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## I. INTRODUCTION

The Defendants' Brief, received on January 17, 2012, contains many misrepresentations. Plaintiff wishes to address these problems as put forth in the brief.

Page one of the brief seems to accurately reflect the scenario of events and only needs clarification on one point. Defendant's attorney is mistaken when they say that no additional information could be located; this issue will be address more fully later in this response.

Page 2 is correct except that the Court acknowledging disputed facts, chose to rule unfavorably, to the plaintiff. Judge Pomeroy mentions that these issues would be taken up by the Court of Appeals, presumably knowing that there were disputed facts.

## II. STATEMENT OF THE ISSUES

1. Whether or not the Department of Corrections' Public Disclosure Unit used due diligence in searching for requested records?
2. Whether or not existing case law sets the start time for the statute of limitations as it applies to the PRA?
3. Whether or not subsequent records requests and documents received indicated that the first disclosure was not complete?
4. Whether or not the Department produced all the documents requested relating to inmate's personal clothing.
5. Whether or not the Department's piecemeal response to a records request would allow a timely response to that request.

Plaintiff's stipulates that the Defendant's COUNTER STATEMENT OF THE CASES reflect the case, from the defendant's point of view.

### III. ARGUMENT

First, let us discuss the subject of Glucosamine/Chondrotin. The public disclosure received in answer to **PDU 8623** consisted of 66 pages of emails and other documents with only four (4) emails mentioning the requested subject matter in those 66 pages. The defendant's counsel contends that the duplications occurred because there were different email strings that had the same information in them. Plaintiff contends that although that fact indeed may be true it does not relieve the records official from redacting the information, either to insure that all material is discloseable under the PRA and/or to preclude duplication of email strings or any other such events from occurring. In just this example plaintiff would have paid substantially less for the disclosure and would spent far less time trying to sort out the extraneous information.

Plaintiff withheld the information as to the names of the two individuals feeling that if an adequate search of records would-have-been completed then those emails would have been included in the disclosed documents. The issue of an adequate search is a subject addressed by the court along with what a requestor has in his/her possession at the time of the records request. The authors of those emails, were both in the medical department; it seems that there records should have been logical areas to be searched to discover any relevant information concerning an OTC (Over The Counter) medication/supplement. Knowing that current computer science has advanced to a stage where search engines can separate millions of documents in the blink of an eye negates the premise that the records staff used fundamental fairness in their search effort.

Concerning the lack of filing of a brief: Mr. Bartz, **pro se** complied with all aspects of the rules of the court, as he knew them. If a brief was not filed it was because he was under the assumption that he had adequately stated the case in prior documents

Plaintiff's second (2) request, **PDU 17117**, for emails concerning Glu/Chon submitted on January 24, 2011, and in response, two additional pages concerning the subject were disclosed. The PDU informed plaintiff that additional information was still available and they would conduct further inquiry. Eventually the missing emails were disclosed after the plaintiff informed the PDU that the emails had not been included in the documents received. Plaintiff did everything he could, except the actual work, to point the records staff to the right person.

What guarantee does the plaintiff have that if he had given the names of the persons having sent the emails that a more thorough search would be undertaken? Only after having pointed DOC to the correct person did they come up with two more sets of records. The plaintiff still lacks assurance that all records were disclosed based upon the facts, as presented. It is not the job of the requestor to limit the search area, or even set the parameters of a search, rather it is the duty of the PDU to search all relevant databases for information that is requested.

Plaintiff points out that the final, hopefully, installment of the records received concerning the subject matter; glucosamine/chondroitin; were not received until some time in 2011, further negating the argument that the litigation is past the statute of limitation, in addition to the fact that no 'privilege log' has ever been received by the plaintiff.

Under **B. PDU #7362/Thurston County Superior Court Cause 10-2-002314-1**, Defendant's counsel took a fairly straightforward process and cobbled it all up. The request was made, and given the assignment **PDU-7362** by the PDU, for records held by the Department. Plaintiff was notified that 250 pages had been found and that after receiving payment for those pages then more would be forthcoming. Plaintiff rightly disputed the 'piece-meal' approach since this process only prolonged the plaintiff's ability to research the relevant records. The money was paid; the records were received; plaintiff noted the large number of duplications and shear bloat; the PDU reduced the monetary cost of the next installment; the second and last installment was received; plaintiff noted this installment was also filed with unwanted material, duplications and shear bloat. Plaintiff never asked for pictures of laundry carts or copies of the clothing matrix, all of which were in the second installment.

Plaintiff did receive the letter stating that the PDU felt the information requested was complete but informed the PDU that numerous sections of the request had not been addressed. Subsequent disclosure found that information pertinent to the request had not been disclosed. One example of this was that the new clothing matrix would not apply to the females at Purdy.

The defendant's counsel, on page 8, goes into much detail about the records request concerning TORT claims by inmates. The fact is not in dispute. The PDU did supply plaintiff with two responses, which were all the records that were needed to show that the problem did not lay with frivolous TORT claims, rather in the fact that DOC failed to recognize that staff have lost inmates shoes at an alarming rate. Plaintiff is reminded to the proverbial lost-socks-in-the-dryer, where do they go? Inmate's shoes are

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taken, for whatever reason, and they just disappear. Since all the material I needed to prove that assumption had been released there was no need to pay for more of the same, and since no payment was forthcoming then it could be logically assumed that the PDU would stop looking; end of matter.

**Response to Defendant's Argument:**

A. The defendant's counsel argues that **Danes v. Spokane County**, 111 Wn.App 342, 44 P.3d 909 (2002) “. . . it was not the sole basis of the court's dismissal decision and the superior court's decision should be upheld,” but fails to state what other justification was used.

B. The issue of the statute of limitation has been adequately addressed by the statute in **RCW 42.56.210(3)**, and the Washington Court of Appeals in **Progressive Animal Welfare society v. Univ. of Wash.** 125 Wn.2d 243, 884 P2d 592 (1994); **Rental Housing Ass'n of Puget Sound v. city of Des Moines**, No. 80532-6; in stating: “to challenge a public agency's claim of exemption or withholding of documents does not begin to run until a public agency provides a detailed privilege log.”

Plaintiff additionally notes that those records received after the last letter to the PDU contained the emails originally sought so it has been less than a year as of this date when full disclosure occurred.

Defendant's attorney states: “Further, this Court is not bound by Division 1 of the Court of Appeals' recent decision in **Tobin v. Worden.**” Plaintiff suspects that although this Court may not be bound by any decision of a lateral court it would certainly pay attention to the decision. No privilege log was received by the plaintiff, in either case.

C. Plaintiff concurs that the litigation **was not** frivolous.

**D.** Plaintiff disputes that the PDU conducted an adequate search when after requesting specific records the PDU failed to produce them. Only after repeated letters and handholding by the plaintiff did the PDU produce those documents.

Defendant's attorney notes that the "Department made several efforts to identify and find the two emails" which is erroneous. The Department made an initial search, producing 66 pages of frivolous documents, except for four emails, and only after one additional records request and guiding document were the emails found. Plaintiff contends that if the PDU can only find glaringly evident documents in answer to a request then how is a requestor to know what they are missing. Having to 'point' the Department to a specific person negates the presumption that all the records bases will be adequately searched. Plaintiff continues to contend that although he hopes that all the records have been produced there is no guarantee, based on the fact that they were able to produce more disclosure after being guided that left to their own devices the PDU has searched diligently enough to find all the records concerning the requested subject matter.

Defendant's attorney contends that because Mr. Bartz failed to produce the two emails in any of his pleadings that it is somehow a bogus case. If the plaintiff had produced the documents then what assurance would he have that the Department made a thorough search; they did produce two additional documents that were not disclosed in the original 66 pages and eventually the 2 emails... Plaintiff submits those emails along with the Kite from Ray Begroos, Health Care Manager HCM of AHCC as **Exhibit A**.

As to where Mr. Bartz got the emails, it was discussed in testimony to the court, as noted on page 21 of the Verbatim Report of Proceeding. Defendant's attorney could

have easily picked up the phone and verified this fact but chose to cast doubt on the validity of the plaintiff's statement, for whatever reason.

E. If the Department did in fact produce all the records requested then it is evident that they probably have the worst records keeping department of any state agency. To tell a requestor that a state agency does not keep the following records is frightening: records of the cost for repairs of washers and dryer's; records that show that no expenditure forecasts were done to plan for the additional cost of the laundry services to do a vastly increased work load; the Department does not keep records on the cost running a laundry facility for specified years; that there are no records that show the 'actual or projected' cost of providing inmates with specified clothing; that because inmates have a history of disputing DOC policies, there was no projected cost of litigation. If this Court believes that such poor records keeping exist, the defendant's may prevail but the plaintiff cannot see that outcome. It would be tantamount to this Court hearing a case and not keeping a record of it or never planning in advance so that all the cases before them can be heard.

Defendant's attorney contends that Mr. Bartz 'failed to produce any evidence' that the Department failed to produce all the records. No evidence but common sense.

F. The Tort claim issue is not a 'bone-of-contention' and plaintiff has no issue other than the fact that the 'piece-meal' production of documents would have taken years to complete.

G. Mr. Bartz contends that the Department acted in bad faith by failing to redact unnecessary documents; provide documents relative to the request; failed to produce all

the documents that must be kept or otherwise the Department could not function; and lastly failed to fulfill its obligation under **RCW 42.56**.

Defendant's attorney now quotes the new **RCW 42.56.565(1)** under which a person serving time can no longer prevail, monetarily, against an agency, even as to recovering filing costs. This provision basically assures that no valid lawsuits will be filed by inmates for the wrongful actions of any state agency under the Public Records Act.

Inmates, just like other persons, must pay to initiate legal action and if they cannot at least recoup their money why would they file an action? Who would benefit from such an outcome? How could any court sanction such an act when its language condones nondisclosure by an agency? The very nature of the act makes it possible for an agency to ignore requests from inmates, no matter how valid the request. Why answer an Inmate's request if no sanctions can be brought for such an act? To pick out one group of persons, no matter their status, smacks of discrimination on the part of persons proposing such legislation and flies-in-the-face of a doctrine of fairness.

Where an act is designed solely to further disenfranchise an already disadvantaged group of persons; where an act serves to remove just recompense and reasonable deterrent against deliberate negligence by the State; where an act serves to prevent an already disadvantaged person – an incarcerated, and often pro se litigant – from receiving just payment for his long struggles to receive documents to which he is by law entitled, this act serves to further punish that party beyond what the law and his sentence allows, and is a direct threat to the right of prisoners to protest and litigate in order to seek reasonable treatment; to protect what few rights remain to them; to

prosecute claims of violation of constitutional liberties; and, in short, serves to completely take from prisoners their last vestige of humanity, and their last bastion of protection against inhumane treatment.

If the Attorney General's staff condones this it would be an entirely self-serving act done solely for the purpose of preventing prisoner litigation in attempts to secure and support their claims of violation of DOC policy and Constitutionally secured liberties.

Wow! Mr. Bartz "chose to hide the ball." Mr. Bartz did not have the ball. It was in the hands of the PDU in the form of a records request, which the Department continually dropped.

#### **IV. CONCLUSION**

In conclusion, plaintiff answers the questions asked on page 1:

1. Whether or not the Department of Corrections' Public Disclosure Unit used due diligence in searching for requested records?

Due diligence would have uncovered the records concerning Glu/Chon. Due diligence would have uncovered all the missing records concerning inmate clothing and the cost to DOC of doing laundry and all other requests in that document.

2. Whether or not existing case law sets the start time for the statute of limitations as it applies to the PRA?

Current case law and the RCW require DOC to submit a privilege log, which they did not do.

3. Whether or not subsequent records requests and documents received indicated that the first disclosure was not complete?

Only after being directly pointed was the PDU able to fulfill the requirement of the RCW to provide all requested documents, concerning Glu/Chon and they still have not produced to other records requested, making a sham of the intent of the legislation.

4. Whether or not the Department produced all the documents requested relating to inmate's personal clothing.

Only if one believes that an agency can function within a budget by such slipshop accounting and records keeping methods could anyone think that all the records were produced.

5. Whether or not the Department's piecemeal response to a records request would allow a timely response to that request.

The period with which the Department answered the requests indicates a lackadaisical approach to the job and full disclosure of the requests for information on the TORT claims could have taken years to complete.

Submitted this 2<sup>nd</sup> day of <sup>February</sup>~~January~~, 2012

Submitted by:

George Bartz  
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**CERTIFICATE OF SERVICE**

I certify that I have mailed the following documents to by placing them in the Legal Mail of the Minimum Security Unit, Washington State Reformatory on the date indicated below: PLAINTIFF'S REPLY TO RESPONDENT'S BRIEF WITH EXHIBIT A; CERTIFICATE OF SERVICE. The documents were caused to be delivered to the following parties or their respective lawyers.

TO: Candie M. dibble, WSBA #42279  
Ohad M. Lowy, WSBA #33128  
Assistant Attorneys General  
Attorney Genral's Office  
POB 40116  
Olympia, WA 98504-0116

12 FEB -6 11 59 AM '08  
STATE OF WASHINGTON  
COUNTY OF THURSTON  
CLERK OF SUPERIOR COURT

I declare under the penalty of perjury in the State of Washington that the foregoing is true and correct.

George Bartz 1-30-12  
George Bartz, Plaintiff pro se  
985210 MCC/MSU  
POB 7001, D105B  
Monroe, WA 98272

**CERTIFICATE OF SERVICE**

# EXHIBIT

A

MEDICAL RESPONSE FORM

RETURN TO: Bartz, George

DOC: 985210

UNIT: LA23L

DATE: 3/11/09

MESSAGE: \_\_\_\_\_

This is a follow up  
per your discussion  
with Mr. Bergroos.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Bergroos, Raymond (DOC)**

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**From:** Kerr, Rhonda M. (DOC)  
**Sent:** Wednesday, March 11, 2009 1 01 PM  
**To:** Bergroos, Raymond (DOC)  
**Subject:** FW: Outside meds

Here you go

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**From:** Rossi, Andre F. (DOC)  
**Sent:** Wednesday, March 11, 2009 12:55 PM  
**To:** Kerr, Rhonda M. (DOC)  
**Cc:** Bergroos, Raymond (DOC)  
**Subject:** Re: Outside meds

No, but if it is not available at the Inmate store currently it will be with new OTC policy within a month or two. The store may make it available to purchase at this time.  
The obly other way is following DOC 600 020 which requires a \$50 application fee.

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**From:** Kerr, Rhonda M. (DOC)  
**To:** Rossi, Andre F. (DOC)  
**Cc:** Bergroos, Raymond (DOC)  
**Sent:** Wed Mar 11 11:54:21 2009  
**Subject:** Outside meds

Andre,  
What is the procedure for an offender to receive non-formulary medications from an outside source. We have an offender who's family wants to send in glucosamine/chondroitin. Can they send it directly to him?

Thanks, Rhonda

*Rhonda M. Kerr, R.Ph.*  
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*Clinical Pharmacist*  
*Airway Heights Correction Center*  
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