DATE:_____

Mr. Jon Litscher
Department Of Corrections Secretary
P.O. Box 7925
Madison, WI. 53707-7925

RE: PETITION FOR INJUNCTION & DECLARATORY JUDGMENT

Dear Sir,

Enclosed, please find a copy of the above captioned documents & their attachments that I'm filing in the Dane County Circuit Court. If you have any questions or comments please let me know. Thank you.

Sincerely yours,

_____

CC: Clerk of circuit court.

_____

_____

_____

DATE:_____

JOINT COMMITTEE FOR REVIEW
OF ADMINISTRATIVE RULES
State Capitol Rm 131 South
P.O. Box 7882
Madison, WI. 53707-7882

RE: PETITION FOR INJUNCTION & DECLARATORY JUDGMENT

Dear Committee Members,

Please find enclosed a copy of my petition and all attachments to it that is being filed in the Dane County Circuit Court. Please let me know if you require anything else. Thank you.

Sincerely yours,

_____

CC: Clerk of circuit courts.

_____

_____

_____

DATE:_____

Mr. Brad Schimel
Wisconsin Attorney General
P.O. Box 7857
Madison, WI. 53707-7857

Dear Sir,

Please find enclosed my petition for an injunction and declaratory Judgment being filed in the Dane County Circuit Court. I've previously served you with a notice of injury and claim via the certified mail process. If you have any questions or input please contact me at the above address. Thank you.

Sincerely yours,

_____

CC: Clerk of circuit courts

DATE _____

Civil Litigation Unit
Wisconsin Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707-7857

Re: PLRA certification for _____
(your name and DOC number)

Dear Sir or Madam:

I am incarcerated in a Wisconsin prison, and I am planning to file a 813.02 petition within 30 days. Please mail me a Form DJLS22, certifying that I have not had three or more civil actions dismissed pursuant to Wis. Stat. § 801.02(7)(d). My name and address are:

_____

_____

_____

Since there is a 45-day deadline for me to file my 813.02 petition I would appreciate your prompt action on this request. Thank you for your attention to this matter.

Very truly yours,

_____
(your signature)
(your typed or printed name)

STATE OF WISCONSIN | CIRCUIT COURT | BRANCH_____ | CIVIL DIVISION | COUNTY OF DANE

_____,

Petitioner,

-V-

JON LITSCHER, SECRETARY,
DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO._____

CODE NO. 30704

PETITION FOR A TEMPORARY/PERMANENT INJUNCTION PURSUANT TO 813.02 OF THE WISCONSIN STATE STATUTES

NOW COMES, _____, the petitioner, herein-after to be referred to as "petitioner". The petitioner appears before this Court **in forma pauperis** and **pro se**, seeking an Order from the Court that places a temporary restraining order and or temporary injunction pursuant to 813.02 Wis. Stats. Below are the sufficient facts required by the Statute;

1. The petitioner's name is_____. The petitioner is a victim.
2. The Respondent, Jon Litscher, is an adult citizen of Wisconsin.
3. The Petitioner resides in the Redgranite Correctional Institution located at 1006 County Road EE, p.o. box 925, Redgranite, WI. 54970-0925.

4. Jon Litscher is the Department Of Corrections Secretary. The place where he acts in that capacity is located at 3099 East Washington Avenue. Madison, WI. 53704.

5. The Department Of Corrections main office is also located at the same address as Mr. Litscher. As such, Dane County is the proper venue for hearing this matter. With all apparent parties, except for the petitioner, being in Madison it makes sense to have the case handled by the Dane County Court.

FACTS INVOLVED IN THIS CASE:

The Wisconsin State Legislature enacted 2015 Wisconsin Act 355 and made it effective July 31, 2016. Act 355 amended 973.20 Restitution, and 301.32 property delivered to the Warden or Superintendent for the benefit of the prioners. Please take Judicial Notice that the Act 355 is not being challenged here. The issues at stake herein are the acts of the DOC in their interpretation of Act 355.

The DOC has followed 973.045, 973.05 and 973.06 Wis. Stats and the 309.465 Administrative Code since the mid 1980s. These laws and rule allow the DOC to take 25% deductions from inmate wages and gift money for the purpose of paying their court ordered financial obligations. These obligations are commonly referred to as Crime victim and witness surcharges "A" and "B" and "C", DNA surcharges, Court cost, fees and fines, restitution, etc.

Act 355 amended restitution costs to be taken as "a reasonable amount or percentage". The DOC immediately made an IMP (policy) known now as DAI P&P 309.45.02 in which they changed the 25% deduction rule to 50% deductions across all of the above catagories of court ordered debts.

The DOC'S response to the 50% deductions? We are authorized by the 309.45.02 policy and the 2015 Wis. Act 355 changes. They changes that response to, "301.32 changes allow us to take 50% as it benefits the inmate", which is fundamentally wrong.

First and foremost, the taking of 50% violates ex post facto. The Judgment Of Conviction, "JOC" shows the courts ordered the obligations to be paid. The JOC states the DOC can take 25% of the inmate's wages and/or gift money to pay the court ordered obligations. The DOC has absolutely no authority to over-rule the JOC and no authority to over rule 973.045, 973.05 and 973.06 or Administrative Code 309.465. The policy, 309.45.02 is not an administrative code and it cannot over-rule an administrative code rule or a State Statute.

No agency may promulgate a rule which conflicts with State Law. See §227.10(2). Wis. Stats. In a conflict between a statute and a rule, the statute controls. **Debeck v. DNR**, 172 Wis.2d 382, 493 N.W. 2d 234 (Ct.App.1992).

The fact that the DOC made a policy which is in conflict with the laws of this State, should allow the rule to be stricken. However, a controversy is created here. Must the Joint Committee For Review Of Administrative Rules, be notified and served with a copy of this petition? This legal writer believes that the JCRAR should be served with a copy of this petition and invited to attend the hearing this Court will schedule. Therefore, the petitioner of this action will serve a copy of this petition on the JCRAR. If it is necessary, this Court can construe this as a judicial review by Declaratory Judgment under Ch. 227.40 Wis. Stats. All bases are covered this way.

The taking of 50% for court ordered obligations is contrary to law and it is arbitrary and capricious decision making at its worst. The DOC must follow its own rules which it itself had promulgated. Please see **Vitarelli V. Seaton**, 359 U.S. 535, 79 S.Ct. 968 (1959) and our own State Supreme Court decision in **SXR Anderson-El II V. Cooke**, 2000 WI 40, 234 Wis.2d 626, 610 N.W.2d 821. It is clear, from a reading of Act 355, that the DOC is in violation of several State Statutes, and their own administrative codes. This is why a temporary injunction must issue. All deductions must either, be stopped completely or an order to only deduct 25% until the injunction is resolved.

When all defendants were sentenced under Chapter 973 of the Wis. Statutes, the law held that DOC only take 25% of wages and gifts to be paid toward court ordered obligations. That law cannot be changed retroactively by Act 355. Ex post facto implications are at stake. The U.S. Constitution, Art 1 §10, cl.1 forbids retroactive application by its 3rd prong, which states, (3) Every law that changes punishment and inflicts greater punishment than the law ennexed to the crime, when committed. See also, **Carmel V. Texas**, 529 U.S. 513, 120 S.Ct. 1620 (2000), **Lynce V. Mathis**, 519 U.S. 433, 117 S.Ct. 891 (1997). The Wisconsin Supreme Court interprets ex post facto to mean "An ex post facto law is one that punishes as a crime an act previously committed that; 1) was innocent when done; 2) **makes more burdensome the punishment for a crime after its commission** (emphasis added), or 3) deprives one charged with a crime of any defense available at the time the act was committed. **State V. Thiel**, 188 Wis.2d 695, 524 N.W.2d 641 (1994). Taking 50% of a mans wage certainly "makes more burdensome the punishment..." Id.

The DOC has been taking 50% deductions for more than one deduction at a time, such as, 50% toward crime victim and witness surcharge "A" and of whats left of the money, 50% of it toward crime victim and witness surcharge "B", and if enough is left, 50% of it for DNA surcharge until almost nothing is left for the inmate's account. That is not a reasonable thing to do.

Furthermore, it violates 973.045 Wis. Stats and DOC 309.465. And all JOCS orders. The DOC has taken a stance utterly at odds with the law and they appear to rest their illegal activity on Act 355's new amendments. Nothing in Act 355 says "50% is reasonable", or 50% by 50% by 50% until a man has 2 bucks left out of 100 dollars his family sent to him! This activity must be stopped.

The DOC even started taking supervision fees out of our wages and that too violated the law. Supervision fees are only allowed to be collected when a man is out of prison. Furthermore, they even took supervision fees for pre-1996 years when they didn't even exist!

The DOC is listing old debts, most of which were paid off, but the DOC claims are owed and they are taking money at 50% for them too. We have no way to prove payment for 20 year old debts. Furthermore, when told the debt was time barred by 893.40 statute of limitations, the DOC said nothing at all, it just keeps doing what it wants to do.

Another issue needing resolution is that old debts were waived by the DOC failure to utilize available statutes to collect the debt at that time. 304.074 and 973.07 allow them to convert to civil judgment a debt still owed, also 973.06. When released from prison, a debt still owed, must be followed up on by DOC under 304.074(4m)(b) Wis. Stats. If not followed up on, they waive that debt because they failed to take advantage of available remedies!

A Notice Of Injury And Claim pursuant to 893.82 Wis. Stats, has been filed by the petitioner by mailing said notice, certified mail to the Wisconsin Attorney General's office. A copy of this Injunction is also going to be mailed to the Attorney General.

The DOC is in violation of the following State Statutes: 301.32, 227.10, 227.19, 230.01, 230.80(1), 230.82(1), 304.074, 304.078, 973.045, 973.05, 973.06, 973.07, 943.20, 943.70, 943.39, 946.12, 946.68, 946.73, 946.80, 939.05, 940.29 and 2015 Wisconsin Act 355, section 973.20(11)(c). The list of offenses they are committing is quite extensive. The CPA staff are at risk of losing their certification due to the felonies and misdemeanors they are committing by blindly following DOC Administrators orders. Although they are doing what they have been told to do by their bosses, they have been told by this inmate that what they are doing is illegal and why and yet, they are continuing with their illegal behaviors.

My inmate complaint, file number_____, is attached to this petition. My ICE decision is attached as well, as is the CCE review and DOC Secretary decision on this matter.

I've also attached a copy of the Notice Of Injury And Claim that has been filed with the Wisconsin Attorney General. I am sending a copy of this petition and its attached exhibits to the Joint Committee For Review Of Administrative Rules at State Capitol, Room 131 South, P.O. Box 7882, Madison, WI. 53707-7882. A copy of all of this is also going to Wisconsin Attorney General Brad Schimel, P.O. Box 7857, Madison, WI. 53707-7857. A copy will also be sent to the Secretary of the DOC, Jon Litscher at P.O. Box 7925, Madison, WI. 53707-7925.

A copy of my JOC showing wages only for 25% deductions, is attached.

It is the petitioner's specific request that this Court order the DOC to immediately stop all deductions except for release accounts and, or stop taking 50% and return to taking 25% until this legal action has been concluded. Furthermore, the petitioner intends to also request the Court to order the DOC to return all the excess fees that they illegally took.

The DOC will claim it cannot do that, that its too expensive to go back through all of our accounts to fix it. Too bad for them. They chose to disregard all of our complaints on the matter. They chose to act willfully, with blatant disregard for the laws of this great State. They created their own dilemma and should bear the burden of fixing the problems and making every one "whole" again. Let it be a lesson learned. It may act as a deterrent to future illegal acts.

Let it be legally stated here as a legal notice to all parties, if this matter has to go to the federal courts, it will be the petitioner requesting compensatory damages as well as punitive damages and return of all illegally taken funds. Also, that the CPA certifications be revoked from all institution CPA'S and that the U.S. Attorney General seek charges against DAI/DOC Administrators for computer crimes, and wire fraud, theft and any other relief available.

Furthermore, the petitioner seeks reimbursement of his cost and fees in this action as well as sanctions and damages and the interest on all collected funds.

Dated this____day of_____, 2017.

BY THE PETITIONER:

_____

CC: all referenced within.