2005 FEB 22 P 3:01
DISTRICT OF UTAH
BY: DEPUTY CLERK

RECEIVED
JUDGE TENA CAMPBELL

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RECEIVED CLERK
FEB 17 2005
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	**ORDER TO PRODUCE FEDERAL INMATE FOR TRIAL**
v.	:	
DAVID SUNNY UMOH,	:	**Case No. 03 CR 142 TC**
	:	**Judge: Tena Campbell**
Defendant.	:	

Based on the motion of the defendant and good cause shown:

It is hereby ORDERED that the United States Marshall to produce Heidi Martinez, currently incarcerated at Phoenix FCI, to the United States District Court for the District of Utah to testify in the trial of the above named individual no later than 8:00 a.m. Monday, March 14, 2005 at the Federal Court House 350 South Main, Salt Lake City, Utah.

83

DATED this 21 day of February, 2005.

TENA CAMPBELL
United States District Court Judge

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was mailed/hand delivered on this 17th day of February, 2005, to:

Vernon Stejskal
Special Assistant United States Attorney
Attorneys for the United States of America
348 South Temple
Salt Lake City, Utah 84111

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:03-cr-00142

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Vernon G. Stejskal, Esq.
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Hakeem Ishola, Esq.
ISHOLA & ASSOCIATES PC
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US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

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OFFICE OF
JUDGE TENA CAMPBELL

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

ROBERT PETT, and CHARLES SCHULTZ, Plaintiffs, vs. JAMES DUDZINSKI, and STEVE IVIE, Defendants.	**ORDER GRANTING LEAVE TO FILED OVERSIZED MEMORANDUM** Civil No. 2:03 CV 00508 TC Judge Tena Campbell Magistrate Judge David O. Nuffer

Because it appears there is good cause for granting Plaintiff's motion, IT IS HEREBY ORDERED that the Plaintiffs' Ex Parte Motion For Leave to File Oversized Memorandum is GRANTED. The Memorandum Supporting Motion to Alter or Amend Judgment is accepted.

Dated this 22 day of Feb, 2005.

BY THE COURT:

Tena Campbell

DAVID O. NUFFER
United States Magistrate Judge

82

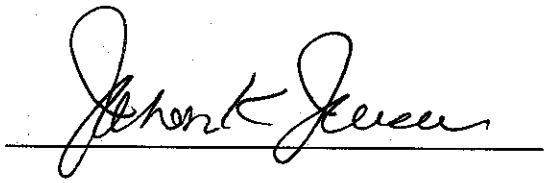
CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing **ORDER**, via U.S. Mail, postage prepaid, to:

Joni J. Jones (801) 366-0101
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 140856
Salt Lake City, Utah 84114-0856

Frank D. Mylar
MYLAR & ASSOCIATES
6925 Union Park Center, Suite 600
Salt Lake City, Utah 84047-4141

Dated this 18th day of February, 2005.



alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00508

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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Mr. Frank D Mylar, Esq.
MYLAR & ASSOCIATES
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Mr. Charles A Schultz, Esq.
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BRIGHAM CITY, UT 84302
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CLERK, U.S. DISTRICT COURT
2005 FEB 22 P 3:01
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BY: _____
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FEB 22 2005
OFFICE OF
JUDGE TENA CAMPBELL

J. MICHAEL BAILEY (4965)
JOHN E. DELANEY (8481)
Parsons Behle & Latimer
Attorneys for Defendant James D. Scanlon III dba
Scanlon Associates
One Utah Center
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Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

RECEIVED CLERK
FEB 18 2005
U.S. DISTRICT COURT

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

COMPLIANCE SOFTWARE, INC., a Utah company, Plaintiff, vs. JAMES D. SCANLON III, an individual, dba SCANLON ASSOCIATES, Defendant.	Case No. 2:05CV00015 TC **~~[PROPOSED]~~ ORDER GRANTING STIPULATION TO EXTEND TIME TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFF'S COMPLAINT** Judge Tena Campbell

Based on the Stipulation for Extension of Time to Answer or Otherwise Respond to Plaintiff's Complaint entered into between defendant James D. Scanlon III, d/b/a Scanlon Associates ("Scanlon"), and plaintiff Compliance Software, Inc., by and through their respective counsel of record, and good cause appearing therefore.

It is hereby ORDERED that Scanlon may have an extension of time through and including Monday, April 18, 2005, in which to answer or otherwise respond to plaintiff's

5

Complaint, subject to CSI's right to require Scanlon, with ten (10) days written notice, to file its answer or otherwise respond to CSI's Complaint prior to April 18, 2005.

DATED this 22 day of February, 2005.

BY THE COURT:

Tena Campbell

THE HONORABLE TENA CAMPBELL
UNITED STATES DISTRICT JUDGE

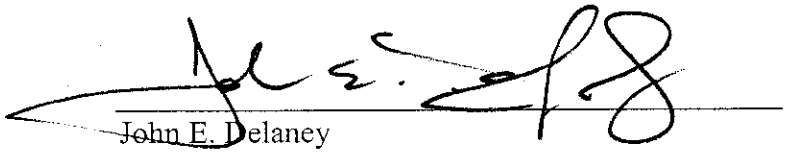
APPROVED AS TO FORM:

ANDREW H. STONE
JOHN A. PEARCE
CANDICE PITCHER
JONES, WALDO, HOLBROOK &
MCDONOUGH, P.C.
Attorneys for Plaintiff Compliance Software, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2005, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **[PROPOSED] ORDER GRANTING STIPULATION TO EXTEND TIME TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFF'S COMPLAINT**, to:

Andrew H. Stone
John A. Pearce
Candice Pitcher
JONES, WALDO, HOLBROOK &
McDONOUGH, P.C.
170 South Main Street, Suite 1500
Salt Lake City, UT 84101



John E. Delaney

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00015

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Andrew H Stone, Esq.
JONES WALDO HOLBROOK & MCDONOUGH
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SALT LAKE CITY, UT 84145-0898
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FILED
CLERK, U.S. DISTRICT COURT
RECEIVED
FEB 22 2005
DISTRICT OF UTAH
OFFICE OF
JUDGE DEE BENSON

RECEIVED CLERK
FEB 18 2005
U.S. DISTRICT COURT

ORIGINAL

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

RONALD D. RUSSO Plaintiff	*	CASE NO. 2: 05-CV-59 TC
v.	*	Appearing on behalf of:
BALLARD MEDICAL PRODUCTS and KIMBERLY- CLARK WORLDWIDE, INC. and KIMBERLY- CLARK CORPORATION Defendant.	*	Ronald D. Russo (Plaintiff/Defendant)

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Jefferson Gross, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: 2/18, 20 05. (Signature of Local Counsel) 8339 (Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Joseph A. Kelly, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) x a non-resident of the State of Utah or, (ii) ___ a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Jefferson Gross as associate local counsel.

Date: February 11, 20 05. Check here X if petitioner is lead counsel.

(Signature of Petitioner) FEE PAID

Name of Petitioner: Joseph A. Kelly Office Telephone: (401) 331-7272 (Area Code and Main Office Number)

Business Address: CARROLL, KELLY & MURPHY (Firm/Business Name)

One Turks Head Building, Suite 400 (Street) Providence, RI (City, State) 02903 (Zip)

11

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
Rhode Island State and Supreme Courts	Rhode Island	1951
United States District Court for the District of Rhode Island,	Rhode Island,	1952
First Circuit Court of Appeals	Massachusetts	1958
United States Supreme Court		1978

(If additional space is needed, attach separate sheet.)

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
None		

(If additional space is needed, attach a separate sheet.)

ORDER OF ADMISSION

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

This 22 day of Feb, 2005.

Tena Campbell
U.S. District Judge

CERTIFICATE OF SERVICE

On the date below written, the undersigned hereby certifies that a true and correct copy of the foregoing **MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL** was mailed with all first-class postage pre-paid to:

Brett L. Foster
Mark A. Miller
HOLLARD & HART, LLP
60 E. South Temple, Suite 2000
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Attorneys for Defendants

Scott S. Barker
HOLLAND & HART
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Denver, Colorado 80202
Fax: (303) 295-8261
Attorneys for Defendants

Joseph A. Kelly
Paula A. Kelly
CARROLL, KELLY & MURPHY
One Turks Head Place, Suite 400
Providence, Rhode Island 02903
Fax: (401) 331-4404
Attorneys for Plaintiff

DATED this the 18th day of February, 2005.

ORIGINAL

FILED
CLERK, U.S. DISTRICT COURT
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DISTRICT OF UTAH
BY: DEPUTY CLERK
FEB 2 7 2005
OFFICE OF
JUDGE TENA CAMPBELL
RECEIVED CLERK
FEB 18 2005
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

RONALD D. RUSSO Plaintiff	*	CASE NO. 2: 05-CV-59 TC
v.	*	Appearing on behalf of:
BALLARD MEDICAL PRODUCTS and KIMBERLY-CLARK WORLDWIDE, INC. and KIMBERLY-CLARK CORPORATION Defendant.	*	Ronald D. Russo (Plaintiff/Defendant)

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Jefferson Gross, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: 2/18, 2005. (Signature of Local Counsel) 8339 (Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Paula Kelly, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) x a non-resident of the State of Utah or, (ii) ___ a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Jefferson Gross as associate local counsel.

Date: February 11, 2005. Check here ___ if petitioner is lead counsel.

FEE PAID

(Signature of Petitioner)

Name of Petitioner: Paula Kelly Office Telephone: (401) 331-7272
(Area Code and Main Office Number)

Business Address: CARROLL, KELLY & MURPHY
(Firm/Business Name)
One Turks Head Building, Suite 400, Providence, RI 02903
Street City State Zip

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
Rhode Island State and Supreme Courts	Rhode Island	1982
United States District Court for the District of Rhode Island,	Rhode Island,	1983

(If additional space is needed, attach separate sheet.)

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
None		

(If additional space is needed, attach a separate sheet.)

ORDER OF ADMISSION

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

This 22 day of Feb, 2005.

Tena Campbell
U.S. District Judge

CERTIFICATE OF SERVICE

On the date below written, the undersigned hereby certifies that a true and correct copy of the foregoing **MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL** was mailed with all first-class postage pre-paid to:

Brett L. Foster
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Attorneys for Defendants

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Providence, Rhode Island 02903
Fax: (401) 331-4404
Attorneys for Plaintiff

DATED this the 18th day of February, 2005.

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00059

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FILED
CLERK, U.S. DISTRICT COURT
2002 FEB 22 A 10:01
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

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Kansas City, MO 64108-2613
Telephone: (816) 474-6550
Facsimile: (816) 421-5547

Attorneys for Ansul Incorporated

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

SAFEWAY, INC., Plaintiff, v. CONSONUS, INC., et al., Defendants.	**ORDER OF DISMISSAL OF CERTAIN CLAIMS WITH PREJUDICE** Civil No. 2:02-CV-1216 Judge David Sam

Based upon the signed Stipulation for Dismissal of Certain Claims With Prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, and good cause appearing therefore,

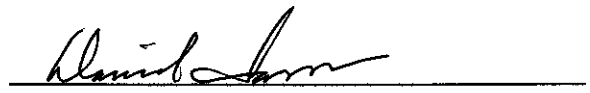
IT IS HEREBY ORDERED that the following claims are hereby dismissed with prejudice:

1. Consonus' Cross-Claim complaint against Ansul.

531

DATED this 22nd day of February, 2005.

BY THE COURT:



Judge David Sam

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ORDER OF DISMISSAL OF CERTAIN CLAIMS WITH PREJUDICE** was mailed in the U.S. Mail, postage prepaid, this 21st day of February, 2005, addressed as follows:

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Attorneys for Union Pointe Construction Corporation

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Cleveland, OH 44114
Attorneys for NCR Corporation

Jolene Morgan

asp

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01216

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 A 10:
DISTRICT OF UTAH
BY: DEPUTY CLERK

RECEIVED
FEB 22 2005
OFFICE OF JUDGE
DAVID SAM

John N. Braithwaite, Bar No. 4544
David Sonnenreich, Bar No. 4917
PLANT, CHRISTENSEN & KANELLY
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Telephone: (801) 363-7611

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SAFEWAY, INC. Plaintiff, v. CONSONUS, INC., CCI MECHANICAL, INC., ALARM CONTROL COMPANY, UNION POINTE CONSTRUCTION CORPORATION, AND EHNINGER FETZER THOLEN ARCHITECTS, INC., d.b.a. EFT ARCHITECTS, INC., COLVIN ENGINEERING ASSOCIATES, INC., and DUNN ASSOCIATES, INC. Defendants.	)	ORDER GRANTING CCI MECHANICAL, INC.'S MOTION FOR SUMMARY JUDGMENT ON CROSS-CLAIMS OF UNION POINTE CONSTRUCTION CORPORATION AND ALARM CONTROL COMPANY, AND DISMISSING CROSS-CLAIMS OF CCI MECHANICAL, INC. AGAINST ALARM CONTROL COMPANY AND UNION POINTE CONSTRUCTION CORPORATION Civil No. 2:02CV1216 Judge David Sam

Based upon the Stipulation filed by Plaintiff Safeway, Inc., Defendant CCI Mechanical, Inc., Defendant Alarm Control Company, and Defendant Union Pointe Construction Corporation, for an order granting CCI Mechanical, Inc.'s Motion for Summary Judgment on the cross-claims filed against it by Union Pointe Construction Corporation and Alarm Control Company, and dismissing CCI Mechanical, Inc.'s cross-claims against Alarm Control Company and Union Pointe Construction

532

Corporation, it is

HEREBY ORDERED, ADJUDGED AND DECREED that:

1. CCI Mechanical, Inc.'s Motion for Summary Judgment on the cross-claims filed against it by Union Pointe Construction Corporation and Alarm Control Company is granted for the reasons set forth in CCI Mechanical, Inc.'s moving papers. Union Pointe Construction Corporation's and Alarm Control Company's cross-claims against CCI Mechanical, Inc. are dismissed with prejudice and on the merits.

2. CCI Mechanical, Inc.'s cross-claims against Alarm Control Company and Union Pointe Construction Corporation are dismissed with prejudice and on the merits.

3. CCI Mechanical, Inc., Union Pointe Construction Corporation, and Alarm Control Company shall bear their own costs and fees on the dismissed cross-claims.

4. The dismissal of claims against CCI Mechanical, Inc. on the merits will preclude apportionment of fault against CCI Mechanical, Inc. in this case. The dismissal of CCI Mechanical, Inc. shall not preclude any party from seeking to offer evidence or to make argument regarding CCI Mechanical, Inc.'s conduct or involvement in this case subject to the Federal Rules of Evidence and Procedure.

DATED this 23rd day of February, 2005.

BY THE COURT:

HONORABLE DAVID SAM
United States District Judge

Approval as to form:

Douglas H. Patton
Attorney for Plaintiff, Safeway, Inc.

John L. Young
Attorney for CCI Mechanical, Inc.

John N. Braithwaite
Attorney for Alarm Control Company

Stanford P. Fitts
Attorney for Union Pointe Construction Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent via e-mail and also via U.S. Mail, first class, postage prepaid, on the___day of February, 2005, to the following:

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10 Exchange Place, Third Floor
Salt Lake City, Utah 84111

_____

asp

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01216

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FOLK & ASSOCIATES

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Attorneys for Defendant CCI Mechanical, Inc.

FILED
CLERK, U.S. DISTRICT COURT
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

SAFEWAY, INC.,

Plaintiff,

vs.

CONSONUS, INC., CCI MECHANICAL, INC., ALARM CONTROL COMPANY, UNION POINTE CONSTRUCTION CORPORATION, EHNINGER FETZER THOLEN ARCHITECTS, INC., COLVIN ENGINEERING ASSOCIATES, INC., DUNN ASSOCIATES, INC., and ANSUL INCORPORATED,

Defendants.

ALARM CONTROL COMPANY, EHNINGER FETZER THOLEN ARCHITECTS, INC., COLVIN ENGINEERING ASSOCIATES, INC., and DUNN ASSOCIATES, INC.,

Third-Party Plaintiffs,

vs.

NCR CORPORATION,

Third-Party Defendant.

ORDER GRANTING CCI MECHANICAL, INC.'S MOTION FOR SUMMARY JUDGMENT DISMISSING PLAINTIFF'S SECOND AMENDED COMPLAINT

Case No. 2:02-CV-1216

Honorable David Sam

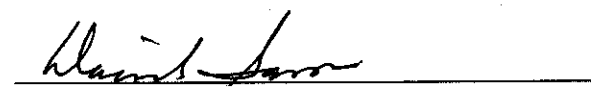
533

The Court, having considered the Stipulation of Safeway, Inc. to entry of an Order granting CCI Mechanical, Inc.'s Motion for Summary Judgment Dismissing Safeway's Second Amended Complaint and the withdrawal of Safeway, Inc.'s Memorandum in Opposition to CCI Mechanical, Inc.'s Motion for Summary Judgment Dismissing Safeway's Second Amended Complaint, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that CCI Mechanical, Inc.'s Motion for Summary Judgment Dismissing Safeway's Second Amended Complaint is hereby granted for and upon the grounds set forth in said motion for Summary Judgment and CCI Mechanical, Inc. is determined by the Court to not be at fault. The claims of Safeway, Inc. as against CCI Mechanical, Inc. are hereby dismissed, with prejudice and on the merits, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

ENTERED this 22nd day of February, 2005.

BY THE COURT:



Judge David Sam

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2005, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing Stipulation to:

Douglas H. Patton, Esq.
Edward B. Havas, Esq.
Dewsnup, King & Olsen
36 South State Street, Suite 2020
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asp

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01216

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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Attorneys for Ansul Incorporated

FILED
CLERK, U.S. DISTRICT COURT
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

SAFEWAY, INC., Plaintiff, v. CONSONUS, INC., et al., Defendants.	**ORDER GRANTING ANSUL, INC.'S MOTION FOR SUMMARY JUDGMENT SEEKING DISMISSAL OF THE CLAIMS OF SAFEWAY, INC.** Civil No. 2:02-CV-1216 Judge David Sam

The Court, having considered the Stipulation of Safeway, Inc. to entry of an Order granting Ansul, Inc.'s Motion for Summary Judgment Seeking Dismissal of the Claims of Safeway, Inc. and the withdrawal of Safeway, Inc.'s Memorandum in Opposition to Ansul, Inc.'s Motion, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Ansul, Inc.'s Motion for Summary Judgment Seeking Dismissal of the Claims of Safeway, Inc. is hereby granted for and

upon the grounds that Ansul, Inc. owed no duty to Safeway, Inc. and Ansul, Inc. is determined by the Court to not be at fault. The claims of Safeway, Inc. as against Ansul, Inc. are hereby dismissed, with prejudice and on the merits, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

DATED this 22nd day of February, 2005.

BY THE COURT:

Judge David Sam

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ORDER GRANTING ANSUL, INC.'S MOTION FOR SUMMARY JUDGMENT SEEKING DISMISSAL OF THE CLAIMS OF SAFEWAY, INC.** was mailed in the U.S. Mail, postage prepaid, this 21st day of February, 2005, addressed as follows:

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Irene Morgan

asp

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01216

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 A 11:33
DISTRICT OF UTAH
BY: DEPUTY CLERK

RECEIVED CLERK
FEB 16 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	O R D E R
	)	
vs.	)	
	)	
BURKE N. BURR,	)	Case No. 2:00CV0150G
	)	
Defendant,	)	Honorable J. Thomas Greene

The Court, having received the Stipulation of the parties dated February 15, 2005, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment was entered on May 12, 2000 in the total sum of $10,118.88 in favor of the United States of America (hereafter the "United States") and against Burke N. Burr (hereafter "Burr").

2. Burr has agreed to pay and the United States has agreed to accept monthly installment payments from him in the amount of $250.00 commencing on the 1st day of March, 2005 and continuing thereafter on the 1st day of each month for a period of

37

12 months. At the end of said time period, and yearly thereafter, Burr shall submit a current financial statement to the United States Attorney's Office. This payment schedule will be evaluated and may be modified, based on the documented financial status of Burr.

3. In addition to the regular monthly payment set forth in paragraph 2, above, Burr has agreed that the United States may submit his debt in the above-captioned case to the State of Utah and the U.S. Department of Treasury for inclusion in the State Finder program and the Treasury Offset program. Burr understands that under these programs, any state or federal payment that he would normally receive may be offset and applied toward the debt in the above-captioned case.

4. Burr shall submit all financial documentation in a timely manner and keep the United States Attorney's Office apprised of the following:

a. Any change of address; and

b. Any change in employment.

5. The United States has agreed to refrain from execution on the judgment so long as Burr complies strictly with the agreement set forth in paragraphs 2 and 4, above. In the event Burr fails to comply strictly with the terms set forth in the Stipulation dated February 15, 2005, the United States may move

the Court ex parte for a writ of execution and/or a writ of garnishment or any other appropriate order it deems necessary for the purpose of obtaining satisfaction of the judgment in full.

DATED this 21st day of February, 2005.

BY THE COURT:

J. Thomas Greene

J. THOMAS GREENE, Senior Judge
United States District Court

APPROVED AS TO FORM:

Burke Burr

BURKE N. BURR
Defendant

asp

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:00-cv-00150

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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407 WILLIAMS AVE
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Attorneys for Defendant
Key Energy Services, Inc.

FILED
CLERK, U.S. DISTRICT COURT
DISTRICT OF UTAH
BY: DEPUTY CLERK

RECEIVED CLERK
FEB 16 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

LEONARD LOVETT, Plaintiff, v. KEY ENERGY SERVICES, INC., Defendant.	**AMENDED SCHEDULING ORDER** Case No.: 2:03CV01034 JTG The Honorable J. Thomas Greene

On February 2, 2005, the parties in the above-captioned proceeding appeared before the Court for a status conference. Cameron Sabin appeared on behalf of defendant Key Energy Services, Inc. ("Defendant"), and Spencer Siebers appeared on behalf plaintiff Leonard Lovett ("Plaintiff"). The parties and the Court agreed that the Scheduling Order in this matter should be amended to allow the parties to complete discovery. Therefore the Court hereby amends the Scheduling Order and ORDERS AS FOLLOWS:

1. The parties shall complete fact discovery by March 15, 2005.

2. Reports from Plaintiff's expert witnesses shall be submitted by March 31, 2005.

33

2. Defendant shall designate its expert witnesses, if any, by no later than April 15, 2005.

3. Reports from Defendant's designated experts shall be submitted by April 30, 2005.

4. The parties shall re-appear before the Court for a status conference on May 3, 2005 at 10:00 a.m to discuss the status of the case, the status of expert discovery, possible ADR, and to set pretrial conference and trial dates. The parties shall make every effort to complete fact and expert discovery before that time.

IT IS SO ORDERED.

J. Thomas Greene

Honorable J. Thomas Greene
United States District Judge

APPROVED AS TO FORM:

Fred R. Silvester
Spencer Siebers
Silverster & Conroy, L.C.
1371 East 2100 South, Suite 200
Salt Lake City, Utah 84105

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February 2005, I caused a true and correct copy of the foregoing **AMENDED SCHEDULING ORDER** to be mailed first-class, postage pre-paid, to the following:

Fred R. Silvester
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Salt Lake City, Utah 84105

asp

United States District Court
for the
District of Utah
February 23, 2005

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FILED
CLERK, U.S. DISTRICT COURT
2005 APR 12 P 1:37
DISTRICT OF UTAH

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AMERICAN GOLD MINING CORPORATION, a Nevada Corporation, AND RONALD V. MARKHAM, Defendants.	**ORDER OF DEFAULT AND FINAL JUDGMENT AGAINST AMERICAN GOLD MINING COMPANY** Civil No. 2:04CV00190 DB Judge Dee Benson

The Court having review the Securities and Exchange Commission's ("Commission") Motion and Memorandum in Support of Motion for Default against American Gold Mining Company ("Defendant") and good cause appearing makes the following findings of fact:

STATEMENT OF FACTS

1. The Commission filed a Complaint against Defendant on February 23, 2004.

19

2. On February 24, 2004 Defendant was served with the Summons and the Complaint filed by the Commission in this Action.
3. A copy of the affidavit was provided to the court on May 10, 2004.
4. On July 21, 2004, the Court issued an Order to Show Cause, directing American Gold to respond in writing within 10 days from the date of the above order as to why the default motion filed by the Commission should not be entered.
5. American Gold failed to respond to the Order to Show Cause.
6. On August 6, 2004, the Clerk of the Court entered a default certificate against American Gold.
7. To date Defendant has failed to file a response to the allegations contained in the Commission's February 23, 2004 Complaint.
8. No stipulation or extension of time to respond to the complaint has been entered into between Defendant and the Commission.
9. Defendant is not an infant or incompetent, and is not entitled to relief under the Soldiers' and Sailors' Civil Relief Act of 1940.
10. The Court has personal jurisdiction over the Defendant. Venue is proper in this District.

It appearing that the Court has jurisdiction over Defendant and the subject matter and being fully advised in the premises and there being no just reason for delay:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant, and Defendant's agents, servants, employees and attorneys, and all persons acting in concert or participation with Defendant, who receive actual notice of this order by personal service or otherwise, and each of them, are permanently restrained from, directly or

indirectly, in the offer or sale of any security by the use of any means or instruments of transportation, or communication in interstate commerce or by the use of the mails: (1) employing any device, scheme, or artifice to defraud; (2) obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or; (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in violation of Section 17(a) of the Securities Act of 1933 [15 U.S.C. §77q(a)].

II.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant, and Defendant's agents, servants, employees and attorneys, and all persons acting in concert or participation with Defendant, who receive actual notice of this order by personal service or otherwise, and each of them, are permanently restrained from, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by use of the means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

(A) employing any device, scheme, or artifice to defraud;

(B) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(C) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

III.

IT IS FURTHER ORDERED that Defendant, Defendant's, agents, servants, employees, attorneys, and those persons in active concert or participation with Defendant

who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are restrained and enjoined from, directly or indirectly, engaging in any transaction or practice in violation of Section 5(a) and 5(c) of the Securities Act. [15 U.S.C. § 77e(a) and 77e(c)].

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that this Court shall retain jurisdiction over this action for all other purposes.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED there being no just reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Final Judgment forthwith and without further notice.

DATED this 22nd day of FEBRUARY, 2005.

Dee Benson
United States District Judge

Approved as to Form

Karen L. Martinez
Thomas M. Melton
Attorneys for Plaintiff
Securities and Exchange Commission

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00190

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Karen L. Martinez, Esq.
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15 W SOUTH TEMPLE STE 1800
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IN THE UNITED STATES OF AMERICA

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	2:03CR00993DB
Plaintiff,	:	ORDER
vs.	:	
WALTER SPANN,	:	
Defendant.	:	

Based on the Motion to Continue, and for good cause shown, the Court hereby ORDERS that the trial in this case be continued until the 18th day of April, 2005.

The Court finds that the ends of justice served by the continuance to the new date outweigh the best interests of the public and the defendant in a speedy trial based on the following:

1. Failure to grant the continuance would deny counsel reasonable time for preparation and continuity of counsel, taking into account the exercise of due diligence.

2. A material and essential fact witness is unavailable based upon inability to transport him from federal prison in Kansas in time for the present trial setting. His timely presence for trial cannot be obtained by due diligence.

57

The Court further ORDERS pursuant to 18 U.S.C. § 3161(h)(3)(A) and (8)(A) that all time through this continuance be excluded from computation of time under the Speedy Trial Act.

DATED this 22 of February, 2005.

BY THE COURT:

Dee Benson

JUDGE DEE BENSON
United States District Court

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00993

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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United States Marshal Service
DISTRICT OF UTAH
,
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US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 A 11:00
DISTRICT OF UTAH
BY: DEPUTY CLERK

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

UNITED STATES OF AMERICA Plaintiff(s), vs. CARLOS ALBERTO PISANI Defendant(s),	PRETRIAL ORDER PURSUANT TO RULE 17.1 F.R.Cr.P. Case No. 2:05-CR-69 DB

The above-entitled action came on for pretrial conference **February 17, 2005**, before Samuel Alba, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/25/05**, (2 days) at **8:30 am**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Dee Benson by **4/22/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No ____

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

3. Pretrial motions are to be filed by: **3/16/05** at 5:00 p.m.

12

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by **4/11/05**. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **RELEASED**.

7. All exhibits will be premarked before Judge Dee Benson's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes **X** No __ Language **SPANISH**

DATED this 17th day of February, 2005.

BY THE COURT:

Samuel Alba
Chief Magistrate Judge

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00069

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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US Probation
DISTRICT OF UTAH
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FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 A 8:54
DISTRICT OF UTAH
BY: DEPUTY CLERK

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

UNITED STATES OF AMERICA Plaintiff(s), vs. FLORENTINO ELIAS-BINZHA Defendant(s),	PRETRIAL ORDER PURSUANT TO RULE 17.1 F.R.Cr.P. Case No. 2:05-CR-84 DB

The above-entitled action came on for pretrial conference **February 16, 2005**, before Samuel Alba, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/27/05**, (1 days) at **8:30 am**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Dee Benson by **4/25/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No ____

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

3. Pretrial motions are to be filed by: **3/16/05** at 5:00 p.m.

9

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by **4/13/05**. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **DETAINED**.

7. All exhibits will be premarked before Judge Dee Benson's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes X No __ Language SPANISH

DATED this 16th day of February, 2005.

BY THE COURT:

Samuel Alba
Chief Magistrate Judge

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00084

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dustin B. Pead, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Viviana Ramirez, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA Plaintiff(s), vs. DALLAS COLEMAN CHARON Defendant(s),	PRETRIAL ORDER PURSUANT TO RULE 17.1 F.R.Cr.P. Case No. 2:04-CR-707 DB

The above-entitled action came on for pretrial conference **February 18, 2005**, before Samuel Alba, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/28/05**, (2 days) at **8:30 am**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Dee Benson by **4/25/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No ____

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

3. Pretrial motions are to be filed by: **3/21/05** at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by **4/14/05**. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **DETAINED**.

7. All exhibits will be premarked before Judge Dee Benson's clerk before trial.

8. Other order and directions are: **GOVERNMENT TO PROVIDE DISCOVERY BY 2/23/05.**

9. Interpreter Needed: Yes __ No X Language _____

DATED this 18th day of February, 2005.

BY THE COURT:

Samuel Alba
Chief Magistrate Judge

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00707

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Vernon G. Stejskal, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Carlos A. Garcia, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

Bryan K. Benard (Bar No. 9023)
HOLLAND & HART LLP
60 East South Temple, Suite 2000
Salt Lake City, Utah 84111-1031
(801) 595-7800

Attorneys for Defendant
United Parcel Service

FILED
CLERK, U.S. DISTRICT COURT
RECEIVED
FEB 14 2005
OFFICE OF JUDGE
DAVID SAM

RECEIVED CLERK
FEB 11 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ROBERT ERIC ALCORN, Plaintiff, vs. UNITED PARCEL SERVICE, a corporation; JOHN (JACK) HOLMES, an individual; CIGNA LIFE INSURANCE COMPANY OF NEW YORK dba CIGNA GROUP INSURANCE Defendants.	**ORDER GRANTING JOINT MOTION TO MOTION TO ENLARGE TIME, MODIFY THE BRIEFING SCHEDULE ON DEFENDANT'S MOTION TO DISMISS AND TO MODIFY SCHEDULING ORDER** Civil Action No. 02-CV-1071 Judge David Sam

Based upon the joint stipulation and motion of Plaintiff Robert E. Alcorn and Defendant United Parcel Service ("UPS) to enlarge the time for briefing on the pending Motion for Partial Summary Judgment of Defendant UPS, to modify the briefing schedule thereon, and to modify the scheduling order of, and good cause appearing therefore,

26

IT IS ORDERED by the Court that Plaintiff shall have until March 11, 2005 to file a 8-page supplemental opposition to UPS' Motion for Partial Summary Judgment and UPS shall have until April 1, 2005 to file its reply memorandum in support of its motion.

IT IS FURTHER ORDERED by the Court that the Scheduling Order entered December 1, 2004 is modified as follows:

Scheduled Event	**Completion Date**
Discovery Completion Date	April 1, 2005
Supplementations under Rule 26(e):	May 20, 2005
Dispositive Motion Cutoff:	May 20, 2005
Final Pretrial Conference:	September 22 2005
Joint Pretrial Order under 26(a)(3):	Due 30 days prior to trial
4 Day Jury Trial:	October 11 2005

Dated this 18 day of February, 2005.

BY THE COURT:

David Sam
Senior Judge
United States District Court

CERTIFICATE OF SERVICE

I certify that on February 11, 2005, I served a copy of the foregoing document to the following by

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Fax

James L. Miller
P.O. Box 195
308 ½ Marine Ave.
Newport Beach, CA 92662-0195

Paul D. Greiner
205 26th Street, Suite 32
Ogden, Utah 84401

Sonja Burdash

Sonja Burdash

3338883_1.DOC

asp

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01071

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Bryan K. Benard, Esq.
HOLLAND & HART
60 E SOUTH TEMPLE STE 2000
SALT LAKE CITY, UT 84111-1031
EMAIL

James L.I. Miller, Esq.
PO BOX 195
308 1/2 MARINE AVE
BALBOA ISLAND, CA 82662

Mr. Paul D Greiner, Esq.
205 26TH ST STE 32
OGDEN, UT 84401
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA Plaintiff(s), vs. ZACHARY KENDALL Defendant(s),	PRETRIAL ORDER PURSUANT TO RULE 17.1 F.R.Cr.P. Case No. 1:04-CR-69 DB

The above-entitled action came on for pretrial conference **February 18, 2005**, before Samuel Alba, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/26/05**, (2 days) at **8:30 am**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Dee Benson by **4/25/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No ____

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

3. Pretrial motions are to be filed by: **3/21/05** at 5:00 p.m.

12

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by **4/12/05**. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **DETAINED**.

7. All exhibits will be premarked before Judge Dee Benson's clerk before trial.

8. Other order and directions are: **GOVERNMENT TO PROVIDE DISCOVERY BY 2/23/05.**

9. Interpreter Needed: Yes __ No X Language _____

DATED this 18th day of February, 2005.

BY THE COURT:

Samuel Alba
Chief Magistrate Judge

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00069

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Vernon G. Stejskal, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Wendy M. Lewis, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA, Plaintiff, vs. REAL PROPERTY LOCATED AT 4866 CENTER STREET, MURRAY, UTAH, et al, Defendants.	**ORDER** Case No. 2:01-CV-877 Judge Dee Benson

Before the Court is Plaintiff's stipulated motion to Dismiss the Claims of Craig Parsons and Agreement to the Entry of an Order of Forfeiture. With good cause shown, and for the reasons outlined in Plaintiff's motion, the Court GRANTS Plaintiff's motion.

DATED this 22 day of February, 2005.

Dee Benson
United States District Judge

13

kvs

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00877

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Geraldine M. Nishiyama
c/o Mark Van Pernis, Esq.
VAN PERNIS, SMITH & VANCIL
PO BOX 1837
KAILUA-KONA, HI 96745

Mr. Edward K. Brass, Esq.
175 E 400 S STE 400
SALT LAKE CITY, UT 84111
EMAIL

Mr Richard P Mauro, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

Richard W. Daynes, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

RECEIVED CLERK
FEB 16 2005
U.S. DISTRICT COURT
FILED
CLERK, U.S. DISTRICT COURT
RECEIVED
OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

WOOD CRAPO LLC
Darryl J. Lee, #4955
500 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
(801) 366-6060

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BMK, L.P., Plaintiff, v. DAVID S. KIRK, IKG PARTNERS, L.L.C., PROMOTIONS UNLIMITED CORPORATION, AND E.Z. GREGORY, INC. Defendants	**ORDER GRANTING EXTENSION OF TIME FOR ALL DEFENDANTS TO RESPOND TO THE COMPLAINT** Civil No. 2:04cv01181 Judge Bruce S. Jenkins

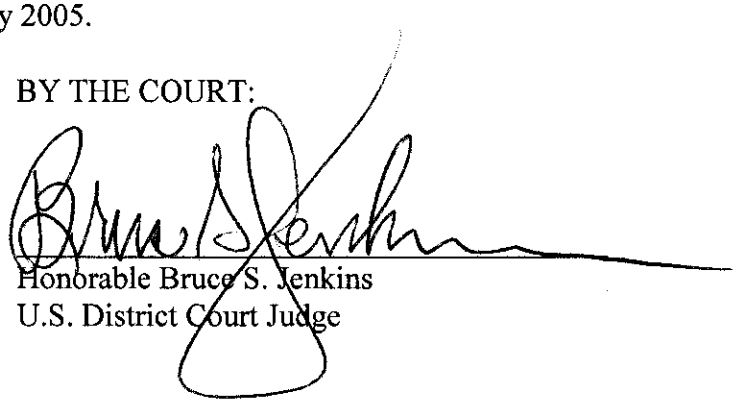
Based upon the Motion for Extension of Time for all Defendants to Respond to the Complaint filed by the Defendants, and the stipulation thereto by the Plaintiff, and good cause appearing therefore,

10

IT IS HEREBY ORDERED that the Defendants in the above-entitled matter shall have until Thursday, March 3, 2005 to answer or otherwise respond to the Plaintiff's Complaint filed in this matter.

Dated this 18 day of February 2005.

BY THE COURT:



Honorable Bruce S. Jenkins
U.S. District Court Judge

S:\WPDATA\PLEADING\IKG.BMK.ORDER ALLOWING EXTENSION OF TIME.wpd

CERTIFICATE OF SERVICE

I certify that on 17th day of February, 2005, I caused a true and correct copy of the foregoing document to be mailed, first-class postage prepaid, to the following:

Robert R. Wallace
Kirton & McConkie
60 East South Temple
Suite 1800
Salt Lake City, UT 84111
Counsel for Plaintiff

asp

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01181

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Robert R Wallace, Esq.
KIRTON & MCCONKIE
60 E S TEMPLE STE 1800
SALT LAKE CITY, UT 84111-1004
EMAIL

Arlene S. Steinfield, Esq.
HUGHES & LUCE LLP
1717 MAIN ST STE 2800
DALLAS, TX 75201
EMAIL

Jennifer Bellow, Esq.
HUGHES & LUCE LLP
1717 MAIN ST STE 2800
DALLAS, TX 75201
EMAIL

Mr. Darryl J Lee, Esq.
WOOD CRAPO LLC
60 E SOUTH TEMPLE STE 500
SALT LAKE CITY, UT 84111
EMAIL

Larry S. Kaplan, Esq.
KAPLAN & VON OHLEN
120 N LASALLE ST 24TH FL
CHICAGO, IL 60602

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 23 A 9:39
DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. KENNETH CHARLES ROGERS, Defendant.	TRIAL ORDER Criminal No. 1:03-CR-00027

The final pretrial conference in this matter is scheduled for Thursday, February 24, 2005, at 3:30 p.m.

This case is set for a 3-day trial to begin on Tuesday, March 1, 2005, at 8:30 a.m. The attorneys are expected to appear in court at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

1. Court-Imposed Deadlines.

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

2. Jury Instructions

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

124

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 P 2:49
DISTRICT OF UTAH
BY:
DEPUTY CLERK

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

IRIS KERSTEN, as Conservator of the Estate of Robert Kersten, Plaintiff, vs. SCHNEIDER NATIONAL BULK CARRIERS, et al., Defendants.	ORDER OF DISMISSAL Case No. 2:02-CV-1429 TS

On January 18, 2005 , this Court issued an order requiring counsel for plaintiff to show cause why the above-entitled case should not be dismissed for lack of prosecution. No response to that order has been received.

Wherefore, good cause appearing, the Court hereby ORDERS this case DISMISSED for failure to prosecute.

Dated this 22nd day of February , 2005 .

BY THE COURT:

Ted Stewart
United States District Judge

10

jmr

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01429

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Lewis B. Quigley, Esq.
NELSON CHIPMAN QUIGLEY & PAYNE
215 S STATE ST STE 500
SALT LAKE CITY, UT 84111
JFAX 9,3643756

Mr. Michael F Richman, Esq.
SIEGFRIED & JENSEN
5664 S GREEN ST
MURRAY, UT 84123
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 P 2:49
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

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

CLIFFORD E. FUNK, Plaintiff, vs. W. BRENT DICKENS, et al., Defendants.	ORDER OF DISMISSAL Case No. 2:03-CV-421 TS

On January 19, 2005 , this Court issued an order requiring counsel for plaintiff to show cause why the above-entitled case should not be dismissed for lack of prosecution. No response to that order has been received.

Wherefore, good cause appearing, the Court hereby ORDERS this case DISMISSED for failure to prosecute.

Dated this 22nd day of February , 2005 .

BY THE COURT:

Ted Stewart
United States District Judge

22

jmr

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00421

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dwayne A. Vance, Esq.
MILLER VANCE & THOMPSON
PO BOX 682800
2200 N PARK AVE STE 10200
PARK CITY, UT 84068
EMAIL

Mr. Ronald C. Barker, Esq.
2870 S STATE
SALT LAKE CITY, UT 84115-3692
EMAIL

Judge Kenneth Rigtrup, Esq.
3098 S HIGHLAND DR STE 399
SALT LAKE CITY, UT 84106-3076

Glenn R. Bronson (7362)
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
(801) 524-1000

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 P 2:48
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

RECEIVED CLERK
FEB 16 2005
U.S. DISTRICT COURT

Attorneys for Plaintiff DIRECTV, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
Central Division

DIRECTV, INC., a California corporation, Plaintiff, vs. MILLER, Defendant.	**STIPULATED PERMANENT INJUNCTION** Civil No. 2:04 CV 00824 TS

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Defendant Donald J. Miller (the "**Defendant**"), and any persons or entities controlled directly or indirectly by him or her, are hereby permanently enjoined and restrained from:

a. receiving or assisting others in receiving DIRECTV, Inc.'s ("**DIRECTV's**") satellite transmissions of television programming without authorization by and payment to DIRECTV;

b. designing, manufacturing, assembling, modifying, importing, exporting, possessing, offering to the public, trafficking, distributing, selling, or using any devices or equipment (including, by way of example, loaders, bootloaders, unloopers, emulators, programmers, reader/writers, or software o

PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City
Utah 84111
(801) 524-1000

16

components therefor) designed or intended to facilitate the reception and decryption of DIRECTV's satellite transmissions of television programming by persons not authorized to receive such programming;

c. advertising the sale of any devices or equipment (including, by way of example, loaders, bootloaders, unloopers, emulators, programmers, reader/writers, or software or components therefor) designed or intended to facilitate the reception and decryption of DIRECTV's satellite transmissions of television programming by persons not authorized to receive such programming, and advertising or providing information or technical services in support thereof; or

d. reverse engineering or attempting to reverse engineer any of DIRECTV's products, services or technologies, including without limitation the encryption and security controls for the DIRECTV satellite system.

2. This Permanent Injunction shall apply to the Defendant's activities worldwide, and shall apply with the same force and effect to the DIRECTV Latin America (also known as Galaxy Latin America) satellite system, and to any other direct broadcast satellite system or related business in which DIRECTV has a financial or other interest, now or in the future, and, in particular, to any satellite interests owned by News Corp., NDS Americas, Inc., or related companies, including Sky Latin America.

3. The Defendant, and any persons or entities controlled directly or indirectly by him, are hereby permanently enjoined and restrained from:

a. investing or holding any financial interest in any enterprise which the Defendant knows is now, or planning in the future, to engage in any of the activities prohibited by this Permanent Injunction; or

PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City
Utah 84111
(801) 524-1000

b. knowingly allowing any persons or entities which he controls, either directly or indirectly, to engage in any of the activities prohibited by this Permanent Injunction.

4. In the event that the Defendant becomes aware that an enterprise in which he has invested or holds any financial interest is engaged in any of the activities prohibited by this Permanent Injunction, the Defendant agrees to immediately divest himself of any such investment or financial interest and to promptly notify DIRECTV of the same.

5. The Court shall retain jurisdiction to entertain such further proceedings and to enter such further orders as may be necessary or appropriate to implement and/or enforce the provisions of this Permanent Injunction. The Defendant specifically consents to personal jurisdiction and venue in the United States District Court for the District of Utah.

6. Upon proof of any violations by the Defendant of the provisions of this Permanent Injunction, the Court shall be authorized to award damages to DIRECTV for losses sustained prior to the date of this Permanent Injunction, in addition to any other damages or other relief authorized by law.

DATED this 22nd day of February 2005.

BY THE COURT:

Honorable Ted Stewart
United States District Court Judge

PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City
Utah 84111
(801) 524-1000

The parties below hereby move for and stipulate to entry of the foregoing Stipulated Permanent Injunction

PRINCE, YEATES & GELDZAHLER **DEFENDANT**

By: _____
Glenn R. Bronson
Attorneys for Plaintiff DIRECTV, Inc.

By: _____
Donald J. Miller

VERIFICATION BY DEFENDANT

STATE OF UTAH)
ss.
COUNTY OF SALT LAKE)

I, **Donald J. Miller,** being first duly sworn, on oath, depose and say that I am one of the defendants herein, have read the foregoing Stipulated Permanent Injunction, understand the terms thereof and, after the opportunity to consult with legal counsel, do freely consent to the entry of the same by this Court.

_____
Donald J. Miller

SUBSCRIBED AND SWORN TO before me this ~~17th~~ 16th day of February, 2005.

Seal

Notary Public
HELEN SHIFLAR
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
My Commission Expires
April 5, 2006
State of Utah

_____
Notary Public

G:\grb\DirecTV\Miller DJ 14251-63\P-inj miller.wpd

PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City
Utah 84111
(801) 524-1000

jmr

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00824

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Glenn R. Bronson, Esq.
PRINCE YEATES & GELDZAHLER
175 E 400 S STE 900
SALT LAKE CITY, UT 84111
EMAIL

Donald J. Miller
15072 MANILLA DR
DRAPER, UT 84020

CLERK

U.S. DISTRICT COURT

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 P 2:48
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

Thomas J. Erbin (1001)
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
(801) 524-1000

Attorneys for Plaintiff DIRECTV, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
Central Division

DIRECTV, INC., a California corporation, Plaintiff, vs. ADAMS, et al., Defendants.	**STIPULATED PERMANENT INJUNCTION** Civil No. 1:03CV00108 TS

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Defendant Van Adams (the "**Defendant**"), and any persons or entities controlled directly or indirectly by him, are hereby permanently enjoined and restrained from:

a. receiving or assisting others in receiving DIRECTV, Inc.'s ("**DIRECTV's**") satellite transmissions of television programming without authorization by and payment to DIRECTV;

b. designing, manufacturing, assembling, modifying, importing, exporting, possessing, offering to the public, trafficking, distributing, selling, or using any devices or equipment (including, by way of example, loaders, bootloaders,

PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City
Utah 84111
(801) 524-1000

73

unloopers, emulators, programmers, reader/writers, or software or components therefor) designed or intended to facilitate the reception and decryption of DIRECTV's satellite transmissions of television programming by persons not authorized to receive such programming;

c. advertising the sale of any devices or equipment (including, by way of example, loaders, bootloaders, unloopers, emulators, programmers, reader/writers, or software or components therefor) designed or intended to facilitate the reception and decryption of DIRECTV's satellite transmissions of television programming by persons not authorized to receive such programming, and advertising or providing information or technical services in support thereof; or

d. reverse engineering or attempting to reverse engineer any of DIRECTV's products, services or technologies, including without limitation the encryption and security controls for the DIRECTV satellite system.

2. This Permanent Injunction shall apply to the Defendant's activities worldwide, and shall apply with the same force and effect to the DIRECTV Latin America (also known as Galaxy Latin America) satellite system, and to any other direct broadcast satellite system or related business in which DIRECTV has a financial or other interest, now or in the future.

3. The Defendant, and any persons or entities controlled directly or indirectly by him, are hereby permanently enjoined and restrained from:

a. investing or holding any financial interest in any enterprise which the Defendant knows is now, or planning in the future, to engage in any of the activities prohibited by this Permanent Injunction; or

PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City
Utah 84111
(801) 524-1000

b. knowingly allowing any persons or entities which he controls, either directly or indirectly, to engage in any of the activities prohibited by this Permanent Injunction.

4. In the event that the Defendant becomes aware that an enterprise in which he has invested or holds any financial interest is engaged in any of the activities prohibited by this Permanent Injunction, the Defendant agrees to immediately divest himself of any such investment or financial interest and to promptly notify DIRECTV of the same.

5. The Court shall retain jurisdiction to entertain such further proceedings and to enter such further orders as may be necessary or appropriate to implement and/or enforce the provisions of this Permanent Injunction. The Defendant specifically consents to personal jurisdiction and venue in the United States District Court for the District of Utah.

6. Upon proof of any violations by the Defendant of the provisions of this Permanent Injunction, the Court shall be authorized to award damages to DIRECTV for losses sustained prior to the date of this Permanent Injunction, in addition to any other damages or other relief authorized by law.

DATED this 22nd day of February 2005.

BY THE COURT:

Honorable Ted Stewart
United States District Court Judge

PRINCE, YEATES & GELDZAHLER
City Centre I, Suite 900
175 East 400 South
Salt Lake City
Utah 84111
(801) 524-1000

The parties below hereby move for and stipulate to entry of the foregoing Stipulated Permanent Injunction

PRINCE, YEATES & GELDZAHLER

By: _____ 2/16/05
Thomas J. Erbin
Attorneys for Plaintiff DIRECTV, Inc.

DEFENDANT

By: _____
Van Adams
Represented by: Kevin Richards, Esq.

VERIFICATION BY DEFENDANT

STATE OF UTAH)
ss.
COUNTY OF SALT LAKE)

I, **Van Adams,** being first duly sworn, on oath, depose and say that I am the defendant herein, have read the foregoing Stipulated Permanent Injunction, understand the terms thereof and, after the opportunity to consult with legal counsel, do freely consent to the entry of the same by this Court.

_____
Van Adams

SUBSCRIBED AND SWORN TO before me this 14 day of February, 2005.

Seal

_____
Notary Public

G:\Tje\DirecTV\Adams\inj-Van Adams.wpd

KEVIN G RICHARDS
NOTARY PUBLIC • STATE of UTAH
1893 EAST SKYLINE DR #102
OGDEN UT 84403
COMM. EXP. 11/11/2007

JAN-28-05 FRI 09:53 AM FAX NO. P. 04

jmr

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:03-cv-00108

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Glenn R. Bronson, Esq.
PRINCE YEATES & GELDZAHLER
175 E 400 S STE 900
SALT LAKE CITY, UT 84111
EMAIL

Mr. Kevin G Richards, Esq.
1893 E SKYLINE DR STE 102
OGDEN, UT 84403
EMAIL

Suzanne Capener
4344 SOUTH 1000 WEST APT A
OGDEN, UT 84405

Matthew L. Nebeker, Esq.
3856 WASHINGTON BLVD
OGDEN, UT 84403

Mr. Mark T Ethington, Esq.
LARSON TURNER FAIRBANKS & DALBY
1218 W SOUTH JORDAN PKWAY STE B
PO BOX 95821
SOUTH JORDAN, UT 84095-0821
EMAIL

Ryan Craner
3980 WASHINGTON BLVD
OGDEN, UT 84403
EMAIL

Jo Ann Green
11281 S JORDAN VIEW DR #46
SANDY, UT 84070

ROBERT ALAN JONES
Attorney for Stanley L. Wade
1061 East Flamingo Road, Suite #7
Las Vegas, NV 89119
Telephone (702)791-3403

SO ORDERED

FILED
CLERK, U.S. DISTRICT COURT
RECEIVED CLERK
2005 FEB 16 P 5:42
DISTRICT OF UTAH
DEPUTY COURT CLERK

TED STEWART
United States District Judge

Date 2/22/05

IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION

STATE OF UTAH

ORDER

UNITED STATES OF AMERICA,	)	**MOTION TO WITHDRAW AS ATTORNEY OF RECORD**
Plaintiff,	)	
vs.	)	2:04CR141 TS
STANLEY L. WADE and JANET B. WADE,	)	Judge: Ted Stewart
Defendants.	)	District Court No. 2:04-CR-141-TS

MOTION TO WITHDRAW AS ATTORNEY OF RECORD

Counsel Robert Alan Jones, hereby moves this Honorable Court pursuant to DUCivR 83-1.4 for leave to withdraw as counsel in the above-captioned matter. This Motion is made and based upon the grounds of a conflict of interest between Mr. Jones and Defendant, Stanley L. Wade, and his related entities.

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1. Defendant Stanley L. Wade has been notified that counsel Robert Alan Jones intends to withdraw on this matter; however, Mr. Jones believes that Mr. Wade will not sign an acceptance of withdrawal. Attached hereto as Exhibit "A" is a copy of a letter which was hand-delivered to Mr. Wade on or about February 1, 2005 advising him that Mr. Jones would be withdrawing from representation and the reasons therefor.

2. Mr. Randall Gaither will continue to represent Mr. Wade in this matter, and knows of this pending Motion to Withdraw.

3. Mr. Wade is aware that his trial date is currently scheduled for March 14, 2005.

4. The office of counsel Robert Alan Jones contacted the U.S. Attorney's Office who is opposed to this Motion for Withdrawal if it necessitates the present trial date being continued.

5. The current mailing address for Stanley L. Wade is Davis County Jail, 800 West State Street, Farmington, Utah 84025, and his home address is 2159 Parleys Terrace, Salt Lake City, UT 84109.

WHEREFORE, Movant Robert Alan Jones prays that this Honorable Court will permit his withdrawal as attorney in the instant matter on the grounds of a conflict of interest.

DATED: This 7th day of February, 2005.

Respectfully submitted,

Robert Alan Jones

Robert Alan Jones (Applicant)
R.A.J. Limited P.C.
1061 East Flamingo Road, Suite 7
Las Vegas, NV 89119
(702) 791-0742
(702) 736-0773 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 2005, I caused to be mailed a true and correct copy of the foregoing Motion to Withdraw, by placing same in the United States Mail, postage prepaid, and addressed as follows:

Stanley L. Wade
C/O DAVIS COUNTY JAIL
800 West State Street
Farmington, UT 84025
Defendant

Gordon W. Campbell, Esq.
U.S. Attorney's Office
185 South State Street, Suite 400
Salt Lake City, Utah 84111

Randall Gaither, Esq.
159 West 300 South, Suite 105
Salt Lake City, UT 84101
Attorney for Stanley Wade

D. Kendall Perkins, Esq.
2417 East 9110 South
Sandy, Utah 84093

Max D. Wheeler, Esq.
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place
P.O. Box 45000
Salt Lake City, UT 84145

Janet Wade
2159 Parleys Terrace
Salt Lake City, UT 84109
Co-defendant

Vicki Lynn Woodruff
Office of Robert Alan Jones

EXHIBIT "A"

EMAIL:
rajltd@aol.com
rajpc2@earthlink.net
Website:
americantaxpayersdefense.com

R.A.J. LIMITED, P.C.

1061 E. FLAMINGO ROAD
SUITE 7
LAS VEGAS, NEVADA 89119

Telephone:
(702) 791-3403

Facsimile:
(702) 736-0773

February 1, 2005

Mr. Stanley Wade
2159 Parleys Terrace
Salt Lake City, Utah 84109

Dear Mr. Wade:

I was hired to provide US Income tax expertise and analysis concerning Stanley Wade's unpaid and unfiled tax returns from 1992 forward. At your direction, I commenced a working relationship with the trustee Don Taylor of your UBO's (Unincorporated Business Organization/Common Law Business Organization).

As of this date, it appears that a real conflict of interest has arisen between your interests and those of your trusts (UBO's). Inasmuch as you retained me to represent both interests, I now find this representation to be impossible. Therefore, I am submitting my resignation as co-counsel in your personal criminal matters immediately.

I wish you every success in your endeavors and would be happy to work with your attorneys and/or professionals to help you receive the best results in both your criminal and civil litigations; however, I can no longer represent you personally.

Thank you very much for your kind understanding.

Sincerely yours,

Robert Alan Jones

Robert Alan Jones, esq.

CC: Randall Gaither via facsimile: 801-531-1992 for delivery to Mr. Wade

jmr

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00141

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Gordon W Campbell, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Robert Alan Jones, Esq.
RAJ LIMITED PC
1061 E FLAMINGO RD STE 7
LAS VEGAS, NV 89119

Mr. Randall T Gaither, Esq.
159 W 300 S #105
SALT LAKE CITY, UT 84101
EMAIL

Mr. D. Kendall Perkins, Esq.
2417 E 9110 S
SANDY, UT 84093
EMAIL

Mr. Max D Wheeler, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
DISTRICT OF UTAH
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH

CENTRAL DIVISION

KAREN HAGEN, **Plaintiff,** **vs.** **RAYMOND M. SCHMIDT, d.b.a. SCHMIDT TRUCKING , and PATRICK McCONE,** **Defendants.**	**ORDER** **2:03CV0411DAK** **Judge Dale A. Kimball**

This matter is before the court on Defendants' F.R.C.P. 62(d) Motion for Stay Upon Appeal and Approval of Supersedeas Bond. Defendants seek to stay the action and post a bond in the amount of $1,996,551.90, which would stand in addition to Defendants' $1 million liability policy with Carolina Casualty Insurance Company. The amount of the bond represents the principal amount of the judgment, plus judgment interest at the rate of 2.96% per annum for twelve months, which is the time Defendants estimate for the appeal of this case.

Plaintiff objects to the amount of the bond on the grounds that it does not include thousands of dollars in costs which have not yet been determined by the court and that additional interest will accrue if the appeal takes up to two years. Plaintiff believes the bond should be at least $2,030,000.00. The court agrees that the bond amount should be more inclusive of potential costs rather than under inclusive. Defendants submitted that the average length of an appeal was 11.2 months. However, that amount would obviously include all types of appeals, not appeals from jury trials. Given the number of issues Defendants have listed in their notice

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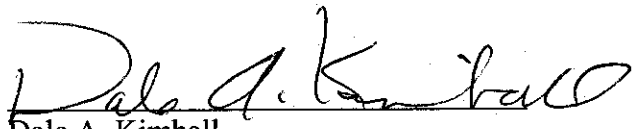
of appeal and based on this court's experience, the court concludes that the appeal in this case would likely take over a year. Therefore, the court concludes that an adequate bond amount in this case is $2,024,000.00, which would cover $7,500.00 of recoverable costs and $20,000.00 of additional interest while the case is on appeal.

Plaintiff also believes that the bonding company, as a prerequisite for approval of the bond, should state explicitly that it will make payment in the full amount of the Judgment, plus compensable costs, plus accrued interest to Plaintiff and her counsel within ten days of the affirmance of the Judgment, unless payment is otherwise made in that full amount within the ten-day time period. The court agrees that the bond should state a time period for payment if the matter is affirmed on appeal. If the appeal and costs are not as great as the bond, then the bond company would only need to pay the full amount of the judgment, recoverable costs, and judgment interest. However, in the unlikely event that the appeal takes an unusually long time and the bond amount is not as great as the full amount of judgment, recoverable costs, and judgment interest, the bond company would only be obligated to pay the full amount of the bond. Therefore, Defendants' bond shall include a provision that states that bond company will pay the lesser of the full amount of the bond or the full amount of the judgment, recoverable costs, and judgment interest to Plaintiff and her counsel within thirty days of an affirmance on appeal unless payment is otherwise made for that full amount.

Plaintiff also objected to the lack of information provided by Defendants with respect to the adequacy of the surety. However, the court concludes that the information provided in Defendants' Reply is sufficient to demonstrate that Monitor Surety Managers, Inc. is an adequate surety.

Based on the above reasoning, Defendants' Motion for a Stay is GRANTED upon Defendants posting of a supersedeas bond from Monitor Surety Management, Inc. in the amount of $2,024,000.00.

DATED this 23rd day of February, 2005.



Dale A. Kimball,
United States District Judge

blk

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00411

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Peter C. Collins, Esq.
PETER C COLLINS LLC
623 E 2100 S
SALT LAKE CITY, UT 84106
JFAX 9,4671800

Mr. Clifford C Ross, Esq.
DUNN & DUNN
505 E 200 S 2ND FL
SALT LAKE CITY, UT 84102
JFAX 9,5219998

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 23 A 9:53
DISTRICT OF UTAH
RECEIVED
FEB - 7 2005
OFFICE OF
JUDGE TENA CAMPBELL
RECEIVED CLERK
FEB - 4 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA	:	
Plaintiff,	:	2:04CR00398TC
v.	:	ORDER OF FORFEITURE
CURTIS JAY BARNES	:	JUDGE TENA CAMPBELL
Defendant.	:	

IT IS HEREBY ORDERED that:

1. As a result of the conviction of Count II for which the government sought forfeiture pursuant to 18 U.S.C. § 2253(a)(3) the CURTIS JAY BARNES shall forfeit to the United States the following computers:

a- 1 gray Prostar laptop computer serial number PS203BJ24614.
b- 1 black and silver Gateway laptop computer, model Solo 5350, serial number BQB02053302.
c- 1 white Gateway computer tower, serial number 0022863498.
d- 140 computer diskettes.
e- 1 gray zip disk.
f- 20 recordable compact discs.

2. The Court has determined that based on the conviction of CURTIS JAY BARNES, that the above-named computers are subject to forfeiture, that the defendant had an interest in such computers, and that the government has established the requisite nexus between such property and such offense.

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3. Upon entry of this Order the Attorney General, or its designee is authorized to seize and conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

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

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

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

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

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

interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

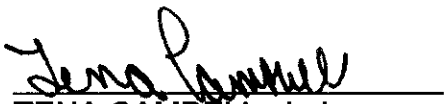
9. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

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

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

Dated this 23 day of July 2005.

BY THE COURT:



TENA CAMBELL, Judge
United States District Court

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00398

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Michele M. Christiansen, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Paul G. Amann, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
CHILDREN'S JUSTICE DIVISION
5272 COLLEGE DR STE 200
SALT LAKE CITY, UT 84123
EMAIL

Barton J. Warren, Esq.
261 E BROADWAY STE 175
SALT LAKE CITY, UT 84111-2604
JFAX 9,5324222

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

USDC UT Approved 06/06/00 Revised 11/03/00

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 23 A 9:53
DISTRICT OF UTAH
DEPUTY CLERK

United States District Court
District of Utah

UNITED STATES OF AMERICA

vs.

Matthew Mark McCray

(For Revocation of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

Case Number: **2:01-CR-00585-001C**

Plaintiff Attorney: **Dustin Pead, AUSA**

Defendant Attorney: **Julie George, Esq.**

Atty: CJA ✖ Ret ___ FPD ___

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: **08951-081**

02/16/2005
Date of Imposition of Sentence

Defendant's Residence Address:

Country _____

Defendant's Mailing Address:
same

Country _____

THE DEFENDANT: **COP** _____ **Verdict** _____

☒ admitted to allegation(s) **1, 2 & 3 of petition**

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

☐ was found guilty as to allegation(s) _____

Violation Number	Nature of Violation	Date Violation Occured
1	The defendant has moved from his previously reported residence.	12/2/2002
2	The defendant failed to attend a substance abuse counseling session at the Intermountain Specialized Abuse Treatment Center.	11/30/2004
3	The defendant failed to submit to drug testing, as directed by the USPO.	12/1/04

Entered on docket
2-23-05 by:
Deputy Clerk

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

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

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **4 months**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **24 months**.

☐ The defendant is placed on Probation for a period of _____.

The defendant shall not illegally possess a controlled substance.
For offenses committed on or after September 13, 1994:
The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

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

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

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

1. The defendant shall spend 180 days in a halfway house with work release and other release when approved by the USPO.

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

3. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan, as directed by the USPO and shall not possess or consume alcohol during the court of treatment.

4. The defendant will submit to drug/alcohol testing as directed by the probation office.

5. The defendant shall refrain from association with any known gang member.

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

CRIMINAL MONETARY PENALTIES

FINE

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

☐ forthwith.

☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

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

☒ other:
The court orders the $115 urinalysis fee ordered on 2/27/2002 for the original offense be re-instated.

☐ The defendant shall pay interest on any fine more than $2,500, unless the fine is paid in full before

the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

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

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

_____

RESTITUTION

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

Name and Address of Payee	Amount of Loss	Amount of Restitution Ordered

Totals: $_____ $_____

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

☐ Restitution is payable as follows:

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

☐ other:

_____

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

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

SPECIAL ASSESSMENT

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

☐ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

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

RECOMMENDATION

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

The court recommends defendant be placed in a local facility and that he be given credit for time served. The court STRONGLY recommends defendant not be placed in the facility in Florence, Colorado.

CUSTODY/SURRENDER

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

☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.

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

DATE: 2-22-2005

Tena Campbell

Tena Campbell
United States District Judge

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cr-00585

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Julie George, Esq.
PO BOX 112338
29 S STATE STE 7
SALT LAKE CITY, UT 84147
EMAIL

Mr. Richard N Lambert, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

RECEIVED FILED
U.S. DISTRICT COURT
2005 FEB 23 A 9:53
OFFICE OF CLERK RECEIVED CLERK
JUDGE TENA CAMPBELL
FEB 16 2005
U.S. DISTRICT COURT

STEPHEN R. MCCAUGHEY - 2149
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.	:	
EDWIN ALEJANDRO JIMINEZ,	:	**Case No. 2:01-CR- 0017 TC**
Defendant.	:	

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

FINDINGS

1. If defendant's motion to continue were denied it would deny the defendant continuity of counsel.

2. Counsel needs additional time to effectively prepare for trial and consult with the defendant.

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

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

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ORDER

It is hereby ORDERED that the trial date of March 8, 2005, be stricken and the trial continued to May 3RD, 2005 at 8:30 a.m..

It is further, ORDERED that the time between March 8, 2005, 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 22 day of February, 2005.

BY THE COURT:

TENA CAMPBELL
United States District Court Judge

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Findings and Order was mailed/hand delivered on this 10 day of February, 2005 to:

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

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cr-00017

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Mr. Stephen R McCaughey, Esq.
10 W BROADWAY STE 650
SALT LAKE CITY, UT 84101
EMAIL

Mr. Richard D McKelvie, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 23 A 9:52
DISTRICT OF UTAH
BY:
DEPUTY CLERK

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

JAMES DAVID BUSICO, an individual, Plaintiff, vs. CITIBANK (SOUTH DAKOTA) N.A., a national banking association, et al., Defendants.	ORDER Case No. 2:04 CV 1178 TC

On January 4, 2005, this court ordered that the above-captioned matter be referred to United States Magistrate Judge Brooke C. Wells pursuant to 28 U.S.C. § 636(b)(1)(A). The order of reference is hereby withdrawn.

SO ORDERED this 23 day of February, 2005.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

We

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01178

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

James David Busico
305 S 100 W
TOOLE, UT 84074

Erik A. Christiansen, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Matthew Mikel Boley, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Peggy E. Stone, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 23 A 9:53
DISTRICT OF UTAH
BY: DEPUTY CLERK

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

XANGO, LLC, et al., Plaintiffs, vs. NEW VISION USA, INC., at al., Defendants.	PRETRIAL SCHEDULING ORDER Case No. 2:04-CV-00405 TC

Pursuant to Rule 16 of the Federal Rules of Civil Procedure and the Local Rules of this court, and in order to secure the just, speedy, and inexpensive determination of this action, the following schedule shall govern these proceedings. The schedule may be modified only upon formal motion and a showing of good cause as required by Local Rule 16.3.

Discovery Plan

1. The plaintiffs shall serve upon the defendants by February 28, 2005, a "Plaintiffs' Claim Chart," which shall identify: (1) which claim(s) of their patent they allege are being infringed; (2) which specific products or methods of defendants they allege literally infringe each claim; and (3) where each element of each claim listed in (1) is found in each product or method listed in (2), including the basis

7le

for each contention that the element is present. If there is a contention by plaintiffs that there is infringement of any claims under the doctrine of equivalents, plaintiffs shall separately indicate this on its Claim Chart and, in addition to the information required for literal infringement, plaintiffs shall also explain each of the functions, way and result that it contends are equivalent, and why it contends that any differences are not substantial.

2. No later than March 14, 2005, defendants shall serve upon plaintiffs "Defendants' Claim Chart" that indicates with specificity which elements on Plaintiffs' Claim Chart it admits are present in its accused device or process, and which it contends are absent. In the latter regard, defendants will set forth in detail the basis for their contention that the element is absent. As to the doctrine of equivalents, defendants shall indicate on their chart their contentions concerning any differences in function, way and result and why any differences are substantial.

3. On or before March 24, 2005, the parties shall simultaneously exchange a list of claim terms, phrases, or clause which each party contends should be construed by the court. The parties shall thereafter meet and confer for the purpose of finalizing a list, narrowing or resolving differences, and facilitating the ultimate preparation of a joint claim construction statement During the meet and confer

process, the parties shall exchange their preliminary proposed construction of each claim term, phrase or clause which the parties collectively have identified for claim construction purposes.

At the same time the parties exchange their respective "preliminary claim construction," they shall also provide a preliminary identification of intrinsic and extrinsic evidence, including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of factual and expert witnesses they contend support their respective claim constructions. The parties shall identify each such item of intrinsic and extrinsic evidence by production number or produce a copy of any such item not previously produced. The parties shall cite the patent by column and line numbers and the prosecution history by production numbers from the certified prosecution history as produced by plaintiffs. With respect to any such witness, the parties shall also provide a brief description of the substance of that witness's proposed testimony.

4. Following the parties meet and confer described above, and no later than March 31, 2005, the parties shall complete and file with the court, a joint claim construction statement which shall contain the following information:

   a. The construction of those claim terms, phrases or clauses on which the parties agree;

b. Each party's proposed construction of each disputed claim term, phrase or clause, together with an identification of all references from the specification of prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either in support of its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited, as permitted by law, dictionary definitions, citation to learned treatises and prior art, and testimony of percipient and expert witnesses;

c. The anticipated length of time necessary for the Markman hearing;

5. On or before April 11, 2005, the parties shall serve and file briefs addressing the issues the parties anticipate will be placed before the court at the Markman hearing.

6. The Markman hearing is set for April 21, 2005, at 3:00 p.m. At that time the court will also address Plaintiffs' motion to amend their complaint (Dkt. #62).

DATED: Feb 22, 2005

Tena Campbell

TENA CAMPBELL

United States District Judge

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00405

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

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2005 FEB 23 A 9:53
DISTRICT OF UTAH
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PACIFIC FRONTIER, INC., et al., Plaintiffs, vs. FARMINGTON CITY, et al., Defendants.	ORDER Case No. 1:04-CV-121 TC

For the reasons set forth during the February 22, 2005 hearing on Defendant Melvin Wilson's Motion to Dismiss and Motion for Rule 11 Sanctions, Mr. Wilson's Motion to Dismiss is GRANTED WITHOUT PREJUDICE. Plaintiff may file a motion for leave to file an amended complaint with a copy of a proposed amended complaint curing flaws in the allegations against Mr. Wilson. If Plaintiff chooses to file a motion for leave, Plaintiff must do so no later than 21 days from the date of this Order. Additionally, for the reasons set forth during the hearing, Mr. Wilson's Motion for Rule 11 Sanctions is DENIED.

IT IS SO ORDERED this 22 day of February, 2005.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

25

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cv-00121

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Attorney for Union Pacific Railroad Company

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, Plaintiff, vs. LORAM MAINTENANCE OF WAY INC., a Minnesota corporation, Defendant.	ORDER EXTENDING TIME FOR UNION PACIFIC RAILROAD COMPANY TO FILE MEMORANDUM IN OPPOSITION TO LORAM MAINTENANCE OF WAY, INC.'S SECOND MOTION FOR SUMMARY JUDGMENT Civil No. 2:04CV00271 Judge Tena Campbell

Based on the Stipulation and Joint Motion for Extension of Time for Union Pacific Railroad Company ("UPRR") to File its Memorandum in Opposition to Loram Maintenance of Way, Inc.'s ("Loram") Second Motion for Summary Judgment, and good cause appearing therefor, it is hereby

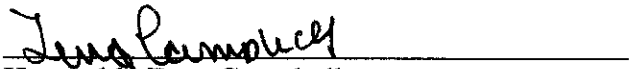
ORDERED, that the Stipulation and Joint Motion of UPRR and Loram is granted, and it is further

ORDERED, that UPRR may have up to and including Friday, March 11, 2005, to file its Memorandum in Opposition to Loram's Second Motion for Summary Judgment.

JC

Dated this 22 day of February, 2005.

BY THE COURT:



Honorable Tena Campbell
U.S. District Court Judge

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00271

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

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JUDGE TENA CAMPBELL

DARRYL PETERSON, a.k.a MAXX PAYNE Plaintiff, vs. ROCKSTAR GAMES, INC., a Delaware Corporation, APOGEE SOFTWARE, LTD., a Texas limited partnership d/b/a 3D REALMS ENTERTAINMENT; GATHERING OF DEVELOPERS, INC., a Texas Corporation; REMEDY ENTERTAINMENT, LTD., a Finnish Company, TAKE- TWO INTERACTIVE SOFTWARE, INC, a Delaware corporation and MAXCORP, LTD. Defendants.	§ §	**ORDER** Civil No. 2:03cv00613 TC Judge Tena Campbell Magistrate Judge David Nuffer

Having considered the Defendants' Motion for Leave to File Lengthy Briefs in Connection With Summary Judgment Briefings, the Court GRANTS the Motion.

It is hereby ORDERED that the following briefs submitted concurrently with the motion for leave) be deemed filed with the Court as of February 17, 2005.

- Reply in Support of Apogee and Remedy's Motion for Partial Summary Judgment on Plaintiff's § 43(a) Claim (for Lack of Secondary Meaning);
- Reply in Support of Apogee and Remedy's Motion for Partial Summary Judgment on Plaintiff's § 43(a) Claim (for No Likelihood of Confusion) and On Plaintiff's Common Law Misappropriation Claim (for Lack of Identifiability);
- Reply in Support of Apogee and Remedy's Motion for Partial Summary Judgment on Plaintiff's §§ 43(c) and (d) Claims;
- Defendants' Motion to Strike Evidence Offered in Support of Plaintiff's Opposition to Defendants' Motions for Partial Summary Judgment; and
- Defendant Apogee and Remedy's Opposition to Plaintiff's *Daubert* Challenge to the Gelb, Jones and Sobchak Expert Reports.

224

SIGNED AND ENTERED this 21 day of February, 2005.

Tena Campbell

HONORABLE TENA CAMPBELL
UNITED STATES DISTRICT JUDGE

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00613

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JOHN J. BORSOS Utah Bar Number 384
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(801) 533-8883 FAX (801) 533-8877

JANET K. FISK, Plaintiff, vs. JOANNE B. BARNHART, Commissioner, Social Security Administration, Defendant.	Civil No. 1:04 CV 152 ORDER

Based upon Plaintiff's unopposed motion for enlargement of time, and for good cause shown,

IT IS HEREBY ORDERED that the filing dates for the parties' briefs be set as follows:

1. Plaintiff's Brief may be filed by March 4, 2005.

2. Defendant's Answer Brief may be filed by April 4, 2005.

3. Plaintiff may file a Reply Brief by April 18, 2005.

DATED this 22 ~~day~~ of February, 2005.

BY THE COURT:

UNITED STATES MAGISTRATE

10

alt

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cv-00152

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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United States District Court
District of Utah

Markus B. Zimmer
Clerk of Court

Louise S. York
Chief Deputy

February 23, 2005

Mr. Patrick Fisher, Clerk
United States Court of Appeals
for the Tenth Circuit
1823 Stout Street
Denver, CO 80257

RE: RECORD ON APPEAL
USA v. Gomez-Astorga -- 04-4278
Lower Docket: 1:03-CR-62-TC

Dear Mr. Fisher:

We hand you herewith, by FedEx mail, Volumes I-VII of the record on appeal in the above-referenced case.

Volume:	Contents:
I.	Consisting of designated documents 1, 35, 78, 84, 88, 110, 139-140, 146, 148-149, 152-153, 172, 192, 199, 203-204, 211, 214, 223.
II.	Consisting of designated documents 233, 235-236, 248, 265, 268, 304, 308, 320, 341, 399, 404, 421-424, 455, 457, 459-460, 464-466, 475.
III.	Consisting of designated transcripts for 09/05/03(Motion Hearing).
IV.	Consisting of designated transcripts for 10/23/03(Motion Hearing).
V.	Consisting of designated transcripts for 03/03/04(Change of Plea).
VI.	Consisting of designated transcripts for 11/03/04(Sentencing).
VII.	Consisting of SEALED pre-sentence report.

Please acknowledge receipt of this record on appeal by signing the enclosed copy of this letter and returning it to my attention.

Sincerely,

Markus B. Zimmer, Clerk

By: /S
Aaron Paskins
Appeals Clerk

cc: Counsel of Record

Frank E. Moss U.S. Courthouse
Office of the Clerk

350 South Main Street
Suite 150

Salt Lake City, Utah 84101-2180
801/524-6100

FedEx Mail Receipt No.: 7915 5698 2564

ACKNOWLEDGMENT OF RECEIPT:

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Date: _____

asp

United States District Court
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District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:03-cr-00062

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FEB 2 2 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No. 2:04 CR 692
Plaintiff,	:	
vs.	:	ORDER GRANTING LEAVE OF COURT TO FILE A DISMISSAL OF THE INDICTMENT
ALBERTO AVILA-VILLANUEVA,	:	
Defendant.		

Based upon the motion of the United States of America, and for good cause appearing, the Court hereby grants the Government leave under Rule 48(a) of the Federal Rules of Criminal Procedure to dismiss the Indictment against defendant Alberto Avila-Villanueva.

DATED this 23 day of February 2005.

BY THE COURT:

David K Winder

DAVID WINDER
United States District Judge

22

jmr

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00692

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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US Probation
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United States Marshal Service
DISTRICT OF UTAH
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EMAIL

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2005 FEB 23 P 2:35
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

RACHEL CIESLEWICZ, Plaintiff, vs. AMERICAN RED CROSS, et al., Defendants.	**ORDER GRANTING MOTION TO COMPEL and PROTECTIVE ORDER** Case No: 2:03 CV 278 TS District Judge Ted Stewart Magistrate Judge David Nuffer

Plaintiff has moved[1] for an order compelling Defendant to turn over the names of persons who donated blood on May 25, 2001, the date she alleges she suffered an injury in connection with her own donation of blood on that date. Plaintiff seeks to corroborate her account of the events of that date:

> [Plaintiff] went to the Red Cross facility a 6616 South and 900 East on May 25, 2001, to donate blood. Her health history was taken at that time by a Red Cross employee. [Plaintiff] disputes the accuracy of some of the information written by the health historian, including her weight and heart rate.[2]
> During the donation, [Plaintiff] began to feel unwell, and complained to the phlebotomist that she was feeling tingling and spasms in both arms. She repeated these complaints at the end of the donation, but was told that her bed was needed for the next donor, and that she would feel better after having cookies and juice.[3]
> As she was walking over to the canteen area, [Plaintiff] lost consciousness and fell to the ground, hitting her head on the hard donor center floor. [Plaintiff] reports seeing a burst

---

[1] Docket no. 43, filed January 14, 2005.

[2] Memorandum in Support of Motion to Compel Discovery (Supporting Memorandum) at 3, docket no. 44, filed January 14, 2005, citing Plaintiff's deposition attached to the memorandum as Exhibit C, at page 15 line 6 through page 16 line 9 and page 19 line 15 through page 20 line 11.

[3] Supporting Memorandum at 4 citing Plaintiff's deposition at page 23 through page 29 line 22.

61

of light.[4] As a result of the fall, [Plaintiff] received a bloody head wound, and was taken by ambulance to a nearby emergency room. Ms. Cieslewicz was later diagnosed with a closed head injury.

Defendant Red Cross claims that its phlebotomist recalls no complaints or symptoms reported by Plaintiff and that nothing amiss was noted until Plaintiff fainted.[5] Thus, the facts are highly disputed.

Defendant Red Cross resists the motion because it has a motion for summary judgment pending, because Plaintiff has delayed asking for this information until three years after the incident, and to protect the privacy of its donors.[6]

Defendant attaches its privacy policy[7] pertaining to donors that designates identifying information as confidential, and requires that its dissemination of this information be limited to those who "need to know," to be used only in "furtherance of the best interests of the American Red Cross." This policy is not binding on the Plaintiff or the court and cannot prevent a claimant from acquiring needed evidence.[8] However, the privacy interests of donors and their trust in the Red Cross deserve some protection.

Delay in seeking these names and the pending summary judgment motion do not affect the need for this evidence (or the lack of it) to be developed in the near term.

---

[4] *Id.* citing Plaintiff's deposition at page 34 line 2 through page 36 line 12.

[5] Defendant American Red Cross's Memorandum in Opposition to Motion to Compel Discovery (Opposing Memorandum) at 3, docket no. 53, filed January 31, 2005

[6] *Id.*

[7] Exhibit B to Opposing Memorandum.

[8] Plaintiff refers to another Red Cross policy permitting disclosure pursuant to court order, but the court is unable to locate the policy. *See* Reply in Support of Plaintiff's Motion to Compel at 4, docket no. 55, filed February 9, 2005.

ORDER

IT IS HEREBY ORDERED that the motion to compel[9] is GRANTED as follows:

a. On or before March 4, 2005, Defendant shall deliver to Plaintiff's counsel a list of all donors and other persons known to have been at the relevant premises on May 25, 2001, with the estimated time of arrival and departure of each person, together with any documentation related to that person's presence or activities at the premises that day.

b. On or before March 11, 2005, Counsel for Plaintiff and Defendant shall mutually confer to determine which persons might reasonably be expected to have witnessed Plaintiff's arrival on the premises, her presence while there and/or her departure, and shall agree on an independent investigator or paralegal who shall perform functions hereafter described, to be paid equally by the parties.

c. On or before March 18, 2005, counsel shall jointly draft, sign and send a letter to each person reasonably believed to have been on the premises within the period beginning two hours before Plaintiff arrived on the premises and two hours after the time Plaintiff departed the premises. Among other things, the letter should discuss Plaintiff's claims, emphasize the need of the justice system for witnesses to come forward, inform the recipient of the court order for an investigation using a neutral investigator, and ask that a recipient with any recall of the incident alleged by Plaintiff contact the investigator.

d. After April 1, 2005, the investigator may contact any person who received a letter and inquire as to their knowledge and may take a statement from them if they have any knowledge of relevant facts. The investigator shall deliver any reports to counsel, simultaneously.

e. Counsel shall arrange any depositions of these persons through the investigator.

---

[9] Docket no. 43, filed January 14, 2005.

PROTECTIVE ORDER

IT IS FURTHER ORDERED that until the parties stipulate otherwise (a) no party or representative shall contact any of the persons named in the list provided under subparagraph a. above; (b) the documents (other than the list) described in subparagraph a. above or information contained therein, shall be treated as HIGHLY CONFIDENTIAL; and (c) the list described in subparagraph a. and the reports of the investigator and statements identified in subparagraph d. above shall be treated as CONFIDENTIAL. Documents and the information in documents which is HIGHLY CONFIDENTIAL shall be accessible only by Plaintiff's counsel and employees of counsel. Documents and the information in documents which is CONFIDENTIAL shall be accessible only by Plaintiff, Plaintiff's counsel and employees of counsel.

All such documents and information shall be used only as necessary for purposes of this civil action and for no other action, and shall not be used for any other purpose, and shall not be disclosed to any other person. At the conclusion of this action, including through all appeals, any person receiving documents shall destroy or return to the Defendant all such documents received and certify to the other party such destruction or return. Such return or destruction shall not relieve any person from any of the continuing obligation imposed upon by this order. If a person receiving such documents or information is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order seeks documents or information subject to this order, that party shall give prompt written notice to opposing counsel and allow opposing counsel an opportunity to oppose such subpoena or demand or court order prior to the deadline for

complying with the subpoena or demand or court order. No compulsory disclosure to third parties of documents or information subject to this order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction. The court's jurisdiction to enforce this order will continue after the termination of this action.

February 23, 2005.

BY THE COURT:

David Nuffer
U.S. Magistrate Judge

jmr

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00278

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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

STEVEN RASMUSSEN Plaintiff, vs. GENERAL GROWTH PROPERTIES, INC. and PROVO MALL, LLC. Defendants.	ORDER GRANTING DEFENDANTS' 12(b)(6) MOTION TO DISMISS COUNT 7 OF PLAINTIFF'S AMENDED COMPLAINT Case No. 2:04-CV-00099PGC

This case is before the court on defendant's motion to dismiss Count 7 of the Amended Complaint for failure to state a claim. Count 7 of the Amended Complaint is labeled "Harassment" and consists of paragraphs 72-79. There is no cause of under Utah or Federal law for general "harassment." The nearest cause of action stated by the plaintiff is intentional infliction of emotional distress. Under Utah law:

> In order to state a claim for intentional infliction of emotional distress, a plaintiff must plead facts which demonstrate that the defendant:
>
> > "Intentionally engaged in some conduct toward the plaintiff, (a) with the purpose of inflicting emotional distress, or, (b) where any reasonable person would have known that such

36

> would result; and his actions are of such a nature as to be considered outrageous and intolerable in that they offend against the generally accepted standards of decency and morality."[1]

The crux of Count 7 is that the alleged actions of the defendant caused "substantial emotional distress" to the Plaintiff. The court therefore will assume that Count 7 is an attempt to state a cause of action for intentional infliction of emotional distress. Whether or not the Plaintiff has successfully stated such a claim "must be determined by the facts pleaded rather than the conclusions stated."[2] Further, under Utah law, "it is for the trial court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery."[3]

The highlight of Count 7 is the allegation that on three occasions, the defendants threatened to file suit, but did not immediately follow through with the threats. But "[a]n allegation of improper filing of a lawsuit or the use of legal process against an individual is not redressable by a cause of action for intentional infliction of emotional distress."[4] More important, to state a cause of action for intentional infliction of emotional distress, the plaintiff must identify conduct which is "outrageous and intolerable."[5] Even if the conduct is "tortious,

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[1]*Franco v. The Church of Jesus Christ of Latter-day Saints*, 21 P.3d 198 (Utah 2001) (citations omitted).

[2]*Ellefsen v. Roberts*, 526 P.2d 912, 915 (Utah 1974).

[3]*Williams v. Jeffs*, 57 P.3d 232, 237 (Utah App. 2002) (citations omitted).

[4]*Bennett v. Jones, Waldo, Holbrook & McDonough*, 70 P.3d 17, 32 (Utah 2003).

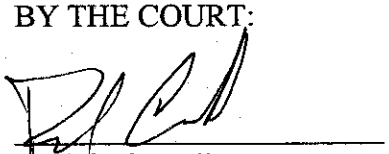
[5]*Id.* at 31.

injurious, or malicious, or because it would give rise to punitive damages, or because it is illegal" it is not necessarily outrageous.[6]

The conduct identified by the plaintiff, including: (1) threats of a lawsuit which were not immediately acted on; (2) an allegation that the defendants lied about when they became aware of plaintiff during arbitration; (3) an allegation that his "valid explanations of situations" were ignored by the defendants; and (4) an allegation that the defendants did not conduct their communications with him in good faith and were uncooperative. These allegations fall far short of establishing the type of outrageous behavior that must be identified to state a cause of action for intentional infliction of emotional distress. The court therefor GRANTS defendants motion to dismiss Count 7 of the Amended Complaint (# 19-1).

DATED this 14th day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

[6] *Id.* at 32.

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00099

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Steven Rasmussen
PO Box 416
Loa, UT 84747

Sarah E. Smith, Esq.
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60 E S TEMPLE STE 1800
SALT LAKE CITY, UT 84111-1004
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RECEIVED CLERK
FEB 18 2005
U.S. DISTRICT COURT

LEVITON MANUFACTURING CO., INC. Plaintiff, v. GRANDWAY U.S.A. CORPORATION d/b/a/ CHEETAH U.S.A. CORPORATION, Defendant.	Civil Action No. 2:04 CV-00347 PGC Judge Paul G. Cassell

RECEIVED
FEB 18 2005
OFFICE OF
JUDGE PAUL G. CASSELL

STIPULATED PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the parties, that the parties respectfully request that the Court enter the following proposed Stipulated Protective Order.

WHEREAS, this Court recognizes that pursuant to discovery or otherwise during the course of this action, all parties and nonparties may be required to disclose trade secrets and other "CONFIDENTIAL" or proprietary research, development, or commercial information within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure;

WHEREAS, this lawsuit may involve, inter alia, (a) highly confidential, technical, proprietary and trade secret subject matter and (b) highly sensitive and "CONFIDENTIAL" financial and marketing information;

WHEREAS, the unrestricted disclosure of such highly "CONFIDENTIAL" technical, scientific, marketing and financial information would be extremely prejudicial to the parties and

15

compromise their respective competitive positions; this Court having determined that this protective order is required in order to protect the interests of the parties while allowing the exchange of information relevant to the litigation;

WHEREFORE, this Court, pursuant to Rule 26(c) to prevent unnecessary disclosure or dissemination of such "CONFIDENTIAL" or proprietary information, hereby orders the following:

1. Designated Material

In accordance with the terms of this Stipulated Protective Order, any information recorded in any form or any portion thereof, including any form of evidence or discovery contemplated under Rules 26 through 36 of the Federal Rules of Civil Procedure, may be designated pursuant to this Stipulated Protective Order "CONFIDENTIAL OUTSIDE COUNSEL ONLY," OR "CONFIDENTIAL" by the person or entity producing or by any party to this action (the "Designating Party") if: (a) produced or served, formally or informally, pursuant to the Federal Rules of Civil Procedure or in response to any other formal or informal discovery request in this action; and/or (b) filed with the Court. All such information and material and all information or material derived from it constitutes "Designated Material" under this Stipulated Protective Order. Unless and until otherwise ordered by the Court or agreed to in writing by the parties, any and all material designated under this Stipulated Protective Order shall not be used or disclosed by the party receiving the Designated Material except as provided under the terms of this Stipulated Protective Order. (For purposes of this Stipulated Protective Order, "disclose" or "disclosed" means to show, furnish, provide or otherwise communicate the content of the referenced material or document to anyone, except as provided herein).

2. Access

2.1 Materials Designated "CONFIDENTIAL OUTSIDE COUNSEL ONLY." Subject to the limitations set forth in this Stipulated Protective Order, Designated Material may be marked "CONFIDENTIAL OUTSIDE COUNSEL ONLY" generally for the purpose of protecting non-public information relating to the Designating Party's highly sensitive technical, manufacturing, patent applications, marketing, sales and financial information. Material designated "CONFIDENTIAL OUTSIDE COUNSEL ONLY" may only be disclosed by the receiving party to:

(a) Persons who appear on the face of the Designated Material marked "CONFIDENTIAL OUTSIDE COUNSEL ONLY" as an author, addressee or recipient thereof; or persons in whose former files the document or thing was found;

(b) Outside counsel of record for the parties to this action, as well as the partners, associates, and regularly employed staff and supporting personnel of such counsel to the extent reasonably necessary to render professional services in this action;

(c) The Court and court personnel (including stenographic reporters) and any necessary law clerk, paralegal, secretarial, clerical, and other lay court personnel;

(d) Subject to Section 3.2 below, Designated Material marked "CONFIDENTIAL OUTSIDE COUNSEL ONLY" may also be disclosed to independent experts (and the assistants, secretarial and clerical staff of such experts), (collectively, "Consultants") who are not employees of the receiving party and who are retained by a party or its attorneys of record in this action to assist in the preparation of the case, such as independent economic, accounting or scientific experts or technical advisors, to furnish technical or expert services in connection with this action, or to give testimony with respect to the subject matter thereof for the trial of this action, and (i) who have been designated in writing by notice to counsel for all the

other parties to this suit prior to any disclosure of any of the producing parties' "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY" information to such persons, and (ii) who have been provided with a copy of this Order and have signed an affidavit in the form of Exhibit A attached hereto (a copy of such signed affidavit to be provided promptly to counsel for all other parties by counsel for the party retaining such person);

(e) Duplicating, photocopying, document coding, document scanning, independent graphic designer contractors and jury consultants, provided that such contractors be provided a copy of this order and that such contractors agree in writing, in the form of Exhibit A attached hereto, to comply with and be bound by its terms; and

(f) Such other persons as the parties may, in writing, agree or by order of this Court;

2.2 Materials Designated "CONFIDENTIAL." Subject to the limitations set forth in this Stipulated Protective Order, Designated Material may be marked "CONFIDENTIAL" for the purpose of protecting non-public research, development, manufacturing, patent, marketing, sales, commercial, financial, business or other "CONFIDENTIAL" information of the Designating Party. Materials designated "CONFIDENTIAL" may only be disclosed by the receiving party to:

(a) Persons who appear on the face of Designated Materials marked "CONFIDENTIAL" as an author, addressee or recipient thereof; or persons in whose former files the document or thing was found;

(b) Outside counsel and Consultants defined respectively in Sections 2.1(b), and (d) above; and persons defined in Section 2.1(a) above, to the extent they would be permitted

access to such "CONFIDENTIAL" information if it were designated "CONFIDENTIAL OUTSIDE COUNSEL ONLY;"

(c) Present employees or agents of the designating party; and

(d) Consultants of the designating party and former employees of the designating party who were employees at the time the documents were created or who received the documents from the designating party;

(e) A single technical consultant per side, whose name, title and current position shall be designated in writing by notice to opposing counsel and who has been provided a copy of this Order and has signed an affidavit in the form of Exhibit A attached hereto prior to any disclosure of any of the producing party's "CONFIDENTIAL" information to such person (a copy of such signed affidavit to be provided promptly to counsel for all the other parties);

(f) The Court and court personnel (including stenographic reporters) and any necessary law clerk, paralegal, secretarial, clerical, and other lay court personnel;

(g) Duplicating, photocopying and document coding/scanning contractors, provided that such contractors be provided a copy of this order and that such contractors agree in writing, in the form of Exhibit A attached hereto, to comply with and be bound by its terms; and

(h) Such other persons as the parties may, in writing, agree.

2.3 Upon the termination of this action, all recipients of Designated Material pursuant to Section 2 shall return or destroy all Designated Material (and all copies thereof) in the manner described in Section 13.2 of this Stipulated Protective Order.

3. Certificates Concerning Designated Materials

3.1 Each person to whom any Designated Material may be disclosed pursuant to the provisions of Section 2.2(b) above, (with the exception of secretarial, clerical staff and supporting personnel of outside counsel or a designated consultant) shall, prior to the time such

Designated Material is disclosed to him or her, be provided with a copy of this Stipulated Protective Order and shall certify under penalty of perjury that he or she has carefully read this Stipulated Protective Order and fully understands and agrees to abide by its terms. This certificate shall be in the form attached as Exhibit A. Outside counsel who makes any disclosure of Designated Materials to Consultants, pursuant to Sections 2.1(d) and 2.2(b) above, shall retain each original executed certificate. This certificate shall be in the form attached as Exhibit A.

3.2 If any party desires to give, show, make available or communicate any documents or information designated as "CONFIDENTIAL OUTSIDE COUNSEL ONLY" to any person identified in section 2.1(d) above, the party must first identify that individual to the attorneys for the Designating Party, who shall have seven (7) business days from receipt of such notice in writing to object to disclosure to any individual so identified. Such identification shall include the full name, company or firm name and professional address of the Section 2.1(d) individuals and shall also include a general description of job title, duties, and scope of work, together with a disclosure of any consulting done within the immediately prior five (5) years and any present consulting contracts. The parties shall attempt to resolve any objections informally. If the objections cannot be resolved within ten (10) business days from service of the notice, the party seeking to disclose the documents or information designated as "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY" to the individual may move for an order of the Court allowing the disclosure. In the event objections are made and not resolved informally, disclosure of "CONFIDENTIAL OUTSIDE COUNSEL ONLY" or "CONFIDENTIAL" documents and/or information to the individual shall not be made except by order of the Court. The party seeking disclosure shall bear the burden of proving that the disclosure is appropriate.

4. Use of Designated Materials By Designating Party

Nothing in this Stipulated Protective Order shall limit any Designating Party's use of its own documents and information, nor shall it prevent the Designating Party from disclosing its own "CONFIDENTIAL" information or documents to any person. Such disclosure shall not affect any designations made pursuant to the terms of this Stipulated Protective Order, so long as the disclosure is made in a manner which is reasonably calculated to maintain the confidentiality of the information.

5. Designating Materials

Documents, information, materials, pleadings, legal memoranda, expert statements and discovery responses, in whole or in part, may be designated as "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY" as follows:

5.1 The producing or responding party shall designate material by placing the legend "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY" on each page of the materials or on each physical item prior to its production.

5.2 When a party wishes to designate its own "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY" materials produced by someone other than the Designating Party, such designation shall be made:

(a) Within twenty-five days (25) from the date that the Designating Party receives copies of such materials from the producing or disclosing entity; and

(b) By notice to all parties to this action and to the producing party, if such party is not a party to this action, identifying the materials to be designated with particularity (either by production numbers or by providing other adequate identification of the specific material). Such notice shall be sent by facsimile and regular mail.

(c) The parties receiving such materials agree to treat it as "CONFIDENTIAL OUTSIDE COUNSEL ONLY" materials under this Stipulated Protective Order until expiration of said 25 day period or until designation is made as set forth above within said 25 day period.

5.3 Upon notice of designation pursuant to Section 5.2 above, all persons receiving notice of the requested designation of materials shall:

(a) Make no further disclosure of such Designated Material or information contained therein, except as allowed in this Stipulated Protective Order;

(b) Take reasonable steps to notify any persons known to have possession of or access to such Designated Materials of the effect of such designation under this Stipulated Protective Order; and

(c) Take reasonable steps to reclaim or prevent access to such Designated Material or information in the possession or control of any person not permitted to have access under the terms of this Stipulated Protective Order.

6. Designating Depositions

6.1 Deposition transcripts or portions thereof may be designated as "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY" by a party during deposition testimony taken in this action, in which case the portion of the transcript containing Designated Material shall be identified in the transcript by the Court Reporter as "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY."

6.2 Where testimony is designated at a deposition, the Designating Party shall have the right to exclude, at those portions of the deposition, all persons not authorized by the terms of this Stipulated Protective Order to receive such Designated Material.

6.3 Notwithstanding the provisions set forth in Sections 2.1, 2.2 and 3, above, any party may mark Designated Material marked "CONFIDENTIAL" or "CONFIDENTIAL

OUTSIDE COUNSEL ONLY" as a deposition exhibit and examine any witness thereon, provided that the exhibit and related transcript pages receive the same confidentiality designation as the original Designated Material and provided that the person to whom the Designated Material is to be shown is a person who may have such access under Sections 2.1, 2.2 and 3, above.

6.4 Any party may, within thirty (30) calendar days after receiving a deposition transcript, designate pages of the transcript and/or its exhibits as Designated Material. If any party so designates such material, the parties or deponents shall provide written notice of such designation to all parties within the thirty day period. Designated Material within the deposition transcript or the exhibits thereto may be identified in writing or by underlining the relevant portions and marking such portions "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY." Until the expiration of the thirty calendar day period, any portion of the deposition not previously designated shall be treated as "CONFIDENTIAL OUTSIDE COUNSEL ONLY," subject to protection as provided for by this Stipulated Protective Order.

7. Copies

All complete or partial copies of Designated Material shall also be deemed subject to the terms of this Stipulated Protective Order.

8. Court Procedures

8.1 Disclosure of Designated Material to Court Officials. Subject to the provisions of this Section 8, Designated Material may be disclosed to the Court, Court officials or employees involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master or referee appointed by the Court),

the jury in this action, and any independent interpreters interpreting on behalf of any party or deponent who complete the certification set out in Exhibit A.

8.2 Filing Designated Materials with the Court. In applications and motions to the Court, all Designated Material filed with the Court shall be in a sealed envelope or container on which shall be affixed the title of this action, an indication of the nature of the content, the words "CONFIDENTIAL -- FILED UNDER SEAL" and a statement substantially as follows:

> **THIS ENVELOPE CONTAINS MATERIAL SUBJECT TO A PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT TO BE OPENED NOR ARE ITS CONTENTS TO BE DISPLAYED, REVEALED OR MADE PUBLIC, EXCEPT BY ORDER OF THE COURT.**

The submission shall indicate clearly which portions are Designated Materials. For the convenience of the parties and the Court, a party that files a paper that is a pleading, brief, declaration or exhibit that contains, in excerpts, quotes or paraphrases, Designated Material and undesignated material may file the entire paper under seal. The Clerk of the Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal with the Court in this litigation that have been designated, in whole or in part, as Designated Material by a party to this action.

8.3 Retrieval of Designated Materials. The party responsible for filing the Designated Materials shall be responsible for retrieving such Designated Materials from the Court following the final termination of the action (including any appeals thereof), to the extent permitted by the Court and the Court's governing rules.

8.4 Failure to File Under Seal. If any party fails to file Designated Materials under seal, the Designating Party or any party to this action may request that the Court place the

Designated Materials under seal within 30 days of the filing of said Designated Materials. The Clerk of the Court is directed to comply with such request if made.

9. Objections

A party may challenge the propriety of any designation under this Stipulated Protective Order at any time. A challenge may be made by serving all other parties with a captioned notice of objection, which shall identify with particularity the Designated Materials as to which the designation is challenged and state the basis for each challenge ("Notice of Objection"). Service of a Notice of Objection shall be made by facsimile and by mail.

Following service of a Notice of Objection, the parties shall meet and confer in good faith to resolve the challenge. In the event that the parties are unable to resolve the challenge informally, the party challenging the designation may file, on or before the thirtieth calendar day after service of a Notice of Objection, a motion to redesignate the challenged material, accompanied by a certification that the parties met and conferred in good faith prior to the filing of the motion. In the event of such a motion, the material at issue may be submitted to the Court for in-camera inspection. It shall be the burden of the designating person(s) under such circumstances to establish that the information so designated is "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY" within the meaning of this Stipulated Protective Order. The original designations shall remain effective until ten (10) business days after service of notice of entry of an order redesignating the materials and during the pendency of any timely filed appeal or writ petition.

In the event that a party files a motion challenging the designation of a document or documents, following the objection procedure set forth above and the meet and confer process, the Court may award sanctions, including reasonable attorneys' fees and costs, to the party prevailing on the motion if the Court finds that the other party acted without substantial

justification by filing the motion, by resisting the motion, or by improperly designating materials as "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY," as the case may be.

10. Client Communication

Nothing in this Stipulated Protective Order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course of rendering such advice, relying upon the examination of Designated Material. In rendering such advice and otherwise communicating with the client, however, counsel shall not disclose the content, substance or source of any Designated Material, except as permitted by this Stipulated Protective Order.

11. No Prejudice

11.1 This Stipulated Protective Order shall not diminish any existing obligation or right with respect to Designated Material, nor shall it prevent a disclosure to which the Designating Party consents in writing before the disclosure takes place.

11.2 Unless all parties stipulate otherwise, evidence of the existence or nonexistence of a designation under this Stipulated Protective Order shall not be admissible for any purpose during any proceeding on the merits of this action.

11.3 If any person required to produce documents inadvertently produces any Designated Material, without marking it with the appropriate legend, the producing party may give written notice to the receiving party or parties, including appropriately stamped copies of the Designated Material, that the document, thing, or response is deemed Designated Material and should be treated as such in accordance with the provisions of this Stipulated Protective Order. Any party, in good faith, may designate as "CONFIDENTIAL" or "CONFIDENTIAL OUTSIDE COUNSEL ONLY" information at any time information which has been previously produced in the event of that party's inadvertent failure to make such a designation earlier.

11.4 Neither the provisions of this Stipulated Protective Order, nor the filing of any material, under seal, shall prevent the use in court, at any hearing, or at trial of this case of any material that is subject to this Stipulated Protective Order or filed under seal pursuant to its provisions. Prior to the pretrial conference, the parties shall meet and confer concerning appropriate methods for dealing with Designated Material at trial.

11.5 Nothing in this Stipulated Protective Order shall constitute an admission or concession by either party that any Designated Material or other evidence or information produced pursuant to this Stipulated Protective Order is relevant, material, or admissible in this action. Notwithstanding any provision of this Stipulated Protective Order, the parties hereby reserve all rights to object to the relevance, materiality, or admissibility of Designated Material or other evidence or information produced under the terms of the Stipulated Protective Order, and to seek exclusion of any such evidence or information in this action. Nothing in this Stipulated Protective Order is intended to waive such rights to object to or seek exclusion of evidence in this action.

12. Inadvertent Production of Privileged Documents

In the event that one of the law firms that is counsel of record in this action (or a responsible attorney for a non-party) learns or discovers that a document subject to immunity from discovery on the basis of attorney-client privilege, work product immunity or other valid basis has been produced inadvertently, counsel shall notify the receiving party or parties within ten (10) business days after so learning or discovering that such inadvertent production has been made. The inadvertently disclosed documents and all copies thereof shall be returned to the producing party and the receiving party shall not seek an order compelling production of the inadvertently disclosed documents on the ground that the producing party has waived or is estopped from asserting the applicable privilege or immunity on the basis that the document has

been voluntarily produced. Such inadvertent disclosure shall not result in the waiver of any associated privilege, provided that the producing party has given timely notice as provided in this paragraph. Counsel shall cooperate to restore the confidentiality of any such inadvertently produced information.

13. Modification and Survival

13.1 Modification. The parties reserve the right to seek modification of this Stipulated Protective Order at any time for good cause. The parties agree to meet and confer prior to seeking to modify this Stipulated Protective Order for any reason. The restrictions imposed by this Stipulated Protective Order may only be modified or terminated by written stipulation of all parties or by order of this Court.

13.2 Survival and Return of Designated Material. This Stipulated Protective Order shall survive termination of this action. Upon termination of this action, the Clerk of the Court may return to counsel or destroy any sealed material. Upon final termination of this action, including appeals and retrials, and at the written request of the Designating Party, all Designated Material, including deposition testimony regarding designated exhibits and all copies thereof, shall be destroyed or returned to counsel for the Designating Party or, if such party is not represented by counsel, directly to the Designating Party. Such Designated Materials shall either be returned at the expense of the Designating Party or, at the option of the requesting party, destroyed. Upon request for the return or destruction of Designated Materials, counsel of record shall certify their compliance with this provision and shall deliver such certification to counsel for the Designated Materials. Counsel of record shall certify their compliance with this provision and shall deliver such certification to counsel for the Designating Party not more than ninety (90) days after the written request to return or destroy Designated Materials. Notwithstanding the provisions for return or destruction of Designated Material, outside counsel may retain pleadings,

attorney and consultant work product and one set of trial exhibits or any hearing and deposition transcripts.

14. The Provisions Hereof Do Not Apply To Information That Becomes Public Knowledge In The Absence Of A Violation Of This Stipulated Protective Order

The restrictions set forth in the foregoing paragraphs shall not apply to information which (a) was or became public knowledge, not in violation of this Stipulated Protective Order; (b) was or is acquired in good faith from a third party, not a party to this litigation, not in violation of this Stipulated Protective Order and who has the right to disclose such information; (c) was or is discovered independently by the receiving party without any violation of this Stipulated Protective Order having occurred; or (d) was disclosed by the supplying party to a third party in the absence of any understanding or expectation that the information would be kept confidential. The burden of showing that Designated Material can be treated as non-confidential material pursuant to the provisions of this section 14 shall rest at all times on the party who seeks to disclose such information or to treat such information as non-confidential. A party that objects to the designation of material as "CONFIDENTIAL" (under any of the two levels of confidentiality contemplated herein) on one of the grounds set forth in this section 14 shall follow the objection procedures set forth in section 9 above.

15. Material Disclosed To Be Used Only For Purposes Of Lawsuit

All Designated Material hereunder may be used by each receiving party solely for purposes of this litigation, and for no other purpose. Except as provided below, a receiving party may not use any Designated Material it obtains in the course of this litigation for any business purpose or in any other legal or administrative proceeding or in any other manner relating to the prosecution of any patent application or any request for patent rights in any country. Designated Material produced during the course of this litigation can be used by a receiving party in other

legal or administrative proceedings if such use is mutually agreed upon by the producing and receiving party.

16. No Contract

This Stipulated Protective Order shall not be construed to create a contract between the parties or between the parties and their respective counsel.

17. Court's Retention of Jurisdiction

The Court retains jurisdiction to make such amendments, modifications, and additions to this Stipulated Protective Order as it may from time to time deem appropriate.

GREENBERG TRAURIG LLP

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Barry G. Magidoff
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Facsimile: ( )
Attorneys for Defendant
Grandway U.S.A. Corporation d/b/a/
Cheetah U.S.A. Corporation.

ENTERED this 22nd day of February 2005

AGREED:

United States District Judge

EXHIBIT A

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

LEVITON MANUFACTURING CO., INC. Plaintiff, v. GRANDWAY U.S.A. CORPORATION d/b/a/ CHEETAH U.S.A. CORPORATION, Defendant.	Civil Action No. 2:04 CV-00347 JTG Judge J. Thomas Green

AGREEMENT

My full name is _____. I am presently employed by _____ in the position of _____. My residence address is _____.

I hereby acknowledge that I am to have access to information designated in this litigation as "CONFIDENTIAL" material and/or "CONFIDENTIAL OUTSIDE COUNSEL ONLY" material, if permitted, by the terms of the parties' Stipulated Protective Order, in the above-captioned litigation. I certify my understanding that such information has been provided to me pursuant to the terms and restrictions of the Stipulated Protective Order entered January ____, 2005, in the above-captioned litigation, under Section 2 thereof, and that I have been given a copy of and have read said Stipulated Protective Order and agree to be bound by the terms thereof. I further agree to subject myself to the jurisdiction of the United States District Court for the Central District of Utah regarding resolution of any matter pertaining to said Stipulated Protective Order.

Dated:_____

Signature:_____
Print Name: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **STIPULATED PROTECTIVE ORDER** was served on plaintiff Leviton Manufacturing Company, Inc., by mailing a true copy thereof to its attorneys of record, this 18th day of February, 2005, in an envelope addressed as follows:

Milo Steven Marsden
DORSEY & WHITNEY, LLP
170 South Main Street
Suite 900
Salt Lake City, Utah 84101-1655

Via U.S. Mail

Paul J. Sutton
Barry G. Magidoff
Michael A. Nicodema
GREENBERG TRAURIG, LLP
Lipstick Building
885 Third Avenue
New York, New York 10022

Via Federal Express

Elizabeth C. Davidson

J:\1527250\prop Stipulated Protective Order_v1.DOC

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00347

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Milo Steven Marsden, Esq.
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170 S MAIN #900
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FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

FEB 23 2005

MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ANDY WAH LEW Defendant.	ORDER DENYING DEFENDANT'S NOTICE OF SUBSTITUTION OF COUNSEL AND DEEMING MOOT DEFENDANT'S MOTION FOR REVIEW OF CUSTODY Case No. 2:04-CR-00694 PGC

This matter is before the court on defendant Andy Wah Lew's notice of substitution of counsel and motion for review of custody. As required under Rule 83-1.4 of the local rules of Civil Procedure:

> No attorney of record will be permitted to withdraw *after an action has been set for trial unless* (i) the application includes an endorsement signed by a substituting attorney indicating that such attorney has been advised of the trial date and will be prepared to proceed with trial; (ii) the application includes an endorsement signed by the client indicating that the client is advised of the time and date and will be prepared for trial; or (iii) the court is otherwise satisfied for good cause shown that the attorney should be permitted to withdraw. . . .[1]

[1]DUCivR 83-1.4(3) (emphasis added).

2le

On December 10, 2004, the trial date was originally set for February 7, 2005. The court then granted defendant's motion to continue the trial, re-setting it for March 21, 2005. Therefore, because a trial date has been set (and is less than one month out), and because the notice of substitution of counsel was submitted without any of the additional information required under the local rules, defendant's notice is DENIED. The court further finds that it the notice is not "otherwise satisfied for good cause shown" upon consideration of the upcoming trial and the potential for delay that most likely would result should new counsel be allowed.

Lastly, in light of this order, defendant's motion for review of custody is also DENIED as moot because Mr. Oliver is not currently recognized by the court as defendant's counsel in this matter.

DATED this 23rd day of February, 2005.

BY THE COURT:

Paul G. Cassell
United States District Judge

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00694

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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US Probation
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,
EMAIL

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CLERK U.S. DISTRICT COURT
2005 FEB 23 P 12: 10
DISTRICT OF UTAH
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA	:	
	:	**ORDER**
Plaintiff,	:	
	:	**1:04-CR-158**
Samuel Oetinger		
Defendant	:	
	:	

This Court affirms the Order Setting Conditions of Release signed by Chief United States Magistrate Samuel Alba on February 18, 2005, which was agreed upon by the Assistant United States Attorney. The denial of the Motion for Release submitted by the defendant, signed February 16, 2005, is rescinded.

DATED this 23rd day of February, 2005.

BY THE COURT:

Honorable Paul G. Cassell
United States District Judge

54

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00158

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FILED
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2005 FEB 23 A 11:49
DISTRICT OF UTAH
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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

EXECUTIVE RISK INDEMNITY, INC., Plaintiff(s), vs. CAMERON J. LEWIS, et al., Defendant(s).	ORDER DENYING EXPEDITED CONSIDERATION Case No. 2:04-CV-01115 PGC

Defendant Shanna Black has moved for expedited consideration of her underlying motion for partial summary judgment in the above-referenced matter. Expedited consideration is denied as the court anticipates that the non-moving party will raise a valid objection to partial summary judgment under Fed.R.Civ.P. 56(f), which provides for a continuance of proceedings on summary judgment upon an affidavit by the non-moving party that further discovery is needed.

Although the court does not find expedited consideration warranted in the present context, Ms. Black nonetheless retains the option of moving for a preliminary injunction. If that motion were well-founded, the motion could gain her more expedited review. The court

19

expresses no views on the merits of any such motion.

DATED this 22nd day of February, 2005.

BY THE COURT:

Paul G. Cassell
United States District Judge

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01115

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FILED
CLERK, U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA Plaintiff(s), vs. MERCEDES AZARVAND Defendant(s),	PRETRIAL ORDER PURSUANT TO RULE 17.1 F.R.Cr.P. Case No. 2:05-CR-74 PGC

The above-entitled action came on for pretrial conference **February 15, 2005**, before Samuel Alba, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/18/05**, (2 days) at **8:30 am**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Paul G. Cassell by **4/15/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No ____

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

10

3. Pretrial motions are to be filed by: **2/14/05** at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by **4/4/05**. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **RELEASED**.

7. All exhibits will be premarked before Judge Paul G. Cassell's clerk before trial.

8. Other order and directions are: **GOVERNMENT TO PROVIDE DISCOVERY BY 2/18/05.**

9. Interpreter Needed: Yes ___ No X Language _____

DATED this 15th day of February, 2005.

BY THE COURT:

Samuel Alba
Chief Magistrate Judge

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00074

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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,
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FILED
CLERK, U.S. DISTRICT COURT
DISTRICT OF UTAH
BY: DEPUTY CLERK

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

UNITED STATES OF AMERICA Plaintiff(s), vs. JACQUELINE CARRIE NELSON Defendant(s),	PRETRIAL ORDER PURSUANT TO RULE 17.1 F.R.Cr.P. Case No. 1:05-CR-13 PGC

The above-entitled action came on for pretrial conference **February 16, 2005**, before Samuel Alba, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/27/05**, (3 days) at **8:30 AM**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Paul G. Cassell by **4/25/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No ____

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

14

3. Pretrial motions are to be filed by: **3/18/05** at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by **4/13/05**. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **RELEASED**.

7. All exhibits will be premarked before Judge Paul G. Cassell's clerk before trial.

8. Other order and directions are: **GOVERNMENT TO PROVIDE DISCOVERY BY 2/21/05.**

9. Interpreter Needed: Yes __ No X Language _____

DATED this 16th day of February, 2005.

BY THE COURT:

Samuel Alba
Chief Magistrate Judge

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cr-00013

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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United States Marshal Service
DISTRICT OF UTAH
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EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

FEB 22 2005

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

JOHN J. BORSOS Utah Bar Number 384
JOHN J. BORSOS, P. C.
Attorney for Plaintiff
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Salt Lake City, UT 84147-2347
(801) 533-8883 FAX (801) 533-8877

CATINA HARPER for, JANTANIQUE ROSS, Plaintiff, vs. JOANNE B. BARNHART, Commissioner, Social Security Administration, Defendant.	Civil No. 2:04 CV 980 PGC ORDER

Based upon Plaintiff's unopposed motion for enlargement of time, and for good cause shown,

IT IS HEREBY ORDERED that the filing dates for the parties' briefs be set as follows:

1. Plaintiff's Brief may be filed by March 4, 2005.

2. Defendant's Answer Brief may be filed by April 4, 2005.

3. Plaintiff may file a Reply Brief by April 18, 2005.

DATED this 21st day of February, 2005.

BY THE COURT:

UNITED STATES MAGISTRATE

8

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00980

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Scott Patrick Bates, Esq.
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FILED
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2005 FEB 16 A 9:54
DISTRICT OF UTAH
BY: DEPUTY CLERK

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

UNITED STATES OF AMERICA Plaintiff(s), vs. PAUL DAVID STRANGE Defendant(s),	PRETRIAL ORDER PURSUANT TO RULE 17.1 F.R.Cr.P. Case No. 2:05-CR-17 PGC

The above-entitled action came on for pretrial conference **February 10, 2005**, before Samuel Alba, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/21/05**, (2 days) at **8:30 am**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Paul G. Cassell by **4/19/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No ____

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

14

3. Pretrial motions are to be filed by: **3/7/05** at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by **4/7/05**. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **RELEASED**.

7. All exhibits will be premarked before Judge Paul G. Cassell's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes __ No X Language _____

DATED this 15th day of February, 2005.

BY THE COURT:

Samuel Alba
Chief Magistrate Judge

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00017

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 P 4:34

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

MARY L. ROWE, Plaintiff, vs. CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, d.b.a. DESERET INDUSTRIES, Defendant.	ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT Case No. 2:02-CV-01399PGC

This matter is before the court on the defendant Deseret Industries motion for summary judgment. Plaintiff Mary Rowe brought this action under the Americans with Disabilities Act (ADA), alleging that Deseret Industries failed to accommodate her disability and terminated her employment because of her disability. The court finds that there are no disputed issues of material fact which would allow Ms. Rowe to prevail at trial. Accordingly, summary judgment is hereby GRANTED to Deseret Industries.

BACKGROUND

Deseret Industries is owned by the Corporation of the Presiding Bishop of the Church of

41

Jesus Christ of Latter-Day Saints – a financial wing of the LDS Church. The purpose of the thrift stores operated by Deseret Industries is to assist individual trainees in their efforts to develop self-reliance by acquiring work skills. Deseret Industries generally employs individuals with special needs and disabilities in a 12-month training program. The goal is to help these individuals in acquiring skills which make them marketable for traditional employment.

Trainees at Deseret Industries must be referred to the program by their bishop (an LDS ecclesiastical leader). During their employment, trainees are generally evaluated quarterly according to their Individual Self Reliance Plan, and their bishop is kept informed of the trainee's progress. At the beginning of each trainee's tenure, they are classified as either (1) disabled – a trainee with a documented disability as defined by the U.S. Department of Labor; (2) vocationally impaired – a trainee who needs assistance in order to become competitively employed; or (3) work adjusted – a trainee who is employable but needs specific skills training. Work-adjusted trainees may be classified as mentors (who mentor 3-5 other trainees) or leads (who mentor other trainees and assist in supervisory responsibilities). Trainees are classified based on an initial skills evaluation and may be reclassified based on quarterly evaluations.

Mary Rowe was referred by her bishop and began a training program in March 1998. On her application, Ms. Rowe wrote that she had diabetes and needed accommodations so she could "eat and test." Her employment apparently progressed well over the first six months. Ms. Rowe was initially classified as vocationally impaired. But in October 1998, while working under supervisor Jill Sayers, Ms. Rowe's status was changed to work-adjusted. Ms. Rowe contends that her success while working under Ms. Sayers was a result of Ms. Sayers' willingness to

accommodate her in regular monitoring and regulation of her blood-sugar levels.

As a result of her success, Ms. Rowe's duties were changed. She was moved to a different department where her new supervisor was Phil Washburn. It was during this period that Ms. Rowe's difficulties apparently began. Ms. Rowe alleges that Mr. Washburn did not accommodate her need to regulate her blood-sugar levels. According to Ms. Rowe, Mr. Washburn questioned her each time she took a break to test her levels. According to Mr. Washburn, Ms. Rowe frequently left her own work area to visit with other trainees and customers for prolonged periods of time.

The first week Ms. Rowe worked for Mr. Washburn, Ms. Rowe told him she had problems in the morning because of her many medications. Mr. Washburn replied, "come in when you're feeling well and call if you're not feeling well." Ms. Rowe argues that she wanted to tell Mr. Washburn that she needed a fixed place which would always be available and accessible where she could store her food and supplies and gain access to in an immediate fashion whenever she needed to eat and test. In her deposition, Ms. Rowe states that she needed a consistent place to test. However, Ms. Rowe also states, "I can test anywhere I am, but if I know that I have a place to eat and test, then I'm not worried about not having a place to eat and test. . . . If I have had my tester and I have food, I can eat and test as needed." Ms. Rowe states she did not have an opportunity to discuss her concerns and interact with Mr. Washburn using an interactive process.

In September 2001, Ms. Rowe expressed her frustration with Mr. Washburn. According to Ms. Rowe, her repeated requests for accommodations were ignored. But according to Deseret

Industries, Ms. Rowe was continually accommodated, but made repeated requests for the same accommodations she was already receiving.

On February 5, 2002, Ms. Rowe met with the store manager, Dave Toone, and the Rehabilitation Manager, Sid Thomas. The meeting was apparently an attempt to resolve concerns over Ms. Rowe's performance. There is some dispute about exactly what occurred at the meeting, but it is not disputed that Mr. Toone went over a list of eight items with which Ms. Rowe was expected to comply with if she wanted to remain in the program. Most of the items were simply informational, such as reiterating that the mission of Deseret Industries was to create training programs rather than permanent employment. Two of the items required compliance. Item six stated: "It is our choice to place you in any assignment in which you are capable of working, as long as it is safe and you are able to perform the task. It is not your place to demand a certain job or supervisor." And item seven read: "You need to work your assigned days and shifts. If there are medical reasons that you cannot meet the schedule, you should notify your supervisor. We have made every effort to provide work schedules that will fit your specific needs." Finally, item eight stated: "Are you willing to comply with these requests? If not, we will release you from the program."

According to Mr. Toone, Ms. Rowe said she was not willing to comply. Ms. Rowe also does not dispute that after the meeting Mr. Toone called Ms. Rowe's bishop and informed him about the meeting; at that time, Ms. Rowe's bishop instructed Mr. Toone to release her from the program. Ms. Rowe alleges that the real reason for her termination was that Deseret Industries simply did not want to deal with her disabilities.

STANDARD OF REVIEW

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment "shall be rendered . . . if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[1] In applying this standard, the court must examine the evidence and reasonable inferences therefrom in the light most favorable to the non-moving party.[2] Because Deseret Industries is the moving party, all reasonable inferences have been taken in the light most favorable to Ms. Rowe.

DISCUSSION

Deseret Industries has moved for summary judgment alleging that (1) Ms. Rowe is not a "qualified individual with a disability" under the ADA; (2) Deseret Industries provided reasonable accommodations for Ms. Rowe; and (3) Deseret Industries released Ms. Rowe from the employment training program for legitimate, nondiscriminatory reasons. While the disputed issues of fact preclude summary judgment as to the first argument, summary judgment is appropriate on the next two. These two arguments dictate summary judgment as to the entire case. The court agrees with both of these positions.

"Qualified Individual with a Disability" Under the ADA

Deseret Industries argues that Ms. Rowe does not have a substantially limiting disability because she is able to mitigate the effects of her diabetes by taking medication and controlling

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[1]FED. R. CIV. P. 56(c).

[2]*See Gaylor v. Does*, 105 F.3d 572, 574 (10th Cir. 1997).

her diet. The ADA defines the term "qualified individual with a disability" as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires."[3] A disability is a physical or mental impairment that limits one or more of the major life activities.[4] "[I]f a person is taking measures to correct for, or mitigate, a physical or mental impairment, the effects of those measures – both positive and negative – must be taken into account when judging whether that person is 'substantially limited' in a major life activity and thus 'disabled' under the Act."[5] Ms. Rowe is able to mitigate the effects of her impairments by eating and testing her blood glucose levels and Deseret Industries' position is a strong one. However, given Ms. Rowe's testimony about the long history of her disease, the frequency with which she states she must eat and test to maintain her blood glucose levels, and her inability to eat, sleep and do physical activity when she wants to, the court finds that a genuine issue of material fact exists on this point.

Reasonable Accommodation

Deseret Industries also contends that, even if Ms. Rowe was disabled, it provided reasonable accommodations to her. Under the ADA, a plaintiff can state a cause of action for failure to provide reasonable accommodations.[6] However, an employer is not required to provide

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[3]42 U.S.C. § 12111(8).

[4]42 U.S.C. § 12102(2)(A).

[5]*Sutton v. United Airlines, Inc.*, 527 U.S. 471, 482 (1999).

[6]*Selenke v. Med. Imaging of Colo.*, 248 F.3d 1249, 1261 (10th Cir. 2001).

the best possible accommodations or to accommodate in the specific manner the employee requested.[7] Employers have broad discretion in determining which alternative accommodation should be provided.[8] At oral argument, Ms. Rowe conceded that Deseret Industries accommodated her diabetes, but claims she did not receive the precise accommodation she requested – a consistent and convenient place to eat and store her supplies. In her deposition, however, Ms. Rowe admitted that she could test anywhere and carry her supplies on her. Ms. Rowe stated, "If I have my tester and I have my food, I can eat and test as needed."[9] When asked where she carried her food and supplies Ms. Rowe answered, "I could put it – I put it in my purse. I put it in a bag. I put it in my coat."[10] Ms. Rowe acknowledged that several supervisors, including Washburn, allowed her to keep supplies in their offices.[11] Additionally, Washburn made accommodations to allow her to come in when she was feeling well and to call if she was not feeling well. Although Deseret Industries may not have provided the exact accommodation requested by Ms. Rowe – a single consistent place to eat and test – reasonable accommodations were made to allow her to eat and test when necessary. In sum, what Ms. Rowe sought were more convenient accommodations, but she has not alleged that the accommodations she received were unreasonable or insufficient to allow her to do her job despite her disability. An unmet

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[7]*Id.*

[8]*Id* (citing 29 C.F.R. § 1630.9).

[9]Deposition of Mary L. Rowe at 120.

[10]*Id.* at 129.

[11]*Id.* at 89-91.

request for a more convenient accommodation does not establish a violation of the ADA where the plaintiff has been reasonably accommodated. The court therefore grants summary judgment against Ms. Rowe on her claim for failure to provide reasonable accommodation.

Ms. Rowe's Termination

With respect to Ms. Rowe's termination, Deseret Industries has offered a legitimate, nondiscriminatory reason for the challenged action. To establish discrimination based on disability the plaintiff must present some affirmative evidence that the disability was a determining factor in the employer's decision.[12] Deseret Industries states that Ms. Rowe was released because "she had a poor work ethic, socialized too much, and failed to abide by her ISRP, which included schedule accommodations, as well as accommodations to allow her to test, eat and rest."[13] In additional, Ms. Rowe's bishop withdrew his recommendation and told Mr. Toone and Mr. Thomas to release Ms. Rowe from the training program. A bishop's recommendation is a requisite to work at Deseret Industries. The reasons given for Ms. Rowe's termination, including the temporary nature of the program, the withdrawal of her bishop's referral, and her own refusal to abide by the conditions of her employment, provided Deseret Industries with a legitimate, nondiscriminatory reason for terminating Ms. Rowe's employment.

To rebut a nondiscriminatory reason for termination, a plaintiff must present evidence creating a fact issue as to whether the employer's proffered reason is pretextual.[14] Ms. Rowe has

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[12]*Selenke*, 248 F.3d at 1259.

[13]Defendant's Memorandum in Support of Motion for Summary Judgment at 16.

[14]*Russell v. TG. Mo. Corp.*, 340 F.3d 735, 743 (8th Cir. 2003).

offered no evidence to indicate that Deseret Industries terminated her for any other reason than those stated above. In fact Ms. Rowe's counsel explained, "The issue is whether the Provo Deseret Industries' failure to accommodate Ms. Rowe caused her damage – not whether the Provo Deseret Industries terminated her because of her disabilities."[15] Accordingly, Ms. Rowe has not alleged that Deseret Industries had a discriminatory reason for terminating her employment.

Ms. Rowe may contend that her bishop's recommendation that she be released from the program was based upon false information provided by Mr. Toone. If that is the case, it is an ecclesiastical matter. Courts do not get involved in ecclesiastical disputes between church leaders and their members.[16]

CONCLUSION

Although Ms. Rowe may have a disability that affects her major life activities, Deseret Industries did not fail to make reasonable accommodations to allow her to eat and test as needed. Despite these accommodations, Ms. Rowe did not perform the essential functions of her job. Ms. Rowe was not discriminated against on the basis of her disability, nor was she terminated because of her disability. There is no genuine issue of material fact and Deseret Industries is entitled to judgment as a matter of law. Deseret Industries' motion for summary judgment is hereby GRANTED. Deseret Industries' motion to strike affidavits filed by Ms. Rowe on

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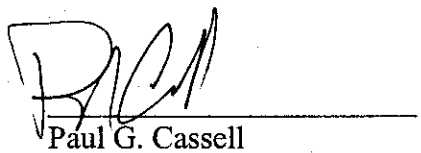
[15]Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment at 13.

[16]*See, e.g., Cook v. Corp. of President of the Church of Jesus Christ of Latter-Day Saints*, 2005 WL 115467 at *3 (10th Cir., Jan. 20, 2005).

February 8, 2005, just two days before the summary judgment hearing, is also GRANTED because of the untimely filing of the affidavits for reasons explained at greater length during the hearing. The clerk's office is directed to close this case.

DATED this 22nd day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01399

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 22 P 4: 34
DISTRICT OF UTAH
BY: _____
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

TERRENCE HOLDEMAN, Plaintiff(s), vs. MICHAEL W. DEVINE, et al., Defendant(s).	**ORDER AND REFERRAL TO SETTLEMENT CONFERENCE PROCEEDINGS** Case No: 2:02-CV-365 PGC District Judge Paul G. Cassell

The above-entitled matter is hereby referred to Magistrate Judge Samuel Alba to conduct a Settlement Conference on or before July 15, 2005 pursuant to DUCivR 16-3(b) and 28 U.S.C. § 636(b)(1). Any objection to this order must filed within ten days. Settlement proceedings in this matter will be governed by the provisions of DUCivR 16-3, including its provisions on the confidentiality of Settlement Conferences and the requirement that a person or representative with full settlement authority is available during the settlement conference. This referral does not affect any deadlines scheduled in this case.

IT IS HEREBY ORDERED that counsel shall, on or before June 3, 2005, jointly contact the magistrate judge to whom this case is referred for settlement to set the date and time of the Settlement Conference.

DATED this 22nd day of February, 2005.

By _____
Paul G. Cassell
United States District Judge

172

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00365

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

C. Mark Humbert, Esq.
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648 E 100 S #200
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Joel Ban #10114
WildLaw
1817 S. Main Ste. 10
Salt Lake City, Utah 84115
(801)-474-2626

Counsel for Plaintiff

FILED
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2005 FEB 22 P 4:34
DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF UTAH

UTAH ENVIRONMENTAL CONGRESS,	*	
	*	**[PROPOSED] ORDER SETTING AMENDED LITIGATION SCHEDULE**
Plaintiff,	*	
	*	
vs.	*	
	*	**Case No. 1:04CV00155 PGC**
JACK TROYER, in his official capacity as Regional Forester of the Intermountain Region of the U.S. Forest Service; DALE BOSWORTH, as Chief of the Forest Service; and UNITED STATES FOREST SERVICE,	*	**Judge Paul G. Cassell**
Defendants.	*	

For good cause shown, the amended schedule for production of the "East Mountain" administrative record, briefing, and hearing date in the above captioned matter as set forth in the parties' amended joint stipulation of February 15th, 2005 is hereby adopted. Pursuant to joint stipulation UEC's amended complaint challenging the "East Mountain" project is also accepted.

Dated this 22nd day of February, 2005.

Paul G. Cassell
United States District Court Judge

18

CERTIFICATE OF SERVICE

I hereby certify that I have delivered, either by hand delivery or by mail, a copy of the foregoing document, properly addressed and postage paid, to the Defendants or their counsel, as listed below, on this the 15 day of Feb 2004.

OF COUNSEL

Via U.S. First Class Mail
Barclay Samford
U.S. DOJ
Suite 945, North Tower
999 18th St
Denver, CO 80202

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cv-00155

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Joel Ban, Esq.
WILDLAW SOUTHWEST
1817 S MAIN #10
SALT LAKE CITY, UT 84115

Ms. Carlie Christensen, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Barclay Samford, Esq.
US DEPARTMENT OF JUSTICE
ENVIRONMENTAL DEFENSE
999 18TH STREET STE 945
DENVER, CO 80202
EMAIL

USDC UT Approved 06/06/00 Revised 01/20/04

FILED
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4:34
DISTRICT OF UTAH
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United States District Court
District of Utah

UNITED STATES OF AMERICA

vs.

James Thomas Carey

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: **2:04-cr-00508-001 PGC**

Plaintiff Attorney: **Carlos Esqueda**

Defendant Attorney: **Lee Rasmussen**

Atty: CJA ✖ Ret ___ FPD ___

Defendant's Soc. Sec. No.: ___

Defendant's Date of Birth: ___

Defendant's USM No.: **05586-081**

12/07/2004
Date of Imposition of Sentence

Defendant's Residence Address:

Country USA

Defendant's Mailing Address:
same

Country USA

THE DEFENDANT:

COP **09/28/2004** Verdict ___

✖ pleaded guilty to count(s) **1 - 3 of the Indictment**

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

☐ was found guilty on count(s) ___

Title & Section	Nature of Offense	Count Number(s)
18 USC § 2113(a)	Bank Robbery	1 - 3

Entered on docket
2-23-05 by:
Deputy Clerk

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

✖ Count(s) **4, 5 of the Indictment** (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **100 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **36 months**.

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☐ The defendant is placed on Probation for a period of _____.
The defendant shall not illegally possess a controlled substance.
For offenses committed on or after September 13, 1994:
The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

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

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

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

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

2. The defendant will submit to drug/alcohol testing as directed by the USPO.

3. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the USPO.

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

CRIMINAL MONETARY PENALTIES

FINE

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

☐ forthwith.

☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

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

☒ other:
No Fine Imposed

☐ The defendant shall pay interest on any fine more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

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

Defendant: James Thomas Carey
Case Number: 2:04-cr-00508-001 PGC

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

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

Name and Address of Payee	Amount of Loss	Amount of Restitution Ordered
Granite Credit Union 6799 South 900 East Midvale, Utah	76.73	76.73
Wells Fargo Bank 1710 South Redwood Road Salt Lake City, Utah	383.63	383.63
Deseret First Credit Union 4645 South 2700 West West Valley City, Utah	623.79	623.79
Zion's Bank 2330 East 3300 South Salt Lake City, Utah	1,861.40	1,861.40
Zion's Bank 845 East 4500 South Salt Lake City, Utah	6,252.55	6,252.55
Totals:	$ **9,198.10**	$ **9,198.10**

Original Restitution	**$11,988.10**
Less Adjustment	**2,790.00**
Revised Restitution	**9,198.10**

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

☒ Restitution is payable as follows:

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

☒ other:
Monies recovered by the govt. which were on the defendant's person during his arrest shall be used and offset the minimum of $200 per month upon release from incarceration

Defendant: James Thomas Carey
Case Number: 2:04-cr-00508-001 PGC

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

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

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of $ **300.00**, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

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

RECOMMENDATION

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

the Atwater facility in California to facilitate familial visitation and while there to participate in drug abuse treatment program.

CUSTODY/SURRENDER

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

☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.

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

SUPPLEMENTAL STATEMENT OF REASONS
APPLICABILITY OF THE FEDERAL SENTENCING GUIDELINES

x The court applied the Guidelines and all relevant enhancements in this case.

The court found the Guidelines unconstitutional in part, and imposed a sentence in accordance with the constitutionally applied portions of the Guidelines.

The court did not apply the federal sentencing guidelines at all in this case and imposed a discretionary sentence.

Defendant: James Thomas Carey
Case Number: 2:04-cr-00508-001 PGC

The court took some other action (Please explain below.):

This judgment includes an alternative sentence.

The court finds that the application of the sentencing guidelines to this defendant is not permitted by Blakely v. Washington. Therefore, the sentence in this judgment is a non-guideline sentence. Should the sentencing guidelines later be found to be constitutional, it will be judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of _____.
All other terms and conditions of the judgment will remain the same.

The court finds that the application of the sentencing guidelines to this defendant is permitted by Blakely v. Washington. Therefore, the sentence in this judgment is a guideline sentence. Should the sentencing guidelines later be found to be unconstitutional in their entirety, it will be the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of _____.
All other terms and conditions of the judgment will remain the same.

DATE: 2/22/05

Paul Cassell
United States District Judge

Defendant: James Thomas Carey
Case Number: 2:04-cr-00508-001 PGC

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

tsh

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00508

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr Carlos A Esqueda, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Lee C. Rasmussen, Esq.
RASMUSSEN MINER & ASSOCIATES
42 EXCHANGE PLACE
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United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

STEPHEN R. MCCAUGHEY - 2149
Attorney at Law
10 West Broadway, Suite 650
Salt Lake City, Utah 84101
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FILED
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2005 FEB 23 P 12: 28
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FEB 22 2005
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	**ORDER RE: OVERLENGTH MEMORANDUM**
v.	:	**Case No. 2:04-CR-23 DAK**
ARNOLD "SPEEDY" GONZALES,	:	
Defendant.	:	

Based on the motion of the defendant and good cause shown;

It is hereby ORDERED that the defendant is allowed to file an overlength memorandum in the above captioned case.

DATED this 23rd day of February, 2005.

BY THE COURT;

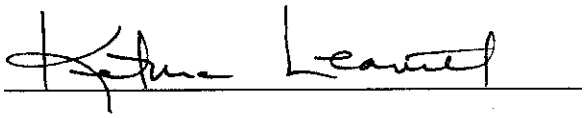
DALE A. KIMBALL
U.S. District Court Judge

81

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was mailed/hand delivered on this 22nd day of February, 2005 to:

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



blk

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00023

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Veda M. Travis, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Mr. Stephen R McCaughey, Esq.
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SALT LAKE CITY, UT 84101
EMAIL

Scott C. Williams, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

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2005 FEB 23 P 12: 28
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

CRAIG REYNOLDS, Plaintiff, v. **JO ANNE B. BARNHART,** **Commissioner of Social Security,** Defendant.	**ORDER** Case No. 2:02CV1243DAK

This matter is before the court on Plaintiff's "Petition for EAJA Attorney Fees." The Defendants have filed a memorandum opposing Plaintiff's requests for fees, and Plaintiff has submitted a reply memorandum. The court concludes that oral argument would not materially aid the court's determination of the issue before it. The court has carefully reviewed the memoranda and exhibits filed in conjunction with the above petition, as well as the facts and law relevant to the application.

Plaintiff is seeking attorney fees pursuant to the Equal Access to Justice Act ("EAJA"). 28 U.S.C. § 2412(d)(1)(A). Under the EAJA, "a court shall award to a prevailing party . . . fees and other expenses . . . incurred by that party in any civil action . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." *Id.*

41

Defendant does not dispute that Plaintiff is entitled to an award of attorney fees. Defendant disputes only the amount of attorney fees that this court should award. Plaintiff seeks $462.50 in attorney fees for work done by John J. Borsos and $10,520.00 in attorney fees for work done by Teresa J. Pfender. The disputes regarding the amount of attorney fees focus on the appropriate billable hour rate to apply. The government asserts that the maximum allowable hourly rate for attorney work is $154.12. However, Plaintiff seeks an enhanced hourly rate of $250 for Borsos' work and an hourly rate of $200 for Pfender's work based on specialized knowledge and the complexities of Social Security law.

The court does not agree with Plaintiff that an enhanced hourly rate under EAJA is appropriate in the present case. The court agrees with the computation of the hourly rate made by the government. Therefore, Borsos' work on the case will be computed with the hourly rate of $154.12. Accordingly, Plainitff is entitled to $285.12 for Borsos' work on the case.

The next issue is whether Pfender's work should be billed at the attorney rate even though she is not licensed to practice law in the State of Utah and is on inactive status with the New Mexico State Bar. Plaintiff argues that attorneys are paid for their education, training, and experience. Plaintiff also likens the situation to counsel admitted to practice in another jurisdiction on a pro hac vice basis. However, the situation is not the same as an out-of-state attorney associating with local counsel on a case. Pfender admits that she is not licensed to practice in Utah and is on inactive status in New Mexico. Pfender could not practice in New Mexico because of her inactive status. Pfender lives and works in Utah for Borsos. And she admits to preparing over thirty-five briefs for Borsos in the year and a half she has worked for him. Nevertheless, there is no assertion that she has sought to become licensed in Utah. Without an active license to practice in at least one state, the court cannot conclude that it would be

appropriate to award attorney fees for her work at the attorney rate. To do so would be to countenance the practice of law without a license. Rather, Pfender has chosen to assist Borsos as a legal assistant and her rate should reflect that of a legal assistant.

Defendants cited case law from around the country that sets the market rate for paralegals from between $75 per hour to $95 per hour. Neither party submitted affidavits of the market rate for paralegals in Utah. However, based on this court's understanding of the market rates, the court concludes that the prevailing rate for highly qualified paralegal work in this market is $85 per hour. Therefore, Plaintiff is entitled to $4471.00 for Pfender's work on the case.

Based on the above reasoning, Plaintiff's Petition for award of attorney fees under the EAJA is GRANTED in the amount of $4756.12 .

DATED this 23rd day of February, 2005.

Dale A. Kimball,
United States District Judge

blk

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01243

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Mr. John J. Borsos, Esq.
PO BOX 112347
SALT LAKE CITY, UT 84147-2347
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 23 A 11: 30
DISTRICT OF UTAH
BY:
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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

CANOPY CORPORATION and DAVID E. JORGENSEN, Plaintiffs, - vs - SYMANTEC CORPORATION, Defendant.	**ORDER GRANTING MOTION FOR EXPEDITED REVIEW OF PLAINTIFFS' MOTION TO DEPOSE PAUL WINN TELEPHONICALLY** **Civil No. 2-04-CV-000629 DAK** **Judge Dale A. Kimball** **Magistrate Judge David Nuffer**

Having reviewed the Motion for Expedited Review of Plaintiffs' Motion to Depose Paul Winn Telephonically, and finding good cause therefore,

IT IS HEREBY ORDERED that the Motion for Expedited Review of Plaintiffs' Motion to Depose Paul Winn Telephonically[1] is GRANTED.

IT IS FURTHER ORDERED that the following briefing schedule shall apply to Plaintiffs' Motion to Depose Paul Winn Telephonically:[2]

1. Defendant's Opposition to Plaintiffs' Motion to Depose Paul Winn Telephonically, shall be filed on or before 4:00 p.m. March 1, 2005.

2. Plaintiffs' Reply Memorandum in Support of Plaintiffs' Motion to Depose Paul Winn Telephonically, shall be filed on or before 3:00 p.m. March 3, 2005.

---

[1] Submitted February 23, 2005, not docketed as of the date of this order.

[2] Submitted February 22, 2005, not docketed as of the date of this order.

34

IT IS FURTHER ORDERED that the parties shall reserve Wednesday March 9, 2005, at 10:00 a.m. for any hearing on this motion. Counsel shall call chambers of the magistrate judge after 12:00 noon Monday March 7, 2005, to determine if the hearing shall be required.

IT IS FURTHER ORDERED that counsel shall comply with directions at http://www.utd.uscourts.gov/judges/nuffer.html and copy any communication sent to the court simultaneously to all counsel. Papers relating to Plaintiffs' Motion to Depose Paul Winn Telephonically shall be served under Fed. R. Civ. P. 5 concurrently with filing, by conventional means and by fax or email to provide prompt service. Courtesy copies shall be provided to the magistrate judge in the conventional manner **and** by (a) email to utmj_nuffer@utd.uscourts.gov or (b) physical delivery to chambers at Room 483, U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah.

SO ORDERED this __23rd__ day of February, 2005.

BY THE COURT:

Magistrate Judge David Nuffer

blk

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00629

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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James S. Jardine, Esq.
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EMAIL

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DISTRICT OF UTAH

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CRAVATH, SWAINE & MOORE LLP
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David R. Marriott (7572)
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Telephone: (212) 474-1000
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Attorneys for Defendant/Counterclaim-Plaintiff International Business Machines Corporation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC. Plaintiff/Counterclaim-Defendant, v. INTERNATIONAL BUSINESS MACHINES CORPORATION, Defendant/Counterclaim-Plaintiff.	~~[PROPOSED]~~ **ORDER GRANTING IBM'S EX PARTE MOTION FOR LEAVE TO FILE OVERLENGTH SUR-REPLY MEMORANDUM IN FURTHER OPPOSITION TO SCO'S MOTION FOR LEAVE TO FILE A THIRD AMENDED COMPLAINT** Civil No. 2:03CV0294 DAK Honorable Dale A. Kimball Magistrate Judge Brooke C. Wells

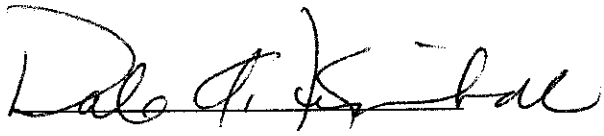
408

Based upon Defendant/Counterclaim-Plaintiff International Business Machines Corporation's ("IBM") Ex Parte Motion for Leave to File Overlength Sur-Reply in Further Opposition to SCO's Motion for Leave to File a Third Amended Complaint, and for good cause appearing thereon,

IT IS HEREBY ORDERED that IBM may file its overlength Sur-Reply in Further Opposition to SCO's Motion for Leave to File a Third Amended Complaint, not to exceed fourteen pages of argument.

DATED this 22 day of February, 2005.

BY THE COURT



CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2005 a true and correct copy of the was sent by U.S. Mail, postage prepaid, to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
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Miami, Florida 33131

Robert Silver
Edward Normand
Sean Eskovitz
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504

Amy F. Sorenson

blk

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00294

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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Mr. Michael P O'Brien, Esq.
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170 S MAIN ST STE 1500
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SALT LAKE CITY, UT 84145-0444

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2005 FEB 22 P 2:17
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BY: _____
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Thomas M. Melton (4999)
Karen L. Martinez (7914)
Securities and Exchange Commission
15 West South Temple, Suite 1800
Salt Lake City, UT 84101
(801) 524-5796

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FEB 18 2005
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ORDER

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

v.

4NEXCHANGE, a Utah limited liability company,
PAUL R. GRANT, and
RONALD K. BASSETT,
Defendants.

Civil No. 2:02 CV 0431 K

AMENDED ~~PROPOSED~~ ORDER TO EXPAND RECEIVERSHIP

Judge Dale A. Kimball

WHEREAS this matter came before the Court on February 10, 2005 at 3:00 p.m. upon the Motion of the Plaintiff Securities and Exchange Commission ("Commission") to expand the receivership for the purpose of marshalling and preserving assets and to prevent the dissipation of assets in the above-captioned action. The Commission was represented by Thomas M. Melton and Karen L. Martinez. The Receiver, Robert G. Wing appeared on his own behalf. The third party, the LNF Trust, did not appear.

WHEREAS the Court has reviewed the pleadings and supporting documentation;

WHEREAS the assets attributable to LNF Trust are in danger of being dissipated, and it is appropriate that the assets be marshaled and an accounting provided to the Court;

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WHEREAS this Court has jurisdiction over the subject matter of this action and over the LNF Trust, and venue properly lies in this district.

NOW THEREFORE:

I.

IT IS HEREBY ORDERED that, pending the determination of the Commission's action on the merits, or such other time as the Court may order, Robert G. Wing, Esq., be appointed Receiver of LNF Trust and of its assets. The Receiver shall take control of LNF Trust's funds, assets, claims and property wherever situated, with the powers set forth herein, including powers over all funds, assets, premises, choses in action, books, records, and other property belonging to or in the possession of the LNF Trust, and the Receiver is hereby authorized, empowered, and directed:

a. to have access to, to marshal and take control of all funds, assets, premises (whether owned, leased, occupied or otherwise controlled), choses in action, papers, books, records in whatever media, and other property, wherever located, belonging to, in the custody, control or possession of LNF Trust, with full power to take such steps as he deems necessary to secure such premises, funds and property;

b. to have control of, and to close, transfer or otherwise take possession of all accounts, securities, commodities positions, funds, or other assets of, or in the name of LNF Trust at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds of LNF Trust, or of any assets deposited by customers or clients with LNF Trust, or into an account in the name of LNF Trust, or held in trust or deposited with LNF Trust or its agents or trustees, wherever situated;

c. to take such action as is necessary and appropriate to preserve and take control of, and to prevent the dissipation, concealment, or disposition of any assets in the possession, custody, name, or control of LNF Trust;

d. to hold in his possession, custody and control all assets, securities, commodities positions, monies and property, together with all profits, dividends, interest or other income attributable thereto, of whatever kind deposited by LNF Trust, with LNF Trust, or into an account in the name of LNF Trust, pending further order of this Court;

e. to make or authorize such payments and disbursements from the funds and assets under his control pursuant to this Order, and to incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary and advisable in discharging his duties as Receiver;

f. to engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, commodities traders, registered representatives, futures commission merchants, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;

g. to take possession, have access to, and to review all mail or any other communication, in any form, of LNF Trust or of its agents, officers and directors;

h. to take any action which he deems to be necessary and appropriate in order to cause LNF Trust to file a bankruptcy petition under any chapter of Title 11 of the United States Code, including the execution of all necessary corporate resolutions or directions. The Defendants or any other person affiliated with LNF Trust or purporting to act on behalf of

LNF Trust may not file a bankruptcy petition under any chapter of Title 11 of the United States Code on behalf of LNF Trust or under any analogous law of any other jurisdiction. In the event that a Bankruptcy petition is filed on behalf of LNF Trust, the bankruptcy reference shall be withdrawn with regard to payment of fees and expenses of the Receiver, his attorneys, accountants, consultants and any other person or entity hired to assist the Receiver in the execution of his duties pursuant to this Order, and this Court shall retain jurisdiction over the payment of such fees and expenses;

i. to make demand, file or otherwise handle any claim under any insurance policy held by or issued on behalf of LNF Trust, its officers, directors, agents, employees, trustees or other persons affiliated with LNF Trust and to take any and all appropriate steps in connection with such policies.

II.

IT IS FURTHER ORDERED that, in connection with the appointment of the Receiver provided for above:

a. LNF Trust and all officers, agents, servants, employees, attorneys-in-fact, shareholders, consultants, accountants, advisers, counsel and other persons, and Defendants in this action, who are in custody, possession, or control of any customer or client information, assets, books, records, or other property belonging to or in the custody or control of LNF Trust shall forthwith give access to and control of such property to the Receiver, and shall forthwith grant to the Receiver, or such other person whom the Receiver may designate, authorization to be the signatory as to all accounts at banks, brokerage firms, commodities

firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of LNF Trust.

b. The Receiver is authorized, empowered, and directed without further leave of the Court, to liquidate and convert into money all of the assets, property, estate, effects and interests of every nature held in his possession and control pursuant to this Order, by selling, conveying, and disposing of the property, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the persons or parties entitled to the proceeds, and with due regard to the realization of their true and proper value and to deposit such proceeds into a trust account, pending further order of the Court.

c. The Receiver is authorized to invest any and all money or proceeds in his possession and control in United States Treasury instruments or in a money market account that invests solely in United States Treasury instruments.

d. All banks, brokerage firms, commodities firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of or for the benefit of LNF Trust shall cooperate expeditiously in the transfer of funds, other assets and accounts to the Receiver or at the direction of the Receiver.

e. All banks, brokers, dealers, commodities firms, futures commission merchants, depositories or any other financial institutions shall not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, commodities positions, funds, or accounts in the name of or for the benefit of LNF Trust except upon instructions from the Receiver or his designees.

f. The Receiver shall have the authority to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure.

g. Defendants and their respective officers, agents, servants, employees, and attorneys-in-fact, consultants, accountants, advisers and counsel cooperate with and assist the Receiver, including, if deemed necessary by the Receiver, by appearing for deposition testimony and producing documents, and shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of his duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above.

h. The Receiver shall not return to LNF Trust customers any securities, commodities positions, or other assets deposited with LNF Trust or into an account in the name of LNF Trust or any dividends, interest, or other income or profits earned thereon or the proceeds from the sale of any securities, commodities positions, or other assets without further Order of this Court.

i. The costs, fees and expenses of the Receiver incurred in connection with the performance of his duties described herein, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations hereunder shall be paid out of the proceeds or other assets of LNF Trust, or any and all assets under the control of the Receiver pursuant to this Order. All applications for costs, fees and expenses for services rendered in connection with the Receiver shall be made by application setting forth in reasonable detail the nature of the services and shall be heard by the Court.

j. No bond shall be required in connection with the appointment of the Receiver. The Receiver and all other persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations hereunder shall not be liable for any act or omission of the Receiver or such person, respectively, or any of their partners, employees, or agents, unless it shall be proven that the Receiver or such other person acted or omitted to act willfully and in bad faith. This provision shall apply to claims based on conduct of the Receiver and all other persons who may be engaged or employed by the Receiver hereunder during the term of the appointment by this Court, even if such claims are filed after the termination of any such appointment.

III.

IT IS FURTHER ORDERED that, pending the determination of the Commission's action on the merits, representatives of the Receiver are authorized to have continuing access to inspect or copy any or all of the corporate books and records and other documents of LNF Trust, including records relating to any accounts maintained by or in the name of LNF Trust at a broker, dealer, futures commission merchant, financial institution, depository institution or any other entity, or of accounts maintained on behalf of LNF Trust's customers or clients that have transferred, transmitted or otherwise delivered any securities, monies, or property of any kind, to LNF Trust, and continuing access to inspect LNF Trust funds, property and assets, including customer or client accounts, wherever they may be located.

IV.

IT IS FURTHER ORDERED that, in addition to the powers, duties and responsibilities as set forth herein, the Receiver shall be authorized, empowered and directed to investigate, prosecute,

defend, intervene in or otherwise participate in, compromise, and adjust actions in any state, federal or foreign court or proceeding of any kind as may in his sole discretion be advisable or proper to recover or conserve funds, assets and property of LNF Trust.

V.

IT IS FURTHER ORDERED that LNF Trust and its officers, directors, employees, agents and counsel shall transfer to the Receiver, as and when directed by him, any and all funds, property, documents or records of LNF Trust, in whatever form, that may be in their possession, custody or control; and that any signatories on any and all LNF Trust accounts at banks, brokerage firms, commodities firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of LNF Trust, shall forthwith take all steps necessary to relinquish their signatory authority as to said accounts including, but not limited to, accounts containing securities or other assets that LNF Trust's customers have transferred, transmitted or otherwise delivered to LNF Trust.

VI.

IT IS FURTHER ORDERED that this Order shall remain in effect and shall supplement all prior Orders of this Court until further Order of this Court. The Court shall retain jurisdiction of this matter for all purposes.

Dated this 22 day of February, 2005

UNITED STATES DISTRICT JUDGE

Respectfully submitted this 18th day of February, 2005

Thomas M. Melton
Karen L. Martinez
Attorney for Plaintiff
Securities and Exchange Commission

CERTIFICATE OF SERVICE

I do hereby certify that on this 18th day February 2005, I caused to be served a true and correct copy of the **AMENDED PROPOSED ORDER TO EXPAND RECEIVERSHIP** to all persons receiving notice in this case by causing a copy to be delivered by first class mail, postage prepaid to:

Rodney G. Snow, Esq.
J. Scott Hunter, Esq.
Clyde Snow Sessions & Swenson
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Commodity Futures Trading Commission
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175 East 400 South
Salt Lake City, UT 84111

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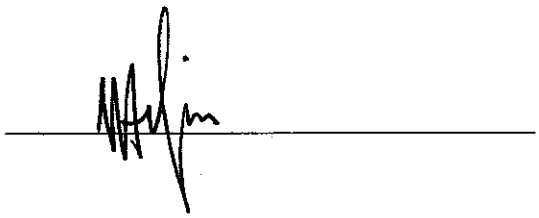
P.O. Box 45385
Salt Lake City, UT 84145-0385



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United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00431

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Julian D Jensen, Esq.
311 S STATE ST STE 380
SALT LAKE CITY, UT 84111
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MORRISTOWN, NJ 07932
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PRINCE YEATES & GELDZAHLER
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SALT LAKE CITY, UT 84111

Ronald K. Bassett
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LINDON, UT 84042
EMAIL

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CLYDE SNOW SESSIONS & SWENSON
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SALT LAKE CITY, UT 84111-2216
EMAIL

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SECURITIES AND EXCHANGE COMMISSION
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SALT LAKE CITY, UT 84101
EMAIL

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DURHAM JONES & PINEGAR
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SALT LAKE CITY, UT 84111
EMAIL

John W. Mackay, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

PROB 12C (10/98)

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 23 A 8:03
DISTRICT OF UTAH
DEPUTY CLERK

United States District Court
for the District of Utah

Petition and Order for Warrant for Offender Under Supervision

Name of Offender: **VICTORINO VARA-ALVAREZ** Docket Number: **1:01-CR-00046-001-DAK**

Name of Sentencing Judicial Officer: **Honorable Dale A. Kimball, U.S. District Judge**

Date of Original Sentence: **January 2, 2002**

Original Offense: **Illegal Re-Entry of a Deported Alien**

Original Sentence: **Commitment to Bureau of Prisons 15 months, 36 months supervised release**

Type of Supervision: **Supervised Release** Supervision Began: **January 31, 2003**

PETITIONING THE COURT

[X] To issue a warrant to be placed as a detainer tolling the supervision term as of February 8, 2005

In custody: Salt Lake County ADC SO #266494

CAUSE

The probation officer believes that the offender has violated the conditions of supervision as follows:

Allegation No. 1: The defendant illegally re-entered the United States and was found in Weber County, Utah, on or about February 8, 2005. No information has been received to indicate that the defendant had legal permission to enter the country.

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

by Maria EA Sanchez

Maria EA Sanchez, U.S. Probation Officer
Date: February 22, 2005

THE COURT ORDERS:

[X] The issuance of a warrant to be placed as a detainer tolling the supervision term as of February 8, 2005

[ ] No action

[ ] Other

Dale A. Kimball

Honorable Dale A. Kimball
United States District Judge

Date: February 23, 2005

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United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:01-cr-00046

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

~~Laurie J. Sartorio, Esq.~~
~~INT'L CRMNL TRBNL (FOR FORMER) YUGOSLAVIA~~
~~---~~
~~CHURCILLPLEIN 1 2517 JW TEAM 2~~
~~THE HAGUE, NL~~
~~NL~~

US Atty Office
Via messenger

USDC UT Approved 06/06/00 Revised 01/20/04

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 23 A 8:03
DISTRICT OF UTAH
BY: DEPUTY CLERK

United States District Court
District of Utah

UNITED STATES OF AMERICA

vs.

Jose Luis Castro-Guerrero

aka Jose Castro-Guerrero, Jr.

aka Jose Luis Castro

Defendant's Soc. Sec. No.:

Defendant's Date of Birth:

Defendant's USM No.: **11654-081**

Defendant's Residence Address:

Country USA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: **2:04-CR-00436-001 DAK**

Plaintiff Attorney: **Dustin Pead, AUSA**

Defendant Attorney: **Viviana Ramirez**

Atty: CJA ___ Ret ___ FPD ✖

February 22, 2005
Date of Imposition of Sentence

Defendant's Mailing Address:
Same

Country USA

THE DEFENDANT:

COP **12/09/04** **Verdict** _____

- [x] pleaded guilty to count(s) **1 of the Indictment.**
- [ ] pleaded nolo contendere to count(s) which was accepted by the court.
- [ ] was found guilty on count(s)

Title & Section	Nature of Offense	Count Number(s)
8 U.S.C. §1326	Re-entry of Previously Removed Alien	1

Entered on docket
2-23-05 by:
Deputy Clerk

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

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **30 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **36 months.**.

- [ ] The defendant is placed on Probation for a period of _____.

The defendant shall not illegally possess a controlled substance.

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For offenses committed on or after September 13, 1994:

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

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

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

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

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

CRIMINAL MONETARY PENALTIES

FINE

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

☐ forthwith.

☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

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

☒ other:
No Fine Imposed

☐ The defendant shall pay interest on any fine more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

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

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

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

Name and Address of Payee	Amount of Loss	Amount of Restitution Ordered

Totals: $_____ $_____

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

☐ Restitution is payable as follows:

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

☐ other:

_____

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

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

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of $ **100.00**, payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

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

DEPARTURE

The Court does not grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2).

RECOMMENDATION

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

That the defendant be sent to FCI Terminal Island, CA to facilitate family visitation and that he receive drug abuse treatment while incarcerated.

CUSTODY/SURRENDER

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

☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.

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

DATE: February 23, 2005

Dale A. Kimball
United States District Judge

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

blk

United States District Court
for the
District of Utah
February 23, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00436

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dustin B. Pead, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Viviana Ramirez, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL