

1999

Ken Ray Harward v. Utah County, Utah County  
Sherrif's Office, Utah County Attorney's Office,  
Pleasant Grove City, Pleasant Grove Police  
Department, Lehi City, Lehi Police Department,  
Provo City, Provo City Police Department : Brief of  
Appellee

Utah Court of Appeals

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D. Bruce Oliver; Attorney for Appellant.

Peter Stirba, Linette B. Hutton; Gary L. Gregerson, David C. Dixon, Gary A. McGinn; Dale J. Lambert, Rebecca L. Hill; Christensen, Jensen; Gregory J. Sanders; Kipp, Christian; Attorneys for Appellees.

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IN THE UTAH COURT OF APPEALS

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KEN RAY HARWARD,

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Plaintiff Appellant,

:

vs.

:

990707

UTAH COUNTY, UTAH COUNTY  
SHERIFF'S OFFICE, UTAH COUNTY  
ATTORNEY'S OFFICE, PLEASANT  
GROVE CITY, PLEASANT GROVE  
POLICE DEPARTMENT, LEHI CITY,  
LEHI POLICE DEPARTMENT,  
PROVO CITY, PROVO POLICE  
DEPARTMENT, and JOHN DOES i  
through 10,

:

Case No 9907-LA  
Priority No. 15

:

:

:

Defendants/Appellees.

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BRIEF OF APPELLEES PLEASANT GROVE CITY,  
LEHI CITY, PROVO CITY, AND UTAH COUNTY

---

Appeal from Summary Judgment of the  
Fourth Judicial District Court, Utah County  
Judge Guy R. Burningham

---

D. Bruce Oliver  
180 South 300 West, Suite 210  
Salt Lake City, UT 84101-1218

Attorney for Appellant

Gregory J. Sanders #2858  
Kipp & Christian, P.C.  
10 Exchange Place, 4<sup>th</sup> Floor  
Salt Lake City, UT 84101

**FILED**

MAR 16 2000

COURT OF APPEALS

Dale J. Lambert, #1871  
Rebecca L. Hill, #6246  
Christensen & Jensen  
50 South Main Street, Suite 1500  
Salt Lake City, UT 84144

Gary L. Gregerson  
David C. Dixon  
Provo City Attorney's Office  
P.O. Box 1849  
Provo, UT 84603

Peter Stirba  
John May  
Stirba & Hathaway  
215 South State Street, Suite 1150  
Salt Lake City, UT 84111

Attorneys for Appellees

## **LIST OF PARTIES**

The caption of this brief identifies the Pleasant Grove City, Lehi City and Provo City Police Departments as parties to the litigation. The district court, at R., p.340, dismissed the police departments as not being separate legal entities from Pleasant Grove City, Lehi City, and Provo City, and, therefore, not properly named Defendants. In the Notice of Appeal at R., p.399, the Plaintiff only states that he “cross-appeals [sic] the final judgment” and does not indicate whether he considers the Pleasant Grove City, Lehi City, and Provo City Police Departments to be part of this appeal. Harward’s brief is entirely silent on whether the Pleasant Grove and Lehi Police Departments being dismissed out of the litigation is on appeal. Since the appellant’s brief says absolutely nothing concerning this part of the court’s judgment, Pleasant Grove City, Lehi City, Provo City and their police departments assume that the police departments are not parties to this appeal.

Similarly, the Utah County Sheriff’s Office was held by the Fourth District Court to not be a proper party. R., p. 339. The district court also held that the Utah County Attorney was protected by prosecutorial immunity and was dismissed from the suit. R., p. 339. As the Harward brief is completely silent also with regard to these parties and the court’s ruling regarding them, they are also identified as parties to the suit, but not on appeal pursuant to Rule 24(a)(1),

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**IN THE UTAH COURT OF APPEALS**

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KEN RAY HARWARD,

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Plaintiff/Appellant,

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vs.

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UTAH COUNTY, UTAH COUNTY  
SHERIFF'S OFFICE, UTAH COUNTY  
ATTORNEY'S OFFICE, PLEASANT  
GROVE CITY, PLEASANT GROVE  
POLICE DEPARTMENT, LEHI CITY,  
LEHI POLICE DEPARTMENT,  
PROVO CITY, PROVO POLICE  
DEPARTMENT, and JOHN DOES 1  
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Case No. 99707-CA  
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**BRIEF OF APPELLEES PLEASANT GROVE CITY,  
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Appeal from Summary Judgment of the  
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**Counsel Listed on Cover**

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### **STATEMENT OF JURISDICTION**

The jurisdiction over this appeal is originally with the Utah Supreme Court pursuant to §78-2-2(3)(j), but this case has been transferred by order of the Utah Supreme Court to the Utah Court of Appeals under §78-2a-3(2)(j).

### **STATEMENT OF THE ISSUES PRESENTED**

Pursuant to Rule 24(b)(1) these appellees hereby indicate that the Statement of Issues by the appellant is essentially correct but the three issues stated by appellant are really one issue. That issue is whether Plaintiff timely filed suit based upon the notice and filing requirements of Title 63 Chapter 30 of the Utah Code.

The standard of review stated by Plaintiff that a correction of error standard applies is correct.

### **DETERMINATIVE LAW**

Appellee's claim that §63-30-11, §63-30-13 through §63-30-15 and §63-37-1 of the Utah Code control the resolution of this appeal. Those statutes are reproduced in the addendum.

### **STATEMENT OF THE CASE**

#### **A. Nature of the Case**

The Plaintiff had several guns seized from him during the course of a drug arrest in

Utah County. Those guns were later ordered to be returned by the Fourth District Court, but were not. Plaintiff brought actions for negligence, replevin, conversion, and “bailment” against those governmental entities he believed to be responsible for the loss of his property.

**B. Course of Proceedings**

Plaintiff filed his Complaint with the Fourth Judicial District Court in Utah County on September 5, 1997. R., p.8. All of the Defendants answered and brief discovery was conducted. Pleasant Grove City then filed a Motion for Summary Judgment on July 13, 1998, for itself and its police department. R., p.90.

Lehi City and the Lehi Police Department followed with its own Motion for Summary Judgment on October 5, 1998. R., p.185. Utah County, the Utah County Sheriff’s Office and the Utah County Attorney’s Office filed a Motion to Dismiss on October 5, 1998. R., p.263. Provo City and its police department joined the motions for summary judgment orally at the hearing on the motions. R., p. 340.

With all of the Defendants having filed dispositive motions, a hearing was held on all of those motions on February 2, 1999, before the Honorable Guy R. Burningham, Fourth District Court. R., p.323. The court granted the pending motions and entered a formal order on February 17, 1999. R., p.340. See, Addendum “A”. On the same day,

February 17, 1999, Plaintiff filed a Motion for New Trial. R., p.326. That motion was considered and denied in a ruling dated March 17, 1999. See, Addendum “B”. R., p.368. The formal Order Denying Motion for New Trial was entered by the court on April 21, 1999. R., p.371. See, Addendum “C”.

On May 24, 1999, Plaintiff faxed to the court a Motion for Extension of Time for Filing Notice of Appeal with the hard-copy filed with the court on May 25, 1999. The order granting an extension was signed May 26, 1999. R., p.381. The Notice of Appeal was filed on June 21, 1999. R., p.399.

Note that the Notice of Appeal calls this appeal a “cross-appeal”. In fact, there is no cross-appeal and this is misnomer.

Pleasant Grove City has earlier filed a Motion to Dismiss this appeal with the Utah Supreme Court, but the appeal was transferred to the Utah Court of Appeals before the Utah Supreme Court considered that motion. The Utah Court of Appeals deferred ruling on the Motion to Dismiss in an order entered November 24, 1999.

### **STATEMENT OF FACTS**

No depositions were taken in this action but there was limited written discovery. The facts leading to this action are derived primarily from the Complaint and that evidence which was used to support and oppose the pending motions for summary judgment.

As of August 5, 1994, Plaintiff Ken Harward was a resident of Utah County, R., pp.5, 199. On August 5, 1994, members of the Utah County Narcotics Enforcement Team, consisting of officers from Lehi City Police Department, Provo City Police Department, Pleasant Grove City Police Department, and the Utah County Sheriff's Office arrested Mr. Harward and seized guns from him. R., pp.7, 199. In a subsequent forfeiture action, the Fourth District Court ordered that the firearms in question be returned to Mr. Harward. R., p.100. Those firearms were not returned. R., p.6.

Pursuant to §63-30-11 of the Utah Governmental Immunity Act, Plaintiff prepared multiple Notices of Claim addressed to each Defendant and those notices are dated June 6, 1996. R., p. 141 (Utah County), p.132 (Lehi City), p.126 (Provo City), and p. 147 (Pleasant Grove City). Plaintiff claims the Notices of Claim were delivered to each Defendant via the U.S. Postal Service Express Mail. As evidence of that delivery, Plaintiff produced Customer Copy Receipts of U.S. Postal Express Mail wrappers which are addressed to each Defendant and show a posting date of June 6, 1996. R., pp. 145, 139, 127, 121. Defendants deny receiving Notices of Claim.<sup>1</sup> No letters of denial of Plaintiff's claims were sent by Defendants and Plaintiff, thereafter, filed his Complaint on

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<sup>1</sup> Specifically, the Pleasant Grove City Recorder attests that she never received either Notice of Claim addressed to the Pleasant Grove Defendants. R., p. 104.

September 5, 1997. R., p.8.

### **SUMMARY OF ARGUMENTS**

The Defendant governmental entities show in this brief that Plaintiff failed to file his lawsuit against them within one year after expiration of the time to deny the claim as required by §63-30-15 of the Utah Code.

Section 63-37-1 of the Utah Code provides that a claim is filed when it is deposited in the United States Mail. By failing to include this particular statute in his calculations of the time to file his lawsuit, Plaintiff erred and missed the filing deadline.

This brief additionally shows Plaintiff's attempt to avoid the consequences of his untimely failing by asking the Court to take judicial notice of when mail is delivered is not allowed by the Utah Rules of Evidence in the circumstances.

Finally, Defendants show that they have always plead the defense that the Plaintiff failed to comply with the Utah Governmental Immunity Act so that arguments made in his brief to the effect that the affirmative defense had been waived are incorrect.

### **ARGUMENT**

#### **A. Plaintiff's Suit Against Defendants Is Barred as Untimely Under the Utah Governmental Immunity Act.**

Plaintiff's suit against Defendants for recovery of personal property seized during a drug arrest is governed by the Utah Governmental Immunity Act ("Governmental

Immunity Act” or “Act”), Utah Code Ann. § 63-30-1 *et seq.* (1997). The Governmental Immunity Act recognizes the doctrine of sovereign immunity as essential to the protection of governmental entities “in rendering the many and ever increasing number of governmental services.” Taylor v. Ogden City School District, 927 P.2d 159, 162 (Utah 1996). The Act establishes, however, waivers to the immunity doctrine by creating certain statutory causes of action against governmental entities. See e.g. Utah Code Ann. § 63-30-10 (1997) (“Waiver of immunity for injury caused by negligent acts”). The Act also establishes notice and filing requirements for a claimant to perform before the statutory causes of action are perfected. Courts have consistently held that “where a cause of action is based upon a statute, full compliance with its requirements is a condition precedent to the right to maintain a suit.” Scarborough v. Granite School District, 531 P.2d 480, 482 (Utah 1975). Plaintiff has failed to fully comply with the Immunity Act's condition precedent notice and filing requirements to maintain his suit. As such, Plaintiff's suit is barred.

The notice and filing provisions of the Immunity Act require that before a Plaintiff may initiate suit against a political subdivision, a notice of claim must be directed and delivered to the governing body of the political subdivision within one year after the claim arises. Utah Code Ann. §§ 63-30-11(3)(b)(ii) and 63-30-13 (1997). Thereafter, the political subdivision has ninety days to accept or deny the claim, or have the claim

deemed denied if silent after the expiration of the ninety day period. Utah Code Ann. § 63-30-14 (1997). If a Plaintiff's claim is denied or deemed denied with expiration of the ninety day period, Plaintiff has one year thereafter to file suit. Utah Code Ann. § 63-30-15(2) (1997) ("The claimant shall begin the action within one year after denial of the claim or within one year after the denial period specified in this chapter has expired . . .").

In this case, the trial court granted summary judgment in favor of all Defendants holding that Plaintiff failed to timely file his complaint within the one year following the expiration of the ninety day period. That holding was based upon a finding that the ninety-day notice period began on June 6, 1996, the date upon which Plaintiff placed his notices of claim within the United States Mail and are deemed delivered on that date pursuant to § 63-37-1 of the Utah Code. The trial court succinctly explained its holding in its Ruling denying Plaintiff's Motion for a New Trial:

The Court finds that the date of filing Plaintiff's Notices of claim is June 6, 1996, per § 63-37-1. Plaintiff had one year from the claim denial date to file suit. September 4, 1996, is deemed the claim denial date, because it is 90 days after the date of filing the Notices of Claim. Therefore, the last date for Plaintiff to timely file was September 3, 1997. The Plaintiff's suit against Defendants, filed on September 5, 1997, is time barred as failing to comply with § 63-30-15 of the Utah Governmental Immunity Act.

Ruling, dated March 17, 1999, R., p. 368. The trial court's ruling is correct as a matter of law and should be affirmed.



**B. The Trial Court Correctly Ruled That Plaintiff's Notices Were Deemed Delivered On June 6, 1996 Pursuant to §63-37-1 of the Utah Code.**

To prove delivery of his Notices of Claim to Defendants, Plaintiff produced the Notices of Claim addressed to each Defendant and Customer Copy Receipts of U.S. Postal Service Express Mail addressed to each Defendant (collectively referred to as "Customer Copy Receipts"). R., pp. 121, 127, 139, 145. See, Addendum "G". Plaintiff uses the Customer Copy Receipts to show he sent notices to the Defendants through the United States Mails on June 6, 1996. Note that none of these receipts actually show delivery of the notices, only that this form was completed at the time of mailing.

For delivery of notices of claim, the Utah Governmental Immunity Act neither specifies the manner in which notices are to be delivered (e.g. via service by constable, hand-delivery, mail, facsimile etc.), nor the computation of time for the type of delivery performed. However, while the Utah Governmental Immunity Act does not provide the foregoing guidance or requirements, Chapter 37 of Title 63<sup>2</sup> of the Utah Code does so for notices of claims which are transmitted through the United States Mail. § 63-37-1 of the Utah Code provides:

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<sup>2</sup> The Utah Code entitles Title 63 as "State Affairs in General". See Utah Code Ann. Vol. 6D p. 1 (1997).

**MAILING REPORTS, CLAIMS,  
RETURNS, STATEMENTS AND  
OTHER DOCUMENTS TO  
STATE OR POLITICAL  
SUBDIVISIONS**

**63-37-1. When postmark date deemed filing date -- When mailing date deemed filing date.**

Any report, *claim*, tax return, statement or other document or any payment required or authorized to be filed or made to the state of Utah, or to any political subdivision thereof, which is:

(1) Transmitted through the United States mail, shall be deemed filed or made and received by the state or political subdivisions on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it.

(2) Mailed but not received by the state or political subdivisions where received and the cancellation mark is illegible, erroneous, or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and in cases of such nonreceipt of any such report, tax return, statement, or other document required by law to be filed, the sender files with the state or political subdivision a duplicate within thirty days after written notification is given to the sender by the state or political subdivisions of its nonreceipt of such report, tax return, statement, or other document.

Utah Code Ann. § 63-37-1 (1997) (emphasis added).<sup>3</sup> Utah courts have looked to §63-37-1 of the Utah Code when determining whether a Plaintiff complied with the notice requirements of the Utah Governmental Immunity Act. See Lister v. Utah Valley Community College, 881 P.2d 933 (Utah Ct. App. 1994) (discussed *infra*).

Pursuant to § 63-37-1(1), when a Plaintiff has a claim against the state or political subdivision and he/she transmits their notice of claim through the United States Mail, that notice is deemed filed and received by the governmental entity on the date shown by the post-office cancellation mark or other appropriate wrapping. Plaintiff allegedly delivered his notices of claim to Defendants via U.S. Express Mail and the wrapper receipts Plaintiff produced were the Customer Copy Receipts showing the date of mailing as June 6, 1996. Therefore, §63-37-1 applies and the date upon which Plaintiff's notices are deemed filed is June 6, 1996.

Computing the delivery date of the Notices of Claim as June 6, 1996, the ninety (90) day notice period expired on September 4, 1996 and the filing period for Plaintiff's action expired on September 4, 1997. Plaintiff's Complaint, being filed September 5, 1997, is barred as untimely under §63-30-13 through 15 of the Governmental Immunity

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<sup>3</sup> § 63-37-2 of the Utah Code addresses the time computation for claims filed and delivered via registered or certified mail and "the date of registration or certification shall be deemed the postmark date." Utah Code Ann. § 63-37-2 (1997).

Act. Therefore, the trial court was correct in granting Defendants summary judgment and dismissing Plaintiff's suit with prejudice.

Computation made in the preceding paragraph shows that Harward filed his action one day late. This computation is made by following the usual rule that the one year allowed in §63-30-13 to file a lawsuit after denial of the claim begins the day after the last day the governmental entity had to deny the claim. Pleasant Grove City argued to the trial court that the Harward lawsuit was actually filed two days late. R., p. 172. Pleasant Grove argued that the language of 63-30-13 is that the lawsuit must be filed "within" one year after denial of the claim. Looking at a calendar, 365 days after September 4, 1996, is September 3, 1997. A diagram of this calculation taken from R., p. 165 is reproduced in the addendum. Certainly, whether one adopts the Pleasant Grove City method of calculation or that suggested by the other Defendants in this brief, Plaintiff's Complaint was filed at least one day late and is thereby barred.

**C. Plaintiff Fails To Show Why § 63-37-1 Does Not Apply To This Case.**

In his Appellant's Brief, Plaintiff argues that the trial court erred in applying § 63-37-1 to the delivery of his notices of claim and computing the time he had to file suit based upon that statute. He makes both legal and factual arguments as to why § 63-37-1 does not apply in this case, but, as shown below, each argument fails.

First, Plaintiff argues that § 63-37-1 does not apply to compute the delivery date of his notices of claim because § 63-30-11 controls the question of delivery. To support his argument, Plaintiff asserts the statutory construction principle that when two statutes address the same subject the specific statute controls over the general statute.

While Plaintiff's recitation of the statutory construction principle regarding specific versus general statutes is correct, it is misapplied in this case because §63-30-11 and 63-37-1 do not address the same subject, but rather address corresponding subject matter. § 63-30-11 sets out the required content to be contained in a notice of claim and requires that the notice be directed and delivered to the responsible governmental entity for the state or political subdivision. Utah Code Ann. § 63-30-11. § 63-30-11 does not, however, mandate a particular manner of delivery for the notices, (e.g. personal service), nor does the provision establish the way to compute time for the type of delivery performed. § 63-37-1 addresses the subjects of manner and computation time with respect to mail delivery and deems the time of delivery to be the date as "shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it." Utah Code Ann. § 63-37-1(1) (1997). Therefore, both Sections 63-30-11 and 63-37-1 address conforming subject areas and in this case both apply since Plaintiff delivered his notices of claim through the United States Mail.

Second, Plaintiff argues that the requirements of §63-37-1 are not met in this case in the same manner they were not met in the case of Lister v. Utah Valley Community College, 881 P.2d 933 (Utah Ct. App. 1994). While the Lister case demonstrates that § 63-37-1 applies to notices of claim under the Governmental Immunity Act, its holding is distinguishable from the facts in this case.

In Lister, the plaintiff filed a personal injury suit against the Utah Valley Community College (“UVCC”). As a defense and the subject of a summary judgment motion, UVCC asserted that the plaintiff failed to deliver his notice of claim to the Utah State Attorney General as required by Sections 63-30-11 and 12 of the Governmental Immunity Act. The plaintiff alleged that he had mailed the notice of claim to the Attorney General, but he did not have proof of mailing by a post-office cancellation mark or mark on another appropriate wrapper as required by § 63-37-1(1). However, the plaintiff attempted to prove that the notice was mailed to the Attorney General pursuant to § 63-37-1(2) by way of presenting affidavit testimony regarding plaintiff's counsel's office mailing custom. The trial court granted UVCC's summary judgment motion finding that the plaintiff's evidence of office mailing custom was insufficient to prove mailing and delivery to the Attorney General.

The Utah Court of Appeals affirmed summary judgment finding that the plaintiff

failed to show that a notice of claim specifically addressed to the Attorney General's Office had ever been prepared. Lister, 881 P.2d at 941. In making that finding, the Lister Court established criteria for proving mailing through office mailing custom and that criteria is: 1) showing that the document that was allegedly mailed was actually prepared, and 2) showing that the document in question was mailed. Id. at 940. The plaintiff in Lister failed to prove either criteria to meet the burden of proving mailing under §63-37-1(2).

The issue on appeal in this case is not whether delivery took place, but rather, assuming delivery took place by mail, what date is deemed the delivery date for Plaintiff's Notices of Claim. Plaintiff, unlike the plaintiff in Lister, claims to have proved delivery by producing the Customer Copy Receipts, dated June 6, 1996. Assuming the Receipts to be valid and authentic, they show that the notices of claim were transmitted by mail and the date shown on the Receipts of June 6, 1996 is deemed the date of delivery. Accordingly, § 63-37-1(1) is triggered and neither plaintiff nor Defendant have to prove evidence of delivery pursuant to § 63-37-1(2). as the plaintiff attempted to do in Lister. Computing the delivery date as of June 6, 1996 demonstrates that Plaintiff's suit filed September 5, 1997 was untimely, being one year and ninety-one days after delivery of the notices. Thus, the ruling in Lister regarding proof of delivery does not prove that

§63-37-1(1) does not apply to this case and date of delivery should not be June 6, 1996.

Third, Plaintiff claims that in order to trigger the application and effect of §63-37-1, the notice of claim must be mailed to the state or political subdivision by registered or certified mail as required by § 63-37-2. A plain reading of Sections 63-37-2 and 63-37-1 show that they apply to two different types of mailings and both do not require registered or certified mailing. § 63-37-2 addresses and applies to documents specifically transmitted via registered or certified mail. Utah Code Ann. § 63-37-2 (1997) (“sent by United States mail and either registered or certified”). § 63-37-1 applies to documents generally “transmitted through the United States mail.” Utah Code Ann. § 63-37-1 (1997). Therefore, registered or certified mail is not required and Plaintiff is again wrong in claiming that §63-37-1 does not apply to this case.

Fourth, Plaintiff argues that he never intended to have delivery of his notice of claim computed pursuant to § 63-37-1, for June 6, 1996. Rather he intended the delivery time to be computed from June 7, 1996 based upon overnight delivery service. To support his assertion, Plaintiff claims that the Court should take judicial notice that the postmaster guarantees overnight delivery.

Judicial Notice is governed by Rule 201 of the Utah Rules of Evidence and as an evidentiary rule it must be asserted at the trial level and cannot be raised for the first time



on appeal. Mel Trimble Real Estate v. Monte Vista Ranch, Inc., 758 P.2d 451, 455-56 (Utah Ct. App.) *cert. denied*, 769 P.2d 819 (Utah 1988) (court of appeals would not take judicial notice of record in prior proceeding as the assertion of judicial notice was raised for the first time on appeal). Plaintiff did not assert judicial notice of his manner of delivery at the trial level and therefore this Court cannot take judicial notice of the delivery now.

Even assuming the Court could utilize judicial notice at this stage in the case, overnight delivery by the postmaster is not a fact which the Court can take judicial notice of because delivery is not the type of fact “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Rule 201(b)(2), Utah Rules of Evidence. That finding is especially true in this case because Defendants contest that they ever received the notices of claim Plaintiff allegedly delivered, and Plaintiff has failed to prove that Defendants, as addressees of the Express Mail, signed for and received delivery of the notices. The Customer Copy Receipts show that Plaintiff's counsel did not check the box entitled “WAIVER OF SIGNATURE” in which he could have chosen not to require the addressee to sign for the delivery. R., p. 121, 127, 139, 145. See, Addendum “G”. Since that box was not checked on the Receipts it appears that the Postal Service requires a signature of the addressee upon delivery and Plaintiff

failed to produce that evidence. Accordingly, the Court cannot take judicial notice of guaranteed overnight delivery and that the date of delivery should be June 7, 1996.

Moreover, where strict compliance with notice and filing requirements is mandated by the Governmental Immunity Act, Plaintiff's subjective intent to have the delivery of the notices take place on June 7, 1996 is irrelevant. What is relevant is objective conduct and in this case Plaintiff's conduct shows that delivery took place via the United States Mail and that method of delivery is governed by statute and the date of delivery is deemed to be the date shown on the customer copy receipt. Therefore, § 63-37-1 applies to this case and Plaintiff's notices of claim must be computed as delivered on June 6, 1996.

Lastly, Plaintiff argues that Defendants failed to raise § 63-37-1 as an affirmative defense within their Answers and such failure "may" constitute a waiver of said claim pursuant to Rule 12 of the Utah Rules of Civil Procedure. Plaintiff's argument is both legally and factually incorrect, and his use of the word "may" shows Plaintiff's own misgivings regarding the argument.

Defendants are not obliged to assert § 63-37-1 as an affirmative defense under Rule 12 or any other rule regarding conditions of suit, since it addresses a method of delivery and computation of that delivery, and does not address conditions or limitations

to filing suit. See Shunk v. Jordan School District, 924 P.2d 879 (Utah 1996) (State was not specifically obliged to deny or affirm the plaintiff's compliance with the notice and filing requirements of the Governmental Immunity Act when plaintiff failed to specifically plead compliance within his complaint). Moreover, Defendants complied with the requirement of Rule 12 by asserting the defenses of non-compliance with the notice and filing requirements of the Utah Governmental Immunity Act and statute of limitation. See R., pp. 42, 46, 51, 58.

Accordingly, the foregoing analysis demonstrates that the trial court correctly ruled that Plaintiff's notices of claim were deemed delivered upon June 6, 1996 pursuant to § 63-37-1 of the Utah Code. The trial court thereafter correctly ruled that based upon the date of June 6, 1996 Plaintiff's Complaint filed on September 5, 1997 was untimely under the Utah Governmental Immunity Act and is barred. This Court should therefore affirm the trial court's grant of summary judgment in favor of all Defendants.

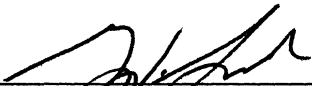
### **CONCLUSION**

Pleasant Grove City, Lehi City, Provo City, and Utah County have shown that Plaintiff was at least one day late in filing his lawsuit under the Utah Governmental Immunity Act. The consequence is that the action is barred and the Fourth Judicial

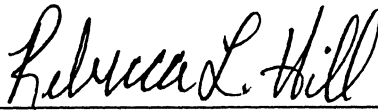
District Court ruled correctly in granting summary judgment for the Defendants. The judgment of the Fourth District Court should be affirmed.

DATED this 6<sup>th</sup> day of March, 2000.

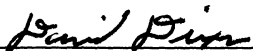
KIPP & CHRISTIAN, P.C.

  
\_\_\_\_\_  
GREGORY SANDERS  
Attorneys for Pleasant Grove City

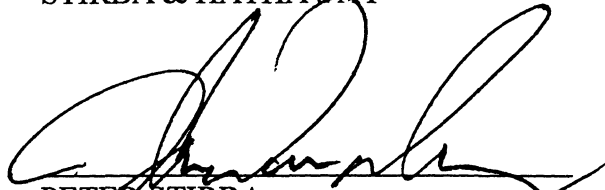
CHRISTENSEN & JENSEN

  
\_\_\_\_\_  
DALE J. LAMBERT  
REBECCA L. HILL  
Attorneys for Lehi City

PROVO CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
GARY L. GREGERSON  
DAVID C. DIXON  
Attorneys for Provo City

STIRBA & HATHAWAY

  
\_\_\_\_\_  
PETER STIRBA  
JOHN MAY  
Attorneys for Utah County Sheriff's Office

## **ADDENDUM**

- A. Order Dismissing Plaintiff's Complaint with Prejudice
- B. Ruling Dated March 17, 1999
- C. Order Denying Motion for new Trial
- D. Title 63, Chapter 30, Sections 11, 13, 14, and 15
- E. §63-37-1
- F. Pleasant Grove City Timeline
- G. Plaintiff's U.S. Postal Service Customer Receipt Forms

## **ADDENDUM “A”**

### **A. Order Dismissing Plaintiff’s Complaint With Prejudice**

PETER STIRBA (Bar No. 3118)  
LINETTE B. HUTTON (Bar No. 6408)  
**STIRBA & HATHAWAY**  
Attorneys for Defendants Utah County  
215 South State Street, Suite 1150  
Salt Lake City, UT 84111  
Telephone: (801) 364-8300

**FILED** 2/17/99  
Fourth Judicial District Court  
of Utah County, State of Utah  
CARMA B. SMITH, Clerk  
Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT**  
**UTAH COUNTY, PROVO DEPARTMENT, STATE OF UTAH**

---

KEN RAY HARWARD,	:	
	:	
Plaintiff,	:	<b>ORDER DISMISSING PLAINTIFF'S</b>
	:	<b>COMPLAINT WITH PREJUDICE</b>
v.	:	
	:	
UTAH COUNTY, UTAH COUNTY	:	
SHERIFF'S OFFICE, UTAH COUNTY	:	
ATTORNEY'S OFFICE, PLEASANT	:	
GROVE CITY, PLEASANT GROVE	:	
POLICE DEPARTMENT, LEHI CITY,	:	Case No. <del>9704000697</del> CV
LEHI POLICE DEPARTMENT, PROVO	:	970400697
CITY, PROVO POLICE DEPARTMENT,	:	Judge Guy R. Burningham
and JOHN DOES 1 THRU 10,	:	
	:	
Defendants.	:	

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The above entitled matter came before the Court on February 2, 1999, pursuant to Defendants' Utah County, Utah County Sheriff's Office and Utah County Attorney's Office Motion to Dismiss and Defendants' Pleasant Grove City, Pleasant Grove Police Department, Lehi City, and Lehi Police Department's Motions for Summary Judgment, as well as Provo City's and Provo Police Department's Oral Motion to Dismiss Plaintiff's Complaint ("collectively

hereinafter Defendants"). Following oral arguments from counsel, the Courts examination of the pleadings, and being fully advised in the premises,

IT IS HEREBY ORDERED, that Defendant Provo City's Oral Motion to Join in Defendants' Motions to Dismiss is GRANTED;

IT IS HEREBY FURTHER ORDERED, that Defendants' Motions to Dismiss and Motions for Summary Judgment are GRANTED and Plaintiff's Complaint, as against the answering Defendants is dismissed with prejudice, finding as follows:

1. The Utah County Attorneys are entitled to absolute prosecutorial immunity for conduct which occurs within the scope of their official duties and, therefore, the Utah County Attorney's Office is not a properly named defendant in this matter;

2. Claims against the Utah County Sheriff's Office, Pleasant Grove Police Department, Lehi Police Department and Provo Police Department are redundant claims as these law enforcement offices are not separate legal entities as defined by the Utah Governmental Immunity Act and cannot be sued in an individual or independent capacity. These entities are not, therefore, properly named defendants in this matter;

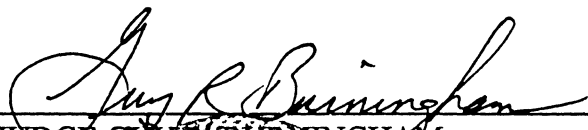
3. Plaintiff's Complaint is barred for failure to timely file pursuant to the relevant provisions of the Utah Governmental Immunity Act, specifically §§ 63-30-11, 63-30-13 and 63-30-15; and

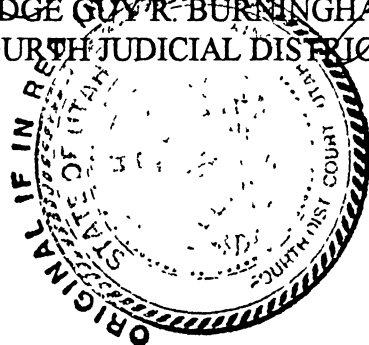


4. Utah Code Ann. § 63-37-1 is applicable to this case in determining the date of service of the Plaintiff's Notice of Claim.

Dated this 17 day of February, 1999.

**BY THE COURT:**

  
JUDGE GUY R. BURNINGHAM  
FOURTH JUDICIAL DISTRICT COURT



**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of February, 1999, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing ORDER DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE to the following:

D. Bruce Oliver  
180 South 300 West, Suite 210  
Salt Lake City, UT 84101-1490  
Attorney for Plaintiff

☒ U.S. Mail, Postage Pre-Paid  
☐ Hand Delivery  
☐ Overnight Mail  
☐ Facsimile (No. \_\_\_\_\_)

Gary L. Gregerson  
David C. Dixon  
PROVO CITY ATTORNEY'S OFFICE  
Attorneys for Provo City  
P. O. Box 1849  
Provo, Utah 84603

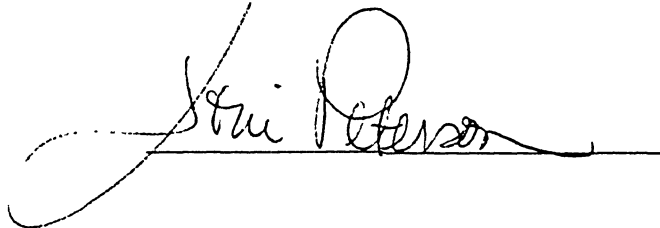
☒ U.S. Mail, Postage Pre-Paid  
☐ Hand Delivery  
☐ Overnight Mail  
☐ Facsimile (No. \_\_\_\_\_)

Dale J. Lambert  
Rebecca L. Hill  
CHRISTENSEN & JENSEN  
Attorneys for Lehi City  
175 South West Temple #510  
Salt Lake City, Utah 84101

☒ U.S. Mail, Postage Pre-Paid  
☐ Hand Delivery  
☐ Overnight Mail  
☐ Facsimile (No. \_\_\_\_\_)

Gregory J. Sanders  
KIPP & CHRISTIAN  
Attorneys for Pleasant Grove City  
10 Exchange Place, #400  
Salt Lake City, Utah 84111

☒ U.S. Mail, Postage Pre-Paid  
☐ Hand Delivery  
☐ Overnight Mail  
☐ Facsimile (No. \_\_\_\_\_)

  
\_\_\_\_\_

**ADDENDUM “B”**

**B. Ruling dated March 17, 1999**

of Utah County, State of Utah  
CARMA B. SMITH, Clerk  
3-18-99 SLA Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH

KEN RAY HARWARD	<b>RULING</b>
Plaintiff,	CASE NO. 970400697
vs.	DATE: March 17, 1999
UTAH COUNTY, UTAH COUNTY SHERIFF'S OFFICE, UTAH COUNTY ATTORNEY'S OFFICE; PLEASANT GROVE CITY, PLEASANT GROVE POLICE DEPARTMENT; LEHI CITY, LEHI POLICE DEPARTMENT; PROVO CITY, PROVO POLICE DEPARTMENT and JOHN DOES 1 through 10	JUDGE: GUY R. BURNINGHAM
Defendants.	

This matter came before the Court under Rule 4-501 on Plaintiff's Motion for New Trial. The court has reviewed the file, considered the memoranda of counsel, and upon being advised in the premises, now makes the following:

RULING

1. On or about February 17, 1999, Plaintiff submitted Motion for New Trial and supporting Memorandum, claiming that the Court had erred in its Order dated February 17, 1999, by incorrectly applying the 1998 amended version of Utah Code Annotated Section 63-30-11 in determining that Plaintiff's action had been untimely filed.
2. On or about February 24, 1999, Defendants Lehi City and Lehi Police Department filed their Memorandum in Opposition to Plaintiff's Motion for New Trial, arguing that the inadvertent error in referring to the 1998 version of Section 63-30-11 does not change the correctness of the Court's primary ruling granting the Defendants' Summary Judgment Motions based upon untimely filing of suit.
3. On or about March 1, 1999, Defendants Utah County, Utah County Sheriff's Office and Utah County Attorney's Office filed their Memorandum in Opposition to Plaintiff's Motion for New Trial, adopting Defendants Lehi City and Lehi Police Department's arguments.

4. On or about March 1, 1999, Defendant Pleasant Grove City filed its Memorandum Opposing Motion for New Trial, also arguing that the filing of the lawsuit was late, even under the earlier version of Utah Code Annotated Section 63-30-11.

5. The Court finds that the date of filing Plaintiff's Notices of Claim is June 6, 1996, per Section 63-37-1. Plaintiff had one year from the claim denial date to file suit. September 4, 1996, is deemed the claim denial date, because it is 90 days after the date of filing the Notices of Claim. Therefore, the last date for Plaintiff to timely file was September 3, 1997. The Plaintiff's suit against Defendants, filed on September 5, 1997, is time barred as failing to comply with Section 63-30-15 of the Utah Governmental Immunity Act. That ruling upon timeliness is in no way affected by the different versions of Section 63-30-11 of same act. Furthermore, Section 63-30-11, under either the 1998 or previous version, requires that the Notice of Claim should be filed within one year after the claim arises.

6. Furthermore, the Court wishes to point out that any inadvertence by the Court in referring the 1998 version of Section 63-10-11(3) was caused by Plaintiff who directed the Court to the 1998 version of Section 63-10-11(3) by using its exact provisions to argue his position on page 3 of Memorandum of Points and Authorities in Opposition to Utah County's Motion to Dismiss filed October 19, 1998. It now seems disingenuous of Plaintiff to use the later version of the statute to support his position, to refer the Court to that version, and then ask the Court to set its Ruling aside on the basis of using the wrong version of the statute when it made its Ruling.

7. Therefore, the Motion for New Trial is DENIED.

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8. Counsel for Defendant Pleasant Grove City is requested to prepare an Order consistent with the terms of this Ruling and submit to other Defendants as well as opposing counsel for approval as to form before submission to the Court for signature.

DATED at Provo, Utah, March 17, 1999.

  
GUY R. BURNINGHAM  
Fourth District Court Judge



cc: Peter Stirba  
D. Bruce Oliver  
Gary L. Gregerson  
Dale J. Lambert  
Gregory J. Sanders

## **ADDENDUM “C”**

### **C. Order Denying Motion for New Trial**

GREGORY J. SANDERS - 2858  
KIPP AND CHRISTIAN, P.C.  
Attorneys for Defendants Pleasant Grove City  
and Pleasant Grove Police Department  
10 Exchange Place, Fourth Floor  
Salt Lake City, UT 84111  
Telephone: (801) 521-3773

**IN THE FOURTH JUDICIAL DISTRICT COURT, STATE OF UTAH  
UTAH COUNTY, PROVO DEPARTMENT**

KEN RAY HARWARD,

Plaintiff,

vs.

UTAH COUNTY, UTAH COUNTY  
SHERIFF'S OFFICE, UTAH COUNTY  
ATTORNEY'S OFFICE, PLEASANT  
GROVE CITY, PLEASANT GROVE  
POLICE DEPARTMENT, LEHI CITY,  
LEHI POLICE DEPARTMENT, PROVO  
CITY, PROVO POLICE DEPARTMENT,  
and JOHN DOES 1 through 10,

Defendants.

**ORDER DENYING  
MOTION FOR  
NEW TRIAL**

Case No. 970400697 CV

Judge Guy R. Burningham ✓

The court having considered the plaintiff's Motion for New Trial and having further considered the responses thereto by Lehi City, Lehi Police Department, Utah County, Utah County Sheriff's Office, Utah County Attorney's Office, and Pleasant Grove City, and good cause appearing, hereby denies the motion.



The basis of this denial is explained more fully in a Ruling issued by the court dated March 17, 1999, and incorporated herein by reference.

DATED this 21 day of April, 1999.

BY THE COURT:

  
HONORABLE GUY R. BURNINGHAM



**CERTIFICATE OF SERVICE**

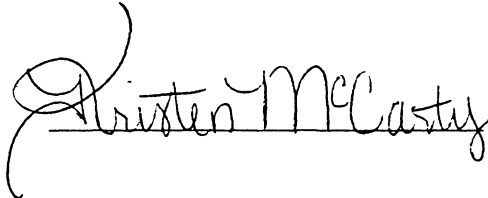
I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 29<sup>th</sup> day of <sup>March</sup>~~February~~, 1999, to the following:

D. Bruce Oliver  
180 South 300 West, Suite 210  
Salt Lake City, UT 84101-1218

Gary L. Gregerson  
David C. Dixon  
PROVO CITY ATTORNEY'S OFFICE  
P.O. Box 1849  
Provo, UT 84603

Dale J. Lambert  
Rebecca L. Hill  
CHRISTENSEN & JENSEN  
175 South West Temple, #510  
Salt Lake City, UT 84101

Peter Stirba  
Linette B. Hutton  
STIRBA & HATHAWAY  
215 South State Street, Suite 1150  
Salt Lake City, UT 84111

Handwritten signature of Kristen McCarty in cursive script.

## **ADDENDUM “D”**

### **D. Title 63, Chapter 30, Sections 11, 13, 14, and 15**

### **63-30-11. Claim for injury — Notice — Contents — Service — Legal disability.**

(1) A claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(2) Any person having a claim for injury against a governmental entity, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

- (i) a brief statement of the facts;
- (ii) the nature of the claim asserted; and
- (iii) the damages incurred by the claimant so far as they are known.

(b) The notice of claim shall be:

- (i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and

(ii) directed and delivered to:

(A) the city or town recorder, when the claim is against an incorporated city or town;

(B) the county clerk, when the claim is against a county;

(C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;

(D) the president or secretary of the board, when the claim is against a special district;

(E) the attorney general, when the claim is against the State of Utah; or

(F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body.

(4) (a) If the claimant is under the age of majority, or mentally incompetent and without a legal guardian at the time the claim arises, the claimant may apply to the court to extend the time for service of notice of claim.

(b) (i) After hearing and notice to the governmental entity, the court may extend the time for service of notice of claim.

(ii) The court may not grant an extension that exceeds the applicable statute of limitations.

(c) In determining whether or not to grant an extension, the court shall consider whether the delay in serving the notice of claim will substantially prejudice the governmental entity in maintaining its defense on the merits.

**63-30-13. Claim against political subdivision or its employee — Time for filing notice.**

A claim against a political subdivision, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the governing body of the political subdivision according to the requirements of Section 63-30-11 within one year after the claim arises, or before the expiration of any extension of time granted under Section 63-30-11, regardless of whether or not the function giving rise to the claim is characterized as governmental.

**63-30-14. Claim for injury — Approval or denial by governmental entity or insurance carrier within ninety days.**

Within ninety days of the filing of a claim the governmental entity or its insurance carrier shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the ninety-day period the governmental entity or its insurance carrier has failed to approve or deny the claim.

**63-30-15. Denial of claim for injury — Authority and time for filing action against governmental entity.**

(1) If the claim is denied, a claimant may institute an action in the district court against the governmental entity or an employee of the entity.

(2) The claimant shall begin the action within one year after denial of the claim or within one year after the denial period specified in this chapter has expired, regardless of whether or not the function giving rise to the claim is characterized as governmental.

**ADDENDUM “E”**

**E. §63-37-1**



**63-37-1. When postmark date deemed filing date — When mailing date deemed filing date.**

Any report, claim, tax return, statement or other document or any payment required or authorized to be filed or made to the state of Utah, or to any political subdivision thereof, which is:

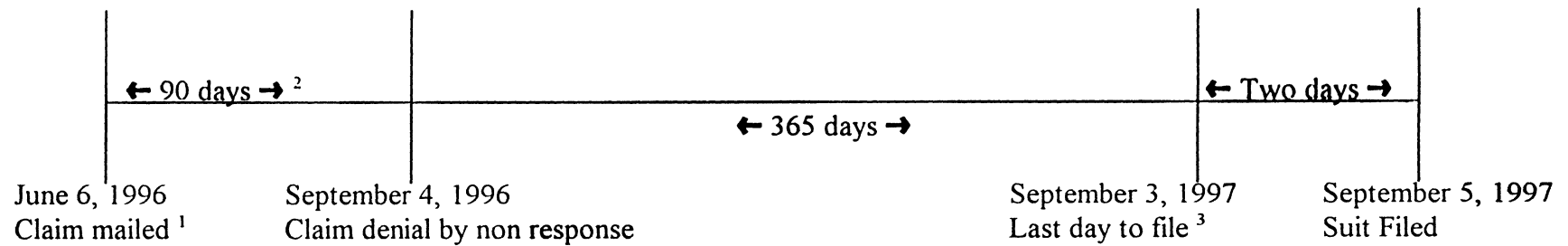
(1) Transmitted through the United States mail, shall be deemed filed or made and received by the state or political subdivisions on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it.

(2) Mailed but not received by the state or political subdivisions where received and the cancellation mark is illegible, erroneous, or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and in cases of such nonreceipt of any such report, tax return, statement, or other document required by law to be filed, the sender files with the state or political subdivision a duplicate within thirty days after written notification is given to the sender by the state or political subdivisions of its nonreceipt of such report, tax return, statement, or other document.

## **ADDENDUM “F”**

### **F. Pleasant Grove City Timeline**

## TIMELINE OF HARWARD CLAIM



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<sup>1</sup> Date of mailing is date of service under §63-37-1.

<sup>2</sup> June 7, 1996 - September 4, 1996 = 90 days.

<sup>3</sup> §63-30-15 requires action filed "within one year" after denial period has expired.

## **ADDENDUM “G”**

### **G. Plaintiff’s U.S. Postal Service Customer Receipt Forms**



UNITED STATES POSTAL SERVICE

# POST OFFICE TO ADDRESSEE

EH349455218US

## ORIGIN (POSTAL USE ONLY)

PO ZIP Code 11111	Date of Delivery Next <input type="checkbox"/> Second <input type="checkbox"/>	Flat Rate Envelope <input type="checkbox"/>
Date In Mo Day Year 9 6	<input type="checkbox"/> 12 Noon <input checked="" type="checkbox"/> 4 PM	Postage \$ 1.75
Time In <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Int'l Alpha Country Code	Return Receipt <input type="checkbox"/>
Weight lbs ozs	Acceptance Clerk Initials M	Total Postage & Fees \$ 1.75
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday		

SEE REVERSE SIDE FOR  
SERVICE GUARANTEE AND  
INSURANCE COVERAGE LIMITS

Customer Copy

## CUSTOMER USE ONLY

METHOD OF PAYMENT: Express Mail Corporate Acct. No.	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only): I wish delivery to be made without obtaining signature of addressee. I understand that the delivery employee's signature constitutes valid proof of delivery.
Federal Agency Acct. No. or Postal Service Acct. No.	<input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday Customer Signature

FROM: (PLEASE PRINT) D BRUCE OLIVER PC 180 S 300 W STE 210 SALT LAKE CITY UT 84101	TO: (PLEASE PRINT) PHONE 201-379-6120 PROVO CITY COUNCIL 351 W CENTER ST PROVO UT 84601
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FOR PICKUP OR TRACKING CALL 1-800-222-1811





# POST OFFICE TO ADDRESSEE

EH349455235US

## ORIGIN (POSTAL USE ONLY)

PO ZIP Code 10001	Date of Delivery Next <input checked="" type="checkbox"/> First <input type="checkbox"/> Second <input type="checkbox"/>	Flat Rate Envelope <input type="checkbox"/>
Date In Mo. 06 Day 06 Year 96	Time In <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Postage \$ 10.75
Weight lbs 0 ozs	Int'l Alpha Country Code	Total Postage & Fees \$ 10.75
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials M	

SEE REVERSE SIDE FOR  
SERVICE GUARANTEE AND  
INSURANCE COVERAGE LIMITS

## CUSTOMER USE ONLY

METHOD OF PAYMENT: Express Mail Corporate Acct. No. Federal Agency Acct. No.	WAIVER OF SIGNATURE (Domestic Only) I wish delivery to be made without obtaining signature of addressee. Delivery employee's signature constitutes valid proof of delivery.
FROM: D BRUCE OLIVER PC 180 S 300 W STE 210 SALT LAKE CITY UT 84101	TO: LEHI CITY COUNCIL 153N 100E LEHI UT 84043

FOR PICKUP OR TRACKING CALL 1-800-222-1811



Customer Copy





# POST OFFICE TO ADDRESSEE

EH349455270US

## ORIGIN (POSTAL USE ONLY)

PO ZIP Code 87101	Date of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Date In Mo. 6 Day 9 Year 96	<input type="checkbox"/> 12 Noon <input checked="" type="checkbox"/> 3 PM	Postage \$ 10.75
Time In <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Military Code 00	Return Receipt 00
Weight lbs 3 ozs	Int'l Alpha Country Code	
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials M	Total Postage & Fees \$ 17.85

## CUSTOMER USE ONLY

METHOD OF PAYMENT:  
Express Mail Corporate Acct. No.

Federal Agency Acct. No. or  
Postal Service Acct. No.

☐ WAIVER OF SIGNATURE (Domestic Only): I wish delivery to be made without obtaining signature of addressee. If delivery employee's signature constitutes valid proof of delivery.

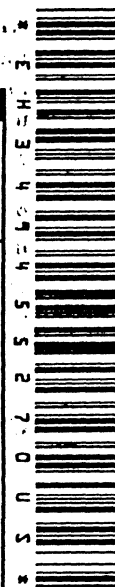
☐ NO DELIVERY: I wish to return this mail to the sender. I have signed the return receipt.

FROM: (PLEASE PRINT)  
D BRUCE OLIVER PC  
180 S 300 W STE 210  
SALT LAKE CITY UT 84101

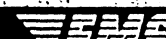
TO: (PLEASE PRINT)  
UTAH COUNTY COMMISSION  
100 E CENTER ST  
STP 2300  
PROVINT 84606

SEE REVERSE SIDE FOR  
SERVICE GUARANTEE AND  
INSURANCE COVERAGE LIMITS

Customer Copy



FOR MORE INFORMATION CALL 1-800-222-1811





POST OFFICE TO ADDRESSEE

EH349455337US

ORIGIN (POSTAL USE ONLY)

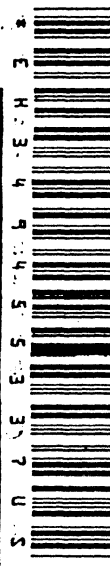
PO ZIP Code 10001	Date of Delivery Next <input type="checkbox"/> Second <input type="checkbox"/>	Flat Rate Envelope <input type="checkbox"/>
Date In Mo. 10 Day 16 Year 86	<input type="checkbox"/> 12 Noon <input checked="" type="checkbox"/> 3 PM	Postage \$ 11.75
Time In <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Int'l Alpha Country Code	Return Receipt <input type="checkbox"/>
Weight lbs 3 ozs	Acceptance Clerk Initials M	Total Postage & Fees \$ 11.75
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday		

SEE REVERSE SIDE FOR  
SERVICE GUARANTEE AND  
INSURANCE COVERAGE LIMITS

CUSTOMER USE ONLY

METHOD OF PAYMENT: Express Mail Corporate Acct. No.	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only): I wish delivery to be made without obtaining signature of addressee. Delivery employee's signature constitutes valid proof of delivery.
Federal Agency Acct. No. Postal Service Acct. No.	<input type="checkbox"/> NO DELIVERY <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday
FROM: (PLEASE PRINT) D. BRUCE OLIVER P.C. 180 S. 300 W. #210 SALT LAKE CITY UT 84101	TO: (PLEASE PRINT) PLEASANT GROVE CITY PO BOX 515 70 E 100 E PLEASANT GROVE UT 84062

Customer Copy

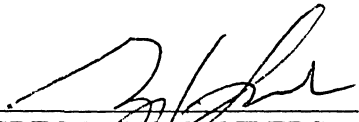




**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that two true and correct copies of the foregoing Brief of Appellees was mailed, first-class, postage prepaid, on this 6<sup>th</sup> day of March, 2000, to the following:

D. Bruce Oliver  
180 South 300 West, Suite 210  
Salt Lake City, UT 84101-1218

  
\_\_\_\_\_  
GREGORY J. SANDERS