

BILL TO  
 County Counsel  
 UC Administration Building  
 10 Elizabethtown Plaza  
 Elizabeth, NJ 07207

SHIP TO  
 UC COUNTY COUNSEL  
 10 ELIZABETHTOWN PLAZA  
 ELIZABETH, NJ 07207

VENDOR  
 PENDER JOHN  
 P.O. BOX 154  
 GARWOOD, NJ 07027

VENDOR #: PEN34

COUNTY OF UNION, NEW JERSEY

**PURCHASE ORDER/VOUCHER**  
 THIS NUMBER MUST APPEAR ON ALL INVOICES,  
 PACKING LISTS, CORRESPONDENCE, ETC.

No. 09008518

ORDER DATE: 09/23/09  
 REQUISITION NO: 09008326  
 DELIVERY DATE: 09/21/09  
 STATE CONTRACT:  
 F.O.B. TERMS:

INJCP

PAYMENT RECORD

CHECK NO. CHECK DATE

1-908-527-4000

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	COURT ORDER SETTLEMENT JOHN B. PENDER V. COUNTY OF UNION CIVIL ACTION NO. 92-3614 (SRC) COURT ORDER FOR \$40,200.00 PLUS POST- JUDGMENT INTEREST	T-03-56-850-000-537	64,571.0000	64,571.00
			TOTAL	64,571.00

*Michael M. York*

DEPARTMENT ATTEST  
 RECEIPTS RECEIVED AND CHECKED

DATE SIGNATURE

FOR PAYMENT - SIGN AND RETURN  
 TO ABOVE "BILL TO ADDRESS"

SIGNATURE BELOW MUST BE ORIGINAL  
 PLEASE MAKE COPY FOR YOUR RECORDS

VENDOR'S CERTIFICATION & DECLARATION

I do solemnly declare and certify under the penalty of law that the within bill is correct in all its particulars that the articles have been furnished or services rendered as stated therein, that no bonus has been given or received by any person or persons within the knowledge of this claimant in connection with the above claim and that the amount herein stated is justly due and owed, and that the amount charged is a reasonable one.

PERSONAL KNOWLEDGE OF SERVICE RENDERED OR RECEIPT OF MATERIALS, SUPPLIES AND EQUIPMENT

DATE SIGNATURE

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JOHN B. PENDER,

Plaintiff,

vs.

UNION COUNTY; WARREN  
MACCARELLI, JAIL DIR.; ANDREW  
R. RUOTOLO, PROSECUTOR; DONALD  
GARRETSON, INTERNAL AFFAIRS,  
UNION COUNTY CORRECTIONS; ROSS  
DOYLE, PROBATION ADMIN.;  
CORRECTIONS OFFICER LUGO;  
CORRECTIONS OFFICER KURTZO;  
CORRECTIONS OFFICER JOHN DOE;  
PROBATION OFFICER HORTON;  
PROBATION OFFICER GOMBERT,  
individually and jointly in  
their official capacity as  
Union County Employees.

Defendants.

Civil Action No. 92-3614(SRC)


STIPULATION OF DISMISSAL  
WITH PREJUDICE

The matter in difference having been satisfied by payment of \$64,754.00 consisting of judgment amount and statutory interest, it is hereby stipulated and agreed that the above action be hereby dismissed with prejudice and without costs against either party.

DATED: 9/20/99

ROBERT E. BARRY, ESQ.  
UNION COUNTY COUNSEL

  
\_\_\_\_\_  
JOHN B. PENDER  
Plaintiff Pro Se

By:   
\_\_\_\_\_  
WILLIAM T. DONEGAN  
Assistant County Counsel

GENERAL RELEASE

THE STATE OF NEW JERSEY REQUIRES THE FOLLOWING STATEMENT BE PROVIDED: ANY PERSON WHO KNOWINGLY FILES A STATEMENT OF CLAIM CONTAINING ANY FALSE OR MISLEADING INFORMATION IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES

For and in consideration of the sum of **SIXTY-FOUR THOUSAND FIVE HUNDRED SEVENTY-ONE DOLLARS (\$64,571.00)** in hand paid, receipt whereof is hereby acknowledged, **JOHN B. PENDER**, being of full age, individually, and for his/her heirs, agents, executors, administrators, successors, assignees, hereby releases, acquits and forever discharges the Releasee(s), **COUNTY OF UNION, CORRECTIONS OFFICER ROBERT E. LUGO** and **CORRECTION OFFICER MICHAEL R. KURTZO**, and any affiliated departments, divisions and companies and any agents, servants, successors, firms or corporations who are or might be liable in any way from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, which the undersigned now has or which she may hereafter accrue on account of or in any way any and all claims arising from the circumstances surrounding any and all injuries arising out of a case entitled **John B. Pender -v- County of Union, et al.** which bears Federal Civil Docket No.92-3614(SRC)

In further consideration of the above-described payment, the undersigned releases and forever discharges the Releasee(s) against any indemnity or contribution claim of any persons, firms, or corporations, which may have been brought or may be brought arising from the accident or occurrence which resulted in a jury verdict.

The undersigned hereby discharges and agrees to indemnify and save harmless the Releasee(s) from any liens asserted by any health care carrier, health care provider, hospital, insurer or attorney for medical expenses, hospital expenses, long term care payments, attorney liens, subrogation claims or liens or any child support or workers compensation liens to the extent required to be paid in accordance with the law which is a result of this accident or occurrence or against me/us whether or not it pertains to this accident or occurrence. The undersigned hereby certifies and represents to the Releasee(s) that he/she has fully disclosed the name, address, telephone number, policy number, and claim number, and docketed judgment number for child support as well as amount claimed, as a lien, by any health care carrier, health care provider, workers compensation carrier, subrogation insurance carrier, or attorney as a result of this accident or occurrence or against me/us whether or not it pertains to this accident or occurrence.

The undersigned further agrees, represents, and certifies that he/she/they will pay the fully agreed upon amount of any lien asserted as outlined above directly out of the proceeds of this settlement. The undersigned hereby further agrees to indemnify and hold harmless the Releasee(s) from any future lien which has not been previously made known to the parties herein.

The undersigned hereby acknowledges full and final settlement and satisfaction of all claims, demands, actions and causes of action of whatsoever kind of character which he/she may have against the Releasee(s).

In witness whereof, I hereby certify, it is understood and agreed that the undersigned hereby certifies and

his/her own belief and knowledge of the nature, extent, and duration of said injuries and that no representations or statements regarding said injuries or regarding any other matters made by the person, firms, corporations or entities and agree that the payment of said amount is not to be construed as an admission of liability on the part of said Releasee(s), and it is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, liability being expressly denied.

**THE UNDERSIGNED HAS/HAVE READ THE FOREGOING RELEASE AND UNDERSTANDS IT**

No agreements nor understandings have been made between the parties except as expressed herein and the terms of this Release is contractual and not a mere recital.

Witness or attested by:

Neeraj/Cipeno

John B. Pender  
JOHN B. PENDER

STATE OF NEW JERSEY

SS:

COUNTY OF Union

I certify that on 11th day of April, 2011 JOHN B. PENDER  
personally appeared before me and acting as Judge under oath to my satisfaction that the above

- (1) is named in and personally signed this document; and
- (2) signed, sealed and delivered this document as his or her act and deed.

Deborah J. Capasso

Prepared by:

William T. Donagan

DEBORAH J. CAPASSO  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Jan. 10, 2011

COUNTY OF UNION, NEW JERSEY

**PURCHASE ORDER NUMBER**  
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	UC COUNTY COUNSEL 10 ELIZABETHTOWN PLAZA ELIZABETH, NJ 07207
VENDOR	VENDOR #: FEN34 PENDER JOHN P.O. BOX 154 GARWOOD, NJ 07027

TY UNIT	DESCRIPTION	ACCOUNT NO	UNIT PRICE	TOTAL COST
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			TOTAL	64,571.00

*Handwritten signature*

RECEIVED BY SIGNATURE	DATE
SIGNATURE	DATE
SIGNATURE	DATE
SIGNATURE	DATE

ACKNOWLEDGEMENT OF SERVICE RENDERED OR RECEIPT OF MATERIALS, SUPPLIES AND EQUIPMENT

# COUNTY OF UNION

County Counsel  
 UC Administration Building  
 10 Elizabethtown Plaza  
 Elizabeth, NJ 07207

REQUISITION	
NO.	09008326

S H I P  T O	UC COUNTY COUNSEL 10 ELIZABETHTOWN PLAZA ELIZABETH, NJ 07207
V E N D O R	VENDOR #: PEN34  PENDER JOHN P.O. BOX 154 GARWOOD, NJ 07027

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			TOTAL	64,571.00

REQUESTING DEPARTMENT

DATE

908-875-5100

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JOHN B. PENDER,

Plaintiff,

v.

COUNTY OF UNION, et al.,

Defendants.

Civil Action No. 92-3614 (SRC)

OPINION & ORDER

CHESLER, District Judge

This matter comes before the court on a petition by *pro se*<sup>1</sup> Plaintiff John B. Pender ("Plaintiff") for a writ of execution against Defendants County of Union and Union County Corrections Officers Robert E. Lugo and Michael R. Kurtzo [Docket Entry No. 178]. Plaintiff seeks the issuance of a writ of execution by this Court in the amount of \$40,200, plus post-judgment interest and double damages. Defendant County of Union opposes the application to the extent that Plaintiff seeks interest and double damages [Docket Entry No. 181]. Defendants Lugo and Kurtzo have not filed opposition to the instant petition.

<sup>1</sup> Plaintiff proceeds *pro se* in this action. It is well settled that a *pro se* pleading is held to less stringent standards than more formal pleadings filed by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972).

### Background

By way of brief background, on January 6, 1999, Plaintiff obtained a judgment against Union County Corrections Officers Robert E. Lugo and Michael R. Kurtzo. The judgment was entered pursuant to a civil jury verdict in which the jury found that Lugo and Kurtzo acted with deliberate indifference to Plaintiff's medical condition as a insulin dependent diabetic. The jury entered an award in favor of Plaintiff and against Defendant Lugo in the amount of \$20,100 and in favor of Plaintiff and against Defendant Kurtzo in the amount of \$20,100. No judgment of record was entered in favor of Plaintiff and against the County of Union.

Federal Rule of Civil Procedure Rule 69(a) provides that the procedure for execution on a judgment is the same as that which is provided for in the state courts. Specifically, Rule 69 provides that "[t]he procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought...." In other words, under Rule 69, a federal litigant may make use of available state law mechanisms for executing a judgment after the judgment is entered. New Jersey Court Rule 4:59-1(a) provides that the "[p]rocess to enforce a judgment or order for the payment of money and process to collect costs allowed by a judgment or order, shall be a writ of execution, except if the court otherwise orders.... The writ may be issued either by the court or the clerk thereof."

### Writ Execution Will Not Issue Against Defendant Union County

By a deliberate reading of Plaintiff's submission in support of his petition for a writ of execution, Plaintiff apparently seeks a writ of execution against Defendants Union County, Lugo and Kurtzo. Based on the record, the Court concludes that there is clear evidence that Plaintiff is

entitled to a writ of execution against Defendants Lugo and Kurtzo in the amount of the judgment entered by Judge Lifland on January 6, 1999. However, the Court is aware of no judgment of record which was ever entered in favor of Plaintiff and against Union County. To the extent that Plaintiff argues that he is entitled to a writ of execution against Union County due to the government's status as employer of the Defendants Lugo and Kurtzo, the Court notes that the judgment of record was entered against Officers Lugo and Kurtzo in their individual capacity. Moreover, Plaintiff has not asserted that Officers Lugo and Kurtzo continue to be employed by Union County and does not explicitly seek wage execution against the County. Any duty by Defendant Union County to indemnify or otherwise step into the shoes of the officers is a separate question and one which is not properly the subject of a petition for a writ of execution. Rather, questions of indemnity and governmental liability, questions which may implicate both statutory and contractual provisions, are more properly resolved through the ordinary course of litigation. Therefore, while it is clear that a writ of execution should issue against Officers Lugo and Kurtzo, Plaintiff's application for a writ of execution against Union County will be denied.

#### Post-Judgment Interest

Plaintiff seeks post-judgment interest. The award of post-judgment interest is governed by 28 U.S.C. § 1961, which provides that interest may be awarded on a money judgment from the date of entry of the final judgment. Defendant Union County objects to Plaintiff's request for post-judgment interest, arguing that Plaintiff has not complied with the provisions of N.I.S.A. 2A:17-56.23b(b)(1) (Defendant's Brief at 2.) Specifically, Defendant Union County claims that Plaintiff has not provided the requisite information, in the form of a certification denominating Plaintiff's full name, mailing address, date of birth and social security number, to allow for the

distribution of funds. Notably, the Court has already determined that a writ of execution will not issue against Defendant Union County. Defendants Lugo and Kurtzo do not oppose the provision of post-judgment interest. Therefore, the Court will grant Plaintiff's request for post-judgment interest pursuant to the terms of 28 U.S.C. § 1961 with January 6, 1999 as the date of final judgment for calculating post-judgment interest.

### **Double Damages**

Plaintiff also seeks double damages based on the allegation that he, a child-support debtor, was incarcerated in the same cell as a bank robber in violation of N.J.S.A. 30:8-5 and N.J.S.A. 30:8-6. The Court will deny Plaintiff's request for double damages. In short, Plaintiff misapprehends the role of this Court in considering a petition for a writ of execution. This Court entered a judgment in favor of Plaintiff and against Officers Lugo and Kurtzo in the amount of \$40,200. At the time judgment was entered, the Court was empowered to grant double damages based on the finding of a violation of N.J.S.A. 30:8-5 and/or N.J.S.A. 30:8-6. Notably, the judgment by the Court did not provide for such damages. The Court should not do so here. It is not the role of this Court, on a petition for writ of execution, to reopen a ten year old case in order to examine the record and make factual determination which were not made by the presiding judge and jury at the time of trial. Had Plaintiff wished to contest the Court's denial of double damages, he was free to appeal the final judgment to the Third Circuit Court of Appeals. Absent an explicit finding that Plaintiff was incarcerated in violation of N.J.S.A. 30:8-5 or N.J.S.A. 30:8-6, the Court must deny Plaintiff's application for statutory double damages.

Accordingly, for the reasons set forth above,

**IT IS** on this 2nd day of September, 2009

**ORDERED** that Plaintiff's petition for a writ of execution against Defendant County of Union is **DENIED** with prejudice; and it is further

**ORDERED** that Plaintiff's petition for a writ of execution against Defendant Robert E. Lugo is hereby **GRANTED** in the amount of \$20,100, plus post-judgment interest to be calculated pursuant to 28 U.S.C. § 1961; and it is further

**ORDERED** that Plaintiff's petition for a writ of execution against Defendant Michael R. Kurtzo is hereby **GRANTED** in the amount of \$20,100, plus post-judgment interest to be calculated pursuant to 28 U.S.C. § 1961; and it is further

**ORDERED** that no writ of execution shall issue until, pursuant to Federal Rule of Civil Procedure 69, New Jersey Court Rule 4:59-1 and this Court's Opinion & Order, Plaintiff submits to the Court, within 45 days, proposed writs of execution incorporating the applicable statutory post-judgment interest and denominating the manner in which Plaintiff seeks to satisfy the January 6, 1999 judgment (i.e., whether through garnishment of debtor's wages or a levy on debtor's personal or real property).

s/ Stanley R. Chesler  
STANLEY R. CHESLER  
United States District Judge

Dated: September 2, 2009

John B. Pender  
P.O. Box 154  
Garwood, N.J. 07027  
(908) 875-5100  
[johnbpender31@yahoo.com](mailto:johnbpender31@yahoo.com)

Bill Donegan, Assistant County Counsel  
Union County Counsel's Office  
10 Elizabethtown Plaza  
Elizabeth, N.J. 07207  
(908) 527-4250  
FAX: (908) 289-4230  
[wdonegan@ucnj.org](mailto:wdonegan@ucnj.org)

Re: Pender v. Union County, et als  
Civil Docket No. 92-3814

September 17, 2009

DEAR MR. DONEGAN:

Attached herewith, please find your calculated interest agreement with my signature and today's date, September 17, 2009. Please e-mail back to me, both this letter -and- the signed interest agreement with a County Stamp-In Date. I'll then transmit a letter to the Honorable Stanley R. Chesle, U.S. District Judge, ruling that Union County is indemnifying Independent Correction Officers Robert E. Lugo -and- Michael E. Kurzo.

Also, be advised that I'll be on vacation from September 24<sup>th</sup> to October 3<sup>rd</sup>. If you need my signature on a release, please expedite that paperwork to me now. As you've noted, the interest agreement runs to the end of September 2009. When the check is ready, either pre-September 24<sup>th</sup> -or- when I return from vacation on October 4<sup>th</sup>, I'll pick it up at the County Office. You'll also need to advise where and who to see.

Thank you

  
John B. Pender

<u>Judgment Amount</u>	<u>Judgment Date</u>	<u>Interest Rate</u>
\$40,200	1/6/99	4.513%

<u>Year</u>	<u>Daily Interest Rate</u>	<u>Days</u>	<u>Interest Amount</u>	<u>Compounded Amount</u>
1999	0.012364%	359	\$1,784	\$41,984
2000	0.012364%	365	1,895	43,879
2001	0.012364%	365	1,980	45,859
2002	0.012364%	365	2,070	47,929
2003	0.012364%	365	2,163	50,092
2004	0.012364%	365	2,261	52,353
2005	0.012364%	365	2,363	54,716
2006	0.012364%	365	2,469	57,185
2007	0.012364%	365	2,581	59,766
2008	0.012364%	365	2,697	62,463
2009	0.012364%	273 (thru 9/30/09)	2,108	<b>\$64,571</b> <b>Total Judgment and Interest Due*</b>

I agree that the above calculation of judgment amount and interest due in the above matter is correct in all its particulars, including the interest rate, yearly interest calculations and compounded amounts.

Date 9-17-2009

  
 \_\_\_\_\_  
 John B. Pender

\* Interest calculated pursuant to 28 U.S.C. §1961