

11-5-2009

Collection Bureau, Inc. v. Dorsey Clerk's Record v. 1 Dckt. 36734

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LAW CLERK

IN THE SUPREME COURT
OF THE STATE OF IDAHO

COLLECTION BUREAU, INC
an Idaho Corporation

Plaintiff/Appellant,

vs.

JOHN M DORSEY

Defendant/Respondent

FILED COPY
NOV - 5 2009
Supreme Court Court of Appeals
Entered on ATS by

TRANSCRIPT ON APPEAL

In the District Court of the First Judicial District of
the State of Idaho, in and for the County of Kootenai

ATTORNEY FOR APPELLANT

Terry Michaelson

ATTORNEY FOR RESPONDENTS

John E Redal

Supreme Court No 36734-2009

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU, INC, an Idaho
Corporation

Plaintiff-Appellant,

vs.

JOHN M DORSEY

Defendant-Respondent.

CIVIL CASE NO.
CV 08-712

SUPREME COURT DOCKET
NO. 36734-2009

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for the
County of Kootenai.

HONORABLE LANSING L HAYNES
District Judge

Attorney for Appellant

Terry Michaelson
ISB #2025
P O Box 65
Nampa, Idaho 83653-0065

Attorney for Respondent

John E Redal
ISB #4846
5431 N Government Way Ste 101A
Coeur d'Alene, ID 83815

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Collection Bureau Inc vs. John M Dorsey

Date	Code	User		Judge
1/28/2008	NCOC	MCCORD	New Case Filed - Other Claims	Lansing L. Haynes
		MCCORD	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Mark Clark Receipt number: 0779944 Dated: 1/28/2008 Amount: \$88.00 (Check) For: [NONE]	Lansing L. Haynes
	SUMI	KSMITH	Summons Issued	Lansing L. Haynes
7/28/2008	NOPD	MEYER	Notice Of Proposed Dismissal Issued	Lansing L. Haynes
8/8/2008	MOTN	PARKER	Motion to Retain Case on Calendar	Lansing L. Haynes
	AFFD	PARKER	Affidavit to Retain Case on Calendar	Lansing L. Haynes
	MISC	PARKER	Plan and Date for Disposition	Lansing L. Haynes
8/15/2008	IOPR	DUBE	Inactivity Order Printed - File Sent to Judge	Lansing L. Haynes
8/25/2008	REVR	PARKER	Order to Retain Case on Calendar	Lansing L. Haynes
	ORDR	PARKER	Order of Retention	Lansing L. Haynes
10/14/2008		MCCORD	Filing: I7 - All Other Cases Paid by: John Redal Receipt number: 0817354 Dated: 10/14/2008 Amount: \$58.00 (Check) For: Dorsey, John M (defendant)	Lansing L. Haynes
	NOAP	MCCORD	Notice Of Appearance - John Redal	Lansing L. Haynes
	ANSW	MCCORD	Answer	Lansing L. Haynes
10/22/2008	AFSV	BAXLEY	Affidavit Of Service 9/15/08 on John M Dorsey	Lansing L. Haynes
11/18/2008	HRSC	TAYLOR	Hearing Scheduled (Status Conference 01/08/2009 03:30 PM)	Lansing L. Haynes
		TAYLOR	Notice of Hearing	Lansing L. Haynes
12/8/2008	RSCN	MCCORD	Response to Status Conference Notice - Mark Clark	Lansing L. Haynes
12/29/2008	RSCN	VICTORIN	Response to Status Conference Notice/John Redal	Lansing L. Haynes
1/8/2009	HRHD	TAYLOR	Hearing result for Status Conference held on 01/08/2009 03:30 PM: Hearing Held	Lansing L. Haynes
1/9/2009	HRSC	TAYLOR	Hearing Scheduled (Court Trial Scheduled 07/20/2009 09:00 AM) 1 day	Lansing L. Haynes
		TAYLOR	Notice of Trial	Lansing L. Haynes
2/9/2009	HRSC	JOKELA	Hearing Scheduled (Motion for Summary Judgment 04/21/2009 03:30 PM) REDAL - 30 MIN	Lansing L. Haynes
3/6/2009	MNSJ	LEU	Motion For Summary Judgment	Lansing L. Haynes
	MEMO	LEU	Memorandum Of Facts And Authority In Support Of Motion For Summary Judgment	Lansing L. Haynes
	NOHG	LEU	Notice Of Hearing	Lansing L. Haynes
3/18/2009	MEMO	MCCORD	Pet's Memorandum of Facts & Authority on Opposition of Motion for Summary Judgment	Lansing L. Haynes

Collection Bureau Inc vs. John M Dorsey

Date	Code	User	Judge
3/20/2009	MEMO	BAXLEY	Lansing L. Haynes
			Response Memorandum To Plaintiffs Memorandum In Opposition To Defendants Motion For Summary Judgment
4/3/2009	MEMO	LEU	Lansing L. Haynes
			Plaintiff's Supplemental Response Memorandum In Opposition To Motion For Summary Judgment
4/6/2009	MISC	CRUMPACKER	Lansing L. Haynes
			Plaintiffs Point & Authority in Support of Opposition to Motion for Summary Judgment
4/7/2009	MEMO	ROSEBUSCH	Lansing L. Haynes
			Plaintiff's Supplemental Response Memorandum in Opposition to Motion for Summary Judgment
4/8/2009	MISC	STOKES	Lansing L. Haynes
			Plaintiff's Point and Authority in Support for Opposition to Motion for Summary Judgment
4/21/2009	HRHD	TAYLOR	Lansing L. Haynes
			Hearing result for Motion for Summary Judgment held on 04/21/2009 03:30 PM: Hearing Held REDAL - 30 MIN TAKEN UNDER ADVISEMENT ON 5/12/09
5/11/2009	MEMO	COCHRAN	Lansing L. Haynes
			Plaintiff's Supplemental Memorandum of Facts and Authority in opposition of Motion for Summary Judgment
5/14/2009	HRSC	TAYLOR	Lansing L. Haynes
			Hearing Scheduled (Decision 05/29/2009 08:00 AM)
		TAYLOR	Lansing L. Haynes
			Notice of Hearing
5/15/2009	MEMO	SREED	Lansing L. Haynes
			Response Memorandum - John Redal OBO Defendant
5/29/2009	DCHH	TAYLOR	Lansing L. Haynes
			Hearing result for Decision held on 05/29/2009 08:00 AM: District Court Hearing Held Court Reporter: Number of Transcript Pages for this hearing estimated: MARK CLARK APPEARING TELEPHONICALLY 208-498-1421 (Katie)
	DPHR	TAYLOR	Lansing L. Haynes
			Disposition With Hearing
	HRVC	TAYLOR	Lansing L. Haynes
			Hearing result for Court Trial Scheduled held on 07/20/2009 09:00 AM: Hearing Vacated 1 day
6/10/2009	CVDI	VICTORIN	Lansing L. Haynes
			Civil Disposition entered for: Dorsey, John M, Defendant; Collection Bureau Inc, Plaintiff. Filing date: 6/10/2009
	FJDE	VICTORIN	Lansing L. Haynes
			Order Granting Summary Judgment - Case Dismissed
	STAT	VICTORIN	Lansing L. Haynes
			Case status changed: Closed
7/21/2009	STIP	RICKARD	Lansing L. Haynes
			Stipulation For Substitution Of Counsel
	NOTC	RICKARD	Lansing L. Haynes
			Notice Of Appeal
	CERT	RICKARD	Lansing L. Haynes
			Clerk's Certificate Of Appeal
7/22/2009		RICKARD	Lansing L. Haynes
			Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Collection Bureau Inc (plaintiff) Receipt number: 0858502 Dated: 7/23/2009 Amount: \$101.00 (E-payment) For: Collection Bureau Inc (plaintiff)

Date: 10/1/2009

User: PARKER

Time: 08:06 AM

ROA Report

Page 3 of 3

Case: CV-2008-0000712 Current Judge: Lansing L. Haynes

Collection Bureau Inc vs. John M Dorsey

Collection Bureau Inc vs. John M Dorsey

Date	Code	User		Judge
7/27/2009	BNDC	RICKARD	Bond Posted - Cash (Receipt 858827 Dated 7/27/2009 for 100.00)	Lansing L. Haynes
	STAT	RICKARD	Case status changed: Closed pending clerk action	Lansing L. Haynes

SUMMONS ISSUED
JAN 28 2008

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: 779944
2008 JAN 28 PM 1:52

CLERK DISTRICT COURT
Kathryn
DEPUTY

MARK L. CLARK, ISB No. 1813
ATTORNEY AT LAW
719 1ST STREET SOUTH
P O BOX 846
NAMPA ID 83653-0846
208-463-8903
208-463-9776 Facsimile

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU, INC.,	)	CASE NO. C008-712
an Idaho corporation,)	
	)	COMPLAINT
Plaintiff,)	
	)	FEE CATEGORY: A.1.
-vs-)	
	)	FILING FEE: \$88.00
JOHN M DORSEY)	
)	
Defendant(s).)	
_____)	

COMES NOW, the above named Plaintiffs by and through its undersigned counsel of record, MARK L. CLARK, and for its cause of action against the above named Defendant complains and alleges as follows:

I

Plaintiff is an Idaho corporation licensed to do business within the State of Idaho, with its principal place of business located at Nampa, Canyon County, Idaho.

II

Defendant is a resident of Kootenai County, Idaho.

009

ASSIGNED TO JUDGE HAYNES

III

That the account hereinafter referred to has been duly assigned to Plaintiff.

IV

That demand for payment was made more than ten days prior to the commencement of this action, and that an amount at least equal to ninety-five percent (95%) of the amount due has not been tendered to Plaintiff.

V

That as of September 25, 2007, Defendant owed to Plaintiff's assignor, SHOSHONE COUNTY CASE# CR-2000-0032907, the amount of \$33,325.00, for fine.

VI

That nothing has been paid towards said fine.

VII

That both oral and written demands have been made upon Defendant for payment of \$33,325.00.

VIII

That said Defendant has failed and/or refused to pay \$33,325.00 for said fine, and there is now due and owing the principal sum of \$33,325.00, until paid.

CLAIM FOR ATTORNEYS FEES

That Plaintiff has been required to retain the services of an attorney to institute and prosecute this action and for that purpose has retained MARK L.

CLARK, a licensed and practicing attorney of the State of Idaho, and has been obligated to pay a reasonable attorney's fee and costs which Plaintiff is entitled to recover from Defendant pursuant to Idaho Code 12-120 and other applicable statutes of Idaho law.

WHEREFORE, Plaintiff prays judgment against said Defendant as follows:

1. For the principal sum of \$33,325.00;
2. For attorney's fees incurred herein in the minimum sum of \$750.00 if this matter remains uncontested;
3. For costs and disbursements incurred herein;
4. For such further relief as the Court deems just and proper in the premises.

DATED this 21st day of January, 2008.



MARK L. CLARK
Attorney for Plaintiff

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2008 AUG 25 AM 9:31

CLERK DISTRICT COURT
Joanna Barber
DEPUTY

MARK L. CLARK ISB #1813
Attorney at Law
719 1st Street South
PO Box 846
Nampa ID 83653-0846
208-463-8903
208-463-9776 Fax

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU INC.,	)	CASE NO. CV08-712
an Idaho corporation,)	
)	
Plaintiff,	)	ORDER TO RETAIN
	)	CASE ON CALENDAR
-vs-)	
)	
JOHN M DORSEY,)	
)	
Defendant(s).)	

BASED UPON the Plaintiff's Motion to Retain Case on Calendar, supporting affidavit of counsel, and Plan and Date for Disposition, and good cause appearing therefrom, it is:

ORDERED, and this does hereby ORDER, that the above entitled matter be retained on the Court's calendar for a period of days. L.H.

DATED this 22 day of Aug. 2008.

Lausing L. Haynes
Magistrate Judge
District

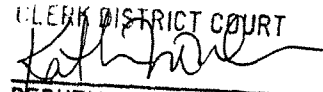
Fxd. 208-463-9776 - 8/25/08 936
ORDER TO RETAIN CASE ON CALENDAR

Public Trust
012

REDAL & REDAL
JOHN E. REDAL/L. DIANE REDAL
Attorneys at Law
5431 N Government Way #101A
Coeur d'Alene, ID 83815
Phone: (208) 676-9999
Fax: (208) 676-8680
ISBN#: 4846/5078

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
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2008 OCT 14 PM 12:12

CLERK DISTRICT COURT

DEPUTY


IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU, INC.,)
An Idaho Corporation,)
Plaintiff,)
Vs.)
JOHN M. DORSEY,)
Defendant)

CASE NO. CV2008-712
NOTICE OF APPEARANCE

NOTICE IS HEREBY GIVEN that John E Redal, of the firm of Redal & Redal, 5431 N. Government Way, Suite 101A, Coeur d'Alene, ID, appears in the above-entitled matter as attorney of record for the Defendant, JOHN M. DORSEY.

DATED this 14 day of October, 2008.


JOHN E. REDAL
Attorney for Defendant

I certify that a true and correct copy of the foregoing document was:

Mailed:

Faxed:

Hand delivered:


Interoffice:

On this 14 day of ~~August~~^{Oct}, 2008, to:

Mark L. Clark

Attorney for Plaintiff

Fax: 208-463-9776

By: 

REDAL & REDAL
 JOHN E. REDAL/L. DIANE REDAL
 Attorneys at Law
 5431 N. Government Way Suite 101A
 Coeur d'Alene, ID 83815
 Phone: (208) 676-9999
 Fax: (208) 676-8680
 ISBN#: 4846/5078

STATE OF IDAHO }
 COUNTY OF KOOTENAI } SS
 FILED:

2008 OCT 14 PM 12:12

101A
 CLERK DISTRICT COURT

Kathleen
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU, INC.,)	
An Idaho Corporation	)	CASE NO. CV2008-712
Plaintiff,)	
	)	ANSWER
vs.)	
)	
JOHN M. DORSEY,)	
Defendant)	
_____)	

Comes now, JOHN M. DORSEY, by and through his attorney of record, JOHN REDAL, and hereby answers the Plaintiff's Complaint as follows:

I.

Defendant does not have any knowledge regarding the status of the Plaintiff's corporation and lacks sufficient knowledge to answer paragraph I.

II.

Defendant admits paragraph II.

III.

Defendant lacks sufficient knowledge to answer paragraph III.

IV.

Defendant denies paragraph IV.

V.

Defendant denies paragraph V.

VI.

Defendant denies paragraph VI.

VII.

Defendant denies paragraph VII.

VIII.

Defendant denies paragraph VIII.

AFFIRMATIVE DEFENSES TO COMPLAINT

1. **AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to Plaintiffs' Complaint, Plaintiff's cause of action is barred by the Statute of Limitations.
3. **AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to Plaintiffs' Complaint, the judgment in this matter has expired and was never renewed.

JURY TRIAL

Pursuant to IRCP 38(b), Defendants demand a jury trial of no less than twelve (12) persons.

DATED this 14 day of October, 2008




JOHN E. REDAL
Attorney for Defendant

STATE OF IDAHO)
) ss.
County of Kootenai)

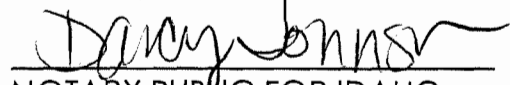
JOHN M. DORSEY, being first duly sworn upon oath, deposes and says:

I am the Defendant in the above-entitled matter. I have read the foregoing document, know the contents hereof, and verily believe the same to be true and correct to the best of my knowledge.

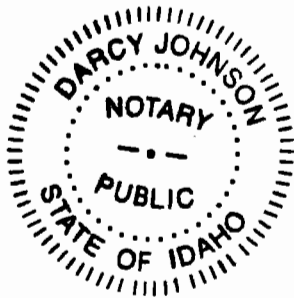


JOHN M. DORSEY
Defendant

SUBSCRIBED AND SWORN to before me this 14 day of October, 2008



NOTARY PUBLIC FOR IDAHO
Residing at: Coeur d Alene, Idaho
Commission expires: 12/21/2010



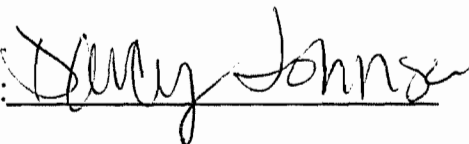
CERTIFICATE OF DELIVERY

I certify that a true and correct copy of the foregoing document was

Mailed:
Faxed:
Hand delivered: _____
Interoffice: _____

On this 14 day of October, 2008, to:

MARK CLARK
Attorney for Plaintiff
Fax: 208-463-9776

By: 

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

#701

2009 MAR -6 AM 9:25

CLERK DISTRICT COURT

Debra J. DeWitt
DEPUTY

REDAL & REDAL
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Fax: (208) 676-8680
ISBN#: 4846/5078

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU, INC.,)
An Idaho Corporation)
Plaintiff,)
vs.)
JOHN M. DORSEY,)
Defendant.)

CASE NO. CV2008-712

MOTION FOR SUMMARY
JUDGMENT

Comes now, JOHN M. DORSEY, by and through his attorney of record, JOHN REDAL, hereby moves this court for an order granting the defendant judgment in the above entitled matter.

This motion is made pursuant to rule 56(b) of the Idaho Rules of Civil Procedure and supported by the memorandum of facts and authority filed herewith.

Counsel for defendant hereby requests oral argument at the hearing of this matter.

DATED this 6 day of March, 2009

John E. Redal

JOHN E. REDAL
Attorney for Defendant

CERTIFICATE OF DELIVERY

I certify that a true and correct copy of the foregoing document was

Mailed:
Faxed:
Hand delivered:
Interoffice:

On this 6 day of October, 2008, to:

MARK CLARK
Attorney for Plaintiff
Fax: 208-463-9776

BY: Danny Johnson

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2009 MAR -6 AM 9:25

#701

CLERK DISTRICT COURT
Debra J. [Signature]
DEPUTY

REDAL & REDAL
JOHN E. REDAL/L. DIANE REDAL
Attorneys at Law
5431 N. Government Way Suite 101A
Coeur d'Alene, ID 83815
Phone: (208) 676-9999
Fax: (208) 676-8680
ISBN#: 4846/5078

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU, INC.,)
An Idaho Corporation)
Plaintiff,)
vs.)
JOHN M. DORSEY,)
Defendant)

CASE NO. CV2008-712
MEMORANDUM OF FACTS
AND AUTHORITY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT

Comes now, JOHN M. DORSEY, by and through his attorney of record, JOHN REDAL, hereby submits the following memorandum of facts and authority in support of his motion for summary judgment.

FACTS

The above defendant was sentenced on the 19th day of March 2001 by the Honorable Judge Kosonen in Shoshone case number CR00-32907 (see attached exhibit A). He received a period of incarceration in the Idaho State Penitentiary, as well as a \$25,000.00 fine, and was out on parole at the time he was served the lawsuit by the defendants herein. The lawsuit herein was filed by plaintiff on January 28, 2009 (Plaintiffs complaint of record). Within Plaintiff's complaint, it is undisputed that the basis for the claim for monies owed is the Shoshone County "judgment" mentioned above.

ISSUE

IS PLAINTIFF BARRED BY LAW FROM ATTEMPTING TO COLLECT THE DEBT IN QUESTION BASED ON THE AGE OF THE JUDGMENT CREATING THE UNDERLYING INDEBTEDNESS?

DISCUSSION

Both IC 11-101 and 11-105 clearly state that enforcement of a money judgment may only commence within the first five years after the entry of the judgment. When looking at this from a criminal procedure standpoint, IC19-2518 provides that "a judgment that a defendant pay a fine . . . constitutes a lien in like manner as a judgment for money in a civil action." Further, IC19-2702 states that "if the judgment includes the payment of a fine . . . execution may be issued thereon for such sums as on a judgment in a civil action."

IC 19-4708 specifically provides for the clerk of the court to approve outside parties to collect debts owed on its behalf. 'Debts owed to the court' is defined as "any assessment of fines . . . which a court judgment has ordered to be paid to the court in criminal cases." IC19-4708(2)(c).

In this case before the court, it is clear that plaintiff is attempting to collect a debt that is premised upon a prior judgment. The prior judgment was entered against the defendant beyond five years prior to when the plaintiff initiated their action to collect. As such, the debt plaintiff seeks to collect is no longer collectible and judgment should be granted in favor of defendant.

CONCLUSION

Motion should be granted in favor of defendant.

DATED this 6 day of March, 2009



JOHN E. REDAL
Attorney for Defendant

CERTIFICATE OF DELIVERY

I certify that a true and correct copy of the foregoing document was

Mailed: _____
Faxed: _____
Hand delivered: _____
Interoffice: _____

On this 6 day of March, 2009, to:

MARK CLARK
Attorney for Plaintiff
Fax: 208-463-9776

BY: Daniel Johnson

STATE OF IDAHO
COUNTY OF SHOSHONE/SS

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF IDAHO
Mar 19 10 00 AM '01

STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

By *Val Siegel*
DEPUTY

STATE OF IDAHO,	)	No. CR-F 00-32907
)	
Plaintiff,)	
)	
vs.	)	JUDGMENT AND SENTENCE
)	
JOHN M. DORSEY,)	
DOB: [REDACTED])	
SS#: [REDACTED])	
)	
Defendant.)	

The above-entitled matter came on to be heard before the Honorable Craig C. Kosonen, one of the Judges of the above-entitled Court, on the 12th day of March, 2001; the State was represented by Val Siegel, Prosecuting Attorney in and for the County of Shoshone, State of Idaho; the Defendant was personally present in Court and was represented by Marty M. Raap, Attorney at Law, Kellogg, Idaho.

WHEREUPON, a presentence report previously ordered having been filed herein, and the Court having ascertained that the defendant had an opportunity to read said presentence report, and the defendant having been given the opportunity to explain,

1. JUDGMENT AND SENTENCE



correct or deny parts thereof, and defendant having done so, and there being no reason given why Judgment and Sentence should not then be pronounced, the Court did then pronounce its Judgment and Sentence as follows:

IT IS HEREBY ORDERED AND IT IS THE JUDGMENT OF THIS COURT THAT YOU, John M. Dorsey, having been found guilty by a jury of the criminal charge stated in the Second Amended Information on file herein as follows:

GUILTY TO THE CRIME of Violation of Idaho Code Section 37-2732B(a)(3), Trafficking in Methamphetamine by Manufacturing, a Felony, Count One, which was committed on the 16th day of May, 2000, as charged in the said Second Amended Information.

THAT YOU ARE GUILTY OF THE CRIME AS SO CHARGED; and now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED That you be, and you hereby are, sentenced to the custody of the Idaho State Board of Corrections, for a fixed period of five (5) years followed by an indeterminate period of fifteen (15) years, for a total unified sentence of twenty (20) years.

IT IS FURTHER ORDERED that defendant is hereby remanded to the custody of the Sheriff of Shoshone County, State of Idaho, until such time as defendant is transported to the State

2. JUDGMENT AND SENTENCE



Board of 'Corrections at Boise, Idaho.

IT IS FURTHER ORDERED that the defendant pay a fine in the amount of \$25,000.00 to the Clerk of the Court, Shoshone County, Idaho. Court costs and costs of defense are waived.

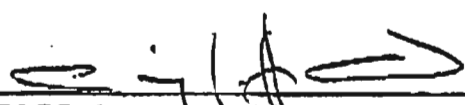
IT IS FURTHER ORDERED that for the purpose of making restitution to the victim of the crime this Court shall also enter its separate Order of Restitution pursuant to the Compensation of Victims Act.

YOU ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

YOU ARE FURTHER NOTIFIED that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer.

Bond, if any, is hereby exonerated.

ENTERED at Wallace, Idaho, this 19th day of March, 2001.


CRAIG C. KOSONEN
DISTRICT JUDGE

3. JUDGMENT AND SENTENCE



file

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2009 MAR 18 AM 11:49

CLERK DISTRICT COURT

Kathleen
DEPUTY

MARK L. CLARK, **ISB No. 1813**
ATTORNEY AT LAW
719 1ST STREET SOUTH
PO BOX 846
NAMPA ID 83653-0846
208-463-8903
208-463-9776 Facsimile

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU INC.,)	CASE NO. CV08-712
an Idaho corporation)	
Plaintiff,)	PLAINTIFF'S MEMORANDUM OF
-vs-)	FACTS AND AUTHORITY IN
JOHN M. DORSEY)	OPPOSITION OF MOTION FOR
Defendant.)	SUMMARY JUDGMENT
_____)	

COMES NOW, the above-named Plaintiff, by and through its undersigned counsel of record, and hereby submits Plaintiff's Memorandum of Facts and Authority in Opposition of Motion for Summary Judgment.

FACTS

Plaintiff agrees with the facts set forth in Defendant's Memorandum In Support of Motion for Summary Judgment. However, the Defendant's stated

facts are not complete and do not fully detail the record of the Defendant's underlying criminal proceedings.

After entry of the March 19, 2001 Judgment and Sentence, the Defendant appealed to the Idaho Supreme Court. Upon completion of the appeal, on June 3, 2004, the Defendant filed a motion for credit for time served, together with a supporting affidavit. A certified copy of the First Judicial District Court-Shoshone County ROA Report reflecting the filing of Defendant's motion and affidavit is attached hereto marked Exhibit "1", and by this reference thereto made a part hereof as though set forth in full verbatim.

On June 4, 2004, based upon Defendant's request as set forth in the Plaintiff's attached exhibits, District Judge Gibler amended the March 19, 2001 Judgment and Sentence to allow the Defendant 217 days credit for time already served. A certified copy of said Order Amending Judgment dated June 4, 2004, is attached hereto marked Exhibit "2", and by this reference thereto made a part hereof as though set forth in full verbatim.

ISSUE

For the limited purposes of the pending summary judgment, the issue is whether the Plaintiff's cause of action is barred by the statute of limitations cited by Defendant.

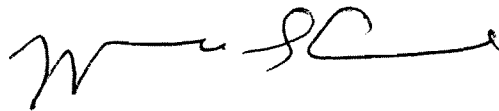
ARGUMENT

At the request of the Defendant, the underlying criminal Judgment and Sentence was amended on June 4, 2004. The final judgment of the underlying criminal case was June 4, 2004, and not March 19, 2001, as argued by Defendant. Applying the correct date of final judgment of the underlying criminal case, the Defendant's cited legal authority and analysis of the case clearly supports Plaintiff's position that the pending civil action is not barred by the cited statute of limitations.

CONCLUSION

Defendant's motion for summary judgment should be denied.

DATED this 16th day of March, 2009.



MARK L. CLARK
Attorney for Plaintiff

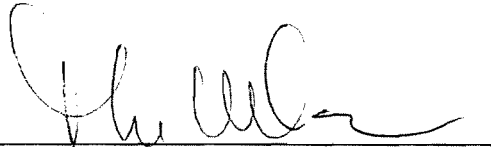
CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of March, 2009, a true and correct copy of the within and foregoing instrument was served the following

Redal & Redal
Attorneys at Law
5431 N Government Way #101A
Coeur d'Alene ID 83815

via facsimile transmission to 208-676-8680, and

by placing the same in the United States Mail, in an envelope so addressed, at Nampa, Idaho, with first class postage affixed thereon.



THERESA WILSON

State of Idaho vs. John M Dorsey

Date	Code	User	Judge
5/17/2000	SWIS	PENNY	Search Warrant Issued #149
	SWIS	PENNY	Search Warrant Issued #150
5/23/2000	NEWC	PEGGI	New Case Filed
	CRCO	PEGGI	Criminal Complaint
	WARI	PEGGI	Warrant Issued - Arrest
	SWRT	PENNY	Search Warrant Returned #149
	SWRT	PENNY	Search Warrant Returned #150
3/1/2000	ARRN	PENNY	Arraignment / First Appearance
3/2/2000	HRSC	SANDRA	Hearing Scheduled - Preliminary (08/11/2000) Daniel J Mcgee
	SODR	PENNY	Statement Of Def's Rights
	FSAO	PENNY	Financial Statement And Order
	ORPD	PENNY	Order Appointing Public Defender
	WART	PEGGI	Warrant Returned
3/3/2000	NOAP	CYNDI	Notice Of Appearance
	RFD	CYNDI	Request For Discovery
3/4/2000	SUPI	PEGGI	Subpoena Issued-bernard C Bourgeois
3/8/2000	SUBR	PEGGI	Subpoena Returned-served Bernard Bourgeois
3/11/2000	PHHD	PEGGI	Preliminary Hearing Held - Preliminary
	BOUN	PEGGI	Bound Over (after Prelim)
	TIOC	PEGGI	Transfer In (from Idaho Court Or County)
3/16/2000	MOTN	BONNIE	Motion For Transcript Of Preliminary Hearing
	ORDR	BONNIE	Order For Copy Of Transcript
3/18/2000	INFO	MARLA	Information
	NTSA	MARLA	Notice Time Set For Arraignment
	HRSC		Hearing Scheduled - Arraignment (09/11/2000) Craig C. Kosonen
3/22/2000	ORDR	PENNY	Order Binding Def Over To Dist Court
3/23/2000	DFJT	CYNDI	Demand For Speedy Trial
3/1/2000	TRAN	BONNIE	Transcript Filed- 8/11/00 Prelim Hrg
	AFFD	BONNIE	Affidavit Of Service - To J.cossell/j.douglas
	AFFD	MARLA	Affidavit Support Mtn Release Or
	NOTC	MARLA	Notice Of Hearing Re: Above Mtn Release Or
3/5/2000	MOTN	MARLA	Motion Substitution Of Counsel
	NOTC	MARLA	Notice Of Hearing Re: Substitution Counsel
3/11/2000	ARRN	MARLA	Arraignment / First Appearance
	APNG	MARLA	Appear & Plead Not Guilty Per Court Minutes
3/19/2000	DENY	MARLA	Order Denying Substiution Of Counsel

State of Idaho vs. John M Dorsey

Date	Code	User		Judge
9/28/2000	MOTN	BONNIE	Motion To Suppress-sw For Lightner Residence	Craig C. Kosonen
	MOTN	BONNIE	Motion To Suppress-all Evidence-constit.right	Craig C. Kosonen
	MOTN	BONNIE	Motion For Dismissal - Under Rule 21 Icr.	Craig C. Kosonen
	NOTC	BONNIE	Notice Of Hearing-d's Mtns Suppr/d dismissal	Craig C. Kosonen
	HRSC		Hearing Scheduled - Mtns Suppr/dism (11/06/2000) Craig C. Kosonen	
9/29/2000	MOTN	BONNIE	Motion For Release O.r.or Bond Redut/notc Hrg	Craig C. Kosonen
	HRSC	BONNIE	Hearing Scheduled - Mtn Bond Reduct (10/10/2000) Craig C. Kosonen	Craig C. Kosonen
10/2/2000	MOTN	BONNIE	Motion For Trans Of Prob Cause Of 5/17 Sw	Craig C. Kosonen
	ORDR	BONNIE	Order For Copy Of Transt-prob.cause Sw Hrg	Craig C. Kosonen
10/11/2000	HRHD	MARLA	Hearing Held - Mtn Bond Reduction	Craig C. Kosonen
	HRSC	MARLA	Hearing Scheduled - Mtn Reduce Bond Cont From (10/30/2000) Craig C. Kosonen 10-11-00	Craig C. Kosonen
10/16/2000	JTSC	BONNIE	Jury Trial Scheduled - 4 Days/#4 Set (01/30/2001) Craig C. Kosonen	Craig C. Kosonen
10/23/2000	NOTC	MARLA	Notice Of Hearing Re: Mtn Reduce Bond	Craig C. Kosonen
10/30/2000	INHD	MARLA	Interim Hearing Held - Mtn Bond Reduce	Craig C. Kosonen
11/2/2000	MOTN	MARLA	Motion To Dismiss/notice Of Hearing-11-6-00	Craig C. Kosonen
11/3/2000	MOTN	MARLA	Amended Motion To Suppress	Craig C. Kosonen
	SUBC	MARLA	Substitution Of Counsel-m Raap For Douglas	Craig C. Kosonen
11/6/2000	HRHD	MARLA	Hearing Held - Mtns Suppr/dism	Craig C. Kosonen
	CONT	MARLA	Continued - Mtns Suppr/dism-to 12-11-00	Craig C. Kosonen
	HRSC	MARLA	Hearing Scheduled - Mtn/suppress/dismiss (12/11/2000) Craig C. Kosonen	Craig C. Kosonen
11/7/2000	MOTN	BONNIE	Oral Mtn For Transcript Of 5/23/00 Pc Hrg>>>>	Craig C. Kosonen
	MOTN	BONNIE	>>>>>>per John Cossel<	Craig C. Kosonen
	ORDR	MARLA	Order Reducing Bond-to \$20,000.00	Craig C. Kosonen
11/8/2000	MOTN	BONNIE	Motion For Transcript - 11/6/00 Hrg	Craig C. Kosonen
11/9/2000	TRAN	BONNIE	Transcript Filed Of Sw #149/150. Copies To	Craig C. Kosonen
	TRAN	BONNIE	*****marty Raap/john Cossel *****	Craig C. Kosonen
	TRAN	BONNIE	Transcript Filed-pc Hrg-to Cossel/raap	Craig C. Kosonen
	ORDR	BONNIE	Order For Transcript - 11/6/00 Hrg	Craig C. Kosonen
11/14/2000	MOTN	MARLA	Motion For Transport For Treatment	Craig C. Kosonen
	ORDR	MARLA	Order For Transport For Treatment	Craig C. Kosonen
11/28/2000	MAIR	MARLA	Motion Amend Information/remand	Craig C. Kosonen
	OAIR	MARLA	Order Amend Information/remand	Craig C. Kosonen
	INFO	MARLA	Amended Information-change Date In The Charge	Craig C. Kosonen

State of Idaho vs. John M Dorsey

Date	Code	User		Judge
11/28/2000	REDU	MARLA	Charge Amended	Craig C. Kosonen
12/11/2000	HRHD	MARLA	Hearing Held - Mtn/suppress	Craig C. Kosonen
12/15/2000	MOTN	MARLA	Motion For Acceptance Of Property Bond	Craig C. Kosonen
	HRSC	MARLA	Hearing Scheduled - Mtn Property Bond (12/22/2000) Craig C. Kosonen	Craig C. Kosonen
12/18/2000	MISC	BONNIE	Reporter's Transcript - 11/6/00 Proceeding	Craig C. Kosonen
12/19/2000	MISC	BONNIE	Undertaking - Court Disapproved.	Craig C. Kosonen
12/21/2000	HRVC	BONNIE	Hearing Vacated-mtn Prop Bond-per M. Raap	Craig C. Kosonen
12/29/2000	ORDR	MARLA	Memorandum Order Denying Motion To Suppress	Craig C. Kosonen
1/10/2001	HRSC	BONNIE	Hearing Scheduled - Pre-trial Conference (01/16/2001) Craig C. Kosonen	Craig C. Kosonen
1/16/2001	HRHD	BONNIE	Hearing Held-not Resolved-left On For Trial	Craig C. Kosonen
1/17/2001	SUPI	PEGGI	Subpoena Issued-adam J Malaby	Craig C. Kosonen
	SUBR	PEGGI	Subpoena Returned-faxed To Adam J Malaby	Craig C. Kosonen
	SUPI	PEGGI	Subpoena Issued-michael Sabatini	Craig C. Kosonen
	SUBR	PEGGI	Subpoena Returned-faxed To Michael Sabatini	Craig C. Kosonen
	SUPI	PEGGI	Subpoena Issued-janet L Taylor	Craig C. Kosonen
	SUBR	PEGGI	Subpoena Returned-faxed To Janet L Taylor	Craig C. Kosonen
	MOTN	MARLA	Motion To Reconsider/notice Of Hearing	Craig C. Kosonen
	HRSC	MARLA	Hearing Scheduled - Mtn Reconsider (01/29/2001) Craig C. Kosonen	Craig C. Kosonen
1/18/2001	SRFD	CYNDI	State's Req For Discovery	Craig C. Kosonen
	NOTC	CYNDI	Notice Of Compliance With Discovery	Craig C. Kosonen
	SUBR	MARLA	Subpoena Returned-fax Kootenai Co Re:lightner	Craig C. Kosonen
1/19/2001	SUBR	MARLA	Subpoena Returned-svd J Witherspoon 1-18-01	Craig C. Kosonen
1/22/2001	MISC	MARLA	Brief Support Motion To Reconsider-to Judge K	Craig C. Kosonen
1/24/2001	SUBR	PEGGI	Subpoena Returned-served Adam J Malaby	Craig C. Kosonen
1/25/2001	NCWD	MARLA	Notice Compliance With Supp Request Discovery	Craig C. Kosonen
1/26/2001	SUBR	MARLA	Subpoena Returned-svd B Bourgeois On 1-25-01	Craig C. Kosonen
1/29/2001	DENY	BONNIE	Motion Denied - Mtn Reconsider	Craig C. Kosonen
	HRHD	MARLA	Hearing Held-mtn Reconsider-denied	Craig C. Kosonen
1/30/2001	NOTC	GAIL	Notc Of Compliance With Third Supp. Response	Craig C. Kosonen
	JTST	BONNIE	Jury Trial Started	Craig C. Kosonen
	NCWD	MARLA	Notice Compliance With 2nd Supp Resp To Disc	Craig C. Kosonen
	BNDS	PENNY	Bond Posted - Surety	Craig C. Kosonen
	NTD	PENNY	Notice To Defendant	Craig C. Kosonen
	MOTN	MARLA	Motion In Limine/notice Of Hearing	Craig C. Kosonen
	INFO	MARLA	Second Amended Information-to Change Date	Craig C. Kosonen

State of Idaho vs. John M Dorsey

Date	Code	User		Judge
1/30/2001	HRSC	MARLA	Hearing Scheduled - Sentencing (03/12/2001) Craig C. Kosonen	Craig C. Kosonen
	MISC	MARLA	Plt's Requested Jury Instructions/verdicts	Craig C. Kosonen
1/31/2001	NCWD	GAIL	Notice Compliance With 4th Supp Resp To Disc.	Craig C. Kosonen
2/1/2001	MISC	BONNIE	Verdict-guilty-trafficking Meth By Manufactur	Craig C. Kosonen
	FOGT	BONNIE	Found Guilty After Trial	Craig C. Kosonen
2/2/2001	BNDE	MARLA	Bond Exonerated Upon A Guilty Verdict	Craig C. Kosonen
	MISC	MARLA	Given Jury Instructions	Craig C. Kosonen
	MISC	MARLA	Def's Requested Jury Instructions/verdicts	Craig C. Kosonen
2/26/2001	ORDR	MARLA	Order For Presentence Investigation	Craig C. Kosonen
	ORDR	MARLA	Order For Presentence Investigation	Craig C. Kosonen
3/9/2001	REPT	BONNIE	Presentence Report Received	Craig C. Kosonen
3/12/2001	MISC	BONNIE	Temporary Commitment - To Isbc	Craig C. Kosonen
	HRHD	MARLA	Hearing Held	Craig C. Kosonen
	APSC	MARLA	Notice Of Appeal-to Supreme Court	Craig C. Kosonen
	MOTN	MARLA	Motion For Stay Sentence Pending Appeal	Craig C. Kosonen
3/19/2001	JDMT	MARLA	Judgment & Sentence	Craig C. Kosonen
	SNIC	MARLA	Sentenced To Incarceration	Craig C. Kosonen
	CSCP	MARLA	Case Status Closed But Pending	Craig C. Kosonen
5/25/2001	MOTN	MARLA	Motion Appoint Of State Appellate P.d.	Craig C. Kosonen
	ORDR	MARLA	Order Appoint State Appellate P.d.	Craig C. Kosonen
8/3/2001	TRAN	GAIL	Reporter's Transcript Of Proceedings Filed	Craig C. Kosonen
11/1/2001	NOC	MARLA	Notice Of Completion	Craig C. Kosonen
	CROA	MARLA	Clerk's Record On Appeal	Craig C. Kosonen
11/5/2002	NOTC	PEGGI	Notice Of Substitution Of Attorney	Craig C. Kosonen
6/4/2003	MISC	GAIL	Opinion From Supreme Court	Craig C. Kosonen
9/17/2003	REMT	MARLA	Remittitur	Craig C. Kosonen
3/3/2004	MOTN	MARLA	Motion For Credit For Time Served	Craig C. Kosonen
	AFFD	MARLA	Affidavit Of Defendant	Craig C. Kosonen
3/4/2004	ORDR	BONNIE	Order Amending Judgment (217 Days Cts)	Fred M. Gibler
1/5/2005	NOTC	MARLA	Notice Return/Destroy Exhibits-after consulting with Judge Gibler, we will need to keep these exhibits until one year from the determination of the appeal on his Post Conviction	Craig C. Kosonen
3/3/2005	MEMO	MARLA	Memorandum from Commission of Pardons and Parole-the Defendant will parole on 8-8-05	Craig C. Kosonen
1/4/2006		FLO	***** Affidavit and Notice of Fail to pay ***** - Step 1, Failure to Pay Fines and Fees - Charge # 1, Drug-traffick Methamphetamine/amphetamine Manufact Appearance date: 4/18/2006	Craig C. Kosonen

State of Idaho vs. John M Dorsey

Date	Code	User		Judge
3/6/2007		DEBI	*** SENT TO COLLECTIONS *** - Step 2, Failure to Pay Fines and Fees - Charge # 1, Drug-traffick Methamphetamine/amphetamine Manufact Appearance date: 9/6/2007	Craig C. Kosonen
3/12/2009	CHJG	BONNIE	Change Assigned Judge	Fred M. Gibler

STATE OF IDAHO }
COUNTY OF SHOSHONE } ss

THIS IS TO CERTIFY THAT THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL NOW ON RECORD
IN THIS OFFICE SEALED ON THIS 12th DAY
OF March, 2009

PEGGY WHITE, CLERK OF THE DISTRICT COURT
By Bonnie Gibler
Deputy



STATE OF IDAHO
COUNTY OF SHOSHONE/SS
FILED

2004 JUN -4 A 11: 16

PEGGY WHITE
CLERK DIST. COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

BY Donnie Johnson
DEPUTY

STATE OF IDAHO,	)	CASE NO. CR-F-00-32907
	)	IDOC NO. 17847
Plaintiff,)	
	)	ORDER AMENDING JUDGMENT
vs.)	
)	
JOHN M. DORSEY,)	
)	
Defendant.)	

The Judgment and Sentence in this action filed March 19, 2001, is hereby amended to allow the defendant 217 days credit for time already served.

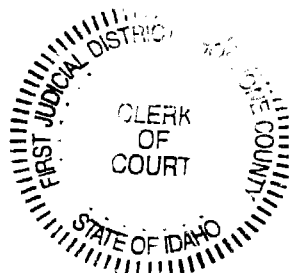
Dated this 4th day of June, 2004.

Fred M Gibler
FRED M. GIBLER, District Judge

I hereby certify a true and correct copy of the foregoing was mailed, postage prepaid, this 4th day of June, 2004, to the following:

John Dorsey - IDOC #17847
Hospital Drive North #23
Orofino, Idaho 83544

Val Siegel, Prosecuting Attorney - I.O. mail
Shoshone County Sheriff- I.O. mail
Central Records - Fax: (208) 327-7445



PEGGY WHITE, Clerk of Court
STATE OF IDAHO
COUNTY OF SHOSHONE } SS
By: Donnie Johnson
Deputy Clerk

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON RECORD IN THIS OFFICE SEALED ON THIS 13th DAY OF March, 2004
PEGGY WHITE, CLERK OF THE DISTRICT COURT
BY Donnie Johnson
Deputy

ORDER AMENDING JUDGMENT -1-

REDAL & REDAL
 JOHN E. REDAL/L. DIANE REDAL
 Attorneys at Law
 5431 N. Government Way Suite 101A
 Coeur d'Alene, ID 83815
 Phone: (208) 676-9999
 Fax: (208) 676-8680
 ISBN#: 4846/5078

STATE OF IDAHO }
 COUNTY OF KOOTENAI }
 FILED: 589 }
 2009 MAR 20 PM 2:4
 CLERK DISTRICT COURT
Patty Barber
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU, INC.,)	
An Idaho Corporation	)	CASE NO. CV2008-712
Plaintiff,)	
	)	RESPONSE MEMORANDUM
vs.	)	TO PLAINTIFFS MEMORANDUM IN
	)	OPPOSITION TO DEFENDANTS
JOHN M. DORSEY,	)	MOTION FOR SUMMARY JUDGMENT
Defendant)	

Comes now, JOHN M. DORSEY, by and through his attorney of record, JOHN REDAL, hereby submits the following memorandum in response to Plaintiffs memorandum in opposition to Defendants motion for summary judgment.

FACTS

The Defendant would refer the court to its statement of facts in their original memorandum and concur with Plaintiffs facts as stated in their response memorandum.

ISSUE

Defendant would refer the court to the original memorandum and also concur with Plaintiffs issue in their response memorandum.

DISCUSSION

In Plaintiffs response memorandum, the facts are accurately stated. However, the Defendant would disagree that the order entered June 4, 2004

allowing the Defendant credit for time served creates a new date by which to start the statute of limitations running.

Idaho Criminal Rule 38(c) clearly states that a judgment to pay fine or costs, if an appeal is taken, **MAY** be stayed by the district court (emphasis added) ICR38(c). In this case, no stay of any kind was ever entered by the court in the action. Plaintiffs exhibit 1. Although Plaintiff contends that the order amending the judgment in 2004 created a new timeline for the judgment, this is simply not correct. Under IC 18-309, a Defendant in a felony criminal prosecution is entitled to credit for time served. The motion simply corrected an error in the jail time on the original judgment, it did not change the date the money judgment was entered.

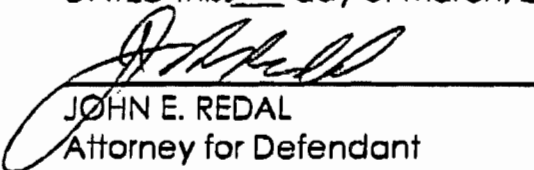
When looking at the issue of collecting the judgment that was entered, the defendant clearly lays out in his brief that collection is done pursuant to the civil rules of collection. During an appeal, Idaho Appellate Rule 13(b) clearly states that the District Court has the power to stay execution of a money judgment upon the posing of a bond. In the criminal case that is at issue, that was never done. Idaho Appellate Rule 13(c) also provides the District Court with the authority to stay execution of a judgment. Again, this was never done.

For all of the foregoing reasons, it is clear that the money judgment entered in the criminal action was fully collectable from its entry in March 2001 and that the time to collect on that debt had expired when Plaintiff filed their action for collection.

CONCLUSION

Defendants motion for Summary Judgment should be granted.

DATED this 20 day of March, 2009



JOHN E. REDAL
Attorney for Defendant

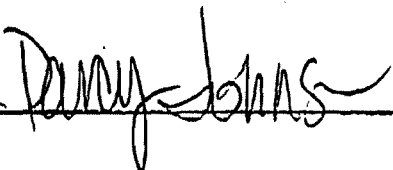
CERTIFICATE OF DELIVERY

I certify that a true and correct copy of the foregoing document was

Mailed: _____
Faxed: _____
Hand delivered: _____
Interoffice: _____

On this 20 day of March, 2009, to:

MARK CLARK
Attorney for Plaintiff
Fax: 208-463-9776

By: 

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

#115ales

2009 APR -3 AM 8:21

CLERK DISTRICT COURT

DEPUTY

MARK L. CLARK, ISB No. 1813
ATTORNEY AT LAW
719 1ST STREET SOUTH
PO BOX 846
NAMPA ID 83653-0846
208-463-8903
208-463-9776 Facsimile

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU INC.,)
an Idaho corporation)
)
Plaintiff,)
)
-vs-)
)
JOHN M. DORSEY)
)
Defendant.)
)
_____)

CASE NO. CV08-712

PLAINTIFF'S SUPPLEMENTAL
RESPONSE MEMORANDUM IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

COMES NOW, the above-named Plaintiff, by and through its undersigned
counsel of record, and hereby submits Plaintiff's Supplemental Response
Memorandum in Opposition to Motion for Summary Judgment.

FACTS

On August 8, 2005, the Defendant, JOHN MICHAEL DORSEY, executed
a notarized written instrument captioned "Idaho Commission of Pardons and

Parole". A copy of said executed document is attached as Exhibit "3", and by this reference thereto made a part hereof as though set forth in full verbatim.

Condition 3 of the SPECIAL CONDITIONS of the parole agreement provides "Pay restitution as determined by the Courts. You must make payment to the sentencing court for fines and other assessments, which were ordered at the time of sentencing. Establish and follow a payment schedule as determined by the Parole Officer."

For purposes of the pending summary judgment, the Plaintiff would request the Court to take judicial notice of the underlying Shoshone County case entitled *The State of Idaho v John M. Dorsey*, Case No. CR-F-00-32907.

ISSUE

Plaintiff would refer the Court to the original memorandums of the parties previously filed herein.

ARGUMENT

As a condition to being released on parole, the Defendant agreed to pay Shoshone County for fines and other assessments. This agreement was signed by the Defendant on August 8, 2005. The agreement constitutes a written contract and is not barred by the statute of limitations. The agreement is a new written promise made by the Defendant to pay the original fines and assessments specified in the Judgment and Sentence of March 19, 2001,

(Defendant's Exhibit "A") and as amended on June 4, 2004, in the Order Amending Judgment (Plaintiff's Exhibit "2").

Pursuant to the terms of the parole agreement attached hereto as Exhibit "3", the Defendant is on parole until August 6, 2020.

Until such time as the defendant is released from parole, he has agreed, by a written contract, to pay the fines and assessments to Shoshone County. Therefore, as long as Defendant is on parole, the debt to Shoshone County is enforceable, and is not barred by the statute of limitations.

CONCLUSION

Defendant is not entitled to a summary judgment.

DATED this 3rd day of April, 2009.



MARK L. CLARK
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2009, a true and correct copy of the within and foregoing instrument was served the following

Redal & Redal
Attorneys at Law
5431 N Government Way #101A
Coeur d'Alene ID 83815

via facsimile transmission to 208-676-8680, and

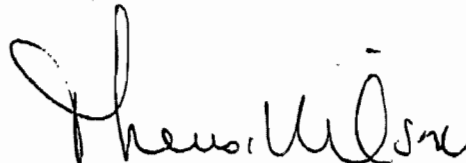
by placing the same in the United States Mail, in an envelope so addressed, at Nampa, Idaho, with first class postage affixed thereon.

and to the following:

Honorable Lancing Haynes
District Court Chambers
Kootenai County Courthouse
PO Box 9000
324 W Garden Avenue
Coeur d'Alene ID 83816-9000

via facsimile transmission to 208-446-1188, and

by placing the same in the United States Mail, in an envelope so addressed, at Nampa, Idaho, with first class postage affixed thereon.



THERESA WILSON

IDAHO COMMISSION OF PARDONS AND PAROLE

P.O. Box 83720, Boise, Idaho 83720-1807

MAXIMUM EXPIRATION: (1) Case #CRF00-32907, August 6, 2020 IDOC #17847

TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS, on the 12th day of March, 2001, JOHN MICHAEL DORSEY was sentenced by the Judge of the District Court of the State of Idaho, in and for the County of Shoshone to be committed to the Idaho State Board of Correction for the crime of Trafficking in Methamphetamine By Manufacturing, Court I, Court Case #CRF00-32907, for a term not to exceed twenty (20) years; and was received by the Idaho Department of Correction on the 20th day of March, 2001.

NOW THEREFORE, the State Commission of Pardons and Parole by virtue of the authority vested in it by the laws of the State of Idaho, hereby authorizes the Executive Director of the Idaho State Commission of Pardons and Parole to allow the said JOHN MICHAEL DORSEY to go on parole outside an institution effective this date, subject to the conditions enumerated on the reverse side of this document and Special Conditions, if any, given below.

This parole is granted to and accepted by the parolee subject to all its terms and conditions and with the understanding that the Commission of Pardons and Parole may, at any time, in case of violation of the terms of this parole, cause the parolee to be returned to an institution to serve the full maximum sentence or any part thereof. Time on parole may be forfeited in whole or in part, if parole is revoked.

The parolee will be under the jurisdiction of Probation and Parole for a minimum of at least one (1) year but not to exceed the maximum sentence. The parolee shall abide by all conditions until a final discharge has been effected.

SPECIAL CONDITIONS: 1. Remain alcohol and drug free. Do not enter any establishment where alcohol is the main source of income. 2. Obtain a substance abuse evaluation at your own expense and as directed by supervising personnel and comply with all directives for treatment/counseling. 3. Pay restitution as determined by the courts. You must make payment to the sentencing court for fines and other assessments, which were ordered at the time of sentencing. Establish and follow a payment schedule as determined by the Parole Officer. 4. The parolee will not associate with known felons (unless specifically allowed by the Commission or supervising personnel); persons involved with illegal activity; or other persons as identified by supervising personnel.

Dated in Boise, Idaho, this 8th day of August, 2005.

IDAHO STATE COMMISSION OF PARDONS AND PAROLE

[Signature]
EXECUTIVE DIRECTOR OR DESIGNEE

THIS IS TO CERTIFY THAT I have read, or have had read to me, and fully understand and accept all the conditions, regulations and restrictions under which I am being released on parole. I will abide by and conform to them strictly, and fully understand that my failure to do so may result in the revocation of my parole.

[Signature]
Signature of Parolee

STATE OF IDAHO
COUNTY OF CLEARWATER

On the 8th day of August, 2005, before me came JOHN MICHAEL DORSEY to me known to be the individual described herein, and who executed the foregoing instrument and acknowledged that he/she executed same.



[Signature]
NOTARY PUBLIC
Commission Expires: 05/08/2009

1. Parolee will go directly to the destination approved by the Commission for Pardons and Parole and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice. Any deviation in travel plans will require prior permission from Commission staff. M.D.
2. Parolee shall (a) work diligently in a lawful occupation or a program approved by the Commission or supervising officer and not change employment or designated program without written permission from the Commission or supervising officer, (b) support dependants (if any) to the best of his/her ability, and (c) live within lawful income without incurring unnecessary indebtedness. M.D.
3. Parolee shall submit a complete and truthful report to the assigned parole officer, or other person designated by the Commission, on forms available, before the fifth (5th) day of each month, or as otherwise instructed. M.D.
4. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee and s/he is unavailable, communication will be directed to the district supervisor. M.D.
5. Parolee will: (a) obey all municipal, county, state and federal laws; (b) conduct him/herself in a manner which is not, nor is intended to be, harmful to him/herself or others; (c) follow written or oral instructions of the parole officer or Parole Commission; (d) not purchase, own, sell, or have in his/her possession or control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose; (e) not have any dangerous weapon used or intended to be used for other than normal or usual purposes, such as knives for household use. M.D.
6. Parolee shall: (a) abstain from excessive use of alcoholic beverages; (b) abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner; (c) freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol or narcotics, which may be at parolee's expense; (d) participate in treatment programs as specified by the Commission or ordered by the parole officer. M.D.
7. Parolee is fully advised that written permission is required for the following: (a) willfully changing job, (b) willfully changing residence, or (c) leaving assigned district or the state of Idaho. M.D.
8. Parolee will submit to a search of person or property, to include residence and vehicle, at any time and place by any agent of Field and Community Services and s/he does waive constitutional right to be free from such searches. M.D.
9. If another jurisdiction has lodged a detainer against a parolee, parolee may be released to the custody of that jurisdiction. Should parolee be released from their custody prior to the expiration of the Idaho parole, or should the detainer be adjudicated without incarceration, parolee will: (a) report immediately to the nearest Adult Parole and Probation office for instructions concerning placement under supervision, if appropriate; and (b) contact the Executive Director of the Parole Commission to advise of address, employment, etc., within five (5) days after release from custody. M.D.
10. The parolee will make him/herself available for supervision and will not actively avoid supervision. M.D.

I have read (or have had read to me) and initialed the above conditions of parole under which I am being released on parole. I will abide by and follow them strictly, and fully understand that my failure to do so may result in the revocation of my parole.

[Signature]
Signature of Parolee

044



STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 5/8/09

2009 APR -6 AM 9:48

CLERK DISTRICT COURT
[Signature]
DEPUTY

MARK L. CLARK, *ISB No. 1813*
ATTORNEY AT LAW
719 1ST STREET SOUTH
PO BOX 846
NAMPA ID 83653-0846
208-463-8903
208-463-9776 Facsimile

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU INC.,)
an Idaho corporation)
)
Plaintiff,)
)
-vs-)
)
JOHN M. DORSEY)
)
Defendant.)
_____)

CASE NO. CV08-712

PLAINTIFF'S POINT AND
AUTHORITY IN SUPPORT OF
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

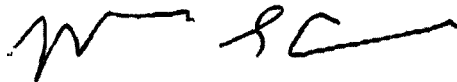
COMES NOW, the above-named Plaintiff, by and through its undersigned counsel of record, and hereby submits Plaintiff's Point and Authority in Opposition to Motion for Summary Judgment, which was inadvertently omitted from Plaintiff's Supplemental Response in Opposition to Motion for Summary Judgment previously filed herein on April 3, 2009.

POINT AND AUTHORITY

ACKNOWLEDGEMENT OR NEW PROMISE - - EFFECT ON
OPERATION OF STATUTE - - EFFECT OF PARTIAL PAYMENT. No
acknowledgement or promise is sufficient evidence of a new or continuing
contract by which to take the case out of the operation of this chapter, unless the
same is contained in some writing, signed by the party to be charged thereby;
but any payment of principal or interest is equivalent to a new promise in writing,
duly signed, to pay the residue of the debt.

Idaho Code 5-238

DATED this 6th day of April, 2009.



MARK L. CLARK
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2009, a true and correct copy of the within and foregoing instrument was served the following

Redal & Redal
Attorneys at Law
5431 N Government Way #101A
Coeur d'Alene ID 83815

via facsimile transmission to 208-676-8680, and

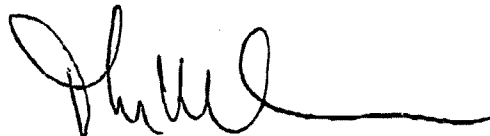
by placing the same in the United States Mail, in an envelope so addressed, at Nampa, Idaho, with first class postage affixed thereon.

and to the following:

Honorable Lancing Haynes
District Court Chambers
Kootenai County Courthouse
PO Box 9000
324 W Garden Avenue
Coeur d'Alene ID 83816-9000

via facsimile transmission to 208-446-1188, and

by placing the same in the United States Mail, in an envelope so addressed, at Nampa, Idaho, with first class postage affixed thereon.



THERESA WILSON

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2009 APR -7 AM 10: 01

CLERK DISTRICT COURT

M. J. [Signature]
DEPUTY

MARK L. CLARK, *ISB No. 1813*
ATTORNEY AT LAW
719 1ST STREET SOUTH
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NAMPA ID 83653-0846
208-463-8903
208-463-9776 Facsimile

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU INC.,)
an Idaho corporation)

Plaintiff,)

-vs-)

JOHN M. DORSEY)

Defendant.)
_____)

CASE NO. CV08-712

PLAINTIFF'S SUPPLEMENTAL
RESPONSE MEMORANDUM IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

COMES NOW, the above-named Plaintiff, by and through its undersigned
counsel of record, and hereby submits Plaintiff's Supplemental Response
Memorandum in Opposition to Motion for Summary Judgment.

FACTS

On August 8, 2005, the Defendant, JOHN MICHAEL DORSEY, executed
a notarized written instrument captioned "Idaho Commission of Pardons and

Parole". A copy of said executed document is attached as Exhibit "3", and by this reference thereto made a part hereof as though set forth in full verbatim.

Condition 3 of the SPECIAL CONDITIONS of the parole agreement provides "Pay restitution as determined by the Courts. You must make payment to the sentencing court for fines and other assessments, which were ordered at the time of sentencing. Establish and follow a payment schedule as determined by the Parole Officer."

For purposes of the pending summary judgment, the Plaintiff would request the Court to take judicial notice of the underlying Shoshone County case entitled *The State of Idaho v John M. Dorsey*, Case No. CR-F-00-32907.

ISSUE

Plaintiff would refer the Court to the original memorandums of the parties previously filed herein.

ARGUMENT

As a condition to being released on parole, the Defendant agreed to pay Shoshone County for fines and other assessments. This agreement was signed by the Defendant on August 8, 2005. The agreement constitutes a written contract and is not barred by the statute of limitations. The agreement is a new written promise made by the Defendant to pay the original fines and assessments specified in the Judgment and Sentence of March 19, 2001,

(Defendant's Exhibit "A") and as amended on June 4, 2004, in the Order Amending Judgment (Plaintiff's Exhibit "2").

Pursuant to the terms of the parole agreement attached hereto as Exhibit "3", the Defendant is on parole until August 6, 2020.

Until such time as the defendant is released from parole, he has agreed, by a written contract, to pay the fines and assessments to Shoshone County. Therefore, as long as Defendant is on parole, the debt to Shoshone County is enforceable, and is not barred by the statute of limitations.

CONCLUSION

Defendant is not entitled to a summary judgment.

DATED this 3rd day of April, 2009.



MARK L. CLARK
Attorney for Plaintiff

IDAHO COMMISSION OF PARDONS AND PAROLE

P.O. Box 83720, Boise, Idaho 83720-1807

MAXIMUM EXPIRATION: (1) Case #CRF00-32907, August 6, 2020 IDOC #17847

TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS, on the 12th day of March, 2001, JOHN MICHAEL DORSEY was sentenced by the Judge of the District Court of the State of Idaho, in and for the County of Shoshone to be committed to the Idaho State Board of Correction for the crime of Trafficking in Methamphetamine By Manufacturing, Count I, Court Case #CRF00-32907, for a term not to exceed twenty (20) years; and was received by the Idaho Department of Correction on the 20th day of March, 2001.

NOW THEREFORE, the State Commission of Pardons and Parole by virtue of the authority vested in it by the laws of the State of Idaho, hereby authorizes the Executive Director of the Idaho State Commission of Pardons and Parole to allow the said JOHN MICHAEL DORSEY to go on parole outside an institution effective this date, subject to the conditions enumerated on the reverse side of this document and Special Conditions, if any, given below.

This parole is granted to and accepted by the parolee subject to all its terms and conditions and with the understanding that the Commission of Pardons and Parole may, at any time, in case of violation of the terms of this parole, cause the parolee to be returned to an institution to serve the full maximum sentence or any part thereof. Time on parole may be forfeited in whole or in part, if parole is revoked.

The parolee will be under the jurisdiction of Probation and Parole for a minimum of at least one (1) year but not to exceed the maximum sentence. The parolee shall abide by all conditions until a final discharge has been effected.

SPECIAL CONDITIONS: 1. Remain alcohol and drug free. Do not enter any establishment where alcohol is the main source of income. 2. Obtain a substance abuse evaluation at your own expense and as directed by supervising personnel and comply with all directives for treatment/counseling. 3. Pay restitution as determined by the courts. You must make payment to the sentencing court for fines and other assessments, which were ordered at the time of sentencing. Establish and follow a payment schedule as determined by the Parole Officer. 4. The parolee will not associate with known felons (unless specifically allowed by the Commission or supervising personnel); persons involved with illegal activity; or other persons as identified by supervising personnel.

Dated in Boise, Idaho, this 8th day of August, 2005.

IDAHO STATE COMMISSION OF PARDONS AND PAROLE

[Signature]
EXECUTIVE DIRECTOR OR DESIGNEE

THIS IS TO CERTIFY THAT I have read, or have had read to me, and fully understand and accept all the conditions, regulations and restrictions under which I am being released on parole. I will abide by and conform to them strictly, and fully understand that my failure to do so may result in the revocation of my parole.

[Signature]
Signature of Parolee

STATE OF IDAHO
COUNTY OF CLEARWATER

On the 8th day of August, 2005, before me came JOHN MICHAEL DORSEY to me known to be the individual described herein, and who executed the foregoing instrument and acknowledged that he/she executed same.

[Signature]
NOTARY PUBLIC

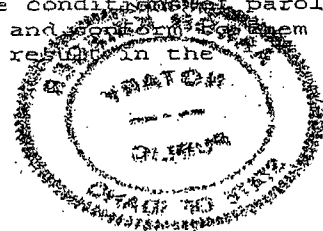
Commission Expires: 05/08/2009



1. Parolee will go directly to the destination approved by the Commission for Pardons and Parole and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice. Any deviation in travel plans will require prior permission from Commission staff. M.D.
2. Parolee shall (a) work diligently in a lawful occupation or a program approved by the Commission or supervising officer and not change employment or designated program without written permission from the Commission or supervising officer, (b) support dependents (if any) to the best of his/her ability, and (c) live within lawful income without incurring unnecessary indebtedness. M.D.
3. Parolee shall submit a complete and truthful report to the assigned parole officer, or other person designated by the Commission, on forms available, before the fifth (5th) day of each month, or as otherwise instructed. M.D.
4. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee and s/he is unavailable, communication will be directed to the district supervisor. M.D.
5. Parolee will: (a) obey all municipal, county, state and federal laws; (b) conduct him/herself in a manner which is not, nor is intended to be, harmful to him/herself or others; (c) follow written or oral instructions of the parole officer or Parole Commission; (d) not purchase, own, sell, or have in his/her possession or control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose; (e) not have any dangerous weapon used or intended to be used for other than normal or usual purposes, such as knives for household use. M.D.
6. Parolee shall: (a) abstain from excessive use of alcoholic beverages; (b) abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner; (c) freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol or narcotics, which may be at parolee's expense; (d) participate in treatment programs as specified by the Commission or ordered by the parole officer. M.D.
7. Parolee is fully advised that written permission is required for the following: (a) willfully changing job, (b) willfully changing residence, or (c) leaving assigned district or the State of Idaho. M.D.
8. Parolee will submit to a search of person or property, to include residence and vehicle, at any time and place by any agent of Field and Community Services and s/he does waive constitutional right to be free from such searches. M.D.
9. If another jurisdiction has lodged a detainer against a parolee, parolee may be released to the custody of that jurisdiction. Should parolee be released from their custody prior to the expiration of the Idaho parole, or should the detainer be adjudicated without incarceration, parolee will: (a) report immediately to the nearest Adult Parole and Probation office for instructions concerning placement under supervision, if appropriate; and (b) contact the Executive Director of the Parole Commission to advise of address, employment, etc., within five (5) days after release from custody. M.D.
10. The parolee will make him/herself available for supervision and will not actively avoid supervision. M.D.

I have read (or have had read to me) and initialed the above conditions of parole under which I am being released on parole. I will abide by and follow them strictly, and fully understand that my failure to do so may result in the revocation of my parole.

[Signature]
Signature of Parolee



053

EVIDENCE 12

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2009 APR -8 AM 10:45

CLERK DISTRICT COURT

DEPUTY

MARK L. CLARK, *ISB No. 1813*
ATTORNEY AT LAW
719 1ST STREET SOUTH
PO BOX 846
NAMPA ID 83653-0846
208-463-8903
208-463-9776 Facsimile

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU INC.,)
an Idaho corporation)
)
Plaintiff,)
)
-vs-)
)
JOHN M. DORSEY)
)
Defendant.)
_____)

CASE NO. CV08-712

PLAINTIFF'S POINT AND
AUTHORITY IN SUPPORT OF
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

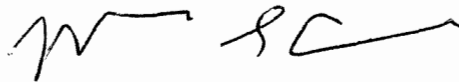
COMES NOW, the above-named Plaintiff, by and through its undersigned counsel of record, and hereby submits Plaintiff's Point and Authority in Opposition to Motion for Summary Judgment, which was inadvertently omitted from Plaintiff's Supplemental Response in Opposition to Motion for Summary Judgment previously filed herein on April 3, 2009.

POINT AND AUTHORITY

ACKNOWLEDGEMENT OR NEW PROMISE - - EFFECT ON OPERATION OF STATUTE - - EFFECT OF PARTIAL PAYMENT. No acknowledgement or promise is sufficient evidence of a new or continuing contract by which to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but any payment of principal or interest is equivalent to a new promise in writing, duly signed, to pay the residue of the debt.

Idaho Code 5-238

DATED this 6th day of April, 2009.



MARK L. CLARK
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2009, a true and correct copy of the within and foregoing instrument was served the following

Redal & Redal
Attorneys at Law
5431 N Government Way #101A
Coeur d'Alene ID 83815

via facsimile transmission to 208-676-8680, and

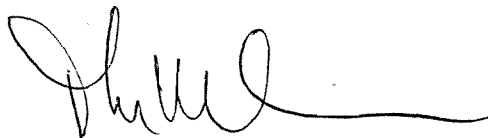
by placing the same in the United States Mail, in an envelope so addressed, at Nampa, Idaho, with first class postage affixed thereon.

and to the following:

Honorable Lancing Haynes
District Court Chambers
Kootenai County Courthouse
PO Box 9000
324 W Garden Avenue
Coeur d'Alene ID 83816-9000

via facsimile transmission to 208-446-1188, and

by placing the same in the United States Mail, in an envelope so addressed, at Nampa, Idaho, with first class postage affixed thereon.



THERESA WILSON

2009 MAY 11 PM 3: 20

CLERK DISTRICT COURT

Jessie Corbin
DEPUTY K

MARK L. CLARK, **ISB No. 1813**
ATTORNEY AT LAW
719 1ST STREET SOUTH
PO BOX 846
NAMPA ID 83653-0846
208-463-8903
208-463-9776 Facsimile

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU INC.,)	CASE NO. CV08-712
an Idaho corporation)	
Plaintiff,)	PLAINTIFF'S SUPPLEMENTAL
-vs-)	MEMORANDUM OF FACTS
JOHN M. DORSEY)	AND AUTHORITY IN OPPOSITION
Defendant.)	OF MOTION FOR SUMMARY
_____)	JUDGMENT

COMES NOW, the above-named Plaintiff, by and through its undersigned counsel of record, and hereby submits Plaintiff's Supplemental Memorandum of Facts and Authority in Opposition of Motion for Summary Judgment.

FACTS

The parties have stipulated to the following facts.

Defendant, JOHN M. DORSEY, hereinafter referred to as "Defendant", was sentenced on the 19th day of March, 2001, by the Honorable Judge Koronen

in Shoshone County case number CR00-32907. Defendant was "sentenced to the custody of the Idaho State Board of Corrections, for a fixed period of five (5) years followed by an indeterminate period of fifteen (15) years, for a total unified sentence of twenty (20) years". See Defendant's Exhibit "A". Defendant was further ordered to "pay a fine in the amount of \$25,000 to the Clerk of the Court, Shoshone County, Idaho". See Defendant's Exhibit "A".

On June 3, 2004, Defendant filed a motion for credit for time served with a supporting affidavit. See Plaintiff's Exhibit "1". The Honorable District Judge Gibler amended the March 19, 2001 Judgment and Sentence "to allow the Defendant 217 days credit for time already served". See Plaintiff's Exhibit "2".

On August 8, 2005, the Defendant executed a notarized written contract captioned "Idaho Commission of Pardons and Parole". See Plaintiff's Exhibit "3", hereinafter referred to as "Parole Agreement".

Condition 3 of the SPECIAL CONDITIONS of the Parole Agreement requires that Defendant "Pay restitution as determined by the Courts. You must make payment to the sentencing court for fines and other assessments, which were ordered at the time of sentencing". See Plaintiff's Exhibit "3".

Plaintiff, Collection Bureau, Inc., as assignee of Shoshone County, filed a civil complaint on the 28th day of January, 2008, to collect the fine imposed by the Judgment and Sentence entered by the Honorable District Judge Koronen on the 19th day of March, 2001.

Defendant filed a Motion for summary Judgment alleging Plaintiff's Complaint is barred by the statute of limitations as specified in *Idaho Code* 11-101 and 11-105.

ISSUES

I

Whether the Parole Agreement signed by the Defendant constitutes an acknowledgement or new promise to take the Plaintiff's cause of action out of the operations of the statute of limitations imposed by *Idaho Code Title 5 Chapter 2*.

II

Whether Shoshone County, State of Idaho, as a third party beneficiary, can sue to enforce the terms of the Parole Agreement.

III

Whether the Parole Agreement is subject to any statute of limitations.

POINTS AND AUTHORITY

I

ACKNOWLEDGMENT OR NEW PROMISE – EFFECT ON OPERATION OF STATUTE—EFFECT OF PARTIAL PAYMENT. No acknowledgment or promise is sufficient evidence of a new or continuing contract by which to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but any payment of

principal or interest is equivalent to a new promise in writing, duly signed, to pay the residue of the debt.

Idaho Code § 5-238

II

ACTION ON WRITTEN CONTRACT. Within five (5) years: An action upon any contract, obligation or liability founded upon an instrument in writing.

The limitations prescribed by this section shall never apply to actions in the name or for the benefit of the state and shall never be asserted nor interposed as a defense to any action in the name or for the benefit of the state although such limitations may have become fully operative as a defense prior to the adoption of this amendment.

Idaho Code § 5-216

III

Rationale and purpose of doctrine. The rationale for the rule that actions by the government are not barred by a statute of limitations is that public rights should not be prejudiced by the tardiness of the government officials to whom those rights are entrusted. The purpose of this immunity is to preserve public rights when the government is slow to assert them on the public's behalf.

51 Am Jur 2d § 78 -

IV

ENFORCEMENT BY BENEFICIARY. A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

Idaho Code § 29-102

V

When a contract is made expressly for the benefit of a third person, the contract may be enforced by the third person at any time before the parties to the contract rescind it. *Blickenstaff v. Clegg*, 140 Idaho 572, 579, 97 P.3d 439, 446 (2004); I.C. § 29-102. "The test for determining a party's status as a third-party beneficiary . . . is whether the agreement reflects an intent to benefit the third party." *Idaho Power Co. v. Hulet*, 140 Idaho 110, 112, 90 P.3d 335, 337 (2004). The third party must show the contract was made primarily for his benefit; it is not sufficient that the third party is a mere incidental beneficiary to the contract. *Id.* (quoting *Adkison Corp. v. Am. Bldg. Co.*, 107 Idaho 406, 409, 690 P.2d 341, 344 (1984); *Fenwick v. Idaho Dep't of Lands*, 144 Idaho 318, 323, 160 P.3d 757, 762 (2007) (quoting *Dawson v. Eldredge*, 84 Idaho 331, 337, 372 P.2d 414, 418 (1962) (quoting *Sacks v. Ohio Nat'l Life Ins. Co.*, 148 F.2d 128, 131 (7th Cir. 1945))). The intent to benefit the third party must be expressed in the contract itself. *Idaho Power Co.* 140 Idaho at 112, 90 P3d at 337 (quoting

Adkison Corp., 107 Idaho at 409, 690 P.2d at 344; *Fenwick*, 144 Idaho at 323, 160 P.3d at 762 (quoting *Adkison Corp.*, 107 Idaho at 409, 690 P.2d at 344).

Partout v. Harper, 145 Idaho 683, 687, 183 P.3d 771 (2008)

ARGUMENT

Defendant's position is that Plaintiff's cause of action is barred by *Idaho Code* 11-101 and 11-105. The Idaho Code sections cited by the Defendant pertain to the time within which a writ of execution may issue on a civil judgment. Plaintiff is not attempting to collect by way of writ of execution on the criminal judgment entered on March 19, 2001. Plaintiff has filed an independent civil action attempting to reduce to a civil judgment the \$25,000 fine imposed against the Defendant by the March 19, 2001, criminal judgment, as reaffirmed and acknowledged by Defendant pursuant to his written Parole Agreement of August 8, 2005. Plaintiff's cause of action is not barred by *Idaho Code* 11-101 and 11-105.

Title 5 Chapter 2 of the Idaho Code codifies the general limitations of actions for the State of Idaho. *Idaho Code* 5-225 provides that the limitations prescribed in Title 5 Chapter 2 apply to the State of Idaho. *Idaho Code* 5-215 provides a limitation of six (6) years for an action upon a judgment. Plaintiff did not file an action on the criminal judgment within six (6) years. However, the Defendant, by a written contract acknowledged the fine imposed by the March

19, 2001, criminal judgment and made a new promise to pay the criminal judgment. Pursuant to *Idaho Code* 5-238, the Defendant's written acknowledgment of the fine and his new promise to pay takes the pending case out of any limitations imposed by Title 5 Chapter 2 of the *Idaho Code*.

The Parole Agreement signed by the Defendant is a written contract with the State of Idaho. Plaintiff's assignor, Shoshone County, is a third party beneficiary to the Parole Agreement. *Idaho Code* 29-102 is the statutory authority for a third party to enforce a contract made expressly for the benefit of the third party. The Idaho Supreme Court has held:

"The test for determining a party's status as a third party beneficiary . . . is whether the agreement reflects an intent to benefit the third party". . . . The third party must show the contract was made primarily for his benefit; it is not sufficient that the third party is a mere incidental beneficiary to the contract. . . . The intent to benefit the third party must be expressed in the contract itself". (*Partout v. Harper* at 687 *supra*, citation omitted).

Special Condition 3 of the Parole Agreement provides in part ". . . You must make payment to the sentencing court for fines and other assessment which were ordered at the time of sentencing". The sentencing court was Shoshone County. By the Parole Agreement, Defendant "must make payment to the sentencing court" (emphasis added), which is Shoshone County. This term of the Parole Agreement is express language reflecting a specific intent to

primarily benefit Shoshone County by requiring the Defendant to pay the fine to Shoshone County as ordered by the criminal judgment entered March 19, 2001.

The Parole Agreement dated August 8, 2005, is a written contract with the State of Idaho. Pursuant to *Idaho Code* 5-216 the five (5) years' limitation of action on a written contract "shall never apply to actions in the name or for the benefit of the state and shall never be asserted nor interposed as a defense to any action in the name or for the benefit of the state." . . . (*Idaho Code* 5-216)

CONCLUSION

Plaintiff's cause of action is based upon a written contract that is never barred by the statute of limitations. Therefore, Plaintiff respectfully submits that Defendant's Motion for Summary Judgment be denied.

DATED this 11th day of May, 2009.



MARK L. CLARK
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2009, a true and correct copy of the within and foregoing instrument was served the following

Redal & Redal
Attorneys at Law
5431 N Government Way #101A
Coeur d'Alene ID 83815

via facsimile transmission to 208-676-8680, and

by placing the same in the United States Mail, in an envelope so addressed, at Nampa, Idaho, with first class postage affixed thereon.

and to the following:

Honorable Lancing Haynes
District Court Chambers
Kootenai County Courthouse
PO Box 9000
324 W Garden Avenue
Coeur d'Alene ID 83816-9000

via facsimile transmission to 208-446-1188, and

by placing the same in the United States Mail, in an envelope so addressed, at Nampa, Idaho, with first class postage affixed thereon.



THERESA WILSON

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: #018

2009 MAY 15 AM 11:56

CLERK DISTRICT COURT
William Reed
DEPUTY *WR*

REDAL & REDAL
JOHN E. REDAL/L. DIANE REDAL
Attorneys at Law
5431 N. Government Way Suite 101A
Coeur d'Alene, ID 83815
Phone: (208) 676-9999
Fax: (208) 676-8680
ISBN#: 4846/5078

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU, INC.,
An Idaho Corporation
Plaintiff,

vs.

JOHN M. DORSEY,
Defendant

CASE NO. CV2008-712
RESPONSE MEMORANDUM

Comes now, JOHN M. DORSEY, by and through his attorney of record, JOHN REDAL, hereby submits the following memorandum regarding IC 5-216 per the request of the Honorable Judge Haynes.

FACTS

The Defendant would refer the court to its statement of facts in their original memorandum and concur with Plaintiffs facts as stated in their response memorandum.

ISSUE

Does IC 5-216 prevent the defendant from asserting his defense of statute of limitations?

DISCUSSION

Counsel for Defendant believes that IC 5-216 clearly does not apply. Common sense shows us that counties are sued all the time and the State is not

named as a party. Shoshone county, just like any other county, operates its own facilities and taxes its own citizens. Further, IC 5-219 3. States "An action upon a statute or upon an undertaking in a criminal action for a forfeiture or penalty to a county or to the people of the state" (emphasis added). The wording here clearly shows a difference between the State and a County. Looking at IC 5-221 also talks about actions against a county. This is important because this shows that there is a clear distinction between a State and a County.

Regarding counsels additional comments about the Parole Agreement, the Defendant respectfully disagrees with the analysis that this somehow reaffirmed the debt. That form clearly states that the defendant "fully understand and accept all the conditions, regulations and restrictions under which I am being released on parole." This document is purely a stock form signed by all parolees and is the defendants agreement to do certain things while on parole, not a reaffirmation of a debt.

CONCLUSION

Defendants motion for Summary Judgment should be granted.

DATED this 15 day of May, 2009



JOHN E. REDAL
Attorney for Defendant

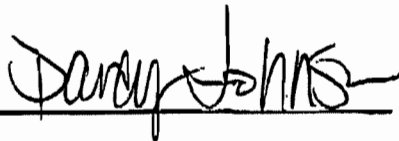
CERTIFICATE OF DELIVERY

I certify that a true and correct copy of the foregoing document was

Mailed: _____
Faxed: _____
Hand delivered: _____
Interoffice: _____

On this 15 day of March, 2009, to:

MARK CLARK
Attorney for Plaintiff
Fax: 208-463-9776

By: 

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED. } SS.
2/1/09

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CLERK DISTRICT COURT
Cathy Victoria
DEPUTY *o w*

REDAL & REDAL
JOHN E. REDAL/L. DIANE REDAL
Attorneys at Law
5431 N Government Way #101A
Coeur d'Alene, ID 83815
Phone: (208) 676-9999
Fax: (208) 676-8680
ISBN#: 4846/5078

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU INC.	)	CASE NO. CV2008-712
)	
Plaintiff,	)	ORDER GRANTING SUMMARY
	)	JUDGMENT
vs.)	
)	
JOHN DORSEY,)	
)	
Defendant.)	
_____)	

THE COURT, reviewing the parties briefs and listening to oral argument of the parties regarding Defendant's motion for summary judgment the Courts hereby orders the following;

1. The Defendant's motion for summary judgment is hereby granted and the case is hereby dismissed.

IT IS SO ORDERED.

DATED this 9 day of June, 2009

Lansing L. Haynes
JUDGE

I certify that a true and correct copy of the foregoing document was:

Mailed: _____
Faxed: X
Hand delivered: _____
Interoffice: _____

On this 10 day of June, 2009 to:

John Redal
Attorney for Defendant
Fax: 208-676-8680 #211 G

Mark Clark
Attorney for Plaintiff
Fax: 208-463-9776 #211 G

DANIEL J. ENGLISH

By: Sherry Bluffman



STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED: #974

2009 JUL 21 PM 3: 21

CLERK DISTRICT COURT
[Signature]
DEPUTY

TERRY MICHAELSON
HAMILTON, MICHAELSON & HILTY, LLP
Attorneys at Law
1303 - 12th Avenue Road
P. O. Box 65
Nampa, ID 83653-0065
(208) 467-4479
(208) 467-3058 Facsimile
ISB No. 2025

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

COLLECTION BUREAU, INC., An)	Case No. CV 2008-712
Idaho Corporation,)	
)	NOTICE OF APPEAL
Plaintiff-Appellant,)	
vs.)	Fee: \$101.00
)	Confirmation Number: 209246
JOHN M. DORSEY,)	Fax Number: (208) 446-1188
)	
<u>Defendant-Respondent.</u>)	

TO THE ABOVE NAMED RESPONDENT JOHN M. DORSEY, AND TO JOHN E. REDAL, HIS ATTORNEY OF RECORD AND TO THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, COLLECTION BUREAU, INC. ("CBI") by and through its counsel of record, TERRY MICHAELSON, appeals against the above named Respondent to the Idaho Supreme Court from the Order Granting Summary Judgment entered on June 10, 2009 in the above entitled action by the Honorable Lansing L. Haynes, District Judge presiding.

07/27/2009 10:30 AM 200 401 0000

2. The Appellant has the right to appeal to the Idaho Supreme Court, and the Order Granting Summary Judgment described in paragraph 1 above is an appealable order under and pursuant to Rule 11 of the Idaho Appellate Rules.

3. A preliminary statement of the issues on appeal is as follows:

a. Whether the court erred in granting summary judgment in favor of the Defendant, dismissing the Plaintiff's claim upon the court's finding that the claim is barred by the statute of limitations.

b. Whether the court erred in finding that the Plaintiff's complaint failed to properly allege a basis for recovery upon a third party beneficiary contract theory.

c. Whether the court erred in determining that it could not find any breach of contract by the Defendant upon the factual record before the court.

d. Whether the court erred in finding that the Plaintiff lacked standing to pursue recovery upon a third party beneficiary breach of contract theory.

4. This appeal is taken upon matters of law. The parties have stipulated to the facts that form the basis for the appeal.

5. The Appellant requests the preparation of the entire reporter's transcript for the hearing on Defendant's Motion for Summary Judgment held on April 21, 2009.

6. The Appellant requests that the following documents be included in the clerk's record in addition to those automatically included under Rule 28 I.A.R.:

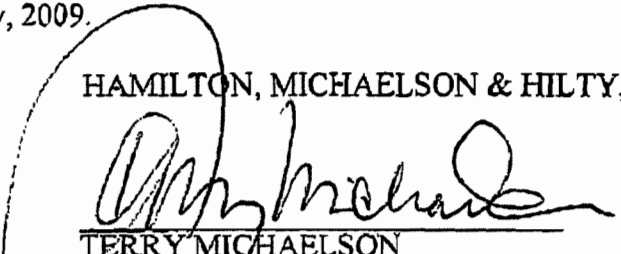
a. All motions, memoranda, affidavits, objections, exhibits, and other documents pertaining to the Motion for Summary Judgment.

7. I certify:

- a. That a copy of this Notice of Appeal has been served on the reporter;
- b. That the clerk of the district court has been paid or will be promptly paid upon receipt of the estimated fee for preparation of the reporter's transcript;
- c. That the estimated fee for preparation of the clerk's record has been paid or will be paid upon receipt of the estimate for that fee;
- d. That the appellate filing fee has been paid; and
- e. That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 21st day of July, 2009.

HAMILTON, MICHAELSON & HILTY, LLP



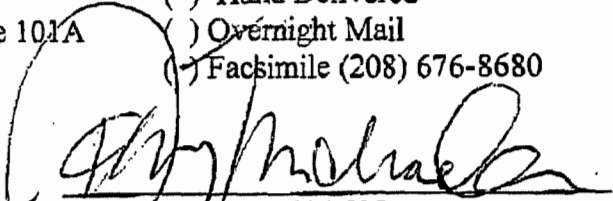
TERRY MICHAELSON
Attorneys for Plaintiff

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on the 21st day of July, 2009, I caused a true copy of the foregoing Notice of Appeal to be served by the method indicated below, and addressed to the following:

John E. Redal
Redal & Redal
5431 N. Government Way, Suite 101A
Coeur d'Alene, Idaho 83815

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile (208) 676-8680



TERRY MICHAELSON

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

COLLECTION BUREAU, INC , an)	
Idaho Corporation)	
)	
Petitioner/Appellant	)	CIVIL CASE NUMBER
	)	CV 08-712
VS)	
)	
JOHN M DORSEY	)	SUPREME COURT
	)	NUMBER 36734-2009

CLERK'S CERTIFICATE OF SERVICE

I, Daniel J English, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served Or mailed, by United States Mail, one copy of the Clerk's Record and the Reporter's Transcript to each of the Attorneys of Record in this cause as follows:

TERRY MICHAELSON
Attorney at Law
P O Box 65
Nampa, Idaho 83653-0065

JOHN E REDAL
Attorney at Law
5431 N Government Way Ste 101A
Coeur d'Alene, Idaho 83815

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
the said Court this 5 day of Oct, 2009

Daniel J English
Clerk of the District Court

By: _____
Deputy Clerk