

2007

Lawrence M. Jackson v. The State of Utah : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Joni J. Jones; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General.

Lawrence M. Jackson.

Recommended Citation

Brief of Appellant, *Jackson v. State of Utah*, No. 20070588 (Utah Court of Appeals, 2007).

https://digitalcommons.law.byu.edu/byu_ca3/395

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

Lawrence M. Jackson #28879
Oquirrh II 207-B
Utah State Prison
P.O. Box 250 Draper, Utah 84020

I, Ricardo Rodriguez #20796
have seen and as witness am
mailing this on Jan 13, 2008
at 9:35 pm. Ricardo Rodriguez
#20796 Oquirrh II 207-B

FILED
UTAH APPELLATE COURTS
JAN 18 2008
LODGE (E)

IN THE UTAH COURT OF APPEALS

Lawrence M. Jackson Appellant,	BRIEF OF APPELLANT
v.	Civil No: <u>20070588-CA</u>
THE STATE OF UTAH, et al., Appellees.	Judge,

BRIEF OF THE APPELLANT

Appeal from A Memorandum Decision Granting Summary Judgment
Sixth District Court
Sanpete County, State of Utah
Judge, Wallace A. Lee

Joni J. Jones (#7562)
Assistant Attorney General
Mark L. Shurtleff (#4666)
Utah Attorney General
Attorneys for the Defendants
160 East 300 South, 6th floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856

Lawrence M. Jackson #28879
Oquirrh II-207-B
Utah State Prison
P.O. Box 250
Draper, Utah 84020

FILED
UTAH APPELLATE COURTS
JAN 10 2008

IN THE UTAH COURT OF APPEALS

Lawrence M. Jackson
Appellant,

BRIEF OF APPELLANT

V.

Civil No: _____

THE STATE OF UTAH, AND
Lisa Soper, RN At CLCF
Appellees.

Judge, _____

BRIEF OF THE APPELLANT

Appeal from A memorandum Decision Granting Summary Judgment
Sixth District Court
Sanpete County, State of Utah
Judge, Wallace A. Lee

Joni J. Jones (#7562)
Assistant Attorney General
Mark L. Shurtliff (#4666)
Utah Attorney General
Attorneys for the Defendants
160 East 300 South, 6th floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856

Lawrence M. Jackson #28879
Quirk II-207-B
Utah State Prison
P.O. Box 250
Draper, Utah 84020

TABLE OF CONTENTS

	Pages
Table of Contents	(ii)
Table of Authorities	(iii)
Statement of Jurisdiction	(iv)
Statement Of Questions Presented for Review	1
Constitutional Provisions, statutes, Ordinances, Rules, And Regulations Whose Interpretations Are Determinative	2
Statement of The Case	5
Statement of Facts	12
Summary of Arguments	17
Argument I	21
Argument II	28
Argument III	44
Argument IV	48
Argument V	51
Argument VI	54
Argument VII	58
Argument VIII	65
Conclusion	72
Supplement	

TABLE OF AUTHORITIES STATE CASES

	Pages
<u>Board of Educ. Granite School Dist. v. Salt Lake County</u> , 659 P.2d 1830 1983 Ut. 33 (2-8-83)	70
<u>Bolt v. Deland</u> , 922 P.2d 732, 740 (Utah 1996)	51, 52, 53, 60, 66
<u>Downtown Athletic Club v. Herman</u> , 740 P.2d 275 (Utah Ct. App. 1987) . .	27
<u>Gillett v. Price</u> , 2006 Ut. 24 ¶¶ 1, 135 P.2d 861, 862 (Utah 2006)	70
<u>Jackson v. Friel</u> , 3rd Dist. Ct., case # 010901240 entered: 9-12-01	29
<u>Kennedy v. New Era Indus., Inc.</u> , 600 P.2d 534, 536 (Utah 1979) .	71
<u>Lazar v. Allen</u> , 347 So. 2d 457 (Fla. Dist. Ct. App. 1977)	27
<u>McKee v. Williams</u> , 741 P.2d 978, 980 (Utah Ct. App. 1987)	70
<u>Peay v. Peay</u> , 607 P.2d 841, 843 (Utah 1980)	70
<u>Salt Lake City, Corp. v. James Constructors, Inc.</u> , 761 P.2d 42, 90 Utah Adv. Rep. 62, 1988 Ut. 215 (1988)	70, 71
<u>Speckman v. Board of Education</u> , 16 P.3d 533, 538-9 (Utah 2000) . .	30, 31
<u>State v. Lafferty</u> , 20 P.3d 342, 365 (Utah 2001)	66
<u>Sterling v. Cupp</u> , 625 P.2d 123, 131 (Ore. 1981)	66

FEDERAL CASES

<u>Beretti v. Wisconsin</u> , 930 F.2d 1150, 1154 (6th Cir. 1991)	40, 62, 69
<u>Cleveland Trust Co. v. Foster</u> , 93 So. 2d 112, 114 (Fla. 1957)	57

TABLE OF AUTHORITIES CONT. FEDERAL CASES

	Pages
<u>Dean v. Barber</u> , 951 F.2d 1210, 1213-14 (11th Cir. 1992)	63
<u>Dickey v. Merrick</u> , 90 Fed Appx. 535, 10th Cir., Case# 03-4073 (12-19-03)	58
<u>Domegan v. Fair</u> , 859 F.2d 1059, 1063 (1st Cir. 1988)	29
<u>Duchesne v. Sugarman</u> , 566 F.2d 817 (1977)	40
<u>Estelle v. Gamble</u> , 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976)	29, 39, 40, 42, 47, 62, 66, 69, 72
<u>Farmer v. Brennan</u> , U.S. Ct. App. 8th Cir.; No: 94-3787 (4-26-96) .	28, 63
<u>Fuentes v. Shevin</u> , 407 U.S. 67, 83, No. 13, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972)	40
<u>Gutten v. Bollinger</u> , 539 U.S. _____, (2003)	47, 48
<u>Hernandez v. European Auto Collision, Inc.</u> , 487 F.2d 378 N.4 (2nd Cir. 1973)	40
<u>Lawrence v. Texas</u> , 539 U.S. _____, (2003)	46
<u>Loving v. Virginia</u> , 338 U.S. 1, 11 (1967)	48
<u>Resolution Trust Corp. v. North Bridge Assoc.</u> , 22 F.3d 1198 (1st Cir. 1994)	28, 63
<u>Smith v. Rowe</u> , 761 F.2d 360; 1985 U.S. App. LEXIS 31025; Fed. R. serv. 3d (Calahan) 31	41
<u>U.S. v. Classic</u> , 313 U.S. 299, 326, 615 S.Ct. 1031, 1043, 85 L.Ed. 1368 (1941)	40

IN THE UTAH COURT OF APPEALS

Lawrence M. Jackson
Appellant,

BRIEF OF APPELLANT

v.

Civil No: _____

THE STATE OF UTAH, et al.,
Appellees

Judge,

BRIEF OF THE APPELLANT

Appeal from A memorandum Decision Granting Summary Judgment
Sixth District Court
Sanpete County, State of Utah
Judge, Wallace A. Lee

STATEMENT OF JURISDICTION

Jackson appeals from a memorandum Decision by the Sixth District Court granting summary judgment to the defendants in a complaint for medical malpractice And Constitutional Rights violations. The Utah Court of Appeals has jurisdiction in this case under Utah Judicial Code § 78-2a-3(1)(a)(2)(j).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. The Trial Court Erred When It Refused To Rule Against The Defendants In Accordance With Uta R. Civ. P. Rule 56 (c), And (f), When The State Failed To Oppose The Plaintiff's Summary Judgment motion.
- II. The Plaintiff Is Entitled To A Summary Judgment Based Upon Constitutional Rights Violations, Because The State, And Defendant, Lisa Super Committed "Flagrant" Constitutional Rights Violations.
- III. The Trial Court Violated Plaintiff's Constitutional Rights Secured Under The U.S. Constitution Amendment XIV (Due Process & Equal Protection Clauses).
- IV. The Trial Court Violated Plaintiff's U.S. Constitution Amendment VII Rights When It Denied Plaintiff's Discovery Motions And GRAMA Records Requests For Defendant, Lisa Super's Physical Address For Purposes of Service of Process.
- V. The Trial Court Violated Plaintiff's Constitution of Utah Article I, Section 9 Rights By Denying Plaintiff's Motions for Discovery For Defendant, Lisa Super's Physical Address for purposes of Service of Process.
- VI. The Trial Court Abused Its Discretion To Allow The State To Use The Martinez Report To Circumvent Uta R. Civ. P. Rule 56 (c); Thereafter Denying Plaintiff A ruling on Plaintiff's Memorandum Opposing Defendant's Motion to Be Allowed To File A Martinez Report.
- VII. The Trial Court Abused Its Discretion When It Denied Plaintiff's Motion To Compel Discovery; And Then Proceeded To Rule Against Plaintiff On Issues That Were The Subject of The Discovery.
- VIII. The Trial Court Erred In Denying Plaintiff's Motion For Reconsideration.

6). Constitutional Provisions, Statutes, Ordinances, Rules, And Regulations Whose Interpretations Are Determinative.

1). The United States Constitution Amendment XIV: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges, or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; Nor deny to any person within its jurisdiction the equal protection of the laws."

2). The United States Constitution Amendment VII: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

3). The United States Constitution Amendment VIII: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

4). Title II of the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 337, as amended 42 U.S.C. § 12131 et seq. (2000 ed. and Supp II). "No qualified individual with a disability shall by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any such entity." § 12132 (2002 ed).

5). The Constitution of Utah Article I, Section 1: "No person shall be deprived of life, liberty, or property without due process of law."

6). Constitution of Utah Article I, Section 11: "All courts shall be open, and every person, for an injury done to him in his person, property, or reputation, shall have remedy by due course of law,

which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this state by himself or counsel, any civil cause to which he is a party."

7). Constitution of Utah Article I section 9: "Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishment be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor."

8). Constitution of Utah Article I, section 24: "All laws of a general nature shall have uniform operation."

9). The Utah Rules of Civil Procedure Rule 56(e): "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Rule 56(f): "Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

10). Utah Rules of Civil Procedure Rule 6 (a) Time (a). Computation

"In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation."

11). Utah Rules of Civil Procedure Rule 8 (d). Effect of Failure To Deny.

"Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided."

12). Utah Rules of Civil Procedure Rule 9 (f). Pleading special matters.

(f). Time and Place. "For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter."

13. Utah Rules of Civil Procedure Rule 12 (f). motion to strike. "upon motion made by a party before responding to a pleading or if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after service of the pleading upon him, the court may order stricken from any pleading any sufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

14). Utah Rules of Civil Procedure Rule 34 (b) Procedure: "The request may, without leave of the court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set

forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts."

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any part thereof, or any failure to permit inspection as requested."

15). Utah Rules of Civil Procedure Rule 37(a)(2): Motion. "If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition or oral examination before he applies for an order."

7).

STATEMENT OF THE CASE

(Exhibits from The Memorandum In Support of Motion for Reconsideration of Court's Decision on Martinez Report are incorporated herein by reference).

1). The plaintiff herein, Lawrence M. Jackson is an insulin dependent diabetic with a medical history of having volatile bloodsugar levels and subject to frequent hypoglycemic reactions while incarcerated in the Utah State Prison.

While incarcerated at the Utah State Prison, the plaintiff was frequently denied medically prescribed supplemental foodstuffs, and this contributed to frequent bouts with hypoglycemia. In about August 22, 2001, the plaintiff was denied a dose of insulin because the plaintiff had an injured foot with gross swelling so much so as to prevent the plaintiff from wearing both shoes. At the pill-line, a Corridor monitoring official denied plaintiff access to life-preserving medication, (insulin), because the plaintiff could not comply with the prison's dress code, (two pair shoes). The plaintiff filed a Utah Rules of Civil Procedure, Rule 65A (injunction), in the Third District Court. see: Exhibit B; Jackson v. Friel, 3rd Dist. Ct. Order; case # 010904240; entered: 9-12-01. After the petitioner and Respondents made their presentations and representations, the Court granted the Rule 65A injunction, and later made it permanent. The Court order has been violated both in the spirit and letter, and that with impunity. see: Exhibit 4; 3rd Dist. Ct. Dock. Evt. Stat'mt; pg. 3; entry: 9-11-01 (minutes on hearing), then pg. 4; entry: 1-25-02.

2). On or about 10-30-02 plaintiff was transferred from the Utah State Prison, (USP), to the Central Utah Correctional Facility, (CUCF).

3). Shortly after arrival at (CUCF), plaintiff encountered a physician in the (CUCF) medical Department, Dr. Burnham, who was extremely rude and arbitrary in that Dr. Burnham, without any physical examination, decided that the "bottom bunk clearance, (for chronic back pain), was not valid at (CUCF), and that plaintiff did not meet the criteria for the bottom bunk clearance." Plaintiff thereafter refused to see Dr. Burnham. Dr. Burnham. This physician resolved to allow plaintiff's prescription for insulin, (AM prescription of insulin), to lapse for my refusal to consult with him. see: Exhibit C (3) Department of Corrections, hereinafter, DOC; Medical Dept. med. charts; entry: 12-10-02. see also: C (2) same charts; entry: 11-12-02.

4). Upon inquiry into why my prescription had lapsed, (Dr. Burnham never told me that he refused to renew the prescription), I told medical personnel that I have a Court order mandating treatment, but this was met with indifference and contempt. see: Exhibit C (5); DOC med. chs; entry: 12-21-02; and see: Exhibit C (4) entry date: 12-21-02.

5). A Registered Nurse, Mr. Steven S. Fitzgerald arranged for me to see the Physician's Assistant, Barbara Mitten, PAC who renewed the prescription for AM insulin which was 15 units Regular insulin, and 30 units NPH insulin. see: Exhibit C (6), DOC med. chs; entry: 12-27-02.

6). The prescription was brought into question by a Nurse, Lisa Soper who, upon her discovery of a discrepancy respecting the AM insulin prescription denied plaintiff the prescribed dose of insulin, and ordered plaintiff to take only 7 units regular and 30 units NPH insulin. Since the prescription was actually 15 units Regular and 30 units NPH, the plaintiff refused, and requested to see the health care providers, preferably Barbara Mitten, PAC, when the plaintiff discontinued taking the lesser amount of insulin, plaintiff also stopped eating. The reason for not eating, is to avoid "hyperglycemia", a condition that happens when one has excessively high bloodsugar levels. Although plaintiff made several requests over a five day period, plaintiff verbally and wrote requests to see a healthcare provider but was denied.

7). On or about November 9, 2003, at approximately 3:30 am plaintiff got out of the bunk to use the toilet. When plaintiff was returning to the bunk, plaintiff suddenly lost consciousness, and fell. On the way down to the floor, plaintiff's left side of the face struck a thick metal stool that was embedded in the cement floor, and sustained grievous injury including crushed left cheek bone; fracture of left orbital socket (floor) eye socket and tissue became entrapped in the fracture causing severe double vision, this injury was extremely painful, plaintiff suffered from constant nausea extreme headaches tremendous swelling over the left side of my face and head. Plaintiff also sustained lacerations above and below the left eye. The left eye was also forced back into plaintiff's orbital socket also making sight next to impossible to see.

8). After the injury the plaintiff was denied pain medication, and was delayed access to a surgical procedure that could have restored the plaintiff's vision less the double-vision which after unnecessary delay, the double-vision has since become permanent. The plaintiff also has some numbness around the left eye and nostril. The plaintiff also have frequent headaches, and has since developed glaucoma, which the ophthalmologist suspects is the result from trauma to the left eye. This condition is also permanent, and requires a prescribed solution (2 types) three times daily for life.

A). COURSE OF THE PROCEEDINGS

1). On 11-17-04 the plaintiff filed a complaint for medical malpractice and Constitutional Rights Violations. See: 6th Dist. Ct. Dock. Evt. Statmt, pg. 1; entry: 11-17-04, Exhibit F, 6th Dist. Ct. Dock Evt. Statmt, pg. 2.

2). On 1-20-05 The Court entered a "Notice to be served", directing the Defendants to answer the complaint. See: Exhibit F, Dock. Evt. Statmt, pg. 2.

3). The State, on 2-16-05 filed a motion to Dismiss pursuant to Ct. R. (iv. P. Rule 12(b)(6). See: Attached hereto; Exhibit 12; see also: 6th Dist. Ct. Dock. Evt. Statmt, pg. 1.

4). On 1-6-06 the court entered a memorandum Decision denying in part, and dismissing in part the state's motion to Dismiss. The Court again directed the State to answer the Amended Complaint. See: Exhibit G; 6th Dist. Ct. memo. Decis.; entered: 1-6-06.

5). On 4-28-06 the State filed its answer to the Amended Complaint. See: Exhibit F; 6th Dist. Ct. Dock. Evt. Statmt, pg. 3.

6). The State then, on 5-12-06 filed a motion for Judgment on the Pleadings. (this motion contended that the state enjoys sovereign immunity and therefore the plaintiff's complaint should be dismissed). See: Exhibit P; St. memo. in Supp. St. mot. Judgment on Pl.; see also: Exhibit F, 6th Dist. Ct. Dock Evt. Statmt, pg. 3; entry: 5-12-06.

7). Based upon the state's answer to the Amended complaint, and the judgment on the Pleadings motion, the plaintiff filed a motion for summary judgment on 6-8-06. see: Exhibit F; 6th Dist. Ct. Dock. Evt. Statmt; pg 3. see also Exhibit W, Pl. Mot. Summary Judgment on 6-8-06.

8). Then, on 7-13-06 the state files a request to Submit for decision (on the motion for judgment on the Pleadings), and a request to stay briefing on the plaintiff's summary judgment motion until the court has ruled on the motion for judgment on the Pleadings. see: Exhibit F; 6th Dist. Ct. Dock Evt Statmt; pg. 3; entry: 7-13-06.

9). On 8-4-06 the court enters an order staying the briefing on the plaintiff's motion for summary judgment. (The Order provided that: "If the state's motion for judgment on the Pleadings is denied, then the state must file its memorandum opposing plaintiff's summary judgment within thirty days of the court's ruling"). Exhibit F; pg. 4, and see: Exhibit H; 6th Dist. Ct. Ord. Stay Br. on Pl. Mot. Summary Judgment; entered on: 8-4-06.

10). The court entered a memorandum Decision on 9-28-06 denying the state's motion for judgment on the Pleadings. see: Exhibit F; 6th Dist. Ct. Dock. Evt. Statmt; pg. 4; entry: 9-28-06.

11). The plaintiff had filed a motion for Reconsideration of the court's ruling in the 1-6-06 memorandum Decision respecting the U.S. Constitution Amendment VIII violation issue. see: Exhibit G; 6th Dist. Ct. memo. Dec's.; entered on: 1-6-06; pg. 7-8; see also: Exhibit 6; Pl. memc. In Supp. Mot. Reconsid. Ct's Ruling & leave to Amend Compl.; entered: 7-19-06.

12). On or about 11-10-06 the state approached the plaintiff with a "Joint motion And Stipulation" ostensibly to resolve outstanding motions that were then before the court.

13). The real reasons for the stipulation and Joint motion was realized, the plaintiff moved the court to strike the joint motion & stipulation. see: Exhibit F; 6th Dist. Ct. Dock. Evt. Statmt; pg. 5; entry: 11-17-06; and 12-06-06; see also: Exhibit C; Pl. Mot. Str. Dec. Joint Mot. & Stip.; and Exhibit R; Pl.

memo, In Reply Def's memo, In Opp. Pl. Mot. Str. Joint Mot & Stip.; dated 2-6-07.

14). On 12-13-06 the court entered a memorandum Decision granting the majority of plaintiffs' outstanding motions thus negating the joint motion and stipulation. The court also ruled on plaintiffs' motion for reconsideration of the court's memorandum Decision of 1-6-06, respecting the U.S. Constitution Amendment VIII issue against the state. Exhibit F, 6th Dist. Dock Ent, Statmt; pg. 5; see also: Exhibit 6.

15). The State arranged for a Telephone conference between the court and the parties on 12-20-06 in order to make a record concerning the "Joint Motion And Stipulation" subsequent to plaintiff writing a letter to the state attorney, and to the court detailing fraud and misrepresentation on the part of the Attorney General's Office. see: Exhibit K: Def's trans. of 12-20-06 telephone confer.

16). At the telephone conference the court granted the plaintiff a (30) thirty day time in which to Amend the Amended complaint, and file a Supplement thereto. The court set dates that the plaintiff would tentatively "renew" the pending motion for summary judgment to include the supplemental Pleadings. Exhibit K; Def. Trans. of teleph. confer.; pg. 4, para. 6.

17). On 1-2-07, the plaintiff filed a motion together with a supporting memorandum to strike the "Joint Motion And Stipulation", consistent with plaintiffs' representations to the court in the 12-20-06 teleph. confer. See: Exhibit K; Def. Trans. of 12-20-06 Teleph. confer.; pg 3; para. 3.

18). The State filed an answer to the Supplemental Pleadings on 1-4-07 even before it was due, or even before I filed the Supplement. See: Exhibit F; entry 1-4-07.

19). The plaintiff filed the Amended Complaint on 1-16-07. Exhibit F; pg. 6

20). Additionally, on 1-16-07 plaintiff filed the Supplemental Pleadings, Exhibit F; pg. 6.

21). The state filed a memorandum in opposition to plaintiff's motion to strike Defendant's Joint Motion And Stipulation on 1-25-07. see: Exhibit F; pg. 6.

22). The state then files an answer to the Amended Complaint on 1-31-07. Exhibit F; pg. 6; see also: state et al. Ans. to 2nd Amend Compl. tabled here in Exhibit 13.

23). The plaintiff filed a memorandum in Reply to State's Answer to the plaintiff's Supplemental Pleadings. Exhibit F, pg. 6; entry: 2-26-07

24). The plaintiff also filed a memorandum in Reply to Defendant's memorandum in opposition to Plaintiff's motion to strike Joint Motion And Stipulation on 2-26-07. Exhibit F; pg. 6; see also: 6th Dist. Ct. Judmt Roll & Index, entry date: 12-24-07, 962-1027.

25). The state filed a motion requesting that the state be allowed to file a Martinez Report and that all proceedings are stayed until the Martinez Report is filed, Also that the court construe the Martinez Report as a motion for Summary Judgment, on 3-15-07. see: Exhibit F; pg. 6; see also: Exhibit N; Def. memo. in Opp. Pl. mot. to Compel Discovery and in Supp. of mot. Martz Rept.

26). On 3-28-07 the court entered an Order allowing the state to file a Martinez Report. The court did not provide a copy of its order even after plaintiff requested one. see: Exhibit O; Pl. Hr. to 6th Dist. Ct.; dated: 5-27-07.

27). The plaintiff filed a motion for Enlargement of time to respond to Defendant's Opposition to Plaintiff's motion to Compel Discovery And motion to file A. Martinez Report on 4-4-07. see: 6th Dist. Ct. Dock, Evt. statmt; pg 7.

4-27-07

28). The plaintiff also filed a memorandum In Opposition To Defendant's motion that the state be allowed to stay proceedings on 4-27-07

29). The state filed 13 Affidavits to be attached to the Martinez Report between 6-1-thru. 6-18-07. See: Exhibit F; pg. 7 from 6-1-07 thru, 6-18-07.

30). On 7-3-07, the court entered a memorandum decision granting the state's summary judgment motion. See: Exhibit A; 6th Dist. Ct. memo. Decis.

31). The plaintiff filed a Notice of Appeal, and it was entered on 7-11-07. See: Exhibit F; pg. 7.

32). On or about 10-1-07 the plaintiff filed a motion to reconsideration of the Court's memorandum Decision of 7-3-07. Exhibit 19. See also: 6th Dist. Ct.; case #040600383 Judmt Roll & Index; entry: 10-1-07; 1608-1903.

33). The court, on 10-24-07 entered a memorandum Decision denying the plaintiff's motion for Reconsideration pursuant to Ut. R. Civ. P. Rule 54(b). See: Exhibit 14; 6th Dist. Ct. memo. Decis & Ord. entered: 10-24-07.

34) The plaintiff forwarded a Notice of Appeal for the motion to Reconsider on or about Oct. 28, 2007 to the 6th District Court.

STATEMENT OF FACTS

1). The plaintiff, before being transferred to CHCF, applied for and obtained an injunction pursuant to Ut. R. Civ. P. Rule 65A enjoining the respondents from denying the petitioner medically prescribed doses of insulin, and supplemental foodstuffs. The injunction became permanent after 1-25-02. See: Exhibit B; 3rd Dist. Ct.; case #010904240; entered: 9-12-01; see also: 3rd Dist. Ct. Dock. Evt. Statmt; case #010904240; pg. 4; entry: 1-25-02. herein as Exhibit 4.

2). Plaintiff encountered difficulties with the medical department physician and some of the nurses and medical technicians upon arrival.

3). The plaintiff went to AM (diabetic) pill-line for an AM dose of insulin. The plaintiff encountered defendant, Lisa Soper, RN. The plaintiff had been harassed by Lisa Soper, RN in the weeks prior to the relevant time, i.e., 11-9-02. see: Pl. Amend. Compl., herein after Pl., pg. 2-3; para. 1.

4). Defendant, Lisa Soper, RN refused the plaintiff a prescribed dose of insulin, i.e., 15 reg. / 30 NPH insulin, but ordered me to take 7r eg. / 30 NPH instead in claiming that 7r/30 N is in fact my prescribed amount. Plaintiff refused the lesser amount. Plaintiff also stopped eating as well. see: Exhibit C (10); DOC Med. Chrs.; entry: 11-7-03.

5). After approximately (5) five days, at about 3:30 am plaintiff awoke and went to use the toilet. With that done, plaintiff started back to the bunk. The plaintiff suddenly lost consciousness and fell to the floor. On the way down, plaintiff's face, (left side), struck a heavy metal stool embedded in the cement floor causing grievous pain and damage, including a crushed cheekbone; left orbital socket fracture, plaintiff's left eye was forced back into the socket; tissue from the left eye was entrapped in the fracture of the orbital socket; and lacerations and nerve damage around plaintiff's eye and left nostril. Plaintiff's left eye lid sags noticeably. Plaintiff later developed glaucoma in the injured eye. Exhibit T. see also: Exhibit D; Moran Eye Clinic Operative Report.

6). The plaintiff was placed into the "special management unit", (SMU), for observation and possible treatment. P.L.; pg. 4, para. 3.

7). The plaintiff was seen by an Ophthalmologist on or about 12-29-03. Exhibit 7(a); Consul. Rept.; by Dr. Goldsmith, Moran Eye Clinic.

8). The plaintiff filed a grievance for the unnecessary delay in obtaining surgical intervention, on or about 5-15-06, but the state refused

to process the grievance. see: Exhibit E; Level I Griev. Ref. #9908533
97; 3-4-04.

9). The plaintiff did not receive surgical intervention until March 19, 2004. see: Exhibit D. Operative Rept. by Dr. Patel Bhupendra.

10). The plaintiff then filed a civil suit for medical malpractice and Constitutional Rights Violations on 11-7-04. see: Exhibit F; 6th Dist. Ct. Dock. Evt. Statmt; pg. 3; entry: 6-8-06, see also: Exhibit W. Pl. mot. Summary Judmt.

11). After the state answered the amended complaint, and filed a motion for Judgment on Pleadings, Plaintiff filed a motion for Summary Judgment on 6-8-06, see: Exhibit E; 6th Dist. Ct. Dock. Evt. Statmt; pg. 3; entry: 6-8-06. Then see: Exhibit W; Pl. mot. Summary Judmt.

12). The state sought and obtained a stay on Briefing the Plaintiff's motion for Summary Judgment on: 8-4-06. The order provided, in relevant part:

"[I]f the state's motion for judgment on the pleadings is denied, the state must file its memorandum opposing Plaintiff's Summary Judgment within thirty days of the court's ruling."
Exhibit H; 6th Dist. Ct. Ord. stay Br. Summary Judmt.

13). The state's time for filing the memorandum in opposition to Plaintiff's motion for Summary Judgment commenced on 9-29-07 and the memorandum would be due on or before 11-2-06. The state missed their date to timely file a memorandum in opposition of Plaintiff's motion for Summary Judgment. Exhibit H.

14). Having missed their date for timely filing opposition to Plaintiff's motion for Summary Judgment the state contacted the plaintiff under the guise of an agreement and stipulation to resolve matters that were the subject of some outstanding motions; the state's real purpose, however, was to trick the plaintiff into acquiescing on the summary judgment motion
(pg. 14)

they had already failed to oppose. Exhibit R; Pl. memo. In Reply Def's memo. In Opp. Pl. Mot. Str. Jt. Mot. & Stip.; see also: Exhibit L; memo. In Supp. Mot. Str. Jt. Mot. & Stip.

15). The state sought, and obtained a telephone conference with the parties and the court on 12-20-06. At this hearing the state told the court that in the interest of "judicial economy", that she, Joni J. Jones, Assistant Attorney General, attorney for the defendants, preferred to respond to only one summary judgment motion, and that by combining the plaintiff's Supplemental Pleadings with the amended complaint, the state would then be in a position to file a motion for summary judgment. The real reason the state wanted to combine the two pleadings was to recover a missed opportunity to oppose the summary judgment motion they had already omitted. See: Exhibit K; Def. Trans. Teleph. Confer.; 12-20-06; pg. 2-3. see also: Exhibit L, and Exhibit R.

16). Also, at the telephone conference, the state actually asked the court for "some control over this case so that there aren't constant motions, ect, that we're responding to". Exhibit K; Def's Trans. Teleph Confer. dated: Jan. 22, 2007; pg. 2, para. 3.

17). From that day forward, the plaintiff became bedeviled where plaintiff's filings of legal documents were abruptly shut down. Where documents mailed from the Utah State Prison, Draper, Utah site would routinely take (3) three to (4) four days, they were suddenly prolonged in filing as much as (22) twenty-two days or more to be filed in the court. Some documents, (including a motion to strike the "Joint Motion And Stipulation"), did not make it to the court at all. see: Exhibit 15; level III Griev. Resp. ref. #990863919; see also: Exhibit T-13; Pl. Pet. for Jud. Rev. of Den. GRAMA Rec. Req. App., dated: 4-8-07; entered: 4-12-07.

18) The state filed its motion to be allowed to file a Martinez Report on: 3-15-07, and the court granted the motion on 3-28-07. (The plaintiff did not obtain a copy of the court's order). see: Exhibit N; Def. Mot. Req. State Be Allowed to file Martinez Rept.

19). The plaintiff did not receive Notice of the state's motion to be allowed to file a Martinez Report until well after the court entered a ruling in that matter. Exhibit 5; Pl. memo. In Opp. Def. mot. to file Mart'z Rept.

20). On 4-27-07 plaintiff filed a memorandum in opposition to the state's Request to Be Allowed to File a Martinez Report. (while the plaintiff awaited the court's ruling on plaintiff's motion, the court entered a memorandum Decision on 7-3-07 granting the state's motion for summary judgment based upon the Martinez Report). see: Exhibit 5; see also: Exhibit F; 6th Dist. Ct. Doc. Ent. Statmt; pg. 1; entry: 4-27-07. see also: 6th Dist. Ct. Jud. Roll & Index; 2-26-07, 962-1027.

21). The plaintiff filed a motion for Reconsideration of the Court's Decision on the Martinez Report on: 10-9-07. see: 6th Dist. Ct. Judmt Roll & Index, entry: 10-1-07, 1608-1903. see also: Exhibit 19; Pl. memo. In Supp. mot. Reconsid. Ct. Ruling Mart'z Rept.

22). The State filed a memorandum in opposition to plaintiff's motion for Reconsideration of the court's Decision on the Martinez Report, together with a motion to Submit for Decision on 10-18-07. see: 6th Dist. Ct. Judmt Roll & Index; entry: 10-18-07, 1965-1967; see also: Exhibit 16; State's memo. In Opp. to Pl. Mot. for Reconsid.

23). Before the plaintiff was able to file a memorandum in Reply to the state's memorandum in opposition to plaintiff's motion for Reconsideration of the court's Decision on the Martinez Report, the court, just (6) six days after the state filed its memorandum, the court entered a memorandum Decision denying the motion for Reconsideration of the Court's Decision on the Martinez Report. see: Exhibit 14; 6th Dist. Ct. memo Decis. & Ord; entered: 10-24-07.

24). On or about 10-30-07, the plaintiff filed a Notice of Appeal. see: 6th Dist. Judgmt Roll & Index: 7-11-07, 1520-1521.

SUMMARY OF THE ARGUMENTS

I. The Trial Court Erred when it Refused to Rule Against The Defendants in Accordance with Ut. R. Civ. P. Rule 56 (e) and (f), When The State Failed To Oppose The Plaintiff's Summary Judgment Motion.

When the state failed to file the memorandum in opposition to Plaintiff's motion for summary judgment, the Rule 56(e) states that failure to "respond, summary, if appropriate, shall be entered against him." The plaintiff argued in the memorandum in support of the motion to strike Defendant's Joint motion and stipulation, and in Plaintiff's Reply to the state's response to the Plaintiff's motion to strike Defendant's "Joint motion And stipulation." The plaintiff argued in these two documents that the state had ample opportunity to come forward with the evidence they had, but failed to do so; moreover, the court did not require the state to show why they did not file the required memorandum in opposition to plaintiff's motion for summary judgment.

II. The Plaintiff Is Entitled To A Summary Judgment Based upon Constitutional Rights Violations Because The State And Defendant, Lisa Soper committed a "flagrant" Constitutional Right violations.

The plaintiff has had a Court Order (injunction, permanent), obtained from The Third District Court, Salt Lake County, Salt Lake City, Utah since 9-11-01. The Prison, through the then warden, Clint Friel was on notice of the injunction, however, its existence only garnered contempt and retaliation. The Court order was violated no less than 14 to 16 times not counting the instant cause of action. Similarly, the (CUCF) facility were no different respecting the Court order. The defendant, Lisa Soper was in the process of violating the Court order when the injury happened. The deprivation of the "prescribed dose of insulin" violated the letter and spirit of the Court order intentionally, and because the Court order mandated that they provide me only what the Constitution Amendment VIII, and Constitution of Utah Article I, section 9 requires to be done, (provision of vital medication), and supplemental feedstuffs for treatment of hypoglycemia. (excessively low blood sugar levels). The violation of the

Court order also violated the above constitutional provisions. The deprivation was "flagrant," by virtue of what the complications of diabetes entails are horrific but the state, and defendant, Lisa Soper, RN's deprivation of the prescribed amount of insulin is corporal punishment.

III. The Trial Court Violated Plaintiffs' Constitutional Rights Secured Under U.S. Constitution Amendment XIV (due process & equal protection of the Laws clause).

The plaintiff filed a motion for summary judgment motion on 6-8-06. The state, almost immediately sought and obtained an enlargement of time to file a memorandum in opposition to Plaintiff's summary judgment motion, by terms in their own proposed order. (The state requested and received an enlargement of time for (303 thirty days after an adverse ruling on the Judgment on the Pleadings Motion). The State failed to submit a memorandum in opposition to plaintiff's motion for summary judgment; what's more, the state never made an argument of "excusable neglect." Nor did the court require the state to advance any explanation.

The court allowed the state to intercept and destroy pleadings that prayed the court enter summary judgment in favor of the plaintiff for violations of Ut. R. Civ. A. Rule 54(c). See: Def. memo. in Opp. Pl. Mot. To Str. Jt. Mot. & Stip. and Ret. memo. in Reply to Def. in Opp. to Pl. Mot. Str. Jt. Mot. & Stip. (these two documents are believed to be attached to the Plaintiff motion And memorandum in support of motion for reconsideration of court's decision on Martinez Report). The court, even when presented a petition to review a (GRAMA) Records Request Denial which sought to obtain evidence that the state was engaging in such conduct, and perhaps even illegal conduct, the court denied this attempt to bring to light acts that brings nothing but disrepute upon the state of Utah and the Office of the Utah Attorney General. The court went forward to rule in favor of the state solely on the state's response to the illfated motion to strike the Joint motion And stipulation", and other acts including ruling on the state's pleadings before plaintiff could draft and file responsive pleadings.

Also, the rules of Civil Procedure, specifically Rule 56(e), (Summary Judgment); and Rule 34(b) and various canons of Ethics and conduct, when the rules of civil procedure works one way with a persons or entity, who invoke the rules and statute, and laws both state and federal, and then is applied differently in my case is a violation of both due process, and equal protection of the laws of the U.S. Constitution and the Constitution of Utah.

IV. The Trial Court Violated Plaintiff's U.S. Constitution Amendment VII Rights when It Denied Plaintiff's Discovery Motions, And (GRAMA) Records Request Appeals For Defendant, Lisa Soper's Physical Address for purposes of service of process.

The trial court, in its 1-6-06 memorandum Decision ruled, inter-alia, that the plaintiff must serve defendant, Lisa Soper, RN with a summons and a copy of the Amended Complaint. (At this time plaintiff was in a level-2 housing facility, (maximum security), and locked-down in the cell (20) twenty-plus hours per day). The plaintiff filed a motion for Official service of process, and the motion was denied. see: 6th Dist. Ct.; case #040600383; entered on: 3-2-06; pg. 2, herein: Exhibit V. The plaintiff consulted the Utah Rules of Civil Procedure Rule 4(g); the plaintiff then filed a motion for service by other means, (clerk of the Church affect service by mail, and this motion was also denied. see: Exhibit J; memo. Decis. entered: 12-13-06; pg. 2 at 1. Then, the plaintiff filed a (GRAMA) Records request, and the State refused. The plaintiff then filed a Petition for Judicial Review of (GRAMA) Records Request Denial, with the court and the court denied this motion as well. see: Exhibit A; memo. Decis.; entered: 7-3-07; pg. 4-5, at 4).

The refusal at every level of the process in perfecting service and Notice was rebuffed. The court's refusal at every quarter, the court thus places the defendant, Lisa Soper outside the court's jurisdiction the affect of which was to deny plaintiff's right to trial by jury as provided in the U.S. Constitution Amendment VII.

V. The Trial Court Violated Plaintiff's Constitution of Utah Article I,
(pg. 19)

Section 9 Rights By Denying Plaintiff's Motions for Discovery For Defendant, Lisa Soper's Physical Address For Purposes of Service of Process.

As argument IV above demonstrates, the plaintiff made every conceivable effort to properly serve defendant, Lisa Soper with a summons, and copy of the Amended Complaint.

The trial court's rulings on 1). the motion for Official Service of Process; 2). motion for Service of Process by other means, Ut. R. Civ. P. Rule 4(g); 3). Requests for Discovery for the physical address of defendant, Lisa Soper; and 4). (GRAMA) Records Request and plaintiff's petition for Judicial Review of (GRAMA) Denial, have operated to unreasonably regulate plaintiff's right to redress for the violation of plaintiff's Constitution of Utah Article I, Section 9.

VI. The Trial Court Abused Its Discretion In Allowing The State To Use The Martinez Report To Circumvent Ut. R. Civ. P. Rule 56 (e), And Rule 34 (b); thereafter Denying Plaintiff A Ruling on Plaintiff's Memorandum Opposing Defendant's Motion To Be Allowed To file A Martinez Report.

The state failed to file a memorandum in opposition to plaintiff's motion for summary judgment, under Ut. R. Civ. P. Rule 56 (e), the state was subject to a ruling against them therefor. Approximately (5) five months later, and over plaintiff's objections, the Court allowed the defendants to file a Martinez Report.

The Court, in allowing the defendants to file the Martinez Report, allowed the state to circumvent the prescriptions of Ut. R. Civ. P. Rule 56 (e), and Rule 34 (b) and Rule 37 (a)(2), and then, the court denied the plaintiff's a ruling on the motion in opposition to the state's motion to be allowed to file a Martinez Report.

VII. The Trial Court Abused its Discretion When It Denied Plaintiff's Motion To Compel Discovery; And Then Proceed To Rule Against Plaintiff on Issues

That Were Subject Of The Discovery Requests.

The plaintiff made only two requests for Discovery; 1). the first request for documentary evidence for those claims in the Amended Complaint; 2). the second request were a mix of those items not received in the first Request for discovery, but also the documents particular to the issues raised in the Supplemental Pleadings. The result of the court's rulings against the plaintiff's repeated attempts to obtain those discovery items, including the court's ruling on the issues that plaintiff sought discovery for the court then used the want of evidence in favor of the state.

VIII. The Trial Court Erred In Denying Plaintiff's' motion for Reconsideration

After the court allowed the defendants to "control the case," to stop constant filings of motions, and the state benefitted from their misconduct and even criminal conduct, culminating into a reversal of positions, (the state was subject to an adverse ruling on plaintiff's summary judgment motion primarily because the state failed to file an opposing memorandum, to the state obtaining a summary judgment due to plaintiff opposing the state's summary judgment motion), this was accomplished by the state intercepting, destroying, and/or delaying key pleadings. When the court entered a memorandum decision against the plaintiff, the court expressly refused to rule on the supplemental pleadings. The plaintiff filed a motion for reconsideration of the court's memorandum decision of July 3, 2007 pursuant to U.T. R. Civ. P. Rule 54(b), because the court declined to rule on issues in the supplemental pleadings, and plaintiff contends that the memorandum decision was therefore not final and subject to revision.

ARGUMENT I

The Trial Court Erred When It Refused To Rule Against The Defendants In Accordance With Utah R. Civ. P. Rule 54(e), and (f), When The State Failed To Oppose The Plaintiff's Summary Judgment Motion.

On 11-17-04, plaintiff filed a complaint for medical malpractice and Constitutional Rights Violations, specifically, Medical Malpractice where a Registered Nurse, Lisa
(pg. 21)

refused the plaintiff a medically prescribed amount of insulin. Plaintiff refused to take the lesser amount defendant, Lisa Soper ordered me to take and asked to see a healthcare provider both in a Healthcare Request form, (HCR), and verbally. Plaintiff stopped eating as well to avoid hyperglycemia, (excessively high blood sugar levels).

I was not allowed to consult with the healthcare provider because the medical unit staff at (CUCF) took a "wait him out" attitude respecting the discrepancy in the prescribed amount of insulin. As a direct result of the denial of the refusal to provide a prescribed amount of insulin and a denial of access to a healthcare provider, and actual delay, the plaintiff suddenly lost consciousness in my cell and fell to the floor. On the way to the floor, however, plaintiff's left side of my face struck a

After the injury happened, the plaintiff made several requests for pain medication and complaints about not receiving adequate treatment where the injury was obvious that the injury was serious. Once the extent of the injury was ascertained, the prison took too long before scheduling surgery, the plaintiff's injuries turned into permanent injuries. See: Pl. Amend. Compl.; see also: Exhibit 7(b); X-ray Rpts. 12-29-03.

The plaintiff also alleged constitutional rights violations; specifically, U.S. Constitution Amendment VIII, because the state and the defendant, Lisa Soper engaged in deliberate and intentional act to violate my constitutional rights.

The plaintiff also alleged violations of the constitution of Utah Article I, section 4 for the acts described above.

On 4-12-05 the state, when called upon to answer the complaint, then filed a motion to dismiss pursuant to Ut. R. Civ. P. Rule 12(b)(6).

On 1-6-06 the trial court entered a memorandum Decision dismissing in part, and denying in part the state's Rule 12(b)(6) motion to dismiss, and again ordered the state to answer the issues the court did not dismiss. See: 6th Dist. Ct. memo. Decis. entered: 1-6-06, Exhibit G. The State

answered the Amended Complaint on 4-28-06, Exhibit F; 6th Dist. Ct. Dock. Evt. Statmt, pg. 3.

Then, right on the heels of the State's answer on 5-12-06, the state filed a motion for judgment on the Pleadings, the state argued, "sovereign immunity." Exhibit P; Def. mot. Judmt on Plead; 5-12-06.

Based upon the State's answer to the Amended Complaint and the State's motion for judgment on the Pleadings, the plaintiff filed a motion for Summary Judgment, on 6-8-06. See: Exhibit F; 6th Dist. Ct. Dock Evt Statmt, pg. 3; entry: 6-8-06.

The state filed a "Request to Submit for Decision, (on the motion for judgment on the Pleadings), and a Request to Stay briefing on Plaintiff's motion for Summary Judgment until the Court rules on the motion for Judgment on the Pleadings) see: Exhibit B; Dock. Evt. Statmt; pg. 3; entry date: 7-13-06 - The Court granted the state's request on: 8-4-06. The state's proposed order, which the Court signed, required the state, "[I]f the State's motion for Judgment on the Pleadings is denied, the state must file its memorandum Opposing Plaintiff's Summary Judgment motion within thirty days of the Court's ruling." See: Exhibit H; 6th Dist. Ct. Ord. entered: 8-4-06.

The Court entered a memorandum Decision on 9-28-06 denying the State's motion for Judgment on the Pleadings. The time in which to file a memorandum in Opposition to the plaintiff's Summary Judgment motion began to run on 9-29-06. See: Exhibit H; Ord. Stay Bri. of Sum'ry Judmt mot; see also: Exhibit I; Memo. Decis. Judmt on Pl.

The state failed to file a memorandum in Opposition to Plaintiff's Summary Judgment motion.

The Utah Rules of Civil Procedure Rule 56 (e) provides, in relevant part:

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not
(pg. 23)

rest upon the mere allegations or denials of his pleading but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate shall be entered against him."

Utah Rules of Civil Procedure Rule 56(e) above makes it clear that if the non-moving party fails to file an opposing memorandum, and supporting affidavits, (where the plaintiff has used them), that summary judgment [if] appropriate shall be entered against him." The plaintiff has argued that a summary judgment against the state is appropriate because the state has had ample time to respond appropriately, and if there was some "excuseable neglect," the state should have raised it before the court. The state simply did not find it necessary to comply with the Utah Rules of Civil Procedure, especially Rule 56(e), and nor have there been called upon for some reasonable excuse for not responding. see: Pl. Mot. To Str. Joint Mot. & Stip.; pg. 4-7, herein Exhibit L. see also: Pl. memo. In Reply To Def's memo. In Opp. to Mot. to Str. Jt Mot. & Stip. pg. 7-11; Exhibit R.; see There: Exhibit S; Pl memo In Opp. Def's Mot. Allow state to file Martz Rept. and Stay Proc.; pg. 20-21. The plaintiff also argued in opposition to the proposed stay on the proceedings, reasoning that from the time of the obligatory "Notice of Intent to Commence Legal Action", until the court ordered the state to answer the complaint, and then again from the answer to the Amended Complaint until October 29, 2006, when the state's memorandum in opposition to the plaintiff's summary judgment motion was due. They also had ample time during that time to present to the court the proffered evidence that plaintiff's claims must fail as a matter of law." see: Def. Martz Rept. pg. 2; para. 1.

On 12-20-06, at a telephone conference, the plaintiff informed the court that a motion and memorandums in support had been prepared outlining what my concerns were about the offending "Joint Motion And Stipulation", and that the document had been sent to the prison's contract attorneys for copies, and that as soon as I received it back I would forward the court a set of documents, and send one to the Attorney General's Office. The document referred to above was the motion to strike the Defendants' "Joint Motion And Stipulation." In that document I explained that the state's
(pg. 24)

objective was first, to cause the plaintiff to acquiesce in my motion for summary judgment, by contriving a "Joint Motion And Stipulation", through misrepresentation and fraud, and trickery. Second, to obtain another opportunity to file the omitted memorandum in opposition of plaintiff's motion for summary judgment and to do so by riding along with the Supplemental Pleadings and calling it "Judicial economy", and, three to prevent the plaintiff from having a fair hearing on the merits. see: Exhibit K; Def's Trans. of Teleph Confer.; 12-20-06.

The court ignored the plaintiff's pleadings referred to above and essentially acted in collusion with the state to keep the issue of untimely memorandum in opposition to motion for summary judgment from the record, and in doing so acted in collusion with the state to defeat the plaintiff's summary judgment motion. The plaintiff, from January 2, 2007 until the filing of the motion for reconsideration of Court's Decision on Martinez Report, all the pleadings filed asserted the timeliness issue respecting the summary judgment motion, but the state argued in those documents against all the points except the timeliness issue. The court, although it referred to the first motion to strike the Joint Motion And Stipulation, it did so in preparation for adjudicating that motion using only the state's memorandum in opposition to plaintiff's motion to strike the "Joint Motion And Stipulation". The state responded to all the issues in the motion to strike except the timeliness issue. The court, did have in the record plaintiff's Reply memorandum in support of the motion to strike, but the court ignored that document. see: 6th Dist. Ct. Judmt Roll & Index; entry: 2-26-07, pg. No. 962-1027; see also: Exhibit R; Pl. memo. IN Reply Def. memo IN Opp. mot. str. "Jt. mot. & Stip."; pg. 3-4, No. 6, and throughout. The court also had in the record a letter from the plaintiff complaining that the plaintiff's legal mail addressed, and forwarded to court had been intercepted and probably destroyed, in an effort to defeat the summary judgment motion. see: Exhibit M, Ltr. 6th Dist. Ct. dated: 1-25-07, re: tampering with legal mail by state. Yet, the court, in its memorandum Decision, Exhibit A; memo. Decis; entered: 7-3-07, pg. 2, at 1). The court begins its analysis by stating, in relevant part:

1. "Plaintiff's motion To Strike Defendant's Joint motion And
(pg. 25)

stipulation." [T]his motion has not been filed with the Court. The court was unable to locate it in the file. As nearly as I can tell the defendant received the motion and responded to it. The defendant's response is in the file dated 25 January 2007."

The Court knew well my complaints about the state tampering with and destroying legal documents for the purpose of defeating plaintiff's summary judgment motion. This was done with the court's blessing because plaintiff thought it prudent to not allow the state to attempt to defraud me again, and called for the court to enter a judgment for the plaintiff and against the state. To understand the nature of this allegation, see: Exhibit A, 6th Dist. Ct. Memo. Decis. entered 7-3-07; pg. 1; para. 2, the court states, in relevant part:

"[T]he plaintiff did not respond to the Martinez Report, and the time to do so has expired."

The fact that the 6th District Court's Judgment Roll and Index shows that the plaintiff did in fact file a memorandum opposing the state being allowed to file a Martinez Report, combined with the several pleadings filed arguing the timeliness of an opposing memorandum of plaintiff's motion for summary judgment it is obvious that the court was in the mode of punishing plaintiff by switching the parties' position, (where the state had failed to file a memorandum in opposition), by then arranging circumstances, (the intercepted legal mail by prison officials at the behest of the office of the Utah Attorney General), and going straight on and awarded the defendants their summary judgment. Nothing makes it appear more biased and malevolent than the court's statement above, that, "The plaintiff did not respond to the Martinez Report, and the time to do so has expired." This, even though the state was in exactly that same position back in October 29, 2006, and it was the court who resurrected the state's opportunity to oppose the plaintiff's motion for summary judgment while simultaneously foreclosing the plaintiff's opportunity to be heard. These actions by the court makes it clear that the summary judgment procedure is employed repressively by the court against the plaintiff.

See: Louis Timm v. T. Lamar and Altha Dennis, 851 P.2d 1178, 211 Utah Adv. Rept. (1983) The Supreme Court of Utah observed that: "[S]ummary judgment procedure is generally considered a drastic remedy, requiring strict compliance with the rules allowing it. Parmelee v. Chicago Eye Shield Co., 157 F.2d 582, 168 A.L.R. 1130 (8th Cir. 1946). In Lazar v. Allen, 347 So.2d 457 (Fla. Dist. Ct. App. 1977), the court stressed the importance of "scrupulously observing the notice requirements" prior to entering summary judgment. The Florida Supreme Court observed:

[27] "[I]f the [requirements of the rules] are not fulfilled, both in letter and in spirit, the summary judgment procedure may become a vehicle of injustice rather than a salutary medium of reaching a swift but just result on a pure matter of law, as intended by the framers of the rule."

Additionally, the Utah Rules of Civil Procedure Rule 56 is also abused where the plaintiff had requested discovery, and the state did not respond to those discovery items, and the matters sought to be discovered went on to a summary judgment grant for the defendants, see: Exhibit X; Pl. first Req. Disc'y; dated: 8-20-06. On this document, one check marks which represent what items of discovery plaintiff requested, but there was no response from the state in violation of Ut. R. (iv. P. Rule 34(b). see Exhibit S; Pl. memo. In Opp. Def. Mot. file Martz Rept.; pg 7-9. Those items enumerated were particular to the Amended Complaint. The state did not provide a single item of discovery documents particular to the issues in the Supplemental Pleadings. see Exhibit S above, pg. 13-15.

The court, in its October 24, 2007 memorandum Decision; Exhibit 14; entered 10-24-07, the court states that: "[T]his court's memorandum Decision; Exhibit 14; entered July, 2007 is a final decision which disposed of all the issues in this case."

It is fundamentally unfair to grant summary judgment where the discovery process is not complete, or not dealt with at all. see: Downtown Athletic Club v. Herman, 740 P.2d 275 (Utah Ct. App. 1987), "Generally, summary judgment should not be granted if discovery is incomplete, since (pg. 27)

information sought in discovery may create a genuine issue of material fact sufficient to defeat the motion."

The U.S. Supreme Court provides a remedy for a party requesting discovery and the party from whom the discovery is requested from in a case entitled: Farmer v. Brennan, U.S. Ct. App., 8th Cir; NO: 94-3787; 4-26-96, respecting the issue of incomplete discovery as it relates to Rule of Civil Procedure Rule 56, Summary Judgment, in (quoting) Resolution Trust Corp. v. North Bridge Assoc., 22 F.3d 1198 (1st Cir. 1994) observed that:

"[I]t noted also that the facts needed to oppose Summary Judgment were within the exclusive control of the defendant and that the incompleteness of discovery was the defendant's fault. Id. at 1208. It remanded, explaining Rule 56(f) should ensure that "a litigant who fails to answer potentially relevant discovery requests on schedule will be unable to demand summary judgment until after he remedies his failure." Id.

The above rule should apply in this case because the items requested and denied in both the first and second Requests for discovery were in the exclusive control of the state, and if the state had provided the discovery items the evidence would have demonstrated that there was a genuine issue of material facts that would not only preclude the state's motion for Summary Judgment, it would have been sufficient to grant plaintiff's motion for Summary Judgment. See: Pl. Memo. In Supp. Mot. For Reconsider. Ct's Decis. on Martínez Repts; pg. 47-50. see also: Exhibit X; Pl. 1st Req. Disc'y; and Exhibit Y; Pl. 2nd Req. Disc'y. Accordingly, the Court of Appeals should apply the same sanctions above: Resolution Trust Corp.; Supra; and remand the case for further procedures consistent with the above cited case.

ARGUMENT II

The Plaintiff Is Entitled To A Summary Judgment Based Upon Constitutional Rights Violations Because The State, And Defendant, Lisa Seger

(pg.28)

Committed A "Flagrant" Constitutional Rights Violations.

The provisions of Utah Rules of Civil Procedure Rule 56(e) are as follows:

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

A. Violation of the Court Order.

The plaintiff argued, in the plaintiff's motion for summary judgment, see: Exhibit W; fl. memo in Supp. Sum'my Jud'm't; pg. 4-5, that the state, and defendant, Lisa Soper "willfully failed to comply with a legal duty imposed upon them." Exhibit W; pg. 5, para. 2; see also: Exhibit B; Lawrence Jackson v. Clint Friel, 3rd Dist. Ct., Case #010904240; entered: 9-12-01; Ut. R. Civ. P. Rule 65A Injunction.

That legal duty was imposed upon them was the same duties imposed by:

(i). The U.S. Constitution Amendment XIV (due process) Clause, because the plaintiff has a liberty interest in receiving medical treatment for a serious medical need, and that includes nutritionally adequate meals including supplemental foodstuffs for the treatment of diabetes mellitus. See: Doregan v. Fair, 859 F.2d 1059, 1063 (1st Cir. 1988)

(ii). U.S. Constitution Amendment VIII (cruel and unusual punishment). This constitutional provision was given meaning in Estate v. Gamble, 429 U.S. 99, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976), which the U.S. Supreme Court, in relevant part determined that:

"[W]e therefore conclude that deliberate indifference to serious medical needs of prisoners constitute "unnecessary infliction of pain" proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." *Id.* at 105.

(iii). Constitution of Utah Article I, Section 9, the trial court in its memorandum Decision; Exhibit G; memo. Decis. And ord; Case #040600383 entered on; 1-6-06 of Article I, Section 9, the right to be free from unnecessary rigor, and in (quoting from Spackman v. Board of Education, 16 P.3d 533, 538-9 (Utah 2000); this court, (trial court) determined that:

"[I]n order to successfully proceed with a private lawsuit on a State constitutional claim for monetary damages, a claimant must establish three required elements: 1). That he suffered a "flagrant" violation of his constitutional right; 2). That the existing remedies do not redress his injuries; and 3). That equitable relief was and is wholly inadequate to protect his rights or redress his injuries.

Therefore, in this case, in order to establish a "flagrant" violation of his constitutional rights under Utah's Constitution, the plaintiff must allege that he has a "clearly established right" and that the state employee, acting within the scope of state employment, understood that said employee's actions would violate that right. *Id.* at 538.

The plaintiff's amended complaint alleges that the plaintiff has the right to receive regular doses of vital medication. The plaintiff further alleges that a state employee, medical technician, "Lisa", acting within the scope of her state employment, refused to administer the required medication to him knowing by virtue

of her position as a medical technician, that withholding the [correct dosage of insulin] would be detrimental to the plaintiff's health. Id.

The court finds that these basic allegations are sufficient to minimally state a cause of action for a "flagrant violation of the plaintiff's rights under Article I, section 9 of the Utah Constitution."

Having ruled that the plaintiff had alleged (minimally) stated a cause of action for a "flagrant" violation of plaintiff's constitutional rights under Article I section 9 of the Utah Constitution, this was the first of the 3 three elements outlined in Spackman, supra, the court determined this of the other two elements:

"[T]he Amended Complaint also indirectly alleges that the existing remedies available to the plaintiff (the Order of the Third District Court) were not sufficient to protect the plaintiff's right to receive timely and proper medication. In addition, the court in Bett, case held that "if prisoner's rights under article I, section 9 are violated, injunctive relief may not be adequate to remedy prisoner's injuries." 922 P.2d 732, 739. Exhibit G; pg. 10, para. 4.

At this juncture, under the trial court's analysis, the only element left to be satisfied is element (1), "Flagrant" violation.

The above referenced court Order, coupled with the trial court's language, that: "knowing by virtue of her position as a medical technician, that withholding the [correct] dose of insulin would be detrimental," and the court order being the backdrop for purposes of demonstrating a "flagrant" violation, see: Exhibit B; 3rd Dist. Ct. Ord.; case #010904240; entered; 9-12-01, it states, in relevant part:

"To administer regular and timely medical treatment to petitioner herein LAWRENCE JACKSON, by means of providing him with regular doses of insulin, and to administer to petitioner timely and regular foodstuffs in accordance
(pg. 31)

with all orders of the treating physician or other medical staff providing his care."

The term above, "orders" of the treating physician is thus the touchstone in the determination as to a "flagrant" violation on plaintiff's constitutional rights.

The court order referred to by the trial court does nothing more than require the defendants to do what the U.S. Constitution Amendment VIII, and XIV, and The Constitution of Utah Article I, section 9 requires them to do. The constitutional guarantees and the court order whose provisions are violated by any measure is "flagrant." See: *Estelle v. Gamble*, 429 U.S. at 104-05; see also: *Bett v. Deland*, 922 P.2d at 744 No. [13].

The State filed a Martinez Report, in which the state's argument in chief is; [15]. "In November 2003 Jackson's prescribed dose of insulin was 7 units regular and 30 units (sic) of NPH," [16]. On November 7, 2003, Jackson's glucometer reading before breakfast showed his bloodsugar level was 177. According to medical records, Jackson demanded to take an insulin dose of 15 regular and 30 units NPH. [17]. but based on Jackson's blood sugar level and sliding scale, he could only take a total of 11 units of regular."

On the same issue the court, in its July 3, 2007 memorandum Decision, pg. 11, para. 4, the court observes the following:

"[I]t is impossible for the court to determine which dose was the right dose. The only entry by Dr. Burnham concerning the prescribed dose is the entry date 5 February, 2004. Which was several months after the injury. It is not clear when the plaintiff's dosage was originally prescribed. However, this issue does not create a genuine issue of material fact because even if the nurse offered the plaintiff an incorrect dose, she did not refuse him medical treatment. Indeed, the plaintiff made a personal decision and determined to refuse to take the medication." Exhibit A; pg. 12, para. 1.

The plaintiff asserts that the court's three conclusions above are in error (pg. 32)

1) "It is impossible for the court to determine which dose was the right dose"; 2) "this issue, (what dose was the correct dose), does not create a genuine issue of material fact; and 3). Even if the nurse offered the plaintiff an incorrect dose, she did not refuse him medical treatment."

1). The first conclusion the court made respecting "which dose was the right dose," the state presented copies of plaintiff's medical charts the copies of the state medical charts goes back to 11-3-03; however, in order to establish which dose of insulin was in effect at the time plaintiff was refused a "prescribed" amount of insulin, the plaintiff attached to the memorandum in support of motion for reconsideration of the court's decision on Martinez Report, several entries into plaintiff's medical charts that predate plaintiff's transfer to Central Utah Correctional Facility, (CUCF), which will establish what the prescribed dose was.

The plaintiff was transferred to the (CUCF) facility, Gunnison, Utah, on 10-31-02. But prior to that move, the plaintiff was treated on a regular basis and just before the transfer, Dr. Kennon Tubbs treated plaintiff as early as 6-21-02. see: Exhibit C(11); med. ch.; Ut. St. Pris. . Dr. Tubbs prescribed an AM insulin dose at 15 R / 30 N. Approximately (45) forty-five days later, 8-6-02, Dr. Tubbs made the following entry:

Diabetes TYPE 1 [MAJOR]

DOCTOR ASSESSMENT

Stable Diabetes And Taking meds PRN Not
on a Regular Dosing Scale Encouraged to
Get A Regular Schedule of Insulin But Re-
fused. He Wants to Self Medicate Based on
His Sugars." Exhibit C(12). med. ch. entry: 8-6-02.

There are ample reasons for "wanting to self medicate" based on blood sugar levels:

(1). There are no diabetic meals served in the Utah State Prison, Nor at (CUCF);

(2). There is poor portion control of the meals ;

(3). The state has, in the past, and even recently in the prosecution of plaintiff's civil lawsuits, where "supplemental foodstuffs, (medically prescribed), are either delayed by (9) nine to (10) ten hours or more, and even Omitted altogether ; and

(4). The prison provides almost no outside yardtime in order to exercise the large muscle groups, and plaintiff's blood sugar levels reflect this omission.

Advancing to 10-21-02 of Exhibit C(12), the prescription for AM insulin was renewed, and transcription was by : Kennon Tubbs, M.D. :

THERAPIES

AM INSULIN

Start : 6-21-2002 ; Stop : 12-18-02

ADMINISTRATION INFO : 15 R / 30 N

On 10-31-02, plaintiff was transferred to (CUCF), see: Entry date: 10-31-02, (9) nine days later after entry by Dr. Tubbs above: Exhibit C(14)

Then, on 12-27-02, I was seen in (CUCF) medical Department by: Ms. Mitten, Barbara L, PAC during this, my first consultation with a healthcare provider regarding plaintiff's diabetes. Ms. Mitten writes:

DIABETES UNSTABLE [MAJOR]

"Review of flow charts showing (sic) poor BS (bloodsugar control). Will renew meds and adjust as needed. Pt., (Patient), was [ordered] AM Insulin of 30 N / 15 R, But states he feels BS go to Low at that dose. Takes only 20 N and 55-R. Discussed with Pt. that he needs to start with 20 NPH and Regular that is ordered, needs to increase 3 units of NPH every 3-5 days until reaching 30

(pg. 34)

with NPH or Stable BS Will Leave PM The
Same for Now." Exhibit C(6).

It is abundantly clear that the Physician's Assistant, Mrs. Barbara Mitten, PAC's intent was to renew the prescription as Dr. Tubbs at The Utah State Prison had established. The above instructions are inconsistent with the prescription order that was written contemporaneously with the verbal instructions. see: Exhibit C(6); (CLCF) med, chs; entry date: 12-27-02. This entry provided the following:

AM INSULIN

Start: 12-27-02 Stop: 6-25-2003

DISCONTINUED: 2/11/03 Renewing order

ADMINISTRATION INFO: 30 N / 1 R + SS

As demonstrated above, the actual prescription, when entered on the medical record, under "THERAPIES" heading, are inconsistent with the written and verbal instructions and prescriptions. It appears that the Physician's Assistant, Barbara Mitten transposed the numbers from the PM insulin order, see: Exhibit C(6):

PM INSULIN

Start: 12-27-02 Stop: 6-25-2003

DISCONTINUED 2/11/2003 Renewing order

ADMINISTRATION INFO: 20 N / 1 R + SS.

The State, in its response to the discovery request, omitted entries in the medical records from: 2-1-03 thru 5-16-03, then to 6-16-03; however, it appears that a David Rich, no apparent title, renewed the prescription as Barbara Henniger, PAC wrote it, and the PM insulin was likewise renewed the diabetes medication (insulin) both AM and PM as it appeared. On 8-13-03, the treating Physician likewise renewed the AM and PM insulin as Barbara Henniger, PAC had wrote it. see: Exhibit C(9).

Between 8-13-03, and 11-7-03, there were no records of a change on plaintiff's insulin doses. Defendant, Lisa Super was perhaps the first employee to dis
(pg. 35)

Cover the discrepancy surrounding the prescription question. What actually took place is Barbara Henniger, in writing the prescription for AM insulin into the computerized medical charts transposed the PM regular insulin dose into the AM regular insulin dose. Of a certainty, the Physician's Assistant, Barbara Henniger had made a mistake in the written prescription in light of the verbal instructions given the plaintiff, and written confirmation into the record, but it is what happened subsequent to the mistake that gives rise to a cause of action.

2). The second conclusion reached by the court: "[T]his issue (what dose was the correct dose), does not create a genuine issue of fact." This conclusion is erroneous because when defendant, Lisa Soper discovered the discrepancy, she used her knowledge of the discrepancy to adversely affect the plaintiff, this is true particularly where the information appears, (the physician's Assistant, Barbara Mitten's verbal instruction, and the written prescription, in the computerized record, may well been displayed in the same screen. If the plaintiff can find the discrepancy in the record, there is little doubt that one of the medical staff could have discovered it. Additionally, the state of Utah should have intervened when another employee, Angelica Tuft, RN made the following notation in the record, in relevant part:

"Would not listen to reasons or to what medical is bound by law w/ regards to the amount we can allow him to take. Wanted to argue and point out "in Dreper then allowed me to take what I've been taking for 15 years, now, all of a sudden you change it w/o telling me." Try as I might, I could not get him to listen w/o interrupting me with his own ideas and opinions."

see: Exhibit C (10); med. ch.; entry date: 11-7-03.

The above shows that the state and its employees were less interested in ascertaining the actual prescribed amount of insulin was, than imposing their collective will upon the plaintiff. Plaintiff believes it to be important that Mrs. Angelica Tuft, RN was told, and the record reflects that there is in existence, a court order mandating treatment, "in accordance with all orders of the treating physician." see: Exhibit C (5) entry: 12-22-02. See:

Duchasne v. Sugarman, 566 F.2d 817 (1977) "Title 42 U.S.C. § 1983 establishes a federal cause of action for damages against state and local officials who have caused individuals to suffer a constitutional deprivation, and was designed to protect them against a "misuse of power made possible because the wrongdoer is clothed in the authority of state law. see also: United States v. Classic, 313 U.S. 299, 326, 61 S.Ct. 1031, 1043, 85 L.Ed. 1368 (1941).

The simple fact of the matter is that the state and the employees had exclusive possession of the medical records, and could have verified that the plaintiff was correct on the dosage prescribed within minutes and with a few keystrokes of the computer's keyboard, but they refuse to not do so simply because they were "clothed in the authority of state law," and right or wrong, they have final say. see: Wilson v. Seiter, 501 U.S. 294, 298 (1991) The Wilson Court reiterated that, "[i]t is obduracy and wantonness, and not inadvertence or error in good faith that characterize the conduct prohibited by cruel and unusual punishment clause. . ."

The court identifies several times the plaintiff's encountered medical staff, or staff was involved in the matter: 1). When plaintiff was denied the prescribed dose of insulin by defendant, Lisa Soper; on or about November 7, 2008; 2). Plaintiff also requested the prescribed dose in the PM of Ms. Angelica Tuff, RN on November 7, 2008; 3). Plaintiff encountered defendant, Lisa Soper, RN on November 8, 2008 and was again denied the AM prescribed dose of insulin; 4). The record shows that Ms. Barbara Henniger, PAC was told of the incident, and she recorded defendant, Lisa Soper's account into the medical record.

Out of all the above encounters, none of these officials bothered to check the records because it was enough for their purposes that they merely say what my prescription was. The Webster (New Edition) Collegiate Dictionary defines "obdurate" thus: stubbornly resistant; unyielding; inflexible, adamant; rigid, uncompromising. Additionally, wantonness is defined, in this context: "having no regard for justice or for other person's feelings, rights, or safety". These terms fit absolutely to the defendant's conduct. This disregard for plaintiff's rights or safety violated both the plaintiff's constitutional Article I, Section 9 rights, as well as violating the spirit and letter of (pg. 37)

The Court Order, see: Exhibit B; 3rd Dist. Ct. Ord., case # 010904240, entered: 9-12-01.

In the plaintiffs' motion for summary judgment, Exhibit W; Pl. memo, In Supp. Mot. Summary Judgment; pg. 6, the plaintiff asserted, in relevant part:

"Also, by virtue of their knowledge and practice in the medical profession, the medical unit, knowing that plaintiff was without insulin and food for what plaintiff contended was (5) days, and the defendants claim it was only (2) days. Under the language of the Court order, even (2) days is a violation of its provisions and proscriptions."

The plaintiff further argued that in so violating the court order, the defendants violated the U.S. Constitution Amendment VIII, and the Constitution of Utah Article I, section 9, that the state and its employees committed a "flagrant" act violating plaintiffs' constitutional rights.

The court order, Exhibit B, provided, in relevant part

"[D]irects Respondent, Clint Friel, Warden of Utah State Prison, to administer regular and timely medical treatment to petitioner here in LAWRENCE JACKSON, by means of providing him with regular doses of insulin, and to administer to Petitioner timely and regular foodstuffs in accordance with all [Orders] of the treating physicians or medical staff providing his care while incarcerated at the Utah State Prison." (Emphasis on "orders" mine). Exhibit B.

The third District Court was even more explicit, as reflected in the minutes of the hearing on the state's motion to dismiss the underlying Ut. R. Civ. P. Rule 65B Petition; see: Exhibit 4, 3rd Dist. Ct. Dock. Evt. Statmt; pg. 4; entry date: 1-23-02; in relevant part:

"[T]he state's motion to dismiss petition is granted, with exception that the court's interim order remains in full force and effect. This order requires the doctors at the Prison
(pg. 38)

at the prison to strictly comply with medical requirements of petitioner." Exhibit 4; pg. 4.

Under the plain language on the face of the order, "in accordance with all "orders" of the treating physicians," and to "strictly comply with medical requirements", the state and its employees failed to comply with the letter and spirit of the court order because the defendant, Lisa Super, and the state of Utah refused to provide plaintiff with the "prescribed dose" of insulin. Thus, there is a genuine issue of material fact as to whether the defendants refused plaintiff a prescribed dose of insulin. As the court phrased it, "[t]he [Correct] dosage of insulin. see: Exhibit G; memo. Dec's, entered: 1-6-06; pg. 10, para. 1. Additionally, there exists a genuine issue of material fact as to whether the withholding of the "correct dosage of insulin", would be detrimental to plaintiff's health. The defendants, and the trial court failed to address this issue. It is material because if established that an interruption of the plaintiff's treatment regime would be detrimental to plaintiff's health, this allegation would, along with the violation of the court order establish the showing the trial court identified as "deliberate indifference", in order to establish a "flagrant" violation under the constitution of Utah Article I, section 9.

The right referred to above, and the "deliberate indifference" standard outlined in Estelle v. Gamble, 429 U.S. at 104-05 are analogous in comparable terms such as "deliberate indifference", whether in the constitution of Utah Article I, section 9, or U.S. Constitution Amendment VIII. Estelle v. Gamble, supra provides, in relevant part:

"[W]e therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain," Gregg v. Georgia, supra at 173 (joint opinion), proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs, or by prison guards in intentionally denying or delaying access to medical care, or intentionally interfering with the treatment once prescribed."

(pg. 39)

3). Even if the Nurse offered the plaintiff an incorrect dose, she did not refuse him medical treatment." When defendant, Lisa Soper refused plaintiff the "prescribed" dose of insulin, she "interfered with the treatment once prescribed". See: Bonetti v. Wiscomb, 930 F.2d 1150, 1154 (6th Cir. 1991) ("deliberate indifference because Nurse interrupted prescribed medical plan, despite the fact that prisoner's wound healed completely").

The court excuses the defendant, Lisa Soper's conduct in saying "[Even] if she was wrong, she did not refuse it to him." Exhibit A; memo. Decis. pg. 11; para. 3 Under Estelle v. Gamble, supra, what defendant Lisa Soper did was to intentionally interfere with the treatment once prescribed. 429 U.S. at 105. The defendant had a duty to ensure that the information she accessed was correct. See: Duchessne v. Sagarman, 566 F.2d 817 (1977). The court in this case determined: "[W]e deal here with the legal procedures in which the government has a far greater familiarity with the legal procedures available for testing its actions depriving individuals of a most basic and essential liberty interest which those uneducated and uninformed in legal intricacies may all too often go unchallenged for a long period of time." C.f. Fuentes v. Shevin, 407 U.S. 67, 83 No. 13, 92 S.Ct. 1983, 32 L.Ed. 2d 556 (1972); Hernandez v. European Auto Collision, Inc., 487 F.2d 378 N.4 (2nd Cir. 1973) (Timbers, J. concurring). Further that: "[14, 15] Title 42 U.S.C. § 1983 establishes a federal cause of action for damages against state and local officials who have caused individuals to suffer a constitutional deprivation, and was designed to protect them against a misuse of power . . . made possible because the wrongdoer is clothed in authority of state law . . ." United States v. Classic, 313 U.S. 299, 326, 61 S.Ct. 1031, 1043, 85 L.Ed. 1368 (1941). Further still: [23, 25] "[I]t is not enough that the appellants may have acted 'sincerely and with a belief [they were] doing right,' for an act violating . . . constitutional rights can be no more justified by ignorance or disregard of settled, indisputable law . . . than by the presence of actual malice." Id. Thus, appellants "must be held to a standard of conduct based not only on permissible intentions, but also knowledge of the basic unquestioned constitutional rights of their charges." Id. at 322, 95 S.Ct. at 1001. The necessity of satisfying both elements of the good faith defense is reflected in the test established by the Supreme Court:

[The relevant question for the jury is whether [appellees] knew or reasonably should have known that the action [they] took within [their] sphere of professional responsibility would violate the constitutional rights of [the appellants], or if [they] took action with malicious intention to [the appellants]. Wood v. Strickland, 420 U.S. at 322, 95 S. Ct. 992]

The U.S. Court of Appeals for the Second Circuit in the above cited case, Citing Burton v. Wilmington Parking Authority, 365 U.S. 715, 725, 81 S. Ct. 856, 861, 6 L. Ed. 2d 45 (1961): quoted the most eloquent critique of State inaction in the discharge of its duties, (in this case, to ensure the Court Order is held inviolate, and thus the constitutional rights sought to be protected by the Court Order):

"[N]o State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. It is of no consolation to an individual denied the equal protection of the laws that it was done in good faith. . . . By its inaction, the Authority, and through it the State, has not only made itself a party to the refusal of service, but has elected to place its power, property, and prestige behind the admitted discrimination."

When the trial court excused the defendant, Lisa Saper's denial of a prescribed dose of insulin, the court determined that "[The plaintiff] himself refused to take the offered insulin because he believed it was the wrong amount. The plaintiff continued to refuse insulin and for two days until he fell and injured his eye." see: Exhibit A; 6th Dist. Ct. memo. Decis.; case #040600383; entered on: 7-3-07; pg. 11, para. 3. It appears that the Court is making an argument that the plaintiff had a duty to mitigate his damages by invalidating my own Court order.

In a case entitled: Smith v. Rowe, 761 F.2d 340; 1985 U.S. App. LEXIS 31025; Fed. R. Serv. 3d (Calahan) 31, the plaintiff in this case sued prison officials for wrongfully charging the plaintiff with a disciplinary policy where she

was placed into disciplinary segregation, she lost her prison job, and she lost goodtime credits.

When the case came on for trial, and where the state argued mitigation defenses the court determined, in quoting Whirl v. Kern, 407 F.2d [**20] at 797. The Whirl court ruled on Whirl's duty to mitigate his damages, that court finding that Whirl had no duty to mitigate his over-stay in jail after charges were dismissed. In Smith, this Court of Appeals agreed with plaintiff, the Court of Appeals observed that:

"[S]mith was convinced that she was right and that she was being deprived of her constitutional rights. She refused assignments to the laundry and utility room as a "matter of principle," insisting that she should be reassigned to her position as a law librarian. On her first appeal this court, in its unpublished order, agreed, holding that Smith had been unconstitutionally placed in segregation that her punishment was illegal, and that she should be released from segregation and returned to her work assignment [**21] as an assistant librarian. It was not unreasonable for the jury to find that Smith's actions were reasonable under the circumstances of this case."

Accordingly, this court of appeals should find that there is a genuine issue for trial, because the plaintiff was refused an amount of insulin prescribed by a prison physician, (Dr. Kennon Tubbs), the see: Estelle v. Gamble, 429 U.S. at 104-05, by "intentionally interfering with the treatment once prescribed". The proof of the intentional acts, see: Exhibit C (17); DOC med. unit med. chts; entry date 11-9-03. The record shows that Mr Barbara Henniger went into the computerized medical charts and changed the prescription back to where they were consistent with her verbal instructions and written prescriptions made on 12-27-02. S.F. Exhibit C (6) DOC med. unit med chts; entry; 12-27-02, then see Exhibit C (17) DOC med. unit med. chts; entry 12-9-03. This particular medical chart, Exhibit C (17) would cast doubt upon the court's findings that "[T]here is no proof that the defendants acted with deliberate indifference to the plaintiff's condition," Exhibit A; memo. Decis; 7-3-07; pg. 12-112. (pg. 42)

But, if they were right, and had not become obstinate, why would the physician's Assistant, Barbara Henniger change the prescription back to its original amount. What is even more telling, the medical record shows that she did so on 11-9-03, at 14:40, that is 2:40 pm. This suggests that this is when Barbara Henniger finally went to the record and discovered her mistake; yet no one had contacted me at that time to inform me that the discrepancy had been corrected and if they had, I would have had time to report to the pill line for my prescribed amount of insulin, and the injury would have been averted. Once again Obduracy got in the way.

The court makes a finding that: "[I]n fact, the court finds that the prison staff acted in the plaintiff's best interest by not giving him the higher dose of insulin he requested because it might have been dangerous to him." The plaintiff attached to the motion for reconsideration, several sheets of plaintiff's medical records at Utah State Prison that showed that at least (19) or more times, some of which show that defendant, Lisa Soper administered the 15 reg / 30 NPH when my bloodsugars were at or below the 177 mg/dl reported by the defendant. see: Exhibit C (15); DOC med. unit med. chs, and I did not have any adverse reactions; "over dose", "go into insulin shock", nor was it fatal; in fact plaintiff was doing exactly what the prison officials in the medical department directed me to do. Those officials were Kevin Tubbs, M.D.; and Barbara Henniger, PAC; take 15 units of regular, and 30 units NPH.

In addition, the plaintiff has a legally binding court order that was also being violated by the state, and defendant, Lisa Soper were resolute in invalidating. The plaintiff had no duty to also invalidate the court order, by relenting and taking whatever dose they wanted to give me. The plaintiff has every legal right to "demand" the prescribed amount of insulin, as the court order, (injunction) requires the defendants to administer. The defendants referred to plaintiff's demands that the state abide by the directives in the court order as, "recalcitrance", caused his injury. Violating a legally binding court order is at the very least, contempt of court. If the state can ignore the law, then there are outlaws running this state, and I have every right; indeed an obligation to oppose the state's illegal conduct.

ARGUMENT III

The Trial Court Violated Plaintiff's Constitutional Rights Secured Under the U.S. Constitution Amendment XIV (Due Process & Equal Protection of The Laws Clause).

The state was required to file a memorandum in opposition to plaintiff's motion for summary judgment on or before October 29, 2006. See: Exhibit H; 6th Dist. Ct. Ord. Stay. Br. on Pl. Mot. Summary Judgment, entered on: 8-4-06. The state, for whatever reason, failed to comply with their own proposed, and signed order, and thus failed to oppose the plaintiff's motion for summary judgment. Under the Utah Rules of Civil Procedure Rule 8(d), the state in effect admitted plaintiff's averments in the summary judgment motion. This provision provides:

(d). "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided."

Additionally, the Utah Rules of Civil Procedure Rule 56(e) also applies in this case. This provision provides, in relevant part:

(e). "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

In a case entitled Valley Bank & Trust Co. v. Wilken, 668 P.2d 493 (Utah 1983). The Supreme Court of Utah determined: "Defenses which have not been raised by the answer or by proper motion may not be raised in an affidavit in opposition to a motion for summary judgment."

The State, during a telephone Conference between the parties and the State, on: 12-20-06; Exhibit K; Def.'s Trans. of 12-20-06 Teleph. Confer, pg. 2, para. 1, said, in relevant part:

"I have no problem with responding to the summary judgment, but it makes more sense if Mr. Jackson wants to use this evidence that he's obtained both the affidavits and medical records, that he would do so and file a renewed motion for summary judgment. That would be my preference, rather than having to respond to two."

The State had already missed their opportunity to file a timely memorandum in Opposition to the plaintiff's motion for Summary judgment. In fact, the State first contacted the plaintiff regarding a "Joint motion And stipulation" on 11-10-06. The State's memorandum In Opposition was overdue by (10) ten or more days. The reason the State "preferred to answer to one summary judgment motion, (one for the Amended Complaint, and one for issues in the supplemental Pleadings), because that would allow the State to avoid the possibility of an adverse ruling against the State as provided in U.R. Civ. P. Rule 56(e).

The Court, when it became apparent that the plaintiff would not assist the State in defeating plaintiff's summary judgment motion by acquiescing. The State filed a motion to be allowed to file a "Martinez report", and the Court granted the State's motion, even over plaintiff's protests that the State failed to oppose the plaintiff's summary judgment motion, and even amid plaintiff's allegations that the State was confiscating plaintiff's pleadings to the Court, see: Exhibit M, Ltr. to Trial Ct. re: Pl. Confisc. from U.S. mail; para 4; see also: Exhibit T (3); Pet. for Jud. Rev. of Den. (GRAMA) Rec. Req. pg. 5; No. 5 and pg. 18-24. The Court ruled on the State's motion to be allowed to file a Martinez Rept. even with a memorandum In Opposition to Defendants Being allowed to file A Martinez Report from the plaintiff on 4-27-07, and the court's ruling on 4-3-07, see: 6th Dist. Ct. Judmt Roll & Index pg. 4-5, and Exhibits 5; pg. 5; No. 15; pg. 18-24.

The Martinez Report was not an appropriate motion for the purposes
(pg. 45)

of defending against a motion for Summary Judgment under Ut. R. Civ. P. Rule 56(c), especially after the adverse party had already failed to file a timely memorandum in Opposition to the summary judgment, because it allows the defendants to omit a response to the summary judgment motion; it also deprived the plaintiff the opportunity to argue for a ruling in the plaintiff's favor based upon the admonishments in Rule 56(c), and that a ruling for the plaintiff is warranted in an absence of a good cause, or "excusable neglect". See: Exhibit S; pg. 5; NO. 15); pg. 18-24. The plaintiff had also previously filed a memorandum in Reply to Defendant's memorandum in Opposition to Plaintiff's motion to Strike Joint Motion And Stipulation. Exhibit R, dated: Feb. 6, 2007; and was entered on 2-20-07. On the other hand, the state was free to circumvent the provisions of Ut. R. Civ. P. Rule 34(b). See: Exhibit S; pg. 6, NO. 16)-20); pg. 6-24.

The Court, despite allegations of state officials tampering with plaintiff's pleadings forwarded to the Sixth District Court; confiscated and destroyed key pleadings; Exhibit L; Mot. and memo. In Supp. of Mot. Str. "Joint Motion And Stipulation" in the court's files, entered on: 2-26-07, the court, in its Memorandum Decision; Exhibit A; pg. 1; para. 2 stated, in relevant part:

"[O]n 15 march 2007, the defendant submitted a request to file a Martinez Report. This request was granted on 28 march, 2007. The defendant filed its Martinez Report on 1 June 2007. The defendant asks the court to consider this report as a summary judgment. The plaintiff did not respond and the time to do has expired."

The court effectively switches the parties positions when the state failed to file a memorandum in Opposition to plaintiff's motion for summary judgment, it was certainly not, as the court determined in its Memorandum Decision of 7-3-07; Exhibit A; pg. 1, para. 2), against the plaintiff: "[t]he plaintiff did not respond to the Martinez Report;" (it was treated as a motion for summary judgment), and the time to do so has expired," applied against the government as it was against the plaintiff, a mere citizen. The court's action violated the plaintiff's due process rights when it refused to hear the plaintiff's pleadings. See: Lawrence v. Texas, 539 U.S. _____ (2003). The

U.S. Supreme Court explained that: "[O]ur opinions applying the doctrine known as 'substantive due process,' hold that the due process clause prohibits states from infringing fundamental liberty interest, unless the infringement is narrowly tailored to serve a compelling state interest. Washington v. Glucksberg, 521 U.S., at 721. We have held repeatedly, in cases the Court today does not overrule, that only fundamental rights qualify for this 'heightened scrutiny' protection — that is, rights which are deeply rooted in this nation's history and tradition," *Ibid.* see also Grutter v. Bollinger et al, 539 U.S. _____, (2003)

There can be no doubt that access to a prescribed amount of insulin is a right that is "fundamental", and is, "deeply rooted in this nation's history and tradition." See: Estelle v. Gamble, 429 U.S. at 103-05. Through Rule 17, Exhibit G. Exhibit 17 (C) is a subtle suggestion of racial animus. This Exhibit by the state has no relation to the defense of excessive force in the applications of restraints. What it does show, however, is the plaintiff's visage, and in the most unflattering manner as possible. It would not be a stretch of a descriptive term as to term it menacing. The state sought to put a face to the individual making the claim. The fact that I am black man, it also shows what my charges are the bits of information may well had the desired effect. This is not the first time the plaintiff has lost a case because of being black and having a sex crime. see: Jackson v. Friel, 3rd Dist. Ct., case #01040440, entered 9-12-01.

The court, when it refused to apply the rules of civil procedure, Rule 56 (e), Rule 34(b), and Rule 37(a)(2), or to even consider a complaint for Acts and Omissions that constitute Contempt of Court, filed on: 9-5-06. see: Exhibit F; 6th Dist. Ct. Dock. Evt. Statmt; pg. 4. The court even ignored a letter complaining of the state confiscating plaintiff's pleadings from the U.S. mail, see: Exhibit M, Ltr to J, Wallace A Lee; dated: Jan 31-2007, the court also ignored a "Petition for Judicial Review of Denial of GRMA Records Request Appeal which sought information pertinent to the allegations of mail tampering and destruction of plaintiff's pleadings forwarded to the Sixth District Court from the mail system. Then, in adding insult to injury, the court ruled against the plaintiff on the motion to strike, which was the center of the controversy primarily because it raised, for the first time, the timeliness issue of the state's memorandum

In Opposition to plaintiff's motion for Summary judgment, The plaintiff believes that the singled out the plaintiff for their treatment for race reasons as it relates to the plaintiff's charge for which the plaintiff is incarcerated for. This type of treatment is violative of the U.S. Constitution Amendment XIV. (equal protection of the laws) clause which provides in relevant part.

"Nor deny to any person within its jurisdiction equal protection of the laws."

In Grutter v. Bollinger, *Supra*, the U.S. Supreme Court went on to explain Justice Powell began by stating that "[T]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal". Bakke, 438 U.S. at 289-290. "We are a free people whose institutions are based upon the doctrine of equality" Loving v. Virginia, 338 U.S. 1, 11 (1967).

Had the plaintiff, a black prisoner done what the government employees have done in this case, (tampering with U.S. mail, (legal mail), there is no doubt that the plaintiff would have been charged with a criminal offense, but when the state commits such offenses, the Court rewards them with a Summary judgment. More frequently, one can view the National News and see that some government officials, and other influential people are being required to court for their misconduct and criminal conduct, and there is no reason why officials in Utah are held accountable as well.

ARGUMENT IV

The Trial Court violated Plaintiff's U.S. Constitution Amendment VII Rights when it Denied Plaintiff's Discovery Motions And (GRAMA Records Request For Defendant, Lisa Soper's physical Address for purposes of service of process.

The U.S. Constitution Amendment VII Provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise
(pg. 48)

wise re-examined in any Court of the United States, than according to the rules of the common law."

The plaintiff asserts that the trial court, in its 7-3-07 memorandum Decision, Exhibit A; memo. Decis. case # 040600383; entered 7-3-07; pg. 4, No. 4, thru pg. 6, violated the above Constitutional Amendment because the plaintiff sought to serve the defendant, Lisa Soper with legal process as ordered by the court in its 1-6-06 memorandum Decision; G; pg. 15, No. 6. The plaintiff first attempted to find the defendant, known to me at that time as "medical Technician, Lisa". Plaintiff attempted to find out what her whole name is, but prison officials would not say. Plaintiff found an inmate who knew her full name. Plaintiff first asked prison officials is there someone who could serve process upon Lisa Soper, defendant; and again I was denied.

On February 9, 2006, the plaintiff filed a motion for service of process upon defendant, Lisa Soper. The court, in a memorandum Decision entered on 3-6-06 denied the plaintiff's motion and in so doing directed the plaintiff to consult Ut. R. Civ. P. Rule 4. Exhibit V; 6th Dist. Ct. memo. Decis; entered on 3-6-06, pg. 2-3. The plaintiff reviewed Ut. R. Civ. P. Rule 4, and determined that Rule 4(g) was a viable means of perfecting notice, and plaintiff filed a motion for service of process by other means pursuant to Ut. R. Civ. P. Rule 4(g) on June 8, 2006. The court denied this motion as well, see: Exhibit J; 6th Dist. Ct. memo. Decis; pg. 1, No. 1 - pg. 3. After the latest denial plaintiff consulted the prison's contract attorneys to determine what I could do from the prison to serve the defendant, Lisa Soper with legal process, and was referred to the Salt Lake County Sheriff's Office who stated that they could serve the defendant, Lisa Soper, but needed an affidavit of impecuniosity approved by the court. The plaintiff obtained an order from the trial court determining that the plaintiff is impecunious for the purposes of service of process from Salt Lake County Sheriff's Office. When the plaintiff forwarded the order on plaintiff's Affidavit of Impecuniosity, Exhibit T entered on 2-16-07. Approximately (30) thirty days later the Salt Lake County Sheriff's Office returned the summons and Amended Complaint stating that they needed a physical address to serve the summons and Complaint. At that point, the plaintiff submitted a (GRAMA) Records Requests to obtain defendant, Lisa Soper's physical address, which was promptly denied by the Department of Corrections. I appealed to the circuit

Executive officer and was there denied the address yet again. Plaintiff then filed a Petition for Judicial Review of Denial of (GRAMA) Request Appeal, see: Exhibit A; memo. Decis., entered: 7-3-07; pg. 4; NO. (4), pg. 6. The court, in its December 13, 2006 memorandum Decision, Exhibit J; pg. 1-3. in response to plaintiff's motion for service of a summons by other means Pursuant to Utah Rules of Civil Procedure Rule 4(g). The court denied this motion could be carried out by the Clerk of the court and plaintiff could have provided a stamped envelope, self address envelope, (plaintiff had \$0.57 on the inmate account), and postage is the only conceivable cost in service by mail. The court determined also that the Clerk of the court could not "locate, identify, and serve all parties." all that would have been required at that juncture was for the Clerk of the court to simply ask of the Department of corrections, defendant, Lisa Soper's physical address, or mailing address. The court also articulated at least (3) three reasons the plaintiff requests the court to assist plaintiff in the service of process; Exhibit J; memo Decis.; entered: 12-13-06; pg. 1-3, but an additional reason was that the plaintiff was confined in a segregated lock-down housing. The court also found that the plaintiff did not "establish any of the required conditions under Rule 4(d)(4)(A)". The court identified (3), three conditions "in several instances. But, plaintiff argues that under the circumstances, that: (1). "Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence; (2). because the state first transferred the defendant, Lisa Soper from (CUCF), to the Utah State Prison - Draper, Utah site shortly after the cause of action accrued and because my housing in a segregated -lock-down makes it impossible to determine if the transfers were for legitimate reasons, or to make it harder, if not impossible to serve the defendant from out of a lockdown facility. To make matters worse, the plaintiff was shortly transferred to The Utah State Prison where defendant, Lisa Soper was, rumored to be at the Olympus facility, but plaintiff still could not locate the defendant and was further hampered when it was said by prison officials that defendant, Lisa Soper was terminated from her employment.

The court has put down plaintiff's every effort to serve the defendant, and the result has been that the plaintiff has been thus prevented from prosecuting.

(pg. 50)

this lawsuit for the court acquiring in personam jurisdiction which frustrates plaintiff to bring civil suit and to be heard by a jury as secured by the U.S. Constitution Amendment VII.

ARGUMENT V

The Trial Court violated Plaintiff's Constitution of Utah Article I, Section 9 Rights By Denying Plaintiff's Motion For Discovery For Defendant, Lisa Sozer's Physical Address For Purposes for service of service of process.

As argument IV above demonstrates, the plaintiff made every conceivable effort to properly serve defendant, Lisa Sozer with a summons and copy of the Amended Complaint

The fact that the court denied motions, including Ut. R. (Civ. P. Rule 4(g), and (GRAMA), and virtually all other motions made to serve the defendant, Lisa Sozer, leaves the court without in personam jurisdiction. the lack of jurisdiction operates as a bar to the Plaintiff's case being adjudicated on the merits, and is therefore an unreasonable regulation of plaintiff's Article I, Section 9 rights to be free from unnecessary rigor. see: Bott v. DeLand, 922 P.2d at 737 NO. [4,5].

The court, in its memorandum Decision, see: Exhibit A; memo. Decis.; entered: 7-3-07, NO. 4 thru pg. 6, para. 1, addresses the "GRAMA request with the Utah Department of Corrections, which was denied." The court continues to state that the GRAMA Records Request was denied pursuant to Utah Codes Annotated §63-2-302 (1)(f). The court goes on to explain the legislative intent in acting the Governmental Records Access Management Act in stating that:

The purpose of the act is to protect two important constitutional rights: (1) The right of the public to access information concerning the conduct of the public's business and (2) the right of privacy in relation to personal data collected by the government."

The Court finds that in this case the right of privacy outweighs the plaintiff's interests. "Exhibit A; memo. Decis.; entered: 7-3-07; pg. 4, no. 4, thru pg. 6; para. 1.

But, the court itself is government as well. The court could ensure that "personal information" is secure (limited to physical, or mailing address), simply by the Department of Corrections or whatever other governmental Agency provide the information to the court, and the court could affect service of process under Utah Rules of Civil Procedure Rule 4(g). It appears then that the court is using the statute to prevent service to defendant, Lisa Soper therefore the statute is analogous to the statute: Governmental Immunities Act § 63-30-4(3) and (4), in Bott, supra.

The Utah Rules of Judicial Administration, Operation of The Courts, has within the rules a classification of records; to the extent that "Private Judicial Records could comprise the defendant, Lisa Soper's address and other information concerning her and relevant to the instant case, see: Rules of Judicial Administration Rule 4-202-02 (3)(F) and (G), which provides, in relevant part:

(3). Private administrative records The following administrative records are private:

(F). Other records containing data on individuals the disclosure of which constitutes an unwarranted invasion of personal privacy;

(G). record provided by the United States or by a governmental entity outside the state that are given with the understanding that the records be managed as private records, if providing entity states in writing that the record would not be subject to disclosure if retained by it."

Subsection (G) is provided to demonstrate the operation of the court has an apparatus in place to receive and maintain "private data, or other information see: Rule 4-202, 02 (1)(I)(J) & (L). These subsections and subparagraphs demon

state the court could have safely acquire, and maintain, or destroy the defendant's "private" data after the same has been used in accordance with Utah Rules of Civil Procedure Rule 4 (g).

The Supreme Court of Utah decided a question of "unreasonable regulation of a Claimant's Article I, section 9 rights in the Constitution of Utah, the Court analyzed that right in the context of the Governmental Immunities Act §63-30-34 (1)(a) & (b), and §63-30-4 (3) & (4).

The Bett Court, in refusing to "apply these subsections because they constitute an unreasonable regulation of Bett's article I, section rights," and further explained that:

"[A]ny rule or regulation in regard to the remedy which does not, under pretence of modifying or regulating it take away or impair the right itself cannot be regarded as beyond proper province of legislation. 2 Thomas M. Cooley, Constitution al Limitations 756 (1927). However, the legislature's "fraud or malice" standard contained in subsections 63-30-4 (3) & (4) impairs article I section 9 rights because it does bar claims that would otherwise be allowed under the standards we will subsequently discuss."

It should be regarded as implicit that the statutes and rules used by the defendants, and the court to frustrate plaintiff's ability to properly serve defendant, Lisa Soper with a summons and copy of the Amended Complaint these rules and statutes include: Ut. R. Civ. P. Rule 4 (g); Rule 26 (b)(1); Governmental Records Access Management Act, (GRAMA), and Rule 4 (d)(1), all of which were rejected by the court. To the extent that these rules and statutes "impaired the right itself, (article I, section 9 of the Constitution of Utah, then are unconstitutional as applied in the plaintiff's case because if they were not employed, the defendant, Lisa Soper would have been duly served, and the case would proceed to an adjudication on the merits.

ARGUMENT VI

The Trial Court Abused Its Discretion To Allow The State To Use The Martinez Report To Circumvent Lit. R. Civ R. Rule 56 (e); Thereafter Denying Plaintiff A Rule On Plaintiff's Memorandum Opposing Defendant's Motion To Be Allowed To File A Martinez Report.

On 1-6-06, the Court entered a memorandum Decision granting in part, and denying in part the State's Rule 12(b)(6) motion. see: Exhibit G; 6th Dist. Ct. Memo. Decis.; entered 1-6-06. The Court again required the State to answer the Amended Complaint on or before 4-28-06, and the State did so on 4-28-06. Exhibit F; 6th Dist. Ct. Deck. Evr. Statmt; pg. 3; entry: 4-28-06.

The State then filed a Motion for Judgment on The Pleadings, arguing that the Court should dismiss the complaint because the State enjoys "sovereign immunity." see: Exhibit A; Def. Mot. Judmt on Ple.

Based upon the State's answer to the amended complaint, and the motion for Judgment on the Pleadings, the plaintiff filed a motion for Summary Judgment. Exhibit W; Motion for Summary Judgment entered: 6-8-06.

The State shortly thereafter filed a Request to Submit for Decision; (on the motion for Judgment on the Pleadings), and request to Stay Briefing on Plaintiff's summary judgment motion until the motion for judgment is adjudicated; the state provided a proposed Order for the Court to Sign, and on 8-4-06, the Court entered and signed the Order. This Order, Exhibit H, provided the following, in relevant part:

"[I]f the state's motion for Judgment on The Pleadings is denied, then the state must file its memorandum opposing Plaintiff's Summary Judgment within thirty days of the Court's Ruling!"

On 9-28-06, the Court entered a memorandum Decision Dismissing the defendant's motion for Judgment on the Pleadings. see: Exhibit P; Def. memo. IN Supp. Mot Judmt on Ple., see also: Exhibit I; memo. Decis. on Judmt on

Plc.

The time in which the state was to submit an Opposing memorandum to plaintiff's motion for summary judgment began to run on 9-29-06. See: Exhibit F; 6th Dist. Ct. Dock. Evt. Stmt. pg. 4. See also: Utah Rules of Civil Procedure Rule 6 (a). If subsection (c) applies then (3) three days would be added. Thus, the time in which to file the memorandum in opposition would be due on or before November 1, 2006. The defendants failed to file the Opposing memorandum to plaintiff's motion for summary judgment.

The state, instead of argue to the trial court, circumstances that constitute excusable neglect, or better still, file for a second motion for enlargement of time before the time in which to file lapses, they did nothing. The state also could have asked the plaintiff for forbearance, but they did not. Instead, the state approached the plaintiff on November 10, 2006 offering to enter into a "Joint Motion and Stipulation", ostensibly to stipulate in the then outstanding motions. Among the motions were: (1) Motion for Service of Summons By Other means; (2). Motion for Reconsideration of Court's Ruling And Leave of the court to Amend the Complaint; (3). Motion for AN Order Requiring the Defendants to make Available A Witness For Signing And Affidavit and Grant A continuance; (4). Motion To Supplement The Pleadings.

On November 10, 2006, a Paralegal from the Utah Attorney General's Office brought the "Joint Motion And Stipulation" which looked appropriate so I signed the agreement. When I received a copy back, attached thereto was a Notice to Submit for Decision. It also contained a proviso that the court did not have to respond to the summary judgment motion. From my perspective, there was no discussion of the summary judgment; nor was there anything in the "Joint Motion And Stipulation" that is worth acquiescence in the motion for summary judgment, the plaintiff immediately wrote both to the court, and to the Utah Attorney General's Office, and requested of the court to allow an extension of time in which to file a motion to strike the "Joint Motion and Stipulation". See: Exhibit F; 6th Dist. Ct. Dock Evt. Stmt.; entry: 12-6-06.

Before the agreement, or "Joint Motion And Stipulation" could be signed by the Judge, the Court ruled on all those outstanding motions, thus negating the offending "Joint Motion And Stipulation".

The events described above effectively left the state in the same position as they were when they failed to file a memorandum in opposition. The state arranged for a telephone conference as Toni J. Jones, Assistant Attorney General said, to make "a record on my position on the stipulation we entered into." The state went further to say: "So my purpose here is certainly not to prevent Mr. Jackson from pursuing his claims, but [I] would like some control over this case so that there aren't constant motions, etc. that we're responding to."

From that moment on, all pleadings I forwarded, (key pleadings), were intercepted and delayed, or destroyed, including the Motion To Strike The Joint Motion And Stipulation. Meanwhile, the court was acting with remarkable speed to rule for the state and against the plaintiff. See: 6th Dist. Ct. Judnt Roll & Index, entry 3-15-07, Def.'s Mot. Rej. St. file mott's Rept.; 3-28-07; Ord. Allowing Def.'s Mot. mott's Rept.; 5-24-07; Ex parte Motion for Overlength memo.; and: 5-25-07; Ord. Granting overlength memo.; 10-1-2007; Pl. Memo In Supp. Mot. Reconsid. Ct's Decis on mott's Rept.; 10-18-07 State's Memo. In Opp. Pl. Mot. Reconsid.; 10-18-07 Notice to Submit for Decision; 10-24-07, Memo. Decis & Ord. The state, nor the court allowed plaintiff to file a reply to the state's objections. One of the more important pleadings is plaintiff's motion and supporting memorandum in support of plaintiff's motion to strike the "Joint Motion And Stipulation" (please note: this motion and memorandum was filed, or forwarded to the court on Jan. 2, 2007, but was never filed). The state filed a state's memorandum in opposition to plaintiff's motion to strike "Joint Motion & Stipulation" on: 1-25-07, and the plaintiff filed a memorandum in reply on the motion to strike, but the court ignored it even though it was filed and is part of the record.

Instead of requiring the state to produce their copy of plaintiff's motion and supporting memorandum in support of motion to strike, or even to look to the plaintiff's reply to the state's response, the reason therefore, was the avoidance (pg. 56)

of the plaintiff's challenge of the timeliness of the state's memorandum in opposition to Plaintiff's Summary Judgment motion. The state made no mention of this issue in their response, and the court, made no mention of it as well, and ruled on the issue in the defendant's favor. The memorandum in reply to defendant's opposition to Plaintiff's motion to strike the joint motion and stipulation.

This thing was done to allow the state back in with a contrived motion for a Martinez Report predicated upon an averment that the state could demonstrate that the "plaintiff is not entitled to relief as a matter of law". see: Exhibit N; Def. memo. in Opp Pl. mot. Compel Disc'y & in Supp. Def. mot for Mart'z Rpt.; pg. 4 para. 2.

The Office of the Utah Attorney General is staffed by professionals, and they are not supposed to fail in meeting dates for filing pleadings or other documents with the courts. The Martinez Report was simply a ruse, contrived to first get back an opportunity to make up for their omission, and then to defeat the summary judgment by preventing the plaintiff from prosecuting the claims any further that it has been. As for the "evidence that could demonstrate that plaintiff's case fails as a matter of law," this evidence was known to them long before the time to submit a memorandum in opposition of Plaintiff's motion for summary judgment. The Martinez Report was used as a vehicle for injustice rather than a salutary medium of reaching a swift but just result." Cleveland Trust Co. v. Foster, 93 So. 2d 112, 114 (Fla. 1957).

The Martinez Report was instituted to create an "administrative record that would aid the court in its decision of "[preliminary issues] including those of jurisdiction." It is equally clear that the court had required this report to be done "[b]efore answer," and to be, "attached to the answer of the defendants."

The trial court, in the instant case, along with the state utilized the Martinez Report to avoid the rules of discovery, especially rule 34(b), and to avoid the plaintiff's motion for summary judgment, and to obtain summary judgment based upon their own versions of what the facts are, and what is relevant in this case and what is not. The state's

defense was in jeopardy because they did not comply with U.R.Civ.P. Rule 56 (e). The Martinez Report was utilized to negate that threat.

Additionally, the plaintiff argues that the plaintiff did not receive proper notice as to the court's intent to treat the state's Martinez Report as a motion for summary judgment. See: Dickey v. Merrick, 90 Fed. Appx. 535, 10th Cir. (case # 03-4073 (12-19-03)). The 10th Circuit Court of Appeals announced: "[A]s we wrote in Hall, 'District courts must take care to insure that pro-se litigants are provided with proper notice regarding the complex procedural issues involved in summary judgment proceedings.'" 935 F.2d at 11 (internal quotations mark omitted). Failure to provide proper notice requires reversal here."

The plaintiff sent a letter to the 6th District Court expressing concern that the plaintiff had not been provided notice from the court. This letter was virtually ignored and the court and the defendants continued the proceedings without me. See: Exhibit C, Ltr. to 6th Dist. Ct.; Jnd, Wallace A. Lee; case # 040600383; dated 5-27-07; re: lack of notice. See also: Pl. memo. in Supp. mot. for Reconsid. of Ct's Ruling on Mart'z Rept. pg. 56, at VIII; accordingly, as in Dickey v. Merrick, *supra*, this court of appeals should reverse this case for the reasons stated above.

ARGUMENT VII

The Trial Court Abused Its Discretion when It Denied Plaintiff's Motion To Compel Discovery; And Then Proceed To Rule Against Plaintiff on Issues That were the Subject of The Discovery Request.

The plaintiff has argued herein above that the discovery requests were finite and crafted to obtain admissible evidence on the issues presented in the Amended Complaint. Those items of discovery were articulated in the requests for discovery. See: Exhibit X; Pl. 1st Reg. Discry; dated: 20 Aug. 2006; and Exhibit Y; Pl. 2nd Reg. Discry; dated: 9-16-07.

The plaintiff, in a memorandum in opposition to Defendants' motion that the (pg. 58)

State Be Allowed To file A Martinez Report And For A Stay On Proceedings Until Martinez Report Is filed, see: Exhibit S; pg. 7-15, sets forth anew what documented evidence was requested, and the rationale for the request of each item. The state did not even bother to respond to the majority of items requested, and the remainder then moved the court to rule against plaintiff's requests for discovery without explanation for not responding. see: Exhibit A; 6th Dist. Ct. memo. Decis., Entered: 7-3-07; pg. 2; para. 2; pg. 4, para. 1 & 2. The court then determines that there was no copy of the plaintiff's second request for discovery. The court did not bother to read, consider, and rule on plaintiff's memorandum in opposition to defendant's motion to be allowed to file a Martinez Report And For A Stay on Proceedings Until Martinez Report Is Filed.

One example of a discovery request not being responded to by the state, but also ignored by the court, and then the court went on to make an adverse ruling against the plaintiff, see: Exhibit Y; Pl. 2nd Reg. Disc'y, No. [2]. Medical Technician, Lisa Soper's work record during the relevant times, i.e., from October, 2003 to present day. The rationale here was to glean some evidence of Lisa Soper, RN having treated another inmate, perhaps even a diabetic inmate the same way she did the plaintiff, i.e., denying an inmate with serious medical needs. In the court's memorandum decision, Exhibit A; pg. 11, para. 3, the court determined, in relevant part:

"There is no issue of material fact. It is established that the plaintiff was given a certain amount of insulin. The nurse believed it was the correct amount. Even if she was wrong, she did not refuse to give it to him."

Additionally, after the state's argument that the plaintiff was refused the requested amount of insulin, it was because it was in excess of his prescribed amount of insulin. see: Exhibit Y, 2nd Reg. Disc'y; No. [4] - "Barbara Henniger, Physician's Assistant's work record, including her work schedule during relevant times, i.e., Oct. 03 to Dec. 03."

The rationale here is two fold. 1). to determine to what extent Barbara Henniger's knowledge of the prescribed amount implicates her in "deliberate" (pg. 59)

indifference? Barbara Henniger was the medical employee who wrote the prescription on 11-7-02. see: Exhibit C(10); Dept. Corr. med. Chrt; entry by Barbara Henniger, PAC, in light of her previous prescription on: 12-27-02. see: Exhibit C(6); DOC med. chrt.. It may be significant that Barbara Henniger left her employment at (CUCF) medical unit at about the same time defendant, Lisa Soper left. The requested information in Exhibit Y, 2nd Req. Disc'y; No [4], and [2]. Was Barbara Henniger's omission of not researching the matter in the medical charts indicative of malice or fraud, thus making her a party to this action. It also may indicate deliberate indifference. 3). If the employees involved: defendant, Lisa Soper, RN; and Barbara Henniger, PAC's transfer and/or termination was in any way related to this case. In other words did the state's actions after the cause of action accrue demonstrate that the state view the incident as a violation of plaintiff's constitutional rights? Yet, the state refused to produce the items of discovery, but went on to argue, in "defendants' Martinez Report, pg. 15, para at No. 1, in relevant part: "[A] prisoner may not recover damages under Article I, section 9 unless he shows that his injuries [were] caused by a prison employee who acted with deliberate indifference or inflicted unnecessary abuse upon him." Bott v. Deland, 922 P.2d 732, 740 (Utah 1996). Also, the state argued, in Defendants' Martinez Report; pg. 6, No. [5] [19] & [20]; [19]. "Later that day, at about 1:00 pm, the nurse reported to the physician's Assistant (PA) on duty that Jackson wanted to take a higher dose of insulin than the prescribed amount." [20]. "The PA agreed with the nurse that Jackson could not take a dose in excess of the amount prescribed, "If he feels he needs more insulin, he needs to put in HCR (healthcare request) and see Dr. Burnham to explain why he needs more."

Similarly, the Court, in its memorandum Decision, adopted the state's version of the facts, the court observes, in relevant part:

[T]he Court examined entries made by prison's medical staff on November Through 9 November, 2003.

On 7 November 2003 at 7:59 a.m. the following entry was made by Lisa Soper:

(pg. 60)

"Refused to take insulin when advised he can only take the prescribed amount of insulin plus sliding scale. He wanted to take 15 units reg, / 30 units NPH and has 7 units reg / 30 units NPH ordered. On sliding scale he could only take 4 extra units of regular (total of 11 units of reg)."

The court's next citation is from another excerpt presented by the state:

"[O]n 7 November 2003, at 12:55 P.M., Physician's Assistant, Barbara Henniger made the following entry:

[R.N.] Soper reports to me that Mr. Lawrence is taking sliding scale insulin at a higher dose than ordered. He is to be allowed only what is ordered, if he feels he needs more insulin, he needs to put in a HCA and see Dr. Burnham to explain why he needs more." memo. Decis., 7-7-07, pg. 8-9.

From the above entries, and the state's misrepresentations, the court concludes:

"[I]t is not clear when plaintiff's dosage was originally prescribed. However, this issue does not create a genuine issue of material fact because even if the nurse offered the plaintiff an incorrect dose, she did not refuse him medical treatment!" memo. Decis., entered: 7-3-07, pg. 11-12, para. 2.

The plaintiff believes this conclusion by the court, that if Lisa Soper offered plaintiff the incorrect dose, "this issue does not create a genuine issue of material fact," to be incorrect, first, because the court's previous ruling in its memorandum decision of 1-6-06, pg. 9, para. 4, the court determined:

"[T]herefore, in this case, in order to establish a "flagrant violation" of his constitutional rights under Utah's Constitution, the plaintiff must allege that he has a "clearly established" right and that a state employee, acting within the scope of state employment, understood that said employee's actions would violate that right. Id., at 538.

The plaintiff's Amended Complaint alleges that the plaintiff has a right to regular doses of vital medications (complaint, pages 6-7; motion to Amend the Pleadings, Pages 2-3). The plaintiff further alleges that a state employee, medical Technician, "Lisa", acting within the scope of her employment, refused to administer the [required] medication to him, knowing by virtue of her position as a medical Technician, that withholding the [correct] dose of insulin would be detrimental to the plaintiff's health. Id.

The court finds that these basic allegations are sufficient to minimally state a cause of action for a "flagrant" violation of plaintiff's constitutional rights under Article I, section 9 of the Utah Constitution. Exhibit G; 6th Dist. Ct. memo. Decis.; pg. 10, para 1-3.

This determination is buttressed by the landmark case: Estelle v. Gamble, 429 U.S. at 104-05 deliberate indifference is there described for purposes of the facts in this case, in relevant part:

"[W]e therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain," Gregg v. Georgia, supra, at 173 (joint opinion), proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed."

What defendant, Lisa Super, RN did was to "interfer with a treatment once prescribed. See: Beretti v. Wisconsin, 930 F.2d 1150, 1154-55 (6th Cir. 1991) ("deliberate indifference because Nurse interrupted prescribed medical plan, despite the fact that prisoner's wound healed completely").

Second, the court order, Exhibit B; 3rd Dist. Ct. Ord.; case # 010904240; entered (pg. 62)

9-12-01, and its provisions could be said to conform to the strictures of both the U.S. Constitution Amendment VIII; and the Constitution of Utah Article I, section 9. The Court order provides no more or no less than what the above constitutional provisions guarantee. The question then is simply, did the defendant, Lisa Soper and the State of Utah violate the Court order? The Court order provides, in relevant part:

"[t]o administer regular and timely medical treatment to Petitioner, Lawrence M. Jackson, by means of providing him with regular doses of insulin, and to administer to Petitioner timely and regular food stuffs in accordance with all orders of the treating physician."

The plain language of the Court order requires the State to provide the medical care "[i]n accordance with all [orders] of the treating physician."
Exhibit B.

The plaintiff has previously shown that the prescribed amount, or the "ordered" amount was, and is: 15 units Reg. / 30 units NPH insulin. see: Exhibit C(6); DOC med. unit med. chrt; entry: 12-27-02. The defendant, Lisa Soper, and the State of Utah violated both the spirit and letter of the Court order and by implication, U.S. Constitution Amendment VIII and Constitution of Utah Article I, section 9, and that violation was "flagrant," because either Lisa Soper, RN, Barbara Henniger, or the State of Utah could have done the research, as the plaintiff did when the medical charts were provided. The State opted not to, and assumed a "wait him out" attitude. In a case entitled Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed. 2d 811 (1994) The United States Court of Appeals for the 7th Circuit, in quoting Dean v. Barber, 951 F.2d 1210, 1213-14 (11th Cir. 1992), the 7th Circuit explained: "[t]he court held that it was an abuse of discretion to grant summary judgment where a district court had never ruled on a pretrial detainee's motion to compel discovery. Summary judgment, it explained, should not be granted until the party opposing the motion has had an adequate opportunity for discovery." The 7th Circuit went on to quote a case entitled: Resolution Trust Corp. v. North Bridge Associates, 22 F.3d 1198 (1st Cir. 1994), The court was not implying that every instance of incomplete discovery would be enough to prevent summary judgment, nor would we agree with such a proposition if it were

advanced. Instead, it evaluated five (5) criteria for a Rule 56(f) motion -- authoritativeness; timeliness; good cause; utility, and materiality -- and found that the motion should have been granted in the case before it. Id. at 1203. It also noted that the facts needed to oppose summary judgment were within the exclusive control of defendant and that the incompleteness of discovery was the defendant's fault. Id. at 1208. It remanded, explaining Rule 56(f) should ensure that a litigant who fails to answer potentially relevant discovery requests on schedule will be unable to demand summary judgment until after he remedies his failure." Id.

Finally, the plaintiff began to experience problems with my legal documents being confiscated and intentional delays in legal mail being delivered to the courts and being filed. The net result was that the court was ruling on pleadings from the state without plaintiff responsive pleadings. The plaintiff complained to the court, the complaint was virtually ignored. The plaintiff submitted a GRAMA Records Request for records of plaintiff's incoming, and outgoing legal mail. The prison did not respond. The plaintiff then filed an appeal to the Department of Corrections Chief executive, and that appeal was responded to. The plaintiff filed a petition for Judicial Review of Denial of GRAMA Records Request, and the court dismissed the petition without explanation. See: Exhibit T (3); Pet. Jud. Rev. Den Disc'y App.; dated: 4-8-07; filed: 4-12-07.

Plaintiff finds the court's response both in a letter, Exhibit: m; Pl. ltr. to 6th Dist. Ct.; dated: 1-25-07; filed on: 1-31-07, and in the Petition for Judicial Review Denial of GRAMA Records Request Appeal, and the plaintiff had previously filed a "Complaint for Acts And Omissions that constitute Contempt of Court in destroying legal documents. This too was ignored by the court.

It appears that a directive in the Code of Judicial Conduct Canon 3B(5) is implicated by the conduct by the Office of the Utah Attorney General, and the 6th District Court's complicity in the conduct of Joni Jo Jones, Assistant Attorney General, the above cited Canon provides:

B.(5) "A judge shall perform judicial duties without bias
(pg. 64)

or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit, and shall use all reasonable efforts to deter, staff, court officials and others subject to judicial direction and control from doing so. A judge should be alert to avoid behavior that may be perceived as prejudicial."

Judge, Wallace A. Lee's conduct after 12-20-06 telephone conference has at the very least the perception of prejudice and bias.

ARGUMENT VIII

The Trial Court Erred In Denying Plaintiff's Motion For Reconsideration.

The court granted the state's motion to be allowed to file a Martinez Report on 3-28-07. The premise for the granting of the motion for Filing a Martinez Report was:

"[T]he focus in this case should be whether Jackson has a meritorious claim. The state believes it can provide sufficient information, including copies of Jackson's medical records and affidavits from medical personnel, that will show Jackson's claims must fail as a matter of law."

The court granted the state's motion on 3-28-07. (The court neglected to provide plaintiff a copy of the order), and the state did not provide the plaintiff a copy of the order and the state did not provide the plaintiff with notice of its motions until the court had granted the motion, see; Exhibit O; Pl. Ltr to 6th Dist. Ct.; to Judi. Wallace A. Lee, dated 5-27-07.

The state, when it submitted its Martinez Report, in its [Statement of Facts] (pg. 65)

a subheading therein was: "Jackson's Refusal To Take Insulin, which announced the state's argument in chief, which could be summarized in the introduction in the Martinez Report, see: Defendant's Martinez Report, pg. 2; para 3: "The state cannot be held liable for a constitutional violation when his recalcitrance caused his injury."

The state begins its argument on this issue: A. ("Jackson was not treated with deliberate indifference or unnecessary abuse when he stopped taking his prescribed dose of insulin, and 1. "Jackson was not treated with deliberate indifference when he refused Insulin Treatments"), by drawing distinctions. First, the state explains the provisions of the constitution of Utah Article I, section 9's "cruel and unusual punishment clause, and its likeness to the U.S. Constitution Amendment VIII. In quoting State v. Lafferty, 20 P.3d 342, 345 (Utah 2001) cert. den. 534 U.S. 1018 (2001) "[A] prisoner may not recover damages under Article I, section 9 unless he shows that his injuries [were] caused by a prison employee who acted with deliberate indifference or inflicted unnecessary abuse upon him." Bott v. DeLand, 922 P.2d 740 (Utah 1996). at the end of their construction of the foundation upon which their argument will be placed, in quoting Sterling v. Cupp, 625 P.2d 123, 131 (Ore. 1981). "Such abuse is needlessly harsh, degrading, or dehumanizing treatment of prisoners. Id. Alleged treatment must be clearly excessive or deficient and unjustified."

In the citation to Bott v. DeLand, *supra*, interquining that a prisoner could not recover damages under Article I, section 9 unless he shows that his injuries were caused by a prison employee who acted with "deliberate indifference", what the state neglected to include in this case Bott, at 740 the court went on to say: "[R]ather, a prisoner may recover damages for inadequate medical care only upon a showing of "deliberate indifference", as defined by the United States Supreme Court in Estelle, 429 U.S. at 103-06, 97 S. Ct. at 290-92. In this case: Estelle v. Gamble, 429 U.S. at 104-05 listed various acts or omissions that constitute "deliberate indifference", among them was: "Intentionally interfering with the treatment once prescribed." When defendant, Lisa Soper refused the plaintiff the correct, and prescribed dose upon request, she effectively, "interfered with treatment. Defendant, (pg. 46)

Lisa Soper should have done the research to be certain that the amount she ordered me to take was accurate, but she and the state did not feel it was important enough to ascertain that they were not violating a court order, and to ensure that the amount she ordered me to take would not set me up for hypoglycemia in the hours or days later. The plaintiff has argued that when my treatment regime is interrupted my blood sugar levels become very unstable and I am subjected to hypoglycemia. The state, to this day has not responded to this argument, and at this point the averment is admitted by the state. See: Ut. R. Civ. P. Rule 8(d).

In the body of the state's argument, the state uses the same phrase: "his prescribed dose of insulin," (11) eleven times. The state concludes that "At no time was Jackson refused the prescribed dosage of insulin; rather, the staff simply refuse to provide him with unnecessary additional units. They cite to the Department of Corrections, (DOC) medical unit medical history chart, Numbered: 311. This record shows a date of: 11-7-03. An entry by defendant, Lisa Soper, RN. She writes:

"Refused to take insulin when advised he can only take the prescribed amount of insulin plus sliding scale. He wanted to take 15 15 units Reg. / 30 units NPH and has 7 units Reg. / 30 units NPH Ordered. On sliding scale he could only take 4 extra units of regular (total of 11 units reg.)".

Exhibit 312 of Def. Martz's Rept., the state shows an entry by Barbara Mitten who writes:

"Chart review RN Soper reports to me that Mr. Lawrence is taking sliding scale insulin at a higher dose than ordered. He is to be allowed only what is ordered, if he feels he needs more insulin he needs more insulin, he needs to put in HCR and see Dr. Burnham to explain why he needs more."

Neither Lisa Soper, nor Barbara Mitten told me what Barbara writes above. There was yet another encounter with medical staff, when on 11-7-03 at 1:18, 29, or 3:29 pm plaintiff asked Ms. Angelica Tuft, RN for the prescribed dose of
(pg. 67)

insulin. Ms. Angelica Tuft, RN, writes:

"Refused to tell me what his BS (bloodsugar) was or check it here in the clinic. Also refuses to take any insulin. Has not had any insulin today. Would not listen to reasons or to what medical is bound by law w/ regards to the amount of insulin we can allow him to take. Wanted to argue and point out "in Draper they allowed me to take what I've been taking for 15 years, now all of a sudden you change it w/o telling me." Try as I might, I could not get him to listen w/o interrupting me with his own ideas and opinions."

(Please note: The plaintiff has submitted excerpts from these same medical charts, a record of an encounter with Ms. Angelica Tuft, RN where she was advised the plaintiff has a court order enjoining the state from refusing plaintiff insulin, or supplemental foodstuffs). See: Pl. App. Brief, Exhibit C(5); entry date: 12-22-02; entry by Angelica Tuft, RN.

Similarly, the court, in adopting the state's version of the facts, the court cites to the same medical records as did the state see: Exhibit A; memo. Dec. entry: 7-3-07; pg 7, No. 1 - pg 12. The court commented, on pg 11, para. 4:

"[I]t is impossible for the court to determine which dose was the right dose. The only entry by Dr. Burnham concerning the prescribed dose is the dated 5 February 2004, which was several months after the injury. It is not clear when the plaintiff's dosage was originally prescribed. However, this issue does not create a genuine issue of material fact because even if the nurse offered the plaintiff an [incorrect] dose, she did not refuse him medical treatment: Id.

It should be noted, the finding of the court in its memorandum decision entered on 7-6-06. See: Exhibit G; pg. 10, para. 1, the court finds, in relevant part:

"[T]he plaintiff further alleges that a state employee, medical technician, "Lisa", acting within the scope of her state employment, re
(pg. 68)

fused to administer the required medication to him, knowing by virtue of her position as a medical technician, that withholding the [correct] dosage of insulin would be detrimental to the plaintiff's health. Id.

The court find[s] that these basic allegations are sufficient to minimally state a cause of action for a "flagrant" violation of the plaintiff's constitutional rights, under Article I, section 9, of the Utah Constitution."

(Please note: at no time, not even in the State's Martinez Report did the state take issue with the assertion that the state requiring the plaintiff to take a dose less than the prescribed amount of insulin would adversely affect the plaintiff's health. In fact, the plaintiff avers, from the inception of the case that an interruption in the treatment regime would set the plaintiff up for "volatile bloodsugar levels", and hypoglycemia, a very dangerous and debilitating condition). See: Amended Compl. for med. malprac. And Const. Rts Vio., pg. 3, para. 3. Also, the court's findings in the memorandum decision of 7-3-07 stands diametrically opposed to the findings in the memorandum decision of 1-6-06. The court went from allegations of being offered an "incorrect dose with knowledge that the same would be detrimental to plaintiff's health," is enough to establish a "flagrant" violation of constitution of Utah Art. I, Section 9, see: Exhibit G; to "Even if the nurse offered the plaintiff an incorrect dose, she did not refuse him medical treatment," and that "There is no proof that the defendants acted with deliberate indifference to plaintiff's condition." The court's findings in this regard is also contrary to the U.S. Supreme Court in Estelle, 429 U.S. at 104-05, and Boretti v. Wisconsin, 930 F.2d 1150, 1154-55 (6th Cir. 1991) ("deliberate indifference because nurse interrupted prescribed medical plan, despite the fact that prisoner's wound healed completely").

The court, inspite of plaintiff's memorandum In Opposition To Defendants' motion that the State Be Allowed To File A Martinez Report, entered on: 4-27-07; see: Exhibit 5, did not bother to issue a ruling on this responsive pleading, nor did the court rule on the Plaintiff's memorandum In Reply to Defendants' memorandum In Opposition to Plaintiff's motion to Strike Joint motion And

stipulation wherein the plaintiff argued the timeliness of the state's memorandum in opposition to plaintiff's motion for summary judgment. The court went forward and granted the state's motion for summary judgment, on 7-3-07, Exhibit A.

On 10-9-07, the plaintiff filed a motion for reconsideration of court's decision on Martinez Report. On 10-16-07, the state filed a memorandum wherein the state argued that: "The Supreme Court 'absolutely reject[s] the practice of filing post-judgment motions to reconsider' quoting Gillett v. Price, 2006 UT 2471, 135 P.2d 861, 862 (Utah 2006).

The state goes on to argue that, in relevant part, of the Utah Supreme Court: "[R]egardless of the motion's substance, post-judgment motions to reconsider and similarly titled motions will not toll the time for appeal because they are not recognized by our rules."

Finally, the state argued, in relevant part: "Jackson has offered no reason for the court to reverse itself, but simply reargues the law and facts."

The court, in its memorandum decision on the motion to reconsider, merely echoed the state's argument citing Gillett, supra.

The Utah Court of Appeals in Salt Lake City Corp. v. James Constructors, Inc., 741 P.2d 42, 90 Utah Adv. Rep. 62, 1988 UT 215 (1988) the Court of Appeals writes: "[28] SLCC argues that the trial court erred in its refusal to reconsider its earlier grant of summary judgment. A motion to reconsider is not expressly available under the Utah Rules of Civil Procedure *Fn 4 McKee v. Williams, 741 P.2d 978, 980 (Utah Ct. App. 1987). see Peay v. Peay, 607 P.2d 841, 843 (Utah 1980). However, by implication Rule 54(b) of the Utah Rules of Civil Procedure does allow for the possibility of a judge changing his or her mind in cases involving multiple parties or multiple claims." In another case, Grawite, supra, offers an opinion to the same effect but conditions the availability of Ut. R. Civ. P. Rule 54(b) upon the finality of the judgment the court explains, in relevant part: "[H]owever, revision of an adjudication that is not final may be appropriate." Likewise, a case entitled: Louis Timen v. T. Lamer and Aletha Dewsnap, (pg. 70)

851 P.2d, 1178, 211 Utah Adv. Rep. 20 (1993) The Utah Supreme Court reversed the trial court's decisions, inter alia, denying Dewsnap's motion to reconsider the trial court's summary judgment against Dewsnap. The Supreme Court explains, in relevant part: "Ms. Dewsnap relies on the provisions of rule 54(b) and in the court of appeals analysis in Salt Lake City Corp. v. James Constructors, 761 P.2d 42 (Utah Ct. App. 1988), for her contention that a motion to reconsider exists and it was error for the trial court not to grant the motion. She asserts that because the summary judgment did not wholly dispose of the case, the judgment is subject to revision at any time before entry of judgment adjudicating all the claims and rights and liabilities of all the parties." Utah R. Civ. P. Rule 54(b). In sum, the court states: "[W]e have also previously held that rule 54(b) permits reconsideration of a non-final judgment 'since it facilitates the just and speedy resolution of disputes in the trial court.'" Kennedy v. New Era Indus., Inc., 600 P.2d 534, 536 (Utah 1979).

We hold that pursuant to the provisions of rule 54(b), because the summary judgment was subject to revision, "a motion to reconsider is reasonable means of requesting such a revision and is therefore permitted. On remand, the trial court is to address the motion on its merits."

The plaintiff argues herein that the court rulings in its memorandum Decision entered on 7-3-07 was not a final adjudication of all the issues, because the court refused to facilitate service of process upon defendant, Lisa Soper. For these reasons, and because of the plaintiff's motion for reconsideration presented "new, material evidence," and "or presents the case in a different light;" see: Salt Lake City Corp. v. James Constructors, 761 P.2d 42, 90 Utah Adv. Rep. 62 (Ut. Ct. App. 1988) NO. [30]. The motion for reconsideration should be granted. The court of appeals must remand.

The trial court's grant of summary judgment must be vacated because the new evidence, (plaintiff's medical records that shows that the defendants did in fact deny the plaintiff a prescribed dose of insulin, which was not only violative of a legally binding court order, but also violated the U.S. Constitution Amendment VIII and the deliberate indifference

Standard announced in Estelle v. Gamble, Supreme and constitution of Utah Article I, section 9's guarantee to be free of unnecessary rigor. The plaintiff, because the state, and defendant, Lisa Soper were violating plaintiff's constitutional rights and plaintiff had no duty to take an amount of insulin less than the prescribed amount of insulin, indeed the state and defendant, Lisa Soper had a duty to ascertain what the prescribed amount of insulin was in as an expeditious manner possible.

Genuine issue of material fact exists as to whether the state, and defendant, Lisa Soper refused plaintiff a "prescribed dose of insulin", and thus violated the court order.

Genuine issue of material fact exists as to whether the withholding of the "prescribed" dose of insulin would be "detrimental" to plaintiff's health, (hypoglycemic reactions);

Genuine issue of material fact exists as to whether the plaintiff was under a duty to invalidate the court order by taking an injection of insulin less than the "prescribed amount of insulin

The interest of justice requires that since the trial court allowed the state to disregard Ut. R. Civ. P. Rule 56(c), and Rule 34(b), and to allow the state to file a belated "Martinez Report" based upon a theory that the plaintiff is entitled to no relief, and also allowed the state to obtain a summary judgment where the plaintiff's motion for the same was disregarded, it's only right that the motion for reconsideration of the court's decision on Martinez Report should be adjudicated on the merits.

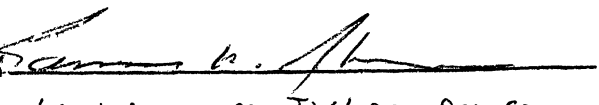
CONCLUSION

The plaintiff is entitled to the court of Appeals reversal of the trial court's summary judgment either by requiring the trial court to reconsider the court's decision on the Martinez Report, or the court of Appeals vacate the summary judgment ruling and order the trial court to conduct a jury trial on the merits. The trial court should be required to inquire into plaintiff's allegations that the state, including the Utah Attorney Gen

eral's Office's misconduct, and even criminal conduct whereby they confiscated, destroyed, and otherwise delayed plaintiff's legal documents that were forwarded to the Court. This conduct allowed the State to obtain a summary judgment ruling in their favor, and provide for the plaintiff an Opportunity to obtain the disputed or otherwise ignored discovery items both in the predicate complaint, and the supplemental pleadings. And any and all other relief the plaintiff may be entitled to recover.

The above statements are true and accurate to the best of my knowledge and belief.

Signed this 9th day of January, 2008.

Signature: 
Lawrence M. Jackson pro-se.

Supplement to Appellate Brief

I. A Genuine Issue of material Fact Exists As to The Plaintiff's Status of (ADA) Disability.

The state of Utah argued again in its Martinez Report, pg. 24 [A]. That the plaintiff "has failed to show that his diabetes in particular, "substantially limits one or more of his major life activities." But even before that argument, the state explained the "test for a claim under the ADA: is that the claimant be a qualified individual with a disability. Congress defined "disability" as "(A). a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B). a record of such impairment; or (C). being regarded as having such an impairment." 42 U.S.C. 12102(2) (2000)

The plaintiff argued, in the plaintiff's memorandum In Reply to Defendants' Answer to the Amended Complaint, filed on 2-26-07 argued that plaintiff meets the requirements enumerated above, and produced documentation from a Federal Agency whose mandate it is to provide rehabilitative benefits and entitlements to persons found to fit the criteria of the (ADA). The state re-argues this issue with no change, or any mention of the submitted (ADA) findings, and treatment plan by the Department of Vocational Rehabilitation, (DVR), in the state's Martinez Report, pg. 24, Para. (A). The Plaintiff responds again making reference to the documentation of an (ADA) findings by a federal Agency, in the memorandum In Support of Motion for Reconsideration of Court's Ruling on Martinez Report, pg. 32, para. 4 - pg. 34.

The court, in its memorandum Decision of 7-3-07, pg. 20, Para. (B) the court writes that the plaintiff claims are in the nature of medical malpractice. The court specifically states: "[C]laimant's are expressly prohibited from using the ADA as an avenue to assert medical malpractice claims."

However, The plaintiff has alleged that the state and the defendant, with foreknowledge of a legally binding court order, refused the plaintiff a prescribed Dose of insulin. The plaintiff further alleged that the omission was an act of deliberate indifference.

When they had an opportunity to search the medical records and correct the mistake, but did not. This act was then deliberate indifference because they continued to refuse plaintiff the "prescribed dose of insulin" until the injury happened. Then, Barbara Henniger, on the day of the injury went to the record and corrected the discrepancy, thus demonstrating foreknowledge of a deprivation but allowed it to persist until grievous injury occurred. This allegation is not indicative of medical malpractice, but of constitutional rights violations.
cc: Exhibit C(17)

The appellant also respectfully request that the issues in the State's Martinez report, and the court's memorandum Decision of 7-3-07, that are not addressed in the body of the Appellate Brief be reviewed in the plaintiff's Memorandum In Support of motion for reconsideration of Court's Decision on Martinez Report, and duly considered for a determination in this appeal.

Signed;



Lawrence M. Jackson, pro-se.

Exhibit 19

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

IN AND FOR SAN PETER COUNTY, STATE OF UTAH

Lawrence M. Jackson
Plaintiff,

MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION
OF THE COURT'S DECISION,
FILED - SUBJECT

vs.

Civil NO:

THE STATE OF UTAH, et al. Defendants
Judge, Wallace A. Lee

Comes now the plaintiff in the above entitled matter and hereby submit this Memorandum in Support of Motion for Reconsideration of The Court's Decision in Martinez v. Jackson pursuant to Utah Rules of Civil Procedure Rule 50(c).

In support of this Motion and Memorandum the plaintiff states the following:

PLAINTIFF'S HISTORY

1). The plaintiff herein filed a Complaint for Medical Malpractice and Constitutional Rights Violations following an injury sustained to plaintiff's left side of the face causing facial fracture of maxilla and orbital eye socket floor (see report) because defendant's refused to provide the plaintiff a prescribed dose of insulin. The Complaint was filed on: 11-17-04; Case # (40000383)

2). The Sixth District Court requested the state to answer the motion and the state, in response filed a Motion to Dismiss per Rule 12(b)(6).

The Utah Rules of Civil Procedure Rule 12(b)(6).

3). On 1-6-2006, in a Memorandum Decision the court granted in part, and denied in part the state's Rule 12(b)(6) motion. The court again required the state to file an answer to the Amended Complaint, and the state did so on: 4-28-06.

4). Additionally, the state filed a motion for Judgment on The Pleadings on: 5-12-06.

5). Based upon the state's answer to the Amended Complaint, and the state's motion for Judgment on the Pleadings, the plaintiff filed a motion for Summary Judgment.

6). On 6-9-06 the state filed an Ex Parte motion for Extension of Time to Respond to Plaintiff's motion for Summary Judgment and Reply to Defendant's motion for Judgment on The Pleadings. The court granted the motion on: 6-21-06.

7). Then, the state filed a Request to Submit for Decision, (the motion for Judgment on The Pleadings), and Request to Stay Briefing on Plaintiff's motion for Summary Judgment on 7-13-06. On 8-4-06, the court grants the state's motion. The Order granting the stay, the court requires, "IF the state's motion for Judgment on The Pleadings is denied, then the state must file its memorandum opposing Plaintiff's Summary Judgment within thirty days of the court's ruling."

8). The court entered a Memorandum Decision on 9-28-06 denying the state's motion for Judgment on The Pleadings.

9). In the interim, plaintiff filed a Records request pursuant to The Governmental Records Access Management Act, hereinafter (GRAMA), first on 2-9-06, and a petition for judicial review of denial of a (GRAMA) Records Requests.

10). Again, on 3-29-06 the plaintiff filed another Records Request

11). On 4-19-06 plaintiff filed another appeal on 3rd Party Records Request.
(pg. 2)

12). On 7-19-06 the plaintiff filed motion for reconsideration of the Court's ruling in the 1-6-06 Memorandum Decision referencing U.S. Const. Amend. VIII.

13). The plaintiff forwards a Second Request for Discovery on 8-30-06

14). On 10-27-06 plaintiff filed an Affidavit of Imprecunescit as per the State's County Sheriff's Office pending service of Plaintiff's Summons and Amended Complaint to be served upon defendant, Lisa Soper, RN.

15). On or about 11-10-06 the State approached the plaintiff to enter into an agreement and stipulation. The plaintiff took exception to one of the provisions of the offending "Joint Motion And Stipulation", the state had surreptitiously added that the state would not be required to respond to a Summary Judgment motion that by the time the state approached the plaintiff, the time in which to respond had already lapsed.

16). Plaintiff immediately sent a letter to the state and to the court to set aside the "Joint Motion And Stipulation" because of misrepresentation and fraud in the procurement. And on 12-6-06 plaintiff filed motion for time to file not to strike Joint Mot And stip.

17). On 12-13-06 the court entered a Memorandum Decision, granting the majority of plaintiff's outstanding motions thus negating the Joint Motion And Stipulation. The court also ruled on the plaintiff's motion for reconsideration, and for leave of court to amend the Amended Complaint.

18). The State arranged a telephone conference between the parties and the court on 12-20-06 to place the State's side of the story referencing the "Joint Motion And Stipulation".

19). The Court granted the plaintiff 30 thirty days in which to forward to the court the Amended Complaint, and to file a Supplement thereto. The Court set the matter for the plaintiff would then "renew" the pending motion for Summary Judgment to include the Supplemental pleadings.

20) On 1-2-07, the plaintiff filed a Motion together with supporting memorandum To strike "Joint Motion And Stipulation"

21) The state filed an Answer to the plaintiff's Motion Supplement the Pleadings on 1-4-07 well before the plaintiff actually Supplemented the pleadings as required by the Court.

2) The plaintiff then, on 1-16-07 filed the Amended complaint.

3) On 1-22-07 plaintiff filed the supplemental Pleadings.

4) The state then files a memorandum In Opposition to plaintiff's motion to strike Defendants' Joint Motion And Stipulation on 1-25-07

5) The state then files an Answer to the Amended Complaint on 1-31-07.

6) The plaintiff filed a memorandum In Reply to state's Answer to the plaintiff's Supplemental Pleadings.

7) The plaintiff filed a memorandum In Reply to Defendants memorandum In Opposition to Plaintiff's Motion to strike Joint Motion And Stipulation on 2-26-07

28) Then, The plaintiff filed a memorandum In Reply to Defendant's Answer to Plaintiff's Second Amended Complaint on: 2-26-07

29) The plaintiff again files a motion compelling Discovery on 3-1-07.

30) On 3-9-07 the (4) four affidavits were entered on the record.

31) The state then files a motion Requesting that the state Be Allowed to file A Martinez Report and That All proceedings Are stayed Until the Martinez Report is Filed.

32). The state filed a memorandum in Opposition to Plaintiff's Motion to Compel Discovery and in support of Motion for Martinez Report.

33). On 3-28-07 the court entered an Order Allowing The State to file a Martinez Report.

34). The plaintiff filed a motion for Enlargement of Time to Respond to Defendant's Opposition to plaintiff's Motion to Compel Discovery And motion to file Martinez Report on 4-4-07

35). The plaintiff also filed a memorandum in Opposition To Defendant's Motion that the State Be Allowed to file a Stay of Proceedings on 5-4-07

36). The state, on 5-24-07 the state filed an Ex parte Motion for Over length Memorandum;

37). The Court granted the Ex parte Motion for Over-length memorandum on 5-25-07.

38). The state filed 13 Affidavits to be attached to the Martinez Report, between 6-1 through 6-18-07

39). On 7-3-07, the court entered a memorandum Decision granting the State's Summary judgment motion.

40). The plaintiff filed a Notice of Appeal and it was entered on 7-11-07.

41). The Plaintiff then filed a Motion for Reconsideration of The Court's Ruling on

RELEVANT FACTS

1). The plaintiff went to AM (Dialectic) 1st-line for an Admin of insulin. The plaintiff encountered defendant, Lisa Super, RN. The plaintiff had been harassed by Lisa Super in the weeks prior to the relevant time, i.e., 11-9-03. Plaintiff's friend's companion, her name is, (pg. 5)

Pl. pg. 2-3; para. 1.

2). Defendant, Lisa Soper, RN refused the plaintiff a prescribed amount of insulin, i.e., 15 reg. / 30 NPH. Plaintiff refused the lesser amount of 7 reg. plus sliding scale of 11 reg. / 30 NPH. Plaintiff also discontinued eating, because I had stopped taking the insulin, anticipating seeing a healthcare provider.

3). After approximately (5) five days the plaintiff got out of plaintiff's bunk and went to the toilet. With that task done plaintiff headed back to the bunk. The plaintiff suddenly lost consciousness and fell. On the way down, the plaintiff's face struck a metal stool hand ^{embedded in cement floor} plaintiff sustained facial lacerations; crushed cheek bone (left side); left eye was forced back into plaintiff's left eye socket, and fracture of floor of left orbital socket.

4). The plaintiff was placed into the Special Management Unit, (SMU), for observation and treatment. Pl. pg. 4, para 3.

5). The plaintiff was seen by an Ophthalmologist on about 12-29-03 Exhibit 7(a) Const. Rpt. by: Dr. Goldsmith,

6). The plaintiff filed a grievance; see: Exhibit E; grievance level 1; no. # 990853397.

7). The plaintiff did not receive surgical intervention until March 19, 2004. see: Exhibit D; Operative Rpt. by: Dr. Patel Bhupendra.

8). The plaintiff filed a civil suit in the Sixth District Court on 11-7-04 Exhibit F; 6th Dist. Ct. Doc. Ev. Stat.; pg. 1.

9). The state was ordered by the court to file an answer to the Amended Complaint on 1-6-06. Exhibit G; 6th Dist. Ct. # 040600383; pg. 15, para. 5.

10). The state filed their answer to the Amended Complaint on: 4-28-06. Exhibit F; 6th Dist. Ct. # 040600383, Doc. Ev. Stat.; pg. 3.

11). Additionally, the state filed a motion for Judgment on the Pleadings on:

5-12-06. Exhibit F; 6th Dist Ct. Doc. Ev. Stat; pg. 3. see also: Exhibit P. Def. Memo. In supp. state's mot for Judgment on Pl.; dated May 10, 2006.

12). Based upon the State's Answer to the Amended Complaint, and to the motion for Judgment on the Pleadings, the plaintiff filed a Motion for Summary Judgment.

13). The state filed a request to Submit for Decision (on judgment on the Pleadings) And Request to St. Brief 2g on Plaintiff's motion for Summary Judgment. The state prepared a proposed Order Staying the Motion for Summary Judgment until the motion for Judgment on the Pleadings is decided. This proposed Order, which was prepared by the state provided, in relevant part: "If the state's motion for judgment on the Pleadings is denied, then the state must file its Memorandum opposing Plaintiff's Summary judgment within thirty days of the court's ruling. This order is dated: 8-2-06 and entered on the record on 8-4-06. See: Exhibit H. 6th Dist Ct. Ord. Staying the Motion for Judgment on the Pleadings; dated 8-2-06."

14). The court entered a memorandum Decision on 9-28-06 denying the state's motion for Judgment on the Pleadings. Exhibit I; 6th Dist Ct. Memo. Decis.; entered: 9-28-06.

15). The state's time for filing its Memorandum in Opposition to Plaintiff's Summary judgment motion began to run from 9-28-06. The time to timely file their Memorandum in Opposition to Plaintiff's Summary judgment, would have been NOV. 2, 2006. The state failed to submit a challenge of the Plaintiff's motion for Summary judgment.

16). On or about 11-10-06 the state contacted the plaintiff's law firm and seeking to enter into an agreement and Stipulation. The state then asked plaintiff verbally to acquiesce in the requirement to file an Opposing Memorandum to Plaintiff's motion for summary judgment. In return, the state surreptitiously included a provision: "it is agreed the state is not required to respond to the Summary judgment motion filed on 6-8-06."

7). When it became apparent that the state was seeking to defeat the Summary judgment by deceit and trickery, the plaintiff immediately wrote a letter to the State's Counsel, Joni J Jones, Assistant Attorney General, and to the court to have the Joint Motion And Stipulation set aside.

8). On 12-13-06 The court entered a Memorandum Decision granting most of plaintiff's motions, thus negating the "Joint Motion And Stipulation".

9). On 12-20-06 Judge, Wallace A. Lee was contacted by the state in order to make a record concerning the "Joint Motion And Stipulation". Exhibit K, State's Trans. of 12-20-06 Tele-confer.

10). The plaintiff told the court that the plaintiff had drafted and forwarded to the contract attorneys office for copies of the motion to strike, and would forward to the court as soon as they are returned to me. Exhibit K. Def. Trans. of 2-20-06 Tele.-confer.; pg. 3; para. 3.

11). On January 2, 2007 plaintiff forwarded through the U.S mail system, a copy to the court and the state plaintiff's Motion And memorandum Exhibit -; Pl. memo. In supp. of Mot. to strike Dec. "Joint Mot And Stip," but the document never reached the court.

12). At the 12-20-06 telephone ^{asked} conference the state that the state be given control of the case in order to curtail the plaintiff's motion filings, and requests for discovery. Exhibit K; State's Trans. of 12-20-06 tele-confer.; pg. 2; para 3.

13). From the date of the 12-20-07 tele-confer. the U.S. mail system has become most dependable, where documents forwarded to the court and other governmental Agencies were intercepted, destroyed or delayed.

14). On 3-15-07 the state filed a Motion Requesting that the state be allowed to file A Martinez Report and That All proceedings are stayed until Martinez Report is filed.

15). The Court entered an Order Allowing the State to File a Martinez Report (pg 8)

on 3-28-07.

26). The plaintiff never received a copy or notice of the court's order allowing the State to file a Martinez Report. See: Exhibit O; Ltr to Judge Lee re: Order Allowing State to file Mart. Rept.; dated: 5-27-07.

27). The plaintiff forwarded through the mail a memorandum in opposition to Defendant's motion that the State be allowed to file a Martinez Report and stay of proceedings, and the memorandum was entered on: 4-27-07. Exhibit S; Pl. memo. opp. Mart's Rept.; dated 4-5-07. The plaintiff's filing of the above memorandum and when it was entered on the record, (22) twenty-two days lapsed, while the State files an Ex Parte motion to file an overlength memorandum on 5-24-07, and the order was granted on 4-29-07.

28). On 7-3-07, the court, without a ruling on plaintiff's memorandum in opposition to State's Martinez Report, ruled in favor of the State's summary judgment motion, and the Plaintiff appealed on 7-11-07. Exhibit T(2).

29). The plaintiff subsequently filed a motion for reconsideration of the order granting State's Martinez Report and summary judgment motion. See: Exhibit 3; Pl. Mot. Enter into Time File Mot. for Reconsid Sum Judgment motion; dated: 8-12-07. This memorandum is submitted pursuant to the motion for time to file motion for reconsideration.

SUMMARY OF ARGUMENT

I. The Court Abused Its Discretion When It Refused To Act In Accordance With Utah Rules of Civil Procedure (i.e. 5bce), and (f), When It Ruled Against The Plaintiff's Summary Judgment Motion That The State Failed To Oppose.

II. The Plaintiff Is Entitled To Relief Under The Americans With Disabilities Act of 1990

- II. Delay In Providing Snack Boxes When The Plaintiff Was Temporarily Housed In The Utah State Prison's Uintah ~~III~~ Facility.
- I. Violation of U.S. Constitution Amendment VIII; and Constitution of Utah Article I, section 9 In Misuse of Restraints.
- II. The Trial Court Violated Plaintiff's U.S. Constitution Amendment III When It Denied Plaintiff's Discovery Motion And (CPA/PA) Records Request For Defendant, Lisa Soper's Physical Address For Purposes of Service of Amended Complaint And Summons. Also Constitution of Utah Art. I, Sect. 1 & 24
- VI The Trial Court Abused It's Discretion In Allowing The Judge To Use The Martinez Report To Circumvent Utah Rules of Civil Procedure Rule 56 (e) Requirements And Remedies.
- VII. The Court Violated Plaintiff's U.S. Const. Amendment V (due process) and it denied Plaintiff's motion to compel discovery of evidence pertinent to the Suppressed Pleadings.
- VIII. The plaintiff was entitled to be heard in opposition to the filing of the Martinez Report.

ARGUMENT I

The State Abused Its Discretion When It Refused To Act In Accordance With Utah Rules of Civil Procedure Rule 56 (e), AND (f), when It Ruled Against The Plaintiff's Summary Judgment Motion That The State Failed To Comply.

On 1-7-05, plaintiff filed a complaint for medical malpractice and constitutional rights violations, specifically, medical malpractice where an RN, Lisa Super, refused the plaintiff a medically prescribed amount of insulin. Plaintiff refused to take the lesser amount Lisa Super ordered me to take and asked for the healthcare provider. Plaintiff also stopped taking insulin.

Plaintiff was not allowed to consult with the healthcare provider on necessary medical care until a CLICF took a "wait him out" in the respect of my prescription. As a direct result of the denial of access to a healthcare provider and actual delay, the plaintiff suddenly lost consciousness in my cell and fell to the floor. On the way to the floor, however, plaintiff's left side of face struck a metal stool that was embedded in the wall and sustained facial fractures and injuries to the left side of my face and eye. The plaintiff therefore sued, alleging medical malpractice and PL and compl.

The plaintiff also alleges constitutional rights violations, specifically, Constitution Amendment VIII because the state and the defendant, Lisa Super, engaged in a deliberate and intentional act to my constitutional rights by maliciously and intentionally refusing plaintiff a prescribed dose of insulin.

The plaintiff alleges US Const. Amend VIII violations against the state as well as ADA violations. See United States v. Georgia, 546 US 151 (2005); see also 6th Dist. Ct. Memo. Decis; entered on 12-13-06 pgs 3-5, para 2, attached hereto as Exhibit 1.

The plaintiff also alleges that defendant, Lisa Super, RN, and the state of Utah violated Plaintiff's Constitution Article I, section 10 for the conduct discussed above.

On 4-12-05 the state, when called upon to answer the complaint, they filed in the 21 motion to dismiss pursuant to U.S. Civil Rule 12(b)(6).

On 1-4-06, the court entered a memorandum in decision dismissing in part and denying in part defendant's 21 motion to dismiss and clerk's certificate to the court (pg 11).

Then, right on the heels of the State's Answer on 5-12-06, the State filed a motion for judgment on the Pleadings. In the Motion for judgment on the Pleadings, the State argued, "Sovereign immunity, Exhibit P; Dec. Mot. Judgment on Plead; 5-12-06.

Plaintiff's Summary judgment was based in part on the following averments by the state:

"Based upon information and belief, the state admits that on November 15, 2003 Plaintiff attended a.m. pill-line, to receive a morning dose of insulin. The state admits that plaintiff is an insulin dependent diabetic." State Ans. pg. 2, para. 3.

Further that:

"The state avers that, according to DOC medical records, on November 7, 2003 Plaintiff refused at 7:59 a.m. to take his insulin and that at 12:55 p.m. Lisa reported to Physician's Assistant Barbara Henniger that plaintiff was taking a sliding scale of insulin at a higher dose than ordered. The state asserts that Henniger recorded in plaintiff's chart that he could only take the ordered dosage, and that if he believed he needed more he would have to put in a health-care request (HCR) to see Dr. Burnham". State Ans. pg. 3, para. 3.

Then, that:

"Upon information and belief, the state admits that plaintiff either stopped eating or ate very little during the period from November 7, 2003 through November 9, 2003." States Ans. pg 4, para. 4.

In plaintiff's motion for summary judgment, the plaintiff pointed out in parts of the state's Answer that was set forth above supports a finding of not only medical malpractice, but also constitutional rights violations of U.S. Constitution Amendment VIII, and also Constitution of Utah Article I, section 9.

The plaintiff believes that the case essentially turns on three questions:

(1). Did the plaintiff have a prescription "order" for the amount plaintiff requested; and

(2). Did the plaintiff have a valid and binding Court Order mandating that the Warden, (the state of Utah included), provide "Irregular and timely medical treatment, (this requirement also entails adequate medical treatment)".

(3). Did the defendants in fact provide plaintiff that treatment mandated by the Court order, with foreknowledge of the existence of the Court Order?

1). The Court order, see: Lawrence M Jackson v. State of Utah, Warden, Clint Eriel, 3rd Dist. Ct. Ord.; case #010904240; entered on: September 12, 2001, requires the state to render what they are already obligated legally, morally, and constitutionally required to provide; Nothing more, nor nothing less. See: Exhibit B.

The court order provides, in relevant part:

"providing him with regular doses of insulin, and to administer to petitioner timely and regular foodstuffs in accordance with all [orders] of the treating physician or medical staff providing his care while incarcerated at the Utah State Prison."

The language in the above injunction is important to the resolution of the above question # (1). First, the state in its answer to the Financial Complaint, pg. 3; para. 3, through pg. 4; para. 3, avers, "that the plaintiff was taking
(pg 13)

a sliding scale of insulin at a higher dosage than ordered."

The State, in its "Martinez Report," and Motion for Summary Judgment based upon the Martinez Report, in the statement of facts portion of this report makes the following conclusions:

"The nurse determines dosage level based on three factors: (1). the insulin dosage prescribed by the inmate's physician; (2). the inmate's blood sugar level at the time the insulin is administered; and (3). The appropriate number of additional units of insulin added to the prescribed dose based on an established "sliding scale".

Further that:

(13). The NPH insulin dose is never modified. (Garden Aff. ¶¶ 10).

And:

(15). In November, 2003 Jackson's prescribed dose of insulin was 7 units of regular, and 30 units (sic) of NPH. (See: Exhibit 1 to Affidavit of Renee Springham, attached as Exhibit C, at NO. 311.

This Exhibit: C at 311 is an entry in computerized medical history state of Utah; MCC Medical Unit, for the date: 11-7-03, Lisa Seger made this entry:

Insulin given.

"Refused to take insulin when advised he can only take the prescribed amount of insulin plus sliding scale. He wanted to take 15 units reg. / 30 units NPH and has 7 units reg. / 30 units NPH ordered. On sliding scale he could only take 4 extra units of regular (total of 11 units Reg!!).

This argument is fundamentally flawed; first, because the plaintiff's dose of insulin was in fact 15 units of regular, and 30 units NPH.

the defendants point to entries in the prison's medical unit records. (Def. Mot. Rept.: Exhibit 1 to affidavit of Renee Stringham, attached as Exhibit C, at NO. 31). As this exhibit is set forth above, defendant, Lisa Soper asserts that plaintiff's prescribed dose is "7 units Reg. & 30 units NPH." The court, in its memorandum Decision entered: July 3, 2007, pg. 11, para. 4 determined:

"It is impossible for the court to determine which dose was the right dose. The only entry by Dr. Foxworth concerning the prescribed dose is the entry dated 5 February, 2004, which was several months after the injury."

The plaintiff believes the reason the court could not determine what the plaintiff's prescribed dose was when the cause of action accrued is because the plaintiff's pleadings and responsive pleadings were being effectively withheld from the record; the plaintiff can, however, demonstrate conclusively that the plaintiff's prescribed amount of insulin was in fact 15 units reg./30 units NPH. In order to establish this as fact, the court would have to review the plaintiff's medical records that precede plaintiff's transfer from Utah State Prison, Utah site: see: Exhibit C (11) U.S. State Prison Med. Dept. Medical Rec., (unpaginated), entry date: 6-21-02 entry by: Dr. Kennon, Tubbs C, MD:

A.M. Insulin

Start: 6-21-02 Stop: 12-18-02

Discontinued: 10-22-02 Inactivated, S.

Stringham, Renee S, RHIT.

ADMINISTRATION INFO: 15 R / 30 N Rx#430313.

Approximately (41) Forty-one days later, plaintiff was seen by a health care Provider on: 8-6-02. Where the health care provider made the following entry:

8-6-02: 15:37 Site: Visitation: Type: Sick call Clinic Visit: Tubbs, Kennon C, MD. Entered by: Tubbs, Kennon C, MD. Exhibit C(12): 8-6-02

DOCTOR ASSESSMENT

"stable diabetes and taking meds. fin Not on a regular dosing scale, encouraged to get a regular schedule of

insulin but he refused, He wants to self medicate based on his sugars!"

There are ample reasons for "wanting to self medicate based on his sugars:

- (1). there is no diabetic meals served in the Utah State Prison, Nor at (CUCF);
- (2). There is poor portion control: of meals
- (3). The state has, in the past, and even recently in the prosecution of plain tiff's civil law suit, where "supplimental Foodstuffs, (medically prescribed), are either delayed by 9-10-10 hours or more; and
- (4). The prison provides almost ^{NO} outside yard time in order to exercise the large muscle groups and the bloodsugars reflect this omission.

Advancing to 10-21-02 of Exhibit C (13), the prescription for AM insulin was reviewed and transcription was by: Kennon Tubbs C, MD.

THERAPIES

AM INSULIN

Start: 6-21-2002; Stop: 12-18-02

ADMINISTRATION INFO: 15r / 30N.

On 10-31-02 plaintiff was transferred to the Central Utah (correctional) facility, (CUCF), see: entry date: 10-31-02, (9) nine days after the entry by Dr. Kennon Tubbs above: 10-21-02 Exhibit C (14).

Then, on 12-27-02 I was seen in (CUCF) medical Department by: Mitten, Barbara L, PAC during this, my first consultation with a health care Provider after a confrontation with Dr. Burnham regarding plaintiff's diabetes. Ms. Mitten writes:

DIABETES UNSTABLE [MAJOR]

"Review of flow chart showing (sic) poor BS (bloodsugar) Control. Will review meds and adjust as needed. Pt. (patient) was "ordered" AM Insulin of 30N / 15r, but states he feels BS go to low at that dose. Takes only 20N and 55 R.

discussed with Dr. F. he needs to start with the 20 NPH and reg. that is ordered, needs to increase 3 units of NPH every 3-5 days until reaching 30 U NPH or stable. Dr. will leave PM insulin the same for now." Exhibit C (6)

It is conceivable at this point the AM insulin prescription was probably unintentionally obscured. For Barbara Mitten, PAI made her instructions and course very clear. In fact, Ms. Mitten takes a cue from Dr. Kennon Tubbs' entry in the medical charts on 8-6-02, in relevant part: "[NOT] ON a regular dosing scale." She observed: "Pt. was 'ordered' AM insulin of 30N/15R." (emphasis mine). Ms. Mitten was clearly NOT interrupting the established prescribed amount of insulin that Dr. Tubbs established. The discrepancy came about when Barbara Mitten L, PAC, on the same day as the above referenced consultation, (12-27-02), under the heading: "Therapies," when she wrote out the prescription she wrote:

THERAPIES

AM INSULIN

"Start: 12-27-02 Stop: 6-25-03

Discontinued: 12-11-03 Renewing Order

ADMINISTRATION INFO: 20N/7R+SS; 12-45815"

It appears then that the physician's Assistant, Barbara Mitten transposed numbers from the PM Insulin amount of 20N/7R+SS. (was written just after the AM insulin prescription above, (12-27-02)).

State omitted the entries in this medical record from: 2-1-03 to 5-16-03, then to 6-16-03; however, it appears - a David Rich, MD appears to have renewed the prescription as Barbara Mitten wrote it and the AM insulin was likewise renewed with the discrepancy intact. In 8-13-03, the treating physician likewise renewed the diabetes meds (insulin) both AM and PM as it appeared. See Exhibit C (9).

especially where the entry date of 12-27-02 Consultation and where the discrepancies lie, in the THERAPIES portion of The record, then could be on the same screen.

Between 8-13-03, and 11-7-03, there were no record of a change in plaintiff's insulin doses. It is already established that defendant, Lisa Supper, RN was the first to discover the discrepancy, and reason would dictate that the defendant did, or should have discovered the source of the discrepancy, especially after the declarations to Angelica Tuft, RN on 11-7-03, Exhibit C(10) 'n relevant part:

"Would not listen to reason or to what medical is bound by law w/re gards to the amount of insulin we can allow him to take. Wanted to argue and point out 'In proper they allowed me to take. Sirs - I've been taking for 15 years, Now all of a sudden you change it w/o telling me!"

The defendant, Lisa Supper, RN was obviously cognizant of the ramifications of over medicating a patient, so she should have known the ramifications of interrupting the prescription made by a healthcare provider by under medicating. See: Bonretti v. Wisconsin, 930 F.2d 1150, 1154-55 (6th Cir. 1991) ("deliberate indifference because nurse interrupted prescribed medical plan, despite the fact that prisoner's wound healed completely,". see also: Ross v. Schakel, 920 P.2d 1159 (Utah 1996) quoting: Mississippi v. Durham, 444 F.2d 152 (5th Cir. 1971) ("The rule is also well-established that a negligent failure to provide medical care to a prisoner known to be in need of such care is actionable against the sheriff and his surety"). More to the point, Estelle v. Gamble, 429 US 97, 104, 97 S.Ct. 285, 291, 50 L.Ed. 2d 251 (1976). The U.S. Supreme Court, at 104-5 determined that: "[W]e therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain." Gregg v. Georgia, Supra, at 173 (joint opinion), proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards intentionally denying or delaying access to medical care or intentionally interfering with treatment once prescribed").

1. The court, in its memorandum Decision: Case # 04060383; entered on: July 3, 2007; pg. 7-11, at ¶¶ I [Refusal to take insulin and subsequent injury], cites several entries in the plaintiff's medical chart, Utah State Prison's Medical Unit, attached to defendant's Exhibit 1 to Springham ¶¶. a 311; and 312, 313. Even though (pg. 18)

the court was aware, that my legal mail, (outgoing) was being intercepted and possibly destroyed, the court determined: "[T]hus the facts are undisputed about what happened on November 7, 2003. There is no genuine issue of material fact. It is established that the plaintiff was given a certain amount of insulin. The nurse believed it was the correct amount. Even if she was wrong, she did not refuse to give it to him. The plaintiff himself refused to take the offered insulin because he believed it was the wrong amount. The plaintiff continued to refuse insulin and food for two days until he fell and injured his eye.

It is impossible for the court to determine which dose was the right dose. The only entry by Dr. Burnham concerning the prescribed dose is the entry dated 5 February 2004, which was several months after the injury. It is not clear when the plaintiff's dosage was originally prescribed. However, this issue does not create a genuine issue of material fact because even if the nurse offered the plaintiff an incorrect dose, she did not refuse him medical treatment. Indeed, the plaintiff made a personal decision and determined to refuse to take the medication."

The question in # (1) above: "Did the Plaintiff have a Prescription 'order' for the amount Plaintiff requested?" this question is material to the court's findings in its memorandum Decision; entered on 1-6-06; Exhibit Q; pg. 9, para. 3. the court determines, in relevant part:

"Nevertheless, in order to successfully proceed with a private law suit on a state constitutional claim for monetary damages, a claimant must establish three required elements: (1). that he suffered a "flagrant" violation of his constitutional right; (2). that the existing remedies do not redress his injuries; and (3). That equitable relief was and is wholly inadequate to protect his rights or redress his injuries."

With respect to element one, the court order mandates that the State "administer regular and timely medical treatment to Petitioner Lawrence M. Jackson by means of providing him with regular doses of insulin, and to administer to Petitioner

insulin was intact 15 reg / 30 NPH. If defendant, Lisa Super refused to give plaintiff the prescribed amount of insulin then the court order was violated. The above referenced court order is entitled to judicial notice in this case.

timely and regular foodstuffs in accordance with all orders of the treating physician or medical staff."

The court could, with reasonable certainty, determine if the defendant, Lisa Super, refused to give the plaintiff the [Ordered] amount of insulin, see: Exhibit B, 3rd Dist. Ct. #010904240, respecting the insulin and the [Orders] of the treating physician or medical staff, (Physician's Assistant, Barbara Pennington). then the court order was violated. Since the mandate in the court order is nothing more than the constitution requires as announced in Estelle v. Gamble, supra. So, based upon the state's own medical records, the prescribed amount of insulin was intact 15 r / 30 N. Thus, the withholding of the "prescribed" or "ordered" amount of insulin, especially where the court order was to prevent this sort of conduct can only be described as a "flagrant violation of plaintiff's constitutional rights." see: Spackman v. Board of Education, 16 P.3d 533, 538-9 (Utah 2000).

2). Did the plaintiff have a valid and binding court order mandating that the warden, (the state of Utah included), provide "regular and timely medical treatment?"

The question as to whether there was in place a valid and binding court order when the state deprived the plaintiff of the "prescribed dose of insulin". To determine if the court was valid and binding on the state, the plaintiff points to the 3rd District Court's ruling in the proceedings in the underlying case: Jackson v. Freil, 3rd Dist. Ct. #010904240; pg. 4; entry: 1-25-02. The court held, in relevant part:

"Based upon the foregoing, and the court's findings, the state's motion to dismiss petition is granted, with the exception, that the court's interim order remains in full force and effect.

This order requires the doctors at the prison to strictly comply with the medical requirements of petitioner."

Based upon the foregoing, and the fact that there has been no argument that the court order is no longer valid or binding upon the defendant's, the court order, (pg. 20

insulin was intact 15 reg / 30 NPH. If defendant, Lisa Super refused to give plaintiff the prescribed amount of insulin then the court order was violated.

at the time that Lisa Soper, defendant, and the State of Ohio was to "strictly comply with the medical requirements of petitioner". This meant to give the plaintiff all the medications the Prison Physicians prescribed, not 8 units of regular insulin less than the prescribed amount, or whatever the defendant, Lisa Soper in her act of whimsy, she decided to give me.

31. Did The Defendants In Fact Provide Plaintiff that treatment mandated By The Court Order, with fore knowledge of The Existence of The Court Order?

The Court had determined that "the nurse believed it was the correct amount. Even if she was wrong, she did not refuse him." This determination is an oversimplification of the proposition I was faced with. First, the prescribed amount was in fact 15 units Regular and 30 units NPH, as evidenced by medical records starting at entry dates: 6-21-02; 8-6-02; and 12-27-02. These records show conclusively what course the healthcare providers chose to take. also 1-9-03; see Exhib't C(7) DOC medical chart

The problem I faced at the point the prescribed amount of insulin refused, was either to take the lesser amount and run the risk of ensuring unstable blood sugar levels and its attendant hypoglycemic reactions, or plead my case to the healthcare provider. The Court, and the government officials refuse to appreciate the complications of being locked inside a prison cell with what is essentially a time-bomb inside me. I have every right to fear hypoglycemia while locked in a cell, something I have faced for the past nine years. If prison officials get my insulin dose wrong, I suffer, and they don't. The Court Order, see Exhibit B, 3rd Dist. Ct. # 010904240, shows it was an issue even back then. The Court, when it determined that: "even if the nurse offered the plaintiff an incorrect dose, she did not refuse him medical treatment," ignores the fact that the defendant Lisa Soper knew, by virtue of her title as a Registered Nurse in the Department of Corrections medical Department, that giving a diabetic an inadequate dose of insulin would have adverse after effects such as volatile blood sugar levels until the patient can resume his regime. Defendant, Lisa Soper, R.N. is required, if the patient is in receipt of his prescription of insulin to be administered, to make certain that she was correct about the doses before

she withhold the prescribed amount. See: Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994), "The Supreme Court began by reiterating the two requirements for a finding that a prison official has violated the Eighth Amendment: "[F]irst, by the deprivation alleged must be, objectively, sufficiently serious," and second, "a prison official must have [had] a sufficiently culpable state of mind," which the prison condition cases means "deliberate indifference to inmate health or safety." 114 S.Ct. at 1977 (internal quotations omitted). The court then clarified the term "deliberate indifference," holding:

"[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference."

Id. at 1979. The court underscored the fact that it was adopting a subjective test, in contrast to the objective standard of negligence articulated in cases like Canton v. Harris, 489 U.S. 378 (1989). It dismissed Farmer's concern that a subjective test would leave prison officials free to ignore obvious dangers to the inmate with this observation:

Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. . . . Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious."

The plaintiff asserted, in the plaintiff's motion for summary judgment that
(pg. 22)

The defendant, and her contemporaries and supervisors adopted a "policy to
but wait" the plaintiff which resulted in the injury alleged. See: Pl. mot. Summary
Judgment; pg. 6, para. 1. The record shows that this policy was resorted to by prison
officials upon my arrival to (CUCF) medical unit. See: Exhibit C (2); Ut. Dept.
of Corr. med. Hist. chart, entry date: 11-2-02: Doctor Burnham, on our first
meeting acted with exceptional hostility and refusing to honor my "bottom
bunk clearance", which plaintiff enjoyed at Utah State Prison. Dr. Burnham
did not do any examination at all before determining I do not fit the criteria;
The criteria is the same at both facilities but Dr. Burnham was making
an arbitrary decision that could have, and would have culminated into
a catastrophic injury, so I resisted seeing him for any other reason
due to his assaultive demeanor.

When plaintiff requested to consult with another healthcare provider,
Doctor Burnham elected to allow my AM insulin prescription resolving
"his AM insulin runs out in one week. On 12-18, PM insuline (sic) and
oral agents for diabetes are good for several more w (sic) weeks. Will
allow AM to expire, when he wants it back he can submit HCR." Exhibit
C (3).

On 12-22-02, when the AM insulin ran out and from my perspective,
with (2) full-time, and (1) part-time physicians, given the past experience
with Dr. Burnham regarding other non-diabetic medical care, I felt justified
in requesting to consult with another healthcare provider who would not be
so arbitrary, and abusive, but an Angelica Tuft, RN who with full knowledge
of a currently binding court order, explained, "I told him that it is policy then
(sic) the Im's can't choose which provider they are scheduled to see: Exhibit C (5)

It wasn't until I spoke with Steven Fitzgerald S, RN, that I was allowed to
see another healthcare provider: Exhibit C (5); Barbara Henniger, PAC, 12-27-02.
Ms. Henniger, PAC who renewed the prescriptions without change. Then, Mrs.
Henniger, on 1-9-03 observed:

DIABETES Stelle [MAJOR]

"much improvement B S's. No change at this time.

(pg. 23)

Here for F/U on DM after renewing his insulin."

Exhibit C (7).

It is obvious, in light of the above, the medical Department at (CUCF) knew that there was a binding court order mandating "regular and timely medical treatment," and further, "[i]n accordance with all orders of the treating physician or medical staff providing his care while incarcerated at the Utah State Prison." see: Exhibit D; 3rd Dist. Ct. Ord. #010904240; entered: 9-12-01.

Those who intend to abide by the letter and spirit of the court order, would ascertain first what the prescription is before depriving me of the dose of insulin "Ordered" by the treating physician, (during the relevant time period, Dr. Kenneth Tubbs; and Barbara Henniger who ratified Dr. Tubbs' course of treatment).

The deviation from that prescribed amount from the onset of the controversy could have been treated as a "goodwill mistake," and an "error on the side of caution." The subsequent refusals were inexcusable. see: Exhibit C (10) (CUCF) med. rec.; entry date: 11-7-03. This entry is by defendant, Lisa Super, RN, at: 7:59. The next encounter 11-7-03, 15:29; Angelica Tuft, RN, (this employee was the same who advised plaintiff that Dr. Burnham had allowed plaintiff's AM insulin to run out, ("waiting the plaintiff out"), Ms. Tuft was also informed of the court order. Then, Barbara Henniger, who noted in the medical record that "chart review RN, Super reports to me that Mr. Lawrence, is taking sliding scale insulin at a higher dose than ordered. He is to be allowed only what is ordered, if he feels he needs more insulin, He needs to put in HCR and see Dr. Burnham to explain why he needs more!" entered on 11-7-03; Exhibit C (10). There were other medical personnel I discussed this with. See: Wilson v. Seiter, 501 U.S. 294, 298 (1991) ("The Wilson court reiterated that "[i]t is abduracy and wantonness, not inadvertance or error in good faith that characterize the conduct prohibited by Cruel and unusual Punishment Clause"). To refuse to research the plaintiff's assertion that my prescription was in fact 15 units Regular and 30 units NPH insulin, and to in effect force me to take a lesser amount or none at all is obduracy and

(pg. 24)

unlawfulness, and is a violation of plaintiff's constitutional rights.

The court excuses the defendant, Lisa Super's conduct in saying, "Even if she was wrong, she did not refuse it to him." Under Estelle v. Gamble, Supra, what defendant, Lisa Super did was to intentionally interfere with the treatment once prescribed. 429 U.S. at 105. The defendant had a duty to ensure that the information she had accessed was correct, see: Duchesne v. Sugarman, 566 F.2d 817 (1977). The court here determined: "[W]e deal here with the legal procedures in which the government has a far greater familiarity with the local procedures available for testing its actions depriving individuals of a most basic and essential liberty interest which those uneducated and uninformed in legal intricacies may allow to go unchallenged for a long period of time." Cf. Fuentes v. Shevin, 407 U.S. 67, 83 No. 13, 92 S.Ct. 1983, 32 L.Ed. 2d 556 (1972); Hernandez v. European Auto Collision, Inc., 487 F.2d 378 N.Y. (2nd Cir. 1973) (Timbers, J. concurring). Further that: [14, 15] "Title 42 U.S.C. § 1983 establishes a federal cause of action for damages against state and local officials who have caused individuals to suffer a constitutional deprivation, and was designed to protect them against a [mis]use of power. . . made possible only because the wrongdoer is clothed with authority of state law. . ." United States v. Classic, 313 U.S. 299, 326, 61 S.Ct. 1031, 1043, 85 L.Ed. 1368 (1941). Further still: [23-25] "[I]t is not enough that appellants may have acted 'sincerely and with a belief that [I]t is not enough that appellants may have acted 'sincerely and that [they were] doing right,' for 'an act violating . . . constitutional rights can be no more justified by ignorance or disregard of settled, indisputable law . . . than by the presence of actual malice.'" Id. Thus, appellees "must be held to a standard of conduct based not only on permissible intentions, but also knowledge of the basic constitutional rights of [their] charges". Id. at 322, 95 S.Ct. at 1001. The necessity of satisfying both elements of the good faith defense is reflected in the established by The Supreme Court:

"[T]he relevant question for the injury is whether [appellees] 'knew or reasonable should have known that the act or [they] took within [their] sphere of official responsibility would violate the constitutional rights of [the appellants], or if [they] took the action with malicious intention

to cause a deprivation of constitutional rights or other injury to [The appellants]; [Wood v. Strickland, 420 U.S. at 322, 95 S. Ct. 992]."

they

As for the matter of the actors in this matter "knew or reasonably should have known" that the action [they] took within the sphere of official responsibility would violate the constitutional rights of the [appellant], or if [they] took action with malicious intention to cause a deprivation of constitutional rights, or injury to [the appellant], "What the defendant, Lisa Super, RN, and Barbara Henniger did next respecting my insulin prescription. see: Exhibit C(17), CUCF) Med. Chart entry 11-9-03: plaintiff's original prescription was restored to what Doctor Kennon Tubbs had previously prescribed, and what Barbara Henniger renewed the prescription to without change. There was little to no time to research and find and correct the discrepancy at the time of the injury, the timing shows that they already knew where the discrepancy was but their "out wait him" policy in the same way they did on 12-10-02 where Dr. Burnham resolved to "out wait him" if, and the timing shows that the deprivation was not an error in good faith, because they went directly to the source and corrected it the day of the injury. Thus, the court's determination that defendant, Lisa Super "[T]he nurse believed it was the correct amount," Exhibit A, 6th Dist. Ct. Memo. Decis. jpg 11, para 3. They went directly to the source of the discrepancy and corrected the prescription.

Exhibit C(17)

The court, in its July 3, 2007 memorandum Decision; #040600383 found that:

"[A]nother important fact for purposes of this analysis is found in Dr. Garden's Affidavit. Dr. Garden testified that taking too much insulin can be dangerous to a diabetic because "an overdose can cause insulin shock, which can be fatal." (pg. 10, para. 3).

On the one hand, this observation has merit in that too much insulin can cause insulin shock; but also too much activity, or inappropriate diet can also lead to hypoglycemia. This argument is right at point in the supplemental Pleadings, (respecting the delay of "supplemental foodstuff"), however, this argument is reserved for later in this document. The court concludes, however,

"[O]f course, they could not force him to take it." In fact the court finds the prison staff acted in the plaintiff's best interest by not giving him the higher dose of insulin because it might have been dangerous to him." Exhibit A; Memo. Decis; entered: 7-3-07; pg. 12, para. 2). This argument was adopted from defendant's Martinez Report and Motion for Summary Judgment, pg. 5, No. 14. The defendants in #16 thru 17 further assert that:

#16. "On November 7, 2006, Jackson's glucometer reading before breakfast showed his blood sugar level was 177. According to medical records, Jackson demanded to take an insulin dose of 15 regular and 30 NPH units (Exhibit 1 to Springham Aff. at 31).

17. But based upon Jackson's blood sugar level and the sliding scale, he couldn't take a total of 11 units of regular. Id.

The defendant's own records show at least (14) different occasions where the plaintiff was administered 15 reg. / 30 NPH for blood sugar levels of 179 DL/mg or less between 9-18-02 thru 10-21-03, and there were no incidents of insulin shock induced because other factors were considered by the plaintiff than just what the blood sugar levels were when I went to the pill line; factors such as: (1) what the fasting (morning) blood sugar levels were; (2). What I ate the evening before; (3). What the intensity of the day is; (4). my activity levels were, or anticipated to be; (5). Upon occasion if I have an illness such as viral infections, and trauma. This regime (which) worked for me because approximately (2) two months before being transferred to (CUCF) my A1C, (a test that determines the average blood sugar levels over a (3) three month period thus indicating the amount of controlled the patient's diabetes is), was square on target and ideal at 6.3. (Exhibit C (16); date: 8-16-02; see also. 8-15-02.

More important, when the defendant's affiants, including Dr. Gardens and Cathy Davis, Renee Springham extrapolate, as to how the (prescribed) amount of 15 r/30 n would affect me, they are in essence second guessing the treating physician's sound decisions as to the appropriate treatment in my case.

This Court should give the appropriate amount of deference to the [treating] physician's decisions with respect to my treatment. See: Gumm v. DeLond, 29 F. Supp. 767 (D. Utah 1990). The Gumm Court determined that:

[31]. "Although determining whether the prison's staff response is negligence represents a "back door" approach to the problem — saying what deliberate indifference is not — it is nevertheless useful as a means of drawing a line in a difficult area of the law. One problem immediately apparent about this line drawing, however, is that this court is asked to second guess and judge the discretionary acts of governmental officials and medical personnel. With this in mind, the third circuit has noted the test for deliberate indifference, as defined by the Supreme court in Estelle affords considerable latitude to prison medical authorities in the diagnosis and treatment of the medical problems of inmate patients. Courts will disavow any attempt to second guess the propriety or adequacy of a particular course of treatment. . . [which] remains a question of sound judgment." Bowring v. Godwin, 551 F.2d 44, 48 (4th Cir. 1977). Implicit in this deference to prison medical authorities is the assumption that such an informed medical judgment has, in fact been made. When, however, prison authorities prevent an inmate from receiving recommended treatment for serious medical needs or deny access to a physician capable of evaluating the need for such treatment, the constitutional standard of Estelle has been violated."

The plaintiff has shown by the prison's own medical records that Dr. Kennon Tubbs made a diagnosis of diabetes mellitus, and prescribed it's treatment with 15 units of regular, and 30 units of NPH Insulin in the AM. The Physician's Assistant ratified this diagnosis and treatment upon my arrival at (CUCF). A registered nurse, Lisa Soaper interfered with that treatment by denying plaintiff the [prescribed] amount of insulin, and further delayed me from access to a healthcare Provider to determine what in fact my prescription was. I also acted reasonably and in the interest of avoiding very debilitating hypoglycemic reactions.

Dr. Tubbs' prescriptions and course of treatment is worthy of the appropriate amount of deference in this court as well as the other courts this case may find itself in.

Delay in Medical Treatment of the wound.

The court, in its July 3, 2007 Memorandum Decision the court finds:

"There is no genuine issue of material fact. The facts, which are not disputed by the plaintiff, clearly, shows that the prison medical staff made every effort to care for plaintiff's injury. If there were some mistakes made, mere medical malpractice does not qualify for "unnecessary and wanton infliction of pain." See: Boh at 740. The court finds no deliberate delay or refusal to provide plaintiff with necessary medical care."

In reviewing the States ex parte Martinez Report and Motion for Summary Judgment, the court referred to several dates from the date of injury starting at November 10, 2003, to March 19, 2004.

Exhibit 7(a)

In the defendant's medical records, including the Ophthalmologist, Dr. Goldsmith's Consultant Evaluation, Dr. Goldsmith; dated: 12-17-03, shows that the Ophthalmologist advised a diagnosis in this document, and instructed the prison to (1). get CT scans made; (2). Call Dr. Patel's office "for scheduling surgery." Exhibit 7(a); consult. Req. from Dr. Goldsmith, oph.; dated 12-17-03

The record also shows that the CT scan was obtained on: 12-29-03. See: Exhibit 7(b). On the Radiologic Diagnosis, (3). "possible subtle fracture of the left orbit. No muscular entrapment identified." Although Exhibit 7(b) is apparently minimizing the extent of the injury, referring to the injury as: "possibility" of an inferior orbital floor fracture cannot be excluded," but see: Exhibit D; Operative Rpt.; dated: March 19, 2004, Authored by: Patel, Bhupendra Oph.; pg. 1 of 2, para. 3, gives a detailed and professional view of the immediate view of the injury was strikingly different than what the Radiologist described in the CT scan. The point the plaintiff makes above is that the State was (pg. 29)

The specialist's diagnosis as early as December 11, 2003. The state, did not schedule the surgery, and although the state did not provide any evidence as to when they actually scheduled the surgery, the point is that it took at least 4 months from the date of the Moran Eye Clinic's Ophthalmologist, Dr. Goldsmith's Consultation Request, dated: 12-17-03. See: Exhibit 7(a). That is (4) months, and if one counts from the date of the injury would be approximately (5) months; meanwhile despite my frequent requests for pain ^{medication}, none was forthcoming, even after the full extent of the injury was known. So there were approximately (2) twelve days between The Consultation Request and the Specialist's Instructions, and when the CT scan was obtained. The time in the interim was obscured in the state's account and also the court's account, the plaintiff filed a copy of a grievance respecting the delay in medical treatment see: Exhibit E; Griev. Resp.; ref. # 99G-08-53397. The grievance, which was forwarded attached to the Memorandum in Reply to Defendants' Memorandum in Opposition to Plaintiff's motion to Strike Joint Motion And Stipulation; pg. 8; para. 1. The grievance shows that the plaintiff was transported to the Utah State Prison from (CUCF) for a follow up visit to the Moran Eye Clinic, and perhaps even for surgery. The plaintiff was housed at U.S.P. for approximately one week, then transported back to CUCF having not been treated, and no reason why. The delay in providing the recommended surgical intervention was not due to the CT scan procedure, but because of prison officials delaying the surgery. The Court must therefore reconsider its ruling in this issue as well.

ARGUMENT II.

The Plaintiff Is Entitled To Relief Under the Americans With Disabilities Act of 1990.

In the memorandum in Support of Motion to Suppress and Pleadings pg. 11; para. 1, plaintiff, in this document, in citing U.S. v. Georgia, 546 U.S. 151 (2006), the plaintiff asserts that the plaintiff has a liberty interest in obtaining adequate and timely medical care for a serious illness or injury." In the Amended Complaint for Medical Malpractice And Constitutional Rights Violation; pg. 8-9. See also: Exhibit 6; Pl. memo. in supp. mot. Rec. of Ct; pg 8, para. 2.

In U.S. v. Georgia, 546 U.S. 151 (2006) the Supreme Court, citing to Pennsylvania Department of Corrections v. Yeskey, 524 U.S. at 210 ("Noting that the phrase, 'services, programs, or activities' in § 12132 includes recreational, [medical], educational, and vocational prison programs"). The plaintiff alleges that the prison violation of the above referenced "services, programs, or activities" include medical care.

The defendants, in their Martinez Report, pg. 3, argue, in relevant part:

"Jackson is not disabled for the purposes of the ADA simply because he is a diabetic. Jackson's ADA claim also fails because a plaintiff who sues under the ADA must show that he was excluded from a service, program, or activity because of his disability. Jackson has made no such allegations. Rather, he has claimed officers did not treat his diabetes properly; courts have uniformly held that allegations of inadequate medical treatment do not state a claim under the ADA. Jackson's diabetes does not qualify as a disability for the purposes of the ADA and thus he cannot sue under that federal statute."

When the state argued that "Rather, he has claimed officers did not treat his diabetes properly." They attempt to re-interpret what I have said in writing & all my pleadings on the matter, that prison officials denied plaintiff a medically prescribed dose of insulin. see: Exhibit 5; Pl. Amend. Compl. for Med. Malpr. & Const. Viol.; pg. 3, para. 3. The plaintiff wrote, in relevant part: "One day the Medical Technician Lisa Soper refused me my medical, prescribed dose of insulin." Also: pg. 7, para. 2: "Her, (Lisa Soper, ...) interruption of that treatment constituted 'deliberate indifference.'" These allegations are in stark opposition to the state's argument, "he has claimed officers did not treat his diabetes properly." The facts in this is transparently clear. The medical personnel at (CUCF) refused plaintiff the prescribed amount of insulin, i.e., 15r / 30N. The plaintiff never questioned in this action the adequacy of the prescribed dose of insulin; nor was there even a reason to. The facts show that just prior to being transferred to (CUCF) approximately 72 days prior, plaintiff's A1C tests were ideal. see: Exhibit C (16); Def. Med. Ch.; entry date: 8-15-02 "Hemoglobin in A1 = 6.3; and 8-15-02 Tubbs, Kennan C, MD: DOCTOR ASSESSMENT: "Therapeutic A1C on Lab Review today diabetes stable, Cont. current dosing regimen see: Exhibit: C (15); U.S.P. Med. Ch.; entry date: 9-19-02 plaintiff's dosage was 15r / 30N. (pg. 31)

Then, approximately 98 days later, (CUCF) med. unit; Barbara Henniger, at 2-27-02, rewrote the prescription and confirmed course of treatment, see: Exhibit C 2, 'CUCF med. Ch.; entry date: 12-27-02. Then again, on 1-9-03 Diagnosis/problems: Diabetes Stable [MAJOR] "much improvement on BS's. No changes at this time. Here for F/U on DM after renewing his insulin."

It is common knowledge here in the Utah State Prison, and also in (CUCF) for all inmates, Registered Nurses cannot write or prescribe medications, nor can they discontinue them or rescind them when they were prescribed by a physician, or a Physician's Assistant.

When The defendant went into the record and discovered the discrepancy, she used the erroneous part of the record to adversely affect me and to cause me whatever problems that the discrepancy could cause. The defendants were also aware of the several years of struggling with my diabetes, and the court filings on my diabetes, and also the court order. The record also demonstrates that whenever the Court Order was mentioned, there was always problems and requests to follow. see: Exhibit 4; 3rd Dist. Ct. Dock Evt. Statmt, pg. 5 of 7; from entry date: 8-13-02 thru pg. 6 of 7. The actions were also demonstrated to be knowing and malicious, this by the defendant's actions of going to the record, right to the discrepancy and corrected it. see: Exhibit C (17); CUCF med. ch; entry date: 1-9-03. The act of denying me a medically prescribed dose of insulin is actionable because it was "deliberate indifference" and "obduracy" when plaintiff tried to reason with them concerning my prescribed dose of insulin. see: Exhibit C (10); CUCF med. ch.; entry date: 11-7-03; Angelica Tuft G, RN.

Finally, when the State argued that: "Jackson is NOT a qualified individual with a disability." The state identifies (3) three part test to determine if a claimant is a qualified individual with a disability: "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102 (2) (2000)." In addressing the above criteria, the plaintiff forwarded to the Court a document entitled: Supplement to The Pleadings. In which, pg. 8, NO. 12, the plaintiff states the following, and provided documentation in support of:

"The plaintiff was evaluated by a federal agency, Department of Vocational Rehabilitation, (DVR), a federal Agency, where the presence of an (ADA) recognized disability is a prerequisite to eligibility for services. This Agency, (DVR) of Roswell, New Mexico; Colorado Springs, Colorado; and Tacoma, Washington recognized both the diabetic condition and the Panic disorder as eligible for the purposes of (ADA) qualification, and thus services were rendered upon the finding of an (ADA) disability."

The plaintiff, in the memorandum IN Reply to Defendant's Answer to the Amended Complaint, filed on: 2-26-07, plaintiff argues that the criteria for a finding that plaintiff's diabetic condition, where plaintiff demonstrated that the plaintiff's diabetic condition was evaluated and determined to meet all three of the definition of a disability see: 42 U.S.C. § 12102(2). In the state's argument in the Martinez Report, pg. 24 at 11 A). The definitions of having a disability were met with a Federal Agency that deals exclusively with persons with an (ADA) disability. The Agency is The Department for Vocational Rehabilitation, (DVR), in at least (3) three states: Roswell, New Mexico; Colorado Springs, Colorado; Tacoma, Washington. The covered disabilities were identified as lumbar spinal injury; Panic Disorder; and diabetes mellitus. I attach the documents supporting my argument on the issue of whether I am an individual with an (ADA) disability. see: Pl. Memo. In Reply to Def's Ans. Amend. Comp., pg. 5, para 3. see, attached thereto Exhibit A; Pikes Peak Mental Health - Confidential Document - Disch. Summ. from 11-11-93. Thus, the test (B), "a record of such an impairment", (C) being regarded as having such an impairment is satisfied, and test (A). is satisfied by the showing of tests (B) and (C).

Additionally, in answer to the question as to plaintiff's eligibility for (ADA) criteria, see: *Brigdon v. Abbott*, 524 U.S. 624, 632, 118 S.Ct. 2196, 2202 (1998) n.c. 5, at 639, 2205, under the definition of "physical impairment", listed are: hearing and vision problems, mental illness, physical disabilities, "certain diseases", or many other conditions." Further, the U.S. Supreme Court has said that a person infected with HIV (human immunodeficiency virus), the virus that causes AIDS, may be disabled even if that person does not have any symptoms of the

disease." In fact, "the courts usually look at the facts of each lawsuit to decide if a person is disabled according to the ADA and Rehabilitation Act." see: Albertson's Inc. v. Kirkingburg, 527 U.S. 555, 563, 119 S.Ct. 2162, 2168 (1999). The plaintiff is requested from the contract Attorney some case law wherein the limitations, major life activities) for diabetics and the ADA but I have been refused. The plaintiff has found a Colorado case that reflects that diabetics are eligible for an (ADA) impairment. see: Montez v. Owens, USDC. D. Co. Case # 92-1V-870-EWN-OES. "The Colorado Department of Corrections (CDOC) has settled a class action disability discrimination suit over accessibility inside its state prisons for prisoners with impairments in mobility, hearing, sight, and for diabetics. Over 3 million will be spent on accessibility renovations and \$252,300 in awards, fees and costs."

Further that: "On November 23, 2004, the court entered an order that individual damage claims would be evaluated based upon the following: (1). whether the claimant is disabled and a class member; (2). whether the claimant was otherwise qualified to participate in programs / receive benefits or services offered by the CDOC; (3). whether the claimant was discriminated against because of his or her disability, (where accommodations were requested and denied based upon a disability), and (4). whether denial of accommodations harmed the claimant and if a remedy has been imposed."

Based upon the above model, the plaintiff can show: (1). the plaintiff has a disability, i.e., insulin dependant diabetic which is a disease considered to be a disability under the (ADA); (2). The plaintiff simply sought a medically prescribed dose of insulin, nothing more, nothing less. The plaintiff is an "otherwise qualified individual" who sought the benefit, or service, or program of medical care, (the full amount of the prescribed insulin); (3). The claimant herein Lawrence M. Jackson, requested, but was denied the prescribed amount of insulin of 15 units Regular, and 30 units NPH insulin; (4). the denial of said accommodation resulted in the plaintiff suddenly lost consciousness and sustained trauma to left side of face and eye, and resulted in an impairment.

Thus, the plaintiff is entitled to relief on the issue of (ADA) of 1990, and the state is not entitled to Summary Judgment and the court must therefore reconsider its ruling.
(pg. 34)

ARGUMENT III

The facts as the state argued, and the court adopted

The court ruled in this matter concerning the deprivation of the "medically prescribed" Supplemental Foodstuffs, (1). That plaintiff called the control room several times and asked officers on "skin count" about diabetic snack boxes. (2). He received his snack boxes every day but he received late. (3) One day (13 April 2006), he suffered hypoglycemic reaction because he did not receive his snack box on time. he also claims to have received a nutritionally inadequate supper that day.

The court then, in quoting the State in its Martinez Report, states: "The State's claim that the Affidavit of Sergeant Thomas Laurson, an officer employed at Unit 11. He indicated that officers on 'skin counts' would not be able to accommodate such requests immediately.

This argument, however, conflicts with the provisions of the court order. That court order provides, in relevant part:

"[and] to administer to petitioner timely and regular foodstuffs in accordance with all orders of the treating physician or medical staff providing his care." Exhibit B; 3rd Dist. Ct. Ord. # 010904240, entered: 9-12-11.

The above accommodation is not conditioned upon if housing staff is able to "accommodate immediately." The first day on that the snack box was late by only a few minutes. That is understandable since it was my first day. But according to Sgt. Laurson, "It is the responsibility of the inmate with a special dietary need to inform the housing officer about the need." The court also noted also that, "[H]e received his snack boxes every day but he received them late." The record shows that the very first day, the housing staff was on notice of this "special dietary need." Moreover, the acts of delaying the "supplemental foodstuffs" is no isolated offense; in fact it is business as usual, see: Exhibit 8 (a) and (b); Pl. Not. of Int. to Clin. Legal Matter (5) Sgt. Zeros, and Off. in, Strickland.

The court also observed that, "[T]hese officers might also not remember the (pg 25)

Suppl. & Med. Foodstuffs Jackson v. DOC, 8:11-cv-00033

request at the time they finish with the count." In this rationale, the plaintiff asserts that it is not likely, since they were asked not less than (10) ten times per evening, that they would forget. Also, the plaintiff, in the "second Request for discovery sought the names of certain prisoners who overheard me asking for the insulin snack box from one Officer and that Officer "laughed in my face". The officer also challenged me, when advised of the court order, to produce it. Since I did not have a hard copy he did not go out of his way to get the medically prescribed "supplemental foodstuff". The inmates whom I requested to have access to were included in the "second Request for Discovery. see: Exhibit Y; Pl. Sec. Req. Discr /, pg 2, No. (s) 8-11. The Attorney General's Office, by virtue of their status and influence, have managed to trammel the Rules of Discovery, and the provisions of the Governmental Records Access management Act, (GRAMA).

At any rate, the intentional delay on the relevant time, was delayed until 2:34 am. see: Exhibit 9; U.S.P. Med. Center, date: 4-14-06; Nursing note. The evening meal is served between the hours of 4:00 pm and 5:00 pm. Between the hours of 4:00 pm and 2:34 am, that is approximately (9) nine hours later than when the last inmate diabetic in that section received his. Moreover, this incident was not an isolated event, but has been resorted to in the past in retaliation for plaintiff displaying the court order. see: Exhibit 4; 3rd Dist. Ct. Dock Event Statin; case No: 010904240; pg. 5-6; entry date: 8-13-02. see also: Exhibit (s) 8(a), Notice of Intent for Sgt. Zornes; and Exhibit 8(b); Notice of Intent; for Officer Strickland.

The court also found that, "[U]intah-IV does not receive any extra diabetic snack boxes. Id., ¶ 15. Thus, upon receiving an inmate request for a snack box, an officer would have to go to Uintah III to obtain it. Id. If an officer has other inmates or incidents to attend to, he may not be able to immediately go to Uintah-III to obtain the box". Id., ¶ 17.

It is genuinely unfortunate that the court can be alright with this type of excuse. There was 9 hours difference between when the other inmate received his snack box. The court order was supposed to prevent this sort of abuse. It is barbaric to lock a prisoner in a cell, having been injected with insulin, it is the equivalence of
(pg. 36)

a ticking time bomb. Then, to allow the officers to claim that they were just too busy, or they had other things to do, or maybe they forgot, if I were an animal, there would have been an uproar that would reach national media, and perhaps the world court to punish the abusers of animals. The government is now in the process of raising the penalty for animal cruelty to a felony. If I can be locked away in a cell and to wonder whether this night, or that night I may slip into a coma and die from this type of treatment.

The Court Order was made in essence perpetual, see Exhibit 4; 3rd List. Ct. Dock. Ex. Stat'mt; pg. 4, min. Hearing entry date: 1-25-02. The judge said, in unambiguous terms, "The court's interim order remains in full force and effect. This order requires the doctors at the prison to [strictly] comply with the medical requirements of petitioner." (emphasis mine). For those

It is all too easy for those on the outside of these prison walls to think this is something to be taken lightly, and that maybe I am making a mountain out of a mole hill, but I challenge those who has the capacity, to correct this heresy, to "walk a mile in my shoes," then we will see how they live with this kind of treatment.

This act was a flagrant violation, if for no other reason than it violating the court order. The Order gave nothing more than a directive to do what they were already legally, and morally, and constitutionally required to do anyway. This Court must reconsider its ruling on this issue as well, for how could this Court justify such a ruling as this when viewed by the rest of the nation. If the public at large are not shocked and outraged both at the acts, and at those who sanction this sort of conduct.

ARGUMENT IV

Violation of U.S. Constitution. Amend. VI, and Const. 14th Art. I, Sect. 6 in violation of federal law.

The Court, in its turn to the issue of restraint and the unnecessary infliction of pain and suffering, and deliberate indifference, finds that, "The Dec. 11 claims that on 13 April 2006, he was transported from the prison facility in

Drayer to the Moran Eye Center, Officer Austin Smith was responsible for the transportation. Officer Smith placed handcuffs on the plaintiff. The plaintiff felt the handcuffs were too tight. He also told Officer Smith that he had a double-cuff clearance because of injuries to his shoulder. Officer Smith refused to adjust his cuffs.

The plaintiff was placed in a prison vehicle. When the plaintiff and Officer Smith arrived at the North Gate of the prison, Officer Smith ^{in and} went ^{asked} Sergeant Katie Healy about the cuffs. Sgt. Healy checked for double-cuff clearance on the computer and found none. However, the cuffs were adjusted so the plaintiff's palms faced each other. Officer Smith also added a second set of cuffs.

The plaintiff claims these adjustments did not relieve his pain and discomfort. When he arrived at the Moran Eye Center to see the eye doctor, he felt he could not handle the pain anymore and asked to be transported back to the prison other than proceed with his appointment."

One thing that is glaringly biased in the court's ruling is the fact that although the court's recitation of the facts, were from the plaintiff's account of the facts, the court, however, leaves out the fact that the transport officer put on a second set of cuffs, only 1 cuff was attached to the plaintiff's wrist, and the second came to rest in the palm of my right hand. This was an obvious attempt to deceive me on the matter of my restraints. Also, the court omits the comments made by a second transport officer who was escorting another inmate who had an appointment at this time. The transport officer told me that I could always refuse treatment and be transported back to the prison and then have the cuffs removed. The phrase "pain and discomfort", also minimizes the level of pain I was forced to undergo during the transport to the Moran Eye Center; while waiting for the appointment, during the examination, and the time going back to my cell. I made every effort to convey the intensity of pain I was enduring; I said I was in "agony" to the point of "panic." these terms were decidedly omitted from plaintiff's account of the events at the instant allegations. The court also omitted the fact that even though the officers involved in this case said they looked in the computer files and did not find any medically prescribed "double-cuff clearance", the inference to be drawn by the fact they found no clearance, they concluded that they would not have to comply. So, it is curious that these two officers could not find the double-cuff clearance, when multiple

(pg-38)

with a non-existent medical clearance, and they in fact did not. In fact they point to their policy of transporting prisoners instead of giving any sort of consideration for the medically prescribed "double-cuff clearance", and declined to take me to the medical unit to check the restraints so they comply with the "double-cuff clearance", and also to verify that there is none.

What else was omitted in the State's Martinez Report was any interview or interrogation of the other Several Transport Officers, and how many incidences of this sort was raised to other transport officers. The Plaintiff has been in custody for (9) nine years, and have been transported several times, probably 15 or 20 by my estimate. There has been no complaints of this sort either by me, or from the transport officers. The state never interviewed the inmate who was on hand during the transport officer's refusal to adjust my cuffs that officer said, "you can always refuse medical treatment and go back to the prison". At that point, there were (2) two transport officers present, so it was obduracy and wanton infliction of unnecessary pain and suffering where if they were so afraid of me; one officer could have made the adjustments while the other officer, both being armed, could ensure that security would not be breached.

Another fact that the state deliberately left out is that even with one transport officer the plaintiff was unwrestled, (handcuffs removed in order to conduct certain tests, both in the Moran Eye Clinic; and also for MRI procedures both at the University of Utah medical center and the Gunnison ^{hospital}, Utah, and at no time did I exhibit a menacing persona, neither to the transport officer, nor to the public.

In the State's Martinez Report, pg 13, No. 75, the state avers that: "The transport Order for Jackson indicated that Jackson should have "full restraints" and that caution should be used in handling Jackson during transport." Again, throughout my 9 years of state custody, and having been transported numerous times by multiple transportation officers, I have never been subjected to this kind of abuse. The defendants, in their lies and disinformation, not once obtain an affidavit from a single transport officer who would say I gave them any problems whatsoever, nor was there a single report that stated

Jackson has made a complaint to the transport officers, or filed a grievance; and I have filed numerous grievances, and has always been fitted with full restraints each and every time I was transported. The transport officer did not use any additional restraints, but in the way they were applied. The impetus in the application of the restraints is in the transportation officer's unfounded and paranoid fears in averring that: "The transport order for Jackson indicated that Jackson should have "full restraints and that caution should be used in handling Jackson during transport." This fact, (of unfounded, paranoid, ^{delusions} are also racial profiling, where the State's Counsel attached a prison picture of the plaintiff, and is labeled Exhibit F; Def. Marté Rept., pg. 10, at no. 54 attached to Phelps Affid. this photo is most unflattering and misleading as to the plaintiff's persona and bearing. But, after the State's scare tactics, and racist inclinations, the court should consider the observations of the healthcare professionals. see: Exhibit 10 herein; Ltr. from Dr. Goldsmith; dated Dec. 15, 2005.

Finally, the Transport Officer, Sgt. Healy, in her affidavit at para. 6 said that: "Officer Smith arrived at the Northgate building with inmate Lawrence M. Jackson and asked me to look at the inmate's restraints," but the State's Counsel, Joni Jones, Assistant Attorney General said, in the Martinez Report that: "Sergeant Healy noticed that one of Jackson's palms was facing out, rather than in," in an attempt to make the Officer appear observant and benevolent and attentive by making sure the plaintiff was not "uncomfortable". The truth of the matter is that it isn't. Also, Officer Austin Smith, in his affidavit averred that "Jackson is a large man, so when I hand cuffed him, I adjusted the restraints and added a second set of cuffs to the waist chain in order to accommodate his size." If that was true why would there have been a reason to go to the Computer to search for the "double-cuff clearance", finding none. According to Officer Smith he had to drive to the North Gate Building to check for the clearance as Uintah IV has "no computer available to check for these clearances." Smith Affid., pg. 3, no 15.. But, at para. (22), the Officer said: "Jackson did not complain about any discomfort of his restraints during the drive." This statement is a lie. I repeatedly asked the Officer to just take me over to the Medical Unit both to check on the double-cuff clearance, and allow healthcare providers to examine the restraints.

The double-cuff clearance is a medical prescription not subject to the whims of paranoid transport officers. See: Exhibit 11; Level III Griev. Resp.; ref. # 99086/416. This grievance response shows that the officers were paranoid that I might attempt to escape. See: Def. Martz. Rept.; pg. 21, para. 2. The State refers time and again to the two cuffs being used to "accommodate Jackson's large size", and also to a "strong governmental interest in preventing inmate escapes and restraining prisoners during transport to ensure the safety of officers and the public." The defendants, however, surely know that for the types of medical procedures and examinations, it has been necessary to take off the handcuffs and waist chain the cuffs are attached to. Therefore, the theory of the harsh and painful restraints are "justified by necessity", is seriously flawed in light of the fact that my restraints are often removed in those "vulnerable areas" is thus placed in serious doubt. Also, the University of Utah Medical Center is home to all the medical care providers ⁱⁿ outside the prison walls, both the Moran Eye Clinic, and the Neurosurgery Clinic. The facility has secured holding areas, for lack of a better word, where inmates are often taken to await medical appointments. This area has a metal door, and bench seats where an inmate can be chained to the wall, and where his shackles can be secured to the floor. So, the restraints could have been adjusted in a secure place, but the transport officer was just too lazy to walk to the secured area, so I was allowed to remain in agony. This "justified by necessity" theory is without merit. That was number 1) of the (5) five point test the state identified in adjudicating an 8th Amendment U.S. Constitution; and Article I, Section 9 of the Utah Constitution (Number 2). "The extent of injury suffered," the plaintiff has, since that instance, had very painful cervical spinal problems to old injuries that excompass nerve pain and numbness that has not gone away. ^{There were not a use of force in the dorsal area.} There is apparently a nerve that goes right over the shoulder joint and I have since been seen by neurologists, but it is not clear to me that the pain I now experience is related to that incident. Number 3). The relationship between the need and the restraint used: on this ground, there were no different restraints used by this officer as was used by all other transport officers; only the way they were used. (The restraints were significantly tighter and placed my hands right in the center of my back, causing severe pain on both shoulders; and 4). the existence of a reasonably perceived threat. On this ground, as previously stated, I have not presented any other transport officer with a perceived threat, or actual threat, and the state has

personnel, and Ophthalmologist's perceptions were a contrast to that of the transport officer. See Exhibit 10, letter from Dr. Goldsmith dated October 19, 2006.

It is also about prison officers circumventing a doctor's prescription and substituting their assessment of plaintiff's need for double-cuffing over that of prison doctors' prescription.

Security procedures

Not shown any reason that particular transport should be any more heightened than all the others. The operative word here is "reasonable". Had the transportation officer had been really as accommodating as defendant's counsel portray, he would have taken me to the secure area and made the necessary adjustments that he was asked to do while still at the prison, and 5) "efforts made to temper the severity of the restraints." As stated above, I asked the transport officer to take me to the medical department to both verify my "double-cuff clearance," but he refused. The officers made their decision about my restraints, medically prescribed double-cuff clearance notwithstanding. This is not about whether he made me "comfortable", it was about the double-cuff clearance, and the reasons for the clearance. This was about binding the plaintiff as tightly as possible. If the transport officer was truly concerned with "tempering the severity of my restraints," he would have, in light of a reported "double-cuff clearance," proceeded to the medical unit without me asking them repeatedly to do. There was nothing done to temper the severity of the restraints. The transportation was compulsory whether I would

The only relief was oral, not physical.

As a result of the refusal, the plaintiff was on excessive force.

Finally, I had requests via Discovery Requests to identify the other transportation officer and the prisoner he was escorting but was denied. It is believed that the other inmate could describe the exchange between the plaintiff and the transport officers, and also shed some light upon the way the plaintiff was trussed up.

In the final analysis, the court must consider the existence of a medically prescribed accommodation, i.e., double-cuff clearance, and prison officials are not allowed to "second guess" the determination, diagnosis, and treatments of the prison's physicians. See: Estelle v. Gamble, 429 U.S. at 102-3. in relevant part: ("[I]t is safe to affirm that punishment is torture . . . and all others in the same line of unnecessary cruelty, are forbidden by that amendment . . ."); In re Kemmner, 136 U.S. 436, 447 (1890) ("Punishments are cruel when they involve torture or a lingering death." Further, "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical 'torture' or a lingering death." In re Kemmner, supra, the evils of most immediate concern to the drafters of the amendment, in less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose. Cf. Gregg v. Georgia supra, at 182-183. (joint opinion). Then, at 104, we conclude (pg. 42)

That deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain," proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983."

Also, the defendant, Officer Austin Smith and Sgt. Katie Hea^{said}, that the computer was searched for a double-cuff clearance, but none was found, Def. Martz Rept., pg. 13; Nos. 78-85. This excuse was advanced to excuse the fact that they applied the restraints extraordinarily, because the transport Order required the transport officer, Austin Smith, that, "The transport order for Jackson indicated that Jackson should have 'full restraints,' and that caution should be used in handling Jackson during transport." A. Smith Rept. pg. 2 at 10; See: Duchisno v. Sugarman, 566 F.2d 817 (1977) "Title 42 U.S.C. § 1983 establishes a federal cause of action for damages against state and local officials who have caused individuals to suffer a constitutional deprivation, and was designed to protect them against a 'misuse of power made possible because the wrongdoer is clothed with the authority of state law.'" United States v. Classic, 313 U.S. 299, 326, 61 S.Ct. 531, 543, 35 L.Ed. 1368 (1941).

ARGUMENT V.

The Trial court Violated Plaintiff's U.S. Constitution Amendment VII When It Denied Plaintiff's Discovery Motion And (GRAND) Records Request - For Defendant, Lisa Soper's Mailing Address For Purposes Of Service Of Amended Complaint And Summons. And A Violation Of 5th Amendment 11x24

The Court, in its memorandum Decision Ex Lit G, 6th Dist. Ct. case # 00-000383, pg. 15, NO. 6, Ordered plaintiff to serve Defendant, Lisa Soper with a copy of a copy of the Amended Complaint and Summons. The plaintiff quickly became unable to determine how the plaintiff could locate the defendant, Lisa Soper, first because she was moved from (PUCF) to USF, then moved again when plaintiff was moved to USF, then moved again when plaintiff was in the process of getting the Sheriff's Office to serve defendant Lisa Soper. The Utah State Prison Admin's office has stated that the defendant has terminated her employment, therefore the State is unable to provide the location of the defendant.

Controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law."

See: This Court's Memorandum Decision, 6th Dist. Ct. memo. decis. entered: 3-8-07, Exhibit V, pg. 2-3
The plaintiff believes the trial court violated the above cited Constitutional Admin.

The court determines, in relevant part:

"[T]he defendant, 'Lisa,' has never been served with the original complaint. The plaintiff's action against defendant, 'Lisa' is a private cause of action for a personal injury. The court sees no mechanisms under the Utah Rules of Civil Procedure that would allow the court to order official service of process on defendant, 'Lisa'. The court is aware that it may be difficult for the plaintiff to locate Defendant 'Lisa' and to provide legal or procedural support or advice to the plaintiff. On this basis, plaintiff will simply need to retain counsel to represent him or review Rule 4, Utah Rules of Civil Procedure, and an appropriate mechanism under the rules to effect service of process."

Plaintiff made numerous requests for representation to local attorneys, but was unsuccessful. Plaintiff requested that the Utah State Prison serve defendant, Lisa Soper, but was told that they could not. Finally, the plaintiff consulted the Utah Rules of Civil Procedure Rule 4(g) as the court had suggested in its 3-8-06 Memorandum Decision, Exhibit V, to 'review' Utah R. Civ. P. Rule 4'. The plaintiff determined that the court could, under Utah R. Civ. P. Rule 4(g), effect service. The plaintiff filed a motion under Rule 4(g), for service by other means, but the court denied the motion. see: Exhibit J; 6th Dist. Ct. memo. decis. entered: 12-13-06; pg. 2-3. The plaintiff consulted with the prison's contract attorneys to determine if they could serve defendant, Lisa Soper. The contract attorneys asserted that they could not serve the defendant, but told me to contact the Salt Lake County Sheriff's Office and get them to perfect Notice. The Salt Lake County Sheriff's Office required plaintiff to obtain a judicial determination of indigency before they could serve the summons and Amended Complaint. The plaintiff obtained the Order from the court, see: Exhibit F; 6th Dist. Ct. #040600383; Duck. Evt Stat., pg. 5; entry date: 10-27-06. The Complaint and Summons together with the Order from the 6th Dist. Ct. finding that the plaintiff is indigent was returned. The Sheriff's Office stated, even though plaintiff had provided the Utah State Prison for the defendant's place of employment, the Sheriff's Office required a physical address, a Post Office box was not sufficient, they wanted defendant Lisa's home address. The plaintiff then filed a Governmental Records Access management Act, (GRAMA) for defendant Lisa Soper's physical address, and was refused. The plaintiff filed a Petition for Judicial Review of Denial of (GRAMA) (pg. 44)

Records Request on 4-12-07. On July 3, 2007, the Court enters a Memorandum Decision; Exhibit A; pg. 4-5 at (4), denying the Records Request. The Court determines:

"[T]he plaintiff sought to obtain information concerning Lisa Soper's physical address from the State of Utah. The plaintiff, filed a GRAMA Records with the Department of Corrections, which was denied. He appealed this denial to the Executive Office of the Utah Department of Corrections. The plaintiff was again denied based on Utah Code Annotated, Section: 63-2-302-(1)(f).

Section 63-2-302(1)(f) classifies employment records of former State employees that discloses the home address of such employee, as private. It appears that the plaintiff's record request was denied because he asked for information classified as private."

The Court, after some discussion of the legislative intent in enacting the Governmental Records Access Management Act, and finds that:

"[I]n this case the right of privacy outweighs the plaintiff's interests. A former employee is entitled to have assurance that his or her personal information will not be released. This applies especially to employees who work within high risk facilities such as prisons. A prison employee's personal information must be protected from access by inmates the employee knew and encountered in the course of employment.

In addition, the plaintiff's interest here is not to obtain information regarding the conduct of the public's business, but obtain the home address of a former governmental employee in order to sue her."

The motion was thus denied. The frustrating part of all this is that I am housed in a segregated housing unit, 20+ hours per day lockdown, and is required by this Court to serve Lisa Soper with the summons and Amended Complaint. See: Exhibit Q: 6th Dist. Ct. Memo. Decise # 040600383; entered: 1-6-17; pg. 15, at (6). The Court acknowledges that, "it may be difficult for the plaintiff to locate defendant, Lisa and properly serve her with the amended complaint," but plaintiff's every effort to perfect the service, the Court

denies my motions that would facilitate proper service.

The court, in its memorandum decision, Exhibit J, entered on: 12-13-06 determines, in relevant part:

"[S]imilarity, the court finds that the clerk of the court is not in a position to locate, identify, and serve parties to this action. This is a civil suit for damages resulting from alleged violations of Constitutional rights. Therefore, it is the plaintiff's responsibility to locate, identify, and serve all parties. The plaintiff Simpson has no more right than any other plaintiff in a civil suit to have the court bear the cost or responsibility for service."

It is regrettable that the court took this position, because the Utah Rules of Civil Procedure Rule 4(g) allows the court clerk to serve the defendant by mail. The court, in its July 3, 2007 memorandum decision; Exhibit A; pg. 5, para. 3, the court determined:

"[T]he court finds that in this case the right of privacy outweighs the plaintiff's interests."

The court could have made an order directing the Department of Corrections to give the classified, "private" information to the court clerk who could then mail the summons and Amended Complaint to the defendant, Lisa Soper in accordance with Ut. R. Civ. P. rule 4(g), and the plaintiff could pay for the postage stamp, (plaintiff has about \$0.50 in inmate trust account). The court, while acknowledging that, "It may be difficult for the plaintiff to locate defendant, Lisa and properly serve her with the amended complaint," but the plaintiff has been met with frustration at every quarter. The court, in Exhibit A; 6th Dist. Ct. memo. Decis. #040600383; entered: 7-3-07; pg. 5, para. 3, determined, in relevant part:

"[T]he court has examined the policies underlying this statute. Section 63-2-404 (8) (a) explains the intent of the legislature in enacting the Governmental Records Access Management Act. The purpose of this Act is to protect two important constitutional rights: (1) the right of the public to access information concerning the conduct of the public's business and (2) the right of privacy in regards to personal data collected by the government."

cite U.S. Court,

The plaintiff asserts herein that the provision, Ut. Code Ann. § 63-2-404(8)(a) as it operates in the instant case violates the U.S. Constitution Amendment VII because unless the court remove the impediments to plaintiff serving defendant, Lisa Super thus giving the court in personam jurisdiction over the defendant the plaintiff cannot proceed for the requested relief. The above statute in its operation in this case also violates the Constitution of Utah Article I, section 11, (Open Courts Clause). See: Berry v. Beach Aircraft Corp., 717 P.2d 670, 680 (Utah 1985), The Supreme Court of Utah provided a two part test to determine if a statute or rule violates Article I section 11 of the Utah Constitution: (1). The law (rule) provides an injured person an effective and reasonable alternative remedy "by due course of law" for vindication of his constitutional interests, i.e., liberty interest. The benefit provided by the substitute must be equal to the remedy eliminated. (2). If no effective and reasonable alternative remedy is provided, elimination of the remedy may be justified only if there is a clear social or economic evil to be eliminated and the elimination of the existing legal remedy is not arbitrary."

The record shows that the plaintiff, an inmate housed in a segregated perpetual 20 hour lockdown condition, attempted to have the court grant "Official Notice to be served," the summons and complaint; plaintiff moved the court under Ut. R. Civ. P. Rule 4(g) for the court to direct the clerk of the court to serve the defendant who was transferred from (CUCF) to the Utah State Prison, Draper site, and then back to (CUCF) when the plaintiff was transferred from (CUCF) to Draper, with a copy of the summons and Amended complaint by mail; and finally, plaintiff sought the address of defendant through (GRAMA) to provide to the Salt Lake County Sheriff's Office so they could serve the defendant; all these attempts were frustrated by the court's rulings. Thus the use of (GRAMA) Act is unconstitutional as applied to the plaintiff because there are no alternative means of obtaining in personam jurisdiction and eliminating the existing remedy; (GRAMA) is arbitrary because the court, under the circumstances could have eliminated any doubts that the rights of privacy could be protected, and allow the plaintiff to bring the defendant before the court in a trial on the merits.

ARGUMENT VI.

over defendant, Lisa Super and eliminating the existing remedy

The Trial Court Abused It's Discretion In Allowing The State To Circumvent Utah Rules of Civil Procedure Rule 56 (e) Requirements And Remedies.

The state was ordered by the Court that, "[I]f the state's motion for Judgment on the Pleadings is denied, then the state must file its Memorandum Opposing Plaintiff's Summary Judgment within thirty days of the court's Ruling." Exhibit H; Ord. Stay, Brief On Pl. I's Sum. Judmt. The State failed to submit its Memorandum Opposing Plaintiff's Motion for Summary Judgment which was due to be filed in the court on or before October 29, 2006.

On or about November 10, 2006 the state approached the plaintiff extensively to resolve some outstanding motions. The state was already delinquent in filing the obligatory memorandum in opposition to Plaintiff's Summary Judgment motion. The state put in the Joint Motion And Stipulation, a proviso that the state would not required to respond to Plaintiff's Summary Judgment motion. The plaintiff strongly objected and wrote to the court ^{and defendants} what had transpired and to strike the "Joint Motion And Stipulation".

In response to the letter and Motion to Strike The Joint Motion And Stipulation, the state called for a telephone conference, to make a record respecting the "Joint Motion And Stipulation". Exhibit K; Def. Trans. Tele. Confer. This conference was convened on 12-20-06. During this telephone conference the state made this request to the Court: "So my purpose here is certain", to not prevent Mr. Jackson from pursuing his claims, but I would like some sort of control over this case so that there are no consent motions, ect. that we're responding to."

From that day forward, plaintiff's legal filings forwarded to the court were intercepted, confiscated, delay, and destroy significant pleadings. The most significant was the Motion To Strike the State's "Joint Motion And Stipulation", was confiscated or destroyed. The state, in its Answer to the Plaintiff's Motion to Strike, did not address the Timeliness of the state's Memorandum In Opposition To Plaintiff's Summary Judgment, instead, the state argued that the motion to strike was made moot in the wake of the Court's December 13, 2006 Memorandum Decision And Order; Exhibit Q, Mem. Decis. entered: 12-13-06. The court, in its memorandum decision entered: 7-3-07; pg. 2-3. The court adopted the state's argument of mootness. It is no mistake that the motion to strike, was confiscated and destroyed, because the state's response would be the only pleading before the court thus the court would only be able to use the state's argument to adjudicate the case, the motion to strike ^{the state} carefully avoided the timeliness argument. This fact is dramatically illustrated in the court's memorandum decision; Exhibit A; pg. 2-3. states, in

relevant part:

"[T]his motion has not been filed with the court. The court was unable to locate it in the file. As nearly as the court can tell the defendant received the motion and responded to it. The defendant's response is in the file dated 25 January 25, 2007."

Thus, the court proceeded to adjudicate the "motion to strike state's Joint motion And Stipulation", and the defendant's argument was the basis of the court's adjudication.

The State, including the Utah Attorney General's Office, specifically Joni J. Jones, Assistant Attorney General's Office caused the other pleadings to be delayed in being filed thus preventing the consideration by the court on the arguments therein. Among them was the Memorandum In Opposition To Defendant's Motion That The State Be Allowed To File A Martinez Report, put in the U.S. mail on: 4-5-07, but was not filed in the court until 4-27-07, (22) + next 1-10 days, while the State's Memorandum In Opposition To Plaintiff's Motion To Strike Defendant's Joint Motion And Stipulation And To Plaintiff's Motion To Compel Discovery, was forwarded to the court on January 22, 2007, and was filed on January 25, 2007; (3) three days from The Attorney General's Office to the court. Then, see Detitioner's Petition for Judicial Review Of Denial Of (GRAINS) Request Appeal was forwarded to the court on: April 8, 2007, and was entered on the record April 12, 2007; a four day delivery, by U.S. mail. Then, Plaintiff's Memorandum In Reply To Defendant's Memorandum In Opposition To Plaintiff's Motion To Strike Joint Motion And Stipulation, was forwarded to the U.S. mail on February 6, 2007, but was not entered on the record until February 20, 2007; a (20) twenty day delivery time. See: Exhibit F, 6th Dist. Ct #00600382 pg. 6. See also: Exhibit R; Memo To Rep. To Def: Jones in Sp. To Pl. Mot Strike Joint Mot & Stip. In reviewing the pleadings prior to the 12-20-06 Telephone Conference, the delivery time from the Utah State Prison to the Sixth District Court, Mont, Utah is (3) three, or (4) four days. Afterward, select pleadings such as the Motion to Strike the Joint Motion And Stipulation, and the Plaintiff's Memorandum In Opposition to the Defendant's Motion To Be allowed to file Martinez Report, were all 12-20-06 + next 1-10 days plus in arriving at the court. On these pleadings, the court had already ruled on the pleadings before a responsive pleading by the plaintiff could be filed.

of the
ANOTHER A copy of the ~~of the~~ ^{or confusion} ~~deletions~~ The Memorandum In Opposition to Defendant's
(pg 49)

Motion To Be Allowed to File Martinez Report. This pleading again asserted that the State failed to file a memorandum in opposition to Plaintiff's summary judgment motion. The next, is to respond to the Martinez Report, and request that the Martinez Report be construed as a motion for summary judgment. See: Halliday v. Board of County Commissioners of the County of Okmulgee, 90 P.3 578 (Okla. Civ. App. 2004). "The Oklahoma Court of Appeals held that the prison mailbox rule applies to prisoner filings of civil actions. It also held that the trial court violated District Court Rule 13(f) when it ruled on a summary judgment motion without giving the prisoner time to file a response to defendant's pleadings." *Id.*; "The court found 'an additional rationale favoring reversal of . . . summary judgment []' to be the fact 'that in this instance the timing of the trial court's judgment did violate Rule 13 . . . The spirit of the rule requires that the party have the 15 days to respond to any affirmative summary judgment pleading which raises new issues or submits the new evidentiary materials. We find the grant of summary judgment only seven days after filing of the County Defendants 'reply' to be error." See also: Bivens v. Six Unknown Named Agents Federal Bureau Narcotics, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (6-21-1971) (quoting) 21 Instead v. United States, 277 U.S. 438, 469, 471 (1928) "Under one of these alternative theories the ruler foundation is shifted to the 'gripping contest' thesis that the government must 'play the game fairly', and cannot be allowed to profit from its own illegal acts."

ARGUMENT VII.

The Court Violated Plaintiff's U.S. Constitutional Amendment XIV (Due Process) Right when It Denied Plaintiff's Motion To Compel Discovery of Evidence Pertinent To The Supplemental Pleadings.

The plaintiff served the state with, "Plaintiff's Second Request for Discovery on January 12, 2007. Although the Second Request for discovery had some items originally requested in Plaintiff's First Request for Discovery, but items 8) through 24), are peculiar to the Supplemental Pleadings alleging 1). The State intentionally and maliciously delayed Plaintiff a prescribed "supplemental foodstuffs, causing hypoglycemic reactions, and the Prison's Transportation Officer subjected plaintiff to unnecessary pain and suffering in the application of restraint. See: Exhibit Y; Pl Second Req. Discovery.

On 7-3-07 the court dismissed all plaintiff's motions to compel Discovery. These items of discovery were necessary in order to present evidence in the Supplemental Pleadings. The discovery items became even more important given the State's response in the Martinez Report. The State made the following arguments, and the court ruled on these arguments even while dismissing plaintiff's motion for Discovery: See: Def. Martinez Rept.; pg 11, pp. 59-73:

59). "Jackson admits that he received his supplemental snack boxes while temporarily housed in Draper."

Although the plaintiff admits plaintiff was eventually given the snack boxes, they were not "timely". See: Jackson v. Friel, 3rd Dist. Ct. Order; case NO. 010904240. So the defendants not only violated the spirit of the court order, they violated the letter of that order. The plaintiff requested, in Plaintiff's second Request for Discovery #10). Because the foodhandlers could corroborate plaintiff's averment that they only delivered only one snack box, because everyone was locked down after 8:30 pm. Plaintiff also requested #9). The mailing address including Prison Identity Number of Inmate, Alvin Johnson, the only other diabetic inmate in the section, who could corroborate the fact that he receives his snack box at supper meal, i.e., 4:30 to 5:30. Inmate Johnson also knew that the plaintiff made use of the untimely supplemental foodstuffs to the Unit staff, as well as medical technicians. In #10 of the plaintiff's Second Request for Discovery, that the State provide the Name of aka "Tex", who was right next door to me, (i.e. and inmate of my conversation between me and the officer who laughed in my face.

60). "Jackson admits that he received his supplemental snack boxes while housed in Draper."

In Plaintiff's second Request for Discovery, No. #10), the foodhandlers only once delivered a snack box to the plaintiff in (5) five days. (The supplemental foodstuffs are always delivered with the evening meal), therefore plaintiff's snack box was not timely, especially where it would not be delivered until 2:30 am. No. 11). The inmate aka "Tex" could corroborate the conversation with the officer who laughed in plaintiff's face, and challenged plaintiff to produce the court order.

62). "Jackson claims that he asked the guards for his snack box as they come through on the skip count."

The Second Request - for Discovery #10, and 11, could corroborate the averments of States #62) in the Martinez report.

63), The dietitian at Draper does not receive notice if a temporary inmate has a special diet.

This averment is without merit. The Culinary is always careful to make certain that I receive what the prison calls a diabetic food tray. The foodhandlers in #10 of Second Request for Discovery could corroborate this averment.

64). The meals at Draper are, however, approved by the dietitian, who reviews the menus for caloric and nutritional quality.

Even though the dietitian reviews the prison's menu, she, Peggy Monson does not guarantee the portion control, nor does the dietitian provide a true individualized diabetic diet. This fact can be corroborated by Inmate Alvin Johnson, as well as a host of other diabetic inmates.

65). Pursuant to policy, inmates are responsible for notifying the housing officer at the temporary housing site if they require a supplemental snack box.

The inmate Alvin Johnson, Ike Iverson, Richard Thomas, and several other inmates overheard me telling the medical technicians and housing staff all at once about my problems in obtaining the accommodation. The facts that the state does not dispute, see: # 59): Jackson admits that he received his supplemental snack boxes while temporarily housed in Draper; then see: pg. 23), para. 2, the state. The state also argues that the plaintiff did not start trying to obtain the snack boxes until 8:30 p.m. If the court would have allowed the plaintiff to either depose the foodhandlers, and "Tex", and Alvin Johnson, Richard Thomas, these inmates would attest to plaintiff's calling the control room, this after I had asked the foodhandlers for the snack boxes at supper meal. The plaintiff called the control room first until the (pg. 52)

Controlroom would not answer anymore. Then, I would ask the staff who was doing their "skin count". The State avers: "Inmates are instructed to contact the Controlroom, not the officers on the skin count, if they need something. This is because the officers who go into the cell area to count each inmate cannot leave the count area to respond to individual inmate's requests. Also the count officer may not remember an inmate's request by the time he has completed the count." Def. Martz Rept; pg. 12, No. 70

This defense is without merit because, 1). The same officer comes through for "skin count" multiple times and that officer was asked multiple times for the "supplemental food stuffs." 2). The officer who conducts the "skin count", as well as all housing staff, and virtually all persons in the prison environment has a hand held radio, or similar device for communication. The staff officers on "skin count" does not have to leave his "skin count", or to remember the individual inmate's requests. In fact, the staff has access via the communication device, to the Unit Controlroom, and anyone he would need to contact in order to obtain the snack box.

The State avers, in the Martinez Report, pg. 12; NO. 71, argues: "If an inmate who was temporarily housed in Unit IV requested a diabetic snack box, and the officer were able to verify that the inmate had a medical order for the snack box, the officer would have to get a snack box from Unitah III, Unitah III reviews extra boxes, but Unitah III does not.

This defense is also without merit because the plaintiff received a snack box about (30) ^{thirty} minutes after the time I contacted the controlroom. Also, given the state's averment that: "The officer were able to verify that the inmate had a medical order for the snack box", therefore, the officer who produced the snack box on the very first day had already verified the existence of a medically prescribed snack box. If all else failed, the officer could call the medical unit to verify. The culinary Department could also verify that prescription. There is no excuse for each and every night the verification process would have to be repeated.

The State also avers that the plaintiff did not begin to request the medically prescribed snack box until 8:30 pm; this excuse likewise is without merit because
(pg. 53)

Not only the plaintiff call the control room, via intercom, but the foodhandlers also contacted the control room to request the snack box immediately, while distributing the evening meal. The State finally argue that, "Despite the fact that there was no record of his medical order on the computer, the staff made every effort to accommodate Jackson. There is no evidence to support a charge of deliberate indifference."

The above defense that, "there was no record of his medical order on the computer," is strikingly similar defense to the allegation of misuse of restraints, (excessive force). The State, however, is believed that the Department of Corrections is on a Wide Area Network, (WAN), and the State is able to access the plaintiff's medical history via computer; thus this excuse is without merit.

In the final analysis, the Court Order mandates the State, in relevant part: "to administer to petitioner [timely] and [regular] foodstuffs in accordance with all orders of the treating physician or medical staff providing in care while incarcerated at the Utah." Exhibit B. Addition, the Court speaking of the Court Order the Court said: "This Order requires the doctor at the prison to [strictly] comply with the medical requirements of petitioner." See: Exhibit R; 3rd Dist. Ct. # 010904240 entered: 9-12-01. See also: Exhibit H; Dock. Event Stat.; # 010904240, pg. 4; entry, date: 1-23-02.

The acts alleged above are not an isolated incident. This act, like the previous acts were resorted to upon plaintiff displaying a Court order. (Exhibit 8(a) Pl. Not. of Intent to Comm Legal Action; 3rd District Court # 010904240; dated: 7-30-02; Claim Sgt. Zorn; Exhibit 8(b) Pl. Not. of Intent to Comm Legal Action 3rd Dist. Ct. # 010904240; Claim, for Officer Strickland; dated: 7-30-02.

The defendants moves the Court to dismiss the issue where Utah staff delayed plaintiff's supplemental foodstuffs, for failure to exhaust administrative remedies. The plaintiff has previously sent copies of the level II and III on the issue of delay in providing the prescribed "supplemental" foodstuffs. The grievances are believed to be in the Plaintiff's Memorandum in Support of Motion to Supplement the Pleading or other response in the Supplemental Pleadings. The plaintiff filed a timely level I Grievance. There was no response to it, so I filed a "formal" Grievance, but Billie Casper, level II D.T.O (pg. 54)

Argument VIII

The Plaintiff was Entitled To Be Heard On Opposition Of The Martinez Report.

The state, in an effort to circumvent the Ut. R. Civ. P. Rule 56(e), the State filed a Motion for a Martinez Report on 3-15-07, arguing chief that, "The focus in this case should be on whether Jackson has a meritorious claim." St. Memo. In Opp. To Pl. Mot. Compel Disc. And In Supp. of Mot. Mart's Rpt.; pg. 4, para. 2. The real purposes were: (1). to overcome the strictures of Ut. R. Civ. P. Rule 56(e); and (2). to be able to present to the court evidence that should have been put before the court in its first answer to the Amended complaint; (3). to delay the proceedings that would have, but for the State's misconduct and criminal actions, culminated in a favorable ruling on the Summary Judgment motion. (4). to be able to dictate the scope of the inquiry into the complaint to determine what evidence should, or should not be had through discovery.

"The focus in this case should be on whether Jackson has a meritorious claim."

The State, when they realized that plaintiff the plaintiff's Summary judgment motion would not go away by trickery and deceit, the state, knowing that the court would not rule on plaintiff's motion, and the state had failed to submit a Memorandum in Opposition to Plaintiff's Summary judgment motion, the state knew that they can get the court's attention by bringing the "merits" of plaintiff's case. The fact remains that the state failed to submit Opposing memorandum, and to this date why they neglected to file. See Utah Rules of Civil Procedure Rule 56(e), in relevant part, provides:

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

The above cited rule, "If he does not so respond, summary judgment [if appropriate] shall be entered against him", the "if appropriate" phrase, the plaintiff argued, that the state has had ample time in which to present its evidence that would demonstrate the plaintiff's claim should fail as a matter of law. The state brought this Martinez Report to delay the proceedings to put

together a scheme to defeat the plaintiff's motion for summary judgment.

The State moved the court to be able to file a Martinez Report gave the court select portions of plaintiff's medical history, both the Department of Correction Medical Department, and the Moran Eye Clinic. The items of evidence however, was damning if the finder of fact views this evidence objectively, would conclude, as I have that the defendant denied plaintiff the medically prescribed insulin with AM dose being 15 reg./30NPH; that the defendant, Lisa Lopez violated both the spirit as well as the letter of the Court Order. That when defendant, Lisa Lopez refused plaintiff the "prescribed" dose of insulin, and because of how plaintiff's diabetic condition^{is} less than the amount requested, is tantamount to denial of the prescribed amount.

The plaintiff should have been allowed by this Court to be heard first, respecting the Motion to Be Allowed to File a Martinez Report. The plaintiff's case was prejudiced when the State filed the Motion to Be Allowed to File a Martinez Report. See: Exhibit N; Def. Memo. In Supp. not file Mart'z Rpt. The State's Motion was filed on, 3-15-07; and the Court granted the motion on 3-28-07, which is only 13 day. Plaintiff did not receive a copy of the Court's Order granting the Motion for a Martinez report. The plaintiff first Notice came on or about 4-4-07, and plaintiff immediately filed a motion for enlargement of time to respond to Defendant's motion for Martinez Report. See: Halliday v. Board of of County Comm. Issuances of the County of Okmulgee, supra.

Additionally, The plaintiff argued in the Memorandum In Opposition to State's Motion to Be Allowed to File a Martinez Report. The argued then as now that the Martinez Report in this case would prejudice plaintiff as the Martinez Report would allow the State to bring in unpleaded defenses. See: Valley Bank & Trust Co. v. Wilken, 668 P.2d 493 (Utah 1983) "Defenses which have not been raised by the answer or by proper motion may not be raised in an affidavit in opposition to a motion for summary judgment".

Also, The use of the Martinez Report and motion for the Court to construe the Report as a summary judgment is contrary to the very notion of law and fairness because it allowed the State to go from a position where the state could be ruled against for failure to submit a memorandum in opposition, to being awarded the summary judgment due to the plaintiff not responding to the State's Martinez Report and Motion for Summary Judgment.

The Martinez Report was originally resorted to in the federal system of civil law. The procedure was resorted to in the case: Martinez v. Aaron, 59 F.2d 317; 1978 U.S. App.). In this case the trial court ordered the New Mexico Penitentiary to prepare Martinez Report, the 10th circuit court of Appeals stated, in relevant part:

[*319] "[A]s indicated above, the trial court ordered [before] answer that the prison officials conduct an investigation of the incident to include an interrogation of those concerned. The transcripts of the interrogation (not required to be under oath), and an explanation by the officials were to be attached to the answer of defendants. This was done, and an administrative record was thereby constructed to enable the trial court to [*47] decide the jurisdictional issues and make a determination under section 1915(a).

Further in relevant part:

"It is apparent that such a record was necessary to enable the trial court to decide the preliminary issues including those of jurisdiction."

It is clear that the Martinez Report was originally resorted to in order for the court to address preliminary issues; among them is questions of jurisdiction and whether the claims are frivolous. i.e., Section §1915(a).

The way the State utilized the Martinez Report was to circumvent the Rules of Discovery. see: Utah Rules of Civil Procedure Rule 26 (b)(1),(3); and Rule 34 (b). The items of discovery plaintiff requested were finite, (documental), as there were (2) two requests for discovery. The parties could have benefitted by the request for a discovery conference under Rule 26(f). The court has not entered a ruling on this motion. The State claims the Martinez Report was necessary, "as a method of controlling the litigation and allowing the defendants to provide all relevant records in their possession and to move for summary judgment, if appropriate, on the inmate claim." IN short, it allows the state to determine what is "relevant" records and what is not. But most importantly, the entire Rule 24 Discovery Rules are obsolete, and Uta R. Civ. P. Rule 56(e) summary judgment rules are ineffectual, because the state can move the court to be allowed to file a Martinez, and all the consequences of not

Complying with the applicable rules of civil procedure, magically goes away. The Martinez report was not used in this case to "control the litigation, (legitimately)". Nor was it resorted to in order to "create an administrative record"; it was done solely to extricate the state's missed opportunity to oppose the plaintiff's motion for summary judgment.

The state's evidence in this case from a historical perspective was marginal, because the history prior to the injury shows that the defendants knowingly, and thereby maliciously refused the plaintiff a prescribed dose of insulin. The state then delayed or refused the plaintiff to consult with a healthcare provider until injury occurred, and then after delaying plaintiff the surgical intervention the specialist had determined was needed, thereby resulting a permanent impairment. If the court would have had the evidence presented herein, the Martinez report would have no basis in fact.

Therefore, the court is called upon to review this evidence and reconsider the court's summary judgment ruling in favor of the state, and rescind its prior determination in this case, and grant plaintiff's motion for summary judgment, or at the very least, set this matter for a trial on the merits.

12-20-06
Third & Amend. Compl.
Exhibit 18

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

IN AND FOR SANPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson
Plaintiff

Amended Complaint For Medical
Malpractice And Constitutional
Rights Violations

v.

Civil No: 040600383

STATE OF UTAH, et. al,
Defendants

Judge, Wallace A. Lee.

The plaintiff, in the above entitled matter does hereby
submit This Amended Complaint For Medical Malpractice
And Constitutional Rights Violations.

In support of this motion the plaintiff states the
following:

- 1) The plaintiff, Lawrence M. Jackson is an inmate
who was housed in the Central Utah Correctional Facility
(CUCF), during the relevant time when the cause of
action accrued.
- 2) The plaintiff now is housed at The Utah State Prison, Ogden
III-204-B, P.O. Box 250 Draper, Utah 84020.
- 3) Jurisdiction is conferred upon this court as provided
in Utah Judicial Code § 78-3-4.
- 4) The venue is proper in that the acts and omissions

Amended Complaint + Supp.

a.m. pill-line to receive a morning dose of insulin, (plaintiff is an insulin dependant diabetic), with a history (within the institution), of having volatile bloodsugar levels. At pill-line, I told the medical Technician, Lisa Soper the amount I was drawing up in the syringe, (which I believe at that time was 10 units of Regular insulin, (fast acting), and 20 units of Humulin MPH Insulin, intermediate acting).

Plaintiff had been harassed by this medical Technician in the past, (without provocation), and for several preceding days leading up to my injury. She was especially an irritant, by demanding to check and recheck the amount of insulin I drew up in my syringe, requiring me to open wide my mouth and, with my fingers, pull my cheeks apart so as to see every crevice in my mouth. She would also require me to empty my pockets, as if I were doing something wrong. She also argued with me respecting the p.m. snack sacks, ("Supplemental foodstuffs") for treatment of hypoglycemia, (excessively low bloodsugar levels).

One day, the medical Technician, Lisa Soper refused me my medically prescribed dose of insulin, and ordered me to take a lesser amount. Medical Technician, Lisa Soper argued with me respecting my prescribed amount of insulin. Because my bloodsugar levels become extremely unstable, and I suffer numerous hypoglycemic reactions when my treatment regime is upset and because hypoglycemia is extremely debilitating, painful, and frightening, I elected not to take the lower dose and I asked to see the treating physician. Plaintiff followed up the verbal request with written healthcare forms.

Because I had stopped my insulin use until I could see the healthcare provider, I also stopped eating as well. This was done in avoidance of the condition known as "hyperglycemia", (excessively high

Amend Complaint & Supp.

The optometrist scheduled x-rays of the injury and because he did not have the equipment to accurately diagnose the full extent of the injuries, he made an appointment with an ophthalmologist. The appointment was cancelled with no explanation as to why.

When the plaintiff was finally seen by the ophthalmologist, he explained to me that my injuries were significant, and was in need of surgical intervention. The specialist also explained to me that the prison officials had waited too long before bringing me in, and that even if they had brought me in as much as a month after the injury he could have guaranteed me (100%) one hundred percent recovery. Since they did not bring me in to him in a timely manner the best he could offer is to correct some of the nausea; I would have permanent impairment.

Just as the ophthalmologist had predicted, the nausea was lessened, the dizziness was likewise made not so acute, and even the double vision was somewhat lessened. On a follow-up visit the specialist explained to me that his goal was to correct any double vision where my eyes were fixed straight forward, or a position where I would read. Satisfied that he had achieved that goal (reasonably so), he told me he did not think that more surgery would be beneficial, and could actually worsen my vision. I would have to live with what I am left with: some double vision when I look up; double vision when my eyes are tired; say, like when I do some reading; I have very extreme headaches; nerve damage that causes numbness around the bottom left side of my eye socket, and nostril, and two scars from the lacerations. Dr. Goldsmith commented to me that I had developed glaucoma in my injured eye, and was therefore concerned that the glaucoma was brought on by the injury, and prescribed an eye solution that

Exhibit 18

Amended Complaint and Supp.

by virtue of her employment, knew the gravity of inadequate treatment of diabetes. Her interruption of that treatment constituted "deliberate indifference" to a serious medical need, and it resulted in significant injury.

Having rendered inadequate and untimely medical care for a serious medical condition, plaintiff was deliberately denied and delayed access to the healthcare provider for up to (5), five days. This act or omission was done as punishment for challenging Medical Technician, Lisa's and other unknown medical department staff's authority to render whimsical medical treatment. Given the nature of the underlying medical condition, (diabetes mellitus), prolonged delay and denial of adequate medical care, and the resultant injuries were completely foreseeable. The omissions were therefore a violation of the U.S. Constitution Amendment VIII with respect to medical Technician, Lisa Soper's conduct.

(b). Constitution of Utah Article I section 9 violations.

With respect to the allegations asserted above, against Medical Technician, Lisa, the acts and omissions were a "clear violation" of plaintiff's state constitutional rights, under article I, section 9 of the constitution of Utah. The plaintiff has a clearly established right to receive regular doses of insulin, a "vital medication", but was denied by Medical Technician, Lisa, this was a malicious act, and it was clear that Med. Tech. Lisa knew, by virtue of her employment in the medical department, that to deprive ^{plaintiff} of the prescribed dose of insulin would not only violate my constitutional rights, but would also violate a legally binding court order mandating "adequate and timely" treatment of my diabetes.

The State of

(Constitution of Utah Article I, section 9)

(a). The State of Utah Failed to provide medical treatment even though,

(pg. 9)

Amended Complaint & Supp.

violation of Title II of The Americans with Disabilities Act
(42 U.S.C. § 12131 et seq.)

The plaintiff's diabetic condition is a recognized "disability" under the Americans with Disabilities Act, hereinafter, (ADA). The State of Utah, for the same conduct described above, The U.S. Constitution Amendment VIII; and Constitution of Utah Article I, Section 9, violates the (ADA), in as much as it denied plaintiff the benefit of programs, services, and activities of a government entity.

Supplemental Pleadings

Relevant Facts

I

1). On or about April 10, 2006, plaintiff was transported to the Utah State Prison to be then transported to the Moran Eye Clinic for followup appointments subsequent to surgical intervention following an eye injury, and subsequent diagnosis of glaucoma in the injured eye.

2). Although I was scheduled to see the Ophthalmologist on 4-16-06, I was nevertheless transported to the Utah State Prison on or about 4-10-06, and housed in the Uintah-4 (maximum security facility), section -2.

3). With the exception of one evening, I was routinely delayed my medically prescribed, "supplemental foodstuffs", until as late as 12:30 to 2:30 am. (Note: at least one other inmate in section -2 of the Uintah-4 Facility received the same "supplemental foodstuffs" box, (inmate Alvin Johnson), routinely received his snack box between the hours of 4:00 pm to 5:30 pm, at supper meals).

Exhibit 18

of pharmaceutical glucose gel; and several cc's of D-50, (50% sugar), solution administered orally.

The plaintiff regards, and alleges the omissions over a (4) four or (5) five day period to be malicious, and not just deliberate indifference, but intentionally done to cause the hypoglycemic reaction particularly where I spent at least (4) four days, and several hours, over days more than (10) hours requesting the "supplemental foodstuffs", but the delay was obdurate in nature because all those who needed to know, (including the medical Department), knew of the medical condition and resultant debilitating medical condition.

- a) Because the housing staff consistently delayed providing the "supplemental foodstuffs", plaintiff suffered debilitating and painful and dehumanizing effects of the hypoglycemic reactions, the defendants violated plaintiff's U.S. Constitution Amendment VIII violations.

Also, the same conduct is prohibited by the constitution of Utah Article I, section 9. The acts and omissions were "flagrant", because they were done with knowledge that the plaintiff required "supplemental foodstuffs" in order to prevent hypoglycemia. Even if the housing staff had only marginal understanding of the medical condition, even a lay person would know that such a condition demands urgent care. The "flagrant violation" component is also demonstrated by the deliberate and malicious and retaliatory violations of the Court Order. It is ironic that the housing staff considered violating the spirit of the Court Order by delaying the provisions of the supplemental foodstuffs but it was also a violation of the letter of the Court Order. See: Jackson v. Friel, 3rd Dist. Ct. Order; case # 010904240; entered on: 9-11-01, in relevant part: "Caprid to administer to petitioner timely and regular foodstuffs in accordance with all orders of the treating physician or medical staff providing his care while incarcerated at the Utah state prison."

Amended Complaint & Supp.

Exhibit 18

When he returned he had with him a woman who identified herself as the transport officer's sergeant, and she said, "I don't know why you are whining, those cuffs look plenty loose to me." I told her that they were causing my hands to go numb, and that I have a double-cuff clearance, and she said that she and the transport officer checked the computer but there was no clearance. They changed my cuffs where my palms faced each other, but put the cuffs back on as tight, if not tighter than before. The transport officer said he would put another set of cuffs on anyway. When he put them on, one of the cuffs came to rest in my right hand. The extra set of cuffs did nothing to relieve the stresses exerted on my shoulders, because in spite of the one cuff being attached to the chain around my waist, I was still bound by one set of cuffs, and was in tremendous pain. The extra set of cuffs were placed on one wrist, while the other dangled at my right hand, this was done in an attempt to deceive me into thinking that they had put on double-cuffs.

I asked the transport officer before we left to go to the medical department and show them how I was bound up, and let them determine if I was properly restrained, (in a less painful position), but the officer declined.

The transport officer proceeded toward the University of Utah Medical Center, (Morgan Eye Clinic). I again told the transport officer I was in agony by my bonds, but he said nothing; he remained stony faced and apathetic.

While waiting for the doctor, I told him, in the presence of another transport officer that I did not know if I could endure the pain, and the other transport officer offered that I could always cancel my appointment, that I could "refuse treatment." It came to that point while a doctor's assistant conducting preliminary

The way the transport officers bound me caused unendurable and unnecessary pain and suffering. The "double-cuff clearance" was prescribed by a prison physician in an effort to spare plaintiff the agonies that ultimately happened anyway by the apathetic and cruel transport officers. The "double-cuff clearance" was in fact a prescription, one that was disregarded by these transport officers, thus violating the plaintiff's constitutional rights secured by both the U.S. Constitution Amendment VIII, and Constitution of Utah Article I, section 9's guarantee against unnecessary rigor. The act was "flagrant", in that the transport officer refused to take me to the prison's medical unit to attempt to satisfy both interests: the prison's security interest as opposed to the plaintiff's interest of avoiding terrific pain and great suffering.

WHEREFORE, The plaintiff prays the Court enters a judgment for the plaintiff and against the defendants, and award compensatory damages; for pain and suffering, damages for mental anguish, and emotional distress, punitive damages for intentional and malicious acts and "flagrant violations of the U.S. Constitution Amendment VIII, and Constitution of Utah Article I, section 9. Also compensatory and punitive damages for violations of Title 17 of the P.A. of 1993, and any and all such additional relief allow by law.

The above statements are true and accurate to the best of my knowledge and belief.

Signed This 9th day of January, 2007.

Signature: _____
Lawrence M. Jackson, Pro-se.

Exhibit 17



UTAH CORRECTIONS
DEPARTMENT TRAVEL ORDER

☒ Hold

☐ Records Hold

Run Description: 19

Entry Date: 03/01/2006 Time: 07:30

ICR Number: _____

Authority: MEDICAL

Court Case: _____

Offender Name: JACKSON, LAWRENCE MARSHAL

Number: 28879

Parole Date: _____

DOB: 05/11/1954

Classification: C2K

Travel From: GE 602B

Convicted Offenses: RAPE OF A CHILD

Pending Offenses: _____

Travel To: DRAPER-HOLD UMC

Date: 04/10/2006 Time: _____

To See: _____

Comments:

Changed: 03/01/2006

APPT UMC 04/13/06 @ 09:10

INTAKE - 0629

LC - 1VIE 0825

To Be Transported By: THOMAS PATTERSON

Entered By: DARLENE PETERSON

Authorized By: LARRY BENZON

ADA Accommodation

Accommodation Comment

SEATBELTS ☒

Time 0649

Restraints To Be Used: FULL

Caution: ☒

Restraint Instructions: _____

Officer Instructions:

Start Time: _____

☒ Office Calls

☐ Officer Calls From Home

☐ Officer Calls

Instructions: _____

Medical Items Transported:

☐ Consult Form

☐ ER Record/Instructions

☐ Medical Device

☐ Prescription

Delivered To: NA

Time/Miles

Date and Time Out: 4/10/06 0600

Time Arrived: _____

Date and Time In: 4/10/06 0830

Total Time: 2.5

Total Run Miles

220

Veh. Lic. Number

41577

Housing Notification

Housing Officer: _____

Time: _____

Supervisor: _____

Time: _____

Main Officer



Exhibit 17 (a)

**UTAH CORRECTIONS
DEPARTMENT TRAVEL ORDER**

☒ Hold
☐ Records Hold

Entry Date: 02/28/2006 Time: 12:51

Authority: MEDICAL

Offender Name: JACKSON, LAWRENCE MARSHAL

DOB: 05/11/1954

Classification: C2K

Convicted Offenses: RAPE OF A CHILD

Pending Offenses:

Run Description: 28

ICR Number: _____

Court Case: _____

Number: 28879

Parole Date: _____

Travel From: U4 213B

Travel To: UMC-MORAN EYE

Date: 04/13/2006 Time: 09:10

See: DR. GOLDSMITH

Comments:
581-2352

Changed: 04/11/2006

Be Transported By: BRANDON LYMAN Smith

Entered By: JANET WELCH

Authorized By: LARRY BENZON

Accommodation

Accommodation Comment

SEATBELTS ☐ Time 0824/0834/0943

Restraints To Be Used: FULL

Caution: ☒

Restraint Instructions:

Officer Instructions:

Start Time: _____

☐ Office Calls

☐ Officer Calls From Home

☐ Officer Calls

Instructions:

Medical Items Transported:

☐ Consult Form

☐ ER Record/Instructions

☐ Medical Device

☐ Prescription

Delivered To: _____

Rate/Miles

Date and Time Out: 4/12/06

Date and Time In: 1030

Time Arrived: 0911

Total Time: 2.75

Total Run Miles 58

Veh. Lic. Number 47

Using Notification

Housing Officer: _____

Time: _____

Supervisor: _____

Time: _____

Smith

Main Officer



EXHIBIT 11(6)

UTAH CORRECTIONS DEPARTMENT
TRAVEL ORDER☒ Hold☐ Records Hold

Run Description: 23

Entry Date: 04/12/2006 Time: 10:36

ICR Number: _____

Court Case: _____

Authority: MEDICAL

Offender Name: JACKSON, LAWRENCE MARSHAL

Number: 28879

Parole Date: _____

DOB: 05/11/1954

Classification: C2K

Travel From: U4 213B

Convicted RAPE OF A CHILD
Offenses: _____Pending
Offenses: _____

Travel To: G RTN MED

Date: 04/14/2006 Time: _____

To See: _____

Comments: _____

Changed: 04/12/2006

To Be Transported By: STACY WILLDEN

Entered By: LARRY BENZON

Authorized By: LARRY BENZON

ADA Accomodation

Accomodation Comment

curr Make female

N 0930

Restraints To Be Used: FULL

Caution: ☒

Restraint Instructions: _____

Officer Instructions:

Start Time: _____

☐ Office Calls☐ Officer Calls From Home☐ Officer Calls

Instructions: _____

Medical Items Transported:

☐ Consult Form☐ ER Record/Instructions☐ Medical Device☐ PrescriptionDelivered To: *N/A*

Time/Miles

Date and Time Out: 4-14-2006 / 0930

Time Arrived: _____

Date and Time In: _____

Total Time: 3.5

Total Run Miles 110

Veh. Lic. Number 87958

Housing Notification

Housing Officer: _____

Time: _____

Supervisor: _____

Time: _____

[Signature]
Main Officer

Exhibit 17(c)

D10 Offender Search (w_app 2.0)

Offender Classification Case Plan MAP Records Visitor Discipline Maintenance Grievances Safety Work


Summary Information

Offender Number: **132204** Name: **JACKSON, LAWRENCE** DOB: **05/11/1954** Privilege Level: **01**

Security Assessment Listing (w_app 1.3)

Date	Type	Case Manager	Class	Section A								Total	A	B
				1	2	3	4	5	6	7	8			
04/20/2006	Reassessment	lbarker2	C3K	6	6	3	0	7	0	0	3	25	3	1
04/28/2005	Reassessment	jensen	C2K	6	6	3	0	7	0	0	3	25	3	1
10/27/2003	Reassessment	dlomb2	C3K	6	6	3	0	7	0	0	3	25	5	1
04/01/2002	Reassessment	openy	C3K	6	6	3	0	7	0	0	3	25	5	1
03/19/2001	Reassessment	william	C3K	6	6	3	0	7	0	0	3	25	11	1

Update Photo



28879

9:44 AM

Exhibit 17(8)



UTAH CORRECTIONS
DEPARTMENT TRAVEL ORDER

☒ Hold
☐ Records Hold

Entry Date: 03/01/2006 Time: 07:30

Run Description: 19

Authority: MEDICAL

ICR Number:

Offender Name: JACKSON, LAWRENCE MARSHAL

Court Case:

DOB: 05/11/1954

Classification: C2K

Number: 28879

Parole Date:

Travel From: GE 602B

Convicted Offenses: RAPE OF A CHILD

Pending Offenses:

Travel To: DRAPER-HOLD UMC

Date: 04/10/2006 Time:

To See:

Comments:

Changed: 03/01/2006

APPT UMC 04/13/06 @ 09:10

INTAKE - 0629

LC 1/16 0825

To Be Transported By: THOMAS PATTERSON

Entered By: DARLENE PETERSON

Authorized By: LARRY BENZON

ADA Accomodation

Accomodation Comment

SEATBELTS ☒ Time 0649

Restraints To Be Used: FULL

Caution: ☒

Restraint Instructions:

Officer Instructions:

Start Time:

☒ Office Calls

☐ Officer Calls From Home

☐ Officer Calls

Instructions:

Medical Items Transported:

☐ Consult Form

☐ ER Record/Instructions

☐ Medical Device

☐ Prescription

Delivered To:

NA

Time/Miles

Date and Time Out:

4/10/06

0600

Time Arrived:

Date and Time In:

0830

Total Time:

2.5

Total Run Miles

220

Veh. Lic. Number

41577

Housing Notification

Housing Officer:

Time:

Supervisor:

Time:

Main Officer



Exhibit (e)

UTAH CORRECTIONS
DEPARTMENT TRAVEL ORDER

☒ Hold

☐ Records Hold

Run Description: 28

Entry Date: 02/28/2006 Time: 12:51

ICR Number: _____

Authority: MEDICAL

Court Case: _____

Offender Name: JACKSON, LAWRENCE MARSHAL

Number: 28879

Parole Date: _____

DOB: 05/11/1954

Classification: C2K

Travel From: U4 213B

Convicted Offenses: RAPE OF A CHILD

Pending Offenses: _____

Travel To: UMC-MORAN EYE

Date: 04/13/2006 Time: 09:10

To See: DR. GOLDSMITH

Comments:
581-2352

Changed: 04/11/2006

To Be Transported By: BRANDON LYMAN *Smith*

Entered By: JANET WELCH

Authorized By: LARRY BENZON

ADA Accommodation

Accommodation Comment

SEATBELTS ☐ Time 0824/0834/0943

Restraints To Be Used: FULL

Caution: ☒

Restraint Instructions:

Officer Instructions:

Start Time: _____

☐ Office Calls

☐ Officer Calls From Home

☐ Officer Calls

Instructions:

Medical Items Transported:

☐ Consult Form

☐ ER Record/Instructions

☐ Medical Device

☐ Prescription

Delivered To: _____

Time/Miles

Date and Time Out:

4/1/06 0745
1030

Time Arrived:

0911 1025

Date and Time In:

Total Time:

2.75

Total Run Miles

58

Veh. Lic. Number

47

Housing Notification

Housing Officer:

Time: _____

Supervisor:

Time: _____

Smith

Main Officer



Exhibit 17 (P)

UTAH CORRECTIONS DEPARTMENT
TRAVEL ORDER

☒ Hold

☐ Records Hold

Run Description: 23

Entry Date: 04/12/2006 Time: 10:36

ICR Number: _____

Authority: MEDICAL

Court Case: _____

Offender Name: JACKSON, LAWRENCE MARSHAL

Number: 28879

Parole Date: _____

DOB: 05/11/1954

Classification: C2K

Travel From: U4 213B

Convicted Offenses: RAPE OF A CHILD

Pending Offenses: _____

Travel To: G RTN MED

Date: 04/14/2006 Time: _____

To See: _____

Comments: _____

Changed: 04/12/2006

To Be Transported By: STACY WILLDEN

Entered By: LARRY BENZON

Authorized By: LARRY BENZON

ADA Accomodation

Accomodation Comment

Restraints To Be Used: FULL

Caution: ☒

Restraint Instructions: _____

Officer Instructions:

Start Time: _____

☐ Office Calls

☐ Officer Calls From Home

☐ Officer Calls

Instructions: _____

Medical Items Transported:

☐ Consult Form

☐ ER Record/Instructions

☐ Medical Device

☐ Prescription

Delivered To: N/A

Time/Miles

Date and Time Out: 4-14-2006 0930

Time Arrived: _____

Date and Time In: 1300

Total Time: 3.5

Total Run Miles 110

Veh. Lic. Number 87958

Housing Notification

Housing Officer: _____

Time: _____

Supervisor: _____

Time: _____

M
Main Officer

SP # 28879 Offender Name JACKSON, LAWRENCE MARSHAL

Exhibit (g)

Start Date/Time	End Date/Time	Location	Entered By	Entry Date
06/30/2006 10:11	07/10/2006 07:35	GB 309 B	jfowles	06/30/2006
06/23/2006 12:46	06/30/2006 10:11	GD G05 B	cfox3	06/23/2006
06/23/2006 12:23	06/23/2006 12:46	INTAKE/CUCF ISSUE	acrane	06/23/2006
06/23/2006 10:08	06/23/2006 12:23	TRANSPORTATION	jmaxwell	06/23/2006
06/23/2006 09:53	06/23/2006 10:08	NORTH GATE	tivie	06/23/2006
06/22/2006 10:12	06/23/2006 09:53	WI 204 A	tivie	06/22/2006
06/22/2006 07:11	06/22/2006 10:12	TRANSPORTATION	tsanchez	06/22/2006
06/22/2006 07:05	06/22/2006 07:11	NORTH GATE	tivie	06/22/2006
06/21/2006 11:04	06/22/2006 07:05	WI 204 A	ajohnson	06/21/2006
06/21/2006 10:45	06/21/2006 11:04	NORTH GATE	mlaplant	06/21/2006
06/21/2006 07:25	06/21/2006 10:45	TRANSPORTATION	dbagley	06/21/2006
04/24/2006 13:22	06/21/2006 07:25	GC 202 B	dashwort	04/24/2006
04/14/2006 13:35	04/24/2006 13:22	GE 607 B	bfrancom	04/14/2006
04/14/2006 09:57	04/14/2006 13:35	TRANSPORTATION	swildden	04/14/2006
04/13/2006 10:21	04/14/2006 09:57	U4 213 B	tivie	04/13/2006
04/13/2006 08:25	04/13/2006 10:21	TRANSPORTATION	asmith5	04/13/2006
04/10/2006 09:07	04/13/2006 08:25	U4 213 B	cstevens	04/10/2006
04/10/2006 06:26	04/10/2006 09:07	TRANSPORTATION	agardner	04/10/2006
01/04/2006 17:23	04/10/2006 06:26	GE 602 B	festey	01/04/2006
01/04/2006 14:09	01/04/2006 17:23	INTAKE/CUCF ISSUE	ppatrick	01/04/2006
01/04/2006 11:25	01/04/2006 14:09	TRANSPORTATION	dbagley	01/04/2006
01/04/2006 11:24	01/04/2006 11:25	U4 203 T	tivie	01/04/2006
01/04/2006 09:17	01/04/2006 11:24	TRANSPORTATION	dbagley	01/04/2006
01/03/2006 10:03	01/04/2006 09:17	U4 203 T	bwalker	01/03/2006
01/03/2006 07:40	01/03/2006 10:03	NORTH GATE	tivie	01/03/2006
01/03/2006 05:30	01/03/2006 07:40	TRANSPORTATION	dbagley	01/03/2006

JONI J. JONES (7562)
Assistant Utah Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Attorneys for Defendants
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

Exhibit 16

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY
STATE OF UTAH – MANTI DIVISION

LAWRENCE M. JACKSON,	:	THE STATE OF UTAH’S
	:	MEMORANDUM IN OPPOSITION
Plaintiff,	:	TO PLAINTIFF’S MOTION FOR
	:	RECONSIDERATION
	:	
vs.	:	Case No. 040600383
	:	
STATE OF UTAH, et al.	:	Judge Wallace A. Lee
	:	
Defendants.	:	
	:	

Pursuant to Utah Rule of Civil Procedure 7(c), Defendant State of Utah files this memorandum opposing Plaintiff Lawrence Jackson’s motion to reconsider.

**JACKSON’S MOTION IS IMPROPER
AND SHOULD BE SUMMARILY DENIED**

The Utah Supreme Court “absolutely reject[s] the practice of filing postjudgment motions to reconsider.” *Gillett v. Price*, 2006 UT 24 ¶ 1, 135 P.3d 861, 862 (Utah 2006). Moreover, the

Exhibit 16

court has held that, “regardless of the motion’s substance, postjudgment motions to reconsider and other similarly titled motions will not toll the time for appeal because they are not recognized by our rules.” *Id.* at ¶ 7. Under *Gillett*, Jackson’s motion must be summarily dismissed, and his time for appeal continues to run.

This Court issued a detailed, comprehensive decision carefully citing applicable case law and citing extensively to the record, including Jackson’s medical records, affidavits of officers involved in Jackson’s case, and official policies and reports. Jackson has offered no reason for the Court to reverse itself, but simply reargues the law and facts. The proper place for Jackson to raise his arguments is with the appellate courts, not this Court.

CONCLUSION

Based on the foregoing, Defendant State of Utah respectfully asks this Court to summarily dismiss Jackson’s motion for reconsideration.

DATED this 16th day of October, 2007.

MARK L. SHURTLEFF
Utah Attorney General

A handwritten signature in black ink, appearing to read "Joni J. Jones", written over a horizontal line.

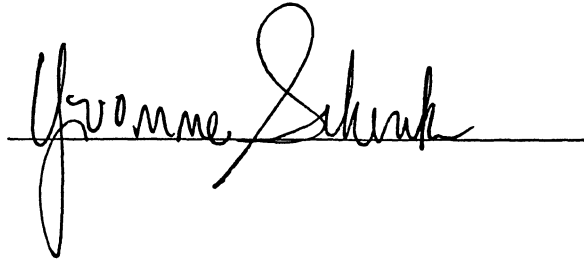
JONI J. JONES
Assistant Utah Attorney General
Litigation Division
Attorneys for Defendants

Exhibit 16

CERTIFICATE OF SERVICE

I certify that on this 16th day of October 2007, I caused to be served by U.S. mail a true and correct copy of the foregoing **THE STATE OF UTAH'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION** to the following:

Lawrence Jackson, USP 28879
Utah State Prison
P.O. Box 250
Draper, Utah 84020

A handwritten signature in black ink, appearing to read "G. Schenk", is written over a horizontal line.



State of Utah

TOM PATTERSON
Executive Director

Utah Department of Corrections

Hearing Office

Exhibit 15

26 April 2007

Inmate Lawrence Jackson, 28879
Oq. 3, 109

RE: Grievance #990863919

I have reviewed your grievance and other relevant information. There is no further administrative review available. **If you are dissatisfied with this response and wish to take further action, this grievance answer will serve as evidence you have exhausted the administrative remedy process. Your only recourse is to seek a judicial remedy.**

You bring this grievance to level three claiming the level two response is still inadequate because grievance coordinator Billie Casper did not do any independent investigation into your complaints and that "neither did the prison officials answer a GRAMA records request appeal filed on 03-20-07."

The grievance system has no authority over GRAMA records requests. Concerns should be addressed to Mr. Ed Kingsford at UDC administration.

As to the rest of your claims, you have the burden of proof in an administrative grievance. There is no evidence, nor have you provided any, that would lead a reasonable person to believe someone stole or mishandled any of your US mail.

Your requested grievance remedies are denied:

Tom Anderson
Hearing Office,
Utah Department of Corrections

Tracking # 103

Exhibit 14

FILED
SANPETE COUNTY, UTAH
2007 OCT 24 PM 4 42

DISTRICT COURT, SANPETE COUNTY, UTAH

160 North Main Street, Room 202

P O Box 100

Manti, UT 84642

Telephone: 435-835-2121 Fax: 435-835-2135

SANPETE COUNTY CLERK
BY _____ DEPUTY

Lawrence M. Jackson,

Plaintiff,

vs.

State of Utah, et. Al.,

Defendant.

**MEMORANDUM DECISION AND
ORDER**

Case No. 0406000383

Assigned Judge: Wallace A. Lee

The plaintiff filed a Motion for Reconsideration of the Court's Decision on Martinez Report. This Motion addresses the Court's Memorandum Decision dated 3 July 2007. The defendants responded with a Memorandum in Opposition.

This Court's Memorandum Decision dated 3 July 2007 is a final decision which disposed of all issues in this case.

In light of the decision of the Utah Supreme Court, in *Gillett v. Price*, 135 P.3d 861 (Utah, 2006), which absolutely rejects the practice of filing post judgment motions to reconsider, the plaintiff's Motion must be denied.

Therefore, the plaintiff's Motion for Reconsideration of the Court's Decision on Martinez Report is denied.

Signed on 24 October, 2007

Wallace A. Lee, District Judge

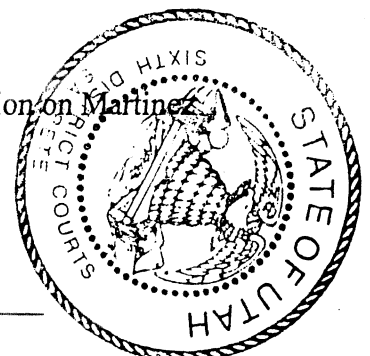


Exhibit 14

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 040600383 by the method and on the date specified.

METHOD NAME

Mail LAWRENCE M #28879 JACKSON
INMATE #28879
Plaintiff
OQUIRRH III 204-B
UTAH STATE PRISON PO BOX 250
DRAPER, UT 84020
Mail JONI J JONES INMATE #28879
Attorney DEF
160 E 300 S 6TH FLR
POB 140856
SALT LAKE CITY UT
84114-0856

Dated this 24 day of October, 2007.

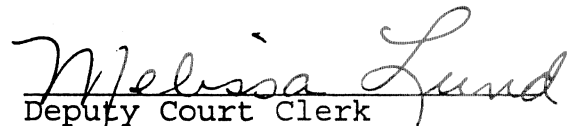

Deputy Court Clerk

Exhibit 13

JONI J. JONES (7562)
Assistant Utah Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Attorneys for Defendants
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY
STATE OF UTAH – MANTI DIVISION

LAWRENCE M. JACKSON,	:	STATE OF UTAH'S ANSWER TO
Plaintiff,	:	SECOND AMENDED COMPLAINT
vs.	:	
	:	Case No. 040600383
STATE OF UTAH, et al.	:	Judge Wallace A. Lee
Defendants.	:	

Pursuant to the Court's order of December 7, 2006, the State of Utah hereby answers Plaintiff's [Second] Amended Complaint for Medical Malpractice and Constitutional Rights Violations (Amended Complaint, dated January 10, 2007) and asserts its defenses as follows:

FIRST DEFENSE

Plaintiff fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The State responds to the allegations in the numbered paragraphs of Plaintiff's Second Amended Complaint as follows.

1. The State admits that Plaintiff was an inmate incarcerated at the Central Utah Correctional Facility (CUCF) and admits that during most, if not all, times relevant to the allegations in Plaintiff's Second Amended Complaint, he was incarcerated at CUCF.

2. The State admits that Plaintiff is currently housed at the Utah State Prison in Draper, Utah.

3. The State admits that this Court has jurisdiction pursuant to Utah Code Ann. §78-3-4, as Plaintiff seeks damages, not declaratory relief.

4. The State admits that venue is proper in this Court.

a. The State admits that during the time period of the allegations in the Second Amended Complaint, a registered nurse named Lisa Soper worked at CUCF providing medical care to inmates. The State denied that Lisa Soper committed any acts violative of Plaintiff's rights.

b. The State admits it is a governmental entity denies that it violated Plaintiff's constitutional rights or otherwise acted "flagrantly", nor violated Plaintiff's rights under Title II of ADA.

6. The State denies the allegations in paragraph five and under "Causes of Action". The State expressly denies that it or any of its employees violated Plaintiff's constitutional or civil rights, or any other rights.

RESPONSE TO PLAINTIFF'S UNNUMBERED FACTUAL ALLEGATIONS

Although Plaintiff's factual allegations are not separately numbered, the State has numbered its response to correspond with the separate paragraphs in Plaintiff's complaint from pages two through nine entitled "Statement of the Facts."

1. Based on information and belief, the State admits that on November 15, 2003, Plaintiff attended a.m. pill line to receive a morning dose of insulin. The State admits that Plaintiff is an insulin dependant diabetic. Based on information and belief, the State denies the remaining allegations in unnumbered paragraph 1.

2. Based on information and belief, the State denies that Soper harassed Plaintiff or argued with him about his "p.m. snack sacks." The State admits that the Department of Corrections (DOC) has, at times, had nurses check inmates' mouths after they take a pill to ensure the inmate has swallowed the pill and not hidden it to dispose of later. The State admits that nurses and medical technicians (med techs) often do check the amount of insulin an inmate has drawn to ensure the amount is consistent with the ordered dosage. The State lacks sufficient information or belief to admit or deny Plaintiff's allegations that Soper required Plaintiff to empty his pockets, and therefore denies those allegations. The State denies the remaining allegations in unnumbered paragraph 2.

3. The State denies that Soper refused Plaintiff his "medically prescribed doses of insulin" and denies that Soper ordered him to take a "lesser amount." The State admits that, based on DOC medical records, Plaintiff refused to take his insulin dosage on November 7, 2003 and on November 8, 2003. The State denies that Soper argued with Plaintiff regarding his dosage. The State lacks sufficient information or belief to admit or deny Plaintiff's allegations regarding why he refused to take his insulin, and therefore denies those allegations. The State denies that Plaintiff asked to see the treating physician on November 7, 2003 or on November 8, 2003, and denies that he submitted a written request to see the physician on those days. The State denies the remaining allegations in unnumbered paragraph 3.

The State avers that, according to DOC medical records, on November 7, 2003, Plaintiff refused at 7:59 a.m. to take his insulin and at 12:55 p.m., Soper reported to physician's assistant Barbara Hennagir that Plaintiff was taking a sliding scale of insulin at a higher dosage than ordered. The State asserts that Hennagir recorded in Plaintiff's chart that he could only take the ordered dosage, and that if he believed he needed more he would have to put in a health care request (HCR) to see Dr. Burnham.

4. Upon information and belief, the State admits that Plaintiff either stopped eating altogether or ate very little during the period from November 7, 2003 through November 9, 2003. Upon information and belief, the State denies that Plaintiff made verbal requests to see a physician during that time period and denies that Plaintiff requested or filled out health care request forms to see a physician during that time period. The State denies the remaining allegations in paragraph 4.

5. The State denies that Plaintiff refused food and insulin for five days. The State admits that, on or about November 9, 2003, Plaintiff fell and hit his face on a stool in his cell. The State admits that Plaintiff injured his eye when he fell. The State denies that Plaintiff was diagnosed with a fracture at the time of the fall. The State lacks sufficient information or belief to admit or deny the remaining allegations in unnumbered paragraph five and therefore denies those allegations.

6. The State denies that Plaintiff's lacerations were sutured and asserts the lacerations were treated with steri-strips. The State admits the remaining allegations in paragraph 6.

7. The State denies that Plaintiff was not seen by an eye specialist until February, 2004.

The State avers that Plaintiff was seen by a specialist at the University of Utah Moran Eye Center on December 17, 2003. The State avers that the specialist indicated Plaintiff possibly had a

fracture and ordered a CT scan, and the following day the CUCF physician, Dr. Burnham, ordered the CT scan. The State denies the remaining allegations in unnumbered paragraph 7.

8. The State denies that CUCF staff cancelled any appointment with an ophthalmologist. The State denies the remaining allegations in unnumbered paragraph 8.

9. State lacks sufficient information or belief to admit or deny the allegations in paragraph 9 and therefore denies those allegations.

10. The State lacks sufficient information or belief to admit or deny Plaintiff's allegations regarding his subjective experience of his injury and therefore denies those allegations. The State lacks sufficient information or belief to admit or deny the remaining allegations in unnumbered paragraph 10 and therefore denies those allegations.

COUNT I. [Labeled in Plaintiff's Second Amended Complaint as "Medical Malpractice"]

11. The State denies that Soper or any other employee ever denied Plaintiff his medically prescribed dose of insulin. The State avers that Plaintiff refused to take the amount of insulin prescribed for him and refused to take any insulin other than the amount he believed he should have. The State denies all remaining allegations in Plaintiff's unnumbered paragraph 11.

12. The State denies the allegations in Plaintiff's unnumbered paragraph 12.

COUNT II. [Labeled in Plaintiff's Second Amended Complaint as Constitutional Violations (Deliberate Indifference)]

13. The State denies the allegations in Plaintiff's unnumbered paragraph 13, labeled at (a).

14. The State denies the allegations in Plaintiff's unnumbered paragraph 14.

[Constitution of Utah Article I, Section 9 Violations]

15. The State denies the allegations in Plaintiff's unnumbered paragraph 15.

**COUNT III. [Labeled in Plaintiff's Second Amended Complaint as "State of Utah
(Constitution of Utah Article I, Section 9)"]**

16. The State denies the allegations in Plaintiff's unnumbered paragraph 16.

17. The State denies the allegations in Plaintiff's unnumbered paragraph 17.

[United States Constitution Amendment VIII (deliberate indifference)]

18. The State denies the allegations in Plaintiff's unnumbered paragraph 18.

19. The State denies the allegations in Plaintiff's unnumbered paragraph 19.

**III. Violation of Title II of the Americans with Disabilities Act, (ADA) of 1990 42 §122131
et seq.**

20. The State denies the allegations in Plaintiff's unnumbered paragraph 20.

THIRD DEFENSE

Plaintiff's state law claims against the State are limited, subject to and/or barred by the provisions of the Utah Governmental Immunity Act, Utah Code Ann. §§63-30-1, et seq.

FOURTH DEFENSE

Plaintiff's recovery under his state law claims, if any, are limited to the amounts set forth in Utah Code Ann. §63-30-34.

FIFTH DEFENSE

Plaintiff's state law claims are barred under §63-30-3(1) of the Utah Governmental Immunity Act because the State is entitled to immunity and such immunity has not been waived.

SIXTH DEFENSE

The State of Utah is not subject to a suit for damages.

SEVENTH DEFENSE

The State of Utah is entitled to sovereign immunity from all of Plaintiff's claims based on the Federal Constitution.

EIGHTH DEFENSE

Plaintiff's claims are barred by the doctrine of waiver and estoppel.

NINTH DEFENSE

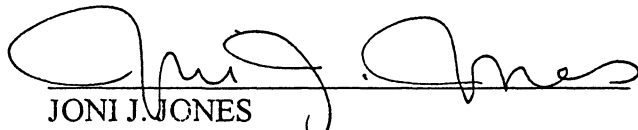
The State denies each and every allegation of the Second Amended Complaint which is not specifically admitted or otherwise pleaded to herein, and the State reserves the right to assert other affirmative defenses as they become known.

PRAYER AND JURY DEMAND

The State prays that the Second Amended Complaint be dismissed with prejudice as no cause of action and that the State be awarded its costs incurred and such other relief as the Court deems just. The State demands trial by jury on all of Plaintiff's claims.

DATED this 29th day of January, 2007.

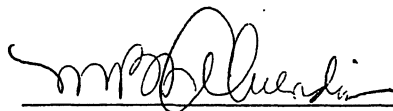
MARK L. SHURTLEFF
Utah Attorney General


JONI J. JONES
Assistant Utah Attorney General
Litigation Division
Attorneys for Defendant State of Utah

CERTIFICATE OF SERVICE

I certify that on this 29th day of January 2007, I caused to be served by U.S. mail a true and correct copy of the foregoing **STATE OF UTAH'S ANSWER TO SECOND AMENDED COMPLAINT** to the following:

Lawrence M. Jackson
Inmate # 28879
Cedar 2-214-B
Central Utah Correctional Facility
P.O. Box 550
Gunnison, Utah 84634



JONI J. JONES (7562)
Assistant Utah Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Attorneys for Defendants
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

Exhibit 12

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY
STATE OF UTAH – MANTI DIVISION

LAWRENCE M. JACKSON,	:	MEMORANDUM IN SUPPORT OF
	:	MOTION TO DISMISS
Plaintiff,	:	
	:	
vs.	:	Case No. 040600383
	:	
STATE OF UTAH, et al.	:	Judge K.L. McIff
	:	
Defendants.	:	
	:	

Pursuant to Rule 7(c) of the Utah Rules of Civil Procedure, Defendant Utah Department of Corrections (the State) files this memorandum of points and authorities supporting its motion to dismiss for failure to state a claim upon which relief may be granted.

INTRODUCTION

Pro se plaintiff Lawrence M. Jackson (Jackson) is an inmate housed in Gunnison, Utah. Jackson has sued the State alleging a medical malpractice claim and a federal constitutional

Exhibit 12

claim under the Eighth Amendment. Jackson's suit against the State fails as a matter of law. First, the Utah Governmental Immunity Act ("Immunity Act") bars all state law claims against the state when the injuries arise out of incarceration. Thus Jackson's claim premised on purported medical malpractice is barred. Second, Jackson's federal constitutional claim fails because the State is not a "person" for purposes of suits brought under 42 U.S.C. § 1983, the statutory vehicle for vindicating violations of federal statutory or constitutional rights. Even accepting all of Jackson's claims as true, his lawsuit against the state fails as a matter of law.

RELEVANT FACTUAL ALLEGATIONS

For purposes of this motion to dismiss only, the State does not dispute the facts alleged in Jackson's complaint.

1. Jackson is an inmate housed at the Central Utah Correctional Facility in Gunnison. And at all times relevant to this lawsuit he was an inmate at the Gunnison facility. (Compl. at p. 1.)
2. Jackson is an insulin-dependant diabetic. (*Id.* at p. 2.)
3. Jackson alleges that beginning on November 15, 2003, medical personnel at the Central Utah refused to give him an adequate dose of insulin. (*Id.*)
4. Jackson alleges that as a result of the inadequate dosage of insulin, he fainted and fell, severely injuring his eye. (*Id.* at p. 4.)
5. Jackson has brought claims of "personal injury," (Count I), "medical malpractice" (Count II) and a claim for cruel and unusual punishment (Count III). (Compl. pp. 6-7.)

Exhibit 12

6. The complaint names the Utah Department of Corrections as the defendant. (*Id.* at p. 2.)

7. Jackson seeks compensatory and punitive damages. (*Id.* at p. 7.)

ARGUMENT

A motion to dismiss under Rule 12(b)(6) should be granted if, accepting all of the allegations in the complaint as true, plaintiff could not recover from the defendant as a matter of law. *See, e.g., Mackey v. Cannon*, 2000 UT App 36, ¶13, 996 P.2d 1081; *Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, 988 F.2d 1157, 1160 (D. C. Cir. 1993) (rule 12(b)(6) should terminate suits that “are fatally flawed in their legal premises and destined to fail”). Jackson’s state and federal constitutional claims are fatally flawed and should be dismissed with prejudice.

I. JACKSON’S CLAIMS FOR NEGLIGENCE AND MEDICAL MALPRACTICE ARE BARRED UNDER THE IMMUNITY ACT.

Jackson cannot sue the State for negligence, including medical malpractice, because the Immunity Act bars inmates from bringing such claims. The Utah courts apply a three-step test to determine whether a governmental entity is immune from suit: (1) Is the activity involved a governmental function so that blanket immunity applies? (2) If so, is immunity waived for the type of claim plaintiff has asserted? (3) If immunity is waived, does plaintiff’s claim fall into one of the exceptions to the waiver? *Ledfors v. Emery County School District*, 849 P.2d 1162, 1164 (Utah 1993).

Exhibit 12

Under the first step, the State was engaged in a governmental function when it provided medical care for Jackson while he was incarcerated. The Immunity Act defines “governmental function” broadly to include “any act, failure to act, operation, function, or undertaking of a governmental entity.” Utah Code Ann. § 63-30-2(4)(a) (1997 & Supp. 2001). Under this definition, anything a governmental entity does is classed as a governmental function, so the State’s care for Jackson while he was imprisoned is a governmental function and hence immunity applies. *See also Sheffield v. Turner*, 445 P.2d 367, 368 (1968) (operation of state prison held to be governmental function).

Under the second step, immunity is waived because Jackson has asserted a negligence (negligence and medical malpractice) claim. *See* Utah Code Ann. § 63-30-10 (“Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment”)

Under the third step, however, there is an exception to the waiver that applies. Immunity for negligence claims is waived, “*except* if the injury arises out of, in connection with, or results from . . . the incarceration of any person in any state prison.” Utah Code Ann. § 63-30-10(10) (1997 & Supp. 2001) (emphasis added).

In determining whether an exception to immunity under section 63-30-10 applies, courts must “focus on the conduct or situation out of which the injury arose. If a subpart of section 63-30-10 describes that conduct or situation, then immunity is preserved.” *Malcolm v. State of Utah*, 878 P.2d 1144, 1147 (Utah 1994) (citation omitted). In this case, section 63-30-10(10) describes the exact situation in this case: Jackson alleges he was injured based on purportedly

Exhibit 12

negligent medical care he received while he was incarcerated in the Central Utah Correctional Facility. Jackson's negligence and medical malpractice claims are accordingly barred under the incarceration exception.

Not only is this conclusion inevitable under the plain language of the Immunity Act, but it is also mandated by controlling case law. The Utah Supreme Court has expressly held that the Immunity Act's incarceration exception bars negligence claims brought by prisoners. In *Madsen v. State*, 583 P.2d 92, 92-93 (Utah 1978), the Court upheld the trial court's dismissal of a wrongful death claim, brought by the wife and daughter of a prisoner who died while he was incarcerated, as barred by Section 63-30-10(10). *Id.* at 92. On appeal, the plaintiffs argued that the prisoner's death did not "arise out of" incarceration within the meaning of the Immunity Act because he died after surgery, allegedly because prison officials failed to promptly obtain medical aid when other inmates notified officials that the prisoner was having trouble breathing after the surgery. *Id.* at 92. The *Madsen* court flatly rejected this argument:

The plain meaning of the section [63-30-10(10)] reflects a legislative intent to retain sovereign immunity for any injuries occurring ***while the incarcerated person is in prison and under the control of the State***. Since this injury occurred while [the prisoner] was under the control of prison officials, the governmental entities . . . are both immune from liability.

Id. at 93 (emphasis added) (footnote omitted). Under *Madsen*, Jackson's state law negligence and medical malpractice claims fail.¹

¹ The *Madsen* court also rejected the plaintiffs' argument that Section 63-30-10(10) was unconstitutional under the 14th Amendment to the Federal Constitution and Article I, Section 24 of the Utah Constitution. See *id.* at 94.

Exhibit 12

Based on the plain language of Section 63-30-10(10), and Utah Supreme Court case law interpreting it, Jackson's state law claims based on negligence fail as a matter of law. The State accordingly asks this Court to dismiss the claim with prejudice.

II. JACKSON'S EIGHTH AMENDMENT CLAIM BECAUSE THE STATE IS NOT A "PERSON."

Jackson has brought a claim based on an alleged violation of the Eighth Amendment against the State. (*See* Compl. at 6-7, Count III.) Although Jackson only references the Eighth Amendment in his complaint, claims for violation of the federal constitution or of federal law are brought pursuant to 42 U.S.C. § 1983. That statute provides a remedy against "[e]very **person** who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects or causes to be subjected . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws" 42 U.S.C. § 1983 (emphasis added). The statute "creates no substantive civil rights, only a procedural mechanism for enforcing them." *Wilson v. Meeks*, 52 F.3d 147, 152 (10th Cir. 1995).

In order to be sued under section 1983, an entity must be a "person" as that term has been defined by the courts. *Ambus v. Utah State Bd. of Educ.*, 858 P.2d 1372, 1376 (Utah 1993) (citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989)). "Neither the state, nor a governmental entity that is an arm of the state for Eleventh Amendment purposes, nor a state official who acts in his or her official capacity, is a 'person' within the meaning of § 1983." *Harris v. Champion*, 51 F.3d 901, 905-06 (10th Cir. 1995); *Will*, 491 U.S. at 71.

Exhibit 12

The State of Utah is not a person amenable to suit under Section 1983, nor is the Utah Department of Corrections, since it is an “arm of the state.” Arms of the state are considered to be those “entities created by state governments that operate as alter egos or instrumentalities of the state.” *Watson v. University of Utah Med. Ctr.*, 75 F.3d 569, 575 (10th Cir. 1996) (citing *Mascheroni v. Board of Regents of the Univ. of California*, 28 F.3d 1554, 1559 (10th Cir. 1994)).

The Department of Corrections is an instrumentality of the state. *See* Utah Code Ann. § 64-13-2 (2000) (“There is created a Department of Corrections, under the general supervision of the executive director of the department. The department is the state authority for corrections”) It is a specific state agency that enjoys the state’s Eleventh Amendment immunity. The result is that it is not a “person” within the meaning of § 1983. Accordingly, Jackson’s section 1983 claim against the Utah Department of Corrections should be dismissed with prejudice because Section 1983 does not provide a remedy against this entity.

Jackson also mentions in passing, on page 1, Jerry Jorgensen. The complaint states that Mr. Jorgensen “is the warden for the Utah Correctional facility” at Gunnison. (Compl. at p. 1.) The complaint does not mention Mr. Jorgensen again. Insofar as Jackson is attempting to allege a claim against Mr. Jorgensen, such a claim fails.

Under section 1983, an “affirmative link” between each defendant’s conduct and the alleged constitutional deprivation must be plead and proven. *Stidham v. Peace Officer Standards & Training*, 265 F.3d 1144, 1156 (10th Cir. 2001). “Personal participation is an essential allegation in a § 1983 claim.” *Bennett v. Passic*, 545 F.2d 1260, 1262-63 (10th Cir. 1976). “Where a complaint alleges no specific act or conduct on the part of the defendant and the

Exhibit 12

complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed, even under the liberal construction to be given pro se complaints." *Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974). *See also Lewis v. Cook County Dep't of Corrections*, 28 F. Supp.2d 1073, 1079 (N.D. Ill. 1998).

Because there are no allegations linking Mr. Jorgensen to the alleged constitutional violation, he is "entitled to be dismissed from the lawsuit." *Linebarger v. Williams*, 77 F.R.D. 682, 684 (E.D. Okl. 1977).

CONCLUSION

Based on the foregoing, the State asks this Court to dismiss Jackson's suit against it with prejudice.

DATED this 14th day of February, 2005.

MARK L. SHURTLEFF
Utah Attorney General

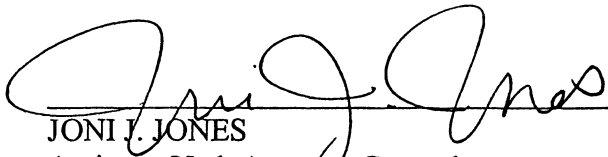
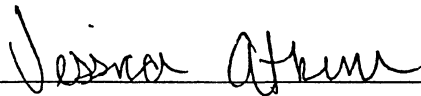

JONI J. JONES
Assistant Utah Attorney General
Litigation Division
Attorneys for Defendant

Exhibit 12

CERTIFICATE OF SERVICE

I certify that on this 4th day of February, 2005, I caused to be served by U.S. mail a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS** to the following:

Lawrence M. Jackson
Inmate # 28879
Cedar 2-214-B
Central Utah Correctional Facility
P.O. Box 550
Gunnison, Utah 84634





State of Utah

SCOTT V. CARVER
Executive Director

Utah Department of Corrections

Hearing Office

Exhibit 11

23 August 2006

Inmate Lawrence Jackson, USP # 28879
Oq 2, 304

RE: Grievance #990861416

I have reviewed your grievance and other relevant information. There is no further administrative review available. If you are dissatisfied with this response and wish to take further action, your only recourse is to seek a judicial remedy.

You bring this grievance to the third level claiming that, predictably, the second level grievance answer supported prison officials and you just want a third level response so you can go to court.

I concur with the first and second level answers. Transportation of inmates is arguably the most dangerous assignment for corrections officers. Recent murders in other states committed by inmates during transports reinforce this undisputed fact. Extraordinary security measures must be taken during transports. The officer made every effort to address your complaints within policy guidelines.

Being uncomfortable during secure transports is one of the unfortunate consequences of coming to prison. It is to be expected. The UDC transport policy is reasonable and effective.

Your requested remedies are denied.

Tom Anderson
Hearing Office,
Utah Department of Corrections

Tracking # 284



Jason A. Goldsmith, MD
Assistant Professor
Glaucoma and Cataract
Department of Ophthalmology and Visual Services
John A. Moran Eye Center, University of Utah
50 North Medical Drive
Salt Lake City, Utah 84132
(801) 581-2352 • FAX (801) 581-3357

December 15, 2005

Dr. Burnham
Central Correctional Facility
P. O. Box 898
Gunnison, UT 84634

Exhibit 10

Re: Lawrence Jackson
DOB: 5/11/54
MRN: 12426326
JMEC No.: 166308

Dear Dr. Burnham:

I am writing to you with regard to Mr. Lawrence Jackson, a 51 year-old African-American inmate with glaucoma. He has a history of trauma to his left and, indeed, his glaucomatous optic neuropathy is, at this point, isolated to his left eye. However, it is certainly possible that he simply has open angle glaucoma that has manifested early in his left eye only. For this reason, I have started him on Travatan one drop OU at night. It is very important that he adhere to this therapy, and that there not be any instances of evenings on which he does not take his medication.

Thank you very much for your assistance in the care of this most pleasant patient; and do not hesitate to contact me with any further questions or concerns.

Sincerely,

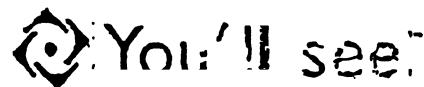
Jason Goldsmith, MD
Assistant Professor

JAG/kk

Electronic signature.

D: 12/15/05
T: 12/16/05

The Moran Eye Center Campaign for Vision



LAWRENCE JACKSON, 288/9

Numerical Results: 234.00

Comment: PT RPT. SACK ISSUED

* Transaction Type: CHARTING - OBSERVATI

* Transaction ID: 646646 Encounter ID:0

* Charted By: DAVID RICH, RN Date: 04/15/2006

* Authorized By: DAVID RICH, RN Date: 04/15/2006 Time: 07:30

Insulin given?: YES

Comment: 15 REG 30 NPH

Numerical Results: 140.00

Comment: PT RPT.

* Transaction Type: MEDICATION ADMINISTE

* Transaction ID: 646497 Encounter ID:0

* Transaction Reference ID: 469371

* Charted By: DAVID RICH, RN Date: 04/15/2006

* Authorized By: DAVID RICH, RN Date: 04/15/2006 Time: 06:47

Dose: 1

Drug: AMITRIPTYLIN TAB 75MG (AMITRIPTYLINE HCL TAB 75 MG)

Quadrant: A

Admin. Type: A

Date: 04/15/2006

Time: 06:37

Rx: 27744-1

Issued By: drich

* Transaction Type: CHARTING - OBSERVATI

* Transaction ID: 644945 Encounter ID:0

* Charted By: DAVID RICH, RN Date: 04/14/2006

* Authorized By: DAVID RICH, RN Date: 04/14/2006 Time: 15:46

Insulin given?: YES

Comment: 13 REG 24 NPH

* Transaction Type: PATIENT ASSESSMENT

* Transaction ID: 641843 Encounter ID:0

* Charted By: MARTIN TODD HANSEN, EMT Date: 04/14/2006

* Authorized By: MARTIN TODD HANSEN, EMT Date: 04/14/2006 Time: 02:34

Complaint Type:

Chief Complaint: LOW BLOOD SUGAR

Guide Category: NURSING

Guide: NURSING NOTE

Comments:

Notes:

=====

Observations

=====

Nursing note: Called to U-4 for report of this inmate not responding to officers. Upon arrival inmate was being restrained and being cooperative. Inmate was slow to respond to questions but, was able to answer them properly. Officers had given inmate 1/2 tube of oral glucose prior to my arrival with no change in mental status. Initial B.S. check was 64. I gave inmate the second half of the oral glucose, and rechecked sugar after 5 mins. with result of 67. Inmate was given a half amp of D-50 with result of 74, and inmate was A+OX4 at that time. Inmate was given the last half of D-50, and sugar checked with result of 100. I contacted infirmary and gave D. Earnshaw RN the results, and he said to give the inmate something to eat to maintain the B.S.

Private

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Lawrence M. Jackson, PLAINTIFF	Notice of Intent to Commence Legal Action.
v.	Civil No: _____
Sergeant, Zorns, U.S.P., Wasatch/D-Block. DEFENDANT	Judge, _____ Presiding

Pursuant to Governmental Immunities Act, UCA 63-30-12, Notice is hereby given that the Plaintiff intends to commence legal action.

Additionally, as provided in §63-30-4 (3,4), which states the following: "A plaintiff may not bring or pursue any other civil action or proceeding based upon the same subject matter against the employee or estate of the employee whose act or omission gave rise to the claim, unless, (i). the employee acted or failed to act through fraud or malice. See also paragraph 4 of this section.

The acts, and/or omissions complained of is in violation of Utah Judicial Code (UJC) §78-35-5, Penalties for Wrongful Acts of Defendant. This section provides that, "If the defendant attempts to evade the service of the writ of habeas corpus, or if the defendant or any officer willfully fails to comply with the legal duties imposed upon him, or if he disobeys the order of discharge, he is guilty of a Class B misdemeanor, and shall also forfeit to the person aggrieved not more than \$5,000. Any person knowingly aiding and abetting invalidation of this section is subject to the same punishment and

Jackson v. Sgt. Zorns
forfeiture."

Notice

It is alleged here in that Sergeant Zorns engaged in acts to invalidate the court's order, and in an attempt to cause unnecessary pain and suffering by willfully delaying my access to adequate and timely medical care, including supplemental foodstuffs, as provided in the URCP Rule 65 A injunction, and several acts of harassment for my complaints to lieutenant Kimber, and to Captain Rasmussen.

On or about 2-14-02, Sergeant Zorns and Officer Strickland reduced my out-of-cell lockdown time from "I-level" (6:00 p.m. lockdown) to H-level, (4:00 p.m. lockdown) and then ordered me to remain in my cell from 4:00 p.m. that pill line would come to me. From that day forward, the medical technicians were chronically late and when I asked them the reason why, they said it was because the staff at D-Block did not call them for me. When I would ask Sergeant Zorns and Officer Strickland to call medical, they would continuously say they forgot to call. There were several days that the medical technicians would not come to my cell until as late as 10:00 p.m. by then, I am the absolute last inmate to receive medical attention. Sergeant Zorns would, on more than one occasion, withhold my p.m. snack box until after 10:00 p.m., and slide it under the door after I was asleep.

After I filed grievances about the above acts, then there were frequent "shake downs" of my cell, culminating in OMR disciplinary actions, (reduction in out-of-cell time, to G-level, 11:00 a.m. lockdown) which I have been on since about March 14, 2002.

Jackson v. Sgt. Zorns

Notice

UJC 878-35-5, in relevant part states that, "or if the defendant or any officer willfully fails to comply with the legal duties imposed upon him," (the legal duty is a ministerial duty to provide adequate and timely medical care"). The willful element is shown by his knowledge of the existence of a serious medical need, the existence of a legally binding injunction, and the pain and suffering that would result from the withholding of medical care. The above conduct was fraudulent, in that Sergeant Zorns knew of his duty to alert the medical unit about my access to medical care, but he repeatedly claimed he forgot to contact them. Also, the reduction of my out-of-cell time was calculated to deny me access. UJC 878-35-5 also provides that, "Any person knowingly aiding and abetting invalidation of this section is subject to the same punishment and forfeiture." The above described acts were calculated to violate the spirit of the injunction, and to just delay the access as long as possible was an attempt to invalidate the legality of the court order.

Therefore, Notice is hereby given that the plaintiff intends to commence legal action on the above acts and omissions. A copy of the complaint is attached here to.

The above statements are true and accurate to the best of my knowledge and belief.

Signed this 30th day of July, 2002.

Signature Lawrence M. Jackson
Lawrence M. Jackson, Pro-se.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Lawrence M. Jackson,
PLAINTIFF

Notice of Intent to Commence Legal Action.

v.

Civil No: _____

Officer Strickland, U.S.P.,
Wasatch D-Block Facility
DEFENDANT

Judge,

Presiding

Pursuant to the Governmental Immunities Act, UCA §63-30-12, notice is hereby given of Plaintiff's intent to commence legal action.

Additionally, as provided in §63-30-4(3,4), which states that: "A plaintiff may not bring or pursue any other civil action, or proceeding based upon the same subject matter against the employee or estate of the employee whose act or omission gave rise to the claim unless, (i) the employee acted or failed to act through fraud or malice." See also paragraph 4 of this section.

The acts and/or omissions complained of is in violation of Utah Judicial Code, (UTC) §78-35-5, Penalties for Wrongful Acts of Defendant. This section provides that: "If a defendant attempts to evade the service of the writ of habeas corpus, or if the defendant or any officer willfully fails to comply with the legal duties imposed upon him, or if he disobeys the order of discharge he is guilty of a class B misdemeanor, and shall also forfeit to the person aggrieved not more than \$5,000. Any person knowingly aiding and abetting invalidation of this section is subject to the same punishment and forfeiture."

Exhibit 8. (b)

Jackson v. ~~STRICKLAND~~

Notice

It is alleged herein that on or about 2-7-02, I was moved back to D-Block from Timpanogos facility, star-2. When I left star-2, I was an I-level, (6:00 pm lockdown). Within days after my arrival at D-Block, I was stopped as I passed Officer Strickland, by the control room. Officer Strickland asked me if I was Lawrence Jackson, I said "yes". Officer Strickland then said, "ok Jackson, we'll be watching you", and the conversation abruptly ended.

On or about 2-14-02, Officer Strickland stopped me as I was on my way to the p.m. pill line, and says that, "you are an 'H-level', (4:00 p.m. lockdown) you can't go to pill line any longer; pill line will come to you". When I was going to p.m. pill line, I got my medication at about 5:30 to 6:00 p.m., also my p.m. snack box. From the date I was fraudulently reduced in my "out-of-cell time, (from I-level to H-level), my access to medical care, including insulin, pain meds, and medically prescribed p.m. snack boxes were deliberately and maliciously delayed by Sergeant Zorns, and Officer Strickland. For several days, my p.m. medical care was delayed to as late as 10:00 p.m., so was the p.m. snack boxes.

Sergeant Zorns and Officer Strickland were well aware of my medical condition, they were also aware of the Court's order enjoining the respondents from the denial of "timely and regular doses of insulin, and timely and regular foodstuffs." Officer Strickland, even after having been shown the court ordered injunction, every evening on Sergeant Zorns and his shift, would come on the tier several times per shift. At which time I would ask when I would be given my p.m. medications, he would say, "I forgot to call the infirmary, I'll do it when I get back to the control room. This would be repeated up to

Jackson v. Strickland

Notice

as late as 10:00 p.m., at that hour, I would literally be the last inmate to have access to medical care in the entire institution. (Please note, while at Timpanogas facilities, I had medical access at from 3:00 to 3:30 pm the difference of about 7 hours. The move from Star-2 was claimed to have been made so I might have better access).

When I filed grievances for the undue delays in access to medical care, Sergeant Zorns and Officer Strickland began frequent shakedowns of my cell, and continued the delays of medical access including pain medication and supplemental (medically prescribed) snack boxes, at one point, the snack boxes would only be delivered after I was in bed and asleep. This was harassment after the fact of violations of the Spirit, and the letter of the court order, and was malicious in that the officers were aware of their ministerial duties to provide that access in a timely manner and also the unnecessary pain and suffering when access is delayed or withheld. These acts were willful and were calculated to violate the spirit of the court order and escape judgement, thus invalidating the lawful court order in violation of UJC §18-35-5.

Therefore, you are hereby on notice of the Plaintiff's intent to commence legal action for the above acts. A copy of the complaint is attached hereto.

The above statements are true and accurate to the best of my knowledge and belief.

Signed this 30th day of July, 2002.

Signature Lawrence M. Jackson
Lawrence M. Jackson, Pro-se

UNNISON VALLEY HOSPITAL

GUNNISON, UTAH

X-RAY REPORTS

NAME: LAWRENCE JACKSON#28879 DATE: DECEMBER 29, 2003
DOB: 05/11/1954 DOCTOR: BRUCE BURNHAM, M.D.
AGE: 49Y X-RAY #: 16483 MR#: 17166 (CUCF)

REVISED COPY

Exhibit 7(b)

CLINICAL INFORMATION: L ORBITAL FX

CT OF FACIAL BONES:

Images were obtained at 1.6 mm intervals with axial and coronal reformats at 3 mm intervals.

Minimal mucosal thickening is present in the inferior aspect of the right frontal sinus as it joins the ethmoid air cells. Moderate mucosal thickening with some opacification is present in left sided ethmoid air cells. Sphenoid air cells are incompletely developed and are clear. Mucosal thickening obstructs bilateral ostiomeatal units, left greater than right. Mild mucosal thickening is present in bilateral maxillary antra. Left sided nasal spur with mild leftward nasoseptal deviation. Moderate right sided middle and inferior turbinate enlargement.

Minor irregularity of the left inferior orbital wall cannot be excluded. If the patient sustained significant trauma to the left orbit, the possibility of an inferior orbital floor fracture cannot be excluded.

RADIOLOGIC DIAGNOSIS:

1. MODERATE CHANGES OF CHRONIC SINUSITIS, MAINLY INVOLVING THE ETHMOID (LEFT GREATER THAN RIGHT) AND MAXILLARY SINUSES. MINIMAL RIGHT FRONTAL SINUS DISEASE. NO SIGNIFICANT SPHENOID SINUS DISEASE.
2. MILD LEFTWARD NASOSEPTAL DEVIATION WITH LEFT SIDED NASAL SPUR.
3. POSSIBLE SUBTLE FRACTURE OF THE FLOOR OF THE LEFT ORBIT. NO MUSCULAR ENTRAPMENT IDENTIFIED.

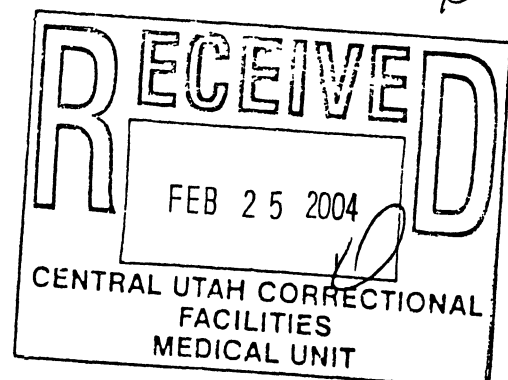
CONNIE VAIL, M.D.
Radiologist

CV/scf

DD: 12/30/2003
DT: 12/31/2003

✓
B3

ELECTRONIC ENTRY



PRIVATE

Exhibit 7(a)

1315

581-2352
5419hCONSULTATION REQUEST

UTAH STATE PRISON MEDICAL BUREAU

INMATE'S NAME JACKSON, LawrenceUSP# 28879BIRTHDATE 05/11/1954HOUSING CUCF - Aspen 213BREFERRAL TO Morgan Eye CLINIC DATE OF CONSULT 12-17-85
Dr. GoldsmithTested for Glaucoma -REFERRING CLINICIAN Plathow TN

CONSULTANT'S EVALUATION (PHOTOCOPY OF CLINIC RECORD IS PREFERRED)

① Floor fracture (orbital) left eye- need orbital CT- Call Dr. Patel's office for scheduling
Surgery 585-6641② Return to Dr. Goldsmith in 4 months
for Humphrey Visual Field and disc photos

RETURN APPOINTMENT MADE FOR _____ DATE _____ TIME _____

CONSULTANT'S SIGNATURE Jason Plathow

IMMEDIATELY UPON RETURN TO THE PRISON SITE SEND RETURN CLINIC APPOINTMENT REQUEST, COPY OF CLINIC RECORD, AND PRESCRIPTIONS TO THE PRISON WITH THE TRANSPORTATION OFFICER. CONSULTANT'S PRESCRIPTIONS WILL BE REVIEWED BY THE PRISON PHYSICIAN AND FILLED BY THE PRISON'S REGISTERED PHARMACIST.

Exhibit 6

In The District Court of the Sixth Judicial District

In And For San Pete County, State of Utah

Lawrence M. Jackson
Plaintiff

Memorandum In Support of
Motion For Reconsideration of
Court's Ruling And For Leave
Of The Court To Amend Complaint

V.

Civil No.

The State of Utah, et al.,
Defendants.

Judge: Wallace R. Lee

Comes now the plaintiff, pro-se, in the above entitled matter and does respectfully submit this memorandum in support of Motion For reconsideration of Court's Ruling And For Leave of The Court To Amend Complaint pursuant to Utah Rules of Civil Procedure Rule 15(a).

In support of this motion, and memorandum, the plaintiff states the following:

Procedural History

1). The plaintiff, Lawrence M. Jackson, filed a complaint in the Sixth District Court on November 17, 2004, alleging medical malpractice; U.S. Constitution Amendment VIII (Cruel and Unusual Punishment) violations; Constitution of Utah Article I, section 9 (unnecessary Rigor). Plaintiff named a medical technician, "Lisa"; (CLICF) Wrenn, Jorgensen; and the state of Utah as defendants in this action.

2). On January 20, 2005, the Sixth District Court Judge, K.L. McEliff directed the Clerk of the Court to serve a copy of the Complaint upon

Exhibit 6

arguing in chief, that, "[P]laintiff's claim for an alleged violation of the Utah Constitution fails because the state enjoys common-law immunity from suit even based on an alleged violation of the Constitution."

11). ON June 1, 2006, the Plaintiff responded with a motion for Summary Judgment.

12). ON June 9, 2006, the state moves the court, (Ex Parte), for enlargement of time to respond to Plaintiff's motion for Summary Judgment and reply to Defendant's motion for Judgment on the Pleadings.

Relevant Facts

1). In the defendant's Memorandum In Support of Motion to Dismiss, dated February 14th, 2005, see (D.S. Mot. to Dismiss, pg. 6 - Point II), The defendant's argued, in essence that "[T]he department is the state authority for corrections..." It is a specific state agency that enjoys the state's Eleventh Amendment Immunity."

2). ON January 6, 2006, ON the issue of Eighth Amendment claims against the state, the this court found that, "[I]n order to claim redress for a violation under the Eighth Amendment, the plaintiff is required to proceed under United States Code, Title 42 section 1983. The court finds the defendant's contention that the state of Utah is not a person, subject to suit under 42 U.S.C. section 1983 is well taken. Under 42 U.S.C. § 1983, neither the state of Utah nor the Department of Corrections is a "person" subject to suit. Harris v. Champion, 51 F.3d 901 (10th Cir. 1995); Will v. Michigan, 491 U.S. 58 (1989); Watson v. University of Utah Medical Center, 75 F.3d 569 (10th Cir. 1996)."

Exhibit 6

United States v. Georgia, 546 U.S. ____ (2006)

II. The United States Congress's Acts Allow For Money Damages Against the State.

III. The Court Should Grant The Plaintiff Leave to Amend The Amended Complaint.

Argument I

Recent United States Supreme Court Decisions Have Shown Conclusively, That Certain Constitutional Rights Violations Could Result In The Abrogation Of State's Sovereign Immunity.

The defendants, in their memorandum in support of The State's Motion for Judgment on the Pleadings, argued, in essence that "Under the common law it was well settled that absent a waiver of immunity, the state as a sovereign could not be sued for money damages." See, e.g., Will v. Michigan, 491 U.S. 58, 67 (1989). See: (Def. Mot. For Judgment on the Pleadings, Pg. 3-4).

The plaintiff, having no law library, or assistance from persons trained in the law, must obtain legal research material from fellow inmates. This was the case when plaintiff filed a Memorandum in response to Defendant's Motion For Judgment on the Pleadings. In that document, the plaintiff relied heavily upon the case entitled: Pitt v. De Land, 922 P.2d 732, 736 (Utah 1996). Subsequent to the filing of above referenced document, the plaintiff located a recent United States Supreme Court case that addressed the "abrogation of state sovereign immunity," and has relevance in the instant case. See: United States v. Georgia, 546 U.S. ____ (2006).

Exhibit 6

The U.S. Supreme Court held that Title II of the ADA abrogates the State Sovereign Immunity, and money damages against the state were available. The Supreme Court did not however rule on the Eighth Amendment claims and assumed that since they were not put at issue that the Eleventh Circuit Court's ruling that the state had violated Goodman's 8th Amendment rights were correct.

The Supreme Court, however, did analyze Goodman's claims under Title II in conjunction with the U.S. Constitution Amendment XIV. The Supreme Court, (quoting) *Yeskey*, 524 U.S. at 210 (noting that the phrase, "services, program, or activities" in §12132 includes recreational, medical, educational, and vocational prison programs). "[T]herefore, Goodman's claims for money damages under Title II were evidently based, at least in large part, on conduct that independently violated the provisions of §1 of the Fourteenth Amendment. see: *Louisiana Ex rel. Francis v. Resweber*, 329 U.S. 459, 463 (1947) (the due process clause of the Fourteenth Amendment incorporates the Eighth Amendment's guarantee against cruel and unusual punishment).

The Supreme Court goes on to say that: "[W]hile the members of this Court have disagreed regarding the scope of Congress's 'prophylactic' enforcement powers (under §5 of the Fourteenth Amendment see, e.g., *Leane*, 541 U.S. at 513 (majority opinion of Stevens, J.); *id.* at 538 (Rehnquist, C.J. dissenting); *id.* at 554 (Sotomayor, J. dissenting)), no one doubts that §5 grants Congress the power to 'enforce ... the provisions' of the Amendment by creating private remedies against the states for actual violations of those provisions.

The plaintiff originally plead 8th Amendment violations against the state, and the Utah Attorney General argued first that in order to bring an 8th Amendment claim against a "person" one must proceed under 42 U.S.C. §1983; second, the state is not a "person" under §1983. see: (Def. Memo. In Supp. of Mot. to Dismiss, pp. 7-10). The trial court (pg. 7)

Exhibit 6

United States v. Georgia, 546 U.S. (2006)
§5 grants Congress the power to "enforce... the provisions of the Amendment by creating private remedies against the States for actual violations of those provisions." Section 5 authorizes Congress to create a cause of action through which citizens may vindicate his Fourteenth Amendment rights." *Id.* at 559-560 (Scalia, J. dissenting) (citing the Ku Klux Klan Act of April 20, 1871, 17 Stat. 13); see also *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976) ("In [§5] Congress is expressly granted authority, to enforce... the substantive provisions of the Fourteenth Amendment" by providing actions for money damages against the States. (emphasis added)); *Ex parte Virginia*, 100 U.S. 339, 346 (1880) ("The prohibitions of the Fourteenth Amendment are directed to the States... It is these which Congress is empowered to enforce..."). This enforcement power includes the power to abrogate State sovereign immunity, by authorizing private suits for damages against the States.

The plaintiff is thus entitled to recover damages for Constitutional violations of which are enforceable under the United States Constitution Amendment XIV., §1, enforceable under §5.

It seems then, that diabetes mellitus is considered a disability, that is recognized by the Americans with Disabilities Act (ADA), and as such, the plaintiff should be allowed to amend the Complaint as well as the other provisions discussed in the above cited case *United States v. Georgia, supra*.

Argument III

The Court should Grant The Plaintiff's Motion For Reconsideration of Its Ruling Respecting Plaintiff's Eighth Amendment Claims Against the State And Grant Plaintiff leave of The Court to Amend The Complaint.

STATE'S MOTION TO DISMISS is scheduled.

Date: 01/23/2002

Time: 09:00 a.m.

Location: Fourth Floor - N45
THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84111-1860

Before Judge: TIMOTHY R. HANSON

State's motion to dismiss petition (30 minute setting)

Judge Hanson's law clerk request curtesy copies be provided 10 days prior to hearing.

11-27-01	STATE'S MOTION TO DISMISS scheduled on January 23, 2002 at 09:00 AM in Fourth Floor - N45 with Judge HANSON.	evelynt
12-10-01	Filed: Letter to Court from Petitioner	kathrygw
12-31-01	Filed: Letter to Court dated 12/25/01 from petitioner	kathrygw
12-31-01	Filed: Complaint for Enforcment of a URCP Rule 65A Injunction and Request for an Order to Show Cause	kathrygw
12-31-01	Filed: Affidavit in Support of Complaint for Enforcment of a URCP Rule 65A Court Order	kathrygw
01-23-02	Filed: Rebuttal memorandum to respondant's answer to the URCP, 65(b) Petition	evelynt
01-23-02	Minute Entry - Minutes for MINUTE ENTRY Judge: TIMOTHY R. HANSON Clerk: evelynt PRESENT	evelynt

Plaintiff(s): LAWRENCE M JACKSON

Defendant's Attorney(s): SHAREL REBER

Video

Tape Number: 1/23/02 Tape Count: 9:21/10:01

HEARING

This matter is before the Court for oral argument on respondent, State of Utah's motion to dismiss. Appearances as shown above.

Oral argument is presented to the Court. The Court reviews petitioners memorandum submitted in court today.

Based upon the foregoing, and the Court's findings, the State's motion to dismiss petition is granted, with exception, that the Court's interim order remains in full force and effect.

This Order requires the doctors at the prison to strictly comply with the medical requirements of petitioner.

Counsel for the State is to prepare the appropriate findings of fact and conclusions of law, and order as directed by the Court.

01-25-02	Filed: Letter to the Court from Lawrence M. Jackson	kathys
----------	-----------------------------------------------------	--------

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

LAWRENCE M JACKSON vs. CLINT FRIEL

CASE NUMBER 010904240 Post Conv Rel NonCap

CURRENT ASSIGNED JUDGE
TIMOTHY R. HANSON

PARTIES

Plaintiff - LAWRENCE M JACKSON
Draper, UT 84020

Defendant - STATE OF UTAH
Represented by: SHAREL REBER

Defendant - UTAH STATE PRISON

Defendant - CLINT FRIEL

Exhibit 4

ACCOUNT SUMMARY

CASE NOTE

PROCEEDINGS

5-15-01	Case filed by candices	candices
5-15-01	Judge HANSON assigned.	candices
5-15-01	Filed: Affidavit of impecuniosity	candices
5-21-01	Filed: Letter to Court from Lawrence Jackson re inmate account	kathrygw
5-29-01	Filed: Letter to Court from Lawrence M. Jackson to amend his petition	kathrygw
5-29-01	Filed: Letter to Ut St Prison inmate acct dept, Chris Olsen	evelynt
6-06-01	Filed: Letter to Court from petitioner	kathrygw
6-14-01	Filed: Notice of Determination of Filing Fee (\$11.75)	kathrygw
6-25-01	Filed: Motion motion for enlargement of time in which to challenge the fee assessment	evelynt
6-26-01	Filed order: Motion for enlargement of time in which to challenge the fee assessment is granted.	kathrygw
	Judge thanson	
	Signed June 26, 2001	
6-02-01	Filed: Letter to Court from Lawrence M. Jackson	kathrygw
6-09-01	Filed: Letter to Court from petitioner with attached Memorandum Challenging Determination of Fee Assesment	kathrygw
6-09-01	Filed: Letter to Court from petitioner with attached documents	kathrygw
6-09-01	Filed: Letter to Court from petitioner with attached Affidavit	

Printed: 01/27/03 08:51:32

Page 1

CASE NUMBER 010904240 Post Conv Rel NonCap

EXHIBIT 4

of Petitioner and Affidavit of Steven Shane Tingey kathrygw
07-09-01 Filed: Letter to Court from petitioner with attached documents kathrygw
07-09-01 Filed: Letter to Court from petitioner with attached documents kathrygw
07-11-01 Filed: Letter to Court dated 7/8/01 from petitioner with
attachments kathrygw
07-11-01 Filed: Letter to Court dated 7/8/01 from petitioner with
attachments kathrygw
07-12-01 Filed: Letter to Court dated 7/8/01 from petitioner kathrygw
08-02-01 Filed: Ct's M.E.: Petitioner may proceed without prepayment,
petitioner is still obligated to make monthly payments towards
the assessed filing fee until amt is paid in full, respondent
is to file an answer within 20 days from date of order, etc evelynt
08-10-01 Filed: Letter to Court from petitioner (see ME of 8/2/01, no
action required) kathrygw
08-16-01 Filed: Letter to Court from petitioner kathrygw
08-16-01 Filed: URCP Rule 65A Motion for a Preliminary Injunction and
Temporary Restraining Order kathrygw
08-16-01 Filed: Affidavit in Support of URCP Rule 65A Application for a
Temporary Restraining Order and Preliminary Injunction kathrygw
08-22-01 Filed: Respondent's Motion to Dismiss kathrygw
08-22-01 Filed: Memorandum in Support of Motion to Dismiss kathrygw
08-23-01 HABEAS CORPUS WRIT HEARING scheduled on September 11, 2001 at
10:00 AM in Fourth Floor - N45 with Judge HANSON. evelynt
08-23-01 Notice - NOTICE for Case 010904240 ID 905377 evelynt
HABEAS CORPUS WRIT HEARING is scheduled.
Date: 09/11/2001
Time: 10:00 a.m.
Location: Fourth Floor - N45
THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84111-1860
Before Judge: TIMOTHY R. HANSON

Extraordinary Writ hearing is set for a one hour setting.
08-30-01 Filed: **NOTE** copy of Notice of Habeas Corpus Writ Hearing
sent to James Beadles returned; re-sent to David K. Gardner kathrygw
09-10-01 Filed: Letter dated 9/6/01 to the Court from petitioner kathrygw
09-10-01 Filed: Letter dated 9/5/01 to the Court from petitioner kathrygw
09-11-01 Minute Entry - Minutes for MINUTE ENTRY evelynt
Judge: TIMOTHY R. HANSON
Clerk: evelynt
PRESENT

Plaintiff(s): LAWRENCE M JACKSON
Defendant's Attorney(s): DAVID K. GARDNER
Video
Tape Number: 9/11/01 Tape Count: 9:56/10:20

Exhibit 4

HEARING

This matter is before the Court for hearing petitioners claim that he has not been provided his prescription medication and diet. Mr. Jackson is present and representing himself pro se. State is represented as indicated herein.

Based upon representations to the Court, the Court will enter an order wherein the Utah State Prison is to provide petitioner his medications and food boxes on a regular and timely basis, in accordance with the doctor's instructions.

The State's motion to dismiss is not before the Court today. Petitioner's motion to allow 30 days in which to respond to the motion is granted. Petitioner is to submit his response by 10/11/01, and the State will have 10 days to file any reply.

The Court will diary this case to 10/29/01, and then consider the merits of the case.

Counsel for the State is to file an order regarding the hearing today.

09-11-01	Filed: level I grievance State response Ut State Prison	evelynt
09-11-01	Filed: Supplement of grievance page	evelynt
09-11-01	Filed: motion for supplemental pleadings	evelynt
09-11-01	Filed: Inmate grievance form	evelynt
09-11-01	Filed: inmate grievance form	evelynt
09-12-01	Filed order: Order	kathrygw
	Judge thanson	
	Signed September 12, 2001	
09-21-01	Filed: Letter to Court from the petitioner at Ut St Prison, date 9/17/01	evelynt
09-24-01	Filed: Letter to Court from the petitioner dated 9/18/01	kathrygw
10-01-01	Filed: Ct's M.E:Petitioner's motion for modification or Court's Order of 9/12/01 is denied, no order necessary, M.E. stands as order	evelynt
10-01-01	Filed: Ct's M.E: Ct copies petitioner's letters to counsel for respondent, as attached to this M.E.	evelynt
10-17-01	Filed: Letter to Court dated 10/15/01 from petitioner	kathrygw
10-19-01	Filed: Letter to Court dated 10/16/01 from petitioner	kathrygw
11-01-01	Filed: Letter to Court dated 10/8/01 from petitioner	kathrygw
11-01-01	Filed: Petitioner's Rebuttal to Respondent's Answer to URCP Rule 65B Writ for Extraordinary Relief	kathrygw
11-06-01	Filed: Letter to Court from petitioner	kathrygw
11-06-01	Filed: Petition for Supplemental Relief to Include Damages Jury Trial Demanded	kathrygw
11-14-01	Filed: Letter dated 11/7/01 from petitioner to the Court	kathrygw
11-16-01	Filed: Letter dated 11/13/01 from Petitioner to the Court	kathrygw
11-21-01	Filed: Letter dated 11/18/01 to Court from petitioner	kathrygw
11-21-01	Filed: Motion for Enforcment of a Court Order and Supporting Affidavit	kathrygw
11-27-01	Notice - NOTICE for Case 010904240 ID 966740	evelynt

Exhibit 4

	Petition	kathys
01-28-02	Note: Cert. copy of Notice of Appeal forwarded to Court of Appeals	kathys
01-31-02	Filed: Motion for Enlargement of Time to Submit Motion for New Trial or Amend Judgment	kathrygw
01-31-02	Filed: Letter dated 1/27/02 to the Court from Lawrence Jackson	kathrygw
02-04-02	Filed: Letter to the Court from petitioner	kathrygw
02-04-02	Filed: Motion for a New Trial and or Amendment of Judgment	kathrygw
02-04-02	Filed: Memorandum in Support of Motion for a New Trial or an Amendment of the Judgment	kathrygw
02-07-02	Filed: Letter from Court of Appeals - Noa received, Court of Appeals No. 20020097-ca	sophieo
02-21-02	Note: Record forwarded to Court of Appeals (unpaginated): 2 files	kathys
02-22-02	Filed order: Order Judge thanson Signed February 22, 2002	kathrygw
03-11-02	Filed: Letter dated 3/8/02 from Lawrence Jackson	kathrygw
06-13-02	Filed: Motion for Recusal Under U.R.C.P. Rule 63(b)	kathrygw
06-13-02	Filed: Motion for Enforcement of URCP Rule 65A Injunction and an Order to Show Cause	kathrygw
06-26-02	Filed: CT's M.E:Re: Petitioner 2 motions & proposed order, case on appeal, & this court is divested of juris, & cannot act on motion to recuse; the same goes for petitioner's motion for enforcement of Rule 65A; **cont'd**	evelynt
06-26-02	Filed order: **Cond'd** when the case is remanded, the Court will take the appropriate action; No response is required, & no formall orer, minute entry stands as Court's Order Judge thanson Signed June 26, 2002	evelynt
06-26-02	Filed: Letter dated 6/20/02 to the Court from petitioner	kathrygw
08-13-02	Filed: Letter dated 8/8/02 to the Court from Lawrence Jackson	kathrygw
08-13-02	Filed: Notice of Intent to Commence Legal Action (Officer Mike Ryan, USP)	kathrygw
08-13-02	Filed: Notice of Intent to Commence Legal Action (Lieutenant Kimber USP)	kathrygw
08-13-02	Filed: Notice of Intent to Commence Legal Action (Sergeant Zorns, USP)	kathrygw
08-13-02	Filed: Notice of Intent to Commence Legal Action (Captain Rasmussen, USP)	kathrygw
08-13-02	Filed: Notice of Intent to Commence Legal Action (Mr. Wolff, Caseworker, USP)	kathrygw
08-13-02	Filed: Notice of Intent to Commence Legal Action (Lieutenant Wilson, USP)	kathrygw
08-13-02	Filed: Notice of Intent to Commence Legal Action (Officer Strickland, USP)	kathrygw
08-13-02	Filed: Notice of Intent to Commence Legal Action (Captain Hughes, USP)	kathrygw

Printed: 01/27/03 08:51:37

Page 5

CASE NUMBER 010904240 Post Conv Rel NonCap

08-13-02 Filed: Notice of Intent to Commence Legal Action (Officer Fickert, USP)

kathrygw

EXHIBIT 4

08-13-02 Filed: Notice of Intent to Commence Legal Action (Sergeant Higinson, USP) kathrygw
08-13-02 Filed: Notice of Intent to Commence Legal Action (Sergeant Boweter, USP) kathrygw
08-13-02 Filed: Notice of Intent to Commence Legal Action (Lieutenant Van Leeuwen, USP) kathrygw
08-13-02 Filed: Notice of Intent to Commence Legal Action (unknown medical technician at USP med.unit) kathrygw
08-13-02 Filed: Certificate of Service ("Notice of Intent to Commence Legal Action) kathrygw
11-14-02 Filed: Letter to Mr. Jackson from the Court, dated 11/12/02 evelynt
11-14-02 Filed: Ct's M.E: Court of Appeals found it appropriate to dismiss the appeal for lack of jurisdiction, this Court now having jurisdiction, its appropriate to address motion for court recusal, case referred to presiding judge for determination** evelynt
11-14-02 Filed: **When recusal issue is resolved, then this court or another court can take up the defendant's motion for enforcement * motion for new trial evelynt
11-14-02 Filed: Ct's M.E: Petitioner's motion for recusal seeking this court to recuse, on basis of bias & prejudice, matter referred to presiding judge for decision evelynt
11-14-02 Filed: Memo to Craig From Judge Hanson, dated d11/12/02 evelynt
11-21-02 Filed: Letter to the Court from Lawrence Jackson kathrygw
12-20-02 Filed order: Minute Entry - Petitioners Motion for Recusal DENIED jills

Judge rnehrling

Signed December 20, 2002

01-06-03 MOTION FOR NEW TRIAL scheduled on February 10, 2003 at 11:00 AM in Fourth Floor - N45 with Judge HANSON. evelynt
01-06-03 Filed: Ct's M.E: Judge Nehrling ruled that motion to recuse is denied, Motion for new trial is set for hearing, State needs to respond within 15 days of M.E., M.E. stands as Court's order evelynt
01-13-03 Filed: Supreme Court letter to Lawrence M. Jackson (SC # 20021078/COA # 20020784) - Petition for Writ of Certiorari filed with SC on 12/27/02 kathys
01-13-03 Filed: Supreme Court order: Court waives filing fee for filing of Writ of Certiorari. Waiver granted as to filing fee only; all other costs to process petition, including if any, transcript costs, must be paid by Petitioner kathys
01-13-03 Notice - NOTICE for Case 010904240 ID 5482538 evelynt
MOTION FOR NEW TRIAL.
Date: 02/24/2003
Time: 03:00 p.m.
Location: Fourth Floor - N45
THIRD DISTRICT COURT
450 SOUTH STATE

Printed: 01/27/03 08:51:38

Page 6

CASE NUMBER 010904240 Post Conv Rel NonCap

SLC, UT 84114-1860

Before Judge: TIMOTHY R. HANSON

The reason for the change is ATD requested continuance.

Exhibit 4

01-13-03	MOTION FOR NEW TRIAL rescheduled on February 24, 2003 at 03:00 PM	Reason: ATD requested continuance..	evelynt
01-14-03	Filed: Motion for Enlargement of Time		kathrygw
01-22-03	Filed: Remittitur Received - Coa#20020097-ca - No record received - Appeal dismissed		sophieo

Exhibit 3

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND FOR SAMPETE COUNTY, STATE OF UTAH

Lawrence M. Jackson

MOTION FOR ENLARGEMENT OF
TIME IN WHICH TO FILE A
MOTION FOR RECONSIDERATION
OF SUMMARY JUDGMENT RULING

V.

Civil No. _____

THE STATE OF UTAH, et al, Judge, Wallace H. Lee

The plaintiff in the above entitled matter hereby moves
this court to reconsider its ruling of summary judgment
pursuant to Utah Rules of Civil procedure Rule 54(b).

In support of this motion the plaintiff states the following:

- 1). On 3-15-07 the defendants apparently filed a motion in this court requesting that state be allowed to file a Martinez Report.
- 2) The plaintiff first filed a letter to the court regarding the state's motion to file a Martinez Report on 3-26-07.
- 3). On 3-28-07, however, the court grants the state's motion to file a Martinez Report, but the Plaintiff did not receive a copy of the court's order.
- 4). On 4-27-07 the plaintiff filed a memorandum in opposition to Defendant's motion that the state be allowed to file a Stay of Proceedings. And the Martinez Report.
- 5). While the plaintiff awaited a decision on the Plaintiff's memorandum opposing the Stay of proceedings, and Martinez Report, on 7-3-07 the court entered a memorandum decision granting the State summary judgment.

GUNNISON VALLEY HOSPITAL

GUNNISON, UTAH

X-RAY REPORTS

NAME:	LAWRENCE #28879 JACKSON	DATE:	12/29/2003
DOB:	05/11/1954	DOCTOR:	BRUCE BURNHAM
AGE:	49Y	X-RAY #:	16483 MR#: 17166 (CUCF)

CLINICAL INFORMATION: L ORBITAL FX

ADDENDUM TO SINUS CT:

Minor irregularity is demonstrated of the floor of the left orbit. A minimal, nondisplaced fracture in this location cannot be absolutely excluded. No other facial fractures are identified.

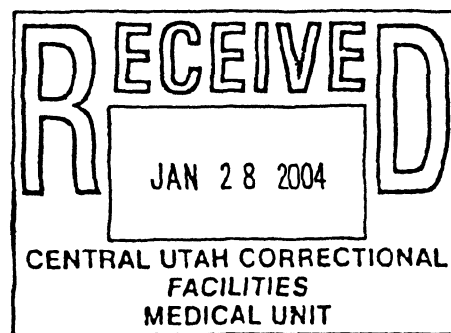
CONNIE VAIL, M.D
Radiologist

CV/sci

DD: 01/13/2004
DT 01/14/2004

Exhibit 2

BB



PRIVATE