

THOMAS J. LAWTON  
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Pro Se

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THOMAS JOHN LAWTON	)	CASE NO.
	)	
Plaintiff,	)	
	)	<b>COMPLAINT FOR</b>
	)	<b>DEPRIVATION OF</b>
<b>RIGHTS</b>	)	
vs.	)	<b>CONSPIRACY</b>
	)	<b>DECLARATORY RELIEF</b>
	)	<b>SUMMARY JUDGMENT</b>
PETER M. FORMAN	)	<b>ACTION FOR DAMAGES</b>
as New York State	)	
Acting Supreme Court Judge	)	
and individually,	)	
	)	
DIANE P. FOLEY	)	
As Law Gaurdian and individually,	)	
<u>Defendants.</u>	)	

1. This is an action at law to redress the deprivation by defendants of plaintiffs' rights, privileges and immunities arising under the Constitution and Laws of the United States and the deprivation under color of law by the individual defendants PETER M. FORMAN and DIANE FOLEY. During the course of this pursuit, defendants each of them, PETER M. FORMAN and DIANE FOLEY conspired to and in fact did deprive the plaintiff of liberty, constitutional and civil rights violating plaintiff's rights guaranteed by the First (1<sup>st</sup>) Fourth (4<sup>th</sup>) Fifth (5<sup>th</sup>) Sixth (6<sup>th</sup>) Eighth (8<sup>th</sup>) Ninth (9<sup>th</sup>) Tenth (10<sup>th</sup>) and Fourteenth (14<sup>th</sup>) Amendments of the United States Constitution. This action arises under Title 42 of the United States Code, Section 1981, 1982, 1983, 1985 based upon the oath of defendant PETER M. FORMAN. Defendants, PETER M. FORMAN and DIANE FOLEY separately and in concert, deprived plaintiff's rights as set forth:

**SPECIFIC ALLAGATIONS WITH FACTUAL SUPPORT SPECIFIED HEREIN**

- a. Right to a Trial & Freedom from Illegal Incarceration beginning  
April 1, 2003 [8 days]
- a. Right to a Trial & Freedom from Illegal Incarceration beginning  
April 9, 2002 [38 days]
- a. Right to Counsel March 18, 2003
- b. Parental Rights Terminated Without Notice or a Hearing by an  
Official Act of a Judge
- c. Defendant Peter M. Forman's Serial Temporary Order of  
Protection Scheme forbid plaintiff parent absolutely no  
contact with his Two Youngest Children by any means for  
755 days
- d. Right to call Witnesses August 15, 2003
- e. Right to call Witnesses: Sua Sponte Withdrawal of Judicial  
Subpoenas  
April 3, 2003
- a. Right to Counsel June 12, 2003 & June 25, 2003
- b. Rights to call Witnesses Dr. Henry Goetze February 5, 2002
- c. Right to Equal Protection
- d. Right to a fair and impartial trial 100%-0% Equitable  
Distribution

2. The jurisdiction of this Court is invoked under 28 USC 1331, 1343, this being an action arising under the Constitution and Laws of the United States and under 42 USC 1981, 1982, 1983, 1985 this being an action authorized by law to redress the deprivation under color of the State law, statute, ordinance, regulation, custom and usage of a right, privilege and immunity secured to plaintiff by the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments of the Constitution of the United States. The sum in controversy exceeds \$75,000 dollars exclusive of interest and costs. Declaratory relief is sought pursuant to 28 USC Sections 2201 and 2202.

3. Defendant NEW YORK STATE UNIFIED COURT SYSTEM, (hereinafter the "Court System") duly formed and authorized under the laws of the State of New York. As part of its duties

defendant Court System provides trial court capabilities specifically at the Dutchess County Court House located in the city of Poughkeepsie, County of Dutchess.

4. Individual defendant, PETER M. FORMAN, is an Acting Supreme Court Judge of the New York Unified Court System, responsible for carrying out judicial duties in the Unified Court System at the Dutchess County Court House, Dutchess County New York.

5. Plaintiff sues each and all defendants in both their individual and official capacities.

6. At all times pertinent to this Complaint, the named individual defendant PETER M. FORMAN, was acting under the color of his official capacity as New York Acting Supreme Court Judge and the ordinances and regulations of the Unified Court System, and the laws of the State of New York and in the case of defendant DIANE FOLEY pursuant to her authority as Law Guardian authority per appointment by defendant PETER M. FORMAN. Defendant PETER M. FORMAN is sued individually and in his capacity as Acting Supreme Court Judge of the New York State Unified Court System.

7. Defendant DIANE FOLEY, was at all times pertinent to the allegations of this complaint a Law Guardian appointed by the oath of office of defendant PETER M. FORMAN as a Law Guardian for the two [2] youngest of the four [4] LAWTON children JANELLE NICOLE LAWTON, d.o.b. November 29, 1989 and JOSHUA ANTHONY LAWTON d.o.b. May 31, 1995. Defendant DIANE FOLEY is sued individually and in her Law Guardian capacity.

8. Plaintiff, THOMAS JOHN LAWTON, was at all times and still is a citizen of the United States and a resident of Hyde Park, New York at apartment 3C2 4676 Albany Post Rd. Hyde Park, New York 12538, whose mailing address is P.O. Box 790 Hyde Park, NY 12538-0790.

9. Plaintiff THOMAS JOHN LAWTON for many years enjoyed an excellent reputation in Dutchess County New York, and other states as a life insurance professional involved in estate planning. Plaintiff's career was inalterably changed on April 5, 2001 when

the House passed the estate-tax repeal.

10. During all times mentioned herein, the defendants, PETER M. FORMAN and DIANE FOLEY, separately and in concert, acted under color and pretense of law, to wit, under color of the statutes, ordinances, regulations, customs and usage of the State of New York and the Court System. Each of the defendants herein, separately and in concert engaged and conspired in the illegal conduct herein mentioned to the injury of the plaintiff, and deprived the plaintiff of the rights, privileges and immunities secured to the plaintiff by the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the Constitution of the United States and the laws of the United States, pursuant to the practice and policy of the defendant Court System.

#### **FIRST ILLEGAL INCARCERATION**

11. Defendant PETER M. FORMAN signed and issued the April 1, 2003 Commitment Order, Ordering the incarceration of the plaintiff THOMAS JOHN LAWTON in which defendant PETER M. FORMAN sentenced the plaintiff THOMAS JOHN LAWTON to 60 days in jail without a trial. A true copy of the April 1, 2003 Commitment Order is attached as **Exhibit 1**.

12. Defendant PETER M. FORMAN signed the April 1, 2003 Commitment Order denying plaintiff THOMAS JOHN LAWTON his right to a trial, to present evidence and to call witnesses as required by the Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. On April 1, 2003 Plaintiff THOMAS JOHN LAWTON was arrested at his home by the Dutchess County Sheriff and taken to the Dutchess County Jail pursuant to defendant PETER M. FORMAN'S April 1, 2003 Commitment Order.

13. Defendant PETER M. FORMAN, by signing the Commitment Order on April 1, 2003 acted under color of the state law acted under pretense and color and virtue of law in his official capacity, but said acts were illegal and each defendant individually and in concert with others acted willfully, knowingly, and with specific intent to deprive plaintiff THOMAS

JOHN LAWTON of his constitutional rights under Fourth, Fifth Sixth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution.

14. By signing the April 1, 2003 Commitment Order defendant judge PETER M. FORMAN was acting in clear and complete absence of personal jurisdiction, mandated by New York State Judiciary Law Section 756. New York State Judiciary Law Section 756 sets forth that an application to punish for civil contempt must be commenced by notice of motion or by an order to show cause returnable before the court or judge authorized to punish for the offense or by an order of such court or judge requiring the accused to show cause why the accused should not be punished for the alleged offense.

See Matter of Murrin v Murrin, (1983, 2d Dept) 93 App Div 2d 858 461 N.Y.S. 2d 360:β

Section 756 of the Judiciary Law mandates that an application to punish for civil contempt be commenced "by notice of motion returnable before the court or judge authorized to punish for the offense, or by an order of such court or judge requiring the accused to show cause \* \* \* why the accused should not be punished for the alleged offense." Absent the requisite notice and warning set forth by that statute, Special Term was without jurisdiction to punish for contempt.

In regard to whether absence of personal jurisdiction would abrogate judicial immunity, the **Rankin** court reasoned:

SEE Rankin v Howard, 633 F 2d 844 (9th Cir. 1980): When the Supreme Court first formulated the "clear absence" standard,...it stated that the principle of immunity applied when there was "jurisdiction of both "subject and person."

SEE Matter of Bradley v. Fisher, 80 U.S. (13 Wall) 335,352 (1872), 20 L.Ed 646:

An absence of personal jurisdiction may be said to destroy "all jurisdiction" because the requirements of subject matter jurisdiction and personal jurisdiction are conjunctional. Both must be met before a court has authority to adjudicate the rights of Parties to a dispute.

SEE Matter of, Kulko v Superior Court, 436 U.S. 84,91,98 S.Ct. 1690, 1696, 56 L.Ed 2d 132 (1978)

If a court lacks jurisdiction over a party then lacks "all jurisdiction" to adjudicate that parties rights, whether or not the subject matter is properly before it.

SEE Matter of *Gregory v. Thompson*, 500 F.2d at 63:  
Because the limits of personal jurisdiction constrain  
judicial authority, acts taken in the absence of personal  
jurisdiction do not fall within the scope of legitimate  
decision making that judicial immunity is designed to  
protect.

See Matter of *Dykes v Hoseman*, (1984) 743 F.2d 1488:  
A judge who acts in clear and complete absence of personal  
jurisdiction loses his judicial immunity. Immunity for  
judicial acts in clear absence of jurisdiction is lost... or  
acts in face of clearly valid statutes or case law expressly  
depriving him of jurisdiction.

15. On April 1, 2003, defendant DIANE FOLEY privately met with defendant PETER M. FORMAN and conspired to violate plaintiff's rights, and at this private meeting defendant DIANE FOLEY presented the attached April 1, 2003 Commitment Order that defendant PETER M. FORMAN signed, please SEE **Exhibit 1**.

16. Defendant judge PETER M. FORMAN did not have personal jurisdiction to enter the April 1, 2003 Commitment Order, and the lack of personal jurisdiction abrogated his judicial immunity. Defendant Forman was absent the requisite notice and warning set forth by statute, and clearly without personal jurisdiction. Judicial immunity was not intended to protect wrongdoers. A judge who acts in clear and complete absence of personal jurisdiction loses his judicial immunity.

17. At all times plaintiff THOMAS JOHN LAWTON was innocent of any crime. Plaintiff was arrested on April 1, 2003 and held in the Dutchess County Jail for 8 days.

#### **SECOND ILLEGAL INCARCERATION**

18. Defendant PETER M. FORMAN signed the April 9, 2002 Commitment Order without a trial, as required by the Fifth and Fourteenth Amendments of the United States Constitution. A true copy of the April 9, 2002 Commitment Order is attached as **Exhibit 2**. Also please see a true copy of correspondence from THOMAS JOHN LAWTON'S attorney Michael D. Krannis Esq. referring to defendant PETER M. FORMAN'S judicial conduct as "Summary Incarceration" attached as **Exhibit 3**.

19. Defendant PETER M. FORMAN signed the April 9, 2002 Commitment Order denying plaintiff THOMAS JOHN LAWTON his right to a trial, required by the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution; and further denied plaintiff the right to present evidence and to call witnesses as required by the Sixth Amendment of the United States Constitution. On April 9, 2002 plaintiff THOMAS JOHN LAWTON was arrested in defendant PETER M. FORMAN'S Court, without notice or a hearing, and taken directly to the Dutchess County Jail by the Dutchess County Sheriffs pursuant to defendant PETER M. FORMAN'S April 9, 2002 Commitment Order. A true copy of the April 1, 2003 Commitment Order is attached as **Exhibit 2**.

20. Plaintiff THOMAS JOHN LAWTON was held in the Dutchess County Jail for 38 [Thirty-eight] days, from April 9, 2002 until May 17, 2002. Defendant PETER M. FORMAN'S illegal incarceration of THOMAS JOHN LAWTON created a state of homelessness for the two oldest children JOSEPH THOMAS LAWTON d.o.b. April 29, 1985 and special needs child JEFFREY DANIEL LAWTON d.o.b. March 5, 1988 who were in the care of the plaintiff.

21. Defendant PETER M. FORMAN, by signing the Commitment Order on April 9, 2002 acted under color of the state law acted under pretense and color and virtue of law in his official capacity, but said acts were illegal and each defendant individually and in concert with others acted willfully, knowingly, and with specific intent to deprive plaintiff THOMAS JOHN LAWTON of his constitutional rights under Fourth, Fifth Sixth, Eighth, Ninth, and Fourteenth Amendments of the United States Constitution.

22. Defendant judge PETER M. FORMAN signed the April 9, 2002 Commitment Order knowing that his written Order of Commitment contained no manner in which plaintiff THOMAS JOHN LAWTON could purge himself of the contempt. New York Judiciary Law Sections 755 and 774 require a Judge to set forth within the Commitment Order the specific manner in which one can purge the contempt. ( SEE Matter of *Teresi v NY Comm. On Jud Conduct 2000*. SEE *NY Comm. On Jud Conduct Annual Report 2001*)

**DENIED RIGHT TO COUNSEL 26 [TWENTY-SIX] TIMES MARCH 18, 2003**

23. Individual defendant judge PETER M. FORMAN denied plaintiff THOMAS JOHN LAWTON's 26 [twenty-six] oral requests and pleas for counsel, a Sixth Amendment right, on March 18, 2003. A true copy of the court transcript is attached as **Exhibit 4**, one example of the twenty-six [26] requests and denials is found on page 11 lines 3 through 8 reads as follows:

MR. LAWTON: In fairness to me your Honor, I have gone through this and I want my counsel here. I know I have a right to counsel and I know that's part of my due process rights. I am protected by the Constitution with that and I just ask you to please—I beg you to let my lawyer be here.

THE COURT: I am going to be entertaining any applications that are returnable today...

24. Plaintiff THOMAS JOHN LAWTON retained attorney Linda T. Kushner JD on March 10, 2003 to represent him in all matrimonial matters before defendant PETER M. FORMAN. On March 18, 2003 Attorney Linda T. Kushner was already appearing in another matter previously scheduled and "marked final" 100 miles away Nassau County Court. Please **SEE Exhibit 5** letter from Judge Julianne S. Eisman dated March 18, 2003.

Judge Julianne S. Eisman's letter regarding plaintiff's attorney Linda Kushner dated March 18, 2003 states:

Ms. Kushner is the Law guardian assigned to this case, as it was previously marked "final", it was mandatory for all parties to be present in order to conclude the matter.

25. Attorney Linda Kushner twice petitioned defendant PETER M. FORMAN notifying defendant PETER M. FORMAN of her prior engagement and requesting the first ever adjournment in three years. **SEE Exhibit 15** a true copy of Attorney Linda T. Kushner's

March 12, 2003 and March 13, 2003 Attorney Affirmations are attached as exhibits to the Notice of Appeal.

26. Defendant FORMAN at the March 18, 2003 appearance immediately sanctioned attorney Linda Kushner sua sponte, \$500 for not appearing, SEE **Exhibit 4** page 2 line 17. Defendant PETER M. FORMAN knew plaintiff THOMAS JOHN LAWTON retained attorney Linda T. Kushner, and therefore was represented by counsel. After defendant PETER M. FORMAN sanctioned Attorney Linda T. Kushner, defendant PETER M. FORMAN continued legal court proceedings depriving plaintiff his protected right to the assistance of counsel. Plaintiff THOMAS JOHN LAWTON throughout the March 18, 2003 appearance, pleaded and begged defendant judge PETER M. FORMAN 26 [twenty-six] times for his protected right of the Assistance of Counsel. Defendant PETER M. FORMAN chose to completely deny or completely ignore each and every single request for counsel. The record presents a distinct and reoccurring pattern of abuse of power unlawfully depriving THOMAS JOHN LAWTON his right to the assistance of counsel, and depriving the plaintiff of property, without regard for his fundamental due process rights secured by the Sixth Amendment of the Constitution of the United States. SEE the 46-page record attached as **Exhibit 4**.

#### **DEPRIVED PROPERTY WIHTOUT THE DUE PROCESS OF LAW**

27. Defendant PETER M. FORMAN threatened THOMAS JOHN LAWTON with incarceration in an attempt to intimidate and coerce THOMAS JOHN LAWTON to "sign over" his interest in the marital home. Defendant PETER M. FORMAN violated plaintiff's rights to have the assistance of counsel mandated by the Sixth Amendment of the United States Constitution. Defendant PETER M. FORMAN deprived plaintiff's right to property under the Fifth Amendment of the United States Constitution. The March 18, 2003, **Exhibit 4**; transcript is replete with deprivation of fundamental rights that shock the conscience. Defendant PETER M. FORMAN further denied plaintiff's request to make a phone call to his attorney prior to signing "the deed over" to transfer his interest in the marital home. SEE **Exhibit 4** page 40 line 5.

28. On March 18, 2003 defendant judge PETER M. FORMAN again acted without personal jurisdiction, mandated by New York State Judiciary Law Section 756. New York State Judiciary Law Section 756 sets forth that an application to punish for civil contempt must be commenced by notice of motion or by an order to show cause returnable before the court or judge authorized to punish for the offense or by an order of such court or judge requiring the accused to show cause why the accused should not be punished for the alleged offense.

See Matter of Murrin v Murrin, (1983, 2d Dept) 93 App Div 2d 858 461 N.Y.S. 2d 360:

Section 756 of the Judiciary Law mandates that an application to punish for civil contempt be commenced "by notice of motion returnable before the court or judge authorized to punish for the offense, or by an order of such court or judge requiring the accused to show cause \* \* \* why the accused should not be punished for the alleged offense." Absent the requisite notice and warning set forth by that statute, Special Term was without jurisdiction to punish for contempt.

See Matter of Dykes v Hoseman, (1984) 743 F.2d 1488:

A judge who acts in clear and complete absence of personal jurisdiction loses his judicial immunity. Immunity for judicial acts in clear absence of jurisdiction is lost... or acts in face of clearly valid statutes or case law expressly depriving him of jurisdiction.

29. On March 18, 2003, defendant judge PETER M. FORMAN took a prosecutorial stance against plaintiff THOMAS JOHN LAWTON. The record, **Exhibit 4** depicts a mean spirited, bullying defendant judge PETER M. FORMAN threatening plaintiff THOMAS JOHN LAWTON with incarceration four [4] times which defendant PETER M. FORMAN had no authority to impose; defendant Forman was absent the requisite notice and warning set forth by statute, therefore defendant Forman was without personal jurisdiction. A judge who acts in clear and complete absence of personal jurisdiction loses his judicial immunity. Judicial Immunity was not intended to protect wrongdoers. See **Exhibit 4** pages 28, 30, 34 and page 40.

30. At 11: 40 A.M. on March 18, 2003, SEE **Exhibit 4** page 39 line 19 plaintiff THOMAS JOHN LAWTON under a great deal of mental anguish, emotional distress, deprived of the assistance of counsel and with the imminent threat of incarceration hanging over his

head was coerced by defendant PETER M. FORMAN, to "sign the deed over" transferring his interest in the marital home.

31. Defendants PETER M. FORMAN and DIANE FOLEY knew that the plaintiff "signing the deed over" was not voluntary and was signed by plaintiff THOMAS JOHN LAWTON under duress, without counsel, and under the threat of incarceration.

32. Defendant DIANE FOLEY acted in concert with defendant PETER M. FORMAN to coerce THOMAS JOHN LAWTON into "signing the deed over" by using plaintiff's right to the companionship with his children JANELLE NICOLE LAWTON and JOSHUA ANTHONY LAWTON as a carrot to coerce the plaintiff father to "sign the deed over" depriving plaintiff THOMAS JOHN LAWTON of his due process rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution. SEE pages 34-39 of **Exhibit 4**.

33. On March 18, 2003 defendants PETER M. FORMAN and DIANE FOLEY individually and in concert with others acted under pretense and color and virtue of law and their official capacities, but said acts were illegal and each defendant individually and in concert with others acted willfully, knowingly, and with specific intent to injure and deprive plaintiff THOMAS JOHN LAWTON of his constitutional rights guaranteed by the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

**PARENTAL RIGHTS TERMINATED WITHOUT NOTICE AND WITHOUT A HEARING BY MEANS OF AN OFFICIAL ACT OF A JUDGE**

34. THOMAS JOHN LAWTON'S parental rights with his two youngest children JANELLE NICOLE LAWTON and JOSHUA ANTHONY LAWTON were terminated by Court Order on May 3, 2001, without notice and without a hearing; depriving the plaintiff of his rights protected by the Fifth and Fourteenth Amendments of the United States Constitution on May 3, 2001.

The U.S. Supreme Court long ago noted that a parent's right to "the companionship, care, custody, and management of his or her children" is an interest "far more precious" than any property right. *May v. Anderson*, 345 U.S. 528, 533, 97 L. Ed. 1221, 73 S.Ct. 840, 843 (1952). In *Lassiter v. Department of Social*

Services, 452 U.S. 18, 27, 68 L. Ed. 2d 640, 120 S.Ct. 2153, 2159-60 (1981), the Court stressed that the parent-child relationship "is an important interest that 'undeniably warrants deference and absent a powerful countervailing interest protection.'" quoting Stanley v. Illinois, 405 U.S. 645, 651, 31 L. Ed 2d 551, 92 S. Ct. 1208 (1972)

In Troxel v. Granville, 527 U.S. 1069 (1999) Justice O'Conner, speaking for the Court stated, "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of the law.' We have long recognized that the Amendment's Due Process Clause like its Fifth Amendment counterpart, 'guarantees more than fair process.' The Clause includes a substantive component that 'provides heightened protection against governmental interference with certain fundamental rights and liberty interest' and "the liberty interest of parents in the care, custody, and control of their children-is perhaps the oldest of the fundamental liberty interest recognized by this Court."

35. Plaintiff THOMAS JOHN LAWTON was at no time charged with a crime of any nature.

**DEFENDANT PETER M. FORMAN'S "SERIAL TEMPORARY ORDER OF PROTECTION SCHEME" FORBID PLAINTIFF FATHER CONTACT WITH HIS TWO YOUNGEST CHILDREN BY ANY MEANS FOR 755 DAYS.**

36. Defendant PETER M. FORMAN'S serial temporary order of protection scheme totally and completely deprived the plaintiff THOMAS J. LAWTON any contact whatsoever with his two youngest children thus depriving THOMAS JOHN LAWTON'S right to the companionship, care, custody, and management of his two youngest children JANELLE NICOLE LAWTON AND JOSHUA LAWTON from May 3, 2001 to May 28, 2003, a period of 755 [Seven Hundred Fifty-Five] days. Parental rights are guaranteed and protected by the Fourteenth and Fifth Amendments to the Constitution of the United States.

37. True copies of defendant PETER M. FORMAN'S Third and Fourth Amended Order(s) of Protection [Serial Temporary Orders of Protection] are attached as **Exhibit 6**, Please SEE page 2 that reads:

**THOMAS J. LAWTON** shall have no contact with the above named children until further order of this court.

**THOMAS J. LAWTON** shall not communicate directly or

indirectly, with **JANE P. LAWTON or the children JANELLE LAWTON and JOSHUA LAWTON** in **ANY** way, by mail, telephone, e-mail, voicemail or other electronic means, except as specifically provided in this order.

38. Defendant PETER M. FORMAN conspired with defendant DIANE FOLEY to sever and to keep severed THOMAS JOHN LAWTON'S parental relationship and contact with his youngest children JANELLE NICOLE LAWTON and JOSHUA ANTHONY LAWTON absent a compelling state interest and without notice and without a trial. Curiously, plaintiff THOMAS JOHN LAWTON has custody of the two oldest children and has never been found to be an unfit parent.

39. Plaintiff THOMAS JOHN LAWTON has had custody of the two oldest children, JOSEPH THOMAS LAWTON d.o.b. April 29, 1985 and JEFFREY DANIEL LAWTON d.o.b. March 5, 1988, since birth and throughout the entire divorce action. Please SEE **Exhibit 7** a true copy of their law guardian Michael Tomkovich's motion requesting custody of both JOSEPH and JEFFREY LAWTON to remain with their father plaintiff THOMAS J. LAWTON. Also, please see a true copy of the permanent Order of Custody for JOSEPH THOMAS LAWTON. Please SEE **Exhibit 8** a true copy of the Permanent Order of Sole Custody to THOMAS JOHN LAWTON.

40. On March 18, 2003, defendant PETER M. FORMAN gave defendant DIANE FOLEY exclusive authority to arrange visitation for plaintiff father THOMAS JOHN LAWTON with his youngest children JANELLE NICOLE LAWTON and JOSHUA ANTHONY LAWTON. **Exhibit 4** page 37 lines 6 through 9.

41. Defendant DIANE FOLEY arranged 1 [one] hour of weekly supervised visitation his two youngest two children, beginning on May 28, 2003.

42. These 1 [one] hour supervised visits continued for fifteen [15] visits and were defacto terminated because the supervisor Thomas P. Mitchell, MSW retired and closed his practice. Defendant DIANE FOLEY knew Mr. Mitchell was about to retire and that his retirement would defacto terminate the one hour a week supervised visits. 43. THOMAS JOHN LAWTON'S

last visit with his children JANELLE NICOLE LAWTON and JOSHUA ANTHONY LAWTON took place on November 4, 2003. Defendant DIANE FOLEY willfully failed to arrange any visits or even a phone call for the plaintiff THOMAS JOHN LAWTON with his youngest children over the Thanksgiving and Christmas Holidays 2003. This failure by defendant Law Guardian DIANE FOLEY represents a distinct and reoccurring pattern to injure and deprive the plaintiff THOMAS JOHN LAWTON'S right to the companionship, care, custody, and management of his two youngest children.

44. Defendant PETER M. FORMAN'S serial temporary order of protection scheme without a trail, orchestrated by the defendants PETER M. FORMAN and DIANE FOLEY individually and in concert with others, acted under pretense and color and virtue of law and their official capacities, but said acts were illegal and each defendant individually and in concert with others acted willfully, knowingly, and with specific intent to injure and deprive the plaintiff THOMAS JOHN LAWTON of his constitutional right to the companionship, care and custody, and his children JANELLE NICOLE LAWTON and JOSHUA ANTHONY LAWTON guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States.

#### **DENIED RIGHT TO CALL WITNESSES AUGUST 15, 2003**

45. On August 7, 2003 plaintiff THOMAS JOHN LAWTON and his attorney, Linda T. Kushner Esq., filed the attached motion with a return date of August 15, 2003 before defendant PETER M. FORMAN to reconsider his prior bench order of August 3, 2003 denying witnesses/withdrawing judicial subpoenas. A true copy of plaintiff's motion dated August 7, 2003 is attached as **Exhibit 9**.

46. On August 15, 2003, individual defendant PETER M. FORMAN denied plaintiff THOMAS JOHN LAWTON his right to call witnesses, a Sixth Amendment right at his children's custody trial. A true copy of the August 15, 2003 transcript is attached as **Exhibit 16**. Please SEE page 3 lines 9 through 14.

DEFENDANT FORMAN: "-- I'm essentially denying Mr. Lawton's motion to reconsider that previous order of the Court, which means that with regard to custody Mr. Lawton will be

restricted to himself as a witness because based on the prior decision of the Court..."

**DENIED RIGHT TO CALL WITNESSES AND SUA SPONTE WITHDREW SIGNED  
JUDICIAL SUBPOENAS APRIL 3, 2003**

47. On April 3, 2003 individual defendant PETER M. FORMAN on his own motion withdrew 12 twelve judicial subpoenas, a Sixth Amendment right, that defendant PETER M. FORMAN signed for THOMAS JOHN LAWTON ten [10] months earlier. A true copy of the April 3, 2003 transcript is attached as **Exhibit 10**. Please SEE page 92 lines 25 through page 93 line 4.

DEFENDANT FORMAN: "Are you asking me to withdraw those subpoenas at this time?"

MR. LANE: Yes

DEFENDANT FORMAN: "Done"

48. True copies of the 12 [twelve] signed judicial subpoenas that were withdrawn by defendant PETER M. FORMAN, sua sponte, on April 3, 2003 are attached to **Exhibit 9** Motion to Reconsider Bench Order Denying Witnesses/Withdrawing Subpoenas as exhibit 1.

**DENIED RIGHT TO CALL WITNESS DR. HENRY GOETZE FEBRUARY 5, 2002**

49. Defendant PETER M. FORMAN denied plaintiff THOMAS JOHN LAWTON his right to call witnesses again on February 5, 2002. A true copy of Dr. Henry J. Goetze's letter is attached as **Exhibit 11**.

Dr. Henry J. Goetze "I would first like to express my disappointment at not being able to speak with Judge Forman personally on February 5<sup>th</sup> when I waited more than 2 \_ hours at the courthouse."

50. PETER M. FORMAN individually and in concert with others acted under pretense and color and virtue of law and their official capacities, but said acts were illegal and each defendant

individually and in concert with others acted willfully, knowingly, and with specific intent to deprive plaintiff THOMAS JOHN LAWTON of his constitutional right, to obtain witnesses in his favor, guaranteed by the Sixth and Fourteenth Amendments of the Constitution of the United States.

#### **RIGHT TO EQUAL PROTECTION**

51. Throughout the divorce proceeding and to the present time, the custody of the two oldest children has been with their father plaintiff THOMAS J. LAWTON, and the custody of the two youngest children has been with their mother. THOMAS JOHN LAWTON filed for divorce on the grounds of adultery on August 18, 2000.

52. The New York State Child Support Standards Act (CSSA) DRL Section 240 1-b., (g), (h), (i) mandates that child support in a divorce action is a shared responsibility of both parents. There are four [4] children of this marriage and all four children are entitled to support from both parents.

53. Defendant PETER M. FORMAN'S Interim and Final Judgment of Divorce Order fails to account for, let alone provide for, child support for the two oldest children in plaintiff THOMAS J. LAWTON'S custody and does not articulate a reason why, as required by the CSSA. Please SEE **Exhibit 12** a true copy of the Final Judgment of Divorce. The child support portion, of the Final Judgment of Divorce, speaks as if the parties only have two children from the marriage and that they both live with their mother.

53. The Final Judgment of Divorce clearly states that the parties have not deviated from the strict application of the CSSA.

54. Defendant PETER M. FORMAN has failed to equally apply the law in this instance regarding the mandates provided by the New York State Child Support Standards Act DRL 240 1-b., (g), (h), (i). As such defendant judge PETER M. FORMAN deprived plaintiff THOMAS JOHN LAWTON and the two oldest children in his custody their right to the proper child support amount. Defendant PETER M. FORMAN acted under color of law, to wit under color of State

Law to injure the plaintiff and deprive plaintiff THOMAS JOHN LAWTON his right to equal protection. Defendant PETER M. FORMAN denied THOMAS JOHN LAWTON his rights and privileges and immunities secured to plaintiff THOMAS JOHN LAWTON by the First, Fourth, Fifth, Sixth, Eighth, Eleventh, and Fourteenth Amendments to the Constitution of the United States and the laws of the United States.

#### **DENIED RIGHT TO COUNSEL TO REVIEW PROPOSED JUDGMENT OF DIVORCE**

55. Defendant PETER M. FORMAN denied plaintiff's right to counsel and signed the Final Judgment of Divorce without allowing plaintiff's attorney to respond. Defendant PETER M. FORMAN knew that plaintiff's attorney, Linda T. Kushner was in a near fatal automobile accident was incapacitated, and unavailable. Plaintiff wrote defendant PETER M. FORMAN on June 12, 2003 **Exhibit 13** and June 25, 2003 **Exhibit 13** requesting an adjournment to allow time for plaintiff's counsel to review the same. This was clearly expressed in THOMAS JOHN LAWTON'S letters Exhibit 5 and Exhibit 6. There was no urgent factor at that time that superceded the interests of justice. Defendant PETER M. FORMAN'S disregard of plaintiff's right to the assistance of counsel again depicts a pattern of abuse of power denying THOMAS JOHN LAWTON his right to the assistance of counsel, a Sixth Amendment right under the Constitution and of the United States. Defendant PETER M. FORMAN tremendously prejudiced plaintiff and continues to deprive plaintiff and plaintiff's two oldest children of the financial support to which they are entitled by the Child Support Standards Act.

56. Defendant PETER M. FORMAN'S response, June 17, 2003 letter, clearly states that that defendant judge PETER M. FORMAN had full knowledge that plaintiff's attorney Linda T. Kushner, in addition to being hospitalized was not even served the proposed Findings of Fact and Judgment of Divorce. Please SEE **Exhibit 14** a true copy of the letter dated June 17, 2003 from defendant PETER M. FORMAN'S principal court attorney Denise M. Watson JD.

#### **RIGHT TO FAIR AND IMPARTIAL TRIAL**

57. The Judgment of Divorce divides the marital assets 100% to the Defendant and 0% to plaintiff, THOMAS JOHN LAWTON. This property division of marital assets is unjust and improper when the two children in plaintiff's custody have greater financial needs than the younger children (i.e., one child in college, one special needs child). Notwithstanding the blatant lack of equity evinced by this division the proposed Judgment states that the agreement is fair and reasonable. It is anything but. A Notice of Appeal filed with the Appellate Division seeks to vacate and set aside the February 7, 2003 stipulation based on fraud, overreaching, duress and unconscionability. SEE **Exhibit 15** Notice of Appeal.

58. Each of the defendants, separately and in concert, deprived plaintiff of plaintiff's rights to:

- a. Right to a Trial & Freedom from Illegal Incarceration beginning  
April 1, 2003 [8 days]
- a. Right to a Trial & Freedom from Illegal Incarceration beginning  
April 9, 2002 [38 days]
- a. Right to Counsel March 18, 2003
- b. Parental Rights Terminated Without Notice or a Hearing by an Official Act of a Judge
- c. Defendant Peter M. Forman's Serial Temporary Order of Protection Scheme forbid plaintiff parent absolutely no contact with his Two Youngest Children by any means for 755 days
- d. Right to call Witnesses August 15, 2003
- e. Right to call Witnesses: Sua Sponte Withdrawal of Judicial Subpoenas  
April 3, 2003
- a. Right to Counsel June 12, 2003 & June 25, 2003
- b. Rights to call Witnesses Dr. Henry Goetze February 5, 2002
- c. Right to Equal Protection
- d. Right to a fair and impartial trial 100%-0% Equitable Distribution

**DAMAGES**

VIOLATION OF CIVIL RIGHTS UNDER 42 USC Section 1981, 1982, 1983 and 1985.

PETER M FORMAN, DIANE FOLEY Defendants

59. Plaintiff THOMAS JOHN LAWTON reaffirms and realleges each and every allegation set forth in paragraphs 1 through 58 above and further alleges as follows:

60 Plaintiff has been subjected, by the above recited acts and things complained of, to the deprivation by defendants, under color of law and of the customs and usages of the State of New York, of rights, privileges, and immunities secured to him by the Constitution and laws of the United States, particularly his rights of companionship, care, custody, management, speech and association with his children guaranteed under the First, Fifth, and Fourteenth Amendments to the Constitution; the rights to security of person and freedom from arrest, except on probable cause, supported by oath or affirmation, guaranteed by the Fourth Amendment to the Constitution; the right not to be deprived liberty or property without due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution; the right to have compulsory process for obtaining witnesses in his favor, and the right to the Assistance of Counsel for his defense guaranteed by the Sixth Amendment to the Constitution; the rights reserved or retained under the Ninth and Tenth Amendments to the Constitution; and the right to the equal protection of the laws guaranteed under the Fourteenth Amendment to the Constitution and by the 42 USC Section 1981, 1982, 1983 and 1985.

61. As a direct and proximate result of the gross, willful, and flagrant violation of plaintiff's constitutional rights, and conspiracy set out above, plaintiff is entitled to a substantial award of punitive damages.

62. As a result of these acts and violations plaintiff THOMAS JOHN LAWTON was injured and made to suffer and continues to suffer in the following ways:

(a) Plaintiff remained incarcerated for 38 days.

a. Plaintiff remained incarcerated for 8 days.

b. Plaintiff lost his employment and suffered substantial lost income.

(d) Plaintiff lost 1022 days of his right to the companionship, care, custody, and management of his two youngest children which continues to present.

(e) Plaintiff was made to suffer great mental anguish, great emotional trauma, discomfort, humiliation, embarrassment, and psychological trauma when he was twice illegally deprived of his liberty, knowing that his two oldest children were made homeless by his incarceration.

(f) Plaintiff suffered and continues to suffer loss of property.

(g) Plaintiff suffered and continues to suffer loss of the proper child support amount for the two oldest children in his custody.

(h) Plaintiff was made to suffer great mental anguish, great emotional trauma, discomfort, humiliation, embarrassment, damage to his professional reputation, damage to his community reputation, and damage to his career as a direct result of the acts and violations.

(i) Plaintiff and his two oldest children were forced to move and bear the expenses of moving eleven [11] times as a direct or proximate result of the acts and violations.

**WHEREFORE**, Plaintiff THOMAS JOHN LAWTON prays for relief against the defendants jointly and severally:

1. Compensatory damages in the sum \$750,000 Seven Hundred Fifty Thousand Dollars;

1. Punitive damages in the sum of \$5,000,000 Five Million Dollars;

2. For costs of suit incurred;

3. For reasonable attorney's fees;

4. For such other and further relief as the court may deem proper

DATED: February 17, 2004

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THOMAS JOHN LAWTON  
P.O. Box 790 Hyde Park, NY 12538-