Case No. _____

IN THE UNITED STATES SUPREME COURT

Andrew Joseph Avitable, osb, tert.,
il Marchese di Monte Bianco,
(aka "Larson" by coercion only),
Petitioner,

vs.

STATE OF WYOMING,
Respondent.

Appendix A
Wyoming Supreme Court Case # S-23-0119 Decision & #S-23-0120 Decision

Petitioner
Andrew J. Avitable, osb, tert.
il Marchese di Monte Bianco
c/o WDOC #23916 – WHCC
P.O. Box 160
Newcastle, WY 82701

Respondent's Attorney,
Wyoming Attorney General
2320 Capitol Ave.
Cheyenne, Wyoming 82002

***All Litigants are Contained within the Caption**

This Appendix shows:

1. The Wyoming Supreme Court used my inability to pay the remaining $100.^{00}$ District Court preparation fee as an excuse to block my court access and deny my Complaint without addressing the merits of my claims despite my having already paid the $140.^{00}$ Supreme Court Filing Fee.
2. It shows the date my filing was denied and that I am within my 90 day time limit.

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2023

IN THE SUPREME COURT
STATE OF WYOMING
FILED

JUN - 6 2023

SHAWNA GOETZ, CLERK

ANDREW J. LARSON a/k/a ANDREW J. AVITABLE,

Appellant (Plaintiff),

v.

STATE OF WYOMING,

Appellee (Defendant).

S-23-0119, S-23-0120

ORDER DISMISSING APPEALS

This matter came before the Court upon its own motion following a review of recently docketed appeals. The Court, having reviewed the file, finds the captioned appeals should be dismissed. Appellant took appeal S-23-0119 to challenge the district court's Order Dismissing Complaint for Declaratory Judgment. He took appeal S-23-0120 to challenge the district court's Order Dismissing Complaint for Breach of Contract. Both orders were entered January 6, 2023. On January 25, Appellant filed two *pro se* notices of appeal. He later requested to proceed on appeal *in forma pauperis*. On February 15 and 17, the district court entered two orders, both titled Order Denying Motion to Proceed on Appeal in Forma Pauperis. Thus, pursuant to W.R.A.P. 2.09(c), Appellant had thirty days from the entry of those orders to pay the district court docket fees, or "the appeal will not proceed further." That rule provides:

I complied with the second part of this rule (unrelated in reality)

W.R.A.P. 2.09. Payment of Filing Fee, Motion to Proceed in Forma Pauperis, and Disposition.

(a) At the time of filing the notice of appeal, an appellant shall deliver to the clerk of the trial court the filing fee for docketing the case in the appellate court and the filing fee for the trial court clerk to prepare the record or a motion for leave to proceed in forma pauperis together with a proposed order and an affidavit documenting the appellant's inability to pay fees and costs or to give security. Except as provided below, a docket fee shall be collected for each notice of appeal pursuant to Wyo. Stat. Ann. § 5-3-205 and § 5-9-135 and court rule. The fee for filing an appeal or other action in the supreme court shall be

set by order of the court and published in Rules of the Supreme Court of Wyoming.

(b) In civil cases, the trial court may not permit an appellant to proceed on appeal in forma pauperis unless such status is permitted by statute or constitutional right. See e.g. *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996) (permitting indigent parent to proceed in forma pauperis in appeal challenging termination of parental rights). Incarceration alone does not confer in forma pauperis status.

(c) If the trial court denies the motion for leave to proceed in forma pauperis, an appellant may, within 30 days of entry of the order denying the motion, deliver to the clerk of the trial court the filing fee for docketing the case in the appellate court. If such fee is not paid within those 30 days, the appeal will not proceed further.

Under that rule, docket fees were due for payment no later than March 17 and 20, respectively. Rule 1, Rules for Fees and Costs for District Courts; Rule 3, Rules of the Supreme Court of Wyoming.

According to correspondence from the district court clerk, the district court clerk received its docket fee May 16, 2023. This Court finds that W.R.A.P. 2.09(c) requires dismissal. This Court finds that rule is clear. Because Appellant did not deliver the docket fees to the clerk of district court within thirty days of entry of the Orders Denying Motion to Proceed on Appeal in Forma Pauperis, his appeals should not proceed further. It is, therefore,

Only $280.00 of the $480.00 was returned.

ORDERED that the captioned appeals be, and hereby are, dismissed; and it is further

ORDERED the appellate docket fees shall be returned to Appellant; and it is further

ORDERED that Appellant's requests to amend the captions in these appeals be, and hereby are, denied as moot.

DATED this 6th day of June, 2023.

BY THE COURT:

Kate M. Fox

KATE M. FOX
Chief Justice

Docket Fees were paid in January of 2023. It was the additional $100.00 District Court File Preparation fee that I was unaware of that didn't get paid until May 16, 2023.

WYOMING DEPARTMENT OF CORRECTIONS	WDOC Form #320	Page 1 of 1
	Inmate Communication Form	Last Revised: 12/02/16

INMATE COMMUNICATION FORM

Inmate Name: Andrew Larson WDOC # 23916 Unit/Cell: C-1-202

To: Mail Room / Business Office Subject: Attached Envelope + Check Requests

State your problem, question or request here:

Attached you will find 2 seperate Check Requests addressing 2 Separate cases (Case#22-160 and Case#22-168) That were denied together and are being appealed. The appeals are being sent in the same envelope. Please put both checks in the attached Envelope.

Thank you.

Inmate Signature Larson etc Date: 1/22/23

WDOC Response to Problem or Request:

This is complete.

Notes

Request is Approved
Request is Denied

WDOC Staff Signature: Date: 1/27/23
Printed Name: Ronna M. Denny

This was the payment of $140.00 for end of the two cases #22-160 which is Sup. Ct. #5-23-0119 and #22-168 which is Sup. Ct. #5-23-0120. Received in Jan. of 2023 - only the extra $100.00 was paid in. Reviewing the filing fees with District Court for the delayed.

($280.00)

The Wyo. Sup. Ct. turned both of my $140.00 Filing Fee for both case #S-23-0119 and #S-23-0120 but my $100.00 District court for each case ($200.00) was never returned. The case was thrown out because the additional $100.00 each was not paid until May 16, 2023, despite the $140.00 docket Fee having been paid in January of 2023. The Docket Fees of $140.00 each arrived in January, but the preparation fee for the District Court was not paid until May. The Wyo. Sup. Ct. dismissed the case for the Preparation fees but stated it was dismissed for delay of the Docket fees, a misrepresentation.

STATE OF WYOMING VENDOR #MISCCASH ANDREW LARSON #23916 4407483

VENDOR INVOICE NUMBER	AGCY	AGCY SHORT NAME	AGENCY PHONE	TRANSACTION IDENTIFICATION	AMOUNT
S-23-0120	101	REFUND OF APPEAL DOCKET FEES - S-23-0120		SC0607230000395	75.00
S-23-0120	101	REFUND OF APPEAL DOCKET FEES - S-23-0120		SC0607230000395	55.00
S-23-0120	101	REFUND OF APPEAL DOCKET FEES - S-23-0120		SC0607230000395	10.00
S-23-0119	101	REFUND OF APPEAL DOCKET FEES - S-23-0119		SC0607230000395	75.00
S-23-0119	101	REFUND OF APPEAL DOCKET FEES - S-23-0119		SC0607230000395	55.00
S-23-0119	101	REFUND OF APPEAL DOCKET FEES - S-23-0119		SC0607230000395	10.00

~Page TOTAL : 280.00
TOTAL: 280.00

****
Wyoming Honor Conservation Camp
Task: 3931777
Date: Jun 13 2023 10:12AM
User: Bcoste
Comment: CK-State of Wyo-Refund Docket Fe

Resident: 23916
Name: Larson, Andrew Joseph
DOB: May 19, 1967
Housing: WHCC, A, 86

Type: 1 - Mailroom
Serial #: 4407483
Amount: $280.00
Debt Paid: $0.00
Debt Balance: $0.00
Net Amount: $280.00
Balance: $1932.21

Wyoming Honor Conservation Camp
****

Case No. _____

IN THE UNITED STATES SUPREME COURT

Andrew Joseph Avitable, osb, tert.,
il Marchese di Monte Bianco,
(aka "Larson" by coercion only),
Petitioner,

vs.

STATE OF WYOMING,
Respondent.

Appendix C
Reprinted Copy of Original Complaint

Petitioner
Andrew J. Avitable, osb, tert.
il Marchese di Monte Bianco
c/o WDOC #23916 – WHCC
P.O. Box 160
Newcastle, WY 82701

Respondent's Attorney,
Wyoming Attorney General
2320 Capitol Ave.
Cheyenne, Wyoming 82002

***All Litigants are Contained within the Caption**

Already sent to the A.G.

Andrew J. Avitable
il Marchese di Monte Bianco
(aka "Larson" by coercion only)
c/o WDOC #23916 – WSP
P.O. Box 400
Rawlins, WY 82301

IN THE SECOND JUDICIAL DISTRICT COURT OF WYOMING

Andrew J. Avitable,	)	
(aka "Larson" by coercion only),	)	
(Avitable is Defendant's Legal Name),	)	Case # _____
Complainant,	)	
vs.	)	
STATE OF WYOMING,	)	
Defendant,	)	

COMPLAINT FOR BREACH OF CONTRACT

COMES NOW, Andrew J. Avitable (Andrew) (mentally handicapped due to autism and severe head injuries), complainant, *in propria persona,* in the above captioned case, who asks this Court to rule that a Material Breach of Contract has occurred in the plea contract of the above captioned case. Andrew provided notice of his intent to file a complaint for Breach of Contract to the State of Wyoming, by and through Governor Gordon in a letter that was written on November 25 & 26; and was mailed on November 29, 2021. The information in items 1-5 are only presented to provide background information so the Court is completely informed. Andrew, the Marchese di Monte Bianco (a very high ranking European Royal Title) states as follows:

Personal Background Information

1. First and foremost, Andrew apologizes in advance for any miscommunication or difficulty in the reading this filing as one of the side effects of his mental handicaps is the inability to communicate adequately while under emotional trauma, mental stress, total despair and/or uncontrollable injustice. Thus, the inability to adequately communicate leads to increased stress which leads to an exacerbation of the entire problem, creating a perpetual cycle resulting in an environment primed for coercion through the manipulation of his handicaps. This process is plainly seen and abused by others.

2. Your Defendant's Legal Name always has been and always will be Andrew Joseph Avitable (Andrew); a name he never abandoned and never will. He was prosecuted under the unwanted alias of "Larson", under duress. Andrew was coerced to use the last name of Larson in Wyoming. Andrew advised his Appointed Public Defender that "Larson" was not his name and that his name is "Avitable" but the Public Defender falsely instructed Andrew that he had to defend himself under the unwanted alias of "Larson" and that he could correct the name after the case was over. This has resulted in much confusion and unnecessary complications; and was a deliberately rendered false statement.

3. Andrew NEVER legally changed his last name in any jurisdiction. He willingly accepted hyphenation with the addition of "Navarro" (Avitable-Navarro) to accommodate for his second wife being blind and incapable of learning how to change her signature to "Avitable," but never legally changed his name. His third wife, Ingrid L. Larson, kept trying to get him to change his last name to "Larson," which he refused to do because he wanted his children to be able to find him in the event they decided to look for him after they reached the age of eighteen. Andrew has three sons (Andrew Joseph, Michael Anthony and James Louis) with his first wife, Alba X. Monge; and one daughter (Vanessa Marie) with his second wife, Sandra E. Navarro. Andrew's other primary reason for refusing to change his name was due to his Christian teachings that he MUST honor his father and mother (Fourth Mosaic Commandment). Changing his name would dishonor his entire paternal lineage; plus he is very proud of his royal heritage and title, which he would never abandon. In fact, Andrew informed his appointed Public Defender's Office Attorney of his being the Marchese di Monte Bianco, and that the United States never revoked his family's exequatur, leaving him still holding the family's dignitary status pursuant to *Dominican Republic v. Peguero*, 225 F. Supp. 342 (S.D. N.Y. 1963); divesting the State Court's

jurisdiction relating to Andrew pursuant to *Lacks v. Fahmi*, 623 F.2d 254 (2d Cir. 1980).

4. "Avitable" is a mutilation of "Avitabile" that was unwanted by everyone other than the sister of Andrew's grandfather, Anna, who illegally changed the spelling of the family's last name for everyone in the family as well as 3-4 other families in New York in the 1920's; allegedly to Americanize them, angering her father, Andrea, and the other families (including DeGatano to Degaten, Andrew's grandmother's maiden name) greatly. Andrew recently learned that in the same time frame that Anna changed the spelling of the last name, she fraudulently claimed she was her grandfather's daughter to hide the fact that she was trying to steal her father's High Ranking European Royal Peerage Title of Marchese di Monte Bianco (documented in the "Libro d'Oro della Nobiltà Italiana"). Pursuant to the "Law of Succession," also known as the "Salic law," which Italy embraces and is "immutable," Anna could not inherit the title as it MUST pass to the eldest son, Andrew's grandfather, Louis, down the line through Andrew's father, Andrew, to Andrew.

5. The adulterous affair between Andrew's third wife, Ingrid Louise Larson, and Andrew's biological father, Andrew Joseph Avitable, resulted in the conception of a child, Noah Daniel. This was the protagonist for Andrew attempting to divorce Ingrid. Unknowingly, the first lawyer Andrew contacted was the lawyer that represented Ingrid in her first divorce. That attorney, Carol Serelson, by and through her assistant, unethically instructed Andrew to provide her with his claims and evidence for her to decide if she wanted to represent him; despite there being no way for her to represent Andrew due to her conflict of interest from representing Ingrid in her first divorce. The only way for Ingrid to win the divorce was if she found a way to dispose of Andrew, and shortly after Andrew contacted the attorney and shortly after the Cheyenne Police Department closed the case of the complaint (case #04-065205) Andrew filed against Ingrid to

protect her kids from her abuse, Ingrid levied the false charges against him. Ultimately, she chose to get rid of Andrew the same way she got rid of her first husband, with the same charges and evidence.

Applicable Law Provisions

6. Ballantine's Law Dictionary contains the definition of "Contract" as meaning: "Federal Constitution, the term "contract" includes not only contracts as the word is ordinarily understood, but all instruments, ordinances and measures, by whatever name known, which embody the inherent qualities or purposes of valid contracts and carry like them their reciprocal obligations of good faith. 16 Am J2d Const L 438 et seq. Verb: To enter into a binding obligation of contract." "Criminal Law Constitutional Contract Courts Can Vacate Plea Agreements If State Proves Material Breach," *State v. Rivest*, 106 Wis. 2d 406, 316 N.W.2d 395 (Wis.), 66 Marq. L. Rev. 193 (1982).

7. Wyoming contract law is inflexible and not open for interpretation. Wyoming has maintained this integrity of contract law to ensure the State has the ability to rely upon its contract law in dealing with contractors. A change in this status of Wyoming Contract Law would result in all the past contractors who did not like the ruling in their breach of contract cases to return under new evidence and use that newly created flexibility to gain financial compensation from the State of Wyoming. Wyoming Contract law also provides that subdivisions and third party contractors are required to comply with the terms of other contracts. See W.S. § WS § 34.1-1-201. General definitions.

> **(a)** Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this act that apply to particular articles or parts thereof, have the meanings stated.
> **(b)** Subject to definitions contained in other articles of this act that apply to particular articles or parts thereof:

(b) Subject to definitions contained in other articles of this act that apply to particular articles or parts thereof: **(xxxix)** Surety includes a guarantor or other secondary obligor

8. WS § 34.1-1-305. Remedies to be liberally administered.

(a) The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this act or by other rule of law.

(b) Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.

9. Accordingly, we determine the government's obligations by reviewing the express language used in the agreement. See *United States v. Courtois*, 131 F.3d 937, 939 (10th Cir. 1997) ("We agree with the other circuits that have considered this issue and have found that whether a plea agreement unequivocally obligates the government to provide defendant with the opportunity to provide substantial assistance turns on the specific language of the agreement."); *Rockwell*, 124 F.3d at 1200; *United States v. Vargas*, 925 F.2d 1260, 1266-67 (10th Cir. 1991); *United States v. Easterling*, 921 F.2d 1073, 1079 (10th Cir. 1990). We will not allow the government to rely "upon a 'rigidly literal construction of the language' of the agreement" to escape its obligations under the agreement. Hand, 913 F.2d at 856 (quoting *United States v. Shorteeth*, 887 F.2d 253, 256 (10th Cir.1989)). As {80 F. Supp. 2d 1205} with the interpretation of any contract, we also apply the maxim that the agreement should be construed against its drafter. Hawley, 93 F.3d at 690. *United States v. Brye*, 146 F.3d 1207, 1209-10 (10th Cir. 1998). "The government cannot prevail upon a formalistic, literal interpretation of the language in the plea agreement, and it may not do indirectly what it promised not to do directly." *United States v. Belt*, 89 F.3d 710, 713 (10th Cir. (citing Hand, 913 F.2d at 856). See *United States Of America v. Loving*, 80 F. Supp. 2d 1200; 1999 U.S. Dist. Lexis 19881 (1999).

10. *United States v. Bunner*, 134 F.3d 1000 (10th Cir. 1998) (construing plea agreement according to principles of contract law). See also *Santobello v. New York*, 404 U.S. 257, 262, 30 L. Ed. 2d 427, 92 S. Ct. 495 (1972). The court will strictly construe the agreement against the state. See *Rowe*, 676 F.2d at 526 n. 4. Cf. *United States v. Massey*, 997 F.2d 823, 824 (10th Cir. 1993) (ambiguities in plea agreement resolved against the drafter). The court will also interpret the agreement according to petitioner's reasonable understanding at the time he entered into the agreement. See *United States v. Rockwell Intern. Corp.*, 124 F.3d 1194, 1199 (10th Cir. 1997) (analyzing plea agreement based upon defendant's reasonable understanding at the time he entered the plea agreement); *Rowe*, 676 at 528 (interpreting immunity agreements pursuant to principles applied to interpretation of plea agreements).

> We first consider Mr. Pam's argument that his 2255 motion does not fall within the scope of the collateral attack waiver contained in his plea agreement. In determining the scope of waiver, we apply principles of contract law and examine the plain language of the plea agreement. *United States v. Taylor*, 413 F.3d 1146, 1151 (10th Cir. 2005). But we strictly construe the scope of the waiver and interpret any ambiguities against the government and in favor of Mr. Pam's collateral attack rights. United States v. Novosel, 481 F.3d 1288, 1291 n.1 (10th Cir. 2007); Taylor, 413 F.3d at 1151-52. See *United States Of America v. Pam,* 867 F.3d 1191; 2017 U.S. App. Lexis 15193 (2017).

11. "We interpret plea agreements as a matter of law using contract principles." *Schade v. State*, 2002 WY 133, 5, 53 P.3d 551, 554 (Wyo. 2002). "Under general contract law, "we read the contract as a whole to find the plain meaning of all the provisions[.]"" *Bear Peak Res., LLC v. Peak Powder River Res., LLC*, 2017 WY 124, 17, 403 P.3d 1033, 1041 (Wyo. 2017)(citing *Thornock v. Pacificorp*, 2016 WY 93, 13, 379 P.3d 175, 180 (Wyo. 2016)). "However, in criminal plea agreement cases, "ambiguities in a waiver of appellate rights are interpreted against the State."" *Henry*, 13, 362 P.3d at 789 (citing *Hahn*, 359 F.3d at 1325, 1328). "waivers of

appellate rights are to be construed narrowly." *United States v. Lonjose*, 663 F.3d 1292, 1297 (10th Cir. 2011).

> The parties agree the question of whether the State has breached a plea agreement is a question of law we review de novo. *Nordwall v. State*, 2015 WY 144, 13, 361 P.3d 836, 839 (Wyo. 2015). A plea agreement is a contract between the State and the defendant to which we apply general principles of contract law. *Mendoza v. State*, 2016 WY 31, 26, 368 P.3d 886, 895 (Wyo. 2016)(citing *Deeds v. State*, 2014 WY 124, 14, 335 P.3d 473, 478 (Wyo. 2014)). To determine whether a breach of a plea agreement occurred we:
>
> (1) examine the nature of the promise; and (2) evaluate the promise in light of the defendant's reasonable understanding of the promise at the time the plea was entered. The prosecutor must explicitly stand by the terms of any agreement; and if the State is unable to carry out the terms, the correct remedy is withdrawal of the plea. The State may not obtain the benefit of the agreement and at the same time avoid its obligations without violating either the principles of fairness or the principles of contract law. *Mendoza*, 2016 WY 31, 26, 368 P.3d at 895. As in a contract, courts will not release a party from its obligations under a plea agreement unless another party materially and substantially breaches the agreement. *Browning v. State*, 2001 WY 93, 32, 32 P.3d 1061, 1071 (Wyo. 2001). "A material or substantial breach is one that goes to the whole consideration of the agreement." *Id.* (citing *Williams v. Collins Commc'n, Inc.*, 720 P.2d 880, 891 (Wyo. 1986)). When determining whether a breach is material or substantial, we examine several factors, "including the extent to which the non-breaching party will be deprived of the benefit it reasonably expected and the extent to which the breaching party's conduct comports with the standards of good faith and fair dealing." *Browning*, 2001 WY 93, 32, 32 P.3d at 1071.

12. The Statute of Limitations on this breach of contract has not begun to run yet because the State of Wyoming still has Andrew illegally incarcerated, having violated his contract on the first sentence as of February 27, 2018, under 10 years ago. Andrew was paroled to his second sentence on Wednesday, October 7, 2015. On the second sentence, the intent to violate was first verbalized in writing on March 18, 2019, also under 10 years ago, with the Wyoming Department of Corrections stating that they would not give Andrew the 329 days of pre-trial confinement that Judge Peter Arnold (Judge Arnold) awarded him because they did not have to give it to him. This was most recently repeated in 2021.

> The district court properly rejected defendants' statute of limitations claim in light of the applicable **ten-year time limit for breach of contract actions under Wyo. Stat. Ann. 1-3-105(a)(i).** *Ultra Res., Inc. v. Hartman*, 2010 WY 36, 226 P.3d 889, 2010 Wyo. LEXIS 39 (Wyo. 2010).

13. To further frustrate justice, the WDOC also refused to grant Andrew the good-time he had earned while housed in the Laramie County Detention Center like they have given to other inmates, showing discrimination against Andrew extending his sentence, violating *due process*.

> Credit will be automatically granted for presentence incarceration time on all sentences. We will presume that in imposing the stated sentence, the trial court, in its exercise of discretion, considered presentence confinement. Consequently, without regard for what is or is not stated in the sentence, credit for presentence confinement will be applied to reduce the length of remaining incarceration under the sentence. As long as the maximum and minimum terms remain within statutory limits, discretion of the trial court continues to establish the periods which obviously include recognition of presentence confinement. *Renfro v. State*, 785 P.2d 491, 498-99 (Wyo. 1990). See also *Lightly v. State,* 739 P.2d 1232 (Wyo. 1987); and *Bayless v. Estelle,* 583 F.2d 730 (5th Cir. 1978).
>
> A sentence which does not include proper credit for presentence incarceration is illegal. *Smith v. State*, 932 P.2d 1281, 1282 (Wyo.1997). A criminal defendant is entitled to credit against his sentence for the time he was incarcerated prior to sentencing, provided that the confinement was due to his inability and failure to post bond on the offense for which he was awaiting disposition. *Meek v. State*, 956 P.2d 357, 358 (Wyo.1998); *Renfro v. State*, 785 P.2d 491, 498 (Wyo.1990). The purpose of this rule is to provide equal protection to defendants who are unable to post bond because of their indigence. *Renfro*, 785 P.2d at 497-98.

14. As of this date, Andrew has recently lost 45 days of good-time as a result of 2 unconstitutional Conduct Violation Reports (CVR) demanding Andrew change his signature and an unconstitutional enhancement causing a third CVR, a major CVR, which inappropriately and unconstitutionally cost Andrew 45 days of good-time.

15. "A Plea Agreement is a Contract between a defendant [Andrew] and a government [Wyoming]" (*United States v. Standiford*, 148 F.3d 864, 868 (7th Cir. 1998) and *Mabry v. Johnson*, 467 U.S. 504, 508 (1984)). "To determine whether a plea agreement has been breached,

the appellate court, guided by principles of contract law, analyzes the government's obligation in light of the nature of the promise and the defendant's understanding of it when the plea was entered." *Herrera v. State*, 64 P.3d 724 (Wyo. 2003). See also *Buckley v Terhune* (2006, CA9 Cal) 441 F.3d 688, cert den, motion den (2007, US) 127 S Ct 2094, 167 L Ed 2d 831.

16. The Court's "analysis begins with the terms of the agreement." *Mendoza*, 2016 WY 31, 27, 368 P.3d at 895. "If its language is 'clear and unambiguous, [we] must enforce the agreement according to its terms without looking beyond the four corners of the contract.'" *Id.* (quoting *In re CDR*, 2015 WY 79, 25, 351 P.3d 264, 270 (Wyo. 2015))(alteration in original).

17. A contract must be taken as a whole and exactly as written without interpretation (on its face value) provided the contract is not ambiguous and any ambiguities must be interpreted in favor of the defendant (Andrew).

> "Contracts must be construed as whole and all parts must be given effect, no part of contract terms should be left meaningless or interpreted out of contract; if in process of construction or interpretation within whole contract, contract is found ambiguous, then contractor is under duty to inquire if ambiguity or omission is "gross" or "glaring" or cannot be resolved without inquiry by contractor prior to bid; in any event, in order to be considered, contractor's view of ambiguous contract terms must be reasonable." *Wiebe Constr. Co.* (1976, ASBCA) 76-2 BCA 11920, affd, on reconsideration (1976, ASBCA) 77-1 BCA 12235

18. "The court will strictly construe the agreement against the state." *See Rowe*, 676 F.2d at 526 n. 4. *Cf. United States v. Massey*, 997 F.2d 823, 824 (10th Cir. 1993)(ambiguities in plea agreement resolved against the drafter [State of Wyoming]).

19. "We apply general principles of contract law to define the nature of the government's obligations in a plea agreement." *Hawley*, 93 F.3d at 692; *see Doe v. United States*, 51 F.3d 693, 701 (7th Cir. 1995) ("Plea agreements are contracts, which means that the first place to look in determining the extent of the government's promises under the [] agreement is the language of the agreement itself."). "Accordingly, we determine the government's obligations by reviewing

the express language used in the agreement." *See United States v. Courtois*, 131 F.3d 937, 939 (10th Cir. 1997) ("We agree with the other circuits that have considered this issue and have found that whether a plea agreement unequivocally obligates the government to provide defendant with the opportunity to provide substantial assistance turns on the specific language of the agreement."); *Rockwell*, 124 F.3d at 1200; *United States v. Vargas*, 925 F.2d 1260, 1266-67 (10th Cir. 1991); *United States v. Easterling*, 921 F.2d 1073, 1079 (10th Cir. 1990). "We will not allow the government to rely 'upon a 'rigidly literal construction of the language' of the agreement to escape its obligations under the agreement." *Hand*, 913 F.2d at 856 (*quoting United States v. Shorteeth*, 887 F.2d 253, 256 (10th Cir.1989)). "As with the interpretation of any contract, we also apply the maxim that the agreement should be construed against its drafter." *Hawley*, 93 F.3d at 690. *United States v. Brye*, 146 F.3d 1207, 1209-10 (10th Cir. 1998). "The government cannot prevail upon a formalistic, literal interpretation of the language in the plea agreement, and it may not do indirectly what it promised not to do directly." *United States v. Belt*, 89 F.3d 710, 713 (10th Cir. (citing Hand, 913 F.2d at 856)). See *United States Of America vs. Loving*, 80 F. Supp. 2d 1200; 1999 U.S. Dist. Lexis 19881 (1999).

20. Wyoming Law states: **WS § 34.1-1-304.** "Obligation of good faith. Every contract or duty within this act imposes an obligation of good faith in its performance and enforcement". **WS § 34.1-1-305.** "Remedies to be liberally administered. (a) The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this act or by other rule of law." **WS § 34.1-2-106.** "Definitions: Contract; agreement; contract for sale; sale; present sale; conforming to contract; termination; cancellation. (b) Goods or **conduct** including any part of a performance

are conforming or conform to the contract when they are in accordance with the obligations under the contract. (d) Cancellation occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of termination except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance." **WS § 34.1-2-510.** "Effect of breach on risk of loss. (a) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance. (b) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning." **WS § 34.1-2-609.** "Right to adequate assurance of performance. (a) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may, in writing, demand adequate assurance of due performance and until he receives such assurance may, if commercially reasonable, suspend any performance for which he has not already received the agreed return. (c) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of further performance. (d) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. **WS § 34.1-2-701.** "Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this article." Andrew has notified Wyoming of the breach.

21. 42 USCS §12132 Discrimination Subject to the provisions of this subchapter, no qualified

individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity.

22. 42 USCS §12112 (b) (5) (A), states that a failure to accommodate is itself an act of discrimination that violates the ADA, See Brown v. City of N. Chi., 2006 US Dist Lexis 47371 (7th Cir 2006), rehearing denied, 131 S Ct 310 (2006); Wis. Cnty. Serv. V. City of Milwaukee, 18 AD Cas 918 (2007 CA7 Wis); 42 USCS §12112 (b) (5) (A) and 42 USCS §§ 12101 et seq.

23. 42 USCS § 12202. State Immunity. A state shall not be immune under the eleventh amendment to the Constitution of the United States from an action in [a] Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including both remedies at law and in equity) are available for such a violation to the same extent that such remedies are available for such a violation in an action against any public or private entity other than a State.

24. US Constitution Article 6. Debts, Supremacy, Oath states in part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.

25. US Constitutional Amendment 5 Rights of Accused in Criminal Proceedings states in part: "No person shall be deprived of life, liberty, or property, without due process of law; nor shall

private property be taken for public use, without just compensation. "

26. US Constitutional Amendment 6 Right to Speedy Trial, Witnesses, etc. states: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

27. US Constitutional Amendment 7 Trial by Jury in Civil Cases states: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

28. Wyoming Constitutional Article 1, §6. Due process of law states: "No person shall be deprived of life, liberty or property without due process of law."

29. Wyoming Constitutional Article 1, §7. No absolute, arbitrary power states: "Absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority."

30. Wyoming Constitutional Article 1, §8. Courts open to all; suits against state States: "All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the state in such manner and in such courts as the legislature may by law direct."

31. Wyoming Constitutional Article 1, §9. Trial by jury inviolate states in part: "The right of trial by jury shall remain inviolate in criminal cases. A jury in civil cases and in criminal cases where the charge is a misdemeanor may consist of less than twelve (12) persons but not less than

six (6), as may be prescribed by law."

32. Wyoming Constitutional Article 1, §18. Religious liberty states: "The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

33. Wyoming Constitutional Article 1, §20. Freedom of speech and press; libel; truth a defense states: "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right; and in all trials for libel, both civil and criminal, the truth, when published with good intent and [for] justifiable ends, shall be a sufficient defense, the jury having the right to determine the facts and the law, under direction of the court.

34. Wyoming Constitutional Article 1, §37. Constitution of United States supreme law of land states: "The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land.

35. Wyoming Constitutional Article 1, §38. Right of health care access states in part: "(a) Each competent adult shall have the right to make his or her own health care decisions. (d) The state of Wyoming shall act to preserve these rights from undue governmental infringement."

36. Wyoming Constitutional Article 19, §7. Contract exempting employer from liability for personal injuries prohibited states: "It shall be unlawful for any person, company or corporation, to require of its servants or employes [employees] as a condition of their employment, or otherwise, any contract or agreement whereby such person, company or corporation shall be

released or discharged from liability or responsibility, on account of personal injuries received by such servants or employes [employees], while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes [employees] thereof, and such contracts shall be absolutely null and void."

37. Wyoming Constitutional Article 21, §24. State part of United States states: "The State of Wyoming is an inseparable part of the federal union and the constitution of the United States is the supreme law of the land."

38. Wyoming Constitutional Article 21, §25. Religious liberty states: "Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship."

39. "Defendant's *due process* rights were violated where government breached its plea agreement promise not to make specific sentence recommendation by advocating specific period of incarceration since doctrine that government must adhere to its bargain in plea agreement is fundamental." *United States v. Hayes*, 946 F.2d 230 (3d Cir. 1991).

> "Plea of guilty was not voluntarily entered where states attorney promised to recommend 24-year sentence to court but subsequently broke promise and asked for extremely severe sentence; defendant was entitled to recommendation prosecution promised to make even though recommendation would not have bound court." *Harris v. Superintendent, Va. State Penitentiary*, 518 F.2d 1173 (4th Cir. 1975).

40. *Due process* is violated when criminal defendant receives sentence greater than that promised by trial judge. *United States ex rel. Johnson v. De Robertis*, 718 F.2d 209 (7th Cir 1983).

> Defendant is denied *due process* of law when guilty plea is induced by plea bargain or by what defendant justifiably believes is plea bargain, and that bargain is not kept, since guilty plea then was not freely and knowingly given. *State v. Hayes*, 423 So. 2d 1111 (La. 1982).

Contents of the Plea Contract

41. The Wednesday, October 12, 2005 Plea Contract Andrew signed read exactly as follows:

"PLEA OFFER

Andrew Larson
CAN 28-553

Current Charges: 6 counts of Second Degree Sexual Assault
Maximum penalty – 0 to 20 years on each count

Offer: Plead cold to 2 counts of Second Degree Sexual Assault
The State will dismiss the remaining counts
The State will **not** the Possession of Child Pornography charge
(Maximum penalty if you take this deal is two 20 year sentences)

A cold plea means that the State can recommend whatever sentence that they feel is appropriate and the Defense can argue for whatever sentence that we feel is appropriate"

42. The additional charge the State was allegedly holding over Andrew was one of "Possession of Child Pornography," when, in fact, the computer Andrew owned had had the hard drive replaced three months before the computer was given to the Cheyenne Police Department and the new hard drive was never formatted, let alone anything being placed on it. The old hard drive was disassembled by Andrew and Ingrid's two kids so they could see what was inside of it. Afterwards, the kids threw the disk back and forth like a Frisbee until it was thrown away later that day. When the Cheyenne Police Detectives asked Andrew to sign a release allowing them to take possession of the computer, it was already in their car trunk and Andrew still believed the hard drive had not been formatted yet because he never had the chance to format it. The only person to have the time to format it before the police took possession of it would have been Ingrid; and she still possessed the entire hard drive from her former husband's computer which had a great deal of pornographic material on it. She used the accusation of possession of child porn against her first husband to prevent him from arguing for custody of or visitation with their children and the same accusation with the same evidence against Andrew to ensure she would

win a divorce she stood no chance of winning because of her adulterous affair with Andrew's biological father.

43. At no time did Judge Arnold state that he would not accept the Plea Contract Andrew and Mark Goldberg (State Employee working under the color of the law) signed; nor did he ever state he was modifying the contract. Andrew has attempted to withdraw his plea as is required when the plea has been violated, but thus far Wyoming refuses to allow him to do so.

Andrew's Understanding of the Contract

44. The plea contract Andrew signed provided him with the possible sentence of two terms of 0-20 years, meaning that he would be immediately eligible for parole and could be incarcerated for "no more than 20 years for each sentence," which was the maximum sentence allowable under the sentencing statute (see W.S. §6-2-306(a)(ii) as it was stated in 2005 and still is), an unconscionable contract in relation to the two sentences handed down (Andrew gained no benefit by accepting this one-sided contract, but he did not understand that at the time because of his autism and severe mental distress). Additionally, McMurtry verbally promised Andrew that he would never see the inside of a prison, probation only, and that the two sentences would be run concurrently. There was no concession made for any type of financial liabilities, groups, therapy obligations, loss of rights or privileges or registration requirements; nor was there any concession made for a change of Andrew's name of signature. The trial court was free to give Andrew the maximum sentence allowable for both charges without restriction, in a case in which the evidence clearly demonstrated a crime never occurred. Andrew was coerced to accept the unwanted plea contract via the fraudulent claims made by Public Defender's Office (PDO) Appointed Defense Counsel Joy McMurtry (McMurtry) and PDO Investigator Mark Goldberg (Goldberg), which is discussed later.

cf. United States v. Bunner, 134 F.3d 1000 (10th Cir. 1998)(construing plea agreement according to principles of contract law). *See also Santobello v. New York*, 404 U.S. 257, 262, 30 L. Ed. 2d 427, 92 S. Ct. 495 (1972). "The court will also interpret the agreement according to petitioner's reasonable understanding at the time he entered into the agreement." *See United States v. Rockwell Intern. Corp.*, 124 F.3d 1194, 1199 (10th Cir. 1997) (analyzing plea agreement based upon defendant's reasonable understanding at the time he entered the plea agreement); *Rowe*, 676 at 528 (interpreting immunity agreements pursuant to principles applied to interpretation of plea agreements). *See also United States v. Conway*, 81 F.3d 15, 17 (First Cir. 1996). See *Cabral v. Hannigan*, et al., 5 F. Supp. 2d 957; 1998 U.S. Dist. Lexis 6898(1998). Pursuant to W.S. §1-37-104, "a contract may be construed either before or after there has been a breach thereof."

45. Andrew's acquiescence to the plea contract quoted above was accomplished through the fraudulent claims that 1) he was already guilty under the law (because W.S. §6-2-311stated, "Corroboration unnecessary. Corroboration of a victim's testimony is not necessary to obtain a conviction for sexual assault." This is an unconstitutional statute as it eliminates *due process* and allows absolutely no ability to overcome the unconstitutional presumption of guilt.); and 2) he would be sentenced to the term of life for each sentence for the charges against him if he did not accept the arranged plea contract (coercion via deception, making the plea "unknowing and involuntary" as the maximum statutory sentence was 20 years).

46. Andrew is not addressing the illegitimacy of the plea contract at this time despite his desire to do so; he is only addressing the breach of contract at this time because the Wyoming courts have previously shown him that they refuse to even examine the conditions of coercion that forced him to take the unwanted plea contract in spite of the evidence supporting his claims of illegitimacy or coercion. If the Court wishes to correct the injustices occurring due to the unconstitutionality of W.S. §6-2-311 or wants to correct the injustice of the unconstitutional plea contract due to it being unconstitutional by the coercion of and lies to a mentally handicapped man to break his resolve to have a trial, Andrew will gladly elaborate further in a separate brief.

47. That plea contract was signed by both Andrew (the defendant) and Goldberg (acting under

the color of the law as a Wyoming State Employee) on October 12, 2005. Goldberg and McMurtry worked together to finally coerce Andrew into signing the contract he never wanted. Despite McMurtry having a copy of that plea contract, she lied on the record by claiming it did not exist, in the attempt to gain a longer sentence for Andrew.

48. The interesting thing is that McMurtry had the evidence definitively confirming Andrew's innocence the entire time (the fact that the alleged victim of rape was still a virgin at the time of Andrew's arrest, making ½ of the accusations impossible and the genito-urinary obstructions from scar tissue that Andrew suffered, making the other ½ of the accusations impossible) and refused to provide it to Andrew or address it with the trial court.

Arguments Demonstrating Breaches Of The Plea Contract

Defense Attorney's Deliberate Breaches

Perjury Breach Of Contracts (Constitutional and Plea Contracts)

49. In fact, McMurtry lied multiple times on the record to try to increase the sentence Andrew would receive as illustrated in the October 14, 2005 Change of Plea Colloquy quoted below:

Change of Plea Transcript Quotations
Quote from page 2

THE COURT: And is there a written plea agreement?
MS. MCMURTRY: There is not, Your Honor.
The only other term that we agreed to is there was an additional charge that could be filed by the state, and the state has agreed not to file any additional charges.
THE COURT: Thank you Ms. McMurtry.

Quote from page 4

THE COURT: According to my notes the maximum penalty for each of these counts is zero to 20 years and a zero to $10,000 fine.
MS. WOLFF: That's incorrect. It's actually five to life on each count. Ms. McMurtry and I did have a discussion. It was listed that way on the original warrant that Mr. Larson was served with.

Continuing on page 5

MS. MCMURTRY: (Nodded head.)
THE COURT: A minimum of five years and a maximum of life?
MS. WOLFF: Correct.

THE COURT: For each count?
MS. WOLFF: (Nodded head.)
THE COURT: Do you agree with that, Ms. McMurtry?
MS. MCMURTRY: Yes. Ms. Wolff and I did have a discussion about that because he's being charged with two or more charges, that's where that particular provision kicks in.

Quote from page 8

THE COURT: Are there any other terms of the plea agreement other than those you have given me, Ms. McMurtry?
MS. MCMURTRY: No, Your Honor. There's no agreement as to sentence in this matter.
THE COURT: So the agreement is in return for his plea to guilty to counts I and II, the state agrees to dismiss the remaining counts and agrees not to charge whatever pending offenses there might be?
MS. WOLFF: Correct.
MS. MCMURTRY: That's correct.

50. At no time did McMurtry or Goldberg ever discuss any change of sentencing that resulted in a five to life sentence with Andrew as they had signed a plea contract; nor did Andrew, an autistic person, recognize the above colloquy occurred or what was said because he was completely distressed, which is why he had a total emotional break-down as he left the trial court resulting in his being placed on suicide watch. Being an autistic person (mentally handicapped), Andrew suffers a great deal of distress when faced with abuses and injustices he cannot remedy; and unless a person gets his attention and/or tells him that they are talking to him before they say something, he rarely even realizes that they are saying something because as a child, he was taught to mind his own business because his father always said: "children are meant to be seen and not heard." Andrew's grandparents never contradicted that statement, so Andrew never had any indication that his father's words were inaccurate. Andrew did not even acknowledge that the above conversation occurred in court.

51. There were only two ambiguities in the Plea Contract. At the time Andrew signed the plea contract, McMurtry kept telling Andrew that he would go directly onto probation and never see the inside of a prison, which was not contained within the plea contract but was verbally

promised to him; and the way the contract was written, there was no indication as to whether the sentences would be served concurrently or consecutively, with McMurtry promising Andrew the two sentences would be served concurrently.

> *United States v. Jeronimo*, 398 F.3d 1149 (9th Cir. 2005)(court enforces clear and unambiguous language of plea agreement under contract law); *Brown v. Poole*, 337 F.3d 1155 (9th Cir. 2003)(plea agreements are contracts and are assessed using standards associated with contract law; oral plea agreements, like oral contracts are enforceable but are discouraged); *United States v. Escamilla*, 975 F.2d 568, 571 (9th Cir. 1992)(contract law applies to interpreting plea agreements and determining remedy for breach, while Rule 11 governs decision whether valid agreement even formed).

Court Access Breaches

52. The law provides that the courts WILL be open equally to all for prosecution and defense of civil and criminal cases. There is no loss of this right due to incarceration. The law also mandates that the government ensure this access is available to prisoners. "Where government fails to provide the prison with the legal counsel it demands, the prison generates its own." *Johnson v. Avery*, 393 US 483, 21 L Ed 2d 718, 89 S Ct 747 (1969).

> "Reasonable access to the courts is ... a right [secured by the Constitution and laws of the United States], being guaranteed as against state action by the due process clause of the fourteenth amendment. In so far as access by state prisoners to federal courts is concerned, this right was recognized in *Ex parte Hull*, 312 US 546, 549. ... [85 L Ed 1034, 1035, 61 S Ct 640.] The right of access by state prisoners to state courts was recognized in *White v Ragen*, 324 US 760, 762, n. [1]" [89 L Ed 1348, 1351, 65 S Ct 978]. *Hatfield v Bailleaux*, 290 F.2d 632, 636 (CA9th Cir 1961). See *Johnson v. Avery*, 393 US 483, 21 L Ed 2d 718, 89 S Ct 747 (1969).

53. "The cooperation and help of laymen, as well as of lawyers, is necessary if the right of "[r]easonable access to the courts" is to be available to the indigents among us." Johnson v. Avery, 393 US 483, 21 L Ed 2d 718, 89 S Ct 747 (1969).

> "It is not unusual, then, in a subculture created by the criminal law, wherein prisoners exist as creatures of the law, that they should use the law to try to reclaim their previously enjoyed status in society. The upheavals occurring in the

> American social structure are reflected within the prison environment. Prisoners, having real or imagined grievances, cannot demonstrate in protest against them. The right peaceably to assemble is denied to them. The only avenue open to prisoners is taking their case to court. Prison writ-writers would compare themselves to the dissenters outside prison .... *Johnson v. Avery*, 393 US 483, 21 L Ed 2d 718, 89 S Ct 747 (1969).

54. "It is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed. *Johnson v. Avery*, 393 US 483, 21 L Ed 2d 718, 89 S Ct 747 (1969).

55. "The court "has insisted that, for the indigent as well as for the affluent prisoner, post-conviction proceedings must be more than a formality." *Long v District Court*, 385 US 192, 17 L Ed 2d 290, 87 S Ct 362 (1966). Cf. *Griffin v Illinois*, 351 US 12, 100 L Ed 891, 76 S Ct 585, 55 ALR2d 1055 (1956). *Johnson v. Avery*, 393 US 483, 21 L Ed 2d 718, 89 S Ct 747 (1969).

56. The problem is that the WDOC provides no type of assistance to its inmates for the preparation of meaningful legal filings, which causes an enormous waste of the Courts' time and the taxpayers' money. Therefore, inmates must prepare their own filings or rely upon the assistance of writ-writers/jailhouse lawyers, which all too often results in inadequate filings that may have otherwise yielded an innocent man being released and the actual offender finally being brought to justice.

57. In Andrew's case, he has found that the assistance to him was extremely limited because most people, especially in prison, do not have the patience to help an autistic litigant. The end result is that he has remained in prison for almost 20 years for a crime that never happened and instead of providing Andrew the needed accommodation of legal assistance in compliance with the ADA, the WDOC files frivolous CVR's against Andrew that appear to be for the purpose of tormenting/torturing this mentally handicapped man and obstruct his court access.

58. On one occasion, the WDOC removed his legal files and disconnected his computer access

while he was trying to prepare a Writ of Certiorari to the U.S. Supreme Court, which resulted in his losing his opportunity to file a Writ of Certiorari.

59. To further exacerbate the matter, every time Andrew changes facilities, the majority of his legal files disappear. The last move was from the WHF facility in Riverton, Wyoming to the WSP facility in Rawlins, Wyoming and 2/3 of Andrew's legal files disappeared leaving him trying to accommodate his own needs with the incomplete files left to him.

Name Change Breach Of Contracts

60. At no time did the Plea Contract or Judge Arnold provide for a forcible change in Andrew's surname. No law in any jurisdiction of the world includes the change of one's surname as part of a punishment for any crime (alleged or actual). Yet the State of Wyoming charged Andrew under the unwanted alias of "Larson" and the State Appointed Public Defender (Joy McMurtry, has since left Wyoming), a State Actor, fraudulently instructed Andrew that he must defend himself under the unwanted alias instead of telling the Court it had "Andrew J. Avitable," a high ranking European Royal in custody and not "Andrew Larson," the wrong person.

61. McMurtry's Breach of the U.S. and Wyoming Constitutional Contracts, caused by her conflict of interests, resulted in a constructive denial of the assistance of counsel ending in the unconstitutional conviction of "Andrew J. Avitable" under the unwanted alias of "Andrew Larson," invalidating the plea contract as "Andrew J. Avitable" signed the plea contract, not "Andrew Larson;" and "Andrew J. Avitable" was incarcerated since January 21, 2005 for a crime that the evidence definitively shows never happened, not "Andrew Larson."

62. Andrew J. Avitable has been forced to live under the unwanted alias of "Larson" despite his never making any type of legal change in his name in any jurisdiction and the plea contract not containing any provision for forcibly changing Andrew's surname. No petition for a name

change has ever been written on Andrew's behalf and no judge has ever changed his surname. The unwanted adoption of "Larson" was forced upon him in Wyoming and the WDOC is now trying to force him to change his signature to match the unwanted alias, discussed later.

63. The fact that the NCIC report shows "Andrew Larson" didn't exist 11 days before Andrew's arrest, Andrew could not have changed his name before being arrested because it takes several months to change one's name. This supports Andrew's argument that he was forced to assume the unwanted alias of "Larson" against his wishes.

64. The only place Andrew could have legally changed his name is the First Judicial District Court in Cheyenne, Wyoming as it was the only court to hold jurisdiction as Andrew's residence was Cheyenne for the preceding 4 years (See W.S. §1-25-102); therefore, there would have been a record of this event in the Clerk of Court's Office in Cheyenne and the local newspapers. Since neither has such a record, Andrew never changed his name. Pursuant to W.S. §1-25-101 Andrew had to file a Verified Petition and Information for the Court to issue an Order to make the change and a record of it. Andrew would have also been mandated to give a two week Notice by Publication pursuant to W.S. §1-25-103 for the Court to have issued the order. None of this exists verifying Andrew never changed his name. Thus, the WDOC's investigation confirmed they are holding someone they do not have a court order to incarcerate.

65. Since the Court in Cheyenne was the only court to hold jurisdiction to change Andrew's name and it is more probable than not that no other court would violate their rules and the law to change Andrew's name when the Cheyenne Court held jurisdiction and should not have had any reason to refuse to change his name upon petition, one can reasonably conclude Andrew did not change his name because on 1/10/05 the NCIC reports (see Ms. Melody Norris' memo dated 8/5/15; Ms. S. Daly's response to WDOC Communication Form dated 7/20/17; Andrew's Birth

Certificate; NCIC reports – Msg Id: 01F000000X / Date/Time: 20050110110640 / D.A Evidence Pages 70-73; Msg Id: 01F0000015 / Date/Time: 20050110110851 / D.A Evidence Page 81; and Msg Id: 01F0000015 / Date/Time: 20050110110852 / D.A Evidence Page 82) verify Andrew had no aliases and was not "Larson." Andrew was arrested only 11 days later, making it impossible for him to have gained residence in any other city, making the only court available to him to change his name in, the Court in Cheyenne, Wyoming.

66. The WDOC presented Andrew with a Wyoming Driver's Dossier that did not exist on 1/10/05 but somehow was created before printing on 9/22/15, indicating it was made on 12/30/02; 3 days after Andrew renewed his license (on 12/27/02). This document was purported to show that "Andrew Avitable" and "Andrew Larson" were the same person, which it does not, because in light of the NCIC reports and the signature being a duplicate of a previous signature, it actually proves that a Wyoming Official committed fraud to create a link between the two names. It was physically impossible for Andrew to have renewed his license on 12/30/02 because at that time the Wyoming Driver's License Authority would only renew a license with a photo driver's license ID card in hand, which took 6-8 weeks to arrive (42-56 days) after one renewed their license (between 2/7/03 and 2/21/03). This clearly demonstrates fraud after the fact by a Wyoming Official to justify their illegal actions.

67. The entire issue the WDOC (C.J. Young specifically) is premising this breach on is allegedly that if they allow Andrew to use his legal signature, it is an admission that they are holding someone in custody that they do not have an order to hold. On 1/13/16, Young wrote: "To allow you to sign official WDOC documents under a different name would be tantamount to the WDOC recognizing you as "Avitable" rather than the name you were legally incarcerated under. ¶ The court sent the WDOC "Andrew Larson" to hold for the term of years specified in

your judgment and sentence. To now allow you to sign documents under the name of "Avitable" would be the WDOC recognizing a person in prison that WDOC has no court order to imprison." Based upon this statement, the WDOC had already admitted from 2006 until 2015 that they were holding someone they did not have a court order to incarcerate.

68. It is not the WDOC's responsibility to ensure an inmate does not have legitimate arguments to contest their convictions, but it **is their responsibility** to ensure they have the right person in custody; and when they find an error, they have a moral duty, if not the legal responsibility to correct the error, not cover-it-up. Instead of addressing the issue with the Court as moral and ethical character would mandate, they chose to try to make Andrew become the person they do have an order to hold at the taxpayers' expense, demonstrating moral turpitude. The WDOC has the obligation to bring it to the Court's attention and try to reconcile the matter by appropriate means instead of trying to hide this illegal action with more illegal actions.

Judge Arnold's Breaches

Sentencing Breach

69. Judge Arnold handed down two sentences of 15 - 20 years to run consecutively. This new sentence structure caused Andrew to have to be incarcerated in prison for a minimum of 15 years (including good time allowances awarded) on the first sentence before he would be eligible for parole to his second sentence and another 15 years (including good time allowances awarded) before Andrew would be eligible for parole to the streets (a total of 30 years). Judge Arnold's sentence was, in fact, the first breach in this plea contract because it changed the 0 - 20 year sentences promised verbally and in writing for each of the 2 charges, which would have allowed him to be paroled immediately or placed on probation, to 15 - 20 year sentences for each of the 2 charges, with McMurtry trying to convince the judge to give Andrew a Life Sentence as is

illustrated in the Change of Plea Colloquy. This was exacerbated by Judge Arnold ordering the sentences run consecutively when McMurtry had promised Andrew they would run concurrently.

> Under *Santobello*, inmate had *due process* right to enforce provisions of his plea agreement and under *Adamson*, state court was required to interpret inmate's plea agreement pursuant to California contract law; consequence was that inmate was sentenced to indeterminate prison term of 15 years to life when bargained-for sentence, to which he was constitutionally entitled, was maximum of 15 years, and thus state court committed constitutional error that had substantial and injurious effect on inmate and inmate was entitled to habeas corpus relief. *Buckley v Terhune* (2006, CA9 Cal) 441 F.3d 688, cert den, motion den (2007, US) 127 S Ct 2094, 167 L Ed 2d 831

Bar Of Review Breach

70. There was no mention of a bar of review of any appealable issues contained in the verbiage of the plea contract, making all appealable claims ripe for review in the superior courts. Instead, the State refused to entertain any claims other than those addressing the jurisdiction of the Court, which they also chose to ignore; and when Andrew presented the claim of "constructive denial of counsel" due to conflicts of interest, the AG and the Court, contrary to standing precedents, stated these claims were not a jurisdictional arguments and stated they could not be argued in violation of the plea contract, causing a breach of the contract.

71. On appeal Andrew filed a Motion to Replace his appellate counsel due to conflicts of interest and her refusal to raise meritorious arguments Andrew presented on Thursday, August 3, 2006. The appellate court did not timely address this Motion and falsely claimed the Motion did not arrive until after the Court rendered its decision on the Conflicted Appellate Counsel's fraudulent Ander's Brief and supplemental Ander's Brief.

72. Initially, appellate counsel's attempt at an Ander's Brief was denied due to inadequacy. A copy of the denial was forwarded to Andrew. Andrew's copy had nothing more than the denial; however, much later, after Andrew's case had reached a point where the courts refused to look at

anything Andrew presented, he received a copy of the denial that the appellate counsel received and it contained handwritten instructions to the appellate counsel telling her how to overcome Andrew's attempt to replace her and what she needed to include in her supplement to her Ander's Brief. This was the Court coaching the conflicted appellate counsel on how to win where she did not deserve a win and clearly demonstrates a biased court in breach of the Wyoming and U.S. Constitutional Contracts.

73. Andrew was ordered to file a brief of appellant by the appellate judge and because Andrew did not know how to prepare a brief, he filed a 14 page letter requesting that it be accepted in lieu of a brief that outlined the arguments he wanted to present in his appeal. The Court accepted that letter as a letter instead of a brief and then refused to address any of the meritorious arguments presented in that letter. Later the AG falsely argued that Andrew had never presented the arguments he raised in his later filings to the direct appeals court. Andrew's letter contained those arguments; therefore, he presented them to the direct appeals court as best as he, a mentally handicapped man, could.

Financial Penalty Breaches

74. In addition to changing the sentencing terms of the contract, Judge Arnold also added restitution, fees for the Public Defender's Office, and other financial penalties that were not included in the verbiage of the contract.

> *United States v. Gottesman*, 122 F.3d 150, 152 (2d Cir. 1997) (plea bargain agreement interpreted using contract law principles, court may order restitution as specified and agreed to within the terms of that agreement, failure of government to include restitution provision within plea agreement will preclude court from imposing such term).

WDOC's Deliberate Breaches

75. Before Andrew addresses these violations, he wishes to state that the WDOC is a

paramilitary organization, mandating that officers comply with the orders of their superiors unless, as the Nuremburg Hearings proved, that order offends the law (Federal or State), the Constitution (Federal or State) or international law, at which point the subordinate is obligated to decline to obey the order or be personally (in their official and personal capacity) held accountable for their violations of said law. A supervisor may be personally (in their official and personal capacity) held liable if they have the authority and ability to correct the violation and choose not to do so. Andrew also wishes to state that he has repeatedly informed the WDOC's Records Department that they are enlarging/enhancing his sentence beyond what Judge Arnold ordered, what the plea contract allows and what Wyoming Law allows. (See W.S. §6-2-306(a)(ii)).

Americans with Disabilities Act Breaches

76. The Americans with Disabilities Act (ADA) is compulsory upon all States' Departments of Corrections (see 42 USCS §12202; and *Estelle v. Gamble*, 429 US 97 (1976); *Farmer v. Brennan*, 511 US 825 (1994)); therefore, the State of Wyoming and it Department of Corrections have no choice but to comply with the ADA's mandates.

> 42 USCS § 12202, part of Title II of Americans with Disabilities Act of 1990 (ADA), 42 USCS §§ 12131 et seq., was abrogation of state sovereign immunity and thus, petitioner disabled inmate's challenge to conditions of his confinement, filed against respondents, state and its department of corrections, under 42 USCS §12132 was not barred by Eleventh Amendment; it was quite plausible that alleged deliberate refusal of prison officials to accommodate inmate's disability-related needs (in such fundamentals as mobility, hygiene, medical care, and virtually all other prison programs) constituted exclusion from participation in or denial of benefits of prison's services, programs, or activities, and "public entity," under 42 USCS §12131 (1) included prisons. *United States v. Georgia* (2006, US) 126 S Ct 877, 163 L Ed 2d 650, 17 AD Cas 673.

77. A refusal to make reasonable accommodations for the disabled is discrimination under §12112 of the ADA.

42 USCS §12112 (b) (5) (A), states that a failure to accommodate is itself an act of discrimination that violates the ADA, See Brown v. City of N. Chi., 2006 US Dist Lexis 47371 (7th Cir 2006), rehearing denied, 131 S Ct 310 (2006); Wis. Cnty. Serv. V. City of Milwaukee, 18 AD Cas 918 (2007 CA7 Wis); 42 USCS §12112 (b) (5) (A) and 42 USCS §§ 12101 et seq.

78. Instead of complying with the ADA, the WDOC regularly violates this Federal Law as though it is optional. Captain Tayson in the Wyoming Medium Correctional Institution (WMCI) of the WDOC tried to get Andrew to believe that compliance with the ADA was an option for the WDOC, contrary to what the law says by changing the wording of the statute and case law when Andrew presented it to him. He falsely stated that Andrew had misquoted it when he did and then he deliberately violated it.

79. Originally, the WDOC made accommodations for Andrew's disabilities and now they repeatedly refuse to do so, even when the accommodation would be entirely Andrew's cost and not theirs.

80. One accommodation Andrew requested was for the WDOC to allow him to use the multicolored pens he has already purchased with their permission for making meaningful notes. The WDOC ordered that Andrew has to wait 6 months until he is eligible for an Art Hobby before he can have them back for note taking. These pens are NEEDED because Andrew is having great difficulty in remembering things due to a severe head injury caused by a WDOC Security Staff Member's negligence in the performance of his duties.

a. That security officer instructed another inmate to mop the "South Kitchen" floor with vinegar water after a civilian kitchen supervisor had prohibited hit practice because of how dangerous of a situation it creates. The vinegar separates the bond between the grease and the floor that requires immediate cleaning with a degreaser to make the floor safe. This never occurred and the other inmate never placed markers indicating the floor was wet.

Andrew slipped and fell, striking his head on the flat-top stove before landing on his head on the floor, causing a concussion that led to ischemia of the White Matter of Andrew's brain.

b. Andrew also asked for the WDOC to provide/allow him note pads to make his notes on, which was also denied with the statement that he could carry paper for making notes on.

81. Another accommodation Andrew has requested was for the Corrections Officers to either speak louder, so he could hear them or get his attention before speaking to him so he would know they were talking to him. The WDOC refused without giving any reason; there merely denied it without explanation. The aforementioned head injury has left Andrew with a permanent tinnitus condition in which the ringing is so loud that unless Andrew is paying attention, he has great difficulty hearing.

82. Another accommodation Andrew requested was for the Corrections Officers to allow him a little extra time to apply his leg brace so he could come out of his cell because he is required to wear this brace due to a "line-of-duty" injury that has left him with bone grinding against bone in his ankle. The WDOC refused to allow this accommodation. The WDOC also refuses to allow Andrew the arthroscopic surgery that would correct this condition because they do not want to spend the money to have it done. If they would have arranged the surgery when it was first needed, it would have been the expense of the New York Workman's Compensation Board. The refusal to do the surgery all three times Andrew got the case reopened has resulted in New York refusing to address this issue again.

83. Another accommodation Andrew requested was for the WDOC to allow him to wear his coat indoors when he is cold the way they did in the past because Andrew has difficulty maintaining normal body temperature. This has been confirmed by the WDOC's medical

provider, who found Andrew's temperature to be well below a safe temperature on a regular basis. Andrew did not know if the cause was his autism, the many head injuries he has suffered in the past or the one heat stroke he experienced. In any case, the need exists and the WDOC refused to provide this accommodation.

84. Andrew has asked for staff or an attorney's assistance in every disciplinary hearing because of his difficulty, which is caused by his autism, in communicating, but the WDOC always refuses.

85. The WDOC regularly refuses to make any accommodations for any of the disabilities Andrew suffers in violation of the ADA and Andrew's rights. Andrew's plea contract NEVER made any concession for the removal of Andrew's ADA rights. Unfortunately, the WDOC ignores the US Constitution, and the US Supreme Court's rulings that inmate still possess limited rights by saying that inmates have NO rights.

Length of Sentence Served Breach

86. On his first sentence Andrew actually served 5838 days (with good-time awarded at 15 days per month) or 6 days short of 16 years before he was paroled to his second sentence; and his first sentence was not discharged until 7633 days were served (with good time allowances at 15 days per month awarded as his behavior has resulted in the loss of no good time) or 37 days short of 21 years. This is almost a year over the plea contract's maximum sentence and the statutorily allowed sentence at the time of the plea contract and as the statute (W.S. §6-2-306(a)(ii)) still stands currently. If the maximum sentence plus the pre-sentence confinement time exceeds the statutory maximum sentence, it is illegal, *Heier v. State,* 727 P.2d 707, 709-10 (Wyo. 1986). As an indigent, [Andrew] is entitled to credit for [three hundred twenty-nine] days off the maximum sentence. *Pote v. State,* [695 P.2d 617, 628 (Wyo. 1985)]. Otherwise, the time spent in

presentence confinement plus the [twenty] year sentence would exceed the statutory maximum of [twenty] years. *Heier v. State,* 727 P.2d 707, 709-10 (Wyo. 1986). The fact that Judge Arnold specifically ordered that the presentence confinement be removed from the upper and lower sentences, the WDOC has no excuse for breaching that contract to commit an ex-post-facto sentence enhancement of three hundred twenty-nine days in violation of the Plea Contract, the U.S. (Art. 1, §§9 & 10) and Wyoming Constitutional (Art. 1, §35) Contracts as well as the law.

Threat Of Further Sentence Enhancement Breach

87. The WDOC Records Department is now telling Andrew he will not be given the pre-trial confinement credit awarded by Judge Arnold nor the associated good-time allowance making Andrew's second sentence almost 21 years long. This is almost a year over the plea contract's maximum sentence and the statutorily allowed sentence. The WDOC Records Department is justifying their refusal to comply with Judge Arnold's Order by stating nothing more than: "We don't have to." This ties directly into the statement repeatedly spoken by WDOC staff members (C.J. Young, Ms. Rife, Sgt. Ross, Sgt. Lira): "I don't care what the law says," as well as WDOC Warden Pacheco's statement of "I don't care" when Andrew told him how his people were violating the law. This contempt for the law, the legislature, and the courts is reprehensible and is costing the taxpayers a lot of wasted money.

> "A sentence cannot be increased after it has been entered." *Turner v. State*, 624 P.2d 774 WY (1981); *Kaess v. State*, 748 P.2d 698, 702 (WY 1987). "The state may not make sentence adjustments that upset the defendant's legitimate "expectation of finality in his sentence."" *United States v. DiFancesco* 449 US 117, 136 (1980); *Warnick v. Booher*, 425 F.3d 842, 847 (10th Cir. 2005). "A sentence cannot be increased after it has been entered, nor may restitution be added at a later date." *Kaess v. State*, 748 P.2d 698, 702 (WY 1987). *United States v. DiFrancesco* 449 US 117, 136 (1980) "It is a violation of double jeopardy to increase the punishment of a conviction after the expectation of finality has attached." *Simonds v. State*, 799 P.2d 1210, 1214 (Wyo. 1990). "Finality in a defendant's expectation of his sentence attaches when either: the time for taking an appeal has expired, or a decision from an appeal has been

made." *United States v. DiFrancesco* 449 US 117, 136 (1980).; also, *Griffith v. Kentucky*, 479 U.S. 314, 321 n 6 (1987).

88. In the immediate case, the Wyoming Supreme Court's decision on Andrew's appeal was made on January 25, 2007, making his sentences finalized on January 25, 2007. It wasn't until after Andrew was paroled to his second number in 2015 that he became aware of the WDOC was intending to illegally extend his sentence on the second sentence the way they did on his first sentence. As previously stated and verified in the evidence provided, the WDOC officials keep stating they will not give Andrew the pretrial confinement credit Judge Arnold ordered Andrew receive. This is a deliberate breach of the plea contract by the state officials, which falls under the purview of the prosecution as both agencies are subdivisions of the executive branch of the Wyoming Government.

> "When the prosecution breaches its promise with respect to an executed plea agreement, the defendant pleads guilty on a false premise, and hence his conviction cannot stand." *Mabry v. Johnson*, 467 U.S. 504, 509 (1984).

Actual Sentence Enhancement Breach

89. To exacerbate the matter, soon after Andrew's arrival, he volunteered to program (he did not know what was involved in those programs) and the WDOC refused to allow him to participate in those Programs for 9 months before it finally transferred Andrew to the "PRIDE Program", where it made Andrew participate in MANY groups. Now the WDOC is telling Andrew he MUST participate in the SOTP program regardless of the fact that he is still contesting his conviction in the courts and is actually innocent. Participation in the SOTP Program requires Andrew to falsely admit to committing the crimes despite all the evidence verifying the crimes he is in prison for never happened. This program mandates he describe the actions he committed leading up to and during the commission of the crime, creating not only a Fifth Amendment violation, but forcing Andrew to fabricate lies to satisfy the program's

requirements under threat of a Major CVR for failure to program. If Andrew tells the truth, the crimes never happened, he will receive the CVR for failure to program; and he is not allowed to present evidence verifying his innocence to avoid the CVR. Neither the Plea Contract or the Judge's Order mandates that Andrew participate or even attend any groups, making an actual ex-post-facto sentence enhancement and a breach of the Plea Contract Andrew signed.

Equal Protection Under The Law Breaches

Equal Protection – Disciplinary and Grievances

90. At no time did Andrew's plea contract annunciate that he would be relinquishing his *due process* rights to redress of grievance or in disciplinary procedures. Yet, the WDOC regularly violates the inmates' rights to *due process* in both the grievance process and the disciplinary process. The WDOC refuses to provide Andrew any assistance in the preparation of a defense for CVR's and takes advantage of any communications errors in the grievance Andrew files. Furthermore, the WDOC regularly uses false statements and false evidence to support their unconstitutional decisions. In the alternative, the WDOC returns the grievances without filing them under false claims that the inmate either already grieved the issue or failed to perform some action prior to filing the grievance.

a. Two past grievance managers stated they were under orders to give a blanket denial to all initial grievances submitted and only consider whether or not to grant the grievance on appeal. This violates due process.

b. On a regular basis the grievance manager not only denies the grievance, but they also deny the grievance appeal to the warden, making the appeal not only useless, but a falsity. This also violates due process.

Equal Protection – Good Time

91. Andrew understands that no inmate has a legitimate expectation of receiving good-time (see *Fogle v. Pierson*, 435 F.3d 1252, 1262 (10th Cir. 2006)) (finding no liberty interest implicated where good time credits are discretionarily awarded), nor do they have an expectation of parole (see *Bird v. LeMaitre*, 371 Fed. Appx. 938; 2010 U.S. App. Lexis 7112 (10th Cir 2010)); however, all inmates do have an expectation of equal treatment, protection and application under the laws of this Country (see *due process* clause in Fourteenth Amendment). This means that if an inmate has conducted himself in a manner which affords good-time allowances to other inmates; then he also has an expectation of receiving the same good-time allowance for the same conduct. Throughout Andrew's incarceration he has only lost 45 days of good-time due to a write-up that he still contests as it should have never been written.

92. In fact, when Wyoming's Governor Gordon signed House Enrolled Act 28 of 2020 (HEA 28) into law on July 1, 2020, he created a situation in which all inmates were required to be treated equally in the computation of the pre-trial good-time credit. As a result of the fact that Andrew never received any disciplinary write-ups during his pre-trial confinement, he should have received not only the 329 days (11 months) of pre-trial confinement credit that Judge Arnold awarded him plus 21 days of time spent incarcerated in the detention center after conviction and before transport, for a total of 350 days; but also the related pre-trial good-time credit instated by HEA 28 of 117 days for a total credit of 467 days off his minimum and maximum sentences on the charge he is currently serving. The Wyoming Department of Corrections (WDOC) has no legitimate authority to discriminate in favor of or against any inmate in relation to the computation of the pre-trial good-time credits; they MUST apply the statute evenhandedly; however, they are now stating they will not give him that good-time credit because they don't have to. They are stating that it would have been applicable to Andrew's first

sentence that ended on Monday, January 21, 2019, contrary to the verbiage in HEA 28 Section 3, ¶(h), *infra*. See HEA 28 Section 2, §(e), Section 3, §§(b) & (h):

> HEA 28 Section 2, (e): "Good time allowance" is a reduction of the minimum and maximum sentence of an inmate in the amount of up to fifteen (15) days per month for each month served on a sentence as an inmate, to include the inmate's credit for jail time served in accordance with the inmate's Judgment and Sentence and any time served in the county jail from the date of sentence until transfer to a WDOC facility.
>
> HEA Section 3, (b): Good time may be awarded to an inmate not to exceed fifteen (15) days per month for each month served of his or her minimum and/or maximum sentence.
>
> HEA Section 3, (h): Good time awarded for time served in county jail, which includes credit for time served in accordance with the Judgment and Sentence and from date of sentence until transfer to a WDOC facility, shall not apply to sentences discharged before July 1, 2020, but shall apply to current sentence(s) and to any subsequent sentence for which the trial court ordered jail time to be credited.

93. When Judge Arnold sentenced Andrew to a maximum of 20 years on each charge, he gave Andrew the maximum sentence he could possibly give on each sentence pursuant to the governing statute and the plea contract. Therefore, Judge Arnold had no choice but to award Andrew the full amount of pre-trial confinement credit on each sentence or violate both the statutory maximum sentence imposed by the controlling law and plea contract. With the WDOC Records Department now refusing to give Andrew the 329 days of pre-trial confinement credit that Judge Arnold awarded, the 21 days between conviction and transfer or the 117 days of good-time enacted by HEA 28, they are, in effect, extending Andrew's sentence by 467 days (more than a year) over the maximum it should have ever been. This is an *ex-post-facto* violation because it is an enhancement of his sentence after he was sentenced, as well as a double jeopardy violation (see *Simonds*, supra) and a *due process* violation (see Fourteenth Amendment) as Andrew is not being afforded equal treatment, protection, and application under the law as other

inmates.

94. "Plea agreement amounts to, and should be interpreted as, a contract under state contract law." Id., at 883 (citing *Ricketts v. Adamson*, 483 U.S. 1, 5, n. 3, 107 S. Ct. 2680, 97 L. Ed. 2d 1 (1987)). "Contract law would consider the State's motion to amend the complaint as a breach of contract." 827 F.3d, at 887-890. ``the remedy for breach must 'repair the harm caused by the breach.' " Id., at 890 (quoting *People v. Toscano*, 124 Cal. App. Fourth 340, 20 Cal. Rptr. 3d 923, 927 (2004)). "Consequently [Andrew was] entitled to specific performance, namely, a maximum prison term of [0-20] years." *Ibid.* The only obligatory change to Andrew's sentence is the granting or removal of good-time earned or lost by Andrew through his actions, which must be applied in an equal manner to other inmates who earn good-time as Andrew is entitled to equal protection under the law and not providing him with the good-time he has earned is tantamount to discrimination against him. A contrary Wyoming State Court decision would be itself ``contrary to, or involv[ing] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. 2254(d)(1); see 827 F.3d, at 888. See *Kernan v. Cuero*, 199 LED2D 236, _ US _ (2017).

Safety And Security Breaches

95. The WDOC has specific mandates under the Law and the Constitution, regardless of whether you choose to reference State or Federal mandates. Those mandates obviously include attempting to keep the public safe by rehabilitating the inmates charged to its custody, which they are grossly failing at. That mandate appears to be lost in the application in that Andrew has observed many inmates learning, not how to be productive and contributing members of society, but how to commit the crimes they are imprisoned for and other crimes without getting caught. This is exacerbated by the fact that WDOC staff members are sharing with the inmate

community the charges of other inmates and their personal information (legal and private). In Andrew's personal case, WDOC staff members released to the inmate population that he was in prison for a sexual assault allegation before he ever had the chance to arrive on the yard. At no time did his plea contract or Judge Arnold's Order provide for endangering his safety; therefore, this breaches not only the plea agreement, but also the Wyoming and U.S. Constitutional Contracts.

96. This was compounded by Officer (now Captain) Crystal Powell (now Eversol?) informing WSP inmates who did not recognize Andrew; that he had worked for Frontier Corrections and had previously been a cop. Those inmates, having previously been housed in Frontier Corrections Facilities immediately went to him to confront him and confirm if they could recognize him. Subsequent to that they began spreading the information like wildfire. Andrew had to be immediately removed from the pod. This happened multiple times. Now Andrew has no choice but to admit to having worked in law enforcement up front to avoid even worse complications by the inmate population believing he is trying to hide it from them and attacking him. Thankfully his honesty subverts that problem, but in any case, it is something that WDOC staff should have never brought into the prison in the first place.

97. In one event, Sgt. (subsequently Lieutenant) Keisel, in front of numerous other WSP inmates, called Andrew's mother a "bitch," infuriating him greatly. Officer Demoray (?) jumped up and offered him access to his cell to cool-off. The WDOC, allegedly after an investigation, decided the event never happened. Lt. Keisel had been observed making overt passes at female WDOC staff members (including in front of inmates) and the WDOC also deemed this to have never occurred until he became bold enough to try to coerce the wife of a superior officer, which finally resulted in his termination.

98. In one event Sgt. Nira, in the view of all the WSP inmates in the K-1 and K-2 dayrooms was in the K-Unit Control Room and chasing Officer Savage (female officer) around the desk in attempts to grope her. Officer Savage filed a formal complaint that was dismissed after an alleged investigation and she was ostracized; and her fiancé was allegedly found to have submitted a "hot" urine sample. He was terminated. With the termination of her fiancé and the harassment occurring in the WSP facility she resigned to move back to Detroit. Oddly enough, Officer Savage's complaint of Sgt. Nira's sexual harassment was ignored; but when he groped a superior officer's wife, suddenly it was a legitimate complaint and he was finally terminated.

Deliberate PREA Breaches

99. The WDOC has a mandate to not only protect Andrew's person, but also protect his Constitutional Rights under the Eighth Amendment's protection against cruel and unusual punishment. Deliberate violations of his limited Fourth Amendment Right to Bodily Privacy are as intolerable as are violations of his First Amendment Right to Religious Freedom. At no time did Andrew's plea contract or Judge Arnold's Order include torturous bodily exposure that completely violates the Fourth Amendment as well as the First Amendment by violating his religious beliefs.

100. In one event in WSP, Sgt. Morrow (female officer) ordered Cpl. Jones (male officer) to remove the towel at the bottom of the shower door while Andrew was showering, exposing his naked body while she and three homosexual male inmates watched until he was complete with his shower (PREA). At no time was his claim denied by the AG or WDOC. Wyoming conceded Andrew's claims by a failure to contest and relied solely upon the State's Immunity to overcome his claims. The Federal District Court erroneously granted the State actors "Absolute Immunity," which only Judges and Heads of State are entitled to (rubber-stamped the AG's response of

immunity). Ultimately the State won on an erroneous application of immunity.

101. Pursuant to Genesis 18-19; Leviticus 18:2–3; 18:22; 18:24; 18:27–30; 20:13; 20:23; Jude 1:7–8; Romans 1:26–27; Corinthians 6:9–11; and 1 Timothy 1:8–11, homosexuality is an abomination. Though the Courts cannot promote one religion over another, they are obligated to respect Andrew's choice of Christianity, which mandates he avoid homosexual acts or exposing his body before females that are not his wife. Because the Bible states that homosexuality is an abomination, Andrew will not participate in these actions; nor will he willingly allow himself to be used as a peep-show for homosexual inmates or a female (Sgt. Morrow) from which to gain their sexual gratification. There was no security benefit from Sgt. Morrow and the three homosexual inmates watching Andrew shower. After Andrew's complaint to the Federal Courts was finished, the WDOC suddenly modified their showers to obstruct the view of the male genital regions.

102. In another event in WMCI, Inmate Webb kept rubbing his genitalia on Andrew (repeated third degree sexual assaults of frottage and PREA) despite his protestations; and the WDOC staff present each time merely laughed at Webb's actions. After a month of these repeated actions in front of staff and Andrew's repeated complaints, he finally snapped and warned Inmate Webb that if he did it again Andrew would knock him out. Immediately, Andrew was locked-down, written-up and moved to the WSP facility for making threats. The WDOC did nothing to protect Andrew from the repeated PREA violations by inmate Webb despite their watching them occur and then when he attempted to verbally protect himself because they refused to protect him, they punished him for protecting himself. Being a Christian, Andrew cannot and will not participate in homosexual activities; nor will he accept being forced to do so.

Additional Court Access Breach

103. In addition to the Court Access Breaches discussed above that show how the WDOC removed Andrew's files and temporarily closed Andrew's computer account, the Clerk of Court for the First Judicial District Court in Cheyenne, Wyoming refused to file Andrew's Complaint for Declaratory Judgment. Initially the Clerk refused to file the complaint based upon her (not a judge's) refusal to allow Andrew to have *Forma Pauperis* Status. When Andrew had a friend on the streets submit the $120 filing fee via mail, she allegedly returned the money via mail and still refused to allow Andrew's complaint to be filed despite it containing all the requisite filings and materials. The $120 disappeared in the Clerk's hands and the Judge then ordered that Andrew was not allowed to have forma pauperis status, dismissing the case without filing it. Andrew's Plea Contract did not indicate a denial of his first Amendment Right to Court Access for redress of grievance. This action breached Andrew's Plea Contract as well as the Wyoming and U.S. Constitutional Contracts.

Deliberate Ex-Post-Facto Breaches

Signature Breach

104. The WDOC committed another violation of the plea contract in that they harass and give Andrew numerous disciplinary CVR's for using his legal signature on documents instead of the signature they are ordering him to use, which started as of 2015, 10 years after Andrew's conviction. An individual's signature is a "personal artistic expression of one's self" and, as such, is protected under the First Amendment to the U.S. Constitution and Art. 1, §20 of the Wyo. Constitution. The WDOC based this harassment on policy #4.001 enacted June 20, 2012, 7 years after Andrew's conviction. This action not only violates the Plea Contract but also violates both the Wyoming and U.S. Constitutions (Freedom of Expression/Speech and ex-post-facto prohibitions) as well as federal and state laws.

105. Any law enforcement officer (WDOC Director Daniel Shannon, WDOC Deputy Prison Division Administrator Scott Abbott, WDOC Compliance Manager C.J. Young, WDOC Sgt. Ross, Former WDOC Assistant Housing manager and Current WDOC Caseworker Butler, WDOC Librarian Ms. Nuss, Former WDOC Law Librarian Ms. Korell, Former WDOC Librarian Cornwall, WDOC Work Supervisor Garza, WDOC Capt. Tayson, WDOC Disciplinary Hearing Officer Sgt. Lira, WDOC Former CTL. Current Unit Manager Lever, WDOC Warden Pacheco and Former WDOC Education Manager Ms. Rife) of any level (uniformed or plain clothed) stating they "don't care what the law says" or act in that manner is reprehensible because it is their duty to protect the U.S. and Wyoming Constitutions and enforce the law that they are now saying they don't care about.

106. Compliance Manager C.J. Young, the one commissioned with ensuring the WDOC complies with the Wyoming and U.S. Constitutions as well as both Federal and State Law has been spearheading the entire problem of Andrew's signature. Andrew's signature is not a security interest as no other inmate must have a specific or legible signature prescribed by the WDOC. Young stated Andrew could use his legal signature only for grievances. This concession verifies it is not a security concern, but provoked by some other motivation. These State Actors are clearly showing contempt for the Legislatures, the Courts, and the Laws of the State of Wyoming as well as the United States.

> "Censorship is a form of infringement upon freedom of expression to be especially condemned. While the constitutional protection even against a previous restraint is not absolutely unlimited, limitation will be recognized only in exceptional cases. The state has a heavy burden to demonstrate that such a restraint presents an exceptional case. The basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule. There is no justification in this case for making an exception to that rule. This Court recognized many years ago that such a previous restraint is a form of infringement upon freedom of expression to be especially

condemned." *Near*, 283 U.S. 697 (1931). *Burstyn*, 343 U.S. 495 (1952).

107. WDOC policy 4.001 was created long after Andrew's incarceration began on Friday, January 21, 2005 (7.5 years), making it an *ex post facto* administrative law in relation to Andrew's signature and sentence/punishment structure. This policy was last updated on October 1, 2019, and the offending portion was not corrected despite the WDOC being made aware of the fact that part (IV)(B)(1)(i)(b) violates federal and state law and the U.S. and Wyoming Constitutions. The fact that this compulsion is an administrative law that was established more than 7 years after Andrew's conviction and incarceration that exacerbates the sentence handed down by the court with undue hardship upon Andrew and his Constitutional rights as well as his religious freedoms; and the trial court did not impose a change in Andrew's signature as part of his punishment, this is an *ex-post-facto* violation prohibited by both the U.S. and Wyoming Constitutions. "[i]t has long been clearly established that the First Amendment bars retaliation for protected speech and association." *Mimics*, 394 F.3d at 848 (citing *Crawford*, 523 U.S. 574, 592 (1998)); *Pickering*, 391 U.S. 563, 574 (1968).

108. On September 9, 2019, WDOC Deputy Director Steven Lindly, while functioning as "Acting Director" in the absence of Director Lampert wrote to Andrew: "As I am not directly over prison operations I gave your letter to someone in that division to review. I was told that you received a memorandum from Warden Martin, dated August 20, 2019, which states the department's position on this issue." (See 9/9/19 Letter from WDOC Deputy Director Lindly). On August 20, 2019, Warden Todd Martin wrote to Andrew: "As for WDOC paperwork and or forms you may sign it Andrew Larson or Andrew Avitable but, Andrew Larson must be printed on the document first before any other name is listed. If the document does not say Andrew Larson first on the document it will be returned to you without being processed." (See WDOC

Warden Todd Martin's 8/20/19 Memorandum). Thus the WDOC's main office overseeing the entirety of the WDOC ruled that Andrew was allowed to utilize his legal signature of Andrew J. Avitable so that he was not committing fraud/forgery, which parallels Federal Law. In the WHF facility, this mandate suddenly had no value because Deputy Director Lindly retired. Andrew received 2 more CVR's on the matter.

109. "The government may not avoid the strictures of [the constitution] by deferring to the wishes or objections of some faction of the body politic." *ACLU of New Jersey*, 84 F3d 1471, 1477-78 (3d Cir 1996)(quoting *Cleburne*, 473 U.S. 432, 448 (1985). "A policy that violates the Constitution is unlawful, notwithstanding that it may promote the will of the majority and be consistent with state law." *Huertas*, 2006 US Dist Lexis 73157. See also *Brown*, 520 U.S. 397, 404-07 (1997).

110. Any law, policy, or statute that is inconsistently applied cannot be enforced. *Sanders, L.P.*, 544 F.3d 1101, 1106-07 (10th Cir. 2008); and *Whittington*, 429 F.3d 986, 994 (10th Cir. 2005). Any state law, policy, or statute that violates the Constitution and/or Federal Law is unenforceable. *Colo. Dep't of Pub. Health & Env't*, 693 F.3d 1214 (10th Cir 2012); *City of Cleburne*, 105 S.Ct. 3249 (1985). "A state rule is not "adequate" unless it is "strictly or regularly followed."" *Johnson*, 108 S.Ct. at 1987 (1964); *Runnels*, 653 F.2d 1359, 1366 (10th Cir. 1981); "to bar federal court review, procedural rule must be applied "evenhandedly to all similar claims"" *Hathorn*, 457 U.S. at 263 (1982). Andrew is the only person the WDOC is harassing; thus, there can be no claim that this mandate is being evenhandedly applied, but is obviously an arbitrary capricious harassment. (See also *Beaird*, 145 F.3d at 1169; see also: *Sanders,* 544 F.3d 1101, 1106-07 (10th Cir. 2008); *Whittington*, 429 F.3d 986, 994 (10th Cir. 2005); and *Coleman*, 869 F.2d 1377, 1383 (10th Cir. 1989), cert. denied, 110 S. Ct. 1835 (1990)).

111. WDOC is obligated to follow its policies unless they violate the law, at which point they are obligated to be changed to comply with the law and Constitution. The Wyoming Supreme Court held that an administrative agency is bound to follow its own rules and regulations. See *MB*,933 P.2d 1126, 1130 (Wyo. 1997); see also *Tayback*, 402 P.3d 984 (Wyo. 2017) stating: "An agency's rules and regulations "'have the force and effect of law, and an administrative agency must follow its own rules and regulations or face reversal of its action.'" *Wilson Advisory Committee*, 292 P.3d at 862, quoting *Northfork Citizens*, 228 P.3d 838, 848 (Wyo. 2010) (other citation omitted). We interpret administrative regulations as a matter of law using our wellknown rules of statutory construction. *See U.P. R. Co.*, 67 P.3d 1176, 1183 (Wyo. 2003)."

112. If Andrew acquiesces to use a signature that is not his legal signature; he would be open to further criminal prosecution and extending his already illegal confinement. (Entrapment, See Justice O'Connor's dissent in *Jacobson,* 112 S. Ct. at 1544; and *Sherman,* 356 U.S. 369 (1958)). A law enforcement officer, including those working for the WDOC cannot order an inmate to commit a criminal offense (State or Federal); and if one does, that order is unenforceable.

113. A legal signature is the signatory's "signature of will," (See U.C.C. §1-201(37) & §3-401(b) and *Goins*, 793 F. Supp. 2d 1064 (6th Cir. 2010)). A "signature of will" can be: "a name or abbreviated name (*Goins, id.*); printed name (*Cambridge, Inc.*, 471 F. Supp. 2d 1039 (Fourth Cir. 1979)); "an "X", cross mark, initials, typewritten name, numbers, any mark or symbol used by a party with the intention of constituting it as his signature is sufficient; thus, whatever is intended as a signature is a valid signature, no matter how imperfect or unfinished." (*Crossland Fed Savings Bank of FDIC*, 935 F. Supp. 184 (E.D.N.Y. 1995)); an electronic signature or single name (*Lawrence*, 2014 U.S. Dist. Lexis 195438 (6th Cir 2010)); a pin (*Foster*, 693 F.3d 1226 (10th Cir. 2012)) as long as the signatory uses it to accept a document as true and his/hers

(*Cambridge, id.*). Regardless of what the signatory wishes to use as their "signature of will," it is acceptable as long as the signatory authorizes it (*Goins, id.*). The key is that a "signature is legally binding if lawfully authorized by the individual signing" (*Cambridge, id.*).

114. "Signing fictitious name to designate fictional person is forgery" (See *Edge*, 270 F.2d 837 (1959)). "Using assumed name to designate fictional person is fraudulent impersonation and as much a forgery as though fictional character was real." (See *Seay*, 96 S.Ct. 421 (1975)).

115. Anything other than the signatory's signature of will is fraud/forgery and violates: 18 USCS §§ 371, 1002, 1028, 1030, 1037, 1101, 1341, 1344, 1347 and 1382. Under Wyoming Statutes Title 6, Chapters 3 and 5, Fraud and/or Forgery is a criminal offense. These chapters parallel their federal counterparts: Title 18, Chapters 25, 47, 63, and 79.

116. A signature (sign-manual/signet/autograph/*Signum manus*) is a "personal artistic expression of one's self" and, as such, is rightfully protected under the First Amendment as artistic expression. One's "mark" can be anything that person chooses. This God given freedom is protected by the U.S. Constitution; and **nobody** has the right to dictate what another person will sign as their "self-representation." (Wyo. Const. Art. 1, §20; & First Amendment). Even Hitler's Germany, Cold-War Russia, current day China and Korea haven't breached the sanctity of one's personal signature; therefore, Wyoming has no justification, right, or privilege to seize such power. The First Amendment's "Freedom of Expression/ Speech" is a right protected in every jurisdiction of the United States. An attack like this can't be permitted.

117. "An agency regulation that is legislative in nature is encompassed by the *Ex Post Facto* Prohibition because a legislative body "cannot escape the constitutional constraints on its power by delegating its lawmaking function to an agency."" *Smith*, 223 F.3d 1191, 1193-94 (10th Cir. 2000). Wyo. Const. Art. 1, §35 and U.S. Const. Art. 1, § 9 both prohibit *ex post facto* violations.

"In order to fall within the *Ex Post Facto* Prohibition, a "law must be retrospective, that is, it must apply to events occurring before its enactment; and ... it must disadvantage the offender affected by it."" *Miller*, 482 U.S. 423, 430 (1987). "A retroactive change to a parole law violates the *Ex Post Facto* Clause if it creates "a sufficient risk of increasing the measure of punishment attached to the covered crimes."" *Morales*, 514 U.S. 494, 509 (1995). The First Amendment of the U.S. Constitution prohibits the creation of a law abridging: the freedom of speech or to petition the government for a redress of grievances. *Dugan*, 451 P.3d 731 (Wyo. 2019). "Above all else, the First Amendment means that government" generally "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Mosley*, 408 U.S. 92, 95 (1972). Wyo. Const. Art. 1, §20 states: "Every person may freely speak, write and publish on all subjects..."

118. As previously stated: "Though this Court cannot promote one religion over another, it is obligated to respect Andrew's choice of Christianity," which mandates honoring one's father and mother. In Catholicism the importance of honoring father and mother is based on the divine origin of the parental role as dictated in Ephesians 3:14 and Exodus 20:12 (Fourth Commandment). According to the teachings of the Catholic Church, the Commandment to honor father and mother reveals God's desired order of charity – first God, then parents, then others. The Catholic Church teaches that a failure to honor one's parents harms the individual as well as society. As a Benedictine Oblate Andrew is sincere about his religious beliefs. This CVR is a direct assault on Andrew's family name; his Title; and his personal religious beliefs, when others are not forced to change their signatures, abandon their names, heritages and religious belief structure; others' right to embrace those attributes of their lives are protected and promoted.

119. For some reason, the WDOC decided that they wanted Andrew to change his signature (to

what they were ordering, "Andrew Larson," and demanded it be legible), which has been the same his entire life ("Andrew J. Avitable," his legal name). At the time Andrew's conviction and incarceration began, the WDOC did not concern itself with what an inmate's signature looked like. Andrew's only legal signature will always be "Andrew J. Avitable" and, pursuant to the federal courts' rulings and the constitutions, the WDOC does not legally have the right or authority to make him change it. In his January 13, 2016 letter Mr. C.J. Young, the WDOC Compliance Manager stated:

> "To allow you to sign official WDOC documents under a different name would be tantamount to the WDOC recognizing you as "Avitable" rather than the name you are legally incarnated (sic) under."

120. And later in that same letter he stated:

> "To now allow you to sign documents under the name of "Avitable" would be WDOC recognizing a person in prison that WDOC has no court order to imprison."

121. In stating this, Young admitted that Andrew is not the person the WDOC has an order to incarcerate and since everything Andrew has ever signed in his entire life was signed with "Andrew J. Avitable," including his intake paperwork to the WDOC, the WDOC has recognized Andrew is not "Larson" and they do not have a court order to incarcerate him, requiring his immediate release. This is much better than the alternative that will be argued in the federal courts.

122. In Disciplinary Rehearing 043-2022, the DHO admitted that the NCIC Reports and other evidence demonstrated that Andrew never changed his name and legally is Andrew Joseph Avitable. This admission imposes the mandate on the WDOC to rectify the problem in an appropriate legal manner and not cover-it-up.

123. If the WDOC refuses to accept Andrew's legal signature, then they MUST release him as

the WDOC cannot have it both ways, pursuant to the Sword and Shield Doctrine (See *Rylander*, 460 U.S. 752, 758 (1983). ("Hence the truism that a privilege cannot be used as both a shield and a sword. The non-legal equivalent of that truism is equally to the point: "You can't have it both ways." *Id.*)). Andrew's Judgment and Sentence were signed with an illegible signature as were all the documents in his case; and everything he signed was signed with "Andrew J. Avitable." If Andrew's legal signature is not acceptable and is "not valid" because it is illegible and "Andrew J. Avitable," his signature on the unwanted plea contract and every court document is invalid and not acceptable, then every action of the trial court is invalid, as well as his intake paperwork when he entered into WDOC custody.

124. The WDOC's stance on Andrew's signature makes him illegally incarcerated for almost 18 years, and Wyoming culpable for his kidnapping pursuant to the implications of their contention. This makes Wyoming responsible for the kidnapping of a Very High Ranking European Royal with the high ranking peerage title of the Marquis of Monte Bianco, an internationally protected person-See 18 U.S.C.A. §§112(a), 1116(a), 1201(a)(4)), and endangerment of his life (federal & international felonies)). Ergo, Wyoming is obligated to release him and compensate him for his illegal incarceration and all the rights violations committed to incarcerate him and those thereafter in WDOC custody.

125. The WDOC's stance on Andrew's signature would also mandate that the WDOC release EVERY INMATE who has an illegible signature on their Judgment and Sentence because it MUST be vacated, or who has used an illegible signature on any of their official court or commitment paperwork. This would also include the return of all federal largess received due to illegible signatures. It is easier for the State to accept Andrew's signature.

126. Despite his protestations, Andrew has been forced to use the name of "Andrew Larson;"

but he will not accept being forced to change his signature and thereby violating his religious beliefs by dishonoring his paternal lineage and abandoning his European Royal Title.

Closing

127. "This state's free speech/libel constitutional provision is textually different from the free speech clause of the First Amendment to the United States Constitution. In comparison with the text of its federal counterpart, Wyoming's free speech/libel provision is more elaborate and clearly worded. Expansive protection for freedom of expression seems to be invited by the state text that "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right * * *." This provision, like similar provisions in thirty-eight other state constitutions, is phrased as an affirmative right, in contrast to the First Amendment's negative phrasing that restrains government action." *Dworkin*, 839 P.2d 903 (Wyo. 2001).

128. Andrew wishes this Court to take notice that *Cooper*, 517 U.S. 348, 369 (1996), though not exactly on point, provides the fact that there are some things that cannot be proven, especially by a mentally handicapped person in prison. *Cooper* says: "Any state law presuming the defendant is competent unless he proves his incompetence by clear and convincing evidence violates *due process*." AND "The obligation to prove or disprove the petitioner's claim of a mental disability fall[s] upon the state because any state law that requires a defendant prove his mental disability beyond a reasonable doubt is unconstitutional."

129. This concept brought into this case makes it clear that to expect Andrew to definitively prove that he never changed his name is an irrational expectation that is unreasonable to place upon anyone, let alone a mentally handicapped man in prison, like Andrew. The obligation to prove what Andrew's legal name is should rightfully be placed upon Wyoming. The WDOC has already done that and proven Andrew is "Avitable," not "Larson" via the absence of a court

record, in the court of jurisdiction (Cheyenne, WY), changing Andrew's name.

130. The Cheyenne Police Department, the DA's Office and the Public Defender's Office (PDO) all knew they were prosecuting "Andrew Joseph Avitable" and not "Andrew Larson" because they all had the NCIC reports of 1/10/05 (D.A Evidence Pages 70-73, 81 & 82). The PDO has even communicated with Andrew through letters in which Diane Lazono addresses Andrew as "H.R.H. Andrew J. Avitabile Larson." H.R.H. stands for "His Royal Highness," an address that is not appropriate for Andrew at this time, but shows she is aware of his Royal Title. The proper address for Andrew is "The Most Honorable Andrew Joseph Avitable, Marchese di Monte Bianco." Marchese di Monte Bianco means "Marquis of White Mountain."

131. There was no legitimate reason for Wyoming to have prosecuted "Andrew J. Avitable" under any other name; the only explanation is a personal political agenda. Since all of these records as well as numerous forms of identification (DD-214, Birth Certificate, NY Driver's License, NY EMT ID Card, School Transcripts, Work ID's-including 2 law enforcement agencies, Baptismal-Communion-Confirmation Certificates, etc.) were provided to the WDOC, there is no excuse for them to try to force Andrew to change his signature to match an alias he never wanted and was forced to use.

132. Because of his incarceration, Andrew lost his law enforcement career, his ability to help people as an EMT with paramedic's training and spent an enormous amount of time in prison for crimes that the evidence clearly shows never happened because his ex-wife, Ingrid, was politically connected and had to win the couple's divorce that Andrew was trying to effectuate because he caught her cheating on him with his father, who got her pregnant with Noah Daniel.

133. Andrew now asks this Court to provide a determination of the construction as well as the rights and liabilities created under the plea contract Andrew entered into that resulted in his

incarceration and find that it was breached. Andrew will not accept a new contract or an amendment to the existing contract. He believes the only just resolution is the acknowledgement and correction of the breach of his plea contract, which MUST place him in the situation as if the contract was fulfilled and restore him to his pre-contract state as mandated under Wyoming Law.

> This section permits not only construction, but determination of rights and liabilities under contract. *Holly Sugar Corp. v. Fritzler*, 42 Wyo. 446, 296 P. 206, 1931 Wyo. LEXIS 50 (Wyo. 1931).

134. "Substantial *Due Process* means the government must treat people with "fundamental fairness." *Mooney*, 294 U.S. 103, 112 (1935). "[I]n safeguarding the liberty of the citizen against deprivation through the action of the state, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions." *Mooney*, *id.* "That law shall not be unreasonable, arbitrary or capricious, and shall have real and substantial relation to object sought to be attained." *Nebbia*, 291 U.S. 502 (1934). "*Due process* extends to state action through its judicial, legislative, executive, or administrative, branch of government." *Hill*, 281 U.S. 673 (1930). "*Due process* of law requires evaluation based on disinterested inquiry pursued in spirit of science, on balanced order of facts exactly and fairly stated, on detached consideration of conflicting claims, and on judgment not *ad hoc* and episodic." *Rochin*, 342 U.S. 165 (1952). "First inquiry in *due process* challenge is whether plaintiff was deprived of protected interest in property or liberty." *Sullivan*, 526 U.S. 40 (1999).

135. *Res judicata* and collateral estoppel don't apply as Andrew is not asking for damages; he is only asking to correct the breaches of contract. Andrew is also concerned with stopping the further persecution, the ability to sign his legal signature and honoring his paternal lineage and the law, as well as ADA compliance.

136. Wyoming violated Andrew's rights by illegally incarcerating him under a name that is not

his and he never wanted (forcibly changing Andrew's name & identity-**inexcusable**), for a crime the evidence clearly shows never happened through the use of a coerced plea contract in which he was forced to accept an unwanted alias. If this were not enough, the WDOC (State) has committed material breaches of that contract on many levels and continues to do so.

137. Now the WDOC is trying to violate his rights again by attempting to force him to utilize a signature that is not his legal signature like everyone else is allowed to do. This is an attempt to force him to commit fraud. Granted, "In certain limited circumstances, . . . courts have permitted a plaintiff to proceed using a fictitious name where there are significant privacy interests or threats of physical harm implicated by the disclosure of the plaintiff's name. . ." (*Zavaras*, 139 F.3d 798 (10th Cir 1998)); but nobody has ever been forced to do so until this case. The officials in this case repeatedly stepped outside their official offices (positions of trust under the color of the law) to violate the law and Andrew's rights; and tried to force Andrew to violate the law. Andrew now asks this Court to intervene and correct at least some of the wrongs done to him as "no one is bound to obey an unconstitutional law or policy and no courts are bound to enforce them." (See *In re. Walker*, 388 U.S. 307 (1967); *Griffin*, 30 F. Supp. 3d 1139 (Dist. NM, 2014)).

138. "In fleshing out the concept of a liberty interest, the Supreme Court of the United States has said a liberty interest "denotes not merely freedom from bodily restraint but **also the right of any individual**." *Meyer,* 262 U.S. 390, 399 (1923). "In a local context, the United States district court has ruled that liberty under the *due process* clause is broader than freedom from bodily restraint." *Moore,* 825 F. Supp. 1531 (D. Wyo. 1993). "This reasoning invokes the concept of strict scrutiny, which demands identification of a compelling state interest. The compelling state interest then must be balanced against the fundamental right, and the method of protecting that compelling state interest must be the least intrusive by which that interest can be

accomplished."" *State in the Interest of C,* 638 P.2d 165. *Michael*, 900 P.2d 1144 (Wyo. 1995).

139. A last word Andrew wishes to say, as quoted from his letter to Governor Gordon is:

> "I believe that any law enforcement official (uniformed or civilian) who says they do not "care what the law says" should have never been in the law enforcement field and is a disgrace to their uniform, their agency, the state, a disgrace to the country and mankind as a whole; and needs to be removed. Any official that condones that type of behavior by not putting it to a halt; thereby facilitating it, is just as much a disgrace and needs to be removed. 42 USC §1986 actually places a mandate to correct these kinds of violations upon any official once they learn of the abuses. Abuse of authority, insubordination, contempt of legislature and indirect contempt need to be purged from our law enforcement agencies as it is a cancer that destroys the entirety of society."

WHEREFORE, Andrew asks this Court to correct the manifest injustice that resulted in the Breaches of his Plea Contract with the State of Wyoming by ruling that Wyoming has failed its obligation under the contract by and through the actions of the WDOC, ordering his release and expunging the conviction from his record. Andrew also asks for the reimbursement of his expenses in relation to this filing, to include copy work, printing and his research and preparation time.

DECLARATION UNDER PENALTY OF PERJURY

I swear under the penalty of perjury pursuant to W.S. §6-5-301; 18 USC §1621; and 28 USC §1746 that the above information contained in my Complaint for Declaratory Judgment is true and correct to the best of my knowledge, recollection and understanding. I therefore place my hand as seal upon this Complaint on the _____ day of _____, 2022.

_____UCC §1-308
Andrew Joseph Avitable

Andrew's signature was witnessed by the following people:

_____	_____
Signed	Signed
_____	_____
Printed	Printed

Table Of Contents

Case No. _____

IN THE UNITED STATES SUPREME COURT

Andrew Joseph Avitable, osb, tert.,
il Marchese di Monte Bianco,
(aka "Larson" by coercion only),
Petitioner,

vs.

STATE OF WYOMING,
Respondent.

Appendix D
Reprinted Copy of Appeal

Petitioner
Andrew J. Avitable, osb, tert.
il Marchese di Monte Bianco
c/o WDOC #23916 – WHCC
P.O. Box 160
Newcastle, WY 82701

Respondent's Attorney,
Wyoming Attorney General
2320 Capitol Ave.
Cheyenne, Wyoming 82002

***All Litigants are Contained within the Caption**

Already sent to A.G.

Andrew J. Avitable
il Marchese di Monte Bianco
(aka "Larson" by coercion only)
c/o WDOC #23916 – WHCC
P.O. Box 160
Newcastle, WY 82701

IN THE WYOMING SUPREME COURT

Andrew J. Avitable,	)	
(aka "Larson" by coercion only),	)	
(Avitable is Defendant's Legal Name),	)	Supreme Court Case # S-23-0120
Appellant,	)	Appeal on 2nd District Case #22-168
vs.	)	
STATE OF WYOMING,	)	
Appellee,	)	

APPEAL ON COMPLAINT FOR BREACH OF CONTRACT

COMES NOW, Andrew J. Avitable (Andrew) (mentally handicapped due to autism and severe head injuries), appellant, *pro se,* in the above captioned case, and appeals the erroneous decision rendered by Judge Dawnessa Snyder (Judge Snyder) in the Second Judicial District Court in relation to his Complaint for Breach of Contract (Complaint) that violates this Court's standing precedents, the Federal Courts' standing precedents, the US and Wyoming Constitutions as well as the Court's own rules. To yield this unjust decision, Judge Snyder had to fail to read the *pro se* litigious filings before her and had to only have only read the Wyoming Attorney General's (AG) contention, which she rubber-stamped with a blanket denial without actually addressing any of the claims Andrew presented or the merits of his claims. Therefore, Andrew's claims have not yet been addressed, despite his presenting justiciable arguments and genuine disputes as to material facts; and is entitled to judgment as a matter of law. The court never stated the reasons for granting the inappropriate motion to dismiss, all in violation of Rule 56(a) W.R.C.P. Furthermore, Judge Snyder never complied with Rule 6(c), W.R.C.P., which establishes a general requirement that the nonmoving [Andrew] party receive 10 days' notice of conversion in order to file opposing matters (or seek a continuance under Rule 56(f), W.R.C.P). *Alm v. Sowell*, 899 P.2d 888, 1995 Wyo. Lexis 127 (Wyo. 1995). Since Petitioner presented

genuine issues of material fact and legitimate questions of law in a case where declaratory judgment was all that was pursued, Summary Judgment was not appropriate. *Intermountain Brick Co. v. Valley Bank*, 746 P.2d 427, 1987 Wyo. Lexis 545 (Wyo. 1987).

1. Judge Snyder never addressed Andrew's Motion for Trial by Jury or his Motion for Recusal that he filed due to Judge Snyder's showing an overt bias against him by disregarding the Court's Rules by changing the caption of the case to appease the AG without Andrew's consent. Judge Snyder's decision also violated the Court's Rules as discussed later. The original caption was the same as above. Before Andrew goes any further, he wishes to apologize to this Court for having already provided copies of everything to press outlets directly and through third parties because of the corruption he has already been the victim of by the judges that have repeatedly chosen to ignore his filings and their supporting evidence, simply providing rulings that do not address any of his claims and only rubber-stamp the AG's words in their responses.

2. Andrew would like to begin his arguments by stating that if this Court views the computation of time as the trial Judge ordered to be correct, it will find that Andrew has a little over 1 year of his 30-40 year sentence remaining before he is eligible for parole and only 3+ years after that before it is discharged; however, if it chooses to view the Wyoming Department of Corrections' (WDOC) computation of time to be correct, it will find that Andrew has approximately 2.5 years to his parole eligibility and 3+ years after that to discharge. The reason for the discrepancy is that the WDOC contemptuously claims they do not have to abide by the trial judge's order or by this Court's rulings in *Renfro v. State*, 785 P.2d 491, 498-99 (Wyo. 1990); *Lightly v. State*, 739 P.2d 1232 (Wyo. 1987); *Bayless v. Estelle*, 583 F.2d 730 (5th Cir. 1978); *Smith v. State*, 932 P.2d 1281, 1282 (Wyo.1997); and *Meek v. State*, 956 P.2d 357, 358 (Wyo.1998). On a related side note, Andrew cannot wait to leave Wyoming <u>PERMANENTLY</u>.

3. Andrew also wishes to point out that the AG never disputed any of Andrew's claims at any

time; thereby admitting the accuracy of those claims under the Courts' Rules and decisions in general. This warranted a default ruling in Andrew's favor, as discussed in Andrew's Motion for Default Judgment to the District Court, not a granting of the inaccurate depository motion that the AG filed.

> While a motion for summary judgment may be based solely upon the pleadings, it is then functionally equivalent to a motion to dismiss for failure to state a claim under subdivision (b)(6) or a motion for judgment under subdivision (c). *Landmark, Inc. v. Stockmen's Bank & Trust Co.*, 680 P.2d 471, 1984 Wyo. Lexis 277 (Wyo. 1984).

4. The AG has merely been asking the court to dismiss the cases without addressing any of the merits of the cases, which the court did. Furthermore, Andrew wishes to point out that immunity does not attach because the State of Wyoming (Wyoming) never included a provision for maintaining immunity in the contract the State entered into with Andrew like it has done in its other contracts; therefore, the State has waived its immunity in cases regarding him during the life of the current contract they are in.

5. Completing the issue of a lack of immunity, Andrew informed the Wyoming Public Defender's Office that he possessed a very high ranking Italian Royal Peerage Title (Marchese di Monte Bianco) prior to their coercing his acceptance of the unwanted plea contract, which divested the State Court's jurisdiction. At that time Wyoming was obligated to transfer the case to the Federal Court System or abandon its prosecution because "once a state court has determined that only a federal court is empowered to adjudicate a controversy, the state court need not and should not consider issues going to the merits of the case" (See *Lacks v. Fahmi*, 623 F.2d 254 (2d Cir. 1980); See also 28 U.S.C.A. §§ 1604, 1605, 1607). At the establishment of the United States, Italy was recognized as a separate and independent nation, which existed prior to the United States becoming a nation. At that time, the President and/or Secretary of State for the United States identified that Italy and its Royals possessed dignitary status and the associated

immunity. "Such recognition by the executive branch [US President & US Secretary of State] of diplomatic status is not to be second guessed by the judiciary" (see *In re Baiz*, 135 U.S. 403, 10 S. Ct. 854, 34 LED 222 (1890); *U.S. v. Lumumba*, 741 F.2d 12 (2d Cir. 1984); *Traore v. State*, 290 Md. 585, 431 A.2d 96 (1981); *Matter of Terrence K.*, 135 A.D.2d 857, 522 N.Y.S.2D 949 (2d Dep't 1987)), "even in suits already commenced" (see *Abdulaziz v. Metropolitan Dade County*, 741 F.2d 1328, 40 Fed. R. Serv. 2d 110 (11th Cir. 1984); *Republic of Philippines by Cent. Bank of Philippines v. Marcos*, 665 F. Supp. 793 (N.D. Cal. 1987)).

6. When Italy converted to a Republic in 1946, Italy never petitioned the United States to revoke the exequatur/immunity that its Royals possessed in writing or otherwise as is required for the termination of that right. "A [federal] district court has jurisdiction under this provision so long as the United States has not yet revoked the exequatur issued to the defendant, even though the regime that appointed him or her has been deposed, although the action will be dismissed where the United States has revoked the exequatur of the plaintiff." *Dominican Republic v. Peguero*, 225 F. Supp. 342 (S.D. N.Y. 1963). Therefore, the Italian Royals still possess their diplomatic immunity. "Diplomatic immunity may be waived by the sending state" (see *In re Grand Jury Proceedings, Doe No. 700*, 817 F.2d 1108, 22 Fed. R. Evid. Serv. 1682 (4th Cir. 1987)), "and only the state" (see *Aquamar, S.A. v. Del Monte Fresh Produce N.A., Inc.*, 179 F.3d 1279, 12 Fla. L. Weekly Fed. C 1002 (11th Cir. 1999); *Logan v. Dupuis*, 990 F.Supp. 26 (D.D.C. 1997)), but "it must be express" (see *Republic of Philippines by Cent. Bank of Philippines v. Marcos*, 665 F. Supp. 793 (N.D. Cal. 1987); *People v. Corona*, 211 Cal. App. 3d 529, 259 Cal. Rptr. 524 (1st Dist. 1989)), and "must be communicated to the receiving state in writing" (see *People v. Corona*, 211 Cal. App. 3d 529, 259 Cal. Rptr. 524 (1st Dist. 1989)). "The waiver exception to immunity is to be narrowly construed" (see 28 U.S.C.A. § 1605(a)(1); and *Corporacion Mexicana de Servicios Maritimos, S.A. de C.V. v. M/T Respect*, 89 F.3d 650 (9th

Cir. 1996), as amended on denial of reh'g, (Aug. 28, 1996)).

7. Wyoming refused to acknowledge Andrew's Royal Title and associated immunity; therefore, Wyoming waived its Immunity, as "immunity may be waived by continuing to assert a claim while at the same time seeking immunity from a counterclaim." See *Abdulaziz v. Metropolitan Dade County*, 741 F.2d 1328, 40 Fed. R. Serv. 2d 110 (11th Cir. 1984). Wyoming's claims against Andrew were the fictitious criminal charges fabricated to control the divorce court because Andrew caught his ex-wife in bed with his biological father and she was politically connected in Wyoming; and the claims Wyoming has asked for immunity from are this case, his 42 US §1983 concluded in July of 2017 (Case # 1:16-cv-00244-ABJ), and his Complaint for Declaratory Judgment (Case #22-160). Thus, immunity does not attach and dismissal based upon any claim of immunity is infirm.

8. The only way for Ingrid to win the divorce was to dispose of Andrew, and shortly after Andrew contacted the divorce attorney and shortly after the Cheyenne Police Department (CPD) closed the case of the complaint (case #04-065205) Andrew filed against Ingrid to protect her kids from her abuse, Ingrid levied the false charges against him. Ultimately, she chose to get rid of Andrew the same way she got rid of her first husband, with the same charges and evidence.

9. Prior to case #22-168, Andrew attempted to file a "Complaint for Breach of Contract" in the 1st Judicial District Court who refused to accept the filing in *forma pauperis,* so no decision was rendered and the merits were never addressed; and it was never docketed. Subsequently, Andrew filed a "Motion for Breach of Contract" on the original case number of 28-553, which the trial court demanded he pay the filing fee for despite the original trial judge having granted *forma pauperis* status. When Andrew attempted to appeal Judge Catherine R. Rogers (Judge Rogers) erroneous denial within this Court, the clerk of court refused to docket Andrew's Appeal without his paying the filing fee as she denied him *forma pauperis* status, so his appeal never got

docketed. (The thing that confuses Andrew is that *forma pauperis* status was originally created for Civil Cases and then later it was adapted and applied to criminal cases, yet Wyoming chooses to deny its use by *pro se* complainants who do not have the funds to litigate their cases.) After his attempt to appeal Judge Rogers' refusal to allow his filing to be docketed in the already existing case, she rendered a ruling that did nothing more than rubber-stamp the AG's response without addressing any of the claims Andrew presented. She adopted the AG's false representations of Andrew's claims the same way Judge Snyder did. Therefore, Andrew's claims have never been adjudicated; only the AG's misrepresentation of what he wanted the Court to view as Andrew's claims was adjudicated.

10. In both Case #22-168 & Case # 22-160, the cases were established as "Andrew J. Avitable" not "Andrew J. Larson" filing suit against the "State of Wyoming," and was opened and docketed as "Avitable" filing the suit, paying for it, and litigating it. Judge Snyder's decision improperly contained the wrong caption. The Summons and Complaint were captioned under "Andrew J. Avitable." All Andrew's filings were captioned under "Andrew J. Avitable." Therefore, when Judge Snyder changed the caption, she showed a deliberate unconstitutional bias against one of her litigants, making her decision infirm as Andrew was entitled to an unbiased trier of the facts under the mandates of the United States Constitution. This is a primary tenet of the of the foundation of the entire court system within the United States that not only first year law students learn, but that children learn in primary school. To deviate from that underlying support of the American System of Juris Prudence is appalling. Thus, the case Andrew opened has technically never been adjudicated. The merits of Andrew's claims have never been addressed.

11. In 2017 this Court stated: "Comment 2 to Rule 2.3 states in part: "A judge must avoid conduct that may reasonably be perceived as prejudiced or biased."" *Neely v. Wyoming*

Commission On Judicial Conduct And Ethics 2017 WY 25; 390 P3d 728; 2017 Wyo Lexis 26.

When Andrew learned Judge Snyder was biased against him, he filed a "Motion for Recusal for Judicial Bias" that Judge Snyder never addressed. In that Motion for Recusal Andrew provided:

> "The right of every person accused of crime to have a fair and impartial trial, before an unbiased court and an unprejudiced jury, is a fundamental principle of criminal jurisprudence" * * *. Not only must there be no prejudice, actual or implied, but even the appearance of prejudice must be avoided. "Next in importance to the duty of rendering a righteous judgment, is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge" * * *. *People v. Greenfield Const. Co., Inc.*, 48 A.D.2d 765, 368 N.Y.S.2d 89, 90 (1975) (quoting *People v. McLaughlin*, 150 N.Y. 365, 375, 44 N.E. 1017, 1019 (1896); *People v. Suffolk Common Pleas*, 18 Wend. 550, 552 (1836); and *People v. Naimark*, 154 A.D. 760, 764, 139 N.Y.S. 418, 420 (1913)). "A biased proceeding is not a procedurally adequate one." *Clements v. Airport Auth. of Washoe Cty.*, 69 F.3d 321, 333 (9th Cir. 1995). The Constitution demands that all litigants have an unbiased judge/jury/tribunal as that is the only way to ensure that due process as well as justice is rendered. Trial before unbiased judge is essential to due process. *Johnson v. Mississippi*, 403 US 212, 29 L Ed2d 423, 91 S Ct 1778 (1971).
>
> Due process clause guarantees litigants impartial judge, reflecting principle that no man is permitted to try cases where he has interest in outcome; where judge has direct, personal, substantial, or pecuniary interest, due process is violated. *Franklin v. McCaughtry*, (2005, CA7 Wis) 398 F3d 955. There may be a very few, rare cases in which their personal attacks or law suites are so egregious that a reasonable person would perceive the judge as being biased. In such case, the judge should recuse himself or herself in order to avoid the appearance of a conflict. See *In re Whet, Inc.*, 33 BR 424 (Bankr. Mass. 1983); In re Potter, 292 BR 711 (Bankr. 10th Cir 2002).

12. Andrew provided 14 different claims demonstrating how and why he believed Judge Snyder to be biased in his Motion for Recusal. A biased judge erodes the public's faith in the judiciary and brings shame upon the entire institution. On this matter, this Court stated in *Brown v. State*, 816 P.2d 818; 1991 Wyo. Lexis 131:

> A valuable and considerate discussion is provided by Lewis, Systemic Due Process: Procedural Concepts and the Problem of Recusal, 38 U. of Kan. L. Rev. 381 (1990). Included in part in the author's broad evaluation was the statement:
> An independent and impartial decision maker is crucial to the effective functioning of our justice system. As former California Supreme Court Chief Justice Roger Traynor stated before the Senate Judiciary Committee, "an

independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved." A biased judiciary threatens the legitimacy of the entire legal process. Over one hundred years ago a court noted that lack of judicial impartiality extends beyond its effect on the parties to question the integrity of the entire judicial system:

"The Court ought not to be astute to discover refined and subtle distinctions to save a case from the operation of the maxim, ['No one can be a judge in his own cause'] when the principle it embodies bespeaks the propriety of its application. The immediate rights of the litigants are not the only objects of the rule. A sound public policy, which is interested in preserving every tribunal appointed by law from discredit, imperiously demands its observance."

In light of the inconsistent application of existing recusal standards, a new recusal approach is needed that will apply uniform rules to all areas of judicial impropriety. When a biased decision maker sits, the legal process loses its legitimacy. Thus, protections against abuses of judicial bias or relationship are as necessary as safeguards against abuse of pecuniary interest. Id. at 409-10 (quoting *Stockwell v. Township Bd.*, 22 Mich. 341, 350 (1871) and footnotes omitted). (emphasis added)

13. Not only must there be no prejudice, actual or implied, but even the appearance of prejudice must be avoided. The Supreme Court's *Wheat* [*Wheat v. United States*, 486 U.S. 153, 108 S. Ct. 1692, 1697, 100 L. Ed. 2d 140 (1988).] decision teaches that an actual or potential conflict of interest poses a serious challenge indeed to the integrity of the judicial process. Fed. R. Crim. P. Rule 21(a)'s requirement that a defendant receive a fair and impartial trial mirrors the dictates of the due process clause, and the familiar constitutional standards govern the Rule. [*United States v. Rewald*, 889 F.2d 836; 1989 U.S. App. Lexis 16951; 103 A.L.R. Fed. 159 (9th Cir.)]. Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself. When the objective risk of actual bias on the part of a judge rises to an unconstitutional level, the failure to recuse cannot be deemed harmless. "An act which, although within the general power of the trial judge, is not authorized and therefore void with respect to the particular case, because the conditions which alone authorize the exercise of his general power in that particular case are wanting, an hence the

judicial power is not lawfully invoked."

> Judicial Code, Commentary – Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.
>
> The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, including the discharge of the judge's adjudicative and administrative responsibilities. The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.
>
> Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities.
>
> Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges, including harassment and other inappropriate workplace behavior. A judge must avoid all impropriety and appearance of impropriety. ... Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

14. The Prosecutor, State's Attorney, and/or Attorney General, as well as the courts, all have the specific duty to preserve and serve justice over winning cases. It is contrary to their oath of office (which promises to uphold the Constitution) to merely fight for a win. They MUST fight for justice in all cases and thereby protect the public's perception of the Courts integrity and promotion of justice. A failure to do so erodes the public's confidence in the judicial system. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. ~US Supreme Court, *Berger v. United States*, 295 US 78, 88 (1935). See *United States v. Agurs*, 427 U.S. at 110-11, 96 S. Ct. at 2400-2401. *United States v. Brown*, 628 F.2d 471; 1980 U.S. App. LEXIS 13008; *Young* v. *United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 814, 95 L. Ed. 2d 740, 107 S. Ct. 2124

(1987). The AG's job is not to simply fight for the maintenance of convictions but similar to this Court, the AG's responsibility is to fight for justice instead of convictions. *Berger v. United States*, 295 US 78, 88 (1935). In *Scheuer v. Rhodes* [416 U.S. 232, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974)], the Supreme Court stated:

> While we recognize that a "court must not let its zeal for a tidy calendar overcome its duty to justice," *Davis v. United Fruit Co.*, 402 F.2d 328, 331 (2d Cir. 1968), *cert. denied,* 393 U.S. 1085, 21 L. Ed. 2d 778, 89 S. Ct. 869 (1969)" *West v. City of New York*, 130 F.R.D. 522; 1990 U.S. Dist. LEXIS 4866; *Cole-Hoover v. United States*, 2017 U.S. Dist. LEXIS 61183; *Feurtado*, 225 F.R.D. at 480 (2004).
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> "Although "statements to the press may be an integral part of a prosecutor's job, and . . . may serve a vital public function,"" *Buckley* v. *Fitzsimmons*, 125 L. Ed. 2d 209, 113 S. Ct. 2606, 2618 (1993) (citation omitted), "that function is strictly limited by the prosecutor's overarching duty to justice.

15. Judge Snyder's bias created a structural error as the Court was incomplete. A finding of structural error assumes the existence of a "defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." *Arizona v. Fulminante*, 499 U.S. 279, 310, 113 L. Ed. 2d 302, 111 S. Ct. 1246 (1991); see also *United States v. Perez-Ruiz*, 353 F.3d 1, 17 (1st Cir. 2003). And some (perhaps most) structural errors deserve careful, individualized attention. The Supreme Court stated that "certain structural errors undermining the fairness of a criminal proceeding as a whole . . . require[] reversal without regard to the mistake's effect on the proceeding." *United States v. Dominguez Benitez*, 542 U.S. 74, 159 L. Ed. 2d 157, 124 S. Ct. 2333, 2339 (2004) (emphasis added). As that passage indicates, the sub-category of "automatic reversal" errors has been reserved for the most pervasive and debilitating constitutional deprivations, such as a total withholding of the right to counsel at trial, a denial of the right to self-representation at trial, and the specter of a biased judge presiding over a case. See *Arizona v. Fulminante*, 499 U.S. 279, 309-10 111 S.Ct. 1246, 113 L.Ed.2d 307 (1991). Such errors affect "the entire conduct of the trial from beginning to end." Id. at 309. *United States v.*

Padilla, 393 F.3d 256; 2004 US App Lexis 26760 (1st Cir 2004).

> The court has recognized that structural errors' distinctive attributes make them defy analysis by 'harmless-error' Standards." Id., at 309, 111 S. Ct. 1246, 113 L.Ed.2d 302. It has therefore categorically exempted structural errors from the case-by-case harmlessness review to which trial errors are subjected. Our precedent does not try to parse which structural errors are the truly egregious ones. It simply views all structural errors as "intrinsically harmful" and holds that any structural error warrants "automatic-reversal" on direct appeal "without regard to [its] effect on the outcome" of a new trial. *Neder v. United States*, 527 US 1, 7, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999).
>
> Just as the "difficulty of assessing the effect" of such an error would turn harmless-error analysis into a speculative inquiry into what mighe have occurred in an alternate universe," *United States v. Gonzalez-Lopez*, 548 US 140, 149, n.4, 150, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006), so too would it undermine a defendant's ability to make and actual-prejudice showing to establish and ineffective-assistance claim.

16. It is necessary to promote public confidence in the courts by avoiding the unseemly spectacle of trial before a biased judge, the need for immediate relief is manifest. See *In re United States*, 666 F.2d 690, 694 (1st Cir. 1981) at 694. In cases in which parties have sought recusal based on assertions of actual bias, we have stated that "the issue of judicial disqualification presents an extraordinary situation suitable for the exercise of our mandamus jurisdiction." *In re United States*, 666 F.2d at 694. Our rationale in these cases has been that "public confidence in the courts may require that such a question be disposed of at the earliest possible opportunity." *In re Union Leader Corp.*, 292 F.2d 381, 384 (1st Cir.), cert. denied, 368 U.S. 927, 7 L. Ed. 2d 190, 82 S. Ct. 361 (1961). See also *In Re Cargill, Inc.*, 66 F.3d 1256; 1995 US App Lexis 28048; 1995-2 Trade Cas. (CCH) P71, 139.

17. Andrew also submitted a "Motion for Trial By Jury" so as to help ensure that justice would prevail because of Judge Snyder's overt bias, but Judge Snyder ignored it and never addressed that motion, showing Judge Snyder's intent on hiding her illegal actions from the public's eye; however, since Andrew had observed her overt acts of bias, he forwarded copies of the case

filings to the press to ensure exposure of her unconstitutional actions.

18. In his Complaint, Andrew provided not only a photocopy of the plea contract, but he quoted that contract verbatim within the filing, with evidence confirming his claims. He provided "personal background information" in items #'s 1-5. In this section Andrew informed Judge Snyder of the fact that his legal name is "Andrew J. Avitable," that he holds a very high ranking European Royal Peerage Title, that he never changed his name and that his reason for trying to divorce his wife at the time, which was the protagonist for his criminal charges, was because he found his wife cheating on him with his biological father. This information was not part of the claims and only provided so the Judge Snyder would have a complete picture of the case, as he specifically stated in the complaint. In the next section he provided Judge Snyder the "applicable law provisions" that provided the controlling case law and statutes. This section spanned from Item #6 to #40. The next section contained the quote of the plea contract that was signed by the State and Andrew on October 12, 2005, prior to the change of plea. This section spanned from #41 to #43. The next section of the Complaint addressed "Andrew's Understanding of the Contract" based upon what his defense counsel told him. It was not until the section titled "Arguments Demonstrating Breaches Of The Plea Contract" starting at item #49 that Andrew began providing his actual claims as was illustrated in the Table of Contents of his Complaint.

19. Andrew's first claim was that his defense counsel deliberately breached the Constitutional Contract by committing perjury in his hearing (items #49 to #51); obstructed his court access (items #52 to #59); and helped force the change of his name from "Avitable" to "Larson" by falsely stating he could not contest the change of his surname until after the case was over (items #60 to #68). Andrew provided the second claim of "Judge Arnold's Breaches" enumerating a "Sentencing Breach" (item #69), a "Bar Of Review Breach" (Items #70 to #73) and a "Financial Penalty Breach" (Item #74). The next section was the "WDOC's Deliberate Breaches"

enumerating "Americans with Disabilities Act Breaches" (items #76 to #85), "Length of Sentence Served Breach" (item #86), "Threat Of Further Sentence Enhancement Breach" (items #87 to #88), "Actual Sentence Enhancement Breach" (items #89), "Equal Protection Under The Law Breaches" with the two subsections of "Equal Protection – Disciplinary and Grievances" (items #90) and "Equal Protection – Good Time" (items #91 to #94), "Safety And Security Breaches" (items #95 to #98), "Deliberate PREA Breaches" (items #100 to #102), and "Additional Court Access Breach" (items #103). The next section addressed "Deliberate Ex-Post-Facto Breaches" (items #104 to #126) addressing "Signature Breach," which is an ex-post-facto breach and a 1st Amendment Violation of censorship. Andrew's closing encompassed item #127 to 139.

> "Censorship is a form of infringement upon freedom of expression to be especially condemned. While the constitutional protection even against a previous restraint is not absolutely unlimited, limitation will be recognized only in exceptional cases. The state has a heavy burden to demonstrate that such a restraint presents an exceptional case. The basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule. There is no justification in this case for making an exception to that rule. This Court recognized many years ago that such a previous restraint is a form of infringement upon freedom of expression to be especially condemned." *Near*, 283 U.S. 697 (1931). *Burstyn*, 343 U.S. 495 (1952).

20. The above breaches violate Andrew's plea contract, and in most of the items he illustrates statutory and Constitutional violations that beach the Constitutional (US and Wyoming) Contracts. The WDOC justifies its illegal actions with amending its policies to accommodate the illegal changes after the fact; in the immediate case, 7 years and more post-facto. The US and Wyoming Constitutions' Supremacy Clauses are ignored and Judge Snyder chose to close her eyes to those illegal actions that violate Andrew's plea contract with the fraudulent claim that there was no contract. All the claims Andrew presented were appropriate under a Breach of Contract Complaint because Andrew and Wyoming were, and still are, in contract together.

Judge Snyder's decision rewrites Wyoming Contract Law to allow flexibility and interpretation, which Wyoming has stringently adhered to in the past because it protects the State. If this Court allows this unjust decision to stand that makes a mockery of Wyoming Contract Law and the Wyoming Court System, it would be opening Wyoming to re-litigation of all the contract disputes of the past and require the flexibility that Judge Snyder has now incorporated into Wyoming Contract Law. The press will have a heyday with the articles they can write on the subject if this Court chooses to allow this illegal amendment to Wyoming Contract Law to stand.

21. To obfuscate the claims Andrew presented to the Court, the AG referenced 2 Court Rules that were not applicable. The AG presented W.R.Civ.P Rule 12(b)(6 & 7).

22. W.R.Civ.P Rule 12(b)(6) does not apply because Andrew does actually "state [several] claim[s] upon which relief can be granted" because there was a plea contract entered into by both Wyoming and Andrew; and that contract was breached by the actions of the State of Wyoming's Employees. Thus, this argument was intended to convolute the case. The arguments Andrew stated in the Complaint clearly demonstrated a Material Breach of Contract has occurred in the plea contract addressed in this case and that he is deserving of relief.

23. W.R.Civ.P Rule 12(b)(7) does not apply as the only defendant in a complaint for breach of contract against the State of Wyoming (Wyoming) is Wyoming itself. All other individuals discussed within a complaint for breach of contract are not parties to the case; but are state actors working for the State of Wyoming under the color of the law. Therefore, the caption above, which is the same exact caption of the original complaint, is both proper and accurate. The claim of a need to joinder is a frivolous attempt to obfuscate the issues. Even the WDOC as a whole is not considered a party to the complaint, only a state actor. Therefore, W.R.Civ.P Rule 12(b)(7) does not apply, as the only necessary party is the State of Wyoming. The proper party to serve was either or both the Governor of Wyoming (Governor) and/or the AG. Thus, all parties were

properly included in the caption and served; and this argument is designed to convolute the case.

24. Wyoming contract law is inflexible and not open for interpretation. Wyoming has maintained this integrity of contract law to ensure the State has the ability to rely upon its contract law in dealing with contractors. A change in this status of Wyoming Contract Law would result in all the past contractors who did not like the ruling in their breach of contract cases to return under new evidence and use that newly created flexibility to gain financial compensation from the State of Wyoming. Wyoming Contract law also provides that subdivisions and third party contractors are required to comply with the terms of other contracts. See W.S. § WS § 34.1-1-201. General definitions.

25. WS § 34.1-1-305. Remedies to be liberally administered. (a) The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this act or by other rule of law. **(b)** Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.

26. Accordingly, we determine the government's obligations by reviewing the express language used in the agreement. See *United States v. Courtois*, 131 F.3d 937, 939 (10th Cir. 1997) ("We agree with the other circuits that have considered this issue and have found that whether a plea agreement unequivocally obligates the government to provide defendant with the opportunity to provide substantial assistance turns on the specific language of the agreement."); *Rockwell*, 124 F.3d at 1200; *United States v. Vargas*, 925 F.2d 1260, 1266-67 (10th Cir. 1991); *United States v. Easterling*, 921 F.2d 1073, 1079 (10th Cir. 1990). As with the interpretation of any contract, we also apply the maxim that the agreement should be construed against its drafter. *Hawley*, 93 F.3d at 690. *United States v. Brye*, 146 F.3d 1207, 1209-10 (10th Cir. 1998). "The

government ... may not do indirectly what it promised not to do directly." *United States v. Belt*, 89 F.3d 710, 713 (10th Cir. (citing Hand, 913 F.2d at 856). See *United States Of America v. Loving*, 80 F. Supp. 2d 1200; 1999 U.S. Dist. Lexis 19881 (1999). "We will not allow the government to rely 'upon a 'rigidly literal construction of the language' of the agreement to escape its obligations under the agreement." *Hand*, 913 F.2d at 856 (*quoting United States v. Shorteeth*, 887 F.2d 253, 256 (10th Cir.1989)). "The government cannot prevail upon a formalistic, literal interpretation of the language in the plea agreement, and it may not do indirectly what it promised not to do directly." *United States v. Belt*, 89 F.3d 710, 713 (10th Cir. (citing Hand, 913 F.2d at 856)). See *United States Of America vs. Loving*, 80 F. Supp. 2d 1200; 1999 U.S. Dist. Lexis 19881 (1999).

27. *United States v. Bunner*, 134 F.3d 1000 (10th Cir. 1998) (construing plea agreement according to principles of contract law). See also *Santobello v. New York*, 404 U.S. 257, 262, 30 L. Ed. 2d 427, 92 S. Ct. 495 (1972). The court will strictly construe the agreement against the state. See *Rowe*, 676 F.2d at 526 n. 4. Cf. *United States v. Massey*, 997 F.2d 823, 824 (10th Cir. 1993) (ambiguities in plea agreement resolved against the drafter [Wyoming]). The court will also interpret the agreement according to petitioner's reasonable understanding at the time he entered into the agreement. See *United States v. Rockwell Intern. Corp.*, 124 F.3d 1194, 1199 (10th Cir. 1997) (analyzing plea agreement based upon defendant's reasonable understanding at the time he entered the plea agreement); *Rowe*, 676 at 528 (interpreting immunity agreements pursuant to principles applied to interpretation of plea agreements).

28. "We interpret plea agreements as a matter of law using contract principles." *Schade v. State*, 2002 WY 133, 5, 53 P.3d 551, 554 (Wyo. 2002). "Under general contract law, "we read the contract as a whole to find the plain meaning of all the provisions[.]"" *Bear Peak Res., LLC v. Peak Powder River Res., LLC*, 2017 WY 124, 17, 403 P.3d 1033, 1041 (Wyo. 2017)(citing

Thornock v. Pacificorp, 2016 WY 93, 13, 379 P.3d 175, 180 (Wyo. 2016)). "However, in criminal plea agreement cases, "ambiguities in a waiver of appellate rights are interpreted against the State."" *Henry*, 13, 362 P.3d at 789 (citing *Hahn*, 359 F.3d at 1325, 1328). "waivers of appellate rights are to be construed narrowly." *United States v. Lonjose*, 663 F.3d 1292, 1297 (10th Cir. 2011).

29. "Defendant's due process rights were violated where government breached its plea agreement promise not to make specific sentence recommendation by advocating specific period of incarceration since doctrine that government must adhere to its bargain in plea agreement is fundamental." *United States v. Hayes*, 946 F.2d 230 (3d Cir. 1991). Defendant is denied due process of law when guilty plea is induced by plea bargain or by what defendant justifiably believes is plea bargain, and that bargain is not kept, since guilty plea then was not freely and knowingly given. *State v. Hayes*, 423 So. 2d 1111 (La. 1982).

30. The parties agree the question of whether the State has breached a plea agreement is a question of law we review de novo. *Nordwall v. State*, 2015 WY 144, 13, 361 P.3d 836, 839 (Wyo. 2015). A plea agreement is a contract between the State and the defendant to which we apply general principles of contract law to define the nature of the government's obligations in a plea agreement." *Hawley*, 93 F.3d at 692; *see Doe v. United States*, 51 F.3d 693, 701 (7th Cir. 1995) ("Plea agreements are contracts, which means that the first place to look in determining the extent of the government's promises under the [] agreement is the language of the agreement itself."). See also *Mendoza v. State*, 2016 WY 31, 26, 368 P.3d 886, 895 (Wyo. 2016)(citing *Deeds v. State*, 2014 WY 124, 14, 335 P.3d 473, 478 (Wyo. 2014)). To determine whether a breach of a plea agreement occurred we: (1) examine the nature of the promise; and (2) evaluate the promise in light of the defendant's reasonable understanding of the promise at the time the plea was entered. The State may not obtain the benefit of the agreement and at the same time

avoid its obligations without violating either the principles of fairness or the principles of contract law. *Mendoza*, 2016 WY 31, 26, 368 P.3d at 895.

31. "A material or substantial breach is one that goes to the whole consideration of the agreement." *Id.* (citing *Williams v. Collins Commc'n, Inc.*, 720 P.2d 880, 891 (Wyo. 1986)). When determining whether a breach is material or substantial, we examine several factors, "including the extent to which the non-breaching party will be deprived of the benefit it reasonably expected and the extent to which the breaching party's conduct comports with the standards of good faith and fair dealing." *Browning*, 2001 WY 93, 32, 32 P.3d at 1071.

32. "A Plea Agreement is a Contract between a defendant [Andrew] and a government [Wyoming]" (*United States v. Standiford*, 148 F.3d 864, 868 (7th Cir. 1998) and *Mabry v. Johnson*, 467 U.S. 504, 508 (1984)). "To determine whether a plea agreement has been breached, the appellate court, guided by principles of contract law, analyzes the government's obligation in light of the nature of the promise and the defendant's understanding of it when the plea was entered." *Herrera v. State*, 64 P.3d 724 (Wyo. 2003). See also *Buckley v Terhune* (2006, CA9 Cal) 441 F.3d 688, cert den, motion den (2007, US) 127 S Ct 2094, 167 L Ed 2d 831.

33. The Court's "analysis begins with the terms of the agreement." *Mendoza*, 2016 WY 31, 27, 368 P.3d at 895. "If its language is 'clear and unambiguous, [we] must enforce the agreement according to its terms without looking beyond the four corners of the contract.'" *Id.* (quoting *In re CDR*, 2015 WY 79, 25, 351 P.3d 264, 270 (Wyo. 2015))(alteration in original).

34. A contract must be taken as a whole and exactly as written without interpretation (on its face value) provided the contract is not ambiguous and any ambiguities must be interpreted in favor of the defendant (Andrew). Contracts must be construed as whole and all parts must be given effect, no part of contract terms should be left meaningless or interpreted out of contract. The party not drafting the contract's view of ambiguous contract terms must be reasonable to be

considered. See *Wiebe Constr. Co.* (1976, ASBCA) 76-2 BCA 11920, affd, on reconsideration (1976, ASBCA) 77-1 BCA 12235.

35. WS § 34.1-1-304 demands good faith in contracts. WS § 34.1-1-305 demands that remedies be liberally administered. WS § 34.1-2-106 demands that conduct including any part of a performance must conform to the contract. Cancellation occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of termination except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. WS § 34.1-2-510 explains the Effect of breach on risk of loss. WS § 34.1-2-609 explains the Right to adequate assurance of performance of a contract and imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. WS § 34.1-2-701 gives the remedies for breach of collateral contracts not impaired. Andrew has notified Wyoming of the breach.

36. Judge Snyder conveniently chose to ignore US Constitution Article 6. Debts, Supremacy, Oath which states in part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution. And its Wyoming Constitutional counterpart: Wyoming Constitutional Article 1, §37. Constitution of United States supreme law of land states: "The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land. And Wyoming Constitutional Article 21, §24. State part of United States says: "The State of

Wyoming is an inseparable part of the federal union and the constitution of the United States is the supreme law of the land."

37. Judge Snyder also chose to ignore US Constitutional Amendment 7 Trial by Jury in Civil Cases states: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." And its Wyoming Counterpart: Wyoming Constitutional Article 1, §9. Trial by jury inviolate states in part: "The right of trial by jury shall remain inviolate in criminal cases. A jury in civil cases and in criminal cases where the charge is a misdemeanor may consist of less than twelve (12) persons but not less than six (6), as may be prescribed by law."

38. Wyoming Constitutional Article 1, §8 states: Courts open to all; suits against state States: "All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the state in such manner and in such courts as the legislature may by law direct."

39. Amongst other violations, the WDOC is violating Wyoming Constitutional Article 1, §20. Freedom of speech and press; libel; truth a defense states: "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right; and in all trials for libel, both civil and criminal, the truth, when published with good intent and [for] justifiable ends, shall be a sufficient defense, the jury having the right to determine the facts and the law, under direction of the court.

40. The Wednesday, October 12, 2005 Plea Contract Andrew signed read exactly as follows:

"PLEA OFFER

Andrew Larson
CAN 28-553

Current Charges: 6 counts of Second Degree Sexual Assault
Maximum penalty – 0 to 20 years on each count

Offer: Plead cold to 2 counts of Second Degree Sexual Assault
The State will dismiss the remaining counts
The State will **not** the Possession of Child Pornography charge
(Maximum penalty if you take this deal is two 20 year sentences)

A cold plea means that the State can recommend whatever sentence that they feel is appropriate and the Defense can argue for whatever sentence that we feel is appropriate"

41. The additional charge the State was allegedly holding over Andrew was one of "Possession of Child Pornography," when, in fact, the computer Andrew owned had had the hard drive replaced three months before the computer was given to the CPD and the new hard drive was never formatted, let alone anything being placed on it. The old hard drive was disassembled by Andrew and Ingrid's two kids so they could see what was inside of it. Afterwards, the kids threw the disk back and forth like a Frisbee until it was thrown away later that day. When the Cheyenne Police Detectives asked Andrew to sign a release allowing them to take possession of the computer, it was already delivered by Andrew's accusatory ex-wife and in their car trunk; and Andrew still believed the hard drive had not been formatted yet because he never had the chance to format it. The only person to have the time to format it before the police took possession of it would have been Ingrid; and she still possessed the entire hard drive from her former husband's computer which had a great deal of pornographic material on it. She used the accusation of possession of child porn against her first husband to prevent him from arguing for custody of or visitation with their children and the same accusation with the same evidence against Andrew to ensure she would win a divorce she stood no chance of winning because of her adulterous affair with Andrew's biological father.

42. At no time did the trial judge, Judge Peter Arnold (Case #28-553), state that he would not accept the Plea Contract Andrew and Mark Goldberg (State Employee working under the color

of the law) signed; nor did he ever state he was modifying the contract. Andrew has attempted to withdraw his plea as is required when the plea has been violated, but thus far Wyoming refuses to allow him to do so, so Andrew's only recourse was to file a complaint for breach of contract.

43. Plea of guilty was not voluntarily entered where states attorney promised to recommend [0-20]-year sentence but subsequently broke promise and asked for extremely severe sentence [5-Life]; defendant was entitled to recommendation prosecution promised to make even though recommendation would not have bound court. *Harris v. Superintendent, Va. State Penitentiary*, 518 F.2d 1173 (4th Cir. 1975).

> Under *Santobello*, inmate had *due process* right to enforce provisions of his plea agreement and under *Adamson*, state court was required to interpret inmate's plea agreement pursuant to California contract law; consequence was that inmate was sentenced to indeterminate prison term of 15 years to life when bargained-for sentence, to which he was constitutionally entitled, was maximum of 15 years, and thus state court committed constitutional error that had substantial and injurious effect on inmate and inmate was entitled to habeas corpus relief. *Buckley v Terhune* (2006, CA9 Cal) 441 F.3d 688, cert den, motion den (2007, US) 127 S Ct 2094, 167 L Ed 2d 831

44. Due process is violated when criminal defendant receives sentence greater than that promised by trial judge. *United States ex rel. Johnson v. De Robertis*, 718 F.2d 209 (7th Cir 1983).

> "When the prosecution breaches its promise with respect to an executed plea agreement, the defendant pleads guilty on a false premise, and hence his conviction cannot stand." *Mabry v. Johnson*, 467 U.S. 504, 509 (1984).

45. Andrew's Understanding of the Contract was that the plea contract Andrew signed provided him with the possible sentence of two terms of 0-20 years on probation. , meaning that he would have to serve "no more than 20 years for each sentence," which was the maximum sentence allowable under the sentencing statute (see W.S. §6-2-306(a)(ii) as it was stated in 2005 and still is), an unconscionable contract in relation to the two sentences handed down (Andrew gained no benefit by accepting this one-sided contract, but he did not understand that at the time

because of his autism and severe mental distress). Additionally, defense counsel, Joy McMurtry, verbally promised Andrew that he would never see the inside of a prison, probation only, and that the two sentences would be run concurrently.

46. There was no concession made for any type of financial liabilities, groups, therapy obligations, loss of rights or privileges or registration requirements; nor was there any concession made for a change of Andrew's name of signature. The trial court was free to give Andrew the maximum sentence allowable for both charges without restriction, in a case in which the evidence clearly demonstrated a crime never occurred. Andrew was coerced to accept the unwanted plea contract via the fraudulent claims made by Public Defender's Office (PDO) Appointed Defense Counsel Joy McMurtry (McMurtry) and PDO Investigator Mark Goldberg (Goldberg), that he was already guilty because of Wyoming Statute §6-2-311. He was also told that he would not be allowed a replacement attorney because he refused to cooperate with current trial counsel by accepting the arranged plea contract. He was told he would have to defend himself at trial and would get the worst possible sentence because he, as an autistic person could not defend himself properly.

> *United States v. Jeronimo*, 398 F.3d 1149 (9th Cir. 2005)(court enforces clear and unambiguous language of plea agreement under contract law); *Brown v. Poole*, 337 F.3d 1155 (9th Cir. 2003)(plea agreements are contracts and are assessed using standards associated with contract law; oral plea agreements, like oral contracts are enforceable but are discouraged); *United States v. Escamilla*, 975 F.2d 568, 571 (9th Cir. 1992)(contract law applies to interpreting plea agreements and determining remedy for breach, while Rule 11 governs decision whether valid agreement even formed).

47. Andrew's sentence changed from two 0-20 year sentences (written plea contract) run concurrently (verbal promise) on probation only (verbal promise) to two consecutive 15-20 years sentences in prison. Now the WDOC has extended Andrew's sentence by over a year by refusing to give him the 329 days of pretrial confinement Judge Arnold awarded him and the associated

good time award that Governor Mark Gordon's HEA 28 awarded him; extending his sentence by over a year, long after it was entered.

> "A sentence cannot be increased after it has been entered." *Turner v. State*, 624 P.2d 774 WY (1981); *Kaess v. State*, 748 P.2d 698, 702 (WY 1987). "The state may not make sentence adjustments that upset the defendant's legitimate "expectation of finality in his sentence."" *United States v._DiFancesco* 449 US 117, 136 (1980); *Warnick v. Booher*, 425 F.3d 842, 847 (10th Cir. 2005). "A sentence cannot be increased after it has been entered, nor may restitution be added at a later date." *Kaess v. State*, 748 P.2d 698, 702 (WY 1987). *United States v. DiFrancesco* 449 US 117, 136 (1980) "It is a violation of double jeopardy to increase the punishment of a conviction after the expectation of finality has attached." *Simonds v. State*, 799 P.2d 1210, 1214 (Wyo. 1990). "Finality in a defendant's expectation of his sentence attaches when either: the time for taking an appeal has expired, or a decision from an appeal has been made." *United States v. DiFrancesco* 449 US 117, 136 (1980).; also, *Griffith v. Kentucky*, 479 U.S. 314, 321 n 6 (1987).

48. Andrew understands that no inmate has a legitimate expectation of receiving good-time (see *Fogle v. Pierson*, 435 F.3d 1252, 1262 (10th Cir. 2006)) (finding no liberty interest implicated where good time credits are discretionarily awarded), nor do they have an expectation of parole (see *Bird v. LeMaitre*, 371 Fed. Appx. 938; 2010 U.S. App. Lexis 7112 (10th Cir 2010)); however, all inmates do have an expectation of equal treatment, protection and application under the laws of this Country (see *due process* clause in Fourteenth Amendment). This means that if an inmate has conducted himself in a manner which affords good-time allowances to other inmates; then he also has an expectation of receiving the same good-time allowance for the same conduct. Throughout Andrew's incarceration he has only lost 45 days of good-time due to a write-up that he still contests as it should have never been written.

49. In addition to changing the sentencing terms of the contract, Judge Arnold also added restitution, fees for the Public Defender's Office, and other financial penalties that were not included in the verbiage of the contract.

> *United States v. Gottesman*, 122 F.3d 150, 152 (2d Cir. 1997) (plea bargain agreement interpreted using contract law principles, court may order restitution as

specified and agreed to within the terms of that agreement, failure of government to include restitution provision within plea agreement will preclude court from imposing such term).

50. As Andrew stated in his Complaint, Andrew is not addressing the illegitimacy of the plea contract at this time despite his desire to do so; he is only addressing the breach of contract at this time because the Wyoming courts have previously shown him that they refuse to even examine the conditions of coercion that forced him to take the unwanted plea contract in spite of the evidence supporting his claims of illegitimacy or coercion. If the Court wishes to correct the injustices occurring due to the unconstitutionality of W.S. §6-2-311, which was used to force his acquiescence or wants to correct the injustice of the unconstitutional plea contract due to it being unconstitutional as it is unconscionable, the coercion of it and the lies to a mentally handicapped man to break his resolve to have a trial, Andrew will gladly elaborate further in a separate brief.

51. Goldberg and McMurtry worked together to finally coerce Andrew into signing the contract he never wanted. Despite McMurtry having a copy of that plea contract, she lied on the record multiple times by claiming it did not exist, in the attempt to gain a longer sentence for Andrew (5 years to Life for each of the 2 sentences). The interesting thing is that McMurtry had the evidence definitively confirming Andrew's innocence the entire time (the fact that the alleged victim of rape was still a virgin at the time of Andrew's arrest, making ½ of the accusations impossible and the genito-urinary obstructions from scar tissue that Andrew suffered, making the other ½ of the accusations impossible) and refused to provide it to Andrew or address it with the trial court.

52. The 2nd Judicial District Court held an unconstitutional bias against Andrew and deliberately chose to violate the law, constitutions and Andrew's rights, apparently in an effort to cover-up the illegal actions in the WDOC facilities.

53. "Plea agreement amounts to, and should be interpreted as, a contract under state contract

law." Id., at 883 (citing *Ricketts v. Adamson*, 483 U.S. 1, 5, n. 3, 107 S. Ct. 2680, 97 L. Ed. 2d 1 (1987)). ``the remedy for breach must 'repair the harm caused by the breach.' " Id., at 890 (quoting *People v. Toscano*, 124 Cal. App. Fourth 340, 20 Cal. Rptr. 3d 923, 927 (2004)). "Consequently [Andrew was] entitled to specific performance, namely, a maximum prison term of [0-20] years." *Ibid.* The only obligatory change to Andrew's sentence is the granting or removal of good-time earned or lost by Andrew through his actions, which must be applied in an equal manner to other inmates who earn good-time as Andrew is entitled to equal protection under the law (also discussed slightly in the end of this filing) and not providing him with the good-time he has earned is tantamount to discrimination against him. A contrary Wyoming State Court decision would be itself ``contrary to, or involv[ing] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. 2254(d)(1); see 827 F.3d, at 888. See *Kernan v. Cuero*, 199 LED2D 236, _ US _ (2017).

54. The WDOC decided they wanted Andrew to change his signature (to what they were ordering, "Andrew Larson," and demanded it be legible), which has been the same his entire life ("Andrew J. Avitable," his legal name). At the time Andrew's conviction and incarceration began, the WDOC did not concern itself with what an inmate's signature looked like. Andrew's only legal signature is "Andrew J. Avitable" and, pursuant to the federal courts' rulings and the constitutions, the WDOC does not legally have the right or authority to make him change it.

55. A signature (sign-manual/signet/autograph/*Signum manus*) is a "personal artistic expression of one's self" and, as such, is rightfully protected under the First Amendment as artistic expression. One's "mark" can be anything that person chooses. This God given freedom is protected by the U.S. Constitution; and **nobody** has the right to dictate what another person will sign as their "self-representation." (Wyo. Const. Art. 1, §20; & First Amendment). Even Hitler's Germany, Cold-War Russia, current day China and Korea haven't breached the sanctity

of one's personal signature; therefore, Wyoming has no justification, right, or privilege to seize such power. The First Amendment's "Freedom of Expression/ Speech" is a right protected in every jurisdiction of the United States. An attack like this can't be permitted.

56. If the WDOC refuses to accept Andrew's legal signature, then they MUST release him as the WDOC cannot have it both ways, pursuant to the Sword and Shield Doctrine (See *Rylander*, 460 U.S. 752, 758 (1983). ("Hence the truism that a privilege cannot be used as both a shield and a sword. The non-legal equivalent of that truism is equally to the point: "You can't have it both ways." *Id.*)). Andrew's Judgment and Sentence were signed with "Avitable," which was an illegible signature as were all the documents in his case; and everything he signed was signed with "Andrew J. Avitable." If Andrew's legal signature is not acceptable and is "not valid" because it is illegible and "Andrew J. Avitable," his signature on the unwanted plea contract and every court document is invalid and not acceptable, then every action of the trial court is invalid, as well as his intake paperwork when he entered into WDOC custody.

57. The WDOC's stance on Andrew's signature makes him illegally incarcerated for 18 years, and Wyoming culpable for his kidnapping pursuant to the implications of their contention. This makes Wyoming responsible for the kidnapping of a Very High Ranking European Royal with the high ranking peerage title of the Marquis of Monte Bianco, an internationally protected person-See 18 U.S.C.A. §§112(a), 1116(a), 1201(a)(4)), and endangerment of his life (federal & international felonies)). Ergo, Wyoming is obligated to release him and compensate him for his illegal incarceration and all the rights violations committed to incarcerate him and those thereafter in WDOC custody.

58. Because of his incarceration, Andrew lost his law enforcement career, his ability to help people as an EMT with paramedic's training and spent an enormous amount of time in prison for crimes that the evidence clearly shows never happened because his ex-wife, Ingrid, was

politically connected and had to win the couple's divorce that Andrew was trying to effectuate because he caught her cheating on him with his father, who got her pregnant with Noah Daniel.

59. Andrew now asks this Court to provide a determination of the construction as well as the rights and liabilities created under the plea contract Andrew entered into that resulted in his incarceration and find that it was breached. Andrew will not accept a new contract or an amendment to the existing contract. He believes the only just resolution is the acknowledgement and correction of the breach of his plea contract, which MUST place him in the situation as if the contract was fulfilled and restore him to his pre-contract state as mandated under Wyoming Law.

> This section permits not only construction, but determination of rights and liabilities under contract. *Holly Sugar Corp. v. Fritzler*, 42 Wyo. 446, 296 P. 206, 1931 Wyo. LEXIS 50 (Wyo. 1931).

60. *Res judicata* and collateral estoppel don't apply as Andrew is not asking for damages; he is only asking to correct the breaches of contract. Andrew is also concerned with stopping the further persecution, the ability to sign his legal signature and honoring his paternal lineage and the law, as well as ADA compliance.

61. Wyoming violated Andrew's rights by illegally incarcerating him under a name that is not his and he never wanted (forcibly changing Andrew's name & identity-**inexcusable**), for a crime the evidence clearly shows never happened through the use of a coerced plea contract in which he was forced to accept an unwanted alias. If this were not enough, the WDOC (State) has committed material breaches of that contract on many levels and continues to do so.

62. Now the WDOC is trying to violate his rights again by attempting to force him to utilize a signature that is not his legal signature even though everyone else is allowed to use their legal signature. This is an attempt to force him to commit fraud. Granted, "In certain limited circumstances, . . . courts have permitted a plaintiff to proceed using a fictitious name where there are significant privacy interests or threats of physical harm implicated by the disclosure of

the plaintiff's name. . ." (*Zavaras*, 139 F.3d 798 (10th Cir 1998)); but nobody has ever been forced to do so until this case. The officials in this case repeatedly stepped outside their official offices (positions of trust under the color of the law) to violate the law and Andrew's rights; and tried to force Andrew to violate the law. Andrew now asks this Court to intervene and correct at least some of the wrongs done to him as "no one is bound to obey an unconstitutional law or policy and no courts are bound to enforce them." (See *In re. Walker*, 388 U.S. 307 (1967); *Griffin*, 30 F. Supp. 3d 1139 (Dist. NM, 2014)).

63. "In fleshing out the concept of a liberty interest, the Supreme Court of the United States has said a liberty interest "denotes not merely freedom from bodily restraint but **also the right of any individual**." *Meyer,* 262 U.S. 390, 399 (1923). "In a local context, the United States district court has ruled that liberty under the *due process* clause is broader than freedom from bodily restraint." *Moore,* 825 F. Supp. 1531 (D. Wyo. 1993). "This reasoning invokes the concept of strict scrutiny, which demands identification of a compelling state interest. The compelling state interest then must be balanced against the fundamental right, and the method of protecting that compelling state interest must be the least intrusive by which that interest can be accomplished."" *State in the Interest of C,* 638 P.2d 165. *Michael*, 900 P.2d 1144 (Wyo. 1995).

64. The District Court granted the Motion to Dismiss without notifying Petitioner that the Motion to Dismiss would be construed as Summary Judgment and never provided him the requisite 10 days to respond.

> Rule 56, W.R.C.P., in combination with Rule 6(c), W.R.C.P., establishes a general requirement that the nonmoving party receive 10 days' notice of conversion in order to file opposing matters (or seek a continuance under Rule 56(f), W.R.C.P). *Alm v. Sowell*, 899 P.2d 888, 1995 Wyo. Lexis 127 (Wyo. 1995).

65. A summary judgment ruling is improper as all undecided claims arose from the contract and constitute a single claim. See generally *Griffin v. Bethesda Foundation*, 609 P.2d 459 (Wyo. 1980).

> "We view the facts as alleged in the complaint in the light most favorable to the plaintiffs, and we will uphold the dismissal **only** if it appears beyond doubt that they can prove no set of facts which would entitle them to relief." *Walker*, 450 F.3d 1082, 1088-89 (10th Cir. 2006). "Citing federal cases should constitute a fair presentation of Constitutional claims." *Cotto*, 11 F.3d 217 (CA2, 2003); *Pendergast*, 699 F.3d 1182 (CA 10, 2012). "State courts must enforce federal laws and protect constitutional rights." *Scarpa*, 38 F.3d 1 (CA1, 1994).

66. The AG did not file a response to Petitioner's claims and chose instead to file a Motion to Dismiss, which is the same as a Motion for Summary Judgment and was not appropriate. The AG failed to file a Response to Andrew's Claims as contained within his Complaint; thereby conceding Andrew's claims as true because Defendant's conversely chose to argue claims they fabricated in their Motion to Dismiss instead of the claims Andrew actually presented to the District Court, in what appears to be an unfair attempt to manipulate the Court into rubber-stamping its unjust contention (a foul blow). Instead of addressing the claims Petitioner raised, the Wyoming District Courts blindly followed the AG's fraudulent version and rendered rulings failing to address anything Petitioner raised. The claims Petitioner raised have been presented to the Wyoming Courts and defaulted, but have never had a ruling on their merits, leaving them ripe for any court to address.

> For purposes of a motion to dismiss the Court must accept all well pleaded factual allegations in the complaint as true and resolve all reasonable inferences in the plaintiff's favor. See *Morse v. Regents of the Univ. of Colo.*, 154 F.3d 1124, 1126-27 (10th Cir 1998); *Seamons v. Snow*, 84 F.3d 1226, 1231-32 (10th Cir 1996); *Walker*, 450 F.3d 1082, 1088-89 (10th Cir. 2006).

67. Petitioner did not ask for damages or any compensation that is not within the scope of Wyoming's Uniform Declaratory Judgment's Act as all of Andrew's claims are justiciable and worthy of Declaratory Judgment (declaratory relief only and reimbursement of expenses for this case), which is what Andrew is asking for. Andrew has not omitted anything that "is material and necessary to entitle him to relief." See *Moses Inc. v. Moses*, 2022 WY 57, ¶ 8 (Wyo. 2022). Andrew has presented claims that can be addressed through Wyoming's Uniform Declaratory

Judgment's Act; therefore, there is no legitimate reason or justification for this Court to dismiss the case as the AG is asking. To do so would be an abandonment of the Court's duty to justice.

68. As mentioned in item #53, the issue of violations of equal protections and discrimination are not limited to those complained about within the original brief. The problem with discrimination against Andrew extends to include discriminatory treatment in the medical arena;

a. Medical Arena:

i. While other inmates have received treatment for illnesses and injuries, the WDOC has denied Andrew proper treatment in a number of areas to include proper treatment for his 2018 head injury (see #iv), equal and proper treatment for COVID (see #ii), proper treatment for his 1989 ankle injury (which would not have cost them anything if they would have addressed it in a timely manner)(see #v), proper treatment for his food allergies (see #iii), proper treatment for his hypoglycemia (see #vi), etc. This is only the tip of the iceberg.

ii. As for COVID, Andrew was brought into the Wyoming Honor Farm (WHF) with other inmates and placed into the quarantine wing like the other inmates; however, this is where the parallel ends. When the quarantine period was complete and Andrew still had negative COVID test results, the other inmates were entered into general population while Andrew was kept in the quarantine wing and was celled with multiple consecutive cell mates who had positive COVID tests in what appeared to be an attempt to force him to contract COVID (attempted murder under the law and medical assault). Andrew was not allowed to leave the quarantine wing until after he finally contracted COVID; and while other inmates were given vitamins and other treatment for COVID, he received absolutely no treatment to recover or abet his symptoms. He was left to suffer the symptoms of COVID (torture). This constitutes cruel and unusual

punishment in violation of the 8th Amendment of the US Constitution and Art. 1, §15 of the Wyoming Constitution. Andrew believes this heinous treatment was retalitory because of the conflict he and Warden Moffat have resulting from Andrew's 2016 42 USCS §1983 lawsuit in which Warden Moffat (then Major Moffat) was a defendant.

iii. Andrew suffers food allergies that range from IBS like symptoms to full blown anaphylactic reactions, which have required epinephrine and Benadryl shots. Andrew has kept the WDOC aware of this problem from the beginning of his incarceration; however, when the special diet inmate cook (Mr. Rising) in the Wyoming Medium Correctional Institution decided he was going to prove that Andrew was not allergic to soy (by report from other inmates working in the kitchen) because he did not like all the restrictions Andrew's food allergy caused; it was too much work. Andrew notified the medical staff of a rash he was developing to stem the allergic reaction prior to it progressing to a full anaphylactic reaction. The nurse refused to approach Andrew when she was examining him and from over 8 feet away dismissed that the rash was nothing more than the result of an irritant. She refused him medical treatment and instructed him to wait for the rash to subside. Shortly afterward Andrew informed the pod officer that his throat was beginning to swell and asked for Medic 1, which was denied him. He called Sonya White (mom) and asked her to call WDOC Director Lampert about the problem and inform him that his lips and throat were swelling. Only then did the nurse return to examine him again with an extremely irate attitude. When she saw the swelling, Andrew was finally brought to the infirmary for epinephrine and Benadryl shots to control the swelling. This happened multiple times but the WDOC kept refusing to prevent this inmate from access to Andrew's diet and allowed the problem to continue until Andrew was finally transferred to another facility.

iv. On February 21, 2018, Andrew sustained a serious head injury that resulted in his being so incapacitated that he kept flopping around on the floor trying to figure out how to sit up for 15 minutes after the nurse arrive. The nurse did nothing more than take his vitals, have him squeeze her fingers and follow her finger to determine he was "all right." No treatment was provided to Andrew other than a neurology examination almost 2 years later to the day, which resulted in the neurologist ordering that Andrew needed an MRI as soon as possible, which was finally complied with several months later. The MRI determined that Andrew's brain had suffered enough of a trauma that part of his "white matter" had died. The white matter is what functions as the control center for the brain, which explains why Andrew has suffered: mild long term memory loss, severe short term memory loss, visual instability, loud multi-octave ringing in the ears that makes it hard for Andrew to understand what is being said to him unless he is paying attention prior to any statement, muscle tremors, migraines, and loss of words and train of thought, all of which he continues to suffer to this date. Andrew also temporarily suffered: a metal taste in his mouth, blurred vision, dizziness, disorientation, and loss of proper muscular control. Andrew has yet to be properly treated for this head injury.

v. Andrew suffered a work-related trimalleolar ankle fracture and talus fracture of the right ankle on November 30, 1989 that was originally treated with an open-reduction and internal-fixation surgery. In 1990 the hardware was removed. Approximately in 1992, an arthroscopic surgery was conducted to remove calcium deposits, which sufficed to keep the ankle alive and fully functional from 1992 until January 21, 2005, when Andrew was arrested and placed in lock-down. The sedentary life of 23+ hour a day lock-down (only out for showers) from January 21, 2005 until approximately

September/October of 2006, in which Andrew was not able to get the necessary exercise to keep the ankle functional resulted in a re-growth of the calcium deposits, necessitating another arthroscopy. The re-growth of calcium was the direct result of the lack of exercise. Andrew informed the WDOC medical provider that the New York Workmen's Compensation Board was responsible for any and all treatment relating to his right ankle, but they still refused to provide the needed arthroscopy and made Andrew wear a brace instead, to avoid the surgery. Since the issuance of the brace, Andrew has needed several replacement braces and new shoes every year, but has been resigned to fighting for new shoes and new braces when needed. In one case, it took 3.5 years after the shoes were required to be replaced before the medical provider actually got him new shoes and the ones he was wearing were worn entirely through so as to grind the brace on the ground and require its replacement. Currently, Andrew is in need of a new brace and new shoes. He does not know how long it will take to get the new ones despite the other inmate population getting new shoes 2x per year and being allowed to possess 3 pairs.

vi. Andrew has suffered hypoglycemia his entire life and informed the WDOC medical provider upon entry into the prison system. Initially, they provided him with snack bags to combat his episodes of low blood sugars. Later, they changed their policy to only provide snack bags to inmates who received insulin shots; nobody else could get one. The purpose of the snack bags was to provide a boost when the sugar level dropped to prevent passing-out and becoming injured by hitting one's head or limbs on something as they fall. Andrew pointed out to the WDOC that a hypoglycemic's problems and dangers are exactly the same as an insulin dependent diabetic's because the same injuries can be sustained when they pass-out from low blood sugars. The WDOC said

that did not matter. Subsequently, Andrew has suffered numerous events, with one occurring in the shower in which Corrections Officer Scarborough (the son) found Andrew unconscious on the floor of the upstairs handicap shower in WMCI's Pod D-5 and immediately contacted medical for an emergency response. The nurse instructed him to have Andrew file a Health Services Report (HSR). Scarborough complied and Andrew followed the instruction. The HSR came back with the statement that the next time, Andrew should inform the Corrections Officer so the officer can call medical to get the event documented. This circular logic and change in policy has resulted in Andrew not being properly treated for his episodes of hypoglycemia despite their creating a safety and security hazard as well as a health hazard for Andrew.

69. Genuine issues of material fact, precluding summary judgment, existed in regard to claim for breach of contract. See generally *McLaughlin v. Michelin Tire Corp.*, 778 P.2d 59, 1989 Wyo. Lexis 174 (Wyo. 1989).

> We review a grant of summary judgment entered in response to a petition for declaratory judgment de novo. Wyo. Cmty. Coll. Comm'n v. Casper Cmty. Coll. Dist., 2001 WY 86, P 11, 31 P.3d 1242, 1247 (Wyo. 2001). "The summary judgment can be sustained only when no genuine issues of material fact are present and the moving party is entitled to judgment as a matter of law." Id. See also Voss v. Goodman, 2009 WY 40; 203 P.3d 415; 2009 Wyo. Lexis 41 (Wyo. 2009); Coffinberry v. Board Of County Commissioners Of The County Of Hot Springs, Wyoming, 2008 WY 110; 192 P.3d 978; 2008 Wyo. Lexis 115 (Wyo. 2008).

WHEREFORE, Andrew asks this Court to overturn the District Court's erroneous decision and correct the Breaches of his Plea Contract with Wyoming by ruling that Wyoming has failed its obligation under the contract, by and through the actions of the WDOC, causing a material breach of their contract. He also asks that this Court order his release and expunging the conviction from his record. Andrew also asks for the reimbursement of his expenses in relation to this filing, to include copy work, printing and his research and preparation time, which is

allowable under declaratory relief.

DECLARATION UNDER PENALTY OF PERJURY

I swear under the penalty of perjury pursuant to W.S. §6-5-301; 18 USC §1621; and 28 USC §1746, without relinquishing any rights in relation to my Royal Title and status that the above information contained in my Complaint for Declaratory Judgment is true and correct to the best of my knowledge, recollection and understanding. I therefore place my hand as seal upon this Complaint on the _____ day of _____, 2023.

Andrew J. Avitable
il Marchese di Monte Bianco

WITNESS TO THE HAND AND SEAL

Subscribed and sworn to as being true under the penalty of perjury pursuant to W.S. 6-5-301; 28 USC 1746; 18 USC 1621 by: Andrew Joseph Avitable (known to the WDOC as "Andrew Larson" against his wishes), before me this _____ day of _____, 2023. Said individual satisfactorily demonstrated to be the individual whose signature is subscribed hereon, and solemnly affirmed that he has firsthand knowledge of the facts contained herein and that the facts are true, correct and complete to the to the best of his knowledge, understanding and belief.

State of Wyoming)
) ss.
County of Weston)

_____ _____
Notary Public My commission expires

Additional material from this filing is available in the Clerk's Office.