

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

RALPH BRADBURY

PLAINTIFF

v.

4:11-cv-810 - DPM

UNITED STATES OF AMERICA

DEFENDANT

INITIAL SCHEDULING ORDER

An appearance was entered by the defendant(s) on **JANUARY 20, 2012**.
The following deadlines and proposed deadlines are in effect:

1. Rule 26(f) Conference Deadline 29 MARCH 2012

The parties are jointly responsible for holding their Rule 26(f) conference by this date.

2. Rule 26(f) Report Due Date 12 APRIL 2012

Consult Federal Rule of Civil Procedure 26(f) and Local Rule 26.1 for information to be included in the Rule 26(f) Report. The Report should be filed with the Clerk of the Court.

Parties should also confer about the expected trial length and include their best estimations in their Report.

3. Proposed Trial Date 12 NOVEMBER 2013

The case will be scheduled for a Jury Trial before Judge D. P. Marshall Jr. starting at 9:30 a.m. sometime during the week indicated.

4. Rule 16(b) Conference: (Scheduled if needed)

The Court will schedule a conference within one week after the parties file their Rule 26(f) Report, if necessary, to resolve any disputes about the proposed trial date and deadlines, mandatory disclosures, and the like. The parties should consider the attached Proposed Final Scheduling Order – including all proposed deadlines – during the Rule 26(f) conference. Unless a party objects, the proposed scheduling order will become the Court’s Final Scheduling Order and will be issued without a conference.

5. The Court encourages the parties to consider and confer now about consenting to the randomly assigned Magistrate Judge presiding over this case. Our Court’s Magistrate Judges are able, experienced, and available.

**AT THE DIRECTION OF THE COURT
JAMES W. McCORMACK, CLERK**

**By: /s/ Martha Fugate
Courtroom Deputy to Judge D. P. Marshall Jr.
7 February 2012**

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

RALPH BRADBURY

PLAINTIFF

4:11-cv-810 - DPM

v.

UNITED STATES OF AMERICA

DEFENDANT

PROPOSED FINAL SCHEDULING ORDER

Pursuant to Federal Rule of Civil Procedure 16(b), the Court orders:

- Deadline to request any pleading amendment **6 May 2013**
- Status reports due **5 June 2013**
- Plaintiffs shall identify all expert witnesses and produce their opinions by **5 June 2013**
- Defendants shall identify all expert witnesses and produce their opinions by **5 July 2013**
- Plaintiff shall identify any rebuttal expert witnesses and produce their opinions by **19 July 2013**
- Discovery Cutoff **5 August 2013**
- Dispositive motions due **15 August 2013**

- Settlement conference request **29 August 2013**
- Motions in limine due **30 September 2013**
- Local Rule 26.21 pre-trial disclosure sheets due **14 October 2013**
- Trial briefs due **14 October 2013**
- Jury Instructions (agreed or disputed) or Proposed Findings and Conclusions due . **14 October 2013**
- Responding trial briefs due **23 October 2013**
- Deposition Designations due **23 October 2013**
- Deposition counter-designations due . . . **1 November 2013**
- Deposition objections **5 November 2013**
- Response to deposition objection **8 November 2013**
- Jury Trial, Little Rock Division **12 November 2013**

1. Here is some information about particular issues:

- **Courtroom.** Unless otherwise noted, all proceedings will be in my courtroom (B-155) at the Richard Sheppard Arnold U.S. Courthouse in Little Rock. If the parties need lots of technology, we will relocate to a courtroom in the annex.

- **Divisional Courtroom Locations:**
Northern - 490 College, Batesville Courtroom #252.
Eastern - 617 Walnut Street, Helena Courtroom #314
Western - 600 W. Capitol, Little Rock Courtroom #B-155
Jonesboro - 615 S. Main, Courtroom #324
Pine Bluff - 100 East 8th Street, Courtroom #3602

- **Discovery Disputes.** Counsel should confer in good faith in person before bringing any discovery dispute to the Court. Absent an emergency (such as a dispute during a deposition), if the parties reach an impasse, they should submit a joint five-page report explaining the disagreement and the Court will rule or schedule a hearing.

- **Exhibits.** The Court strongly encourages the parties to agree on as many of the exhibits as possible before the pre-trial.

- **Jury Instructions.** The Court strongly encourages the parties to agree on the verdict form and as many of the jury instructions as possible. Use standard instructions (AMI, Eighth Circuit, or Federal Jury Practice and Instructions (5th edition)) where possible. Note authority on the bottom of the each proposed instruction. Please explain the reason for any disputed instructions in your submission. Send agreed and disputed instructions in WordPerfect to dpmchambers@ared.uscourts.gov.

- **Pre-Trial Hearing.** We will address motions in limine, deposition excerpts for use at trial, jury instructions, trial architecture, exhibits, and voir dire.

- **Summary Judgment.** Motions must comply with Federal Rule of Civil Procedure 56 and Local Rules 7.2 and 56.1. Please make the complete condensed transcript of any deposition cited an exhibit. Please limit your Rule 56.1 statements to *material* facts.
- **Conflicts Of Interest.** Counsel must check the Court's list of financial interests on file in the U.S. District Clerk's Office to determine whether there is any conflict that might require recusal. If any party is a subsidiary or affiliate of any company in which the Court has a financial interest, counsel should bring that fact to the Court's attention immediately.

Please communicate with Martha Fugate, Courtroom Deputy, by e-mail at martha_fugate@ared.uscourts.gov to check your position on the calendar as the trial date approaches. In the event of settlement, advise Ms. Fugate immediately.

**AT THE DIRECTION OF THE COURT
JAMES W. McCORMACK, CLERK**

**By: /s/ Martha Fugate
Courtroom Deputy to Judge D.P. Marshall Jr.
7 February 2012**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
Richard Sheppard Arnold United States Courthouse
600 West Capitol, Room B149
Little Rock, Arkansas 72201-3325**

D. P. MARSHALL JR.
U. S. District Judge

(501) 604-5410
FAX: (501) 604-5417

NOTICE TO ALL PARTIES IN THIS CASE

This case is presently assigned to Judge D.P. Marshall Jr.'s docket. Pursuant to 28 U.S.C. Sec. 636 (c), a Magistrate Judge can be empowered by the consent of the parties to make final disposition of the matter without reference to a District Judge for review. The Magistrate Judge can also conduct a jury trial, if one was requested by either party. Appeal from a judgment entered by the Magistrate judge would be appealed directly to the United States Court of Appeals for the Eighth Circuit.

I am enclosing a Consent to the Exercise of Jurisdiction By a United States Magistrate Judge. If you wish the Magistrate Judge to handle the case to its conclusion, please complete the form and return it to me. I will present the Consent to the Court for approval after all parties have signed it.

I call your attention to the fact that the Scheduling Order issued in this matter contains the trial date scheduled on Judge Marshall's docket. It is not an indication that the same date is available on the Magistrate Judge's calendar. However, the Magistrate Judge may be able to accommodate a more expedited trial date in some instances.

Martha Fugate
Courtroom Deputy for Judge Marshall
Richard Sheppard Arnold United States Courthouse
600 West Capitol, Room B-149
Little Rock, Arkansas 72201

UNITED STATES DISTRICT COURT

Eastern District of Arkansas

RALPH BRADBURY

PLAINTIFF

v.

4:11-cv-810 - DPM

UNITED STATES OF AMERICA

DEFENDANT

NOTICE, CONSENT, AND REFERENCE OF A CIVIL ACTION TO A MAGISTRATE JUDGE

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

Parties' printed names	Signatures of parties or attorneys	Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____

Reference Order

IT IS ORDERED: This case is referred to a United States magistrate judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636 (c) and Fed. R. Civ. P. 73.

Date: _____

District Judge's signature

Printed name and title

Note: Return this form to the clerk of court only if you are consenting to the exercise of jurisdiction by a United States magistrate judge. Do not return this form to a judge.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

* * * * *

United States of America,

Plaintiff,

vs.

SETTLEMENT CONFERENCE ORDER

Eugene E. Rivetts, Brenda A.
Rivetts, et al.,

Defendants.

Civ. No. 11-556 (RHK/LIB)

* * * * *

Pursuant to the directives of the Hon. Judge Richard H. Kyle, a Settlement Conference in the above-entitled matter is set for **Thursday, June 14, 2012, at 9:30 o'clock a.m.**, before Magistrate Judge Leo I. Brisbois, in Courtroom No. 2, U.S. Courthouse, 118 South Mill St., Fergus Falls, Minnesota.

Counsel who will actually try the case and each party, armed with full settlement discretion, shall be present in person. If individuals are parties to this case, they shall also be present. If a corporation or other collective entity is a party, a duly authorized officer or managing agent of that party shall be present. This means that each party must attend through a person who has the power to change that party's settlement posture during the course of the conference. If the party representative has a limit, or "cap" on his or her authority, this requirement is not satisfied. If an insurance company is involved, the responsible agent must be present in person.

The parties shall note that the Settlement Conference will not be terminated to accommodate any travel plans. If needed, hotel reservations should be made in advance of the Conference to accommodate continuing settlement efforts that extend past the usual business hours.

In order to encourage the parties to address the issue of settlement on their own, counsel for all parties must confer in person at least ten (10) days prior to the date of the Settlement Conference, to engage in a full and frank discussion of settlement. If the case does not settle, each attorney shall submit to the undersigned, at least one (1) week before the date of the Settlement Conference, a confidential letter setting forth the parties' respective settlement positions before the meeting, their respective positions following the meeting and a reasoned, itemized analysis justifying their client's last stated settlement position. **This letter shall be submitted to the undersigned by e:mail to the following address: brisbois_chambers@mnd.uscourts.gov.** Failure of any lawyer to submit this letter will result in the Settlement Conference being rescheduled and the imposition of an appropriate sanction on the attorney whose failure caused the Conference to be postponed. Additional sanctions may be imposed for failure to comply with any of the other foregoing instructions.

BY THE COURT:

DATED: February 7, 2012

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION**

IN RE: **CHERYL A. REAGAN,**
Debtor

Case No. 6:04-bk-77590 T
Chapter 11

ORDER SUSTAINING TRUSTEE'S OBJECTION TO CLAIM NO 22

Now before the Court is the *Trustee's Objection to Claim No. 22 of Eudox Patterson*. No response to the objection has been received from the creditor. The Court therefore finds that the Trustee's Objection to Claim No. 22 is sustained, and the claim will be disallowed.

IT IS SO ORDERED.



HONORABLE RICHARD D. TAYLOR
UNITED STATES BANKRUPTCY JUDGE

DATE: February 7, 2012

cc:
Frederick S. Wetzel, III, Trustee
U. S. Trustee
Eudox Patterson, Attorney at Law, 220 Woodbine St., Hot Springs, AR 71901

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

ECO BUILT, INC.

PLAINTIFF(S)

VS

CIVIL ACTION NO. 3:11CV-342-H

E-TOWN MOTEL ASSOCIATES-2, LLC, et al.

DEFENDANT(S)

ORDER

IT IS HEREBY ORDERED that this matter is set for a telephonic conference **on FEBRUARY 16, 2012 at 2:00 p.m.** **The Court will initiate the call.** The parties shall be prepared to discuss all pending motions with the Court.

No later than **THREE DAYS** prior to the date of the conference, each party to this action needing to participate in this conference shall notify the Court's Deputy of the name(s) of the individual(s) who will participate in the conference and indicate the telephone number and extension at which they can be reached at that time. Notification may be made by e-mail to: andrea_r.kash@kywd.uscourts.gov Local counsel may appear in person, if they so wish.

IT IS FURTHER ORDERED that the motions for pretrial conference and status conference (DN#53 and 58) are **sustained**.

Date: February 6, 2012

**ENTERED BY ORDER OF COURT
JOHN G. HEYBURN II, JUDGE
UNITED STATES DISTRICT COURT
VANESSA L. ARMSTRONG, CLERK**

**BY: /s/: Andrea Kash
Deputy Clerk**

Copies to:
Counsel of Record & *Pro-Se* Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

* * * * *

United States of America,

Plaintiff,

vs.

SETTLEMENT CONFERENCE ORDER

Eugene E. Rivetts, Brenda A.
Rivetts, et al.,

Defendants.

Civ. No. 11-556 (RHK/LIB)

* * * * *

Pursuant to the directives of the Hon. Judge Richard H. Kyle, a Settlement Conference in the above-entitled matter is set for **Thursday, June 14, 2012, at 9:30 o'clock a.m.**, before Magistrate Judge Leo I. Brisbois, in Courtroom No. 2, U.S. Courthouse, 118 South Mill St., Fergus Falls, Minnesota.

Counsel who will actually try the case and each party, armed with full settlement discretion, shall be present in person. If individuals are parties to this case, they shall also be present. If a corporation or other collective entity is a party, a duly authorized officer or managing agent of that party shall be present. This means that each party must attend through a person who has the power to change that party's settlement posture during the course of the conference. If the party representative has a limit, or "cap" on his or her authority, this requirement is not satisfied. If an insurance company is involved, the responsible agent must be present in person.

The parties shall note that the Settlement Conference will not be terminated to accommodate any travel plans. If needed, hotel reservations should be made in advance of the Conference to accommodate continuing settlement efforts that extend past the usual business hours.

In order to encourage the parties to address the issue of settlement on their own, counsel for all parties must confer in person at least ten (10) days prior to the date of the Settlement Conference, to engage in a full and frank discussion of settlement. If the case does not settle, each attorney shall submit to the undersigned, at least one (1) week before the date of the Settlement Conference, a confidential letter setting forth the parties' respective settlement positions before the meeting, their respective positions following the meeting and a reasoned, itemized analysis justifying their client's last stated settlement position. **This letter shall be submitted to the undersigned by e:mail to the following address: brisbois_chambers@mnd.uscourts.gov.** Failure of any lawyer to submit this letter will result in the Settlement Conference being rescheduled and the imposition of an appropriate sanction on the attorney whose failure caused the Conference to be postponed. Additional sanctions may be imposed for failure to comply with any of the other foregoing instructions.

BY THE COURT:

DATED: February 7, 2012

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIAN TECH, on behalf of himself	:	
and all others similarly situated,	:	
Plaintiff,	:	1:09-cv-47
	:	
v.	:	Hon. John E. Jones III
	:	
THE UNITED STATES OF AMERICA,	:	
Defendants.	:	

ORDER

February 7, 2012

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Pending before the Court is Plaintiff’s Motion to Reopen Discovery for the Limited Purpose of Seeking Limited Discovery from Four Telephone Carriers (Doc. 131) filed on November 3, 2011. The Motion is opposed, and has been fully briefed by the parties. For the reasons that follow, the Motion shall be granted.

DISCUSSION

Plaintiff’s Motion comes on the heels of our denial of his Motion to Clarify, or in the alternative, Reconsider our June 7, 2011 Order denying Tech’s renewed Class Certification Motion. In Plaintiff’s view, our Order denying his Motion to Clairfy/Reconsider “represented a sea change for Plaintiff because it then became manifestly clear that any effort to avoid accessing the telecom records would not satisfy the Court’s view of Rule 23's certification requirements,” (Doc. 140, p. 2) inasmuch as we rejected Tech’s class proposal that used the Government’s ESA list to identify class members. Thus, Plaintiff seeks a sixty (60) day period of time within which it may seek discovery from the four major telephone carriers regarding their billing and record

retention policies. To obtain the information he seeks, Plaintiff intends to serve a subpoena *duces tecum* on the four major telephone carriers, and, in the event he requires further information, he intends to serve Fed. R. Civ. P. 30(b)(6) deposition subpoenas upon the carriers.

In determining whether good cause exists to reopen discovery, courts consider several factors including (1) whether trial is imminent; (2) whether the request to reopen or extend discovery is opposed; (3) whether the non-moving party would be prejudiced; (4) whether the moving party was diligent in obtaining discovery within the guidelines established by the Court; (5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the Court; and (6) the likelihood that discovery will lead to relevant evidence. *See Celani v. Neumeyer*, 2011 U.S. Dist. LEXIS 121003 *5 (D. Colo. Oct. 19, 2011) (citing *Smith v. United States*, 834 F. 2d 166, 169 (10th Cir. 1987)); *see also Spring Creek Holding v. Keith*, 2006 U.S. Dist. LEXIS 58240 (D.N.J. Aug. 18, 2006).

The United States opposes Tech's Motion on several grounds. First, the United States argues that Tech's request to reopen discovery three years into this litigation, and more than one year after the close of discovery, will disrupt the current case schedule. The United States also argues that, even if Tech receives the discovery he seeks, it is still unlikely that he would be able to identify a class or establish all of Rule 23's certification requirements.

However, we must recognize that we have previously denied Tech's motions for class certification on the basis that Tech could not properly define the class based on the use of the ESA list and other methods that did not involve the use of telecom records themselves. We are fully cognizant that this litigation has been ongoing for several years, however, the scope of

discovery sought and the time frame proposed within which to obtain such discovery are fairly narrow. Further, while it is possible that Tech still might be unable to define an appropriate class after receiving the discovery he desires, we cannot render an opinion on that point without inappropriately prejudging the matter. Thus, we find that in the interest of fairness and prudence, the appropriate course is to grant the Plaintiff leave to conduct the *limited* discovery he proposes.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion to Reopen Discovery (Doc. 131) is **GRANTED**.
2. As set forth below, discovery is hereby reopened for a period of 60 days for the purpose of allowing Plaintiff to seek from the major telephone carriers relevant information about their billing and record retention policies.
3. Plaintiff shall be permitted to serve, within ten days of the date of this Order, a subpoena *duces tecum* on each of the four carriers. These subpoenas shall be substantially in the form of "Exhibit A" to Plaintiffs' Memorandum in Support of the Motion.
4. In the event that the information or documents produced by any of the carriers in response to the subpoenas *duces tecum* are incomplete, Plaintiff may serve a subpoena on such carrier, pursuant to Fed. R. Civ. P. 30(b)(6). Any such Fed. R. Civ. P. 30(b)(6) deposition subpoena shall be substantially in the form of "Exhibit B" to Plaintiff's Memorandum in Support of the Motion.
5. Plaintiff shall file a status report with this Court no later than 75 days from the date of this Order.

6. All briefing on the Defendant's Motion for Summary Judgment (Doc. 145) is **STAYED** until the conclusion of the limited, reopened discovery period.

s/ John E. Jones III
John E. Jones III
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
WESTERN DIVISION

UNITED STATES OF AMERICA,

Counterclaimant

VERSUS

CIVIL ACTION NO. 5:07-cv-162-DCB-JMR

MISSION PRIMARY CARE CLINIC, PLLC,

Counterclaim Defendant and
Cross-claimant, and

**VICKSBURG PRIMARY CARE TEAM INC., and
MARKUS B. STANLEY**

Cross-Claim Defendants on Counterclaim.

OPINION AND ORDER

This cause is before the Court on the Government's Motion to Reconsider Order and Enter Judgment Under Federal Rule of Civil Procedure 58(d), or, in the alternative, Motion for Relief from Judgment Under Federal Rule of Civil Procedure 60(a) or 60(b)(1). Having carefully considered said Motion, the Defendant's opposition thereto, applicable statutory and case law, and being otherwise fully advised in the premises, the Court finds and orders as follows:

I. Summary of the Arguments

On March 25, 2010, Mission Primary Care Clinic, PLLC, ("Mission") appealed this Court's grant of summary judgment in favor of the United States. The Fifth Circuit upheld the Court's conclusion that Mission's payments to Stanley constituted salary or

wages subject to the levy imposed by the United States but reversed this Court's determination that Stanley was not entitled to claim the statutory "fallback" exemption. See Mission Primary Care Clinic, PLLC v. Dir., Internal Revenue Servs., 370 Fed. Appx. 536, 541-42 (5th Cir. July, 7, 2010) (unpublished op.) (citing 26 U.S.C. § 6334(d)(2)(B)). Accordingly, the Court of Appeals remanded the cause, instructing this Court to recalculate the amount of Mission's liability. Id. at 542. Shortly thereafter, this Court applied an exemption of \$1,012.50--the per month amount to which Mission claimed its liability should be reduced--for a three-month period to reduce Mission's liability to the United States by \$3,037.50.

The United States contends that the Court's June 8, 2010 Order (1) miscalculated the amount owed by Mission, (2) failed to reaffirm its earlier finding that the United States is the prevailing party in this case and (3) did not dispose of Mission's pending crossclaims against Vicksburg Primary Care Team, Inc. ("VPCT") and Markus B. Stanley. The United States asks the Court to recalculate the amount owned by Mission and enter a final judgment in its favor thereby disposing all of its claims against Mission.

Not wanting to incur further costs associated with the case, Mission states, without explanation, that the Court correctly calculated the exemption amount. Mission, however, does not dispute that the United States was the prevailing party in this case and

therefore concedes that the Court's earlier assessment of costs still stands. Further, Mission's response does not address the status of their crossclaims against VPCT or Stanley. Mission's primary concern is that it should not have to pay interest that has accrued on the judgment after June 8, 2010 since it has been "ready and willing" to pay the judgment since that date. In rebuttal, the United States objects to Mission's claim that any interest should be abated and asks the Court to reaffirm that prejudgment and postjudgment interest runs from the date the Court entered its original judgment.

II. Whether the Court's July 8, 2010 Order Was a Final Judgment

Before the Court can address the merits of the United States's argument, it first must determine the status of the case at bar. The United States has expressed confusion as to whether the Court's June 8, 2010 Order reducing Mission's liability to the United States [docket entry no. 115] should be construed as a final judgment disposing of all of the claims against it, which would qualify the Order as appealable. Additionally, the United States questions why the docket sheet indicates that the case was terminated on July 13, 2009, even though Mission has crossclaims pending against other Defendants.

The Court rendered its June 8, 2010 Opinion and Order pursuant to the instruction of the Fifth Circuit, intending that Order to reduce the amount of Mission's liability to the United States;

however, the Court never set out its amended judgment in a separate document as required by Rule 58(a). As it stands, the Court's original judgment technically remains in effect, although it directly conflicts with the June 8, 2010 Order. To rectify this conflict, the Court will consider the United States's present Motion pursuant to its authority to revise previous, non-appealable orders under Rule 54(b). See Johnson v. TCB Construction Co., Inc., 2007 WL 37769, at *1 (S.D. Miss. 2007) (noting that the Court had not entered a final judgment dismissing all claims against all defendants and therefore should review the order pursuant to its authority under Rule 54(b)), see also Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 12 & n.14 (1983).¹ Following a resolution of this matter, the Court will promptly amend its original Judgment [docket entry no. 105] with a separate document consistent with this Opinion and Order, thereby concluding all claims between the United States and Mission. See FED. R. CIV. P.

¹ Motions for reconsideration based on decrees or orders *from which an appeal lies*, i.e., final judgments, are evaluated under either Rule 59(e) or 60(a), depending on how quickly the motion for reconsideration was filed after entry of the Court's order, degree, or judgment. See FED. R. CIV. PRO. 54(a) (emphasis added), 58(a); Shepherd v. Int'l Paper Co., 372 F.3d 326, 328 n.1 (5th Cir. 2004). If the order in question was appealable, the Government's motion would undoubtedly be a Rule 60 motion--filed exactly a year after the Order was entered--which has a more stringent standard of review than a Rule 54(b) motion. See generally, Fed. R. Civ. P. 60. Regardless, the Government would prevail even under a more demanding standard because the Court clearly miscalculated the exemption amount. See infra. Indeed, the standard of review makes little difference in this case because the Court clearly erred in its calculations.

58(a).

With respect to Mission's remaining crossclaims, the United States correctly points out that the docket sheet does not indicate that these claims have been resolved. The Court has previously held in this case that VPCT and Stanley lacked standing to challenge the United States's counterclaim against Mission, and, to the extent that the United States is now asking the Court to take any action regarding Mission's counterclaims, by the same logic the Court finds that the United States may not pursue Mission's counterclaims for indemnity from VPCT and Stanley. See March 6, 2009 Opinion and Order at 6-7, docket entry 90. The Court is uncertain as to whether Mission intends to prosecute its crossclaims once the amount of its liability to the United States is finalized, but the Court will leave that decision to Mission's discretion. See July 13, 2009 Order at 3-4, docket entry no. 104. Accordingly, at this time the Court will only resolve the issues remaining between the United States and Mission.

III. Judgment Amount

The United States disputes both the amount of the personal exemption applied by the Court and the length of time during which the exemption applies, arguing that Stanley qualified for an exemption of \$729.17, not \$1,012.50, and that this exemption applies for a forty-three-day(43) period, not the entire three

months.

Under 26 U.S.C. § 6334(d)(2)(B), a taxpayer who fails to provide proper documentation for his claimed exemptions is entitled to an exemption "as if the taxpayer is a married individual filing separately with only one personal exemption." Mission Primary Care Clinic, 370 Fed. Appx. at 542. In 2007, the personal exemption for a married individual filing separately with only one personal exemption was \$729.17. See IRS Notice 2006-106, 2006-49 I.R.B. 1033, 2006-2 C.B., 2006 WL 3473247 (Table 1). Therefore, the Court should have used this amount in reducing Mission's liability to the United States.²

Secondly, 26 C.F.R. § 301.6334-3(d) provides that "[i]n the case of an individual who is paid or receives, wages, salary, and other income other than on a weekly basis, the [amount exempt] from levy under section 6334(a)(9) is the amount that as nearly as possible will result in the same total exemption from levy for such individual over that period of time"³ Mission made payments

² In its original recalculation of liability, this Court incorrectly relied on Mission's claim that it was entitled to a personal exemption amount of \$1,012.50. The Court can find no explanation as to how Mission arrived at this amount but notes that \$1,012.50 is the exemption amount for a individual taxpayer claiming two exemptions. See IRS Notice 2006-106, 2006-49 I.R.B. 1033, 2006-2 C.B., 2006 WL 3473247 (Table 1).

³ 26 U.S.C. § 6334(a)(9) defines the minimum exemption for wages, salary, and other income as "[a]ny amount payable to or received by an individual as wages or salary for personal services,

to Stanley on March 23, March 30, April 5 (two payments), April 10, April 20, April 24, May 2, and May 4, 2007. Because Mission paid Stanley on an other-than-weekly basis, there is no question that the exemption should have been applied only from the dates between March 23 to May 4--a forty-three-day (43) period--rather than for the entire three months. Applying the correct exemption of \$729.17 for the correct time-period of forth-three (43) days, the Court finds the judgment should have been reduced by \$1,043.27 and will amend the judgment to \$42,157.73 to reflect the correct amount Mission owes the United States.⁴

IV. Costs and Interest

Next, the United States asks this Court to reaffirm the assessment of costs and interests in its favor, and in rebuttal to Mission's response to this request, further requests that the Court reaffirm that Mission owes interest starting from the date of the

or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection (d)."

⁴ The Court arrived at this calculation by multiplying \$729.17 by 12, which equals \$8,750.04. This amount, divided by 52, is \$168.27--the weekly exemption to which Mission was entitled. Multiplying \$168.27 by six--for the six work weeks during the applicable period--equals \$1009.62. A one-day daily exemption rate of \$33.65 (\$168.27/5) was added to this amount, totaling \$1,043.27, to account for the full six weeks and one day that Mission was entitled to claim the exemption. See IRS Notice 2006-106, 2006-49 I.R.B. 1033, 2006-2 C.B., 2006 WL 3473247 (Table 1).

judgment entered prior to appeal. Mission, for its part, does not object to paying costs and interests; however, it requests, without providing any supporting legal authority, that this Court abate any interest on the judgment that may have accrued after the Court's entry of its June 08, 2010 Order because it contacted the IRS in an effort to pay the judgment but was unable to do so.

Upon remand, an inferior court must follow the mandate of the appellate court, including instructions regarding interest amounts. Briggs v. Pennsylvania R. Co., 334 U.S. 304, 306 (1948); see also FED. R. APP. P. 37 (advisory notes). This Court was instructed to recalculate the amount of Mission's liability to the United States. In all other respects, the Fifth Circuit affirmed the Court's earlier Order, which assessed prejudgment and postjudgment interest to the judgment amount.⁵ See Judgment, docket entry no. 105. Mission cites no authority for its argument that the interest should be abated from June 8, 2010 to the present, and the Court can find no legal authority to support this position.

⁵ The Court of Appeals held that Mission waived any objection to the imposition of interest on the judgment amount by not raising their objections prior to appeal. See Mission Primary Care Clinic, 370 Fed. Appx. at 542 n. 3. To the extent that reversal "for recalculation of Mission's liability" is subject to Federal Rule of Appellate Procedure 37(b), the Court interprets this footnote to affirm the Court's assessment of prejudgment and postjudgment interest. In other words, the Court understands this footnote to provide adequate "instructions about the allowance of interest." FED. R. APP. P. 37

Regarding costs awarded to the United States and interest derived therefrom, this circuit follows the majority rule that interest on costs accrues from the date of the judgment that provides the basis for the award, rather than the date on which the Court determines the amount of costs payable. See, e.g., Louisiana Power & Light Co. v. Kellstrom, 50 F.3d 319, 331-32 (5th Cir. 1995); see also, Boehner v. McDermott, 541 F. Supp. 2d 310, 321-22 (D.D.C. 2008) (noting that the Fifth Circuit follows the majority rule). The Court entered its judgment finding Mission liable to the United States on July 13, 2009. Therefore, the Court finds that the costs and interest awarded to the United States and the prejudgment and postjudgment interests on the new liability amount should be calculated pursuant to 26 U.S.C. § 6332(d)(1) from July 13, 2009, the date the Court entered its final judgment.

V. Disposition

After reconsidering the June 8, 2010 Order, the Court finds that it miscalculated the amount Mission may claim as exempt from the IRS levy. Pursuant to the instruction of the Fifth Circuit, Mission's liability to the United States should be reduced by \$1,043.27. Accordingly, the Court will enter a separate document amending the amount of Mission's total liability to the United States to \$42,157.73.

IT IS HEREBY ORDERED that Government's Motion to Reconsider

Order and Enter Judgment [**docket entry no. 119**] is **GRANTED**.

The Court will enter an Amended Judgment reducing Mission's liability to the United States to \$42,157.73.

SO ORDERED on this the 6th day of February, 2012.

/s/ David Bramlette

UNITED STATES DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN BOOTH, et al.,	)	Case No.: 1:12-cv-00171 LJO JLT
)	
Plaintiffs,)	
	)	ORDER DISQUALIFYING MAGISTRATE
v.	)	JUDGE AND REASSIGNING CASE
)	
ACACIA CORPORATE MANAGEMENT,)	
LLC et al.,	)	Old Case Number: 1:12-cv-00171 LJO JLT
)	
Defendants.	)	New Case Number: 1:12-cv-00171 LJO DLB
)	

Good cause appearing, the undersigned disqualifies herself from all proceedings in the present action. The Clerk of the Court has reassigned this action to the docket of Magistrate Judge Dennis L. Beck. The new case number shall be 1:12-cv-00171 LJO DLB. All future pleadings shall be so numbered. Failure to use the correct case number may result in delay in your documents being received by the correct judicial officer.

IT IS FURTHER ORDERED that the Initial Scheduling Conference is reset to the calendar of Magistrate Judge Dennis L. Beck May 23, 2012 at 09:30 a.m., Courtroom 9, Sixth Floor.

IT IS SO ORDERED.

Dated: February 7, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

VENTURE BANK, INC.,

CIVIL NO. 11-3548 (ADM/JSM)

Plaintiff,

v.

ORDER FOR
PRETRIAL CONFERENCE

UNITED STATES OF AMERICA,

Defendant.

TO: Plaintiff above named and to Leslie M. Witterschein, Esq., attorneys for plaintiff;
Defendant above named and to Mark C. Milton, Esq., attorneys for defendant.

If counsel for all parties are not listed above, it is the responsibility of counsel for plaintiff to (1) immediately notify those parties and counsel of this conference, and (2) inform those parties and counsel of the requirements set forth in this notice.

Failure of any party or counsel to comply with any part of this Order, **including delivery of a hard copy of the Rule 26(f) Report and confidential settlement letter to Magistrate Judge Mayeron by the date specified in this Order**, may result in the postponement of the pretrial conference, an imposition of an appropriate sanction on the party, company or attorney who failed to comply, or both.

I. DATE, TIME, PLACE AND PARTICIPANTS

Pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 16 of the Rules of this District, a pretrial conference of trial counsel in the above matter will be held in chambers in Room 632, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, on **April 2, 2012 at 1:30 p.m.** before United States Magistrate Judge Janie S. Mayeron to consider the matters set forth in Rule 16(c), the Rule 26(f) disclosures, and

related matters.

Counsel who will be trying the case should make every effort to be present **in person** at the conference. If this is not possible, substitute counsel should attend who can knowledgeably discuss the dispute and the matters set forth in Rule 16(c), the Rule 26(f) disclosures, and related matters.

II. MEETING, REPORTS AND DISCLOSURES REQUIRED

A. Pursuant to Federal Rule of Civil Procedure 26(f), trial counsel for each party shall confer in person or by telephone on or before **March 12, 2012** to discuss (a) settlement, and (b) to prepare the report required by Rule 26(f) and Local Rule 16.2.

B. If the case does not settle, no later than **March 19, 2012**, counsel shall jointly prepare and file with the Clerk of Court on ECF ("Electronic Case Filing") a complete written report of the Rule 26(f) meeting. **A copy of the 26(f) Report and the confidential settlement letter shall be mailed, or hand delivered, or faxed to 651-848-1192 or emailed to chambers at mayeron_chambers@mnd.uscourts.gov on the same day.**

The Report shall contain the following information:

1. **Date and Place of the Meeting; Identification of the Parties and Their Attorneys; Agenda of Matters for Pretrial Conference.**
 - a. The date and place at which the meeting was held;
 - b. Name, address and occupation or business of each party, together with the name, address and telephone number of the attorneys who represented each party at the meeting;
 - c. Name of insurance carriers that may be liable for the defense or payment of any damage award; and
 - d. An agenda of matters to be discussed at the Pretrial Conference.

2. Description of the Case

- a. A concise statement of the jurisdictional basis of the case, giving statutory citation and a brief narrative description;
- b. A brief narrative of the facts giving rise to the lawsuit, including a description of legal claims and defenses; and
- c. A summary itemization of the dollar amount of each element of the alleged damages.

3. Pleadings

- a. A statement of whether the Complaint and all responsive pleadings have been filed, and whether any party proposes to amend its pleadings;
- b. The date by which all motions that seek to amend the pleadings to add parties, claims and defenses will be filed; and
- c. Whether a jury trial is available under the law, and whether a jury trial has been timely demanded.

4. Discovery Plan (If the parties are unable to agree on a discovery plan, the Report shall separately set forth each party's proposed plan.) Such a plan shall include such matters as focusing the initial discovery on preliminary issues that might be case dispositive or might lead to early settlement discussions, instituting document control mechanisms, stipulating to facts to eliminate unnecessary discovery, and any other matters counsel may agree upon to control litigation costs and delay. In addition, the plan shall provide the following information:

- a. Date by which the initial Rule 26(a)(1) disclosures of witnesses, documents, itemized damage computations and insurance will be completed. (**Note:** Unless otherwise agreed by counsel, the initial disclosures under Rule 26(a)(1) shall be exchanged no later than 14 days from the Rule 26(f) meeting);
- b. Whether the parties wish to engage in any method of alternative dispute resolution following Rule 26(a)(1) disclosures but before formal discovery is commenced, and if not, when the parties believe that alternative dispute resolution would be appropriate. In addition, state the proposed method of alternative dispute resolution;

- c. Whether discovery should be conducted in phases (e.g., to first discover information bearing on dispositive issues or on settlement), or limited to or focused upon, particular issues;
- d. How the parties propose handling any issues relating to the disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;
- e. How the parties propose handling claims of privilege and protection of trial preparation material;
- f. How the parties propose handling the protection of confidential information;
- g. The date by which each party shall disclose the identity of expert witnesses and their reports under Rule 26(a)(2)(A) and (B), including rebuttal experts;
- h. Whether changes should be made in the limitations on discovery imposed by the Federal Rules of Procedure or the Local Rules, and what other limitations should be imposed, if any;
- i. The number of interrogatories each party shall be permitted to serve, including subparts;
- j. The number of depositions (excluding depositions of expert witnesses) each party shall be permitted to take; and
- k. The number of expert depositions each party shall be permitted to take.

5. Close of Fact and Expert Discovery and Non-Dispositive Motions

- a. The date by which all fact discovery shall be completed;
- b. The date by which all expert discovery, including expert depositions, shall be completed;
- c. The date by which any independent medical examination shall be completed and the report served on the opposing party; and
- d. The date by which all non-dispositive motions shall be served, filed and heard by the Court.

6. Dispositive Motions and Trial

- a. Date by which all dispositive motions shall be served, filed and heard by the Court;
- b. Date by which case will be ready for trial;
- c. The number of expert witnesses each party expects to call at trial; and
- d. Estimated trial time (the number of days needed for trial, including jury selection and instructions, if applicable).

C. Each party shall also submit a letter to Magistrate Judge Mayeron concerning settlement which shall remain confidential between the Court and that party. This confidential letter shall describe the following information: (a) the status of settlement discussions to date; (b) whether you are interested in participating in a voluntary settlement conference with the Magistrate Judge; (c) if you are interested in participating in a voluntary settlement conference with the Magistrate Judge, when you believe this settlement conference should take place. The confidential letter shall be **mailed, or hand delivered, or faxed to 651-848-1192 or emailed to chambers at mayeron_chambers@mnd.uscourts.gov** on or before **March 19, 2012**.

III. EXERCISE OF JURISDICTION BY U.S. MAGISTRATE JUDGE PURSUANT TO TITLE 28, UNITED STATES CODE, SECTION 636(c)

If the parties consent to have this matter tried before the Magistrate Judge, all counsel are requested to sign the enclosed form by **April 2, 2012**, and electronically file said form pursuant to Section II, Part F, of the electronic Case Filing Procedures for the District of Minnesota (Civil).

Dated: February 7, 2012

s/ Janie S. Mayeron

JANIE S. MAYERON
United States Magistrate Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
WESTERN DIVISION

UNITED STATES OF AMERICA,

Counterclaimant

VERSUS

CIVIL ACTION NO. 5:07-cv-162-DCB-JMR

MISSION PRIMARY CARE CLINIC, PLLC,

Counterclaim Defendant and
Cross-claimant, and

**VICKSBURG PRIMARY CARE TEAM INC., and
MARKUS B. STANLEY**

Cross-Claim Defendants on Counterclaim.

Amended Final Judgment

This cause having come before the Court on the Government's Motion to Reconsider and the Court having granted said Motion, pursuant to Federal Rule of Civil Procedure 58(a) and consistent with the Court's recently entered Opinion and Order, the Court hereby amends its July 13, 2009 final judgment [docket entry no. 105] as follows:

IT IS HEREBY ORDERED that the Court's previous judgment against Mission in the amount of \$43,200.00 is reduced to \$42,157.73 plus prejudgment and postjudgment interest thereon in accordance with 26 U.S.C. § 6621(a)(2).

IT IS FURTHER ORDERED that Mission shall pay to United States costs in the amount of \$1,984.89 and interest thereon in accordance with 26 U.S.C. § 6621(a)(2).

IT IS FURTHER ORDERED that all aforementioned interest payable to the United States shall be calculated from the date the Court entered its previous judgment, July 13, 2009.

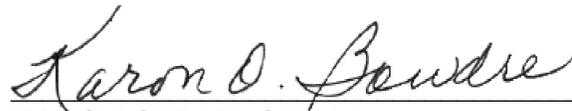
SO ORDERED AND ADJUDGED, this the 6th day of February, 2012.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE

As the court noted previously, it has received the motion for preliminary injunction and the opposition to that motion, both filed today. Because those filings occurred on the same date, the parties have advised the court that they would like an opportunity respond. The deadline for responses to today's filings is **Tuesday, February 14, 2012 at noon.**

All affiants must be available in court at the preliminary injunction hearing for cross examination and advancing for trial on the merits, unless the opposing side advises otherwise. The parties cannot offer any additional evidence at the hearing that is not contained in the affidavits filed in support of their positions – either filed on Tuesday, February 7, 2012 or filed as a response to those documents by the February 14 deadline – except to address matters raised for the first time in the February 14 responses.

DONE and ORDERED this 7th day of February, 2012.


KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

CIVIL ACTION

VERSUS

**LARRY CARNELL DIXON, SR., D/B/A
DIXON'S TAX SERVICE**

NO. 12-26-FJP-SCR

ORDER

IT IS ORDERED that a scheduling conference is hereby set before United States Magistrate Judge Stephen C. Riedlinger for **April 26, 2012 at 9:00 a.m.**

IT IS FURTHER ORDERED that a status report **shall be filed not later than April 12, 2012**. It shall be the duty of the attorney for plaintiff to provide the defendant(s) with a copy of this order and attachment, and to prepare, sign, and file the status report in accordance with Attachment A.

No party may submit a separate status report without first obtaining leave of court for good cause shown. Mere disagreements among parties with respect to any of the matters addressed in the report should be set forth in the appropriate section of the joint status report.

The Court will review the report prepared and filed in accordance with Attachment A in advance of the conference to determine whether or not the scheduling conference should go forward as scheduled, be reset, or be canceled and a scheduling order issued based upon the report. In the event there are no reported problems requiring court

Revised: 1/5/2001

intervention and the parties have provided a timely report setting forth applicable deadlines, the court will notify the parties that the conference *will not* be held and that a scheduling order based on their submitted deadlines will be forthcoming. Unless the court issues an order cancelling the conference, the conference will be held as scheduled.

Signed in chambers in Baton Rouge, Louisiana, this 7th day of February, 2012.


MAGISTRATE JUDGE STEPHEN C. RIEDLINGER

Enc.: Attachment A
Consent Notice

Revised: 1/5/2001

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CIVIL ACTION

VERSUS

LARRY CARNELL DIXON, SR., D/B/A
DIXON'S TAX SERVICE

NO. 12-26-FJP-SCR

STATUS REPORT

A. JURISDICTION

What is the basis for the jurisdiction of the Court?

B. BRIEF EXPLANATION OF THE CASE

1. Plaintiff claims:
2. Defendant claims:

C. PENDING MOTIONS

List any pending motion(s), the date filed, and the basis of the motion(s):

D. ISSUES

List the principal legal issues involved and indicate whether or not any of those issues are in dispute:

E. DAMAGES

Separately, for each party who claims damages or an offset, set forth the computation of damages or the offset:

1. Plaintiff's calculation of damages:
2. Defendant's calculation of offset and/or plaintiff's damages:
3. Counterclaimant/cross claimant/third party's calculation of damages:

F. SERVICE:

Identify any unresolved issues as to waiver or service of process, personal jurisdiction, or venue:

G. DISCOVERY

1. Have the initial disclosures required under FRCP 26(a)(1) been completed?
[] YES [] NO

A. Do any parties object to initial disclosures?

[] YES [] NO

For any party who answered yes, please explain your reasons for objecting:

B. Please provide any stipulations reached by the parties with regard to FRCP 26(a)(1) initial disclosures:

2. Briefly describe any discovery that has been completed or is in progress:

By plaintiff(s):

By defendant(s):

3. Please describe any protective orders or other limitations on discovery that may be required/sought during the course of discovery. (For example, are there any confidential business records or medical records that will be sought? Will information that is otherwise privileged be at issue?)

4. Discovery from experts:

Identify the subject matter(s) as to which expert testimony will be offered:

By plaintiff(s):

By defendant(s):

H. PROPOSED SCHEDULING ORDER

1. Recommended deadlines for amending the complaint, or adding new parties, claims, counterclaims or cross claims:
2. Recommended deadlines for completion of fact discovery:
 - A. Exchanging initial disclosures required by FRCP 26(a)(1):
 - B. Filing all discovery motions and completing all discovery except experts:
3. Disclosure of identities and resumés of expert witnesses (if appropriate, you may suggest different dates for disclosure of experts in different subject matters):

Plaintiff(s):

Defendant(s):
4. Exchange of expert reports:

Plaintiff(s):

Defendant(s):
5. Completion of discovery from experts:
6. Filing dispositive motions:
7. If the general outline of proposed deadlines set forth in numbers 1 - 6 does not fit the circumstances of your particular case, please provide a proposed joint schedule of deadlines which is more appropriate for your case.

I. TRIAL

1. Has a demand for trial by jury been made?

YES NO
2. Estimate the number of days that trial will require:

J. OTHER MATTERS

Are there any specific problems the parties wish to address at the scheduling conference?

YES NO

1. If the answer is yes, please explain:
2. If the answer is *no*, do the parties want the court to cancel the scheduling conference and to enter a scheduling order based on the deadlines set out in this report?

YES NO

K. ALTERNATIVE DISPUTE RESOLUTION ("ADR")

1. Several ADR techniques are available through the court and may be helpful in your case. These include early neutral evaluation, mediation, and summary jury trial. Do the parties wish to engage in alternative dispute resolution proceedings?

YES NO

If so, identify the ADR procedure(s) to be used:

2. If the parties have been unable to agree on an ADR procedure, but one or more parties believe that the case is appropriate for such a procedure, identify the party or parties who recommend ADR and the specific ADR process recommended:

L. SETTLEMENT

1. Please set forth what efforts, if any, the parties have made to settle this case.
2. Do the parties wish to have a settlement conference?

YES NO

If your answer is *yes*, at what stage of litigation would a settlement conference be most beneficial?

M. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE

You have the right to waive your right to proceed before a United States District Judge and may instead consent to proceed before a United States Magistrate Judge.

Indicate whether, at this time, all parties will agree, pursuant to 28 U.S.C. § 636(c), to have a Magistrate Judge handle all the remaining pretrial aspects of this case and preside over a jury or bench trial, with appeal lying to the United States Court of Appeals for the Fifth Circuit.

All parties agree to jurisdiction by a Magistrate Judge of this court:

YES NO

If your response was “yes” to the preceding question, all attorneys and unrepresented parties should sign the attached form to indicate your consent.

Signature of person preparing report: _____

Report dated: _____

**NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF
CIVIL CASE BY A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. 636(c), you are hereby notified that all of the parties in this civil case may consent to allow a United States Magistrate Judge of this district court to conduct any and all proceedings, including trial of the case and entry of a final judgment.

You may consent by signing the form contained within the status report, or you may use the attached form at any later stage of the proceedings should you decide at that time to proceed before the United States Magistrate Judge. A copy of a consent form is enclosed and is also available from the clerk of court.

You should be aware that your decision to consent, or not to consent, to the disposition of your case before a United States Magistrate Judge is entirely voluntary and should be communicated in writing to the clerk of the district court by signing the enclosed form. Either the district judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in doing so, shall also advise the parties that they are free to withhold consent without adverse consequences.

Please note that the parties may appeal the magistrate judge's decision directly to the court of appeals in the same manner as an appeal from any other judgment of the district court.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA
VERSUS**

CIVIL ACTION

**LARRY CARNELL DIXON, SR., D/B/A
DIXON'S TAX SERVICE**

NO.12-26-FJP-SCR

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. 636(c), the parties to the above captioned civil proceeding hereby waive their right to proceed before a United States District Judge and consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including but not limited to the trial of the case, and order the entry of judgment in the case.

The parties are aware that in accordance with 28 U.S.C. 636(c)(3), any aggrieved party may appeal from the judgment directly to the United States Court of Appeals for the Fifth Circuit in the same manner as an appeal from any other judgment of the district court.

Date	Party Represented	Pro Se or Atty. Name	Pro Se or Atty. Signature

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.	)	Civil No. 6:10-cv-00340-DLR
)	
RONALD H. SATHER,)	
BARBARA SATHER,)	
BANK OF OKLAHOMA,)	
)	
Defendants.)	

MODIFIED ORDER OF SALE

This Court entered a final judgment in this action on September 7, 2011, ordering that the federal tax liens and restitution lien be foreclosed. The Court issued an Order of Sale on January 13, 2012 (Doc. No. 91). The United States moved to modify that Order (Doc. No. 92) to allow occupants of the properties at issue until May 1, 2012 to vacate. The Court hereby GRANTS that motion and modifies the Order of Sale to allow the occupants of the properties until May 1, 2012 to vacate the properties. The original Order of Sale remains the same in all other respects.

Accordingly, the Court now ORDERS that the real properties described below (“Properties”)

Property located at 506 Lark Drive, McAlester, Oklahoma 74501 and legally described as: Lot 3 in Block 10, Mockingbird Hill Addition to the City of McAlester, according to the subdivision plat thereof in Book 16, Folio No 107 Pittsburg County, Oklahoma.

Property located at 210 West Carl Albert Parkway, McAlester, Oklahoma 74501 and legally described as: Lot Three (3) and Lot Eleven (11) of Block Three hundred Fifty-two (352) of the City of McAlester, formerly South McAlester, County of Pittsburg and State of Oklahoma.

Property located at 1803 S. 9th Street, McAlester, OK 74501 and legally described as: The South 80 feet of the North 185 feet of the East 185 feet of the Southeast Quarter of the Southeast Quarter of the SE1/4 SE1/4 NW1/4 of Section 18,

Township Five 5 North, Range 15 East of the Indian Base and Meridian, Pittsburg County, State of Oklahoma.

Property located at 314 W. Washington, McAlester, Oklahoma 74501 and legally described as: the Westerly Fifty feet (50') of the Easterly One Hundred feet (100') of Lot Two (2), in Block Three Hundred Fifteen (315), in the City of McAlester formerly South McAlester, in Pittsburg County and State of Oklahoma.

Property located at 215 W. Choctaw Ave., McAlester, Oklahoma 74501 and legally described as: Lot 11 Blk 352 So. McAlester & the N 20' of the Vac Alley Lying Adj. Thereto

be sold under title 28, United States Code, §§ 2001 and 2002, to satisfy the federal tax liens and restitution lien, as follows:

1. The Internal Revenue Service (“IRS”) Property Appraisal and Liquidation Specialists (“PALS”), is authorized to offer for public sale and to sell the Property.
2. The terms and conditions of the sale are as follows:
 - a. The sale of the Property shall be free and clear of the interests of Ronald and Barbara Sather and all parties in the suit.
 - b. The sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Property, and easements and restrictions of record, if any;
 - c. The sale shall be held either at the courthouse of the county or city in which the Property is located or on the Property’s premises;
 - d. The PALS shall announce the date and time for sale;
 - e. Notice of the sale shall be published once a week for at least four consecutive weeks before the sale in at least one newspaper regularly issued and of general circulation in Worcester County, and, at the

discretion of the PALS, by any other notice that the PALS deems appropriate. The notice shall contain a description of the property and shall contain the terms and conditions of sale in this order of sale;

- f. The PALS shall set the minimum bid. If the minimum bid is not met or exceeded, the PALS may, without further permission of this Court, and under the terms and conditions in this order of sale, hold a new public sale, if necessary, and reduce the minimum bid.
- g. At the time of the sale, the successful bidder(s) shall deposit with the PALS, by money order or by certified or cashier's check payable to the Clerk of the United States District Court for the Eastern District of Oklahoma, a deposit in an amount between five (5) and twenty (20) percent of the minimum bid as specified by the PALS in the published Notice of Sale. Before being permitted to bid at the sale, potential bidders shall display to the PALS proof that they are able to comply with this requirement. No bids will be accepted from any person(s) who have not presented proof that, if they are the successful bidders(s), they can make the deposit required by this order of sale;
- h. The successful bidder(s) shall pay the balance of the purchase price for the Property within sixty (60) days following the date of the sale. The certified or cashier's check payable to the United States District Court for the Eastern District of Oklahoma shall be given to PALS who will deposit the funds with the clerk of this Court. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the

expenses of the sale, with any amount remaining to be applied to the liabilities of Ronald Sather at issue herein. The Clerk shall distribute the deposit as directed by the PALS by check made to the "United States Treasury." The Property shall be again offered for sale under the terms and conditions of this order of sale or, in the alternative, sold to the second highest bidder.

- i. The Clerk of the District Court is directed to accept the proceeds of the sale and deposit it into the Court's interest bearing registry account and hold it until distribution is directed pursuant to further Order of this Court.
 - j. The sale of the Property shall be subject to confirmation by this Court. On confirmation of the sale, the Internal Revenue Service shall execute and deliver its deed conveying the Property to the purchaser. On confirmation of the sale, all interests in, liens against, or claims to, the Property that are held or asserted by all parties to this action are discharged and extinguished.
 - k. When this Court confirms the sale, the Recording Official of Pittsburg County, Oklahoma shall cause transfer of the Property to be reflected upon that county's register of title. The successful bidder at the sale shall pay, in addition to the amount of the bid, any documentary stamps and Clerk's registry fees as provided by law;
 - l. The sale of the Property is ordered pursuant to 28 U.S.C. § 2001, and is made without right of redemption.
3. Until the Property is sold, Ronald and Barbara Sather shall take all reasonable

steps necessary to preserve the Property (including all buildings, improvements, fixtures and appurtenances on the property) in its current condition including, without limitation, maintaining a fire and casualty insurance policy on the Property. They shall neither commit waste against the Property nor cause or permit anyone else to do so. They shall neither do anything that tends to reduce the value or marketability of the Property nor cause or permit anyone else to do so. The defendants shall not record any instruments, publish any notice, or take any other action (such as running newspaper advertisements, posting signs, or making internet postings) that may directly or indirectly tend to adversely affect the value of the Property or that may tend to deter or discourage potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do so.

4. All persons occupying the Property shall vacate the Property permanently by May 1, 2012, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the Property). If any person fails or refuses to vacate the Property by the date specified in this Order, the PALS are authorized to coordinate with the United States Marshal to take all actions that are reasonably necessary to have those persons ejected. Any personal property remaining on the Property after May 1, 2012 is deemed forfeited and abandoned, and the PALS are authorized to dispose of it in any manner they see fit, including sale, in which case the proceeds of the sale are to be applied first to the expenses of sale and the balance to be paid into the Court for further distribution. Checks for the purchase of the personal property shall be made out to the Clerk of the Clerk for the Eastern District of Oklahoma and the Clerk is directed to accept these checks and deposit them into the Court's registry for distribution pursuant to further Order of this Court.

5. No later than two business days after vacating the Property pursuant to the

deadline set forth in paragraph 4 above, Ronald Sather shall notify counsel for the United States of a forwarding address where he can be reached. Notification shall be made by contacting the paralegal for the United States, Marion Goyette, at (202) 514-6674.

6. Pursuant to the Judgment in this case, the United States has an interest of \$723,733.80, plus lien costs and statutory interest and additions accruing on that amount. Any other defendant wishing to claim an interest in the sale proceeds must submit to the Court evidence of its claim, the amount, and the priority of its claim within 45 days from the entry of this Order.

7. Pending the sale of the Property and until the deed to the Property is delivered to the successful bidder, the PALS is authorized to have free access to the premises in order to take any and all actions necessary to preserve the Property, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the Property.

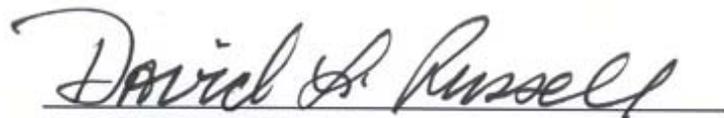
8. After the Court confirms the sale, the sale proceeds are to be paid to the Clerk of this Court and applied to the following items, in the order specified:

- a. First, to the United States Treasury for the expenses of the sale, including any expenses incurred to secure or maintain the property pending sale and confirmation by the Court.
- b. Second, to any real property taxes due and owing, to the extent not paid by the mortgage holder, with interest calculated to the estimated date of the confirmation of sale;
- c. Third, one half of the balance to defendant Barbara Sather for her one - half interest in the real properties;

- d. Fourth, to the United States of America for application to the balance of the \$133,764.60 restitution ordered by the Court on 11/9/99 in *United States v. Ronald Sather*, Case No. 99-cr-00029-001 (E.D. Okla.) against the Ronald Sather, plus all accrued statutory penalties, additions, and interest, until fully paid,
- e. Fifth, to the United States of America for application to the balance of Ronald Sather's federal income tax liabilities of \$316,949.98 for 1992 - 1999 as reflected in the Notice of Federal Tax Lien filed in Pittsburg County on October 9, 2001, plus all accrued statutory penalties, additions, and interest, until fully paid;
- f. Sixth, to The Bank of Oklahoma, N.A. for application toward the unpaid balance of the \$38,430.74 judgment entered against Ronald Sather on May 3, 2004 in *The Bank of Oklahoma v. Ronald H. Sather*, Case No. CJ-2003-7736 in the District Court of Tulsa County on May 3, 2004; and
- g. Seventh, all remaining proceeds to the United States for application to the remaining balance of the judgment, after application of the proceeds to the underlying tax liabilities as described in paragraphs 8(d) and 8(e), of \$723,733.78 entered in favor of the United States against Ronald H. Sather, plus all accrued statutory penalties, additions, and interest, until fully paid.

¹ This amount does not reflect statutory penalties, additions, and interest since the Notice of Federal Tax Lien was filed. It also subtracts the \$239.61 assessment made on June 22, 1998. The United States released its Notice of Federal Tax Lien for that amount.

IT IS SO ORDERED THIS 7th day of February, 2012.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JOHN K. BALDWIN,	)	Case No. CV 09-0033
)	
Plaintiff,)	
	)	ORDER GRANTING JOINT MOTION TO
v.	)	EXTEND CERTAIN DATES IN THE
	)	AMENDED SCHEDULING ORDER AND
UNITED STATES OF AMERICA,	)	TO SET OTHER DATES
)	
Defendant.)	
)	

The Court, having reviewed the parties’ Joint Motion to Extend Certain Dates in the Amended Scheduling Order and to Set Other Dates (Docket No. 106), and good cause appearing therefore, hereby GRANTS the Joint Motion. The Court’s prior Scheduling Order dated January 12, 2012 (Docket No. 105), is amended and replaced by this Order. The remaining deadlines are as follows:

1. Expert discovery shall be completed by June 1, 2012;
2. Expert discovery motions shall be filed on or before June 1, 2012;
3. Dispositive motions shall be filed on or before June 7, 2012;
4. Responses to dispositive motions shall be filed on or before June 28, 2012;
5. Replies to responses to dispositive motions shall be filed on or before July 12, 2012;
6. A hearing on dispositive motions will be held on July 26, 2012, at 8:00 a.m.;
7. Motions in limine shall be filed on or before August 10, 2012;
9. Responses to motions in limine shall be filed on or before August 24, 2012;

- 1 10. Replies to responses to motions in limine shall be filed on or before September 7, 2012;
- 2 11. The joint proposed final pretrial order shall be filed by September 25, 2012;
- 3 12. A final pretrial conference will be held October 4, 2012, at 9:00 a.m.; and
- 4 13. Trial shall begin October 9, 2012, at 9:00 a.m.

5 **IT IS SO ORDERED.**

6 DATED this 7th day of February, 2012.

7
8 
9 RAMONA V. MANGLONA
Chief Judge

10
11
12
13
14
15
16
17
18
19
20
21
22

Below is a Judgment of the Court. If the judgment is for money, the applicable judgment interest rate is:


ELIZABETH PERRIS
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re:	)	Case No. 10-39598-elp11
)	
PACIFIC COAST MEDICAL SUPPLY, INC.	)	Chapter 11
)	
<u>Debtor.</u>	)	Adv. Proc. No. 11-03157
)	
INVACARE CORPORATION; INVACARE	)	JUDGMENT OF DEFAULT AS TO
CREDIT CORPORATION; THE	)	DEFENDANTS
AFTERMARKET GROUP, INC.; and	)	FIRST NIAGARA BANK;
INVACARE SUPPLY GROUP, INC.,	)	ASSOCIATED BANC-CORP.;
	)	MARSHALL & ILSLEY
Plaintiffs,	)	CORPORATION; KEY
	)	EQUIPMENT FINANCE INC.; M&I
v.	)	MARSHALL AND ILSLEY BANK;
	)	ASSOCIATED BANK, N.A.; BMO
UNITED STATES OF AMERICA, INTERNAL	)	HARRIS BANK, N.A.
REVENUE SERVICE; COLUMBIA STATE)	
BANK, fka, Bank of Astoria; PACIFIC COAST)	
MEDICAL SUPPLY, INC.; FPC FUNDING II,)	
LLC; COACTIV CAPITAL PARTNERS, INC.,)	
fka CoActiv Capital Partners LLC, and fka)	
Partners Equity Capital Company LLC, aka)	
Partners Equity Capital Co.; UNITED LEASING)	
ASSOCIATES OF AMERICA, LTD;)	
ASSOCIATED BANC-CORP., dba Associated)	
Bank N.A.; FINANCIAL PACIFIC LEASING,)	
LLC; MARSHALL & ILSLEY CORPORATION,)	

dba M & I Marshall & Ilsley Bank; LEAF)
 FUNDING, INC., dba Dolphin Capital)
 Corporation; WELLS FARGO BANK N.A., dba)
 Greater Bay Bank N.A.; MADISON FUNDING)
 LLC; FIRSTLEASE, INC.; PAWNEE LEASING)
 CORP.; SUNRISE MEDICAL HHG, INC., a)
 Colorado corporation, dba Sunrise Mobility, Inc.;)
 SUNRISE MEDICAL HHG, INC., a California)
 corporation, dba Sunrise Medical, Inc.; FIRST)
 NIAGRA BANK; TCF EQUIPMENT FINANCE,)
 INC., dba VGM Financial Services; KEY)
 EQUIPMENT FINANCE INC.; RYJE, LLC;)
 CANON FINANCIAL SERVICE, INC.; CIT)
 TECHNOLOGY FINANCING SERVICES, INC.;)
 SUSQUEHANNA COMMERCIAL FINANCING,)
 INC.; CLATSOP COUNTY; M&I MARSHALL)
 AND ILSLEY BANK; ASSOCIATED BANK,)
 N.A.; and BMO HARRIS BANK, N.A.,)
)

Defendants.

This matter came before the court following Plaintiffs' Motions for Order of Default as to the defendants listed below. It appears to the court that Orders of Default were entered against the following parties ("Defaulted Defendants") on the following dates:

<u>Defaulted Defendants:</u>	<u>Date:</u>	<u>Dkt #:</u>
First Niagara Bank	9/29/11	62
Associated Banc-Corp.	1/31/12	107
Marshall & Ilsley Corporation	1/31/12	107
Key Equipment Finance Inc.	1/31/12	107
M&I Marshall and Ilsley Bank	1/31/12	107
Associated Bank, N.A.	1/31/12	107
BMO Harris Bank, N.A.	1/31/12	107

Therefore, it is hereby

ADJUDGED and declared that:

1. To the extent that Defaulted Defendants have a security interest, lien, or any other interest (“Possible Interest”) in any personal property of the Debtor, that Possible Interest is, and always has been, junior and subordinate to the security interest held by plaintiffs (“Plaintiffs”) in such personal property; and

2. This judgment does not reflect any determination of, or declaration as to, the validity or the extent of Defaulted Defendants’ Possible Interest(s) in any of Debtor’s personal property.

###

Presented by:

/s/ Bruce H. Orr

Bruce H. Orr, OSB No. 813297

bho@wysekadish.com

Attorneys for Plaintiffs Invacare Corporation
and Invacare Credit Corporation

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the proposed foregoing JUDGMENT OF DEFAULT has been today, February 3, 2012, by Electronic Notification using the Court's ECF system to:

QUINN P HARRINGTON
quinn.p.harrington@usdoj.gov,
western.taxcivil@usdoj.gov
on behalf of Cross Defendant USA, Internal
Revenue Service

BLAIR J HENNINGSGAARD on behalf of
Defendant Clatsop County
blair@astorialaw.net, sarah@astorialaw.net

MARGOT D LUTZENHISER on behalf of
Defendant Pacific Coast Medical Supply, Inc.
mlutzenhiser@fwwlaw.com,
dhitti@fwwlaw.com

JASON M. AYRES, on behalf of Defendant
Pacific Coast Medical Supply, Inc.
jayres@fwwlaw.com

/s/ Bruce H. Orr
Bruce H. Orr, OSB #
813297

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF ARKANSAS (JONESBORO)

In re:)	
)	
MICHAEL ANTHONY CREWS,)	
	)	Case No. 3-11-bk-17026
	)	Chapter 7
Debtors.)	
_____)	
MICHAEL ANTHONY CREWS,)	
)	
Plaintiffs,)	
)	
v.	)	Adv. Proc. No. 3-11-ap-01287
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

STIPULATED ORDER

This matter comes before the Court on the plaintiffs' Complaint to determine the dischargeability of federal tax debts. The Court finds that:

1. On November 21, 2011, the plaintiffs filed the above-captioned adversary proceeding seeking a determination of the dischargeability of federal tax debts.
2. The United States, on behalf of the Internal Revenue Service, and the plaintiffs have agreed to resolve the matter as follows:
 - a. The plaintiffs' federal personal income tax debts (including associated interest and penalties) for tax years 1996 - 2000 are dischargeable.
 - b. The plaintiffs' federal personal income tax debts (including associated interest and penalties) for tax years 2006, 2007, 2009, and 2010 are not dischargeable.

- c. Federal tax liens that attached to the plaintiffs' property and interests in property before the petition will survive the bankruptcy to the extent permitted by law.

This Order does not prejudice the right of the United States to dispute or enforce federal tax liens against the plaintiffs or their creditors.

IT IS SO ORDERED.


Audrey R. Evans
United States Bankruptcy Judge
Dated: 02/07/2012

Approved as to form and content:

s/ Joe Barrett

JOE BARRETT
P.O. Box 4036
Jonesboro, AR 72403
Telephone: (870) 931-7111
Fax: (870) 931-9578
E-mail: barrettbkctcy@sbcglobal.net

Attorney for Plaintiffs

s/ Sherra Wong

SHERRA WONG, NY Bar #4894895
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-1882
Fax: (202) 514-6770
E-mail: sherra.t.wong@usdoj.gov

Attorney for the United States

CC: Attorney for Plaintiff(s)
Plaintiff(s)
Attorney for Defendant(s)
Defendant(s)
Trustee
US Trustee

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ADVANCE AUTO BODY LLC,
SHAWN BIERD and KATRINA BIERD,

Defendants.

PRELIMINARY PRETRIAL
CONFERENCE ORDER

11-cv-341-wmc

This court held a recorded telephonic preliminary pretrial conference in this case on February 3, 2012. Plaintiff appeared by Miranda Bureau. The court already has entered default judgement against Advance Auto Body, LLC. Neither Shawn Bierd nor Katrina Bierd defendant Bierd called in for the conference and the court had no telephone number at which to reach them. Neither defendant has attempted to contact the court since the conference date.

Each pro se defendant must represent himself or herself

To the court's knowledge, neither Shawn Bierd nor Katrina Bierd is a licensed attorney authorized to practice law in any state court. Therefore, although each of them may represent himself or herself in this lawsuit, Mr. Bierd cannot represent Mrs. Bierd, and Mrs. Bierd cannot represent Mr. Bierd. They are allowed to file and serve documents jointly, that is, on behalf of both of them, as long as they both sign such documents.

Read this whole order NOW

This federal civil lawsuit is a serious matter. As a party to a federal civil lawsuit, it is your duty to understand what you are supposed to do and when you are supposed to do it. To help

you, this order explains what your duties are and what your deadlines are. This court has a number of rules that you must follow. It will not be easy to do everything that you are supposed to do, and you will not have a lot of time. Therefore, it is important for you to read this order now so that you can do things the right way.

Review the Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure are the rules that control much of what happens in this lawsuit. Not all of those rules will be important in your case, but some of them will be very important, particularly the rule about summary judgment and the rules about discovery. It is your duty to know the rules of procedure that apply to you in this case. This court cannot provide you with a copy of the rules of procedure. You will have to find your own copy of the rules to review.

The Federal Rules of Evidence could be important later in this lawsuit. The rules of evidence affect the parties' submissions for summary judgment motions. Also, if this case goes all the way to trial, the rules of evidence will affect how the evidence is presented at trial. It is your duty know the rules of evidence that apply to you in this case. This court cannot provide you with a copy of the rules of evidence. You will have to find your own copy of the rules to review.

Service of documents on your opponent

The usual rule is that every letter, motion, brief, exhibit, or other document that you file with the court in this lawsuit must be served on your opponent at the same time. This means that whenever you mail a document to the court, you simultaneously must mail a copy of that

document to the attorney representing the government in this case. You also must **certify service** by including with each submission to the court a sentence at the end of your document, or on a separate piece of paper, in which you swear or certify that you sent a copy through the mail with proper postage to the government's lawyer. If you do not serve your documents on the government, then this court will not look at your documents. If you think you will have trouble making copies, then you should think about this ahead of time and follow the directions in the next section about copying.

Scheduling

1. Disclosure of Expert Witnesses: Plaintiff: July 6, 2012

Defendants: August 6, 2012

Because expert witnesses are different from other witnesses, there is a special rule telling how plaintiffs and defendants must name their experts and explain what those experts are going to say at trial. That rule is Rule 26(a)(2) of the Federal Rules of Civil Procedure. If a party does not follow the requirements of Rule 26(a)(2) by his (or her) deadline to disclose expert witnesses, then this court will not allow that expert witness to present evidence in this case.

This court does not have any money to help plaintiff hire an expert witness. This court does not have any lists or other information that would help the defendants locate or contact an expert witness. The parties are on their own and they should keep this in mind if they think they might want expert witnesses in this case. There is no extra time in the schedule to allow for extensions, so the parties should begin looking for expert witnesses right away if this type of witness might be important for summary judgment or for trial.

2. Deadline for Filing Dispositive Motions: August 20, 2012

There are two kinds of dispositive motions: (1) motions to dismiss, and (2) motions for summary judgment. No one may file a dispositive motion after the deadline unless the court grants permission. The court usually does not grant permission to file a late motion, so you must work hard on this case to meet the deadlines.

A) Motions To Dismiss

Motions to dismiss usually do not require the parties to present evidence or to take discovery. If a defendant files a motion to dismiss, he or she must submit a supporting brief at the same time.

Plaintiff must file and serve its response to a motion to dismiss within 21 calendar days of service of the motion. The court starts counting these 21 days on the day the motion to dismiss is filed with the court. Any reply brief by the defendant must be filed and served within 10 calendar days of service of the response.

B) Motions for Summary Judgment

Summary judgment is a way for plaintiff or defendants to win this lawsuit (or parts of it) before the trial. Rule 56 of the Federal Rules of Civil Procedure explains how the parties must present their evidence and their legal arguments when they file or respond to a summary judgment motion. Rule 56 is important, so you should read it carefully, even before a summary judgment is filed, so that you can be ready for a summary judgment motion and then to do things correctly.

This court has a written set of rules that explains how to file a summary judgment motion and how to respond to your opponent's summary judgment motion. This "Procedure Governing

Summary Judgment” is attached to this order and you should read it **now**. This will help you to understand how much work will be involved, and understand the parts that give litigants trouble, like writing good responses to the proposed findings of fact.

Because it is very hard for pro se parties to prepare everything needed to respond to a summary judgment motion, the court will give you 30 calendar days to file every part of your response and to serve it on the defendant’s attorney. The court will start counting your 30 day response deadline on the day that it receives defendant’s motion for summary judgment. Any reply must be filed and served not later than 10 calendar days after service of the response.

BE AWARE: you are not going to get an extension of this 30 day deadline. The only way to get more time would be if you can convince the court that something totally unfair happened that actually prevented you from meeting your deadline, and this was completely somebody else’s fault. Some things that might seem unfair to you are **not** reasons to get more time. For example, you will not get more time just because you claim that you did not have enough time or money to make copies. You will not get more time if you waited too long to get all the information you think you need to respond to the motion.

Also, if you do not follow the court’s procedure for how to respond to summary judgment, then you will not get more time to do it over unless the court decides on its own that you should get a second chance.

The only way to make sure that the court will consider your documents is to start early, do them right the first time, and file them and serve them on time. If you do not do things the way it says in Rule 56 and in the court’s written summary judgment procedure, then the court will not consider your documents.

A party may not file more than one motion for summary judgment in this case without first getting permission from the court.

3. Discovery Cutoff: December 17, 2012

“Discovery” is the word used in federal courts to describe how plaintiffs and defendants can learn information and get documents relevant and useful to deciding this lawsuit. Rules 26 through 37 and 45 of the Federal Rules of Civil Procedure explain how you may get information and documents from the plaintiff and how the plaintiff may get information and documents from you. You should read Rules 26 through 37 and 45 **now** so that you understand how this works, and so that you can begin taking discovery in this case.

The court expects both sides to follow Rules 26 through 37 and 45. You have no right to get information or documents to use in this case except in the way these rules say. For example Rule 26(b) says that you may discover evidence that is relevant to the claims or defenses in this lawsuit. You may not discover evidence that is not relevant. Rule 26(c) protects all parties from discovery requests that are annoying, oppressive, or too expensive or too much time to be worth it in this case. Defendants often object that discovery demands violate Rules 26(b) or 26(c), so it is important to make careful discovery requests that are aimed at getting the information and documents you really need for this lawsuit, and not aimed at getting other information and documents that you don't really need.

Another reason that it is important to make careful discovery requests is because Rule 33(a) says that a party only may serve 25 interrogatories on his opponents. An interrogatory is a written question that you want the defendants to answer under oath. Even if you have lots

of questions that you want the defendants to answer so that you can learn information about your claims, you cannot ask more than 25 questions unless the court gives you permission first. This court usually does not give either side permission to ask more than 25 interrogatories. That means you must use your 25 interrogatories to ask the most important questions.

Rule 34 allows you to ask the plaintiff to show you documents that are relevant to this lawsuit, but it does not require the plaintiff to make free photocopies of these documents for you. The court expects the plaintiff and its attorney to be reasonable when responding to document production requests. The best way for a party to obtain quick and complete disclosures from his or her opponents is for that party to limit the document requests to the documents that he or she really needs to prepare his claims for summary judgment and for trial.

If the parties disagree about discovery requests, then this court would like them to try to work it out if they can do so quickly, but the court does not require this if it would be a waste of time. If either side thinks that the other side is not doing what it is supposed to do for discovery and they cannot work it out, then either the plaintiff or the defendant quickly should file a motion with the court. If the parties do not bring discovery problems to the court's attention quickly, then they cannot complain that they ran out of time to get information that they needed for summary judgment or for trial.

If a party files a motion to compel discovery, or to protect from discovery, or for some other discovery problem, that party also must submit at the same time his (or her) other documents that show why the court should grant the motion. If your opponent files a discovery motion, you only have seven calendar days to file and to serve your written response. The court will not allow a reply brief on a discovery motion unless the court asks for one.

The court does not want the parties to file their discovery material with the court, except to support some other matter in this lawsuit, such as a summary judgment motion. Once a document or a copy of a document is in the court's file, no one has to file another copy, as long as the parties make it clear to the court where the court can find the document in the file.

A party need not file a deposition transcript with the court until that party is using the deposition in support of some other submission, at which time the entire deposition must be filed. All deposition transcripts must be in compressed format. The court will not accept duplicate transcripts. The parties must determine who will file each transcript.

4. Final Pretrial Submissions and Disclosures: December 17, 2012

Responses: January 7, 2013

The first date is the deadline to file and serve all Rule 26(a)(3) disclosures, as well as all motions in limine, proposed voir dire questions, proposed jury instructions, and proposed verdict forms. All responses in opposition are due by the second date. The format for submitting proposed voir dire questions, jury instructions and verdict forms is set forth in the Order Governing Final Pretrial Conference, which is attached.

5. Final Pretrial Conference: January 15, 2013 at 4:00 p.m.

Any deposition that has not been filed with the Clerk of Court by the date of the final pretrial conference shall not be used by any party for any purpose at trial.

6. Trial: Tuesday, January 22, 2013 at 9:00 a.m.

The parties estimate that this case will take two to three days to try. Trial shall be to a jury of seven and shall be bifurcated. This means that the parties will offer evidence and arguments only on the issue of liability, that is, whether plaintiff has proved his claims. If the jury find that the plaintiff has met his burden, then the parties will offer evidence and arguments on the issue of damages.

This case will be tried in an electronically equipped courtroom and the parties may present their evidence using this equipment. It is up to the parties and lawyers to check whether their personal electronic equipment works with the court's electronic equipment.

The parties must have all witnesses and other evidence ready and available to present at trial in order to prevent delay. If you are not ready with your witnesses or other evidence ready when it is your turn, then the court could end your presentation of evidence.

Entered this 6th day of February, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

INDEX
to
PRELIMINARY PRETRIAL CONFERENCE PACKET

Order in Non-Jury CasesPage 29

Order Regarding Timely Presentation of Witnesses and Evidence Page 33

Procedures Governing Final Pretrial Conference Page 9

Settlement Before Trial Page 28

Standard Jury Instructions. Page 13

Standard Voir Dire Questions. Page 11

Summary Judgment Memorandum to Pro Se Litigants.Page 2

Summary Judgment Procedures Page 4

Summary Judgment Tips Page 1

Trial Exhibit Procedures. Page 10

Witness Procedures. Page 22

HELPFUL TIPS FOR FILING
A SUMMARY JUDGMENT MOTION

Please read the attached directions carefully – doing so will save your time and the court's.

REMEMBER:

1. All facts necessary to sustain a party's position on a motion for summary judgment must be explicitly proposed as findings of fact. This includes facts establishing jurisdiction. (Think of your proposed findings of fact as telling a story to someone who knows nothing of the controversy.)

2. The court will not search the record for factual evidence. Even if there is evidence in the record to support your position on summary judgment, if you do not propose a finding of fact with the proper citation, the court will not consider that evidence when deciding the motion.

3. A fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes that it is in dispute.

4. Your brief is the place to make your legal argument, not to restate the facts. When you finish it, check it over with a fine tooth comb to be sure you haven't relied upon or assumed any facts in making your legal argument that you failed to include in the separate document setting out your proposed findings of fact.

5. A chart listing the documents to be filed by the deadlines set by the court for briefing motions for summary judgment or cross-motions for summary judgment is printed on the last page of the procedures.

MEMORANDUM TO PRO SE LITIGANTS
REGARDING SUMMARY JUDGMENT MOTIONS

This court expects all litigants, including persons representing themselves, to follow this court's Procedures to be Followed on Motions for Summary Judgment. If a party does not follow the procedures, there will be no second chance to do so. Therefore, PAY ATTENTION to the following list of mistakes pro se plaintiffs tend to make when they oppose a defendant's motion for summary judgment:

- Problem: The plaintiff does not answer the defendant's proposed facts correctly.

Solution: To answer correctly, a plaintiff must file a document titled "Response to Defendant's Proposed Findings of Fact." In this document, the plaintiff must answer each numbered fact that the defendant proposes, using separate paragraphs that have the same numbers as defendant's paragraphs. See Procedure II.D. If plaintiff does not object to a fact that the defendant proposes, he should answer, "No dispute."

- Problem: The plaintiff submits his own set of proposed facts without answering the defendant's facts.

Solution: Procedure II.B. allows a plaintiff to file his own set of proposed facts in response to a defendant's motion ONLY if he thinks he needs additional facts to prove his claim.

- Problem: The plaintiff does not tell the court and the defendant where there is evidence in the record to support his version of a fact.

Solution: Plaintiff must pay attention to Procedure II.D.2., which tells him how to dispute a fact proposed by the defendant. Also, he should pay attention to Procedure I.B.2., which explains how a new proposed fact should be written.

- Problem: The plaintiff supports a fact with an exhibit that the court cannot accept as evidence because it is not authenticated.

Solution: Procedure I.C. explains what may be submitted as evidence. A copy of a document will not be accepted as evidence unless it is authenticated. That means that the plaintiff or someone else who has personal knowledge what the document is must declare under penalty of perjury in a separate affidavit that the document is a true and correct copy of what it appears to be. For example, if plaintiff wants to support a proposed fact with evidence that he received a conduct report, he must submit a copy of the conduct report, together with an affidavit in which he declares under penalty of perjury that the copy is a true and unaltered copy of the conduct report he received on such and such a date.

NOTE WELL: If a party fails to respond to a fact proposed by the opposing party, the court will accept the opposing party's proposed fact as undisputed. If a party's response to any proposed fact does not comply with the court's procedures or cites evidence that is not admissible, the court will take the opposing party's factual statement as true and undisputed. You'll find additional tips for making sure that your submissions comply with the court's procedures on page 8 of this packet.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PROCEDURE TO BE FOLLOWED ON MOTIONS FOR SUMMARY JUDGMENT

I. MOTION FOR SUMMARY JUDGMENT

A. Contents:

1. A motion, together with such materials permitted by Rule 56(e) as the moving party may wish to serve and file; and
2. In a separate document, a statement of proposed findings of fact or a stipulation of fact between or among the parties to the action, or both; and
3. Evidentiary materials (see I.C.); and
4. A supporting brief.

B. Rules Regarding Proposed Findings of Fact:

1. Each fact must be proposed in a separate, numbered paragraph, limited as nearly as possible to a single factual proposition.
2. Each factual proposition must be followed by a reference to evidence supporting the proposed fact. The citation must make it clear where in the record the evidence is located. If a party is citing an affidavit of a witness who has submitted multiple affidavits or the deposition of a witness who has been deposed multiple times, that party should include the date the cited document was filed with the court. For example,

1. Plaintiff Smith bought six Holstein calves on July 11, 2006. Harold Smith Affidavit, filed Jan. 6, 2007, p.1, ¶ 3.

3. The statement of proposed findings of fact shall include ALL factual propositions the moving party considers necessary for judgment in the party's favor. For example, the proposed findings shall include factual statements relating to jurisdiction, the identity of the parties, the dispute, and the context of the dispute.
4. The court will not consider facts contained only in a brief.

C. Evidence

1. As noted in I.B. above, each proposed finding must be supported by admissible evidence. The court will not search the record for evidence. To support a proposed fact, you may use:
 - a. Depositions. Give the name of the witness, the date of the deposition, and page of the transcript of cited deposition testimony;
 - b. Answers to Interrogatories. State the number of the interrogatory and the party answering it;
 - c. Admissions made pursuant to Fed. R. Civ. P. 36. (state the number of the requested admission and the identity of the parties to whom it was directed); or
 - d. Other Admissions. The identity of the document, the number of the page, and paragraph of the document in which that admission is made.
 - e. Affidavits. The page and paragraph number, the name of the affiant, and the date of the affidavit. (Affidavits must be made by persons who have first hand knowledge and must show that the person making the affidavit is in a position to testify about those facts.)
 - f. Documentary evidence that is shown to be true and correct, either by an affidavit or by stipulation of the parties. (State exhibit number, page and paragraph.)

II. RESPONSE TO MOTION FOR SUMMARY JUDGMENT

A. Contents:

1. A response to the moving party's proposed finding of fact; and

2. A brief in opposition to the motion for summary judgment; and
 3. Evidentiary materials (See I.C.)
- B. In addition to responding to the moving party's proposed facts, a responding party may propose its own findings of fact following the procedure in section I.B. and C. above.
1. A responding party should file additional proposed findings of fact if it needs them to defeat the motion for summary judgment.
 2. The purpose of additional proposed findings of fact is to SUPPLEMENT the moving party's proposed findings of fact, not to dispute any facts proposed by the moving party. They do not take the place of responses. Even if the responding party files additional proposed findings of fact, it MUST file a separate response to the moving party's proposed findings of fact.
- C. Unless the responding party puts into dispute a fact proposed by the moving party, the court will conclude that the fact is undisputed.
- D. Rules Regarding Responses to the Moving Party's Proposed Factual Statements:
1. Answer each numbered fact proposed by the moving party in separate paragraphs, using the same number.
 2. If you dispute a proposed fact, state your version of the fact and refer to evidence that supports that version. For example,

Moving party proposes as a fact:

"1. Plaintiff Smith purchased six Holstein calves from Dell's Dairy Farm on July 11, 2006. Harold Smith Affidavit, Jan. 6, 2007, p.1, ¶ 3."

Responding party responds:

"1. Dispute. The purchase Smith made from Dell's Dairy Farm on July 11, 2006 was for one Black Angus bull John Dell Affidavit, Feb. 1, 2007, Exh. A."

3. The court prefers but does not require that the responding party repeat verbatim the moving party's proposed fact and then respond to it. Using this format for the example above would lead to this response by the responding party:

“1. *Plaintiff Smith purchased six Holstein calves from Dell’s Dairy Farm on July 11, 2006. Harold Smith Affidavit, Jan. 6, 2007, p.1, ¶ 3.*

“**Dispute.** The purchase Smith made from Dell’s Dairy Farm on July 11, 2006 was for one Black Angus bull.” John Dell Affidavit, Feb. 1, 2007, Exh. A.”

4. When a responding party disputes a proposed finding of fact, the response must be limited to those facts necessary to raise a dispute. The court will disregard any new facts that are not directly responsive to the proposed fact. If a responding party believes that more facts are necessary to tell its story, it should include them in its own proposed facts, as discussed in II.B.

E. Evidence

1. Each fact proposed in disputing a moving party’s proposed factual statement and all additional facts proposed by the responding party must be supported by admissible evidence. The court will not search the record for evidence. To support a proposed fact, you may use evidence as described in Procedure I.C.1. a. through f.
2. The court will not consider any factual propositions made in response to the moving party’s proposed facts that are not supported properly and sufficiently by admissible evidence.

III. REPLY BY MOVING PARTY

A. Contents:

1. An answer to each numbered factual statement made by the responding party in response to the moving party’s proposed findings of fact, together with references to evidentiary materials; and
2. An answer to each additional numbered factual statement proposed by the responding party under Procedure II.B., if any, together with references to evidentiary materials; and
3. A reply brief; and
4. Evidentiary materials (see I.C.)

- B. If the responding party has filed additional proposed findings of fact, the moving party should file its response to those proposed facts at the same time as its reply, following the procedure in section II.
- C. When the moving party answers the responding party's responses to the moving party's original proposed findings of fact, and answers the responding party's additional proposed findings of fact, the court prefers but does not require that the moving party repeat verbatim the entire sequence associated with each proposed finding of fact so that reply is a self-contained history of all proposed facts, responses and replies by all parties.

IV. SUR-REPLY BY RESPONDING PARTY

A responding party shall not file a sur-reply without first obtaining permission from the court. The court only permits sur-replies in rare, unusual situations.

MOTION FOR SUMMARY JUDGMENT

Deadline 1 (All deadlines appear in the Preliminary Pretrial Conference Order Sent to the Parties Earlier)	Deadline 2	Deadline 3
moving party's motion		
moving party's brief	non-moving party's response brief	moving party's reply brief
moving party's proposed findings of fact	non-moving party's response to moving party's proposed findings of fact	moving party's reply to non-moving party's response to moving party's proposed findings of fact
	non-moving party's additional proposed findings of fact	moving party's response to non-moving party's additional proposed findings of fact, if any.

CROSS MOTIONS FOR SUMMARY JUDGMENT

Deadline 1 (All deadlines appear in the Preliminary Pretrial Conference Order Sent to the Parties Earlier)	Deadline 2	Deadline 3
defendant's motion		
defendant's brief	plaintiff's response brief	defendant's reply brief
defendant's proposed findings of fact	plaintiff's response to defendant's proposed findings of fact	defendant's reply to plaintiff's response to defendant's proposed findings of fact
plaintiff's motion		
plaintiff's brief	defendant's response brief	plaintiff's reply brief
plaintiff's proposed findings of fact	defendant's response to plaintiff's proposed findings of fact	plaintiff's reply to defendant's response to plaintiff's proposed findings of fact

PROCEDURES GOVERNING FINAL PRETRIAL CONFERENCE

1. The preliminary pretrial conference order tells the parties what documents must be submitted for the final pretrial conference and what the deadlines are for submitting them.

2. The court's standard voir dire questions and standard jury instructions are attached to this order and will be asked in every case. The parties should not duplicate the standard questions or instructions.

3. A party must submit to the court an electronic copy of any proposed additional voir dire questions, proposed form of special verdict and proposed jury instructions in full electronic text (that is, not just by citation) by e-mailing them in a single document in WordPerfect or Microsoft Word format to wiwd_bbc@wiwd.uscourts.gov.

4. Proposed jury instructions shall be submitted in the following form:

- A. Pattern instructions are to be requested by reference to the source (e.g., court's standard instruction or Devitt & Blackmar, § 18.01); and
- B. Special instructions or pattern instructions, whether modified or not, must be presented double-spaced with one instruction per page, and each instruction shall show the identity of the submitting party, the number of the proposed instruction, and the citation of the pattern instruction, decision, statute, regulation or other authority supporting the proposition stated, with any additions underscored and any deletions set forth in parentheses. **The e-mail version of a party's proposed instructions must follow this format.**

5. The court retains the discretion to refuse to entertain voir dire questions, special verdict forms, or jury instructions not submitted in accordance with this order or the preliminary pretrial conference order unless the subject of the request is one arising during trial that could not reasonably have been anticipated prior to trial.

6. Each party shall be represented at the final pretrial conference by the lawyer who will actually try the case unless the party is proceeding pro se, in which case the pro se party must appear. A party represented by counsel shall also be present in person unless

- A. Counsel has been delegated the full authority to settle the case; or
- B. Attendance in person is impossible and arrangements are made for communication by telephone during the entire duration of the conference for the purpose of acting upon settlement proposals.

PROCEDURES FOR TRIAL EXHIBITS

Before trial, the parties are to label all exhibits that may be offered at trial. Before the start of trial, the parties are to provide the deputy clerk with a list of all exhibits. Exhibits for use at trial are not subject to the electronic filing procedures, but are to be filed conventionally. Counsel are to retain the original exhibits following trial.

1. Each party is to label all exhibits.
2. If more than one defendant will be offering exhibits, that defendant should add an initial identifying the particular defendant to the label.
3. Each party is to submit a list of their exhibits. The party should state to whom the exhibits belong, the number of each exhibit and a brief description.
4. Each party is to provide the court with the original exhibit list and a copy of each exhibit that may be offered for the judge's use.
5. As a general rule, the plaintiff should use exhibit numbers 1-500 and the defendant should use exhibit numbers 501 and up.
6. Each party is to maintain custody of his or her own exhibits throughout the trial.
7. At the end of trial, each party is to retain all exhibits that become a part of the record. It is each party's responsibility to maintain his or her exhibits and to make arrangements with the clerk's office for inclusion of the exhibits in the appeal record, if there is an appeal.
8. Each party should be aware that once reference is made to an exhibit at trial, the exhibit becomes part of the record, even though the exhibit might not be formally offered or might not be received.

Any questions concerning these instructions may be directed to the clerk's office at (608) 264-5156.

Entered this 19th day of May, 2006.

BY THE COURT:

BARBARA B. CRABB
District Judge

COURT'S STANDARD VOIR DIRE QUESTIONS

1. Statement of the case. (A very brief, concise description of the plaintiff(s)' claims and the defendant(s)' defenses.)

Has any one of you ever heard of this case before today? How? When? When you heard about it, did you form any opinion concerning the case? Do you believe that your ability to serve impartially as a juror in this case has been affected by what you have heard about it?

2. The trial of this case will begin _____ and will last _____ days. Is there any one of you who would be unable to serve as a juror during this time?
3. Ask counsel to stand and tell the jury where they practice and with whom. Ask panel whether anyone knows counsel or their associates or partners.
4. Ask counsel to introduce the parties. Ask panel whether anyone knows any of the parties. (If any party is a corporation, have counsel identify the nature of the corporation's business, its major subsidiaries, or its parent corporation, and where it conducts business. Ask whether anyone on the panel is stockholder of corporation or has had business dealings with it.)
5. Question to each prospective juror.

Please stand up and tell us about yourself.

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse or domestic partner.

Any military service, including branch, rank and approximate date of discharge.

How far you went in school and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

6. Question to panel regarding prior experience with court proceedings:

- a. Have any of you ever been a party to a lawsuit? Describe circumstances.
- b. Have any of you ever been a witness in a lawsuit?
- c. How many of you have served previously on a jury?
- d. Of those of you who have sat on a jury, were you ever the foreperson on a jury? Describe your experience.
- e. Do any of you know any of the other persons on the jury panel?

7. Question to panel in personal injury cases:

In this case the plaintiff is alleging that he suffered injuries [describe in summary fashion, for example, he was burned, or he suffered a broken leg and ankle] in an [automobile, horseback riding, industrial, farm, etc.] accident.

- a. Has any one of you ever suffered similar injuries? Describe. Do you have any residual effects of your injury?
- b. Do you have close friends or relatives who have suffered similar injuries?
- c. Were you ever in an accident involving [an automobile, farm machinery, industrial machine, etc.)?
- d. Do you have any close friends or relatives who have been in an accident of this kind?

8. Question to panel. At the end of the case I will give you instructions that will govern your deliberations. You are required to follow those instructions, even if you do not agree with them. Is there any one of you who would be unable or unwilling to follow the instructions?

9. Question to panel. Do any of you have opinions, whether positive or negative, about people who go to court to obtain relief for wrongs they believe they have suffered?

10. Question to panel. Do you know of any reason whatsoever why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

STANDARD JURY INSTRUCTIONS – CIVIL*

*These instructions are used in cases before the Honorable Barbara B. Crabb, District Judge

I. INTRODUCTORY INSTRUCTION

Members of the jury, we are about to begin the trial of the case. Before it begins, I will give you some instructions to help you understand how the trial will proceed, how you should evaluate the evidence, and how you should conduct yourselves during the trial.

The party who begins the lawsuit is called the plaintiff. In this action, the plaintiff is _____ . The parties against whom the suit is brought are called the defendants. In this action, the defendants are _____ .

[Describe claims and basic legal elements of claims and defenses]

The case will proceed as follows:

First, plaintiff's counsel will make an opening statement outlining plaintiff's case. Immediately after plaintiff's statement, defendants' counsel will also make an opening statement outlining defendants' case. What is said in opening statements is not evidence; it is simply a guide to help you understand what each party expects the evidence to show.

Second, after the opening statements, the plaintiff will introduce evidence in support of his claim. At the conclusion of the plaintiff's case, the defendants may introduce evidence. The defendants are not required to introduce any evidence or to call any witnesses. If the defendants introduce evidence, the plaintiff may then introduce rebuttal evidence.

Third, after the evidence is presented, the parties will make closing arguments explaining what they believe the evidence has shown and what inferences you should draw from the evidence. What is said in closing argument is not evidence. The plaintiff has the right to give the first closing argument and to make a short rebuttal argument after the defendants' closing argument.

Fourth, I will instruct you on the law that you are to apply in reaching your verdict.

Fifth, you will retire to the jury room and begin your deliberations.

You will hear the term "burden of proof" used during this trial. In simple terms, the phrase "burden of proof" means that the party who makes a claim has the obligation of proving that claim. At the end of the trial, I will instruct you on the proper burden of proof to be applied in this case.

The trial day will run from 9:00 a.m. until 5:30 p.m. You will have at least an hour for lunch and two additional short breaks, one in the morning and one in the afternoon.

During recesses you should keep in mind the following instructions:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. The parties to this lawsuit have a right to expect from you that you will keep an open mind throughout the trial. You should not reach a conclusion until you have heard all of the evidence and you have heard the lawyers' closing arguments and my instructions to you on the law, and have retired to deliberate with the other members of the jury.

Second, do not permit any third person to discuss the case in your presence. If anyone tries to talk to you despite your telling him not to, report that fact to the court as soon as you are able. Do not discuss the event with your fellow jurors or discuss with them any other fact that you believe you should bring to the attention of the court.

Third, although it is a normal human tendency to converse with people with whom one is thrown in contact, please do not talk to any of the parties or their attorneys or witnesses. By this I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

Fourth, do not read about the case in the newspapers, or listen to radio or television broadcasts about the trial. If a newspaper headline catches your eye, do not examine the article further. Media accounts may be inaccurate and may contain matters that are not proper for your consideration. You must base your verdict solely on the evidence produced in court.

Fifth, no matter how interested you may become in the facts of the case, you must not do any independent research, investigation or experimentation. Do not look up materials on the internet or in other sources. [do not visit the site of the incident] [or perform any kind of experiment.] Again, you must base your verdict solely on the evidence produced in court.

Credibility of Witnesses

In deciding the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. In considering the testimony of any witness, you may take into account many factors, including the witness's opportunity and ability to see or hear or know the things the witness testified about; the quality of the witness's memory; the witness's appearance and manner while testifying; the witness's interest in the outcome of the case; any bias or prejudice the witness may have; other evidence that may have contradicted the witness's testimony; and the reasonableness of the witness' testimony in light of all the evidence. The weight of the evidence does not necessarily depend upon the number of witnesses who testify.

Depositions

During the course of a trial the lawyers will often refer to and read from depositions. Depositions are transcripts of testimony taken while the parties are preparing for trial. Deposition testimony is given under oath just like testimony on the trial. You should give it the same consideration you would give it had the witnesses testified here in court.

Objections

During the trial, you will hear the lawyers make objections to certain questions or to certain answers of the witnesses. When they do so, it is because they believe the question or answer is legally improper and they want me to rule on it. Do not try to guess why the objection is being made or what the answer would have been if the witness had been allowed to answer it.

If I tell you not to consider a particular statement that has already been made, put that statement out of your mind and remember that you may not refer to it during your deliberations.

Questions

During the trial, I may sometimes ask a witness questions. Please do not assume that I have any opinion about the subject matter of my questions.

If you wish to ask a question about something you do not understand, write it down on a separate slip of paper. If, when the lawyers have finished all of their questioning of the witness, the question is still unanswered to your satisfaction, raise your hand, and I will take the written question from you, show it to counsel, and decide whether it is a question that can be asked. If it cannot, I will tell you that. I will try to remember to ask about questions after each witness has testified.

Notetaking

The clerk will give each of you a notepad and pencil for taking notes. This does not mean you have to take notes; take them only if you want to and if you think they will help you to recall the evidence during your deliberations. Do not let notetaking interfere with your important duties of listening carefully to all of the evidence and of evaluating the credibility of the witnesses. Keep in mind that just because you have written something down it does not mean that the written note is more accurate than another juror's mental recollection of the same thing. No one of you is the "secretary" for the jury, charged with the responsibility of recording evidence. Each of you is responsible for recalling the testimony and other evidence.

Although you can see that the trial is being reported, you should not expect to be able to use trial transcripts in your deliberations. You will have to rely on your own memories.

Evidence

Evidence at a trial includes the sworn testimony of the witnesses, exhibits admitted into the record, facts judicially noticed, and facts stipulated by counsel. You may consider only evidence that is admitted into the record.

In deciding the facts of this case, you are not to consider the following as evidence: statements and arguments of the lawyers, questions and objections of the lawyers, testimony that I instruct you to disregard, and anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Evidence may be either direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness said or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence.

Contradictory or Impeaching Evidence

A witness may be discredited by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe any witness has been discredited, it is up to you to decide how much of the testimony of that witness you believe.

If a witness is shown to have given false testimony knowingly, that is, voluntarily and intentionally, about any important matter, you have a right to distrust the witness's testimony about other matters. You may reject all the testimony of that witness or you may choose to believe some or all of it.

The general rule is that if you find that a witness said something before the trial that is different from what the witness said at trial you are to consider the earlier statements only as an aid in evaluating the truthfulness of the witness's testimony at trial. You cannot consider as evidence in this trial what was said earlier before the trial began.

There is an exception to this general rule for witnesses who are the actual parties in the case. If you find that any of the parties made statements before the trial began that are different from the statements they made at trial, you may consider as evidence in the case whichever statement you find more believable.

Drawing of Inferences

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts you find have been proved, such reasonable conclusions as seem justified in the light of your own experience and common sense.

Experts

A person's training and experience may make him or her a true expert in a technical field. The law allows that person to state an opinion here about matters in that particular field. It is up to you to decide whether you believe the expert's testimony and choose to rely upon it. Part of that decision will depend on your judgment about whether the expert's background of training and experience is sufficient for him or her to give the expert opinion that you heard, and whether the expert's opinions are based on sound reasons, judgment, and information.

During the trial, an expert witness may be asked a question based on assumptions that certain facts are true and then asked for his or her opinion based upon that assumption. Such an opinion is of use to you only if the opinion is based on assumed facts that are proven later. If you find that the assumptions stated in the question have not been proven, then you should not give any weight to the answer the expert gave to the question.

II. POST-TRIAL INSTRUCTIONS

Introduction

Ladies and Gentlemen of the Jury:

Now that you have heard the evidence and the arguments, I will give you the instructions that will govern your deliberations in the jury room. It is my job to decide what rules of law apply to the case and to explain those rules to you. It is your job to follow the rules, even if you disagree with them or don't understand the reasons for them. You must follow all of the rules; you may not follow some and ignore others.

The decision you reach in the jury room must be unanimous. In other words, you must all agree on the answer to each question.

Your deliberations will be secret. You will never have to explain your verdict to anyone.

If you have formed any idea that I have an opinion about how the case should be decided, disregard that idea. It is your job, not mine, to decide the facts of this case.

The case will be submitted to you in the form of a special verdict consisting of ___ questions. In answering the questions, you should consider only the evidence that has been received at this trial. Do not concern yourselves with whether your answers will be favorable to one side or another, or with what the final result of this lawsuit may be.

Note that certain questions in the verdict are to be answered only if you answer a preceding question in a certain manner. Read the introductory portion of each question very carefully before you undertake to answer it. Do not answer questions needlessly.

Burden of Proof

When a party has the burden to prove any matter by a preponderance of the evidence, it means that you must be persuaded by the testimony and exhibits that the matter sought to be proved is more probably true than not true. You should base your decision on all of the evidence, regardless of which party presented it.

Middle Burden of Proof

In answering question ___, you are instructed that the burden is on the plaintiff to convince you to a reasonable certainty by evidence that is clear, satisfactory, and convincing that the answer should be "yes."

Answers Not Based on Guesswork

If, after you have discussed the testimony and all other evidence that bears upon a particular question, you find that the evidence is so uncertain or inadequate that you have to guess what the answer should be, then the party having the burden of proof as to that question has not met the required burden of proof. Your answers are not to be based on guesswork or speculation. They are to be based upon credible evidence from which you can find the existence of the facts that the party must prove in order to satisfy the burden of proof on the question under consideration.

Selection of Presiding Juror; Communication with the Judge; Verdict

When you go to the jury room to begin considering the evidence in this case you should first select one of the members of the jury to act as your presiding juror. This person will help to guide your discussions in the jury room.

You are free to deliberate in any way you decide or select whomever you like as a presiding juror. However, I am going to provide some general suggestions on the process to help you get started. When thinking about who should be presiding juror, you may want to consider the role that

the presiding juror usually plays. He or she serves as the chairperson during the deliberations and has the responsibility of insuring that all jurors who desire to speak have a chance to do so before any vote. The presiding juror should guide the discussion and encourage all jurors to participate.

Once you are in the jury room, if you need to communicate with me, the presiding juror will send a written message to me. However, don't tell me how you stand as to your verdict.

As I have mentioned before, the decision you reach must be unanimous; you must all agree.

When you have reached a decision, the presiding juror will sign the verdict form, put a date on it, and all of you will return with the verdict into the court.

Suggestions for Conducting Deliberations:

In order to help you determine the facts, you may want to consider discussing one claim at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any public votes on a verdict be delayed until everyone can have a chance to say what they think without worrying what others on the panel might think of their opinion. I also suggest that you assign separate tasks, such as note taking, time keeping and recording votes to more than one person to help break up the workload during your deliberations. I encourage you at all times to keep an open mind if you ever disagree or come to conclusions that are different from those of your fellow jurors. Listening carefully and thinking about the other juror's point of view may help you understand that juror's position better or give you a better way to explain why you think your position is correct.

III. DAMAGES

General

On the damages question, the party asking for damages has the burden of convincing you, by the preponderance of the evidence, both that he or she has been injured or damaged and the amount of the damages.

The party seeking damages need not produce evidence that is as exact as the evidence needed to support findings on other questions in the verdict. Determining damages involves the consideration of many different factors that cannot be measured precisely. In determining the damages you must base your answer on evidence that reasonably supports your determination of damages under all of the circumstances of the case. You should award as damages the amount of money that you find fairly and reasonably compensates the named party for his or her injuries.

Do not measure damages by what the lawyers ask for in their arguments. Their opinions as to what damages should be awarded should not influence you unless their opinions are supported by the evidence. It is your job to determine the amount of the damages sustained from the evidence you have seen and heard. Examine that evidence carefully and impartially. Do not add to the damage award or subtract anything from it because of sympathy to one side or because of hostility to one side. Do not make any deductions because of a doubt in your minds about the liability of any of the parties.

Income Taxes

You must not add to any award of damages any money to compensate the plaintiff for state or federal income taxes. Damages received as an award for personal injuries are exempt from income taxes. On the other hand, you must not subtract any money from your award of damages just because the plaintiff is not required to pay income taxes.

Pain and Suffering

In determining how much money will fairly and reasonably compensate plaintiff for past pain and suffering [disability] [disfigurement] [mental anguish] [loss of capacity for enjoyment of life], you should consider any pain and suffering, mental anguish and apprehension, sorrow and anxiety plaintiff has endured from the time of the incident up to the present time. There is no exact standard for deciding how much to award plaintiff for these damages. Your award should be fair and just in the light of the evidence.

Aggravation of Pre-existing Injury or Condition

The evidence shows that the plaintiff was previously injured when _____. If the injuries plaintiff received at _____ aggravated any physical, mental or emotional condition resulting from the earlier injury or injuries, you should award fair and reasonable compensation for such aggravation. However, you should award compensation only if you find the aggravation of the existing condition was a natural result of the injuries received at _____.

Duty to Mitigate Damages

A person who has been damaged may not recover for losses that he or she could have reduced by reasonable efforts. "Reasonable efforts" do not include efforts that might cause serious harm or subject the person making the effort to an unreasonable risk, unreasonable inconvenience, unreasonable expense, disorganization of his or her business or loss of honor and respect.

If you find that a reasonable person would have taken steps to reduce the loss, and if you find that the plaintiff did not take such steps, then you should not include as damages any amount the plaintiff could have avoided. If you find that a reasonable person would not have taken steps to reduce the loss under all of the circumstances existing in the case, then you should not consider the plaintiff's failure to act when you determine damages.

It is defendants' burden to satisfy you by the greater weight of the credible evidence that plaintiff should have taken steps to reduce the loss and failed to do so.

Mortality Tables

In answering the question of future damages as a result of plaintiff's injuries, you may take into consideration the fact that at this time _____ is _____ years of age. According to the mortality tables, plaintiff has a life expectancy of _____ years.

Although a mortality table giving the expectancy of life of a person of _____'s age, was received in evidence as an aid in determining such expectancy, it is not conclusive or binding upon you. Such tables are based upon averages, and there is no certainty that any person will live the average duration of life rather than a longer or shorter period. In order to determine the probable length of life of _____, you should take into consideration all of the facts and circumstances established by the credible evidence bearing upon that subject.

Future Earnings

In determining the amount of damages for any loss of _____ that will be incurred in the future, it is your duty to determine the present worth of such future damages.

By present worth, I am referring to the fact that a lump sum of money received today is worth more than the same sum paid in installments over a period of months or years. A sum received today can be invested and earn money at current interest rates. Your answer will reflect the present value in dollars of an award of future damages if you make a reduction for the earning power of money.

Keep in mind that this instruction does not apply to the portion of future damages that represents future pain and suffering. In computing the amount of future damages, you may take into account economic conditions, present and future, and the effects of inflation.

The fact that I have instructed you on the proper measure of damages does not mean I have any view about the verdict in this case. These instructions on damages are only for your guidance in the event that you should find in favor of plaintiff on the question of liability.

Punitive Damages

If you answered "yes" to Question No. ____, you may award punitive damages in addition to compensatory damages. You are not required to make any award of punitive damages, but you may do so if you think it is proper under the circumstances to make such an award as an example or punishment to deter the defendant and others from offending in a similar manner in the future. In deciding whether to make an award of punitive damages you may also consider the seriousness of the offense committed.

Punitive damages may be awarded even if the violation of plaintiff's rights resulted in only nominal compensatory damages. That is, even if the plaintiff can show no damages or other injury as a result of a defendant's actions, if the defendant acted with deliberate indifference to plaintiff's rights, punitive damages may be awarded.

Punitive damages are never a matter of right. It is in the jury's discretion to award or withhold them. Punitive damages may not be awarded unless the defendant acted with deliberate indifference to the plaintiff's rights. Even if you find that the violations were reckless or deliberate, you may withhold or allow punitive damages as you see fit.

If you find that a defendant's conduct was motivated by evil motive or intent, such as ill will or spite or grudge either toward the injured person individually or toward all persons such as plaintiff, then you may find that the defendant deliberately violated the plaintiff's rights.

Acts are reckless when they represent a gross departure from ordinary care in a situation where a high degree of danger is apparent. If the defendant was in a position in which he certainly should have known that his conduct would violate the plaintiff's rights, and proceeded to act in disregard of that knowledge and of the harm or the risk of harm that would result to the plaintiff, then he acted with reckless disregard for the plaintiff's rights.

In answering this question, you are instructed that the burden is on the plaintiff to convince you to a reasonable certainty by evidence that is clear, satisfactory, and convincing that the answer should be "yes."

PROCEDURES FOR CALLING WITNESSES TO TRIAL

At trial, plaintiff will have to be ready to prove facts supporting his claims against the defendants. One way to offer proof is through the testimony of witnesses who have personal knowledge about the matter being tried. If a party wants witnesses to be present and available to testify on the day of trial, the party must follow the procedures explained below. (“Party” means either a plaintiff or a defendant.) These procedures must be followed whether the witness is:

- 1) A defendant to be called to testify by a plaintiff; or
- 2) A plaintiff to be called to testify by a defendant; or
- 3) A person not a party to the lawsuit to be called to testify by either a plaintiff or a defendant.

I. PROCEDURES FOR OBTAINING ATTENDANCE OF INCARCERATED WITNESSES WHO AGREE TO TESTIFY VOLUNTARILY

An incarcerated witness who tells a party that he is willing to attend trial to give testimony cannot come to court unless the court orders his custodian to let him come. The Court must issue an order known as a writ of habeas corpus ad testificandum. This court will not issue such a writ unless the party can establish to the court’s satisfaction that

- 1) The witness has agreed to attend voluntarily; and
- 2) The witness has actual knowledge of facts directly related to the issue to be tried.

A witness’s willingness to come to court as a witness can be shown in one of two ways.

- a. The party can serve and file an affidavit declaring under penalty of perjury that the witness told the party that he or she is willing to testify voluntarily, that is, without being subpoenaed. The party must say in the affidavit when and where the witness informed the party of this willingness;

OR

b. The party can serve and file an affidavit in which *the witness* declares under penalty of perjury that he or she is willing to testify without being subpoenaed.

The witness's actual knowledge of relevant facts may be shown in one of two ways.

a. The party can declare under penalty of perjury that the witness has relevant information about the party's claim. However, this can be done only if the *party* knows first-hand that the witness saw or heard something that will help him prove his case. For example, if the trial is about an incident that happened in or around a plaintiff's cell and, at the time, the plaintiff saw that a cellmate was present and witnessed the incident, the plaintiff may tell the court in an affidavit what happened, when and where the incident occurred, who was present, and how the witness was in a position to see or hear what occurred;

OR

b. The party can serve and file an affidavit in which *the witness* tells the court what happened, when and where the incident occurred, who was present, and how the witness was in a position to see or hear what occurred.

Not later than four weeks before trial, a party planning to use the testimony of an incarcerated witness who has agreed to come to trial must serve and file a written motion for a court order requiring the witness to be brought to court at the time of trial. The motion must

- 1) State the name and address of the witness; and
- 2) Come with an affidavit described above to show that the witness is willing to testify and that the witness has first-hand knowledge of facts directly related to the issue to be tried.

When the court rules on the motion, it will say who must be brought to court and will direct the clerk of court to prepare the necessary writ of habeas corpus ad testificandum.

II. PROCEDURE FOR OBTAINING THE ATTENDANCE OF INCARCERATED WITNESSES WHO REFUSE TO TESTIFY VOLUNTARILY

If an incarcerated witness refuses to attend trial, TWO separate procedures are required. The court will have to issue a writ of habeas corpus ad testificandum telling the warden to bring the witness to trial and the party must serve the witness with a subpoena.

Not later than four weeks before trial, the party seeking the testimony of an incarcerated witness who refuses to testify voluntarily must file a motion asking the court to issue a writ of habeas corpus ad testificandum and asking the court to provide the party with a subpoena form. (All requests from subpoenas from pro se litigants will be sent to the judge for review before the clerk will issue them.)

The motion for a writ of habeas corpus ad testificandum will not be granted unless the party submits an affidavit

- 1) Giving the name and address of the witness; and
- 2) Declaring under penalty of perjury that the witness has relevant information about the party's claim. As noted above, this can be done only if the *party* knows first-hand that the witness saw or heard something that will help him prove his case. In the affidavit, the party must tell the court what happened, when and where the incident occurred, who was present, and how the witness was in a position to see or to hear what occurred.

The request for a subpoena form will not be granted unless the party satisfies the court in his affidavit that

- 1) The witness refuses to testify voluntarily;
- 2) The party has made arrangements for a person at least 18 years of age who is not a party to the action to serve the subpoena on the witness; or

3) The party is proceeding in forma pauperis, has been unable to arrange for service of the subpoena by a person at least 18 years of age who is not a party to the action and needs assistance from the United States Marshal or a person appointed by the court.

If the court grants the party's request for a subpoena for an incarcerated witness, it will be the party's responsibility to complete the subpoena form and send it to the person at least 18 years of age who will be serving the subpoena or to the United States Marshal, if the court has ordered that the subpoena be served by the Marshal. The address of the United States Marshal is 120 N. Henry St., Suite 440, Madison, Wisconsin, 53703. If the subpoena is not received by the marshal at least two weeks in advance of trial, the marshal may not have enough time to serve the subpoena on the party's witness.

III. UNINCARCERATED WITNESSES WHO AGREE TO TESTIFY VOLUNTARILY

It is the responsibility of the party who has asked an unincarcerated witness to come to court to tell the witness of the time and date of trial. No action need be sought or obtained from the court.

IV. UNINCARCERATED WITNESSES WHO REFUSE TO TESTIFY VOLUNTARILY

If a prospective witness is not incarcerated, and he or she refuses to testify voluntarily, no later than four weeks before trial, the party must serve and file a request for a subpoena form. All parties who want to subpoena an unincarcerated witness, even parties proceeding in forma pauperis, must be prepared to tender an appropriate sum of money to the witness at the time the subpoena is served. The appropriate sum of money is a daily witness fee and the witness's mileage costs. In addition, if the witness's attendance is required for more than one trial day, an allowance for a room and meals must be paid. The current rates for daily witness fees, mileage costs and room and meals may be

obtained either by writing the clerk of court at P.O. Box 432, Madison, Wisconsin, 53703, or calling the office of the clerk at (608) 264-5156.

Before the court will grant a request for a subpoena form for an unincarcerated witness, the party must satisfy the court by affidavit declared to be true under penalty of perjury that

1) The witness refuses to testify voluntarily;

2) The party has made arrangements for a person at least 18 years of age who is not a party to the action to serve the subpoena on the witness; or

3) The party is proceeding in forma pauperis, has been unable to arrange for service of the subpoena by a person at least 18 years of age who is not a party to the action and needs assistance from the United States Marshal or a person appointed by the court; and

4) The party is prepared to tender to the marshal or other individual serving the subpoena a check or money order made payable to the witness in an amount necessary to cover the daily witness fee and the witness's mileage, as well as costs for room and meals if the witness's appearance at trial will require an overnight stay.

If the court grants the party's request for a subpoena for an unincarcerated witness, it will be the party's responsibility to complete the subpoena form and send it to the person at least 18 years of age who will be serving the subpoena or to the United States Marshal, if the court has ordered that the subpoena be served by the marshal, together with the necessary check or money order. The address of the United States Marshal is 120 N. Henry St., Suite 440, Madison, Wisconsin, 53703. If the subpoena is not received by the marshal at least two weeks in advance of trial, the marshal may not have enough time to serve the subpoena on the party's witness.

V. SUMMARY

The chart below may assist in referring you to the section of this paper which sets forth the appropriate procedure for securing the testimony of witnesses in your case.

WITNESSES			
INCARCERATED		UNINCARCERATED	
VOLUNTARY	INVOLUNTARY	VOLUNTARY	INVOLUNTARY
A court order that the witness be brought to court is required. Papers are due 4 weeks before trial.	A court order that the witness be brought to court and a subpoena are required. A motion must be served & filed 4 weeks before trial. Subpoena forms must be completed 2 weeks before trial.	Nothing need be sought or obtained from the court.	Pro se parties must obtain an order granting issuance of a subpoena. Papers are due 4 weeks before trial. Completed forms <u>and fees</u> are due 2 weeks before trial.

Office of the Clerk
**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

120 North Henry Street, Room 320 • P.O. Box 432 • Madison, WI 53701-0432 • 608-264-5156

October 27, 2006

MEMO

If a case is **settled on the weekend before trial**, the court should be notified immediately by calling Clerk of Court Peter Oppeneer at (608) 287-4875. This notification will enable the Clerk to call off unneeded jurors and to advise the trial judge to discontinue working on the case. The same procedure should be followed to report last-minute emergencies which might affect the start of the trial.

ORDER IN NON-JURY CASES

The parties are hereby directed to observe the following requirements in preparing for the trial to the court in this case:

I. No later than TWO WEEKS IN ADVANCE OF THE TRIAL the parties are to confer for the following purposes:

A. To enter into comprehensive written stipulations of all uncontested facts in such form that they can be offered at trial as the first evidence presented by the party desiring to offer them. If there is a challenge to the admissibility of some uncontested facts that one party wishes included, the party objecting and the grounds for objection must be stated.

B. To make any deletions from their previously-exchanged lists of potential trial witnesses.

C. To enter into written stipulations setting forth the qualifications of expert witnesses.

D. To examine, mark, and list all exhibits that any party intends to offer at trial. (A copy of this court's procedures for marking exhibits is contained in this packet.)

E. To agree as to the authenticity and admissibility of such exhibits so far as possible and note the grounds for objection to any not agreed upon.

F. To agree so far as possible on the contested issues of law.

G. To examine and prepare a list of all depositions and portions of depositions to be read into evidence and agree as to those portions to be read. If any party objects to the admissibility of any portion, the name of the party objecting and the grounds shall be set forth.

H. To explore the prospects of settlement.

The parties shall convene and prepare the Pretrial Statement described in the next paragraph.

2. No later than ONE WEEK PRIOR TO THE TRIAL, plaintiff shall submit a Pretrial Statement containing the following:

A. The parties' comprehensive written stipulations of all uncontested facts.

B. The probable length of trial.

C. The names of all prospective witnesses. Only witnesses so listed will be permitted to testify at the trial except for good cause shown.

D. The parties' written stipulation setting forth the qualifications of all expert witnesses.

E. Schedules of all exhibits that will be offered in evidence at the trial, together with an indication of those agreed to be admissible and a summary statement of the grounds for objection to any not agreed upon. Only exhibits so listed shall be offered in evidence at the trial except for good cause shown.

F. An agreed statement of the contested issues of law supplemented by a separate statement by each counsel of those issues of law not agreed to by all parties.

G. A list of all depositions and portions of depositions to be offered in evidence, together with an indication of those agreed to be admissible and summary statements of the grounds for objections to any not so agreed upon. If only portions of a deposition are to be offered, counsel should mark the deposition itself with colored markers identifying the portions each party will rely upon.

3. No later than ONE WEEK PRIOR TO TRIAL, each party shall file with the court and serve upon opposing counsel a statement of all the facts that counsel will request the court to find at the conclusion of the trial. In preparing these statements, the parties should have in mind those findings that will support a judgment in their favor. The proposed findings should be complete. They should be organized in the manner in which the parties desire them to be entered. They should include stipulated facts, as well as facts not stipulated to but which the parties expect to be supported by the record at the conclusion of the trial. Those facts that are stipulated to shall be so marked.

4. Along with the proposed findings of fact required by paragraph 3 of this order, each party shall also file and serve a proposed form of special verdict, as if the case were to be tried to a jury.

5. Before the start of trial, each party shall submit to the court a complete set of each party's pre-marked trial exhibits to be used by the judge as working copies at trial.

6. If the parties wish to submit trial briefs, they are to do so no later than THREE WORKING DAYS PRIOR TO TRIAL. Copies of briefs must be provided to the opposing party.

Final pretrial submissions are to be filed as stated above with no exceptions.

Entered this 27th day of October, 2006.

BY THE COURT:

BARBARA B. CRABB
District Judge

ORDER REGARDING TIMELY PRESENTATION
OF TRIAL WITNESSES AND TRIAL EVIDENCE

The parties must have all witnesses and other evidence ready and available for timely presentation at trial in order to prevent delay. Failure to comply with this order will be grounds for an order precluding the presentation of any additional evidence by the non-complying party.

Entered this 27th day of October, 2006.

BY THE COURT:

BARBARA B. CRABB
District Judge

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
Fayetteville Division

JAMES J. BRASSART)	
)	
Debtor.	)	Bankruptcy No. 5:11-bk-75430
)	
	)	Chapter 7
<hr/>		
JAMES J. BRASSART)	
)	
Plaintiff,)	
)	
v.	)	Adversary No. 5:11-ap-7180
)	
UNITED STATES OF AMERICA)	
INTERNAL REVENUE SERVICE)	
U.S. DEPT. OF TREASURY)	
)	
Defendant.)	

CONSENT ORDER

THIS MATTER comes before the Court upon Plaintiff James J. Brassart’s Complaint to determine dischargeability of his federal income tax debts.

WHEREFORE it appears to the Court that the Plaintiff and Defendant the United States are in agreement as to the disposition of this adversary proceeding pursuant to the stipulation filed herein, it is

ORDERED AND ADJUDGED that the stipulation between Plaintiff and the United States is APPROVED and ADOPTED by the Court, and it is

FURTHER ORDERED as follows:

1. The Plaintiff’s 2006 federal income taxes and related penalties and interest are properly subject to discharge pursuant to 11 U.S.C. § 727, if and when an Order

of Discharge is entered in this case. This debt is not excepted from discharge by 11 U.S.C. §§ 507(a)(8)(A) and 523(a)(1).

2. The United States has filed pre-petition Notices of Federal Tax Lien in Carroll County and Benton County, Arkansas, in connection with the Plaintiff's 2006 federal income tax debt. These liens continue in effect and attach to all existing property, title, and rights to property, including exempt property, belonging to Brassart both on and prior to the filing of his Chapter 7 petition. *See* 11 U.S.C. § 522(c)(2)(B); 26 U.S.C. § 6322.
3. The above-captioned proceeding is dismissed with prejudice.
4. Each party shall bear its own litigation expenses, including costs and attorney's fees.



Ben Barry
United States Bankruptcy Judge JUDGE
Dated: 02/07/2012

/s/ Erin E. Lindgren
ERIN E. LINDGREN
U.S. Department of Justice
P.O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 353-0013
Erin.Lindgren@usdoj.gov
Attorney for Defendant the United States of America

Dated: January 31, 2012

/s/ John T. Lee
JOHN T. LEE
P.O. Box 1348
Siloam Springs, AR 72761-1348
(479)524-2337
jtlee.atty@cox-internet.com
Attorney for Debtor/Plaintiff

Dated: January 31, 2012

Teresa M. Shill, OSB #031680
E-Mail: tshill@rcolegal.com
Routh Crabtree Olsen, P.C.
621 SW Alder St., Suite 800
Portland, Oregon 97205
Phone: (503) 977 - 7926
Fax: (503) 977-7963

Attorneys for Defendant Bank of America, National Association,
successor by merger to BAC Home Loans Servicing, LP fka
Countrywide Home Loans Servicing LP.

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION**

CHRISTOPHER HATFIELD, TRUSTEE,

Plaintiff,

v.

INTERNAL REVENUE SERVICE, ET AL.

Defendants.

Case No. 6:10-cv-6350-AA

**STIPULATED ORDER FOR THE
DISBURSEMENT OF INTERPLEAD
FUNDS**

[CLERKS ACTION REQUIRED]

1.

Plaintiff, Christopher Hatfield ("Plaintiff"), Trustee, by and through his attorney Brian John MacRitchie; defendant Awbrey Village Homeowners Association, Inc. ("Defendant HOA") by and through its attorneys of record Landye, Bennett, Blumstein and Stuart Cohen; and the defendant Bank of America, National Association, successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, Inc. ("BANA"), by and through its

attorneys of record Routh Crabtree Olsen, P.C. and Teresa M. Shill, have conferred and settled all matters between themselves, the Internal Revenue Service (“IRS”) having disclaimed all interest in the interplead funds, and orders of default having been entered against the remaining defendants, said parties hereby stipulate and agree as follows:

STIPULATION:

2.

Plaintiff, Defendant HOA, and BANA hereby stipulate that:

(a) On August 9, 2010, Plaintiff sold real property at a non-judicial foreclosure sale. The property sold for \$300,000.00 (“Sale Proceeds”);

(b) Plaintiff applied the Sale Proceeds to the trustee’s fees, sales costs, and the foreclosed trust deed leaving net Sale Proceeds in the amount of \$77,818.94;

(c) Plaintiff interplead the net Sale Proceeds, and the IRS removed the Deschutes County Circuit Court Case No 10CV1020SF to the District Court herein;

(d) On October 17, 2011, the Court granted Plaintiff’s motion to deposit the net Sale Proceeds in the amount of \$77,818.94 into the Court’s registry, and on October 24, 2011 said funds were so deposited (the “Interplead Funds”);

(e) On November 4, 2011, the IRS disclaimed all interest in the Interplead Funds;

(e) Plaintiff, Defendant HOA, and BANA hereby stipulate to the disbursement of the Interplead Funds as follows: \$9,105.00 to Plaintiff to be applied to his attorney fees and costs incurred to bring this action; \$560.00 to Defendant HOA; and the balance of the Interplead Funds in the amount of \$68,153.94 (plus any applicable interest) to BANA to be applied to its trust deed dated January 5, 2007, and recorded on January 18, 2007, as Instrument No. 2007-03345;

(f) The parties will bear their own attorneys' fees and costs except where herein provided;
and

(g) The disbursement of the Interplead Funds will satisfy any and all claims, counterclaims
or cross claims the parties have to the Interplead Funds.

3.

The Court being fully advised in the premise, finding that good cause exists so that this
Stipulated Order for Disbursement of Interplead Funds may be entered, it is hereby

ORDERED AS FOLLOWS:

4.

BANA unopposed Motion for Disbursement of Interplead Funds is hereby GRANTED, and
the Court directs the Court's Registry to disburse the Interplead Funds in the amount of \$77,818.94
as follows:

(a) \$9,105.00 to plaintiff Christopher Hatfield, Trustee to be applied to his attorney fees
and costs. **The \$9,105.00 will be sent by check payable to Christopher Hatfield, Trustee** and
mailed to:

Brian John MacRitchie
Hurley Re, PC
747 SW Mill View Way,
Bend, OR 97702

(b) \$560.00 to defendant Awbrey Village Homeowners Association, Inc. **The \$560.00
will be sent by check payable to Awbrey Village Homeowners Association, Inc.** and mailed

to: Landye, Bennett, Blumstein Attn: Stuart Cohen
1300 SW 5th Ave., Ste. 3500
Portland, OR 97201

(c) \$68,153.94 (plus any applicable interest) to the defendant Bank of America, National Association, successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, Inc. The **\$68,153.94 (plus any applicable interest) will be sent by check payable to Bank of America, National Association** and mailed to:

Routh Crabtree Olsen, P.C.
Attn: Teresa M. Shill
621 SW Alder St., Ste. 800
Portland, OR 97205

5.

The foregoing disbursements of the Interplead Funds, hereby satisfies any and all claims, counterclaims, and cross claims the parties have to the Interplead Funds.

6.

The parties shall bear their own attorneys' fees and costs except where herein provided.

7.

This matter is now closed.

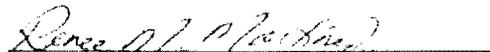
Dated this 7 day of February, 2012.


The Honorable Ann L. Aiken

For Court Use Only

APPROVED AS TO FORM:

Mary L. Moran, Clerk of Court


By: Financial Administrator

So Stipulated to by:

ROUTH CRABTREE OLSEN, P.C.

By /s/ Teresa M. Shill
Teresa M. Shill, OSB # 031680
Attorneys for Defendant: Bank of America,
National Association, successor by
merger to BAC Home Loans Servicing,
LP fka Countrywide Home Loans
Servicing, Inc.
621 SW Alder St, Ste 800
Portland, OR 97205

Dated: January 27, 2012

LANDYE, BENNETT, BLUMSTEIN

By /s/ Stuart Cohen
Stuart Cohen, OSB # 851738
Attorneys for Defendant: Awbrey Village HOA
1300 SW 5th Ave., Ste 3500
Portland, OR 97201

Dated: January 30, 2012

AND

HURLEY RE P.C.

By /s/ Brian John MacRitchie
Brian John MacRitchie, OSB # 793115
Attorneys for Plaintiff Christopher Hatfield, Trustee
747 SW Mill View Way
Bend, OR 97702

Dated: January 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **Proposed Stipulated Order For Disbursement Of Interplead Funds**:

- **Alexis V. Andrews**
alexis.v.andrews@usdoj.gov,western.taxcivil@usdoj.gov
- **Christopher D Hatfield**
cdhatfield@hrlr-law.com
- **Brian John MacRitchie**
bjmacritchie@hurley-re.com
- **Timothy W. Simmons**
tim.simmons@usdoj.gov,trudylee.fleming@usdoj.gov,jeannie.berg@usdoj.gov,JANET.SORBER@OGC.USDA.GOV

by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to party, or each parties' attorney's last-known address and depositing in the U.S. Mail on the date set forth below:

by causing a copy thereof to be hand-delivered to said attorneys at each attorney's last-known office address on the date set forth below:

by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to each attorney's last-known address on the date set forth below; of

by Electronic Case Filing, (ECF) on the date set forth below.

DATED this 6th day of February, 2012.

ROUTH CRABTREE OLSEN, P.C.

/s/ Daniel Craig
Daniel Craig, Paralegal
Of Attorneys for Defendant BAC
621 SW Alder St., Ste. 800
Portland, Oregon 97205
(503)517-7181; Fax (503)977-7963



Dated: 02/07/12

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

In re:

**THOMAS LEON CARNEY SR.
HILLSIDE DR.
NASHVILLE, TN 37042**

Case No. 10-07970-MH3-13 3030

**QUINETINE LAVONNE CARNEY
3030 HILLSIDE DR. Road
NASHVILLE, TN 37207**

SSN: XXX-XX- SSN: XXX-XX-, Debtors

**ORDER STRIKING MOTION OBJECTING TO IRS CLAIM AND CONTEMPT FOR
VIOLATION OF THE AUTOMATIC STAY**

At the request of counsel for the Debtors, and by agreement with counsel for the Internal Revenue Service and permission of the Court, it is hereby **ORDERED** that the pending Objection to the IRS claim and motion for contempt for violation of the automatic stay set for January 23, 2012 is dismissed at the request of counsel for the Debtors.

Approved for Entry:

/S/ L.G. BURNETT, JR.

L. G. BURNETT, JR., BPR#: 6463

Counsel for Debtors

4800 Charlotte Ave

Nashville, TN37209

(615) 279-0007

FAX (615) 383-7128

lgburnett@lgburnettlaw.com

/S/ ANDREW C. STRELKA

Andrew C. Strelka

Trial Attorney

U.S. Department of Justice

Tax Division, CTS Eastern Region

P.O. Box 227, Ben Franklin Station
Washington, D.C. 20044
p.(202) 616-8994
f. (202) 514-6866
andrew.c.strelka@usdoj.gov

This Order has been electronically signed. The Judge's signature and Court's seal appear at the top of the first page.
United States Bankruptcy Court.

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF PUERTO RICO

IN RE:

LUIS A SABINO DE JESUS

CASE NO. 11-08348 BKT

BLANCA IRIS MATTA GARCIA

Chapter 13

XXX-XX-

XXX-XX-



FILED & ENTERED ON 02/07/2012

Debtor(s)

ORDER

The motion filed by debtors requesting extension of time (20 days) to answer motion to dismiss (docket #19) is hereby granted.

IT IS SO ORDERED.

San Juan, Puerto Rico this 07 day of February, 2012.


Brian K. Tester
U.S. Bankruptcy Judge

CC: DEBTOR(S)
RAMON F LOPEZ RIVERA
JOSE RAMON CARRION MORALES
IRS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

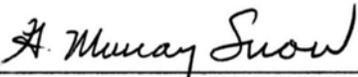
United States of America,	)	No. CV-10-444-PHX-GMS
Plaintiff,	)	JUDGMENT ORDER
vs.)	
Vistoso Partners, LLC,)	
Defendant.)	

Pursuant to the Order entered January 3, 2011,

IT IS HEREBY ORDERED THAT:

- Judgement is entered in favor of the United States of America and against Defendant Vistoso Partners, LLC, pursuant to 26 U.S.C. § 6332(d)(1) in the amount of \$6,959,351.44, plus statutory interest pursuant to 28 U.S.C. § 1961(c)(1) and 26 U.S.C. § 6621, accruing after January 17, 2012; and
- Judgment is entered in favor of the United States of America and against Defendant Vistoso Partners, LLC, pursuant to 26 U.S.C. § 6332(d)(2) in the amount of \$3,479,675.72, plus statutory interest pursuant to 28 U.S.C. § 1961(c)(1) and 26 U.S.C. § 6621, accruing after January 17, 2012

DATED this 7th day of February, 2012.



 G. Murray Snow
 United States District Judge