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Nielson v. Talbot Clerk's Record Dckt. 44864

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife, Plaintiffs/Appellants, vs.))) Supreme Docket No. 44864)) Franklin Co. Case No.: CV-2015-132)
ROBERT TALBOT and MICHELE TALBOT, husband and wife,)))
and PAUL PARKER and SAUNDRA PARKER, husband and wife,)))
Defendants/Respondents.	,))

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Franklin

Honorable ROBERT C. NAFTZ, District Judge

APPEARANCES:

Counsel for Appellants:

Blake S. Atkin ATKIN LAW OFFICE 7579 North Westside Highway Clifton, ID 83228 batkin@atkinlawoffices.net Counsel for Respondent:

Lane V. Erickson RACINE LAW OFFICE PO Box 1391 Pocatello, ID 83204-1391 lve@racinelaw.net

Date: 4/5/2017	Sixth Judicial District Court - Franklin County	User: HAMPTON
Time: 04:12 PM	ROA Report	
Page 1 of 8	Case: CV-2015-0000132 Current Judge: Robert Naftz	
	Glen Wayne Nielson, etal. vs. Robert Talbot, etal.	

Date	Code	User		Judge
3/23/2015	NCOC	HAMPTON	New Case Filed - Other Claims - Verified Complaint for Quiet Title and Injunctive Relief	Mitchell W. Brown
	SMIS	HAMPTON	Summons Issued (2)	Mitchell W. Brown
	APER	HAMPTON	Plaintiff: Nielson, Glen Wayne Appearance C. Edward Cather	Mitchell W. Brown
		HAMPTON	Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: MOFFATT THOMAS BARRETT ROCK Receipt number: 0000838 Dated: 3/23/2015 Amount: \$221.00 (Check) For: Nielson, Cheryl E. (plaintiff) and Nielson, Glen Wayne (plaintiff)	Mitchell W. Brown
4/3/2015	MOTN	HAMPTON	Motion for Disqualification Without Cause-Cather	Mitchell W. Brown
	MISC	HAMPTON	Acknowledgement and Acceptance of Service-Cather	Mitchell W. Brown
4/6/2015	ORDR	HAMPTON	Order for Disqualification Without Cause	Mitchell W. Brown
4/21/2015		MDELGADO	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Lane Erickson Receipt number: 0001102 Dated: 4/21/2015 Amount: \$136.00 (Credit card) For: Talbot, Robert (defendant)	Mitchell W. Brown
		MDELGADO	Filing: Technology Cost - CC Paid by: Lane Erickson Receipt number: 0001102 Dated: 4/21/2015 Amount: \$3.00 (Credit card) For: Talbot, Robert (defendant)	Mitchell W. Brown
	NOAP	HAMPTON	Notice Of Appearance-Lane Erickson	Robert Naftz
4/23/2015	ANSW	HAMPTON	Answer and Counterclaim-Erickson	Robert Naftz
4/28/2015	CHJG	HAMPTON	Change Assigned Judge	Robert Naftz
	ADOR	HAMPTON	Administrative Order of Reference	Robert Naftz
4/29/2015	ORDR	HAMPTON	Order for Submission of Information for Scheduling Order	Robert Naftz
5/11/2015	MISC	HAMPTON	Plaintiffs/Counterdefendants' Answer to Counterclaim-Cather	Robert Naftz
	MISC	HAMPTON	Joint Statement in Response to Order for Submission of Information for Scheduing Order-Cather	Robert Naftz
5/18/2015	MISC	HAMPTON	Combined Discovery Requeststo Defendant Robert Talbot-Cather	Robert Naftz
	NOTC	HAMPTON	Notice of Service of Combined Discovery Requests to Defendant Robert Talbot	Robert Naftz
5/25/2015	HRSC	HAMPTON	Hearing Scheduled (Jury Trial 03/22/2016 09:00 AM)	Robert Naftz
	HRSC	HAMPTON	Hearing Scheduled (Jury Trial 05/17/2016 09:00 AM)	Robert Naftz
5/26/2015	ORDR	HAMPTON	Scheduling Order, Notice of trial Setting and Initial Pretrial Order	Robert Naftz 2 of 759

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6/15/2015	NOTC	HAMPTON	Notice of Service of Defendant Robert Talbot's Responses to Plaintiff's Combined Discovery Requests to Defendant Robert Talbot-Erickson	Robert Naftz	
9/3/2015	MOTN	HAMPTON	Motion for Leave to Withdraw as Counsel of Record-Cather	Robert Naftz	
	AFFD	HAMPTON	Affidavit of C. Edward Cather in Support of Motion for Leave to Withdraw as Counsel of Record-Cather	Robert Naftz	
9/14/2015	HRSC	HAMPTON	Hearing Scheduled (Motion to Withdraw 10/06/2015 02:30 PM) Telephonic	Robert Naftz	
	NOTC	HAMPTON	Notice of Hearing and Notice of Intent to Appear Telephonically	Robert Naftz	
9/21/2015	NOTC	HAMPTON	Notice of Service of Defendants' First Set of Interrogatories, Requests for Admission and Requests for Production to Plaintiffs-Erickson	Robert Naftz	
9/25/2015	NOTC	HAMPTON	Notice of Intent to Appear Telephonically-Erickson	Robert Naftz	
10/6/2015	DCHH	HAMPTON	Hearing result for Motion to Withdraw scheduled on 10/06/2015 02:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Telephonic	Robert Naftz	
10/8/2015	ORDR	HAMPTON	Order Granting Motion for Leave to Withdraw as Counsel of Record	Robert Naftz	
10/29/2015	NOAP	HAMPTON	Notice Of Appearance filed by Plaintiffs as pro se	Robert Naftz	
11/4/2015		DSHAFFER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Chris Barton Receipt number: 0002873 Dated: 11/4/2015 Amount: \$19.00 (Cash)	Robert Naftz	
12/14/2015	MOTN	HAMPTON	Motion to Vacate and Continue Trial-Erickson	Robert Naftz	
	AFFD	HAMPTON	Affidavit of Lane V. Erickson - Erickson	Robert Naftz	
1/11/2016	ORDR	HAMPTON	Order Granting Motion to Vacate and Continue Trial	Robert Naftz	
2/9/2016	ΜΟΤΝ	HAMPTON	Defendant/Counterclaimants' Motion for Summary Judgment-Erickson	Robert Naftz	
	AFFD	HAMPTON	Affidavit of Lane V. Erickson in Support of Plaintiff's Motion for Summary Judgment-Erickson	Robert Naftz	
	AFFD	HAMPTON	Affidavit of Gae Murdock - Erickson	Robert Naftz	
	AFFD	HAMPTON	Affidavit of Michele Talbot-Erickson	Robert Naftz	
	AFFD	HAMPTON	Affidavit of Craig Shaffer-Erickson	Robert Naftz	
2/10/2016	MEMO	HAMPTON	Memorandum in Support of Defendant/Counterclaimants' Motion for Summary Judgment	Robert Naftz	
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2/12/2016	APER	HAMPTON	Plaintiff: Nielson, Glen Wayne Appearance Blake S. Atkin	Robert Naftz	
	NOAP	HAMPTON	Notice Of Appearance Blake Atkin	Robert Naftz	
2/18/2016	NOTC	HAMPTON	Notice of Hearing-Erickson	Robert Naftz	
	HRSC	HAMPTON	Hearing Scheduled (Motion for Summary Judgment 03/16/2016 10:30 AM)	Robert Naftz	
2/19/2016	CERT	HAMPTON	Certificate of Service	Robert Naftz	
2/29/2016	MOTN	HAMPTON	Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission-Atkin	Robert Naftz	
	MEMO	HAMPTON	Memorandum in Support of Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission-Atkin	Robert Naftz	
	CERT	HAMPTON	Certificate of Service - Atkin	Robert Naftz	
3/2/2016	NOTC	HAMPTON	Notice of Hearing-Atkin	Robert Naftz	
	MISC	HAMPTON	Plaintiffs' Response to Defendant/Counterclaimant's Motion for Summary Judgment-Atkin	Robert Naftz	
	MOTN	HAMPTON	Motion to Strike Affidavit of Michele Talbot-Atkin	Robert Naftz	
	MOTN	HAMPTON	Motion to Continue Hearing on Summary Judgment Under Rule 56(f)-Atkin	Robert Naftz	
	AFFD	HAMPTON	Affidavit of Jennifer Mariscal-Atkin	Robert Naftz	
	MISC	HAMPTON	Rule 56(F) Affidavit of Blake S. Atkin	Robert Naftz	
3/3/2016	HRSC	HAMPTON	Hearing Scheduled (Motion 03/16/2016 10:30 AM) Atkin Motion to Strike Affidavit and Motion to Continue Hearing on SJ	Robert Naftz	
	NOTC	HAMPTON	Notice of Hearing-Atkin	Robert Naftz	
	AFFD	HAMPTON	Affidavit of Vince Whitehead-Atkin	Robert Naftz	
3/11/2016	HRVC	HAMPTON	Hearing result for Motion scheduled on 03/16/2016 10:30 AM: Hearing Vacated Atkin Motion to Strike Affidavit and Motion to Continue Hearing on SJ	Robert Naftz	
	HRVC	HAMPTON	Hearing result for Motion for Summary Judgment scheduled on 03/16/2016 10:30 AM: Hearing Vacated	Robert Naftz	
	CONT	HAMPTON	Hearing result for Jury Trial scheduled on 05/17/2016 09:00 AM: Continued	Robert Naftz	
	HRSC	HAMPTON	Hearing Scheduled (Jury Trial 11/15/2016 09:00 AM)	Robert Naftz	
3/15/2016	AMEN	HAMPTON	AMENDED Scheduling Order, Notice of Trial Setting and Initial Pretrial Order	Robert Naftz	
	ORDR	HAMPTON	Order RE: Motion for Leave to Supplement Discovery and Responses to Requests for Admissions	Robert Naftz	4 of 759

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3/15/2016	MOTN	HAMPTON	Motion to Disqualify Counsel for Current Irreconcilable Conflict of Interest-Atkin	Robert Naftz	
	NOTC	HAMPTON	Notice of Hearing	Robert Naftz	
	HRSC	HAMPTON	Hearing Scheduled (Motion 04/19/2016 10:30 AM) Motion to Disqualify Counsel	Robert Naftz	
4/12/2016	OPPO	HAMPTON	Opposition to Motion to Disqualify-Erickson	Robert Naftz	
4/14/2016	REPL	HAMPTON	Reply in Support of Motion to Disqualify-Atkin	Robert Naftz	
4/19/2016	DCHH	HAMPTON	Hearing result for Motion scheduled on 04/19/2016 10:30 AM: District Court Hearing He Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Motion to Disqualify Counsel	Robert Naftz k	
	MEOR	HAMPTON	Minute Entry And Order	Robert Naftz	
5/6/2016	MOTN	HAMPTON	Motion to Deem Facts Admitted-Atkin	Robert Naftz	
	MEMO	HAMPTON	Memorandum in Support of Motion to Deem Facts Admitted-Atkin	Robert Naftz	
	MOTN	HAMPTON	Motion to Compel-Atkin	Robert Naftz	
	MEMO	HAMPTON	Memorandum in Support of Motion to Compel	Robert Naftz	
	CERT	HAMPTON	Certificate of Service-Atkin	Robert Naftz	
	AFFD	HAMPTON	Affidavit of Jennifer Mariscal-Atkin	Robert Naftz	
5/10/2016	HRSC	HAMPTON	Hearing Scheduled (Motion 06/02/2016 02:00 PM) Motion to Compel and Motion to Deem Facts Admitted - Atkin	Robert Naftz	
5/11/2016	NOTC	HAMPTON	Notice of Hearing-Atkin	Robert Naftz	
5/16/2016	BNDC	HAMPTON	Bond Posted - Cash (Receipt 1125 Dated 5/16/2016 for 50.00)	Robert Naftz	
5/23/2016	BNDV	HAMPTON	Bond Converted (Transaction number 121 dated 5/23/2016 amount 48.75)	Robert Naftz	
	BNDE	HAMPTON	Cash Bond Exonerated (Amount 1.25)	Robert Naftz	
	TRAN	HAMPTON	Transcript Filed - Motion April 19, 2016	Robert Naftz	
	NOTC	HAMPTON	Notice of Service of Defendant Talbots' Answers and Response to Plaintiffs' Second Set of Interrogatories, Documents Requests and Requests for Admission-Erickson	Robert Naftz	
	MISC	HAMPTON	Defendant Talbots' Response to Plaintiffs' Motion to Compel and Motion to Deem Admissions Admitted-Erickson	Robert Naftz	
5/25/2016	NOTC	HAMPTON	Notice of Intent to Appear Telephonically - Erickson	Robert Naftz	
5/26/2016	NOTC	HAMPTON	Notice of Deposition-Atkin	Robert Naftz	
5/27/2016	NOTC	HAMPTON	Notice of Intent to Appear	Robert Naftz	
			Telephonically-Erickson		5 of 759

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Date	Code	User		Judge
6/1/2016	HRVC	HAMPTON	Hearing result for Motion scheduled on 06/02/2016 02:00 PM: Hearing Vacated Motion to Compel and Motion to Deem Facts Admitted - Atkin	Robert Naftz
	MISC	HAMPTON	Request to Vacate Hearing-Atkin	Robert Naftz
6/10/2016	CERT	HAMPTON	Certificate of Service-Atkin	Robert Naftz
6/30/2016	LETT	HAMPTON	Letter Notice of Preparation of Transcript and Filing-M&M	Robert Naftz
7/14/2016	NOTC	HAMPTON	Notice of Service of Defendants Parkers' Responses to Plaintiffs' Second Set of Requests for Production to Defendants Parker-Erickson	Robert Naftz
7/18/2016	MISC	HAMPTON	Plaintiffs' Witness Disclosure-Atkin	Robert Naftz
7/19/2016	STIP	HAMPTON	Stipulation to Extend Deadline for Summary Judgment Hearing-Erickson	Robert Naftz
	NOTC	HAMPTON	Notice of Hearing for Summary Judgment-Erickson	Robert Naftz
7/20/2016	HRSC	HAMPTON	Hearing Scheduled (Motion for Summary Judgment 09/12/2016 02:00 PM)	Robert Naftz
7/21/2016	NOTC	HAMPTON	Notice of Hearing for Summary Judgment-Erickson	Robert Naftz
	STIP	HAMPTON	Stipulation to Extend Deadline for Summary Judgment Hearing-Erickson	Robert Naftz
8/5/2016	MOTC	HAMPTON	Motion To Compel-Atkin	Robert Naftz
	MEMO	HAMPTON	Memorandum in Support of Motion to Compel-Atkin	Robert Naftz
	CERT	HAMPTON	Certificate of Service-Atkin	Robert Naftz
	NOTC	HAMPTON	Notice of Hearing-Atkin	Robert Naftz
	HRSC	HAMPTON	Hearing Scheduled (Motion to Compel 09/01/2016 10:00 AM)	Robert Naftz
8/9/2016	CERT	HAMPTON	Certificate of Service-Atkin	Robert Naftz
8/15/2016	HRVC	HAMPTON	Hearing result for Motion to Compel scheduled on 09/01/2016 10:00 AM: Hearing Vacated per Blake Atkin	Robert Naftz
	NOTC	HAMPTON	Notice of Hearing for Summary Judgment-Erickson	Robert Naftz
	AMEN	HAMPTON	AMENDED Motion for Summary Judgment-Erickson	Robert Naftz
	AMEN	HAMPTON	AMENDED Memorandum in Support of Motion for Summary Judgment	Robert Naftz
	AFFD	HAMPTON	Affidavit of Robert Talbot-Erickson	Robert Naftz
	AFFD	HAMPTON	Affidavit of Dr. Phil Cromwell-Erickson	Robert Naftz
	AFFD	HAMPTON	Affidavit of Dave Larsen-Erickson	Robert Naftz

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8/15/2016	AFFD	HAMPTON	Second Affidavit of Lane V. Erickson in Support of Amended Motion for Summary Judgment-Erickson	Robert Naftz
8/17/2016	MISC	HAMPTON	Request to Vacate Hearing-Atkin	Robert Naftz
8/18/2016	NOTC	HAMPTON	Notice of Deposition-Atkin	Robert Naftz
	SUBI	HAMPTON	Subpoena-Franklin County Assessor - Atkin	Robert Naftz
	MOTN	HAMPTON	Cross Motion for Summary Judgment-Atkin	Robert Naftz
	MEMO	HAMPTON	Memorandum in Support of Cross Motion for Summary Judgment-Atkin	Robert Naftz
8/29/2016	MISC	HAMPTON	Response to Amended Motion for Summary Judgment-Atkin	Robert Naftz
	MOTN	HAMPTON	Motion to Strike Affidavit of Dr. Phil Cromwell-Atkin	Robert Naftz
	MOTN	HAMPTON	Motion to Strike Affidavit of Dave Larsen-Atkin	Robert Naftz
	CERT	HAMPTON	Certificate of Service-Atkin	Robert Naftz
	AFFD	HAMPTON	Second Affidavit of Cheryl Nielson-Atkin	Robert Naftz
8/31/2016	MEMO	HAMPTON	Response Memorandum in Opposition to Plaintiff's Cross Motion for Summary Judgment-Erickson	Robert Naftz
9/2/2016	MOTN	HAMPTON	Motion for Relief from Late Filing of Cross Motion for Summary Judgment-Atkin	Robert Naftz
	REPL	HAMPTON	Plaintiffs' Reply in Support of Cross Motion for Summary Judment-Atkin	Robert Naftz
	CERT	HAMPTON	Certificate of Service	Robert Naftz
9/8/2016	REPL	HAMPTON	Defendants' Reply Memorandum in Support of Motion for Summary Judgment-Erickson	Robert Naftz
	AFFD	HAMPTON	Affidavit of Vincent L. Whitehead-Erickson	Robert Naftz
	MISC	HAMPTON	Defendant/Counterclaimants' Response to Plaintiffs' Motions to Strike-Erickson	Robert Naftz
9/12/2016	DCHH	HAMPTON	Hearing result for Motion for Summary Judgment scheduled on 09/12/2016 02:00 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages	Robert Naftz
	NOTC	KARENV	Notice of Service of Defendant Talbot's Answers and Responses to Plaintiff's Third Set of Request for Admissions	Robert Naftz
9/16/2016	MISC	HAMPTON	Request for Pre-Trial Conference-Erickson	Robert Naftz
9/19/2016	MEOR	HAMPTON	Minute Entry And Order held September 12, 2016	Robert Naftz
9/29/2016	MOTN	HAMPTON	Motion in Limine-Atkin	Robert Naftz
	MEMO	HAMPTON	Memorandum in Support of Motion in Limine-Atkin	Robert Naftz

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9/29/2016	HRSC	HAMPTON	Hearing Scheduled (Motion in Limine 10/26/2016 10:00 AM)	Robert Naftz
	MEMO	KARENV	Memorandum in Support of Motion in Limine	Robert Naftz
9/30/2016		KARENV	Plaintiffs' Disclosure of Lay and Expert Witnesses	Robert Naftz
	NOHG	KARENV	Notice Of Hearing	Robert Naftz
10/3/2016	NOHG	KARENV	Notice Of Hearing for Pretrial Conference	Robert Naftz
	HRSC	KARENV	Hearing Scheduled (Pretrial Conference 11/03/2016 02:00 PM)	Robert Naftz
10/4/2016	WITN	HAMPTON	Defendants' Disclosures of Lay Witnesses-Erickson	Robert Naftz
10/12/2016	MDEC	HAMPTON	Memorandum Decision and Order	Robert Naftz
	JDMT	HAMPTON	Judgment - Dismissed with Prejudice	Robert Naftz
	STAT	HAMPTON	Case Status Changed: Closed	Robert Naftz
10/13/2016	MOTN	HAMPTON	Motion for a New Trial or to Alter or Amend Judgment Dated october 12, 2016-Atkin	Robert Naftz
	MEMO	HAMPTON	Memorandum in Support of Motion for New Trial or to Alter or Amend Judgment Dated October 12, 2016-Atkin	Robert Naftz
10/17/2016	HRSC	HAMPTON	Hearing Scheduled (Motion to Reconsider 10/26/2016 10:00 AM)	Robert Naftz
	NOTC	HAMPTON	Notice of Hearing-Atkin	Robert Naftz
10/19/2016	OPPO	HAMPTON	Defendants' Opposition to Plaintiffs' Motion for New Trial or to Alter or Amend Judgment-Erickson	Robert Naftz
10/20/2016	NOTC	HAMPTON	Notice of Intent to Appear Telephonically-Erickson	Robert Naftz
10/24/2016	REPL	HAMPTON	Reply in Support of Motion for New Trial-Atkin	Robert Naftz
	MOTN	HAMPTON	Motion to Vacate	Robert Naftz
10/25/2016	HRVC	HAMPTON	Hearing result for Motion to Reconsider scheduled on 10/26/2016 10:00 AM: Hearing Vacated	Robert Naftz
10/26/2016	MEMO	HAMPTON	IRCP Rule 54(d)(4) Memorandum of Costs-Erickson	Robert Naftz
	BREF	HAMPTON	Defendants' Brief in Support of Motion for an Award of Attorney Fees and Costs-Erickson	Robert Naftz
10/31/2016	AFFD	HAMPTON	Affidavit of Lane V. Erickson in Support of Motion for Attorney Fees and Costs-Erickson	Robert Naftz
11/9/2016	RESP	HAMPTON	Plaintiffs' Response to Defendants' Motion for an Award of Fees and Costs-Atkin	Robert Naftz
12/15/2016	MDEC	HAMPTON	Memorandum Decision and Order	Robert Naftz
	STAT	HAMPTON	Case Status Changed: closed	Robert Naftz

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Date	Code	User		Judge
1/12/2017		KJONES	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Atkin, Blake S. (attorney for Nielson, Cheryl E.) Receipt number: 0000095 Dated: 1/12/2017 Amount: \$129.00 (Check) For: Nielson, Cheryl E. (plaintiff)	Robert Naftz
	BNDC	KJONES	Bond Posted - Cash (Receipt 96 Dated 1/12/2017 for 100.00)	Robert Naftz
	STAT	KJONES	Case Status Changed: Closed pending clerk action	Robert Naftz
	APSC	KARENV	Appealed To The Supreme Court	Robert Naftz
	STAT	KARENV	Case Status Changed: Inactive	Robert Naftz
	ΝΟΤΑ	KARENV	NOTICE OF APPEAL	Robert Naftz
1/19/2017	HRSC	HAMPTON	Hearing Scheduled (Motion for Attorney fees and Costs 03/03/2017 10:00 AM) Lane Erickson	Robert Naftz
2/24/2017	CCOA	HAMPTON	Clerk's Certificate Of Appeal	Robert Naftz
3/3/2017	DCHH	HAMPTON	Hearing result for Motion for Attorney fees and Costs scheduled on 03/03/2017 10:00 AM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Lane Erickson	Robert Naftz
3/8/2017	HRSC	HAMPTON	Hearing Scheduled (Motion 04/04/2017 01:30 PM) Notice will be sent by Lane Erickson's office	Robert Naftz
	NOTC	HAMPTON	Notice of Hearing-Erickson	Robert Naftz
3/10/2017	NOTC	HAMPTON	Notice of Hearing-Erickson	Robert Naftz
3/15/2017	AMEN	HAMPTON	AMENDED Notice of Appeal	Robert Naftz
3/21/2017	MEOR	HAMPTON	Minute Entry And Order	Robert Naftz

FILED 15 MAR 23 PM 13 27 FRANKLIN COUNTY CLERK

DEPUTY

Charles Edward Cather, III, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83402-1505 Telephone: (208) 522-6700 Facsimile: (208) 522-5111 cec@moffatt.com 25996.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

Case No. CV-2015- 132

VERIFIED COMPLAINT FOR QUIET TITLE AND INJUNCTIVE RELIEF

Judge: Mitchell W. Brown Robert Naftz

COMES NOW plaintiffs Glen Wayne Nielson and Cheryl E. Nielson ("Nielsons"

or "Plaintiffs"), by and through their undersigned counsel, and hereby complain and allege the

following as a causes of action against Robert Talbot and Michelle Talbot, together with each of

their respective heirs, assigns and successors in interest, and all other persons or entities

unknown claiming any right, title, or interest (collectively, "Defendants") in the Nielson Property (hereinafter described).

PARTIES

- 1. Plaintiffs are individuals residing in Franklin County, Idaho.
- 2. Plaintiffs own one hundred percent (100%) of the fee simple interest in the

real property, located in Franklin County, Idaho, commonly known as 496 West 200 South,

Preston, Idaho, and more particularly described as follows ("Nielson Property"):

Commencing at a point 81 Rods South and 40 Rods West of the NE corner of the NW1/4 of Section 27 of Township 15 South, Range 39EBM, Franklin County, Idaho, thence East 170 feet; thence South 160 feet; thence West 170 feet; thence North 160 feet to the Point of Beginning. (04791.05)

3. Based on information and belief, defendants Robert Talbot and Michelle

Talbot, husband and wife, reside in Franklin County and claim an interest in the Nielson Property.

JURISDICTION AND VENUE

4. This is an action to quiet title in a parcel of real property located in

Franklin County, Idaho, and an action for declaratory and injunctive relief.

5. This Court has jurisdiction over the subject matter of this action pursuant

to Idaho Code Section 1-705.

6. Pursuant to Idaho Code Section 5-514, this Court has personal jurisdiction

over Defendants in this action because Defendants are residents of State of Idaho.

7. Venue of this action properly lies in Franklin County, Idaho, pursuant to

Idaho Code Section 5-401 because the real property, which is the subject of this action, is located in Franklin County, Idaho.

GENERAL ALLEGATIONS

8. On or about August 27, 2013, Plaintiff Glen Wayne Nielson purchased the Nielson Property from Paul Parker and Saundra Parker, husband and wife, using, in part, funds borrowed from Bank of Idaho.

9. Bank of Idaho secured its purchase loan to Plaintiff Glen Wayne Nielson with a Deed of Trust recorded in the records of Franklin County.

10. On or about June 9, 2014, Plaintiff Glen Wayne Nielson quit claimed the Nielson Property to Glen Wayne Nielson and Cheryl E. Nielson, husband and wife.

Plaintiffs own one hundred percent (100%) of the fee simple interest in the
 Nielson Property.

12. Plaintiffs and/or their immediate predecessors in interest have been in possession of the Nielson Property continuously for more than twenty (20) years. Nielsons (or their immediate predecessors in interest) have discharged all obligations, financial and otherwise, in connection with the Nielson Property during such time, including, without limitation, the payment of all state, county and municipal taxes that have been levied and assessed upon the Nielson Property.

13. Defendants are the apparent owners of real property in Franklin County, Idaho, commonly known as 478 West 200 South ("Talbot Property"), with a portion of said property adjoining Plaintiff's property on the Nielson Property's east boundary line.

14. Defendants shed and car port sit, in part, on the Nielson Property.

15. The real property records of Franklin County, Idaho indicate that prior to 1962 and through 1985, the Talbot Property and Nielson Property were part of larger parcels with common ownership. 16. The Nielson Property and the Talbot Property, as part of a much larger parcel ("Ransom Property"), were deeded from Chloe Ann Winger to Milo and Myrtle Ransom on November 18, 1962.

17. Mrs. Ransom deeded the Ransom Property to Howard Almond on April 5, 1972 pursuant to a warranty deed of the same date recorded July 19, 1973 as Instrument No. 133194 in the records of Franklin County, Idaho, as modified by that certain corrective warranty deed dated September 16, 1976 recorded September 20, 1976 as Instrument No. 140803 in the records of Franklin County, Idaho. The Corrective Warranty Deed is attached hereto as Exhibit A.

18. On or about July 2, 1979, Howard Almond and Laura Almond, husband and wife, deeded a portion of the Ransom property ("Schaffer Property") to Craig Schaffer and Sue Schaffer, husband and wife, by that certain warranty deed recorded on July 11, 1979 as Instrument No. 150231, as modified by that certain warranty deed recorded on October 2, 1981 as Instrument No. 157161. Copies of the warranty deeds are attached hereto as Exhibits B and C.

19. The Schaffer Property was approximately 272 feet by 160 feet and consisted solely of the Nielson Property and Talbot Property.

20. The Schaffers subsequently split the Schaffer Property into two separate parcels – the Nielson Property and the Talbot Property.

21. The Nielson property was 170 feet by 160 feet and the Talbot Property was 102 feet by 160 feet.

22. The Schaffers deeded the Nielson Property to Phillip and Sherry Cromwell, husband and wife, on September 22, 1986. The Cromwell Deed is attached hereto as

VERIFIED COMPLAINT FOR QUIET TITLE AND INJUNCTIVE RELIEF - 4 Client: 378708959

Exhibit D. Since that date, the Nielson property has been transferred to the Heaps, Parkers and finally the Nielsons. The subsequent deeds of transfer are attached hereto as Exhibits E, F, G and H.

23. The Schaffers deeded the Talbot Property to Suel Murdock and Gae Murdock, husband and wife, on or about January 17, 1985. The Murdock Deed is attached hereto as Exhibit I. Since that date, the Talbot property has been transferred to the Whiteheads, Larsens and finally the Talbots. The subsequent deeds of transfer are attached hereto as Exhibits J, K and L.

COUNT I – QUIET TITLE

24. Plaintiffs incorporate the allegations of Paragraphs 1 through 23 as if fully set forth herein.

25. Plaintiffs are the rightful owner of the Nielson Property.

26. Defendants have claimed an ownership interest in the Nielson Property that is adverse to that of Plaintiffs.

27. Plaintiffs are entitled to an order from this Court quieting title to the Nielson Property in the name of Plaintiffs, free and clear of any interests of Defendants.

COUNT II – INJUNCTIVE RELIEF

28. Plaintiffs incorporate the allegations of Paragraphs 1 through 27 as if fully set forth herein.

29. Defendants have wrongfully interfered and continue to wrongfully interfere with Plaintiff's ownership, use, and property rights in the Nielson Property.

30. Plaintiffs have no adequate remedy at law for Defendants' continuing conduct, in that it would be impossible to determine the precise amount of damages Plaintiff will

VERIFIED COMPLAINT FOR QUIET TITLE AND INJUNCTIVE RELIEF - 5 Client:378708959

suffer if Defendants are allowed to proceed excluding Plaintiff from the use and enjoyment of the Nielson Property.

31. Defendants' conduct, if not enjoined by the Court, will cause serious and irreparable harm to Plaintiff.

32. Defendants have encroached on existing boundary lines and constructed improvements on the Nielson Property. As a result of the encroachment, Plaintiffs will be irreparably harmed.

33. Plaintiffs are entitled to injunctive relief prohibiting Defendants from encroaching or entering upon the Nielson Property.

34. Plaintiffs request that the Court enter an order enjoining Defendants from encroaching on Plaintiffs' property, or otherwise interfering with the use and enjoyment of the Nielson Property, and further requests that the Court enter an order requiring Defendants to remove the carport and shed from the Nielson Property.

COUNT III – TRESPASS

35. Plaintiffs incorporate the allegations of Paragraphs 1 through 34 as if fully set forth herein.

36. In the construction of the carport and shed on the Nielson Property,

Defendants have entered upon Plaintiffs' property without authorization or permission.

37. Defendants' conduct constitutes trespass.

38. Plaintiffs are entitled to injunctive relief enjoining the trespass.

COUNT IV – ATTORNEYS' FEES AND COSTS

39. Plaintiffs incorporate the allegations of Paragraphs 1 through 38 as if fully set forth herein.

40. Defendants are wrongfully asserting rights and ownership to property.

41. Plaintiffs have been unreasonably and unnecessarily forced to file the

instant action to protect their rights in the Nielson Property.

42. Defendants should pay Plaintiffs' attorneys' fees and costs pursuant to Idaho law.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial with a 12 member jury on all issues pursuant to Rule 38(b) of the Idaho Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant the following relief:

- 1. Entry of a judgment quieting title to the Nielson Property in Plaintiffs;
- 2. Entry of judgment enjoining Defendants from interference with Plaintiffs'

use and enjoyment of the Nielson Property;

3. Entry of permanent injunction directing Defendants to immediately

remove the carport and shed from the Nielson Property;

4. Entry of judgment in favor of Plaintiffs requiring Defendants to pay

Plaintiffs' reasonable attorneys' fees and costs; and

5. For such other and further relief as the Court shall deem just and proper.

DATED this 20th day of March, 2015.

Moffatt, Thomas, Barrett, Rock & Fields, Chartered

By

C. Edward Cather – Of the Firm Attorneys for Plaintiffs

STATE OF IDAHO)) ss.

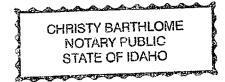
County of Franklin

CHERYL E. NIELSON, being first duly sworn, deposes and says:

I have read the foregoing VERIFIED COMPLAINT FOR QUIET TITLE AND INJUNCTIVE RELIEF, know the contents thereof and that the same are true to the best of my knowledge, information, and belief.

Kielsn

SUBSCRIBED AND SWORN to before me this day of March, 2015.



)

NOTARY PUBLIC FOR IDAHO Residing at <u>Prestor</u> My Commission Expires <u>[(-26-16</u>

Client:3787089.1

EXHIBIT A

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	-	-				

MYRTLE RANSON, A VIGOW

MARRANTY DELD

For Value Received

correction dele

DEXED.

- SEP 20 1976

the Grantor, does hereby grant, bargain, sell and convey unto

MICHAEL D. XUNZ RECOR

HOWARD ALMOND

BY SURA BALLING

the Grantee, the following described premises, to wit:

Commencing at a point 85 rods South from the Sortheast Corner of the Northwest Quarter of Section 27, Township 15 South, Range 39 East, of the Boise Meridian, and running thence West 12 rods: thence North 4 rods: thence West 28 rods: thence South 19.5 rods: thence Last 370 feet: thence North 76 feet; thence fest 290 feet; thence North 179.75 feet; to the place of beginning. ्रीकः स Subject to all incumbrances now existing.

This deed corrects Warranty Deed executed by the above parties dated the 5th day of April, 1972, recorded the 19th day of July, 1973, under Microfilm Instrument No. 133194, records of Franklin County, State of Idaho,

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his beits and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that she is the owner in fee simple of seld premises; that said premises are free from all incumbrances

and that she will warrant and defend the same from all lawful claims whatsoever.

DATED: September 16, 1976

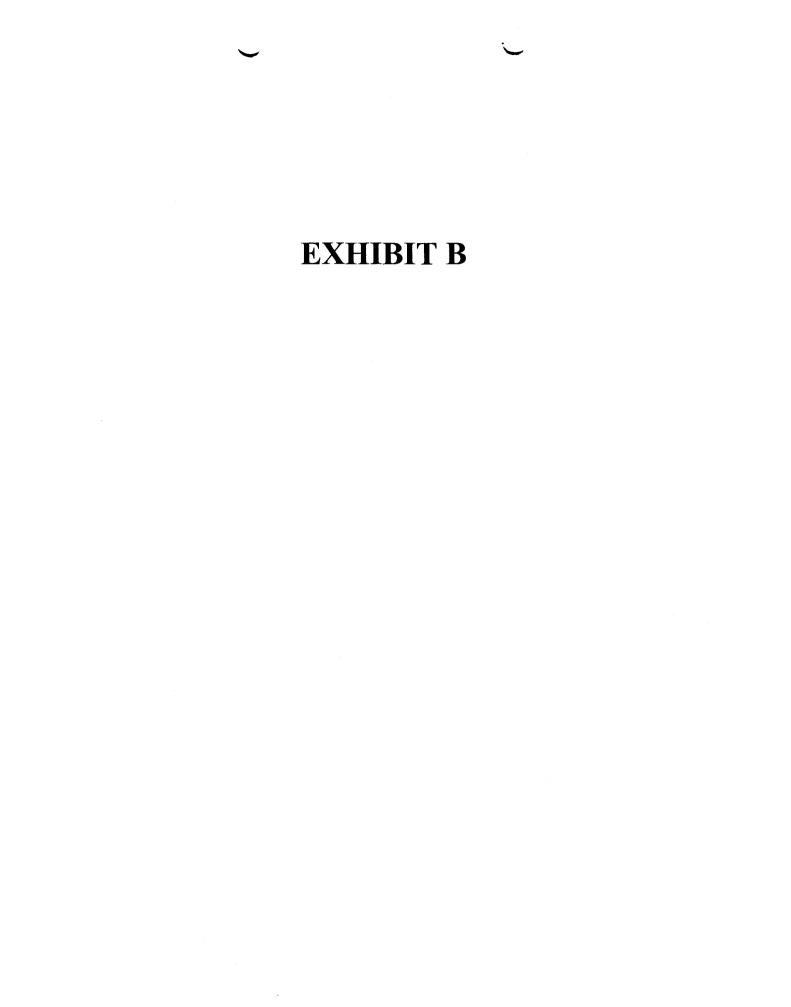
STATE OF IDAHO, COUNTY OF FRANKLIN Cn this day of 1975, before me, a notary public in and for said state, personally appeared

MYRTLE RANSON, A Widow

to he to be the person whose name subscribed to the within instrument, hereiged to me that she executed

Notary Public R-831

Preston, Idaho Commission Expires: March 1, 1980



\smile	150231

WARRANTY DEED

For Value Received

HOWARD J. ALMOND and LAURA JEAN R. ALMOND, husband and wife,

the grantor S, do hereby grant, bargain, sell and convey unto

CRAIG SHAFFER and SUE SHAFFER, husband and wife, Preston, Idaho

whose current address is

the grantee S, the following described premises, in Franklin County Idaho, to wit:

Township 15 South, Range 39 East of the Boise Meridian Section 27: Commencing at a point 81 rods South and 40 rods West from the Northeast correr of the Northwest Quarter of Section 27, and running thence East 170 feet; thence South 160 feet; thence West 170 reet; thence North 160 feet to the point of beginning.

> SUBJECT to DEED OF TRUST to First Security Bank of Idaho, N.A., recorded April 26, 1976, under Microfilm Instrument No. 139637, records of Franklin County, State of Idaho, which Grantees herein assume and agree to pay.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee S, their heirs and assigns forever. And the said Granter S do hereby covenant to and with the said Grantee S, that they are the owner S in fee simple of said premises; that they are free from all incumbrances

and that the y will warrant and defend the same from all lawful claims whatsoever.

Dated:

Residing at

Commission

July 2. 1979 Mourses 2 ALMOND	
0 0 0 0	i
Taura Das & Blance	
Xaural the Claud	

STATE OF IDAHO, COUNTY OF FRANKLIN On this day of , 1979, before me, a notary public in and for said State, personally appeared

HOWARD J. ALMOND and LAURA JEAN B. ALMOND, husband and wife, known to me to be the person S whose mame^S are

subscribed to the within instrument, and acknowledged to me that the y excepted the same

Notary Public

Idaho

----- JUL 1 1 1979

EXHIBIT C

157161

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Recorded at the request of	
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_____ 9 1981 "......

MICHAEL, D. MUNZ, RECORDER

Reception C.

(DO NOT WRITE ABOVE THIS LINE)

WARRANTY DEED

For Value Received

HOWARD J. ALMOND and LAURA JEAN ALMOND

the grantors, do hereby grant, bargain, sell and convey unio

CRAIG SHAFFER and SUE SHAFFER, husband and wife

the grantee sthe following described premises, in ____Franklin ___ County, Idaho, to wit:

Township 15 South, Range 59 East of the Boise Meridian Section 27: Commencing at a point SI rods South and 660 feet West of the Northeast Corner of the Northwest Quarter of Section 27, and running thence East 272 feet, more or less, thence South 160 feet; thence West 272 feet, more or less, thence North 160 feet to the place of beginning.

This deed is given to correct the description in the doed from Grantors herein to Grantees herein dated the 2nd day of July, 1979, and recorded the 11th day of July, 1979, under Microfilm Instrument No. 150251.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that he y are the owners in fee simple of said premises: that they are free from all incumbrances

and that the y will warrant and defend the same from all lawful claims whatsoever.

Dated:			· · · · ·	
10-2-8	/	1 town	RO J. Browno	
	· . ·		alle the and the same	
INCTARY BEALS	State of Idaho)	n - 1 0	
	County of) so Osihe 2	UNVOI COEBCE AD. 1581	
	personaliy appeared HOWARD 3.	tbefore me ALMOND and LAURA JE	AN ALMOND	
	the signar(s) of th executed the same,		icknowledged to me that t. he Y	
	Residing at. Pro	ston, Idaho	My Commission expires.	
Mail deed to:		Mail tax notice	e to:	

EXHIBIT D

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172822

QUITCLAIM DEED

For Value Received

ï

also known as Laurie Sue Shaffer, Craig Shaffer and Sue Shaffer, humband & wife

do hereby convey, release, remise and forever quit claim unto Beneficial Idaho Inc. dba Beneficial Mortgage Co of Idaho (formerly known as Beneficial Finance Co of Idaho) P. O. Box 1074, Pocatello, Idaho 83204

the following described premises, to-wit:

TOWNSHIP 15 SOUTH, RANGE 39 EAST OF THE BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO SECTION 27; COMMENCING AT A POINT 81 RODS SOUTH AND 40 RODS WEST FROM THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 27, AND RUNNING THENCE FAST 170 FEET: THENCE SOUTH 160 FEET: THENCE WEST 170 FEET: THENCE NORTH 160 FEET TO THE POINT OF BEGINNING....

"This deed is an absolute converance, the grantors having sold said land to the grantee for a fair and adequate consideration, such consideration, in addition to that above recited, being full satisfaction of all obligations secured by the deed of trust executed by Craig Shaffer and Sue Shaffer, husband & wife to Beneficial Mortgage Co of Idaho and to Walter H. Bithell, Alfred C. Hagen, John C. Ward, Attorney at Law as trustee recorded in book #165575; Official Records of Franklin C ounty, and note secured thereby.

"Grantors declares that this conveyance is freely and fairly made, and that there are no agreements, oral or written, or other than this deed between grantors and grantee with respect to said land."

together with their appurtenances. Dated: June 30, 1986	
Aurie Abe Baffir	
STATE OF IDAHO, COUNTY OF FRANKLIN On this 30th day of June , 1986, before me, a notary public in and for said State, personally appeared CRAIG SHAFFER and SUE SHAFFER, also known as LAURIE SUE SHAFFER, husband and wife, SHAFFER, husband and wife, superfixed-te-the within instrument, and acknowledged to me that it for the persons whose name s are superfixed-te-the within instrument, and acknowledged to me that it for the persons whose name s are superfixed-te-the within instrument, and acknowledged to me that it for the persons whose name s are superfixed-te-the within instrument, and acknowledged to me that it for the persons whose name s are superfixed-te-the within instrument, and acknowledged to me that it for the persons whose name s are superfixed-te-the within instrument, and acknowledged to me that it for the persons whose name s are superfixed-te-the within instrument, and acknowledged to me that it for the persons whose name s are superfixed-te-the within instrument, and acknowledged to me the same. Notary Public Residing at the persons whose name s are superfixed-te-the within instrument, and acknowledged to not save the same.	STATE OF IDAHO, COUNTY OF Tranklin I hereby certify that this instrument was filed for record at the request of Bereficial Idaho IMC. at 20 minutes past // o'clock Am., this // db day of July 19 %, in my office, and duly recorded in Book of Deeds at page <u>Orce f. Keller</u> Extornicho Elecorder By <u>Catoline</u> <u>Deputy</u> . Fees \$ 2.00

17397	4~3000 79
WARRAN	
(CORPORA Beneficial Idaho Inc. dba Beneficial Mortga As Beneficial Finance Co of Idaho Organized and existing under the laws of the State of Polatello, Idaho grantor, hereby CONVEYS or GRANTS and WARRANT	ge Co of Idaho (formerly known Delaware , a corporation K, with its principal office at 228 N. Main St., Bannock , State of Idaho
Philip G. Cromwell and Sherry Lyn Cromwell	, husband & wife
of Preston, Idaho	grantee for the sum of
Sixty thousand dollars and no/100	DOLLARS. County,
Township 15 South, Range 39 East of the 3 Section 27; Commencing at a poing 81 rod Northeast Corner of the Northwest Quarter East 170 feet: thence South 160 feet: the feet to the point of beginning	s South and 40 rods West from the root Section 27, and running thence
Location of above described property 496 W. 200 Source House N	
authorized under a resolution duly adopted by the board of and attended by a quorum. In witness whereof, the grantor has caused its corpo authorized officers this 22nd day of September	orate name and seal to be hereunto affixed by its duly
	Mortgage Co. of Idaho (CORPORATE NAME) BT LEROY H. Haug, Vice PRESIDENT
	Attest Morg 15/
	Jah B. Georgie, Vice Presidenterer
State of Idaho 55. County of	STATE OF IDAHO, COUNTY OF heulin I hereby ceptify that this instrument was filed for record at the request of fugeter Sand Little
On the day of . A.D. 19	at 5 minutes past 11.00 o'clock A.m.
personally appeared before me and	this actiles 27 1956, in my office, and duly recorded in Book
who being by me duly sworn did say, each for himself, that he,	of Deeds at page
s the president, and he, the said	Keller
is the secretary	Le I OL
a corporation, and that the within and foregoing	By Martae 6. Johnson
	22nd day of <u>September</u> 19 <u>86</u> , before r
ounty of San Mateo	licie Freitas
********	igned Notary Public, personally appeared
FELICIE FREITAS	M. Haug and Jon B. Georgie
SAN MATEO COURTY Y around	ally known to me to me on the basis of satisfactory evidence
My comm. stores AUS 30, 1300 p to be the p	erson(s) who executed the within instrument as <u>& Vice President</u> or on behalf of the corporation the
UIDE Fr <u>eelden</u> t	
	d acknowledged to me that the corporation executed it. my hand and official seal.
	d acknowledged to me that the corporation executed it. my hand and official seal.

27 of 759

EXHIBIT E

WARRANTY DEED

For Value Received Philip G. Cromwell and Sherry Lyn Cromwell, husband and wife

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

Jared Heaps and Marissa Heaps, husband and wife

whose address is: 496 West 200 South, Preston, ID 83263

Hereinafter called the Grantee, the following described premises situated in Franklin County, Idaho, to-wit:

Commencing at a point 81 Rods South and 40 Rods West of the NE comer of the NW¹/4 of Section 27 of Township 15 South, Range 39EBM, Franklin County, Idaho, thence East 170 feet; thence South 160 feet; thence West 170 feet; thence North 160 feet to the Point of Beginning.

Field at the request of

AM JUL 0 2 2001 2:00

V. ELLIOTT LARSEN, RECORDER By Shaune Deddes Doputy FRANKLIN COUNTY, IDAHO

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: 2004

, main ull Sherry Lyn Oromwel

STATE OF Idaho)ss.

COUNTY OF FRANKLIN

On this Z5th day of June, 2004, before me Karen Rawlings, personally appeared Philip G. Cromwell and Sheny Lyn Cromwell, known or identified to me (or proved to me on the cath of), to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same.

mp

Notary Public of Idaho Residing at Preston, Idaho Commission Expires: 12/18/09

LAURIE BOSTWICK NOTARY PUBLIC STATE OF IDAHO

EXHIBIT F

234740 1-2

RECORDING REQUESTED BY First American Title Company

rirst American Title Company

AND WHEN RECORDED MAIL TO: Paul W. Parker and Saundra L. Parker 496 West 200 South Preston, ID 83263 Recorded at the request of FIRST AMERICAN TITLE

11:40 a.m. AUG 1 7 2006 p.m.___

V. ELLIOTT LARSEN, RECORDER By Camille Deputy FRANKLIN COUNTY, IDAHO

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: 174702-PR (mh)

Date: August 14, 2006

For Value Received, **Jared Heaps and Marissa Heaps**, **husband and wife**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Paul W Parker and Saundra L Parker**, **husband and wife**, hereinafter called the Grantee, whose current address is **1618 North 800 East**, **Preston**, **ID 83263**, the following described premises, situated in **Franklin** County, **Idaho**, to-wit:

Commencing at a point 81 Rods South and 40 Rods West of the NE corner of the NW¹/₄ of Section 27 of Township 15 South, Range 39EBM, Franklin County, Idaho, thence East 170 feet; thence South 160 feet; thence West 170 feet; thence North 160 feet to the Point of Beginning.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

STATE OF

) 55.

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234740 2~

COUNTY OF Franklin

Idaho

On this **Fifteenth day of August, 2006**, before me, a Notary Public in and for said State, personally appeared **Jared Heaps and Marissa Heaps**, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

MARY HINRICHS HE TARY PUBLIC STATE OF IDAHO

Notary Public for the State of Idaho Residing at: Presion, Idaho My Commission Expires: April 28, 2008

EXHIBIT G

259382 1.1

RECORDING REQUESTED BY First American Title Company

AND WHEN RECORDED MAIL TO: First American Title Company 28 West Oneida/PO Box 148 Preston, ID 83263 Recorded at the request of <u>First American</u> Title Time <u>9.48A</u> Amount \$ 1300

AUG 3 0 2013

SHAUNA T. GEDDES, RECORDER By ______ Deputy Franklin County, Idaho

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: 474009-PR (mh)

Date: August 27, 2013

For Value Received, **Paul Parker and Saundra Parker**, **husband and wife**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Glen Wayne Nielson**, a married man as his **sole and separate property**, hereinafter called the Grantee, whose current address is **496 West 200 South**, **Preston**, **ID 83263**, the following described premises, situated in **Franklin** County, **Idaho**, to-wit:

Commencing at a point 81 Rods South and 40 Rods West of the NE corner of the NW¼ of Section 27 of Township 15 South, Range 39EBM, Franklin County, Idaho, thence East 170 feet; thence South 160 feet; thence West 170 feet; thence North 160 feet to the Point of Beginning. (04791.05)

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Paul Parker

In parker

Saundra Parker

STATE OF

COUNTY OF

Idaho 🔪

) SS,

)

259382 2.2

On this **Twenty-seventh day of August, 2013**, before me, a Notary Public in and for said State, personally appeared **Paul Parker and Saundra Parker**, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

MARY HINRICHS NOTARY PUBLIC STATE OF IDAHO

Franklin

Notary Public for the State of Idaho Residing at: Preston, Idaho My Commission Expires: 06-16-2014

EXHIBIT H

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261737

Recorded at the request of <u>Glass Nickson</u> Time <u>2:36</u> P Amount \$ 10°°

JUN 0 9 2014

SHAUNA T. GEDDES, RECORDER By Deputy Franklin County, Riaho

QUIT CLAIM DEED

For Value received

Return to: <u>Gilen & Chery LNielsa</u> <u>496 W 2025</u> <u>Preston</u> ID 83263

Glen Wayne Nielson	, Grantor(s),
do(es) hereby convey, release, remise and foreve	r quit claim unto
Glen Wayne & Cheryl E. Nie	1801 (husband) E wife ,)Grantee(s),
the following described premises, to-wit:	

Commencing at a point 81 Rods South and 40 Rods West of the NE corner of the NW% of Section 27 of Township 15 South, Range 39EBM, Franklin County, Idaho, thence East 170 feet; thence South 160 feet; thence West 170 feet; thence North 160 feet to the Point of Beginning. (04791.05)

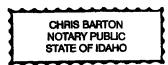
together with their appurtenances.

Dated: 6-9-14

x Cheng & Aulsni)

State of Idaho County of Franklin

On this 9^{13} day of <u>JUNE</u>, 20 (4, before me, a Notary Public in and for said State, personally appeared <u>CLEN WAYNE NIELSON</u>, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same. In witness whereof I have set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public State of 1DAHD Residing at: PRESTON Commission Expires: 11/13/2018

EXHIBIT I

38 of 759

Instrument No. 305

OUT CLAIM DEED

THIS INDENTURE WITNESSETH: That for value received

the, Grantor 5 CRAIG SHAFFER and SUE SHAFFER, husband and wife

hereby Remise, Release and forever Quit claim unto

SUEL MURDOCK AND GAE MURDOCK, husband and wife

Grantee the following

described	premises,	inFRANKLIN	County, Idaho, to wit:
-----------	-----------	------------	------------------------

Township 15 South, Range 39 East of the Boise Meridian Section 27: Commencing at a point 81 rods South and 388 feet West of the Northeast corner of the NW1 of Section 27; and running thence West 102 feet: thence South 160 feet; thence East 102 feet; thence North 160 feet to the point of beginning.

This deed is being recorded to correct description on Quit Claim Deed recorded on the 17th day of January , 1985, under Microfilm Instrument No. 168360 . records of Franklin County, State of Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Grantee heirs and assigns forever.

Dated: February 11, 1985

1.7

Comm. Expires..... bifetime

i e-

Residing at Preston

SEAL) (SEAL)

STATE OF IDAHO, COUNTY OF

the request of

20

at

Notary Public

, Idaho

STATE OF IDAHO, COUNTY OF FRANKLIN سي ور day of February , 19 85 On this before me, a notary public in and for said State, personally appeared

> CRAIG SHAFFER and SUE SHAFFER, husband and wife

known to me to be the person S whose name S are subscribed to the within instrument, and acknowledged to they ... executed the same. me that Э Cmuth

29th this day of March 19 55, in my office, and duly recorded in Book of Deeds at page Ex-Qfficio Recorde By Deputy. ه ه Fees \$ 2.

I hereby certify that this instrument was filed for record at he request of Inecide Title

minutes past

Frankle

12:00

o'clock P.m

NANCIN

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Suel Preston, 83263 Suel Murdock Mail to:

EXHIBIT J

186450

WARRANTY DEED

For Value Received

7-6253 ARB. 2.23

NEZSEZNWZ

SUEL MURDOCK and GAY MURDOCK, a/k/a GAE MURDOCK, husband and wife,

the grantors, do hereby grant, bargain, sell and convey unto

VINCENT LEE WHITEHEAD and CORLISS C. WHITEHEAD, husband and wife,

whose current address is 85 West 1st South, Clifton, Idaho 83228 the grantees, the following described premises, in Franklin County Idaho, to wit:

Township 15 South, Range 39 East of the Boise Meridian, Franklin County, Idaho Section 27: Commencing at a point 81 rods South and 388 feet

Commencing at a point 81 rods South and 388 feet West of the Northeast corner of the Northwest Quarter of Section 27, and running thence West 102 feet; thence South 160 feet; thence East 102 feet; thence North 160 feet to the point of beginning.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that they are free from all incumbrances Subject to Reservations in United States and State Patents, existing and recorded rights-of-way and easements, zoning and building ordinances, and taxes and assessments as prorated between the parties hereto.

and that the y will warrant and defend the same from all lawful claims whatsoever.

Dated: August 21, 1992	Sul Murdock
STATE OF IDAHO, COUNTY OF FRANKLIN On this 21st day of August, 1992, before me, a notary public in and for said State, personally appeared SUEL MURDOCK and GAY MURDOCK, husband and wife, NuRDOCK, husband and wife, Known to me to be the personS whose name S are subscribed to the within instrument, and acknowledged to me that they executed the same. Notary Public Residing at Swan Lake , Idaho Comm. Expires June 1, 1994	Recorded at the request of <u>Preston Lond Table</u> h: 20 a.m. AUG 2 1 1992p.m. LARAE E. JOHNSON, RECORDER By Ruth K. Roulingbeouty FRANKLIN COUNTY, IDAHO

-

EXHIBIT K

187652

WARRANTY DEED

For Value Received

VINCENT LEE WHITEHEAD and CORLISS C. WHITEHEAD, husband and wife,

the grantors, do hereby grant, bargain, sell and convey unto

DAVID W. LARSEN and BRENDA LARSEN, husband and wife,

whose current address is 1117 North Main Logan, Utah 84321 the grantees, the following described premises, in Franklin

County Idaho, to wit:

Township 15 South, Range 39 East of the Boise Meridian, Franklin County, Idaho Section 27: Commencing at a point 81 rods South and 388 feet

West of the Northeast corner of the Northwest Quarter of Section 27, and running thence West 102 feet; thence South 160 feet; thence East 102 feet; thence North 160 feet to the point of beginning.

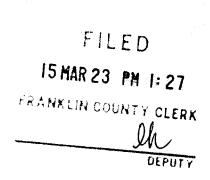
TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that they are free from all incumbrances Subject to Reservations in United States and State Patents, existing and recorded rights-of-way and easements, zoning and building ordinances, and taxes and assessments as prorated between the parties hereto.

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: BUYERS: Dave us haven 2.2093 Brenda Sarin Epp 20, 1993	SELLERS: Balanta 2/23/93 Corliss (. Whitehesd 2/23/93
STATE OF IDAHO, COUNTY OF On this 23 day of February 19 93, before me, a notary public in and for said State, personally appeared VINCE WHITEHEAD CORLISS WHITEHEAD	Recorded at the request of Unice_tuby to bus_c
Resulting at 10 wright, 17-96	9:55 B.M. FEB 2 3 1993 _p.m. LARAE E. JOHNSON, RECORDEN By Carol Baller - Deputy FRANKLIN COUNTY, IDAHO
FORM COMPLIMENTS OF	PRESTON LAND TITLE CO.

EXHIBIT L

7962	Al Market and the second second second		Hewicea sine (squestor
•	When Recorded mail to: CACHE MORTGAGE CORPORATION 33 NORTH MAIN, LOGAN, UT 84321	19 4042	- Freston Land Title
	WARRA	ANTY DEE	D V. ELLIOTT LARSEN, RECCADER
	DAVID W. LARSEN and BRENDA LARSE	N	By <u>Pamille Jacon</u> Deputy FRANKLIN COUNTY, IDAHO
	grantor(s) of Contract Contrac	DUNTY OF FRANKLIN	State of
	ROBERT TALBOT and MICHELE TALBOT	, Husband & Wife	
			ntee(s)
	of 478 WEST 200 SOUTH PRESTON, ID 83263 for the sum of TEN DOLLARS AND OTHER VALUABL the following described tract(s) of land in FRANKLI	County of FRANKLIN E CONSIDERATIONS *****	
	TOWNSHIP 15 SOUTH, RANGE 39 EAST OF TH	E BOISE MERIDIAN, F	CANKLIN COUNTY, IDAHO
	SECTION 27: COMMENCING AT A POINT 81 NORTHEAST CORNER OF THE NORTHWEST QUAR WEST 102 FEET; THENCE SOUTH 160 FEET; FEET TO THE PLACE OF BEGINNING.	RODS SOUTH AND 388 I RTER OF SECTION 27, A THENCE EAST 102 FEET	FEET WEST OF THE AND RUNNING THENCE T: THENCE NORTH 16D
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	• • • • • • • • • • • • • • • • • • •		
	WITNESS the hand(s) of said grantor(s), this 11' To	hay of AUGUST 1995	
	Signed in the presence of	1 in n	Ind Low
		Bronda fa	NRSEN VILD
	STATE OF WARM IDAHO	BRENDA LARS	S E N
	COUNTY OF FRANKLIN	Ily appeared before me	
	the signer(s) of the above instrument, who duly acknow	owledged to me that they ex	recuted the same.
1	Notáry Public * Swan Lake, Idaho My Commission Expires: May 25, 2000		· ·
CLO-W/	ARRANTY DEED 12/91		45 of 759



Charles Edward Cather, III, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83402-1505 Telephone: (208) 522-6700 Facsimile: (208) 522-5111 cec@moffatt.com 25996.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

Judge: Mitchell W. Brown

TO: ROBERT TALBOT

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S). THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

YOU ARE HEREBY NOTIFIED that in order to defend this lawsuit, an

appropriate written response must be filed with the above-designated court within twenty (20)

Client: 377 1468 1

Case No. CV-2015- 132

SUMMONS

days after service of this Summons on you. If you fail to so respond, the Court may enter judgment against you as demanded by the Plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time, and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure, and shall also include:

1. The title and number of this case.

2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.

3. Your signature, mailing address, and telephone number, or the signature, mailing address, and telephone number of your attorney.

4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this 23 day of March, 2015.



CLERK OF THE COURT

Linda Mampton

Charles Edward Cather, III, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83402-1505 Telephone: (208) 522-6700 Facsimile: (208) 522-5111 cec@moffatt.com 25996.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

TO: **MICHELLE TALBOT**

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S). THE **COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE** UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

YOU ARE HEREBY NOTIFIED that in order to defend this lawsuit, an

appropriate written response must be filed with the above-designated court within twenty (20)

- 1

SUMMONS

Judge: Mitchell W. Brown

Case No. CV-2015- 132

FILED

15 MAR 23 PH 1:27

FRANKLIN COUNTY CLERK OL

DEPUTY

days after service of this Summons on you. If you fail to so respond, the Court may enter judgment against you as demanded by the Plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time, and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure, and shall also include:

1. The title and number of this case.

2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.

3. Your signature, mailing address, and telephone number, or the signature, mailing address, and telephone number of your attorney.

4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this 33 day of March, 2015.



CLERK OF THE COURT

Bx Linda Hampton

Deputy Clerk

FRANKLIN COUNTY CLERK

DEPUTY

C. Edward Cather, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Dr., Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83405-1505 Telephone: (208) 522-6700 Facsimile: (208) 522-5111 cec@moffatt.com 25996.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

Case No. CV-2015-132

MOTION FOR DISQUALIFICATION WITHOUT CAUSE

COME NOW Plaintiffs Glen Wayne Nielson and Cheryl E. Nielson, by and

through their undersigned counsel, and pursuant to the provisions of Rule 40(d)(1), Idaho Rules

of Civil Procedure, move for disqualification of District Judge Mitchell W. Brown from any

further proceedings in this cause. This motion, which is not made to hinder, delay, or obstruct

the administration of justice, is made before service of any written notice or order setting the

action for status conference, pretrial conference, trial, or for hearing on a contested motion and not later than twenty-one (21) days after service or receipt of the complaint, summons, order, or other pleading indicating or specifying who the presiding judge to this action will be.

DATED this 1st day of April 2015.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

Bv

C. Edward Cather – Of the Firm Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April 2015, I caused a true and correct copy of the foregoing **MOTION FOR DISQUALIFICATION WITHOUT CAUSE** to be served by the method indicated below, and addressed to the following:

Lane V. Erickson RACINE OLSON NYE BUDGE & BAILEY 201 E. Center St. PO Box 1391 Pocatello, ID 83201 (X) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

dward Cather

15 APR - 3 PM 12: 36

FRANKLIN COUNTY CLERK

DEPUTY

Charles Edward Cather, III, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83402-1505 Telephone: (208) 522-6700 Facsimile: (208) 522-5111 cec@moffatt.com 25996.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON, individually,

Plaintiff,

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

Case No. CV-2015-132

ACKNOWLEDGMENT AND ACCEPTANCE OF SERVICE

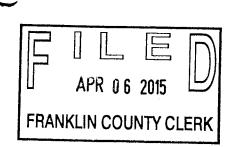
Lane V. Erickson of the law firm of Racine Olson Nye Budge & Bailey, hereby acknowledges that he is an agent authorized by appointment to accept service on behalf of Robert Talbot and Michelle Talbot, acknowledges receipt of a copy of the Verified Complaint and Summonses in this action, and accepts service of the same on behalf of his clients, Robert Talbot and Michelle Talbot.

DATED this <u>3</u>st day of March, 2015.

RACINE OLSON NYE BUDGE & BAILEY

By Jane

Lane V. Erickson – Of the Firm Attorneys for Defendants



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

٧S.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

Case No. CV-2015-132

ORDER FOR DISQUALIFICATION WITHOUT CAUSE

The above-captioned matter having come before the Court on the motion of Plaintiff's Glen Wayne Nielson and Cheryl E. Nielson for disqualification of judge pursuant to Rule 40(d)(1) of the Idaho Rules of Civil Procedure, and the Court being duly advised in the premises; IT IS, THEREFORE, ORDERED that the Honorable Mitchell W. Brown be

disqualified as presiding judge in the above-entitled action.

DATED this 6^{th} day of April, 2015.

Flonorable Mitchell W. Brown, District Judge

ORDER FOR DISQUALIFICATION WITHOUT CAUSE - 1

Client:3308236.1

I HEREBY CERTIFY that on this 7 day of April 2015, I caused a true and correct copy of the foregoing ORDER FOR DISQUALIFICATION WITHOUT CAUSE to be served by the method indicated below, and addressed to the following:

C. Edward Cather MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED Post Office Box 51505 Idaho Falls, Idaho 83405 Facsimile (208) 522-5111 (/) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail

() Facsimile

Lane V. Erickson RACINE OLSON NYE BUDGE & BAILEY 201 E. Center St. PO Box 1391 Pocatello, ID 83201 (/) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

Clerk of the Court

Client:3805586.1

 \checkmark

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail <u>lve@racinelaw.net</u>

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

CASE NO. CV 15-132

NOTICE OF APPEARANCE

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

COMES NOW Lane V. Erickson of the law offices of RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED, and hereby gives notice of the entry of his appearance as attorney of record for and on behalf of the Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, in the above-referenced proceeding.

For all purposes and any further proceedings herein counsel hereby requests that all notices, pleadings, correspondence and the like be forwarded to counsel at the law office of RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED, at the address listed above.

FILED 15 APR 21 PH 4: 34 FRANKLIN COUNTY CLERK DEPUTY

DATED this $\frac{\lambda}{\Sigma}$ Day of April, 2015.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

By

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <u>A</u> day of May, 2014, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Charles Edward Cather III Moffatt, Thomas, Barrett, Rock & Fields, Chtd 900 Pier View Drive, Ste 206 P.O. Box 51505 Idaho Falls, ID 83402-1505 Fax: 208-522-5111 X] U. S. Mail Postage Prepaid

Hand Delivery
 Overnight Mail
 Facsimile
 E-Mail

LANE V. ERICKSON

FILED

15 APR 23 AM 10: 14

FRANKLIN COUNTY CLERK

DEPUTY

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

Case No. CV-2015-00132

ANSWER AND COUNTERCLAIM

Ÿ.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, (hereafter collectively "Defendants") by and through their attorney of record, Lane V. Erickson, and for their answer to the Complaint of the Plaintiffs/Counterdefendants GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife, (hereafter collectively "Plaintiff"), hereby states as follows:

FIRST DEFENSE

1. In answering each of the allegations of the Complaint as specified herein, the

Apr. 23. 2015 9:31AM

No. 6364 P. 3/11

Defendants deny each and every allegation or claim not specifically entered into this Answer.

SECOND DEFENSE

2. In answering Paragraph 1 of Plaintiffs' Complaint, the Defendants admit the same.

3. In answering Paragraph 2 of Plaintiffs' Complaint, the Defendants deny the same.

4. In answering Paragraph 3, 4, 5, 6, and 7 of Plaintiffs' Complaint, the Defendants admit the same.

5. In answering Paragraphs 8, 9, and 10, of Plaintiffs' Complaint Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in said paragraphs and therefore deny the same.

5. In answering Paragraphs 11, and 12, Defendants deny the same.

6. In answering Paragraph 13, of Plaintiffs' Complaint, Defendants admit the same.

7. In answering Paragraph 14, of Plaintiffs' Complaint, Defendants deny the same.

8. In answering Paragraphs 15, 16, 17, 18, 19, and 20, of Plaintiff's Complaint, Defendants admit the same.

9. In answering Paragraph 21 of Plaintiffs' Complaint, Defendants deny the same.

10. In answering Paragraphs 22 and 23 of Plaintiffs' Complaint, Defendants admit the same.

11. In answering Count I – Quiet Title, and paragraph 24 of Plaintiffs' Complaint, the Defendants incorporate their previous answers to paragraphs 1-23; and further, the Defendants deny the remaining allegations set forth in paragraphs 25-27.

12. In answering Count II – Injunctive Relief, and paragraph 28 of Plaintiff's Complaint, the Defendants incorporate their previous answers to paragraphs 1-27; and further,

the Defendants deny the remaining allegations set forth in paragraphs 29-34.

13. In answering Count III – Trespass, and paragraph 35 of Plaintiff's Complaint, the Defendants incorporate their previous answers to paragraphs 1-34; and further, the Defendants deny the remaining allegations set forth in paragraphs 36-38.

14. In answering Count IV – Attorney's Fees and Costs, and paragraph 39 of Plaintiff's Complaint, the Defendants incorporate their previous answers to paragraphs 1-38; and further, the Defendants deny the remaining allegations set forth in paragraphs 40-42.

AFFIRMATIVE DEFENSES

15. Plaintiffs are precluded from the relief sought in their complaint, in whole or in part, by virtue of the Doctrines of Waiver, Estoppel, and/or Latches.

16. Plaintiffs are precluded from the relief sought in their complaint, in whole or in part, by virtue of the application of the Doctrine of Consent and/or Ratification.

17. Plaintiffs are precluded from the relief sought in their complaint, in whole or in part, by virtue of the application of the Doctrine of Boundary by Agreement.

18. Plaintiffs are precluded from the relief sought in their complaint, in whole or in part, by virtue of the application of the Doctrine of Boundary by Acquiescence.

19. Plaintiffs are precluded from the relief sought in their complaint, in whole or in part, by virtue of the application of the detrimental reliance of the Defendants and their predecessors.

20. Defendants reserve the right to amend their pleadings and to provide additional affirmative defenses through the commencement of these proceedings.

Apr. 23. 2015 9:31AM

No. 6364 P. 5/11

COUNTERCLAIM

21. On or about April 5, 1972, Myrtle Ransom deeded certain real property located in Franklin County, Idaho to Howard Almond. This transfer of real property was made by warranty deed, a true and correct copy of which is attached to Plaintiffs' Complaint as Exhibit "A" which is incorporated herein by reference as if set forth fully.

22. Upon information and belief, when Mr. Almond became the title owner of the property he immediately erected a fence for the purpose of maintaining his domesticated livestock animals and providing pasture land for their grazing.

23. Upon information and belief on or around July 2, 1979, Mr. Almond deeded a portion of the property, including that portion in which he had erected a fence, to Craig and Sue Schaffer. Copies of the warranty deed associated with the Shaffer's becoming the owners of said property are attached to Plaintiffs' Complaint as Exhibits "B" and "C" which are incorporated herein by reference as if set forth fully.

24. The Defendants agree that subsequent to becoming the title owners of the property the Shaffers maintained the fence line as established by the Almonds. Additionally, the Shaffers split or subdivided the property into two separate parcels, with the fenceline being maintained as the dividing line between the two properties.

25. On September 22, 1986, the Shaffers deeded a portion of the property which the Plaintiffs describe as the "Neilson Property" to Phillip and Sherry Cromwell, which was subsequently then deeded in turn to the Heaps, the Parkers and then finally to the Plaintiffs. This was accomplished by the Deed attached to Plaintiffs' Complaint as Exhibits "D", "E", "F", "G" and "H" which are incorporated herein by reference as if set forth fully.

26. At all times during these subsequent transfers the fenceline was maintained and

treated by all the above described owners as the boundary line between the properties that the Almonds had divided.

27. Concerning the property that is now owned by the Defendants, the Shaffers deeded this property to the Murdocks. After this transfer this property was subsequently deeded to the Whiteheads, the Larsens and finally to the Defendants. The deeds associated with these transfers are attached to Plaintiffs' Complaint as Exhibits "T", "J", "K", and "L" respectively and are incorporated herein by reference as if set forth fully.

28. The Cromwells planted the shrubs and trees at the fenceline while they lived on the property. Additionally, in or around 1992, the Whiteheads who are believed to have then been the owners of the property that is now owned by the Defendants, removed the fence and in and erected a shed and a carport upon the property based upon the boundary established by the fence which all of the above previous owners had used as a basis for the boundary line. Further, upon information and belief, the Whiteheads also installed an underground sprinkler system with lines and sprinklers placed at the edge of the boundary established by the above-described fence.

29. Subsequently, the Larsens and the Defendants have used and maintained the same sprinkler system, shrubs and/or trees and have also used the shed and a carport that have been in place since 1992.

30. In August of 1995, the Defendants became the owner of the property that has the sprinkler system, shrubs and/or trees and also has the shed and a carport. Defendants have maintained and enjoyed the use of these portions of their property from that time forward.

31. In June 2014, the Plaintiffs became the owner of the property adjacent to that of the Defendants. Immediately upon obtaining ownership, Plaintiffs claim to have learned that the legal description they obtained through their warranty deed entitles them to those portions of the

property that have the Defendants sprinkler system, shrubs and/or trees and also has the shed and a carport upon them. The Plaintiffs, became irate and demanded that the Defendants remove all of these improvements from the property.

32. The Defendants refused based upon well-established legal grounds for maintaining the long established use of the boundary line that existed between all previous owners of the adjacent properties.

COUNT I BOUNDARY BY AGREEMENT

33. Defendants reallege the allegations set forth in paragraphs 21-32 by reference as if set forth fully.

34. Defendants believe that the property line set forth in the above described deeds, evidences the boundary line that currently exists between the Plaintiffs and the Defendants. established by

35. In the alternative, in the event the legal descriptions illustrate that the boundary line is as claimed by the Plaintiffs, said boundary line has been altered by the use of the fenceline established and relied upon decades before by the previous land owners.

36. Because the fenceline was established and relied upon by previous owners, it became a boundary by agreement as provided by Idaho law.

37. Due to there being a boundary by agreement that has been relied upon for decades before the Plaintiffs became the owner of the property they now maintain, the Plaintiffs cannot now change that boundary line.

38. Prior to the Plaintiffs' filing this action, the Defendants provided Plaintiffs with the chain of titles for each of their respective properties and provided to them a summary of the existing law as it relates to the common law of boundary by agreement. Despite knowing this Apr. 23. 2015 9:31AM

No. 6364 P. 8/11

the Plaintiffs proceeded with filing this action for the purpose of harassing the Defendants in an attempt to get the Defendants to give up the boundary line that has been established.

39. The Defendants have been forced to retain the services of Racine, Olson, Nye, Budge and Bailey Chartered to defend this action. The Defendants have obligated themselves to pay for these services. Defendants are entitled to recover all of their attorney fees and costs associated with this action pursuant to Idaho Code § 12-120; 121 and or otherwise applicable Idaho law.

COUNT II

QUIET TITLE

40. Defendants reallege the allegations set forth in paragraphs 21-39 by reference as if set forth fully.

41. The boundary line between the parties properties has been established and maintained by all parties from at least the early 1970s until the present.

42. Prior to the Defendants becoming the owner of their portion of the property, the sprinkler system, shrubs and/or trees and the shed and a carport were installed and used from approximately 1992 to the present date.

43. The Defendants purchased and became the owners of their property in 1995 and have maintained the property from that time until the present with the same sprinkler system, shrubs and/or trees and the shed and a carport that are described above.

44. Based upon the actions of all previous owners of the properties, the reliance of all persons listed herein, and based upon the actions of the Defendants since they obtained ownership of their property in 1995, the Defendants are entitled to quiet title to any and all real property upon which they and the predecessors have exercised dominion and control that does

not match the legal descriptions as set forth on the deeds attached to Plaintiffs' Complaint as Exhibits "A" through "L".

45. The Defendants have been forced to retain the services of Racine, Olson, Nye, Budge and Bailey Chartered to defend this action. The Defendants have obligated themselves to pay for these services. Defendants are entitled to recover all of their attorney fees and costs associated with this action pursuant to Idaho Code § 12-120; 121 and or otherwise applicable Idaho law.

COUNT III

ATTORNEY FEES

46. Defendants reallege the allegations set forth in paragraphs 21-45 by reference as if set forth fully.

47. The Defendants have been forced to retain the services of Racine, Olson, Nye, Budge and Bailey Chartered to defend this action. The Defendants have obligated themselves to pay for these services. Defendants are entitled to recover all of their attorney fees and costs associated with this action pursuant to Idaho Code § 12-120; 121 and or otherwise applicable Idaho law.

DEMAND FOR JURY TRIAL

48. Defendants/Counterclaimants demand a jury trial on all issues related to the Complaint, Affirmative Defenses and Counterclaim raised in this matter.

Apr. 23. 2015 9:32AM

No. 6364 P. 10/11

PRAYER FOR RELIEF

WHEREFORE, the Defendants/Counterclaimants pray for an order of judgment of the Court as follows:

A. That the Plaintiffs/Counterdefendants take nothing by their Complaint;

B. That each and every allegation and/or cause of action and/or claim set forth by the Plaintiffs/Counterdefendants in their Complaint be dismissed with prejudice;

C. That Defendants/Counterclaimants be adjudicated as the title owners to any and all property in dispute as set forth herein;

D. That the Defendants/Counterclaimants recover all of their reasonable attorneys fees and costs associated with these proceedings and pursuant to applicable law, and;

E. For such other and further relief as this Court deems just and equitable under these premises.

DATED this Day of April, 2015.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

Bv:

LANE V. ERICKSON

Apr. 23. 2015 9:32AM

No. 6364 P. 11/11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the Arril, 2015, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Charles Edward Cather, III MOFFAT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED P.O. Box 51505 Idaho Falls, Idaho 83402-1505

[X] U.S. Mail Postage Prepaid Hand Delivery] Overnight Mail 1 Facsimile 1

LANE V. ERICKSON

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FILED

15 APR 28 AM 11:01

FRANKLIN COUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND

FOR THE STATE OF IDAHO, COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff,

VS.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

Case No: CR-2015-132

ADMINISTRATIVE ORDER OF REFERENCE

The Honorable Mitchell W. Brown, District Judge, having been disqualified by the

Defendant under Rule 40(d)(1) of the Idaho Rules of Civil Procedure,

IT IS HEREBY ORDERED that the above-entitled matter is hereby **<u>REFERRED</u>** to the

Honorable Robert C. Naftz for complete resolution.

DATED this 28th day of April, 2015.

STEPHEN 5. DUNN Administrative District Judge

ADMINISTRATIVE ORDER OF REFERENCE - 1

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 28th day of April, 2015, I mailed/served/faxed a true copy of the foregoing Administrative Order of Reference, on the attorney(s)/person(s) listed below by the method indicated:

<u>Attorney(s)/Person(s)</u> :	Method of Service:
C. Edward Cather Counsel for Plaintiff	Faxed: 522-5111
Lane V. Erickson Counsel for Defendants	Faxed: 232-6109

SHAUNA T. GEDDES, Clerk

BY: Linda Hampton, Deputy Clerk

ADMINISTRATIVE ORDER OF REFERENCE - 2

FILED

15 APR 29 PM 2: 58

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,))) Case No: CV-2015-132)
VS.) ORDER FOR SUBMISSION) OF INFORMATION FOR) SCHEDULING ORDER
ROBERT TALBOT and MICHELLE TALBOT, husband and wife,))

Defendants.

A Complaint was filed in this matter on the 23rd day of March, 2015. The Defendants have now appeared and/or answered and the case is at issue.

Pursuant to I.R.C.P. 16, IT IS HEREBY ORDERED that within fourteen (14) days of the date of this Order:

A) The parties, through their counsel (or the parties themselves if self-represented), shall <u>CONFER</u> and reach agreement on each of the issues listed below.

B) After the parties have <u>conferred and reached an agreement on each issue</u>, <u>PLAINTIFF'S</u> <u>counsel</u> (or Plaintiff, if self-represented) shall submit to the Court the <u>AGREED RESPONSE</u> to each issue listed below.

C) Issues on which the parties must reach an agreement and submit a response:

- (1) Whether this matter is to be tried to the Court or to a jury.
- (2) Whether service is still needed upon any unserved parties.
- (3) Whether motions to add new parties or otherwise amend the pleadings are expected.
- (4) Whether an unusual amount of time is needed for trial preparation and/or discovery.
- (5) The number of trial days required for trial.

(6) Whether there are any other matters the parties agree would be helpful to a determination of the case that should be brought to the attention of the Court prior to entering a Scheduling Order, and what those matters are.

(7) **TWO (2) TRIAL DATES, that comply with the requirements listed below.** The trial date for the case will be the <u>earliest</u> date submitted by agreement of the parties. The reason the Court asks for two trial dates is so that an optional backup trial date is available and calendared in the event the first trial date has to be continued by Motion to and Order of the Court. In the event an Order continuing the trial setting becomes necessary, the additional trial date avoids the need to vacate the trial setting for up to a year. Thus, the parties should plan to try the case on the first date submitted. Therefore, do not submit less than the two trial dates.

- The two dates must be <u>AGREED</u> to by the parties and must be the specific day upon which the trial will begin.
- Each date submitted must be a TUESDAY. [If the Monday of that week is a holiday, the date submitted must be a WEDNESDAY].
- <u>Do not submit trial dates for the second week of any month as that is the Court's criminal</u> <u>trial week</u>.
- The first <u>agreed</u> trial date must be a specific day *no less* than nine (9) months and *no more* than twelve (12) months from the date of this Order.
- The second <u>agreed</u> trial date must be a specific day *no less* than twelve (12) months and *no more* than fifteen (15) months from the date of this Order.
- If the parties agree that unusual factors may justify a trial setting schedule which varies in any way from the requirements of this Order, <u>the parties are encouraged to contact the</u> <u>Court to explain the reasons to deviate from this Order</u>. Unless otherwise permitted by the Court the parties must still submit two agreed trial dates that comply with this Order.

D) Upon receipt of the AGREED RESPONSE the Court will issue a scheduling Order setting the matter for trial on the agreed dates with deadlines for discovery, disclosure of witnesses, etc.

E) The submissions requested in the order are deemed by the Court to constitute the scheduling conference required by IRCP 16(a). However, if either party wishes a more formal scheduling conference please contact the Court's clerk and one will be scheduled.

IT IS FURTHER ORDERED that if the parties do not file the AGREED RESPONSE Ordered herein, within the fourteen (14) days of the date of this ORDER, the Court will set this matter for trial on dates available to the Court and <u>will not</u> approve stipulations to modify the trial dates set.

IT IS SO ORDERED.

DATED this 29th day of April, 2015.

ket C. (logs

ROBERT C. NAFTZ District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2015, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

PLAINTIFF ATTORNEY:

Charles Edward Cather, III Moffatt, Thomas, Barrett, Rock & Fields, Chartered PO Box 51505 Idaho Falls, ID 83402-1505 522-5111 Faxed

 \Box Hand Delivered

□ Mailed

DEFENDANT ATTORNEY:

Lane V. Erickson Racine, Olson, Nye, Budge & Bailey, Chartered PO Box 1391/Center Plaza Pocatello, ID 83204-1391 232-6109

Faxed □ Hand Delivered

□ Mailed

Luder Hampton ty Clerk

ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER - 4

TRANSACTION REPORT

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

DEPUTY

GLEN WAYNE NIELSON and CHERYL J NIELSON, husband and wife,)) E.) Case No: CV-2015-132))
Plaintiffs, VS. ROBERT TALBOT and MICHELLE TALM husband and wife,	 ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER BOT,))

Defendants.

A Complaint was filed in this matter on the 23rd day of March, 2015. The Defendants have now appeared and/or answered and the case is at issue.

Pursuant to I.R.C.P. 16, IT IS HEREBY ORDERED that within fourteen (14) days of the date of this Order:

A) The parties, through their counsel (or the parties themselves if self-represented), shall <u>CONFER</u> and <u>reach</u> agreement on each of the issues listed below.

B) After the parties have <u>conferred and reached an agreement on each issue</u>, <u>PLAINTIFF'S</u> <u>counsel</u> (or Plaintiff, if self-represented) shall submit to the Court the <u>AGREED RESPONSE</u> to each issue listed below.

C) Issues on which the parties must reach an agreement and submit a response:

- (1) Whether this matter is to be tried to the Court or to a jury.
- (2) Whether service is still needed upon any unserved parties.
- (3) Whether motions to add new parties or otherwise amend the pleadings are expected.

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(4) Whether an unusual amount of time is needed for trial preparation and/or discovery.

FAX(TX)

TRANSACTION REPORT

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15 APR 29 MH 2: 58

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

DEPUTY

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,))) Case No: CV-2015-132)
Plaintiffs, VS. ROBERT TALBOT and MICHELLE TALBOT, husband and wife,	 ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER)

Defendants.

A Complaint was filed in this matter on the 23rd day of March, 2015. The Defendants have now appeared and/or answered and the case is at issue.

Pursuant to I.R.C.P. 16, IT IS HEREBY ORDERED that within fourteen (14) days of the date of this Order:

A) The parties, through their counsel (or the parties themselves if self-represented), shall <u>CONFER</u> and <u>reach agreement</u> on each of the issues listed below.

B) After the parties have <u>conferred and reached an agreement on each issue</u>, <u>PLAINTIFF'S</u> <u>counsel</u> (or Plaintiff, if self-represented) shall submit to the Court the <u>AGREED RESPONSE</u> to each issue listed below.

C) Issues on which the parties must reach an agreement and submit a response:

- (1) Whether this matter is to be tried to the Court or to a jury.
- (2) Whether service is still needed upon any unserved parties.
- (3) Whether motions to add new parties or otherwise amend the pleadings are expected.
- (4) Whether an unusual amount of time is needed for trial preparation and/or discovery.

FILED 15 MAY II AM II: 50

FRANKLIN COUNTY CLERK

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DEPUTY

Charles Edward Cather III, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83405 Telephone (208) 522-6700 Facsimile (208) 522-5111 cec@moffatt.com 25996.0000

Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs/Counterdefendants,

vs.

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ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants/Counterclaimants.

Case No. CV-2015-132

PLAINTIFFS/ COUNTERDEFENDANTS' ANSWER TO COUNTERCLAIM

COME NOW the plaintiffs/counterdefendants, Glen Wayne Nielson and

Cheryl E. Nielson, husband and wife ("Nielsons"), by and through undersigned counsel of

record, and answer defendants/counterclaimants' Answer and Counterclaim as follows:

FIRST DEFENSE

The Counterclaim fails to state a claim upon which relief can be granted and,

PLAINTIFFS/COUNTERDEFENDANTS' ANSWER TO COUNTERCLAIM - 1

therefore, should be dismissed.

SECOND DEFENSE

The Nielsons deny each and every allegation of the Counterclaim that is not specifically and expressly admitted in this answer.

THIRD DEFENSE

The Nielsons respond to the individual paragraphs of the Counterclaim as follows:

1. The Nielsons, in response to the allegations contained in paragraph 21 of the Counterclaim, admit the same.

2. The Nielsons, in response to the allegations contained in paragraph 22 of the Counterclaim, state that they lack knowledge or information sufficient to form a belief about the truth of the allegations therein pleaded and, therefore, deny the same.

3. The Nielsons, in response to the allegations contained in paragraph 23 of the Counterclaim, state that they lack knowledge or information sufficient to form a belief about the truth of the allegations therein pleaded and, therefore, deny the same.

4. The Nielsons, in response to the allegations contained in paragraph 24 of the Counterclaim, deny the same.

5. The Nielsons, in response to the allegations contained in paragraph 25 of the Counterclaim, admit that the Schaffers deeded the Nielson Property to Phillip and Sherry Cromwell, husband and wife, on September 22, 1986 and that Nielson property has since been transferred to the Heaps, Parkers and finally the Nielsons, the terms of the deeds speak for themselves.

PLAINTIFFS/COUNTERDEFENDANTS' ANSWER TO COUNTERCLAIM - 2

6. The Nielsons, in response to the allegations contained in paragraph 26 of the Counterclaim, deny the same.

7. The Nielsons, in response to the allegations contained in paragraph 27 of the Counterclaim, admit that the Schaffers deeded the Talbot Property to Suel Murdock and Gae Murdock, husband and wife, on or about January 17, 1985 and that the Talbot Property has since been transferred to the Whiteheads, Larsens and finally the Talbots, the terms of the deeds speak for themselves.

8. The Nielsons, in response to the allegations contained in paragraph 28 of the Counterclaim, state that they lack knowledge or information sufficient to form a belief about the truth of the allegations therein pleaded and, therefore, deny the same.

9. The Nielsons, in response to the allegations contained in paragraph 29 of the Counterclaim, state that they lack knowledge or information sufficient to form a belief about the truth of the allegations therein pleaded and, therefore, deny the same.

10. The Nielsons, in response to the allegations contained in paragraph 30 of the Counterclaim, state that they lack knowledge or information sufficient to form a belief about the truth of the allegations therein pleaded and, therefore, deny the same.

11. The Nielsons, in response to the allegations contained in paragraph 31 of the Counterclaim, deny the same.

12. The Nielsons, in response to the allegations contained in paragraph 32 of the Counterclaim, deny the same.

13. The Nielsons, in response to the allegations contained in paragraph 33 of the Counterclaim, believes the paragraph does not contain any allegations that require a response, and therefore deny the same.

PLAINTIFFS/COUNTERDEFENDANTS' ANSWER TO COUNTERCLAIM - 3

14. The Nielsons, in response to the allegations contained in paragraph 34 of the Counterclaim, admit that the deeds evidence the boundary line between the Talbots and Nielsons.

15. The Nielsons, in response to the allegations contained in paragraph 35 of the Counterclaim, deny the same.

16. The Nielsons, in response to the allegations contained in paragraph 36 of the Counterclaim, deny the same.

17. The Nielsons, in response to the allegations contained in paragraph 37 of the Counterclaim, deny the same.

18. The Nielsons, in response to the allegations contained in paragraph 38 of the Counterclaim, deny the same.

19. The Nielsons, in response to the allegations contained in paragraph 39 of the Counterclaim, state that they lack knowledge or information sufficient to form a belief about the truth of the allegations therein pleaded and, therefore, deny the same.

20. The Nielsons, in response to the allegations contained in paragraph 40 of the Counterclaim, believes the paragraph does not contain any allegations that require a response, and therefore deny the same.

21. The Nielsons, in response to the allegations contained in paragraph 41 of the Counterclaim, deny the same.

22. The Nielsons, in response to the allegations contained in paragraph 42 of the Counterclaim, state that they lack knowledge or information sufficient to form a belief about the truth of the allegations therein pleaded and, therefore, deny the same.

PLAINTIFFS/COUNTERDEFENDANTS' ANSWER TO COUNTERCLAIM - 4

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23. The Nielsons, in response to the allegations contained in paragraph 43 of the Counterclaim, state that they lack knowledge or information sufficient to form a belief about the truth of the allegations therein pleaded and, therefore, deny the same.

24. The Nielsons, in response to the allegations contained in paragraph 44 of the Counterclaim, deny the same.

25. The Nielsons, in response to the allegations contained in paragraph 45 of the Counterclaim, state that they lack knowledge or information sufficient to form a belief about the truth of the allegations therein pleaded and, therefore, deny the same.

26. The Nielsons, in response to the allegations contained in paragraph 46 of the Counterclaim, believes the paragraph does not contain any allegations that require a response, and therefore deny the same.

27. The Nielsons, in response to the allegations contained in paragraph 47 of the Counterclaim, state that they lack knowledge or information sufficient to form a belief about the truth of the allegations therein pleaded and, therefore, deny the same.

28. The Nielsons, in response to the allegations contained in paragraph 48 of the Counterclaim, believes the paragraph does not contain any allegations that require a response, and therefore deny the same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants' claims are unenforceable under the statute of frauds.

SECOND AFFIRMATIVE DEFENSE

Defendants' claims are barred by the doctrine of laches.

PLAINTIFFS/COUNTERDEFENDANTS' ANSWER TO COUNTERCLAIM - 5

THIRD AFFIRMATIVE DEFENSE

Defendants' claims are barred by the doctrine of unclean hands.

ADDITIONAL AFFIRMATIVE DEFENSES

The Nielsons considered and believe that they may have additional defenses, but do not have enough information at this time to assert additional defenses under Rule 11 of the Idaho Rules of Civil Procedure. The Nielsons do not intend to waive any such defenses and specifically asserts their intention to amend this answer if, pending research and after discovery, facts come to light giving rise to such additional defenses.

DATED this 11th day of May, 2015.

MOFFATT, THOMAS, BARRETT, ROCK & Fields, Chartered

By

C. Edward Cather – Of the Firm Attorneys for Plaintiffs/Counterdefendants

PLAINTIFFS/COUNTERDEFENDANTS' ANSWER TO COUNTERCLAIM - 6

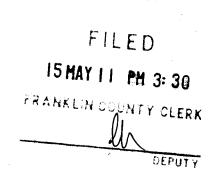
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 2015, I caused a true and correct copy of the foregoing PLAINTIFFS/COUNTERDEFENDANTS' ANSWER TO COUNTERCLAIM to be served by the method indicated below, and addressed to the following:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD. 201 E. Center St. P.O. Box 1391 Pocatello, ID 83204-1391 Facsimile (208) 232-6109 *Attorneys for Defendants* (1) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

C. Edward Cather

PLAINTIFFS/COUNTERDEFENDANTS' ANSWER TO COUNTERCLAIM - 7



Charles Edward Cather III, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83405 Telephone (208) 522-6700 Facsimile (208) 522-5111 cec@moffatt.com 25996.0000

Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs/Counterdefendants,

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants/Counterclaimants.

Case No. CV-2015-132

JOINT STATEMENT IN RESPONSE TO ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER

COME NOW the Plaintiffs, by and through their undersigned counsel, and

Defendants, by and through their undersigned counsel, and hereby stipulate and agree as follows

in regard to the Submission for Information for Scheduling Order:

- 1. This matter is to be tried by a jury.
- 2. No other parties need to be served at this time.

JOINT STATEMENT IN RESPONSE TO ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER - 1

Client:3139696.1

3. It is not contemplated that there will be any need to add new parties or otherwise amend the pleadings.

4. This case does not present any unusual time requirements for trial preparations or discovery.

5. The agreed upon time for trial is four days.

6. The parties request Court ordered mediation. Counsel are unaware of any other matters conducive to determination of the action of this matter at this time.

7. Stipulated trial dates: March 22- 25, 2016; May 17- 20, 2016.

8. Counsel are unaware of any other matters conducive to determination of the action of this matter at this time.

DATED this 11th day of May, 2015.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD

By <u>/Lane V. Erickson</u>/ Lane V. Erickson – Of the Firm Attorney for Defendants

DATED this 11th day of May, 2015.

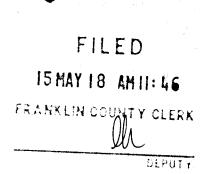
MOFFATT, THOMAS, BARRETT, ROCK & Fields, Chartered

By/<u>C. Edward Cather/</u> C. Edward Cather – Of the Firm Attorneys for Plaintiffs

JOINT STATEMENT IN RESPONSE TO ORDER FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER - 2

Client: 3139696, 1

Charles Edward Cather III, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83405 Telephone (208) 522-6700 Facsimile (208) 522-5111 cec@moffatt.com 25996.0000



Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs/Counterdefendants,

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants/Counterclaimants.

Case No. CV-2015-132

COMBINED DISCOVERY REQUESTS TO DEFENDANT ROBERT TALBOT

TO: ROBERT TALBOT AND HIS ATTORNEYS OF RECORD

COMES NOW COME NOW the plaintiffs/counterdefendants, Glen Wayne

Nielson and Cheryl E. Nielson, husband and wife ("Nielsons"), by and through undersigned

counsel of record, the law firm of Moffatt, Thomas, Barrett, Rock & Fields, Chartered, and

hereby require that Robert Talbot answer the following Requests for Admission, Interrogatories,

and Requests for Production of Documents ("Combined Discovery Requests"), under oath, within 30 days after service thereof in the manner prescribed by Rules 33, 34, and 36 of the Idaho Rules of Civil Procedure.

INSTRUCTIONS

a. Pursuant to the Idaho Rules of Civil Procedure, the requested documents, tangible things, and responses are to be produced at the offices of Moffatt, Thomas, Barrett, Rock & Fields, Chtd., 900 Pier View Drive Suite 206, Post Office Box 51505, Idaho Falls, Idaho 83405, and supplemented hereafter in accordance with the Idaho Rules of Civil Procedure.

b. In producing responsive documents, you are requested to furnish all documents in your possession, custody or control, in addition to all documents known or available to you, any subsidiary or affiliated entities, officers, directors, agents, employees, representatives, investigators, or by your attorneys or their agents, employees, representatives or investigators. This request is continuing, and you are obliged to supplement your response by identifying and producing responsive documents that come to your attention, or into your possession, custody or control, subsequent to your response and production.

c. All documents should be produced in the same order as they are kept or maintained. All documents should be produced in the file, folder, envelope or other container in which the documents are kept or maintained. If, for any reason, the file, folder, envelope or other container cannot be produced, please produce copies of all labels or other identifying markings.

d. Documents attached to each other must not be separated.

e. Each request is to be responded to completely in writing.

f. If any of the materials requested are claimed to be privileged or otherwise protected or withheld from production, list the following for each item claimed to be privileged or protected or withheld:

i. The name, occupation, and capacity of every individual or individuals from whom the privileged or protected matter emanated;

ii. The name, occupation, and capacity of every individual or individuals to whom the allegedly privileged matter was directed or who received or saw the allegedly privileged matter, including carbon copies and blind carbon copies;

iii. The date the item bears;

iv. A brief description of the nature and contents of the matter claimed to be privileged or protected;

v. The number of pages contained in the document;

vi. The privilege or other protection claimed and each fact upon which you rely to support your contention that the item is privileged.

g. If a refusal to respond to a request for production is stated on the grounds of burdensomeness or related grounds, identify the number and nature of documents needed to be searched, the location of the documents, and the number of person hours and costs required to conduct the search.

h. If any request for production cannot be responded to in full, respond to the extent possible and specify each and every reason for the inability to respond to the request.

i. If any document or item herein requested was formerly in your possession, custody, or control and has been lost, disposed of, or destroyed, you are requested to submit in lieu of each document a written statement which:

i. Describes in detail the nature of the document and its contents;

ii. Identifies the person who prepared or authored the document and, if applicable, the person to whom the document was sent;

iii. Specifies the date on which the document was prepared or transmitted or both;

iv. Specifies, to the extent possible, the date on which the document was lost, disposed of, or destroyed, and, if disposed of or destroyed, the conditions of or reasons for such disposition or destruction and the persons requesting and performing the disposition or destruction.

j. When answering these Combined Discovery Requests, you are requested to furnish all information available to you, including information in the possession of your attorneys, investigators, employees, officers, directors, agents, representatives, or any other person or persons acting on your behalf, and not merely such information as is known by you on personal knowledge.

k. If you cannot answer any of the following Combined Discovery Requests in full after exercising due diligence to secure the information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portions.

1. Each Interrogatory is intended to, and does, request that each and every, all and singular, the particulars and parts thereof, be answered with the same force and effect as if each part and particular were the subject of and were asked by a separate Interrogatory. m. Pursuant to the provisions of Idaho Rule of Civil Procedure 26(e), these Combined Discovery Requests are deemed continuing and your answers thereto are to be supplemented as additional information and knowledge becomes available or known to you.

n. Partial Production: Whenever you object to a particular request, or portion thereof, you must produce all documents called for which are not subject to that objection. Similarly, wherever a document is not produced in full, please state with particularity the reason or reasons it is not being produced in full, and describe, to the best of your knowledge, information and belief and with as much particularity as possible, those portions of the document which are not produced.

DEFINITIONS

a. The terms "*you*," "*your*" or "*yours*" means and refers to Robert Talbot or persons acting or purporting to act on his behalf.

b. The terms "*Complaint*" refers to the Complaint filed by Plaintiffs on or about March 23, 2015, before the Idaho District Court for the Sixth Judicial District, County of Franklin, Case No. 15-132.

c. The term "*Answer*" refers to the Answer filed by Defendants on or about April 22, 2015, before the Idaho District Court for the Sixth Judicial District, County of Franklin, Case No. 15-132.

d. The term "*Nielson Property*" refers to real property in Franklin County,
 Idaho, commonly known as commonly known as 496 West 200 South, Preston, Idaho, and more
 particularly described as follows ("Nielson Property"):

Commencing at a point 81 Rods South and 40 Rods West of the NE corner of the NW1/4 of Section 27 of Township 15 South, Range 39EBM, Franklin County, Idaho, thence East 170 feet; thence South 160 feet; thence West 170 feet; thence North 160 feet

to the Point of Beginning. (04791.05)

e. The term "*Talbot Property*" refers to real property in Franklin County, Idaho, commonly known as 478 West 200 South, Preston, Idaho and more particularly in Exhibit L to the Answer.

f. The term "*Shed*" refers to the shed allegedly erected by the Whiteheads and mentioned in paragraphs 28 and 29 of the Answer.

g. The term "*Carport*" refers to the carport allegedly erected by the Whiteheads and mentioned in paragraphs 28 and 29 of the Answer.

h. The terms "document" or "documents" shall have the full meaning provided in Rule 34(a), I.R.C.P., and includes all printed, recorded, written, graphic or photographic matter, including, without limitation, tape recordings and computer tapes, and discs, however printed, produced, reproduced, coded or stored, of any kind of description, regardless of author or origin, and whether or not sent or received, including originals, copies, reproductions, facsimiles, drafts, and both sides thereof, and including, without limitation, papers, books, accounts, letters, prospectuses, offering memoranda, solicitations, disclosures, models, photographs, correspondence, telegrams, telex messages, memoranda, notes, notations, work papers, routing slips, intra and interoffice communications, intra and interdepartmental communications, communications to, between or among directors, officers, agents and/or employees, transcripts, minutes, agendas, reports, notes or recordings of telephone or other conversations, or of interviews, of conference, or of board, committee or subcommittee meetings, or of other meetings, affidavits, drawings, sketches, blueprints, statements, reports, summaries, indices, opinions, court pleadings, whether or not on file, studies, analyses, forecasts, evaluations, contracts, invoices, purchase orders, requisitions, notebooks, entries, ledgers,

journals, books or records of accounts, balance sheets, income statements, questionnaires, answers to questionnaires, statistical records, petitions, advertisements, brochures, circulars, bulletins, pamphlets, trade letters, desk calendars, appointment books, telephone logs, diaries, expense accounts or vouchers, policy statements, manuals, rules, regulations, guidelines, newspaper stories, financial or market reports, computer tapes and discs, magnetic tapes, punch cards, computer printouts, microfilm or microfiche, all other records kept by electronic, photographic or mechanical means, and any material underlying, supporting, or used in the preparation of any such document, however produced or reproduced, which is in your possession, custody or control or to which you have a right or privilege to examine upon request or demand.

i. The terms "*relate*," "*reflect*," "*refer*" or "*pertain*," in all forms, mean and refer, in addition to their customary and usual meaning of those terms, constituting, concerning, describing, evidencing, regarding, mentioning, discussing, including, summarizing, containing, depicting, connected with and boding, evidencing, reporting or involving an act, occurrence event, transaction, fact, thing or course of dealing.

j. The terms "*and*" and "*or*" shall be construed conjunctively and disjunctively. The singular shall be deemed to refer to the plural, and vice versa. Any reference to the male gender includes the female gender.

k. The term "*person*" means and refers to any individual, partnership, corporation, associations, trust, or any other legal entity.

l. When asked to "*identify*" a person or entity or when asked for the "*identity*" of a person or entity, please state:

i. The name of the person or entity;

COMBINED DISCOVERY REQUESTS TO DEFENDANT ROBERT TALBOT - 7 Client: 367 569

ii. The present or last known address and telephone number of the person or entity;

iii. The present or last known occupation, business, and employer of the person or entity; and

iv. The present or last known address and telephone number of the employer of the person or entity.

m. When asked to "*identify*" a record or document or when asked for the "*identity*" of a record or document, please state:

i. The nature or type of "record" or "document" (e.g., letter, photograph, tape recording, radiology report, etc.);

ii. The subject matter of the "record" or "document" and/or a general description of its contents;

iii. The "identity" of the person who authored or created the "record" or "document";

iv. The date of the document or, if it bears no date, the date on which it was prepared or created; and

v. The physical location of the original and any copies of the "document" or "record" of which you are aware and the "identity" of the present custodian of the "record" or "document."

n. The terms "*he*," "*him*" or "*his*" shall refer to persons of either sex, as appropriate.

o. *"Concerns," "concerned,"* or *"concerning"* (or any derivative thereof) means relating to, referring to, describing, evidencing, or constituting.

COMBINED DISCOVERY REQUESTS TO DEFENDANT ROBERT TALBOT - 8 Client: 367 1510755

p. Any word written in the singular shall be construed as plural and any work written in plural shall be construed as singular, as necessary, to facilitate the most comprehensive response to the interrogatories.

REQUESTS FOR ADMISSION

<u>REQUEST FOR ADMISSION NO. 1</u>: Please admit that you moved the Shed after you purchased the Talbot Property.

<u>REQUEST FOR ADMISSION NO. 2</u>: Please admit the Carport was constructed after you purchased the Talbot Property.

INTERROGATORIES

<u>INTERROGATORY NO. 1</u>: Please list and identify the name, address, and telephone number of any persons who have supplied information to answer these Interrogatories.

<u>INTERROGATORY NO. 2</u>: Please identify any and all diaries, calendars, notes, journals, reports, records, statements, writings, audio recordings, or any other such items created by you or at your direction, which relate to any of the allegations and claims set forth in the Complaint, or the defenses thereto set forth in your Answer filed in this matter.

INTERROGATORY NO. 3: Please describe in detail any and all communications you or your agents have had with any other person or entity that relate in any manner to the facts giving rise to, or allegations, claims and/or defenses set forth in the Complaint or Answer, whether said communications were written or oral or otherwise.

<u>INTERROGATORY NO. 4</u>: Please identify in detail every document, writing, or other physical evidence which you intend to offer as an exhibit in the trial of this case by stating the title or nature of the document or evidence, the date of the document or evidence, the name, address, and telephone number of all individuals who have possession of the original or any photocopies of the evidence, and the name, address, and telephone number of each individual who will authenticate the evidence at trial.

<u>INTERROGATORY NO. 5</u>: Please state all facts upon which you rely to support your affirmative defense that "Plaintiffs are precluded from the relief sought in their complaint, in whole or in part, by virtue of the Doctrines of Waiver, Estoppel, and/or Laches" as set forth in Paragraph 15 of the Answer.

<u>INTERROGATORY NO. 6</u>: Please state all facts upon which you rely to support your affirmative defense that "Plaintiffs are precluded from the relief sought in their complaint, in whole or in part, by virtue of the Doctrine of Consent and/or Ratification" as set forth in Paragraph 16 of the Answer.

<u>INTERROGATORY NO. 7</u>: Please state all facts upon which you rely to support your affirmative defense that "Plaintiffs are precluded from the relief sought in their complaint, in whole or in part, by virtue of the application of detrimental reliance of the Defendants and their predecessors" as set forth in Paragraph 19 of the Answer.

<u>INTERROGATORY NO. 8</u>: Please state all facts upon which you rely to support your allegation that the Cromwells planted the shrubs and trees at the fenceline while they lived on the property as set forth in paragraph 28 of your Answer.

<u>INTERROGATORY NO. 9</u>: Please state all facts upon which you rely to support your allegation that "(a)t all times during these subsequent transfers the fenceline was maintained and treated by all the above described owners as the boundary line between the properties that the Almonds had divided" as set forth in paragraph 26 of your Answer.

<u>INTERROGATORY NO. 10</u>: Please state all facts upon which you rely to support the allegations set forth in paragraph 22 of your Answer.

INTERROGATORY NO. 11: Please state all facts upon which you rely to support your allegation that "the Shaffers split or subdivided the property into two separate parcels, with the fenceline being maintained as the dividing line between the properties" as set forth in paragraph 24 of your Answer.

<u>INTERROGATORY NO. 12</u>: Please state all facts upon which you rely to support your allegation that the Whiteheads removed the fence and erected a shed and a carport upon the property based upon the boundary" as set forth in paragraph 24 of your Answer.

INTERROGATORY NO. 13: Please identify each person you may call as a lay or fact witness in the trial of this action or in any evidentiary hearing, or from whom you may seek an affidavit, and identify the subject matter and substance of the information you may elicit from or produce by means of such person. Without limitation on the scope of the preceding sentence, please particularly state and identify any opinion that you may attempt to introduce in this action, and for each person so identified, state the basis for such opinion.

INTERROGATORY NO. 14: Please state the name, address and telephone number of each and every person known to you or your attorneys who has any knowledge, or who purports to have any knowledge, of any of the facts of this case, and a brief description of the information they possess. By this Interrogatory, we seek the names, addresses and telephone numbers of all witnesses who have any knowledge of any fact pertinent to damages and/or liability.

<u>INTERROGATORY NO. 15</u>: For each expert whom you expect to call as an expert witness at trial, please state the following:

(a) The person's name and current address;

(b) The person's background, education, and qualifications in his/her field of expertise;

(c) The substance of the facts and opinions to which the person is expected to testify;

(d) The grounds for each expert opinion to which the person is expected to testify; and

(e) All sources of information that the person has reviewed or relied upon in forming his/her expert opinion.

INTERROGATORY NO. 16: If you contend that the Plaintiffs have at any time made any admissions against interest with regard to the events referred to in the Complaint. Answer or any matter connected therewith, please state the name of the person(s) making the admission, the name and address of the person(s) to whom the admission was made, and the substance of the admission.

INTERROGATORY NO. 17: If your responses to the requests for admission above are anything other than an unqualified admission, please state in full and complete detail each and every fact which supports or tends to support your denial or qualified admission thereof.

REQUESTS FOR PRODUCTION OF DOCUMENTS

<u>REQUEST FOR PRODUCTION NO. 1</u>: If any information provided in your answers to the foregoing interrogatories was obtained from any document or other item of tangible evidence or to the extent you identified any "document" or "record" in your prior interrogatory answers, please produce each and every document or thing from which said information was obtained. <u>REQUEST FOR PRODUCTION NO. 2</u>: Please produce all exhibits that you will utilize or enter into evidence at trial.

<u>REQUEST FOR PRODUCTION NO. 3</u>: Please produce a copy of all documents or other tangible items that support your defenses and claims set forth in the Answer.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all documents relating in any way to the claims stated in the Complaint.

<u>REQUEST FOR PRODUCTION NO. 5</u>: Please produce any and all documents supporting your responses and answers to the Interrogatories and Requests for Admission submitted in these Combined Discovery Requests.

<u>REQUEST FOR PRODUCTION NO. 6</u>: Please produce all documents relating to any statements of witnesses regarding any of the facts alleged in the Complaint or Answer.

<u>REQUEST FOR PRODUCTION NO. 7</u>: Please produce a current curriculum vitae and copies of any published articles for any expert witness identified by you in your answers to interrogatories.

<u>REQUEST FOR PRODUCTION NO. 8</u>: Please produce all documents and/or reports, notes, drafts, journals, and other working documents created or maintained by a testifying expert witness or reviewed by a testifying expert witness which relate in any way to the subject matter of your suit.

<u>REQUEST FOR PRODUCTION NO. 9</u>: Please produce a copy of any correspondence or communication in relation to the issues referred to in the Complaint or Answer.

REQUEST FOR PRODUCTION NO. 10: Please produce each and every

document or tangible thing which will be relied upon by any witness, expert or otherwise, or

which you intend to use at the trial of this matter.

DATED this 14th day of May, 2015.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By C a

C. Edward Cather– Of the Firm Attorneys for Plaintiffs

I HEREBY CERTIFY that on this 14th day of May, 2015, I caused a true and correct copy of the foregoing **COMBINED DISCOVERY REQUESTS TO DEFENDANT ROBERT TALBOT** to be served by the method indicated below, and addressed to the following:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD. 201 E. Center St. P.O. Box 1391 Pocatello, ID 83204-1391 Facsimile (208) 232-6109 *Attorneys for Defendants* (x) U.S. Mail, Postage Prepaid() Hand Delivered

() Overnight Mail

() Facsimile

Elle

C. Edward Cather

Charles Edward Cather III, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83405 Telephone (208) 522-6700 Facsimile (208) 522-5111 cec@moffatt.com 25996.0000 FILED 15 MAY 18 AM II: 46

FRANKLIN COUNTY CEERK

DEPUTY

Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,,

Plaintiffs/Counterdefendants

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants/Counterclaimants

Case No. CV 2015-132

NOTICE OF SERVICE OF COMBINED DISCOVERY REQUESTS TO DEFENDANT ROBERT TALBOT

NOTICE IS HEREBY GIVEN that on the 14th day of May, the original of

COMBINED DISCOVERY REQUESTS TO DEFENDANT ROBERT TALBOT were

served by the method indicated below and addressed to the following at the address shown

below:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD. 201 E. Center St. P.O. Box 1391 Pocatello, ID 83204-1391 Facsimile (208) 232-6109 *Attorneys for Defendants*

- (x) U.S. Mail, Postage Prepaid
 () Hand Delivered
 () Overnight Mail
 () Feasimila
- () Facsimile

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By

C. Edward Cather – Of the Firm Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

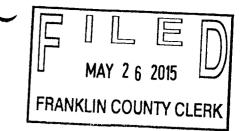
I HEREBY CERTIFY that on this 14th day of May, 2015, I caused a true and correct copy of the foregoing **NOTICE OF SERVICE OF COMBINED DISCOVERY REQUESTS TO DEFENDANT ROBERT TALBOT** to be served by the method indicated below, and addressed to the following:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD. 201 E. Center St. P.O. Box 1391 Pocatello, ID 83204-1391 Facsimile (208) 232-6109 *Attorneys for Defendants* (X) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

MOFFATT, THOMAS, BARRETT, ROCK & Fields, Chartered

By

C. Edward Cather – Of the Firm Attorneys for Plaintiffs



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON AND CHERYL E. NIELSON, HUSBAND AND WIFE,))) Case No: CV-2015-132
PLAINTIFFS,)
VS) SCHEDULING ORDER, NOTICE
) OF TRIAL SETTING AND
ROBERT TALBOT AND MICHELLE) INITIAL PRETRIAL ORDER
TALBOT, HUSBAND AND WIFE,)
)
DEFENDANTS.)
)
)

Pursuant to I.R.C.P. 16 and 40, IT IS HEREBY ORDERED:

1. This matter is set for **TRIAL**, as follows:

(A) FIRST SETTING: March 22-25, 2016 at 9:00 a.m.

(B) BACKUP SETTING: May 17-20, 2016 at 9:00 a.m.

All deadlines listed below shall apply to the trial setting listed in line (A) above.

2. **TRIAL**: This case is set for a **JURY** as set forth above. The trial will be conducted in the District Courtroom, Franklin County Courthouse, Preston, Idaho. A total of four (4) days have been reserved. On the first day of trial, counsel shall report to the Court's chambers at 8:30 a.m. for a brief status conference. Unless otherwise ordered, other than the first and last day of trial, proceedings will convene at 9:00 a.m. each morning, and adjourn at approximately 4:00 p.m. each afternoon. Two twenty (20) minute, brief recesses will be taken.

3. <u>No pre-trial conference will be held</u> unless requested by any party in writing at least sixty (60) days prior to trial and ordered by the Court. Pursuant to I.R.C.P. 16(b), in lieu of a pre-trial conference, trial counsel for the parties (or the parties if they are self-represented) are ORDERED to meet and/or confer for the purpose of preparing a joint Pre-Trial Stipulation, which

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shall be submitted to the Court at least twenty-one (21) days prior to Trial, and shall contain or include:

(A). A statement that all exhibits to be offered at trial have been provided to all other parties and attaching an Exhibit List of all such exhibits. The Exhibit List shall indicate: (1) by whom the exhibit is being offered, (2) a brief description of the exhibit, (3) whether the parties have stipulated to its admission, and if not, (4) the legal grounds for objection. If any exhibit includes a summary of other documents, such as medical expense records, to be offered pursuant to I.R.E. 1006, the summary shall be attached to the Stipulation.

(B). A statement whether depositions or any discovery responses will be offered in lieu of live testimony, and a list of what will actually be offered, the manner in which such evidence will be presented, and the legal grounds for any objection to any such offer.

(C). A list of the names and addresses of all witnesses which each party intends to call to testify at trial, including anticipated rebuttal or impeachment witnesses. Expert witnesses shall be identified as such. The Stipulation should also identify whether any witnesses' testimony will be objected to in its entirety and the legal grounds therefore.

(D). A brief non-argumentative summary of the factual nature of the case. The purpose of the summary is to provide an overview of the case for the jury and is to be included in pre-proof instructions to the jury, unless found inappropriate by the Court.

(E). A statement counsel have, in good faith, discussed settlement unsuccessfully and/or completed mediation unsuccessfully, if mediation was ordered by the Court.

(F). A statement that all pre-trial discovery procedures under I.R.C.P. 26 to 37 have been complied with and all discovery responses supplemented as required by the rules to reflect facts known to the date of the Stipulation.

(G). A statement of all issues of fact and law which remain to be litigated, listing which party has the burden of proof as to each issue.

(H). A list of any stipulated admissions of fact, which will avoid unnecessary proof.

(I). A list of any orders requested by the parties which will expedite the trial.

(J). A statement as to whether counsel require more than 30 minutes per party for voir dire or opening statement and, if so, an explanation of the reason more time is needed.

These submissions will be deemed by the Court to constitute the final pre-trial conference required by IRCP 16(b). However, if either party wishes a more formal pre-trial conference, the same should be requested in writing at least 60 days prior to trial and one will be scheduled.

4. **PRE-TRIAL MOTIONS**: All motions to join parties or amend the pleadings (except motions pertaining to punitive damages under <u>I.C.</u> §6-1604) must be filed and heard so as not to require the continuance or vacation of the trial date, and in no event less than ninety (90) days before trial. All motions for summary judgment and motions to add claims for punitive damages pursuant to <u>I.C.</u> §6-1604 must be filed and served so as to be heard not later than ninety (90) days before trial. All other non-dispositive pre-trial motions (including, but not limited to motions *in limine* or motions which seek to challenge the admissibility or foundation of expert testimony) must be filed and scheduled for hearing not less than fourteen (14) days before trial. Exceptions will be granted infrequently, and only when justice so requires.

5. **MOTIONS FOR SUMMARY JUDGMENT:** All motions for summary judgment must be accompanied by a memorandum which includes a concise statement of each material fact upon which the moving party claims there is no genuine issue, and which shall include a specific reference to that portion of the record at or by which such fact is proven or established. Any party opposing a motion for summary judgment shall, not later than fourteen (14) days prior to hearing, serve and file any affidavits and opposing brief(s). The opposing brief shall identify the specific factual matters as to which the non-moving party contends there are genuine issues requiring denial of the motion, including a specific reference to the portion of the record which supports the claim that a genuine issue of fact exists. In ruling upon any summary judgment motion, the Court may assume that the facts as claimed by the moving party are conceded to exist without dispute except and to the extent the non-moving party shall have controverted them. Any reply brief must be lodged at least seven (7) days prior to hearing. Further, any objection to the admissibility of evidence must be in writing and shall be part of the response to the motion for summary judgment or in reply to the response in opposition to summary judgment. The failure to object in writing to the admissibility of evidence in support of or in response to summary judgment shall constitute a waiver as to any objection to the admissibility of evidence at the time of the hearing on summary judgment. Oral objections to the admissibility of evidence at the time of hearing on summary judgment will not be considered by the court.

6. <u>SCHEDULING AND HEARINGS</u>. All meetings, conferences, and/or hearings with the Court shall be scheduled in advance with the Court's Clerk, Linda Hampton by calling 208-852-0877. No hearing shall be noticed without contacting the Clerk. Absent an order shortening

time, all motions must be filed and served at least fourteen (14) days prior to hearing. As an accommodation to out-of-town counsel and parties, hearings on any pretrial motion (except motions for summary judgment or hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to <u>I.R.C.P.</u> 7(b)(4), in the discretion of the court. Counsel requesting a hearing by conference call will be responsible for arranging for placement of the call, and the cost thereof.

7. **<u>DISCOVERY AND DISCOVERY DISPUTES</u>**: The Court will not entertain any discovery motion unless accompanied by a written certification signed by counsel, which confirms that a reasonable effort has been made to voluntarily resolve the dispute with opposing counsel. A party's obligation to fully and timely respond to discovery requests is distinct from any obligation imposed by this Order, and no party may rely upon this Order or any deadline it imposes as justification for failing to timely respond to discovery requests or to supplement prior responses.

8. **<u>DISCOVERY CUT-OFFS:</u>** Absent a stipulation to the contrary, all discovery shall be propounded and served such that responses are due no later than thirty (30) days before trial. Any supplemental responses a party is required to make pursuant to <u>I.R.C.P.</u> 26(e) or the terms of an earlier discovery request shall also be served at least thirty (30) days before trial. Any supplementation of discovery required by the rule shall be made in a timely manner.

9. **WITNESS DISCLOSURES**: Each party shall disclose the existence and identity of intended or potential expert or lay witnesses to the extent required by interrogatories or other discovery requests propounded by another party. **There is no independent duty to disclose expert or lay witnesses except as required to adequately respond to discovery requests or supplement prior responses.** If discovery requests seeking disclosure of expert witnesses and the information required to be disclosed pursuant to I.R.C.P. Rule 26(b)(4)(A)(i) are propounded, a plaintiff upon whom such requests are served shall, in good faith, disclose the existence and identity of potential or intended expert witnesses, including the disclosures required by I.R.C.P. Rule 26(b)(4)(A)(i) at the earliest opportunity, and in no event later than one hundred-twenty (120) days before trial. A defendant upon whom such requests are served shall, in good faith, identify any potential or intended expert witnesses, including the disclosures required by I.R.C.P. Rule 26(b)(4)(A)(i) at the earliest opportunity, and in no event later than seventy-five (75) days before trial.

Any party upon whom discovery is served who intends or reserves the right to call any expert witness in rebuttal or surrebuttal shall, in good faith, identify such experts, including the disclosures required by I.R.C.P. Rule 26(b)(4)(A)(i) at the earliest opportunity, and in no event later than forty-two (42) days before trial. Any party upon whom discovery requests are served seeking disclosure of lay witnesses shall, in good faith, disclose the identity of all such witnesses at the earliest opportunity, and in no event later than forty-two (42) days before trial. Absent a showing of good cause and a lack of unfair prejudice to any other party, any witness who has not been timely disclosed will not be permitted to testify at trial.

10. **EXHIBITS AND EXHIBIT LISTS**: When and to the extent required to respond to interrogatories, requests for production or other discovery requests propounded by another party, a party must identify and disclose any documentary, tangible or other exhibits that party intends or reserves the right to offer at trial. Absent a showing of good cause and a lack of unfair prejudice to all other parties, any exhibit which has not been timely disclosed will be excluded. Without regard to whether discovery concerning a party's exhibits has been propounded, not less than seven (7) days prior to trial, each party shall: (A) lodge with the Clerk a completed exhibit list in the form attached to this order (Exhibit1attached) together with one complete, duplicate marked set of that party's proposed exhibits for the Judge's use during trial; and (B) deliver to counsel for each other party a copy of the completed exhibit list and duplicate copies need not include exhibits which will be offered solely for the purpose of impeachment. Unless otherwise ordered, the plaintiff shall identify exhibits beginning with number "101," and the defendant shall utilize exhibits beginning with number "201."

11. **JURY INSTRUCTIONS**: Jury instructions and verdict forms requested by a party shall be prepared in conformity with <u>I.R.C.P.</u> 51(a), and shall be filed with the Clerk (with an electronic set sent to the judge at rnaftz@bannockcounty.us at least seven (7) days before trial. Requested instructions not timely submitted may not be included in the court's preliminary or final charge. Parties may submit additional or supplemental instructions to address unforeseen issues or disputes arising during trial.

12. **TRIAL BRIEFS**: The Court encourages (but does not require) the submission of trial briefs which address important substantive or evidentiary issues each party expects to arise

during trial. Any trial briefs shall be prepared, exchanged between the parties, and lodged with the Clerk at least ten (10) days prior to trial.

13. **REQUEST TO VACATE TRIAL SETTING**: Any party requesting *or stipulating* to vacate a trial setting must submit a specific written statement concerning the reasons for the request, and must certify, in writing, that the request or stipulation has been discussed with the parties represented by counsel. An order granting a request to vacate or continue a trial setting may be conditioned upon terms (including orders that the requesting party or attorney reimburse other parties or their attorneys for attorneys fees incurred for preparation which must be repeated or expenses advanced in anticipation of the trial setting which cannot be avoided or recovered). An order vacating or continuing a trial setting shall not serve to alter the deadlines set forth in this order, and unless otherwise stipulated or ordered, the specific calendar dates associated with any deadlines shall be adjusted in reference to the new or amended trial date.

14. **SANCTIONS FOR NON-COMPLIANCE**: A failure to comply with this order or the deadlines it imposes in a timely manner subject a non-compliant party and/or counsel to an award of sanctions pursuant to <u>I.R.C.P.</u> 16(i) and/or other applicable rules, statutes or case precedent.

15. All meetings and/or hearings with the Court shall be scheduled in advance with the Court's Clerk, Linda Hampton by calling 852-0877. No hearing shall be noticed without contacting the Clerk.

Notice is hereby given, pursuant to I.R.C.P. 40(d)(1)(G) that an alternate judge may be assigned to preside over the trial of this case, if the currently presiding judge is unavailable. The list of potential alternative judges is: (1) Honorable Peter D. McDermott; (2) Honorable David C. Nye; (3) Honorable Stephen S. Dunn; (4) Honorable Mitchell Brown; (5) Honorable Mark A. Beebe.

DATED: this 26^{th} day of May, 2015.

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ROBERT C. NAFTZ District Judge

CERTIFICATE OF MAILING/SERVICE

The undersigned certifies that on the <u>29th</u> day of May, 2015, she caused a true and correct copy of the foregoing Scheduling Order, Notice of Trial Setting and Initial Pretrial Order to

be served upon the following persons in the following manner:

PLAINTIFF ATTORNEY:

Charles Edward Cather III MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 522-5111

RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD

Faxed

□ Hand Delivered

□ Mailed

DEFENDANT ATTORNEY:

Lane V. Erickson

232-6109

∠ Faxed

 \Box Hand Delivered

 \square Mailed

SHAUNA T. GEDDES, Clerk bv **Einda Hampton Deputy Clerk**

SCHEDULING ORDER, NOTICE OF TRIAL SETTING AND INITIAL PRETRIAL ORDER - 7

EXHIBIT LIST

ROBERT C. NAFTZ, DISTRICT JUDGE LINDA HAMPTON, DEPUTY CLERK STEPHANIE DAVIS, COURT REPORTER CASE NO. CV-2015-132

DATE:

CASE:	
VS.	

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT
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			-			

FAX(TX)

TRANSACTION REPORT

MAY/29/2015/FRI 04:08 PM

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Sixth Judicial District State of Idaho FRANKLIN COUNTY 39 West Oneida Preston, Idaho 83263 (208) 852-0877

CONTROLENTIANE 24X3

May 29, 2015

TO:	Charles Edward Cather III	522-5 11 1
	Lane V. Erickson	232-6109

PLEASE ADVISE LINDA IMMEDIATELY IF YOU EXPERIENCE ANY DIFFICULTIES RECEIVING THIS TRANSMISSION. THANK YOU.

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail <u>lve@racinelaw.net</u> FILED 15 JUN 15 MM 1: 34 FRANKLIN COUNTY CLERK

Attorneys for Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

vs.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants.

CASE NO. CV 15-132

NOTICE OF SERVICE OF DEFENDANT ROBERT TALBOT'S RESPONSES TO PLAINTIFF'S COMBINED DISCOVERY REQUESTS TO DEFENDANT ROBERT TALBOT

PLEASE TAKE NOTICE that the undersigned, attorney for the Defendants ROBERT TALBOT and MICHELE TALBOT, husband and wife, Lane V. Erickson of Racine, Olson, Nye, Budge & Bailey, Chartered, gives notice of the delivery of "Defendant Robert Talbot's Responses to Plaintiff's Combined Discovery Requests to Defendant Robert Talbot" to the attorney for the Plaintiffs, as set forth in the Certificate of Service.

DATED this 12^{th} day of June, 2015.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

By:

LANE V. ERICKSON Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the $12t^{-}$ day of June, 2014, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Charles Edward Cather III Moffatt, Thomas, Barrett, Rock & Fields, Chtd 900 Pier View Drive, Ste 206 P.O. Box 51505 Idaho Falls, ID 83402-1505 Fax: 208-522-5111 X] U. S. Mail Postage Prepaid
Hand Delivery
Overnight Mail
Facsimile
E-Mail

LANE V. ERICKSON

FILED

15 SEP - 3 AM 11:29

FRAMALIN COUNTY CLERK

C. Edward Cather, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive, Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83405-1505 Telephone: (208) 522-6700 Facsimile: (208) 522-5111 cec@moffatt.com

MTBR&F File No. 25996.0000

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, HUSBAND AND WIFE,

Plaintiffs,

vs.

ROBERT TALBOT AND MICHELLE TALBOT, husband and wife,

Defendants.

COMES NOW the law firm of Moffatt, Thomas, Barrett, Rock & Fields, Chtd.,

RECORD

Case No. CV 2015-132

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF

and its attorney C. Edward Cather and hereby move this Court for an order allowing said attorney to withdraw as counsel of record for Glen Wayne Nielson and Cheryl E.Nielson.

This motion is made pursuant to Idaho Rule of Civil Procedure 11(b)(2) and in accordance with Idaho Rule of Professional Conduct 1.16, and is supported by the Affidavit of C. Edward Cather filed contemporaneously herewith.

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD

Client:3916732.1

DATED this 3rd day of September, 2015.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

B C. Edward Cather – Of the Firm

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD

•2•

Client:3916732.1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 2015, I caused a true and correct copy of the foregoing MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD to be served by the method indicated below, and addressed to the following:

Lane V. Erickson Racine Olson Nye Budge & Bailey 201 E. Center St. PO Box. 1391 Pocatello, ID 83201

Honorable Robert C. Naftz District Court Judge 10 Court Street Malad, Idaho 83252 Facsimile (208) 236-7290

Wayne Glen & Cheryl E. Nielson 496 West 2nd Street Preston, Idaho 83263

- () U.S. Mail, Postage Prepaid
 () Hand Delivered
 () Overnight Mail
 (x) Facsimile
- () U.S. Mail, Postage Prepaid
- () Hand Delivered
- () Overnight Mail
- (x) Facsimile

(x) U.S. Mail, Postage Prepaid

- () Hand Delivered
- () Overnight Mail
- () Facsimile

C. Edward Cather, III

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD

- 3 -

Cilent:3916732.1

FILED

15 SEP -3 AM 11: 29

FRANKLIN COUNTY CLERK

K) DEPUTY

C. Edward Cather, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive, Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83405-1505 Telephone: (208) 522-6700 Facsimile: (208) 522-5111 cec@moffatt.com

MTBR&F File No. 25996.0000

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, HUSBAND AND WIFE,

Plaintiffs,

V5.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

STATE OF IDAHO

COUNTY OF BONNEVILLE

C. Edward Cather, having been duly sworn upon oath, deposes and states as

follows:

AFFIDAVIT OF C. EDWARD CATHER IN SUPPORT OF MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD - 1

Client:3916749.1

Case No. CV 2015-132

AFFIDAVIT OF C. EDWARD CATHER IN SUPPORT OF MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD

vife,

) ss.

)

AHO BONNEVII I F 1. I am an attorney with the law firm of Moffatt, Thomas, Barrett, Rock & Fields, Chtd. ("Moffatt Thomas"), and have been acting as counsel for Glen Wayne Nielson and Cheryl E. Neilson (the "Client") in the above-referenced matter.

2. Moffatt Thomas is moving for leave to withdraw under Rule 11(b)(2) of the Idaho Rules of Civil Procedure and in compliance with Rule 1.16(b) of the Idaho Rules of Professional Conduct.

3. Moffatt Thomas is moving to withdraw as counsel of record in this matter because the relationship with the Client has deteriorated and become adversarial.

4. The communication breakdown has rendered continued representation unreasonably difficult.

5. Further grounds for such motion include the clients' refusal to abide by a material term of our agreement governing our engagement and failure to maintain their financial obligations to Moffatt Thomas. Moffatt Thomas has repeatedly requested the clients to bring its outstanding invoices current to no avail.

6. Client's failure to comply with its terms of engagement of Moffatt Thomas by failing to pay Moffatt Thomas' invoices and failing to respond to Moffatt Thomas' reasonable inquiries has further materially interfered with the ability of Moffatt Thomas to represent the Client.

7. The motion has not been made to delay the proceedings or for any other improper purpose.

8. The motion is made with a view to advancing the Client's best interests and maintaining Moffatt Thomas' professional and ethical obligations.

Further your affiant sayeth naught.

AFFIDAVIT OF C. EDWARD CATHER IN SUPPORT OF MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD - 2

Client3918749.1

DATED this 3rd day of September, 2015.

4 an Edward Cather

SUBSCRIBED AND SWORN to before me this 3rd day of September, 2015.



NOTARY PUBI

Residing at <u>Shulley</u> <u>Hab</u> My Commission Expires <u>4-27-202</u>

AFFIDAVIT OF C. EDWARD CATHER IN SUPPORT OF MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD - 3

Client:3916749.1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 2015, I caused a true and correct copy of the foregoing AFFIDAVIT OF C. EDWARD CATHER IN SUPPORT OF MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD to be served by the method indicated below, and addressed to the following:

Lane V. Erickson Racine Olson Nye Budge & Bailey 201 E. Center St. PO Box 1391 Pocatello, ID 83201

Honorable Robert C. Naftz District Court Judge 10 Court Street Malad, Idaho 83252 Facsimile (208) 236-7290

Wayne Glen Nielson & Cheryl E. Nielson 496 West 2nd Street Preston, Idaho 83263

- () U.S. Mail, Postage Prepaid
 () Hand Delivered
 () Overnight Mail
 (x) Facsimile
- () U.S. Mail, Postage Prepaid
- () Hand Delivered
- () Overnight Mail
- (x) Facsimile
- (x) U.S. Mail, Postage Prepaid
- () Hand Delivered
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del

C. Edward Cather

AFFIDAVIT OF C. EDWARD CATHER IN SUPPORT OF MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD - 4

Client:3916749.1

DEPUTY

FILED

15 SEP 14 PM 2: 59

FRANKLIN COUNTY CLERK

C. Edward Cather, ISB No. 6297 MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 900 Pier View Drive, Suite 206 Post Office Box 51505 Idaho Falls, Idaho 83405-1505 Telephone: (208) 522-6700 Facsimile: (208) 522-5111 cec@moffatt.com

MTBR&F File No. 25996.0000

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, HUSBAND AND WIFE,

Plaintiffs,

VS.

ROBERT TALBOT AND MICHELLE TALBOT, husband and wife,

Defendants.

PLEASE TAKE NOTICE that on October 6th, 2015 at 2:30 p.m., C. Edward

Case No. CV 2015-132

TELEPHONICALLY

OF INTENT TO APPEAR

NOTICE OF HEARING AND NOTICE

Cather will call up for hearing his MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF

RECORD.

Mr. Cather of Moffatt, Thomas, Barrett, Rock & Fields, Chartered, hereby gives

notice that he will appear telephonically at said hearing. before the Honorable Robert C. Naftz in the above-titled matter.

NOTICE OF HEARING AND NOTICE OF INTENT TO APPEAR TELEPHONICALLY

Client:3

DATED this 14th day of September, 2015.

Moffatt, Thomas, Barrett, Rock & Fields, Chartered

By

C. Edward Cather - Of the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September, 2015, I caused a true and correct copy of the foregoing **NOTICE OF HEARING AND NOTICE OF INTENT TO APPEAR TELEPHONICALLY** to be served by the method indicated below, and addressed to the following:

Lane V. Erickson Racine Olson Nye Budge & Bailey 201 E. Center St. PO Box 1391 Pocatello, ID 83201 Facsimile (208) 232-6109 () U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
(x) Facsimile

Honorable Robert C. Naftz District Court Judge 10 Court Street Malad, Idaho 83252 Facsimile (208) 236-7290

Wayne Glen & Cheryl E. Nielson 496 West 2nd Street Preston, Idaho 83263 () U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
(x) Facsimile

(x) U.S. Mail, Postage Prepaid() Hand Delivered() Overnight Mail

() Facsimile

l

C. Edward Cather

Client:3940778.1

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net

Attorneys for Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

vs.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants.

CASE NO. CV 15-132

NOTICE OF SERVICE OF DEFENDANTS' FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION TO PLAINTIFFS

COMES NOW the Defendants ROBERT TALBOT and MICHELE TALBOT, husband and wife, (hereafter "Talbots") by and through its counsel of record, Lane V. Erickson, and pursuant to Idaho's Rules of Civil Procedure hereby provides Notice of Service of Defendants First Set of Interrogatories, Requests for Admission and Requests for Production of Documents to Plaintiffs GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife, a true and correct copy of which were served upon the above-named Plaintiffs by delivery to said

FILED

15 SEP 21 PM 2:21

FRANKLIN COUNTY CLERK

BEPUTY

Plaintiff's attorney of record Charles Edward Cather III, Moffatt, Thomas, Barrett, Rock & Fields, Chtd, in their entirety together with this Notice on the date set forth herein.

DATED this 17^{\pm} day of September, 2015.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the $17^{t/2}$ day of September, 2015, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Charles Edward Cather III Moffatt, Thomas, Barrett, Rock & Fields, Chtd 900 Pier View Drive, Ste 206 P.O. Box 51505 Idaho Falls, ID 83402-1505 Fax: 208-522-5111 [X] U. S. Mail Postage Prepaid

Hand Delivery
Overnight Mail
Facsimile
E-Mail

LANE V. ERICKSON

To:

Fax: +1 (208) 852-2926

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net FILED 15 SEP 23 AMII: 06 FRANKLIN COUNTY CLERK

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

CASE NO. CV 15-132

NOTICE OF INTENT TO APPEAR TELEPHONICALLY

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, by and through their attorney of record, Lane V. Erickson, hereby give notice that they will appear telephonically at the hearing scheduled for October 6, 2015 at 2:30 p.m. regarding Mr. Cather's Motion for Leave to Withdraw as Counsel of Record before Judge Robert C. Naftz.

It is the Defendants' understanding that Mr. Cathers will initiate the call. Defendants can be reached at 208-232-6101.

NOTICE OF INTENT TO APPEAR TELEPHONICALLY -1

DATED this \cancel{blue} Day of September, 2015.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the *Literate* day of September, 2015, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Charles Edward Cather III Moffatt, Thomas, Barrett, Rock & Fields, Chtd 900 Pier View Drive, Ste 206 P.O. Box 51505 Idaho Falls, ID 83402-1505 Fax: 208-522-5111 U. S. Mail Postage Prepaid
Hand Delivery
Overnight Mail
Facsimile
E-Mail

LANE V. ERICKSON

NOTICE OF INTENT TO APPEAR TELEPHONICALLY -2

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs/Counterdefendants,

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants/Counterclaimants.

Case No. CV-2015-132

ORDER GRANTING MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD

FILED

15 OCT -8 PM 1:58

BANKLIN COUNTY CLERK

THIS MATTER came before the Court on October 6, 2015, C. Edward Cather, counsel for Glen Wayne and Cheryl Nielson, husband and wife (the "Nielsons"), and Lane V. Erickson, counsel for Defendants, present. The Court having considered the Motion for Leave to Withdraw as Counsel of Record of the Nielsons filed by Moffatt Thomas Barrett Rock & Fields, Chtd., and its attorney, C. Edward Cather, pursuant to Idaho Rule of Civil Procedure 11(b)(2), and good cause appearing;

IT IS HEREBY ORDERED, adjudged and decreed that such Motion for Leave to Withdraw as Counsel of Record for the Nielsons is GRANTED and that C. Edward Cather and the law firm of Moffatt, Thomas, Barrett, Rock & Fields, Chtd., are hereby permitted to withdraw as counsel for the Nielsons in this case and that such withdrawal shall be deemed to be effectively immediately.

ORDER GRANTING MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD - 1

Client: 3965272.1

IT IS FURTHER ORDERED that within twenty (20) days of the date of service of this Order, the Nielsons are directed to appear in person or appoint another attorney to appear and file a written notice with the Court stating how the Nielsons will be represented.

IT IS FURTHER ORDERED that if the Nielsons fail to appear in this action, either in person or through a newly appointed attorney within such twenty (20) day period, such failure shall be sufficient grounds for the Court to take action adverse to the Nielsons' interests without further notice to the Nielsons.

IT IS FURTHER ORDERED that upon entry of this Order and filing of the proof of service on the client, no further proceedings can be had in this action which will affect the rights of the Nielsons for twenty (20) days after the service of this order.

DATED this **8** day of October, 2015.



ROBERT

District Judge

ORDER GRANTING MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD - 2

Chent:3965272.1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this <u>8</u> day of October, 2015, I caused a true and correct copy of the foregoing ORDER GRANTING MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD to be served by the method indicated below, and addressed to the following:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD. 201 E. Center St. P.O. Box 1391 Pocatello, ID 83204-1391 Facsimile (208) 232-6109 Attorneys for Defendants U.S. Mail, Postage Prepaid
Hand Delivered
Overnight Mail
Facsimile

Glen Wayne Nielson Cheryl E. Nielson 496 West 2nd Street Preston, Idaho 83263

C. Edward Cather MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHTD 900 Pier view Drive, Suite 206 Idaho Falls, Idaho, 83405 208-522-5111 () U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

() U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

Clerk of the Court

ORDER GRANTING MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD - 3

Client:3985272.1

FILED
15 OCT 29 PM 4: 15
FRAMELIN COUNTY CLERK
KQ
DEPUTY

GLEN WAYNE NIELSON and CHERYL E. NIELSON

496 W 2nd S

Preston, Idaho	83263
----------------	-------

(435) 619-4107

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE and CHERYL E. NIELSON, husband and wife,

VS,

Case No. CV 2015-132

NOTICE OF APPEARANCE

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants,

TO: CLERK OF THE ABOVE DISTRICT COURT: I represent myself. All pleadings, motions, notices, or other papers should be served on me until further notice of choice of attorney.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 2015 I caused a true and correct copy of the foregoing NOTICE OF APPEARANCE OF RECORD to be served by the method indicated below, and addressed to the following:

(x) U.S. Mail

Lane V. Erickson Racine Olson Nye Budge & Bailey 201 E. Center St. P.O. Box 1391 Pocatello, ID 83201

(x) U.S. Mail

Honorable Robert C. Naftz District Court Judge **10 Court Street** Malad, Idaho 83252

Tielson Chě

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

FILED 15 DEC 14 PM (1:51 FRANKLIN COUNTY CLERK

DEPUTY

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

Case No. CV-2015-00132

MOTION TO VACATE AND CONTINUE TRIAL

COMES NOW the Defendants, ROBERT TALBOT and MICHELE TALBOT, husband and wife, (hereafter "Defendants") by and through counsel of record, and hereby respectfully moves the Court to enter an order to vacate and continue the trial scheduled for March 22-25, 2016, at 9:00 am to the Second Trial Setting scheduled for May 17-20, 2016 at 9:00 a.m. in the above captioned matter. Defendants' Motion to Vacate and Continue Trial is based upon good cause. The reasons and facts for which Defendants seeks to vacate the trial date and to continue the trial are as follows:

1. On September 3, 2015, Plaintiffs counsel filed a Motion to Withdraw, which MOTION TO VACATE AND CONTINUE TRIAL-1

Motion was subsequently granted by this Court. From that date until the end of October, 2015, Defendants took very little action in this case, waiting to see if Plaintiffs would continue their suit against the Defendants.

2. With that delay and with subsequent delays in locating witnesses, Defendants will not have adequate time to file and hold a hearing on a motion for summary judgment that may be dispositive in this case.

3. Defendants are collecting the affidavits they need from witnesses for filing said summary judgment.

4. The Court's Scheduling Order requires all summary judgment hearings to be heard no less than 90 days before trial. As a result of the delays listed above, Defendants will not be able to meet this deadline.

5. The second setting for trial, dated May 17-20, 2016 at 9:00 am, as set forth in the Court's Scheduling Order will provide adequate time for the Defendants to meet all deadlines set by the Court.

WHEREFORE, as directed by the Court, and based upon the facts, reasons, and grounds set forth above, Plaintiff respectfully requests that the Court:

A. Vacate and/or continue the trial in the above matter currently scheduled for March
 22-25, 2016, at 9:00 am to the Second Trial Setting scheduled for May 17-20, 2016 at 9:00 a.m.
 Respectfully submitted.

This $\underline{14^{12}}$ day of December, 2015.

MOTION TO VACATE AND CONTINUE TRIAL-2

RACINE, OLSON, NYE, BUDGE

& BAILEY, CHARTERED

By: Jane V. ERICKSON,

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

Glen & Cheryl Nielson 496 W 2nd S Preston, Idaho 83263 [X] U. S. Mail Postage Prepaid
[] Hand Delivery
[] Overnight Mail
[] Facsimile

on this $\underline{/4^{\prime}}$ day of December, 2015.

LANE V. ERICKSON

Page 6 of 9 12/14/2015 1:29 PM

FILED

Case No. CV-2015-00132

AFFIDAVIT OF LANE V. ERICKSON

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

15 DEC 14 PM 1:51 CARNELIN COUNTY CLERK

OFPHIT Y

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

+ + + +

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

STATE OF IDAHO) : ss County of Franklin)

I, LANE V. ERICKSON, after first being duly sworn on oath, deposes and states as follows:

1. Affiant is over the age or 18; has capacity and can testify of the following based upon her own information, knowledge and/or belief after reasonable inquiry.

2. I am the attorney representing the Defendants in the above captioned proceedings.

3. On September 3, 2015, Plaintiffs counsel filed a Motion to Withdraw, which Motion was subsequently granted by this Court. From that date until the end of October, 2015,

AFFIDAVIT OF LANE V. ERICKSON IN SUPPORT OF MOTION TO VACATE Page -1

Defendants took very little action in this case, waiting to see if Plaintiffs would continue their suit against the Defendants.

4. With that delay and with subsequent delays in locating witnesses, Defendants will not have adequate time to file and hold a hearing on a motion for summary judgment that may be dispositive in this case.

5. Defendants are collecting the affidavits they need from witnesses for filing said summary judgment.

6. The Court's Scheduling Order requires all summary judgment hearings to be heard no less than 90 days before trial. As a result of the delays listed above, Defendants will not be able to meet this deadline.

7. The second setting for trial, dated May 17-20, 2016 at 9:00 am, as set forth in the Court's Scheduling Order will provide adequate time for the Defendants to meet all deadlines set by the Court.

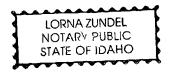
FURTHER SAITH AFFIANT NAUGHT.

DATED this 147^{2} day of December, 2015.

Bv

LANE V. ERICKSON Attorney for Defendants

SUBSCRIBED AND SWORN TO before me on this $\frac{144^{h}}{14}$ day of December, 2015.



Residing at: Commission expires:

AFFIDAVIT OF LANE V. ERICKSON IN SUPPORT OF MOTION TO VACATE Page -2

To

Page 8 of 9 12/14/2015 1:29 PM

F] [_ JAN 11	三 2016	\mathbb{D}
FRAN	KLIN COU	NTY CI	LERK

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lye@racinelaw.net

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

CASE NO. CV 15-132

Plaintiffs,

ORDER GRANTING MOTION TO VACATE AND CONTINUE TRIAL

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

The Court having fully reviewed the Defendants' Motion and Affidavit to Vacate and to

Continue Trial for the trial scheduled for March 22-25, 2016 at 9:00 a.m., to the Second Trial

Setting scheduled for May 17-20-2016 at 9:00 a.m. in the above captioned matter.

IT IS HEREBY ORDERED:

That the trial scheduled herein for March 22-25, 2016 is hereby vacated, and continued to

the Second Trial Setting scheduled for May 17-20 at 9:00 a.m.

DATED this 11 day of December, 2015.

2110 ROBERT C. NAFTZ **District Judge**

ORDER GRANTING MOTION TO VACATE AND CONTINUE TRIAL-I

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4/1 day of December, 2015, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Glen and Cheryl Nielson 496 W. 2nd S. Preston, ID 83263 [/] U.S. Mail Postage Prepaid

-] Hand Delivery
-] Overnight Mail
-] Facsimile

[] U.S. Mail Postage Prepaid

-] Hand Delivery
-] Overnight Mail
-] Facsimile

201 E. Center St P.O. Box 1391 Pocatello, ID 83204 Fax: 208-232-6109 on this // day of December, 2015.

Lane V. Erickson

a Hampten

F

ORDER GRANTING MOTION TO VACATE AND CONTINUE TRIAL-2

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

FILED 16 FEB -9 AM 9: 19 FRANKLIN COUNTY CLERK

SEPUT 7

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

 \star \star \star \star \star

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

Case No. CV-2015-00132

DEFENDANT/COUNTERCLAIMANTS' MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, (hereafter "Defendants"), by and through counsel, and hereby moves this Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, for an Order granting Summary Judgment in favor of Defendants and against Plaintiffs GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife, (hereafter collectively "Plaintiffs").

Defendants request this Court to enter an Order granting Summary Judgment in favor of Defendants and against Plaintiffs upon the grounds and for the reasons that there are no genuine issues of material fact and that Defendants are entitled to a Judgment against Plaintiffs. This motion is based upon Defendants' Counterclaim and other pleadings on file herein, together with the Affidavits of Lane V. Erickson, Gae Murdock, Craig Shaffer and Defendant Michele Talbot,

and the Memorandum in Support of Motion for Summary Judgment submitted herewith.

DATED this <u>St</u> day of February, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

Glen & Cheryl Nielson 496 W 2nd S Preston, Idaho 83263

- [X] U.S. Mail Postage Prepaid
 -] Hand Delivery
 -] Overnight Mail
 -] Facsimile

on this $\frac{g+1}{2}$ day of February, 2016.

LANE V. ERICKSON

Page 19 of 30 02/08/2016 4:59 PM

FILED

16 FEB -9 AM 9:20

FRANKLIN COUNTY CLERK

DEPUTY

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

STATE OF IDAHO) : ss

County of Bannock

Case No. CV-2015-00132

AFFIDAVIT OF LANE V. ERICKSON IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, LANE V. ERICKSON, after first being duly sworn on oath, deposes and states as follows:

I, LANE V. ERICKSON, after first being duly sworn on oath, deposes and states as follows:

)

1. That I am the Attorney of record for ROBERT TALBOT and MICHELE TALBOT, husband and wife, who are named as the Defendants/Counterclaimants (hereafter "Defendants"), in the above litigation, that I am familiar with all the pleadings and documents submitted in this litigation, that if called upon to testify concerning these matters I could and would testify that the following is my understanding and knowledge concerning the same:

2. On or about September 17, 2015, Defendants served upon the Plaintiffs written Discovery Requests including Requests for Admission.

3. Request for admission No. 1., states as follows:

REQUEST FOR ADMISSION NO. 1: Please admit that at the time you moved into your home, there were lilac bushes growing on what you believed was the property line between you and the Defendants.

4. Plaintiffs failed to respond to Defendants' written Discovery Requests and failed to specifically admit or deny any of the Requests for Admission, including Request for Admission No. 1, listed above.

5. On October 21, 2015, Defendants' counsel received an e-mailed document from Cheryl Nielson that simply said in response to each Interrogatory, Request for Admission and Request for Production, "Plaintiffs Glen and Cheryl Nielson reserve the right to respond to this request."

6. In response, on October 21, 2015, Defendants' Counsel e-mailed the Plaintiffs through Cheryl Nielson and requested that written Responses be provided to Defendants' written Discovery Requests.

7. Defendants received no additional written Responses to Defendants' written Discovery Requests from Plaintiffs.

8. On December 9, 2015, Defendants' counsel served a written letter upon the Plaintiffs stating as follows:

This letter serves as notice that you have failed to respond to the Discovery Requests that were served upon you on September 17, 2015. With your attorney

withdrawing from the case the 30 day time limit set forth in I.R.C.P. Rules 33(a)(2); 34(b) and 36(a) were tolled on October 9th but became due on November 9th, 2015.

I recognize that you attempted to e-mail to me Responses which were barely legible. However, the Responses did not provide anything substantive. Rather, your Responses simply stated that you reserve a right to respond. That is not an adequate Response pursuant to the Rules set forth above.

We will provide you with ten (10) additional days to provide a substantive Response. Should you fail to do so, we will proceed with our rights pursuant to the above cited Rules.

9. Defendants received no written response from the Plaintiffs to this letter and

demand.

10. The time in which Plaintiffs have to provide written responses to Defendants'

written discovery requests is now passed pursuant to I.R.C.P. Rules 33(a)(2); 34(b) and 36(a).

FURTHER SAITH AFFIANT NAUGHT.

DATED this $\underline{\$}^{\underbrace{\$}}$ day of February, 2016.

LÁNE V. ERICKSON

SUBSCRIBED AND SWORN TO before me on this $\frac{\delta}{\delta}$ day of February, 2016.

TARY PUBLIC OR IDAHO Residing at: Commission expires

(SEAL) NOTARY PUBLIC STATE OF IDAHC

LORNA ZUNDEL

AFFIDAVIT OF LANE V. ERICKSON IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT Page 3

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

Glen & Cheryl Nielson 496 W 2nd S Preston, Idaho 83263

- [X] U.S. Mail Postage Prepaid
 -] Hand Delivery
 -] Overnight Mail
 -] Facsimile

on this $\underline{8^{\mu}}$ day of February, 2016.

LANE V. ERICKSON

AFFIDAVIT OF LANE V. ERICKSON IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT Page 4 Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109 FILED 16 FEB -9 AN 9: 20 LIBANALIN COUNTY CLERK

SEPUT?

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

STATE OF IDAHO) : ss County of Franklin)

I, GAE MURDOCK, after first being duly sworn on oath, deposes and states as follows:

1. Affiant is over the age or 18; has capacity and can testify of the following based upon her own information, knowledge and/or belief after reasonable inquiry.

2. On or about January 17, 1985, I and my husband purchased property from Craig Schaffer and Sue Schaffer that was originally one piece of property but that had been split into two separate pieces of property by the Schaffers. The piece of property that we purchased from the Schaffers after the original property was split was entirely enclosed by a fence. The purchase

AFFIDAVIT OF GAE MURDOCK Page -1 Case No. CV-2015-00132

AFFIDAVIT OF GAE MURDOCK

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was completed by obtaining from the Schaffers a Ouit Claim Deed which that was recorded as Instrument No. 168360.

3. In purchasing the property enclosed by the fence, we agreed with Craig Schaffer and Sue Schaffer that the fenceline would be the property boundary line which divided the property between us and Craig Schaffer and Sue Schaffer.

4. A legal description was included in the Deed that we and the Schaffers believed reflected our agreement of having the fenceline be the boundary line between the properties.

5. The fenceline was maintained as the boundary line the entire time that we owned the piece of property that we retained, as described above.

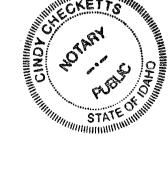
6. The property was sold by us to Vincent and Corliss Whitehead on August 21, 1992. When we sold the property, we told the Whiteheads that the fenceline was the boundary line of the property.

FURTHER SAITH AFFIANT NAUGHT.

DATED this 11th day of December, 2015.

By <u>Hac</u> <u>Murchach</u> GAE MURDOCK

SUBSORIDED AND SWORN TO before me on this $\frac{1}{2}$ day of December, 2015.



NOTARY PUBLIC FOR IDAHO Residing at: Krohn, Ideko 7.26.19 Commission expires: _

AFFIDAVIT OF GAE MURDOCK Page -2

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FRANKLIN COUNTY CLERK

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Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

 \star \star \star \star \star \star

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

) : ss

)

STATE OF IDAHO County of FRANKLIN

I, MICHELE TALBOT, after first being duly sworn on oath, deposes and states as follows:

1. Affiant is over the age or 18; has capacity and can testify of the following based upon her own information, knowledge and/or belief after reasonable inquiry.

2. My husband Robert and I purchased the property that the Plaintiffs describe as the "Talbot Property" in their Complaint dated March 23, 2015. We purchased this property from Dave and Brenda Larsen on August 11, 1995, as is evidenced by the Warranty Deed attached to

AFFIDAVIT OF MICHELE TALBOT Page -1 Case No. CV-2015-00132

AFFIDAVIT OF MICHELE TALBOT

Plaintiff's Complaint as Exhibit "L" which Exhibit is incorporated herein by reference as if set forth fully.

3. At the time we purchased the property, the fence had been taken down and in its place lilacs, shrubs and plants had been planted to provide a boundary line between the "Talbot Property" and the "Nielson Property" which lilacs, shrubs and plants were cared for and maintained by both owners.

4. Prior to our purchasing the home, the Larsens had installed a sprinkler system which provided water/irrigation to the grass and lawn, and a storage shed up to the boundary line maintained between them and the "Nielson Property."

5. Upon our purchasing our home we installed a carport up to the boundary line of the property, with the lilacs, shrubs and plants that were cared for and maintained by both owners.

6. Shortly after the Nielsons moved in, Cheryl Nielson personally tore out all of the lilacs, shrubs and plants that were planted and maintained as the boundary line between the properties.

7. At this same time, Cheryl Nielson began harassing me and my husband about our carport and shed being on her property, which had been in those locations for many years.

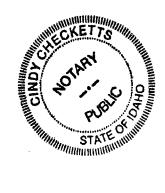
8. The entire time we have lived in our home there has been a clearly established boundary line between the "Talbot Property" and the "Nielson Property". The law mowing, the sprinkler system, shed, and the lilacs, shrubs and plants were all located exactly how the original fenceline was situated. Additionally, our car port is located based upon the original fenceline as well.

AFFIDAVIT OF MICHELE TALBOT Page -2 FURTHER SAITH AFFIANT NAUGHT.

DATED this <u>S</u> day of February, 2016.

Salbet By <u>MICHELE TALBOT</u>

SUBSCRIBED AND SWORN TO before me on this $\frac{2^{n}}{2}$ day of February, 2016.



NOTARY PUBLIC FOR IDAHO Residing at: <u>Frishm, skichs</u> Commission expires: <u>7-26-19</u>

AFFIDAVIT OF MICHELE TALBOT Page -3

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Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

SEPUTY

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

STATE OF UTAH) : ss County of _____)

I, CRAIG SCHAFFER, after first being duly sworn on oath, deposes and states as follows:

1. Affiant is over the age or 18; has capacity and can testify of the following based upon her own information, knowledge and/or belief after reasonable inquiry.

2. On or about July 2, 1979 Howard Almond and Laura Almond deeded property to me and to Sue Schaffer, property by warranty deed recorded on July 11, 1979, as Instrument No. 150231, as modified by the certain warranty deed recorded on October 2, 1981 as

AFFIDAVIT OF CRAIG SHAFFER Page -1

Case No. CV-2015-00132

AFFIDAVIT OF CRAIG SCHAFFER

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Instrument No. 157161.

3. A portion of the property was enclosed by a fence, because it had been used as a pasture by the Almonds.

4. I and Sue Schaffer decided to split the property into two pieces with one piece being the area enclosed by the fence and the remainder being the other piece.

5. On or about January 17, 1985, I and Sue Schaffer sold the property enclosed by the fence to Suel Murdock and Gae Murdock by Quit Claim Deed which was recorded as Instrument No. 168360.

6. In selling the property enclosed by the fence to Suel Murdock and Gae Murdock, it was agreed that the Murdocks were purchasing the property enclosed by the fence. Sue Schaffer and I agreed with Suel Murdock and Gae Murdock that the fenceline would be the property boundary line which divided the property.

7. We created a legal description that was included in the Deed to Suel Murdock and Gae Murdock that we believed reflected our agreement of having the fenceline be the boundary line between the properties.

8. The fenceline was maintained as the boundary line between Sue Schaffer and I and Suel Murdock and Gae Murdock the entire time that we owned the piece of property that we retained, as described above.

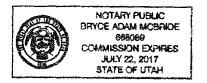
FURTHER SAITH AFFIANT NAUGHT.

DATED this 17 day of December, 2015.

after. aA-

AFFIDAVIT OF CRAIG SHAFFER Page -2 1 , 1 4

SUBSCRIBED AND SWORN TO before me on this 17^{+1} day of December, 2015.



NOTARY PÚBLIC FOR UTAH Residing at: <u>S N Main St Brighom city</u> Ut Commission expires: <u>712217</u> Lane V. Erickson (ISB No. 5979)
RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
P. O. Box 1391/Center Plaza
Pocatello, Idaho 83204-1391
Phone: (208) 232-6101
FAX: 208-232-6109

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SEPUTY

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

Case No. CV-2015-00132

MEMORANDUM IN SUPPORT OF DEFENDANT/COUNTERCLAIMANT'S MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, (hereafter "Talbots"), by and through their attorney of record, Lane V. Erickson, and hereby submits this Memorandum in Support of its Motion for Summary

Judgment.

RELIEF SOUGHT

Talbots seek an entry of Judgment in its favor awarding the relief prayed for in its Counterclaim filed April 22, 2016, against the Plaintiff/Counterdefendants GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife, (hereafter collectively, "Plaintiffs") identified herein, to quiet title in and to the property owned and occupied by the Talbots from 1995 to the present, together with their reasonable attorneys fees and costs.

PARTIES AND JURISDICTION

1. Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, (hereafter "Talbots"), are residents of Preston, Franklin County, Idaho.

2. Plaintiff/Counterdefendants GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife, (hereafter collectively, "Plaintiffs"), are residents of Preston, Franklin County, Idaho.

3. Venue is proper in Franklin County, State of Idaho, due to the residency of the parties in the present case and due to the location of the real property that is at the center of the controversy between the parties pursuant to the terms of Defendants' account agreement with Zions.

FACTUAL ALLEGATIONS

4. On or about April 5, 1972, Myrtle Ransom deeded certain real property located in Franklin County, Idaho to Howard Almond. This transfer of real property was made by warranty deed, a true and correct copy of which is attached to Plaintiffs' Complaint as Exhibit "A" which is incorporated herein by reference as if set forth fully.

5. On or about July 2, 1979 Howard Almond and Laura Almond deeded property to Craig and to Sue Shaffer, property by warranty deed recorded on July 11, 1979, as Instrument No. 150231, as modified by the certain warranty deed recorded on October 2, 1981 as Instrument No. 157161. (See Affidavit of Craig Shaffer, (hereafter Shaffer Affidavit), and Plaintiff's Complaint Exhibits "B" and "C".)

6. A portion of the property was enclosed by a fence, because it had been used as a

pasture by the Almonds. (See Shaffer Affidavit.)

7. Craig and Sue Shaffer decided to split the property into two pieces with one piece being the area enclosed by the fence (hereafter the "Talbot Property"), and the remainder being the other piece (hereafter the "Nielson Property"). (See Shaffer Affidavit and Plaintiff's Complaint.)

8. On or about January 17, 1985, Craig and Sue Shaffer sold the property enclosed by the fence, the Talbot Property, to Suel Murdock and Gae Murdock by Quit Claim Deed which was recorded as Instrument No. 168360. (See Shaffer Affidavit and Plaintiff's Complaint, Exhibit "J".)

9. In selling the Talbot Property to Suel Murdock and Gae Murdock, it was agreed that the Murdocks were purchasing all of the property enclosed by the fence. The Shaffers agreed with the Murdocks that the fenceline would be the property boundary line which divided the Talbot Property from the Nielson Property. (See Shaffer Affidavit and Gae Murdock Affidavit.)

10. The Shaffers and the Murdocks jointly created a legal description for the Talbot Property that was included in the Deed to the Murdocks that the Shaffers and the Murdocks all believed reflected their agreement of having the fenceline be the boundary line between the properties. (See Shaffer Affidavit and Gae Murdock Affidavit.)

11. The fenceline was maintained as the boundary line between the Talbot Property and the Nielson Property by the Shaffers and the Murdocks the entire time that these parties owned their respective properties, as described above. (See Shaffer Affidavit and Gae Murdock Affidavit.)

12. On September 22, 1986, the Shaffers deeded the Neilson Property to Phillip and

Sherry Cromwell, which was subsequently then deeded in turn to the Heaps, the Parkers and then finally to the Plaintiffs. This was accomplished by the Deed attached to Plaintiffs' Complaint as Exhibits "D", "E", "F", "G" and "H" which are incorporated herein by reference as if set forth fully.

13. The Talbots purchased the Talbot Property from Dave and Brenda Larsen on August 11, 1995. At the time the Talbots purchased the Talbot Property, the fence had been taken down and in its place lilacs, shrubs and plants had been planted to provide a boundary line between the Talbot Property and the Nielson Property which lilacs, shrubs and plants were cared for and maintained by the owners of the Talbot Property and the Nielson Property and the Nielson Property. (See Michele Talbot Affidavit and Plaintiff's Complaint Exhibit "L".)

14. Prior to the Talbots' purchasing the Talbot Property, the previous owners, the Larsens had installed a sprinkler system which provided water/irrigation to the grass and lawn, and a storage shed up to the boundary line maintained between the Talbot Property and the Nielson Property. (See Talbot Affidavit.)

15. After the Talbots purchased the Talbot Property they installed a carport up to the boundary line of the property, with the lilacs, shrubs and plants that were cared for and maintained by both owners. (See Michele Talbot Affidavit.)

16. In June 2014, the Plaintiffs became the owner of the Nielson Property adjacent to that of the Defendants. Immediately upon obtaining ownership, Plaintiffs claim to have learned that the legal description they obtained through their warranty deed entitled them to those portions of the Talbot Property that have the Defendants' sprinkler system, shrubs and/or trees and also has the shed and a carport upon them. The Plaintiffs, became irate and demanded that the Defendants remove all of these improvements from the property. (See Plaintiffs' Complaint

and Michele Talbot Affidavit.)

17. Litigation commenced between the parties with the Plaintiffs serving a Complaint upon the Talbots on March 23, 2015.

18. On or about September 17, 2015, the Talbots, through counsel, served upon the Plaintiffs written Discovery Requests including Requests for Admission.

19. Request for Admission No. 1., states as follows:

<u>REQUEST FOR ADMISSION NO. 1</u>: Please admit that at the time you moved into your home, there were lilac bushes growing on what you believed was the property line between you and the Defendants.

(See Affidavit of Lane V. Erickson.)

20. Plaintiffs failed to respond to Talbots' written Discovery Requests and failed to specifically admit or deny any of the Requests for Admission, including Request for Admission No. 1, listed above. (See Erickson Affidavit.)

21. On October 21, 2015, Talbots' counsel received an e-mailed document from Cheryl Nielson that simply said in response to each Interrogatory, Request for Admission and Request for Production, "Plaintiffs Glen and Cheryl Nielson reserve the right to respond to this request." (See Erickson Affidavit.)

22. In response, on October 21, 2015, Talbots' Counsel e-mailed the Plaintiffs through Cheryl Nielson and requested that written Responses be provided to Defendants' written Discovery Requests. (See Erickson Affidavit.)

23. The Talbots received no additional written Responses to Talbots' written Discovery Requests from Plaintiffs. (See Erickson Affidavit.)

24. On December 9, 2015, Talbots' counsel served a written letter upon the Plaintiffs

stating as follows:

This letter serves as notice that you have failed to respond to the Discovery Requests that were served upon you on September 17, 2015. With your attorney withdrawing from the case the 30 day time limit set forth in I.R.C.P. Rules 33(a)(2); 34(b) and 36(a) were tolled on October 9th but became due on November 9th, 2015.

I recognize that you attempted to e-mail to me Responses which were barely legible. However, the Responses did not provide anything substantive. Rather, your Responses simply stated that you reserve a right to respond. That is not an adequate Response pursuant to the Rules set forth above.

We will provide you with ten (10) additional days to provide a substantive Response. Should you fail to do so, we will proceed with our rights pursuant to the above cited Rules.

(See Erickson Affidavit.)

25. Again the Talbots' received no written response from the Plaintiffs to this letter and demand. (See Erickson Affidavit.)

26. The time in which Plaintiffs have to provide written responses to the Talbots' written discovery requests is now passed pursuant to I.R.C.P. Rules 33(a)(2); 34(b) and 36(a).

(See Erickson Affidavit.)

27. The entire time the Talbots' have lived on the Talbot Property there has been a clearly established boundary line between the Talbot Property and the Nielson Property. The law mowing, the sprinkler system, shed, and the lilacs, shrubs and plants were all located exactly how the original fenceline was situated. Additionally, the Talbots' car port is located based upon the original fenceline as well. (See Talbot Affidavit.)

ARGUMENT

I. STANDARD FOR SUMMARY JUDGMENT

Summary Judgment is appropriate when "... the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to Judgment as a matter of law." *State v. Rubbermaid*, 129 Idaho 353 (1996) citing to McCoy v. Lions, 120 Idaho 765, 769 (1991).

Once the moving party establishes the absence of a genuine issue, the burden shifts to the nonmoving party to make a showing of the existence of a genuine issue of material fact on the elements challenged by the moving party. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994). It is well settled in Idaho that in order to create a genuine issue of material fact, the party opposing the motion must present more than just a conclusory assertion that an issue of material fact exists. *Coghlan*, 987 P.2d at 312-13, *Van Velson Corp. v. Westwood Mall Assoc.*, 126 Idaho 401, 406, 884 P.2d 414, 419, (1994). "Rather, the [opposing party] must respond to the summary judgment motion with specific facts showing that there is a genuine issue for trial." *Coghlan*, 987 P.2d at 312-13; *Tuttle v. Sudenga Indus., Inc.*, 125 Idaho 145, 150, 868 P.2d 473, 478 (1994).

The non-moving party has the obligation of establishing the existence of each element essential to any claims or defenses they have made in which they bear the burden of proof at trial. This obligation has been imposed by the United States Supreme Court in applying Rule 56(c) of the Federal Rules of Civil Procedure in the case of *Cellotex Corp. v. Catrett*, 477 U.S. 317 (1986). The Idaho Supreme Court has adopted *Cellotex* in the application of Idaho Rules of Civil Procedure 56(c). *See Badell v. Beeks*, 115 Idaho 101,102 (1998). In *Cellotex*, Justice Renquist wrote for the majority and explained:

The plain language of Rule 56(c) mandates the entry of Summary Judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that parties case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving parties case necessarily renders all other facts immaterial. The moving party is entitled to a Judgment as a matter of law... 477 U.S. at 322-323.

As a result of *Cellotex*, the Defendants in this case cannot raise merit-less defenses or claims to defeat Summary Judgment. Rather the Defendants must introduce facts into the record that support each element of each defense asserted.

Essentially, the facts of the present case are not in dispute and are really quite simple. The Talbot Property and the Nielson Property were originally one parcel of property that was divided up by the owners Craig and Sue Shaffer, when the Talbot Property was sold to Suel and Gae Murdock. The Talbot Property was enclosed by a standing fence. The Shaffers and the Murdocks agreed that the boundary line between the Talbot Property and the Nielson Property would be the existing fence. A deed was drafted based upon the belief of the Shaffers and the Murdocks that the legal description in the deed accurately described their agreed upon boundary line. Over several decades the Talbot Property and the Nielson Property were sold to other groups of individuals. During this time there was always either the fenceline or other items such as lilacs, shrubs, plants and sheds that acted as the boundary between the Talbot Property and the Nielson Property. When the Nielsons purchased the Nielson property they checked the legal description and learned that the Talbot Property actually encroached upon the legal description of property they had on their deed. As a result, the Nielsons ripped out all of the lilacs, shrubs and plants and then demanded that the Talbots move their shed, sprinkler system and carport to give them the land the legal description on their deed stated they owned. The Talbots refused stating that the agreement by the previous parties established the boundary line between the Talbot Property and the Nielson Property to be where the parties had always stated it was based upon the fenceline, lilacs, shrubs, plants and structures. The law in Idaho supports the Talbots in this statement.

As a result, summary judgment should be awarded in favor of the Talbots. Further, a judgment quieting title to the Talbot Property should be granted in favor of the Talbots. Additionally, the Talbots should be awarded all of their attorney fees and costs in this matter.

II. BOUNDARY LINE ESTABLISHED

The boundary line between the Talbot Property and the Nielson Property is established in favor of the Talbots. According to the Idaho Supreme Court, "the fundamental principle underlying all of the rules of construction of deeds, as well as all other contractual instruments, is that the courts must seek and give effect to the intention of the parties." *Campbell v. Weisbrod*, 73 Idaho 82, 89, 245 P.2d 1052, 1057 (1952). The general rule is that monuments, natural or artificial, or lines marked on the ground, control over calls for courses and distances. Id.

The facts in the present case are similar to those of Campbell. In Campbell, the legal description in a deed for property that was divided up did not accurately reflect the agreement between the parties of where the boundary line between the divided properties would be. Subsequent litigation ensued with one party claiming the legal description controlled the boundary line and the other party arguing that the agreement between them controlled. In analyzing the facts the Idaho Supreme Court determined that there was no dispute that a line was agreed upon and marked on the ground between the parties.

The Idaho Supreme Court held, "the particular rule applicable here is that where the

seller and the buyer go upon the land and there agree upon and mark the boundary between the part to be conveyed and the part to be retained by the seller, the line thus fixed controls the courses and distances set out in the deed." *Campbell*, 73 Idaho at 89, 245 P.2d at 1057.

In a subsequent case, the Idaho Supreme Court declared that an agreed upon boundary established under the *Campbell* ruling, "would also be binding upon a successor in interest of the seller, who purchased with notice of the agreement." *Paurley v. Harris*, 75 Idaho 112, 117, 268 P.2d 351, 353 (1954). In defining what actually provides notice of the agreement to successors of the seller the Idaho Supreme Court specifically stated,

The boundary, which defendants claim, was clearly marked by a 'tight board fence,' four or five feet in height, and the area on defendants' side of the fence was planted to lawn, shrubbery and trees. This would constitute notice to an intending purchaser, of defendants' possession. Once buying property in the possession of a third party is put on notice of any claim of title or right of possession by such third party, which a reasonable investigation would reveal.

Reid v. Duzet, 140 Idaho 389, 393 94 P.3d 694, 698 (2004).

The facts in the present case fit the above cited case law precisely, which should result in a judgment in favor of the Talbots. In the present case, The Talbot Property and the Nielson Property were originally one parcel of property that was divided up by the owners Craig and Sue Shaffer, when the Talbot Property was sold to Suel and Gae Murdock. (Shaffer and Murdock Affidavit and Plaintiffs' Complaint.) The Talbot Property was enclosed by a standing fence. (Shaffer and Murdock Affidavit.)

The Shaffers and the Murdocks agreed that the boundary line between the Talbot Property and the Nielson Property would be the existing fence. (Shaffer and Murdock Affidavit.) A deed was drafted based upon the belief of the Shaffers and the Murdocks that the legal description in the deed accurately described their agreed upon boundary line. (Shaffer and

Murdock Affidavit.)

Over several decades the Talbot Property and the Nielson Property were sold to other groups of individuals. (See Plaintiff's Complaint and attached Exhibits.) During this time there was always either the fenceline or other items such as lilacs, shrubs, plants and sheds that acted as the boundary between the Talbot Property and the Nielson Property. (Talbot Affidavit.)

When the Nielsons purchased the Nielson property they checked the legal description and learned that the Talbot Property actually encroached upon the legal description of property they had on their deed. (See Plaintiffs' Complaint.) As a result, the Nielsons ripped out all of the lilacs, shrubs and plants and then demanded that the Talbots move their shed, sprinkler system and carport to give them the land the legal description on their deed stated they owned. (Talbot Affidavit.) The Talbots refused stating that the agreement by the previous parties established the boundary line between the Talbot Property and the Nielson Property to be where the parties had always stated it was based upon the fenceline, lilacs, shrubs, plants and structures. (Talbot Affidavit.)

None of the facts above are in dispute. In applying the *Campbell, Paurley*, and *Reid*, decisions to these facts, the boundary line between the Talbot Property and the Nielson Property is established to be where the fence, lawn, lilacs, shrubs, plants, sprinkler system and structures have always maintained the boundary to be. As a result, the Court should enter an Order defining the boundary line between the Talbot Property and the Nielson Property to be exactly where all of the previous parties maintained it to be. The Order should clearly state that the Talbots have a legal right to maintain the current location of their sprinkler system, lawn and structures.

III. TITLE QUIETED IN FAVOR OF THE TALBOTS

By establishing the boundary line between the Talbot Property and the Nielson Property, the Court should also quiet title in favor of the Talbots so that the legal description in future deeds can accurately describe the Talbot Property and Nielson Property. Idaho Code 6-401 provides a right to any party to bring a quiet title action against any other party concerning ownership of real property. The Idaho Supreme Court has held that in quiet title actions, the party seeking title "asserts his own estate and declares generally that the [other party] claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on the [other party] to set forth the nature of his claim, so that it may be determined by decree." *Drew v. Sorensen*, 133 Idaho 534, 541, 989 P.2d 276, 283 (1999), *quoting*, BLACK'S LAW DICTIONARY 51(4th ed. 1951). According to the Idaho Supreme Court, "[t]he district court in a quiet title action must then determine the ownership rights of the parties based on the facts involved. In making this determination, the district court should examine the facts by applying relevant legal principals and theories that define the property rights of the parties. *Id*.

In the present case, the Talbots' brought a counterclaim against the Plaintiffs to quiet title to the portion of land that is in dispute concerning the boundary claims made by the Plaintiffs. In applying the law set forth in Section II above, title to the disputed portion of land should be quieted in favor of the Talbots. The Court should enter a decree establishing a new legal description for both the Talbot Property and the Nielson Property so that future owners will have clear title and won't be required to proceed with litigation. The Talbots respectfully request that the Court enter such a decree in favor of the Talbots.

IV. LITIGATION COSTS AND ATTORNEY FEES

In addition to entering an Order and Decree establishing the boundary line and quieting title in favor of the Talbots, as prayed for above, the Talbots should also be granted a Judgment from the Court awarding them their reasonable attorney fees and litigation costs in defending and prosecuting this case. Idaho Code § 12-120(1) and (3) specifically gives the Court the authority to award the Talbots their attorney fees and costs. The Talbots respectfully request the Court to enter a judgment granting to them their reasonable attorney fees and costs in this matter.

CONCLUSION

There are no genuine disputes of material fact concerning the established boundary between the Talbot Property and the Nielson Property. Further, title to the disputed property should be quieted in favor of the Talbots. For these reasons, the Talbots are entitled to obtain an Order, Decree and Judgment from the Court establishing the boundary to the property, quieting title to the property and awarding all associated litigation costs and attorney fees in their favor. The Talbots respectfully requests that this Court enter an grant summary judgment on these issues.

DATED this $\underline{\1 day of February, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

Glen & Cheryl Nielson 496 W 2nd S Preston, Idaho 83263 [X] U. S. Mail Postage Prepaid

| Hand Delivery

] Overnight Mail

] Facsimile

on this $\underline{8^{++}}$ day of February, 2016.

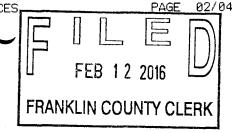
LANE V. ERICKSON

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02/12/2016 15:32 2087473283

ATKIN LAW OFFICES



Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	NOTICE OF APPEARANCE
Plaintiff/Counterdefendants, v.	Case No. CV-2015-132
ROBERT TALBOT and MICHELE TALBOT, husband and wife,	Judge: Naftz
Defendants/Counterclaimants.	

Blake S. Atkin, Atkin Law Offices, P.C. hereby enters his appearance as counsel for Glen Wayne Nielson and Cheryl E. Nielson in the above entitled action. All further notice and copies of pleadings, papers and other material relevant to this action should be directed to and served upon:

> Blake S. Atkin blake@atkinlawoffices.net Atkin Law Offices, P.C. 7579 N. Westside Hwy. Clifton, ID 83228

> > Dated this 12th day of February, 2016.

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Blake S. Atkin Atkin Law Offices, P.C.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February, 2016, a true and correct copy of the foregoing Notice of Appearance of Counsel was served upon each of the following individuals by causing the same to be delivered by the method and to the address indicated below:

Lane V. Erickson	X U.S. Mail	X E-mail	Facsimile
RACINE, OLSON, NYE, BUDGE			
& BAILEY CHARTERED			
201 East Center			
P.O. Box 1391			
Pocatello, Idaho 83204-1391			
Facsimile: (208) 232-7352			
Email: lve@racinelaw.net			
Franklin County Court	U.S. Mail	E-mail	X Facsimile
39 West Oneida			
Preston, Idaho 83263			
Via Fax: (208) 852-2926			

Dated this 12th day of February, 2016.

FILED

16 FEB 18 AM 8:41

RANALIN COUNTY CLERK

In

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

CASE NO. CV 15-132

Plaintiffs,

NOTICE OF HEARING

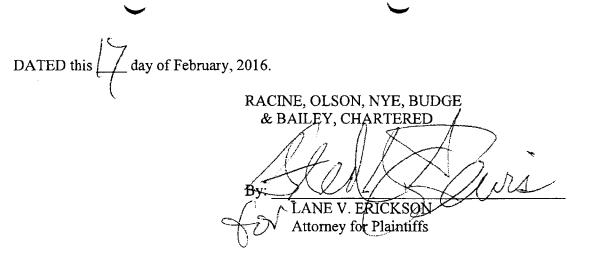
vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

Defendants.

PLEASE TAKE NOTICE that the undersigned will bring on for hearing Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife (hereafter "Defendants"), Motion for Summary Judgment, before the above-entitled Court on <u>Wednesday, March 16</u>, <u>2016</u> at <u>10:30 a.m.</u>, before the Honorable Judge Robert C. Naftz at the Franklin County Courthouse, 39 W. Oneida, Preston, Idaho.

NOTICE OF HEARING-1



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <u>1</u> day of May, 2014, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Glen and Cheryl Nielson 496 W. 2nd S. Preston, ID 83263

U. S. Mail Postage Prepaid Hand Delivery Overnight Mail Facsimile E-Mail LANE V. ERICKSON

NOTICE OF HEARING-2

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Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED IGFEBI9 AM 9:49 CANAL A COUNTY OLERK

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, huspand and wife,

CERTIFICATE OF SERVICE

Case No. CV-2015-132

Judge: Naftz

Defendants/Counterclaimants.

The undersigned certifies that she caused to be served a true and correct copy of the PLAINTIFFS'

SECOND SET OF INTERROGATORIES AND DOCUMENT REQUESTS TO DEFENDANTS

as indicated below:

X U.S. Mail X E-mail _____ Facsimile

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: 1ve@racinelaw.net

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 (Certificate Only) ___U.S. Mail ___E-mail X Facsimile

Dated this 19th day of February, 2016.

Jennifer Mariscal

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 13 FEB 29 PM 3: 34 FRANKLIN COUNTY CLERK

GERUIY

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

MOTION FOR LEAVE TO SUPPLEMENT DISCOVERY RESPONSES INCLUDING RESPONSES TO REQUESTS FOR ADMISSION

Case No. CV-2015-132

Judge: Naftz

Plaintiff through undersigned counsel respectfully request leave to file supplemental

responses to discovery requests including responses to requests for admission. This motion is

supported by the memorandum filed in support hereof.

DATED this 29th day of February, 2016.

Atkin Law Offices

Rahest

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 FEB 29 PM 3: 34 ERANKEN COUNTY CLERK

SEPUTY

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO SUPPLEMENT DISCOVERY RESPONSES INCLUDING RESPONSES TO REQUESTS FOR ADMISSION

Case No. CV-2015-132

Judge: Naftz

On September 17, 2015, Defendants served discovery requests including requests for

admission on the Plaintiffs.

On October 9, 2015, counsel for the Plaintiffs withdrew.

On October 21, 2015, Plaintiffs, whose counsel withdrew on October 9, 2015, emailed

Defendant's counsel a response to the discovery requests including the requests for admission

and stated in response to each interrogatory, document request and request for admission

"Plaintiffs Glen and Cheryl Nielson reserve the right to respond to this request."

Defendant's counsel, on December 9, 2015, wrote Plaintiffs and requested further

response. Defendants have not moved to compel answers to the discovery requests nor a motion

to have requests for admission be deemed admitted.

On February 12, 2016, Plaintiffs hired current counsel who has diligently reviewed the

case and has determined that the responses to the discovery requests were inadequate.

<u>ANALYSIS</u>

Under Idaho Rule of Civil Procedure 36(a),

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 15 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

I.R.C.P. 36(a).

The responses filed by the Plaintiffs pro se do not appear to be "addressed to the matter,"

and under the rule would likely be deemed admitted. However, rule 36(b) gives the Court the

power and discretion to allow the admissions to be withdrawn or amended.

Any matter admitted under this rule is *conclusively established* unless the court *on motion* permits withdrawal or amendment of the admission.... [T]he court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits.

I.R.C.P. 36(b)

Two requirements must be met before an admission may be amended or withdrawn

pursuant to Rule 36(b): (1) presentation of the merits must be promoted, and (2) the party who

obtained the admission must not be prejudiced by the withdrawal. I.R.C.P. 36(b). Quiring v.

Quiring, 944 P. 2d 695, 699 (Id. 1997).

If Plaintiffs are allowed to supplement their responses, including the responses to the requests for admission, Plaintiffs will be able to produce evidence to refute Defendant's theory of the case, defeat summary judgment and support genuine issues of fact that need to be resolved by trial. In her affidavit, Cheryl Nielson sets out the facts showing that she did not view the carport encroaching on her property as any kind of boundary line, and that the lilacs, by their nature, appeared to be a wind break, or aesthetic enhancement, rather than any sort of boundary line. Diana Rugg will testify that Defendant Robbie Talbot, immediately after the Plaintiffs purchased the property, knew that his carport was not the boundary of the property, but instead encroached on the property of his neighbors. See Affidavits of Cheryl Nielson and Diana Rugg attached hereto.

With discovery still open and a trial date several months off, it would not appear that Defendants will be prejudiced by withdrawal of the admissions. "Prejudice" as contemplated in F.R.C.P. 36(b) is "`not simply that the party who obtained the admission will now have to convince the factfinder of its truth. Rather, it relates to the difficulty a party may face in proving its case, e.g., caused by the unavailability of key witnesses, because of the sudden need to obtain evidence' with respect to the questions previously deemed admitted. *Quiring*, 944 P. 2d at 699. The party who obtained the admission has the burden of proving that withdrawal of the admission would prejudice the party's case. *Quiring*, 944 P. 2d at 700. I

Given the unfortunate timing of the withdrawal of Plaintiffs' lawyer at the very time these discovery requests were due, Plaintiffs respectfully request that they be allowed to supplement the discovery requests including the requests for admission to allow this matter to be determined on the merits.

Supplemental responses have been provided to opposing counsel and are attached hereto.

DATED this 29th day of February, 2016.

Atkin Law Offices

Roheste

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

AFFIDAVIT OF CHERYL NIELSON

Case No. CV-2015-132

Judge: Naftz

Cheryl Nielson, having been first duly sworn, deposes and says:

- 1. I am one of the named Plaintiffs in this matter.
- 2. I have personal knowledge of the matters set forth herein.
- 3. When my husband, Wayne, and I purchased our home, there was no fence separating our property from the Talbot property.
- 4. There was no fence line on the property either. There simply was nothing on the ground that appeared to be a property boundary.

- Set back from the road a distance was the Talbot's carport, but it only extends for about 18 feet. I certainly did not consider it to be a property boundary, especially since in civilized society people do not build on the property line.
- 6. There were lilac bushes planted next to the carport in an apparent attempt to cover the unsightly carport, but those did not appear to be a property boundary, since, as bushes they were so wide that if they had been planted to indicate a property line, it would be impossible to tell where the line was.
- 7. There is nothing on the ground that indicates any property boundary.
- When my husband measured the property in preparation to build a fence, we saw that the Talbot's carport encroached on our property by about 13 feet.
- 9. Our conclusion was not that someone had changed the property boundary by 13 feet, but that the Talbots had built their carport 13 feet onto our property.
- 10. Shortly thereafter I asked Robbie Talbot about it, informing him that his carport was 13 feet onto our property. His response was that the carport could be 12 or thirteen feet either way of the property line.
- 11. There was no way during our brief visit of the property before the purchase that we could have discovered that the Talbots had built on our property and there was certainly nothing on the ground that would have led us to wonder if the property line had been changed from what was described in our deed.

Dated this $\frac{24}{2}$ day of February, 2016

hen Hielon

Cheryl Nielson

SUBSCRIBED AND SWORN before me this $29\frac{44}{10}$ day of February, 2016.

JENNIFER MARISCAL Notary Public State of Idaho

Jennifer Mariscal Notary Public exp. 7-13-18 Affidavit of Cheryl Nielson

Blake S. Atkin #6903 ATKIN LAW OFFICES 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

AFFIDAVIT OF DIANA N. RUGG

Case No. CV-2015-132

Judge: Naftz

Defendants/Counterclaimants.

Diana N. Rugg, having been first duly sworn deposes and says:

- 1. I am over the age of 18 and have personal knowledge of the matters set forth herein.
- Shortly after Wayne and Cheryl Nielson bought their home in Preston, Idaho in August 2013, my husband Monte and I went to Preston to do some painting in the home.
- 3. While there we met their neighbors, Robbie Talbot and his wife, Michele.
- 4. Robbie told us that his carport was on Wayne and Cheryl's property.
- 5. I was surprised later to find out that these facts were not disclosed to Wayne and Cheryl when they bought the property.

Dated this <u>29</u> day of February, 2016 Diana A. Lugg Diana N. Rugg SUBSCRIBED AND SWORN before me this ______ day of February, 2016. Notary Public STACY BRITT We on mission #566201 We on unission Expires May 14, 2017 State of Utah Notary Public Attribution clause: This certificate is prepared for, and exclusively belongs to, the accompanying document entitled Affidavit of Diano N Rigg which consists of Ipg and is dated 2-29-16 If this certificate is appropriated to any document other than the one described herein, it shall be deemed nell and void

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION TO PLAINTIFFS

Case No. CV-2015-132

Judge: Naftz

ANSWERS TO INTERROGATORIES

<u>INTERROGATORY NO. 1</u>: Please identify each and every person you intend to call as a lay witness at trial and state the substance of the testimony each lay witness is expected to render. <u>Response to Interrogatory No. 1</u>: Plaintiffs object to this interrogatory on the ground that it is premature, discovery is not yet complete and Plaintiffs have not yet determined which witnesses they will call at the trial of this matter. Without waiving this objection, Plaintiffs will likely call Wayne Nielson, information relating to the property purchase and legal description of the property. Cheryl Nielson, information relating to the property purchase and legal description of

the property. c/o Plaintiff's counsel. Robert Talbot, information relating to the property purchase and legal description of the property, statements made relating to encroachments on Plaintiffs' property. Michele Talbot, information relating to the property purchase and legal description of the property, statements made relating to encroachments on Plaintiffs' property. Craig Shaffer, information relating to the splitting of the properties and the location of the fence. Sue Shaffer, information relating to the splitting of the properties and the location of the fence. Suel Murdock, information relating to the splitting of the properties and the location of the fence. Gae Murdock, information relating to the splitting of the properties and the location of the fence. Diana Rugg, conversations with Robert Talbot and Michele Talbot about encroaching on the Plaintiffs' property. Monte Rugg, conversations with Robert Talbot and Michele Talbot about encroaching on the Plaintiffs' property. Vincent Whitehead, information relating to the nature of the boundary between the properties at the time he constructed the Talbot home. Contact information for the Shaffers, the Murdocks and the Whiteheads is known to Defendants' counsel. INTERROGATORY NO. 2: If you have not yet made a final decision as to what lay witnesses you intend or expect to call at trial, please provide the following information:

- a. The name of any person who you believe may have factual information to support the claims you set forth in your Complaint and/or the denials contained in your Answer to the Counter-Claim;
- b. A summary of the information each person identified in Subpart a has or may have which you believe supports your claim and/or denials; and

c. The address and telephone number of the persons identified.

<u>Response to Interrogatory No. 2</u>: See, response to Interrogatory No. 1. In addition, Scott Moony heard Talbots say they offered the Nielsons \$10,000 to purchase the encroaching property and

the Nielsons turned it down. Does not recall ever seeing a fence. Crystal Rollings - Robbie Talbot acknowledged while building the carport that it was on his neighbor's property, but they would not miss it. Craig Shafer recalls the fence being to the east of the inside wall of the carport.

<u>INTERROGATORY NO. 3</u>: Please state whether you, your attorneys or anyone acting on your behalf has obtained statements in any form from any person relating to the events relevant to this litigation. If so, please identify the following in accordance with the definitions herein:

- a. The person from which such statements were taken:
- b. The documents consisting of the statement, including in your response the dates of the statements, whether such statements were written, oral or recorded; and
- c. The person presently having custody of such statements.

<u>Response to Interrogatory No. 3</u>: Plaintiffs object to this request on the ground that it seeks information protected by the attorney/client and or attorney work product privilege.

<u>INTERROGATORY NO. 4</u>: Please provide a list of all exhibits which you intend or expect to utilize at the trial of this cause, giving a description of each exhibit and a summary of the exhibit's expected relevance to this action.

<u>Response to Interrogatory No. 4</u>: Plaintiffs object to this interrogatory on the ground that it is premature, discovery is not yet complete and Plaintiffs have not yet determined which exhibits they will utilize at the trial of this matter. Without waiving this objection Plaintiffs will likely use the deeds attached to the Complaint, Counterclaim and the Motion for Summary Judgment and affidavits filed by the Defendants, various photos depicting the property, maps showing the property and the location of various buildings and plants on the property.

INTERROGATORY NO. 5: Identify in accordance with the definitions above each and every

individual person answering or participating in the answers to each interrogatory, Requests for Admission, and Requests for Production propounded, specifying, as to each person, the particular discovery request which he or she answers or participates in answering. <u>Response to Interrogatory No. 5</u>: Plaintiffs object to this request on the ground that it seeks information protected by the attorney/client and or attorney work product privilege. Without waiving this objection, Plaintiffs state that Cheryl Nielson participated in the preparation of these answers.

<u>REQUEST FOR ADMISSION NO. 1</u>: Please admit that at the time you moved into your home, there were lilac bushes growing on what you believed was the property line between you and the Defendants.

<u>Response to Request for Admission No. 1</u>: Denied. Plaintiff does not believe that the lilac bushes were on the property line, the lilac bushes took up several feet, and did not extend more than about 18 feet in from the road.

<u>REQUEST FOR ADMISSION NO. 2</u>: Please admit that since owning your property you have built no structures upon your property.

Response to Request for Admission No. 2: Admitted.

<u>REQUEST FOR ADMISSION NO. 3</u>: Please admit that since owning your property you have taken down no structures upon your property.

Response to Request for Admission No. 3: Admitted.

<u>REQUEST FOR ADMISSION NO. 4</u>: Please admit that since owning your property the

Defendants have built no structures upon the property they claim to own.

Response to Request for Admission No. 4: Admitted.

REQUEST FOR ADMISSION NO. 5: Please admit that since owning your property the

Defendants have taken down no structures upon the property they claim to own.

Response to Request for Admission No. 5: Admitted.

<u>REQUEST FOR ADMISSION NO. 6</u>: Please admit that it was Craig and Sue Schaeffer that owned all of the property that is now composed of your property and the Defendants' property. Response to Request for Admission No. 6: Admitted.

<u>REQUEST FOR ADMISSION NO. 7</u>: Please admit that you have not obtained any written statements from any of the previous owners of your property.

Response to Request for Admission No. 7: Admitted.

<u>REQUEST FOR ADMISSION NO. 8</u>: Please admit that you have not obtained any oral statements from any of the previous owners of your property.

Response to Request for Admission No. 8: Denied. See answers to interrogatories.

<u>REQUEST FOR ADMISSION NO. 9</u>: Please admit that you have not obtained any written statements from any of the previous owners of the Defendants' property.

Response to Request for Admission No. 9: Admitted.

<u>REQUEST FOR ADMISSION NO. 10</u>: Please admit that you have not obtained any oral

statements from any of the previous owners of the Defendants' property.

Response to Request for Admission No. 10: Denied. See answers to interrogatories.

<u>REQUEST FOR ADMISSION NO. 11</u>: Please admit that you hired a surveyor to identify the property line between your property and the Defendants' property.

Response to Request for Admission No. 11: Admitted.

<u>REQUEST FOR ADMISSION NO. 12</u>: Please admit that the surveyor identified the property line between your property and the Defendants' property.

Response to Request for Admission No. 12: Denied. The surveyor will be used by the Plaintiffs

as an expert witness and has not yet completed his work.

<u>REQUEST FOR ADMISSION NO. 13</u>: Please admit that the surveyor you hired told you that because of the amount of time that had transpired the boundary line between your property and the Defendants' property would the one that had been relied upon by all previous owners. <u>Response to Request for Admission No. 13</u>: Denied. That legal opinion is not one to which a surveyor is qualified to opine. In any event, Mr. Allen has been engaged as an expert witness but has not yet formulated his opinions.

<u>REQUEST FOR ADMISSION NO. 14</u>: Please admit that you have not paid the surveyor you hired for the work that he performed for you.

Response to Request for Admission No. 14: Denied.

<u>REQUEST FOR ADMISSION NO. 15</u>: Please admit that the name of the surveyor you hired was Brian Allen.

Response to Request for Admission No. 15: Admitted.

<u>REQUEST FOR ADMISSION NO. 16</u>: Please admit that your property is not in a platted subdivision.

Response to Request for Admission No. 16: Admitted.

<u>REQUEST FOR ADMISSION NO. 17</u>: Please admit that there is no record of any survey being completed upon your property at any time.

Response to Request for Admission No. 17: Admitted.

<u>REQUEST FOR ADMISSION NO. 18</u>: Please admit that you terminated your relationship with your surveyor because he was collecting information to use to determine what the legal property line was between you and the Defendants.

Response to Request for Admission No. 18: Denied. The relationship with the surveyor has not

been terminated by Plaintiffs.

INTERROGATORY NO. 6: Should you deny any portion of the Requests for Admission Nos. 1-18 please set forth in detail and with particularity all the facts, circumstances, background, evidence and testimony from any individual, entity or source whatsoever, that supports your denial identifying with specificity which Request for Admission said evidence and/or items applies to.

Response to Interrogatory No. 6: See, responses to Request for Admission.

<u>INTERROGATORY NO. 7</u>: Please identify any Expert Witnesses you have at any time employed, retained, paid or sought concerning any of the claims set forth in your Verified Complaint.

Response to Interrogatory No. 7: Brian Allen.

<u>INTERROGATORY NO. 8</u>: If you identify any person(s) in response to Interrogatory No. 7 above then for each such person(s) please provide the following:

- A description of the person(s) profession and of the qualifications said person(s)
 holds in said profession;
- A description of each and every item said person(s) reviewed, analyzed, read, or studied in the course of said person(s) performance for which hired;
- c. A description of the opinion(s) said person(s) reached, described, discussed or rendered to you whether in writing or orally;
- d. The amount of money you have paid or are contracted to pay to each said person(s) for performing any functions for you.

<u>Response to Interrogatory No. 8</u>: a. See, C.V. of Brian Allen. b. Plaintiff objects to this interrogatory on the ground that it is premature. Mr. Allen has not yet completed his opinion.

Plaintiff will supplement this interrogatory answer at the appropriate time. c. Plaintiff objects to this interrogatory on the ground that it is premature. Mr. Allen has not yet completed his opinion. Plaintiff will supplement this interrogatory answer at the appropriate time. d. Plaintiff has agreed to pay Mr. Allen his normal hourly rate.

INTERROGATORY NO. 9: Please describe in detail and with particularity each and every conversation and/or correspondence you have had with any person, at any time, concerning the subject matter of your Verified Complaint, and/or of the Counterclaim filed by the Defendants. Response to Interrogatory No. 9: Plaintiffs object to this interrogatory on the ground that it seeks information protected by the attorney/client and or attorney work product privilege and on the further ground that it is overbroad and unduly burdensome. Without waiving this objection, Plaintiffs state that they have spoken with the Defendants on numerous occasions, have spoken to Dr. Cromwell about Robbie Talbot building his carport in a way that encroached on the property, spoke to Diana Rugg and Monte Rugg about statements made by Robbie Talbot that his carport and shed encroached on the Plaintiffs' property. Plaintiffs spoke with Scott Moony who told them that the Talbots claim to have offered the Nielsons \$10,000 for the property in dispute and the Nielsons refused. He also told Plaintiffs that the shed was put up when the Larsons owned the property, that it had a covered parking area next to it that was removed. He has lived in the neighborhood for 20 years and has never seen a fence on the property. He reported that Robbie Talbot had been recording Cheryl Nielson and taking pictures of her without her knowledge. He said Robbie told him that Wayne was going to kick his butt and he was not afraid of Wayne. Kenneth Hollingsworth said that Robbie Talbot has been talking about the Nielsons in the coffee shop about the land dispute and that all the Nielsons want to do is cause trouble. Crystal Rollings said when she and Robbie Talbot worked at Hansen's Glass and

Paint Robbie ordered his materials for the carport and Crystal told Robbie: "you can't put that carport up cause it's not your property" and Robbie responded "they won't even know the property is missing". Maddie Chatterton stated she has lived here 23 years and does not recall there ever being a fence. Reo Newbold stated he has lived here since 1975 and does not recall any fence his property was surveyed in the early 70's and he is aware that the Talbot's have part of his property. Mark Beckstead stated that he never said the things attributed to him by Robbie's lawyer. Mr. Garza stated he has lived here over 30 years and does not recall there ever being a fence. Mr. Ken stated he has lived here over 20 years and does not recall a fence. Craig Shafer stated that to the best of his knowledge the fence would have gone to the inside of wall of the carport.

<u>INTERROGATORY NO. 10</u>: Please describe in detail and with particularity each and every document or tangible item that you have obtained, reviewed, or analyzed (regardless of whether you intend to rely upon such as an exhibit at the trial of this cause) concerning the subject matter of your Verified Complaint, and/or Counterclaim filed by the Defendants.

Response to Interrogatory No. 10: Such documents have been or will be produced.

<u>INTERROGATORY NO. 11</u>: Please describe in detail and with particularity when it was that you removed any trees, shrubs, bushes or the like that at any time during your ownership of your property were between your house and the Defendants' house.

<u>Response to Interrogatory No. 11</u>: Plaintiffs removed lilac bushes that had been planted to shield the view of the unsightly carport that the Talbots had erected on the property.

<u>INTERROGATORY NO. 12</u>: Please describe in detail and with particularity each and every conversation and/or correspondence you have had at any time after you moved into your house with the Defendants, setting forth the date of said conversation/correspondence, who the

conversation/correspondence was with and the substance of the conversation/correspondence. Response to Interrogatory No. 12: Plaintiff object to this interrogatory on the ground that it is overbroad and unduly burdensome. Without waiving this objection, Plaintiffs state that they have spoken with the Defendants on numerous occasions. Some that stand out are: Around the end of September of 2013 the Plaintiffs learned that the Talbot's had encroached on the Plaintiffs' property by almost 13ft. At that time, Cheryl Nielson spoke to Robert Talbot and told him that she was going to hire a surveyor to survey the property. At that time Robert Talbot said "there could be a 10 to 15 foot difference either in his favor or ours". That same week Robert, Michelle and Cheryl Nielson were discussing the matter out in the back yard of their home and they told Cheryl that they had a Quit Claim Deed to the property and a letter from Mr. Cromwell that gave them permission to build on the property. At that time Michelle told Cheryl that if they were off 12 ft. then that meant that their property would go 12 ft. east towards Mr. Newbolds property and that meant all of our boundary lines were off. Michelle also told Cheryl that she was aware of the boundary stake that was Mr. Newbolds and that it was red and they tried to find it but couldn't. Michelle Talbot came to the Nielson house a few weeks later and offered to pay for Brian Allen's survey and that Brian Allen told her he would go down and change the property deed to reflect the location of their carport. Cheryl Nielson said no, that she was not going to sign any property over to the Talbots. At various times the dates and times of which cannot be remembered, the Talbots told the Nielsons that they had a quit claim deed, paperwork, permission from someone from the county to build but they couldn't remember the name. At some point Cheryl Nielson was outside doing yardwork and Michelle Talbot was in her driveway and told Cheryl Nielson that it looked like they were going to get the property and asked, "what are you going to do about the lilac bushes?", Cheryl told her they were coming down.

INTERROGATORY NO. 13: If you claim to have any admissions from any of the Defendants concerning any portion of the subject matter of your Verified Complaint or the Defendants' Counterclaim, please describe in detail and with particularity the substance of the admission, the date said admission was made, the circumstances surrounding said admission, and what portion of your Verified Complaint or the Defendants' Counterclaim the admission is applicable to. Response to Interrogatory No. 13: In addition to the admissions set out in response to Interrogatory No. 12, Defendant Robbie Talbot admitted to painters on the property, Monte Rugg and Diana Rugg in 2013 that his carport encroached on the Plaintiffs' property.

<u>INTERROGATORY NO. 14</u>: Please describe in detail and with particularity each and every document and/or other tangible piece of evidence you have that you believe supports your First Affirmative Defense to the Defendants' Counterclaim.

Response to Interrogatory No. 14: Such documents have been or will be produced.

<u>INTERROGATORY NO. 15</u>: Please describe in detail and with particularity each and every document and/or other tangible piece of evidence you have that you believe supports your Second Affirmative Defense to the Defendants' Counterclaim.

Response to Interrogatory No. 15: Such documents will be produced.

<u>INTERROGATORY NO. 16</u>: Please describe in detail and with particularity each and every document and/or other tangible piece of evidence you have that you believe supports your Third Affirmative Defense to the Defendants' Counterclaim.

<u>Response to Interrogatory No. 16</u>: Such documents will be produced.

<u>INTERROGATORY NO. 17</u>: Please describe in detail and with particularity each and every conversation you have had with any third party concerning the Defendants individually; the

property line between you and the Defendants; and/or conduct of the Defendants since you moved into your house.

<u>Response to Interrogatory No. 17</u>: Plaintiffs object to this interrogatory on the ground that it has been asked and answered and is overbroad and unduly burdensome.

<u>INTERROGATORY NO. 18</u>: Please describe in detail and with particularity the directions you gave to the person and/or company you hired to cut down trees on your property concerning the time of day in which you wanted the work to be done and the reasons you wanted the work to be done at that time of day. In answering this Interrogatory, please provide the date of any such conversations, the name(s) of the individual(s) you conversed with and a description of any response you received from any such individual(s).

<u>Response to Interrogatory No. 18</u>: Plaintiffs object to this interrogatory on the ground that it seeks information that is not relevant nor calculated to lead to the discovery of admissible evidence. Chad Hull laughed after Cheryl told him it was OK to come during the day to do the trees and the chipping because Robbie slept during the day.

<u>INTERROGATORY NO. 19</u>: Please describe in detail and with particularity each and every conversation you have had personally with either of the Defendants at any time for any reason concerning the subject matter of your complaint and/or the pending suit. In answering this Interrogatory, please provide the date of any such conversations, identify which Defendant you conversed with and provide a description of any response you received from any such individual(s).

<u>Response to Interrogatory No. 19</u>: Plaintiffs object to this interrogatory on the ground that it is duplicative and has been asked and answered and is overly broad and unduly burdensome. <u>INTERROGATORY NO. 20</u>: Please describe in detail and with particularity each and every

threat and/or harassment if any, of any type or kind, whether written or oral, you claim to have suffered from any of the Defendants since moving into your property. In answering this Interrogatory, please provide the date of any such threat and/or harassment, identify which Defendant you conversed with, identify whether any such threat and/or harassment was oral or written, and provide a descript of any response you provided back to the Defendants. Response to Interrogatory No. 20: Cheryl Nielson has been harassed by Robert Talbot's Small Engine Repair Business that he has had at his residence without a Business permit with Preston City, the revving up of the 4 wheelers, snow mobiles, golf carts and tillers which he repairs. The fumes get overwhelming along with the noise. Also his clients use Plaintiffs property to turn around their trailers and trucks. He is also storing 55 gallon drums of oil in the shed that is on part of Plaintiff's property. He annoys Plaintiffs as he races his client's 4 wheelers and snowmobiles behind plaintiff's house. He is said by Nate Bartschi to have put up cameras on Plaintiffs. He has been taking pictures and recording Plaintiffs for some time now invading their privacy. On September 7, 2014 Plaintiffs let their 6 chickens out of the pen so they could roam around and eat the bugs. Plaintiffs were out in the yard getting ready to do some barbequing and noticed the chickens were in the hedges in the front of the property. Later the Plaintiffs stepped inside for just a moment and when returning outside could not find the chickens. Wayne Nielson went over to the Talbot's, and Michelle and Robert were sitting in chairs on their porch Mr. Nielson asked if they had seen the chickens and neither one of them would look at him, and they both answered no. A few minutes later the police came to let the Nielsons know that their chickens were at large and were given a warning. Wayne Nielson told the officer that if Robert Talbot killed their chickens there would be consequences. After the officer left the chickens reappeared.

INTERROGATORY NO. 21: Please describe in detail and with particularity each and every City Council Meeting you have attended in Preston, Idaho, in which you made any public statement(s) about the subject matter of your complaint, setting forth the date of the meeting, the location of the meeting and the content of the public statement(s) which you made.

Response to Interrogatory No. 21:

On October 13, 2014 complaint was made by the Nielsons of carport and shed on their property City Council Meeting located at 70 West Oneida Street, Preston, Idaho. Cheryl Nielson asked the city council why permission was granted to the Talbot's for building the carport. He had no permit to build the carport.

<u>INTERROGATORY NO. 22</u>: Please describe in detail and with particularity each and every conversation you had with Brian Allen concerning the subject matter of this lawsuit setting forth the date on which each such conversation occurred, the location of each such conversation and the content of each such conversation, including your statements/responses and Brian Allen's statements/responses.

<u>Response to Interrogatory No. 22</u>: Plaintiffs hired Brian Allen to determine whether the carport and shed encroach on the property line as set out in the deeds to the property. He is in the process of preparing his opinion in that regard.

<u>INTERROGATORY NO. 23</u>: Please describe in detail and with particularity each and every conversation you had with any other surveyor concerning the subject matter of this lawsuit, setting for the name of any such surveyor, the date on which each such conversation occurred, the location of each such conversation and the content of each such conversation, including your statements/responses and Brian Allen's statements/responses.

Response to Interrogatory No. 23: None.

<u>INTERROGATORY NO. 24</u>: Please describe in detail and with particularity each and every conversation you had with any of the prior owners of your property setting forth the name of any prior owner with which you have conversed, date on which each such conversation occurred, the location of each such conversation and the content of each such conversation, including your statements/responses and the prior owner's statements/responses.

<u>Response to Interrogatory No. 24</u>: Around July of last year Cheryl Nielson met with Sandra Parker and told her that the Nielsons had a problem due to the Talbot's having encroached on their property that they had purchased from the Parkers. At that time she stated that "this was the first time of her hearing about this and was not aware of it". She also told Cheryl that she had very few conversations with the Talbot's and that they really didn't associate with each other and that she only really communicated with Dennis, Melissa and Nate across the street.

<u>INTERROGATORY NO. 25</u>: Please describe in detail and with particularity each and every conversation you had with any of the prior owners of the Defendant's property setting forth the name of any prior owner with which you have conversed, date on which each such conversation occurred, the location of each such conversation and the content of each such conversation, including your statements/responses and the prior owner's statements/responses. <u>Response to Interrogatory No. 25</u>: Plaintiffs object to this interrogatory on the ground that it has been asked and answered.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

<u>REQUEST FOR PRODUCTION NO. 1</u>: Please produce true and correct copies of any and all documents including but not limited to correspondence, electronic recordings, video recordings and/or audio recordings, and/or any other documents which you have within your possession that supports your responses to Interrogatory Nos. 1 through 25 above and/or Requests for Admission

Nos. 1 through 18 above. With respect to each document, indicate the interrogatory or interrogatories or request(s) for admission to which each document is responsive.

<u>Response to Request for Production No. 1</u>: Plaintiff objects to this request on the ground and to the extent that it requests information protected by the attorney client and/or work product privilege. Without waiving this objection, such documents will be produced.

<u>REQUEST FOR PRODUCTION NO. 2</u>: Please produce true and correct copies of every and all document(s) which you intend to introduce into evidence at the trial of this matter.

<u>Response to Request for Production No. 2</u>: Plaintiffs object to this request on the ground that it is premature. When Plaintiffs determine which exhibits to use at trial Plaintiffs will supplement this request.

<u>REQUEST FOR PRODUCTION NO. 3</u>: Please produce true and correct copies of each and every document of any kind or type whatsoever which you have within your possession that were either given to or were provided from any Expert Witness that you have at any time consulted or retained concerning the subject matter of your Verified Complaint or the Defendants' Counterclaim.

<u>Response to Request for Production No. 3</u>: Plaintiffs object to this request on the ground that it is premature. Plaintiffs will supplement this request at the appropriate time.

<u>REQUEST FOR PRODUCTION NO. 4</u>: Please produce true and correct copies of each and every document of any kind or type whatsoever which you have within your possession that were either given to or were provided from Brian Allen.

<u>Response to Request for Production No. 4</u>: Plaintiffs object to this request on the ground that it is premature. Plaintiffs will supplement this request at the appropriate time.

<u>REQUEST FOR PRODUCTION NO. 5</u>: Please produce true and correct copies of each and

every document of any kind or type whatsoever which you have within your possession that were either given to or were provided from the Defendants.

<u>Response to Request for Production No. 5</u>: Such documents will be produced.

<u>REQUEST FOR PRODUCTION NO. 6</u>: Please produce true and correct copies of each and every document of any kind or type whatsoever which you have within your possession that were either given to or were provided from any prior owner to your property.

Response to Request for Production No. 6: None.

<u>REQUEST FOR PRODUCTION NO. 7</u>: Please produce true and correct copies of each and every document of any kind or type whatsoever which you have within your possession that were either given to or were provided from any prior owner of the Defendants' property. Response to Request for Production No. 7: None.

<u>REQUEST FOR PRODUCTION NO. 8</u>: Please produce true and correct copies of each and every document of any kind or type whatsoever which you have within your possession that were either given to or were provided from any County or City of Preston official, officer and/or representative.

Response to Request for Production No. 8: None.

<u>REQUEST FOR PRODUCTION NO. 9</u>: Please produce true and correct copies of each and every document of any kind whatsoever which you have within your possession that were either given to or were provided from any neighbor or other individual(s) who live within a 3 block radius of your property that is related to the subject matter of the above-captioned matter. Response to Request for Production No. 9: None.

REQUEST FOR PRODUCTION NO. 10: Please produce true and correct copies of each and

every document of any kind or type whatsoever which you have within your possession that were either given to or were provided from any neighbor or other individual(s) who live within a 3 block radius of your property that is related to the subject matter of the above-captioned matter. <u>Response to Request for Production No. 10</u>: None.

<u>REQUEST FOR PRODUCTION NO. 11</u>: Please produce true and correct copies of each and every document of any kind or type whatsoever which you have within your possession that consist of photographs, drawings, renditions or the like of either your property or the Defendants' property regardless of the timeframe in which such items were created. <u>Response to Request for Production No. 11</u>: Such documents have been or will be produced. <u>REQUEST FOR PRODUCTION NO. 12</u>: Please produce true and correct copies of each and every document of any kind or type whatsoever which you have within your possession that support your affirmative defenses to the Counterclaim in the above-captioned matter. <u>Response to Request for Production No. 12</u>: Such documents have been or will be produced.

DATED this 29th day of February, 2016.

Atkin Law Offices

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Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants

I, Cheryl Nielson, having been first duly sworn states: I have reviewed the answers to

interrogatories set out above and the same are true to the best of my knowledge, information, and

belief.

ielsw Cheryl Nielson

<u>Acknung 29, 2016</u> Date

SUBSCRIBED AND SWORN before me this 29^{\pm} day of February, 2016.



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SEPHITY

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife, **CERTIFICATE OF SERVICE** Plaintiff/Counterdefendants, Case No. CV-2015-00164 132 v. ROBERT TALBOT and MICHELE

Judge: Naftz

Defendants/Counterclaimants.

TALBOT, husband and wife,

The undersigned certifies that she caused to be served a true and correct copy of the following documents as indicated below:

- 1. Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission
- 2. Memorandum in Support of Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission
- 3. Answers to Defendants' First Set of Interrogatories, Requests for Admission and **Requests for Production to Plaintiffs**

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 X U.S. Mail X E-mail _____ Facsimile

___U.S. Mail ___E-mail X In-Person

Dated this 29th day of February, 2016.

Jennifer Maissal

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TRANKLIN COUNTY CLERK

DEPULT?

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

NOTICE OF HEARING

Case No. CV-2015-132

Judge: Naftz

Defendants/Counterclaimants.

Please take notice that the hearing on the Plaintiffs Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission will be held on Wednesday, March 16, 2016, at 10:30 a.m.

DATED this 2nd day of March, 2016.

Atkin Law Offices

Jake BA

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants

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CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the NOTICE OF

HEARING as indicated below:

X U.S. Mail X E-mail ____Facsimile

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 ___U.S. Mail X E-mail ____ In-Person

Dated this 2nd day of March, 2016.

Jennifer Mariscal

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 18 MAR - 2 PN 2:28 A MARIER EROCATY CLERK KA

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

PLAINTIFFS' RESPONSE TO DEFENDANT/COUNTERCLAIMANT'S MOTION FOR SUMMARY JUDGMENT

Case No. CV-2015-132

Judge: Naftz

STATEMENT OF MATERIAL FACTS THAT ARE IN DISPUTE THAT PRECLUDE SUMMARY JUDGMENT

Responses to Defendants' statement of facts

(These responses are numbered as numbered in Defendants' memorandum)

4. On or about April 5, 1972, Myrtle Ransom deeded certain real property located in

Franklin County, Idaho to Howard Almond. This transfer of real property was made by warranty

deed, a true and correct copy of which is attached to Plaintiffs' Complaint as Exhibit "A" which

is incorporated herein by reference as it set forth fully.

Response to No. 4: No dispute.

5. On or about July 2, 1979, Howard Almond and Laura Almond deeded property to Craig and to Sue Shaffer, property by warranty deed recorded on July 11, 1979, as Instrument No. 150231, as modified by the certain warranty deed recorded on October 2, 1981 as Instrument No. 157161. (See Affidavit of Craig Shaffer, (hereafter Shaffer Affidavit), and Plaintiff's Complaint Exhibits "B" and "C".)

Response to No. 5: No dispute.

6. A portion of the property was enclosed by a fence, because it had been used as a pasture by the Almonds. (See Shaffer Affidavit.)

Response to No. 6: No dispute.

7. Craig and Sue Shaffer decided to split the property into two pieces with one piece being the area enclosed by the fence (hereafter the "Talbot Property"), and the remainder being the other piece (hereafter the "Nielson Property"). (See Shaffer Affidavit and Plaintiff's Complaint.)

Response to No. 7: Paragraph 7 is disputed. Craig and Sue Shaffer sold the property enclosed by the fence to Gae and Suel Murdock. In carrying out that transaction they had a legal description created to reflect the location of the fence and they gave a quit claim deed to the Murdocks that included that legal description and believed the whole time that they owned the property that the legal description and the fence coincided. Affidavit of Craig Shaffer dated March 2, 2016.

8. On or about January 17, 1985, Craig and Sue Shaffer sold the property enclosed by the fence, the Talbot Property, to Suel Murdock and Gae Murdock by Quit Claim Deed which was recorded as Instrument No. 168360. (See Shaffer Affidavit and Plaintiff's Complaint, Exhibit "J".)

Response to No. 8: Paragraph 8 is disputed. Craig and Sue Shaffer sold the property to Gae and Suel Murdock. In carrying out that transaction they had a legal description created to reflect the location of the fence, and they gave a quit claim deed to the Murdocks that included that legal description and believed the whole time that they owned the property that the legal description and the fence coincided. Affidavit of Craig Shaffer dated March 2, 2016.

9. In selling the Talbot Property to Suel Murdock and Gae Murdock, it was agreed that the Murdocks were purchasing all of the property enclosed by the fence. The Shaffers agreed with the Murdocks that the fenceline would be the property boundary line which divided the Talbot Property from the Nielson Property. (See Shaffer Affidavit and Gae Murdock Affidavit.)

Response to No. 9: Paragraph 9 is disputed. Craig and Sue Shaffer sold the property to Gae and Suel Murdock. In carrying out that transaction they had a legal description created to reflect the location of the fence and they gave a quit claim deed to the Murdocks that included that legal description and believed the whole time that they owned the property that the legal description and the fence coincided. Affidavit of Craig Shaffer dated March 2, 2016. The fence did not extend all the way to the road.

10. The Shaffers and the Murdocks jointly created a legal description for the Talbot Property that was included in the Deed to the Murdocks that the Shaffers and the Murdocks all believed reflected their agreement of having the fenceline be the boundary line between the properties. (See Shaffer Affidavit and Gae Murdock Affidavit.)

Response to No. 10: Paragraph 10 is disputed. The Shaffers and the Murdocks

had a legal description that they both believed accurately reflected the actual location of the fence, but the fence did not extend all the way to the road.

11. The fenceline was maintained as the boundary line between the Talbot Property and the Nielson Property by the Shaffers and the Murdocks the entire time that these parties owned their respective properties, as described above. (See Shaffer Affidavit and Gae Murdock Affidavit.)

Response to No. 11: Paragraph 11 is disputed. The Shaffers and the Murdocks had a legal description that they both believed accurately reflected the actual location of the fence, but the fence did not extend all the way to the road.

12. On September 22, 1986, the Shaffers deeded the Nielson Property to Phillip and Sherry Cromwell, which was subsequently then deeded in turn to the Heaps, the Parkers and then finally to the Plaintiffs. This was accomplished by the Deed attached to Plaintiffs' Complaint as Exhibits "D", "E", "F", "G" and "H" which are incorporated herein by reference as if set forth fully.

Response to No. 12: No dispute.

13. The Talbots purchased the Talbot Property from Dave and Brenda Larsen on August 11, 1995. At the time the Talbots purchased the Talbot Property, the fence had been taken down and in its place lilacs, shrubs and plants had been planted to provide a boundary line between the Talbot Property and the Nielson Property which lilacs, shrubs and plants were cared for and maintained by the owners of the Talbot Property and the Nielson Property and the Nielson Property. (See Michele Talbot Affidavit and Plaintiff's Complaint Exhibit "L".)

Response to No. 13: Paragraph 13 is disputed. The fence was taken down some time before the Larsens owned the property. At the time Vince Whitehead built the

home that is now the Talbot Home, there was no fence on the property. There were no lilac bushes on the property at that time. Affidavit of Vince Whitehead.

14. Prior to the Talbots' purchasing the Talbot Property, the previous owners, the Larsens had installed a sprinkler system which provided water/irrigation to the grass and lawn, and a storage shed up to the boundary line maintained between the Talbot Property and the Nielson Property. (See Talbot Affidavit.)

Response to No. 14: Paragraph 14 is disputed. The shed and the carport encroach on the Nielson property. They are not maintained as a boundary line. The irrigation lines extend even beyond what the Talbots are now claiming as a boundary line. Affidavit of Glen Nielson.

15. After the Talbots purchased the Talbot Property they installed a carport up to the boundary line of the property, with the lilacs, shrubs and plants that were cared for and maintained by both owners. (See Michele Talbot Affidavit.)

Response to No. 15: Paragraph 15 is disputed. The Talbot's installed a carport that goes over the boundary line of the property. The lilacs, shrubs and plants form no kind of line that could be viewed as a demarcation of a boundary line. Affidavit of Glen Nielson; Motion to Strike the Affidavit of Michele Talbot.

16. In June 2014, the Plaintiffs became the owner of the Nielson Property adjacent to that of the Defendants. Immediately upon obtaining ownership, Plaintiffs claim to have learned that the legal description they obtained through their warranty deed entitled them to those portions of the Talbot Property that have the Defendants' sprinkler system, shrubs and/or trees and also has the shed and a carport upon them. The Plaintiffs became irate and demanded that the Defendants remove all of these improvements from the property. (See Plaintiffs' Complaint

and Michele Talbot Affidavit.)

Response to No. 16: Paragraph 16 is disputed. The legal description in both deeds describe a boundary line that has been encroached by the Defendants. There is no evidence of a boundary line that is different than the legal description in both deeds. See motion to strike the affidavit of Michele Talbot.

17. Litigation commenced between the parties with the Plaintiffs serving a Complaint upon the Talbots on March 23, 2015.

Response to No. 17: No dispute.

18. On or about September 17, 2015, the Talbots through counsel, served upon the Plaintiffs written Discovery Requests including Requests for Admission.

Response to No. 18: No dispute.

19. Request for Admission No., states as follows:

<u>REQUEST FOR ADMISSION NO. 1</u>: Please admit that at the time you moved into your home, there were lilac bushes growing on what you believed was the property line between you and the Defendants.

(See Affidavit of Lane V. Erickson.)

Response to No. 19: No dispute. Plaintiffs have now moved for leave to amend their answer to this request for admission. See, Plaintiffs' Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission.

20. Plaintiffs failed to respond to Talbots' written Discovery Requests and failed to specifically admit or deny any of the Requests for Admission, including Request for Admission No. 1, listed above. (See Erickson Affidavit.)

Response to No. 20: No dispute. Plaintiffs have now moved for leave to amend

their answer to this request for admission. See, Plaintiffs' Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission.

21. On October 21, 2015, Talbots' counsel received an e-mailed document from Cheryl Nielson that simply said in response to each Interrogatory, Request for Admission and Request for Production, "Plaintiffs Glen and Cheryl Nielson reserve the right to respond to this request." (See Erickson Affidavit.)

Response to No. 21: No dispute.

22. In response, on October 21, 2015, Talbots' Counsel e-mailed the Plaintiffs through Cheryl Nielson and requested that written Responses be provided to Defendants' written Discovery Requests. (See Erickson Affidavit.)

Response to No. 22: No dispute.

23. The Talbots received no additional written Responses to Talbots' written Discovery Requests from Plaintiffs. (See Erickson Affidavit.)

Response to No. 23: Paragraph 23 is disputed. On February 29, 2016, Plaintiffs filed supplemental answers and a Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission.

24. On December 9, 2015, Talbots' counsel served a written letter upon the Plaintiffs stating as follows:

This letter serves as notice that you have failed to respond to the Discovery Requests that were served upon you on September 17, 2015. With your attorney withdrawing from the case the 30 day time limit set forth in I.R.C.P. Rules 33(a)(2); 34(b) and 36(a) were tolled on October 9th but became due on November 9th, 2015.

I recognize that you attempted to e-mail to me Responses which were barely legible. However, the Responses did not provide anything substantive. Rather, your Responses simply stated that you reserve a right to respond. That is not an adequate Response pursuant to the Rules set forth above. We will provide you with ten (10) additional days to provide a substantive Response. Should you fail to do so, we will proceed with our rights pursuant to the above cited Rules.

(See Erickson Affidavit.)

Response to No. 24: No dispute. Plaintiffs have now moved for leave to amend their answer to this request for admission. See, Plaintiffs' Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission.

25. Again the Talbots' received no written response from the Plaintiffs to this letter and demand. (See Erickson Affidavit.)

Response to No. 25: Paragraph 25 is disputed. On February 29, 2016, Plaintiffs filed supplemental answers and a Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission.

26. The time in which Plaintiffs have to provide written responses to the Talbots' written discovery requests is now passed pursuant to I.R.C.P. Rules 33(a)(2); 34(b) and 36(a). (See Erickson Affidavit.)

Response to No. 26: Paragraph 26 is disputed. On February 29, 2016, Plaintiffs filed supplemental answers and a Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission.

27. The entire time the Talbots' have lived on the Talbot Property there has been a clearly established boundary line between the Talbot Property and the Nielson Property. The lawn mowing, the sprinkler system, shed, and the lilacs, shrubs and plants were all located exactly how the original fenceline was situated. Additionally, the Talbots' car port is located based upon the original fenceline as well. (See Talbot Affidavit.)

Response to No. 27: Paragraph 27 is disputed. The lawn mowing does not

create a clearly established boundary line. The sprinkler system comes over even past the line the Talbots are now claiming, making it obvious that no respect to the boundary of the properties was being paid by whomever installed the sprinkler system. Affidavit of Glen Nielson. There is no competent evidence that the shed or the carport are located where the original fence was located. See Motion to Strike the Affidavit of Michele Talbot.

ADDITIONAL MATERIAL FACTS THAT PRECLUDE SUMMARY JUDGMENT

- 1. Shortly after purchasing their property, the Nielsons measured their property according to the legal description in the Warranty Deed they had received upon purchase of the property and discovered their Talbot neighbors had built their carport about 13 feet onto the Plaintiff's property. Affidavit of Glen Nielson.
- The Talbot's carport is about thirteen feet from where the Warranty Deeds to both the Talbot property and the Nielson property say the boundary between the properties is located. Affidavit of Glen Nielson.
- 3. When the Plaintiffs purchased the property they did not know that the carport encroached on their property. Affidavit of Cheryl Nielson; Affidavit of Glen Nielson.
- 4. However, at the time the Plaintiffs purchased the property, Robbie Talbot knew that his carport encroached on the Plaintiffs' property. Affidavit of Diana Rugg.
- 5. When the Plaintiffs purchased the property there was no established and obvious boundary line between the properties. Affidavit of Vince Whitehead; Affidavit of Cheryl Nielson; Affidavit of Glen Nielson.
- 6. The parties who split the properties had the legal description that has long appeared in the deeds prepared. They both believed that the legal description accurately

described the actual location of the fence that then existed on the property.

- 7. The fence has long been removed from the property, was removed before the shed, the carport, or the lilacs were put on the property. Affidavit of Vince Whitehead.
- There is nothing on the ground from which anyone could locate the fence at this late date. Affidavit of Craig Shaffer.
- 9. Even when the Plaintiffs realized that the carport was on their side of the boundary line, they did not see it as evidence that the property boundary had been moved, but rather saw it as an encroachment on their property. Affidavit of Cheryl Nielson; Affidavit of Glen Nielson.
- 10. Since purchasing the property the Nielsons have paid property taxes on all of the property that they claim in this action pursuant to the legal description in their deed. Affidavit of Glen Nielson. It appears that their predecessors going back to Craig Shaffer who originally divided the property have paid taxes on the property pursuant to the legal description in the deeds. Affidavit of Craig Shaffer.

ARGUMENT

In order to establish their right to quiet title to the property, the Nielsons must show that they are the owners of the property and that the Talbots have encroached upon that property. "An action may be brought by any person against another who claims an estate or interest in real or personal property adverse to him, for the purpose of determining such adverse claim, . . . Idaho Code Section 6-401. The Nielson's ownership of the property is established by the deeds. Defendants admit that their carport encroaches on that property described in the deeds. "When the Nielsons purchased the Nielson property they checked the legal description and learned that the Talbot Property actually encroached upon the legal description of property they had on their deed." Memorandum in Support of Defendant/Counterclaimants' Motion for Summary Judgment. With that, Plaintiffs' right to quiet title is established unless one of the doctrines by which an interloper can gain control of another's property comes into play. There is no competent evidence in this case to establish any right in the Talbots to encroach on the Plaintiffs' property.

THE EVIDENCE DOES NOT SUPPORT A BOUNDARY DIFFERENT FROM THAT CONTAINED IN THE LEGAL DESCRIPTIONS IN THE DEEDS.

Idaho has several doctrines for dealing with encroachment on property boundaries. See, *Luce v. Marble*, 142 Idaho 264, 127 P. 3d 167 (2005). One is the boundary by agreement doctrine argued by defendants in this motion for summary judgment. Defendants cannot prevail on that claim with this state of the record.

Boundary by agreement or acquiescence has two elements: (1) there must be an uncertain or disputed boundary, and (2) a subsequent agreement fixing the boundary. *Luce v. Marble*, 142 Idaho 264, 127 P. 3d 167 (2005). Here the first element is entirely missing. The parties who originally created this boundary had no misgivings about it. They prepared deeds with legal descriptions that they signed conveying the property. Affidavit of Craig Shaffer dated December 17, 2015. Those legal descriptions formed the basis of later conveyances and the payment of taxes from that day forward. They believed that the legal description that they had in their deed coincided with the actual location of the fence. Affidavit of Craig Shaffer dated December 17, 2015; Affidavit of Gae Murdock. There never was any dispute about where the boundary was until the defendants built their carport thirteen feet across that agreed upon boundary. Since the dispute began there has obviously not been any agreement between the parties. There can be no resolution of this case through the doctrine of boundary by agreement or acquiescence.

Defendants argue that the case of Campbell v. Weisbrod, 73 Idaho 82, 245 P. 2d 1052 (1952) helps their case. It does not. As the defendants' quoted, "the fundamental principle underlying all of the rules of construction of deeds, as well as all other contractual instruments, is that the courts must seek and give effect to the intention of the parties." In Campbell it was established that the legal description did not in fact describe the boundary to which the parties had agreed, and there was no dispute that a line on the ground created by the parties to delineate their properties was different from the legal description. Here, while the Shaffers and the Murdocks agreed to split the property where the fence stood, they had a legal description prepared to describe that line. It was their intention, to which they put their signatures, that the legal description was the boundary. In later years the fence was taken out and cannot now be located. Defendants argue, without foundation, that the structures, built many years later by people who had never seen the fence, were built along the line where the fence once was, but of that they have no proof. See Motion to Strike the Affidavit of Michele Talbot. The fence was taken out sometime before Vince Whitehead built the house that is now the Talbot home in the early 1990s. He could not discern a fence line at that time. By the time the Talbots built their carport the fence had been gone through at least three owners. Mrs. Talbot's affidavit claim that she knew where the fence line was when the Talbots built the carport is simply without foundation and cannot form the basis of a summary judgment claim that the Talbots have established a boundary by agreement where the carport or shed now stand. Here, there is at best a dispute over whether the carport and shed stand on the line where the fence once stood. Rule 56(f) Affidavit of Blake S. Atkin. If they do stand on that line, then there is at least a factual issue whether the Shaffers and the Murdocks, had they known their legal description did not

coincide with the actual location of the fence, would have intended the fence to govern over that legal description to which they went great lengths to have created. The fact that the Shaffers and the Murdocks never knew that their legal description did not accurately describe the fence (if in fact it did not) precludes a finding that there was a dispute or uncertainty over the property boundary that then was resolved by agreement. This record simply will not support a boundary by agreement that is different from that set out in the legal descriptions in the deeds.

THE RECORD DOES NOT SUPPORT A CLAIM THAT THE NIELSONS SHOULD HAVE KNOWN OF AN AGREEMENT TO CHANGE THE BOUNDARY.

Even if the Court were to conclude that the Shaffers and the Murdocks intended the fence to govern over the legal description they prepared, and even if there were evidence that the fence was in a different location than where the Shaffers and the Murdocks thought it was, there simply was not the kind of line on the ground when the Nielsons bought the property that imparts the kind of knowledge the law would require for that agreement to be binding on the Nielsons. Another element of the boundary by agreement doctrine is that subsequent purchasers are only bound by the agreement if they "purchased with notice of the agreement." Luce Supra. Here there is not the kind of line on the ground that would impart that kind of knowledge. Instead, there were two buildings finite in length, coming nowhere near encompassing the entire boundary, that encroached the legally described property boundary, bushes and shrubs that were two to three feet wide planted next to an unsightly carport, lawn that was mowed by each of the neighbors and a sprinkler system that had heads placed several feet further onto the Plaintiffs' property than even the Defendants have the audacity to now claim. Those things obviously cannot have created evidence of an alternative boundary to that described in the deed. This is a far cry from the "tight board fence, four or five feet in height, ..." that formed the boundary in Reid v. Duzet, 140 Idaho 389, 94 P.3d 694 (2004) relied upon by the defendants.

A line encroached by a couple of buildings, rather than a new property boundary, was the reasonable interpretation at the time the Nielsons moved into this property.

CONCLUSION

There is no evidence of a boundary by agreement different from the legal description in the deeds; rather, the evidence shows encroachment by the Defendants who had no regard for the actual location of the boundary. Further, Plaintiffs need to be allowed to complete discovery on critical issues before summary judgment should be entertained. Motion to stay pursuant to rule 56(f) affidavit of Blake S. Atkin. Summary judgment cannot be granted on this record.

DATED this 2nd day of March, 2016.

Atkin Law Offices

Blakest

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the RESPONSE

TO DEFENDANT/COUNTERCLAIMANT'S MOTION FOR SUMMARY JUDGMENT

as indicated below:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 X U.S. Mail X E-mail _____ Facsimile

___U.S. Mail ___E-mail X In-Person

Dated this 2nd day of March, 2016.

Jennifer Mariscal

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

V,

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

Cheryl Nielson, having been first duly sworn, deposes and says:

- 1. I am one of the named Plaintiffs in this matter.
- 2. I have personal knowledge of the matters set forth herein.
- When my husband, Wayne, and I purchased our home, there was no fence separating our property from the Talbot property.
- 4. There was no fence line on the property either. There simply was nothing on the ground that appeared to be a property boundary.

AFFIDAVIT OF CHERYL NIELSON

Case No. CV-2015-132

Judge: Naftz

- Set back from the road a distance was the Talbot's carport, but it only extends for about 18 feet. I certainly did not consider it to be a property boundary, especially since in civilized society people do not build on the property line.
- 6. There were lilac bushes planted next to the carport in an apparent attempt to cover the unsightly carport, but those did not appear to be a property boundary, since, as bushes they were so wide that if they had been planted to indicate a property line, it would be impossible to tell where the line was.
- 7. There is nothing on the ground that indicates any property boundary.
- 8. When my husband measured the property in preparation to build a fence, we saw that the Talbot's carport encroached on our property by about 13 feet.
- Our conclusion was not that someone had changed the property boundary by 13 feet, but that the Talbots had built their carport 13 feet onto our property.
- 10. Shortly thereafter I asked Robbie Talbot about it, informing him that his carport was 13 feet onto our property. His response was that the carport could be 12 or thirteen feet either way of the property line.
- 11. There was no way during our brief visit of the property before the purchase that we could have discovered that the Talbots had built on our property and there was certainly nothing on the ground that would have led us to wonder if the property line had been changed from what was described in our deed.

Dated this 2 day of February, 2016

Cheng Hielon

Cheryl Nielson

SUBSCRIBED AND SWORN before me this $29^{\pm h}$ day of February, 2016.

JENNIFER MARISCAL Notary Public State of Idaho

Jernifer Mariscal Notary Public exp. 7-13-18 Affidavit of Cheryl Nielson

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

٧.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

AFFIDAVIT OF GLEN WAYNE NIELSON

Case No. CV-2015-132

Judge: Naftz

Defendants/Counterclaimants.

Glen Wayne Nielson having been first duly sworn deposes and says:

I have personal knowledge of the matters set forth herein.

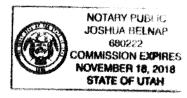
- 1. I am one of the named plaintiffs in this case.
- 2. I am a civil engineer.
- 3. Shortly after purchasing my home, I measured my lot according to the property description on my deed.
- 4. I discovered that the carport on my neighbor, Robbie Talbot's, house encroached on my property by about 13 feet.
- 5. Before making that measurement I did not know that the carport encroached my property.

- 6. Some of the sprinkler heads that were installed come into my property several more feet than what the Talbots are now claiming as the property line. It is obvious that whoever installed the sprinkler line was not installing it on any perceived property line.
- 7. I checked with the City and Robbie Talbot built the carport without obtaining a building permit.
- 8. The lilac bushes that were on the property when we bought it did not appear to be any sort of line. They were broad as bushes are, and appeared to have been planted to cover the unsightly carport that Robbie Talbot had built.
- Since owning the property I have paid property taxes pursuant to the legal description on the deed, and it appears that has been the case with my predecessors in title since the two properties were separated.
- 10. I also have paid for insurance on the property pursuant to the legal description on the deed.
- 11. When I discovered that the Talbot's carport encroached on my property it did not cross my mind that there had once been an agreement to create a property boundary different than that described in the deeds. The carport is set back significantly from the road, and does not extend a significant length of the lot. There is significant space between the carport and the shed with nothing in between to indicate a property line. It appeared to me then and appears to me now that my neighbors have simply built structures without a permit, that encroach on the property line.

Dated this 2 day of March, 2016

Glen Wayne Nielson

SUBSCRIBED AND SWORN before me this _____ day of March, 2016.



Notary Public

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

AFFIDAVIT OF DIANA N. RUGG

Case No. CV-2015-132

Judge: Naftz

Diana N. Rugg, having been first duly sworn deposes and says:

- 1. I am over the age of 18 and have personal knowledge of the matters set forth herein.
- 2. Shortly after Wayne and Cheryl Nielson bought their home in Preston, Idaho in

August 2013, my husband Monte and I went to Preston to do some painting in the home.

- 3. While there we met their neighbors, Robbie Talbot and his wife, Michele.
- 4. Robbie told us that his carport was on Wayne and Cheryl's property.
- 5. I was surprised later to find out that these facts were not disclosed to Wayne and

Cheryl when they bought the property.

Dated this <u>19</u> day of February, 2016

Diane A. Lugg

Diana N. Rugg

SUBSCRIBED AND SWORN before me this ______ day of February, 2016.

Notary Public STACY BRITT W commission #665201 W commission Expires May 14, 2017 State of Utah Notary Public Attribution clause: This certificate is prepared for, and exclusively belongs to, the accompanying document entitled Affidavit of Diana N Ringg which consists of Ipg and is dated 2-29-16 If this certificate is appropriated to any document be deemed nell and void

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

AFFIDAVIT OF CRAIG SHAFFER

Case No. CV-2015-132

Judge: Naftz

Defendants/Counterclaimants.

Craig Shaffer having been first duly sworn deposes and says:

- 1. I have personal knowledge of the matters set forth herein.
- 2. I am familiar with the properties identified in this litigation as the Nielson and the Talbot properties.
- 3. I once owned the properties on which the Nielson and Talbot homes are now located.
- 4. When I bought the property, it was all one piece.
- 5. There was a fence that separated a portion of the property that I used as a horse corral.

The fence did not come all the way to the road, but was set back by about 50 feet.

6. My wife and I decided to sell the horse property to my in-laws, Suel and Gae Murdock.

- 7. The portion we sold to the Murdocks was enclosed by the fence.
- 8. A legal description was prepared that we put into a quitclaim deed for the property sold to the Murdocks.
- 9. At the time, I believed that the legal description used in that deed accurately followed the fence line and I would not have signed the quitclaim deed if I thought the boundary of the property was something other than what the deed said.
- 10. I have recently visited the property,
- 11. When I left the property there was not a house or other buildings on the property now known as the Talbot property.
- 12. I did not plant lilac bushes on the property.
- 13. After the quit claim deed was given to the Murdocks, we each paid property taxes on the property we owned pursuant to the legal descriptions on the deeds.

Dated this 2 day of March, 2016

Craig Shaffer

SUBSCRIBED AND SWORN before me this 2nd day of March, 2016.

JENNIFER MARISCAL Jennifen Mariscal Notary Public 210. 7-13-18 Notary Public state of Idaho

FILED 16 MAR - 2 PN 2: 29 FRANKLIN COUPLY CLERK

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

MOTION TO STRIKE AFFIDAVIT OF MICHELE TALBOT

Case No. CV-2015-132

Judge: Naftz

Plaintiffs and Counter-defendants respectfully move the Court for an order striking the

Affidavit of Michelle Talbot based on Rule 56(e) of the Idaho R. Civ. P. and the Rules of

Evidence. I.R.C.P. 56(e) states:

Rule **56(e)**. Form of Affidavits — Further testimony — Defense required.— Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

Rule 56(e) of the Idaho Rules of Civil Procedure imposes requirements upon the admission of affidavit testimony submitted in connection with a motion for summary judgment. The party offering such evidence must show that it is based upon the witness' personal knowledge and that it sets forth facts as would be admissible in evidence. Kolln v. Saint Luke's Reg'l Med. Ctr., 130 Idaho 323, 940 P.2d 1142 (1997); Rhodehouse v. Stutts, 125 Idaho 208, 868 P.2d 1224 (1994). The party offering the evidence must also affirmatively show that the witness is competent to testify about the matters stated in his testimony. Id. Statements that are conclusory or speculative do not satisfy either the requirement of admissibility or competency under Rule 56(e). Kolln v. Saint Luke's Reg'l Med. Ctr., 130 Idaho 323, 940 P.2d 1142 (1997); Hecla Mining Co. v. Star-Morning Mining Co., 122 Idaho 778, 839 P.2d 1192 (1992). Most of the "evidence" contained in the affidavit of Michele Talbot fails to comply with these requirements and fails to "show affirmatively" that Michele is competent to testify to matters to which she has no personal knowledge. A trial court properly strikes affidavits that fail to measure up to the requirements of rule 56(e). Dulaney v. St. Alphonsus, 137 Idaho 160, 45 P.3d 816 (2002).

SPECIFIC PARAGRAPHS OF AFFIDAVIT THAT SHOULD BE STRICKEN

Paragraph 3. This paragraph lacks foundation. Mrs. Talbot states that "At the time we purchased the property, the fence had been taken down and in its place lilacs, shrubs and plants had been planted to provide a boundary line between the Talbot Property and the Nielson Property." There is no foundation given for this assertion that the lilacs, shrubs or plants were put "in place" of the fence or that they had been planted "to provide a boundary line between the properties." Mrs. Talbot gives no support or foundation regarding her personal knowledge of any fence that may have existed and who planted lilacs, shrubs and/or plants; and how she knows

that these items were planted as a boundary in place of a fence. This type of personal knowledge is required for an affidavit to be admissible under Rule 56(e) Idaho Rules of Evidence and under Rule 602 of the Idaho Rules of Evidence. The statements in this paragraph are also conclusory regarding the existence of a "boundary" and therefore not admissible. *Gerdon v. Rydalch* 280 P.3d 740, 743 (Idaho 2012). This paragraph should be stricken by the Court.

Paragraph 4. This paragraph also lacks of foundation. Mrs. Talbot states: "prior to our purchasing the home, the Larsens had installed a sprinkler system which provided water/irrigation to the grass and lawn, and a storage shed up to the boundary line . . . " There is no foundation for Mrs. Talbots personal knowledge of what the Larsens did or didn't do in regard to a boundary line. There is no explanation as to how Mrs. Talbot knows that these things had been installed up to any boundary line. Indeed, the evidence is that the fence was gone before the Larsens purchased the home from Vince Whitehead. There is no foundation supporting Mrs. Talbot's personal knowledge of these claims as required by Rule 56(e) and they are also conclusory. *Gerdon v. Rydalch*, 280 P.3d 740, 743 (Idaho 2012) It should be stricken by the Court.

Paragraph 5. This paragraph also lacks foundation. Mrs. Talbot states: "upon our purchasing our home we installed a carport up to the boundary line of the property . . ." Mrs. Talbot who purchased the property many years and many owners after the fence was removed has failed to show any foundation to support her personal knowledge of her assertion that the carport was installed "up to the boundary line of the property." Mrs. Talbot does not state the basis for her personal knowledge as to where the boundary line actually and legal was. Her statement is

conclusory and circular reasoning. *See*, Rule 56(e) and *Gerdon v. Rydalch*, 280 P.3d 740, 743 (Idaho 2012). It assumes that just because the car port was installed by her that it was done on the boundary without any foundation as to how the boundary was determined prior to the installation of the carport. This paragraph should be stricken by the Court.

Paragraph 6. This paragraph also lacks foundation. Mrs. Talbot states: "Cheryl Nielson personally tore out all of the lilacs, shrubs and plants that were planted and maintained as the boundary line between the properties." There is no foundation to show how Mrs. Talbot, who did not plant the lilacs, shrubs and plants could know what their purpose was and how she has personal knowledge that these items were on any "boundary line". The statements in this paragraph are also conclusory. *See,* Rule 56(e) and *Gerdon v. Rydalch*, 280 P.3d 740, 743 (Idaho 2012). This paragraph should be stricken by the Court.

Paragraph 8. Finally this paragraph also lacks foundation. Mrs. Talbot states "The law[sic] mowing, the sprinkler system, shed, and the lilacs, shrubs and plants were all located exactly how the original fence line was situated. Additionally, our car port is located based upon the original fence line as well." There is no foundation laid from which the Court could conclude that Mrs. Talbot has any personal knowledge as to where the "original fence line" was or how she knows all these items were located on this line. Mrs. Talbot never saw the fence and provides no foundation as to how she knows where the "original fence line" was located. Since she did not put up tear down the fence how can she make these conclusory claims about these items coinciding with the original fence. *See*, Rule 56(e) and *Gerdon v. Rydalch*, 280 P.3d 740, 743 (Idaho 2012). Again, Mrs. Talbot is concluding that because all of these items existed, they

must have been on the boundary line, without any supporting facts to show how she knows these claims. She has not stated how she knows where the boundary or original fence was, without referencing the items she claims were or are on that line. This paragraph should be stricken.

CONCLUSION

This Court should strike the portions of the Affidavit of Mrs. Talbot that fail to meet the strictures of Rule 56(e), Idaho Rules of Civil Procedure as set out above.

DATED this 2nd day of March, 2016.

Atkin Law Offices

Raheste

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the MOTION

TO STRIKE AFFIDAVIT OF MICHELE TALBOT as indicated below:

X U.S. Mail X E-mail _____ Facsimile

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net

U.S. Mail E-mail X In-Person

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926

Dated this 2nd day of March, 2016.

Jennifer Marscal

FILED 16 MAR - 2 PM 4:29 FRANKLIN COUNTY CLERK

DEPHIY

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife, MOTION TO CONTINUE HEARING ON SUMMARY JUDGMENT UNDER RULE 56(f)

Case No. CV-2015-132

Judge: Naftz

Defendants/Counterclaimants.

Plaintiffs/Counterdefendants (Nielsons) hereby move the Court, under Rule 56(f)

I.R.C.P., for an order continuing the hearing and/or ruling on Talbots' Motion for Summary Judgment until Nielsons have more time to discover facts that are essential to an adequate response to Talbots' summary judgment. This Motion is based on the Rule 56(f) Affidavit filed by Blake S. Atkin and as follows:

FACTS

1. Nielsons' current counsel, Blake S. Atkin (Mr. Atkin), just recently entered an appearance in this case.

2. Mr. Atkin never received a Notice of Hearing on the summary judgment motion.

- 3. Since coming into the case, Mr. Atkin has been diligently trying to update responses to discovery that became due while Nielsons were not represented and were not therefore responded to as might have been desired. Because of the information that had been given about the hearing on the summary judgment, he determined that getting the deficiencies in the discovery completed had a higher priority than responses to the summary judgment motion.
- Yesterday, March 1, 2016 was the first notice that Mr. Atkin had of a hearing set for March 16, 2016 on the Talbots' Motion for Summary Judgment.
- 5. Because Mr. Atkin did not know about the hearing on the motion for summary judgment he has not had the time to fully and adequately respond to the motion for summary judgment.
- 6. Mr. Atkin needs to pursue discovery as outlines in his Rule 56(f) Affidavit filed herewith.
- 7. Mr. Atkin has not had adequate time to complete discovery because of the time it has taken to become familiar with the case and the belief that there were no hearings set.

ARGUMENT

Rule \$6(f), I.R.C.P. states as follows:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Under this Rule a party may request that a court postpone a hearing on a motion for summary judgment if that party can in good faith demonstrate why he cannot respond to a movant's motion and how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact. *Jenkins* v. Boise Cascade Corp. 141 Idaho 233, 108 P.3d 380, 386 (Idaho 2005). In this case, Nielsons, by Mr. Atkin's Affidavit, have shown specifically what matters need to be discovered in order to adequately respond to Talbots' Motion for Summary Judgment and what needs to be done to accomplish this task. The discovery of these matters will clearly affect the Summary Judgment Motion as they go to the primary issues of the establishment of a property dispute that could have been resolved by agreement and where the property line lies. If the facts are discovered as Nielsons believe they will be, the facts will establish that the only property line is as contained in the deeds to the property.

CONCLUSION

This Court should continue the hearing on Talbots' Motion for Summary Judgment until Nielsons have had adequate time to conduct discovery as stated in Mr. Atkin's Affidavit.

Dated this 2nd day of March, 2016

Rahest

Blake S. Atkin

3

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the MOTION TO CONTINUE HEARING ON SUMMARY JUDGMENT UNDER RULE 56(f) as indicated below:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net X U.S. Mail X E-mail _____ Facsimile

Franklin County Court 39 West Oneida Preston, Idaho 83263

Via Fax: (208) 852-2926

U.S. Mail __E-mail X Facsimile

Dated this 2nd day of March, 2016.

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FRANKLIN COUNTY CLERK

SCRUTY

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

\$TATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

AFFIDAVIT OF JENNIFER MARISCAL

Case No. CV-2015-132

Judge: Naftz

12

Defendants/Counterclaimants.

Jennifer Mariscal, having been first duly sworn, deposes and says:

- 1. I have personal knowledge of the matters set forth herein.
- 2. On February 12, 2016, I filed an entry of appearance of counsel for Mr. Atkin in this case and in another case brought by the same Plaintiffs against other parties, the Parkers.
- 3. Mr. Atkin asked me to find out what had been scheduled in either case.
- 4. I talked with Linda, the Franklin County Clerk who informed me about the schedule in both cases.
- 5. She told me that no hearing had been set on the motion for summary judgment in this case and it could not be set before March 8, 2016.

6. I checked the Idaho Repository and it coincided to all the things Linda had told me.

- 7. I informed Mr. Atkin of these facts.
- 8. Yesterday, March 1, 2016, Mr. Atkin informed me that he had learned from opposing counsel that a hearing had been set for March 16, 2016.
- 9. I immediately checked the repository, and there was no hearing on the motion for summary judgment noted there.
- 10. I emailed Defendants' counsel's office and requested a copy of the Notice of Hearing on the motion for summary judgment.
- 11. The Notice of Hearing I requested from the Franklin County clerk was filed on February 17, 2016. (Although, the Certificate of Service says May 17, 2014.)
- 12. The Certificate of Service indicates that the Notice of Hearing was sent by U.S Mail Postage Prepaid to Glen and Cheryl Nielson. Atkin Law Offices is not listed.
- 13. On March 2, 2016, I see that the hearing on the motion for summary judgment now appears on the repository.

Dated this $\frac{2^n d}{day}$ of March, 2016

Mariscal

Jennifer Mariscal

nd σ day of March, 2016. SUBSCRIBED AND SWORN before me this _

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FILED 16 MAR -2 PM 4: 40 TRANKLIK COUNTY CLERK

DEPUTY

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

RULE 56(F) AFFIDAVIT OF BLAKE S. ATKIN

Case No. CV-2015-132

Judge: Naftz

Defendants/Counterclaimants.

Blake S. Atkin, having been first duly sworn deposes and says:

- 1. I am counsel of record in this matter.
- 2. I entered my appearance as counsel of record on February 12, 2016.
- 3. We never received a Notice of Hearing on the summary judgment motion.
- 4. At the time we entered our appearance I asked my secretary to contact the Court and get the schedule on this case.
- 5. At that time she was informed by the Court clerk that there was no hearing set on the motion for summary judgment and it could not be set until after March 8, 2016.
- 6. Since coming into the case, I have been diligently trying to update responses to discovery that became due while my clients were not represented and were not therefore responded

to as might have been desired. Because of the information I had been given I determined that getting the deficiencies in the discovery completed had a higher priority than responses to the summary judgment motion.

- Yesterday, March 1, 2016 I had a phone conference with Lane Erickson in which we discussed the overlap between this case and another case involving my clients and another of his clients.
- 8. I noted to him that there was no hearing set on the motion for summary judgment at which point he told me that a hearing had been set and it was set for March 16, 2016 making my response due today.
- 9. I had my secretary check the court repository and she told me nothing was in the repository showing the hearing on the motion for summary judgment.
- 10. This morning she tells me that the hearing date for the summary judgment motion is now on the repository.
- 11. Had I known about the hearing on the motion for summary judgment I would have been more diligent in getting the affidavits or pursuing the discovery that I feel we need to fully and adequately respond to the motion for summary judgment.
- 12. The discovery that I need to pursue in this case is as follows:
- 13. I need to discover who created the legal descriptions that are in the deeds to the two properties. From that person I need to discover what he understood the intention of the parties were, whether they were just using the fence as a reference or whether they wanted the fence to be the property boundary even if the legal description were different from the actual location of the fence on the ground. I also need to discover whether there was any dispute or uncertainty as to the boundary at the time the legal description was created.
- 14. I need to discover, if possible, the location of the fence that was apparently removed about 30 years ago.
- 15. I need to discover whether the Defendants knew when they built their carport and erected their shed that the structures encroached on the property boundary.
- 16. I need to discover whether the person who installed the sprinkler system attempted to follow any property line when the sprinkler system was installed.

- 17. I need to discover whether the Talbots had permission to build the carport or the shed at the location they were built.
- 18. In order to satisfy those discovery requirements I plan to do the following:
- 19. I have propounded discovery to the Defendants seeking evidence of these issues and others that will come up in the case such as evidence relating to the payment of taxes on the parcels.
- 20. I have made inquiry of witnesses who thus far have not been able to answer all the questions, but I plan to continue interviewing witnesses to try to determine who might have answers to these questions. Upon finding witnesses I will either obtain affidavits or take depositions to obtain the information needed.
- 21. I plan to take the depositions of the Defendants in order to test their knowledge of these matters.
- 22. I have not completed this discovery up until now because of the time it has taken me to familiarize myself with the case and because I did not know until yesterday that a hearing had been set on the motion for summary judgment.

Dated this 2 day of March, 2016

Blake S. Atkin

SUBSCRIBED AND SWORN before me this ______ day of March, 2016.

JENNIFER MARISCAL Notary Public State of Idaho 1 11 anocax Jotary Public Mp. 7-13-18

FILED

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FRANKLIN COUNTY OLERK

DEPHIT?

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

NOTICE OF HEARING

Case No. CV-2015-132

Judge: Naftz

Defendants/Counterclaimants.

Please take notice that the hearing on the Plaintiffs Motion to Strike Affidavit of Michele Talbot and Motion to Continue Hearing on Summary Judgment Under Rule 56(f) will be held on Wednesday, March 16, 2016, at 10:30 a.m.

DATED this 3rd day of March, 2016.

Atkin Law Offices

Rahester

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants

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CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the NOTICE OF

HEARING as indicated below:

Lane V. Erickson	Х	U.S. Mail	Х	E-mail	_ Facsimile
RACINE, OLSON, NYE, BUDGE					
& BAILEY CHARTERED					
201 East Center					
P.O. Box 1391					
Pocatello, Idaho 83204-1391					
Facsimile: (208) 232-7352					
Email: lve@racinelaw.net					
_					
Robert C. Naftz		_ U.S. Mail	_	E-mail	X Facsimile
District Judge		•			
Bannock County Courthouse					
624 E. Center, Room 220					
Pocatello, ID 83201					
Fax: 208-236-7290					
				~ ·1	T Z T · · · ·
Franklin County Court		_U.S. Mail			X Facsimile
39 West Oneida					
Preston, Idaho 83263					
Via Fax: (208) 852-2926					
			16		
	Dated this 3rd day of March, 2016.				

Gennifer Mariscal

FILED 16 MAR - 3 PM 1: 10 FRANKLIN COUNTY CLERK

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL
E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife, AFFIDAVIT OF VINCE WHITEHEAD

Case No. CV-2015-132

Judge: Naftz

Defendants/Counterclaimants.

Vincent Whitehead having been first duly sworn deposes and says:

- 1. I have personal knowledge of the matters set forth herein.
- 2. I am a general contractor.
- 3. On August 21, 1992 I bought the land on which the Talbot home now stands from Suel and Gae Murdock.
- 4. I built the home, now known as the Talbot home, on the land.
- 5. At the time I built the home there was no fence separating the property from the neighbor to the west.

- 6. At the time I sold the property there was no carport on the property, and there was no shed on the property nor any lilac bushes or sprinkler system on the property.
- 7. I had discussions with the neighbors, and no one ever told me there was any dispute as to the boundary, but there was nothing on the ground to indicate where a fence had been or where the boundary was.
- 8. As far as I knew the boundary was as described in the deeds to the two properties.
- 9. On February 23, 1993 I sold the property to David and Brenda Larsen. At that time there was no fence, there was no carport, there was no shed, there were no lilacs and there was no sprinkler system.

Dated this <u>3</u> day of March, 2016

Vince Whitehead

day of March, 2016. SUBSCRIBED AND SWORN before me this _

JENNIFER MARISCAL Notary Public exp. 7-13-18 Notary Public State of Idaho

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE 9: 57

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

AMENDED SCHEDULING ORDER, NOTICE OF TRIAL SETTING AND INITIAL PRETRIAL ORDER

FILED

Case No. CV-2015-132

Judge: Naftz

The Defendants' summary judgment motion currently filed and the trial date are vacated.

Pursuant to I.R.C.P. 16 and 40, IT IS HEREBY ORDERED:

1. This matter is set for **TRIAL**, as follows:

November 15-18, 2016 at 9:00 a.m.

All deadlines listed below shall apply to the trial setting listed above.

2. **TRIAL**: This case is set for a **JURY TRIAL** as set forth above. The trial will be conducted in the District Courtroom, Franklin County Courthouse, Preston, Idaho. A total of four (4) days, have been reserved. On the first day of trial, counsel shall report to the Court's chambers at 8:30 a.m. for a brief status conference. Unless otherwise ordered, other than the first and last day of trial, proceedings will convene at 9:00 a.m. each morning, and adjourn at approximately 4:00 p.m. each afternoon. Two twenty (20) minute, brief recesses will be taken.

3. <u>No pre-trial conference will be</u> held unless requested by any party in writing at least sixty (60) days *(September 16, 2016)* prior to trial and ordered by the Court. Pursuant to I.R.C.P. 16(b), in lieu of a pre-trial conference, trial counsel for the parties (or the parties if they are self-represented) are ORDERED to meet and/or confer for the purpose of preparing a PreTrial Stipulation, which shall be submitted to the Court at least twenty-one (21) days (October 21, 2016) prior to Trial, and shall contain or include:

(A). A statement that all exhibits to be offered at trial have been provided to all other parties and attaching an Exhibit List of all such exhibits. The Exhibit List shall indicate: (1) by whom the exhibit is being offered, (2) a brief description of the exhibit, (3) whether the parties have stipulated to its admission, and if not, (4) the legal grounds for objection. If any exhibit includes a summary of other documents, such as medical expense records, to be offered pursuant to I.R.E. 1006, the summary shall be attached to the Stipulation.

(B). A statement whether depositions or any discovery responses will be offered in lieu of live testimony, and a list of what will actually be offered, the manner in which such evidence will be presented, and the legal grounds for any objection to any such offer.

(C). A list of the names and addresses of all witnesses which each party intends to call to testify at trial, including anticipated rebuttal or impeachment witnesses. Expert witnesses shall be identified as such. The Stipulation should also identify whether any witnesses' testimony will be objected to in its entirety and the legal grounds therefore.

(D). A brief non-argumentative summary of the factual nature of the case. The purpose of the summary is to provide an overview of the case for the jury and is to be included in pre-proof instructions to the jury, unless found inappropriate by the Court.

(E). A statement counsel have, in good faith, discussed settlement unsuccessfully and/or completed mediation unsuccessfully, if mediation was ordered by the Court.

(F). A statement that all pre-trial discovery procedures under I.R.C.P. 26 to 37 have been complied with and all discovery responses supplemented as required by the rules to reflect facts known to the date of the Stipulation.

(G). A statement of any stipulated admissions of fact, which will avoid unnecessary proof.

(H). A list of any stipulated admissions of fact, which will avoid unnecessary proof.

(I). A list of any orders requested by the parties which will expedite the trial.

(J). A statement as to whether counsel require more than 30 minutes per party for voir dire or opening statement and, if so, an explanation of the reason more time is needed.

These submissions will be deemed by the Court to constitute the final pre-trial conference required by IRCP 16(b). However, if either party wishes a more formal pre-trial conference, the same should be requested in writing at least 60 days *(September 16, 2016)* prior to trial and one will be scheduled.

4. **PRE-TRIAL MOTIONS:** All motions to join parties or amend the pleadings (except motions pertaining to punitive damages under I.C. §6-1604) must be filed and heard so as not to require the continuance or vacation of the trial date, and in no event less than ninety (90) days (August 17, 2016) before trial. All motions for summary judgment and motions to add claims for punitive damages pursuant to I.C. §6-1604 must be filed and served so as to be heard not later than ninety (90) days (August 17, 2016) before trial. All other non-dispositive pre-trial motions (including, but not limited to motions *in limine* or motions which seek to challenge the admissibility or foundation of expert testimony) must be filed and scheduled for hearing not less than fourteen (14) days (November 1, 2016) before trial. Exceptions will be granted infrequently, and only when justice so requires.

5. **MOTIONS FOR SUMMARY JUDGMENT:** All motions for summary judgment must be accompanied by a memorandum which includes a concise statement of each material fact upon which the moving party claims there is no genuine issue, and which shall include a specific reference to that portion of the record at or by which such fact is proven or established. Any party opposing a motion for summary judgment shall, not later than fourteen (14) days prior to hearing, serve and file any affidavits and opposing brief(s). The opposing brief shall identify the specific factual matters as to which the non-moving party contends there are genuine issues requiring denial of the motion, including a specific reference to the portion of the record which supports the claim that a genuine issues of fact exists. In ruling upon any summary judgment motion, the Court may assume that the facts as claimed by the moving party are conceded to exist without dispute except and to the extent the non-moving party shall have controverted them. Any reply brief must be lodged at least seven (7) days (November 8, 2016) prior to hearing. Further, any objection to the admissibility of evidence must be in writing and shall be part of the response to the motion for summary judgment or in reply to the response in opposition to summary judgment. The failure to object in writing to the admissibility of evidence in support of or in response to summary judgment shall constitute a waiver as to any objection to the admissibility of evidence at the time of the hearing on summary judgment. Oral

objections to the admissibility of evidence at the time of hearing on summary judgment will not be considered by the court.

6. <u>SCHEDULING AND HEARINGS</u>: All meetings, conferences, and/or hearings with the Court shall be scheduled in advance with the Court's Clerk, Linda Hampton by calling 208-852-0877. No hearing shall be noticed without contacting the Clerk. Absent an order shortening time, all motions must be filed and served at least fourteen (14) days prior to hearing. As an accommodation to out-of-town counsel and parties, hearings on any pretrial motion (except motions for summary judgment or hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b)(4), in the discretion of the Court. Counsel requesting a hearing by conference call will be responsible for arranging for placement of the call, and the cost thereof.

7. **DISCOVERY AND DISCOVERY DISPUTES:** The Court will not entertain any discovery motion unless accompanied by a written certification signed by counsel, which confirms that a reasonable effort has been made to voluntarily resolve the dispute with opposing counsel. A party's obligation to fully and timely respond to discovery requests is distinct from any obligation imposed by this Order, and no party may rely upon this Order or any deadline it imposes as justification for failing to timely respond to discovery requests or to supplement prior responses.

8. **DISCOVERY CUT-OFFS:** Absent a stipulation to the contrary, all discovery shall be propounded and served such that responses are due no later than thirty (30) days *(October 16, 2016)* before trial. Any supplemental responses a party is required to make pursuant to I.R.C.P. 26(e) or the terms of an earlier discovery request shall also be served at least thirty (30) days *(October 16, 2016)* before trial. Any supplementation of discovery required by the rule shall be made in a timely manner.

9. <u>WITNESS DISCLOSURES</u>: Each party shall disclose the existence and identity of intended or potential expert or lay witnesses to the extent required by interrogatories or other discovery requests propounded by another party. There is no independent duty to disclose expert or lay witnesses except as required to adequately respond to discovery to requests or supplement prior responses. If discovery requests seeking disclosure of expert witnesses and the information required to be disclosed pursuant to I.R.C.P. Rule 26(b)(4)(A)(i) are propounded, a plaintiff upon whom such requests are served shall, in good faith, disclose the

existence and identity of potential or intended expert witnesses, including the disclosures required by I.R.C.P. Rule 26(b)(4)A)(i) at the earliest opportunity, and in no event later than one hundred-twenty (120) days (*July 18, 2016*) before trial. A defendant upon whom such requests are served shall, in good faith, identify any potential or intended expert witnesses, including the disclosures required by I.R.C.P. Rule 26(b)(4)(A)(i) at the earliest opportunity, and in no event later than seventy-five (75) days (*September 1, 2016*) before trial.

Any party upon whom discovery is served who intends or reserves the right to call any expert witness in rebuttal or surrebuttal shall, in good faith, identify such experts, including the disclosures required by I.R.C.P. Rule 26(b)(4)(A)(i) at the earliest opportunity, and in no event later than forty-two (42) days (*October 4, 2016*) before trial. Any party upon whom discovery requests are served seeking disclosure of lay witnesses shall, in good faith, disclose the identity of all such witnesses at the earliest opportunity, and in no event later than forty-two (42) days (*October 4, 2016*) before trial. Absent a showing of good cause and a lack of unfair prejudice to any other party, any witness who has not been timely disclosed will not be permitted to testify at trial.

10. **EXHIBITS AND EXHIBIT LISTS**: When and to the extent required to respond to interrogatories, requests for production or other discovery requests propounded by another party, a party must identify and disclose any documentary, tangible or other exhibits that party intends or reserves the right to offer at trial. Absent a showing of good cause and a lack of unfair prejudice to all other parties, any exhibit which has not been timely disclosed will be excluded. Without regard to whether discovery concerning a party's exhibits has been propounded, not less than seven (7) days (*November 8, 2016*) prior to trail, each party shall: (A) lodge with the Clerk a completed exhibit list in the form attached to this Order (Exhibit 1 attached) together with one complete, duplicate marked set of that party's proposed exhibits for the Judge's use during trial; and (B) deliver to counsel for each other party a copy of the completed exhibit list and duplicate copies need not include exhibits which will be offered solely for the purpose of impeachment. Unless otherwise ordered, the plaintiff shall identify exhibits beginning with number "101," and the defendant shall utilize exhibits beginning with number "201."

11. **JURY INSTRUCTIONS**: Jury instructions and verdict forms requested by a party shall be prepared in conformity with <u>I.R.C.P.</u> 51(a), and shall be filed with the Clerk (with

an electronic set sent to the judge at rnaftz@bannockcounty.us at least seven (7) days (November 8, 2016) before trial. Requested instructions not timely submitted may not be included in the court's preliminary or final charge. Parties may submit additional or supplemental instructions to address unforeseen issues or disputes arising during trial.

12. **TRIAL BRIEFS**: The Court encourages (but does not require) the submission of trial briefs which address important substantive or evidentiary issues each party expects to arise during trial. Any trial briefs shall be prepared, exchanged between the parties, and lodged with the Clerk at least ten (10) days (*November 5, 2016*) prior to trial.

13. **REQUEST TO VACATE TRIAL SETTING**: Any party requesting *or stipulating* to vacate a trial setting must submit a specific written statement concerning the reasons for the request, and must certify, in writing, that the request or stipulation has been discussed with the parties represented by counsel. An order granting a request to vacate or continue a trial setting may be conditioned upon terms (including orders that the requesting party or attorney reimburse other parties or their attorneys for attorney's fees incurred for preparation which must be repeated or expenses advanced in anticipation of the trial setting which cannot be avoided or recovered). An order vacating or continuing a trial setting shall not serve to alter the deadlines set forth in this order, and unless otherwise stipulated or ordered, the specific calendar dates associated with any deadlines shall be adjusted in reference to the new or amended trial date.

14. <u>SANCTIONS FOR NON-COMPLIANCE</u>: A failure to comply with this order or the deadlines it imposes in a timely manner subject a non-compliant party and/or counsel to an award of sanctions pursuant to <u>I.R.C.P.</u> 16(i) and/or other applicable rules, statutes or case precedent.

15. All meetings and/or hearings with the Court shall be scheduled in advance with the Court's Clerk, Linda Hampton by calling 852-0877. No hearing shall be noticed without contacting the Clerk.

Notice is hereby given, pursuant to I.R.C.P. 40(d)(1)(G) that an alternate judge may be assigned to preside over the trial of this case, if the currently presiding judge is unavailable. The list of potential alternative judges is: (1) Honorable Peter D. McDermott; (2) Honorable David C. Nye; (3) Honorable Stephen S. Dunn; (4) Honorable Mitchell Brown; (5) Honorable Mark A. Beebe.

DATED: this 15th day of March, 2016.



Ret C. Noos

ROBERT C. NAFTZ District Judge

CERTIFICATE OF MAILING SERVICE

The undersigned certifies that on the 15 day of March, 2016, she caused a true and correct copy of the foregoing Amended Scheduling Order, Notice of Trial Setting and Initial Pretrial Order to be served upon the following persons in the following manner:

PLAINTIFF ATTORNEY:	X	Faxed
Blake S. Atkin		
Atkin Law Offices, P.C.		Hand Delivered
Facsimile: (208) 747-3112		
Email: batkin@atkinlawoffices.net		Mailed
DEFENDANT ATTORNEY:	×	Faxed
Lane V. Erickson	v .	
RACINE, OLSON, NYE,		Hand Delivered
BUDGE & BAILEY, CHTD.		
Facsimile: (208) 232-6109		Mailed

SHAUNA T. GEDDES, Clerk

4 1 Mt By: Linda Hampton Deputy/Clerk

MAR/15/2016/TUE 10:09 AM

BROADCAST

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE		FILE
001	MAR/15	10:03AM	7473112	0:02:13	8	MEMORY OK	ЕСМ	6659
002		10:06AM	2326109	0:02:57	8	MEMORY OK	G 3	6659
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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE 9: 57

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

AMENDED SCHEDULING ORDER, NOTICE OF TRIAL SETTING AND INITIAL PRETRIAL ORDER

Case No. CV-2015-132

Judge: Naftz

The Defendants' summary judgment motion currently filed and the trial date are vacated.

Pursuant to I.R.C.P. 16 and 40, IT IS HEREBY ORDERED:

1. This matter is set for TRIAL, as follows:

November 15-18, 2016 at 9:00 a.m.

All deadlines listed below shall apply to the trial setting listed above.

2. TRIAL: This case is set for a JURY TRIAL as set forth above. The trial will be conducted in the District Courtroom, Franklin County Courthouse, Preston, Idaho. A total of four (4) days, have been reserved. On the first day of trial, counsel shall report to the Court's chambers at 8:30 a.m. for a brief status conference. Unless otherwise ordered, other than the first and last day of trial, proceedings will convene at 9:00 a.m. each morning, and adjourn at approximately 4:00 p.m. each afternoon. Two twenty (20) minute, brief recesses will be taken.

3. <u>No pre-trial conference will be</u> held unless requested by any party in writing at least sixty (60) days *(September 16, 2016)* prior to trial and ordered by the Court. Pursuant to $IR C P_{16}(h)$ in lieu of a pre-trial conference, trial courses for the partice (or the partice if there

IN THE DISTRICT COURT OF THE SIXTH JUDICAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL,)
E. NIELSON, husband & wife,)
)
Plaintiffs/Counterdefendants,)
)
V.)
	Ĵ.
ROBERT TALBOT and MICHELE,)
TALBOT, husband and wife,	Ś
,	ś
Defendants/Counterclaimants.	í

CASE NO. CV-2015-132

ORDER RE: MOTION FOR LEAVE TO SUPPLEMENT DISCOVERY AND RESPONSES TO REQUESTS FOR ADMISSIONS

FILED

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I.R.C.P. 26(e) & 36(b)

Defendants have filed a Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission. The Court has carefully reviewed the motion and accompanying brief and finds that the Plaintiffs would not be prejudiced by allowing the Defendants to amend their responses to the request for admissions. The Court further finds that based upon the Amended Scheduling Order the Defendants may supplement their answers to discovery.

Therefore, it is hereby ordered that the Defendant shall supplement discovery responses and request for admissions as provided by the Idaho Rules of Civil Procedure and paragraphs 7 and 8 of the Amended Scheduling Order.

IT IS SO ORDERED this March 15, 2016.

et C. (Loos

ROBERT C. NAFTZ District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on <u>March |5, 2016</u>, I mailed/served a true copy of the ORDER on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

PLAINTIFF'S ATTORNEY:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, ID 83228 U.S. Mail E-Mail Courthouse Box Fax: 747-3112

DEFENDANT'S ATTORNEY:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P.O. Box 1391 Pocatello, ID 83204-1391 U.S. Mail E-Mail Courthouse Box Fax: 232-6109

SHAUNA T. GEDDES, Clerk

B١

Deputy Clerk

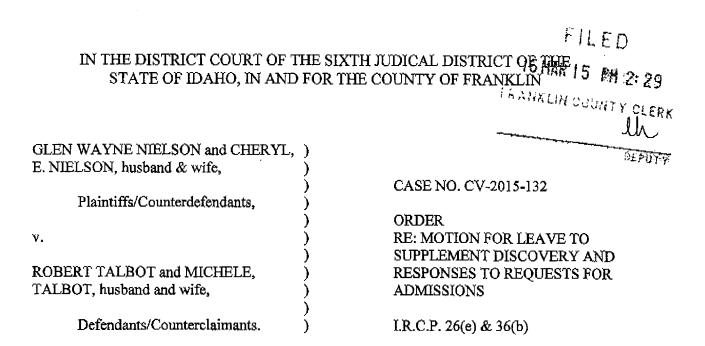
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002		02:37PM	7473112	0:00:34	2	MEMORY OK	ЕСМ	6671
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Defendants have filed a Motion for Leave to Supplement Discovery Responses Including Responses to Requests for Admission. The Court has carefully reviewed the motion and accompanying brief and finds that the Plaintiffs would not be prejudiced by allowing the Defendants to amend their responses to the request for admissions. The Court further finds that based upon the Amended Scheduling Order the Defendants may supplement their answers to discovery.

Therefore, it is hereby ordered that the Defendant shall supplement discovery responses and request for admissions as provided by the Idaho Rules of Civil Procedure and paragraphs 7 and 8 of the Amended Scheduling Order.

IT IS SO ORDERED this March 15, 2016.

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ROBERT C. NAFTZ District Judge

FILED

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ILANSLI COURTY CLERK

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Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

٧.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

MOTION TO DISQUALITY COUNSEL FOR CURRENT IRRECONCILABLE CONFLICT OF INTEREST

Case No. CV-2015-132

Judge: Naftz

After purchasing their home Plaintiffs learned that their neighbors' carport and shed encroach on the property which was conveyed to them by metes and bounds in a warranty deed. Plaintiffs demanded the sellers (the Parkers) to defend the title conveyed by warranty deed. When sellers failed to step up and defend as required by their warranty deed, Plaintiffs filed this suit against sellers for breach. In this separate action, Plaintiffs sued the neighbors (Talbots) for encroachment and to quiet title.

Counsel Lane Erickson represents both the sellers and the encroaching neighbors. Plaintiffs' counsel wrote Defendants' counsel on March 3, 2016 asking for enlightenment as to how he is representing both the seller and the encroaching neighbors given what appears to be an \sim

obvious conflict. See letter from Blake S. Atkin to Lane Erickson date March 3, 2016. Receiving no response, this motion is filed.

<u>Facts</u>

- 1. On August 30, 2013, Wayne Nielson bought a parcel of property in Preston, Idaho
- 2. The sellers (Parkers) conveyed the property by warranty deed.
- 3. Shortly after purchasing the property Plaintiffs learned that their neighbors to the east had a carport and shed that encroached their property, as conveyed to them by the warranty deed, by about 12 feet.
- 4. The neighbors (Talbots) wrote Plaintiffs in August 2013 claiming to own about 12 feet of the property conveyed to Plaintiffs by the sellers (Parkers).
- 5. Plaintiffs wrote Sellers (Parkers) on February 4, 2015 demanding that they step up and defend the property they had conveyed by legal description in a warranty deed.
- 6. Receiving no response Plaintiffs instituted an action seeking both damages for breach of the sellers' (Parkers') duty to defend Plaintiffs' title and damages for any diminution in value of the property should they lose the fight with the neighbor to quiet title to the 12 feet of property being encroached and claimed by the neighbor
- 7. At about the same time Plaintiffs commenced this action against the neighbors (Talbots) seeking quiet title to the 12 feet of property, which the sellers (Parkers) warranted and the neighbors (Talbots) are encroaching.
- 8. Lane Erickson represents both the sellers (Parkers) and the encroachers (Talbots).

Argument

Idaho Rules of Professional Conduct, Rule 1.7 provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of

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interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Representing both the sellers and the encroaching neighbor in actions to enforce the sellers' duty to defend title and the encroachers to quiet title to that property presents both a situation where the representation of one client is directly adverse to the other client and presents a significant risk that the representation of one client is materially limited by the lawyer's responsibilities to another client.

THE SELLERS (PARKERS) AND THE ENCROACHING NEIGHBORS (TALBOTS) ARE DIRECTLY ADVERSE TO ONE ANOTHER.

It seems rather obvious that a seller who is being sued for breach of his warranty to defend the title to property conveyed by metes and bounds against a neighbor who has encroached upon that legal description has a conflict with that neighbor. If the neighbor is found to be encroaching and the property is quieted in his purchases, he has not breached his warranty and cannot be held liable for breach of the warranty. On the other hand if the neighbor is found to be encroaching the seller will be liable for the loss of property suffered by his purchasers. The best outcome for the seller (Parkers) is a loss in court by the encroaching neighbor (Talbots). Plainly a lawyer cannot simultaneously represent both sides of that issue.

REPRESENTATION OF BOTH THE SELLER WHO HAS A DUTY TO DEFEND TITLE AND THE PARTY WHO IS ENCROACHING THE TITLE SO WARRANTED PRESENTS A SITUATION WHERE REPRESENTATION OF BOTH CLIENTS RUN A SIGNIFICANT RISK OF MATERIALLY LIMITED REPRESENTATION.

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Plaintiffs have wondered why their sellers who warranted title by metes and bounds and agreed they would "warrant and defend the same from all claims whatsoever" have not come forward to fulfill that obligation and instead risk ever increasing damages to their purchasers as they continue to ignore their duty, and require their purchasers to continue to incur attorney fees carrying out a responsibility that is theirs. Now the answer is obvious. Lane Erickson who represents the sellers cannot sue the encroaching neighbors in order to defend the purchaser's title because he is representing those encroaching neighbors.

Mr. Erickson's conflict is ongoing and as the costs related to representing his encroaching clients increase, it will become increasingly difficult for him to properly represent his seller clients. He will continue in his inability to fully represent his seller (Parker) clients while carrying the irreconcilable conflict of interest.

Conclusion

Mr. Erickson should be disqualified from representing Defendants in this matter because of an irreconcilable conflict of interest.

DATED this 15th day of March, 2016.

Atkin Law Offices

Makeste

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants



A PROFESSIONAL CORPORATION 7579 North Westside Highway Clifton, ID 83228 TELEPHONE (801) 533-0300 FACSIMILE (801) 533-0380 e-mail: batkin@atkinlawoffices.net

March 3, 2016

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391

Dear Lane:

As I thought about the overlap of issues in the Parker and the Talbot cases, and your unusual argument that the outcome for the Parkers will be better if the Talbots win, I began to think that you have an irreconcilable conflict of interest. It just seems intuitive that if the Talbots lose, my clients will have either no claim or a greatly diminished claim. I will certainly argue if the Talbots succeed that thereby the Parkers have breached their warranty of title. They warranted what is in the legal description, not some ancient, vague fenceline. I write this letter because I genuinely dislike filing motions about conflicts of interest.

Please give me your thoughts as to why you don't have a conflict of interest.

Sincerely,

Rohester

Blake S. Atkin

 \checkmark

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the

MOTION TO DISQUALIFY COUNSEL FOR CURRENT IRRECONCILABLE CONFLICT

OF INTEREST as indicated below:

Lane V. Erickson	X U.S. Mail X E-mail	Facsimile
RACINE, OLSON, NYE, BUDGE		
& BAILEY CHARTERED		
201 East Center		
P.O. Box 1391		
Pocatello, Idaho 83204-1391		
Fax: (208) 232-7352		
Email: lve@racinelaw.net		
Robert C. Naftz	U.S. Mail E-mail	X Facsimile
District Judge		
Bannock County Courthouse		
624 E. Center, Room 220		
Pocatello, ID \$3201		

Franklin County Court 39 West Oneida Preston, Idaho 83263 Fax: (208) 852-2926

Fax: (208) 236-7290

___U.S. Mail ___E-mail X Facsimile

Dated this 15th day of March, 2016.

Gennifer Mariscal

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FILED

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CRADING DURITY CLERK

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

TEPHTPY

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

Defendants/Counterclaimants.

ν.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

NOTICE OF HEARING

Case No. CV-2015-132

Judge: Naftz

Please take notice that the hearing on the Plaintiffs' Motion to Disqualify Counsel for Current Irreconcilable Conflict of Interest will be held on Tuesday, April 19, 2016 at 10:30 a.m.

DATED this 15th day of March, 2016.

Atkin Law Offices

Rahester

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants

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CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the NOTICE OF

HEARING as indicated below:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: Ive@racinelaw.net	x	U.S. Mail	х	E-mail	_ Facsimile
Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290		_ U.S. Mail	_	E-mail	X Facsimile
Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926		_U.S. Mail		E-mail	X Facsimile

Dated this 15th day of March, 2016.

Gennifer Mariscal

Τо

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109 FILED

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FRANKLIN COUNTY CLERK

DEPUTY.

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

Case No. CV-2015-00132

OPPOSITION TO MOTION TO DISQUALIFY

COMES NOW the Defendants, ROBERT TALBOT and MICHELE TALBOT, husband and wife, (hereafter "Defendants") by and through counsel of record, and hereby respectfully submits their Opposition to Motion to Disqualify. The reasons supporting Defendants' Opposition are as follows:

1. On March 16, 2016, Plaintiff filed the present Motion to Disqualify wherein Plaintiff argues that an irreconcilable conflict exists between the Defendants in this case and Paul and Sandra Parker who are Defendants in a separate case brought by the Plaintiff in Franklin County Case No. CV-2015-164, which is pending before the Honorable Judge Mitchell Brown. 2. On March 21, 2016, in Franklin County Case No. CV-2015-164, Plaintiff filed a Motion to Consolidate that case and the present case arguing that the legal issues pending in each separate case are connected by similar or the same facts and should therefore be consolidated.

3. Defendants oppose the argument from Plaintiff that a disqualifying conflict exists between the two Defendants in the pending cases. The Court has on record before it the pending Motion for Summary Judgment filed by Defendants in the pending case. The caselaw cited therein supports the arguments being made by the Defendants. These arguments illustrate that no conflict exists between the two Defendants in the pending cases.

4. While it seems peculiar that the Plaintiff did not originally file one suit naming both sets of Defendants and that Plaintiff allowed each case to progress separately, in essence waiting until now to seek to consolidate the two cases described herein at this late juncture in each case, the Defendants are not opposed to the consolidation of the pending cases as the Defendants agree with the Plaintiff that doing so would result in greater judicial economy and efficiency which would benefit the Court and the parties.

5. If the Court chooses to seek consolidation, it should be noted for the record that in the pending case, the Plaintiffs are identified to be both GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife. However, in Franklin County Case No. CV-2015-164, the only Plaintiff of record is GLEN WAYNE NIELSON. The issue of properly identifying the Plaintiff in a consolidated case will have to be reconciled by the Court.

6. Additionally, it should be noted that in the present case the Defendants have a pending Counterclaim, whereas there is no pending Counterclaim in Franklin County Case No. CV-2015-164.

7. Further, if the Court chooses to seek consolidation, the Defendants would respectfully request that the present case be the anchor case with Franklin County Case No. CV-OPPOSITION TO MOTION TO DISQUALIFY Page -2

2015-164, being brought into this case. This is requested because the present case was filed first, and because the present case has a trial date of November 15, 2016, which would provide adequate time for preparation for resolving the consolidated case.

WHEREFORE, Defendants ROBERT TALBOT and MICHELE TALBOT, husband and wife, respectfully request that the Court:

- A. Deny Plaintiffs Motion to Disqualify;
- B. Work with the parties in the present case to consolidate into this case, the pending
 Franklin County Case No. CV-2015-164;
- C. That the parties in the consolidated case be properly identified;
- D. That the pending Counterclaim in the present case be preserved; and
- E. For such other and further relief as this Court deems just and equitable under these premises.

This Arday of April, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

Bv:

LANE V. ERICKSON, Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228] U. S. Mail Postage Prepaid] Hand Delivery

] Overnight Mail

[X] Facsimile

on this 12th day of April, 2016.

.

LANE V. ERICKSON

ſ

OPPOSITION TO MOTION TO DISQUALIFY Page -4 Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED

16 APR 14 M 5: 55

FRANKLIN COUNTY CLERK

DEPUTY

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

REPLY IN SUPPORT OF MOTION TO DISQUALIFY

Case No. CV-2015-132

Judge: Naftz

It appears that counsel is arguing that if he prevails on his theory of the case, as set out in his motion for summary judgment, there would be no conflict of interest between his two clients. That position is both factually and legally flawed. Success of the encroaching neighbor establishes liability of the seller under its warranty, but even if there were a theory that could provide consistently good results for both clients, under the rules of professional conduct, a lawyer cannot foreclose other litigation strategy that might help one client at the expense of the other.

SUCCESSFUL OUTCOME FOR THE ENCROACHER ON THE MOTION FOR SUMMARY JUDGMENT WILL ESTABLISH LIABILITY FOR THE SELLER FOR BREACH OF WARRANTY.

Counsel has asserted on behalf of the Talbots (the encroaching neighbor) that they get to keep 18 feet of Plaintiffs' property because of an ancient (now obliterated) fence. If counsel succeeds on that theory, it establishes liability for his other clients, the sellers, who conveyed this property by metes and bounds in a warranty deed. *Flynn v. Allison* 549 P.2d 1065 (Id. 1976) (judgment finding adverse possession based on fence establishes breach of warranty under deed that conveyed the fenced in property). That conflict cannot be reconciled.

COUNSEL'S CURRENT THEORY OF THE CASE CURTAILS HIS VIEW OF ALTERNATIVE THEORIES THAT MIGHT BENEFIT HIS SELLER CLIENTS IN THEIR DEFENSE OF THE BREACH OF WARRANTY CLAIM.

Because it limits counsel's ability to think clearly and pursue obvious courses of action, counsel's "if I win on this theory" approach violates Rule 1.7. Rule 1.7 not only prohibits dual representation where potentially competing clients are able to find common ground that doesn't step on either parties toes. It prohibits dual representation where such a myopic course of action will limit full and powerful representation.

"Even where there is no direct adverseness, a conflict of interest exists of there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests . . . the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client." Rules of Professional Conduct, Rule 1.7, Comment paragraph 8.

This circumstance clearly presents itself in this case. Counsel is not able to recommend that his seller clients take up their duty to defend Plaintiffs' title (which could substantially reduce their ultimate costs and risk of exposure for refusing to carry out that duty) because he is representing the parties they would have to sue. \sim

Similarly, he cannot recommend to his seller clients that they demand removal of the carport, that was built without a permit, because he is representing the Defendants who built an encroaching structure without a permit. He cannot recommend that his seller clients prove that no fence existed when they bought the property or that the encroaching neighbors admitted knowing their building encroached because that testimony and evidence would be adverse to the

encroaching neighbors he represents.

Further, Rule 1.7 prohibits dual representation where settlement will be more difficult for one client if saddled with the lawyer's duty of loyalty to another client.

"A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question." Rules of Professional Conduct, Rule 1.7, Comment paragraph 23.

An obvious settlement possibility for the sellers would be to undertake their duty to defend (which is one of the claims made against them by the Plaintiffs) with or without an agreement with regard to the outcome. The seller Defendants are foreclosed from pursuing such settlement however, because it would require suing the lawyer's encroaching clients.

<u>COUNSEL SHOULD BE DISQUALIFIED FROM REPRESENTING EITHER OF THE</u> <u>DEFENDANTS AS THIS CASE MOVES FORWARD.</u>

The parties agree that the two cases should be consolidated. As the consolidated case moves forward, current counsel for the Defendants should be disqualified from representing either client.

Ordinarily the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. Rules of Professional Conduct, Rule 1.7, Comment paragraph 29.

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CONCLUSION

Current counsel for the Defendants should be disqualified from representing either Defendant going forward.

DATED this 14th day of April, 2016.

Atkin Law Offices

Rahest

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants

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CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the

REPLY IN SUPPORT OF MOTION TO DISQUALIFY as indicated below:

Lane V. Erickson X U.S. Mail X E-mail ____ Facsimile RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Fax: (208) 232-7352 Email: lve@racinelaw.net __U.S. Mail __E-mail X Facsimile Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: (208) 236-7290 Franklin County Court U.S. Mail E-mail X Facsimile 39 West Oneida Preston, Idaho 83263 Fax: (208) 852-2926

Dated this 14th day of April, 2016.

Gennifer Mariscal

FILED

16 APR 19 PH 4:48

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN DEPUTY

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,))
Plaintiffs,) Case No. CV-2015-132
vs. ROBERT TALBOT and MICHELLE TALBOT, husband and wife,)) MINUTE ENTRY AND ORDER))
Defendants.)

This matter came before the Court on April 19, 2016 on Plaintiffs' Motion to Disqualify Counsel for Irreconcilable Conflict of Interest. Blake S. Atkin appeared for and on behalf of the Plaintiffs, and Lane V. Erickson appeared for and on behalf of the Defendants. Stephanie Davis acted as court reporter.

The Court informed counsel that previous to this hearing the Court had been in contact with Judge Mitchell W. Brown who has a companion case of CV-2015-164 which a Motion for Consolidation was filed and set for hearing. Judge Mitchell W. Brown will grant the consolidation and CV-2015-164 will be consolidated with CV-2015-132 to be heard by Judge Robert C. Naftz. A separate Order granting the consolidation will be sent and all hearings noticed for hearing before Judge Mitchell W. Brown will be vacated.

Mr. Atkin presented argument in support of Plaintiffs' Motion to Motion to Disqualify Counsel for Irreconcilable Conflict of Interest. Argument was presented in opposition by Mr. Erickson on behalf of the Defendants. Thereafter, the Court DENIED Plaintiffs' motion and continued this matter on the Court's trial calendar.

IT IS SO ORDERED.

Dated this 19th day of April, 2016.

Ret C. Noos

ROBERT C. NAFTZ District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the $\underline{\cancel{P}}$ day of April, 2016, I mailed/served/faxed a true copy of the foregoing Minute Entry and Order to the attorney(s)/party(s) below by the method indicated:

Attorney(s)/Person(s):

Blake S. Atkin Counsel for Plaintiffs Method of Service:

Faxed: (801) 533-0380

Lane V. Erickson Counsel for Defendants Faxed: 232-6109

SHAUNA T. GEDDES, Clerk

BY: Linda Hampton, Deputy Clerk

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 MAY - 6 PM 18 57 FRANKLIH COUNTY CLERK

DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	MOTION TO DEEM FACTS ADMITTED
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

Pursuant to Rule 36, Idaho Rules of Civil Procedure, Plaintiffs move the Court for an order to

deem facts admitted contained in requests for admission served on Defendants on February 19,

2016, that have not been responded to.

DATED this 6th day of May, 2016.

Atkin Law Offices

Make Ste

Blake S. Atkin Attorneys for the Plaintiffs

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

FILED

16 MAY - 6 PM 1: 57

INANKLIN COUNTY CLERK

DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	MEMORANDUM IN SUPPORT OF MOTION TO DEEM FACTS ADMITTED
V.	
ROBERT TALBOT and MICHELE TALBOT, husband and wife,	Case No. CV-2015-132
and	Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

FACTS

On February 19, 2016, Plaintiffs served requests for admission on the Defendants. The requests for admission are set out in Exhibit A attached hereto. No responses have been received from Defendants to the requests for admission even though Plaintiffs' counsel personally asked counsel for Defendants to respond to the discovery. Affidavit of Blake S. Atkin.

Under Rule 36, Idaho Rules of Civil Procedure,

The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed under oath by the party or by the party's attorney,

Plaintiffs have received no response to the requests for admission and the time for response has long since passed. Plaintiff requests an order of the Court that the requests for admission served on Defendants on February 19, 2016 are deemed admitted.

DATED this 6th day of May, 2016.

Atkin Law Offices

Raheste

Blake S. Atkin Attorneys for the Plaintiffs

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

T

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	AFFIDAVIT OF BLAKE S. ATKIN
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

Blake S. Atkin, having been first duly sworn, deposes and says:

- 1. I am attorney of record for the Plaintiffs in this matter.
- 2. On February 19, 2016, I caused to be served Plaintiff's second set of discovery on

Defendants.

- Having received no response on April 19, 2016 I spoke with Mr. Erickson, Defendants' lawyer and reminded him about the discovery requests. He promised to provide me with responses.
- I had my office follow up with Mr. Erickson's office to confirm that they had in fact received the discovery requests. I was informed that they confirmed receipt of the discovery.
- 5. To date I have not received responses to our discovery.

Further affiant saith naught.

Dated this $\cancel{0}$ day of May, 2016

4/ the

Blake S. Atkin

SUBSCRIBED AND SWORN before me this ______ day of May, 2016.

JENNIFER MARISCAL Jennifer Manscal Kotary Public exp. 7-13-18 Notary Public State of Idaho

Exhibit A

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

GLEN WAYNE NIELSON and CHERYL
E. NIELSON, husband and wife,PLAINTIFFS' SECOND SET OF
INTERROGATORIES AND DOCUMENT
REQUESTS TO DEFENDANTSv.Case No. CV-2015-132ROBERT TALBOT and MICHELE
TALBOT, husband and wife,Judge: NaftzDefendants/Counterclaimants.Judge: Naftz

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

Pursuant to Rule 33 of the Idaho Rules of Civil Procedure, Plaintiff, through counsel, requests you, the Defendants and each of you, to respond to the following interrogatories. Each interrogatory shall be answered separately and fully in writing under oath within 30 days of service of these interrogatories upon you.

DEFINITIONS

The following definitions shall govern these Interrogatories absent clear indication to the contrary:

1. The terms "you," "your," or "yours" shall have reference to the Defendant answering the interrogatory and shall also have reference to any employee, agent, attorney, or any other person acting for or on behalf of that Defendant.

2. Other terms pertaining to the parties, documents, events, or occurrences referenced in the pleadings of the parties shall have the meanings ascribed to them in such pleadings.

3. The term "document" or "documents" shall mean every writing, recording or photograph as those terms are defined in Rule 1001, Idaho Rules of Evidence, and every database that can be used to generate any writing or recording as defined in the Idaho Rules of Evidence.

4. The term "person" shall mean any natural person and any firm, corporation, association, partnership or other legal, business or government entity, and shall include the plural as well as the singular.

5. The term "identify" or "identity" when used with reference to a document(s) shall mean to state with respect to each such document:

a) The title and number of pages of the document;

b) The date appearing thereon and the date of the document's preparation, if known;

c) The name(s), address(es), and title(s) of the document's author(s) and signer(s);

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d) The name(s), address(es), and title(s) of the person(s) to whom the document was addressed or distributed;

e) A further general description of the document so it can be distinguished from other similar documents; and

f) The physical location of the document and the name(s) and address(es) of the custodian(s) thereof.

6. The term "identify" or "identity" when used with reference to a person shall mean to state with respect to each such person:

a) The person's name, address, and telephone number;

b) The present employer, occupation, and business address of the person; If the person is not a natural person, the type of entity and the state under whose authority it exists; and

d) Any other information helpful in ascertaining the location or identity of the person.

7. The term "relating to" shall mean pertaining to, referring to, concerning, reflecting, describing, evidencing, constituting, or in any way logically or factually connected with the matter discussed.

8. The phrase "state the factual basis" means to provide a detailed summary of the facts, information, and matters which you presently believe support or tend to support such claim, allegation or statement. Such summary should include, when applicable, appropriate references to dates, times, persons and documents.

9. "All," "every" and "each" shall be construed as all, every and each.

10. The connectives "and" and "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

11. The use of the singular form of any word includes the plural and vice-versa.

12. The "Nielson Property" means that parcel of real estate described by metes and bounds in document number 259382 attached as exhibit G to Plaintiffs' verified complaint.

13. The "Talbot Property" means that parcel of real estate described by metes and bounds in document number 194042 attached as exhibit L to Plaintiffs' verified complaint.

14. The "Carport" means the carport constructed by the Defendants, a portion of which is built on the property that is in dispute in this action.

15. The "Shed" means the shed that a portion of which is on the property that is in dispute in this action.

INSTRUCTIONS

1. If you are entitled to and do elect to produce documents pursuant to Rule 33(c), Idaho Rules of Civil Procedure, instead of identifying the documents as requested by a particular Interrogatory, you are required to produce such documents in the manner set forth in Rule 33(c) and are required to produce every original, every copy of the original where the original is not available, and every nonidentical copy of the document in your possession, custody or control.

2. To the extent that you object to any Interrogatory, set forth the reasons therefor. Should your objection be made to only part of any Interrogatory, you must completely answer the remainder of that Interrogatory. If you claim privilege as grounds for not answering any Interrogatory you must make the claim expressly and describe the nature of the information or communication not disclosed in a manner that will enable other parties to assess the applicability of the privilege. Therefore, as to each Interrogatory or part thereof which you refuse to answer on the basis of a claim of privilege, provide the following information:

- a) The privilege(s) claimed;
- b) Specific facts upon which each claim of privilege is based;
- c) If a document is involved, identify that document; and
- d) If the privilege concerns an oral communication, identify that communication.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all documents that relate to the location of the fence that you contend was once the monument of the property boundary between the property of the plaintiffs and the defendants.

INTERROGATORY NO. 2: Please identify all witnesses who have knowledge of the location of the fence that you contend was once the monument of the property boundary between the property of the plaintiffs and the defendants. In addition please state the substance of the witness' testimony.

INTERROGATORY NO. 3: Please identify the person who constructed the Carport.

INTERROGATORY NO. 4: Please identify the person who constructed the Shed.

INTERROGATORY NO. 5: Did you have permission from anyone to construct the Carport or the Shed? If so, from whom did you receive permission for the construction of the Carport? Was the permission in writing or oral? If oral, where and when did the conversation take place? Who was present and who said what to whom?

INTERROGATORY NO. 6: If your response to the requests for admission set forth below is anything but an unequivocal admission, please state the factual basis for the failure to unequivocally admit.

REQUESTS FOR PRODUCTION

<u>REQUEST NO. 1</u>: All documents relating to the location of the fence that you contend was once the monument of the property boundary between the property of the Plaintiffs and the Defendants.

<u>REQUEST NO. 2</u>: All documents relating to payment by you of taxes on either the Talbot property or the Nielson property including, but not limited to the Franklin County Tax Statements pursuant to which any taxes were paid by you, cancelled checks or other evidence of payment of the taxes.

<u>REQUEST NO. 3</u>: All documents relating to the construction of the Carport or the Shed including but not limited to building permits or applications for building permits.

<u>REQUEST NO. 4</u>: All documents relating to any claim that you were given permission to build the Carport or the Shed.

REQUESTS FOR ADMISSION

<u>REQUEST NO. 1</u>: Admit that you have never paid taxes on the Nielson Property or any portion of it.

<u>REQUEST NO. 2</u>: Admit that you did not obtain a building permit for the construction of the Carport or the Shed.

<u>REQUEST NO. 3</u>: Admit that you did not have permission to build the Carport or the Shed.

<u>REQUEST NO. 4</u>: Admit that when you purchased the Talbot Property the fence referenced in your counterclaim did not exist.

DATED this 19th day of February, 2016.

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Atkin Law Offices

Noheste

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants



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FRANKLIN COUNTY CLERK

DEPUTY

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	MOTION TO COMPEL
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER AND SAUNDRA PARKER, husband and wife, Defendants.	Case No. CV-2015-132 Judge: Naftz

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

Pursuant to Rule 37, Idaho Rules of Civil Procedure, Plaintiffs move the Court to compel responses to interrogatories and document requests served on Defendants on February 19, 2016

for which no response has been received to date.

DATED this 6th day of May, 2016.

Atkin Law Offices

Nahest

Blake S. Atkin Attorneys for the Plaintiffs Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

FILED 16 MAY - 6 PM 1:57 FRANKLIN COUNTY CLERK

DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	MEMORANDUM IN SUPPORT OF MOTION TO COMPEL
V.	
ROBERT TALBOT and MICHELE TALBOT, husband and wife,	Case No. CV-2015-132
and	Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

FACTS

On February 29, 2016, Plaintiffs served Defendants with their second discovery requests.

A Certificates of Service was filed with the Court on that date. The discovery is attached hereto

as Exhibit A.

On April 19, 2016, counsel for the Plaintiff, Mr. Atkin, personally talked to counsel for the Defendant, Mr. Erickson, and requested that he respond to the discovery that was then overdue. Mr. Erickson promised to do so. Affidavit of Blake S. Atkin. Mr. Atkin's office followed up via email on April 19, 2016 to confirm that Mr. Erickson's office had received the discovery and was assured that they had. Affidavit of Jennifer Mariscal.

To date no responses to the discovery have been received and the responses are needed so that the Plaintiffs can do the discovery necessary to prosecute this case.

ARGUMENT

In Idaho if

"a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request". Rule 37(a)(2) Idaho Rules of Civil Procedure

As set out in the fact statement, the discovery was regularly propounded and no attempt has been made by the Defendants to respond, even after counsel for Plaintiffs met and conferred in an attempt to get responses to the discovery.

Rule 37 requires that "The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action." *Id.* In his affidavit Mr. Atkin sets out the efforts made to obtain responses to the discovery.

CONCLUSION

Defendants should be ordered to immediately respond to the outstanding discovery so that this case can be moved along.

DATED this 6th day of May, 2016.

Atkin Law Offices

Rahest

Blake S. Atkin Attorneys for the Plaintiffs

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

Т

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	AFFIDAVIT OF BLAKE S. ATKIN
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

Blake S. Atkin, having been first duly sworn, deposes and says:

- 1. I am attorney of record for the Plaintiffs in this matter.
- On February 19, 2016, I caused to be served Plaintiff's second set of discovery on Defendants.

- Having received no response on April 19, 2016 I spoke with Mr. Erickson, Defendants' lawyer and reminded him about the discovery requests. He promised to provide me with responses.
- I had my office follow up with Mr. Erickson's office to confirm that they had in fact received the discovery requests. I was informed that they confirmed receipt of the discovery.
- 5. To date I have not received responses to our discovery.

Further affiant saith naught.

Dated this $\cancel{0}$ day of May, 2016

11 th

Blake S. Atkin

SUBSCRIBED AND SWORN before me this _____ day of May, 2016.

JENNIFER MARISCAL Jennifer Mariscal Notary Public exp. 7-13-18 Notary Public State of Idaho

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 MAY -6 PM 1 56

FRANKLIN COUNTY CLERK

DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	CERTIFICATE OF SERVICE
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

The undersigned certifies that she caused to be served a true and correct copy of the following documents as indicated below:

- 1. Motion to Compel
- 2. Memorandum in Support of Motion to Compel
- 3. Motion to Deem Facts Admitted

4. Memorandum in Support of Motion to Deem Facts Admitted

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net	X U.S. Mail	X E-mail	Facsimile
Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, Idaho 83201 Facsimile: (208) 236-7290	U.S. Mail	E-mail	X Facsimile
Franklin County Court 39 West Oneida Preston, Idaho 83263 Facsimile: (208) 852-2926	U.S. Mail	E-mail	X In-person

Dated this 6th day of May, 2016.

Gennifer Mariscal

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

FILED 16 MAY - 6 PH 1:57 FRANKLIN COUNTY CLERK

DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	AFFIDAVIT OF JENNIFER MARISCAL
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

Jennifer Mariscal, having been first duly sworn, deposes and says:

1. On February 19, 2016, I served Plaintiffs' second set of discovery requests, which

included requests for admission on Defendants by email and via U.S. mail

2. A Certificate of Service of the discovery was filed with the Court.

- 3. On April 19, I was asked by Mr. Atkin to confirm that the second set of discovery requests was in fact served on Mr. Erickson's office.
- 4. I received an email from Mr. Erickson on April 19 who confirmed that they had received the discovery on February 19, 2016.

Dated this $(\underline{O}$ day of May, 2016

Jennifer Mariscal Jennifer Mariscal

SUBSCRIBED AND SWORN before me this _____ day of May, 2016.

ROCIO GOMEZ Notary Public a of the <u>Ctai</u>

Preis Goney Ex-5/2/17 Notary Public

Exhibit A

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL	PLAINTIFFS' SECOND SET OF
E. NIELSON, husband and wife,	INTERROGATORIES AND DOCUMENT
Plaintiff/Counterdefendants,	REQUESTS TO DEFENDANTS
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, Defendants/Counterclaimants.	Case No. CV-2015-132 Judge: Naftz

Pursuant to Rule 33 of the Idaho Rules of Civil Procedure, Plaintiff, through counsel, requests you, the Defendants and each of you, to respond to the following interrogatories. Each interrogatory shall be answered separately and fully in writing under oath within 30 days of service of these interrogatories upon you.

DEFINITIONS

The following definitions shall govern these Interrogatories absent clear indication to the contrary:

1. The terms "you," "your," or "yours" shall have reference to the Defendant answering the interrogatory and shall also have reference to any employee, agent, attorney, or any other person acting for or on behalf of that Defendant.

2. Other terms pertaining to the parties, documents, events, or occurrences referenced in the pleadings of the parties shall have the meanings ascribed to them in such pleadings.

3. The term "document" or "documents" shall mean every writing, recording or photograph as those terms are defined in Rule 1001, Idaho Rules of Evidence, and every database that can be used to generate any writing or recording as defined in the Idaho Rules of Evidence.

4. The term "person" shall mean any natural person and any firm, corporation, association, partnership or other legal, business or government entity, and shall include the plural as well as the singular.

5. The term "identify" or "identity" when used with reference to a document(s) shall mean to state with respect to each such document:

a) The title and number of pages of the document;

b) The date appearing thereon and the date of the document's preparation, if known;

c) The name(s), address(es), and title(s) of the document's author(s) and signer(s);

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d) The name(s), address(es), and title(s) of the person(s) to whom the document was addressed or distributed;

e) A further general description of the document so it can be distinguished from other similar documents; and

f) The physical location of the document and the name(s) and address(es) of the custodian(s) thereof.

6. The term "identify" or "identity" when used with reference to a person shall mean to state with respect to each such person:

a) The person's name, address, and telephone number;

b) The present employer, occupation, and business address of the person; If the person is not a natural person, the type of entity and the state under whose authority it exists; and

d) Any other information helpful in ascertaining the location or identity of the person.

7. The term "relating to" shall mean pertaining to, referring to, concerning, reflecting, describing, evidencing, constituting, or in any way logically or factually connected with the matter discussed.

8. The phrase "state the factual basis" means to provide a detailed summary of the facts, information, and matters which you presently believe support or tend to support such claim, allegation or statement. Such summary should include, when applicable, appropriate references to dates, times, persons and documents.

9. "All," "every" and "each" shall be construed as all, every <u>and</u> each.

10. The connectives "and" and "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

11. The use of the singular form of any word includes the plural and vice-versa.

12. The "Nielson Property" means that parcel of real estate described by metes and bounds in document number 259382 attached as exhibit G to Plaintiffs' verified complaint.

13. The "Talbot Property" means that parcel of real estate described by metes and bounds in document number 194042 attached as exhibit L to Plaintiffs' verified complaint.

14. The "Carport" means the carport constructed by the Defendants, a portion of which is built on the property that is in dispute in this action.

15. The "Shed" means the shed that a portion of which is on the property that is in dispute in this action.

INSTRUCTIONS

1. If you are entitled to and do elect to produce documents pursuant to Rule 33(c), Idaho Rules of Civil Procedure, instead of identifying the documents as requested by a particular Interrogatory, you are required to produce such documents in the manner set forth in Rule 33(c) and are required to produce every original, every copy of the original where the original is not available, and every nonidentical copy of the document in your possession, custody or control.

2. To the extent that you object to any Interrogatory, set forth the reasons therefor. Should your objection be made to only part of any Interrogatory, you must completely answer the remainder of that Interrogatory. If you claim privilege as grounds for not answering any Interrogatory you must make the claim expressly and describe the nature of the information or communication not disclosed in a manner that will enable other parties to assess the applicability of the privilege. Therefore, as to each Interrogatory or part thereof which you refuse to answer on the basis of a claim of privilege, provide the following information:

- a) The privilege(s) claimed;
- b) Specific facts upon which each claim of privilege is based;
- c) If a document is involved, identify that document; and
- d) If the privilege concerns an oral communication, identify that communication.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all documents that relate to the location of the fence that you contend was once the monument of the property boundary between the property of the plaintiffs and the defendants.

INTERROGATORY NO. 2: Please identify all witnesses who have knowledge of the location of the fence that you contend was once the monument of the property boundary between the property of the plaintiffs and the defendants. In addition please state the substance of the witness' testimony.

INTERROGATORY NO. 3: Please identify the person who constructed the Carport.

INTERROGATORY NO. 4: Please identify the person who constructed the Shed.

INTERROGATORY NO. 5: Did you have permission from anyone to construct the Carport or the Shed? If so, from whom did you receive permission for the construction of the Carport? Was the permission in writing or oral? If oral, where and when did the conversation take place? Who was present and who said what to whom?

INTERROGATORY NO. 6: If your response to the requests for admission set forth below is anything but an unequivocal admission, please state the factual basis for the failure to unequivocally admit.

REQUESTS FOR PRODUCTION

<u>REQUEST NO. 1</u>: All documents relating to the location of the fence that you contend was once the monument of the property boundary between the property of the Plaintiffs and the Defendants.

REQUEST NO. 2: All documents relating to payment by you of taxes on either the Talbot property or the Nielson property including, but not limited to the Franklin County Tax Statements pursuant to which any taxes were paid by you, cancelled checks or other evidence of payment of the taxes.

REQUEST NO. 3: All documents relating to the construction of the Carport or the Shed including but not limited to building permits or applications for building permits.

<u>REQUEST NO. 4</u>: All documents relating to any claim that you were given permission to build the Carport or the Shed.

REQUESTS FOR ADMISSION

<u>REQUEST NO. 1</u>: Admit that you have never paid taxes on the Nielson Property or any portion of it.

<u>REQUEST NO. 2</u>: Admit that you did not obtain a building permit for the construction of the Carport or the Shed.

REQUEST NO. 3: Admit that you did not have permission to build the Carport or the Shed.

<u>REQUEST NO. 4</u>: Admit that when you purchased the Talbot Property the fence referenced in your counterclaim did not exist.

DATED this 19th day of February, 2016.

-

Atkin Law Offices

Naheste

Blake S. Atkin Attorneys for the Plaintiffs/Counterdefendants

FILED

16 MAY 11 AM 9: 22

RANKLIN COUNTY CLERK

DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

٧.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

anđ

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

NOTICE OF HEARING

Case No. CV-2015-132

Judge: Naftz

Please take notice that the hearing on the Plaintiffs' Motion to Compel and Motion to Deem Facts Admitted will be held on Thursday, June 2, 2016 at 2:00 p.m.

DATED this 11th day of May, 2016.

Atkin Law Offices

Blake S. Atkin Attorneys for the Plaintiffs

~ **~~**~

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the NOTICE OF

HEARING as indicated below:

X U.S. Mail X E-mail ____ Facsimile

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net

Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 ____ U.S. Mail ____ E-mail X Facsimile

____U.S. Mail ____ E-mail X Facsimile

Dated this 11th day of May, 2016.

Gennifer Mariscal

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

vs.

. ---

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

And

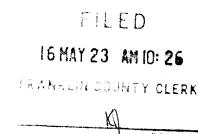
PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

CASE NO. CV 15-132

NOTICE OF SERVICE OF DEFENDANT TALBOTS' ANSWERS AND RESPONSES TO PLAINTIFFS' SECOND SET OF INTERROGATORIES, DOCUMENT REQUESTS AND REQUESTS FOR ADMISSION

PLEASE TAKE NOTICE that the undersigned, attorney for the Defendants ROBERT TALBOT and MICHELE TALBOT, husband and wife, Lane V. Erickson of Racine, Olson, Nye, Budge & Bailey, Chartered, gives notice of the delivery of "Defendants Talbots' Answers and Responses to Plaintiffs' Second Set of Interrogatories, Document Requests and Requests for Admission" to the attorney for the Plaintiffs, as set forth in the Certificate of Service.



RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

B

LANE V. ERICKSON Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 *Fax: 801-533-0380* X] U. S. Mail Postage Prepaid
Hand Delivery
Overnight Mail
Facsimile
X] E-Mail

LANE V. ERICKSON

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail <u>lve@racinelaw.net</u>

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

vs.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

And

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

CASE NO. CV 15-132

DEFENDANT TALBOTS' RESPONSE TO PLAINTIFFS' MOTION TO COMPEL AND MOTION TO DEEM ADMISSIONS ADMITTED

COMES NOW Defendants ROBERT TALBOT and MICHELLE TALBOT (hereafter, "Defendants "Talbot"), by and through their attorney of record, Lane V. Erickson and hereby provides its Response to Plaintiff's Motion to Compel and to Deem Admissions Admitted, pursuant to I.R.C.P. Rules 37(a) and 36(b) as follow:

FILED 16 MAY 23 AM 10: 26 TRANKLIN COUNTY CLERK

BACKGROUND AND FACTS

 Plaintiffs served its first Combined Discovery Requests to Defendant Robert Talbot on May 14th 2015.

2. Since that time Plaintiffs original counsel withdrew representation and Plaintiffs first appeared on their own and they by and through attorney Blake Atkins who is Plaintiff's current counsel of record.

3. On or about February 19, 2016, Plaintiffs served upon counsel for Defendants Talbot its Second Set of Interrogatories and Document Requests to Defendants as evidenced by that certain Certificate of Service on record with the Court.

4. Copies of the Discovery requests were sent by Defendants Talbots' counsel to Defendants Talbot who responded with information within about 2 weeks.

5. A number of motions were then field by Plaintiffs in the present case as are on record before the Court.

6. Defendants Talbots' counsel responded to many of these motions and to the hearings and failed to properly calendar the deadline associated with Second Set of Interrogatories and Document Requests to Defendants.

7. Some time in April 2016 Plaintiffs' counsel's office did contact Defendants Talbots' counsel to inquire about the status of the Responses to its Second Set of Interrogatories and Document Requests.

8. At this time, Defendants Talbots' counsel reviewed Plaintiffs' Second Set of Interrogatories and Document Requests and discovered that they also contained Requests for Admission though this was not designated on the title to either Plaintiffs' Second Set of Interrogatories and Document Requests or the accompanying Certificate of Service as set forth above.

9. Defendants Talbots' counsel reviewed all the items contained in Plaintiffs' Second Set of Interrogatories and Document Requests with Defendants Talbot and obtained information necessary to respond thereto.

10. Defendants Talbots' counsel forwarded Responses to Plaintiffs' counsel on May 19, 2016, which included responses to the Requests for admission, some of which were admitted to and some of which were denied.

RELIEF REQUESTED

Defendants Talbot respectfully request pursuant to the authority below, that the Court deny Plaintiffs Motion to Compel as moot due to Defendant Talbots' having responded to Plaintiffs discovery requests. Further, Defendants Talbot respectfully request that their response to Plaintiffs Requests for Admission be allowed as no prejudice to the Plaintiffs' has or will occur as a result. In support of these requests, Defendants Talbot provide the following argument.

ARGUMENT

I. STANDARD OF REVIEW

The Court has discretion to determine whether tardy responses to requests for admissions will deem the admission to be admitted based upon the circumstances of the case. Rule 36(b) provides, in relevant part: "Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. . . . The court may permit withdrawal or amendment when the presentation of the merits of the action will be

subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits...."

By its terms, this rule vests the court with discretion in determining whether to allow withdrawal or amendment of admissions. The test for determining whether a court has abused its discretion consists of three inquiries: (1) whether the court correctly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the court reached its decision through an exercise of reason. *Sammis v. MagneTek, Inc.*, 130 Idaho 342, 351-352, 941 P.2d 314, 323-324, 1997 Ida. LEXIS 67, *26-27 (Idaho 1997).

In the present case, as is set forth below, no prejudice will be suffered by the Plaintiff in allowing Defendants Talbots' responses to the Requests for Admission to stand, though they are tardy. For this reason, Defendants Talbot respectfully request that their Response to Plaintiffs Requests for Admission be allowed.

II. NO PREJUDICE TO THE PLAINTIFF

As is set forth above, I.R.C.P. Rule 36(a) and (b) specifically allow a court to allow tardy responses to requests for admission, "when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. . . ."

When two requirements are met an admission may be amended or withdrawn pursuant to Rule 36(b). These requirements are: (1) presentation of the merits must be promoted, and (2) the

party who obtained the admission must not be prejudiced by the withdrawal. I.R.C.P. 36(b). *Quiring v. Quiring*, 130 Idaho 560, 564, 944 P.2d 695, 699, 1997 Ida. LEXIS 116, *11 (Idaho 1997).

"Prejudice" as contemplated in F.R.C.P. 36(b) is "not simply that the party who obtained the admission will now have to convince the factfinder of its truth. Rather, it relates to the difficulty a party may face in proving its case, e.g., caused by the unavailability of key witnesses, because of the sudden need to obtain evidence' with respect to the questions previously deemed admitted." Hadley, 45 F.3d at 1348 (quoting Brook Village N. Assoc. v. General Elec. Co., 686 F.2d 66, 70 (1st Cir. 1982)). "The party who obtained the admission has the burden of proving that withdrawal of the admission would prejudice the party's case." Id. Again, these federal decisions are persuasive and consistent with I.R.C.P. 36(b). *Quiring v. Quiring*, 130 Idaho 560, 564-565, 944 P.2d 695, 699-700, 1997 Ida. LEXIS 116, *11-12 (Idaho 1997).

In the present case, the basis for tardiness rests upon Defendants Talbots' counsel and not upon Defendants Talbot themselves. Additionally, this case has just been consolidated with that of another case involving the property, the Plaintiffs and additional Defendants. Discovery is still pending in this case and trial is not scheduled until November of this year. Plaintiffs have ample time in which to prove its case based on its ability to obtain discovery and to locate and depose all relevant witnesses who may be called. As a result, Plaintiffs can hardly claim, let alone meet the standard of proving that allowing the tardy Responses to Requests for Admission prejudice its case. For these reasons, Defendants Talbot respectfully request that their Responses to Plaintiffs Requests for Admission be allowed.

CONCLUSION

For the facts and reasons set forth herein, Defendants Talbot respectfully request that Plaintiffs' Motion to Compel be denied as moot. Further, Defendants Talbot respectfully request that their Responses to Plaintiffs Requests for Admission be allowed.

DATED this $\underline{191}^{t}$ day of May, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

Bv LANE V. ERICKSON

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <u>4</u> day of May, 2016, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 *Fax:* 801-533-0380 [X] U. S. Mail Postage Prepaid
Hand Delivery
Overnight Mail
Facsimile
[X] E-Mail

LANE V. ERICKSON

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

CASE NO. CV 15-132

NOTICE OF INTENT TO APPEAR TELEPHONICALLY

v.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

and

PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, by and through their attorney of record, Lane V. Erickson, hereby give notice that they will appear telephonically at the hearing scheduled for June 2, 2016 at 2:00 p.m. regarding Plaintiffs' Motion to Compel and Motion to Deem Facts Admitted before Judge Robert C. Naftz. Defendants' counsel will call in to the

NOTICE OF INTENT TO APPEAR TELEPHONICALLY -1

Court's phone number: 208-852-0252.

DATED this 25^{1} Day of May, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

Bv:

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the $25^{1/2}$ day of May, 2016, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 Fax: 801-533-0380 U. S. Mail Postage Prepaid
Hand Delivery
Overnight Mail
Facsimile
E-Mail

LANE V. ERICKSON

NOTICE OF INTENT TO APPEAR TELEPHONICALLY -2

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Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net



Filed

16 HAY 26 PM 12: 28

FRAAKLIN COUNTY CLERK

DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

NOTICE OF DEPOSITION

Case No. CV-2015-132

Judge: Naftz

Plaintiffs hereby give notice of the deposition of Defendants Paul Parker and Saundra

Parker to be conducted and recorded before a certified court reporter at the time and place

indicated below:

Date: June 10, 2016

Time: Saundra Parker at 9:00 a.m.

Paul Parker at 1:00 p.m.

-

Place: County Commissioners Room Franklin County Courthouse 51 West Oneida Preston, ID 83263

Dated this 26th day of May, 2016.

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Blake & the

Blake S. Atkin Attorney for Plaintiffs

05/26/2016 12:21 2087473283

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of May, 2016, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing Notice of Deposition upon:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center	X U.S. Mail X E-mail	Facsimile
P.O. Box 1391		
Pocatello, Idaho 83204-1391		
Facsimile: (208) 232-7352		
Email: lve@racinelaw.net		
Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, Idaho 83201 Facsimile: (208) 236-7290	U.S. Mail E-mail	X Facsimile
Franklin County Court 39 West Oneida Preston, Idaho 83263 Facsimile: (208) 852-2926	U.S. MailE-mail	X Facsimile

Dated this 26th day of May, 2016.

Jennifer Mariscal

3

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

and

PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, by and through their attorney of record, Lane V. Erickson, hereby give notice that they will appear telephonically at the hearing scheduled for June 2, 2016 at 2:00 p.m. regarding Plaintiffs' Motion to Compel and Motion to Deem Facts Admitted before Judge Robert C. Naftz. Defendants' counsel will call in to the

16 MAY 27 PM 12: 36

FILED

CASE NO. CV 15-132

NOTICE OF INTENT TO APPEAR TELEPHONICALLY

Court's phone number: 208-852-0252.

DATED this $\frac{25}{10}$ Day of May, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

Bv:

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25^{t} day of May, 2016, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 *Fax: 801-533-0380* X] U. S. Mail Postage Prepaid
] Hand Delivery
] Overnight Mail
] Facsimile
] E-Mail

LANE V. ERICKSON

NOTICE OF INTENT TO APPEAR TELEPHONICALLY -2

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Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0380 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

FILED 16 JUN - 1 FM 3: 52 I FARKLIN COUNTY CLERK

DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

REQUEST TO VACATE HEARING

Case No. CV-2015-132

Judge: Naftz

Plaintiffs filed a Motion to Compel and a Motion to Deem Facts Admitted. The issues raised in those motions have now all been resolved, and the parties request that the Court vacate the hearing scheduled on those motions for Thursday, June 2, 2016 at 2:00 p.m.

DATED this 1st day of June, 2016.

Atkin Law Offices

Blake S. Atkin Attorneys for the Plaintiffs

 \smile

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the

REQUEST TO VACATE HEARING as indicated below:

 Lane V. Erickson
 X U.S. Mail
 X E-mail _____ Facsimile

 RACINE, OLSON, NYE, BUDGE
 & BAILEY CHARTERED
 201 East Center

 201 East Center
 P.O. Box 1391
 Pocatello, Idaho 83204-1391

 Facsimile: (208) 232-7352
 Email: lve@racinelaw.net

 Robert C. Naftz
 _____ U.S. Mail ____ E-mail X Facsimile

District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 ____U.S. Mail _____ E-mail X Facsimile

Dated this 1st day of June, 2016.

Genrifer Mariscal

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16 JUN 10 AH 11:47

TRANKLIM COUNTY CLERK

KI DEPUTY

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO	TRU A BUD DOD	THE COINTY	OT TO ANIZE THE
NIAIR UR MAHE	. IN AND RUR	THE CONTRACT	UPPRAINKLIN
			OT THEM THE SHIT

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	CERTIFICATE OF SERVICE
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

The undersigned certifies that she caused to be served a true and correct copy of the following

document as indicated below:

1. Plaintiffs Second Set of Requests for Production of Documents to Defendants

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: Ive@racinelaw.net

Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, Idaho 83201 Facsimile: (208) 236-7290 (Certificate of Service Only)

Franklin County Court 39 West Oneida Preston, Idaho 83263 Facsimile: (208) 852-2926 (Certificate of Service Only) X U.S. Mail X E-mail _____ Facsimile

U.S. Mail E-mail

X Facsimile

U.S. Mail E-mail

X Facsimile

Dated this 10th day of June, 2016.

Genrifer Mariscal



Boise, Idaho US Bank Plaza 101 S Capitol Blvd, Ste 503 P.O. Box 2636 83701-2636 208 345-9611 208 345-8800 (fax) courtreporters@m-mservice.com www.idahocourtreporting.com

SOUTHERN OFFICES 1 800 234-9611 208 345-8800 (fax)

> Twin Falls, Idaho 208 734-1700 Pocatello, Idaho 208 233-0816 Hailey, Idaho 208 578-1049

NORTHERN OFFICES 1 800 879-1700 208-765-8097 (fax)

Coeur d'Alene, Idaho 208 879-1700 Spokane, Washington 509 455-4515 FILED

June 23, 2016

16 JUN 30 AM 9: 18

FRANKLIN COUNTY CLERK

DEPUTY

To: Clerk, Franklin County District Court

RE: Nielson v. Talbot Case No. CV-2015-132 (Franklin County, Idaho) Deponent: Saundra Parker Taken on 6/10/2016 M & M Job No. 42957B4

Pursuant to Idaho Rule 30(f)(3), NOTICE OF PREPARATION OF TRANSCRIPT AND FILING is given as follows:

The transcript of **Saundra Parker** was completed on **6/23/2016**. The original transcript is currently in the possession of **M&M Court Reporting Service, US Bank Plaza 101 S. Capitol, Blvd, Ste. 503, Boise, Idaho**, awaiting signature by the deponent. Upon signature or expiration of the 30 days allowed under the rule, the original transcript will be forwarded to counsel for future filing.

Copies of the transcript have been provided to:

Lane V. Erickson Blake S. Atkin

M & M Court Reporting Service

pc: Lane V. Erickson Blake S. Atkin File

FILED

16 JUL 18 PM 12: 55

TRANKEIN COONTY OLERK

K) CEPUTY

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

Τ

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	PLAINTIFFS' WITNESS DISCLOSURE
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

Pursuant to the Court's scheduling order, Plaintiff designates the following witnesses for trial:

Plaintiff will call the following:

Cheryl Nielson

Wayne Nielson

 \sim

Monte Rugg

Diana Rugg

Craig Shaffer

Robert Talbot

Michele Talbot

Paul Parker

Saundra Parker

Lyle Wilse

Plaintiffs may call the following:

Ryan Olsen

Randall Henrie

Tyler Olsen

Vince Whitehead

Lou Jerome

Dated this 18th day of July, 2016.

Makes the

Blake S. Atkin Attorney for Plaintiffs

ŀ

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of Plaintiffs'

Witness Disclosure as indicated below:

Lane V. Erickson	X U.S. Mail	X E-mail	Facsimile
RACINE, OLSON, NYE, BUDGE			
& BAILEY CHARTERED			
201 East Center			
P.O. Box 1391			
Pocatello, Idaho 83204-1391			
Facsimile: (208) 232-7352			
Email: lve@racinelaw.net			
			, ,,
Robert C. Naftz	U.S. Mail	E-mail	X Facsimile
District Judge			
Bannock County Courthouse			
624 E. Center, Room 220	1		
Pocatello, Idaho 83201			
Facsimile: (208) 236-7290			
Franklin County Court	US Mail	E-mail	X Facsimile
39 West Oneida			
Preston, Idaho 83263			
Facsimile: (208) 852-2926			

Dated this 18th day of July, 2016.

Gennifer Mariscal

FILED

16 JUL 19 PM 5:02

FRAMELN COUNTY CLERK

ph

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

and

PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

CASE NO. CV 15-132

STIPULATION TO EXTEND DEADLINE FOR SUMMARY JUDGMENT HEARING

COMES NOW Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, by and through their attorney of record, Lane V. Erickson, and the Plaintiffs GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife, (hereafter, Plaintiffs), by and through their attorney of record, Blake S. Atkin, and hereby enter this Stipulation to Extend Deadline for Summary

STIPULATION TO EXTEND DEADLINE FOR SUMMARY JUDGMENT HEARING -1

Judgment Hearing.

With direction from the Court, the parties have scheduled the Summary Judgment Hearing in this matter to September 12, 2016 at 2:00 p.m. as directed in the Notice of Hearing.

DATED this 19th day of July, 2016.

ATKIN LAW OFFICE

By:

BLAKE S. ATKIN

DATED this 19^{47} day of July, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

By:

LANE V. ERICKSON

STIPULATION TO EXTEND DEADLINE FOR SUMMARY JUDGMENT HEARING -2

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net FILED 16 JUL 19 PH 5: 02 TRANKLIN COUNTY CLERK M

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

٧.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

and

PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

CASE NO. CV 15-132

NOTICE OF HEARING FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the undersigned will bring on for hearing Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, (hereafter "Defendants"), Motion for Summary Judgment, before the above-entitled Court on <u>Monday, September 12, 2016</u> at <u>2:00 p.m.</u>, before the Honorable Judge Robert C. Naftz at the Franklin County Courthouse, 39 W. Oneida,

NOTICE OF HEARING FOR SUMMARY JUDGMENT-1

Preston, Idaho.

DATED this 19^{16} Day of July, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

By

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the $\underline{192}$ day of May, 2014, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 Fax: 801-533-0380 X.] U. S. Mail Postage Prepaid
] Hand Delivery
] Overnight Mail
] Facsimile

E-Mail

LANE V. ERICKSON

NOTICE OF HEARING FOR SUMMARY JUDGMENT-2

FILED

16 AUG -5 PM 2: 18 FRANKLIN COUNTY CLERK

NEPUTY

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	MOTION TO COMPEL
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

Pursuant to Rule 37, Idaho Rules of Civil Procedure, Plaintiffs move the Court to compel responses to document requests served on Defendants on February 19, 2016 for which no response has been received to date.

DATED this 5th day of August, 2016.

Atkin Law Offices

Nohe St

Blake S. Atkin Attorneys for the Plaintiffs

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 AUG - 5 PM 2: 18 FRANKLIN COUNTY CLERK

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL

Case No. CV-2015-132

Judge: Naftz

On February 19, 2016, Plaintiffs served Defendants with their second set of document requests. In it they requested "all documents relating to payment by you of taxes on either the Talbot property or the Nielson property including, but not limited to the Franklin County Tax Statements pursuant to which any taxes were paid by you, cancelled checks or other evidence of payment of the taxes". On May 19, 2016, Counsel for the Defendants, in their answers and responses to Plaintiff's second set of document requests, responded that "in response to this request for production Defendants Talbot state that concerning the payment of taxes on the Talbot Property, the documents are being compiled and will be produced once compiled".

Despite repeated requests by Plaintiffs' Counsel and assurances by Defendants' Counsel that these tax documents would be produced, to date no tax document have been received; therefore, necessitating this Motion to Compel.

DATED this 5th day of August, 2016.

Atkin Law Offices

Rahe Sta

Blake S. Atkin Attorneys for the Plaintiffs

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Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	CERTIFICATE OF SERVICE
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER AND SAUNDRA PARKER, husband and wife,	Case No. CV-2015-132 Judge: Naftz
Defendants.	

The undersigned certifies that she caused to be served a true and correct copy of the following

document as indicated below:

- 1. Motion to Compel
- 2. Memorandum in Support of Motion to Compel
- 3. Notice of Hearing

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4. Certificate of Service

X U.S. Mail X E-mail _____ Facsimile Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net Robert C. Naftz U.S. Mail E-mail X Facsimile District Judge **Bannock County Courthouse** 624 E. Center, Room 220 Pocatello, Idaho 83201 Facsimile: (208) 236-7290 Franklin County Court X Facsimile U.S. Mail E-mail 39 West Oneida Preston, Idaho 83263 Facsimile: (208) 852-2926

Dated this 5th day of August, 2016.

Gennifer Mariscal

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 AUG - 5 PM 2: 18 IRANKLIN COUNTY CLERK

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	NOTICE OF HEARING
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

Please take notice that the hearing on the Plaintiffs' Motion to Compel will be held on Thursday, September 1, 2016 at 10:00 a.m.

DATED this 5th day of August, 2016.

Atkin Law Offices

Bloke Ste

Blake S. Atkin Attorneys for the Plaintiffs

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CRARKER COUNTY CLERK



Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	CERTIFICATE OF SERVICE
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	· · · · · · · · · · · · · · · · · · ·
Defendants.	

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

The undersigned certifies that she caused to be served a true and correct copy of the PLAINTIFFS'

THIRD SET OF REQUESTS FOR ADMISSION TO THE TALBOT DEFENDANTS as indicated below:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net

Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290 (Certificate of Service)

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 (Certificate of Service)

X U.S. Mail X E-mail ____ Facsimile

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_U.S. Mail ____ E-mail X Facsimile

Dated this 9th day of August, 2016.

Jennifer Mariscal

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail <u>lve@racinelaw.net</u>

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

CASE NO. CV 15-132

NOTICE OF HEARING FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the undersigned will bring on for hearing Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, (hereafter "Defendants"), Motion for Summary Judgment, before the above-entitled Court on <u>Monday, September 12, 2016</u> at <u>2:00 p.m.</u>, before the Honorable Judge Robert C. Naftz at the Franklin County Courthouse, 39 W. Oneida, Preston, Idaho.

NOTICE OF HEARING FOR SUMMARY JUDGMENT-1

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DATED this $\frac{1}{2}$ Day of August, 2016.

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RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the $1\lambda^{m}$ day of May, 2014, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 Fax: 801-533-0380 X] U. S. Mail Postage Prepaid
Hand Delivery
Overnight Mail
Facsimile
E-Mail

LANE V. ERICKSON

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109 FILED 16 AUG 15 PM 4:53 FRANKLIN COUNTY CLERK _______

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife Case No. CV-2015-00132

AMENDED MOTION FOR SUMMARY JUDGMENT

Defendants/Counterclaimants.

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, and the Defendants PARKER and SAUNDRA PARKER, husband and wife (hereafter "Defendants"), by and through counsel, and hereby files this Amended Motion for Summary Judgment and moves this Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, for an Order granting Summary Judgment in favor of Defendants and against Plaintiffs GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife, (hereafter collectively "Plaintiffs").

Defendants request this Court to enter an Order granting Summary Judgment in favor of

Defendants and against Plaintiffs upon the grounds and for the reasons that there are no genuine issues of material fact and that Defendants are entitled to a Judgment against Plaintiffs. This motion is based upon Defendants' Counterclaim and other pleadings on file herein, together with the Affidavits of Lane V. Erickson, Gae Murdock, Craig Shaffer, Dr. Phil Cromwell, Dave Larsen, Defendant Michele Talbot, and Defendant Robert Talbot, and the Amended Memorandum in Support of Motion for Summary Judgment submitted herewith.

DATED this $\frac{12}{12}$ day of August, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

V ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228 [X] U. S. Mail Postage Prepaid

] Hand Delivery

] Overnight Mail

] Facsimile

on this 12 day of August, 2016.

LANE V. ERICKSON

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109 FILED IS AUG 15 PM 1:53 FRANKLIN COUNTY CLERK

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife

Defendants/Counterclaimants.

Case No. CV-2015-00132

AMENDED MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE

TALBOT, husband and wife, and the Defendants PARKER and SAUNDRA PARKER, husband and wife (hereafter "Defendants"), by and through counsel, and hereby submits this Amended Memorandum in Support of its Amended Motion for Summary Judgment.

PROCEDURE AND BACKGROUND OF CASE

The present case is a consolidation of two cases brought by the Plaintiff. The first case involved ROBERT TALBOT and MICHELE TALBOT, the next door neighbors of the Plaintiff concerning a boundary line dispute, who filed an Answer and a Counterclaim to quiet title to the boundary line. The second case involved PAUL PARKER and SAUNDRA PARKER who sold a home to the Plaintiff. This case raises a Warranty of Title claim and a damage claim for a claim of mold and water damage.

These two cases were consolidated on April 22, 2016 into the present litigation as the boundary line issue is mutual between the two sets of Defendants.

PARTIES AND JURISDICTION

1. Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, (hereafter "Talbots"), are residents of Preston, Franklin County, Idaho.

2. Defendants PAUL PARKER and SAUNDRA PARKER, husband and wife, (hereafter "Parkers"), are residents of Preston Franklin County, Idaho.

3. Plaintiff/Counterdefendants GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife, (hereafter collectively, "Plaintiffs"), are residents of Preston, Franklin County, Idaho.

RELIEF SOUGHT BY DEFENDANTS

Pursuant to the undisputed facts in the present case, the boundary line is established as a matter of law. By being so established, any warranty or duty to defend claims made by Plaintiff must be dismissed. Further, any claim of mold or water damage occurred after Plaintiff's

purchased their home and cannot be charged against the Defendants. Or alternatively, the Plaintiffs were aware of any prior mold that had been removed by the Plaintiffs and for this reason no fraud can have occurred, and Plaintiffs would have consented and/or ratified the transaction. For these reasons, summary judgment should be granted in favor of the Defendants and Plaintiff's causes of action, and the present litigation, should be dismissed entirely with an award of damages being made in favor of Defendants.

FACTUAL ALLEGATIONS

The following undisputed facts are supported by the record before the Court and by the affidavits filed herewith, and support granting summary judgment in favor of the Defendants in the present litigation.

4. On or about April 5, 1972, Myrtle Ransom deeded certain real property located in Franklin County, Idaho to Howard Almond. This transfer of real property was made by warranty deed, a true and correct copy of which is attached to Plaintiffs' Complaint as Exhibit "A" which is incorporated herein by reference as if set forth fully.

5. On or about July 2, 1979 Howard Almond and Laura Almond deeded property to Craig and to Sue Shaffer, property by warranty deed recorded on July 11, 1979, as Instrument No. 150231, as modified by the certain warranty deed recorded on October 2, 1981 as Instrument No. 157161. (See Affidavit of Craig Shaffer, (hereafter Shaffer Affidavit), and Plaintiff's Complaint Exhibits "B" and "C".)

6. A portion of the property was enclosed by a fence, because it had been used as a pasture by the Almonds. (See Shaffer Affidavit.)

7. Craig and Sue Shaffer decided to split the property into two pieces with one piece

being the area enclosed by the fence (hereafter the "Talbot Property"), and the remainder being the other piece (hereafter the "Nielson Property"). (See Shaffer Affidavit and Plaintiff's Complaint.)

8. On or about January 17, 1985, Craig and Sue Shaffer sold the property enclosed by the fence, the Talbot Property, to Suel Murdock and Gae Murdock by Quit Claim Deed which was recorded as Instrument No. 168360. (See Shaffer Affidavit and Plaintiff's Complaint, Exhibit "J".)

9. In selling the Talbot Property to Suel Murdock and Gae Murdock, it was agreed that the Murdocks were purchasing all of the property enclosed by the fence. The Shaffers agreed with the Murdocks that the fenceline would be the property boundary line which divided the Talbot Property from the Nielson Property. (See Shaffer Affidavit and Gae Murdock Affidavit.)

10. The Shaffers and the Murdocks jointly created a legal description for the Talbot Property that was included in the Deed to the Murdocks that the Shaffers and the Murdocks all believed reflected their agreement of having the fenceline be the boundary line between the properties. (See Shaffer Affidavit and Gae Murdock Affidavit.)

11. The fenceline was maintained as the boundary line between the Talbot Property and the Nielson Property by the Shaffers and the Murdocks the entire time that these parties owned their respective properties, as described above. (See Shaffer Affidavit and Gae Murdock Affidavit.)

12. On September 22, 1986, Dr. Phil and Sherry Cromwell, (hereafter "Cromwells") obtained the Nielson property which was subsequently then deeded in turn to the Heaps, the Parkers and then finally to the Plaintiffs. This was accomplished by the Deed attached to

Plaintiffs' Complaint as Exhibits "D", "E", "F", "G" and "H" which are incorporated herein by reference as if set forth fully.

13. When the Cromwells purchased the Nielson property, the property next door was pasture land with a fence that created a boundary between our property and the pasture land. A legal description was included in the Deed for the Cromwells that they believed reflected the fenceline as the boundary line between their property and the Murdock's property on the other side of the fence. After purchasing our property, The Cromwells immediately began watering and maintaining the grass and yard up to the fenceline. On the other side of the fence, on the Murdock property was bare dirt, weeds, and pasture. (See Affidavit of Phil Cromwell, hereafter the "Cromwell Affidavit").

14. Dr. Cromwell personally planted a number of lilac bushes on the Nielson property up to the fenceline to create a sort of natural privacy barrier. These lilac bushes were planted along the boundary line between the Nielson property and the Murdock's property towards the front and extending down the boundary line approximately ¹/₃ to ¹/₂ of the way. Dr. Cromwell then personally maintained the grass, lilac bushes and yard up to the fenceline for several years. (See Cromwell Affidavit.)

15. In August 1992, the Murdocks sold their pasture land surrounded by the fence to Vince Whitehead. Mr. Whitehead took down the fence and immediately built a home which he then sold to Dave & Brenda Larsen in February 1993. When Mr. Whitehead sold the property to the Larsens, the home was completed but no landscaping had been done. At this time a clear boundary line existed between the Nielson property and the Talbot property because there were lilac bushes and maintained yard and grass on the Nielson property and bare dirt on Mr. Whitehead's property (the Talbot property). (See Cromwell Affidavit.)

16. After purchasing his property in February 1993, Mr. Larsen and Dr. Cromwell discussed his landscaping of his property up to the boundary line that had been defined by the previous fence. At the time of this conversation a clear boundary line established by the fence still existed because of my lilac bushes, groomed grass and yard that Dr. Cromwell had maintained up to the fence line, and the bare ground that was on Mr. Larsen's property. (See Cromwell Affidavit.)

17. A legal description was included in the Deed for the Larsens that they believed reflected the clear boundary line existed between their property (Talbot property) and the Cromwell's property (Neilson property). (See Affidavit of Dave Larsen, hereafter Larsen Affidavit.)

18. Mr. Larsen then installed a sprinkler system and grass up to the boundary line of the Cromwell's lilac bushes, grass and yard essentially landscaping all of the bare ground and continuing the boundary line between the Nielson property and the Talbot property. (See Larsen Affidavit.)

19. After this was done, Mr. Larsen maintained his yard and Dr. Cromwell maintained his yard for several years. The boundary line between the Nielson property and the Talbot property was always exactly where the fence had been the entire time the Cromwells owned the Nielson property and the Larsens owned the Talbot property. (See Cromwell Affidavit.)

20. While they owned the property, the Larsens also built a shed on the back corner of their yard (Talbot property). The shed was built so that the back side of it was on the boundary line. (See Cromwell and Larsen Affidavits.)

21. The Talbots purchased the Talbot Property from the Larsens on August 11, 1995.

At this time, the boundary line between the properties was well defined by the lilac bushes, grass, yards, sprinkler system, and shed that existed on the Talbot property or the Cromwell's property (Neilson property). (See Michele Talbot Affidavit, Plaintiff's Complaint Exhibit "L", Cromwell Affidavit and Larsen Affidavit.)

22. A legal description was included in the Deed for the Talbot's property that they believed reflected the boundary line between our property and the Cromwell's property that was well defined by the lilac bushes, grass, yards, sprinkler system, and shed that existed on either our property or the Cromwell's property (Nielson property). (See Robert Talbot Affidavit.)

23. The Talbots and the Cromwells then discussed the Talbots installing a carport on their property up to the boundary line. They discussed how the carport would look. They also discussed that it would be on the boundary line between the property, right next to the lilac bushes that the Cromwells had planted. After discussing this, the Cromwells gave their permission to allow the Talbots to build the carport as described. (See Cromwell and Robert Talbot Affidavits.)

24. The Talbots installed the driveway and carport just as we had discussed. (See Robert Talbot Affidavit and photographs attached as Exhibits "1", "2", and "3".)

25. The Cromwells lived on their property (Nielson property) for nearly 20 years. The Talbots were the Cromwells neighbors for nearly 10 years. During all of this time the boundary line that existed between the Cromwells (Nielson property) and the Talbot property was always the same and was defined by the fence, or once it was removed, by the lilacs, grass, yards, sprinkler system, shed, driveway and carport that took its place. Every neighbor the Cromwells had that lived on the Talbot property, including the Talbots, agreed to the boundary line through their maintenance of the boundary line. There was never any dispute about the boundary line between the properties. (See Cromwell Affidavit.)

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26. The Parkers sold the Nielson property to the Nielsons in August 2013. (See Plaintiffs Complaint.)

27. In June 2014, the Plaintiffs became the owner of the Nielson Property adjacent to that of the Defendants. Immediately upon obtaining ownership, Plaintiffs claim to have learned that the legal description they obtained through their warranty deed entitled them to those portions of the Talbot Property that have the Defendants' sprinkler system, shrubs and/or trees and also has the shed and a carport upon them. The Plaintiffs, became irate and demanded that the Defendants remove all of these improvements from the property. (See Plaintiffs' Complaint and Michele Talbot Affidavit.)

28. Before this, there was never any dispute about the boundary line of the properties between the Talbots or any of our neighbors until nearly 20 years after the Talbots purchased their property. (See Robert Talbot Affidavit.)

29. In August 2014, Cheryl Nielson began cutting down the lilac bushes that had been part of the boundary line the entire time both the Cromwells and the Talbots had lived in their respective properties. (See Cromwell Affidavit and Robert Talbot Affidavit.)

30. Photographs show how the lilac bushes looked for many years, and also how the property looked after the lilac bushes were cut down. (See Robert Talbot Affidavit and attached Exhibits "1", "2", and "3".)

31. Photographs also show the location of the driveway, carport and shed that are located on the Talbot property, and which were part of the boundary line that was first established by the fence when it existed. (See Affidavits of Cromwell, Larsen and Robert Talbot with attached Exhibits "1", "2", and "3".)

32. These same photographs also accurately show the boundary line as established by the lilacs, grass, yards, sprinkler system, shed, driveway and carport that were maintained from the beginning of the time the properties were divided by a fence and as the boundary line existed thereafter for over 20 years. (See Affidavits of Cromwell, Larsen and Robert Talbot with attached Exhibits "1", "2", and "3".)

33. A timeline of Ownership of the Talbot property and the Nielson property is provided to the Court as a visual aid in understanding the establishing and maintaining of the boundary line between the properties that first began with the fence and then continued with the lilacs, grass, yards, sprinkler system, shed, driveway and carport. (See Second Affidavit of Lane V. Erickson Exhibit "4"; the Cromwell, Larsen, and Robert Talbot Affidavits with Exhibits "1", "2", and "3"; and the Plaintiff's Complaint.)

34. The Parkers also testified that they did not know that the legal description written on the Warranty Deed to the property they sold to the Plaintiffs was different from the boundary line established by the lilacs, grass, yards, sprinkler system, shed, driveway and carport. The Parkers believed and treated the lilacs, grass, yards, sprinkler system, shed, driveway and carport as the boundary line. (See Second Affidavit of Lane V. Erickson Exhibit "5" pages 9, 13; and Exhibit "6" pages 15 - 18, 22, 35 - 36, 39, 41 - 42.)

35. The Parkers stated that they believed the lilacs, grass, yards, sprinkler system, shed, driveway and carport as the boundary line based upon their seeing these things for themselves and based upon their conversations with Jared and Marissa Heaps from whom they purchased the (Nielson) property. (See Second Affidavit of Lane V. Erickson Exhibit "6" page 46-48.)

36. The Parkers testified that there was a small spot of mold under the stairs that was

located during an inspection and that it had been cleaned up and totally removed before selling their home to the Plaintiffs. (See Second Affidavit of Lane V. Erickson Exhibit "5" page 15, and Exhibit "6" pages 42 - 43, .)

37. The Parkers further testified that this was the only mold that they were aware of in the home sold to the Plaintiffs. (See Second Affidavit of Lane V. Erickson Exhibit "5" page 15, and Exhibit "6" pages 44 - 45.)

38. The Parkers also testified that there was never any flooding in the home while they owned it. (See Second Affidavit of Lane V. Erickson Exhibit "5" page 15, and Exhibit "6" pages 44 - 45, 51 - 53.)

39. The Parkers testified that the Plaintiff never made any claims to them concerning any mold issue. Rather, all the letters from Plaintiff's attorney were concerning the boundary line issue and nothing was every stated about the mold or any flooding damage. (See Second Affidavit of Lane V. Erickson Exhibit "5" page 15, and Exhibit "6" pages 44 - 46, 58 - 59.)

40. The Parkers testified that they have no knowledge about whether there was any flooding or water problems with the home after they sold it to the Plaintiffs. The Parkers testified that it was about 18 months after they sold the home before the Parkers made any claim of mold or water damage. (See Second Affidavit of Lane V. Erickson Exhibit "5" page 15, and Exhibit "6" pages 16-17.)

41. The Parkers testified that they have no knowledge of what the Plaintiffs did with the property after they purchased it and what may or may not have contributed to any water damage issues. (See Second Affidavit of Lane V. Erickson Exhibit "5" page 15, and Exhibit "6" pages 16-17, 58 - 59.)

42. The Exhibits attached to Plaintiff's Complaint against the Parkers, are the same as

Exhibit "4" in their deposition which only mentions the boundary line issue and no issues with mold. (See Plaintiff's Complaint Case No. CV-2015-00164, which was consolidated into the present case on April 22, 2016.)

43. The Parkers, by and through their attorney, posed and served Requests for Admission upon the Plaintiffs. Request for Admission No. 15 was admitted to by the Plaintiffs and reads as follows:

Request for Admission No. 15: Please admit that prior to closing you did not share the inspection report you received with the Defendants [Parkers]. Response to Request for Admission No. 15: Admitted.

44. The Inspection Report discussed in the admission above, was prepared for Plaintiff Cheryl Nielson by Pillar to Post inspector Lou Jerome, and delivered to Plaintiffs on July 26, 2013, one entire month before closing occurred on August 27, 2013. On page 16 of this Inspection Report, the inspector noted, "apparent mold grown noted under the stairs, this should be cleaned as per the current EPA standards". A true and correct copy of the Inspection Report is attached to the Second Affidavit of Lane V. Erickson as Exhibit "7" and is incorporated herein by reference as if set forth fully.

ARGUMENT

I. STANDARD FOR SUMMARY JUDGMENT

Summary Judgment is appropriate when "... the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to Judgment as a matter of law." *State v. Rubbermaid*, 129 Idaho 353 (1996) citing to McCoy v. Lions, 120 Idaho 765, 769 (1991).

Once the moving party establishes the absence of a genuine issue, the burden shifts to the nonmoving party to make a showing of the existence of a genuine issue of material fact on the elements challenged by the moving party. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994). It is well settled in Idaho that in order to create a genuine issue of material fact, the party opposing the motion must present more than just a conclusory assertion that an issue of material fact exists. *Coghlan*, 987 P.2d at 312-13, *Van Velson Corp. v. Westwood Mall Assoc.*, 126 Idaho 401, 406, 884 P.2d 414, 419, (1994). "Rather, the [opposing party] must respond to the summary judgment motion with specific facts showing that there is a genuine issue for trial." *Coghlan*, 987 P.2d at 312-13; *Tuttle v. Sudenga Indus., Inc.*, 125 Idaho 145, 150, 868 P.2d 473, 478 (1994).

The non-moving party has the obligation of establishing the existence of each element essential to any claims or defenses they have made in which they bear the burden of proof at trial. This obligation has been imposed by the United States Supreme Court in applying Rule 56(c) of the Federal Rules of Civil Procedure in the case of *Cellotex Corp. v. Catrett*, 477 U.S. 317 (1986). The Idaho Supreme Court has adopted *Cellotex* in the application of Idaho Rules of Civil Procedure 56(c). *See Badell v. Beeks*, 115 Idaho 101,102 (1998). In *Cellotex*, Justice Renquist wrote for the majority and explained:

The plain language of Rule 56(c) mandates the entry of Summary Judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that parties case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving parties case necessarily renders all other facts immaterial. The moving party is entitled to a Judgment as a matter of law... 477 U.S. at 322-323.

As a result of *Cellotex*, the Defendants in this case cannot raise merit-less defenses or claims to defeat Summary Judgment. Rather the Defendants must introduce facts into the record that support each element of each defense asserted.

Essentially, the facts of the present case are not in dispute and are really quite simple. The Talbot Property and the Nielson Property were originally one parcel of property that was divided up by the owners Craig and Sue Shaffer, when the Talbot Property was sold to the Murdocks. The Talbot Property was enclosed by a standing fence. The Shaffers and the Murdocks agreed that the boundary line between the Talbot Property and the Nielson Property would be the existing fence. A deed was drafted based upon the belief of the Shaffers and the Murdocks that the legal description in the deed accurately described their agreed upon boundary line. Over several decades the Talbot Property and the Nielson Property were sold to other groups of individuals. During this time there was always either the fence or other items that replaced the fence such as lilacs, shrubs, grass, yards, sprinkler systems, a shed and a driveway and carport, that acted as the boundary between the Talbot Property and the Nielson Property. When the Nielsons purchased the Nielson property they checked the legal description and learned that the Talbot Property actually encroached upon the legal description of property they had on their deed. As a result, the Nielsons ripped out all of the lilacs, shrubs and plants and then demanded that the Talbots move their shed, sprinkler system, driveway and carport to give them the land the legal description on their deed stated they owned. The Talbots refused stating

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that the agreement by the previous parties established the boundary line between the Talbot Property and the Nielson Property to be where the parties had always stated it was based upon the fenceline, lilacs, shrubs, grass, yards, sprinkler systems and structures. The law in Idaho supports the Talbots in this statement.

As a result, summary judgment should be awarded in favor of the Talbots. Further, a judgment quieting title to the Talbot Property should be granted in favor of the Talbots. Additionally, the Talbots should be awarded all of their attorney fees and costs in this matter.

Concerning the Parkers, because the boundary line is established as set forth above, no claim for Breach of Warranty of Title can stand. The legal descriptions in all deeds associated with the Talbot property and the Nielson property are replaced by the intentions of the parties as evidence by decades of agreement concerning the boundary line first established by the fence.

Additionally, there is no dispute of fact concerning the Plaintiff's claim about mold or water damage. At the time the property was sold to the Nielsons, there was no mold or flooding or water damage issues. When the Nielsons attorney threatened suit against the Parkers, no mention of any mold or water damage was made because none existed. The Parkers have no control of or knowledge about what the Nielsons did with the property after they purchased it that may have caused mold or water damage. A year and a half after purchasing the property is the first time the Nielsons make any claim for any mold or water damage. The remoteness of this claim and failure to mention it in previous legal correspondence evidence that the Parkers were not the cause of any such mold or water damage, if any exists. For these reasons, summary judgment should be granted in favor of the Parkers and all claims should be dismissed.

II. BOUNDARY LINE ESTABLISHED

The boundary line between the Talbot Property and the Nielson Property is established in favor of the Talbots. According to the Idaho Supreme Court, "the fundamental principle underlying all of the rules of construction of deeds, as well as all other contractual instruments, is that the courts must seek and give effect to the intention of the parties." *Campbell v. Weisbrod*, 73 Idaho 82, 89, 245 P.2d 1052, 1057 (1952). The general rule is that monuments, natural or artificial, or lines marked on the ground, control over calls for courses and distances. Id.

The facts in the present case are similar to those of Campbell. In Campbell, the legal description in a deed for property that was divided up did not accurately reflect the agreement between the parties of where the boundary line between the divided properties would be. Subsequent litigation ensued with one party claiming the legal description controlled the boundary line and the other party arguing that the agreement between them controlled. In analyzing the facts the Idaho Supreme Court determined that there was no dispute that a line was agreed upon and marked on the ground between the parties.

The Idaho Supreme Court held, "the particular rule applicable here is that where the seller and the buyer go upon the land and there agree upon and mark the boundary between the part to be conveyed and the part to be retained by the seller, the line thus fixed controls the courses and distances set out in the deed." *Campbell*, 73 Idaho at 89, 245 P.2d at 1057.

In a subsequent case, the Idaho Supreme Court declared that an agreed upon boundary established under the *Campbell* ruling, "would also be binding upon a successor in interest of the seller, who purchased with notice of the agreement." *Paurley v. Harris*, 75 Idaho 112, 117, 268 P.2d 351, 353 (1954). In defining what actually provides notice of the agreement to successors of the seller the Idaho Supreme Court specifically stated,

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The boundary, which defendants claim, was clearly marked by a 'tight board fence,' four or five feet in height, and the area on defendants' side of the fence was planted to lawn, shrubbery and trees. This would constitute notice to an intending purchaser, of defendants' possession. One buying property in the possession of a third party is put on notice of any claim of title or right of possession by such third party, which a reasonable investigation would reveal.

Reid v. Duzet, 140 Idaho 389, 393 94 P.3d 694, 698 (2004).

The facts in the present case fit the above cited case law precisely, which should result in a judgment in favor of the Talbots. In the present case, The Talbot Property and the Nielson Property were originally one parcel of property that was divided up by the owners Craig and Sue Shaffer, when the Talbot Property was sold to Suel and Gae Murdock. (Shaffer and Murdock Affidavits and Plaintiffs' Complaint.) The Talbot Property was enclosed by a standing fence. (Shaffer and Murdock Affidavits.)

The Shaffers and the Murdocks agreed that the boundary line between the Talbot Property and the Nielson Property would be the existing fence. (Shaffer and Murdock Affidavits.) A deed was drafted based upon the belief of the Shaffers and the Murdocks that the legal description in the deed accurately described their agreed upon boundary line. (Shaffer and Murdock Affidavits.)

Over several decades the Talbot property and the Nielson property were sold to other groups of individuals. (See Plaintiff's Complaint and attached Exhibits.) During this time there was always either the fence or other "monuments, natural or artificial, or lines marked on the ground" that acted as the boundary between the Talbot Property and the Nielson Property. This is evidenced by the fence, or once it was removed, by the lilacs, grass, yards, sprinkler system, shed, driveway and carport that took its place. (See Affidavits of Shafer, Murdock, Cromwell, Larsen, Robert Talbot, and the depositions of Paul and Saundra Parker; See also the Timeline of Ownership attached as Exhibit 4 to the Second Affidavit of Lane V. Erickson.) When the Plaintiffs purchased the Nielson property these same the lilacs, grass, yards, sprinkler system, shed, driveway and carport existed. However, the Plaintiffs checked the legal description and learned that the Talbot Property actually encroached upon the legal description of property on their deed by about 12 or so feet. (See Plaintiffs' Complaint.) As a result, the Plaintiffs ripped out all of the lilacs, shrubs and plants and then demanded that the Talbots move their shed, sprinkler system and carport to give them the land the legal description on their deed stated they owned. (See Michele Talbot Affidavit, and Affidavit of Robert Talbot with Exhibits "1" "2", and "3".) The Talbots refused stating that the boundary line between the Talbot Property and the Nielson Property was where all previous owners had always established it based upon the fenceline, lilacs, grass, yards, sprinkler system and structures existed.

None of the facts above are in dispute. In applying the *Campbell*, *Paurley*, and *Reid*, decisions to these facts, the boundary line between the Talbot Property and the Nielson Property is established to be where the fence originally stood and was then replaced by the lilacs, grass, yard, sprinkler system, shed, driveway and carport were placed and where decades of previous owners always maintained the boundary to be.

As a result of the undisputed facts set forth on the record, the Court should enter an Order defining the boundary line between the Talbot Property and the Nielson Property to be exactly where all of the previous parties agreed and maintained it to be. The judgment should clearly state that the Talbots have a legal right to maintain the current location of their sprinkler system, lawn and structures.

III. TITLE QUIETED IN FAVOR OF THE TALBOTS

By establishing the boundary line between the Talbot Property and the Nielson Property, the Court should also quiet title in favor of the Talbots so that the legal description in future deeds can accurately describe the Talbot Property and Nielson Property. Idaho Code 6-401 provides a right to any party to bring a quiet title action against any other party concerning ownership of real property. The Idaho Supreme Court has held that in quiet title actions, the party seeking title "asserts his own estate and declares generally that the [other party] claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on the [other party] to set forth the nature of his claim, so that it may be determined by decree." *Drew v. Sorensen*, 133 Idaho 534, 541, 989 P.2d 276, 283 (1999), *quoting*, BLACK'S LAW DICTIONARY 51(4th ed. 1951). According to the Idaho Supreme Court, "[t]he district court in a quiet title action must then determine the ownership rights of the parties based on the facts involved. In making this determination, the district court should examine the facts by applying relevant legal principals and theories that define the property rights of the parties. *Id*.

In the present case, the Talbots' brought a counterclaim against the Plaintiffs to quiet title to the portion of land that is in dispute concerning the boundary claims made by the Plaintiffs. In applying the law set forth in Section II above, title to the disputed portion of land should be quieted in favor of the Talbots.

As a result of the undisputed record, the Court should award summary judgment in favor of the Defendants and enter a decree establishing a new legal description for both the Talbot property and the Nielson property so that future owners will have clear title and won't be required to proceed with additional litigation. The Talbots respectfully request that the Court enter such a decree in favor of the Talbots.

IV. WARRANTY OF TITLE OR DUTY TO DEFEND CLAIM SHOULD BE DISMISSED

Because the boundary is established by Idaho law, as set forth in Section II above, Plaintiff's warranty of title or duty to defend claim against the Parkers should be dismissed. In applying the *Campbell, Paurley*, and *Reid*, decisions, "the general rule is that monuments, natural or artificial, or lines marked on the ground, control over calls for courses and distances." *Campbell v. Weisbrod*, 73 Idaho 82, 89, 245 P.2d 1052, 1057 (1952). The Idaho Supreme Court declared that an agreed upon boundary established under the *Campbell* ruling, "would also be binding upon a successor in interest of the seller, who purchased with notice of the agreement." *Paurley v. Harris*, 75 Idaho 112, 117, 268 P.2d 351, 353 (1954). In defining what actually provides notice of the agreement to successors of the seller the Idaho Supreme Court specifically stated,

The boundary, which defendants claim, was clearly marked by a 'tight board fence,' four or five feet in height, and the area on defendants' side of the fence was planted to lawn, shrubbery and trees. This would constitute notice to an intending purchaser, of defendants' possession. One buying property in the possession of a third party is put on notice of any claim of title or right of possession by such third party, which a reasonable investigation would reveal.

Reid v. Duzet, 140 Idaho 389, 393 94 P.3d 694, 698 (2004).

In the present case, the Nielsons are a successor of the original seller of their land. They and all successors before them over the decades, had notice and were bound by the agreement entered into by the Shafers and the Murdocks which was then maintained by all successors, as evidenced by the fence, or once it was removed, by the lilacs, grass, yards, sprinkler system, shed, driveway and carport that took its place. (See Affidavits of Shafer, Murdock, Cromwell, Larsen, Robert Talbot, and the depositions of Paul and Saundra Parker; See also the Timeline of Ownership attached as Exhibit 4 to the Second Affidavit of Lane V. Erickson.)

As a result of the above applicable law, and the undisputed facts in the present case,

Plaintiff's Breach of Warranty of Title and/or Duty to Defend claims against the Parkers must fail. Plaintiff's Warranty Deed, and the legal description contained therein, were changed by the agreement evidenced and described above by all previous owners of the properties. For this reason, the Warranty Deed provided by the Parkers, in its changed state, is accurate and cannot be the source of a claim in favor of = the Plaintiffs. Summary judgment should be granted in favor of the Parkers and against the Plaintiffs on their claim of Breach of Warranty of Title or Duty to Defend.

V. CLAIMS FOR MOLD OR WATER DAMAGE SHOULD BE DISMISSED

The undisputed facts support dismissing Plaintiff's claims against the Parkers for mold or water damage under the doctrines of laches, and estoppel. The doctrine of laches is a creation of equity and is a species of equitable estoppel. "Long and continuous knowing acquiescence . . . may preclude one from subsequently asserting his claim." *Hillcrest Irr. Dist. v. Nampa Etc. Irr. Dist.*, 57 Idaho 403, 411, 66 P.2d 115, 118 (1937). However, "[lapse] of time is not alone sufficient to defeat a right on the ground of laches. It must be shown that the [claimant] has been misled, to his injury, by the failure of the [holder of the right] to assert its right earlier." *Sears v. Berryman*, 101 Idaho 843, 848, 623 P.2d 455, 460, (1981), *citing, Mountain Home Irr. Dist.* v. Duffy, 79 Idaho 435, 443, 319 P.2d 965, 969 (1957).

In the present case, the Inspection Report discussed in the admission above, was prepared for Plaintiff Cheryl Nielson by Pillar to Post inspector Lou Jerome, and delivered to Plaintiffs on July 26, 2013, one entire month before they closed on and purchased, the property from the Parkers on August 27, 2013. On page 16 of this Inspection Report, the inspector noted, "apparent mold grown noted under the stairs, this should be cleaned as per the current EPA standards". A true and correct copy of the Inspection Report is attached to the Second Affidavit of Lane V. Erickson as Exhibit "7" and is incorporated herein by reference as if set forth fully.

It was a year and a half later, when the Plaintiff filed its complaint against the Parkers claiming that they committed a fraud and intentionally violated the duty to disclose. However, the undisputed evidence shows that the Plaintiffs already knew about the small amount of mold that had occurred. The Plaintiffs also knew that it had been cleaned up by the Parkers before the closing occurred and that there was no mold.

Further, if mold and water damage had been an issue immediately after the closing had occurred, the Plaintiffs would have contacted the Parkers to complain. However, The Parkers testified that the Plaintiff never made any claims to them concerning any mold issue. Rather, all the letters from Plaintiff's attorney were concerning the boundary line issue and nothing was every stated about the mold or any flooding damage. (See Second Affidavit of Lane V. Erickson Exhibit "5" page 15, and Exhibit "6" pages 44 - 46, 58 - 59.)

Further, the Exhibits attached to Plaintiff's Complaint against the Parkers, are the same as Exhibit "4" in their deposition which are letters that only mention the boundary line issue and no issues with mold or water damage. (See Plaintiff's Complaint Case No. CV-2015-00164, which was consolidated into the present case on April 22, 2016.)

As a result of these undisputed facts and the "long and continuous knowing acquiescence" the Plaintiffs are estopped from asserting their claims against the Parkers pursuant to the doctrine of laches. The Plaintiffs simply cannot claim now that mold and water damage existed all along and that because of this the Parkers are liable. The Court should grant summary judgment on all issues raised by the Plaintiffs against the Parkers concerning any mold or water damages they claim occurred.

VI. CLAIMS FOR FRAUD SHOULD BE DISMISSED

The undisputed facts support dismissing Plaintiff's claims against the Parkers for fraud. Fraud is a tort that requires intent. In Witt v. Jones, 111 Idaho 165, 722 P.2d 474, (1986) the Idaho Supreme Court set forth the elements for a cause of action in Idaho based on fraud. The Court stated "the elements for a cause of action based on fraud are: (1) a representation; (2) its falsity; (3) its materiality; (4) speaker's knowledge of its falsity or ignorance of its truth; (5) speaker's intent that it should be acted upon by another person and in manner reasonably contemplated; (6) hearer's ignorance of its falsity; (7) hearer's reliance on truth; (8) hearer's right to rely thereon; and (9) hearer's consequent and proximate injury." *Beco Constr. Co. v. Bannock Paving Co.*, 118 Idaho 463, 467-468, 797 P.2d 863, 867-868, (1990). Additionally, the Idaho Supreme Court stated that the plaintiff "must make a prima facie case on each element of fraud." *Id.*

In the present case, the Plaintiffs pled in their Complaint that the Parkers committed fraud when the provided the required Seller's Disclosure Form to the Plaintiffs. However, the Seller's Disclosure Form was signed before the Parkers knew that a small amount of mold existed in their basement and several months before the closing on the property occurred. (See Second Affidavit of Lane V. Erickson Exhibit "5" pages 12 - 14, and Exhibit "6", pages 50 - 53.) The information the Parkers put into the Disclosure form was accurate at the time it was signed. The Parkers did not know that they were required to fill out an Amendment. (See Second Affidavit of Lane V. Erickson Exhibit "5" pages 12 - 14, and Exhibit "6", pages 50 - 53.) Further, the Parkers cleaned up the small amount of mold as they were instructed to by the Inspector so no mold existed at the time the property was sold to the Plaintiffs. (See Second Affidavit of Lane V. Erickson Exhibit "5" pages 12 - 14, and Exhibit "6", pages 50 - 53.)

Further, the Inspection Report discussed in the admissions provided by Plaintiff, was prepared for Plaintiff Cheryl Nielson by Pillar to Post inspector Lou Jerome, and delivered to Plaintiffs on July 26, 2013, one entire month before closing occurred on August 27, 2013. On page 16 of this Inspection Report, the inspector noted, "apparent mold grown noted under the stairs, this should be cleaned as per the current EPA standards". A true and correct copy of the Inspection Report is attached to the Second Affidavit of Lane V. Erickson as Exhibit "7" and is incorporated herein by reference as if set forth fully.

The deposition testimony provided by the Parkers, in in answer to the questions posed by Plaintiff's attorney, evidences that the Plaintiff's cannot prove the elements of intent necessary for fraud to exist. For these reasons, summary judgment should be granted in favor of the Parkers concerning Plaintiff's claim for fraud, and this claim should be dismissed.

VII. LITIGATION COSTS AND ATTORNEY FEES

In addition to entering an Order and Decree establishing the boundary line and quieting title in favor of the Talbots, as prayed for above, the Talbots should also be granted a Judgment from the Court awarding them their reasonable attorney fees and litigation costs in defending and prosecuting this case. Idaho Code § 12-120(1) and (3) specifically gives the Court the authority to award the Talbots their attorney fees and costs. The Talbots respectfully request the Court to enter a judgment granting to them their reasonable attorney fees and costs in this matter.

CONCLUSION

There are no genuine disputes of material fact concerning the established boundary between the Talbot Property and the Nielson Property. Further, title to the disputed property should be quieted in favor of the Talbots. Additionally, there are no issues of fact concerning the claims made against the Parkers. For these reasons, the Defendants are each, jointly and severally, entitled to obtain an Order, Decree and Judgment from the Court establishing the boundary to the property, quieting title to the property, dismissing Plaintiff's claims and awarding all associated litigation costs and attorney fees in their favor.

DATED this $\frac{122}{120}$ day of August, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

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Γ

Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228 [X] U. S. Mail Postage Prepaid

-] Hand Delivery
-] Overnight Mail
-] Facsimile

on this $\int \frac{\partial f}{\partial t} day$ of August, 2016.

LANE V. ERICKSON

FILED

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Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

STATE OF IDAHO) : ss County of Franklin)

I, ROBERT TALBOT, after first being duly sworn on oath, deposes and states as follows:

1. Affiant is over the age of 18; has capacity and can testify of the following based upon his own information, knowledge and/or belief after reasonable inquiry.

2. On or about August 11, 1995, my wife and I purchased property with a home on it in Preston Idaho, from Dave and Brenda Larsen. Our next door neighbors were Phil and Sherry

AFFIDAVIT OF ROBERT TALBOT Page -1 Case No. CV-2015-00132

AFFIDAVIT OF ROBERT TALBOT

Cromwell.

3. A legal description was included in the Deed for our property that my wife and I believed reflected the boundary line between our property and the Cromwell's property as it appeared from our viewing the boundary line.

4. The boundary line between the properties was well defined by the lilac bushes, grass, yards, sprinkler system, and shed that existed on either our property or the Cromwell's property.

5. After we purchased our property we maintained the sprinkler system, shed, yard and grass up to the boundary line that was established. The Cromwells did the same on their property including maintaining the lilac bushes, grass and yard.

6. We came to the Cromwells and discussed with them that we wanted to install a carport on our property up to the boundary line. We discussed how the carport would look. We also discussed that it would be on the boundary line between the properties, right next to the lilac bushes that were on the Cromwell's property. After discussing this, the Cromwells gave us permission to build the carport on the boundary line between our properties.

7. We installed the driveway and carport exactly as had been discussed on the boundary line between our properties.

8. From the time that we moved onto our property and after installing the driveway and carport, the boundary line that existed continued to be well defined by the lilac bushes, grass, sprinkler system, shed, driveway and carport that existed on either our property or the Cromwell's property.

9. We were neighbors with the Cromwells for nearly 10 years. During all of this time the boundary line that existed between our property and the Cromwell's property was

always the same and was defined by the lilacs, grass, yards, sprinkler system, shed, driveway and carport.

10. The Cromwells sold their property to Jared & Marissa Heaps in July 2004. The Heaps sold the property to the Paul & Saundra Parker in August 2006. The Parkers sold the property to Glen Neilson in August 2013.

11. There was never any dispute about the boundary line of the properties between us or any of our neighbors until nearly 20 years after we purchased our property when the Nielson's moved in on the property that had belonged to the Cromwells.

12. On August 19, 2014, Cheryl Nielson began cutting down the lilac bushes. We took photographs of the lilac bushes that were being cut down and our driveway and carport which are attached as Exhibit "1" and incorporated herein by reference as if set forth fully.

13. The photographs attached as Exhibit "1" show the boundary line on the front of the properties as established by the driveway and carport on our property and the numerous mature lilac bushes on the Nielson's property.

14. Further, the photographs attached as Exhibit "2", which are incorporated herein by reference as if set forth fully, are Google Street View photographs that we obtained before the lilacs were cut down by the Nielsons. Exhibit "2" accurately shows the way the properties looked before the lilacs were cut down by the Nielsons.

15. The Google Street View photographs attached as Exhibit "2" also accurately show the boundary line at the front of the properties as established by the driveway and carport on our property and the numerous mature lilac bushes on the Nielson's property before they were removed by the Nielsons.

16. The Google Earth Aerial photographs attached as Exhibit "3", which are

incorporated herein by reference as if set forth fully, show aerial views of the properties both before and after the lilac bushes were removed by the Nielsons. Exhibit "3" accurately shows the way the properties looked before and after the lilacs were cut down by the Nielsons.

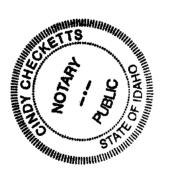
17. The Google Earth Aerial photographs attached as Exhibit "3", also accurately show the boundary line as established by the lilacs, grass, yards, sprinkler system, shed, driveway and carport.

FURTHER SAITH AFFIANT NAUGHT.

DATED this <u>||</u> day of August, 2016.

16 Nall Bv **KOBERT TALBOT**

SUBSCRIBED AND SWORN TO before me on this $\underline{//\mathcal{L}}$ day of August, 2016.



NOTARY PUBLIC FOR IDAHO

Residing at: Tristm. Commission expires: 7.21.19

AFFIDAVIT OF ROBERT TALBOT Page -4 **EXHIBIT "1"**

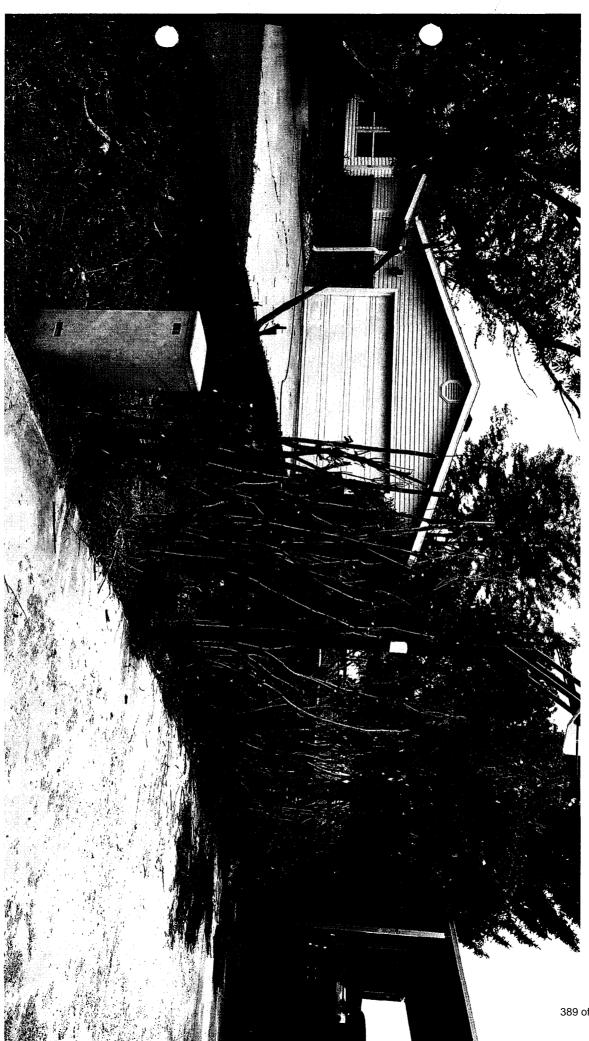


EXHIBIT "2"



Gogle Maps W 2nd S



Image capture: Jun 2013 © 2016 Google

Preston, Idaho

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Street View - Jun 2013

Gogle Maps W 2nd S

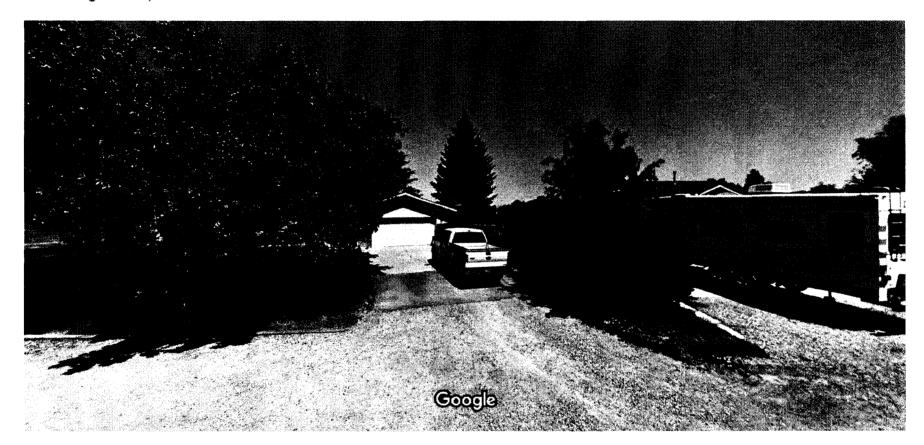


Image capture: Jun 2013 © 2016 Google

Preston, Idaho Street View - Jun 2013

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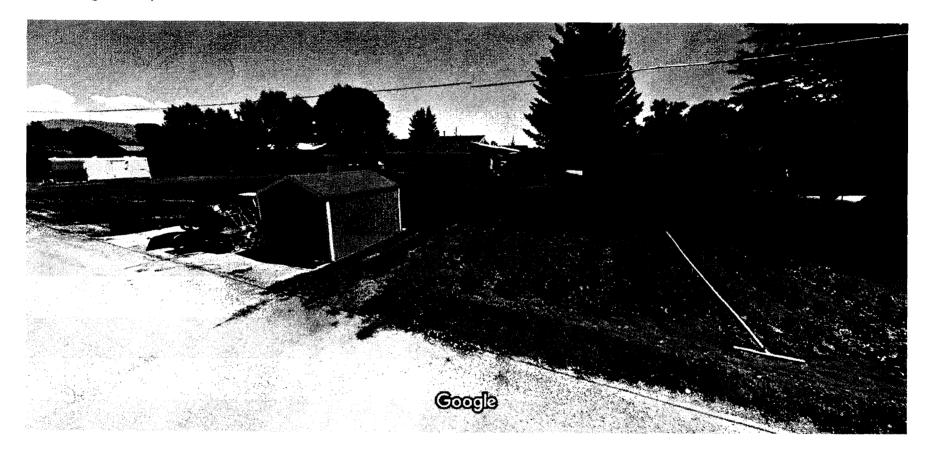


Image capture: Jun 2013 © 2016 Google

Preston, Idaho Street View - Jun 2013

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EXHIBIT "3"



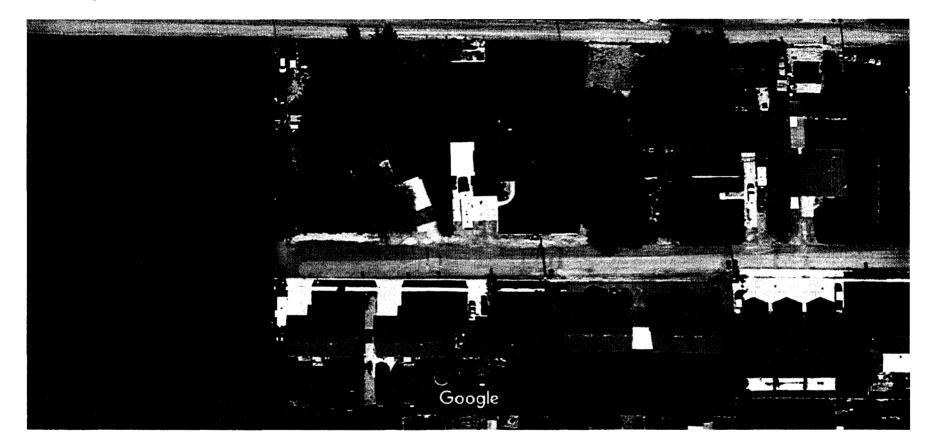
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Imagery ©2016 Google, Map data ©2016 Google 20 ft

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109 FILED 16 AUG 15 PM 1:54 FRANKLIN COUNTY CLERK DEPUT.

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

1

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

STATE OF IDAHO) : ss County of Franklin)

I, DR. PHIL CROMWELL, after first being duly sworn on oath, deposes and states as follows:

1. Affiant is over the age of 18; has capacity and can testify of the following based upon his own information, knowledge and/or belief after reasonable inquiry.

2. On or about September 22, 1986, my wife and I purchased property with a home on it with the address of 496 West 200 South, Preston Idaho. I understand the Plaintiff in the present litigation currently owns this same property.

Case No. CV-2015-00132

AFFIDAVIT OF DR. PHIL CROMWELL

3. At the time that my wife and I purchased our property described above, the property next door was pasture land with a fence that created a boundary between our property and the pasture land. The owners of the fenced in land was Suel and Gae Murdock.

4. A legal description was included in the Deed for our property that my wife and I believed reflected the fenceline as the boundary line between our property and the Murdock's property on the other side of the fence.

5. After purchasing our property, I immediately began watering and maintaining the grass and yard up to the fenceline. On the other side of the fence, on the Murdock property was bare dirt, weeds, and pasture.

6. I personally planted a number of lilac bushes on my property up to the fenceline to create a sort of natural privacy barrier. These lilac bushes were planted along the boundary line between our property and the Murdock's property towards the front and extending down the boundary line approximately $\frac{1}{3}$ to $\frac{1}{2}$ of the way.

7. I then personally maintained the grass, lilac bushes and my yard up to the fenceline for several years.

8. In August 1992, the Murdocks sold their pasture land surrounded by the fence to Vince Whitehead. Mr. Whitehead took down the fence and immediately built a home which he then sold to Dave & Brenda Larsen in February 1993. When Mr. Whitehead sold the property to the Larsens, the home was completed but no landscaping had been done. Mr. Whitehead and I never had any discussions about the boundary line between our property and his property. However, a clear boundary line existed because there were lilac bushes and maintained yard and grass on our property and bare dirt on Mr. Whitehead's property.

9. After purchasing his property in February 1993, Mr. Larsen and I discussed his

landscaping of his property up to the boundary line that had been defined by the previous fence. At the time of this conversation a clear boundary line established by the fence still existed because of my lilac bushes, groomed grass and yard that I had maintained up to the fence line, and the bare ground that was on Mr. Larsen's property. Mr. Larsen indicated that he would complete his landscaping by installing a sprinkler system and putting in grass up to where my yard established the boundary line.

10. Mr. Larsen did exactly what he said he would and installed a sprinkler system and grass up to the boundary line of my lilac bushes, grass and yard.

11. After this was done, Mr. Larsen maintained his yard and I maintained my yard for several years. The boundary line between our property and the Larsen's property was always exactly where the fence had been.

12. While he owned his property, Mr. Larsen built a shed on the back corner of his yard. The shed was built so that the back side of it was on the boundary line where the fence had been located.

13. In August 1995, the Larsens sold their property to Robert & Michele Talbot.

14. After purchasing it, the Talbots maintained their sprinkler system, shed, yard and grass up to the boundary line that was established by the fence. I did the same on our property including maintaining the lilac bushes, grass and yard.

15. The Talbots then came to me and discussed with me their installing a carport on their property up to the boundary line. We discussed how the carport would look. We also discussed that it would be on the boundary line between the property, right next to the lilac bushes that I had planted. After discussing this, we gave our permission to allow the Talbots to build the carport. 16. The Talbots installed the driveway and carport just as we had discussed.

17. For many years, the boundary line that was first established by the fence was now well defined by the lilac bushes, grass, sprinkler system, shed, driveway and carport that existed on either our property or the Talbot's property.

18. On July 2, 2004, we sold our property to Jared & Marisa Heaps

19. We lived on our property for nearly 20 years. The Talbots were our neighbors for nearly 10 years. During all of this time the boundary line that existed between our property and the Talbot's property was always the same and was defined by the fence, or once it was removed, by the lilacs, grass, yards, sprinkler system, shed, driveway and carport. Every neighbor we had that lived on the Talbot property, including the Talbots, agreed to the boundary line through their maintenance of the boundary line. There was never any dispute about the boundary line between the properties.

20. At some point, the Neilsons became the owners of the property that we had owned. When they discovered that the existing and established boundary line did not match the legal descriptions on their Deed, Cheryl Nielson came to my home to discuss the matter with me. Mrs. Nielson told me that the existing and established boundary line did not match the legal descriptions on their Deed.

21. Mrs. Nielson asked me to support her in her claim against the Talbots so that she could force them to move their carport, driveway, shed, sprinkler system and yard.

22. I told Mrs. Nielson that I would not support her in her claims against the Talbots. I told her that the Talbots, and each of my neighbors before them, had been good neighbors and that I had not had any dispute with them about the boundary line between the properties.

23. Mrs. Nielson was angry because I would not support her in her claims against the

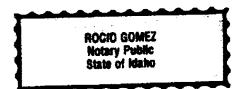
Talbots.

. .

FURTHER SAITH AFFIANT NAUGHT. DATED this $\frac{1}{2} \frac{f^{4}}{f^{4}}$ day of August, 2016.

well. B

SUBSCRIBED AND SWORN TO before me on this _____ day of August, 2016.



POCIO Convy NOTARY PUBLIC FOR IDAHO Residing at: <u>Preston Idaho</u> Commission expires: <u>5.2.17</u>

AFFIDAVIT OF DR. PHIL CROMWELL Page -5 Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

STATE OF IDAHO) : ss County of Franklin) Case No. CV-2015-00132

AFFIDAVIT OF DAVE LARSEN

I, DAVE LARSEN, after first being duly sworn on oath, deposes and states as follows:

1. Affiant is over the age of 18; has capacity and can testify of the following based upon his own information, knowledge and/or belief after reasonable inquiry.

2. On or about February 23, 1993, my wife and I purchased property in Preston Idaho from Vince Whitehead. We had a home built on this property. This property is now

AFFIDAVIT OF DAVE LARSEN Page -1

owned by Robert and Michele Talbot.

3. At the time that my wife and I purchased our property described above, the property next door was owned by Phil and Sherry Cromwell.

4. A legal description was included in the Deed for our property that my wife and I believed reflected the boundary line between our property and the Cromwell's property.

5. After purchasing our property, I discussed with Mr. Cromwell that I wanted to landscape my property. At the time of this conversation a clear boundary line existed because of Mr. Cromwell's lilac bushes, groomed grass and yard that he had maintained, and the bare ground that was on my property. I told Mr. Cromwell that I would complete my landscaping.

6. I then installed a sprinkler system and grass up to the boundary line of the Cromwell's lilac bushes, grass and yard essentially landscaping all of the bare ground.

7. After this was done, I maintained my yard and the Cromwells maintained their yard. The boundary line between our property and the Cromwell's property was always exactly where it had been from the beginning.

8. While I owned this property, I also built a shed on the back corner of our yard. The shed was built so that the back side of it was on the boundary line.

9. On August 11, 1995 we sold our property to Robert & Michele Talbot.

10. At the time that we sold our property to the Talbots, the boundary line between the properties was well defined by the lilac bushes, grass, yards, sprinkler system, and shed that existed on either our property or the Cromwell's property.

FURTHER SAITH AFFIANT NAUGHT.

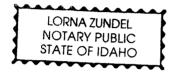
AFFIDAVIT OF DAVE LARSEN Page -2

DATED this $//\frac{14}{2}$ day of August, 2016.

· Sec

By DAVE LARSEN

SUBSCRIBED AND SWORN TO before me on this _____ day of August, 2016.



AFFIDAVIT OF DAVE LARSEN Page -3

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Lane V. Erickson (ISB No. 5979)
RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
P. O. Box 1391/Center Plaza
Pocatello, Idaho 83204-1391
Phone: (208) 232-6101
FAX: 208-232-6109

FILED 16 AUG 15 PM 11:54 FRANKLIN COUNTY CLERK KI

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife

Defendants/Counterclaimants.

STATE OF IDAHO

County of Bannock

I, LANE V. ERICKSON, after first being duly sworn on oath, deposes and states as

follows:

I, LANE V. ERICKSON, after first being duly sworn on oath, deposes and states as follows:

) : ss

)

1. That I am the Attorney of record for ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and

SECOND AFFIDAVIT OF LANE V. ERICKSON IN SUPPORT OF AMENDED MOTION FOR SUMMARY JUDGMENT Page 1

Case No. CV-2015-00132

SECOND AFFIDAVIT OF LANE V. ERICKSON IN SUPPORT OF AMENDED MOTION FOR SUMMARY JUDGMENT wife, who are all named as the Defendants (hereafter "Defendants"), in the above litigation, that I am familiar with all the pleadings and documents submitted in this litigation, that if called upon to testify concerning these matters I could and would testify that the following is my understanding and knowledge concerning the same:

.

....

2. A timeline of Ownership of the Talbot property and the Nielson property is provided to the Court as a visual aid in understanding the establishing and maintaining of the boundary line between the properties that first began with the fence and then continued with the lilacs, grass, yards, sprinkler system, shed, driveway and carport. (See Exhibit "4" attached hereto and incorporated herein by reference as if set forth fully.)

3. True and correct copies of the deposition transcripts of Paul Parker and Saundra Parker are attached hereto as Exhibits "5" and "6" respectively and are incorporated herein by reference as if set forth fully.

4. The Parkers, by and through their attorney, posed and served Requests for Admission upon the Plaintiffs. Request for Admission No. 15 was admitted to by the Plaintiffs and reads as follows:

<u>Request for Admission No. 15</u>: Please admit that prior to closing you did not share the inspection report you received with the Defendants [Parkers].

Response to Request for Admission No. 15: Admitted.

5. The Inspection Report discussed in the admission above, was prepared for Plaintiff Cheryl Nielson by Pillar to Post inspector Lou Jerome, and delivered to Plaintiffs on July 26, 2013, one entire month before closing occurred on August 27, 2013. On page 16 of this Inspection Report, the inspector noted, "apparent mold grown noted under the stairs, this should be cleaned as per the current EPA standards". A true and correct copy of the Inspection Report

.

is attached hereto as Exhibit "7" and is incorporated herein by reference as if set forth fully.

FURTHER SAITH AFFIANT NAUGHT.

2 ... / ¹5 .

DATED this day of August, 2016.

LANE V. ERICKSON

SUBSCRIBED AND SWORN TO before me on this 12^{t} day of August, 2016.



Hune Fundel	
NÓTARY RUBLIC FOR IDAHO	
Residing at: for	
Commission expires: <u>4/10/2018</u>	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

> Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228

- [X] U.S. Mail Postage Prepaid
 - Hand Delivery]
 -] Overnight Mail
 - Facsimile 1

on this 12 day of August, 2016.

LANE V. ERICKSON

EXHIBIT "4"

Timeline of Ownership of the Talbot Property & the Nielson Property

Property 1	Oct 9, 1981 – Jan 17, 1985 Craig Shafer & Sue Berg Affidavit & Complaint Exhibit "B" & "C" Owned the Talbot & Nielson Property as one large lot, Home built on Neilson side and Talbot side fenced in pasture	Jan 17, 1985 – Aug 21, 1992 Shafer & Berg sold fenced in pasture to Gae Murdock and her husband: Affidavit Fence in place; fence was the agreed upon boundary line	Aug 21, 1992 – Feb 23, 1993 Murdocks sold to Vince & Corliss Whitehead Affidavit Fence removed; home build by Whitehead and then sold to Larsens 7 months later;	Feb 23, 1993 – Aug 11, 1995 Whiteheads sold to Dave & Brenda Larsen Affidavit Completed landscaping; Installed sprinkler system; build shed on northwest corner of property line; discussed with Cromwells; agreed to and maintained boundary line;	Aug 11, 1995 – present Dave & Brenda Larsen sold to Michele & Robert Talbot Affidavit Maintained shed, grass, sprinkler system and yard, where they existed at the boundary line between the property with Cromwells; discussed building Carport with Cromwells who agreed to allow it up to the boundary line where lilac bushes already existed establishing boundary line;
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Nielson Property	Oct 9, 1981 – June 30, 1986 Craig Shafer & Sue Berg Affidavit & Complaint Exhibit "B" & "C" Owned the Talbot & Nielson Property as one large lot, Home built on Neilson side and Talbot side fenced in pasture	June 30, 1986 – September 22, 1986 Shafers to Beneficial Life Complaint Exhibit "D"	Sept 22, 1986 – July 2, 2004 Beneficial Life sold to Phil & Sherry Cromwell Affidavit Fence in place; brought dead grass back to life up to the fence line; maintained lawn and yard up to the fence line; believed fence line to be boundary line; planted 6-8 lilac bushes up to the fenceline; Whitehead took fence down; Larsens installed a sprinkler system up to boundary line, installed grass, built shed in northwest corner; discussed with Larsens and agreed to and maintained boundary line as established with both the Larsens and the Talbots; discussed Talbots' building Carport; agreed to allow it up to the boundary line where lilac bushes already existed establishing boundary line; Cheryl Nielson came to Cromwells to convince them to take her side in this litigation; Cromwells disagreed that boundary line was anything other than what they had maintained as described above;	July 2, 2004 – Aug 17, 2006 Cromwell' s sold to Jared & Marissa Heaps Complaint Exhibit "E"	Aug 17, 2006 – Aug 30, 2013 Heaps sold to Paul & Saundra Parker Deposition Boundary line maintained as it existed	Aug 30, 2013 – present Parkers sold to Glenn Nielson Complaint
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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL

DISTRICT OF THE STATE OF IDAHO,

IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL) E. NIELSON, husband and wife,) Case No. CV-2015-132 Plaintiffs,) vs.) ROBERT TALBOT and MICHELE) TALBOT, husband and wife,) and) PAUL PARKER and SAUNDRA PARKER,) husband and wife,) Defendants.))

DEPOSITION OF PAUL PARKER

June 10, 2016

REPORTED BY:

JANET FRENCH, CSR NO. 946

Notary Public

Nielson	v.
Talbot	

Talb	ot		June 10, 2016
	Page 2	1	Page 4
1	THE DEPOSITION OF PAUL PARKER was taken on	1	P R O C E E D I N G S
2	behalf of the Plaintiffs, at the Franklin County	2	TROOLEDINOS
3	Courthouse, located at 51 West Oneida, Preston, Idaho,	3	PAUL PARKER,
4	commencing at the hour of 10:20 a.m. on June 10th,	-	first duly sworn to tell the truth relating to said
5	2016, before Janet French, Certified Shorthand	1	
6	Reporter and Notary Public within and for the State of	5	cause, testificu as follows.
7	Idaho, in the above-entitled matter.	7	EXAMINATION
8		8	QUESTIONS BY MR. ATKIN:
9	APPEARANCES:	9	Q. Mr. Parker, my name is Blake Atkin. I
10	For the Plaintiffs:	10	represent the Nielsons in this lawsuit.
11	ATKIN LAW OFFICES, P.C.	11	Have you ever had your deposition taken
12	By: Blake S. Atkin	12	before?
13	7579 North West Side Highway	13	A. No.
14	Clifton, Idaho 83228	14	Q. You sat in and heard while I took your
15	batkin@atkinlawoffices.net	15	wife's deposition. You understand that I have to ask
16	For the Defendants:	16	the question and then you need to give an answer, and
17	RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED	17	it's best to do that audibly; right?
18	By: Lane V. Erickson	18	A. Correct.
19	201 East Center Street	19	Q. Okay. Let me are you on any medication
20	Post Office Box 1391	20	or anything else today that would interfere with or
21	Pocatello, Idaho 83204-1391	21	make it hard for you to hear what I'm saying,
22	lve@racinelaw.net	22	understand what I'm asking, and give answers to my
23	Also present: Glen and Cheryl Nielson	23	questions?
23 24	Saundra Parker	24	A. No.
25	Saundia Faikei	25	Q. Let me show you what has been marked as
47			
	Page 3		Page 5
1	INDEX	1	Exhibit No. 1.
2	TESTIMONY OF PAUL PARKER PAGE	2	Do you recognize that document?
3	Examination by Mr. Atkin 4	3	A. Yes.
4	Examination by Mr. Erickson 18	4	Q. Tell me what it is.
5		5	A. It says a Warranty Deed.
6	EXHIBITS	6	Q. Right. And do you understand that that's
7	(No exhibits marked.)	7	the Warranty Deed by which you and your wife received
8		8	ownership of the property that you later sold to
9		9	Mr. Nielson?
10		10	A. This is the Warranty Deed from the Heaps to
11		11	us, yes.
12		12	Q. Okay. Let me ask you, how many your wife
13		13	told me about three real estate transactions that
14		14	you've been involved in. You bought a house in
15		15	Tremonton and one in I remember Tremonton because I
16		16	used to live there. Fairview and Tremonton and then
17		17	this home in Preston that you later sold to the
18		18	Nielsons.
19		19	A. Yes.
20		20	Q. Is that correct?
21		21	À. Yes.
22		22	Q. Have you ever bought any other real estate
23		23	of any kind?
24		24	A. Yes.
25		25	Q. Tell me about that.

Niels Talb	on v. 🔪		Paul Parker June 10, 2016
	Page 6		Page 8
1	A. There was one more house over in Bear Lake.	1	Q. What is it? What did you understand you
2	Q. And when was that?	2	were doing when you conveyed title to this property to
3	A. I don't know.	3	the Nielsons by a warranty deed?
4	Q. Was that just you, or did you and your wife	4	A. The warranty deed is I sell this house to
5	both purchase that property?	5	the Nielsons and this is what the that's what this
6	A. Both my wife and I yes.	6	is.
7	Q. Both of you?	7	Q. And did you understand that you were
8	A. Yes.	8	warranting that you owned the property that you were
9 10	Q. All right. And she told me that you had bought title insurance on the house in Fairview and	9	conveying to them?
11	the house in Tremonton and on the house that you	10	MR. ERICKSON: So I'm going to object on the basis that it is leading and also asks for a legal
12	bought from the Heaps.	12	conclusion.
13	A. Title insurance as explain that.	13	If you can answer the question, go ahead.
14	Q. Do you understand what title insurance is?	14	MR. ATKIN: Do you need the question read back to
15	A. You explain that for me, please.	15	you?
16	Q. I get to ask if you know what it is and	16	THE WITNESS: Sure.
17	then do you know what title insurance is in	17	MR. ATKIN: Would you read the question back,
18	connection with a real estate transaction?	18	please.
19	A. Yes.	19	(The question was read back.)
20	Q. Tell me what it is.	20	THE WITNESS: As far as I did, yes.
21	A. As far as I know, it's protection	21	Q. (BY MR. ATKIN) All right. Let me show you
22	insurance.	22	what's been marked Exhibit well, let's let me
23	Q. Protection in case somebody makes a claim	23	ask you this: When did you become aware that the
24	that you don't own the property or a portion of it?	24	Talbots were claiming to own the carport and shed
25	MR. ERICKSON: If you know.	25	that let me back up. When did you become aware
	Page 7		Page 9
1	Q. (BY MR. ATKIN) Is that your understanding?	1	that the carport and the shed that the Talbots claimed
2	A. Yes.	2	to own was 12 or 13 feet onto the property that you
3	Q. And your wife told me that you did not make	3	had conveyed to the Nielsons?
4	any claim against the title insurance carrier that	4	MR. ERICKSON: Were you aware that that was the
5	issued title insurance when you bought the property	5	case?
6	from the Heaps.	6	THE WITNESS: When I sold the home, no.
7	A. No.	7	Q. (BY MR. ATKIN) That's what I'm asking.
8	Q. Do you know why you didn't?	8	When did you find that out?
9	A. No.	9	A. A year and a half.
10	Q. Okay. And no one made any claims in that	10	Q. Was that in connection with the letter from
11	regard nobody now I can't talk. Nobody made any	11	Mr. Cather that we have marked as exhibit 4? Is that
12	claims against the title insurance carrier on your behalf?	12	when you first learned about that encroachment? A. As far as I remember, yes.
13	A. No.	13	A. As far as 1 remember, yes. Q. And did you take any action in response to
14 15	A. No. Q. Now, let me show you what's been marked as	14 15	the letter from Mr. Cather, Exhibit 4?
15	Exhibit 2.	16	A. Through my attorney, yes.
17	Do you recognize that document?	17	Q. What did you do?
18	A. Yes.	18	A. I talked to my attorney, so there was
19	Q. Is that the Warranty Deed by which you	19	action, yes.
	conveyed the property you and your wife conveyed	20	Q. Okay. You talked to your lawyer. Did
20		21	okay. Other than that, did you do anything?
20	the property to Mr. Nielson?		
	A. Yes.	22	A. I talked to my attorney. That's all I did,
21		22 23	A. I talked to my attorney. That's all I did, yes.
21 22	A. Yes.		-

Niels	son v. 🔾		Paul Parker June 10, 2016
	Page 10		Page 12
1	any action to defend the Nielsons with regard to the	1	Q. Did you review it before you signed it?
2	claims made by the Talbots?	2	A. Yes.
3	MR. ERICKSON: I'm going to object on the basis	3	Q. Did you go through it with your wife and
4	that it asking for a legal conclusion and state again	4	make the checkmarks that are made in the document in
5	that there have been documents filed, pleadings filed	5	response to the questions?
6	and so forth, so they speak for themselves.	6	A. Yes.
7	Q. (BY MR. ATKIN) Have you or your wife or	7	Q. Okay. And were the answers accurate at the
8	your lawyer on your behalf taken any action against	8	time you made the document or the time
9	the Talbots to defend the property that you sold to	9	A. Yes.
10	the Nielsons?	10	Q at the time you signed the document?
11	A. For me, no. I don't know what my attorney	11	A. Yes.
12	did.	12	Q. Are any of the disclosures in that document
13	Q. Okay. Do you know why there hasn't been any	13	that you later learned were not accurate?
14	action on your behalf against the Talbots?	14	A. Repeat that.
15	MR. ERICKSON: I'm going to object on the basis	15	Q. Are there any disclosures in the document,
16	that that question asks for revealing attorney-client	16	Exhibit 6, that you later after you signed it learned
17	privilege, other privileged information. I also	17	were not accurate?
18	believe it's been asked and answered.	18	A. Yes.
19	Q. (BY MR. ATKIN) Let me show what has been	19	Q. What were those?
20	marked as Exhibit 5. Your wife testified that was the	20	A. I don't know. You tell me.
21	real estate purchase contract that had been signed by	21	MR. ERICKSON: Do you understand his question
22	you and by this one isn't signed, but there is a	22	that you just answered?
23	copy somewhere that was signed by you and your wife.	23	THE WITNESS: No. Go ahead.
24	Do you recall that? Would you agree with	24	Q. (BY MR. ATKIN) Are there any of the
25	her testimony in that regard?	25	disclosures that you made that after you signed
	Page 11		Page 13
1	MR. ERICKSON: In other words, he's asking, did	1	you've already told me that when you made the
2	you sign a purchase and sale agreement.	2	disclosures at the time you signed this document the
3	Q. (BY MR. ATKIN) Did you sign a copy of that	3	disclosures were accurate.
4	Exhibit 5?	4	A. Yes.
5	MR. ERICKSON: Okay. I'm going to object on the	5	Q. Are there any of the disclosures that you
6	basis that it doesn't have signatures on it, so if you	6	learned after you signed the document that they were
7	are asking him if he signed one, I'm fine with that,	7	not accurate?
	1 . 1		
8	but I'm not going to ask him to try to know in his own	8	A. Yes.
8 9	mind whether this is an exact copy of what he signed.	8 9	Q. What were those?
9 10	mind whether this is an exact copy of what he signed. MR. ATKIN: That's fair enough.	9 10	Q. What were those?A. As far as I know, that was brought up
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Niels Talb	son v.		Paul Parker June 10, 2016
	Page 1	1	Page 16
1 2 3 4 5 6 7 8 9	 THE WITNESS: No, I don't understand what you are asking. Q. (BY MR. ATKIN) Do you understand what a closing is A. Yes. Q in connection with the sale of a house? A. Yes. Q. You enter into the purchase and sale agreement and then later you close it, and they give 	1 2 3 4 5 6 7 8 9	MR. ERICKSON: I'm going to object on the basis that it assumes that he understands and knows it was there. I don't even know if it was there. It's sort of a leading question, to be honest with you, Counsel. Q. (BY MR. ATKIN) Let's assume for a moment that there was a water line in the basement. Do you have A. What water line is it? Q. Do you have any explanation as to why there
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	 you money, and you give them warranty deeds; right? A. Yes. Q. Did you learn about the mold in the house before that closing took place? A. Yes. Q. Did you make any amendments to Exhibit 6 after you were done? A. No. Q. Why not? A. Because I didn't know nothing about it. I told the inspector I would take care of it and my word is I told him I would. I would. Q. And I guess there are two things about mold. There is the mold under the stairs that your wife testified was about a foot square. Is that how you remember it? 	10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	 Would be a water line in the basement along the sheetrock along the walls if there wasn't a flooding incident? MR. ERICKSON: Do you know whether there was or wasn't a line? THE WITNESS: No. I didn't know that. MR. ATKIN: I think we've established oh, go ahead. I'm sorry. THE WITNESS: No. Q. (BY MR. ATKIN) You don't have any explanation why there A. You said along the wall? Q. Yeah. A. I don't know. MR. ERICKSON: Okay. Are you saying you don't know why it was there, or are you saying you don't
	Page 15		Page 17
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	 MR. ERICKSON: I think that misstates her testimony, but I think the location is accurate. I think the size that you are testifying to is Q. (BY MR. ATKIN) How big was the spot of mold or the problem with the mold under the stairs? A. Sure. About that same size. Q. Okay. About a foot square? A. Sure. Q. And did you help your wife with the repair on that mold? A. I took care of it, yes. Q. You took care of it. Okay. And did the did you ever learn about any other mold? A. No. Q. Nobody ever told you about mold behind the washer and dryer? A. What mold? Q. Did anybody tell you about any mold behind the basement? A. No. Q. Okay. Were you ever aware of any flooding in the basement? A. No. Q. Do you know why there would be a water line along the walls in the basement? 	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	 know that there is a line there? THE WITNESS: I didn't know there was a line. Q. (BY MR. ATKIN) If there was a line A. What line? Q. That's my question. Do you have any explanation for why there would be a line along the walls if there hadn't been a flooding incident? MR. ERICKSON: I'm going on object on the basis that I believe his testimony is he didn't know there was a line. MR. ATKIN: I understand that. MR. ERICKSON: So you can hypothecate all you want, Counsel, but it is not a fact in issue. MR. ATKIN: I can ask him if Q. (BY MR. ATKIN) Was there anything that occurred, anything that happened that would create such a line along the sheetrock in the basement if there wasn't a flooding incident? A. I have no idea. MR. ATKIN: Let me take a break. (Recess taken from 10:36 a.m. to 10:40 a.m.) MR. ATKIN: I'm done. MR. ERICKSON: Just a couple questions for you then.

2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	EXAMINATION QUESTIONS BY MR. ERICKSON: Q. The first question is when was the first time that you learned that there was any kind of a claim for mold after you sold the home to Mr. Nielson? Do you recall? A. I don't recall, no. Q. Let me take a look again at or show you Exhibit No. 4. Do you recall receiving that letter from Mr. Nielson's attorney? A. Not as far as I know, no. Q. You don't remember receiving it? A. Let's see. Hang on. Q. I'm just asking if you remember receiving it from them. It came in the mail to you. A. Yes. Q. And the date on that letter? A. The date on the letter is February 4 of 2015. Q. And I think we've all agreed that you sold the home to Mr. Nielson sometime August of 2013; is that accurate? A. As far as I remember, yes. Q. Okay. There is nothing in this letter	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	(The deposition concluded at 10:39 a.m.) (Signature requested.)
			Page 21
	Page 19		
1	talking about mold, so was it after this letter that you received some notice that Mr. Nielson was making a	1 2	CERTIFICATE OF WITNESS I, PAUL PARKER, being first duly sworn,
2	claim about mold?	3	
			depose and say:
4	A. AS I remember, yes.	4	depose and say: That I am the witness named in the foregoing
4 5	A. As I remember, yes.Q. During the time well, let me ask you this	4 5	
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25 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	SIGNATURE Page 23 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action.
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EXHIBIT "6"

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL) E. NIELSON, husband and wife,) Case No. CV-2015-132 Plaintiffs,) vs.) ROBERT TALBOT and MICHELE) TALBOT, husband and wife,) and) PAUL PARKER and SAUNDRA PARKER,) husband and wife,) Defendants.))

DEPOSITION OF SAUNDRA PARKER

June 10, 2016

REPORTED BY:

JANET FRENCH, CSR NO. 946

Notary Public

i aid	on v. 🗨		June 10, 2016
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1	THE DEPOSITION OF SAUNDRA PARKER was taken		
2	on behalf of the Plaintiffs, at the Franklin County	1	P R O C E E D I N G S
3	Courthouse, located at 51 West Oneida, Preston, Idaho,	2	
4	commencing at the hour of 9:15 a.m. on June 10th,	3	SAUNDRA PARKER,
5	2016, before Janet French, Certified Shorthand		first duly sworn to tell the truth relating to said
6	Reporter and Notary Public within and for the State of		cause, testified as follows:
7	Idaho, in the above-entitled matter.	6	
8	Tamo, in the above entitled matter.	7	EXAMINATION
9	APPEARANCES :	8	QUESTIONS BY MR. ATKIN:
10	For the Plaintiffs:	9	Q. Good morning, Saundra. My name is Blake
11	ATKIN LAW OFFICES, P.C.	10	Atkin. I represent the Nielsons, Wayne and what is
12	By: Blake S. Atkin	11	your name, Cheryl?
13	-	12	MS. NIELSON: Cheryl.
— ·	7579 North West Side Highway Clifton, Idaho 83228	13	Q. (BY MR. ATKIN) Cheryl Nielson.
14		14	Would you like me to call you Saundra or
15	batkin@atkinlawoffices.net	15	Mrs. Parker? A. Saundra is fine.
16	For the Defendants:	16	
17	RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED	17	Q. Okay. Saundra. I'm sure you have talked to your lawyer
18	By: Lane V. Erickson	18	• • •
19	201 East Center Street	19	about having your deposition taken. Have you ever had
20	Post Office Box 1391	20	your deposition taken before? A. I have not.
21	Pocatello, Idaho 83204-1391	21	Q. The important thing is to let me ask the
22	lve@racinelaw.net	22	question and get it out before you start to talk or
23	Also present: Glen and Cheryl Nielson	23	she'll get mad at us. The court reporter won't like
24	Paul Parker	24	that.
25		25	tilat.
	Page 3		Page 5
1	INDEX		A Mar
2	TESTIMONY OF SAUNDRA PARKER PAGE	1	A. Yes.
. 44			
3	Examination by Mr. Atkin 4, 59	2	Q. So it is good if you answer audibly "yes" or
		3	"no" rather than shaking your head or that kind of
3 4		3 4	"no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I
3 4 5		3 4 5	"no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay?
3 4	Examination by Mr. Brickson 54 EXHIBITS	3 4 5 6	"no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes.
3 4 5 6 7	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE	3 4 5 6 7	"no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay?A. Yes.Q so that I can rephrase the question.
3 4 5 6 7 8	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6	3 4 5 6 7 8	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that
3 4 5 6 7 8 9	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11	3 4 5 6 7 8 9	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my
3 4 5 6 7 8 9 10	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12	3 4 5 7 8 9 10	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers?
3 4 5 6 7 8 9 10 11	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16	3 4 5 7 8 9 10 11	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No.
3 4 5 6 7 8 9 10 11 12	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16 Edward Cather, Re: Property line dispute	3 4 5 7 8 9 10 11 12	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No. Q. Anything that would prevent you from being
3 4 5 6 7 8 9 10 11 12 13	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16 Edward Cather, Re: Property line dispute 5 - Real Estate Purchase and Sale Agreement 48	3 4 5 7 8 9 10 11 12 13	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No. Q. Anything that would prevent you from being able to understand what I'm asking you and give
3 4 5 6 7 8 9 10 11 12 13 14	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16 Edward Cather, Re: Property line dispute 5 5 - Real Estate Purchase and Sale Agreement 48 6 - Seller's Property Condition Disclosure 49	3 4 5 7 8 9 10 11 12 13 14	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No. Q. Anything that would prevent you from being able to understand what I'm asking you and give answers to the questions that I'm asking you?
3 4 5 6 7 8 9 10 11 12 13 14	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16 Edward Cather, Re: Property line dispute 5 - Real Estate Purchase and Sale Agreement 48	3 4 5 6 7 8 9 10 11 12 13 14 15	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No. Q. Anything that would prevent you from being able to understand what I'm asking you and give answers to the questions that I'm asking you? A. No.
3 4 5 6 7 8 9 10 11 12 13 14 15 16	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16 Edward Cather, Re: Property line dispute 5 5 - Real Estate Purchase and Sale Agreement 48 6 - Seller's Property Condition Disclosure 49	3 4 5 6 7 8 9 10 11 12 13 14 15 16	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No. Q. Anything that would prevent you from being able to understand what I'm asking you and give answers to the questions that I'm asking you? A. No. Q. Okay. Good. As you know, we are here in a
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16 Edward Cather, Re: Property line dispute 5 5 - Real Estate Purchase and Sale Agreement 48 6 - Seller's Property Condition Disclosure 49	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No. Q. Anything that would prevent you from being able to understand what I'm asking you and give answers to the questions that I'm asking you? A. No. Q. Okay. Good. As you know, we are here in a case involving a piece of property that you and your
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16 Edward Cather, Re: Property line dispute 5 5 - Real Estate Purchase and Sale Agreement 48 6 - Seller's Property Condition Disclosure 49	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No. Q. Anything that would prevent you from being able to understand what I'm asking you and give answers to the questions that I'm asking you? A. No. Q. Okay. Good. As you know, we are here in a case involving a piece of property that you and your husband sold to Wayne and Cheryl Nielson. Do you understand that? A. Yes.
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16 Edward Cather, Re: Property line dispute 5 5 - Real Estate Purchase and Sale Agreement 48 6 - Seller's Property Condition Disclosure 49	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No. Q. Anything that would prevent you from being able to understand what I'm asking you and give answers to the questions that I'm asking you? A. No. Q. Okay. Good. As you know, we are here in a case involving a piece of property that you and your husband sold to Wayne and Cheryl Nielson. Do you understand that? A. Yes. Q. You know which property we are talking about?
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16 Edward Cather, Re: Property line dispute 5 5 - Real Estate Purchase and Sale Agreement 48 6 - Seller's Property Condition Disclosure 49	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No. Q. Anything that would prevent you from being able to understand what I'm asking you and give answers to the questions that I'm asking you? A. No. Q. Okay. Good. As you know, we are here in a case involving a piece of property that you and your husband sold to Wayne and Cheryl Nielson. Do you understand that? A. Yes. Q. You know which property we are talking about? A. Yes.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Examination by Mr. Brickson 54 EXHIBITS DESCRIPTION PAGE 1 - 8/17/2016 Warranty Deed 6 2 - 8/27/2013 Warranty Deed 11 3 - Plat map 12 4 - 2/4/2015 letter to Mr. and Mrs. Parker from 16 Edward Cather, Re: Property line dispute 5 5 - Real Estate Purchase and Sale Agreement 48 6 - Seller's Property Condition Disclosure 49	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 "no" rather than shaking your head or that kind of thing. If you ever don't understand a question that I ask, be sure to tell me okay? A. Yes. Q so that I can rephrase the question. Are you under any medications today that would prevent you from being able to understand my questions and give answers? A. No. Q. Anything that would prevent you from being able to understand what I'm asking you and give answers to the questions that I'm asking you? A. No. Q. Okay. Good. As you know, we are here in a case involving a piece of property that you and your husband sold to Wayne and Cheryl Nielson. Do you understand that? A. Yes. Q. You know which property we are talking about?

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Saundra Parker

	Page 6		Page 8
1	A. Yes.	1	after you received that letter, did you make any kind
2	Q. And we will be looking at some things to	2	of a claim against your title insurance carrier in
3	identify that piece of property as we go along. As I	3	relation to that claim?
4	understand it, you and your husband bought that	4	A. No, I did not.
5	property in August of 2006; is that correct?	5	Q. Why not?
6	A. Yes.	6	A. I didn't see it didn't seem necessary. I
7	(Deposition Exhibit No. 1 marked.)	7	wasn't asked to do that.
	Q. (BY MR. ATKIN) Let me show you what's been		Q. Okay. Let me explore that just a little
8	marked as Exhibit No. 1.	8	
9		9	bit. Let me back up a little bit. A. Sure.
10	Do you recognize that document, Saundra?	10	
11	A. Yes.	11	Q. How many was this the first house you had
12	Q. And tell me what it is.	12	ever purchased?
13	A. It's the Warranty Deed.	13	A. No.
14	Q. And that's the Warranty Deed by which the	14	Q. How many properties before this one in
15	property was conveyed to you back in 2006; is that	15	August of 2006 had you purchased?
16	correct?	16	A. I think we've had two homes prior.
17	A. Correct.	17	Q. Okay. That's you and your husband both?
18	Q. You bought it from Jared and Marissa Heaps;	18	A. Yes.
19	is that correct?	19	Q. And where were those homes located?
20	A. Yes.	20	A. Fairview, Idaho, and Tremonton, Utah.
21	Q. And after you purchased the property, you	21	Q. I know Tremonton, I grew up there in
22	had this Warranty Deed recorded with the county;	22	Fielding?
23	correct?	23	A. That's a nice area.
24	A. Yes.	24	Q. Okay. And you sold those homes?
25	Q. At the time you bought the property back in	25	A. Yes.
	Page 7		Page 9
1	August of 2006, did you buy title insurance?	1	Q. Each time you purchased those homes, did you
2	A. Yes.	2	also purchase title insurance
3	Q. Okay. And do you recall who the company was	3	A. Yes.
4	from which you bought title insurance?	4	Q along with those purchases?
5	A. I'm not for sure. I want to say American	5	A. Yes.
6	Title.	6	Q. And tell me, if you can, what your
7	Q. Okay. Let me ask you this: As this	7	understanding why do you buy title insurance?
8	litigation started and you at some point were given	8	A. It's supposed to protect us.
9	notice by the Nielsons that they claimed that the	9	Q. Against what?
10	property you conveyed to them was being encroached by	10	A. It supposed to protect the home. If there
11	their neighbors?	11	is anything wrong with it, they are supposed to
12	A. We had received notice a year and a half	12	protect us.
13	after the purchase of the home or when they bought	13	Q. So do you understand that when you buy title
14	it.	14	insurance, you are paying an insurance company to
	Q. A year and a half after you sold the	14	protect you if somebody makes a claim to own a portion
15	property to the Nielsons?		of that property?
16		16	A. Yes.
17	A. Yes. Correct.	17	
18	Q. And how did you receive that notice?	18	Q. Okay. And so when you bought the property
19	A. A letter.	19	from the Heaps, you bought title insurance along with
20	Q. A letter	20	that?
21	A. In the mail.	21	A. Yes.
22	Q. And I think I might have a copy of it, but	22	Q. And then later you sold the property to the
23	was that the letter from the Nielsons' lawyer?	23	Nielsons?
24	A. Yes.	24	A. Correct.
25	Q. And when you received that letter or	25	Q. And the Nielsons made a claim against you

Niels Talb	son v. ot		Saundra Parker June 10, 2016
	Page 10		Page 12
1	that there was an encroachment with regard to the	1	by which you obtained the property, and Exhibit 2, the
2	property that you had sold to them?	2	deed by which you conveyed the property to the
3	A. Correct.	3	Nielsons, it's the same description?
4	Q. And it didn't occur to you that that might	4	A. It is, yes.
5	create a claim that you might have against your title	5	Q. And so you understood when you were
6	insurance company?	6	conveying the property to the Nielsons you were
7	A. Not at the time, no.	7	conveying the property with this legal description,
8	Q. Since that time, has it been have you	8	which would describe the boundaries of the property
9	determined that you might have a claim against your	9	that you sold to them?
10	title insurance carrier?	10	A. That's correct. Yes.
11	A. No.	11	(Deposition Exhibit No. 3 marked.)
12	Q. So you've never made a claim against your	12	Q. (BY MR. ATKIN) Let me show what's been
13	title insurance carrier?	13	marked as Exhibit 3.
14	A. I have not.	14	Do you see recognize this document?
15	Q. Nobody on your behalf has done that?	15	A. I have not seen this document, no.
16	A. Not that I know of.	16	Q. Okay. I'll represent to you that this
17	Q. Okay. All right. This Warranty Deed that's	17	document was provided to us by your lawyer, and I
18	Exhibit 1 describes the piece of property that you	18	can't remember if it was in this case or the other
19	were purchasing.	19	case that was the lawsuit with the Talbots, but A. Okay.
20	Do you see that?	20	Q my understanding of this is that this is
21	A. I do, yes.Q. And that legal description commencing at	21 22	a document that was prepared by someone. It's on
22 23	Point 81 Rods.	22	record with the county.
23	Do you see that paragraph?	24	A. Okay.
24 25	A. Yes, I do.	25	Q. Showing if you look in the top left
2.5	74. 163, 140.		Q. Showing in you look in the up for
	Page 11		Page 13
1	Q. And what did you understand that legal	1	corner, it says "Glen Wayne Nielson."
2	description described?	2	A. Yes, I see that.
3	A. The property line.	3	Q. And that's the person to whom you conveyed
4	Q. Okay. So you understood that if somebody	4	the property; right?
5	you could go out on the ground itself and map out that	5	A. Correct.
6	property line	6	Q. And then next to that is "Robert Talbot."
7	A. Correct.	7	Do you know who Robert Talbot is?
8	Q around	8	A. Yes. He was a neighbor.
9	A. It's the circumference around our property,	9	Q. So if I told you that this and I
10	yes.	10	understand that you are not a surveyor.
11	Q. And that's what you understood that legal	11	A. No.
12	description to be?	12	Q. And I'm not asking you whether the
13	A. That was what I understood, yes.	13	dimensions on here are accurate or any of those kind
14	Q. All right. And when you later conveyed the	14	of things. I just want to use this for illustrative
15	property to the Nielsons, you used that same legal	15	purposes, and I'll represent to you that I think that
16	description; is that correct?	16	this shows the relative position of the two properties, the property you purchased and then sold
17	A. Correct. (Deposition Exhibit No. 2 marked)	17	to the Nielsons and the property next to it that was
18	(Deposition Exhibit No. 2 marked.) Q. (BY MR. ATKIN) Let me show you what's been	18 19	owned by Robert Talbot.
19	marked Exhibit No. 2. Is that the Warranty Deed by	20	When you bought the property, was Robert
20 21	which you conveyed the property you and your	20	Talbot already your neighbor?
22	husband conveyed the property to Glen Nielson?	22	A. Yes.
23	A. Yes.	23	Q. And there is a carport that I understand
24	Q. And just looking at the two property	24	that Robert Talbot built. Was that built before you
25	descriptions, they between the Exhibit 1, the deed	25	bought the property or after?
	· · ·		

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	Page 14		Page 16
1	A. It was before.	1	that the carport and the shed go over onto the
2	Q. Okay. Would you just I'll give you a	2	property that you had sold to the Nielsons by about 12
3	pen. Could you on that drawing draw for me		feet?
		3	
4	approximately where the carport is located.	4	A. Just like I said, about a year and a half
5	A. If this is the boundary line to what we	5	later that's when we had discovered that.
6	signed here, it is right about here on the line.	6	Q. Okay. But as you sit here today, you
7	Q. And when you say that "we signed here," you	7	understand that?
8	are talking about Exhibit No. 2?	8	A. I do now, yes.
9	A. Well, one and two, going off this	9	Q. And you are telling me the first time that
10	description, which we signed and we agreed to at the	10	you became aware of that was when a lawyer
11	signed we signed from the Heaps we signed and	11	representing the Nielsons informed you about that?
12	Nielsons signed. This is what we went by. This is	12	A. We had received papers certified papers
13	what we agreed to. If this tells me that this is the	13	saying that, yes.
14	line	14	Q. Certified papers. Do you know who that came
15	Q. And when you say	15	from?
16	A this commencing	16	A. Her previous lawyer.
17	Q. Excuse me?	17	Q. Okay. All right.
18	A at Point 81	18	(Deposition Exhibit No. 4 marked.)
19	Q. Excuse me.	19	Q. (BY MR. ATKIN) Let me show what's been
20	A. Yes.	20	marked Exhibit 4.
21	Q. We have to make the record. So when you say	21	A. Okay.
22	"this," you are talking about the legal description in	22	Q. Do you recognize this document?
23	Exhibit 2?	23	A. Yes. It's the property line dispute.
24	A. Okay. On my Warranty Deed, correct. Yes.	24	Q. Okay. And is this the letter you are
25	Q. So if that Warranty Deed description	25	talking about that you received from the Nielsons'
	Page 15		Page 17
	Page 15	_	Page 17
1	describes the property line that you have now drawn	1	lawyer telling you that there was a dispute over the
2	describes the property line that you have now drawn A. Correct. Yes.	2	lawyer telling you that there was a dispute over the property boundary?
2 3	describes the property line that you have now drawnA. Correct. Yes.Q. Okay. Then show me where the carport would	2 3	lawyer telling you that there was a dispute over the property boundary? A. Yes, it is.
2 3 4	describes the property line that you have now drawnA. Correct. Yes.Q. Okay. Then show me where the carport would be.	2 3 4	lawyer telling you that there was a dispute over the property boundary?A. Yes, it is.Q. And if I understand your testimony
2 3 4 5	describes the property line that you have now drawnA. Correct. Yes.Q. Okay. Then show me where the carport wouldbe.A. I did. I drew a line right there. We had	2 3 4 5	lawyer telling you that there was a dispute over the property boundary?A. Yes, it is.Q. And if I understand your testimony correctly, this was the first time that you became
2 3 4	 describes the property line that you have now drawn A. Correct. Yes. Q. Okay. Then show me where the carport would be. A. I did. I drew a line right there. We had lilac bushes, a tree, the carport and Robbie's shed 	2 3 4 5 6	lawyer telling you that there was a dispute over the property boundary?A. Yes, it is.Q. And if I understand your testimony correctly, this was the first time that you became aware that the carport and the shed had been built 12
2 3 4 5	 describes the property line that you have now drawn A. Correct. Yes. Q. Okay. Then show me where the carport would be. A. I did. I drew a line right there. We had lilac bushes, a tree, the carport and Robbie's shed was right about here. 	2 3 4 5	lawyer telling you that there was a dispute over the property boundary?A. Yes, it is.Q. And if I understand your testimony correctly, this was the first time that you became aware that the carport and the shed had been built 12 feet onto the property as it is described in Exhibit 2
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 describes the property line that you have now drawn A. Correct. Yes. Q. Okay. Then show me where the carport would be. A. I did. I drew a line right there. We had lilac bushes, a tree, the carport and Robbie's shed was right about here. Q. The shed is a square? A. And it bordered yes down the line. Q. And your understanding was that the carport and the shed were on what you considered to be the property line? A. That was our agreement when we signed, yes. Q. That was your agreement with A. With the Warranty Deed, how it's written, that was our understanding the border lined where his carport was, the lilac bushes, and the shed. That's what we knew. Q. Let me asked you this: Has anybody told you that the carport and the shed go over the property boundary that's described in Exhibit 2 and Exhibit 1 on to the property that you had sold to 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 lawyer telling you that there was a dispute over the property boundary? A. Yes, it is. Q. And if I understand your testimony correctly, this was the first time that you became aware that the carport and the shed had been built 12 feet onto the property as it is described in Exhibit 2 and 1? A. Yes. Like I said, it was there when we moved in the carport and the shed. Q. I understand that. I just want to make the record clear that the first time you learned about that was in February of two thousand A. Yes, it was. Q. Okay. At the time at any time before receiving at any time before receiving Exhibit 4 from the Nielsons' lawyer, had anybody suggested to you that the carport or the shed were not on the property line? A. No. Q. So your understanding at the time that you lived there and as you during the time that you

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	Page 18		Page 20
1	carport and the shed?	1	Q. Is anyone besides you or your husband paying
2	A. That is correct.	2	the attorneys fees in this case?
3	Q. That's what you thought the boundary	3	A. Just the other people held accountable.
4	A. That is what I understood.	4	Q. Who are those other people?
5	Q. Okay. And I just need to clarify this. I	5	A. Robbie and Michelle Talbot.
6	understand you are telling me that that's what you	6	Q. Have they been paying your attorney's fees
7	thought the boundary line was?	7	up to this point?
8	A. Sure.	8	A. I don't know their end, but we have our end.
9	Q. And it wasn't until February of 2015 you	9	We are together now. We were separate.
10	learned that the boundary line as described in the	10	Q. I'm just asking have you incurred any
11	Warranty Deed that you had given the Nielsons was not	11	attorneys fees in this case?
12	the boundary line as it appeared to you with the	12	A. Just from our lawyer.
13	carport and the shed and the lilacs?	13	Q. Okay. And have you paid those attorneys
14	A. That is correct.	14	fees?
15	Q. Good. All right. If I wanted to find out	15	A. Yes.
16	who the title insurance company was that you bought	16	Q. Okay. No one has paid them on your behalf?
17	when you purchased the property from the Heaps, how	17	A. No.
18	would I find that out?	18	Q. Now, this Exhibit 2 by which you conveyed
19	A. We had a when we signed our papers, I'm	19	the property to the Nielsons is what is called a
20	sure that was disclosed in that.	20	warranty deed.
21	Q. Do you still have some documents relating to	21	A. Yes.
22	your purchase of the property?	22	Q. Tell me what your understanding is of a
23	A. I'm sure we do, yes.	23	warranty deed.
24	MR. ERICKSON: So he's talking about you buying	24	A. Just that, that the commencing at Point 81
25	from the Heaps. Do you have the paperwork from that	25	Rods South it gives the circumference around the
	Page 19		Page 21
1	transaction back in 2006?	1	home and that's what we signed that we knew that
2	THE WITNESS: I'm sure we do, yes.	2	that's where the boundary was.
3	Q. (BY MR. ATKIN) I'd like to ask you to find	3	Q. Let me ask you this: When you convey a
4	for me who your title insurance carrier was.	4	piece of property by a warranty deed, do you
5	A. Okay.	5	understand what the warranty let me back up. Do
6	Q. In fact, can you produce for me what you	6	you understand what a warranty is?
7	have relating to that transaction by which you bought	7	THE WITNESS: Can you tell me more what he's
8	the property from the Heaps?	8	trying to get to?
9	A. Sure.	9	MR. ERICKSON: I can't help you answer the
10	MR. ERICKSON: Counsel, I'll tell you that in my	10	question, but I will object on the I'm going to
11	experience I try to take notes. I try to follow up	11	object on the basis that it's asking for a legal
12	on them, but it is far more effective if you send an	12	conclusion.
13	actual discover request asking for the documentation.	13	Q. (BY MR. ATKIN) Let me just ask you. Do you
14	MR. ATKIN: I will do that, too.	14	have an understanding of what a warranty is?
15	MR. ERICKSON: Thank you.	15	MR. ERICKSON: If you do, answer, if you don't,
16	MR. ATKIN: As long as do you it quickly.	16	say so.
17	MR. ERICKSON: I'll do it within the time	17	THE WITNESS: No.
18	restraints of the rules.	18	Q. (BY MR. ATKIN) Do you know what a guarantee $\frac{1}{1}$
19	MR. ATKIN: That's all I'm asking. I couldn't	19	is?
20	resist the jab.	20	A. Yes.
21	Q. (BY MR. ATKIN) All right. So you told me	21	Q. Do you understand that a warranty is like a
22	you didn't make a claim against the title insurance	22	guarantee?
23	company. You haven't asked them to pay your attorneys fees in this litigation?	23 24	A. Yes. MR. ERICKSON: Okay. I'm going to object again.
17/		44	π_{11} , π_{11} , π_{12} , π_{13} , π_{1
24 25	A. No.	25	Same basis.

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	Page 22	1	Page 24
1	MR. ATKIN: Okay.	1	Do you see that?
2	Q. (BY MR. ATKIN) Did you understand that by	2	A. Yes.
3	giving the or selling the property, conveying the	3	Q. Okay. And did you ever respond to this
4	property to the Nielsons by a warranty deed that you	4	Exhibit 4?
5	were warranting or guaranteeing or promising them that	5	A. When our lawyer told us to respond, we
6	the property that you owned the property that you	6	responded.
7	were selling to them?	7	Q. Okay. Do you know did you respond, or
8	MR. ERICKSON: I'm going to state the same	8	did you have a lawyer respond for you?
9	objection.	9	A. I think he talked in our behalf. That's
LO	MR. ATKIN: He states his objections but then you	10	what a lawyer is for.
11	need to answer.	11	Q. Okay. I need to ask you the question.
L2	MR. ERICKSON: If you can, answer.	12	A. Yes.
L3	THE WITNESS: Yes. I back up signing this paper	13	Q. Did you yourselves you or your husband
L 4	where the commensurate point, the circumference around	14	respond to Exhibit 4?
L5	our home, this is what I signed, yes. I've got my	15	A. Yes.
16	signature and the date.	16	Q. And how did you do that?
L7	Q. (BY MR. ATKIN) And you understood that you	17	A. By phone.
8	were promising the Nielsons that you owned that piece	18	Q. Who did you call?
19	of property?	19	A. Our lawyer.
20	MR. ERICKSON: Same objection.	20	Q. Okay. So you never called Mr. Cather?
21	THE WITNESS: I signed what was written here.	21	A. I don't know him, no.
2	This is what I knew of. I knew the boundary with the	22	Q. Okay. You didn't respond to Mr. Cather in
3	carport and lilac bushes. That's what we come to our	23	writing?
24	agreement to.	24	A. No.
25	Q. (BY MR. ATKIN) That's not my question. When	25	Q. Okay. And did you talk to the Nielsons
	Page 23		Page 25
1	you signed Exhibit 2, did you understand that you were	1	after receiving Exhibit 4?
2	promising the Nielsons that you owned the piece of	2	A. No.
3	property described in Exhibit 2?	3	Q. Okay. Did you ever agree to his demand that
4	MR. ERICKSON: Same objection.	4	you defend against any claims by the Talbots?
5	You can answer.	5	MR. ERICKSON: I'm sorry. I didn't hear your
6	THE WITNESS: Yes.	6	question, Counsel.
7	Q. (BY MR. ATKIN) So when you got the letter	7	Q. (BY MR. ATKIN) Did you ever agree to
8	from Exhibit 4, when you got that letter	8	Mr. Cather's demand in Exhibit 4 that you defend
9	A. Yes.	9	against any claims by the Talbots?
0	Q that's Exhibit 4 and Mr. Cather said on	10	A. I did not talk to Mr. Cather. I talked to
1	August 11 I'm reading the second paragraph. "On	11	my lawyer.
2	August 11, 2014, the Nielsons received the enclosed	12	Q. That's not my question. Did you ever agree
3	correspondence from Lane Erickson, counsel for Robert	13	to the demand that you defend against any claims by
4	and Michelle Talbot. The Talbots are claiming	14	the Talbots?
5	ownership of approximately a 12-foot strip of the	15	MR. ERICKSON: So I'm going to object on the
6	eastern border of the property."	16	basis that it's been asked and answered.
7	So did you understand from that that he was	17	MR. ATKIN: Well, it hasn't been answered yet.
8	saying that the Talbots were claiming a 12-foot strip	18	Q. (BY MR. ATKIN) My question is, did you
.9	on the eastern border of the property, what you have	19	agree to defend against any claims by the Talbots?
0	written in here 12 feet beyond the eastern border of	20	MR. ERICKSON: Same objection. Counsel, I
1	the property?	21	believe that all the documentation and all the
2	A. Yes.	22	correspond speaks for itself.
3	Q. Okay. And then in the last paragraph he	23	MR. ATKIN: I think I'm entitled to an answer.
24	said "As provided for in the deed, the Nielsons demand	24	THE WITNESS: I went through my lawyer, and he
25	that you defend against any claims by the Talbots."	25	responded to Mr. Cather. I don't know him.
		1	

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Falb	on v. 🔾		Saundra Park June 10, 20
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1	Q. (BY MR. ATKIN) So you are telling me that	1	Q. My question is, why haven't you done that to
2	you didn't agree to defend against the claims by the	2	this point?
3	Talbots?	3	MR. ERICKSON: So same objection. She's already
4	MR. ERICKSON: Again, same objection.	4	stated in several different ways, Counsel, that she
5	Q. (BY MR. ATKIN) Let me ask you this: Why	5	has relied upon her attorneys for the communication
6	haven't you defended the Nielsons against the claims	6	and for responding. I don't know that she can say
7	that are being made against them by the Talbots?	7	that in any other away.
8	MR. ERICKSON: I'm going to object again on the	8	THE WITNESS: I agree.
9	basis that again that is asking for a legal	9	Q. (BY MR. ATKIN) So but that isn't my
0	conclusion.	10	question. My question is, why haven't you stepped up
.1	If you have an answer, you can answer.	11	and defended the claims being made by the Talbots?
2	MR. ATKIN: Do you want the question read back to	12	MR. ERICKSON: Same objections.
3	you?	13	MR. ATKIN: Go ahead and answer.
4	THE WITNESS: Why don't you, yes.	14	THE WITNESS: Like I said, I don't know
5	MR. ATKIN: Would you read the question back,	15	Mr. Cather. I responded to my lawyer, and he sent
6	please.	16	whatever was necessary.
7	(The question was read back.)	17	Q. (BY MR. ATKIN) Do you have an understanding
8	THE WITNESS: I still don't understand your	18	as to why your lawyer has not defended the Nielsons
9	question.	19	against the claims being made by the Talbots?
0	Q. (BY MR. ATKIN) Okay. You sold the piece of	20	MR. ERICKSON: I'm going to object to that on
1	property	21	several basis. First of all, that it is asking a
2	A. Okay. You need to lower your voice just a	22	question that would require a response that would
3	little bit.	23	violate attorney-client privilege. Secondly, I think
4	Q. A minute ago I was told I was	24	it is still the same question. You are asking this in
5	A. And you're pointing fingers at me.	25	just a different way that she has already answered.
	Page 27		Page 2
1	-	1	-
	Q. A minute ago I was told I was talking too	1	MR. ATKIN: Well, I'm entitled to her
2	Q. A minute ago I was told I was talking too quietly. Okay.		MR. ATKIN: Well, I'm entitled to her understanding, but if you are asserting the
2 3	Q. A minute ago I was told I was talking tooquietly. Okay.You sold the piece of property to the	2	MR. ATKIN: Well, I'm entitled to her understanding, but if you are asserting the attorney-client privilege
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violating the attorney-client privilege.	1	me approximately when that meeting was?
		A. It may have been a month after we were
		served papers. It was shortly after.
		Q. When you say "served papers," was that
		after after the letter from Mr. Cather or a later
	_	time when you were served a lawsuit paper?
		A. Well, it was the lawsuit paper, I'm
•		assuming.
		Q. Okay. All right. And who called the
		meeting? Did you call the meeting, or did the Talbots
		call the meeting?
• • •	1	A. I don't recall.
		Q. Do you know how the meeting was set up?
		A. Just in our home in the living room. It
		wasn't a meeting. It was just a friendly, hello, this
		is what is going on.
		Q. Do you know who
		A. I don't know who instigated it, no, if
		that's what you are going to.
		Q. Now, can you tell me what was discussed
		during that meeting?
		A. It was just what was brought up against us
	1	as far as the property line.
•	1	Q. Tell me who said what to whom as best as you
	1	can recall during that meeting.
Page 31		Page 33
with the Talbots?	1	A. You want me to recall a year and a half
A. We talk on the phone.	2	Q. If you can.
Q. Okay. And how many can you give me an	3	A. I don't know to word. All I know is the
idea of how many times?	4	claims against the Nielsons brought to us with their
A. I'm guessing maybe five.	5	property line. In fact, we were surprised.
Q. Okay. And have you ever talked to either of	6	Q. Okay. All right. What did you say to the
the Talbots face to face about the issues within this?	7	Talbots during that meeting in substance? I
A. One time.	8	understand you don't recall well, let me back up.
Q. When was that?	9	Did anyone record the meeting?
A. It was a year and a half after we were	10	A. How would we record the meeting?
served with papers.	11	Q. With a tape recorder.
Q. Okay. And approximately five times on the	12	A. It was a casual friend friend
phone?	13	acquaintance, neighbor; hello, this is what is going
A. Exactly.	14	on.
	15	Q. Was the meeting recorded?
conversation?	16	A. No.
A. In our home.	17	Q. Was there a recording made of it?
Q. And where is your home? In Preston?	18	A. No.
A. Yes.	19	Q. Did anybody take any notes during the
	20	meeting?
Q. And who was present?		
· ·	21	A. No.
A. My husband, myself, and Robbie and Michelle.	21 22	
A. My husband, myself, and Robbie and Michelle.Q. Was this the first time that you had talked		Q. Tell me what you recall in substance what
A. My husband, myself, and Robbie and Michelle.	22	
	 violating the attorney-client privilege. My question is, do you, as you sit here without divulging to me what your communications have been with your attorney, can you tell me why do you have an understanding as to why you or your lawyer has not defended the Nielsons against the claims being made by the Talbots? MR. ERICKSON: Same objections restated. MR. ATKIN: As attorney-client THE WITNESS: Restated 20 times. MR. ERICKSON: Every objection that I just voiced all restated. Q. (BY MR. ATKIN) Since receiving the letter from Mr. Cather, Exhibit 4, have you had any discussions with the Talbots, Robert and Michelle Talbot, concerning the boundary line? A. Yes. Q. Tell me when you had those conversations. A. I don't know the exact date, but it was sometime after. Q. Okay. How many conversations have you had Page 31 with the Talbots? A. We share the same trial, yes. We have talked. Q. Okay. And how many can you give me an idea of how many times? A. I'm guessing maybe five. Q. Okay. And have you ever talked to either of the Talbots face to face about the issues within this? A. One time. Q. When was that? A. It was a year and a half after we were served with papers. Q. Okay. And approximately five times on the phone? A. Exactly. Q. Where were you when you had the face-to-face conversation? 	Page 30 Violating the attorney-client privilege. 1 My question is, do you, as you sit here 2 without divulging to me what your communications have 3 been with your attorney, can you tell me why do you 4 have an understanding as to why you or your lawyer has 6 made by the Talbots? 7 MR. ERICKSON: Same objections restated. 8 MR. ATKIN: As attorney-client 9 THE WITNESS: Restated 20 times. 10 MR. ERICKSON: Every objection that I just voiced 11 all restated. 12 Q. (BY MR. ATKIN) Since receiving the letter 13 from Mr. Cather, Exhibit 4, have you had any 14 discussions with the Talbots, Robert and Michelle 15 Talbot, concerning the boundary line? 16 A. Yes. 27 Q. Have you had one or more than one such 21 conversation? 22 A. We share the same trial, yes. We have 23 talked. 24 Q. Okay. How many conversations have you had 3 idea of how many times? 4 A. I'm guessing maybe five. 5<

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	Page 34		Page 36
1	idea what in the heck was going on.	1	discussions with the Heaps about where the border was?
2	Q. Who told you that?	2	A. Like I said, we admired the lilac bushes,
3	A. Well, our neighbors, Robbie and Michelle.	3	and that's what we assumed was the border.
4	Q. Told you that the lilac bushes had been	4	Q. You assumed that was the border. Did the
5	taken out?	5	Heaps tell you that was the border?
6	A. Yes.	6	A. That's what we agreed to, yes.
7	Q. And that the tree had been removed?	7	Q. That's what I'm trying to get at.
8	A. Yes.	8	A. Yes.
9	Q. What else did they say?	9	Q. Tell me what the Heaps said about where the
10	A. Just that Nielsons said that they that	10	border was.
11	Robbie and Michelle their property was on their	11	A. We walked along the outside of the
12	property.	12	circumference of our home
13	Q. The carport was on the Nielsons' property?	13	Q. When you say "we"
14	A. Correct.	14	A. My husband and myself and the Heaps, Jared
15	Q. The Talbots told you that?	15	and Marissa.
16	A. Yes.	16	Q. All right. And tell me what they said.
17	Q. What did the Talbots say in that regard?	17	A. Well, we walked along the we saw the
18	A. They just said this is what the fight is on.	18	tree, the lilac bushes and walked along to the carport
19	This is what is going on.	19	and then the shed was on Michelle and Robbie's yard.
20	Q. Okay. Did the Talbots tell you whether they	20	He said, "This is not your shed. This is where the
21	agreed with the Nielsons that the carport was on the	21	boundary is."
22	Nielsons' property or whether they disagreed with	22	Q. Okay. And who said that?
23	that?	23	A. Jared and Marissa Heaps.
24	A. All I know is that the carport was on there.	24	Q. Did they both say it or did Mr. Heap say it?
25	I don't know as far as disagreeing, agreeing.	25	A. I cannot recall. It's been ten years ago
	Page 35		Page 37
1	Q. No. I'm asking what you the Talbots said	1	seven to ten. It's been a long time ago.
1 2	Q. No. I'm asking what you the Talbots said during this meeting.	1 2	seven to ten. It's been a long time ago. Q. All right. Anything else you recall about
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	Page 38		Page 40
1	Q. All right. When you did you have any	1	with Mr. Beckstead.
2	conversations with Cheryl about the boundary?	2	A. When we were selling our home.
3	A. I did not take Cheryl around the boundary.	3	Q. Did you have one or more conversations about
4	My husband did or our realtor did.	4	that.
5	Q. Okay.	5	MR. ERICKSON: And you're asking specifically
6	A. And our realtor, Mark Beckstead.	6	about conversations about the boundary line?
7	Q. And so you are you telling me that you	7	MR. ATKIN: With Mark Beckstead about a boundary
8	didn't ever have any conversations with Cheryl about	8	line.
9	the boundary?	9	MR. ERICKSON: Do you recall, Saundra?
10	A. I did not talk to Cheryl. I was talking to	10	THE WITNESS: I'm sure I know at least one
11	Cheryl's mother and her father.	11	time we talked about it.
12	Q. Okay. Did you have any conversations with	12	Q. (BY MR. ATKIN) Okay. Tell me about that.
13	her mother or her father about the boundary?	13	When was it, first of all?
14	A. I did not, no.	14	A. When we were selling our home, when he was
15	Q. Okay. Your real estate agent,	15	putting it up for us.
16	Mr. Beckstead?	16	Q. Okay. And where were you when you had that
17	A. Yes.	17	conversation?
18	Q. What was his first name?	18	A. Well, we walked the circumference, and we
19	A. Mark.	19	sat at the kitchen.
20	Q. Do you know if he had any conversations with	20	Q. Okay. And when you say "we," who was
21	Mr. Nielson about the boundary?	21	involved?
22	A. 1 do not.	22	A. My husband and myself and Mark Beckstead.
23	Q. Do you know whether he had any conversations	23	Q. And what did you say to Mr. Beckstead about
24	with anybody about the boundary?	24	the boundary line?
25	A. The only thing I recall is Mr. Nielson,	25	A. Well, he had us sign the purchase and
	Page 39		Page 41
1	Glen, was not around when we showed the home.	1	agreement things and we "X'd" off things. We talked
2	Q. My question is, do you know whether	2	about the circumference or the boundary line. We
3	Mr. Beckstead Mark Beckstead, your real estate	3	talked about our home, getting it ready.
4	agent do you know whether he had any conversations	4	Q. When you say you talked about the boundary
5	with anyone about the boundary?	5	line, specifically what did you say about the boundary
6	A. I don't know.	6	line?
7	Q. Okay. Did you have any conversations with	7	A. We walked around the circumference of the
8	Mark Beckstead about the boundary?	8	home and showed him the lilac bushes.
9	A. Sure. He's my realtor.	9	Q. When you say the circumference, you are
10	Q. And tell me about the conversations you had	10	talking about the circumference of the yard?
11	with him about the boundary.	11	A. Yard, yes. And the home. We walked around
12	A. It is just the same thing. You know, just	12	the whole property.
13	from going off of Exhibit 1 and 2, that's what I	13	Q. All right. And did you talk to him
14	understood the boundary line was. And it was assumed	14	specifically about the lilac bushes?
15	the lilac bushes, the carport to the shed, that was	15	A. We showed him the lilac bushes, yes.
16	our boundary line.	16	Q. Did you say anything about the lilac bushes?
17	Q. Did you have any conversations with	17	A. This is what our boundary line this is
18	Mr. Beckstead about that assumption that the lilac	18	what we knew.
19	bushes, the carport and the shed were the boundary	19	Q. Now, are you telling me what I need to
20	line?	20	have clear
21	A. That's all I knew. Yes.	21	A. Yes.
22	Q. You need to answer the question. Did you	22	Q is what you said to Mr. Beckstead. Did
23	have any conversations with Mr. Beckstead about that?	23	you say to Mr. Beckstead what did you say when you
24	A. Yes.	24	said here the lilac bushes?
25	Q. Tell me when you had those conversations	25	A. We walked around the boundary of our home,
1		1	

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1	and we showed him exactly where the boundary was that	1	had a washer and dryer?
2	we agreed to, which we knew, which was the tree, the	2	A. Yes.
3	lilac bushes, the carport, the shed. We walked around	3	Q. Everything else had been moved out but the
4	the side of the road and went the whole circumference	4	washer and dryer; do you recall that?
5	around. We had barbed wire fence we shared with the	5	MR. ERICKSON: I'm going to object on the basis
6	neighbor, and then we had bushes in the front.	6	that it's a leading question. I mean, if you want to
7	Q. And when you talked to Mr. Beckstead, did	7	ask her if she knows independently about it, that's
8	you specifically talk about the lilac bushes, the	8	fine with me, but to suggest to her in a question is
9	carport, and the shed?	9	leading.
10	A. Like I said, yes, I did.	10	Q. (BY MR. ATKIN) Let me ask you, was the
11	Q. Okay. And you told him that you considered	11	washer and dryer left there while the rest of the
12	the tree and the lilac bushes and the carport and the shed to be the boundary line?	12	furniture had already been moved out of the house? MR. ERICKSON: If you remember.
13 14	A. Yes.	13 14	THE WITNESS: All I remember is we removed all
14	Q. Okay. Now, when you sold the property to	14	the furniture, and we took it in several different
16	the Nielsons, did you understand that that was being	16	loads, and my washer and dryer probably was left last,
17	sold as part of an FHA loan?	17	yes. It was probably our last hook up.
18	A. Yes.	18	Q. (BY MR. ATKIN) When you removed the washer
19	Q. And do you remember the inspection report	19	and dryer, did you do that before or after the closing
20	that the FHA that was connected with that	20	of the sale to Mr. Nielson?
21	transaction?	21	A. I don't recall.
22	A. Yes.	22	Q. When you removed the washer and dryer, did
23	Q. And that inspection report required certain	23	you see mold behind the washer and dryer?
24	things to be repaired before the sale.	24	A. No.
25	Do you recall that?	25	Q. Did you inspect to see if there was mold
	Page 43		Page 45
1	A. Yes.	1	behind the washer and dryer?
2	Q. And did you repair those things that were in	2	A. When we took our washer and dryer out, we
3	that inspection report?	3	unplugged everything. Took it out. It was a brand
4	A. Yes.	4	new set Whirlpool upright. It was very efficient.
5	Q. Was it disclosed to you before the	5	And, no, I did not notice anything.
6	closing of the sale to Mr. Nielson, was it disclosed	6	Q. When did you put the washer and dryer there?
7	to you that there was a mold problem in the home?	7	When you moved in or later?
8	A. It was disclosed by I don't know who it	8	A. When we moved in.
9	was actually that told us that we needed to fix the	9	Q. So the washer had been there during the
10	little spot under the stairs. Q. And what did you do to repair the mold?	10	entire time that you lived there?
11 12	A. We just washed it with warm water. You can	11 12	A. Yes. We purchased it brand new.Q. And when you removed them, you didn't notice
13	use a detergent. You can use Clorox and you let that	13	any mold?
14	dry thoroughly. You remove anything that has black	14	A. No.
15	mold on it. Take it out and clean it.	15	Q. I understand that there in the there is a
16	Q. And that's what you did?	16	basement in the home; right?
17	A. Yes.	17	A. Yes.
18	Q. When you moved out of the home you moved	18	Q. Was there a flood in the basement? Was
1	out of the home before the closing of the sale to the	19	there water in the basement?
19		20	A. No.
19 20	Nielsons; is that correct?		
	A. Yes.	21	Q. You never recall having water standing in
20	A. Yes.Q. And you moved all your furniture out of the		the basement?
20 21 22 23	A. Yes.Q. And you moved all your furniture out of the home?	21 22 23	the basement? A. We had carpet in our basement. I didn't see
20 21 22	A. Yes.Q. And you moved all your furniture out of the	21 22	the basement?

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1 2 3	line along the sheetrock in the basement. Do you know why that was there if there wasn't a flood?A. I don't know even know where the water line	1 2 3	lilac bushes, the carport, that was her understanding the border was. That's what I asked her. Q. And what did she say?
4	was.	4	A. She said, yes that's what she understood as
5	Q. You never noticed a water line?	5	well.
6	A. No. No.	6	Q. Did she agree to give you an affidavit?
7	Q. After this dispute came to your attention,	7	A. She said she would talk to my lawyer.
8	after the letter from Mr. Cather, did you ever have	8	Q. So do you know whether she has signed an affidavit?
9 10	any conversations with the Heaps about the boundary line?	9 10	A. No.
11	A. Yes.	11	Q. I think it is fairly well established, but
12	Q. How many conversations did you have with the	12	if I could have you look at Exhibit 2 again. That's
13	Heaps?	13	the Warranty Deed
14	A. One.	14	A. Yes.
15	Q. And was that in person or on the phone?	15	Q by which you sold the property to
16	A. On the phone.	16	Mr. Nielson.
17	Q. And you and the Heaps were on the phone.	17	Is that your signature
18	Was anyone else on the phone?	18	A. Yes.
19	A. No. It was Marissa and myself.	19	Q that's on the document?
20	Q. Okay. And can you tell me when that occurred?	20	A. On the right-hand side.
21 22	A. It was probably two weeks ago.	21 22	Q. All right. A. Yes.
22	Q. Okay. Before that, you hadn't had any	23	Q. And is that your husband's signature there?
24	conversations with them?	24	A. It is, yes.
25	A. No.	25	(Deposition Exhibit No. 5 marked.)
	Page 47	,	Page 49
1 2	Q. Tell me what you said to her and what she said to you.	1	Q. (BY MR. ATKIN) Let me show what's been marked as Exhibit 5.
3	A. I just told her we were looking for an	3	Do you recognize that document?
4	affidavit for her and asked if she recalled if she	4	A. Yes.
5	knew where the boundary line was and this is what was	5	Q. And is that your signature on the right-hand
6	going on us with our trial with Cheryl.	6	side at the bottom on the first page?
7	Q. What did you tell her?	7	A. I don't see my signature on here. There is
8	A. If she knew of any prior thing with the	8	signature initials but nothing has been signed.
9	boundary line, because it was a surprise to us. Q. And what did she tell you?	9	Q. You know what? I gave you the wrong document.
10 11	A. She said it was a surprise to her as well.	10 11	(Deposition Exhibit No. 6 marked.)
12	The carport was established. The lilac bushes were	12	Q. (BY MR. ATKIN) Since we already marked that
13	there.	13	as Exhibit 5, let me ask you a couple questions about
14	Q. So she told you that she didn't know about	14	it.
15	the boundary dispute?	15	Do you recognize what this document is?
16	A. No.	16	A. I don't have it in front of me, no.
17	Q. She had never had did you ask her if she	17	Q. Take a look at it.
18	had ever had any conversation with the Talbots about	18	MR. ERICKSON: Take your time and look through
19	the boundary?	19	the pages to make sure what you understand it is.
20	A. I did not, no.	20	Q. (BY MR. ATKIN) Tell me what you understand
21	Q. You told her that you were looking for an	21	it is.
22	affidavit? A. Yes.	22 23	A. It is the purchase and agreement.Q. And I notice that that one isn't signed.
23 24	Q. What did you want in the affidavit?	23 24	Did you ever sign one of those documents?
25	A. I wanted her to tell me if that was the	25	A. I sure did, yes.

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1 2	Q. And do you know if Mr. Nielson signed the document?	1 2	damage to any portion of the property, including, but not limited to the crawlspaces crawlspace, floors,
3	A. Yes, he did.	3	walls, ceiling, siding, or basement, based on
4	Q. Let me show you what's been marked Exhibit	4	flooding; moisture seepage, moisture condensation,
5	6.	5	sewer overflow/backup, leaking pipes, plumbing
6	MR. ERICKSON: Put that one over there.	6	fixtures, appliances, or moisture related damage from
7	THE WITNESS: Okay.	7	other cause," and you marked "no."
8	Q. (BY MR. ATKIN) Do you know what Exhibit 6	8	Do you see that?
9	is?	9	A. Yes.
10	A. Seller's Property Condition Disclosure Form.	10	Q. Was that truthful at the time that you made
11	Q. And you filled that form out at the time of	11	that disclosure?
12	the sale?	12	A. Yes, it was.
13	A. Yes, I did.	13	Q. Now, if you go down two more items.
14	Q. Actually, you filled it out before the sale?	14	A. Uh-huh.
15	A. Yes. 3/22 of '13.	15	Q. "Are you aware of the existence of any-mold
16	Q. And the sale actually took place on or	16	related problems on any interior portion of the
17	about August 27 of 2013; right?	17	property, including, but not limited to the floors,
18	A. Yes.	18	walls, ceilings, basement, crawlspaces, and attics or
19	Q. When you filled out this Exhibit 6, did you	19	any mold-related structural damage."
20	understand what its purpose was? A. Yes.	20	Do you see that? A. Yes.
21	Q. And what was your understanding of what its	21 22	Q. And you answered "no."
22 23	purpose was?	23	A. You are right.
23 24	A. The conditions of the home, the property,	24	Q. At the time you filled out that form, was
25	Property Condition Disclosure Form.	25	that truthful?
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1	Q. Okay. And did you understand the importance	1	A. Yes.
1 2	of being accurate with the things you disclosed in	1 2	Q. When you later learned that there were some
	of being accurate with the things you disclosed in this report?		Q. When you later learned that there were some mold problems with the house, did you take any make
2	of being accurate with the things you disclosed in this report? A. Yes.	2	Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form?
2 3	of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to	2 3	Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form?A. We just did what the inspector had told my
2 3 4	of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this	2 3 4	Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form?A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold.
2 3 4 5	of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report?	2 3 4 5 6 7	Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form?A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold.Q. But now I need to ask you the question
2 3 4 5 6 7 8	of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes.	2 3 4 5 6 7 8	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again.
2 3 4 5 6 7 8 9	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, 	2 3 4 5 6 7 8 9	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure.
2 3 4 5 6 7 8 9 10	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a 	2 3 4 5 6 7 8 9 10	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this
2 3 4 5 6 7 8 9 10 11	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a later date? 	2 3 4 5 6 7 8 9 10 11	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this disclosure form?
2 3 4 5 6 7 8 9 10 11 12	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a later date? A. Not to my knowledge, no. 	2 3 4 5 6 7 8 9 10 11 12	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this disclosure form? A. This is the one that I signed and, no, there
2 3 4 5 6 7 8 9 10 11 12 13	of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a later date? A. Not to my knowledge, no. Q. Even after looking at the inspection the	2 3 4 5 6 7 8 9 10 11 12 13	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this disclosure form? A. This is the one that I signed and, no, there was no amendment to it.
2 3 4 5 6 7 8 9 10 11 12 13 14	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a later date? A. Not to my knowledge, no. Q. Even after looking at the inspection the FHA inspection, you didn't make any amendments to this 	2 3 4 5 6 7 8 9 10 11 12 13 14	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this disclosure form? A. This is the one that I signed and, no, there was no amendment to it. Q. Okay. Now, if you turn to the next page,
2 3 4 5 6 7 8 9 10 11 12 13 14 15	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a later date? A. Not to my knowledge, no. Q. Even after looking at the inspection the FHA inspection, you didn't make any amendments to this report? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this disclosure form? A. This is the one that I signed and, no, there was no amendment to it. Q. Okay. Now, if you turn to the next page, the other disclosures section. "Are there any
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a later date? A. Not to my knowledge, no. Q. Even after looking at the inspection the FHA inspection, you didn't make any amendments to this report? A. Not to my knowledge, no. 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this disclosure form? A. This is the one that I signed and, no, there was no amendment to it. Q. Okay. Now, if you turn to the next page, the other disclosures section. "Are there any conditions that may affect your ability to clear title
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a later date? A. Not to my knowledge, no. Q. Even after looking at the inspection the FHA inspection, you didn't make any amendments to this report? A. Not to my knowledge, no. Q. Okay. And I think I asked you, but is that 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this disclosure form? A. This is the one that I signed and, no, there was no amendment to it. Q. Okay. Now, if you turn to the next page, the other disclosures section. "Are there any conditions that may affect your ability to clear title such as encroachments, easements, zoning violations,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a later date? A. Not to my knowledge, no. Q. Even after looking at the inspection the FHA inspection, you didn't make any amendments to this report? A. Not to my knowledge, no. Q. Okay. And I think I asked you, but is that your signature on the right-hand of Exhibit 6? 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this disclosure form? A. This is the one that I signed and, no, there was no amendment to it. Q. Okay. Now, if you turn to the next page, the other disclosures section. "Are there any conditions that may affect your ability to clear title such as encroachments, easements, zoning violations, lot line disputes, restricted covenants, et cetera,"
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a later date? A. Not to my knowledge, no. Q. Even after looking at the inspection the FHA inspection, you didn't make any amendments to this report? A. Not to my knowledge, no. Q. Okay. And I think I asked you, but is that your signature on the right-hand of Exhibit 6? A. Yes. 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this disclosure form? A. This is the one that I signed and, no, there was no amendment to it. Q. Okay. Now, if you turn to the next page, the other disclosures section. "Are there any conditions that may affect your ability to clear title such as encroachments, easements, zoning violations, lot line disputes, restricted covenants, et cetera," and you marked "no" on that as well.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	 of being accurate with the things you disclosed in this report? A. Yes. Q. You understood that the buyer was going to be relying upon the statements that were made in this report? A. Yes. Q. Did you ever do an amendment to this report, or did you ever add to this report or change it at a later date? A. Not to my knowledge, no. Q. Even after looking at the inspection the FHA inspection, you didn't make any amendments to this report? A. Not to my knowledge, no. Q. Okay. And I think I asked you, but is that your signature on the right-hand of Exhibit 6? A. Yes. Q. Now, turn to the second page. If you look 	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	 Q. When you later learned that there were some mold problems with the house, did you take any make any effort to amend this form? A. We just did what the inspector had told my realtor needed to be done. We cleaned up the mold. Q. But now I need to ask you the question again. A. Sure. Q. Did you ever make any effort to amend this disclosure form? A. This is the one that I signed and, no, there was no amendment to it. Q. Okay. Now, if you turn to the next page, the other disclosures section. "Are there any conditions that may affect your ability to clear title such as encroachments, easements, zoning violations, lot line disputes, restricted covenants, et cetera," and you marked "no" on that as well. A. Correct.
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	Page 54		Page 56
1	EXAMINATION	1	Q. And that would be on the back end of the
2	QUESTIONS BY MR. ERICKSON:	2	property towards the backyard?
3	Q. So I want to ask you questions first about	3	A. Correct.
4	Exhibit No. 1.	4	Q. You also drew just a straight line. What
5	A. Okay.	5	does that line represent?
6	Q. This is the Warranty Deed between the Heaps	6	A. It represents the carport.
7	and you and your husband where they sold the property	7	Q. Okay.
8	to you.	8	A. And the border, which I thought was the
9	Do you have that in front of you?	9	border.
10	A. Yes.	10	Q. So my question for you is the square you
11	Q. Did you prepare this document before it was	11	drew and the line you drew on Exhibit No. 3, do you
12	signed?	12	have any idea whether that matches or doesn't match
13	A. No.	13	the legal description that's on Exhibit No. 2?
14	Q. In other words, I'm asking you did you type	14	A. No.
15	all this up?	15	Q. You just drew it based on your best
16	A. No.	16	knowledge
17	Q. Okay. Exhibit No. 2	17	A. Yes.
18	A. Okay.	18	Q of are where those are located?
19	Q this is the Warranty Deed between you and	19	A. Yes.
20	your husband to Mr. Nielson.	20	Q. Okay. With regards to the questions that
21	A. Yes.	21	Mr. Atkin asked you about the mold that was in the
22	Q. Did you or your husband type this document	22	home
23	up?	23	A. Yes.
24	A. No.	24	Q I wanted to follow up with that. Would
25	Q. The legal description that was referred to	25	you describe for me again where you discovered that
	Page 55		Page 57
1		1	Page 57 mold to be.
1 2	several times in your deposition, which is the section	1 2	
	several times in your deposition, which is the section saying commencing at point 81.		mold to be. A. The mold was underneath the basement in a
2	several times in your deposition, which is the section	2	mold to be.
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	Page 58		Page 60
1	Q. Okay. Is that what happened?	1	you have testified about, did you ever did anybody
2	A. Yes.	2	else ever tell you anything about other mold in the
3	Q. After that happened, was there any other	3	home?
4	mold that grew in that area?	4	A. No.
5	A. No.	5	MR. ATKIN: That's all I have.
6	Q. When you sold the property to Mr. Nielson,	6	(The deposition concluded at 10:18 a.m.)
7	was there any mold in that area?	7	(Signature requested.)
8	A. No.	8	(
9	Q. Was there any mold in any other location of	9	
10	the home?	10	
11	A. Not that I knew of, no.	11	
12	Q. Mr. Atkin asked you questions about the	12	
13	washer and dryer. Was there any flooding or any water	13	
14	damage or any issues with water behind the washer or	14	
15	dryer?	15	
16	A. No.	16	
17	Q. How long well, let's go to Exhibit No	17	
18	let's go to Exhibit No. 4 for a moment. You described	18	
19	this as being the first time you were aware that there	19	
20	were any issues with the property that you sold to	20	
21	Mr. Nielson; is that correct?	21	
22	A. Correct.	22	
23	Q. Is there anything on this letter that you	23	
24	see that mentions your talks about mold?	24	
25	A. No.	25	
	Page 59		Page 61
1	Q. When was the first time that you were aware	1	CERTIFICATE OF WITNESS
2	that Mr. Nielson was making a claim that there was	2	I, SAUNDRA PARKER, being first duly sworn,
3	some sort of mold damage in the home?	3	depose and say:
4	A. It was a year and a half it was	4	That I am the witness named in the foregoing
5	approximately a year and a half after we had sold the	5	deposition, that I have read said deposition and know
6	home.	6	the contents thereof; that the questions contained
7	Q. Do you have any idea of what happened to	7	therein were propounded to me; and that the answers
8	that property during that year and a half time after	8	contained therein are true and correct, except for any
9	you sold the home?	9	changes that I may have listed on the change sheet
10	A. No.	10	attached hereto.
11	Q. Do you have any knowledge about whether	11	
12	there was any flooding in the home during that time	12	DATED this day of,
13	period?	13	
14	A. No knowledge.	14	CHANGES ON ERRATA SHEET YESNO
15	Q. Do you have any knowledge about whether	15	
16	there was any leaks of any pipes or any other	16	
17	appliances or any other things that were in the home	17	WITNESS
18	during that time period?	18	
19	A. No.	19	SUBSCRIBED AND SWORN to before me this
20	MR. ERICKSON: I don't have any other questions.	20	day of,
21	MR. ATKIN: Just a couple follow-ups.	21	
	—	22	NAME OF NOTARY PUBLIC
22			
22 23	FURTHER EXAMINATION	23	NOTARY PUBLIC FOR
	FURTHER EXAMINATION QUESTIONS BY MR. ATKIN: Q. Other than this little space of mold that	23 24	NOTARY PUBLIC FOR RESIDING AT MY COMMISSION EXPIRES

_	Page 62
1	ERRATA SHEET FOR SAUNDRA PARKER
2	Page Line Reason for Change
3	Reads
4	Should Read
5	Page Line Reason for Change
6	Reads
7	Should Read
8	Page Line Reason for Change
9	ReadsShould Read
1	Page Line Reason for Change
2	
3	
4	Should Read Page Line Reason for Change
5	
5	Reads
7	Should Read
8	Page Line Reason for Change
8	Reads
0	Should Read
1	Page Line Reason for Change
1 2	Reads
∡ 3	Should Read
3 4	Please use separate sheet if you need more room.
-	
5	SIGNATURE Page 63
1	SIGNATURE Page 63 REPORTER'S CERTIFICATE
1 2	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR No. 946, Certified
1 2 3	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR No. 946, Certified Shorthand Reporter, certify:
1 2 3 4	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR No. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken
1 2 3	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at
1 2 3 4 5	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR No. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;
1 2 3 4 5 6	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR No. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made
1 2 3 4 5 6 7	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR No. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed
1 2 3 4 5 6 7 8	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction;
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1 2 3 4 5 6 7 8 9 0	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct
1 2 3 4 5 6 7 8 9 0 1	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR No. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability;
1 2 3 4 5 6 7 8 9 0 1 2	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative
1 2 3 4 5 6 7 8 9 0 1 2 3	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR No. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability;
1 2 3 4 5 6 7 8 9 0 1 2 3 4	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action.
123456789012345	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action.
1234567890123456	SIGNATURE Page 63 REFORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action. IN WITNESS WHEREOF, I set my hand and seal this 23rd day of June, 2016.
12345678901234567	SIGNATURE Page 63 REFORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action. IN WITNESS WHEREOF, I set my hand and seal this 23rd day of June, 2016.
123456789012345678	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR No. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action. IN WITNESS WHEREOF, I set my hand and seal
1234567890123456789	SIGNATURE Page 63 REFORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action. IN WITNESS WHEREOF, I set my hand and seal this 23rd day of June, 2016.
12345678901234567890	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action. IN WITNESS WHEREOF, I set my hand and seal this 23rd day of June, 2016.
123456789012345678901	SIGNATURE Page 63 REFORTER'S CERTIFICATE I, JANET L. FRENCH, CSR NO. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action. IN WITNESS WHEREOF, I set my hand and seal this 23rd day of June, 2016. JANET L. FRENCH, CSR, RPR
1234567890123456789012	SIGNATURE Page 63 REPORTER'S CERTIFICATE I, JANET L. FRENCH, CSR No. 946, Certified Shorthand Reporter, certify: That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction; That the foregoing is a true and correct record of all testimony given, to the best of my ability; I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in this action. IN WITNESS WHEREOF, I set my hand and seal this 23rd day of June, 2016. JANET L. FRENCH, CSR, RPR Notary Public

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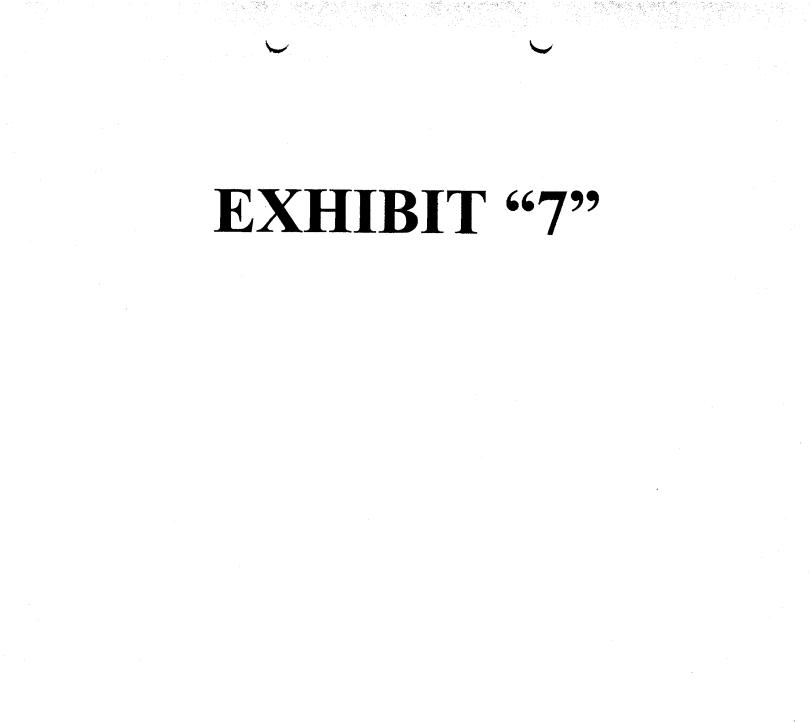
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Inspection No. 38113-11335

Visual Property Inspection

496 West 200 South Preston, ID 83263

Prepared for :

Cheryl Nielson 698 South 100 West Ceder City, UT 84720

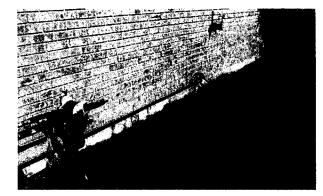


Inspected by :

Lou Jerome 837 South 500 West Brigham City, Utah 84302 Phone: (435) 723-3682 Fax: (435) 723-0946 Email: lou.jerome@pillartopost.com

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Pilar To post.					
THE HOME OF HOME INSPECTION."	Date: 26-Jul	-2013		496 West 20	0 South, Preston, ID 83263
					Property and Site
Limitations	bris	Snow	Vegetation		
Conditions ✓Clear Clear Approx. Temperature 75F	oudy	Rain Approx. Hydrant	Dry Distance On Site		
Building Condo Ru Semi-Detached Du		▼Ranch Row House	Bi-Level	2 Story	3 Story
Blue items are observations.	the main c	oncerns and	green items are	e minor repairs,	maintenance, and
For clarification in the front of the formation of the front of the fr		mments in th	e report please	call the mobile	e number on the card
Landscaping ✓ Slopes to House	1.11 0 L	Flower Bed	Hedge	Dam ✓ Tree	aged: No
are and a second s	e Erosion	No Swale	ould be correcte	he	

Keep the trees trimmed back from the house to help prevent damage.

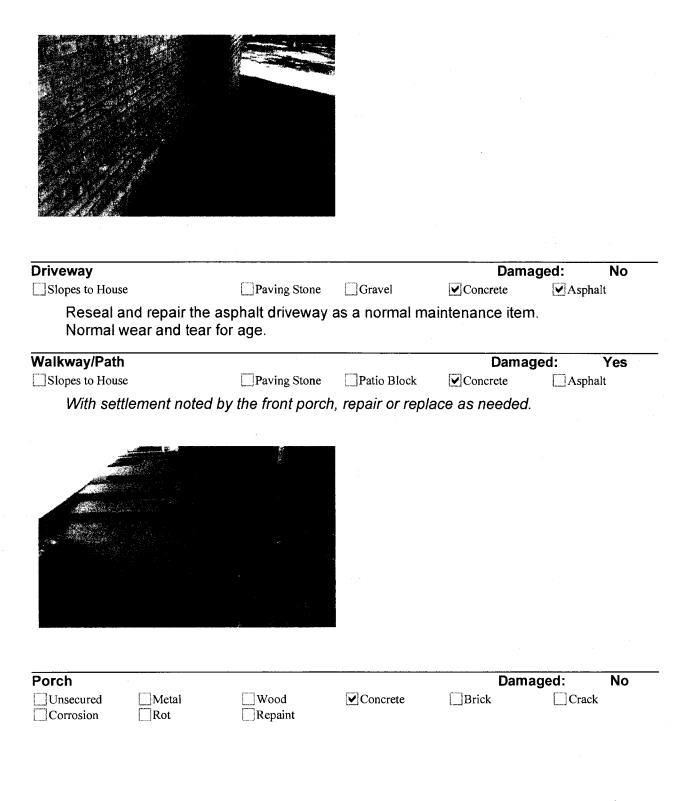






496 West 200 South, Preston, ID 83263

Property and Site





^a Date: 26-Jul-2013

496 West 200 South, Preston, ID 83263

Property and Site

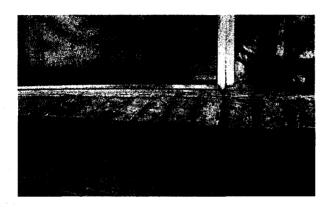
Deck/Patio				Dam	naged:	No
Unsecured Slopes to House	Wood	Brick	Concrete Patio Block	Metal Stone	Crac	:k
Deterioration	Mold	Rot				

THE HOME OF HOME INSPECTION*	Date: 26-Ju	1-2013	11-04-14-14-14-44	496 West 20	00 South, Preston, ID 83
		<u></u>	· · · · · · · · ·		Exte
	easonal Storm arged	Windows	Debris	Shrub	Snow
Foundation Wall				Dam	naged: No
Exterior Rigid Insulation	oured Concrete on rost Heave	PWF	Block	☐Brick ✔Crack	Stone Mildew
water entry an	d subsequ ical hair lin	ent damages e cracks note			erioration, potentia
Wall Surface				1	Not Applicable
Recaulk C	inyl Siding rack aulk betwe e	Aluminum Steel Mildew en dissimilar s	Composite Split Stain Stain	Brick Repoint Blister	Not Applicable
No Ground Clearance Stucco ♥V Recaulk □C Monitor and ca With patched s	rack aulk betwee	Steel Mildew en dissimilar s	Split Stain Stain	Dister	Stone Repaint
No Ground Clearance Stucco ♥V Recaulk □C Monitor and ca	rack aulk betwee siding note	Steel Mildew en dissimilar s	Split Stain Stain	Dister	Stone Repaint



496 West 200 South, Preston, ID 83263

Exterior



Window Well

Damaged: No

Improper Drainage

Repaint the window casings to help prevent rusting and replacement. Recommend lowering the soil level to 6 inches below the bottom of the window to help reduce the risk of water intrusion into the basement.



Doors				Operation	al: Yes
Binds Weather-strip	Damaged Mildew	Storm Stain	Unsecured Split	Repaint	Recaulk
Monitor a	and repaint are	ound doors an	d frames as need	ed as a normal m	naintenance iten
Lighting None	Unsecured			Operation	al: Yes

Receptacle			Operation	al: Yes
Damaged	✓ Install GFCI	Reverse Polarity	No Ground	Open Ground
Recom	mend installation	of GFCI receptacles to	o reduce risk of electrical	shock.

Professional Borne Inspection PIII ar To DOSt					
THE HOME OF HOME INSPECTION"	Date: 26-Jul	-2013		496 West 20	00 South, Preston, ID 83263
<u></u>		,			Garage
Type ✓ Attached □Bu ✓ Attic Access □	iilt-In	Detached		Double	Insulated
Door				Operat	ional: Yes
Binds Da Adjust Auto Stop No	maged Safety Stop	Automatic Stain	Sectional	Wood	✓ Metal
item.		-			ormal maintenance placement at any

Floor	loor		Dam	naged:	No	
Crack	Settlement	Asphalt	Concrete	Gravel	Stain	1
House	ehold items stored	I - unable to in	spect thoroughly	Ι.		

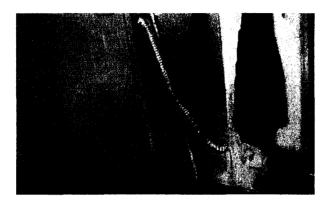


Wall				Dan	naged:	No
No Fire Barrier	✓ Drywall	Brick	Wood	Stain		



496 West 200 South , Preston, ID 83263

Garage



Dryer vent

Window Binds	Damaged			Operational:	Yes
Ceiling		<u></u>		Damaged:	No
No Fire Barrier	Drywall	Crack	Wood	✓ Stain	
Lighting				Operational:	Yes
None	Unsecured				
Receptacle				Operational:	Yes
Damaged	Install GFCI	Reverse Polari	ity	No Ground	Open Ground
Circuit Wire Concealed	Unsecured	Improper			
Access Door	<u></u>			Operational:	Yes
Auto Door Close Damaged To Laundry Room	Stain	Metal Clad	Wood		Gas Proof
The door Door does	binds, this sho	• •	ed.	in the future. proofing kit to prevent (Carbon



N² Date: 26-Jul-2013

496 West 200 South, Preston, ID 83263

Roof Structure

Inspected By	/:				
Binocular	Roof Edge	Walk On	No Access		
Limitations			· · · · ·		
Deck	Gravel	Height	Steep Slope	Rain	Solar Panel
Main Roof					
Flat	Gable	✓ Valley	Hip	Shed	Other
Estimated Age 2	012	Pitch Normal	-		
Gutter/Down	spout	8		Dam	naged: No
Unsecured	Aluminum	Galvanized	Copper	Plastic	Incomplete
Dent	Corrosion	Leak	Drainage Abov	ve Ground	-
Drainage Belo	ow Ground	Spill	Extended Lead	ler	
Redirect Lead					

Extend all downspouts away from foundation to reduce wall deterioration, potential water entry and subsequent damages.

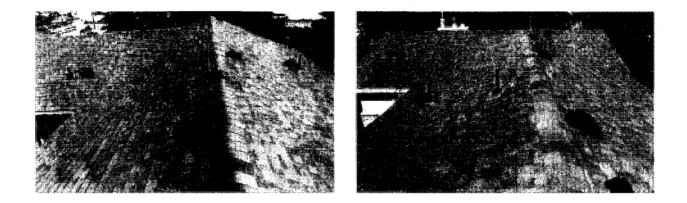
Seal seams as needed to reduce further leaking and subsequent water damage Gutters full of debris and require cleaning to facilitate water drainage towards downspouts.

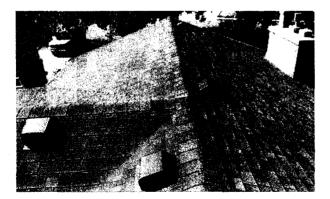
Fascia/Soffit				Dar	naged:	No	
Not Vented	✓ Aluminum Stain	Wood Corrosion	Vinyl	Other		se	
	in the west sof	fit by the chimn	ey, should be	sealed.			

Professional Home Inspection Pillar To post					
THE HOME OF HOME INSPECTION."	Date: 26-Ju	ıl-2013		496 West 200 South	, Preston, ID 83263
			······		Roof Structure
Covering	ncrete	Wood Shingle	Wood Shake	Damaged:	No

Asphalt Shingle	Concrete	Wood Shingle	Wood Shake	Fiberglass Shingl	e
Tar	Metal	Other	Nail Pop	Loose	Broken
Crack	Patched	Mildew	Stain	Worn	Curl
Fungus	Improper Installa	tion			
# of Layers 1					
	•				

Typical life expectancy of asphalt shingles is 20 years. Monitor regularly for loose shingles, wind damage and deterioration. Reseal exposed nail heads to reduce the risk of water intrusion.





Life Expectar	ncy			
✓ Middle	Typical	Exceeded		
Accessory			Damaged:	No
Unsecured	Exhaust_Ven	t Vent Stack	Furbine Electrical Mast Sol	ar Panel
Skylight	Antenna	Dish		

		Roof Structure
THE HOME OF HOME INSPECTION	Date: 26-Jul-2013	 496 West 200 South, Preston, ID 83263
Antiparties and Herric Inspection Rillar To post		

Flashing				Dama	ged: No
Not Checked	Chimney	Dormer	✓ Drip Edge	Flat Roof	Skylight
Roof to Wall	✓ Stack	✓ Valley	Roll Roofing	Galvanized	Copper
Rubber	Gap	Deterioration	Corrosion	✓ Tarred	Reseal
Improper	Replace Whe	n Re-roofing			

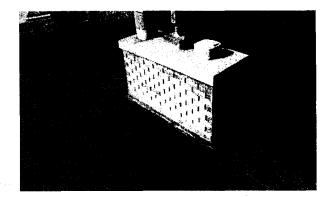
Seal and maintain flashing to reduce water entry related damages.





Chimney/Vent				Damag	jed: No
Leaning	Fireplace	Furnace	Gas Insert	Other	✓ Brick
Metal	Wood	Stucco	Crack	Deterioration	Corrosion
Loose	Abandoned	No Wind Cap	Metal Liner R	equired	

Monitor and repoint the chimney as needed.



Chimney Cap	Damaged:	No	
None Concrete Masonry Deterioration Corrosion Loose		ck	



496 West 200 South, Preston, ID 83263

Roof Structure

Visible Flue Liner				Dama	ged: No
None Deterioration	Brick Corrosion	Clay Loose	✓ Metal Crack	Metal Insert	Rain Cap

Professional Home Insp PIIAT TO PI THE HOME OF HOME INSPE		Jul-2013	· · · · · · · · · · · · · · · · · · ·	496 West 200) South, Preston, ID 83
			<u> </u>		A
Limitations					
 No Access Pull Down	Sealed ✓ Insulated	Stored Items	✓ Looked In	Entered	Hatch
Structure ✓ Truss	Rafter	Warped	[]Stain	Dama	aged: No
	1/				
			10 ²		
Sheathing				Dam	aged: No
Condensation Mildew	Composite Sag	☐ Thermal Board ✓ Stain	Plywood	Board	R Felt
Insulation	Concealed	Finished	None	Dam Vapor Barrie	aged: No r Fibreglass

and an either



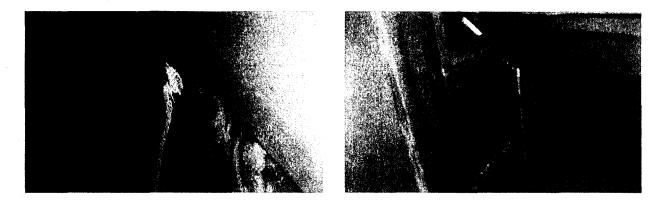
496 West 200 South, Preston, ID 83263

Attic

The current min. standard is 12 inches. It may be advisable to add more insulation for increased energy efficiency. An insulation over fill is recommended to an R-60 or about 14 inches total insulation.

Ventilation			Damaged:	No	
☐None ✔Roof	✓ Soffit □Blocked	Gable End	Turbine	Mechanical Baf	fles
Exhaust Duct	Not Insulated	Into Attic	Plastic	Damaged:	No
Electrical	Abandoned	Knob & Tub	Open Splice	Damaged:	No

sepretion OSt				
PECTION [®] Date:	26-Jul-2013		496 Wes	st 200 South, Preston, ID 83
		<u>and an </u>		Basement/Struct
	Dry Weather	Dry Ground		
				Not Applicable
Concrete	Carpet	Ceramic	Vinyl	Wood
		he structure is c	oncealed.	
	<u>,</u>	,,,,,	Da	maged: Yes
	[Mildew	Concrete	Brick	PWF
	Clutter Concrete ne finished b od where visi	Dest* Describer Date: 26-Jul-2013 Date: 26-Jul-2013 Dry Weather Dry Weather Concrete Carpet Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description Description D	Difference Date: 26-Jul-2013 Date: 26-Jul-2013 Clutter Dry Weather Dry Ground Concrete Carpet Concrete Carpet Concrete Carpet Concrete Carpet Concrete Carpet Definished basement most of the structure is of where visible.	Dot: 26-Jul-2013 496 Wes Date: 26-Jul-2013 496 Wes Clutter Dry Weather Dry Ground Clutter Dry Weather Dry Ground Concrete Carpet Ceramic Vinyl Definished basement most of the structure is concealed. Date: Date: Date: Date: Date: 26 Date: Date: Date:



Ceiling Stain	Unfinished	Drywall	Stipple	Wood	Not Applicable
Window Binds Thermal Stain	Not Tested Aluminum Repaint	Single Vinyl	Casement Wood	Sliding Damaged	Not Applicable
Door Binds	Damaged	Pocket	Hinged	Wood	Not Applicable
Lighting Minimal	Unsecured				Not Applicable

Light fixture is supported by its own wiring. This is not an acceptable method and should be corrected.



496 West 200 South, Preston, ID 83263

Basement/Structure

Receptacle		···		No	ot Applic	able
Damaged	Install GFCI	Reverse Polarity	,	No Ground	Ope	n Ground
Replace	the missing cov	ver plate(s).				
Circuit Wire Concealed		Improper				· · · · ·
Heat Source ✓ None	Thermostat	Electric	Air Register	Convector	Radi	ant
Basement Sta	iirway			Dama	ged:	No
Unsecured	Carpet	Vinyl	Wood	Worn	[] Trip	Hazard
Railing Unsecured	Metal	Vood	Incomplete	Dama	ged:	No
correctic Recomn	ons as needed.	istures is wider th mplete hand railíi ded.				
Floor Joist ✓ Concealed	Unsecured	Split	Stain	Dama	iged:	No
Due to		ement most of th				
Bridging				No	ot Applic	able
✓ Concealed	Continuous	X-Metal	X-Wood	Solid Wood		
				₽° 2446 • j		

Professional Home Inspection
Pllar To post
THE HOME OF HOME INSPECTION

 $496 \ West \ 200 \ South$, $\ Preston, \ ID \ 83263$

Basement/Structure

Sill Plate Concealed	Moisture Gasl	ket	Mildew	Stain	Not Applicable
Beam		Laminate	Metal	Wood	Not Applicable
Post On Slab	Concealed	Adjustable	Brick	Concrete	Not Applicable
Bearing Wall	· · · · · · · · · · · · · · · · · · ·				Not Applicable

Concealed

Pillar To p	spection OST						
THE HOME OF HOME INSI					496 West 200 South, Preston, ID 83263		
	· • • • •				Electrical Service		
Service Entra	nce						
Underground	✓ Overhead	No Conduit	120 - Volt	✓ 120/240 Volt	Unsecured		

Underground ✓ Overhead Frayed

Monitor and trim trees as needed to help prevent power failure. The power lines are in contact with the trees and this should be corrected by a qualified tree trimmer.

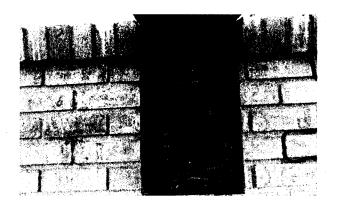


Entrance Cab	le			· · · · · ·	
Concealed	Aluminum	Copper			
	:				
Main Disconn	ect				
Switch/Cartrid	ge Fuse	Breaker			
Disconnect R	ating				
Have Electricia	an Evaluate				· · ·
Amps 200					
Distribution P	anel			Dama	aged: No
Not Opened	Non Standard	Installation	Obstructed	Unsecured	Corrosion
Obsolete					
Location West Ex	terior				



496 West 200 South, Preston, ID 83263

Electrical Service



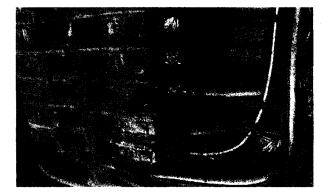
Panel Rating

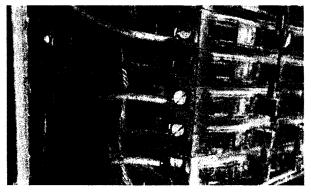
Room For Expansion Amps 200

The panel is full at this time.

Fuse						
Breaker Blown	Glass Over-Fused	Cartridge	Time Delay	GFCI Breaker		l Breaker
Circuit Wire				Damag	ed:	No
Improper Non-Metallic She		Copper Armoured Cable	Copper Clad	Other Knob & Tub		

Aluminum wiring noted on the 110 branch circuits, no overheating visible, make corrections as needed.





Professional House Inspection Rillar To post				
THE HOME OF HOME INSPECTION*	Date: 26-Ju	1-2013	49	6 West 200 South, Preston, ID 83263
				Electrical Service
Grounding ✓ Concealed Gro	ound Rod	Water Main	Improper Connection	Meter By-Pass
Bonding				

Improper Connection

Corrosion

Concealed Unsecured

Water Pipe

Gas Pipe

-

Professional Home Inspection Buildr' To Post . THE HOME OF HOME INSPECTION.	Date: 26-Jul	-2013		406 West 200	South	region ID 9	2262
	Date. 20-Ju	-2013		496 West 200	South, P	reston, ID 8	3263
						Hea	ting
Smoke Detectors		<u>, , , ,</u>		Operatio	nal:	Yes	
Basement Ist	Floor	2nd Floor	3rd Floor	Other			
CO Detectors			<u> </u>	Operatio	nal:	Yes	
Basement 1st	Floor	2nd Floor	3rd Floor	Other			
Recommend ac	lding a nig	ghthawk digital	CO detector o	n all levels.			
Thermostat/Humidist	at		• ••••	Operatio	nal:	Yes	_
Unsecured Pro	grammable	Standard					
Heating Fuel Source							
Unknown Ele	ctric	Gas					
Heat Type			· · · · · ·				
Convector For	ced Air	Radiator					
AC/Heat Pump				No	t Applie	cable	
	porative rosion	Central Noisy	Geo-Therm Loose	Air Unsecured		ough Wall t Level	
No central AC.							
Electric Heating		. <u> </u>		Damag	ged:	No	
· · · · · · · · · · · · · · · · · · ·	ced Air	Boiler Damaged Fins	Baseboard Corrosion	Radiant Scorched			

The electrical heaters were all operational at this time unless noted on the individual room sheets.



496 West 200 South, Preston, ID 83263

Plumbing Components

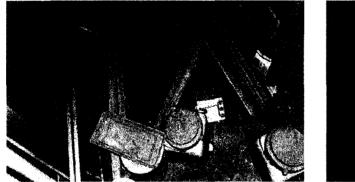
Limitation ✓ Finished Basem	ent	Private	Private System			
Public Supply						
Metered	Concealed	Lead	Galvanized	Plastic	Coj	pper
Shut-Off Valve						
✓ Not Tested	Corrosion	Leak				
Shut Off Valve						
Location Under Sta	airs					
Water Pressur	e					
Low	Typical	High				
Hose Bibb				Operat	ional:	Yes
Not Checked	Frost Free Leak	Anti-Siphon	Shut-Off Valve	Recaulk	Un	secured
Distribution Pi	ping			Dan	naged:	No
Concealed Dissimilar Mate	Lead	Galvanized	Plastic Corrosion	Copper Leak		
		osive by nature as low water flo	and will require r w.	replacement	at some	time.
Waste Drainag	e			Dar	naged:	No
✓ Concealed Unsecured	Galvanized	Cast Iron Leak	✓ Plastic✓ Advise Septic T	Copper ank Checked	[]Od	or
Sewage pump	······			Dar	naged:	No
through r	nultiple times.	, .	basement bathr		nd cycling	g the pu

. .



496 West 200 South, Preston, ID 83263

Plumbing Components





Vent Stack/P	iping			Dam	aged: No
Concealed Unsecured	Galvanized	Cast Iron Leak	Plastic	Copper	Undersized
Main Cleanou	ut			Dam	aged: No

Main Cleanout

Concealed Improper Plug Location Basement Utility Room

Hot Water Tank			 Operational:	Yes
		-		
A States				
	3. 2			

not water rain	 			Operation	mar.	res	
Hybrid Heating	Power-Vented	✓ Own	Rent	✓ Gas	Oil		
Wood	Electric	Dirty	Unsecured	 Corrosion 	Leak		
Age 1988/2013		Estimated Cap	pacity U.S. Gallons 50				
Typical life	e expectancy of	f electric hot	water heaters is 1	5 years.			

The older tank is not being used at this time and the power is shut off. Replace as needed.

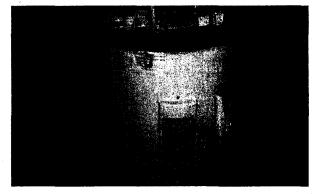


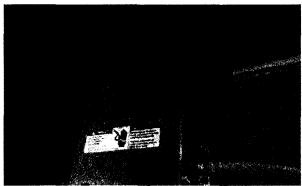
496 West 200 South, Preston, ID 83263

Plumbing Components

The crimped pipe on the newer tank that is used should be replaced to help prevent failure or low water flow.

Recommend strapping the hot water heater to the wall for earth quake protection.

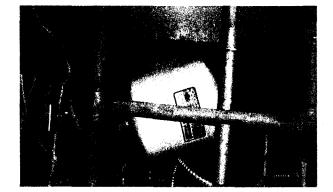




Not used



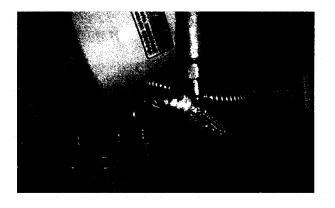
Contraction of the second





496 West 200 South, Preston, ID 83263

Plumbing Components



Life Expecta	ancy		
Typical	Middle	✓Exceeded	
Fuel Shut-O	ff	· · · · · · · · · · · · · · · · · · ·	
Concealed			
Location Main	Panel		
Relief Valve			· · · · · · · · · · · · · · · · · · ·
No Test Lev	er Corrosion	Other	

Discharge Tube

Undersized Discharge

Discharge tube is missing. Highly recommend installing discharge tube for safety reasons and have extended to 3-6 inches of floor.



THE HOME OF HOME INS	PECTION [®] Date: 26-J	ul-2013		496 West 200	South, Pr	eston, ID 83
						Laun
Floor				Dama	-	No
Worn	No drain	Concrete	Vinyl	Wood	Cera	mic
No floor	drain visible, if I	eaks occurs da	mage can result	•		
Wall			-	Dama	aged:	No
Patched	Unfinished	✓ Drywall	Brick	Wood	Cera	imic
Ceiling				Dama	aaed:	No
Patched	Unfinished	✓ Drywall	Stipple	Wood	Tile	
Door				Operatio	nal	Yes
Binds	Damaged	Pocket	Hinged	Wood		
ighting None	Unsecured			Operatio	onal:	Yes
Receptacle				Operatio	onal:	Yes
Damaged	Install GFCI	Reverse Polarit	ty	No Ground		n Ground
Vasher				Dama	aed:	No
The was	her and drver w	ere not tested a	at this time		5	
					·	
Dryer				Dama	-	No
With 220) volt electric co	nnections noted	l, no visible gas	service noted	at this tir	ne.
Dryer Vent				Dama	aged:	No
Unsecured	With Other Exa	aust	To Crawlspace	To Attic	Plas	tic Duct
normal n	naintenance iter		on the dryer eve	ry year as a m	inimum,	this is a
Heat Source						

- 33 S.

Polesional Home has Pllar To p	OSt				
THE HOME OF HOME INSP	ECTION [®] Date: 26-Ju	1-2013		496 West 200 South,	Preston, ID 83263
1st Floor		<u> </u>			Fireplace
Type ✓ Built-in External Air Suj	Free Standing	Gas Insert	Wood Insert	Metal Liner	irebrick
Fireplace Fron	t		·····	Damaged:	No
Soot	Brick	Ceramic	Marble	Stone	
Hearth ✓ Raised	None		····	Damaged:	Νο
Door/Screen	Binds Corrosion	Glass Crack	Metal	Damaged:	No Poor Fit
The mine		the glass is no		commend to have a f ont.	ireplace
Firebox Fan	Not Checked			Damaged:	No
Damper ✓ None	Sticks	Unsecured	Corrosion	Not App	licable
Gas Insert	Not Tested			Damaged:	No
-	<i>nsert should be</i> evels at the from	•	ace. Ire 0 ppm and th	is is very good.	
Chimney Flue	Soot	Unsecure	✓ Advise Inspect	Damaged:	No

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D Professional Home Ins	spection					
THILL IO P	USL ECTION [®] Date: 26-Ju	1-2013		496 West 200	South P	reston, ID 8320
1st Floor						
IST FIOU	12 mar - 12 mar					Fireplac
ype ■Built-in External Air Su	Free Standing	✓Gas Insert	Wood Insert	Metal Liner	⊡ Fire	ebrick
ireplace Fron	t		······	Dama	aed:	No
Soot	Brick	Ceramic	Marble	Stone	J • • •	
learth ✓Raised	None			Dama	ged:	Νο
Door/Screen				Dama	ged:	No
None Unsecured	Binds Corrosion	✓ Glass Crack	Metal	Mesh		or Fit
The mine		the glass is no	en. rmal and it is reco al of the glass fror		ve a fire	place
irebox		· · · · · · · · ·	······································	Dama	ged:	No
Fan	Not Checked					
Damper	,			No	t Applic	cable
None	Sticks	Unsecured	Corrosion	Creosote		
Bas Insert				Dama	ged:	No
Fan	Not Tested					
•	insert should be evels at the from	-	ace. re 0 ppm and this	is very good.		
Chimney Flue				Dama	ged:	No
✓ Not Checked The flue i	Soot is not visible for	Unsecure Unspection.	Advise Inspectio	n		

ر قىنچىن<u>ە</u>

Pliar To p	Öst [®]					
THE HOME OF HOME INSPI	ECTION Date: 26-Ju	1-2013		496 West 200 S	outh, Preston, I	D 832
Basement	· ·				Fire	eplac
Type ✓Built-in External Air Sup	Free Standing	Gas Insert	Wood Insert	Metal Liner	Firebrick	
Fireplace Fron	t Brick	Ceramic	Marble	Damag ✓ Stone	ed: No)
Hearth ✓ Raised	None			Damag	ed: No)
	Binds Corrosion nit glass is not o			Damag	Poor Fit)
Firebox				be cleaned at thi Damag)
Fan	Not Checked					
Damper	Sticks	Unsecured	Corrosion	Not	Applicable	
				Damag	ed: No)
✓None Gas Insert	Not Tested			5		
✓ NoneGas Insert☐ Fan		nt of this unit a	re 0 ppm and thi	-		

	PECTION ^a Date: 26-J	ul-2013		496 West 200	South, Preston, ID 8326
Hallway					Bathroor
Location Basement	✓ 1st Floor	2nd Floor	3rd Floor	Other	
Water Flow ✓ Normal	Suspect	Low	<u></u>		
Floor Worn	Crack	Carpet	Vinyl	Dama Wood	Ceramic
Monitor	and caulk betwe	en the floor and	d the bathtub, a	as a normal mair	itenance item.
Wall Patched	Crack	Drywall	Brick	Dama Wood	ged: No Ceramic
	Crack ress cracking no	✓Drywall oted on ceiling ty	Stipple	Dama Wood ormal settling an	Tile
house.	*****		· · ·		
Window □Binds ✓Thermal □Stain	Not Tested	Single Hung ✔ Vinyl	Casement Wood	Operatio ✓Sliding □Damaged	nal: Yes Bay Mildew
Door	<u>,</u> ,	····		Operatio	nal: Yes
Binds	Damaged	Pocket	Hinged	Wood	
Recomn	nend adding a d	oor stop.			
Lighting None	Unsecured			Operatio	nal: Yes
Receptacle	Install GFCI	Reverse Polari	Ŋ	Operatio No Ground	nal: Yes
Exhaust Fan	tion			Operatio	nal: Yes
Advise Installa	mon				
		/ and this is an i	ndication that	it is nearing the e	end of its life cycle.

Professional Home I	POST				
THE HOME OF HOME INS	PECTION ^a Date: 26-J	ul-2013		496 West 200 So	uth, Preston, ID 832
Hallway				-	Bathroo
aucet	Sticks	Unsecured	Corrosion	Operationa	l: Yes
rap/Drain Unsecured	Improper Trap	Slow Drain	Corrosion	Damage Leak	d: No
Heavy co	orrosion noted of	on the trap, con	sider replacem	ent.	
∕anity ✓Worn Scratch	Unsecured Mildew	Laminate Missing Hardv	Plywood vare	Damage Wood	d: No Metal
The miss	sing handle sho	uld be replaced	l.		
Counter Unsecured Mildew	Solid Surface	Marble Worn	Laminate	Damage ✓ Ceramic	d: No Regrout
ſoilet				Operationa	I: Yes
No Shut-Off	Tank Loose	Unsecured	Crack	Leak	
72.	.3°F	\$FLIR			
1					an a
59°F		xiii 779F			
ub/Enclosur	e	<u> </u>		Damage	
Unsecured Mildew	Ceramic Crack	Cultured Mart	ole Fiberglass	Plastic	Regrout
Monitor	and caulk arour	nd the tub and i	n the corners a	s needed in the fut	ure.
Faucet/Showe	Er Head	Unsecured	Corrosion	Operationa	l: Yes

م الحمد اليكان مي مريكة من المحمد اليكان مي مريكة يرة يتجن

				\smile		
Pilar To						
THE HOME OF HOME IN	SPECTION [®] Date: 26	-Jul-2013		496 West 2	00 South ,P	reston, ID 83263
Hallway			·····			Bathroom
Shower Encle	osure			Dan	naged:	No
Unsecured Mildew	Ceramic Scratch	Cultured Marb	le Fiberglass	Plastic	Reg	grout
Mixer/Showe	r Head			Operat	tional:	Yes
Not Tested	Sticks	Unsecured	Corrosion	Leak		

None	Thermostat	✓ Electric	Air Register	Convector	Radiant
------	------------	------------	--------------	-----------	---------

Heat Source

THE HOME OF HOME IN	SPECTION Date: 26-J	ul-2013		496 West 200) South, Pre	eston, ID 8326
Master	х.				B	ATHROOM
Location Basement	✓ Ist Floor	2nd Floor	3rd Floor	Other		
Water Flow ✓ Normal	Suspect	Low				
Floor Worn	Crack	Carpet	Vinyl	Wood	aged:	No mic
	and caulk betwe	een the shower	and the floor a			
Wall Patched Typical		Drywall ed in the wall, th	Brick	Wood	aged:	No mic
Ceiling				Dama	aged:	No
Patched		["""] + 4	·····		-	
	Crack ress cracking no	Drywall Drywall on ceiling ty	Stipple	⊡ ^{Wood} ormal settling a	Tile nd mover	nent of
Minor st house.		-		ormal settling a	nd mover	
Minor st house.		-		Bel ANDRON	nd mover	Yes
Minor st house. Window Binds Thermal Stain	Not Tested ✓ Aluminum	oted on ceiling t	ypically from n	ormal settling an Operation	nd mover	Yes
Minor st house. Window Binds Thermal Stain Single p	Not Tested Aluminum Repaint	oted on ceiling t	ypically from n	ormal settling an Operation	nd mover	Yes ^{ew} Yes
Minor st house. Window Binds Thermal Stain Single p Door Binds	Not Tested Not Tested Aluminum Repaint wane window.	Dited on ceiling to Single Hung Vinyl	ypically from n	ormal settling an Operation Sliding Damaged	nd mover	Yes ^{ew} Yes
Minor st house.	Not Tested ✓ Aluminum Repaint vane window.	Dited on ceiling to Single Hung Vinyl	ypically from n	ormal settling an Operation Sliding Damaged Operation Wood Operation	onal: Conal: Conal: Comal: Conal: Conal:	Yes ew Yes posite Yes Yes
Minor st house.	Not Tested ✓ Aluminum Repaint vane window.	Died on ceiling ty	ypically from n Casement Wood Wood Winged	ormal settling at Operation Sliding Damaged Operation Operation Operation No Ground	nd mover onal: Bay Mild onal: Com onal: Oper	Yes ew Yes Posite Yes Yes
Minor st house.	Not Tested Not Tested Aluminum Repaint Damaged Unsecured ✓Install GFCI	Died on ceiling ty	ypically from n Casement Wood Wood Winged	ormal settling at Operation Sliding Damaged Operation Wood Operation Operation No Ground Re risk of electric	onal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal:	Yes ew Yes posite Yes Yes
Minor st house.	Not Tested ✓ Aluminum Repaint vane window. □ Damaged □ Unsecured ✓ Install GFCI mend installation	Died on ceiling ty	ypically from n Casement Wood Wood Winged	ormal settling at Operation Sliding Damaged Operation Operation Operation No Ground	onal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal:	Yes ew Yes Yes Yes
Minor st house.	Not Tested ✓ Aluminum Repaint vane window. □ Damaged □ Unsecured ✓ Install GFCI mend installation	Died on ceiling ty	ypically from n Casement Wood Wood Winged	ormal settling at Operation Sliding Damaged Operation Wood Operation No Ground te risk of electric Operation	onal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal: Donal:	Yes ew Yes posite Yes Yes a Ground

Professional Horn		 I-2013		496 West 2	00 South, Pr	eston, ID 83263
Master					E	ATHROOM
Trap/Drain		·····		Dan	naged:	No
Unsecured	Improper Trap	Slow Drain	Corrosion	Leak		r. 1
Vanity		·····		Dan	naged:	No
Worn	Unsecured	Laminate	Plywood	∀ Wood	Met	al
Scratch	Mildew	Missing Hard	ware			

Laminate

Crack

The toilet does not flush properly and this may be blockage on the S trap, replace or

Damaged:

Operational:

Ceramic

Leak

No

Yes

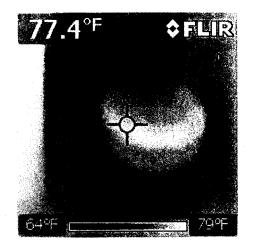
Regrout

Toilet is loose and should be securely mounted to the floor.

Marble

Unsecured

Worn



Solid Surface

Tank Loose

repair as needed.

Scratch

Counter

Mildew

Toilet

Unsecured

No Shut-Off

Shower Enclo	sure		······	Dam	aged:	No
Unsecured Mildew	Ceramic Scratch	Cultured Marble V Worn	Fiberglass	Plastic	Reg	rout

With a chip noted at the pan, this should be repaired at this time.

Mixer/Showe	er Head			Operatio	onal: Yes	
Not Tested	Sticks	Unsecured	Corrosion	Leak		
Heat Source					·····	;
None	✓ Thermostat	✓ Electric	Air Register	Convector	Radiant	

Professional lione						
THE HOME OF HOME INS		ıl-2013		496 West 200) South, P	reston, ID 8326
Basement						Bathroon
Location ✓ Basement	1st Floor	2nd Floor	3rd Floor	Other		
Water Flow	Suspect	Low				
Floor Wom	Crack	Carpet	Vinyl	Wood	aged:	
Wall						No
Patched	Crack	✓ Drywall	Brick		aged:	ramic
Ceiling Patched	Crack	Drywall	Stipple	Dama Wood	aged:	No
Door Binds Recomn	Damaged	Pocket	Hinged	Operatio ✓ Wood		Yes mposite
	Unsecured t is not operation ect this it is record	· · · ·			icing the	Yes bulbs does
Receptacle	Install GFCI	Reverse Polar	ity	Operatio No Ground		Yes en Ground
Exhaust Fan Advise Installa	tion			Operatio	onal:	Yes
Sink Worn	Chip			Dama	aged:	No
Faucet	Sticks	Unsecured	Corrosion	Operati Leak	onal:	Yes
Trap/Drain	Improper Trap	Slow Drain		Dam Leak	aged:	No
Vanity Worn Scratch	Unsecured Mildew	Laminate	Plywood	Dam ✓ Wood	aged:	No etal

	PECTION* Date: 26-Ju	ıl-2013		496 West 200 South, Preston, ID 832		
Basement			<u></u>	······································	B	Bathroc
Counter				Damag	jed:	No
Unsecured Mildew	Solid Surface	Marble Worn	Laminate	Ceramic	Regrout	
Toilet				Operation	al: Y	'es
No Shut-Off	Tank Loose	Unsecured	Crack	Leak		
1						
50°F		729F				
58°F Shower Enclo	-\$-	729F		Damaç	led:	No



Leaking shower

THE HOME OF HOME IN	Dost			406 Wast 200 South Proston ID S			
THE HOME OF HOME IN	SPECTION [®] Date: 26	CTION [®] Date: 26-Jul-2013			496 West 200 South, Preston, ID 8326		
Basement						Bathroom	
Mixer/Showe	r Head			Operatio	onal:	Yes	
Not Tested	Sticks	Unsecured	Corrosion	Leak			
Heat Source				······································			
None	✓ Thermostat	✓ Electric	Air Register	Convector	□Ra	diant	



496 West 200 South, Preston, ID 83263

Kitchen

Floor	(an internet in			Dama	ged:	No
Worn	Crack	Carpet	Vinyl	Wood	Cerami	с
Wall				Dama		No
Patched	Crack	Drywall	Brick	Wallpaper		
Ceiling		<u></u>		Dama	ged:	No
Patched	Crack	Drywall	Stipple	Wood	Tile	
Window				Operatio	nal:	Yes
Binds Thermal Stain	☐ Not Tested ✓ Aluminum ☐ Repaint	Single Hung	Casement Wood	✓ Sliding Damaged	Bay Mildew	r
Single p	ane window.					
Door				Operatio	nal:	Yes
Binds	Damaged	Pocket	Hinged	Wood	Compos	site
Patio Door				Operatio	nal:	Yes
Binds	Damaged	Sliding	Hinged	Wood	✓ Metal	
The bott	tom pin is damag	ed and this sh	ould be repaire	d at this time.		
Lighting		·····		Operatio	nal:	Yes
None	Unsecured					
Receptacle				Operatio	nal:	Yes
Damaged	✓ Install GFCI	Reverse Polari	ţy	No Ground	Open G	round
Recomm	nend installation	of GFCI recept	acles to reduce	e risk of electrica	I shock.	
Sink				Dama	ged:	No
✔ Worn	Chip	Single	Double	Stainless	Enamel	
aucet	<u></u>	• m		Operatio	nal:	Yes
No Shut-Off V	alve	Sticks	Unsecured		Leak	
Trap/Drain	<u></u>			Dama	ged:	No
Unsecured	Improper Trap	Slow Drain	Corrosion	Leak		
Counter				Dama	ged:	No
Unsecured Mildew	Ceramic Scratch	Marble Worn	Laminate	Solid Surface	Regrou	t

Professional House Inspection Pallar to post		
THE HOME OF HOME INSPECTION"	Date: 26-Jul-2013	496 West 200 South, Preston, ID 83263

				Damaged	l: No
Worn	Unsecured	Laminate	Plywood	Wood	Metal
Missing Hardwa	are	Mildew	Scratch	Other	
Range Hood				Operational	Yes
Cooktop Exhau	st	Corrosion	No Exhaust	No Light	Noisy
Exhaust i	is built into mic	rowave.			
Exhaust vent			······································		<u>.</u>
Unsecured	✓ Ductless	Concealed	With Other Ex	haust	To Attic
Improper	To Exterior				
Filter				Damaged	: No
None	Unsecured	Damaged	Greasy		
Stove Top				Operational	Yes
Whirlpool					
Major Applian	ces (Built-in)				
Tested ON/OFF	only.	✓ Did Not Test	All Functions		
Tested ON/OFF	only.	✓ Did Not Test	All Functions	Operational	Yes
	only.	✓ Did Not Test	All Functions	Operational	Yes
Oven	only.	✓ Did Not Test	All Functions	Operational Operational	
Oven Whirlpool		✓ Did Not Test	All Functions		
Oven Whirlpool Dishwasher	Maytag	✓ Did Not Test	All Functions		Yes
Oven ✓ Whirlpool Dishwasher ✓ Tested ON/OFF	Maytag ⊃sal	✓ Did Not Test	All Functions	Operational	Yes
Oven Whirlpool Dishwasher Tested ON/OFF Garbage Dispo	Maytag ⊃sal		All Functions	Operational	Yes Yes
Oven ✓ Whirlpool Dishwasher ✓ Tested ON/OFF Garbage Dispo ✓ Tested ON/OFF	Maytag Sal only		All Functions	Operational Operational	Yes Yes
Oven Whirlpool Dishwasher Tested ON/OFF Garbage Dispo Tested ON/OFF Refrigerator	Maytag Sal only	ISE	All Functions	Operational Operational	Yes Yes Yes
Oven ✓ Whirlpool Dishwasher ✓ Tested ON/OFF Garbage Dispo ✓ Tested ON/OFF Refrigerator ✓ Interior cold to	✓ Maytag Dsal Y only the touch	ISE	All Functions	Operational Operational Operational	Yes Yes Yes
Oven ✓ Whirlpool Dishwasher ✓ Tested ON/OFF Garbage Dispo ✓ Tested ON/OFF Refrigerator ✓ Interior cold to Microwave	✓ Maytag Dsal Y only the touch	ISE	All Functions	Operational Operational Operational	Yes Yes Yes

THE HOME OF HOME IN	VSPECTION Date: 26-	·	496 West 200	O South, Preston, ID 8.	
					Foyer/Hall
Floor	<				aged: No
Worn	Crack	Carpet	Vinyl	Wood	Ceramic
The loo	se carpeting ca	n be restreched			
Wall				Dam	aged: No
Patched	Crack	Drywall	Brick	Wood	Wallpaper
Ceiling				Dam	aged: No
Patched	Crack	✓ Drywall	Stipple	Wood	Tile
Minor s	tress cracking r	noted on ceiling	typically from	normal settling a	nd movement of
house.	tress cracking r	noted on ceiling	typically from	normal settling a	
	tress cracking r	noted on ceiling	typically from	normal settling a	
house.	Unsecured	noted on ceiling		Operatio	
house. Lighting None The ligh	Unsecured			Operationement hallway.	onal: Yes
house.	Unsecured		bbe in the base	Operatio	onal: Yes
house. Lighting None The ligh Receptacle	Unsecured	ing the glass glo	bbe in the base	Operation ement hallway. Operation	onal: Yes Onal: Yes Open Ground
house.	Unsecured	ing the glass glo	bbe in the base	Operation ement hallway. Operation No Ground	onal: Yes Onal: Yes Open Ground
house.	Unsecured nt fixture is miss	ing the glass glo	bbe in the bas	Operation ement hallway. Operation No Ground Operation	Onal: Yes Open Ground Onal: Yes Sliding
house. Lighting None The ligh Receptacle Damaged Closet/Door Binds	Unsecured nt fixture is miss Switched Damaged	ing the glass glo	bbe in the bas	Operation ement hallway. Operation No Ground Operation Hinged	Onal: Yes Open Ground Onal: Yes Sliding
house. Lighting None The ligh Receptacle Damaged Closet/Door Binds Front Door Damaged Weather Scal	Unsecured Int fixture is miss Switched Damaged Binds Split	ing the glass glo Reverse Polar Light	bbe in the base ity Bifold	Operation ement hallway. Operation No Ground Operation Hinged Operation	onal: Yes Open Ground Onal: Yes Sliding Onal: Yes

Professional Honne In Pullar To P					
THE HOME OF HOME INSI		ul-2013		496 West 200	South, Preston, ID 83263
Basement	· · · · · · · · · · · · · · · · · · ·				Family Room
Floor				Dama	ged: No
Worn	Crack	Carpet	Vinyl	Wood	Ceramic
Two base	ement rooms.				
Wall			· · · · · · · · · · · · · · · · · · ·	Dama	iged: No
Patched	Crack	✓ Drywall	Brick	Wood	Wallpaper
Ceiling		······································		Dama	iged: No
Patched	Crack	✓ Drywall	Stipple	Wood	Tile
Window				Operatio	onal: Yes
☐Binds ✓Thermal ☐Stain	Not Tested ✓Aluminum Repaint	Single Hung	Casement Wood	Sliding Mildew	Bay Damaged
Door	<u></u>			Operatio	onal: Yes
Binds	Damaged	Pocket	Hinged	Wood	French
Lighting None	Unsecured			Operatio	onal: Yes
Receptacle				Operatio	onal: Yes
Damaged	Switched	Reverse Polarity		No Ground	Open Ground
Heat Source	Thermostat	Electric	Air Register	Convector	Radiant



THE HOME OF HOME INSPECTION* Date: 26-Jul-2013				496 West 200 South, Preston, ID 83265		
1st Floor						Living Room
Floor				Dama	iged:	No
Worn	Crack	✓ Carpet	Vinyl	Wood	Cer	amic
Wall				Dama	iged:	No
Patched	Crack	✓ Drywall	Brick	Wood	Wa	llpaper
Ceiling	· · · · · · · · · · · · · · · · · · ·	·		Dama	iged:	No
Patched	Crack	Drywall	Stipple	Wood	Tile	2
Window			<u> </u>	Operatio	onal:	Yes
Binds ✓ Thermal Stain	Not Tested	✓ Single Hung ✓ Vinyl	Casement Wood	Sliding Damaged	Bay Mil	, dew
Lighting None	Unsecured			Operatio	onal:	Yes
Receptacle				Operatio	onal:	Yes
Damaged	Switched	Reverse Polarity	• •	No Ground	Оре	en Ground
Heat Source						
None	✓ Thermostat	✓ Electric	Air Register	Convector	Rac	liant

The electric heat is not operational at this time.

THE HOME OF HOME I	SPECTION * Date: 26	Jul-2013		496 West 20	0 South, Pres	ston, ID 8326
Master						Bedroo
Floor				Dam	aged:	No
Worn	Crack	Carpet	Vinyl	Wood	Ceran	nic
Wall				Dam	aged:	No
Uneven	Crack	Drywall	Brick	Wood	Comp	osite
Loose b	baseboards note	ed.				
Ceiling	· · · ·			Dam	aged:	No
Patched	Crack	Drywall	Stipple	Wood	Tile	
Window				Operati	onal:	Yes
Binds	Not Tested	Single Hung	Casement	Sliding	Bay	
Thermal Stain	✓Aluminum	[]] Vinyl	Wood	Damaged	Milde	w
	pane window.					
Door				Operati	onal:	Yes
Binds	Damaged	Pocket	✓ Hinged	Wood	Comp	
Recom	mend adding a d	loor stop.				
Closet/Door				Operati	onal:	Yes
Binds	Damaged	Light	✓ Hinged	Bi-Fold	Slidin	g
Lighting				Operati	onal:	Yes
None	Unsecured					
Missing	the pull chain for	or the light.				
Ceiling Fan	· · · · · · · · · · · · · · · · · · ·			Operati	onal:	Yes
None	Unsecured					
Receptacle	· · · ·			Operati	onal:	Yes
Damaged	Switched	Reverse Polari	ty	No Ground	Open	Ground

Professional Born	post	Jul-2013		496 West 200	South, Preston, ID 83263
	orth Center	470 West 200	Bedroom		
Floor	<u></u>			Dama	ged: No
Worn	Crack	Carpet	Vinyl	Wood	
Wall				Dama	ged: No
Uneven	Crack	✓ Drywall	Brick	Wood	Composite
Basebo	ard has not bee	n caulked.			
Ceiling	and a final state of the second state of the s		-	Dama	ged: No
✓ Patched	Crack	✓ Drywall	Stipple	Wood	Tile
Patchin	g and repair not	ed.			
Window			• • • •	Operatio	onal: Yes
Binds Thermal Stain	☐Not Tested ✓Aluminum ☐Repaint	Single Hung	Casement Wood	✓ Sliding Damaged	Bay Mildew
Single p	ane window.				
Door				Operatio	onal: Yes
Binds	Damaged	Pocket	Hinged	∀ Wood	Composite
Recom	mend adding a o	door stop.			
Closet/Door			•	Operatio	nal: Yes
Binds	Damaged	Light	Hinged	Bi-Fold	Sliding
Receptacle				Operatio	onal: Yes
Damaged	Switched	Reverse Polarit	у	No Ground	Open Ground
Heat Source	Thermostat	▼ Electric	Air Register	Convector	Radiant

loor Damaged: No "Wom Typical stress crack noted in the wall, this is typically of no concern. Ceramic All Damaged: No "Uneven Crack Drywall Brick Wood Composite Typical stress crack noted in the wall, this is typically of no concern. Damaged: No "eiling Daywall Brick Wood Composite Typical stress crack noted in the wall, this is typically of no concern. Damaged: No "eiling Daywall Stiple Damaged: No "Patched Crack Drywall Stiple Wood Tile "Indexing pane_window, Binds Single pane_window, Not Tested Single Hung Damaged Casement Damaged Mildew Stain Repaint Single pane window. Wood Composite Single pane window. Operational: Yes "Binds Damaged Pocket Winged Wood Composite "losed/9596/90 one handle. Pocket Mileed Wood Sliding Operational: Yes Binds Damaged Light Hinge		\smile			\smile	
High To POSt Print To POSt Print To POSt Print To Post Print To Post Technet of elect inserterina Date: 26-Jul-2013 1st Floor NW Center Bedroof Ist Floor NW Center Damaged: No "Orypical stress crack noted in the wall, this is typically of no concern. Platched Crack "Orywall Brick "Damaged: No Patched Crack "Drywall Stiple "Mody Gle pane window. Operational: "Patched Crack "Drywall Stiple Hung "Stain Repaint Stingle pane window. Single Hung "Stain Repaint Stingle pane window. Pocket "Binds of traded, replace as needed. Operational: Yes "Binds Damaged Pocket Procket	A					
Image: State of the state	Partouried Berne	Incopul have				
Image: State of the state	Hilar To J	DOST				
Initial To protocol Date: 26-Jul-2013 496 West 200 South, Preston, ID 8324 1st Floor NW Center Bedrood loor Damaged: No "Wong Typical stress crack noted in the wall, this is typically of no concern. Damaged: No /all Damaged: No Iuneven Crack Drywall Brick Wood Composite Typical stress crack noted in the wall, this is typically of no concern. Damaged: No Platched Crack Drywall Brick Wood Composite Platched Crack Drywall Stipple Wood The Platched Crack Drywall Stipple Wood The Indefigie pane window. Single Hung Casement Damaged Mildew Stain Not Tested Single Pane window. Deparational: Yes Binds Damaged replace as needed. Wood Composite Iose/USB&D0 one handle. Operational: Yes Binds Damaged Light Hinged Bi-Fold Sliding One door is damaged, replace	LACE SI HOLE IN					
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Thermal VAluminum Stain Repaint Single pane window. Poor Definition Definition Definition Operational: Yes Binds Damaged Poor Stain Damaged Poor Definition Operational: Yes Binds Damaged Itoset/Boby one handle. Operational: Yes Binds Damaged Light Hinged Operational: Yes None Unsecured Operational: Yes None Unsecured Operational: Yes None Operational: Yes Damaged Switched Reverse Polarity	✓ Patched	Crack	Drywall	Stipple	Wood	Tile
Thermal VAluminum Stain Repaint Single pane window. Poor Definition Definition Definition Operational: Yes Binds Damaged Poor Stain Damaged Poor Definition Operational: Yes Binds Damaged Itoset/Boby one handle. Operational: Yes Binds Damaged Light Hinged Operational: Yes None Unsecured Operational: Yes None Unsecured Operational: Yes None Operational: Yes Damaged Switched Reverse Polarity	Nindew ale n	ane window			Operationa	al: Yes
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Binds Damaged One door is damaged, replace as needed. IoseWD&Bitg one handle. Binds Damaged Light Hinged Operational: Yes Binds Damaged. replace as needed. Missing one handle. Ighting None Unsecured Receptacle Damaged Switched Reverse Polarity None Ighting Operational: Yes Missing one handle. Yes Inserverse Polarity Operational: Yes Inserverse Polarity I		-				
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Binds Damaged Light Hinged Bi-Fold Sliding One door is damaged, replace as needed. Missing one handle. Missing one handle. Operational: Yes ighting None Unsecured Operational: Yes None Unsecured Operational: Yes ecceptacle Damaged Switched Reverse Polarity No Ground	Binds One doo	Damaged or is damaged, i	Pocket replace as need	✓ Hinged ed.	-	
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Missing one handle. ighting None Unsecured Ceceptacle Damaged Switched Reverse Polarity Operational: Yes No Ground Open Ground	Binds	Damaged	Light	Hinged	Bi-Fold	Sliding
ighting Operational: Yes None Unsecured Operational: Yes Receptacle Operational: Yes Damaged Switched Reverse Polarity No Ground Open Ground leat Source Image: Switched		~	replace as need	ed.		
None Unsecured Receptacle Operational: Yes Damaged Switched Reverse Polarity No Ground Open Ground leat Source Operational: Yes Open Ground	Missing	one handle.				
Ceceptacle Operational: Yes Damaged Switched Reverse Polarity No Ground Open Ground leat Source Surce Surce Surce Surce Surce	Lighting				Operation	al: Yes
Damaged Switched Reverse Polarity No Ground Open Ground	None	Unsecured				
leat Source	Receptacle				Operation	al: Yes
	Damaged	Switched	Reverse Polari	ty	No Ground	Open Ground
	Heat Source				······	
	None	Thermostat	Electric	Air Register		Radiant



496 West 200 South, Preston, ID 83263

Bedroom

Basement NW Center

Floor	**************************************		······································	Dama	aged:	No
Worn	Crack	Carpet	Vinyl	Wood	Cer	amic
Wall				Dama	aged:	No
Uneven	Crack	✓ Drywall	Brick	Wood	Сог	mposite
Ceiling				Dama	aged:	No
Patched	Crack	✓ Drywall	Stipple	Wood	[] Tile	9
Window				Operatio	onal:	Yes
■Binds ▼Thermal	Not Tested	Single Hung ✓Vinyl	Casement	✓ Sliding Damaged	Bay Mil	
Stain	Repaint				1	
Door				Operatio	onal:	Yes
Binds	Damaged	Pocket	Hinged	Wood	Сог	nposite
Closet/Door		.	· · · · · · · · · · · · · · · · · · ·	Operatio	onal:	Yes
Binds	Damaged	Light	Hinged	Bi-Fold	✓ Slid	ling
Lighting			······································	Operatio	onal:	Yes
None	Unsecured					
The light	fixture is missi	ng the glass glo	be.			
Receptacle	<u> </u>		·· ·· · · · · · · · · · · · · · · · ·	Operatio	onal:	Yes
Damaged	Switched	Reverse Polarit	У	No Ground	Ор	en Ground
Heat Source						
None	✓ Thermostat	✓ Electric	Air Register	Convector	Rad	liant

The electric heat is not operational at this time.



ION* Date: 26-Jul-2013

496 West 200 South, Preston, ID 83263

Bedroom

Basement North Center

Floor				Dama	iged:	No
Worn	Crack	Carpet	Vinyl	Wood		amic
Wall				Dama	iged:	No
Uneven	Crack	✓ Drywall	Brick	Wood		nposite
Ceiling			<u> </u>	Dama	iged:	No
Patched	Crack	✓ Drywall	Stipple	Wood	Tile	2
Window				Operatio	nal:	Yes
Binds	Not Tested	Single Hung	Casement	Sliding	Bay	/
✓ Thermal Stain	✓ Aluminum Repaint	Vinyl	Wood	Damaged	Mil	dew
					· ·	
Door	W/75/44			Operatio		Yes
Binds	Damaged	Pocket	Hinged	Wood		nposite
Recomm	nend adding a c	loor stop.				
Closet/Door				Operatio	nal:	Yes
Binds	Damaged	Light	Hinged	Bi-Fold	Slic	ling
Lighting		<u></u>	. <u></u>	Operatio	nal:	Yes
None	Unsecured					
Receptacle				Operatio	nal:	Yes
Damaged	Switched	Reverse Polarity		No Ground	Ор	en Ground
Heat Source			·····			
✓None	Thermostat	Electric	Air Register	Convector	Rac	liant
No heat	source.					



406 W

496 West 200 South, Preston, ID 83263

Bedroom

Basement NE Corner

Floor				Dama	aged:	No
Worn	Crack	Carpet	Vinyl	Wood	Cer	ramic
Wall		<u> </u>		Dama	aged:	No
Uneven	Crack	✓ Drywall	Brick	Wood	Con	mposite
Ceiling				Dama	aged:	No
Patched	Crack	✓ Drywall	Stipple	Wood	[] Tile	e
Window				Operatio	onal:	Yes
☐ Binds ✓ Thermal ☐ Stain	Not Tested✓ Aluminum✓ Repaint	Single Hung	Casement Wood	✓ Sliding Damaged	⊡Bay ⊡Mil	
······						
Door			1	Operatio		Yes
Binds	Damaged	Pocket	Hinged	Wood		mposite
Closet/Door				Operatio	onal:	Yes
Binds	Damaged	Light	Hinged	Bi-Fold	Slice Slice	ding
Lighting		. <u></u>		Operatio	onal:	Yes
None	Unsecured					
Receptacle		······································		Operatio	onal:	Yes
Damaged	Switched	Reverse Polarity	Ý	No Ground	⊡Ор	en Ground
Heat Source						
None	Thermostat	Electric	Air Register	Convector	Rad	diant
No heat	source.					



^{*} Date: 26-Jul-2013

496 West 200 South, Preston, ID 83263

Additional Comments

General Comments

Recommend changing the locks prior to taking occupancy of the home.

Limitations

Circuit Sizing - The Inspector is required to address the compatibility of conductors and overcurrent devices. In some instances, general trade procedures include over-sizing overcurrent devices to guard against nuisance (e.g. air conditioning units, dryers). The Inspector is not required to evaluate such general trade procedures, but to inform you of incompatibility.

Finished Basements - The finishing of the basement prevents visual inspection of foundation walls, floors, mechanical and structural components. Normal moisture readings were found at time of inspection. Despite these tests results, a dry basement at this time or at any time in the future is not guaranteed.

Occupied Home – The home is occupied by seller/tenant with their personal belongings and furniture which may limit some areas to inspect.

Supplementary Comments

It is very important that water & runoff drain away from foundations to minimize chance of water leakage into the basement, as cracks in foundation walls are common. Make sure the ground, patios and walkways slope away from the house for the first six feet. Recommend installing & testing regularly Carbon Monoxide Detectors (locate in bedroom area + rooms with fireplace) and new Smoke sensors (mandatory every floor). Propane & Natural Gas sensors are also available in stores. (\$35-\$60) Basement walls were checked visually and with moisture sensor. Dampness was not detected at this time. Ensure roof flashing remains fastened, lays flat and gaps / cracks are caulked & sealed promptly to prevent leaks.



THE HOME OF HOME INSPECTION"

496 West 200 South, Preston, ID 83263

This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the entire report.

1.0 Property and Site

1.1 Building

Blue items are the main concerns and green items are minor repairs, maintenance, and observations.

1.2 Walkway/Path

With settlement noted by the front porch, repair or replace as needed.

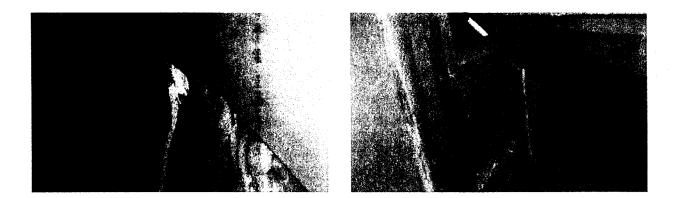
Date: 26-Jul-2013



2.0 Basement/Structure

2.1 Wall

With apparent mold growth noted under the stairs, this should be cleaned as per the current EPA standards.



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THE HOME OF HOME INSPECTION Date: 26-Jul-2013

496 West 200 South, Preston, ID 83263

This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the entire report.

2.0 Basement/Structure

2.2 Lighting

Light fixture is supported by its own wiring. This is not an acceptable method and should be corrected.



3.0 Fireplace

<u>1st Floor</u>

3.1 Gas Insert

The gas insert should be secured in place.

4.0 Bathroom

Basement

4.1 Shower Enclosure

The shower is leaking at this time, This should be corrected.



THE HOME OF HOME INSPECTION* Date: 26-Jul-2013

496 West 200 South, Preston, ID 83263

This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the entire report.

4.0 <u>Bathroom</u>





Leaking shower

- 5.0 <u>Kitchen</u>
- 5.1 Patio Door

The bottom pin is damaged and this should be repaired at this time.

5.2 Heat Source

The electric ceiling heat is not operational at this time.

6.0	Living Room	<u>1st Floor</u>
6.1	Heat Source	
	The electric heat is not operational at this time.	
7.0	Bedroom	1st Floor NW Center
7.1	Closet/Door	
	One door is damaged, replace as needed.	
8.0	Bedroom	Basement NW Center
8.1	Heat Source	

The electric heat is not operational at this time.



THE HOME OF HOME INSPECTION⁵⁸

Date: 26-Jul-2013

496 West 200 South, Preston, ID 83263

This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the entire report.

9.0 Bedroom

Basement North Center

9.1 Heat Source

No heat source.

10.0 Bedroom

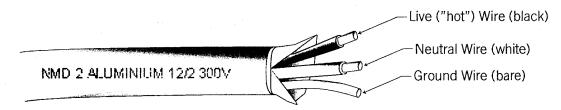
Basement NE Corner

10.1 Heat Source

No heat source.

Aluminum Branch-circuit Wiring

If you ask three electricians about the uses and safety of aluminum wiring, you will likely get at least three different answers. Furthermore, opinion varies again depending on where you live in North America. The more you research into aluminum wiring, the more frustrated you may become. We hope this article will clear up any confusion and end the frustration.



What's the Problem with Aluminum Wiring?

From the mid '60s to the late '70s, aluminum wire often replaced copper as a less expensive alternative. Aluminum, however, is not a direct replacement for copper since each type of wire has different physical properties. Aluminum's properties proved problematic for reasons no one had anticipated. What you need to know is the following: with aluminum wiring it is possible that, over time, a high resistance connection and/or arcing could develop somewhere in the electrical system, resulting in a connection that gets very hot and increases risk of fire.

Fortunately, the problems associated with aluminum wiring are now well understood, thus shifting the focus to rendering existing installations safe. A knowledgeable electrician with aluminum wiring experience can check for safety and fix what needs fixing.

Solutions

Re-wire the Home

If you are renovating, or the configuration of your home is such that stringing new wiring is relatively easy, re-wiring your home may be a good idea. In most cases, however, re-wiring is an expensive and disruptive undertaking.

COPALUM® Crimp Connection

COPALUM® is a proprietary system that involves crimping a copper wire to existing aluminum wire using a special crimp connection tool that exerts extremely high pressure on the joint. This kind of connection is called "cold welding." The copper wire is then connected to fixtures and outlets, etc. Once you "convert" the aluminum to copper with the cold-weld method, the repair is considered permanent. This solution, however, is expensive and requires an electrician certified in this system.

Information Series



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Pigtail Repair

Similar to the COPALUM connection described above, the pigtail repair method involves attaching upper wire to the existing aluminum. Pigtailing uses special twist connectors compatible with both duminum and copper. While the pigtailing parts are inexpensive and readily available, the pigtailing change requires specialized knowledge and experience. Furthermore, although pigtailing is cheaper han the COPALUM system, its success depends entirely on how well the electrician executes the pair. It is difficult to get a good connection that will not oxidize, making long term safety an issue. Some elieve that a poorly executed pigtail is worse than doing nothing. In some geographical areas, pigtailing is not considered an acceptable solution.

trofit all Connections with Aluminum Compatible Devices

Andard electrical outlets and light switches are not compatible with aluminum wiring. Fortunately, sted and approved replacement devices and connectors are available from electrical supply shops. medevices, however, such as ceiling-mounted light fixtures not rated for aluminum wire, still require electrician who knows the pigtailing technique.

Few More Points

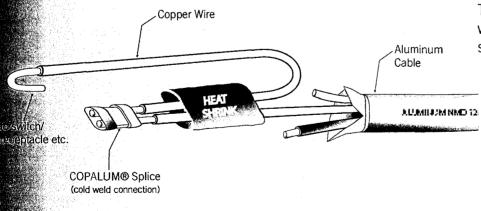
1972, a new aluminum alloy, and aluminum-compatible devices, entered the market. Homes wired the aluminum after 1972 are more likely to have this new aluminum. This new aluminum solved many the problems associated with the original aluminum wiring. These homes, however, still require an perienced electrician for a wiring retrofit.

so generally speaking, the problems associated with aluminum wiring have to do with branch-circuit ing smaller than 8 gauge. Anything 8 gauge and higher, such as wiring for a dryer or stove, does not desent a problem.

Mestimportant to remember: if you have aluminum wiring, a licensed and experienced electrician should perform all electrical work.

The Best Course of Action

Since even amongst electricians misinformation and confusion persist, an electrician with specific sowledge and experience should evaluate each home on a case-by-case basis.



The good news is, aluminum wiring can be made safe, but seek the advice of an expert.

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Galvanized Steel Water Pipes

What is Galvanized Steel Pipe?

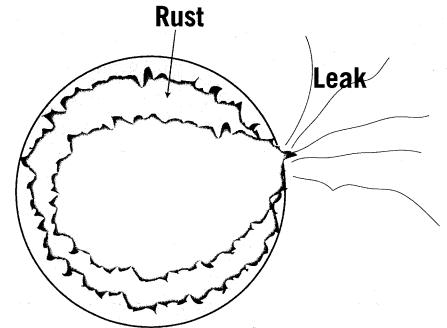
Galvanized refers to a zinc coating added to steel pipes to protect them from rust. Galvanized steel was used for residential supply plumbing until around 1950. Although it was considered an effective resistant to corrosion at the time, it proved to have a limited service life of approximately 50 years. Over time, water passing through the pipes literally consumes the zinc. Once the zinc is gone, the exposed steel will then start to rust.

The Problems

Galvanized steel pipe has not been used in residential homes since around 1950. Any galvanized steel found in homes today, therefore, will generally be well past its shelf date. If you have galvanized steel pipes, consider replacing them, especially since rust is not the only problem you will face. Other problems include:

Poor water flow

- galvanized steel pipe rusts from the inside out, diminishing the effective cross-sectional area. Any pipe found today will likely have an interior comprised mostly of rust.



- **Rust in the water** you may see rust in the water when you first turn on the taps. It will, however, quickly clear as you run the water, but unsightly stains may develop on plumbing fixtures.
- Leaks the pipe eventually rusts right through, usually at the threaded joints where the steel is the thinnest, causing leaks.
- **Home insurance** many insurance companies will not insure homes with galvanized steel pipe because of the risk of major leaks.





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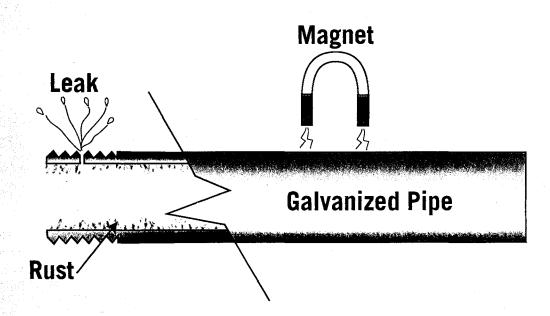
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ognizing Galvanized Steel Pipe

A silvery grey color indicates weathered galvanized steel pipe The pipe connections are often threaded Amagnet will stick to galvanized steel pipe but not to copper, lead, or plastic The flow from the hot tap is distinctly different than the flow from the cold Rust stains can be found near the drain in a sink

cognizing galvanized steel is easy, but *finding* it can be a challenge. If the plumbing in your home has been raded at some point, galvanized steel pipe may be located in areas difficult and/or disruptive to access. Instance, a past upgrade might have involved replacing the horizontal runs of pipe, which tend to corrode on than the vertical runs (risers), leaving the latter, therefore, in place. Risers inside walls are often difficult impossible to see. Furthermore, hot water pipes often get replaced while cold are left behind since the hot or ode faster than the cold. Galvanized steel pipes, therefore, tend to go undetected until a leak appears, or and the walls are opened during a renovation.

though galvanized steel does not present a health hazard, you should still consider replacing it since you the risk of major leaks that may cause serious damage to your house, resulting in expensive repairs. placement will also clear up minor problems, such as poor water flow. If you find galvanized steel in your one, contact a plumber to have it replaced. Do not wait for a leak!



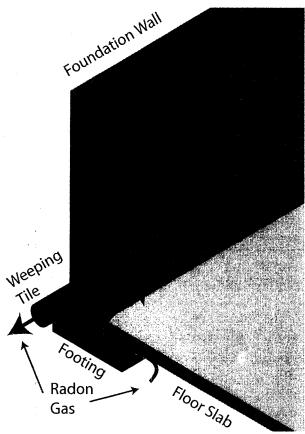
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Radon Gas

Radon is a radioactive gas that exists naturally in the environment in very low concentrations. Radon comes from uranium in the soil. While uranium is not present in significant quantities in most geographical areas, traces of uranium in the soil exist everywhere. As uranium breaks down, it produces radon gas.

Radon is classified as a human carcinogen. Breathing radon gas is associated with an increased risk of developing lung cancer. The risk increases with increased concentration of radon in the air and exposure time. The concern is around radon levels that can build up inside a house. Even if you live in an area with fairly low environmental radon, you could still have significant levels in your home.



Radon testing

You can get a relatively inexpensive test to

determine the radon levels in your home. Testing strategies fall into two general categories: short term testing, which may take only a few days; or long term testing, which could take several months. While long term testing gives you a better indication of the radon exposure, people often choose short term testing for faster results.

Understanding Radon Levels

Radon levels are reported in one of three different units of measure:

- The most common unit of measure in the United States is pico Curies per Liter (pCi/L)
- The most common unit of measure in Canada is Becquerels per cubic meter (Bq/m³)
- You may also see the term working levels (WL), common in scientific literature

The following numbers will give you an idea what to expect to see:

- Average outdoor level is 0.3 pCi/L or 10 Bq/m³
 - Average indoor level is 1.2 pCi/L or 45 Bq/m³
- Indoor action level in the United States is 4 pCi/L or 150 Bq/m³
- Indoor action level in Canada is 22 pCi/L or 800 (the level at the time of writing of this article, expected to change soon to 200 Bq/m³)

Action level is the level at which you should take steps to reduce the radon gas entering your home.

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king a Radon Problem

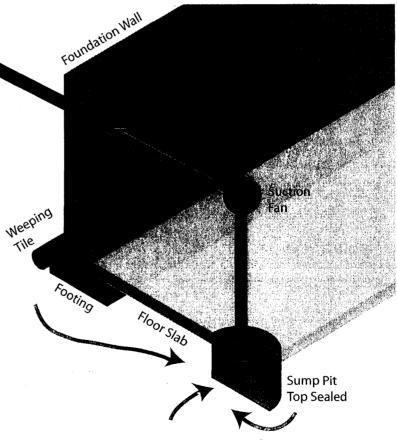
You have radon levels at or above the action level, you should take action. The most common remedial changue involves depressurizing the soil under your home. If your home has a basement or slab-onede, a suction pipe is inserted through the slab into the gravel below. Then suction is applied to the upe to draw radon in the soil towards the pipe, effectively sucking the radon up and out of the home.

the past, remediation involved a trial-and-error approach. For example, a technician might try sealing that the cracks in the basement, such as a gap between the floor slab and the foundation, and then onduct a re-test. If the re-test shows acceptable levels, you may get away with paying only a few undered dollars for the fix. But if sealing the cracks does not solve the problem you will have go to the ext level of remediation. Today, most people feel that it is better to do a proper, comprehensive fix the institute.

Adding a heat-recovery antiation rate in your home. Adding a heat-recovery attiator brings fresh air into the home, discharges stale air outside, and swaps heat in the process to event heat-energy loss. But this approach does not sit well with everyone since it effectively lets in adon in order deal with it.

gardless of the remedial method you choose, getting your home tested is a good first step. Arming

arious approaches is the next step and insulting an expert is always a good



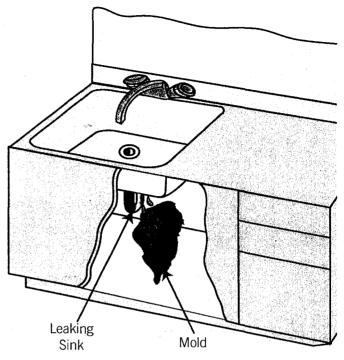
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Mold in Your Home

With so much in the news about the dangers of mold in your home, and the associated health risks, it is easy to get carried away with fear. As with most things, however, a little knowledge goes a long way – getting a clearer picture of the issues and solutions will not only reduce fear, but will also arm you with preventative tools.

Mold has been with us since the beginning of time. Believe it or not, you already have mold in your house. Leave a loaf of bread on your counter for a couple of weeks and you will see it grow. All mold needs to thrive and multiply is a food source, a little water, and oxygen.



Repair Plumbing Leaks Promptly

Building materials are good food

source for mold spores. Add water (you do not need to add oxygen since it's everywhere) and you have a mold problem. Water is the key to understanding and controlling mold since it is the only mold-growth factor you can control.

What To Do About Mold

You can clean mold yourself if it appears in small amounts. If you find a large amount of mold, or if you suffer from any kind of lung condition, you should get someone else to clean it for you.

You can scrub mold found on hard surfaces with water and detergent. Mold in absorbent materials, however, such as carpets, is more difficult to clean. Better to just throw the carpet out. If you have a flood in your home, it is critical to dry things up quickly. Call in an expert who specializes in flood clean-up.

Government web sites offer free and detailed common sense guides on how to clean mold:

- Centers For Disease Control And Prevention: <u>www.cdc.gov</u>
- U.S. Environmental Protection Agency: <u>www.epa.gov</u>
- Canada Mortgage and Housing Corporation: <u>www.cmhc-schl.gc.ca</u>





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Ventative measures

Deal promptly with water leakage in areas such as the roof, plumbing, and basement.

Keep indoor humidity levels at 50% or lower. In cold climates during winter, 50% is still too high. Condensation on the windows indicate that you have too much humidity. Check the chart on your numidifier.

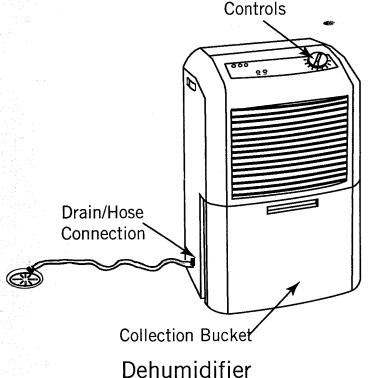
Make sure your clothes dryer vents to the outside rather than into the house. Check the discharge and, too, as these pipes often become disconnected.

Use your bathroom ventilation fan when showering or bathing, and leave the fan running for about wenty minutes afterwards. Similarly, use your kitchen range hood to discharge steam outside when cooking.

central air-conditioning system effectively reduces humidity levels in warm weather. If areas of our home seem humid during air-conditioning season, you may develop a condensation problem. Sometimes adding a return air vent in the damp area, or adding a damper to the ducting that supplies the area, can improve humidity levels dramatically. Dehumidifiers also help, but be aware that they are expensive to run and do not condition the house. Ask an air-conditioning technician to look at the situation.

Do not put carpets in damp or humid areas. Also, keep furniture and storage away from the wall to ensure good air circulation.

id may be here to stay but it can be controlled. Look for dampness in your home and deal with it comptly.

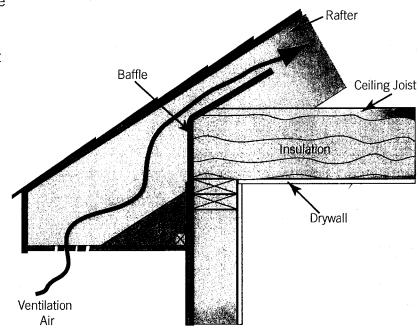


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Attic Thermal Insulation

The attic accounts for a large percentage of a house's heat loss and heat gain. Attic insulation reduces heat loss in the cold months. and prevents heat build up in hotter months, making it a priority for insulation. In new construction, insulation levels for the attic are higher than all other areas. In an old home, the attic is the first place for insulation upgrades. The attic is comparatively easy to insulate since it usually presents no space constraint, making it easy to add a lot of insulation.



Ventilation

Critical to a healthy attic is good ventilation, with airflow circulating into and out of the attic. Circulation helps stabilize the attic temperature and remove moisture. Ideal ventilation has vent openings low on the roof and vents high on the roof to create draft. Air will flow naturally in the low openings and out the high openings. This is usually accomplished with soffit vents at the eaves and roof top vents (mushroom vents) on top of the roof. There are many other possibilities as well.

Many homes in which the insulation has been upgraded does not have appropriate ventilation either because the insulation contractor did not add vents when insulating or because insulation now covers the soffit vents, restricting the air flow. To solve this problem, baffles can be added to create an air channel past the insulation at the soffit. Air can then flow freely into the attic and then out the vents on the roof top. If additional roof top vents are needed, it is a very easy and inexpensive upgrade.

Air Leakage

The thought behind current building science recognizes that while attic ventilation is important, equally important is sealing air leaks from the rest of the house to the attic, especially in cold climates. In a typical home, recessed light fixtures, bathroom vents, plumbing stacks, chimneys and wall cavities present numerous potential air leakage paths to the attic. Air leakage from the house causes many problems including condensation,

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511 of 759 38113-11335 tor mildew and in cold climates – ice dams.

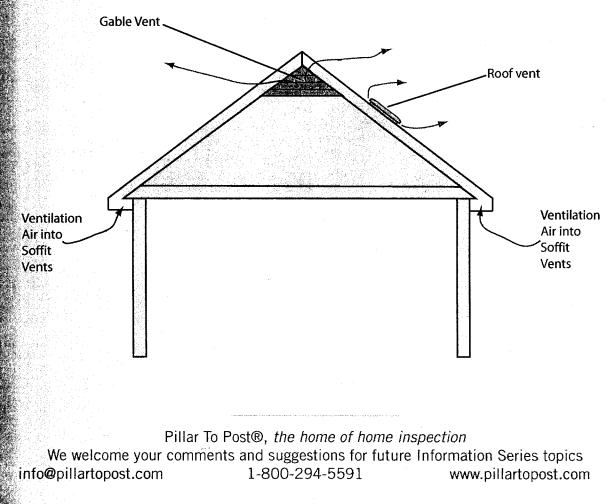
a configure that runs through the attic should be well sealed and properly insulated. There is no point cating and cooling your attic.

DONOT Disturb the Insulation

best not to disturb the insulation in the attic. Some attics have vermiculite insulation. Most vermiculite sulation contains small amounts of asbestos. Disturbing the insulation can cause a cloud of asbestos, substance it is best to avoid or to which exposure should be limited. In some cases, the vermiculite lies der a layer of a different type of insulation. Visually, it may look like you have ten inches of fiberglass of, in fact, you may actually have four inches of vermiculite and six inches of fiberglass. If you have to sub the insulation, check what kind of insulation you have first and take appropriate precautions. A negard dust mask is not good enough for asbestos.

grading Attic Insulation

vou are upgrading your attic insulation, make sure you hire a contractor who is knowledgeable about the fechniques and codes for your area. Good contractors will asses the insulation type and condition, as a sair leakage from the house and ventilation.



Carbon Monoxide

Carbon monoxide, or CO, a byproduct of incomplete combustion of fossil fuels, is a colorless, odorless gas. Breathing CO reduces the blood's ability to carry oxygen. In severe cases, CO can cause death.

Defective or malfunctioning fossil fuel appliances, or inappropriate use of appliances that burn fossil fuel close to or inside the home can pose a serious health hazard. Here are a few examples of dangerous operations:

- Running an automobile or gas lawn mower inside the garage
- Operating a barbeque inside the home
- A gas or oil burning furnace with a blockage in the chimney
- Kerosene space heaters
- Operating a generator in the home during a power failure

Symptoms of Carbon Monoxide Poisoning

Symptoms of carbon monoxide poisoning include headache, dizziness, nausea, vomiting, weakness, chest pain, confusion, and loss of consciousness. Carbon monoxide poisoning can lead to death. Low level poisoning may go unnoticed because it may be mistaken for the flu.

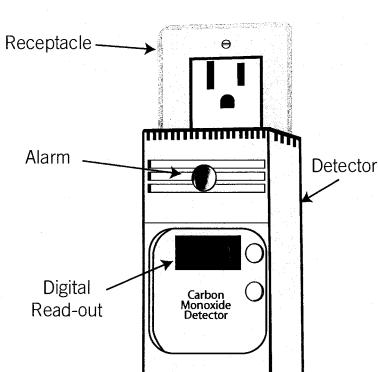
Carbon Monoxide Detector

You should have at least one carbon monoxide detector in your home. In some geographic areas, a CO detector is required by law. The CO detector should be placed where you can hear it if it goes off when you are asleep. A CO detector does not have to be placed on the ceiling, since unlike smoke, CO has approximately the same weight as air so it mixes

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513 of 759 38113-11335 iniformly throughout the room rather than floating up to the ceiling. To avoid false alarms, do not install the detector next to heating and cooking appliances, vents, flues, or chimneys. Make sure you read and follow the operating, placement, and testing instructions that come with the detector.

The carbon monoxide detector alarms, take it seriously.

olding CO Poisoning

Have your heating systems serviced every year by a qualified technician.

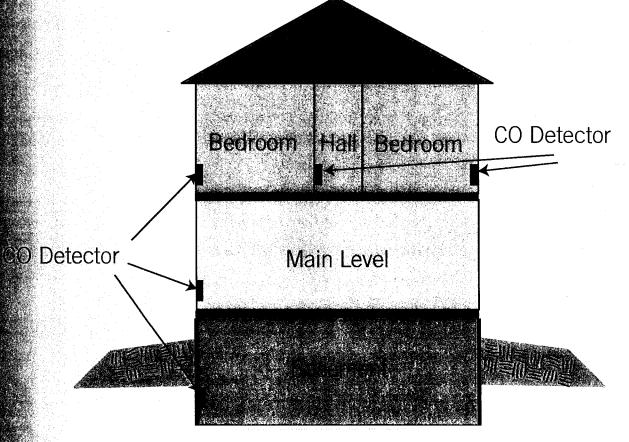
Have your fireplace chimney cleaned and inspected every year.

Install at least one CO detector in your home and replace the batteries twice per year.

upen the garage door prior to starting your car; drive the car out promptly. Do not leave it idling in the garage. Do not use a remote car starter when the car is in the garage.

Do not use a charcoal or propane barbeque in the home.

If you are installing only one carbon monoxide (CO) detector, it should be located where you can hear it if it goes off when you are sleeping. For greater safety, multiple CO detectors can be installed throughout the home. Follow the instructions packaged with the detector.



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1

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FILED 16 AUG 17 AM 9: 13 ARABLA DECATY CLERK

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

٧.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

REQUEST TO VACATE HEARING

Case No. CV-2015-132

Judge: Naftz

Plaintiffs filed a Motion to Compel on August 5, 2016. The issue raised in that motion has now been resolved, and the parties request that the Court vacate the hearing scheduled on those motions for Thursday, September 1, 2016 at 10:00 a.m.

DATED this 17th day of August, 2016.

Atkin Law Offices

Robert

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the

REQUEST TO VACATE HEARING as indicated below:

Lane V. EricksonX U.S. MailX E-mailFacsimileRACINE, OLSON, NYE, BUDGE
& BAILEY CHARTEREDX U.S. MailX E-mailFacsimile201 East Center
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Pocatello, Idaho 83204-1391
Facsimile: (208) 232-7352
Email: Ive@racinelaw.netFacsimileFacsimileRobert C. Naftz
District Judge
Bannock County Courthouse
624 E. Center, Room 220U.S. MailE-mailX Facsimile

Pocatello, ID 83201 Fax: 208-236-7290

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926

____U.S. Mail ____ E-mail X Facsimile

Dated this 17th^t day of August, 2016.

Gerniefer Mariscal

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 AUG 13 PM 12: 10 MOMALINE COUNTY CLERK

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

Т

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	NOTICE OF DEPOSITION
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

Plaintiff hereby gives notice of the Deposition of Franklin County Assessor, Jase D.

Cundick, to be conducted and recorded before a certified court reporter at the time and place indicated below:

Date: September 2, 2016

Time: 9:00 a.m.

Place: County Commissioners Room Franklin County Courthouse 51 West Oneida Preston, ID 83263 Dated this 18th day of August, 2016.

s . ~c

Rahest

Blake S. Atkin Attorney for Plaintiffs

CERTIFICATE OF SERVICE

~:

The undersigned certifies that she caused to be served a true and correct copy of the NOTICE OF DEPOSITION as indicated below:

Lane V. Erickson X U.S. Mail X E-mail ____ Facsimile RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net ____ U.S. Mail ____ E-mail X Facsimile Robert C. Naftz **District Judge** Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290 ____U.S. Mail ____ E-mail X Facsimile Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 Dated this 18th day of August, 2016.

Gennifer Mariscal

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 AUG 18 PM 12: 11

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

Т

GLEN WAYNE NIELSON and CHERYI E. NIELSON, husband and wife,	
Plaintiffs,	SUBPOENA
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

The State of Idaho to: FRANKLIN COUNTY ASSESSOR:

YOU ARE COMMANDED:

[] to appear in the Court at the place, date and time specified below to testify in the above case.

[] to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

[X] to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below.

All tax notices since 1996 for the property of Robert and Michele Talbot located at 478

West 200 South, Preston, Idaho, 83263.

[] to permit inspection of the following premises at the date and time specified below.

PLACE DATE AND TIME:

4

Date: September 2, 2016

Time: 9:00 a.m.

Place: County Commissioners Room Franklin County Courthouse 51 West Oneida Preston, ID 83263

You are further notified that if you fail to appear at the place and time specified above, or to produce or permit copying or inspection as specified above that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

This Subpoena is issued under Rule 45, I. R. Civ. P.

DATED this 18th day of August, 2016.

Atkin Law Offices

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

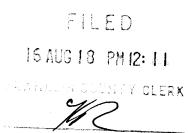
The undersigned certifies that she caused to be served a true and correct copy of the

SUBPOENA as indicated below:

.

X U.S. Mail X E-mail ____ Facsimile Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net Robert C. Naftz ____ U.S. Mail ____ E-mail X Facsimile District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290 Franklin County Court ____U.S. Mail ____ E-mail X Facsimile 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 Dated this 18th day of August, 2016.

Gennifer Mariscal



DEPUTY

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Attorneys for Plaintiffs

1

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

CROSS MOTION FOR SUMMARY JUDGMENT

Case No. CV-2015-132

Judge: Naftz

Plaintiffs respectfully move for summary judgment against the Parker Defendants. If the Court determines that the Talbot Defendants are correct and that they are entitled to 12.5 feet of property beyond that called for in the Warranty Deed given to the Plaintiffs by the Parkers, then Plaintiffs are entitled to judgment against the Parkers for breach of Warranty of Title. The amount of damages to be determined later. In addition, Plaintiffs are entitled to judgment against the Parkers for breach of their duty to defend Plaintiffs' title. If on the other hand the Court finds that the Talbot Defendants are not entitled to an additional 12.5 feet, the Parker Defendants have not breached their warranty of title, but they have nevertheless breached their duty to defend the title and Plaintiffs are entitled to judgment that they breached their duty to defend. The amount of damages (attorney fees) Plaintiffs have incurred because of the breach will be established later.

DATED this 18th day of August, 2016.

-

Atkin Law Offices

Make Ste

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the Cross

Motion for Summary Judgment as indicated below:

-

Lane V. Erickson	Х	U.S. Mail	Х	E-mail 🔄	Facsimile	
RACINE, OLSON, NYE, BUDGE						
& BAILEY CHARTERED						
201 East Center						
P.O. Box 1391						
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Facsimile: (208) 232-7352						
Email: lve@racinelaw.net						
Robert C. Naftz		U.S. Mai	1_	E-mail	X Facsimile	
District Judge						
Bannock County Courthouse						
624 E. Center, Room 220						
Pocatello, ID 83201						
Fax: 208-236-7290						
Franklin County Court		US Mail		F-mail	X Facsimile	
39 West Oneida	<u></u>				X Taesinine	
Preston, Idaho 83263						
Via Fax: (208) 852-2926						
	Da	Dated this 18th day of August, 2016.				

Gennifer Mariscal

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Attorneys for Plaintiffs

FILED 15 AUG 18 PM 12: 11 CERANELISE DOUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

MEMORANDUM IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT

Case No. CV-2015-132

Judge: Naftz

Plaintiffs purchased their home from the Parker Defendants. The property was conveyed to them by a metes and bounds legal description in a warranty deed. Consistent with the law, that warranty deed expressly promised to defend the title so conveyed "from all claims whatsoever. " Seeing no obvious demarcation of the boundary of the property, Plaintiffs made inquiries. Their neighbor, Robbie Talbot, claimed that his carport was built upon 12.5 feet of the Plaintiffs' property. Plaintiffs notified their sellers and asked them to step up and defend the title to the property. They failed and refused to do so. Plaintiffs then brought action against the encroaching neighbor and their sellers, the Parkers.

Facts

- 1. On August 30, 2013, Wayne Nielson bought a parcel of property in Preston, Idaho.
- 2. The sellers (Parkers) conveyed the property by warranty deed. In that warranty deed,

Sellers (Parkers) agreed that they would "warrant and defend the same from all claims

whatsoever."

3. The Parkers knew that the legal description represented the circumference to the property

they were selling to the Plaintiffs.

- Q. Okay. All right. This Warranty Deed that's Exhibit 1 describes the piece of property that you were purchasing. Do you see that?
- A. I do, yes.
- Q. And that legal description commencing at Point 81 Rods. Do you see that paragraph?
- A. Yes, I do.
- Q. And what did you understand that legal description described?
- A. The property line.
- Q. Okay. So you understood that if somebody -- you could go out on the ground itself and map out that property line --
- A. Correct.
- Q. -- around --
- A. It's the circumference around our property, yes.
- Q. And that's what you understood that legal description to be?
- A. That was what I understood, yes.
- Q. All right. And when you later conveyed the property to the Nielsons, you used that same legal description; is that correct?
- A. Correct.
 - (Deposition Exhibit No. 2 marked.)
- Q. (BY MR. ATKIN) Let me show you what's been marked Exhibit No. 2. Is that the Warranty Deed by which you conveyed the property -- you and your husband conveyed the property to Glen Nielson?
- A. Yes.
- Q. And just looking at the two property descriptions, they -- between the Exhibit 1, the deed by which you obtained the property, and Exhibit 2, the deed by which you conveyed the property to the Nielsons, it's the same description?
- A. It is, yes.
- Q. And so you understood when you were conveying the property to the Nielsons you were conveying the property with this legal description, which would describe the

boundaries of the property that you sold to them?

A. That's correct. Yes.

(Deposition of Saundra Parker, June 10, 2016) Attached hereto as Exhibit "A".

- 4. Shortly after purchasing the property Plaintiffs learned that their neighbors to the east had a carport that encroached their property, as conveyed to them by the warranty deed, by about 12.5 feet.
- 5. The neighbors (Talbots) wrote Plaintiffs in August 2013 claiming to own about 12 feet of the property conveyed to Plaintiffs by the sellers (Parkers). See, Exhibit "B" attached.
- Plaintiffs wrote Sellers (Parkers) on February 4, 2015 demanding that they step up and defend the property they had conveyed by legal description in a warranty deed. See, Exhibit "C" attached.
- 7. Receiving no response Plaintiffs instituted an action seeking both damages for breach of the sellers' (Parkers') duty to defend Plaintiffs' title and damages for any diminution in value of the property should they lose the fight with the neighbor to quiet title to the 12.5 feet of property being encroached and claimed by the neighbor
- At about the same time Plaintiffs commenced this action against the neighbors (Talbots) seeking quiet title to the 12.5 feet of property, which the sellers (Parkers) warranted and the neighbors (Talbots) are encroaching.
- 9. Parkers have been kept fully apprised of the prosecution of this matter against the encroaching neighbor since they are represented by the same attorney.

Argument

If the neighbors (Talbots) are found to be encroaching and the property is quieted in Plaintiff then the Sellers (Parkers) have breached only their duty to defend title but not their warranty of title. On the other hand, if the neighbors (Talbots) are found to be encroaching the sellers (Parkers) have breached their warranty of title and will be liable for the loss of property suffered by Plaintiffs in addition to their damages (attorney fees) incurred in defending the title.

THE NEIGHBORS (TALBOTS) CANNOT ESTABLISH OWNERSHIP OF THE 12.5 FEET ONTO WHICH THEIR CARPORT AND SHED ENCROACHES

The Warranty deed by which the Parkers conveyed the property to the Nielsons is prima facie evidence that the Nielsons are the owners of the property contained within the metes and bounds description in that warranty deed. As will be shown in more detail in Plaintiff's response to defendants' motion for summary judgment, Talbots cannot establish the facts necessary to overcome the effects of the warranty deed. Therefore title to the property Plaintiffs purchased that was conveyed to them by warranty deed should be quieted in the Plaintiffs.

THE SELLERS (PARKERS) WHO CONVEYED THE PROPERTY BY WARRANTY DEED WITH A METES AND BOUNDS DESCRIPTION HAD A DUTY TO DEFEND THE PROPERTY "FROM ALL CLAIMS WHATSOEVER."

In their Warranty deed, the Sellers (Parkers) described the property they were selling to the Plaintiffs by metes and bounds. They agreed to "warrant and defend" that property, described by that metes and bounds legal description "from all claims whatsoever." That agreement is nothing more than a recitation of the law that attaches to all warranty deeds.

Under Idaho law, damages for breach of the warranty contained in a deed, rather than specific performance of the deed covenants, has been established as adequate compensation for the property lost and expenses incurred in defending the title, including attorney fees; *Flynn v. Allison*, 549 P.2d 1065; *Elliott v. Thompson*, 63 Idaho 395, 120 P. 2d 1014 (1941); *Madden v. Caldwell Land Co.*, 16 Idaho 59, 100 P. 358 (1909).

No formal proof of attorney fees need be offered, but can be assessed, as in other cases

by the trial court through affidavit. Id. Damages for the loss of the disputed strip will be

determined by evidence produced at trial. Id.

;

When property is conveyed by warranty deed, the seller is promising that he owns the

property, *Elliott v. Thompson*, 63 Idaho 395, 120 P. 2d 1014 (1941). It matters not that the seller honestly believes he owns the property and is without fault at the time of the conveyance. *Id.* If it turns out that he did not own the property that he conveyed to the purchaser, he has breached his warranty of title. *Id.* Indeed, in a case on all fours similar with this case, the Idaho Supreme Court found that the seller of a property by metes and bounds was liable for breach of warranty when the court found that a neighbor owned a portion of the property because of a fence that established adverse possession. *Flynn v. Allison* 549 P.2d 1065 (Id. 1976). In *Flynn* the fence was in existence when the seller conveyed the property to the purchaser.

Before this litigation began Plaintiff's invited the Sellers (Parkers) to defend their title against the claims brought by the neighbors (Talbots). They refused, and have been kept fully informed of the proceedings against the Talbots since they are represented by the same lawyer. No matter the outcome of this litigation, the Parkers have breached their duty to warrant and defend the property and must be held liable for the attorney fees incurred by the Plaintiffs to defend the property. The Idaho Supreme Court has followed "universal authority that one may recover on such a warranty as contained in the deed in question the expenses connected with litigation *unsuccessfully* attempting to validate the title received, and the cost of extinguishing an adverse title." *Elliott v. Thompson*, 63 Idaho 395, 120 P. 2d 1014 (1941)(emphasis added); *Koelker v. Turnbull*, 899 P.2d 972, 976 (Id. 1995).

If, however, the Court were to agree with the Talbots, that through some theory they are now the owners of property underlying their carport and shed that encroach the Nielson homestead then the Parkers are liable not only for the breach of the duty to defend, but also the breach of the warranty which warranted that the Nielsons own the property described in their deed. *Koelker v. Turnbull*, 899 P.2d 972, 976 (Id. 1995). So long as the seller has been kept abreast of those proceedings he cannot later challenge the outcome.

If a warrantor has no notice of the action against his grantee, and no opportunity of showing therein that he transferred a good title, he cannot, in any sense, be considered a party to the action, and therefore ought not to be bound by an adjudication of the question of title. But, if he has notice, he may become a party to the suit, and it is his own fault if his title is not fully presented and investigated. He then has an opportunity of sustaining the title he has warranted and defeating a recovery by the plaintiff in ejectment. If he fails to do this successfully, he is concluded from afterward asserting the superiority of that title, and compelled to refund the purchase money, with interest. *Elliott v. Thompson*, 63 Idaho 395, 409, 120 P. 2d 1014 (1941).

CONCLUSION

If it is ultimately determined by the trier of fact that the Talbots are entitled to keep the 12.5 feet of property being encroached by their car port, then Plaintiffs are entitled to judgment against the Parker Defendants for breach of Warranty and the amount of damages resulting from that breach will be proved later at trial, plus damages (attorney fees) incurred by the Plaintiffs in defending the breach of warranty. On the other hand, if the trier of fact finds that the Talbots are not entitled to keep the 12.5 feet of property, then the Parkers have not breached their warranty, but they are liable to the Plaintiffs for their failure to fulfill their duty to defend title in an amount that will be later proved at trial.

DATED this 18th day of August, 2016.

Atkin Law Offices

Rohert

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the

Memorandum in Support of Cross Motion for Summary Judgment as indicated below:

r

Lane V. Erickson	Х	U.S. Mail	Х	E-mail	Facsimile
RACINE, OLSON, NYE, BUDGE					
& BAILEY CHARTERED					
201 East Center					
P.O. Box 1391					
Pocatello, Idaho 83204-1391					
Facsimile: (208) 232-7352					
Email: lve@racinelaw.net					
Robert C. Naftz		U.S. Ma	il	E-mail	X Facsimile
District Judge					
Bannock County Courthouse					
624 E. Center, Room 220					
Pocatello, ID 83201					
Fax: 208-236-7290					
Franklin County Court		U.S. Mail		E-mail	X Facsimile
39 West Oneida					
Preston, Idaho 83263					
Via Fax: (208) 852-2926					
× /					

Dated this 18th day of August, 2016.

Gennifer Mariscal

Exhibit A

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encroached on their property. Affidavit of Cheryl Nielson.

- 4. However, at the time the Plaintiffs purchased the property, Robert Talbot knew that his carport encroached on the Plaintiffs' property. Affidavit of Diana Rugg.
- 5. When the Plaintiffs purchased the property there was no established and obvious boundary line between the properties. Affidavit of Vince Whitehead; Affidavit of Cheryl Nielson.
- 6. The parties who split the properties had the legal description prepared, that has forever since then appeared in the deeds. They both believed that the legal description accurately described the actual location of the fence that then existed on the property.
- 7. The fence has long been removed from the property, was removed before the shed, the carport, or the lilacs were put on the property. Affidavit of Vince Whitehead.
- There is nothing on the ground from which anyone could locate the fence at this late date. Affidavit of Craig Shaffer.
- 9. Even when the Plaintiffs realized that the carport was on their side of the boundary line, they did not see it as evidence that the property boundary had been moved, but rather saw it as an encroachment on their property. Affidavit of Cheryl Nielson. Similarly, the lilacs did not appear to be a boundary line, but rather an attempt to cover an ugly car port. Id.
- 10. Since purchasing the property the Nielsons have paid property taxes on all of the property that they claim in this action pursuant to the legal description in their deed. Affidavit of Glen Nielson. It appears that their predecessors going back to Craig Shaffer who originally divided the property have paid taxes on the property pursuant

to the legal description in the deeds. Affidavit of Craig Shaffer.

11. There was never a dispute about the location of the property line until Cheryl Nielson began asking questions about where the boundary was. Craig Shaffer and Gae Murdock have submitted affidavits that they created the legal description in the deeds to reflect the location of the fence and believed it did so. Affidavit of Craig Shaffer; Affidavit of Gae Murdock; Phil Cromwell, testified there was never any dispute about the boundary line between the properties. Cromwell affidavit at 19. "I told her [Plaintiff Cheryl Nielson] that the Talbots, and each of my neighbors before them, had been good neighbors and that I had not had any dispute with them about the boundary line between the properties." Cromwell affidavit at 22. Similarly all the witnesses agree that there was never a dispute about where the boundary line was. Defendant Robert Talbot testified "There was never any dispute about the boundary line of the properties between us or any of our neighbors until nearly 20 years after we purchased our property when the Nielson's moved in on the property that had belonged to the Cromwells." Affidavit of Robert Talbot at 11.

ARGUMENT

In order to establish their right to quiet title to the property, the Nielsons must show that they are the owners of the property and that the Talbots have encroached upon that property. "An action may be brought by any person against another who claims an estate or interest in real or personal property adverse to him, for the purpose of determining such adverse claim, . . . Idaho Code Section 6-401. The Nielsons' ownership of the property is established by the deeds. Defendants admit that their carport encroaches on that property described in the deeds. "When the Nielsons purchased the Nielson property they checked the legal description and learned that the Talbot Property actually encroached upon the legal description of property they had on their deed." Memorandum in Support of Defendant/Counterclaimants' Motion for Summary Judgment. With that, Plaintiffs' right to quiet title is established unless one of the doctrines by which an interloper can gain control of another's property comes into play. There is no competent evidence in this case to establish any right in the Talbots to encroach on the Plaintiffs' property.

<u>THE EVIDENCE DOES NOT SUPPORT A BOUNDARY DIFFERENT FROM THAT</u> <u>CONTAINED IN THE LEGAL DESCRIPTIONS IN THE DEEDS.</u>

Idaho has several doctrines for dealing with encroachment on property boundaries. See, *Luce v. Marble*, 142 Idaho 264, 127 P. 3d 167 (2005). One is the boundary by agreement doctrine exclusively relied upon by defendants in this case. Defendants cannot prevail on that claim.

Boundary by agreement or acquiescence has three elements: (1) there must be an uncertain or disputed boundary, and (2) a subsequent agreement fixing the boundary. (3) subsequent purchasers must be put on notice of the boundary that is different from their deed. *Luce v. Marble*, 142 Idaho 264, 127 P. 3d 167 (2005). Here the first element is missing. To be sure the dispute need not have led to guns, but here there simply never was a dispute or question about the boundary until Cheryl Nielson began asking questions. Passage of time is irrelevant to the boundary by acquiescence doctrine, but some modicum of dispute or doubt is clearly an element of the claim. The requirement of a "dispute" is a consideration substitute. Like any other contract, changing the boundary between properties from what is set out in the deeds requires consideration. See, *Brand S Corp. v. King*, 639 P.2d 429. (Id. 1981). Without some modicum of dispute, there is no consideration for the agreement to modify the boundary which

may be rescinded at any time by either party. *Id.* The parties who originally created this boundary had no misgivings about it. They prepared deeds with legal descriptions that they signed conveying the property, legal descriptions that they believed actually and accurately described the boundary. Those legal descriptions formed the basis of later conveyances and the payment of taxes from that day forward. They believed that the legal description that they had in their deed coincided with the actual location of the fence, but there never was any dispute about where the boundary was until the Plaintiffs bought their property. By then, the fence was long gone, and the evidence shows that neither side of the property was exactly sure where the fence had been or the property boundary was. Even the most narrow lilac tree is several feet wide. The lilacs were planted some time after the fence was removed, Affidavit of Vince Whitehead, and the evidence shows that when Mr. Larsen put in his sprinkler system he did not know where a line was since some of the sprinkler heads are nearly a foot onto grass planted by Mr. Cromwell. Second Affidavit of Cheryl Nielson. Since the dispute began there has obviously not been any agreement between the parties. There can be no resolution of this case through the doctrine of boundary by agreement or acquiescence.

Defendants argue that the case of *Campbell v. Weisbrod*, 73 Idaho 82, 245 P. 2d 1052 (1952) helps their case. It does not. As the Defendants' quoted, "the fundamental principle underlying all of the rules of construction of deeds, as well as all other contractual instruments, is that the courts must seek and give effect to the intention of the parties." In *Campbell* it was established that the legal description did not in fact describe the boundary to which the parties had agreed, and there was no dispute that a line on the ground between the parties was different from the legal description. Here, while the Shaffers and the Murdocks agreed to split the property where the fence stood, they had a legal description prepared to describe that line. It was

their intention, to which they put their signatures, that the legal description was the boundary. Affidavit of Craig Shaffer. In later years the fence was taken out and no sign of the fence existed on the ground when the Nielsons bought the property. What existed when the Nielsons bought the property can hardly be called a line. There was a carport and a shed, lilac bushes, several feet wide that appeared to be shielding the view from an unsightly car port, and a sprinkler system that encroaches even further than the carport and the shed. What existed looked more like hodgepodge than a property line. Defendants argue, without foundation, that the structures, built many years later by people who had never seen the fence, were built along the line where the fence once was, but their conclusions about the location of the fenceline were based on speculation and hearsay. See Motion to Strike the Affidavits of Michele Talbot, and Dave Larson and Phil Cromwell, Affidavit of Vince Whitehead. The fence was taken out sometime before Vince Whitehead built the Talbot home in the early 1990s. He could not discern a fence line at that time. By the time the Talbots built their carport the fence had been gone through at least three owners. There is no evidence that the Shaffers or the Murdocks established the legal description know, to this day, whether the legal description accurately described the fenceline. If the carport and shed stand on the line where the fence once was, then there is at least a factual issue whether the Shaffers and the Murdocks, had they known their legal description did not coincide with the actual location of the fence, would have intended the fence to govern over that legal description to which they went to great lengths to have created. The fact that the Shaffers and the Murdocks never knew that their legal description did not accurately describe the fence (if in fact it did not) precludes a finding that there was a dispute or uncertainty over the property boundary that then was resolved by agreement. There was never a dispute about the location of the property line until Cheryl Nielson began asking questions about where the boundary was.

Craig Shaffer and Gae Murdock have submitted affidavits that they created the legal description in the deeds to reflect the location of the fence and believed it did so. Affidavit of Craig Shaffer; Affidavit of Gae Murdock; Phil Cromwell, testified there was never any dispute about the boundary line between the properties. Cromwell affidavit at 19. I told her [plaintiff Cheryl Nielson] that the Talbots, and each of my neighbors before them, had been good neighbors and that I had not had any dispute with them about the boundary line between the properties." Cromwell affidavit at 22. Similarly all the witnesses agree that there was never a dispute about where the boundary line was. Defendant Robert Talbot testified "There was never any dispute about the boundary line of the properties between us or any or our neighbors until nearly 20 years after we purchased our property when the Nielson's moved in on the property that had belonged to the Cromwells." Affidavit of Robert Talbot at 11.

This record simply will not support a boundary by agreement that is different from that set out in the legal descriptions in the deeds.

THE RECORD DOES NOT SUPPORT A CLAIM THAT THE NIELSONS SHOULD HAVE KNOWN OF AN AGREEMENT TO CHANGE THE BOUNDARY.

Even if the Court were to conclude that the Shaffers and the Murdocks intended the fence to govern over the legal description they prepared, and even if there were evidence that the fence was in a different location than where the Shaffers and the Murdocks thought it was, there simply was not the kind of line on the ground when the Nielsons bought the property that imparts the kind of knowledge the law would require for that agreement to be binding on the Nielsons. In order to be bound by a boundary by agreement subsequent purchasers are only bound by the agreement if they "purchased with notice of the agreement." In other words parties to a changed boundary, changed through the doctrine of boundary by agreement must maintain the demarcation of the boundary on the ground or the boundary necessarily reverts to the legal description that is recorded. Here there is not the kind of line on the ground that would impart that kind of knowledge. When the Nielsons purchased the property there were two buildings finite in length that encroached the legally described property boundary, bushes and shrubs that were two to three feet wide planted next to an unsightly carport, lawn that was mowed by each of the neighbors and a sprinkler system that had heads placed several feet further onto the Plaintiffs' property than even the Defendants have the audacity to now claim. Those things cannot have created evidence of an alternative boundary to that described in the deed. This is a far cry from the "tight board fence, four or five feet in height, . . . that formed the boundary in *Reid v. Duzet*, 140 Idaho 389, 94 P.3d 694 (2004) relied upon by the defendants.

A line encroached by a couple of buildings, rather than a new property boundary, was the reasonable interpretation at the time the Nielsons moved into this property.

CONCLUSION

Defendants cannot carry their burden to show a boundary by acquiescence different from what the Plaintiffs thought they were buying. Title should be quieted in the Plaintiffs according to the legal descriptions in the deeds.

DATED this 28th day of August, 2016.

Atkin Law Offices

Rohert

Blake S. Atkin Attorneys for the Plaintiffs

July 22, 2014

To whom it may concern,

I purchased a lot at 478 West 200 South in the early 1990's front Vince Whitehead to build a home. At that time if was a vacant lot. There was already a home to the West and to the East with established lawns and boundaries. To my knowledge at the time, the neighboring yards on each side were the legal boundaries and the property I owned was the vacant lot in between. During the course of my living in the home, there was never any property dispute or disagreements regarding boundaries.

Dave Larsen

Exhibit A

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5 February 2015

To whom it may concern,

My wife and I originally purchased the home at 496 W. 200 S. in the summer of 1977. We purchased the property through Beckstead Realty in Preston, Idaho. We were given to understand that the property was in repossession and that a part of the property that was fenced for animals had been sold just prior to the repossession to someone else. When we moved in we considered the fence on the animal property our east line. We did not have it surveyed but felt that rather than remove the fence we would just trust that to be the line. Later we planted lilac bushes on our property at the south end near the street to establish our line. Those were there when David and Brenda Larsen built on the property.

When the house was sold to Robert and Michelle Talbot the houndary was set by those shrubs.

The Talbots asked us about building a carport on to their house. We had no objection. We did not ask about building codes but left the legality of building to them.

At no time were we aware that the actual boundary of the property might be elsewhere. At no time did we think that it might be off as much as 12 feet because that would have encroached substantially upon the animal enclosure present at the original purchase. We were happy with our yard and the neighbors were as well.

We have not had a fence between our properties and have just honored the original idea of boundaries.

Juwell illin Cromwell

SHELD'A WANNER Notary Public State of Idako Malla Wanun exp & 10/16

8-3.jpg

Exhibit B

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Exhibit C

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Jase D. Candick Franklin County Assessor 51 W Oneida St Preston, ID 83263 (208) 852-1091 jese@plmw.com

February 9, 2015

To: Mr. & Mrs. Robert Talbot 478 W 200 S Preston, ID 83263

In regards to your questions regarding the value of square footage/acreage if added to your parcel (RP04791.06) and taken away from your neighbor to the West, Glen Wayne Nielson and Cheryl Nielson (RP04791.05), if land were to be deeded to resolve a boundary dispute.

In the scenario that a strip of land 12.5' x 160' (2000 sq/ft = 0.04 acres) along the property line shared by yourselves and the aforementioned neighbor was to be deeded to you from your neighbor, your land value for property tax purposes would increase by \$893. Because of the Homestead Exemption on your property the estimated tax increase would be \$5.99 per year.

Your neighbor's property would drop in value by \$129, resulting in an estimated tax decrease of \$0.86 per year (the Homestead Exemption is also accounted for in this change).

The minimal value change for each of these parcels is due to the minimal market difference in lots so close in size. To see a large increase or decrease in value, a much larger difference of acreage would need to change.

I am happy to answer any further questions you have regarding property tax values.

Sincerely,

mobil

Jase Cundick Franklin County Assessor

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL) E. NIELSON, husband and wife,) Case No. CV-2015-132 Plaintiffs,) vs.) ROBERT TALBOT and MICHELE) TALBOT, husband and wife,) and) PAUL PARKER and SAUNDRA PARKER,) husband and wife,) Defendants.))

DEPOSITION OF SAUNDRA PARKER

June 10, 2016

REPORTED BY:

•

:

JANET FRENCH, CSR NO. 946

Notary Public

Nielson v. Talbot

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Saundra Parker June 10, 2016

fall	ot		June 10, 2016
	Page 10		Page 12
1	that there was an encroachment with regard to the	1	by which you obtained the property, and Exhibit 2, the
2	property that you had sold to them?	2	deed by which you conveyed the property to the
3	A. Correct.	3	Nielsons, it's the same description?
4	Q. And it didn't occur to you that that might	4	A. It is, yes.
5	create a claim that you might have against your title	5	Q. And so you understood when you were
6	insurance company?	6	conveying the property to the Nielsons you were
7	A. Not at the time, no.	7	conveying the property with this legal description,
8	Q. Since that time, has it been have you	8	which would describe the boundaries of the property
9	determined that you might have a claim against your	9	that you sold to them?
10	title insurance carrier?	10	A. That's correct. Yes.
11	A. No.	11	(Deposition Exhibit No. 3 marked.)
12	Q. So you've never made a claim against your	12	Q. (BY MR. ATKIN) Let me show what's been
13	title insurance carrier?	13	marked as Exhibit 3.
14	A. I have not.	14	Do you see recognize this document?
15	Q. Nobody on your behalf has done that?	15	A. I have not seen this document, no.
16	A. Not that I know of.	16	Q. Okay. I'll represent to you that this
17	Q. Okay. All right. This Warranty Deed that's	17	document was provided to us by your lawyer, and l
18	Exhibit 1 describes the piece of property that you	18	can't remember if it was in this case or the other
19	were purchasing.	19	case that was the lawsuit with the Talbots, but
20	Do you see that?	20	A. Okay.
21	A. I do, yes.	21	Q my understanding of this is that this is
22	Q. And that legal description commencing at	22	a document that was prepared by someone. It's on
23	Point 81 Rods.	23	record with the county.
24	Do you see that paragraph?	24	A. Okay.
25	A. Yes, I do.	25	Q. Showing if you look in the top left
	Page 11		Page 13
1	Q. And what did you understand that legal	1	corner, it says "Glen Wayne Nielson."
2	description described?	2	A. Yes, I see that.
3	A. The property line.	3	Q. And that's the person to whom you conveyed
4	Q. Okay. So you understood that if somebody	4	the property; right?
5	you could go out on the ground itself and map out that	5	A. Correct.
6	property line	6	Q. And then next to that is "Robert Talbot."
7	A. Correct.	7	Do you know who Robert Talbot is?
8	Q around	8	A. Yes. He was a neighbor.
9	A. It's the circumference around our property,	9	Q. So if I told you that this and I
LO	yes.	10	understand that you are not a surveyor.
11	Q. And that's what you understood that legal	11	A. No.
12	description to be?	12	Q. And I'm not asking you whether the
.3	A. That was what I understood, yes.	13	dimensions on here are accurate or any of those kind
.4	Q. All right. And when you later conveyed the	14	of things. I just want to use this for illustrative
15	property to the Nielsons, you used that same legal	15	purposes, and I'll represent to you that I think that
6	description; is that correct?	16	this shows the relative position of the two
17	A. Correct.	17	properties, the property you purchased and then sold
8	(Deposition Exhibit No. 2 marked.)	18	to the Nielsons and the property next to it that was
.9	Q. (BY MR. ATKIN) Let me show you what's been	19	owned by Robert Talbot.
0	marked Exhibit No. 2. Is that the Warranty Deed by	20	When you bought the property, was Robert
11	which you conveyed the property you and your	21	Talbot already your neighbor?
	husband conveyed the property to Glen Nielson?	22	A. Yes.
		23	Q. And there is a carport that I understand
22	A. Yes.	1	
22	 A. Yes. Q. And just looking at the two property descriptions, they between the Exhibit 1, the deed 	24 25	that Robert Talbot built. Was that built before you bought the property or after?

Exhibit C

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Randall A. Peterman Mark S. Prusynski Stephen R. Thomas Gerald T. Husch Scott L. Camobell Patricia M. Olsson Christine E. Nicholas Bradley J Williams Lee Radford

James L. Martin C. Clayton Gill David P. Gardner Julian E. Gabiola Jon A. Stenquist C. Edward Cather III Mark C. Peterson Tyler |. Anderson Andrew J. Waldera

David K. Penrod Blake G. Swenson Benjamin C. Rinchie Matthew J. McGee Mindy M. Willman Jerta Hatch Mathews Andrea J. Rosholt Kirk I. Figurton Jamie K. Moon

Of Counsel: Larry C. Hunter Gary T. Dance John C. Ward John S. Sinako David B. Lincoln Norman M. Semanko

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208.522.6700 MAIN 800.422.2889 TOLL/STE

PHYSICAL ADDRESS

208.522.3111 PAX

900 Per View Dr. STE 206

February 4, 2015

Paul and Saundra Parker 701 South 2nd West Preston. ID 83263

Re: **Property Line Dispute** MTBR&F File No. 25996.0000

Dear Mr. & Mrs. Parker:

Our firm represents Wayne and Cheryl Nielson. On August 27, 2013, you sold the property commonly known as 496 W. 200 S., Preston, Idaho 83263 ("Property") and more specifically described in that certain warranty deed recorded in the records of Franklin County, Idaho as Instrument No. 259382 ("Deed"). The Deed states that you were the owners in fee simple of the Property and that you would "warrant and defend the same from all claims whatsoever."

On August 11, 2014, the Nielsons received the enclosed correspondence from Lane Erickson, counsel for Robert and Michelle Talbot. The Talbots are claiming ownership of an approximately 12 foot strip of the eastern boarder of the Property. Their claim is based on boundary by agreement or, alternatively, an established fence line.

As provided for in the Deed, the Nielsons demand that you defend against any claims by the Talbots. Your prompt attention to this matter would be greatly appreciated. If you are unable to resolve this matter in the Nielsons' favor within fourteen (14) days of the date of this letter, the Nielsons will take logal action against you to enforce the terms of the Deed.

Very truly yours,

C. Edward Cather III

CEC/ims Enclosures

BOISE . POCATELLO . IDAHO FALLS

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

-

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

RESPONSE TO AMENDED MOTION FOR SUMMARY JUDGMENT

FILED

16 AUG 29 AM 11:04

FRANKLER COUATY CLERK

Case No. CV-2015-132

Judge: Naftz

Plaintiffs sued their neighbors (the Talbots) claiming they were encroaching on property they purchased from the Parkers. Plaintiffs sued the Parker Defendants seeking compensation for mold damage that was not disclosed at the time of purchase, and seeking compensation for breach of warranty of title and of the obligation to defend Plaintiffs' quiet enjoyment of the property warranted by the Parkers. Plaintiffs hereby concede the mold claims.

As to the boundary issues, Plaintiffs agree that this case is simple factually. But the

outcome is that title needs to be quieted in Plaintiffs to the property described by metes and bounds in their warranty deed. Defendant goes to great lengths to describe the factual history of this property, but in all the detail one decisive fact is clear. Until the Plaintiff appeared on the scene the owners of both parcels—to a person-- believed that the legal description in their warranty deed constituted the boundary between the properties. Not one of the Defendants' witnesses states that he or she knew that the legal description was different from the fence, or the lilacs, the grass line or the sprinkler system or the carport now built somewhere in that vicinity. Rather-- to a person-- they all state that they believed, until the dispute was raised by Cheryl Nielson, that the legal description described the boundary between the properties.

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The Talbot claim to the property must fail. Talbots put forward only one legal theory that would allow this Court to ignore the legal descriptions of these properties that were recorded years ago and renewed each time the property changed hands. They claim ownership under the doctrine of boundary by acquiescence. A key element to boundary by acquiescence is that there be a dispute and that dispute be resolved by agreement, express or implied. As the Talbots have amply proved in their moving papers, there never was a dispute. The original owners of the entire parcel from which these two properties emerged had the legal description prepared. Shaffers believed the legal description described a preexisting fence on the property. And their grantees, the Murdocks believed the same. And on it goes. Each recipient of a warranty, deed on either side of the boundary, believed that the legal description defined their boundary. None of them knew that the fence, long since abandoned, delineated a different line from their legal description.

When the Plaintiffs bought the property there was no observable boundary on the property. The fence had been removed at least 20 years earlier. What the Defendants are calling

a boundary on the ground was nothing of the sort. The lilacs planted by Dr. Cromwell, may have appeared to him to delineate a boundary line, but by the time the Plaintiffs bought the property, an ugly car port had been built and the lilacs appeared to be an attempt to hide an eyesore. As for the grass line and the sprinkler system, Defendants' testimony shows that no one believed that to be a property boundary. The sprinkler system installed by Mr. Larson extends an additional foot beyond the Cromwell's grass line that he now says he considered as the boundary line. Neighbors do not often build sprinkler systems on their neighbor's property. The short of it is, this boundary line, as least since the removal of the fence 20 year ago was never well defined. The only real sure knowledge we have of the location of the boundary line is the legal description, accepted by everyone who has ever owned the property.

RESPONSE TO DEFENDANTS' STATEMENT OF FACTS SHOWING FACTS IN DISPUTE THAT PRECLUDE SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS

4. [sic] Undisputed.

5. Undisputed.

. .

6. Undisputed.

7. Disputed. On January 17, 1985 the Shaffers sold a portion of the property to Suel Murdock and Gae Murdock. They had a legal description prepared to reflect the location of the fence that existed at that time.

8. Disputed. There is no evidence that the property described in Exhibit "J" is the property "enclosed by the fence."

9. Disputed. The Shaffers and the Murdocks believed that the legal description described the fenceline. Mr. Shaffer would not have signed the deed had he believed that

the legal description did not accurately define the boundary of the property. Affidavit of Craig Shaffer dated December 17, 2015.

10. Disputed. The Shaffers and the Murdocks believed that the legal description described the fenceline. Mr. Shaffer would not have signed the deed had he believed that the legal description did not accurately define the boundary of the property. Affidavit of Craig Shaffer dated December 17, 2015.

11. Undisputed.

. .

12. Undisputed.

13. Disputed. There is no foundation for the stated "belief" that the legal description described the fence. See, Motion to Strike the Affidavit of Dr. Phil Cromwell. Indeed, the recollection of Dr. Cromwell, and Mr. Larsen as to how the fence corresponded to the later planted and installed lilacs and shed seem to have evolved over time. Affidavit of Phil Cromwell dated 2-5-15 attached hereto as Exhibit "A", Statement of Dave Larsen attached hereto as Exhibit "B".

14. Disputed. Vince Whitehead bought the property that is now the Talbot property. He built the home that now belongs to the Talbots. At the time Vince Whitehead bought the property there was neither a fence nor lilac bushes. Affidavit of Vince Whitehead.

15. Disputed. Vince Whitehead did not take down the fence. When he bought the property the fence did not exist and he could not discern a boundary line on the ground. Affidavit of Vince Whitehead.

16. Disputed. There is no foundation for the claim that landscaping was being done up to the boundary line previously defined by a fence that was long gone by that point. See Motion to Strike Affidavits of Cromwell and Larsen.

17. Undisputed.

18. Disputed. The sprinkler system does not appear to follow any particular line. Some heads of the sprinkler system extend 9 to 10 inches further than what Defendants are now claiming is the boundary line. Second Affidavit of Cheryl Nielson with photo showing the sprinkler line.

19. Disputed. There is no foundation that there is a boundary or that the boundary is exactly where the fence had been The fence was gone when Vince Whitehead

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bought the property before any lilacs had been planted, and there was no indication of a boundary line on the ground. Affidavit of Vince Whitehead.

20. Disputed. The claim that the back of the shed coincides with where there is a boundary line lacks foundation. Mr. Cromwell and Mr. Larsen's recollection of these matters seem to have evolved over time. Affidavit of Phil Cromwell dated 2-5-15 attached hereto as Exhibit "A", Statement of Dave Larsen attached hereto as Exhibit "B". See, Motion to Strike Affidavits of Dr. Phil Cromwell and Dave Larsen, Affidavit of Vince Whitehead.

21. Disputed. The claim that what existed when the Talbots bought the property, long after the fence was gone, constituted a "boundary" is without foundation. See, Motion to Strike Affidavits of Dr. Phil Cromwell and Dave Larsen. Affidavit of Vince Whitehead. In their first statements, both Mr. Cromwell and Mr. Larsen were far less certain of there being an established boundary. Rather it appeared they simply did not care where the boundaries were. Affidavit of Phil Cromwell dated 2-5-15 attached hereto as Exhibit "A", Statement of Dave Larsen attached hereto as Exhibit "B".

22. Disputed. The claim that what existed when the Talbots bought the property, long after the fence was gone, constituted a "boundary" is without foundation. In their first statements, both Mr. Cromwell and Mr. Larsen were far less certain of there being an established boundary. Rather it appeared they simply did not care where the boundaries were. See, Motion to Strike Affidavits of Dr. Phil Cromwell and Dave Larsen, Affidavit of Vince Whitehead.

23. Disputed. The claim that the lilac bushes, planted long after the fence was gone, constituted a "boundary" is without foundation. See, Motion to Strike Affidavits of Dr. Phil Cromwell and Dave Larsen, Affidavit of Vince Whitehead. In their first statements, both Mr. Cromwell and Mr. Larsen were far less certain of there being an established boundary. Rather it appeared they simply did not care where the boundaries were. Affidavit of Phil Cromwell dated 2-5-15 attached hereto as Exhibit "A", Statement of Dave Larsen attached hereto as Exhibit "B".

24. Undisputed.

25. Disputed. Paragraph 25 is mostly legal conclusions for which there is not foundation. See Motion to Strike the Affidavits of Dr. Phil Cromwell and Dave Larsen and Robert Talbot.

26. Undisputed.

27. Except for the vituperative that the Plaintiffs became "irate", the facts in paragraph 27 are undisputed.

28. Undisputed.

29. Disputed. There is no foundation for the claim that the lilacs constituted the boundary. See, Motion to Strike Affidavits of Dr. Phil Cromwell and Dave Larsen, Affidavit of Vince Whitehead. Mr. Cromwell and Mr. Larsen's recollection of these matters seem to have evolved over time. Affidavit of Phil Cromwell dated 2-5-15attached hereto as Exhibit "A", Statement of Dave Larsen attached hereto as Exhibit "B".

30. Undisputed.

31. Disputed. There is no foundation for the claim that the lilacs, carport, and shed constituted the boundary. See, Motion to Strike Affidavits of Dr. Phil Cromwell and Dave Larsen, Affidavit of Vince Whitehead. Affidavit of Cheryl Nielson. Mr. Cromwell and Mr. Larsen's recollection of these matters seem to have evolved over time. Affidavit of Phil Cromwell dated 2-5-15 attached hereto as Exhibit "A", Statement of Dave Larsen attached hereto as Exhibit "B".

32. Disputed. There is no foundation for the claim that the lilacs, carport, and shed constituted the boundary. See, Motion to Strike Affidavits of Dr. Phil Cromwell and Dave Larsen, Affidavit of Vince Whitehead. Affidavit of Cheryl Nielson. Mr. Cromwell and Mr. Larsen's recollection of these matters seem to have evolved over time. Affidavit of Phil Cromwell dated 2-5-15 attached hereto as Exhibit "A", Statement of Dave Larsen attached hereto as Exhibit "B".

33. Disputed. The timeline does not accurately reflect the disputes of fact that exist as to the timing of some of the events such as taking down the fence and planting the lilac bushes. It is undisputed that when the shed and the carport were built the fence had been long gone and the parties who built those structures had never seen the fence. See, Motion to Strike Affidavits of Dr. Phil Cromwell and Dave Larsen, Affidavit of Vince Whitehead. Affidavit of Cheryl Nielson.

34. Disputed. It is undisputed that when the shed and the carport were built the fence had been long gone and the parties who built those structures had never seen the fence. See, Motion to Strike Affidavits of Dr. Phil Cromwell and Dave Larsen, Affidavit of Vince Whitehead. Affidavit of Cheryl Nielson. 35. The Parkers' belief based on hearsay statements from the Heaps is not admissible.

36. Plaintiffs have conceded the mold claims.

- 37. Plaintiffs have conceded the mold claims.
- 38. Plaintiffs have conceded the mold claims.
- 39. Plaintiffs have conceded the mold claims.
- 40. Plaintiffs have conceded the mold claims.
- 41. Plaintiffs have conceded the mold claims.
- 42. Plaintiffs have conceded the mold claims.
- 43. Plaintiffs have conceded the mold claims.
- 44. Plaintiffs have conceded the mold claims.

ADDITIONAL MATERIAL FACTS THAT PRECLUDE SUMMARY JUDGMENT

- Shortly after purchasing their property, the Nielsons, not seeing an established fence or other boundary, measured their property according to the legal description in the Warranty Deed they had received upon purchase of the property and discovered their Talbot neighbors had built their carport about 12.5 feet onto the Plaintiff's property. Affidavit of Glen Nielson. (12.5 feet by Talbot's calculation) See, letter from Franklin County Assessor Jase Cundick to Talbots attached as Exhibit "C".
- 2. The Talbots' carport is about 12.5 feet from where the Warranty Deeds to both the Talbot property and the Nielson property say the boundary between the properties is located. See paragraph 1.
- 3. When the Plaintiffs purchased the property they did not know that the carport

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Attorneys for Plaintiffs

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

Т

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	MOTION TO STRIKE AFFIDAVIT OF DR. PHIL CROMWELL
V.	
ROBERT TALBOT and MICHELE TALBOT, husband and wife,	Case No. CV-2015-132
and	Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

An affidavit used to support or oppose a motion must be made on personal knowledge,

set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. Rule 56(c)(4). Affidavits supporting or opposing a motion for summary judgment shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. *Gem*

State Ins. Co. v. Hutchinson, 175 P. 3d 172 (Id. 2007); Carnell v. Barker Mgmt., Inc., 137 Idaho 322, 327, 48 P.3d 651, 656 (2002) (citations omitted).

A party may object that the material cited to support or dispute a fact is not admissible in evidence at the hearing. Rule 56(c)(2). The admissibility of the evidence contained in affidavits and depositions in support of or in opposition to a motion for summary judgment is a threshold question to be answered before applying the liberal construction and reasonable inferences rule to determine whether the evidence is sufficient to create a genuine issue for trial. *Gem State Ins. Co. v. Hutchinson, 175 P. 3d 172 (Id. 2007); Carnell v. Barker Mgmt., Inc., 137 Idaho 322, 327, 48 P.3d 651, 656 (2002).*

In paragraph 3, Mr. Cromwell makes a legal conclusion that the fence that divided his property from the pasture ground "created a boundary." This statement is made without foundation. Foundation is a simple proposition. Before you can tell me a fact, you must first tell me how you know that fact. *Gem State Ins. Co. v. Hutchinson, 175 P. 3d 172 (Id. 2007)* Rule 56(e) makes this foundation requirement applicable to affidavits. Each affidavit must "affirmatively show" that the affiant has personal knowledge of the facts to which he attests. Mr. Cromwell fails to tell us how he concluded that the fence "created a boundary." His statement is without foundation.

In paragraph 4 he tells us that he and his wife believed the legal description in their deed "reflected the fenceline as the boundary line. . ." But again he fails to give us the foundation for why he and his wife believed that to be the case.

Paragraph 19 contains an improper legal conclusion. Mr. Cromwell states "every neighbor we had that lived on the Talbot property, including the Talbots, agreed to the boundary line through their maintenance of the boundary line."

DATED this 28th day of August, 2016.

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Atkin Law Offices

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Blake S. Atkin Attorneys for the Plaintiffs

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 AUG 29 AM 11: 04 FRANKLIN COUNTY CLERK

Attorneys for Plaintiffs

Ξ,

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

Т

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	MOTION TO STRIKE AFFIDAVIT OF DAVE LARSEN
V.	
ROBERT TALBOT and MICHELE TALBOT, husband and wife,	Case No. CV-2015-132
and	Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

An affidavit used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. Rule 56(c)(4). Affidavits supporting or opposing a motion for summary judgment shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. *Gem* State Ins. Co. v. Hutchinson, 175 P. 3d 172 (Id. 2007); Carnell v. Barker Mgmt., Inc., 137 Idaho 322, 327, 48 P.3d 651, 656 (2002) (citations omitted).

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A party may object that the material cited to support or dispute a fact is not admissible in evidence at the hearing. Rule 56(c)(2). The admissibility of the evidence contained in affidavits and depositions in support of or in opposition to a motion for summary judgment is a threshold question to be answered before applying the liberal construction and reasonable inferences rule to determine whether the evidence is sufficient to create a genuine issue for trial. *Gem State Ins. Co. v. Hutchinson, 175 P. 3d 172 (Id. 2007); Carnell v. Barker Mgmt., Inc., 137 Idaho 322, 327, 48 P.3d 651, 656 (2002).*

The affidavit of Dave Larsen lacks foundation. Foundation is a simple concept. Before a witness can testify about a fact, he needs to demonstrate how he knows that fact. Rule 56(e) specifically requires an affiant to "affirmatively show" that he has personal knowledge of the facts to which he is testifying. *Gem State Ins. Co. v. Hutchinson, 175 P. 3d 172 (Id. 2007)* Rather than meet this burden, Mr. Larsen instead demonstrates that he does not have personal knowledge of the only salient fact in his affidavit--the location of the boundary line between the properties.

The parties whose transaction divided the property, the Shaffers and the Murdocks have submitted affidavits stating that there was a fence at the time they divided the property, and they both believed that the legal description they put in the deed delineated that fence line. Tellingly, their affidavits do not ever say that they have since discovered that they were wrong. Based on the affidavits of Craig Shaffer and Gae Murdock, the trier of fact would have to conclude that the legal description did in fact delineate the fence. Mr. Larsen also states that it was his belief that the legal description in his deed "reflected the boundary line" between the properties. Paragraph 4.

Before Mr. Larsen obtained the property, the fence had been removed. Phil Cromwell testified that a year before the property was sold to the Larsens the fence was removed by Vince Whitehead. Affidavit of Dr. Phil Cromwell at paragraph 8. See, also, Affidavit of Vince Whitehead. Mr. Larsen nowhere in his affidavit refers to the fence that the Shaffers and Murdocks believe was described by the legal description.

Without having observed the fence, Mr. Larsen is merely speculating that the lilac bushes, or the grass delineated the property line. Indeed, common experience suggests that plants seldom reach all the way to the fence or other boundary. Whatever knowledge Mr. Larsen had about the location of the actual boundary on the ground is based on his speculation that the lilacs or the grass came all the way to where the fence once was. Or worse yet, his understanding would necessarily be based on hearsay which finds no proper place in an affidavit. Rule 801, Idaho Rules of Evidence; Charboneau v. State, 102 P.3d 1108 (Id. 2004). His conclusions about the boundary are therefore without foundation and must be stricken.

For instance in paragraph 5, Mr. Larsen states "a clear boundary line existed because of Mr. Cromwell's bushes, groomed grass and yard that he had maintained . . ." There is nothing but speculation on Mr. Larsen's part that would connect this "clear boundary line" to the fence referenced by the Shaffers.

Paragraph 6 shows the less than solid grasp Mr. Larsen had on this supposed "clear boundary line." Mr. Larsen states that he installed the sprinkler system and grass "up to the boundary line." Mr. Cromwell testifies in a similar manner. Cromwell affidavit at 10. "Mr. Larsen did exactly what he said he would and installed a sprinkler system and grass up to the boundary line . . . But the sprinkler system extends onto the grass that Mr. Cromwell planted by about another foot! Obviously, the boundary was not a "clear boundary line."

Paragraph 7. "The boundary line between our property and the Cromwell's property was always exactly where it had been from the beginning." Without having seen the fence he cannot make such an unfounded conclusion.

Again in paragraph 8, Mr. Larsen alleges "I also built a shed on the back corner of our yard. The shed was built so that the back side of it was on the boundary line." Again, without having seen the fence, Mr. Larsen cannot testify that the shed was built so that the back side of it was on the boundary line.

Finally, his ultimate conclusion in paragraph 10 in reference to "the boundary line" is without foundation because he never observed the fence and has no basis to conclude that the fence was not on the boundary line described in his deed as he always believed it was.

DATED this 28th day of August, 2016.

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Blake S. Atkin Attorneys for the Plaintiffs

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Attorneys for Plaintiffs

FILED 16 AUG 29 AMII: 04 FRANKLIN SUUNTY CLERK DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

CERTIFICATE OF SERVICE

Case No. CV-2015-132

Judge: Naftz

The undersigned certifies that she caused to be served a true and correct copy of the

following documents as indicated below:

- 1. Motion to Strike Affidavit of Dave Larsen
- 2. Motion to Strike Affidavit of Dr. Phil Cromwell
- 3. Second Affidavit of Cheryl Nielson
- 4. Response to Amended Motion for Summary Judgment

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net

Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290

Franklin County Court

39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 X U.S. Mail X E-mail _____ Facsimile

____ U.S. Mail ____ E-mail X Facsimile

____U.S. Mail ____ E-mail X Facsimile

Dated this 28th day of August, 2016.

Gennifer Mariscal

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Attorneys for Plaintiffs

FILED 16 AUG 29 AM 11:05 FRANKLIN OCUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

SECOND AFFIDAVIT OF CHERYL NIELSON

Case No. CV-2015-132

Judge: Naftz

I am familiar with the Talbot's sprinkler system. Some of the sprinkler heads for that sprinkler system extend even further onto my property than the supposed line between the carport and the shed. See, photo, Exhibit A. It appears obvious that whoever installed that sprinkler system did not have a clear understanding of where the property line was.

Dated this day of August, 2016.

hem E Hielsm rylNielson

SUBSCRIBED AND SWORN before me this 26^{th} day of August, 2016.

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JENNIFER MARISCAL Notary Public State of Idaho

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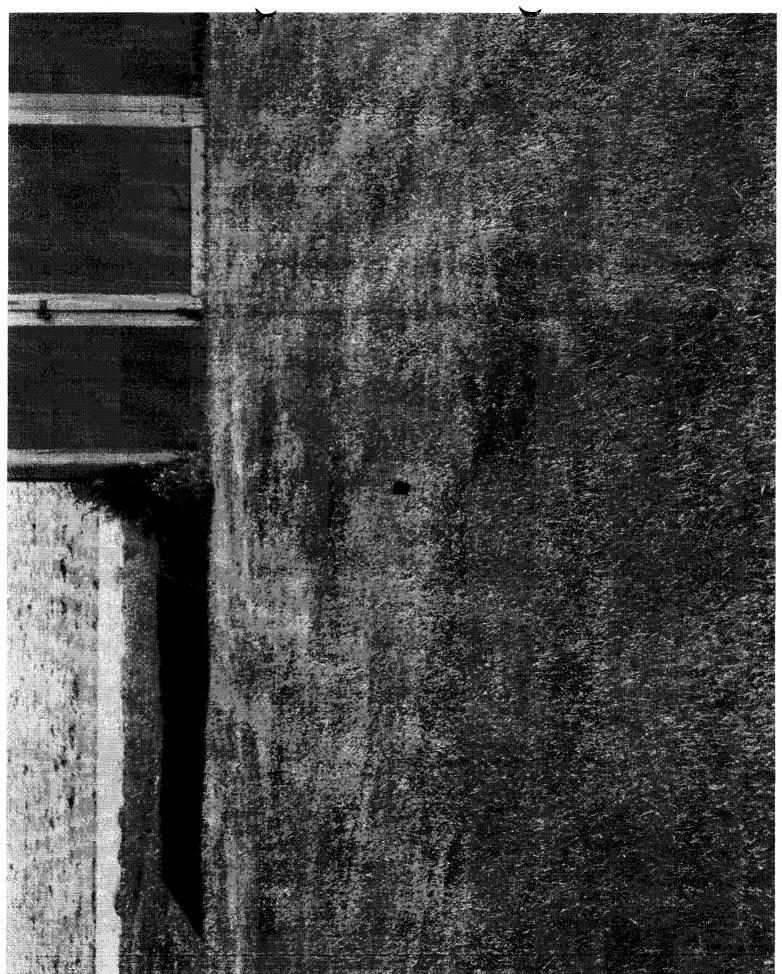
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Exhibit A



Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

FILED 16 AUG 31 AM 10: 12 FRANKLING YUNTY CLERK

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife

Defendants/Counterclaimants.

Case No. CV-2015-00132

RESPONSE MEMORANDUM IN OPPOSITION TO PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, and the Defendants PARKER and SAUNDRA PARKER, husband and wife (hereafter "Defendants"), by and through counsel, and hereby submits this Response Memorandum in Opposition to Plaintiff's Cross Motion for Summary Judgment.

RELIEF SOUGHT BY DEFENDANTS

Pursuant to the undisputed facts in the present case, only Plaintiff GLEN WAYNE NIELSON (hereafter Plaintiff) received the deed transferring the Nielson property from Defendants Parker. The undisputed facts in the present case also evidence that the boundary line between the Nielson property and the Talbot property is established as a matter of law. By being so established, any of Plaintiff's claims for breach of warranty or duty to defend must be dismissed. For these reasons, Plaintiff's Cross Motion for Summary Judgment should be denied, the present litigation, should be dismissed entirely, and an award of attorney fees and costs should be granted in favor of all the Defendants.

FACTUAL ALLEGATIONS

The undisputed facts and the record before the Court is established by previous filings on the record including the affidavits filed by the Defendants. The Defendants incorporate all such facts, affidavits, and the entire record before the Court, into this Response Memorandum in Opposition to Plaintiff's Cross-Motion for Summary Judgment, as if set forth fully. Additional facts that are relevant are as follows:

1. Plaintiff quotes from the Deposition of Sandra Parker, pages 10 - 13, with a discussion of the legal description on the Warranty Deed Defendants Parker gave to Plaintiff. However, Plaintiff fails to finish and direct the Court to additional testimony from Ms. Parker concerning the boundary line of the property between the Nielson Property and the Talbot Property.

2. Ms. Parker explained to Plaintiff's counsel several times, in answer to his

questions, that the boundary line was clearly marked by the lilacs, trees, carport, and shed when the Plaintiff purchased the property and that they all thought the legal description matched the physical boundary line. (See Second Erickson Affidavit, Exhibit "6", Sandra Parker Deposition pages 14-18; 22-23; 35-36; 39-42; 46-47.)

ARGUMENT

I. STANDARD FOR SUMMARY JUDGMENT

Summary Judgment is appropriate, according to the Idaho Supreme Court, *only* when "... the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any *material fact* and that the moving party is entitled to Judgment *as a matter of law.*" *State v. Rubbermaid*, 129 Idaho 353 (1996) citing to *McCoy v. Lions*, 120 Idaho 765, 769 (1991) (italics added). The non-moving party is entitled to have all the facts and all inferences thereto construed in a light most favorable to its position and against the moving party. *Bonz v. Sudweeks*, 119 Idaho 539, 808 P.2d 876 (1991).

The facts of the present case are not in dispute and are really quite simple as set forth by the Defendants in their Motion for Summary Judgment, and accompanying affidavits, on record before the Court. The Talbot Property and the Nielson Property were originally one parcel of property that was divided up by the owners Craig and Sue Shaffer, when the Talbot Property was sold to the Murdocks. The Talbot Property was enclosed by a standing fence. The Shaffers and the Murdocks agreed that the boundary line between the Talbot Property and the Nielson Property would be the existing fence. A deed was drafted based upon the belief of the Shaffers and the Murdocks that the legal description in the deed accurately described their agreed upon boundary line represented by the fence. Over several decades the Talbot Property and the Nielson Property were sold to other groups of individuals all using the same legal descriptions. During this time there was always either the original fence or other items that replaced the fence such as lilacs, shrubs, grass, yards, sprinkler systems, a shed and a driveway and carport, that acted as the original boundary between the Talbot Property and the Nielson Property.

When the Nielsons purchased the Nielson property they checked the legal description and learned that the Talbot Property actually encroached upon the legal description of property they had on their deed. As a result, the Nielsons ripped out all of the lilacs, shrubs and plants and then demanded that the Talbots move their shed, sprinkler system, driveway and carport to give them the land the legal description on their deed stated they owned. The Talbots refused stating that the agreement by the previous parties established the boundary line between the Talbot Property and the Nielson Property to be where the parties had always stated it was based upon the fenceline, lilacs, shrubs, grass, yards, sprinkler systems and structures. The law in Idaho supports the Talbots in this statement.

Concerning the Parkers, because the boundary line is established as set forth above, no claim for Breach of Warranty of Title can stand. The legal descriptions in all deeds associated with the Talbot property and the Nielson property are replaced by the intentions of the parties as evidence by decades of agreement concerning the boundary line first established by the fence.

For these reasons, Plaintiff's Cross Motion for Summary Judgment should be denied. Further, an award of attorney fees and costs should be made in favor of the Defendants0.

II. PLAINTIFF'S CROSS MOTION IS UNTIMELY AND SHOULD BE DENIED

Plaintiff's Cross Motion for Summary Judgment was not filed 28 days before the hearing and should therefore be denied. In Idaho, a motion for summary judgment and all supporting documents, "must be served at least 28 days before the date of the hearing." I.R.C.P. Rule 56(a)(2). It is true that the "court may alter or shorten the time periods and requirements. . ." of this rule. I.R.C.P. Rule 56(a)(3). "[H]owever, the time limitations set forth in Rule 56 still apply unless the court shortens the time for *good cause shown.*" *Sun Valley Potatoes v. Rosholt*, 133 Idaho 1, 6, 981 P.2d 236, 241, 1999 Ida. LEXIS 59, *14 (Idaho 1999). Typically this requires the party to show that there is a good reason for not complying with the time limitations set forth in Rule 56. *Id*.

In the present case, the record evidences that the Court entered its Amended Scheduling Order on March 15, 2016. Section 4 of this Amended Scheduling Order requires the parties to schedule and complete all hearings on motions for summary judgment 90 days prior to trial. Trial is scheduled to begin on November 15th, making the 90-day deadline August 17th. On July 19, 2016, the parties entered into a Stipulation that was approved by the Court, providing an additional month for the deadline for a hearing on any of the parties' motion for summary judgment. The deadline for any such hearing became Monday, September 12, 2016. Additionally, on July 19, 2016, Defendants actually filed a Notice of Hearing for its Motion for Summary Judgment scheduling the hearing for Monday, September 12, at 2:00 pm.

Defendants then filed and served their Motion for Summary Judgment and all supporting documents, including an additional Notice of Hearing, on Friday, August 12, 2016. The Court entered these items on the record on Monday, August 15, 2016 which is exactly 28 days before the summary judgment hearing scheduled, as required by the above cited rules.

Plaintiff filed and served its Cross Motion for Summary Judgment on Wednesday, August 18, 2016. This is less than the 28 days required by the rules. Plaintiff has made no motion to the Court pursuant to I.R.C.P. Rule 56(a)(3) to alter or shorten the 28-day requirement for filing a summary judgment motion. Further, Plaintiff has provided nothing to the Court to seek or to satisfy the "good cause shown" requirement of I.R.C.P. Rule 56(a)(3).

The Plaintiff cannot just ignore the requirements of I.R.C.P. Rule 56, particularly when this rule contains the mandatory language, "the motion, supporting documents and brief *must* be served as least 28 days before the date of the hearing." See I.R.C.P. Rule 56(a)(2)(italics added).

Plaintiff cannot claim that they were unaware of the date because all the parties entered into a Stipulation to change the date. Further, on July 19, 2016, the same day the Stipulation was filed, the Defendants also filed and served a Notice of Hearing setting the date of the summary judgment hearing to be September 12, 2016. Additionally, the Defendants filed and served another Notice of Hearing on August 12, 2016, when they filed their Motion for Summary Judgment in this case.

The Plaintiff's cross motion for summary judgment is not timely. No effort has been made by the Plaintiff to correct this with the Court. Based upon this, and pursuant to I.R.C.P. Rule 56(a)(2) and (3), Plaintiff's cross motion should be denied, and the Defendants should be awarded their attorney fees and costs associated with defendant said cross motion. Defendants respectfully request that the Court deny Plaintiff's cross motion and enter an award in favor of Defendants for all their attorney fees and costs associated with said cross motion.

III. PLAINTIFF'S BREACH OF WARRANTY AND/OR DUTY TO DEFEND CLAIMS MUST FAIL

The boundary line between the Talbot Property and the Nielson Property is established in favor of the Defendant Talbots. According to the Idaho Supreme Court, "the fundamental principle underlying all of the rules of construction of deeds, as well as all other contractual instruments, is that the courts must seek and give effect to the *intention* of the parties." *Campbell v. Weisbrod*, 73 Idaho 82, 89, 245 P.2d 1052, 1057 (1952)(italics added). The general rule is that *monuments, natural or artificial, or lines marked on the ground,* control over calls for courses and distances. *Id.* (italics added).

The facts in the present case are similar to those of Campbell. In Campbell, the legal description in a deed for property that was divided up did not accurately reflect the agreement between the parties of where the boundary line between the divided properties would be. Subsequent litigation ensued with one party claiming the legal description controlled the boundary line and the other party arguing that the agreement between them controlled. In analyzing the facts the Idaho Supreme Court determined that there was no dispute that a line was agreed upon and marked on the ground between the parties.

The Idaho Supreme Court held, "the particular rule applicable here is that where the seller and the buyer go upon the land and there agree upon and mark the boundary between the part to be conveyed and the part to be retained by the seller, *the line thus fixed controls the courses and distances set out in the deed.*" *Campbell*, 73 Idaho at 89, 245 P.2d at 1057.

In a subsequent case, the Idaho Supreme Court declared that an agreed upon boundary established under the *Campbell* ruling, "would also be binding upon a successor in interest of the seller, who purchased with notice of the agreement." *Paurley v. Harris*, 75 Idaho 112, 117, 268

P.2d 351, 353 (1954). In defining what actually provides notice of the agreement to successors of the seller the Idaho Supreme Court specifically stated,

The boundary, which defendants claim, was clearly marked by a 'tight board fence,' four or five feet in height, and the area on defendants' side of the fence was planted to lawn, shrubbery and trees. This would constitute notice to an intending purchaser, of defendants' possession. One buying property in the possession of a third party is put on notice of any claim of title or right of possession by such third party, which a reasonable investigation would reveal.

Reid v. Duzet, 140 Idaho 389, 393 94 P.3d 694, 698 (2004).

The facts in the present case are set forth and argued in Defendants Memorandum on record before the Court. Defendants incorporate the facts and arguments set forth therein. However it is important to note that in its cross motion for summary judgment the Plaintiff attempts to carve out a small amount of testimony from Defendant Sandra Parker's deposition in support of their claim for breach of warranty and/or duty to defend. What Plaintiff failed to do was provide to the Court with all of Ms. Parker's testimony concerning the boundary line issue. Ms. Parker explained to Plaintiff's counsel several times, in answer to his questions, that the boundary line was clearly marked by the lilacs, trees, carport, and shed when the Plaintiff purchased the property and that they all thought the legal description matched the physical boundary line. (See Second Erickson Affidavit, Exhibit "6", Sandra Parker Deposition pages 14-18; 22-23; 35-36; 39-42; 46-47.)

By way of additional argument, based on the law set forth above, all of the deeds attached to Plaintiff's original complaint against the Talbots, were altered and changed by the above law, so that the legal descriptions would conform to the actual physical boundary established by the fence and then later by all the other items listed which established the agreed upon boundary line. Plaintiff claims that his breach of warranty and/or duty to defend claims are established by the warranty deed given by Defendant Parkers to him. Plaintiff argues that the legal description as written controls and that Defendant Parkers must now defend the deed provided. This argument ignores the straight forward laws set forth above. Once the fence established the legal boundary line between the original owners, the legal description was altered *by law* to conform to the actual physical boundary line. This conforming legal description is imputed into and replaces the legal description set forth in all subsequent deeds given to successors in interest dealing with the Nielson property and the Talbot property. This includes the Plaintiffs.

Plaintiff argues that if he loses the boundary line dispute with the Defendant Talbots, his breach of warranty and/or duty to defend claims will still require Defendant Parkers to pay for the costs of litigation involving the boundary line dispute. This argument is without merit because it ignores the above cited law. The applicable law (set forth above) and the facts in this case (see affidavits on record before the Court) all establish the boundary line to be where it is now, and where it has been from the beginning down through the decades. The above-cited law overrides Plaintiff's warranty deed, because the legal description must conform to the actual physical boundary. Essentially, because there is no boundary line dispute, there can be no breach of warranty and/or of the duty to defend.

Additionally, Plaintiff cannot claim a warranty right to obtain defense costs and fees from Defendants Parker when the Plaintiff, as a successor in interest, "purchased with notice of the agreement" concerning the established boundary line. If Plaintiff chose to bring his lawsuits against all of the Defendants, he did so after he had "purchased with notice of the agreement". By doing so, Plaintiff undertook this litigation at his own risk and he is responsible for his own attorney fees and costs. Based upon the applicable facts and law, there is no breach of warranty and/or duty to defend claim that can exist. The law altered all of the legal descriptions in all of the deeds of all successors in interest dealing with the properties at issue to conform to the actual physical boundary that has existed between the properties for decades. For this reason, Plaintiff cannot claim that breach of warranty and/or duty to defend occurred. Nor can Plaintiff claim that Defendants Parker are required to pay his attorney fees and litigation costs in this matter. The Court should deny Plaintiff's cross motion for summary judgment and should enter an award for attorney fees in favor of the Defendants.

III. LITIGATION COSTS AND ATTORNEY FEES

In addition to denying Plaintiff's cross motion for summary judgment, as prayed for above, the Defendants should also be granted a Judgment from the Court awarding them their reasonable attorney fees and litigation costs in defending and prosecuting this case. Idaho Code § 12-120(1) and (3) specifically gives the Court the authority to award both Defendant Talbots and Defendant Parkers their attorney fees and costs. The Defendants respectfully request the Court to enter a judgment granting to them their reasonable attorney fees and costs in this matter.

CONCLUSION

For these reasons set forth above, the Defendants respectfully request an Order from the Court denying Plaintiff's cross motion for summary judgment, dismissing Plaintiff's claims and awarding all associated litigation costs and attorney fees in their favor. DATED this $\frac{29}{29}$ day of August, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

> Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228

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- Overnight Mail
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on this 29 day of August, 2016.

ERICKSON

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

٧.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

MOTION FOR RELIEF FROM LATE FILING OF CROSS MOTION FOR SUMMARY JUDGMENT

Case No. CV-2015-132

Judge: Naftz

Plaintiffs' counsel respectfully requests relief from his error in filing Plaintiffs' cross motion for summary judgment 3 days late. The grounds for this relief are set out in Plaintiffs' Reply in Support of Plaintiffs' Cross Motion for Summary Judgment.

DATED this 2nd day of September, 2016.

Atkin Law Offices

Blake S. Atkin Attorneys for the Plaintiffs

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

٧.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

PLAINTIFFS' REPLY IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT

Case No. CV-2015-132

Judge: Naftz

PLAINTIFFS OBJECT TO DEFENDANTS' ATTEMPT TO REFORM THE DEEDS SINCE SUCH A THEORY HAS NEVER BEEN PLEADED.

The thrust of the Parker Defendants' response to Plaintiffs' motion for summary

judgment is that the Parkers need not live up to the warranty they made in their deed to Plaintiff

because they mistakenly thought the legal description contained in their deed coincided with the

lilacs, the shed and the carport.

Ms. Parker explained to Plaintiffs' counsel several times, in answer to his questions, that the boundary line was clearly marked by the lilacs, trees, carport, and shed when the Plaintiff purchased the property and that they all thought the legal description matched the physical boundary line.

By way of additional argument, based on the law set forth above, all of the deeds attached to Plaintiffs' original complaint against the Talbots, were altered and changed by the above law, so that the legal descriptions would conform to the actual physical boundary established by the fence and then later by all the other items listed which established the agreed upon boundary line." Defendants' response at 8.

There are two problems with this argument. First, good faith or a genuine belief that one owns the property warranted is no defense to a breach of warranty claim. A plaintiff does not need to prove fault or knowledge in order to establish breach of warranty. That is the whole point, the defendant "warrants" that she is the owner of the property so conveyed. *Koelker v. Turnbull, 899 P.2d 972* (ID 1995). The second problem with this argument is that it assumes that this altering of the legal descriptions can happen, automatically, as a matter of law, without any effort on the part of the parties to have the deeds reformed. That is not the legal descriptions in a deed, none of those theories are automatic, but require pleading and proof. At this late date, Defendants appear to be arguing that the deeds should be reformed because of a mutual mistake of the parties. That is a theory of law that has never been raised before and cannot, in fairness, be raised now after this case has been litigated for over a year, discovery is complete and the issue has not been raised before. *Morrissey v. Haley*, 865 P.2d 961 (1993). It would create unfair prejudice to the Plaintiffs to allow Defendants to raise this issue at this late date.

PLAINTIFF DID NOT HAVE NOTICE OF THE ALLEGED BOUNDARY BY ACQUIESENCE BECAUSE THE FENCE THAT WAS THE PILLAR OF THIS ALLEGED BOUNDARY HAD BEEN GONE FOR DECADES AND WAS NOT REPLACED BY ANYTHING THAT APPEARED TO BE A BOUNDARY LINE.

In response to Defendants' motion for summary judgment, Plaintiffs have pointed out that what they were confronted with at the time they purchased the property did not appear to be a boundary line. A subsequent purchaser who purchases after the fence that formed the basis of the alleged boundary by acquiescence cannot be bound by that agreement even if the fence were to have been located in a different location than the legal description, which is not at all certain. See, Plaintiff's response to Defendants' amended motion for summary judgment.

DEFENDANTS ARE NOT ENTITLED TO ATTORNEY FEES

Defendants do not explain how Idaho Code Section 12-120(1) applies where no amount was pleaded because the liability amount necessarily depends upon calculating the costs of the action between the Plaintiffs and the Talbots before the amount the Parkers owe can be determined. Idaho Code Section 12-120(3) provides for attorney fees to the prevailing party in certain circumstances. Unfortunately it would not appear to apply to this case.

(3) In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

Plaintiffs have had no dealings with the Talbots at all. As concerns the Parkers, this case does not involve an open account, account stated, note, bill, negotiable instrument, guaranty or contract relating to the purchase or sale of goods, wares, merchandise, or services. Nor does the catch all "commercial transaction" apply since this was the purchase and sale of a home for household, family purposes and not a commercial transaction.

PLAINTIFFS' COUNSEL REQUESTS RELIEF FROM HIS ERROR IN THE LATE FILING OF THE CROSS MOTION FOR SUMMARY JUDGMENT.

Plaintiffs' cross motion for summary judgment was filed 3 day late. As the Court knows, motions for summary judgment were originally due July 20, 2016. Defendants' counsel requested an extension of time to file his motions for summary judgment. Plaintiffs' counsel agreed. It was also agreed that Plaintiff would file a cross motion for summary judgment to be heard at the same hearing. By way of explanation, while recognizing that it is a flimsy excuse, Plaintiffs' counsel mistakenly assumed that the regular rule that the memorandum in support of the motion needed to be filed 14 days before the hearing applied. (see Rule 7, Idaho Rules of Civil Procedure). That mistake is purely the fault of counsel, who seeks leave of the Court to be relieved of that error.

It would appear that the Court could relieve counsel of the consequences of his error, because the Court has the power to grant the relief requested in the cross motion for summary judgment even if the motion had not been filed. In *Harwood v. Talbert*, 39 P.3d 612 (Id. 2001) our Supreme Court explained:

This Court has determined "[s]ummary judgment may be rendered for any party, not just the moving party, on any or all the causes of action involved, under the rule of civil procedure" thus allowing trial courts flexibility in determining the form of relief granted in summary judgment orders. *Brummett v. Ediger*, 106 Idaho 724, 726, 682 P.2d 1271, 1273 (1984) (citing I.R.C.P. 56(a), (b), (c), (d)).

The district court may grant summary judgment to a non-moving party even if the party has not filed its own motion with the court. A motion for summary judgment allows the court to rule on the issues placed before it as a matter of law; the moving party runs the risk that the court will find against it, as in this case.

Further, the issues of both fact and law are all overlapping between the Defendants' motions for summary judgment and Plaintiffs' cross motion for summary judgment. Indeed, at several places in their response brief, Defendants incorporate by reference the facts and arguments made in their motion for summary judgment. While counsel apologizes for the error and the lateness of his filing the cross motion for summary judgment, it appears that there is not \smile

prejudice and the Court would have discretion to relieve counsel of the consequences of his error.

DATED this 2nd day of September, 2016.

Atkin Law Offices

Jake Sta

Blake S. Atkin Attorneys for the Plaintiffs

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

CERTIFICATE OF SERVICE

Case No. CV-2015-132

Judge: Naftz

The undersigned certifies that she caused to be served a true and correct copy of the

following documents as indicated below:

- 1. Motion for Relief from Late Filing of Cross Motion for Summary Judgment
- 2. Plaintiffs' Reply in Support of Cross Motion for Summary Judgment

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X U.S. Mail X E-mail ____ Facsimile

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net

Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290

Franklin County Court

39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926

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Dated this 2nd day of September, 2016.

Gemüßer Mariscal

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Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

7

ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife

Defendants/Counterclaimants.

Case No. CV-2015-00132

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, and the Defendants PARKER and SAUNDRA PARKER, husband and wife (hereafter "Defendants"), by and through counsel, and hereby submits this Reply Memorandum in Support of its Amended Motion for Summary Judgment.

ARGUMENT

I. STANDARD FOR SUMMARY JUDGMENT

Summary Judgment is appropriate when "... the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to Judgment as a matter of law." *State v. Rubbermaid*, 129 Idaho 353 (1996) citing to McCoy v. Lions, 120 Idaho 765, 769 (1991).

Once the moving party establishes the absence of a genuine issue, the burden shifts to the nonmoving party to make a showing of the existence of a genuine issue of material fact on the elements challenged by the moving party. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994). It is well settled in Idaho that in order to create a genuine issue of material fact, the party opposing the motion must present more than just a conclusory assertion that an issue of material fact exists. *Coghlan*, 987 P.2d at 312-13, *Van Velson Corp. v. Westwood Mall Assoc.*, 126 Idaho 401, 406, 884 P.2d 414, 419, (1994). "Rather, the [opposing party] must respond to the summary judgment motion with specific facts showing that there is a genuine issue for trial." *Coghlan*, 987 P.2d at 312-13; *Tuttle v. Sudenga Indus., Inc.*, 125 Idaho 145, 150, 868 P.2d 473, 478 (1994).

In the present case, the Plaintiffs rely upon the Affidavit of Vince Whitehead in an effort to create an issue of fact to preclude summary judgment. However, Defendants also spoke with Mr. Whitehead, who provided a contrary affidavit to the Defendants concerning the critical facts in this case: whether the fence and the lilacs existed on the boundary line between the properties at the time Mr. Whitehead purchased and owned the Talbot Property. In his contrary Affidavit, Mr. Whitehead testifies that he honestly does not remember whether there was a fence or lilacs on the boundary line between his property and the Cromwell's property. He testifies that he told this to Plaintiffs' counsel but the affidavit presented by the Plaintiffs does not state this.

Mr. Whitehead's affidavits, when taken as a whole, do not create a genuine issue of fact necessary to preclude summary judgment in the present case because they do not state with certainty about the issues concerning the boundary line. Rather, Mr. Whitehead's affidavits conflict with each other, and cannot be the basis of creating a genuine issue of fact. In contrast, the Shafer, Murdock, Cromwell, Larsen, Robert Talbot Affidavits and depositions of Defendants Parkers, all speak with certainty about the facts concerning the boundary line between the Nielson Property and the Talbot Property. These facts are that the boundary line was established by the fence and by the lilacs, grass, yards, sprinklers, carport, driveway, and shed that existed in the same place both during and after the fence was removed. For these reasons, there are no genuine issues of fact and summary judgment should be entered in favor of the Defendants.

II. BOUNDARY LINE ESTABLISHED BY APPLICABLE LAW

The boundary line between the Talbot Property and the Nielson Property is established in favor of the Talbots. The Defendants incorporate the undisputed facts and law set forth previously which are on the record before the Court.

To dispute summary judgment, or in an attempt to create an issue of fact, the Plaintiffs rely on the original Affidavit of Vincent Whitehead which states that there was no fence or lilacs when he purchased the property. However, Defendants have now placed on the record before the Court a contrary Affidavit from Mr. Whitehead wherein he testifies that he really does not remember whether or not there was a fence and lilacs when he bought the Talbot Property. (See Affidavit of Vincent L. Whitehead.) Thus, his previous testimony cannot be relied upon to create a genuine issue of fact.

The only other facts the Court has on the record concerning the boundary line are those in the Affidavits of Craig Shafer, Gae Murdock, Phil Cromwell, Dave Larsen, Michele Talbot and Robert Talbot, and in the depositions of Defendants Parkers. The Plaintiffs attempt to strike the Cromwell and Larsen Affidavits but their arguments are without merit. (See Defendants Opposition to Plaintiff's Motion to Strike.)

All of these affidavits and depositions on record before the Court establish the facts necessary to support an award of summary judgment in favor of the Defendants concerning the boundary line. (See Second Erickson Affidavit Exhibit "4"), These facts are:

- Mr. Shafer was the original owner of both the Talbot Property and the Nielson Property which was one parcel. (See Shaffer Affidavit.)
- The Talbot Property was enclosed by a fence and was pasture land. (See Shaffer Affidavit.)
- Shafer divided the property into 2 parcels and sold the parcel enclosed by the fence to the Murdocks. (See Shaffer and Murdock Affidavits.)
- The Shafers and the Murdocks all agreed that the property enclosed by the fence (Talbot Property) belonged to the Murdocks. (See Shaffer and Murdock Affidavits.)
- Deeds with legal descriptions were prepared but the legal descriptions did not match the agreement between the Shaffers and the Murdocks that the fenceline was the boundary line. Neither party knew that the legal descriptions did not match the agreed upon fence boundary line. (See Shaffer and Murdock Affidavits.)
- The boundary line created by the fence was maintained as the boundary line between the

Shaffers and the Murdocks the entire time they owned the Nielson Property and the Talbot Property. (See Shaffer and Murdock Affidavits.)

- Dr. Cromwell purchased the Nielson Property while the Murdocks owned the Talbot Property. The fence creating the boundary line still existed. (See Cromwell Affidavit.)
- Dr. Cromwell planted lilacs up to the fenceline when the Talbot Property was owned by the Murdocks.
- Dr. Cromwell maintained the grass, lilac bushes and yard up to the fenceline for several years before Mr. Whitehead purchased the Talbot Property. (See Cromwell Affidavit.)
- When Mr. Whitehead purchased the Talbot Property the fence still existed. (See Cromwell Affidavit.)
- When Mr. Whitehead purchased the Talbot Property, Mr. Whitehead took down the fence, but the remaining lilacs, grass and yard still marked where the fence originally was, and the boundary originally created by the fence continued to be maintained by Dr. Cromwell and all of his subsequent neighbors, including Mr. Whitehead, the Larsens and the Talbots. (See Cromwell Affidavit and Second Erickson Affidavit Exhibit "4".)
- When Mr. Larsen purchased the Talbot Property a clear boundary line existed because Cromwells' had lilac bushes, grass and yard and he had bare ground. (See Larsen Affidavit.)
- Mr. Larsen did the landscaping on his bare ground up to the boundary line. (See Larsen Affidavit.)
- Mr. Larsen installed sprinklers, grass, and even a shed up to the boundary line and this boundary line was maintained by him from the beginning of his purchasing the property and all during his ownership. (See Larsen Affidavit.)

- The Talbots purchased their property from the Larsens at a time when Dr. Cromwell still owned the Nielson Property and was their neighbor. (See Cromwell, Larsen and Robert Talbot Affidavits.)
- When the Talbots purchased their property, the boundary line was well defined and easy to see based on the lilacs, grass, yard, shed, and sprinklers. (See Robert Talbot Affidavit.)
- The Talbots talked with Dr. Cromwell, and with his agreement, built a driveway and carport up to the boundary line established by the lilacs, grass, yard, shed, and sprinklers.
 (See Cromwell and Robert Talbot Affidavits.)
- When Defendants Parkers owned the Nielson Property, the boundary line was well defined by the lilacs, grass, yard, shed, sprinklers, driveway and carport. (See depositions of Defendants Parkers.)
- When the Plaintiffs purchased from Defendants Parkers and moved onto their property, the boundary line was well defined by the lilacs, grass, yard, shed, sprinklers, driveway and carport. (See Robert Talbot Affidavit and Exhibits "1", "2", and "3".)
- An undisputed agreement exists through the years, between the original and all subsequent owners of the Nielson Property and the Talbot Property, from the beginning of its original division down to the Plaintiffs and the Defendants, due to the undisputed facts that the owners each maintaining the original boundary line through the fence, lilacs, grass, yard, shed, sprinklers, driveway and carport. (See Second Erickson Affidavit, Exhibit "4" incorporating all previously cited affidavits and depositions.)
- Notice of the undisputed agreement of the boundary line was provided pursuant to applicable law, by the original owners to all subsequent owners of the Nielson Property

and the Talbot Property, from the beginning of its original division down to the Plaintiffs and the Defendants. (See Second Erickson Affidavit, Exhibit "4" incorporating all previously cited affidavits and depositions.)

As a result of the undisputed facts listed above, which are set forth on the record before the Court and the law set forth by the Defendants in their Amended Memorandum, there are no genuine issues of fact that remain. The Court should enter summary judgment in favor of the Defendant along with an Order defining the boundary line between the Talbot Property and the Nielson Property to be exactly where all of the previous parties agreed and maintained it to be. The judgment should clearly state that the Talbots have a legal right to maintain the current location of their sprinkler system, lawn and all structures, including the driveway, carport and shed.

III. TITLE QUIETED IN FAVOR OF THE TALBOTS

By establishing the boundary line between the Talbot Property and the Nielson Property, the Court should also quiet title in favor of the Talbots so that the legal description in future deeds can accurately describe the Talbot Property and Nielson Property. Pursuant to applicable law, the Court has the authority to quiet title in favor of the Talbots concerning the boundary line to the property.

As a result of the undisputed record, the Court should award summary judgment in favor of the Defendants and enter a decree establishing a new legal description for both the Talbot Property and the Nielson Property so that future owners will have clear title and won't be required to proceed with additional litigation. The Talbots respectfully request that the Court enter such a decree in favor of the Talbots.

IV. WARRANTY OF TITLE/DUTY TO DEFEND CLAIM SHOULD BE DISMISSED

As a result of the above applicable law, and the undisputed facts in the present case, Plaintiff's Breach of Warranty of Title and/or Duty to Defend claims against the Defendants Parkers must fail. Plaintiff's Warranty Deed, and the legal description contained therein, were changed by the agreement evidenced and described above by all previous owners of the properties. For this reason, the Warranty Deed provided by Defendants Parkers, in its changed state, is accurate and cannot be the source of a claim in favor of the Plaintiffs. Summary judgment should be granted in favor of the Defendants Parkers and against the Plaintiffs on any and all of their claims of Breach of Warranty of Title or Duty to Defend.

V. CLAIMS FOR MOLD OR WATER DAMAGE SHOULD BE DISMISSED

In their Response Memorandum dated August 28, 2016, Plaintiffs concede any and all claims raised by them against Defendants Parkers for mold and/or water damage. (See Plaintiff's Response Memorandum paragraphs 35-44.) Based upon Plaintiff's conceding these claims, summary judgment should be entered in favor of Defendants Parkers on the issues of mold and/or water damage including all claims associated with the Seller's Disclosure requirements pursuant to Idaho Code §§ 55-2501 *et seq*.

V. CLAIMS FOR FRAUD SHOULD BE DISMISSED

In their Response Memorandum dated August 28, 2016, Plaintiffs concede any and all

claims raised by them against Defendants Parkers for mold or water damage which would include their claims for fraud. (See Plaintiff's Response Memorandum paragraphs 35-44.) Based upon Plaintiff's conceding these claims, summary judgment should be entered in favor of Defendants Parkers on the issue of fraud including all claims associated with the Seller's Disclosure requirements pursuant to Idaho Code §§ 55-2501 *et seq*.

VI. LITIGATION COSTS AND ATTORNEY FEES

In addition to entering an Order and Decree establishing the boundary line and quieting title in favor of the Talbots, as prayed for above, and dismissing all of the claims of the Plaintiffs against the Parkers, each of these Defendants should also be granted a Judgment from the Court awarding them their reasonable attorney fees and litigation costs in defending and prosecuting this case. Idaho Code § 12-120(1) specifically gives the Court the authority to award each of the Defendants their attorney fees and costs.

In the present case, the Plaintiff's presented the Court with a letter from the Franklin County Assessor concerning the value of the land associated with the boundary line dispute in this case. (See Plaintiff's Response to Amended Motion for Summary Judgment dated August 28, 2016, Exhibit "C".) In this letter the Franklin County Assessor states that the land in dispute has an assessed value of approximately \$129 to \$893. The value of the litigation concerning the real property between the Plaintiffs and both Defendants, by Plaintiff's own admission through Exhibit "C", is well under the \$35,000 requirement set forth in Idaho Code § 12-120(1), thus this code section is applicable and provides the Court with authority for an award of attorney fees and costs in favor of the Defendants, jointly and severally.

Further, Plaintiffs chose to bring their claims against the Defendants, including

Defendants Parkers, for mold and fraud claims under Idaho's Disclosure statues. By conceding these claims (see above), Plaintiffs are conceding that all such claims have no value. Again, pursuant to in Idaho Code § 12-120(1), Defendants Parkers are entitled to recover their attorney fees and costs from the Plaintiff.

For these reasons, and based upon the undisputed facts of this case and the applicable law, the Defendants each respectfully request the Court to enter a judgment granting to each of them their reasonable attorney fees and costs in this matter.

CONCLUSION

There are no genuine issues of material fact that exist concerning the established boundary between the Talbot Property and the Nielson Property. Title to the disputed property should be quieted in favor of the Talbots. Additionally, there are no issues of fact concerning the claims made against the Parkers. For these reasons, the Defendants are each, jointly and severally, entitled to obtain an Order, Decree and Judgment from the Court establishing the boundary to the property, quieting title to the property, dismissing Plaintiff's claims and awarding all associated litigation costs and attorney fees in their favor.

DATED this day of September, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

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Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228 [X] U. S. Mail Postage Prepaid

] Hand Delivery

] Overnight Mail

] Facsimile

on this \underline{l}^{ν} day of September, 2016.

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LANE V. ERICKSON

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Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

STATE OF IDAHO) : ss County of BANNOCK)

I, VINCENT L. WHITEHEAD, after first being duly sworn on oath, deposes and states as follows:

1. Affiant is over the age or 18; has capacity and can testify of the following based upon his own information, knowledge and/or belief after reasonable inquiry.

2. I provided an Affidavit to Blake Atkin in March 2016, which he presented to me.

3. In providing this Affidavit, I told Mr. Atkins that I do not remember the exact details about the land that I purchased from Suel and Gae Murdock.

Case No. CV-2015-00132

AFFIDAVIT OF VINCENT L. WHITEHEAD

4. Since beginning my business, I've built approximately 75 homes in the Preston and outside areas and I don't remember all of the details about these homes.

5. I honestly do not remember whether or not there was a fence or any lilacs planted on the boundary line between the property I bought from the Murdocks and the property that was owned by the Cromwells next door.

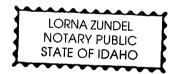
FURTHER SAITH AFFIANT NAUGHT.

~

DATED this $\underline{6^{44}}$ day of September, 2016.

By WHITHEAD

SUBSCRIBED AND SWORN TO before me on this _____ day of September, 2016.



NOTARY PUBLICAFOR IDAHO

Residing at: ______ Commission expires: _____/////2018_____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

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Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228 [X] U. S. Mail Postage Prepaid

- | Hand Delivery
-] Overnight Mail
-] Facsimile

on this <u>w</u> day of September, 2016.

LANE V. ERICKSON

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

FILED
16 SEP - 8 PH 1: 35
LA ARCEN COURTY CLERK
KQ

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

Case No. CV-2015-00132

DEFENDANT/COUNTERCLAIMANTS' RESPONSE TO PLAINTIFFS' MOTIONS TO STRIKE

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, (hereafter "Defendants"), by and through counsel, and pursuant to applicable rules hereby provides its Response to Motions to Strike filed by Plaintiffs GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife, (hereafter collectively "Plaintiffs").

PROCEDURE AND BACKGROUND

Defendants filed a motion for summary judgment with the Court. In support of its motion, Defendants filed the Affidavits of Dr. Phil Cromwell and Dave Larsen, former owners of the properties at issue in these proceedings. Plaintiff filed motions to strike these affidavits on the basis that Dr. Cromwell and Mr. Larsen failed to provide a proper foundation for the testimony contained in their affidavits. For the reasons set forth below, the motions to strike and the arguments presented by Plaintiffs are frivolous; should be denied; and should be the basis for the Court entering an award of reasonable attorney fees in favor of the Defendants and against the Plaintiffs.

ARGUMENT OPPOSING PLAINTIFF'S MOTION TO STRIKE

I. STANDARD OF REVIEW

"Summary judgment proceedings are decided on the basis of admissible evidence." *Shea v. Kevic Corp.*, 156 Idaho 540, 544, 328 P.3d 520, 524, 2014 Ida. LEXIS 176, *4-5, 2014 WL 2854710 (Idaho 2014) citing, *Campbell v. Kvamme*, 155 Idaho 692, 696, 316 P.3d 104, 108 (2013). Hence, "[t]he admissibility of evidence contained in affidavits and depositions in support of or in opposition to a motion for summary judgment is a threshold matter before applying the liberal construction and reasonable inferences rule to determine whether the evidence creates a genuine issue of material fact for trial." *Id., citing, Fragnella v. Petrovich*, 153 Idaho 266, 271, 281 P.3d 103, 108 (2012). "This Court applies an abuse of discretion standard when determining whether testimony offered in connection with a motion for summary judgment is admissible." *Id., citing, Gem State Ins. Co. v. Hutchison*, 145 Idaho 10, 15, 175 P.3d 172, 177

(2007). "A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason." *Id., citing, Fragnella*, 153 Idaho at 271, 281 P.3d at 108. Likewise, Idaho appellate courts review a district court's conclusion that evidence is supported by proper foundation under an abuse of discretion standard. *State v. Sheahan*, 139 Idaho 267, 276, 77 P.3d 956, 965, 2003 Ida. LEXIS 130, *17 (Idaho 2003).

In the present case, the Defendants filed a motion for summary judgment. In support of the legal arguments set forth in their motion, the Defendants obtained and filed in the record with the Court the Affidavit of Phil Cromwell and the Affidavit of Dave Larsen. Dr. Cromwell owned the Nielson Property for 18 years when the original fence existed and when it was removed. (See Cromwell Affidavit and Second Erickson Affidavit, Exhibit "4".) Mr. Larsen owned the Talbot Property for nearly two years and was the individual who had the home built on the Talbot Property and who completed the landscaping on the Talbot Property, which before this was nothing but pasture land or bare ground. (See Larsen Affidavit and Second Erickson Affidavit, Exhibit "4".) The Plaintiffs' motions to strike are on the basis that the affidavits do not provide a proper foundation for the testimony they contain.

Based upon the testimony contained in the Cromwell Affidavit and the Larsen Affidavit, an argument by the Plaintiffs' that the affidavits lack proper foundation, should not be brought before this Court. This argument by the Plaintiffs is not based upon any recognizable fact or law, and appears to be a violation of I.R.C.P. Rule 11(b), in that it's only purpose appears to be to needless increase the costs of litigation, and/or to harass the Defendants. The arguments by the Plaintiffs and their motions to strike, should not be considered by the Court and should be denied. Based upon the arguments set forth below, the Court is well within its discretion, as set out in the applicable standard of review above, to deny Plaintiff's Motion to Strike. Further, the Court should award Defendants their reasonable attorney fees and costs for having to respond to Plaintiffs' Motions to Strike.

II. PLAINTIFFS' ARGUMENTS FOR STRIKING THE AFFIDAVITS ARE INVALID

Plaintiffs' arguments to strike certain affidavits submitted by the Defendants on the basis of foundation are without any basis in fact or law. The purpose of the Idaho Rules of Evidence are to "secure fairness in administration, elimination of unjustifiable expense and delay, an promot[e] the development of the law of evidence, to the end that the truth may be ascertained and proceedings justly determined." I.R.E. Rule 102. Current rules of evidence provide that a witness can testify to a matter when "evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness." See I.R.E. Rule 602. *See also*, *Taft v. Jumbo Foods*, *Inc.*, 155 Idaho 511, 516, 314 P.3d 193, 198, 2013 Ida. LEXIS 315, *10, 2013 WL 6198246 (Idaho 2013).

The case of *Jumbo Foods, Inc.*, is worth noting because it involved a motion for summary judgment supported by affidavits that were challenged through a motion to strike by the opposing party. In *Jumbo Foods, Inc.*, the opposing party's motion to strike was on the basis of foundation or lack of personal knowledge. However, both the district court and then the Idaho Supreme Court on appeal both found that the affidavits contained evidence of the personal knowledge of the affiants. As a result, the motion to strike was denied, which denial was upheld by the Idaho Supreme Court.

In the present case, the Affidavits of Dr. Cromwell and Mr. Larsen are based upon their own personal knowledge, concerning the boundary between the Nielson Property and the Talbot Property, which they both saw with their *own eyes* and maintained with their *own hands*. It cannot be questioned that the testimony in the Affidavits of Dr. Cromwell and Mr. Larsen are based upon their own actions concerning the things they personal saw and did to continue to maintain the boundary line between the Nielson Property and the Talbot Property during the time that they personally owned these properties.

Plaintiffs rely upon the case of *Gem State Ins. Co. v. Hutchinson*, 145 Idaho 10, 175 P.3d 172 (2007), in support of their motions to strike the Affidavits of Dr. Cromwell and Mr. Larsen. However, this case actually supports the validity of the Affidavits of Dr. Cromwell and Mr. Larsen. Specifically, in *Gem State Ins.*, the affidavit that was challenged was that of an expert witness. It was his testimony *alone* that supported a critical fact that was presented in the case. The Court found that the expert witness had not provided foundation for his factual conclusions. In the present case, however, the Affidavits of Dr. Cromwell and Mr. Larsen, are based upon their own personal knowledge about what they personally saw and what they personally did to maintain the boundary line. This testimony is in compliance with I.R.E. Rule 602.

Additionally, the Affidavits of Dr. Cromwell and Mr. Larsen are not alone. These affidavits are joined by the Affidavits of Craig Shafer, Gae Murdock, Michele Talbot and Robert Talbot, and the depositions of the Defendants Parkers, all of which agree factually concerning the boundary between the Nielson Property and the Talbot Property. This evidence is also supported by I.R.E. Rule 602. All of the testimony, and attached Exhibits, are in compliance with I.R.E. Rule 602, and support a timeline that the boundary established between the original

owner, Mr. Shafer, and the first purchaser Ms. Murdock, was maintained by all subsequent owners of the property down to the Plaintiffs and the Defendants. (See Shafer, Murdock, Cromwell, Larsen, and Robert Talbot Affidavits and the Second Erickson Affidavit Exhibit "4".)

The testimony in the Affidavits of Dr. Cromwell and Mr. Larsen do not lack foundation. Rather, these affidavits are in full compliance with I.R.E. Rule 602 and provide all the foundation necessary concerning the testimony of Dr. Cromwell and Mr. Larsen in that they owned their properties, they personally saw with their own eyes the boundary, and they themselves personally took actions that supported and maintained that boundary. That Plaintiffs would challenge the Affidavits of Dr. Cromwell and Mr. Larsen on the evidentiary basis of "foundation" when I.R.E. Rule 602 is fully satisfied is not well taken.

Based upon I.R.E. Rule 602, and applicable case law, the Court should find that proper foundation has been provided for the testimony of Dr. Cromwell and Mr. Larsen as contained in their affidavits. The Court should deny the motions to strike by Plaintiffs.

III. ATTORNEY FEES AND COSTS

The Defendants should be awarded their attorney fees and costs in responding to Plaintiff's frivolous Motion to Strike. Rule 11 of the Idaho Rules of Civil Procedure states in part that every pleading must be signed, and by signing a pleading the attorney and/or party "certifies that to the best of the person's knowledge, information, and belief . . . it is not be presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." I.R.C.P. Rule 11(a) and (b)(1). According to these rules, when a party challenges an affidavit through a motion to strike, they are certifying to the court that they have read the affidavit and that it merits a motion to strike. A party cannot simply bring a

motion to strike because they don't like the testimony that is provided or that they want to take a shot at keeping it out of the record. Rather, there must be a reasonable argument that merits a motion to strike.

In the present case, the Affidavits of Dr. Cromwell and Mr. Larsen are well founded, are based upon their personal knowledge of the things that they themselves saw and actually did. Dr. Cromwell's and Mr. Larsen's testimony do not rely on the statements of other persons. The testimony of Dr. Cromwell and Mr. Larsen does not provide any legal conclusions or arguments. Their testimony is simply what they saw and what they did. There is nothing in the Affidavits of Dr. Cromwell and Mr. Larsen that is inadmissible.

The Plaintiff is not entitled to challenge the testimony contained in the Affidavits of Dr. Cromwell and Mr. Larsen without some reasonable rule of evidence upon which to rely. To claim a lack of foundation as a basis, when the affidavits on their face establish a foundation for the testimony provided pursuant to I.R.E. Rule 602, is a frivolous action by the Plaintiffs. Further, by filing motions to strike, Plaintiffs have forced the Defendants to respond. Defendants have incurred attorney fees and costs in doing so. Defendants are entitled to recover all attorney fees and costs associated with responding to Plaintiffs' motions to strike.

CONCLUSION

Based upon the facts and the law set forth above, Defendants respectfully request that the Court deny Plaintiffs' motions to strike. Further, Defendants respectfully request that the Court enter an award in favor of the Defendants awarding them their reasonable attorney fees and costs for having to respond to Plaintiffs' motions to dismiss. DATED this day of September, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

V. ERICKSON LANE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

> Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228

[X] U.S. Mail Postage Prepaid

] Hand Delivery

] Overnight Mail

1 Facsimile

on this $\frac{1}{2}$ day of September, 2016.

LANE V. ERICKSON

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Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net FILED 16 SEP 12 PM 1: 57 FRANKLIN COUNTY CLERK

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

vs.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants.

CASE NO. CV 15-132

NOTICE OF SERVICE OF DEFENDANT TALBOT'S ANSWERS AND RESPONSES TO PLAINTIFF'S THIRD SET OF REQUESTS FOR ADMISSIONS

PLEASE TAKE NOTICE that the undersigned, attorney for the Defendants ROBERT TALBOT and MICHELE TALBOT, husband and wife, Lane V. Erickson of Racine, Olson, Nye, Budge & Bailey, Chartered, gives notice of the delivery of "Defendant Talbot's Answers and Responses to Plaintiff's Third Set of Requests for Admissions" to the attorney for the Plaintiffs, as set forth in the Certificate of Service to Plaintiffs' attorney:

Blake S. Atkin Atkin Law Offices, P.C. 7579 North West Side Hwy Clifton, ID 83228 DATED this $\underline{\t day of September, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

Bv: ANE V. ERICKSON

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the day of June, 2014, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Charles Edward Cather III Moffatt, Thomas, Barrett, Rock & Fields, Chtd 900 Pier View Drive, Ste 206 P.O. Box 51505 Idaho Falls, ID 83402-1505 Fax: 208-522-5111 X] U. S. Mail Postage Prepaid
Hand Delivery
Overnight Mail
Facsimile
E-Mail

LANE V. ERICKSON

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net FILED 16 SEP 16 AMII: 37 ERANDER COURTY CLERK

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

CASE NO. CV 15-132

REQUEST FOR PRE-TRIAL CONFERENCE

v.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, by and through their attorney of record, Lane V. Erickson, and hereby submits this request for a Pre-Trial to be scheduled regarding the above-captioned case, pursuant to the Amended Scheduling Order dated March 15, 2016.

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DATED this 1/2 Day of September, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <u>lb</u> day of May, 2014, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 Fax: 801-533-0380 U. S. Mail Postage Prepaid
Hand Delivery
Overnight Mail
Facsimile
E-Mail

LANE V. ERICKSON

FILED

16 SEP 19 PM 4:55

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE COUNTY CLERK STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and) CHERYL E. NIELSON, husband and wife,) Plaintiffs,) Vs.) ROBERT TALBOT and MICHELLE) TALBOT, husband and wife, and PAUL) PARKER and SAUNDRA PARKER,) husband and wife,) Defendants.)

This matter came before the Court on September 12, 2016 on various motions. Blake S. Atkin appeared for and on behalf of the Plaintiffs, and Lane V. Erickson appeared for and on behalf of the Defendants. Stephanie Davis acted as court reporter.

The Court reviewed the history of this case. Mr. Erickson stated that he believed that the issues relative to mold have been conceded to by Plaintiffs. Mr. Atkin concurred.

First, the Court heard the parties' arguments with respect to the Plaintiffs' Motion to Strike Affidavit of Dr. Phil Cromwell and Motion to Strike Affidavit of Dave Larsen. At the conclusion of said arguments, the Court DENIED the motions to strike.

The Court heard Mr. Atkin's argument regarding Plaintiffs' Motion for Relief from Late Filing of Cross Motion for Summary Judgment. Mr. Erickson objected. The Court DENIED Plaintiffs' motion. The Court heard the parties' arguments with respect to the Defendants' Motion for Summary Judgment. Further, the Court heard argument regarding attorney fees and costs. At the conclusion of said arguments, the Court took those matters under advisement and will issue a written decision on the same in due course.

IT IS SO ORDERED.

Dated this 19th day of September, 2016.

ROBERT C. NAFTZ District Judge



CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 19/4 day of September, 2016, I mailed/served/faxed a true copy of the foregoing Minute Entry and Order to the attorney(s)/party(s) below by the method indicated:

Attorney(s)/Person(s):

Blake S. Atkin Counsel for Plaintiffs Method of Service:

Faxed: (801) 533-0380

Lane V. Erickson Counsel for Defendants Faxed: 232-6109

SHAUNA T. GEDDES, Clerk

BY: Linda Hampton, Deputy Clerk

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 SEP 29 PM 1:53 RAHMON COUNTY CLERK

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

٧.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

MOTION IN LIMINE

Case No. CV-2015-132

Judge: Naftz

Plaintiff respectfully moves the Court for an order in limine preventing Defendants from proffering any evidence attempting to show that the boundary of the property between the Nielsons and the Talbots is anything but that boundary described on the warranty deeds by which the Talbots and the Nielsons obtained title to their respective properties. The basis for this motion is the failure of the Defendants to in good faith provide answers to requests for admission on this issue. This motion is supported by a memorandum filed in support hereof. 27

Dated this 29th day of September 2016.

Atkin Law Offices

J.

Blake S. Atkin Attorneys for the Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the

MOTION IN LIMINE as indicated below:

Lane V. EricksonXU.S. MailXE-mailFacsimileRACINE, OLSON, NYE, BUDGE
& BAILEY CHARTERED& BAILEY CHARTERED201East CenterFacsimile201 East CenterP.O. Box 1391Facsimile:(208) 232-7352Email: Ive@racinelaw.netRobert C. Naftz________ U.S. Mail______ E-mailXFacsimile

District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926

____U.S. Mail ____ E-mail X Facsimile

Dated this 29th day of September, 2016.

Gernrifer Mariscal



Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION IN LIMINE

Case No. CV-2015-132

Judge: Naftz

Defendants should not be allowed to proffer any evidence at trial attempting to show that the boundary of the property between the Nielsons and the Talbots is anything but that boundary described on the warranty deeds by which the Talbots and the Nielsons obtained title to their respective properties. In order to streamline this matter for trial, Plaintiffs served requests for admission on the Defendants going to the heart of the issues relating to the supposed boundary between these properties that is somehow different from the legal description found in each of the warranty deeds by which these neighbors obtained their properties. The requests for admission and the responses are as follows:

REQUEST FOR ADMISSION #1: Admit that Exhibit A attached hereto is a true and correct copy of the Warranty Deed by which the Nielson Property was conveyed to Glen Wayne Nielson. ("the Nielson Warranty Deed").

<u>RESPONSE TO REQUEST NO. 1</u>: Deny. Defendants Talbot were not personally involved in the transaction whereby property was conveyed to Glen Wayne Nielson and for this reason have no personal knowledge or ability necessary to confirm whether the document attached as Exhibit A is a true and correct copy of the Warranty Deed used for this purpose.

REQUEST FOR ADMISSION #2: Admit that Exhibit B attached hereto is a true and correct copy of the Warranty Deed by which the Talbot Property was conveyed to the Talbot Defendants ("the Talbot Warranty Deed").

RESPONSE TO REQUEST NO. 2: Admit.

REQUEST FOR ADMISSION #3: Admit that since purchasing the Talbot property the Talbot Defendants have paid property taxes on the property described in the legal description in the Talbot Warranty Deed.

RESPONSE TO REQUEST NO. 3: Deny. Defendants Talbot admit that they have paid property taxes from the time they purchased their property until the present. However, Defendants Talbot do not know, with any personal knowledge, what portion of real property or what boundary of real property their property taxes were applied to by Franklin County or the City of Preston. **REQUEST FOR ADMISSION #4**: Admit that the Talbot Defendants have never paid property taxes on any portion of the property described in the legal description in the Nielson Warranty Deed.

RESPONSE TO REQUEST NO. 4: Deny. Defendants Talbot admit that they have paid property taxes from the time they purchased their property until the present. However, Defendants Talbot do not know, with any personal knowledge, what portion of real property or what boundary of real property their property taxes were applied to by Franklin County or the City of Preston.

REQUEST FOR ADMISSION #4 [sic]: Admit that a carport constructed by the Talbots is, to some extent, built upon property within the legal description contained in the Nielson Warranty Deed.

RESPONSE TO REQUEST NO. 4 [sic]: Deny. Defendants Talbot are without any personal knowledge that this is the case. Defendants Talbot understand that this is the claim of the Plaintiffs in the above-captioned litigation, however, Defendants Talbot dispute that the claims of the Plaintiffs are accurate or are legally binding given the facts and circumstances of the present case. Defendants Talbot, by and through their counsel, dispute Plaintiffs ' claims and have provided facts and law concerning all legal issues to the Court for determination concerning the boundary line between the Plaintiffs property and property of Defendants Talbot.

REQUEST FOR ADMISSION #5: Admit that a shed that the Talbots claim to own is located, to some extent, upon property within the legal description contained in the Nielson Warranty Deed.

RESPONSE TO REOUEST NO. 5: Deny. Defendants Talbot are without any personal knowledge that this is the case. Defendants Talbot understand that this is the claim of the Plaintiffs in the above-captioned litigation, however, Defendants Talbot dispute that the claims of the Plaintiffs are accurate or are legally binding given the facts and circumstances of the present case. Defendants Talbot, by and through their counsel, dispute Plaintiffs ' claims and have provided facts and law concerning all legal issues to the Court for determination concerning the boundary line between the Plaintiffs property and property of Defendants Talbot.

Rule 36, Idaho Rules of Civil procedure requires a party to answer a request for admission in good faith. I.R.C.P. Rule 36(a)(5) Either Defendants are evading their responsibility to respond to requests for admission in good faith or they do not know if their shed and carport encroach upon the legal description in the deeds, in which case they had no business doing anything but default on the legal action brought by Plaintiffs to quiet title. Rule 36(a)(50 is clear:

The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. Rule 36(a)(5), Idaho Rules of Civil Procedure.

Defendants did not comply with the rule requirement of setting out the reason they could not answer these straight forward questions. Perhaps they failed to do so because it is not possible for them to not easily find out whether they have been paying taxes on the Nielson property. By simply looking on their tax notices, the defendants can ascertain what property was being taxed. If they had any question they could easily make inquiry of the county assessor. Their obfuscation about whether the carport and shed encroach the legal description is similarly disingenuous.

At this late date, having played hide the ball and choosing to obfuscate the questions asked in the requests for admission, Defendants cannot be allowed to introduce evidence showing that their carport and shed encroach the metes and bounds legal description found in the deeds or that they ever paid taxes on the Nielson property.

Dated this 29th day of September 2016.

Atkin Law Offices

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she, caused to be served a true and correct copy of the

MEMORANDUM IN SUPPORT OF MOTION IN LIMINE as indicated below:

Lane V. Erickson X U.S. Mail X E-mail ____ Facsimile RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net Robert C. Naftz ____ U.S. Mail ____ E-mail X Facsimile District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290 _U.S. Mail ____ E-mail X Facsimile Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926

Dated this 29th day of September, 2016.

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PLAINTIFFS' DISCLOSURE OF LAY AND EXPERT WITNESSES

Case No. CV-2015-132

Judge: Naftz

16 SEP 30 AM 10: 57

FRANKLIN COUNTY CLERK

DEPUTY

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

ν.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

Plaintiffs, Glen Wayne Nielson and Cheryl E. Nielson, hereby discloses the following

expert and lay witnesses that it intends to call or may call at trial:

Intend to call:

1. Cheryl Nielson

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- 2. Wayne Nielson
- 3. Diana N. Rugg
- 4. Monte Rugg
- 5. Robert Talbot
- 6. Michelle Talbot
- 7. Brian Allen
- 8. Paul Parker
- 9. Saundra Parker
- 10. Lyle Wilse
- 11. Vince Whitehead

DATED this 29th day of September, 2016.

Atkin Law Offices

John Sta

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the

PLAINTIFFS' DISCLOSURE OF LAY AND EXPERT WITNESSES as indicated below:

X U.S. Mail X E-mail ____ Facsimile Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net U.S. Mail ____ E-mail X Facsimile Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926

Dated this 29th day of September, 2016.

X Facsimile

Jennifer Mariscal

_U.S. Mail ____ E-mail

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	· · · ·
Plaintiffs,	NOTICE OF HEARING
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

Please take notice that the hearing on the Plaintiffs' Motion in Limine will be held on Wednesday, October 26, 2016 at 10:00 a.m.

DATED this 30th day of September, 2016.

Atkin Law Offices

shelt

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the NOTICE OF

HEARING as indicated below:

Lane V. Erickson X U.S. Mail X E-mail _____ Facsimile RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net Robert C. Naftz _ U.S. Mail ____ E-mail X Facsimile District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290 Franklin County Court _U.S. Mail ____ E-mail X Facsimile 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926

Dated this 30th day of September, 2016.

Gennifer Mariscal

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net FILED---IGOCT-3 PH 3:45

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

CASE NO. CV 15-132

NOTICE OF HEARING FOR PRE-TRIAL CONFERENCE

v.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

PLEASE TAKE NOTICE that this Court will bring on for hearing for Pre-Trial Conference regarding the above captioned matter, before the above-entitled Court on <u>Wednesday, November 3, 2016</u> at 2:00 p.m., before the Honorable Judge Robert C. Naftz at the Franklin County Courthouse, 39 W. Oneida, Preston, Idaho. DATED this \mathcal{L}^1 Day of September, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

B LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the \mathcal{R}^{\pm} day of September, 2016, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

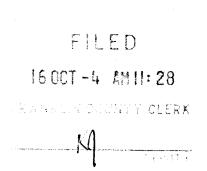
Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 *Fax:* 801-533-0380

Judge Robert C. Naftz 624 E. Center Pocatello, ID 83201 *Fax: 208-236-7290*

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LANE V. ERICKSON

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net



Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

CASE NO. CV 15-132

DEFENDANTS' DISCLOSURES OF LAY WITNESSES

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, by and through their attorney of record, Lane V. Erickson, and pursuant to the Amended Scheduling Order dated March 15, 2016 hereby submits their Disclosures of Lay Witnesses. Defendants anticipate calling the following witnesses at the trial of this cause:

• Any and all of the witnesses listed by Plaintiffs in their Witness Disclosures dated

DEFENDANTS' DISCLOSURES OF LAY WITNESSES Page -1

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September 29, 2016.

In addition, Defendants may call the following individuals:

- The Plaintiffs;
- The Defendants;
- Craig Shaffer;
- Sue Berg;
- Gae Murdock;
- Suel Murdock;
- Phil Cromwell;
- Sherry Cromwell;
- Vince Whitehead;
- David Larsen;
- Brenda Larsen;
- Reo Newbold;
- Nate Bartschi;
- Melissa Bartschi;
- Dennis Olson;
- Scott Moony;
- Mark Beckstead;
- Jared Heaps;
- Quinn Corbridge;
- Pam Corbridge;

DEFENDANTS' DISCLOSURES OF LAY WITNESSES Page -2

- Chad Hull;
- Marrisa Heaps; and
- Any potential lay witnesses disclosed by the Plaintiffs in their discovery responses.

Further, Defendants reserve the right to disclose rebuttal witnesses consistent with the

Court's Scheduling Order and applicable I.R.C.P.

DATED this 4th Day of October, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

Bv

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of October, 2016, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 Fax: 801-533-0380

Judge Robert C. Naftz 624 E. Center Pocatello, ID 83201 Fax: 208-236-7290 X] U. S. Mail Postage Prepaid
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LANE V. ERICKSON

DEFENDANTS' DISCLOSURES OF LAY WITNESSES Page -3

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FRAMMLIN COUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE TO OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

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GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

vs.

ROBERT TALBOT and MICHELE TALBOT, Husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife.

Defendants/Counterclaimants.

Case No. CV-2015-132

MEMORANDUM DECISION AND ORDER

NATURE OF THE ACTION

This decision is to address the various recent motions filed by the parties. First, this Court received an Amended Motion for Summary Judgment filed by the defendants/counterclaimants, Robert and Michele Talbot and the defendants, Paul and Saundra Parker (collectively referred to as "the Defendants"). The plaintiffs, Glen and Cheryl Nielson, also submitted a Cross Motion for Summary Judgment.

In support of their amended request for summary judgment, the Defendants submitted a memorandum and accompanying affidavits and exhibits. The Plaintiffs then submitted a Response to Amended Motion for Summary Judgment, along with their affidavits and exhibits. That was followed by the Defendants' reply brief. The Plaintiffs then submitted motions to strike two of the Defendants' supporting affidavits, including the Affidavit of Dr. Phil Cromwell and the Affidavit of Dave Larsen. The Plaintiffs also filed a Cross Motion for Summary

Memorandum Decision and Order Case No. CV-2015-132

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Judgment, with accompanying exhibits. The Defendants filed a response to the Plaintiffs' motions to strike, as well as a memorandum both opposing the cross motion for summary judgment and asking this Court to deny the Cross Motion for Summary Judgment on the basis that the motion was untimely. The Plaintiffs then submitted a reply brief in support of their cross motion for summary judgment, whereby they also requested relief from the late-filed Cross Motion for Summary Judgment.

Oral arguments were heard on September 12, 2016. At the outset of the hearing, counsel for the Plaintiffs confirmed on the record that the Plaintiffs' claims for mold and water damages were dismissed, along with the fraud and disclosure claims contained in the Complaint. In a ruling from the bench, this Court also denied the Plaintiffs' motions to strike. This Court further granted the Defendants' motion to strike the Plaintiffs' Cross Motion for Summary Judgment on the basis of untimeliness. As such, the only remaining issue is whether to grant the Defendants' Amended Motion for Summary Judgment. After reviewing the entire file and the relevant law, and considering the arguments made by the parties, this Court now issues this Memorandum Decision and Order.

ISSUE

1. Whether to grant the Defendants' Amended Motion for Summary Judgment.

FACTUAL BACKGROUND

This is a boundary line dispute. The plaintiffs, Glen and Cheryl Nielson, are the owners of the "Nielson Property." Defendants Robert and Michele Talbot own a piece of property next to the Nielson Property, known as the "Talbot Property." In filing their lawsuit, the Plaintiffs **Memorandum Decision and Order** 2 Case No. CV-2015-132 claim the Defendants have encroached onto the Nielson Property because a "shed and car port sit, in part, on the Nielson Property." (V. Compl. for Quiet Title and Injunctive Relief, March 23, 2015, 3.)

The Nielson Property and the Talbot Property were originally part of one much larger parcel owned by Craig and Sue Shaffer. The Shaffers split their property into two separate parcels, which parcels would become the Nielson and Talbot properties. The portion that would become the Talbot Property was originally enclosed by a fence and was used as pasture land. The Shaffers eventually sold the parcel enclosed by the fence to Suel and Gae Murdock. The Shaffers and the Murdocks all agreed the property enclosed by the fence (the Talbot Property) belonged to the Murdocks. Deeds with the legal descriptions were prepared; however, the legal descriptions did not match the agreement between the Shaffers and the Murdocks, which held that the fence line was the boundary line. Apparently, the Shaffers and the Murdocks never realized that the legal descriptions did not match the agreed-upon fence boundary. As such, the boundary line created by the fence was maintained as the boundary line between the Shaffers and the Murdocks throughout the time they each owned those properties. At some point, Phil and Sherry Cromwell purchased the Nielson Property, while the Murdocks maintained ownership of the Talbot Property. Mr. Cromwell planted lilacs up to the fence line, and he continued to maintain the grass, lilac bushes and yard up to the fence line.

The Talbot Property was eventually sold to Vince and Corliss Whitehead. At the time the Whiteheads purchased the parcel, the fence still existed. Sometime after the Whiteheads purchased the Talbot Property, Mr. Whitehead took the fence down. However, the remaining

purchased the Talbot Property, Mr. whitehead took the fence down. However, the remaining Memorandum Decision and Order Case No. CV-2015-132

lilacs, grass and yard still marked the original fence line, and the boundary originally created by the fence continued to be maintained by Mr. Cromwell and all of his subsequent neighbors, including the Talbot Defendants in this case. Eventually, the Talbot Property was sold to Dave and Brenda Larsen. At the time of the Larsens' purchase, their property was bare ground, and it bordered the lilac bushes, grass and yard planted by Mr. Cromwell. Mr. Larsen subsequently landscaped his bare ground up to the boundary line created by the lilac bushes, grass and yard on the Cromwells' side. Mr. Larsen also installed sprinklers, grass and a shed up to the boundary

line, which line he maintained throughout the time he owned the property.

The Talbots subsequently purchased the property from the Larsens. At the time of the Talbots' purchase, the Cromwells still owned the Nielson Property, and they were neighbors. Based upon an agreement with the Cromwells, the Talbots built a driveway and a carport up to the boundary line established by the lilacs, grass, yard, shed and sprinklers already in existence. This was the landscape still in place when the Nielson Plaintiffs purchased their property from the Parkers and moved onto their property. However, when the Nielsons checked the legal description for their property, they discovered that the Talbot Property actually encroached upon the land described in the Nielsons' deed by approximately 12.5 feet. As a result, the Nielsons ripped out all of the lilacs, shrubs and plants bordering the two properties and also demanded that the Talbots move their shed, sprinkler system, driveway and carport and restore to the Nielsons all of the land included in the legal description contained on their deed. The Talbots have refused that demand, on the grounds that the agreement of all the previous neighbors establishes

Memorandum Decision and Order Case No. CV-2015-132

that the boundary line between the Talbot and Nielson properties is based upon the original fence line and the subsequent lilacs, shrubs, grass, yard, sprinkler systems and structures.

DISCUSSION

a. <u>Summary Judgment Standard of Review</u>

Summary judgment shall be rendered "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Idaho R. Civ. P. 56(c)(2016). The burden of establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment. *Tingley v. Harrison*, 125 Idaho 86, 89, 867 P.2d 960, 963 (1994). This Court liberally construes the record in favor of the party opposing the motion and draws all reasonable inferences and conclusions in that party's favor. *Friel v. Boise City Hous. Auth.*, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994). If the evidence reveals no disputed issues of material fact, then summary judgment should be granted. *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991).

If the moving party challenges an element of the non-moving party's case on the basis that no genuine issue of material fact exists, the burden now shifts to the non-moving party to come forward with sufficient evidence to create a genuine issue of fact. *Tingley*, 125 Idaho at 90, 867 P.2d at 964. Summary judgment is properly granted in favor of the moving party when the nonmoving party fails to establish the existence of an element essential to that party's case upon which that party bears the burden of proof at trial. *Thomson*, 126 Idaho at 530-31, 887 P.2d at 1037-38; *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988). The party opposing Memorandum Decision and Order

Case No. CV-2015-132

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the summary judgment motion "may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must *set forth specific facts showing that there is a genuine issue for trial.*" Idaho R. Civ. P. 56(e)(2016) (emphasis added).

b. <u>Analysis</u>

The Plaintiffs are suing the Talbots and the Parkers. The Plaintiffs allege the Talbots are encroaching on property the Plaintiffs purchased from the Parkers. In moving for summary judgment, the Defendants argue there is no encroachment because the undisputed facts establish that "the boundary line between the Talbot Property and the Nielson Property is established to be where the fence originally stood and was then replaced by the lilacs, grass, yard, sprinkler system, shed, driveway and carport ... and where decades of previous owners always maintained the boundary to be." (Am. Mem. in Supp. of Mot. for Summ. J., Aug. 12, 2016, 17.) As such, the Defendants maintain "the boundary line is established as a matter of law" in favor of the Talbots. (*Id.* at 2, 15, 17.) Based on that argument, the Defendants are seeking an "Order defining the boundary line between the Talbot Property and the Nielsen Property to be exactly where all of the previous parties agreed and maintained it to be." (*Id.*) The Defendants are further requesting a judgment "clearly stat[ing] that the Talbots have a legal right to maintain the current location of their sprinkler system, lawn and structures." (*Id.*)

In Idaho, "[t]he fundamental principle underlying all of the rules of construction of deeds, as well as all other contractual instruments, is that the courts must seek and give effect to the intention of the parties." *Campbell v. Weisbrod*, 73 Idaho 82, 89, 245 P.2d 1052, 1057 (1952). Memorandum Decision and Order 6 Case No. CV-2015-132

In line with that principle, Idaho courts have determined that "where the seller and the buyer go upon the land and there agree upon and mark the boundary between the part to be conveyed and the part to be retained by the seller, the line thus fixed controls the courses and distances set out in the deed executed to effectuate the division agreed upon." Id. As such, "[t]he general rule is that monuments, natural or artificial, or lines marked on the ground, control over calls for courses and distances." Id. Furthermore, in such cases where the intended and agreed-upon boundary line is different from that described in the deed, the tenants in common and others having a legal interest of privity in the property "estop themselves ... from thereafter claiming a different line under the calls in the deeds." Id. at 89-90, 245 P.2d at 1057. The Idaho Supreme Court has further extended *Campbell*, finding that "an agreed boundary would also be binding upon a successor in interest of the seller, who purchased with notice of the agreement." Paurley v. Harris, 75 Idaho 112, 117, 268 P.2d 351, 353 (1954). In that case, the Idaho Supreme Court determined a potential buyer had notice of an agreed boundary line based on the fact that the boundary was "clearly marked by 'a tight board fence', four or five feet in height, and the area on defendants' side of the fence was planted to lawn, shrubbery and trees." Id. The court stated: "This would constitute notice to an intending purchaser, of defendants' possession. One buying property in the possession of a third party is put on notice of any claim of title or right of possession by such third party, which a reasonable investigation would reveal." Id. More recently, the Idaho Supreme Court has further clarified what constitutes notice when the delineated boundary does not comport to the deed description. Reid v. Duzet, 140 Idaho 389,

393, 94 P.3d 694, 698 (2004). In that case, the Idaho Supreme Court upheld the district judge's
 Memorandum Decision and Order
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 Case No. CV-2015-132

finding that the plaintiff "knew or should have known that there existed structures upon the portion of the ... area in dispute. Just as in the *Campbell* case, [the plaintiff] could not have reasonably assumed she was purchasing either the structures or improvements, or the land on which they were situate." *Id.* Therefore, although the plaintiff in the *Reid* case did not know of the previous agreement as to the boundaries of the property she was purchasing, "she did have notice that someone else claimed the disputed ... property." *Id.* Based on those determinations, our Supreme Court reiterated the following rule:

Idaho law provides that when two parties orally establish boundaries of property to be transferred from one to the other, and the subsequent written deed does not match those boundaries, the orally agreed upon boundaries will prevail. This oral agreement is binding upon all subsequent purchasers who have notice of the agreement, or who are put on notice at the time of purchase that the property as described by the inaccurate deed is claimed by someone other than the seller.

Id. at 394, 94 P.3d at 699.

In this case, an undisputed boundary agreement has existed over decades between the original and all subsequent owners of the Nielson and Talbot properties. It is also undisputed that all of the owners have honored the original boundary line, first through a fence, then through the planting of lilacs and a yard, the placement of a shed, the installation of sprinklers, and the creation of a driveway and a carport. In resisting summary judgment, the Plaintiffs do not dispute any of those facts.¹ The only argument relevant to the legal theory left before this Court is the Plaintiffs' claim that they did not have notice of the boundary because when they "bought

¹ Further, the Plaintiffs' arguments are confined to arguing that the Defendants' claim for summary judgment fails "under the doctrine of boundary by acquiescence." (Resp. to Am. Mot. for Summ. J., Aug. 29, 2016, 3.) However, that is not the legal theory put forward by the Defendants in support of their claim for summary judgment; as such, the arguments asserted in opposition are mostly inapplicable.

the property there was no observable boundary on the property." (Resp. to Am. Mot. for Summ.

J., Aug. 29, 2016, 3.) In support of that assertion, the Plaintiffs stated:

The fence had been removed at least 20 years earlier. What the Defendants are calling a boundary on the ground was nothing of the sort. The lilacs planted by Dr. Cromwell, may have appeared to him to delineate a boundary line, but by the time the Plaintiffs bought the property, an ugly car port had been built and the lilacs appeared to be an attempt to hide an eyesore. As for the grass line and the sprinkler system, Defendants' testimony shows that no one believed that to be a property boundary. The sprinkler system installed by Mr. Larson extends an additional foot beyond the Cromwell's grass line that he now says he considered as the boundary line. Neighbors do not often build sprinkler systems on their neighbor's property. The short of it is, this boundary line, at least since the removal of the fence 20 years ago was never well defined. The only real sure knowledge we have of the location of the boundary line is the legal description, accepted by everyone who has ever owned the property.

(Id. at 3-4; see also Aff. of Cheryl Nielson, Feb. 29, 2016, 1:3-2:11; Aff. of Glen Wayne Nielson,

March 2, 2016, 2:6, 8, 11.)

Despite the Plaintiffs' claims, there is nothing to dispute the fact of the actual location and existence of the boundary line. As explained, Idaho law provides that when two parties orally establish boundaries of property to be transferred from one to the other, and the subsequent written deed does not match those boundaries, the orally agreed upon boundaries will prevail. Such oral agreement is also binding upon all subsequent purchasers who have notice of the agreement, or who are put on notice at the time of purchase that the property as described by the inaccurate deed is claimed by someone other than the seller. The Plaintiffs here do not dispute that an intended and agreed-upon boundary line was created, which boundary is different from that described in the deed. There is no dispute that such an agreed-upon boundary line is controlling over the "courses and distances" set out in the deed and that such "an agreed

Memorandum Decision and Order Case No. CV-2015-132

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boundary would also be binding upon a successor in interest of the seller, who purchased with notice of the agreement." Thus, based on the arguments put forward by the Plaintiffs, the only potential question left is whether the Plaintiffs purchased with notice of the agreement. A review of the records, exhibits and affidavits submitted in this case indicates there is no question the Plaintiffs were put on notice of the agreed boundary line based on the aforementioned undisputed facts. While the fence was no longer in place, there is no question the boundary line was still defined by lilac bushes, grass, a yard, sprinklers, a driveway, a carport and a shed. Under Idaho law these types of monuments and lines marked on the ground "control over calls for courses and distances" set out in the deed executed to effectuate the agreed-upon boundary. As explained previously, the Idaho Supreme Court has already determined that potential buyers are put on notice of an agreed boundary line based on the existence of a lawn, shrubbery and trees planted to the boundary, and the presence of structures and improvements. The Plaintiffs here certainly had notice of those exact types of markers, which markers constitute notice to an intending purchaser under Idaho law. As such, the boundary line between the Talbot Property and the Nielson Property is established to be where the fence originally stood and was then subsequently replaced by the lilacs, grass, yard, sprinklers, shed, driveway and carport. Therefore, summary judgment in favor of the Defendants is hereby GRANTED.

b. Quiet Title

Having granted the Defendants' Motion for Summary Judgment, this Court must now consider the Defendants' request to quiet title in their favor, allowing the legal description in

Memorandum Decision and Order Case No. CV-2015-132

future deeds to accurately reflect the boundary between the Nielson Property and the Talbot Property.

"An action may be brought by any person against another who claims an estate or interest in real or personal property adverse to him, for the purpose of determining such adverse claim... " IDAHO CODE ANN. § 6-401(2016). The Talbot Defendants also brought a counterclaim against the Plaintiffs seeking to quiet title to the portion of land that is in dispute concerning the boundary claims made by the Plaintiffs. "Our Supreme Court has held that every estate or interest known to the law in real property, whether legal or equitable, may be determined in an action to quiet title." Aldape v. Atkins, 105 Idaho 254, 260, 668 P.2d 130, 136 (Idaho Ct.App. 1983). In a quiet title action, "the plaintiff 'asserts his own estate and declares generally that the defendant claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on the defendant to set forth the nature of his claim, so that it may be determined by decree." Drew v. Sorensen, 133 Idaho 534, 541, 989 P.2d 276, 283 (1999)(quoting Dickerson v. Brewster, 88 Idaho 330, 336, 399 P.2d 407, 410 (1965)). "[B]ecause a claim of title is a general claim of ownership of the property, a complaint to quiet title is sufficient if it alleges, in ordinary and concise terms, that the plaintiff is the owner of the disputed property, without setting forth the probative facts by which that ultimate fact is to be established." Aldape, 105 Idaho at 260, 668 P.2d at 136. "The district court in a quiet title action must then determine the ownership rights of the parties based on the facts involved. In making this determination, the district court should examine the facts by applying relevant legal

Memorandum Decision and Order Case No. CV-2015-132

principles and theories that define the property rights of the parties." *Sorensen*, 133 Idaho at 541, 989 P.2d at 283.

Based on the undisputed facts in the record, this Court granted summary judgment in favor of the Defendants, thereby establishing the boundary line between the Talbot Property and the Nielson Property to be where the fence originally stood and was then subsequently replaced by the lilacs, grass, yard, sprinklers, shed, driveway and carport. As a result of that decision, this Court must now also grant the Defendants' request to quiet title in their favor and against the Plaintiffs to the portion of the land that is in dispute concerning the boundary claims made by the Nielsons. Counsel for the Defendants is hereby ordered to produce an appropriate decree establishing a new and accurate legal description for both the Nielson Property and the Talbot Property for this Court's consideration and signature.

CONCLUSION

The Defendants' Motion for Summary Judgment is hereby GRANTED. Based on that ruling, the boundary line between the Nielson Property and the Talbot Property is also hereby defined to be where all of the previous parties agreed it to be and to be where the parties have continued to maintain it. As such, the Talbot Plaintiffs have a legal right to maintain the current location of their sprinkler system, lawn and existing structures.

This Court further quieted title in favor of the Talbots. Counsel for the Defendants is hereby ordered to submit a decree establishing the accurate legal description for the disputed boundary.

Memorandum Decision and Order Case No. CV-2015-132 Furthermore, based on the Plaintiffs' concessions during oral arguments and pursuant to their response to the amended motion for summary judgment, this Court also hereby DISMISSES the Plaintiffs' claims for mold and/or water damage and fraud, including all claims associated with the Seller's Disclosure requirements asserted against the Parkers.

The Defendants also requested an award of litigation costs and attorney fees. Counsel for the Defendants may submit an appropriate memorandum detailing the grounds for such an award and the amount requested. However, any decision regarding costs and fees will be made in a separate order after this Court is provided an opportunity to review such a request in detail.

Based on the preceding discussion and this Court's findings, no claims remain. As such, this case is hereby DISMISSED WITH PREJUDICE. As such, all previously scheduled hearings and the trial must be vacated. The hearing regarding the motions in limine set for October 26, 2016, is hereby vacated. The pre-trial conference set for November 3, 2016, is also vacated, and the jury trial scheduled in this matter for November 15-18, 2016, is hereby vacated. **IT IS SO ORDERED.**

DATED this 12^{th} day of October 2016.



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ROBERT C. NAFTZ District Judge

Memorandum Decision and Order Case No. CV-2015-132

CERTIFICATE OF MAILING/SERVICE I hereby certify that on, <u>DCTOPIC</u> 12, <u>JOIL</u> I mailed/served a true copy of the MEMORANDUM DECISION AND ORDER to the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, ID 83228 Fax: (801)533-0380

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED 201 East Center P.O. Box 1391 Pocatello, ID 83204-1391 Fax: (208)232-7352 6109

U.S. Mail E-Mail Courthouse Box Fax:

U.S. Mail E-Mail Courthouse Box A Fax:

SHAUNA T. GEDDES, Clerk

Bv: Deputy Clerk

Memorandum Decision and Order Case No. CV-2015-132

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IN THE DISTRICT COURT OF THE SIXTE OF IDAHO, IN AND FOR THE	
GLEN WAYNE NIELSON and CHERYL E.)
NIELSON husband and wife,) Case No. CV-2015-132
Plaintiff/Counterdefendants,))) JUDGMENT
VS.	
ROBERT TALBOT and MICHELE TALBOT, Husband and wife, and PAUL PARKER and))

Defendants/Counterclaimants.

SAUNDRA PARKER, husband and wife.

JUDGMENT IS ENTERED AS FOLLOWS: Summary judgment is granted in favor of

the Defendants/Counterclaimants. This case is dismissed with prejudice.

IT IS SO ORDERED.

DATED this 12th day of October, 2016

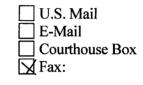


Ret C.

ROBERT C. NAFTZ DISTRICT JUDGE

CERTIFICATE OF MAILING/SERVICE I hereby certify that on, (CODEN 12, 2016 I mailed/served a true copy of the MEMORANDUM DECISION AND ORDER to the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, ID 83228 Fax: (801)533-0380



Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED 201 East Center P.O. Box 1391 Pocatello, ID 83204-1391 Fax: (208)232-7352 6109 U.S. Mail E-Mail Courthouse Box Fax:

SHAUNA T. GEDDES, Clerk

By: L'INDA HAMPTO

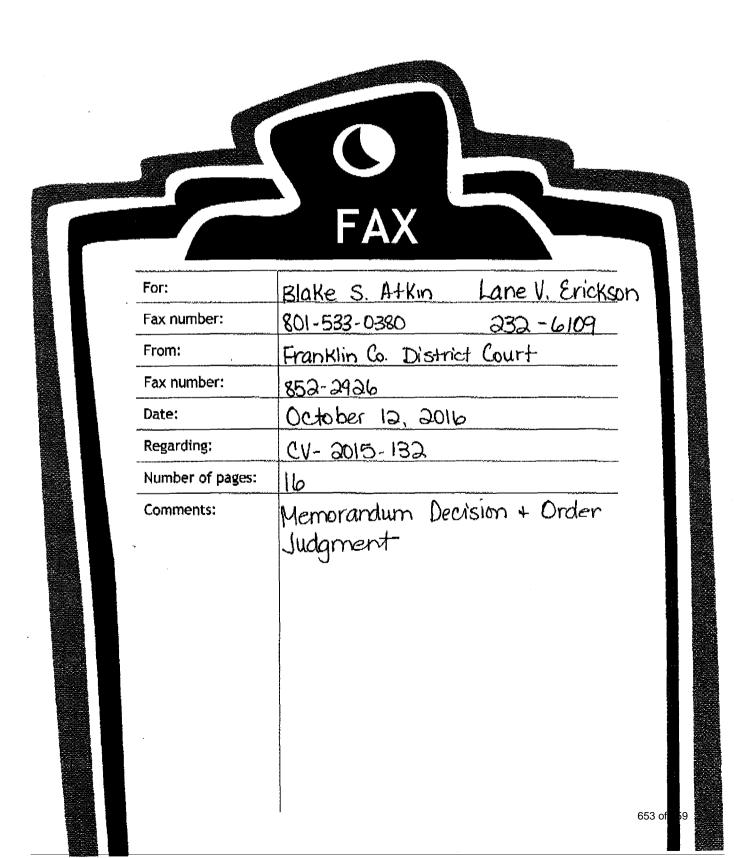
Deputy Clerk

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Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 OCT 13 PM 12: 31 FRANKLER SOUNTY CLERK KI

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

MOTION FOR NEW TRIAL OR TO ALTER OR AMEND JUDGMENT DATED OCTOBER 12, 2016

Case No. CV-2015-132

Judge: Naftz

Plaintiffs pursuant to Rule 59, Idaho Rules of Civil Procedure respectfully move the Court for a new trial or to alter and amend the judgment dated October 12, 2016 so as to address Plaintiffs' claims against the Parkers for breach of warranty and failure to defend the title they conveyed by metes and bounds to the Plaintiffs that the Court now has found to have been lost. This motion is supported by the memorandum filed in support hereof.

DATED this 13th day of October, 2016.

Atkin Law Offices

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the MOTION

FOR NEW TRIAL OR TO ALTER OR AMEND JUDGMENT DATED OCTOBER 12, 2016 as

indicated below:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net

Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926

X U.S. Mail X E-mail ____ Facsimile

____ U.S. Mail ____ E-mail X Facsimile

____U.S. Mail ____ E-mail X Facsimile

Dated this 13th day of October, 2016.

Gennifer Mariscal

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION FOR NEW TRIAL OR TO ALTER OR AMEND JUDGMENT DATED October 12, 2016

Case No. CV-2015-132

Judge: Naftz

In this consolidated case Plaintiffs sought against the Talbot Defendants to clear title to property conveyed to them by the Parker Defendants by warranty deed. In their claims against the Parkers Plaintiffs sought recovery under the warranty in the warranty deed both for the cost of prosecuting the claims against their encroaching neighbors and the value of the property lost if this Court were to rule in favor of the Talbot Defendants. In the Court's ruling dated October 12, 2016 the Court ruled that the Talbots are entitled to keep the property encroached by their

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carport, shed and sprinkler system. However the Court ruled that the entire matter is determined and vacated all future hearing dates and the trial date, but the Court did not address the claims of the Plaintiffs against the Parker Defendants for breach of their warranty and their duty to defend the title conveyed by metes and bounds. Plaintiffs raised these issue in their cross motion for summary judgment. This Court ruled that the memorandum in support of the cross motion for summary judgment was three days late in being filed and therefore the Court would not hear that motion. However, the failure of a motion for summary judgment does not dispose of the matters, it merely relegates those matters to the time of trial. Plaintiffs have viable claims against the Parkers for breach of warranty and breach of the duty under the warranty deed to defend the title conveyed by the warranty deed that have not been disposed of. Rule 59, Idaho Rules of Civil Procedure gives the Court power to reopen the judgment and do justice as to the Plaintiffs' claims against the Parker defendants that are not disposed of pursuant to the Court's ruling.

INTRODUCTION

Plaintiffs purchased their home from the Parker Defendants. The property was conveyed to them by a metes and bounds legal description in a warranty deed. Consistent with the law, that warranty deed expressly promised to defend the title so conveyed "from all claims whatsoever. " After purchasing their property, Plaintiffs made inquiries. Their neighbor, Robbie Talbot, claimed that his carport was built upon 12.5 feet of the Plaintiffs' property. Plaintiffs notified their sellers and asked them to step up and defend the title to the property. They failed and refused to do so. Plaintiffs then brought action against the encroaching neighbor and their sellers, the Parkers. The Court has now ruled that the neighbors are entitled to ownership of the property underlying their carport and shed that encroach on the legal description conveyed to the plaintiffs by the Parker Defendants. Indeed, the Court has ordered that a new legal description

be prepared to reflect that loss of property to the Plaintiffs. That ruling solidifies Plaintiffs'

claims against their grantors who warranted the title as described in the legal description.

<u>Facts</u>

- 1. On August 30, 2013, Wayne Nielson bought a parcel of property in Preston, Idaho.
- 2. The sellers (Parkers) conveyed the property by warranty deed. In that warranty deed,

Sellers (Parkers) agreed that they would "warrant and defend the same from all claims

whatsoever."

3. The Parkers knew that the legal description represented the circumference to the property

they were selling to the Plaintiffs.

- Q. Okay. All right. This Warranty Deed that's Exhibit 1 describes the piece of property that you were purchasing. Do you see that?
- A. I do, yes.

Q. And that legal description commencing at Point 81 Rods. Do you see that paragraph?

- A. Yes, I do.
- Q. And what did you understand that legal description described?
- A. The property line.
- Q. Okay. So you understood that if somebody -- you could go out on the ground itself and map out that property line --
- A. Correct.
- Q. -- around --
- A. It's the circumference around our property, yes.
- Q. And that's what you understood that legal description to be?
- A. That was what I understood, yes.
- Q. All right. And when you later conveyed the property to the Nielsons, you used that same legal description; is that correct?
- A. Correct.

(Deposition Exhibit No. 2 marked.)

- Q. (BY MR. ATKIN) Let me show you what's been marked Exhibit No. 2. Is that the Warranty Deed by which you conveyed the property -- you and your husband conveyed the property to Glen Nielson?
- A. Yes.

Q. And just looking at the two property descriptions, they -- between the Exhibit 1, the deed by which you obtained the property, and Exhibit 2, the deed by which you conveyed the property to the Nielsons, it's the same description?

- A. It is, yes.
- Q. And so you understood when you were conveying the property to the

Nielsons you were conveying the property with this legal description, which would describe the boundaries of the property that you sold to them?

A. That's correct. Yes.

(Deposition of Saundra Parker, June 10, 2016) Attached hereto as Exhibit "A".

- 4. Shortly after purchasing the property Plaintiffs learned that their neighbors to the east had a carport that encroached their property, as conveyed to them by the warranty deed, by about 12.5 feet.
- 5. Robbie Talbot admitted that his carport encroached upon the Nielsons' property. See, Exhibit "B" attached.
- Plaintiffs wrote Sellers (Parkers) on February 4, 2015 demanding that they step up and defend the property they had conveyed by legal description in a warranty deed. See, Exhibit "C" attached.
- 7. Receiving no response Plaintiffs instituted an action seeking both damages for breach of the sellers' (Parkers') duty to defend Plaintiffs' title and damages for any diminution in value of the property should they lose the fight with the neighbor to quiet title to the 12.5 feet of property being encroached and claimed by the neighbor
- 8. At about the same time Plaintiffs commenced this action against the neighbors (Talbots) seeking quiet title to the 12.5 feet of property, which the sellers (Parkers) warranted and the neighbors (Talbots) are encroaching.
- 9. Parkers have been kept fully apprised of the prosecution of this matter against the encroaching neighbor since they are represented by the same attorney.
- 10. The Court has now ruled that the conveyance by the Parkers to the Nielsons was not effective to convey ownership to the property encroached by the Talbots in violation of

the warranty given by the Parkers to the Nielsons.

Argument

By virtue of this Court's ruling that the encroached property is quieted in the Talbots Parkers have breached their warranty of title and are liable for the loss of property suffered by Plaintiffs in addition to their damages (attorney fees) incurred in defending the title.

THE SELLERS (PARKERS) WHO CONVEYED THE PROPERTY BY WARRANTY DEED WITH A METES AND BOUNDS DESCRIPTION HAD A DUTY TO DEFEND THE PROPERTY "FROM ALL CLAIMS WHATSOEVER."

In their warranty deed, the Sellers (Parkers) described the property they were selling to the Plaintiffs by metes and bounds. They agreed to "warrant and defend" that property, described by that metes and bounds legal description "from all claims whatsoever." That agreement is nothing more than a recitation of the law that attaches to all warranty deeds.

Under Idaho law, damages for breach of the warranty contained in a deed, rather than specific performance of the deed covenants, has been established as adequate compensation for the property lost and expenses incurred in defending the title, including attorney fees; *Flynn v. Allison*, 549 P.2d 1065; *Elliott v. Thompson*, 63 Idaho 395, 120 P. 2d 1014 (1941); *Madden v. Caldwell Land Co.*, 16 Idaho 59, 100 P. 358 (1909).

No formal proof of attorney fees need be offered, but can be assessed, as in other cases by the trial court through affidavit. *Id.* Damages for the loss of the disputed strip will be determined by evidence produced at trial. *Id.*

When property is conveyed by warranty deed, the seller is promising that he owns the property, *Elliott v. Thompson*, 63 Idaho 395, 120 P. 2d 1014 (1941). It matters not that the seller honestly believes he owns the property and is without fault at the time of the conveyance. *Id.* If it turns out that he did not own the property that he conveyed to the purchaser, he has breached his warranty of title. *Id.* Indeed, in a case on all fours similar with this case, the Idaho Supreme

Court found that the seller of a property by metes and bounds was liable for breach of warranty when the court found that a neighbor owned a portion of the property because of a fence that established adverse possession. *Flynn v. Allison* 549 P.2d 1065 (Id. 1976). In *Flynn* the fence was in existence when the seller conveyed the property to the purchaser.

Before this litigation began Plaintiffs invited the Sellers (Parkers) to defend their title against the claims brought by the neighbors (Talbots). They refused, and have been kept fully informed of the proceedings against the Talbots since they are represented by the same lawyer. Based on the Court's ruling, the Parkers have breached their duty to warrant and defend the property and must be held liable for the attorney fees incurred by the Plaintiffs to defend the property. The Idaho Supreme Court has followed "universal authority that one may recover on such a warranty as contained in the deed in question the expenses connected with litigation *unsuccessfully* attempting to validate the title received." *Elliott v. Thompson*, 63 Idaho 395, 120 P. 2d 1014 (1941)(emphasis added); *Koelker v. Turnbull*, 899 P.2d 972, 976 (Id. 1995).

Since the Court has agreed with the Talbots, that they are now the owners of property underlying their carport and shed that encroach the Nielson homestead as conveyed by the Parkers, the Parkers are liable not only for the breach of the duty to defend, but also the breach of the warranty which warranted that the Nielsons own the property described in their deed. *Koelker v. Turnbull*, 899 P.2d 972, 976 (Id. 1995).

So long as the seller has been kept abreast of those proceedings he cannot later challenge the outcome.

If a warrantor has no notice of the action against his grantee, and no opportunity of showing therein that he transferred a good title, he cannot, in any sense, be considered a party to the action, and therefore ought not to be bound by an adjudication of the question of title. But, if he has notice, he may become a party to the suit, and it is his own fault if his title is not fully presented and investigated. He then has an opportunity of sustaining

the title he has warranted and defeating a recovery by the plaintiff in ejectment. If he fails to do this successfully, he is concluded from afterward asserting the superiority of that title, and compelled to refund the purchase money, with interest. *Elliott v. Thompson*, 63 Idaho 395, 409, 120 P. 2d 1014 (1941).

CONCLUSION

Since it has been determined by the Court that the Talbots are entitled to keep the 12.5 feet of property being encroached by their car port, Plaintiffs are entitled to judgment against the Parker Defendants for breach of warranty and the amount of damages resulting from that breach will be proved later at trial, plus damages (attorney fees) incurred by the Plaintiffs in defending the breach of warranty.

DATED this 13th day of October, 2016.

Atkin Law Offices

Rohest

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the MEMORANDUM IN SUPPORT OF MOTION FOR NEW TRIAL OR TO ALTER OR AMEND JUDGMENT DATED OCTOBER 12, 2016 as indicated below:

X U.S. Mail X E-mail ____ Facsimile Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net Robert C. Naftz ____ U.S. Mail ____ E-mail X Facsimile **District Judge** Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290 Franklin County Court ____U.S. Mail _____ E-mail X Facsimile 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 Dated this 13th day of October, 2016.

Gennifer Mariscal

Exhibit A

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL) E. NIELSON, husband and wife,) Case No. CV-2015-132 Plaintiffs,) vs.) ROBERT TALBOT and MICHELE) TALBOT, husband and wife,) and) PAUL PARKER and SAUNDRA PARKER,) husband and wife,) Defendants.))

DEPOSITION OF SAUNDRA PARKER

June 10, 2016

REPORTED BY:

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JANET FRENCH, CSR NO. 946

Notary Public

Nielson v. Talbot

Talt	lot		June 10, 2010
	Page 10		Page 12
1	that there was an encroachment with regard to the	1	by which you obtained the property, and Exhibit 2, the
2	property that you had sold to them?	2	deed by which you conveyed the property to the
3	Â. Correct.	3	Nielsons, it's the same description?
4	Q. And it didn't occur to you that that might	4	A. It is, yes.
5	create a claim that you might have against your title	5	Q. And so you understood when you were
6	insurance company?	6	conveying the property to the Nielsons you were
7	A. Not at the time, no.	7	conveying the property with this legal description,
8	Q. Since that time, has it been have you	8	which would describe the boundaries of the property
9	determined that you might have a claim against your	9	that you sold to them?
10	title insurance carrier?	10	A. That's correct. Yes.
11	Λ. No.	11	(Deposition Exhibit No. 3 marked.)
12	Q. So you've never made a claim against your	12	Q. (BY MR. ATKIN) Let me show what's been
13	title insurance carrier?	13	marked as Exhibit 3.
14	A. Thave not.	14	Do you see recognize this document?
15	Q. Nobody on your behalf has done that?	15	A. I have not seen this document, no.
16	A. Not that I know of.	16	Q. Okay. I'll represent to you that this
17	Q. Okay. All right. This Warranty Deed that's	17	document was provided to us by your lawyer, and I
18	Exhibit 1 describes the piece of property that you	18	can't remember if it was in this case or the other
19	were purchasing.	19	case that was the lawsuit with the Talbots, but
20	Do you see that?	20	A. Okay.
21	A. I do, yes.	21	Q my understanding of this is that this is
22	Q. And that legal description commencing at	22	a document that was prepared by someone. It's on
23	Point 81 Rods.	23	record with the county.
24	Do you see that paragraph?	24	A. Okay.
25	A. Yes, I do.	25	Q. Showing if you look in the top left
			D
	Page 11		Page 13
1	Q. And what did you understand that legal	1	corner, it says "Glen Wayne Nielson."
2	description described?	2	A. Yes, I see that.
3	A. The property line.	3	Q. And that's the person to whom you conveyed
4	Q. Okay. So you understood that if somebody	4	the property; right?
5	you could go out on the ground itself and map out that	5	A. Correct.
6	property line	6	Q. And then next to that is "Robert Talbot."
7	A. Correct,	7	Do you know who Robert Talbot is?
8	Q around	8	A. Yes. He was a neighbor.
9	A. It's the circumference around our property,	9	Q. So if I told you that this and I
10	yes.	10	understand that you are not a surveyor.
11	Q. And that's what you understood that legal	11	A. No.
12	description to be?	12	Q. And I'm not asking you whether the
13	A. That was what I understood, yes.	13	dimensions on here are accurate or any of those kind
14	Q. All right. And when you later conveyed the	14	of things. I just want to use this for illustrative
L 5	property to the Nielsons, you used that same legal	15	purposes, and I'll represent to you that I think that
16	description; is that correct?	16	this shows the relative position of the two
17	A. Correct.	17	properties, the property you purchased and then sold
18	(Deposition Exhibit No. 2 marked.)	18	to the Nielsons and the property next to it that was
19	Q. (BY MR. ATKIN) Let me show you what's been	19	owned by Robert Talbot.
20	marked Exhibit No. 2. Is that the Warranty Deed by	20	When you bought the property, was Robert
	which you conveyed the property you and your	21	Talbot already your neighbor?
	husband conveyed the property to Glen Nielson?	22	A. Yes.
21	• • • •		
21 22	A, Yes.	23	Q. And there is a carport that I understand
21 22 23 24	• • • •	23 24 25	that Robert Talbot built. Was that built before you bought the property or after?

2

Exhibit B

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff/Counterdefendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

Defendants/Counterclaimants.

AFFIDAVIT OF DIANA N. RUGG

Case No. CV-2015-132

Judge: Naftz

Diana N. Rugg, having been first duly sworn deposes and says:

- 1. I am over the age of 18 and have personal knowledge of the matters set forth herein.
- 2. Shortly after Wayne and Cheryl Nielson bought their home in Preston, Idaho in

August 2013, my husband Monte and I went to Preston to do some painting in the home.

3. While there we met their neighbors, Robbie Talbot and his wife, Michele.

4. Robbie told us that his carport was on Wayne and Cheryl's property.

 I was surprised later to find out that these facts were not disclosed to Wayne and Cheryl when they bought the property. Dated this <u>19</u> day of February, 2016

Diane A. Lugg

Diana N. Rugg

SUBSCRIBED AND SWORN before me this day of February, 2016.

Notary Public STACY BRITT We commission #566201 W commission Expines May 14, 2017 State of Utah Notary Public Attribution clause: This certificate is prepared for, and exclusively belongs to, the accompanying document entitled Affidavit of Diano N Rengg Which consists of 1 pg and is dated 2-29-16 If this certificate is appropriated to any document be deemed null and void

Exhibit C

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Randall A Peterman Mark S. Prusyuski Stephen R. Thomas Gerald T. Husch Scott L. Campbeli Patricia M. Olsson Christine E. Nicholas Bradley J Williams Lee Radford

James L. Martin C. Clayton Gill David P. Gardner Julian E. Gabiola Jon A. Stenguist C. Edward Cather III Mark C. Peterson Tyler |. Anderson Andrew J. Waldera

David K. Pentod Blake G. Swenson Benjamin C. Ritchie Matthew J. McGee Mindy M. Willman Jetta Hatch Mathews Andrea I. Rosholi Kirk J. Houston Jamie K. Moon

Of Counsel: Larry C. Hunter Gary T. Dance John C. Ward John S. Sinuko David B. Lincoln Norman M. Semanko

MAILING ADDRESS: PC 90x 51505

900 Pier View Dr. STE 206 Idaho Falls ID 83405-1505 Idaho Falk ID 83402-4977 208.522.6700 MAIN

PHYSICAL ADDRESS

www.molfatt.am

800.422.2889 FOLL/TRUE 208.522.5111 PAX

February 4, 2015

Paul and Saundra Parker 701 South 2nd West Preston. ID 83263

Re: **Property Line Dispute** MTBR&F File No. 25996.0000

Dear Mr. & Mrs. Parker:

Our firm represents Wayne and Cheryl Nielson. On August 27, 2013, you sold the property commonly known as 496 W. 200 S., Preston, Idaho 83263 ("Property") and more specifically described in that certain warranty deed recorded in the records of Franklin County, Idaho as Instrument No. 259382 ("Deed"). The Deed states that you were the owners in fee simple of the Property and that you would "warrant and defend the same from all claims whatsoever."

On August 11, 2014, the Nielsons received the enclosed correspondence from Lane Erickson, counsel for Robert and Michelle Talbot. The Talbots are claiming ownership of an approximately 12 foot strip of the eastern boarder of the Property. Their claim is based on boundary by agreement or, alternatively, an established fence line.

As provided for in the Deed, the Nielsons demand that you defend against any claims by the Talbots. Your prompt attention to this matter would be greatly appreciated. If you are unable to resolve this matter in the Nielsons' favor within fourteen (14) days of the date of this letter, the Nielsons will take logal action against you to enforce the terms of the Deed.

Very truly yours,

C. Edward Cather III

CEC/ims Enclosures

BOISE * POCATELLO * IDAHO FALLS

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 16 OCT 17 AM 10: 41

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife, NOTICE OF HEARING

Case No. CV-2015-132

Judge: Naftz

Defendants.

Please take notice that the hearing on the Plaintiffs' Motion for New Trial or to Alter or Amend Judgment Dated October 12, 2016 will be held on Wednesday, October 26, 2016 at 10:00 a.m.

DATED this 17th day of October, 2016.

Atkin Law Offices

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the NOTICE OF

HEARING as indicated below:

Lane V. Erickson	XU.	S. Mail	Х	E-mail 🔄	Facsimile
RACINE, OLSON, NYE, BUDGE					
& BAILEY CHARTERED					
201 East Center					
P.O. Box 1391					
Pocatello, Idaho 83204-1391					
Facsimile: (208) 232-7352					
Email: lve@racinelaw.net					
Robert C. Naftz		US Mail		E-mail	X Facsimile
District Judge	~~~ <u>~</u>	0.0. 101011		D man	
Bannock County Courthouse					
624 E. Center, Room 220					
Pocatello, ID 83201					
Fax: 208-236-7290					
Franklin County Court	ŢŢ	S Mail		E-mail	X Facsimile
39 West Oneida	0		,		
Preston, Idaho 83263					
Via Fax: (208) 852-2926					
	Dated	this 17th c	lay	of October,	2016.

Gennifer Mariscal

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109 FILED ISOCTIS FM 5:00 FRAMALIN SCHUTY CLERK KA

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

 $\star \star \star \star \star \star$

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife

Defendants/Counterclaimants.

Case No. CV-2015-00132

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR NEW TRIAL OR TO ALTER OR AMEND JUDGMENT

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, and the Defendants PARKER and SAUNDRA PARKER, husband and wife (hereafter "Defendants"), by and through counsel, and hereby submits this Opposition to Plaintiffs' Motion for New Trial or To Alter or Amend Judgment.

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR NEW TRIAL OR TO ALTER OR AMEND JUDGMENT Page 1

PROCEDURE AND BACKGROUND OF CASE

The present case is a consolidation of two cases brought by the Plaintiff. The first case involved ROBERT TALBOT and MICHELE TALBOT, the next door neighbors of the Plaintiff concerning a boundary line dispute, who filed an Answer and a Counterclaim to quiet title to the boundary line. The second case involved PAUL PARKER and SAUNDRA PARKER who sold a home to the Plaintiff. This case raises a Warranty of Title claim and a damage claim for a claim of mold and water damage.

These two cases were consolidated on April 22, 2016 into the present litigation as the boundary line issue is mutual between the two sets of Defendants. Defendants filed an Amended Motion for Summary Judgment. On September 12, 2016, the Court held a hearing on the Amended Motion for Summary Judgment and heard oral argument. Following arguments by the parties the Court took the matter under advisement.

On October 12, 2016, the Court entered a Memorandum Decision and Order granting summary judgment in favor of the Defendants and dismissing Plaintiffs' case and claims with prejudice. The Court also entered a Judgment in favor of the Defendants on October 12, 2016. On October 13, 2016, Plaintiffs filed their Motion for New Trial or To Alter or Amend Judgment.

RELIEF SOUGHT BY DEFENDANTS

Pursuant to the Decision and/or subsequent Judgment entered by the Court, there is no basis for granting a new trial or for altering or amending the judgment. Essentially, there are no remaining issues to present at trial, nor is there any reason to alter or amend the Court's Decision and/or subsequent Judgment. All issues were decided by the Court on the merits given the record before the Court. For this reason, the Court should deny Plaintiffs' Motion. From: Lorna 343

ARGUMENT

I. STANDARD OF REVIEW FOR RULE 59 MOTION

A trial court's determination not to grant a new trial or to alter or amend a judgment will not be overturned absent manifest abuse of discretion. Stout v. Westover, 106 Idaho 533, 534, 681 P.2d 1008, 1009, (Idaho 1984). Indeed the Idaho Supreme Court has repeatedly stated that in

"reviewing the denial of a motion for a new trial our standard is well settled. This Court has been consistent in recognizing the trial court's important function in passing on motions for new trial and upholding the trial court's grant or denial of such motions unless the court has manifestly abused the wide discretion vested in it. The trial court is in a far better position to weigh the demeanor, credibility, and testimony of witnesses, and the persuasiveness of all the evidence. Appellate review is necessarily more limited. While we must review the evidence, we are not in a position to 'weigh' it as the trial court can."

Quick v. Crane, 111 Idaho 759, 770, 727 P.2d 1187, 1198, (Idaho 1986).

The Idaho Supreme Court does require "the trial judge [to] disclose his reasoning for granting or denving motions for a new trial and/or remittitur or additur unless those reasons are obvious from the record itself." Quick v. Crane, 111 Idaho 759, 772, 727 P.2d 1187, 1200, (Idaho 1986).

Concerning the Defendants Parkers, because the boundary line was established by the Court's Decision and Judgment, no claim for Breach of Warranty of Title and/or Duty to Defend can stand. The legal descriptions in all deeds associated with the Talbot property and the Nielson property are altered and replaced by the intentions of the parties as evidence by decades of agreement concerning the boundary line first established by the fence. Thus, the Deed the Plaintiffs claim provides them with a duty to defend or a breach of warranty title claim was altered to reflect the intentions of the original buyer and seller and all subsequent owners of the From: Lorna 343

properties. For these reasons, the Court should either deny Plaintiff's Motion or should amend the judgment to reflect that all claims raised against Defendants Parker are also dismissed.

II. WARRANTY OF TITLE OR DUTY TO DEFEND CLAIMS

In the present case, the Court applied the correct law and found that with regard to both the Nielson Property and the Talbot Property "the particular rule applicable here is that where the seller and the buyer go upon the land and there agree upon and mark the boundary between the part to be conveyed and the part to be retained by the seller, the line thus fixed controls the courses and distances set out in the deed." *Campbell v. Weisbrod*, 73 Idaho 82, 89, 245 P.2d 1052, 1057 (1952). Essentially, applying the law set for the by the Idaho Supreme Court, the Districit Court stated, "the general rule is that monuments, natural or artificial, or lines marked

The District Court also correctly determined that in a subsequent case, the Idaho Supreme Court declared that an agreed upon boundary established under the *Campbell* ruling, "would also be binding upon a successor in interest of the seller, who purchased with notice of the agreement." *Paurley v. Harris*, 75 Idaho 112, 117, 268 P.2d 351, 353 (1954). Accordingly, the District Court entered its decision and judgment that the boundary line between the Talbot Property and the Nielson Property was established to be where the fence originally stood and was then replaced by the lilacs, grass, yard, sprinkler system, shed, driveway and carport were placed and where decades of previous owners always maintained the boundary to be. Further, the District Court granted Defendant Talbot's counterclaim against the Plaintiffs to quiet title to the portion of land that is in dispute in favor of the Talbots.

Because the boundary is established by Idaho law, as set forth in Section II above, Plaintiff's warranty of title or duty to defend claim against the Parkers were dismissed. In applying the *Campbell, Paurley*, and *Reid*, decisions, District Court determined that the Nielsons were successors in interest with notice of the agreement that altered or changes the meets and bounds descriptions in the written deeds. As a result of the District Court's Decision and Judgment there is no remaining Breach of Warranty of Title and/or Duty to Defend claim that can remain against Defendants' Parkers. Plaintiff's Warranty Deed, and the legal description contained therein, were changed by the agreement evidenced and described by all previous owners of the properties. For this reason, the Warranty Deed provided by the Parkers, in its changed state, is accurate and cannot be the source of any claim for Breach of Warranty of Title and/or Duty to Defend in favor of the Plaintiffs.

CONCLUSION

As a result of the above, the Court should either dismiss Plaintiff's Motion for New Trial, or in the alternative, should alter or amend its original Decision and Judgment to reflect that Plaintiffs claims against Defendants Parker for Breach of Warranty of Title and/or Duty to Defend are dismissed.

DATED this 19^{12} day of October, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR NEW TRIAL OR TO ALTER OR AMEND JUDGMENT Page 5

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228 [X] U. S. Mail Postage Prepaid[] Hand Delivery

] Overnight Mail

| Facsimile

on this $\frac{19^{44}}{100}$ day of October, 2016.

LANE V. ERICKSON

[

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR NEW TRIAL OR TO ALTER OR AMEND JUDGMENT Page 6 Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail <u>lve@racinelaw.net</u>

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife,

and

PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

CASE NO. CV 15-132

NOTICE OF INTENT TO APPEAR TELEPHONICALLY

Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, by and through their attorney of record, Lane V. Erickson, hereby give notice that they will appear telephonically at the hearing scheduled for October 26, 2016 at 10:00 a.m. regarding Plaintiffs' Motion for New Trial or to Alter or Amend Judgment before Judge Robert C. Naftz. Defendants' counsel will call in to the

NOTICE OF INTENT TO APPEAR TELEPHONICALLY -1

FILED 16 OCT 24 PM 3: 04 FRANKLIN OCENITY OLERK Court's phone number: 208-852-0877.

DATED this 20th Day of October, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the $\underline{\lambda c}^{\perp}$ day of October, 2016, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 Fax: 801-533-0380 X] U. S. Mail Postage Prepaid
Hand Delivery
Overnight Mail
Facsimile
E-Mail

LANE V. ERICKSON

FILED

16 OCT 24 MM 11: 15

THANKERS COURT Y CLERK



Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

REPLY IN SUPPORT OF MOTION FOR NEW TRIAL

Case No. CV-2015-132

Judge: Naftz

Defendants would have this Court leave the issue of breach of Warranty undecided. One peruses the Court's decision in vain looking for any determination of the Plaintiffs' claims for breach of the warranty of title by the Parker Defendants who conveyed the property to the Nielsons by warranty deed. That warranty deed conveyed property that the Court has now found belongs, in part, to the neighbors.

Defendants argue that the actions of prior owners going onto the ground and marking out a boundary that is different than the metes and bounds set out in the warranty deed by which the Parkers conveyed the property to the Nielsons and the actions of the owners in the years since has altered the legal descriptions in the deeds:

"The legal descriptions in all deeds associated with the Talbot property and the Nielson property are altered and replaced by the intentions of the parties as evidence [sic] by decades of agreement concerning the boundary line first established by the fence. Thus, the Deed that Plaintiffs claim provides them with a duty to defend or a breach of warranty [sic] title claim was altered to reflect the intentions of the original buyer and seller and all subsequent owners of the properties." Response at 3.

In effect, Defendants are arguing for reformation of the deeds. One problem is that the Defendants never pleaded a defense of reformation. There is a process in the law whereby a deed can be reformed, but it is not automatic. An action for reformation can be undertaken in a court of law, and a judgment reduced to writing and filed with the county recorder reflects the changes made and puts the public and future purchasers on notice of the reformation. No such action was undertaken by the original parties who split these properties nor any of the subsequent purchasers.

Reformation is a serious undertaking and is not so casual a thing as defendants would assert. Rather for a defense such as that made by defendants that the deed is altered requires pleading and proof. Failure of pleading and proof of an affirmative defense such as reformation precludes the defense. See, <u>Flynn v. Allison</u>, 549 P. 2d 1065, 97 Idaho 618 (1976).

Such an argument could not prevail even if it had been properly pleaded. The law requires more than a mere oral agreement for the agreement to validly work a reformation of the language of the warranty deeds.

"Where the location of a true boundary line between conterminous owners is known to either of the parties, or is not uncertain, and is not in dispute, an oral agreement between them purporting to establish another line as the boundary between their properties constitutes an attempt to convey real property in violation of the statute of frauds (I.C. §§ 9-505 and 55-601) and is invalid. But, where the location of the true boundary line is unknown to either of the parties, and is uncertain or in dispute, such conterminous owners may orally agree upon a boundary line. When such an agreement is executed and actual possession is taken under it, the parties and those claiming under them are bound thereby. In such circumstances, an agreement fixing the boundary line is not regarded as a conveyance of any land from one to the other, but merely the location of the respective existing estates and the common boundary of each of the parties." *Hyde v. Lawson*, 499 P. 2d 1242, 1245 (Idaho 1972). This is a statement of what is known in Idaho law as boundary by acquiescence or boundary by agreement.¹ Defendants conceded at the hearing on the motion for summary judgment that there is no boundary by acquiescence or boundary by agreement here because there was never a dispute.

Without having pleaded a cause of action for reformation against the Nielsons, the Parkers cannot be allowed to assert as a defense a reformation that they claim negates their agreement to defend and warrant the title they signed in the transaction with the Nielsons. Reformation can only be had when the parties to the original agreement had a mutual mistake "regarding a basic assumption or vital fact upon which the bargain is based." *Hughes v. Fisher*, 129 P. 3d 1223, 1231 (Id. 2006). It might be a far stretch to conclude that a mistake as to a six foot strip at the outer edge of the properties being divided was a basic assumption that would have thwarted the original deal. In any event, such a conclusion would not be the kind of issue a court should resolve without pleading, discovery and trial. *Hughes v. Fisher*, 129 P. 3d 1223, 1231 (Id. 2006)("What the parties actually intended is a question of fact.") Reformation is not favored in the law, particularly where it will affect the rights of third parties who were not party to the agreement being reformed, and the facts that would support a reformation must be proved by clear and convincing evidence. *Hughes v. Fisher*, 129 P. 3d 1223, 1231 (Id. 2006).

Reformation is not something this Court should attempt where it was not raised in the pleadings, no opportunity for discovery on its issues was afforded the Plaintiffs, and the factual issues have not been determined by clear and convincing evidence at a trial on the merits.

¹ The Parker Defendants pleaded a defense of "boundary by Agreement/Acquiescence", Parker Answer at 20 which they have now conceded. But they did not plead a defense of reformation.

The motion for new trial should be granted and the Court should find that the Parkers have failed to plead or prove a cause of action justifying reformation of the deed, and in accordance with Idaho law as set out in this motion find that the Parkers have breached both their duty to defend and their warranty under the warranty deed.

DATED this 24th day of October, 2016.

Atkin Law Offices

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Blake S. Atkin Attorneys for the Plaintiffs

Via Fax: (208) 852-2926

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CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the REPLY IN

SUPPORT OF MOTION FOR NEW TRIAL as indicated below:

X U.S. Mail X E-mail ____ Facsimile Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net ____ U.S. Mail ____ E-mail X Facsimile Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290 Franklin County Court U.S. Mail ____ E-mail X Facsimile 39 West Oneida Preston, Idaho 83263

Dated this 24th day of October, 2016.

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MOTION TO VACATE

Case No. CV-2015-132

Judge: Naftz

FILED

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net 16 OCT 24 PM 1: 23

FRANKLAN DOGMTY CLERK

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

Notice is hereby given that the hearing on Plaintiffs' Motion for New Trial scheduled for Wednesday, October 26, 2016 at 12:45p.m. is vacated. The Court will take the matter under advisement.

DATED this 24th day of October, 2016.

Atkin Law Offices

Blake S. Atkin Attorneys for the Plaintiffs

Ξ.

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the NOTICE

TO VACATE as indicated below:

' X U.S. Mail X E-mail ____ Facsimile

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: Ive@racinelaw.net

 U.S.	Mail	E-mail	Х	Facsimile

Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 ____U.S. Mail ____ E-mail X Facsimile

Dated this 24th day of October, 2016.

Jennifer Mariscal

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109 FILED 16 OCT 25 PM 4:55 HEANELIS DOMAGE CLERK

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

٧.

ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife

Defendants/Counterclaimants.

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, and the Defendants PARKER and SAUNDRA PARKER, husband and wife (hereafter "Defendants"), by and through counsel, and pursuant to Rules 54(d)(1); 54(d)(4) and 54(e)(1) of the Idaho Rules of Civil Procedure, and I.C. §§ 12-120(3); and 12-121; hereby submits the within Memorandum of Costs itemizing each claimed expense, cost and disbursement incurred by Defendants in these proceedings.

Name	Defendants Talbot	Defendants Parker
Legal Hours	112.20 hours	78.80 hours

Case No. CV-2015-00132

I.R.C.P. RULE 54(d)(4) MEMORANDUM OF COSTS

Filing Fee	\$139.00 \$161.04	\$139.00 \$167.10
Mileage Meals	\$0.00	\$8.02
Court Call	\$60.00	\$205.59
Deposition Costs Totals	\$23,355.04	\$16,673.71

To the best of the undersigned's knowledge and belief, the separated and itemized costs listed above are correct and are claimed in compliance with the applicable rules and laws, including, but not limited to, Rules 54(d)(1); 54(d)(4) and 54(e)(1) of the Idaho Rules of Civil Procedure, and I.C. §§ 12-120; and 12-121.

The authority for awarding fees and costs against the Plaintiff is set forth above and in Defendants' Brief in Support of Motion for Award of Fees and Costs, and the authorities set forth therein which are incorporated herein by reference as if set forth fully. Based upon the applicable statutes and authorities provided by the Defendants, the Court has authority to enter the award requested in favor of the Defendants.

Defendants Respectfully request that the Court enter a Judgment in their favor for the sums listed above.

DATED this 26^{42} day of October, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

MEMORANDUM OF COSTS Page 2

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228 [X] U.S. Mail Postage Prepaid

] Hand Delivery

] Overnight Mail

[X] Facsimile

on this $\underline{\mathcal{L}}_{4}^{\text{T}}$ day of October, 2016.

LANE V. ERICKSON

Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109

FILED 16 OCT 26 PM 4: 55 ANTON A CLEARY CLEAK

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife

Defendants/Counterclaimants.

Case No. CV-2015-00132

DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEY FEES AND COSTS

COMES NOW the Defendants/Counterclaimants ROBERT TALBOT and MICHELE TALBOT, husband and wife, (hereafter "Defendants Talbot"), and the Defendants PARKER and SAUNDRA PARKER, husband and wife (hereafter "Defendants Parker"), by and through counsel, in the above-referenced proceeding, and hereby submits its Brief in Support of its Motion for an Award of Attorncy Fccs and Costs.

PROCEDURE AND BACKGROUND OF CASE

The present case is a consolidation of two cases brought by the Plaintiff. The first case

DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEY FEES AND COSTS Page 1 involved Defendants Talbot, the next door neighbors of the Plaintiff concerning a boundary line dispute, who filed an Answer and a Counterclaim to quiet title to the boundary line. The second case involved Defendants Parker who sold the home to the Plaintiff. This case raises a Warranty of Title claim and a damage claim for a claim of mold and water damage.

These two cases were consolidated on April 22, 2016 into the present litigation as the boundary line issue is mutual between the two sets of Defendants. In each of the Complaints, the Plaintiff claimed a right to recover attorney fees and costs against the Defendants pursuant to Idaho Code §§ 12-120 and 121. As against Defendants Parker, the Plaintiff also plead a right to recover attorney fees and costs pursuant to Idaho Code §55-2517.

The Defendants filed for summary judgment against all of the claims of the Plaintiff on August 15, 2016. A hearing was held by the court on September 12, 2016. Oral argument was made by all the parties. On October 12, 2016, the Court entered a Decision granting summary judgment in favor of the Defendants and dismissing all of Plaintiff's claims. On October 12, 2016, the Court also entered a Judgment in favor of the Defendants.

RELIEF SOUGHT

Defendants Talbot and Defendants Parker respectfully request that a judgment be entered in their favor separately allowing them to recover their attorney fees and costs in this litigation pursuant to the authority listed in the argument below which includes but is not limited to Idaho Code §§ 12-120; 12-121; § 55-2517, and I.R.C.P. Rule 54.

ARGUMENT

Defendants Talbot and Defendants Parker should each be awarded all of their specific

DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEY FEES AND COSTS Page 2 reasonable attorney fees and litigation costs in defending all of the causes of action and claims that the Plaintiffs brought against them. The Idaho Supreme Court has repeatedly declared that "Idaho courts will consider whether the parties alleged the application of I.C. § 12-120." *De Groot v. Standley Trenching, Inc.*, 157 Idaho 557, 567, 338 P.3d 536, 546, (2014), *citing, Fritts v. Liddle & Moeller Const.*, 144 Idaho 171, 174-75, 158 P.3d 947, 950-51 (2007) ("[both parties] in their answer and counterclaim . . . clearly allege that I.C. § 12-120 applies.", and *citing, Cannon Builders, Inc. v. Rice*, 126 Idaho 616, 624, 888 P.2d 790, 798 (Ct. App. 1995).

In Lexington Heights Development, LLC v. Crandlemire, 140 Idaho 276, 287, 92 P.3d 526, 537 (2004) the Idaho Supreme Court noted that "[w]here a party alleges the existence of a contract that would be a commercial transaction under Idaho Code § 12-120(3), that claim triggers the application of the statute and the prevailing party may recover attorney fees even if no liability under the contract is established." Fritts v. Liddle & Moeller Constr., Inc., 144 Idaho 171, 174-175, 158 P.3d 947, 950-951, (2007). In Fritts, both parties raised the right to be awarded attorney fees specifically under I.C. § 12-120. The parties were not more specific in their pleadings than this. In doing so, the Idaho Supreme Court found that this was adequate to provide for an award of attorney fees to the prevailing party. Id. At 144 Idaho 175, 158 P.3d 951.

In the present case the Plaintiff in both of its Verified Complaints against Defendants Talbot and Defendants Parker alleged a right to be awarded their attorney fees and costs pursuant to Idaho Code §§ 12-120; 12-121; § 55-2517. Likewise, in the Answer and Counterclaim of Defendants Talbot and in the Answer of Defendants Parker a claim was made pursuant to Idaho Code §§ 12-120; 12-121.

On October 12, 2016, the Court entered a Decision granting summary judgment in favor DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEY FEES AND COSTS Page 3 of the Defendants and dismissing all of Plaintiff's claims. On October 12, 2016, the Court also entered a Judgment in favor of the Defendants. Defendants Talbot and Defendants Parker are the prevailing parties in this litigation. Based upon the claims filed in Plaintiff's Complaints against each of the Defendants, as well as the requests from each of the Defendants in their Answers and Counterclaims, Defendants have set forth a statutory basis to receive an award of attorney fees and costs in the present case. Defendants respectfully request the entry of such an award by the Court.

CONCLUSION

Defendants Talbot and Defendants Parker respectfully request that this Court enter a Judgment against the Plaintiffs awarding to the Defendants all their reasonable attorney fees and costs.

DATED this Laday of October, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON

DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEY FEES AND COSTS Page 4

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228 [X] U.S. Mail Postage Prepaid

-] Hand Delivery
-] Overnight Mail

[X] Facsimile

on this <u>Jue</u> day of October, 2016.

LANE V. ERICKSON

DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEY FEES AND COSTS Page 5 Lane V. Erickson (ISB No. 5979) RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P. O. Box 1391/Center Plaza Pocatello, Idaho 83204-1391 Phone: (208) 232-6101 FAX: 208-232-6109 FILED ISOCT 31 PH 1:18 TRANKLAS COLOURY OLERK

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife

Defendants/Counterclaimants.

STATE OF IDAHO) : ss County of Bannock)

I, LANE V. ERICKSON, after first being duly sworn on oath, deposes and states as follows:

1. That I am the attorney of record for the Defendants ROBERT TALBOT and MICHELE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, in the above-captioned matter.

2. Affiant is an attorney licensed to practice law in the State of Idaho, and, if called

Case No. CV-2015-00132

AFFIDAVIT OF LANE V. ERICKSON IN SUPPORT OF MOTION FOR ATTORNEY FEES AND COSTS

upon to testify, could testify to the following, all of which are within his own personal knowledge or based upon his professional judgment.

3. I have been engaged in the active practice of law since 1999, and am a partner with the law firm of Racine, Olson, Nye, Budge & Bailey, Chartered, in Pocatello, Idaho. A substantial portion of my practice concerns business litigation and contracts. Affiant is familiar with the prevailing rate for attorneys in the southeast Idaho area engaged in the similar law practice. A usual and customary fee for legal services of the kind provided in a matter such as this one if contested are \$225.00 per hour.

4. From July 17, 2014, to the present I have represented Defendants Talbot in this litigation. From April 8, 2015, to the present I have represented Defendants Parker in this litigation. From these dates forward there have been the following hours expended for each representation:

Name	Defendants Talbot	Defendants Parker
Legal Hours	112.20 hours	78.80 hours
Attorney Fees @ \$205/hour	\$22,995.00	\$16,154.00
Filing Fee	\$139.00	\$139.00
Mileage	\$161.04	\$167.10
Meals	\$0.00	\$8.02
Court Call	\$60.00	
Deposition Costs		\$205.59

This time was expended on behalf of the respective Defendants in defending each of the Defendants first in their separate actions and then in the consolidated action, brought against them by the above-named Plaintiffs. Actual costs are also listed above in the table that were expended on behalf of Defendants Talbot and Defendants Parker.

5. All incurred fees have been charged at the rate of \$205.00 per hour for a total as previously set forth. The project categories, and itemization of the time and fees, as well as the costs, are incurred in each category is reflected in the statement of attorney fees and costs attached hereto as Exhibit "A" for Defendants Talbot and Exhibit "B" for Defendants Parker.

6. The time I spent on various portions of this matter, as listed in the attached Exhibits "A", and "B" were reasonably necessary in defending against the Plaintiffs' Complaints and for all the various actions, motions, hearings, and the like conducted and completed in this litigation.

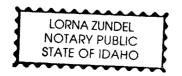
FURTHER SAITH AFFIANT NAUGHT.

DATED this $\underline{\lambda}_{\ell} \underline{\Gamma}_{\ell}^{L}$ day of October, 2016.

RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

LANE V. ERICKSON Attorney for Plaintiff

SUBSCRIBED AND SWORN TO before me on this $\underline{\mathcal{I}} \mu^{\mu}$ day of October, 2016.



Jama Juntil NOTARY PUBLIC FOR IDAHO

Residing at: <u>Pocatello, Idaho</u> Commission expires: $\frac{\dot{\gamma}}{16}/\frac{2618}{3}$

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following unless a different method of service is indicated:

Blake S. Atkin Atkin Law Offices, PC 7579 North West Side Highway Clifton, Idaho 83228 [X] U. S. Mail Postage Prepaid

] Hand Delivery

[] Overnight Mail

[X] Facsimile

on this $\underline{\lambda}_{i}^{\dagger}$ day of October, 2016.

LANE V. ERICKSON

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Detail Transaction File List ACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERE

Page: 1

Client	Trans Date	Atty P	Task Code	Rate	to Bill	Amount		Re
0.0046022	07/17/2014	LVE A	75	195.00	0.60	117.00	TELEPHONE CONFERENCE WITH MICHELLE TALBOT REGARDING HISTORY OF PROPERTY; THREAT OF SUIT; RECEIVED AND REVIEWED PACKET OF DOCUMENTS REGARDING CHAIN OF TITLE TO THE PROPERTY TALBOT/MICHELLE	ARG
0.0046022	07/24/2014	LVE A	55	205.00	1.70	348.50	MICHELLE TALBOT V CHERYL NELSON COMPLETE RESEARCH ON BOUNDARY BY AGREEMENT/FENCELINE; DRAFTED OPINION LETTER TO MICHELLE TALBOT; EMAILED TO MICHELLE TALBOT; MULTIPLE TELEPHONE CONFERENCES WITH MICHELLE TALBOT REGARDING REVIEW OF LETTER AND PREPARATION FOR MEETING WITH CHERYL NELSON TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARC
0.0046022	08/08/2014	LVE A	75	205.00	0.30	61.50		AR
0.0046022	08/11/2014	LVE A	. 75	205.00	0.40	82.00		AR
0.0046022	09/04/2014	LVE A	. 75	205.00	0.30	61.50		AR
0.0046022	11/14/2014	LVE A	227	205.00	0.30	61.50		AR
0.0046022	11/17/2014	LVE A	227	205.00	0.20	41.00		AR
0.0046022	12/08/2014	LVE A	58	205.00	0.30	61.50		AR
0.0046022	02/04/2015	LVE A	81	205.00	0.30	61.50		AF
0.0046022	02/06/2015	LVE A	224	205.00	0.60	123.00		AR
0.0046022	02/12/2015	LVE A	227	205.00	0.40	82.00		AR
0.0046022	02/17/2015	LVE A	. 75	205.00	0.30	61.50		AF
0.0046022	02/19/2015	LVE A	. 60	205.00	0.80	164.00		AF

, Date: 10/19/2016

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Detail Transaction File List ACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERE

	Client	Trans Date		Tcode/ Task Code	Rate	Hours to Bill	Amount		<u>Ref #</u>
Fees	0.0046022	02/24/2015	LVE A	227	205.00	1.10	225.50	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON MULTIPLE EMAILS FROM AND TO ED CATHER RE: ACCEPTING SERVICE OF COMPLAINT TALBOT/MICHELLE	ARCH
	0.0046022	03/24/2015	LVE A	58	205.00	0.70	143.50	MICHELLE TALBOT V CHERYL NELSON RECEIVE AND REVIEW COMPLAINT FROM ED CATHER (ATTORNEY FOR NIELSENS); EMAIL CORRESPONDENCE TO AND FROM ED CATHER TALBOT/MICHELLE	ARCH
	0.0046022	03/31/2015	LVE A	62	205.00	0.80	164.00	MICHELLE TALBOT V CHERYL NELSON REVIEWED COMPLAINT AND ATTACHED DOCUMENTS; TELEPHONE CONFERENCE WITH ROBERT AND MICHELE TALBOT; DISCUSSION OF COMPLAINT; DISCUSSION OF POTENTIAL WITNESSES; DISCUSSION OF RETAINING BRIAN ALLEN; DISCUSSION OF ACCEPTANCE OF SERVICE AND OF ANSWERING THE COMPLAINT AND FILING A COUNTERCLAIM TALBOT/MICHELLE	ARCH
	0.0046022	04/03/2015	LVE A	58	205.00	0.40	82.00	MICHELLE TALBOT V CHERYL NELSON RECEIVE PLAINTIFF'S MOTION TO DISQUALIFY JUDGE BROWN FROM CASE; SCANNED AND EMAILED TO ROBERT AND MICHELE TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARCH
	0.0046022	04/07/2015	LVE A	227	205.00	0.30	61.50	EMAILS FROM AND TO MICHELE; RECEIVE LIST OF PEOPLE/WITNESSES TO CONTRACT TO SUPPORT CASE TALBOT/MICHELLE	ARCH
	0.0046022	04/21/2015	LVE A	60	205.00	2.10	430.50	MICHELLE TALBOT V CHERYL NELSON DRAFTING ANSWER AND COUNTERCLAIM; EMAIL CORRESPONDENCE FROM AND TO ED CATHER; FILED NOTICE OF APPEARANCE TALBOT/MICHELLE	ARCH
	0.0046022	04/22/2015	LVE A	227	205.00	0.80	164.00	MICHELLE TALBOT V CHERYL NELSON MULTIPLE EMAIL CORRESPONDENCE FORM AND TO MICHELE TALBOT REGARDING REVISIONS TO ANSWER AND COUNTERCLAIM; FINALIZED RESEARCH ON COLLECTION OF ATTORNEY FEES; FINALIZED AND FILED ANSWER AND COUNTERCLAIM TALBOT/MICHELLE	ARCH
	0.0046022	05/08/2015	lve a	227	205.00	0.40	82.00	MICHELLE TALBOT V CHERYL NELSON MULTIPLE EMAIL CORRESPONDENCE FROM AND TO ED CATHER REGARDING SCHEDULING RULE 16 MEETING BETWEEN ATTORNEYS FOR SCHEDULING TALBOT/MICHELLE	ARCH
	0.0046022	05/11/2015	LVE A	75	205.00	0.70	143.50	MICHELLE TALBOT V CHERYL NELSON TELEPHONE CONFERENCE WITH ED CATHER (ATTORNEY FOR CHERYL) REGARDING RULE 16 DISCUSSION AND PREPARATION OF MATERIALS FOR SUBMISSION TO COURT FOR SCHEDULING ORDER TALBOT/MICHELLE	ARCH
	0.0046022	05/14/2015	LVE A	58	205.00	0.60	123.00	MICHELLE TALBOT V CHERYL NELSON RECEIVED ANSWER TO COUNTERCLAIM; ANALYZED DENIALS, ADMISSIONS AND AFFIRMATIVE DEFENSES RAISED BY NEILSON TALBOT/MICHELLE	ARCH
	0.0046022	05/18/2015	LVE A	58	205.00	1.10	225.50	MICHELLE TALBOT V CHERYL NELSON RECEIVED AND ANALYZED PLAINTIFF'S FIRST DISCOVERY REQUESTS; SCANNED AND E-MAILED TO THE TALBOTS FOR REVIEW; SCHEDULED ASSOCIATED DEADLINES FOR RESPONSES TALBOT/MICHELLE	ARCH
	0.0046022	05/21/2015	LVE A	227	205.00	0.30	61.50	MICHELLE TALBOT V CHERYL NELSON EMAIL CORRESPONDENCE TO TALBOTS REGARDING DISCOVERY REQUESTS TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARCH
	0.0046022	05/26/2015	LVE A	75	205.00	0.60	123.00	TELEPHONE CONFERENCE WITH MICHELE TALBOT; NOTES FOR DISCOVERY RESPONSES; TELEPHONE CONFERENCE WITH BRIAN ALLEN TALBOT/MICHELLE	ARCH
MBS	0.0046022	05/29/2015	LVE A	58	205.00	0.30	61.50	MICHELLE TALBOT V CHERYL NELSON RECEIVED COURT'S SCHEDULING ORDER FOR TRIAL AND DEADLINES	ARCH

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Detail Transaction File List ACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERE

Fees	Client	Trans Date	Atty P	Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref#
	0.0046022	06/01/2015	LVE A	227	205.00	1.10	225.50	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON MULTIPLE EMAIL CORRESPONDENCE TO AND FROM MICHELE TALBOT RE: MEETING IN PRESTON TO REVIEW PROPERTY; DRAFTING DISCOVERY RESPONSES;	ARCH
	0.0046022	06/02/2015	LVE A	50	205.00	4.20	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON 861.00 PREPARED FOR AND PARTICIPATE IN MEETING WITH TALBOTS RE: REVIEW OF PROPERTY; RESPONSES TO INTERROGATORIES; REQUEST OF ADMISSION AND REQUESTS FOR PRODUCT OF DOCUMENTS; MEETING WITH BRIAN ALLEN RETENTION AS EXPERT WITNESS; TALBOT/MICHELLE		ARCH
	0.0046022	06/04/2015	LVE A	60	205.00	0.60	123.00	MICHELLE TALBOT V CHERYL NELSON DRAFTING DISCOVERY RESPONSES; TALBOT/MICHELLE	ARCH
	0.0046022	06/08/2015	LVE A	60	205.00	0.60	123.00	MICHELLE TALBOT V CHERYL NELSON BEGAN DRAFTING DISCOVERY RESPONSES; TALBOT/MICHELLE	ARCH
	0.0046022	06/11/2015	LVE A	60	205.00	3.10	635.50	MICHELLE TALBOT V CHERYL NELSON DRAFTED DISCOVERY RESPONSES AND PREPARED DOCUMENTS FOR RESPONSES; EMAILED TO MICHELE FOR REVIEW; TALBOT/MICHELLE	ARCH
	0.0046022	06/12/2015	LVE A	55	205.00	1.60	328.00	MICHELLE TALBOT V CHERYL NELSON RESEARCHING COMMON GRANTOR CASES IN IDAHO; ANALYZING APPLICATION TO FACTS OF CASE; REVIEWING DEEDS AND GRANTS FROM COMMON GRANTOR TO PRESENT; TALBOT/MICHELLE	ARCH
	0.0046022	08/28/2015	LVE A	227	205.00	0.60	123.00	MICHELLE TALBOT V CHERYL NELSON EMAIL FROM MICHELLE; TELEPHONE CONFERENCE WITH ROBERT REGARDING STATUS OF CASE AND DISCUSSION OF LITIGATION STRATEGY;	ARCH
	0.0046022	09/03/2015	LVE A	58	205.00	1.60	328.00	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON RECEIVE AND ANALYZED MOTION FOR LEAVE TO WITHDRAWAL AS COUNSEL BY ED CATHER; AFFIDAVIT OF ED CATHER IN SUPPORT; BEGAN DRAFTING DISCOVERY REQUESTS TO BE SERVED ON THE NIELSENS	ARCH
	0.0046022	09/09/2015	LVE A	53	205.00	1.80	369.00	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON FINALIZED AND DRAFTING OF DISCOVERY REQUESTS, INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND EVIDENCE	ARCH
	0.0046022	09/10/2015	LVE A	53	205.00	1.10	225.50	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON FINALIZED DISCOVERY REQUESTS TO NIELSONS; MULTIPLE E-MAILS FROM AND TO TALBOTS TO REVIEW AND DISCUSSION OF LITIGATION STRATEGY	ARCH
	0.0046022	09/11/2015	LVE A	60	205.00	0.30	61.50	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON MULTIPLE E-MAIL CORRESPONDENCE FROM AND TO MICHELE TALBOT TALBOT/MICHELLE	ARCH
	0.0046022	09/14/2015	LVE A	. 58	205.00	0.40	82.00	MICHELLE TALBOT V CHERYL NELSON RECEIVED NOTICE OF HEARING; SCHEDULED HEARING; FORWARDED TO MICHELE TALBOT BY E-MAIL	ARCH
	0.0046022	09/16/2015	LVE A	. 58	205.00	0.30	61.50	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON SCHEDULED HEARING ON MOTION TO WITHDRAW; E-MAIL CORRESPONDENCE TO MICHELE TALBOT TALBOT/MICHELLE	ARCH
	0.0046022	09/17/2015	LVE A	227	205.00	1.80	369.00	MICHELLE TALBOT V CHERYL NELSON AMENDED, REVISED AND FINALIZED DISCOVERY REQUESTS; SERVED DISCOVERY REQUESTS ON PLAINTIFF	ARCH
400	0.0046022	10/06/2015	LVE A	23	205.00	0.60	123.00	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON PARTICIPATE IN HEARING ON ED CATHER'S MOTION TO WITHDRAW; DISCUSSION WITH THE COURT ON THE DISCOVERY THAT WAS SERVED;	ARCH

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Detail Transaction File List ACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERE

Fana	Client	Trans Date	Atty	H Tcode/ P Task Code	Rate	Hours to Bill	Amount	<u>.</u>	Ref#
Fees	0.0046022	10/09/2015	LVE	A 227	205.00	0.30	61.50	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON EMAILED UPDATE AND RESULT OF HEARING OF MOTION TO WITHDRAW TO CLIENT; TALBOT/MICHELLE	ARCH
	0.0046022	10/12/2015	LVE	A 62	205.00	0.60	123.00	MICHELLE TALBOT V CHERYL NELSON RECEIVED ORDER GRANTING MOTION FOR LEAVE TO WITHDRAW; SCHEDULED DEADLINE FOR APPEARANCE BY NIELSON; SCHEDULED DEFAULT IF NO APPEARANCE; RESEARCHED IRCP RULE	ARCH
	0.0046022	10/21/2015	LVE	A 58	205.00	0.80	11(B) FOR RIGHTS TO DEFAULT TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON 164.00 RECEIVE AND REVIEW EMAILED SUBMISSION O RESERVATION OF RIGHT TO MAKE RESPONSES FROM NIELSONS; EMAIL CORRESPONDENCE W NIELSONS REQUESTING ADDITIONAL RESPONS RECEIVED EMAIL CORRESPONDENCE FROM CHERYL NIELSON REGARDING DISCOVERY		ARCH
	0.0046022	10/22/2015	LVE	A 224	205.00	0.60	123.00	REPONSES TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON ANALYZED AND REVIEWED PLEADINGS AND DISCOVERY REQUESTS; RESEARCHED COURT DOCKET REPORT FOR FILINGS BY NIELSONS TALBOT/MICHELLE	ARCH
	0.0046022	10/26/2015	LVE	A 227	205.00	0.60	123.00	MICHELLE TALBOT V CHERYL NELSON MULTIPLE EMAILS FROM AND TO CHERYL NIELSON REGARDING EMAILED DISCOVERY RESPONSES THAT AR NOT LEGIBLE; REQUEST FOR MORE LEGIBLE RESPONSES TO BE MAILED	ARCH
	0.0046022	10/29/2015	LVE	A 75	205.00	0.40	82.00	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON MULTIPLE TELEPHONE CONFERENCES WITH COURT CLERK REGARDING CHECKING ON APPEARANCES BY THE NIELSONS; CONFIRMED THAT NIELSONS MADE AN APPEARANCE WITH THE COURT	ARCH
	0.0046022	11/02/2015	LVE	A 75	205.00	0.30	61.50	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON TELEPHONE CONFERENCE WITH JUDGE NAFTZ REGARDING COMPLIANCE BY NIELSONS WITH COURT ORDER; RECEIVED COPY OF FILED NOTICE OF APPEARANCE; EMAIL FROM MICHELE TALBOT	ARCH
	0.0046022	11/11/2015	LVE	A 56	205.00	0.60	123.00	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON CALCULATING DAYS FOR DISCOVERY RESPONSES TO BE PROVIDED; RESEARCH IN PREPARATION FOR MOTION FOR SUMMARY JUDGMENT TALBOT/MICHELLE	ARCH
	0.0046022	11/12/2015	LVE	A 29	205.00	0.30	61.50	MICHELLE TALBOT V CHERYL NELSON LETTER TO NIELSONS REGARDING DISCOVERY RESPONSES TALBOT/MICHELLE	ARCH
	0.0046022	11/13/2015	LVE	A 75	205.00	1.10	225.50	MICHELLE TALBOT V CHERYL NELSON IN OFFICE MEETING WITH TALBOTS; DISCUSSION OF LITIGATION AND STRATEGY; DISCUSSION OF OBTAINING AFFIDAVIT FROM CRAIG SCHAFFER; MOTION FOR SUMMARY JUDGMENT TALBOT/MICHELLE	ARCH
	0.0046022	11/30/2015	LVE	A 55	205.00	0.60	123.00	MICHELLE TALBOT V CHERYL NELSON BEGAN RESEARCH FOR MOTION FOR SUMMARY JUDGMENT; TALBOT/MICHELLE	ARCH
	0.0046022	12/01/2015	LVE	A 58	205.00	0.80	164.00	MICHELLE TALBOT V CHERYL NELSON RECEIVED EMAIL FROM MICHELE TALBOT REGARDING GAE MURDOCK LETTER; BEGAN DRAFTING AFFIDAVIT FOR GAE MURDOCK TALBOT/MICHELLE	ARCH
	0.0046022	12/07/2015	LVE .	A 81	205.00	0.60	123.00	MICHELLE TALBOT V CHERYL NELSON EMAIL CORRESPONDENCE FROM AND TO MICHELE TALBOT; TELEPHONE CONFERENCE WITH MICHELE TALBOT RE: CRAIG SCHAFFER LETTER	ARCH
	0.0046022	12/08/2 015	LVE ,	A 75	205.00	0.60	123.00	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON TELEPHONE CONFERENCE WITH CRAIG SCHAFFER RE: FACTS OF CASE CONCERNING DIVISION OF LAND AND AFFIDAVIT; TELEPHONE	ARCH

Detail Transaction File List ACINE, OLSON, NYE, BUDGE AND BAILEY CHARTER

Fees	Client	Trans Date		Tcode/ Task Code	Rate	Hours to Bill	Amount Ref		Ref #
	0.0046022	12/09/2015	LVE A	60	205.00	1.60	OF LVE IN SUPPORT AND PROPOSED ORDER; DRAFTED AFFIDAVIT OF CRAIG SCHAFFER AND GAE MURDOCK; DEMAND LETTER TO NIELSONS	FFIDAVIT OF GAE MUDOCK ALBOT/MICHELLE ICHELLE TALBOT V CHERYL NEL RAFT AND FILE MOTION TO VAC/ F LVE IN SUPPORT AND PROPOS RAFTED AFFIDAVIT OF CRAIG SC AE MURDOCK; DEMAND LETTER	ARCH
	0.0046022	12/23/2015	LVE A	75	205.00	2.20	COURT CLERK; SCHEDULED HEARING ON MOTION TO VACATE; BEGAN RESEARCH ON MOTION FOR SUMMARY JUDGMENT	ALBOT/MICHELLE ICHELLE TALBOT V CHERYL NEL ULTIPLE TELEPHONE CONFERE OURT CLERK; SCHEDULED HEAF O VACATE; BEGAN RESEARCH O JMMARY JUDGMENT	ARCH
	0.0046022	12/24/2015	LVE A	58	205.00	0.30	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON 61.50 RECEIVED LETTER FORM CRAIG SCHAFFER ARCH TALBOT/MICHELLE	ICHELLE TALBOT V CHERYL NEL ECEIVED LETTER FORM CRAIG S	ARCH
	0.0046022	12/28/2015	LVE A	53	205.00	1.10	MICHELLE TALBOT V CHERYL NELSON 225.50 ADDITIONAL TELEPHONE CONFERENCE WITH ARCH COURT CLERK REGARDING MOTION TO VACATE TRIAL SETTING TO BACK UP SETTING; FOLLOW UP WITH CRAIG SCHAFFER TO OBTAIN AFFIDAVIT	DDITIONAL TELEPHONE CONFER DURT CLERK REGARDING MOTIO RIAL SETTING TO BACK UP SETT	ARCH
	0.0046022	01/05/2016	LVE A	58	205.00	0.40	AFFIDAVIT; TELEPHONE CONFERENCE WITH CRAIG SCHAFFER; EMAIL CORRESPONDENCE TO AND FROM MICHELE TALBOT;	ICHELLE TALBOT V CHERYL NEL ECEIVED CRAIG SCHAFFER ENV FFIDAVIT; TELEPHONE CONFERE RAIG SCHAFFER; EMAIL CORRES ND FROM MICHELE TALBOT;	ARCH
	0.0046022	01/19/2016	LVE A	75	205.00	0.60	SCHAFFER; MULTIPLE EMAIL TO AND FROM MICHELE TALBOT;	ICHELLE TALBOT V CHERYL NEL ELEPHONE CONFERENCE WITH CHAFFER; MULTIPLE EMAIL TO A ICHELE TALBOT;	ARCH
	0.0046022	01/26/2016	LVE A	58	205.00	0.60	AFFIDAVIT; BEGAN PREPARATION FOR FILING MOTION FOR SUMMARY JUDGMENT;	ICHELLE TALBOT V CHERYL NEL ECEIVE AND ANALYZED CRAIG S FFIDAVIT; BEGAN PREPARATION OTION FOR SUMMARY JUDGMEN	ARCH
	0.0046022	02/08/2016	LVE A	53	205.00	5.10	MICHELE TALBOT; E-MAIL CORRESPONDENCE WITH MICHELE TALBOT; FINALIZE AFFIDAVIT; DRAFTED AFFIDAVIT OF LVE; DRAFTED MOTION FOR SUMMARY JUDGMENT; DRAFTED MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; FILED ALL AFFIDAVITS, MOTIONS AND MEMORANDUM WITH COURT; CALLED COURT TO CONFIRM FILING	ICHELLE TALBOT V CHERYL NEL NALIZED RESEARCH; DRAFTED J ICHELE TALBOT; E-MAIL CORRES TITH MICHELE TALBOT; FINALIZE RAFTED AFFIDAVIT OF LVE; DRAF EMORANDUM IN SUPPORT OF M JMMARY JUDGMENT; FILED ALL. OTIONS AND MEMORANDUM WIT ALLED COURT TO CONFIRM FILIN	ARCH
	0.0046022	02/11/2016	LVE A	75	205.00	0.40	TO CHERYL NIELSON REGARDING WILL BE DELIVERING DISCOVERY RESPONSES AND MOTION TO DISMISS SUMMARY JUDGMENT	ICHELLE TALBOT V CHERYL NEL ULTIPLE E-MAIL CORRESPONDE O CHERYL NIELSON REGARDING ELIVERING DISCOVERY RESPON OTION TO DISMISS SUMMARY JU	ARCH
	0.0046022	02/12/2016	LVE A	75	205.00	0.60	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON 123.00 TELEPHONE CONFERENCE WITH BLAKE ATKINS (ATTORNEY FOR THE NIELSONS) REGARDING PENDING DISCOVERY AND OUR PENDING MOTION FOR SUMMARY JUDGMENT TALBOT/MICHELLE	ICHELLE TALBOT V CHERYL NEL ELEPHONE CONFERENCE WITH I TTORNEY FOR THE NIELSONS) F ENDING DISCOVERY AND OUR P DR SUMMARY JUDGMENT	ARCH
	0.0046022	02/16/2016	LVE A	62	205.00	1.10	MICHELLE TALBOT V CHERYL NELSON 225.50 MULTIPLE E-MAIL FROM AND TO BLAKE ATKINS (ATTORNEY FOR NIELSONS) REGARDING DISCOVERY AND MEDIATION	ICHELLE TALBOT V CHERYL NEL ULTIPLE E-MAIL FROM AND TO B TTORNEY FOR NIELSONS) REGA SCOVERY AND MEDIATION	ARCH
	0.0046022	02/24/2016	LVE A	75	205.00	0.40	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON 82.00 TELEPHONE CONFERENCE WITH ROBERT TALBOT; ARCH TELEPHONE CONFERENCE WITH MICHEL TALBOT REGARDING MOTION FOR SUMMARY JUDGMENT HEARING AND ATTORNEY APPEARING FOR THE NIELSONS TALBOT/MICHELLE	ICHELLE TALBOT V CHERYL NEL ELEPHONE CONFERENCE WITH I ELEPHONE CONFERENCE WITH I EGARDING MOTION FOR SUMMA EARING AND ATTORNEY APPEAF ELSONS	ARCH
MBS	0.0046022	02/25/2016	LVE A	60	205.00	1.10	MICHELLE TALBOT V CHERYL NELSON	ICHELLE TALBOT V CHERYL NEL ULTIPLE E-MAIL CORRESPONDE	ARCH

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Detail Transaction File List ACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERE

Fees	Client	Trans Date	Atty P	Tcode/ Task Code	Rate	Hours to Bill	Amount Ref #
1003							HARASSING PREVIOUS OWNERS OF PROPERTY; RECEIVED DISCOVERY REQUESTS FROM PLAINTIFFS; LETTER TO MICHELE TALBOT AND FORWARD DISCOVERY REQUESTS; SCHEDULED DEADLINE
	0.0046022	02/29/2016	LVE A	58	205.00	1.60	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON 328.00 RECEIVED PLAINTIFF'S MOTION FOR LEASE TO FILE SUPPLEMENTAL RESPONSE; MEMORANDUM AND AFFIDAVIT; ANSWERS TO DISCOVERY REQUESTS TALBOT/MICHELLE
	0.0046022	03/01/2016	LVE A	224	205.00	1.10	MICHELLE TALBOT V CHERYL NELSON 225.50 ANALYZED ARGUMENTS MADE BY NIELSONS REGARDING ALLOWING SUPPLEMENT DISCOVERY; FORMATTED DOCUMENTS AND E-MAILED TO MICHELE TALBOT FOR REVIEW AND DISCUSSION; ADDITIONAL E-MAIL CORRESPONDENCE FROM AND TO MICHELE TALBOT
	0.0046022	03/01/2016	LVE A	81	205.00	0.80	TALBOT TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON 164.00 EMAIL CORRESPONDENCE TO AND FROM MICHELE TALBOT; TELEPHONE CONFERENCE WITH BLAKE ATKINS (ATTORNEY FOR PLAINTIFFS) REGARDING MOTION TO SUPPLEMENTAL DISCOVERY RESPONSES; DISCUSSION REGARDING SUMMARY JUDGMENT HEARING
	0.0046022	03/02/2016	LVE A	81	205.00	0.70	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON 143.50 EMAIL CORRESPONDENCE FROM MICHEL TALBOT REGARDING AFFIDAVIT OF NIELSEN AND RUGG; RESPONSES TO INTERROGATORIES; RECEIVED FAXED DOCUMENTS FROM NIELSEN'S ATTORNEY BLAKE ATKINS REGARDING MOTION TO CONTINUE HEARING UNDER RULE 56(f); NOTICE OF HEARING
	0.0046022	03/03/2016	LVE A	224	205.00	1.20	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON 246.00 ANALYZED MOTION TO CONTINUE HEARING; ARCH ANALYZED AFFIDAVITS PROVIDED BY CRAIG SHAFFER, WAYNE NIELSEN, THE RUGGS AND CHERYL NIELSEN; SCANNED AND E-MAILED TO MICHELE TALBOT FOR REVIEW WITH EXPLANATION; RECEIVED LETTER FROM ATKINS; FAXED LETTER RESPONSE TO ATKINS; SCANNED AND E-MAILED TO PARKERS FOR REVIEW; MULTIPLE E-MAIL CORRESPONDENCE FROM MICHELE
	0.0046022	03/04/2016	LVE A	75	205.00	0.60	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON 123.00 TELEPHONE CONFERENCE WITH ROBERT TALBOT ARCH REGARDING PROCEDURE OF CASE AND STATUS OF LITIGATION; DISCUSSION OF PENDING SUMMARY JUDGMENT AND THE AFFIDAVIT OF SHAFFER AND WHITEHEAD TALBOT/MICHELLE
	0.0046022	03/08/2016	LVE A	55	205.00	0.60	MICHELLE TALBOT V CHERYL NELSON 123.00 RESEARCHING CHAIN OF TITLE ISSUES AND ARCH BURDEN OF PROOF TALBOT/MICHELLE
	0.0046022	03/10/2016	LVE A	53	205.00	1.10	MICHELLE TALBOT V CHERYL NELSON 225.50 CALLED INTO AND PARTICIPATED ON PRE-TRIAL HEARING WITH JUDGE NAFTZ AND BLAKE ATKINS; DISCUSSION OF TRIAL DATE AND SCHEDULING; DISCUSSION OF HEARING ON MOTION FOR SUMMARY JUDGMENT; RECEIVED ORDER FROM THE COURT VACATING SUMMARY JUDGMENT HEARING AND TRIAL SETTING; SECURED RIGHTS FROM JUDGE NAFTZ TO AMEND SUMMARY JUDGMENT AND COMPLETE DISCOVERY; MULTIPLE E-MAIL CORRESPONDENCE FROM AND TO MICHELE TALBOT TALBOT/MICHELLE
	0.0046022	03/15/2016	LVE A	58	205.00	1.10	MICHELLE TALBOT V CHERYL NELSON 225:50 RECEIVED COURT'S SCHEDULING ORDER ARCH REGARDING TRIAL IN NOVEMBER; RECEIVED MOTION TO DISQUALIFY; CALENDARED HEARING; RECEIVED COURT'S ORDER ALLOWING DISCOVERY TO BE SUPPLEMENTED

-	Client	Trans Date		Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref#
Fees	0.0046022	03/16/2016	LVE A	55	205.00	0.60	123.00	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON RESEARCHING CONFLICTS OF INTEREST; NOTES TO FILE FOR RESPONSE TO MOTION A AND MEMORANDUM TO DISQUALIFY ME AS ATTORNEY; E-MAIL CORRESPONDENCE FROM AND TO	ARCH
	0.0046022	04/12/2016	LVE A	62	205.00	1.30	266.50	MICHELE TALBOT TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON REVIEWED MOTION TO DISQUALIFY AND MOTION TO CONSOLIDATE; DRAFTED OPPOSITION TO MOTION TO DISQUALIFY; FILED WITH COURT; EMAIL CORRESPONDENCE WITH MICHELE TALBOT;	ARCH
	0.0046022	04/19/2016	LVE A	56	205.00	2.10	430.50	TALBOT; TALBOTMICHELLE MICHELLE TALBOT V CHERYL NELSON PREPARED FOR AND PARTICIPATE IN HEARING IN PRESTON BEFORE DISTRICT JUDGE ROBERT NAFTZ ON MOTION TO DISQUALIFY AND MOTION TO CONSOLIDATE CASES	ARCH
	0.0046022	04/25/2016	LVE A	227	205.00	0.60	123.00	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON FOLLOW UP EMAIL WITH TALBOTS REGARDING DISCOVERY RESPONSES; EMAILED ABOUT CONSOLIDATION OF CASE AND NEED FOR MEETING/PHONE CONFERENCE; TALBOT/MICHELLE	ARCH
	0.0046022	04/26/2016	LVE A	227	205.00	0.30	61.50	MICHELLE TALBOT V CHERYL NELSON MULTIPLE EMAIL FROM AND TO TALBOT REGARDING SCHEDULING MEETING; TALBOT/MICHELLE	ARCH
	0.0046022	05/06/2016	LVE A	75	205.00	0.30	61.50	MICHELLE TALBOT V CHERYL NELSON TELEPHONE CONFERENCE WITH TALBOT'S RE: STATUS OF LITIGATION TALBOT/MICHELLE	ARCH
	0.0046022	05/09/2016	LVE A	62	205.00	1.60	328.00	MICHELLE TALBOT V CHERYL NELSON REVIEW MOTION TO COMPEL; AFFIDAVIT IN SUPPORT OF MOTION; BEGAN DRAFTING RESPONSE AND OPPOSITION TO MOTION TO COMPEL TALBOT/MICHELLE	ARCH
	0.0046022	05/11/2016	LVE A	60	205.00	0.80	164.00	MICHELLE TALBOT V CHERYL NELSON DRAFT MOTION TO COMPEL TALBOT/MICHELLE	ARCH
	0.0046022	05/12/2016	LVE A	81	205.00	0.40	82.00	MICHELLE TALBOT V CHERYL NELSON EMAIL CORRESPONDENCE FROM AND TO MICHELLE TALBOT RE: LANDOWNERS THEY HAVE CONTACTED TALBOT/MICHELLE	ARCH
	0.0046022	05/13/2016	LVE A	81	205.00	0.60	123.00	MICHELLE TALBOT V CHERYL NELSON EMAIL CORRESPONDENCE TO AND FROM MICHELE TALBOT RE: DISCOVERY REQUESTS AND MOTION TO COMPEL TALBOT/MICHELLE	ARCH
	0.0046022	05/19/2016	LVE A	60	205.00	1.70	348.50	MICHELLE TALBOT V CHERYL NELSON DRAFTED AND SERVED RESPONSES TO 2ND SET OF DISCOVERY; DRAFTED AND FILED RESPONSE TO MOTION TO COMPEL AND TO DEEM ADMISSIONS ADMITTED; TALBOT/MICHELLE	ARCH
	0.0046022	05/26/2016	LVE A	13	205.00	0.30	61.50	MICHELLE TALBOT V CHERYL NELSON EMAIL CORRESPONDENCE FROM AND TO BLAKE ATKINS; PREPARED VERIFICATION FOR MICHELE TALBOT; MULTIPLE EMAIL CORRESPONDENCE TO AND FROM MICHELE TALBOT	ARCH
	0.0046022	06/01/2016	LVE A	75	205.00	0.60	123.00	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON TELEPHONE CONFERENCE WITH BLAKE ATKINS REGARDING HEARING ON MOTION TO COMPEL; RECEIVED COMMITMENT FROM ATKINS THAT HE WOULD VACATE HEARING; RECEIVED FILED REQUEST TO VACATE HEARING; TALBOT/MICHELLE	ARCH
	0.0046022	06/02/2016	LVE A	227	205.00	0.30	61.50	MICHELLE TALBOT V CHERYL NELSON EMAIL CORRESPONDENCE FROM AND TO BLAKE ATKINS; TALBOT/MICHELLE	ARCH
MRS	0.0046022	07/15/2016	LVE A	75	205.00	0.80	164.00	MICHELLE TALBOT V CHERYL NELSON TELEPHONE CONFERENCE WITH PHIL CROMWELL; WZ075.06750919/20	ARCH

Fees	Client	Trans Date	Atty	H Tcode/ P Task Code	Rate	Hours to Bill	Amount	Ref #
	0.0046022	07/18/2016	LVE	A 227	205.00	0.60	TELEPHONE CONFERENCE W TALBOT/MICHELLE MICHELLE TALBOT V CHERYL 123.00 EMAIL WITH MICHELE TALBOT CROMWELL; TEXTING CORRE BERG; TALBOTMICHELLE	NELSON ; EMAIL WITH PHIL ARCH
	0.0046022	08/08/2016	LVE	A 58	205.00	1.10	TALBOT/MICHELLE MICHELLE TALBOT V CHERYL 225.50 RECEIVED AND REVIEWED MO RECEIVED TAX ASSESSMENT MICHELE TALBOT; EMAIL COR FROM AND TO MICHELE TALBO TALBOT/MICHELLE	DTION TO COMPEL; ARCH PAYMENTS FROM RESPONDENCE
	0.0046022	08/09/2016	LVE /	4 75	205.00	1.60	MICHELLE TALBOT V CHERYL 328.00 MULTIPLE TELEPHONE CONF CROMWELL AND DAVE LARSE STATEMENTS FROM EACH RE BOUNDARY LINE AND DETAILS NOTED FOR AFFIDAVITS; MUL FROM MICHELE TALBOT; TELE CONFERENCE WITH BLAKE AT TAX DOCUMENTS; EMAILED T BLAKE ATKINS; DRAFTED AND TIMELINE OF OWNERS WITH AFFIDAVIT/STATEMENTS FOR FOR COURT; TALBOT/MICHELLE	ERENCE WITH PHIL ARCH N; OBTAINED GARDING S FOR AFFIDAVITS; TIPLE EMAIL TO AND PHONE KINS REGARDING AX DOCUMENTS TO PREPARED FASTS SUMMARY
	0.0046022	08/11/2016	LVE /	A 60	205.00	2.20	MICHELLE TALBOT V CHERYL 451.00 DRAFTED AFFIDAVITS FOR PH LARSEN AND ROB TALBOT; OE PREPARED PHOTOGRAPHS FI TALBOT AND FROM GOOGLE S GOOGLE EARTH; MULTIPLE EN CORRESPONDENCE TO AND F CROMWELL; DAVE LARSEN AN TALBOT/MICHELLE	IL CROMWELL, DAVE ARCH STAINED AND ROM MICHELE STREET AND MAIL ROM DR. ID MICHELE TALBOT;
	0.0046022	08/11/2016	LVE	A 227	205.00	1.30	MICHELLE TALBOT V CHERYL 266.50 ADDITIONAL EMAIL CORRESP TO ROB AND MICHEL TALBOT; PHIL CROMWELL; REVISED AN AFFIDAVITS; REVIEWED DISCO PLAINTIFFS' TALBOT/MICHELLE	DNDENCE FROM AND ARCH DAVE LARSEN AND D FINALIZED ALL
	0.0046022	08/12/2016	LVE /	A 60	205.00	3.10	MICHELLE TALBOT V CHERYL 635.50 DRAFTED AND PREPARED PO AMENDED MOTION FOR SUMM AND AMENDED MEMORANDUM MOTION FOR SUMMARY JUDG THE TALBOT'S; PREPARED EX AND FILED WITH COURT AND S NIELSON'S ATTORNEY TALBOT/MICHELLE	RTIONS OF THE ARCH IARY JUDGMENT I IN SUPPORT OF MENT IN FAVOR OF HIBITS; FINALIZED SERVED ON
	0.0046022	08/17/2016	LVE	A 227	205.00	0.40	MICHELLE TALBOT V CHERYL 82.00 EMAIL CORRESPONDENCE RE OF THE CASE; DESCRIPTION O JUDGMENT FILED AND PROCE DISCUSSION OF MEDIATION; TALBOT/MICHELLE	GARDING STATUS ARCH)F THE SUMMARY DURES;
	0.0046022	08/18/2016	LVE /	A 62	205.00	0.80	MICHELLE TALBOT V CHERYL 164.00 RECEIVED AND BEGAN ANALY MOTION FOR SUMMARY JUDG CORRESPONDENCE TO AND F ROB TALBOT; TALBOT/MICHELLE MICHELLE TAL BOT V CHERYL	ZING CROSS ARCH MENT; EMAIL ROM MICHELE AND
	0.0046022	08/19/2016	LVE /	A 227	205.00	0.30	MICHELLE TALBOT V CHERYL I 61.50 MULTIPLE EMAIL CORRESPON TO MICHELE TALBOT REGARD MOTION FOR SUMMARY JUDG FILINGS; TALBOT/MICHELLE	DENCE FROM AND ARCH ING NIELSONS' MENT AND OTHER
	0.0046022	08/29/2016	LVE	A 60	205.00	2.70	MICHELLE TALBOT V CHERYL I 553.50 DRAFTING RESPONSE BRIEF I PLAINTIFF'S CROSS MOTION F JUDGMENT; RECEIVED AND BE MOTION TO STRIKE AFFIDAVIT AND PHIL CROMWELL; RECIVE ANALYZING RESPONSE BRIEF OUR MOTION TO DISMISS; TALBOT/MICHELLE	N OPPOSITION TO ARCH OR SUMMARY EGAN ANALYZING S OF DAVID LARSEN D AND BEGAN

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1 663	0.0046022	08/30/2016	LVE /	A 224	205.00	1.40	287.00	MICHELLE TALBOT V CHERYL NELSON ANALYZED ARGUMENTS BY NIELSONS IN RESPONDE TO OUR MOTION FOR SUMMARY JUDGMENT; NOTE IN PREPARATION TO OUR MOTION FOR SUMMARY JUDGEMENT; NOTES IN PREPARATION FOR REPLY TALBOT/MICHELLE	ARCH
	0.0046022	09/02/2016	LVE	A 60	205.00	2.70	553.50	MICHELLE TALBOT V CHERYL NELSON DRAFTED AND FILED OPPOSITION TO MOTION TO STRIKE AFFIDAVITS OF PHIL CROMWELL AND DAVE LARSEN; RESEACRH FOR REPLY BRIEF; TALBOT/MICHELLE	ARCH
	0.0046022	09/06/2016	LVE	A 60	205.00	2.70	553.50	MICHELLE TALBOT V CHERYL NELSON FINALIZED OPPOSITION TO MOTION TO STRIKE; TELEPHONE CONFERENCE WITH VINCENT WHITEHEAD; DRAFTED AFFIDAVIT OF VINCENT WHITEHEAD; DRAFTED REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; EMAIL CORRESPONDENCE TO CLIENTS RE; HEARING ON ALL MOTIONS; TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARCH
	0.0046022	09/12/2016	LVE	A 62	205.00	0.80	164.00	REVIEWING AFFIDAVITS, ARGUMENTS, LEGAL STANDARDS AND PREPARING FOR ORAL ARGUMENT ON MOTION FOR SUMMARY JUDGMENT TALBOT/MICHELLE	ARCH
	0.0046022	09/12/2016	LVE /	A 50	205.00	1.60	328.00	MICHELLE TALBOT V CHERYL NELSON PREPARED ORAL ARGUMENT AND PARTICIPATED IN ARGUMENTS BEFORE JUDGE NAFTZ IN PRESTON IDAHO; ARGUED IN FAVOR OF MOTION FOR SUMMARY JUDGMENT AND AGAINST CROSS MOTION AND MOTION TO STRIKE; MEETING WITH TALBOT'S FOLLOWING HEARING TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARCH
	0.0046022	09/14/2016	LVE /	A 55	205.00	1.10	225.50	BEGAN RESEARCHING ABILITY OF WITNESS TO PROVIDE CONTRADICTORY TESTIMONY AS A MEANS OF CREATING A GENUINE ISSUE OF FACT IN SUMMARY JUDGMENT PROCEEDINGS TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARCH
	0.0046022	09/20/2016	LVE /	A 58	205.00	0.60	123.00	RECEIVED AND ANALYZED COURT'S MINUTE ENTRY AND ORDER; REVIEWED COURT'S SCHEDULING ORDER; BEGAN DRAFTING WITNESS LIST TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARCH
	0.0046022	09/29/2016	LVE A	A 60	205.00	1.10	225.50	RECEIVED AND ANALYZED PLAINTIFF'S RECEIVED AND REVIEWED PLAINTIFF'S MOTION IN LIMINE AND MEROANDUM IN SUPPORT OF REVIEWED PLAINTIFF'S MOTION IN LIMINE AND MERMORANDUM IN SUPPORT OF MOTION; NOTES TO FILE ON RESEARCH FOR RESPONDING TO MOTION IN LIMINE; TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARCH
	0.0046022	09/30/2016	LVE /	A 60	205.00	0.80	164.00	RECEIVED PLAINTIFF'S WITNESS LIST AND AND PROPOSED ORDER; REVIEWED COURT'S SCHEDULING ORDER; NOTES TO FILE TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARCH
	0.0046022	10/04/2016	LVE F	° 60	205.00	1.10	225.50	SCHEDULED DEADLINES FOR RESPONDING TO MOTION IN LIMINE; RESEARCH CASE LAW IN SUPPORT OF OPPOSITION MOTION IN LIMINE; REVIEWED WITNESS DISCLOSURES FROM PLAINTIFF'S DRAFTED AND PREPARE WITNESS DISCLOSURES FOR DEFENDANTS; FILED WITH COURT AND SERVED ON PLAINTIFF'S TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	114
	0.0046022	10/10/2016	LVE F	P 60	205.00	1.10	225.50	REVIEWING ADMISSIONS MADE IN DISCOVERY; REVIEWED WITNESS LIST; BEGAN PREPARING SUBPOENAS FOR WITNESS; TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	115
MRS	0.0046022	10/12/2016	LVE F	6 0	205.00	0.80	164.00	RECEIVED DECISION FROM JUDGE NAFTZ GRANTING SUMMARY JUDGMENT IN FAVOR OF	116

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F	Client	Trans Date	Atty	H Tco P Tas	de/ k Code	Rate	Hours to Bill	Amount		Ref #
Fees	0.0046022	10/13/2016	LVE	Ρ	60	205.00	1.10	225.50	THE TALBOTS; TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON RECEIVED AND BEGAN ANALYZING MOTION FOR RECONSIDERATION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION; EMAILED TO TALBOTS; BEGAN RESERACHING LEGAL ARGUMENTS; MULTIPLE EMAIL CORRESPONDENCE FROM AND TO ALL BRIAN ALLEN RE; COURT ORDER FOR A LEGAL DECRIPTION TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	117
Total f	or Fees		597. 597.			Billable	112.20	22,995.00		
Expen	ses 0.0046022	04/23/2015	LVE	A	75			139.00	FILING FEE TALBOT/MICHELLE	ARCH
	0.0046022	06/02/2015	LVE	A 1	29			81.65	MICHELLE TALBOT V CHERYL NELSON RT MILEAGE POCATELLO/PRESTON FOR MEETING W/CLIENT & EXPERT WITNESS TALBOT/MICHELLE	ARCH
	0.0046022	06/02/2015	LVE	A 1	32			8.02	MICHELLE TALBOT V CHERYL NELSON MEALS TALBOT/MICHELLE	ARCH
	0.0046022	04/20/2016	LVE	A 1	31			44.06	MICHELLE TALBOT V CHERYL NELSON TRAVEL TO PRESTON & MEALS 4/19/16 - LVE CHECK NO. 79703 TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARCH
	0.0046022	09/13/2016	LVE	A 1	29			41.39	RT MILEAGE POCATELLO/PRESTON CHECK NO. 81039 TALBOT/MICHELLE MICHELLE TALBOT V CHERYL NELSON	ARCH
Total f	or Expenses				. 660.42	Billable	0.00	314.12		rin e sê
							GRAND TO	TALS		
						Billable	112.20	23,309.12		

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	Client	Trans Date		Tcode/ Task Code	Rate	Hours to Bill	Amount	Re	Ref#
Fees	0.0046718	04/08/2015	LVE A	35	205.00	0.30	61.50	MEETING WITH PAUL PARKER RE: RECEIVING ARC PACKET OF DOCUMENTS AND DEMAND LETTER FROM CHERYL NEILSON PARKER/PAUL & SAUNDRA	CH
	0.0046718	05/08/2015	LVE A	75	205.00	0.30	61.50	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL TELEPHONE CONFERENCE WITH PAUL PARKER ARC REGARDING STATUS OF CASE DEMAND CHERYL NEILSON	СН
	0.0046718	06/03/2015	LVE A	75	205.00	0.30	61.50	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL MULTIPLE TELEPHONE CONFERENCE WITH PAUL PARKER RE: LAWSUIT FILED BY NEILSON; DISCUSSION OF TIME FRAME FOR FILING ANSWER; DISCUSSION OF EVIDENCE IN CASE;	СН
	0.0046718	06/08/2015	LVE A	224	205.00	0.60	123.00	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL ANALYZED AND REVIEWED COMPLAINT; NOTES RE: ANSWER TO COMPLAINT; PARKER/PAUL & SAUNDRA	СН
	0.0046718	06/23/2015	LVE A	60	205.00	2.10	430.50	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL DRAFTED, FILED SERVED ANSWER TO THE ARC COMPLAINT WITH AFFIRMATIVE DEFENSES PARKER/PAUL & SAUNDRA	СН
	0.0046718	06/25/2015	LVE A	75	205.00	0.60	123.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL MULTIPLE TELEPHONE CONFERENCES WITH FRANKLIN COUNTY COURT CLERK; OBTAINED VERIFICATION OF FILING OF ANSWER TO COMPLAINT; RECEIVED FAXED COURT-STAMPED COPY	СН
	0.0046718	07/28/2015	LVE A	58	205.00	0.80	164.00	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL RECEIVED PROPOSED RESPONSE FOR SUBMISSION OF INFORMATION FOR SCHEDULING ORDER WITH THE COURT; TELEPHONE CONFERENCE WITH ED CATHER (ATTORNEY FOR NEILSEN)	СН
	0.0046718	08/06/2015	LVE A	58	205.00	0.60	123.00	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL RECEIVED JOINT FILING FOR COURT ARC SCHEDULING; TELEPHONE CONFERENCE WITH ED CATHER'S OFFICE	сн
	0.0046718	09/03/2015	LVE A	58	205.00	0.60	123.00	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL RECEIVE AND ANALYZED MOTION FOR LEAVE TO WITHDRAWAL AS COUNSEL BY ED CATHER; AFFIDAVIT OF ED CATHER IN SUPPORT; BEGAN DRAFTING DISCOVERY REQUESTS TO BE SERVED	сн
	0.0046718	09/09/2015	LVE A	53	205.00	1.80	369.00	ON THE NIELSENS PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL FINALIZED DRAFTING OF DISCOVERY REQUESTS, INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND EVIDENCE	СН
	0.0046718	09/10/2015	LVE A	53	205.00	1.10	225.50	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL FINALIZED DISCOVERY REQUESTS TO NIELSONS; ARC E-MAILED TO PARKERS TO REVIEW PARKER/PAUL & SAUNDRA	сн
	0.0046718	09/14/2015	LVE A	58	205.00	0.40	82.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL RECEIVED NOTICE OF HEARING; SCHEDULED ARC HEARING; FORWARDED TO PAUL PARKER BY E-MAIL	СН
	0.0046718	09/16/2015	LVE A	58	205.00	0.30	61.50	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL SCHEDULED HEARING ON MOTION TO WITHDRAW; ARC E-MAIL CORRESPONDENCE TO AND FROM PAUL PARKER	сн
	0.0046718	09/17/2015	LVE A	227	205.00	1.80	369.00	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL AMENDED, REVISED AND FINALIZED DISCOVERY REQUESTS; SERVED DISCOVERY REQUESTS ON PLAINTIFF	сн
	0.0046718	09/28/2015	LVE A	75	205.00	0.60	123.00	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL MULTIPLE E-MAIL FROM AND TO ED CATHER (ATTORNEY FOR NIELSENS) RE RESPONSE FOR SCHEDULING; EXHIBIT	CH.
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Detail Transaction File List ACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERE

Fees	Client	Trans Date	Atty	H Tcode/ P Task Code	Rate	Hours to Bill	Amount	Ref #
rees	0.0046718	10/08/2015	LVE .	A 23	205.00	0.60	WITH COURT PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 123.00 APPEARED AT AND PARTICIPATED HEARING ON MOTION TO WITHDRAW; ARGUMENT TO COURT REGARDING PENDING DISCOVERY REQUESTS; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	10/09/2015	LVE .	A 227	205.00	0.30	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 61.50 EMAILED UPDATE AND RESULT OF HEARING ON MOTION TO WITHDRAW TO CLIENT; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	10/12/2015	LVE /	A 62	205.00	0.60	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 123.00 RECEIVED ORDER GRANTING MOTION FOR LEAVE TO WITHDRAW; SCHEDULED DEADLINE FOR APPEARANCE BY NIELSON; SCHEDULED DEFAULT IF NO APPEARANCE; RESEARCHED IRCP RULE 11(B) FOR RIGHTS TO DEFAULT; PARKER/PAUL & SAUNDRA DAIL & SAUNDRA	ARCH
	0.0046718	10/21/2015	LVE /	A 58	205.00	0.80	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 164.00 RECEIVE AND REVIEW EMAILED SUBMISSION OF RESERVATION OF RIGHT TO MAKE RESPONSES FROM NIELSONS; EMAIL CORRESPONDENCE WITH NIELSONS REQUESTING ADDITIONAL RESPONSES; RECEIVED EMAIL CORRESPONDENCE FROM CHERYL NIELSON REGARDING DISCOVERY REPONSES PARKER/PAUL & SAUNDRA DARKER/PAUL & SAUNDRA	ARCH
	0.0046718	10/22/2015	LVE	A 224	205.00	0.60	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 123.00 ANALYZED AND REVIEWED PLEADINGS AND DISCOVERY REQUESTS; RESEARCHED COURT DOCKET REPORT FOR FILINGS BY NIELSONS PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	ARCH
	0.0046718	10/26/2015	LVE	A 227	205.00	0.60	123.00 MULTIPLE EMAILS FROM AND TO CHERYL NIELSON REGARDING EMAILED DISCOVERY RESPONSES THAT AR NOT LEGIBLE; REQUEST FOR MORE LEGIBLE RESPONSES TO BE MAILED PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	10/29/2015	LVE /	A 75	205.00	0.40	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 82.00 MULTIPLE TELEPHONE CONFERENCES WITH COURT CLERK; REGARDING CHECKING ON APPEARANCES BY THE NIELSONS; CONFIRMED THAT NIELSONS MADE AN APPEARANCE WITH THE COURT; EMAIL WITH SAUNDRA PARKER PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	11/02/2015	LVE	A 75	205.00	0.30	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 61.50 TELEPHONE CONFERENCE WITH JUDGE BROWN REGARDING COMPLIANCE BY NIELSONS WITH COURT ORDER; RECEIVED COPY OF FILED NOTICE OF APPEARANCE; EMAIL TO PARKERS PARKER/PAUL & SAUNDRA DARKER / AUL & SAUNDRA	ARCH
	0.0046718	11/11/2015	LVE /	A 56	205.00	0.60	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 123.00 CALCULATING DAYS FOR DISCOVERY RESPONSES TO BE PROVIDED; RESEARCH IN PREPARATION FOR MOTION FOR SUMMARY JUDGMENT PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	ARCH
	0.0046718	11/12/2015	LVE /	A 227	205.00	0.60	123.00 MULTIPLE EMAIL CORRESPONDENCE FROM AND TO PAUL PARKER REGARDING MEETING TO DISCUSS CASE; LETTER TO NIELSONS REGARDING DISCOVERY RESPONSES PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	11/30/2015	LVE /	A 35	205.00	1.10	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 225.50 IN OFFICE MEETING WITH PAUL PARKER; REVIEWED LITIGATION OPTIONS AND PROCEDURES; DISCUSSION OF MOTION FOR SUMMARY JUDGMENT; PREPARED LETTER TO NIELSON'S; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	12/09/2015	LVE /	A 60	205.00	0.80	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 164.00 DRAFT AND FILE MOTION TO VACATE, AFFIDAVIT OF LVE IN SUPPORT AND PROPOSED ORDER; DEMAND LETTER TO NIELSONS RE: DISCOVERY RESPONSES PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	12/18/2015	LVE	A 75	205.00	0.30	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 61.50 TELEPHONE CONFERENCE WITH COURT REGARDING SCHEDULING HEARING ON MOTION TO VACATE TRIAL SETTING	ARCH

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_	Client	Trans Date	Atty		Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref #
Fees	0.0046718	01/14/2016	LVE	А	56	205.00	1.10	225.50	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PREPARED FOR AND PARTICIPATED IN TELEPHONE HEARING ON MOTION TO CONTINUE TRIAL; JUDGE BROWN AND THE NIELSENS PARTICIPATED; MADE ARGUMENTS; OBTAINED ORDER CONTINUING TRIAL; ORDER FOR NIELSENS TO RESPOND TO DISCOVERY; ORDER TO MEDIATE	ARCH
	0.0046718	01/19/2016	LVE	A	227	205.00	0.60	123.00	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL MULTIPLE EMAIL FROM AND TO PAUL PARKER REGARDING HEARING RESULTS WITH JUDGE BROWN; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	02/11/2016	LVE	A	75	205.00	0.30	61.50	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL MULTIPLE E-MAIL CORRESPONDENCE FROM AND TO CHERYL NIELSON REGARDING WILL BE DELIVERING DISCOVERY RESPONSES PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	02/12/2016	LVE	A	75	205.00	1.80	369.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL TELEPHONE CONFERENCE WITH BLAKE ATKINS (ATTORNEY FOR THE NIELSONS) REGARDING PENDING DISCOVERY; RECEIVED AND REVIEWED RESPONSES TO DISCOVERY REQUESTS	ARCH
	0.0046718	02/15/2016	LVE	A	62	205.00	2.10	430.50	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL REVIEWED AND ANALYZED RESPONSES TO DISCOVERY REQUESTS BY NIELSON; MULTIPLE EMAIL CORRESPONDENCE TO AND FROM PAUL PARKER;	ARCH
	0.0046718	02/16/2016	LVE	A	224	205.00	0.60	123.00	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL ANALYZING AND REVIEWING DISCOVERY RESPONSES FROM NIELSONS PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	02/29/2016	LVE	Α	227	205.00	0.60	123.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL MULTIPLE EMAIL CORRESPONDENCE TO AND FROM BLAKE ATKINS OFFICE REGARDING SCHEDULING COURT ORDERED MEDIATION PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	03/01/2016	LVE	A	75	205.00	0.60	123.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL TELEPHONE CONFERENCE WITH BLAKE ATKINS (ATTORNEY FOR PLAINTIFF) REGARDING SCHEDULING MEDIATION; DISCUSSION OF HOW TALBOT CASE AFFECTS PARKER CASE AND MEDIATION WOULDN'T BE EFFECTIVE UNTIL TALBOT CASE RESOLVED PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	03/03/2016	LVE	А	58	205.00	0.30	61.50	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL RECEIVED LETTER FROM ATKINS; FAXED LETTER RESPONSE TO ATKINS; SCANNED AND E-MAILED TO PARKERS FOR REVIEW PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	03/04/2016	LVE	А	75	205.00	0.60	123.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL TELEPHONE CONFERENCE WITH BLAKE ATKIN (ATTORNEY FOR NIELSONS) REGARDING CLAIMED CONFLICT AND EFFECT OF PENDING LITIGATION PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	03/08/2016	LVE	A	75	205.00	0.70	143.50	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL TELEPHONE CONFERENCE WITH PAUL PARKER; RESEARCHED WARRANTY OF TITLE ISSUES PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	03/15/2016	LVE	A	58	205.00	0.60	123.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL RECEIVED MOTION TO DISQUALIFY; CALENDARED HEARING PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	03/16/2016	LVE	A	55	205.00	0.60	123.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL RESEARCHING CONFLICTS OF INTEREST; NOTES TO FILE FOR RESPONSE TO MOTION A AND MEMORANDUM TO DISQUALIFY ME AS ATTORNEY PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	03/21/2016	LVE	A	58	205.00	1.20	246.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL RECEIVED AND REVIEWED MOTION TO CONSOLIDATE CASES; MEMORANDUM IN SUPPORT OF MOTION; NOTICE OF HEARING;	ARCH
MRS	0.0046718	04/12/2016	LVE	A	62	205.00	0.60	123.00	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL REVIEWED MOTION TO CONSOLIDATE; EMAIL Wet/Geota/5/9/19/20	ARCH

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CORRESPONDENCE UNIT PALL PARKER PARKER 0.0046718 04/182016 LVE A 55 205.00 2.10 PASKERPAUL & SUNDRAW PARKERPAUL & SUNDRAW 0.0046718 04/210216 LVE A 55 205.00 2.10 PASKERPAUL & SUNDRAW PARKERPAUL & SUNDRAW	Fees	Client	Trans Date	Atty P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref#
PAUL & SULMORA PARKEY, WAYNE & CHEFYL BOOK6718 ACH PAUL & SULMORA PARKEY, WAYNE & CHEFYL BOOK6719 ACH PAUL SULMORA PARKEY, WAYNE & CHEFYL BAUL SULMORA PARKEYL, SULMORA PARKEYL, WAYNE & CHEFYL BAUL SULM	1000	0.0046718	04/19/2016	LVE A	56	205.00	2.10	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 430.50 PREPARED FOR AND PARTICIPATE IN HEARING IN PRESTON BEFORE DISTRICT JUDGE ROBERT NAFTZ ON MOTION TO DISQUALIFY AND MOTION TO CONSOLIDATE CASES	ARCH
0.0046718 0425/2016 LVE A 224 205.00 0.60 12300 ANALYZE DISCOVERY REQUESTS; EMAILED TO ARCH PAUL 64/2016 ARCH PAUL 64/2016 <		0.0046718	04/21/2016	LVE A	58	205.00	1.30	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 266.50 RECEIVED AND BEGAN REVIEWING DISCOVERY REQUESTS TO PARKERS FROM NIELSON	ARCH
0.0046718 0428/2016 LVE A 227 205.00 0.30 FIGURATION SCHEDULING METTING, PARKERFAUL SAUNDRA PARKERFAUL SAUNDRA PARKE		0.0046718	04/25/2016	LVE A	224	205.00	0.60	123.00 ANALYZED DISCOVERY REQUESTS; EMAILED TO PAUL PARKER WITH EXPLANATION AND INSTRUCTIONS; SCHEDULED DEADLINES FOR RESPONDING TO DISCOVERY; EMAILED ABOUT CONSOLIDATION OF CASE AND NEED FOR MEETING/PHONE CONFERENCE;	ARCH
0.0046718 05062016 LVE A 75 205.00 0.30 61.50 TELEPHONE CONFERENCE WITH PARKER'S RE: STATUS OF LITICATION PARKER V. WAYNE & CHERYL PARKER/PAUL & SAUNDRA PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER/PAUL & SAUNDRA PAUL & SAUN		0.0046718	04/26/2016	LVE A	227	205.00	0.30	61.50 MULTIPLE EMAIL FROM AND TO PARKER REGARDING SCHEDULING MEETING; PARKER/PAUL & SAUNDRA	ARCH
0.0046718 05/13/2016 LVE A 81 205.00 0.60 123.00 PARKER PSONDENCE TO AND FROM PAUL PARKER PSONDENCE TO AND FROM PAUL PARKERPSONDENCE TO PERFORMENCE WITH PAUL PARKER PARKERPSONDENCE TO FROM PAUL PARKERPSONDENCE TO PERFORMENCE WITH PAUL PARKER PARKERPSONDENCE TO PERFORMENCE WITH PAUL PARKER PARKERPSONDENCE TO FROM PAUL PARKERPSONDENCE TO PERSONNENCE PARKENPSONDENCE PARMENT PAUL & SAUNDRA PARKEN V WAYNE & CHERYL PARKENPSONDENCE PARMARENT PAUL & SAUNDRA PARK		0.0046718	05/06/2016	LVE A	75	205.00	0.30	61.50 TELEPHONE CONFERENCE WITH PARKER'S RE: STATUS OF LITIGATION PARKER/PAUL & SAUNDRA	ARCH
0.0046718 05/16/2016 LVE A 75 205.00 0.80 144.00 ULTPLE TELEPHONE CONFERENCE WITH AND EMAIL EMAIL CORRESPONDECC FROM NAD TO PAUL ASAUNDRA PARKER V WAYNE & CHERYL RESPONSES. PARKER7AUL & SAUNDRA PARKER V. WAYNE & CHERYL PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PARKER7AUL & SAUNDRA PAR		0.0046718	05/13/2016	LVE A	81	205.00	0.60	123.00 EMAIL CORRESPONDENCE TO AND FROM PAUL PARKER RE: DISCOVERY REQUESTS AND APPROACHING DEADLINES	ARCH
0.0046718 05/20/2016 LVE A 60 205.00 2.60 F33.00 DRAFTED FILED AND SERVED DISCOVERY ARCH 0.0046718 06/01/2016 LVE A 75 205.00 0.60 123.00 TELEPHONE CONFERENCE WITH PAUL PARKER ARCH 0.0046718 06/01/2016 LVE A 75 205.00 0.60 123.00 TELEPHONE CONFERENCE WITH PAUL PARKER ARCH 0.0046718 06/01/2016 LVE A 75 205.00 0.60 123.00 TELEPHONE CONFERENCE WITH PAUL PARKER ARCH 0.0046718 06/09/2016 LVE A 50 205.00 1.80 360.00 PREPARED FRO MEETINO WITH PARKERS. IN ARCH 0.0046718 06/09/2016 LVE A 50 205.00 1.80 360.00 PREPARED FRO MEETINO WITH PARKERS. IN ARCH 0.0046718 06/10/2016 LVE A 50 205.00 4.60 94.00 PREPARED FRO MEETINO WITH PARKERS. IN ARCH 0.0046718 06/10/2016 LVE A 50 205.00 4.60 94.00 PREPARED FOO RAND ATTENDED DEPOSITION FERENCE 0.0046718 06/10/2016 LVE A 62 205.00 <		0.0046718	05/16/2016	LVE A	75	205.00	0.80	164.00 MULTIPLE TELEPHONE CONFERENCE WITH AND EMAIL EMAIL CORRESPONDENCE FROM AND TO PAUL PARKER REGARDING DISCOVERY RESPONSES;	ARCH
0.0046718 06/01/2016 LVE A 75 205.00 0.60 123.00 TELEPHONE CONFERENCE WITH PAIL PARKER REGRDING DEPOSITION PREPARATION FOR DEPOSITION; SCHEDULED TIME TO PREPARE PAUL AND SAUNDRA; PARKER/PAUL & SAUNDRA PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER/PAUL & SAUNDRA PAUL		0.0046718	05/20/2016	LVE A	60	205.00	2.60	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 533.00 DRAFTED FILED AND SERVED DISCOVERY RESPONSES TO DEFENDANTS;	ARCH
PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PARKER, V. WAYNE & CHERYL OFFICE MEETING WITH SAUNDRA AND PAUL PARKER, PE DEPOSITION PREPARATION; REVIEW OF DOCUMENTS AND DISCUSSION DEPOSITION; PARKER, PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PARKER V. WAYNE & CHERYL PARKER/PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PARKER/PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PARKER/PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PARKER/PAUL & SAUNDRA AND PAUL PARKER; PARKER/PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PARKER/PAUL & SAUNDRA PARKER V. WAYNE & CHERY		0.0046718	06/01/2016	LVE A	75	205.00	0.60	123.00 TELEPHONE CONFERENCE WITH PAUL PARKER REGARDING DEPOSITION PREPARATION; NOTES TO FILE IN PREPARATION FOR DEPOSITIONS; SCHEDULED TIME TO PREPARE PAUL AND SAUNDRA;	ARCH
0.004671806/10/2016LVEA50205.004.60943.00PREPARED FOR AND ATTENDED DEPOSITIONS OF SAUNDRA AND PAUL PARKER IN PRESTON AT FRANKLIN COUNTY COURTHOUSE; PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL0.004671806/10/2016LVEA62205.000.4082.00RECEIVED DSET OF DISCOVERY REQUESTS; PARKER/PAUL & SAUNDRA AND PAUL PARKER; CALENDARED DEADLINES; PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL0.004671806/15/2016LVEA227205.000.3061.50MULTIPLE EMAIL CORRESPONDENCE FROM AND TRANSCRIPTS FOR SAUNDRA AND PAUL; PARKER/PAUL & SAUNDRA PAUL & SAUNDRAARCH TO COURT REPORTER REGARDING DEPOSITION TRANSCRIPTS FOR SAUNDRA AND PAUL; PARKER/PAUL & SAUNDRAARCH TO COURT REPORTER REGARDING DEPOSITION TRANSCRIPTS FOR SAUNDRA AND PAUL; PARKER/PAUL & SAUNDRA0.004671806/23/2016LVEA58205.001.10225.50RECEIVED AND BEGAN REVIEWING DEPOSITION TRANSCRIPTS FOR SUANDRA AND PAUL PARKER PAUL & SAUNDRAARCH TRANSCRIPTS FOR SUANDRA AND PAUL PARKER PAUL & SAUNDRA0.004671806/27/2016LVEA58205.000.60123.00RECEIVED SAUNDRAAND PAUL PARKER PAUL & SAUNDRA0.004671806/27/2016LVEA58205.000.60123.00RECEIVED SAUNDRAAND PAUL PARKER PAUL & SAUNDRA		0.0046718	06/09/2016	LVE A	50	205.00	1.80	369.00 PREPARED FRO MEETING WITH PARKERS; IN OFFICE MEETING WITH SAUNDRA AND PAUL PARKER RE: DEPOSITION PREPARATION; REVIEW OF DOCUMENTS AND DISCUSSION DEPOSITION;	ARCH
0.004671806/10/2016LVEA62205.000.4082.00RECEIVED 2ND SET OF DISCOVERY REQUESTS; RECEIVED 2ND SET OF DISCOVERY REQUESTS; ARCH MAILED TO SAUNDRA AND PAUL PARKER; CALENDARED DEADLINES; PARKER/PAUL & SAUNDRA PAUL & SAUNDRA P		0.0046718	06/10/2016	LVE A	50	205.00	4.60	943.00 PREPARED FOR AND ATTENDED DEPOSITIONS OF SAUNDRA AND PAUL PARKER IN PRESTON AT FRANKLIN COUNTY COURTHOUSE;	ARCH
0.0046718 06/15/2016 LVE A 227 205.00 0.30 61.50 MUL TIPLE EMAIL CORRESPONDENCE FROM AND ARCH TO COURT REPORTER REGARDING DEPOSITION TRANSCRIPTS FOR SAUNDRA AND PAUL; PARKER/PAUL & SAUNDRA AND PAUL; PARKER/PAUL & SAUNDRA PARKER V. WAYNE & CHERYL ARCH 0.0046718 06/23/2016 LVE A 58 205.00 1.10 225.50 RECEIVED AND BEGAN REVIEWING DEPOSITION TRANSCRIPTS FOR SUANDRA AND PAUL; PARKER/PAUL & SAUNDRA PARKER V. WAYNE & CHERYL ARCH 0.0046718 06/23/2016 LVE A 58 205.00 1.10 225.50 RECEIVED AND BEGAN REVIEWING DEPOSITION ARCH TRANSCRIPTS FOR SUANDRA AND PAUL PARKER PAUL & SAUNDRA PARKER V. WAYNE & CHERYL ARCH 0.0046718 06/27/2016 LVE A 58 205.00 0.60 123.00 RECEIVED SAUNDRA PARKER V. WAYNE & CHERYL PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PAUL & SAUNDRA PARKER V. WAYNE & CHERYL ARCH 0.0046718 06/27/2016 LVE A 58 205.00 0.60 123.00 RECEIVED SAUNDRA PARKER V. WAYNE & CHERYL PAUL & SAUNDRA PARKER V. WAYNE & CHERYL PAUL & SAUNDRA PARKER V. WAYNE & CHERYL ARCH		0.0046718	06/10/2016	LVE A	62	205.00	0.40	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 82.00 RECEIVED 2ND SET OF DISCOVERY REQUESTS; MAILED TO SAUNDRA AND PAUL PARKER; CALENDARED DEADLINES;	ARCH
0.0046718 06/23/2016 LVE A 58 205.00 1.10 225.50 RECEIVED AND BEGAN REVIEWING DEPOSITION ARCH TRANSCRIPTS FOR SUANDRA AND PAUL PARKER PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 0.0046718 06/27/2016 LVE A 58 205.00 0.60 123.00 RECEIVED SAUNDRA PARKER'S CHANGE (ERATTA) ARCH SHEET; SCANNED AND EMAILED TO COURT		0.0046718	06/15/2016	LVE A	227	205.00	0.30	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 61.50 MULTIPLE EMAIL CORRESPONDENCE FROM AND TO COURT REPORTER REGARDING DEPOSITION TRANSCRIPTS FOR SAUNDRA AND PAUL;	ARCH
0.0046718 06/27/2016 LVE A 58 205.00 0.60 123.00 RECEIVED SAUNDRA PARKER'S CHANGE (ERATTA) ARCH SHEET; SCANNED AND EMAILED TO COURT		0.0046718	06/23/2016	LVE A	58	205.00	1.10	225.50 RECEIVED AND BEGAN REVIEWING DEPOSITION TRANSCRIPTS FOR SUANDRA AND PAUL PARKER PARKER/PAUL & SAUNDRA	ARCH
MRS Weth-94/159/19/2016 4:08 pm		0.0046718	06/27/2016	LVE A	58	205.00	0.60	123.00 RECEIVED SAUNDRA PARKER'S CHANGE (ERATTA) SHEET; SCANNED AND EMAILED TO COURT REPORTER; RECEIVED COURT REPORTER'S	

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Detail Transaction File List ACINE, OLSON, NYE, BUDGE AND BAILEY CHARTERE

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Fees	Client	Trans Date	Atty	Н Р —	Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref#
rees	0.0046718	07/05/2016	LVE	A	75	205.00	0.60	123.00	REGARDING DISCUSSION OF MEDIATION; DISCOVERY QUESTIONS;	ARCH
	0.0046718	07/08/2016	LVE	A	227	205.00	0.30	61.50	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL MULTIPLE EMAIL CORRESPONDENCE TO BLAKE ATKINS REGARDING DISCOVERY RESPONSES; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	07/11/2016	LVE	A	60	205.00	1.10	225.50	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL DRAFTED AND PREPARED DISCOVERY RESPONSES TO NIELSON'S 2ND SET OF REQUESTS; PREPARED DOCUMENTS; MAILED AND FILED NOTICE OF SERVICE	ARCH
	0.0046718	08/12/2016	LVE	A	60	205.00	3.10	635.50	AMENDED MOTION FOR SUMMARY JUDGMENT AND AMENDED MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT IN FAVOR OF THE PARKERS; DRAFTED SECOND AFFIDAVIT OF LANE V. ERICKSON; REVIEWED AND PROVIDED DEPOSITION TRANSCRIPTS OF THE PARKERS; PREPARED EXHIBITS; FINALIZED AND FILED WTH COURT AND SERVED ON NIELSONS ATTORNEY	ARCH
	0.0046718	08/17/2016	LVE	A	227	205.00	0.80	164.00	OF THE CASE; DESCRIPTION OF THE SUMMARY JUDGMENT FILED AND PROCEDURES; DISCUSSION OF MEDIATION; TELEPHONE CONFERENCE WITH PAUL AND SAUNDRA PARKER AND DISCUSSION OF STATUS OF LITIGATION; MOLD CLAIMS;	ARCH
	0.0046718	08/18/2016	LVE	A	62	205.00	0.80	164.00	PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL RECEIVED AND BEGAN ANALYZING CROSS MOTION FOR SUMMARY JUDGMENT: ADDITIONAL RESEARCH ON LEGAL DOCTRINE IN MOTION FOR SUMMARY JUDGMENT; RESEARCHED RULE 56(A) REGARDING TIMING OF MOTION; EMAIL CORRESPONDENCE TO AND FROM MICHELE AND ROB TALBOT; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	08/23/2016	LVE	A	62	205.00	1.60	328.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL REVIEWING AND ANALYZING CROSS MOTION FOR SUMMARY JUDGEMENT FILED BY NIELSON AGAINST PARKERS; NOTES TO FILE FOR DRAFTING BRIEF IN OPPOSITION TO CROSS MOTION; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	08/29/2016	LVE	A	60	205.00	2.70	553.50	PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGEMENT; FILED WITH COURT AND SERVED ON PLAINTIFF RECEIVED AND BAGAN ANALYZING MOTION TO STRIKE AFFIDAVITS OF DAVID LARSEN AND PHIL CROMWELL; RECEIVED AND BEGAN ANALYZING RESPONSE BRIEF FROM PLAINTIFF'S TO OUR MOTION TO DISMISS; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	08/30/2016	LVE	A	224	205.00	1.40	287.00	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL ANALYZED ARGUMENTS BY NIELSONS IN RESPONSE TO OUR MOTION FOR SUMMARY JUDGEMENT; NOTES IN PREPARATION FOR REPLY; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	09/02/2016	LVE	A	60	205.00	2.70	553.50	STRIKE AFFIDAVITS OF PHIL CROMWELL AND DAVE LARSEN; RESEACRH FOR REPLY BRIEF; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	09/06/2016	LVE	A	60	205.00	2.70	553.50	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL FINALIZED OPPOSITION TO MOTION TO STRIKE; TELEPHONE CONFERENCE WITH VINCENT WHITEHEAD; DRAFTED AFFIDAVITS OF VINCENT WHITEHEAD; MEETING WITH VINCENT	ARCH

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Detail Transaction File List

Food	Client	Trans Date		code/ ask Code	Rate	Hours to Bill	Amount	Ref#
Fees							WHITEHEAD; DRAFTED REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGEMENT; FILED ALL WITH COURT; EMAIL CORRSPONDENCE TO CLIENT RE; HEARING ON ALL MOTIONS; PARKER/PAUL & SAUNDRA	
	0.0046718	09/12/2016	LVE A	62	205.00	0.80	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 164.00 REVIEWING AFFIDAVITS, ARGUMENTS, LEGAL STANDARDS AND PREPARING FOR ORAL ARGUMENT ON MOTION FOR SUMMARY JUDGMENT PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	09/12/2016	LVE A	50	205.00	1.60	IN ARGUMENTS BEFORE JUDGE NAFTZ IN PRESTON IDAHO; ARGUED IN FAVOR OF MOTION FOR SUMMARY JUDGMENT AND AGAINST CROSS MOTION AND MOTION TO STRIKE; EMAIL TO PARKERS PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	09/14/2016	LVE A	55	205.00	1.10	PROVIDE CONTRADICTORY TESTIMONY AS A MEANS OF CREATING A GENUINE ISSUE OF FACT IN SUMMARY JUDGMENT PROCEEDINGS PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	09/20/2016	LVE A	58	205.00	0.60	ENTRY AND ORDER; REVIEWED COURT'S SCHEDULING ORDER; BEGAN DRAFTING WITNESS LIST PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	09/29/2016	LVE A	60	205.00	1.10	ORDER; RECEIVED AND REVIEWED PLAINTIFF'S MOTION IN LIMINE AND MEMORANDUM IN SUPPORT OF MOTION; NOTES TO FILE ON RESEARCH FOR RESPONDING TO MOTION IN LIMINE; PARKER/PAUL & SAUNDRA	ARCH
	0.0046718	09/30/2016	LVE A	60	205.00	0.80	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 164.00 RECEIVED PLAINTIFF'S WTNESS LIST AND PROPOSED ORDER; REVIEWED COURT'S SCHEDULING ORDER; NOTES TO FILE; PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	ARCH
	0.0046718	10/04/2016	LVE P	60	205.00	1.10	225.50 SCHEDULED DEADLINE FOR RESPONDING TO MOTION IN LIMINE; RESERACH CASE LAW IN SUPPORT OF OPPOSTIONS TO MOTION IN LIMINE; REVIEWED WITNESS DISCLOSURES FROM PLAINTIFF'S DRAFTED AND PREPARE WITNESS DISCLOSURES FOR DEFENDANTS; FILED WITH COURT AND SERVED ON PLAINTIFF'S PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	77
	0.0046718	10/10/2016	LVE P	62	205.00	1.10	225.50 REVIEWING ADMISSIONS MADE IN DISCOVERY; REVIEWED WITNESS LIST; BEGAN PREPARING SUBPOENAS FOR WITNESS; PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	78
	0.0046718	10/12/2016	LVE P	60	205.00	0.80	164.00 RECEIVED DECISION FROM JUDGE NAFTZ GRANTING SUMMARY JUDGMENT IN FAVOR OF THE PARKERS; PARKER/PAUL & SAUNDRA	79
	0.0046718	10/12/2016	LVE P	60	205.00	0.80	PAUL & SAUNDRA PARKER V. WAYNE & CHERYL 164:00 MULTIPLE TELEPHONE CONFERENCE WITH JOHN KEENEN AND PATRICIA DEEMER RE; MEDICAID ISSUES AND PLANNING FOR DISTRIBUTIONS FOR THEIR SISTER ELLEN; INCLUDED NRP IN DISCUSSIONS; PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	80
	0.0046718	10/13/2016	LVE P	60	205.00	1.10	225.50 RECEIVED AND BEGAN ANALYZING MOTION FOR RECONSIDERATION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION; EMAILED TO PARKERS; TELEPHONE CONFERENCE WITH PARKERS; BEGAN RESERACHING LEGAL ARGUMENTS; MULTIPLE EMAIL CORRESPONDENCE FROM AND TO BRIAN ALLEN RE; COURTS ORDER FOR A LEGAL DESCIPTION	81

4

Detail Transaction File List

Fees	Client	Trans Date	Atty		Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref#
									PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	
Total fo	x Fees		54 I I		naalis source a	Billable	78.80	16,154.00		
Expens	es									
	0.0046718	06/23/2015	LVE	A	75			139.00	FILING FEE PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	ARCH
(0.0046718	12/22/2015	LVE	A	75			60.00	COURT CALL CHARGE PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	ARCH
(0.0046718	04/20/2016	LVE	A	131			44.05	TRAVEL TO PRESTON & MEALS 4/19/16 - LVE PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	ARCH
(0.0046718	06/10/2016	LVE	Α	129			75.60	RT MILEAGE POCATELLO/PRESTON CHECK NO. 80145 PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	ARCH
(0.0046718	06/24/2016	LVE	Α	153				DEPOSITION APPEARANCE FEE - SAUNDRA PARKER CHECK NO. 80282 PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	ARCH
(0.0046718	06/24/2016	LVE	A	153			52.47	DEPOSITION APPEARANCE FEE - PAUL PARKER CHECK NO. 80282 PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	ARCH
(0.0046718	09/13/2016	LVE	A	129			41.39	RT MILEAGE POCATELLO/PRESTON - LVE CHECK NO. 81039 PARKER/PAUL & SAUNDRA PAUL & SAUNDRA PARKER V. WAYNE & CHERYL	ARCH
Total fo	or Expenses			2011 153		Billable	0.00	565.63		
			ndo Anton				GRAND TOTALS			
						Billable	78.80	16,719.63		

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Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,

Plaintiffs,

v.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

And

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR AN AWARD OF FEES AND COSTS

Case No. CV-2015-132

Judge: Naftz

INTRODUCTION

Plaintiffs have filed a Motion under Rule 59 of the I.R.C.P. to alter or amend this Court's decision dated October 12, 2016 granting Defendants' Motion for Summary Judgment and dismissing all of Plaintiffs' claims. Plaintiffs incorporate that motion and supporting memorandum in response to Defendants' motion for fees and costs. As that motion points out, Plaintiffs should be determined to be the prevailing party vis-à-vis the Parker defendants, negating any claim the Parker defendants would have to fees.

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FACTS

Defendants' motion requests the Court to award them costs and attorneys' fees based on the claim that they are the prevailing parties. The Talbots may be considered a prevailing party, but Parkers' claim to be a prevailing party is premature at best based on Plaintiffs' Rule 59 Motion. That motion is based on the fact that the Court has not decided all of Plaintiffs' claims against Parkers, so they cannot be a prevailing party at this point. In any event, Defendants' claim the basis for an award of costs under Rule 54 I.R.C.P., and the basis for attorneys' fees as I.C. § § 55-2517; 12-121 and 12-120. Rule 54 clearly provides for an award of costs to a prevailing party. It does not appear the Defendants' claim for costs is improper. (Except that Parkers are not prevailing parties at this point.)

Defendants claim for attorney's fees is based on three statutes. First is I.C. § 55-2517, which does not specially provide for an award of attorneys' fees, nor do Defendants state how this statute actually applies to this case as support for an award of fees. Second, Defendants claim I.C. § 12-121 supports an award of fees, but again do not state specifically how it applies to this case. Finally, Defendants claim that I.C. § 12-120 supports an award of fees and they do provide an explanation why they believe it supports such an award. However, Defendants make an incorrect statement of fact in stating that Plaintiffs' claim in both their complaints, filed in this consolidated case, that Plaintiffs are entitled to fees based on these three statutes. While it is true Plaintiffs make such a claim in the Parker complaint, they make no such claim in the Talbot complaint.

This case does not involve any type of commercial transaction, nor does it involve any claims "on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services." As concerns

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the Talbot defendants this case is a boundary dispute between neighbors of residential real property. There was no transaction, commercial or otherwise between the Plaintiffs and the Talbots.

ARGUMENT

Since Defendants do not provide any explanation of how I.C. §§ 55-2517 or 12-121

support their claim for an award of attorneys' fees, Plaintiff will not respond to such an

unsupported contention except to state that those statutory provisions do not apply to this case as

far as an award of fees is concerned. Also, Defendants attempt at distorting I.C. § 12-120 to

provide support for an award of fees in this case is without merit.

I.C. § 12-120(3), which Defendants claim applies to this case, states as follows:

(3) In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

This case involves a boundary dispute between adjoining residential real property owners. Plaintiffs' claims against Parkers relate to the warranty deed that Parkers gave to Plaintiffs when they purchased the real property. There are no allegations whatsoever that this case involves any commercial transactions, or contracts for the sale of "goods, wares, merchandise or services."

Defendants' sole contention is that § 12-120 applies to this case simply because the parties claim in their pleadings that it does. They make no argument that this section applies based on its specific language. However, even this misguided argument is inapposite as far as

the Talbots are concerned because Plaintiffs never alleged that § 12-120 applies to this case against the Talbots. There is no basis for an award of fees as claimed by Defendants, even if their argument were a correct statement of the law, which it is not.

Defendants make the claim that all that need happened for § 12-120 to apply is that the parties both allege that is does, and they cite the cases of *De Groot v. Standley Trenching Co.*, 157 Idaho 557; 338 P.3d 338 (Idaho 2014); *Fritts v. Liddle & Moeller Construction*, 144 Idaho 171; 158 P.3d 947 (Idaho 2007) and *Lexington Heights Development, LLC v. Candlemire*, 140 Idaho 276; 92 P.3d 526 (Idaho 2004). None of these cases stand for that proposition. In fact, in all of these cases the court analyzes how § 12-120 applies based on its express terms, not simply because the parties allege it applies.

In *De Groot*, the Idaho Supreme Court found that § 12-120 applied to the case and awarded fees because "DeGroot argued it was a third-party beneficiary to a commercial transaction and alleged Standley breached a contract, express warranties and implied warranties. This is a commercial transaction." *De Groot* 157 Idaho 546. The award of fees was based on the substance of what the case was about, not simply because the parties alleged the application of § 12-120.

Similarly in *Fritts*, the court upheld the trial court's finding that the plaintiffs were the prevailing party in a commercial transaction as the basis for awarding fees under § 12-120. In fact the court held that a party does not even have to allege the basis for an award of fees in its pleadings to be otherwise entitled if after prevailing the proper claim is made. *Fritts*, 158 P.3d at 951. There is no allegation of a commercial transaction being involved in this case.

Finally, in *Lexington Heights*, the court did find that all of the parties had alleged that § 12-120 applied and was a basis for an award of fees. However, the court held "... the complaint

does not allege any commercial transaction between Lexington Heights and Mayes. It simply alleges that by his conduct Mayes interfered with a commercial transaction between Lexington Heights and the Crandlemires. Therefore, Mayes is <u>not</u> entitled to an award of attorney fees under Idaho Code § 12-120(3)." *Id at* 92 P.2d at 537. (emphasis added) The court held that the other party in the case did allege a commercial transaction and may be entitled to fees, but did not award any because the case was not yet finished. *Id*.

Defendants reliance on the cases cited for its award of fees is completely misguided, at best. In fact the cases stand for the proposition that the application of § 12-120 is based on the substance of the allegations in the case, not just that the parties claim it applies. Based on the substance of what this case is about, it becomes crystal clear that § 12-120 does not apply to this case and is not a basis for an award of fees. The dispute with the Talbots was simply a boundary dispute with no transaction of any sort between the parties, and the dispute with the Parkers is not only still pending, but is a dispute based on the purchase of a family home not a commercial property.

Furthermore, even if this Court were to award fees, the amount requested should be reduced by the fact that counsel represented both Defendants and cannot double bill or collect for attending hearings and other items which were a duplicate for both parties.

CONCLUSION

Defendants' motion for an award of attorneys' fees is not supported by a contract nor by statute and should be denied.

DATED this 9th day of November, 2016.

Atkin Law Offices

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the forgoing

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR AN AWARD OF FEES AND

COSTS served as indicated below:

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net

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_U.S. Mail ____ E-mail X Facsimile

X U.S. Mail X E-mail ____ Facsimile

Robert C. Naftz District Judge Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290

Franklin County Court 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926

Dated this 9th day of November, 2016.

Gennifer Mariscal

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	CAAMALIN CLEI
IN THE DISTRICT COURT OF THE SIXT OF IDAHO, IN AND FOR TH	
LEN WAYNE NIELSON and CHERYL E. IELSON husband and wife,)) Case No. CV-2015-132-OC)

MEMORANDUM DECISION AND ORDER

NATURE OF THE ACTION

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This is a boundary line dispute. This Court previously granted summary judgment for the defendants/counterclaimants, Robert and Michele Talbot and Paul and Saundra Parker (collectively referred to as "the Defendants".) That decision quieted title in the Defendants' favor to the portion of land that was in dispute as to the boundary claims made by the plaintiffs, Glen and Cheryl Nielson. Judgment was entered, and this case was dismissed with prejudice on October 12, 2016. On October 13, 2016, the Plaintiffs filed a "Motion for New Trial or To Alter or Amend Judgment Dated October 12, 2016." The Plaintiffs are specifically seeking an additional opportunity to "address Plaintiffs' claims against the Parkers for breach of warranty and failure to defend the title they conveyed by metes and bounds to the Plaintiffs that the Court now has found to have been lost." (Mot. for New Trial or to Alter or Amend J. ("Mot. for New

Trial"), Oct. 13, 2016, 1.) Memorandum Decision and Order Case No. CV-2015-132-OC Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment

ROBERT TALBOT and MICHELE TALBOT,

Defendants/Counterclaimants.

Husband and wife, and PAUL PARKER and

SAUNDRA PARKER, husband and wife.

Plaintiff/Counterdefendants.

NIELSON husband and wife,

vs.

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CLERK

The Plaintiffs submitted a memorandum in support of their motion. The Defendants then filed an opposition brief, which was followed by the Plaintiffs' reply. Oral arguments were scheduled; however, the Plaintiffs later requested this Court decide the motion on the briefing alone. Having now reviewed the briefs and considered the entire file and the relevant law, this Court issues the following Memorandum Decision and Order.

ISSUE

1. Should this Court alter or amend the Judgment?

FACTUAL AND PROCEDURAL BACKGROUND

In its previous Memorandum Decision and Order, this Court set forth the relevant factual history in great detail. There is no need to repeat those facts here. It is sufficient to note that in granting summary judgment for the Defendants, this Court defined the boundary line between the Nielson Property and the Talbot Property to be where all of the previous parties had agreed it to be and where the parties have continued to maintain it. Based on that finding, this Court further determined that the Talbot Plaintiffs have a legal right to maintain the current location of their sprinkler system, lawn and existing structures, and this Court quieted title in favor of the Talbots consistent with that finding. This Court also asked the Defendants to submit a decree establishing the accurate legal description for the disputed boundary line, which description would reflect the original intent of the parties, as determined by this Court. The case was then dismissed with prejudice, and a Judgment was entered.

Pursuant to their request to alter or amend the Judgment, the Plaintiffs now argue this Court's ruling did not address the Plaintiffs' claims "against the Parker Defendants for breach of their warranty and their duty to defend the title conveyed by metes and bounds." (Mem. in Supp. of Mot. for New Trial or to Alter or Amend J., Oct. 13, 2016, 5.) The Plaintiffs contend they still "have viable claims against the Parkers for breach of warranty and breach of the duty under the warranty deed" for the Parkers' failure to defend the title conveyed by the warranty deed. The Plaintiffs maintain that by virtue of this Court's ruling to quiet the disputed property in the Talbots, the "Parkers have breached their warranty of title and are liable for the loss of property suffered by Plaintiffs in addition to their damages (attorney fees) incurred in defending the title." (*Id.* at 8.)

STANDARD OF REVIEW

The Plaintiffs brought their motion pursuant to Idaho Rule of Civil Procedure 59(e)¹. Rule 59 pertains to motions to alter or amend the judgment and "affords the trial court the opportunity to correct errors both of fact or law that had occurred in its proceedings; it thereby provides a mechanism for corrective action short of an appeal. *First Security Bank v. Neibaur*, 98 Idaho 598, 570 P.2d 276 (1977)." *Lowe v. Lym*, 103 Idaho 259, 263, 646 P.2d 1030, 1034 (Idaho Ct. App. 1982). "A Rule 59(e) motion to amend a judgment is addressed to the discretion of the court. *Cohen v. Curtis Publishing Co.*, 333 F.2d 974 (8th Cir. 1964)." *Id.* Thus, "[a]n order

Memorandum Decision and Order Case No. CV-2015-132-OC Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment

¹ Rule 59. New trial; Altering or amending a judgment

⁽e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment must be filed and served no later than 14 days after entry of the judgment.

denying a motion made under Rule 59(e) to alter or amend a judgment is appealable, but only on the question of whether there has been a manifest abuse of discretion." *Id.* (internal citation omitted). "The rule provides to the trial court a mechanism to correct legal and factual errors occurring in the proceedings before it; and as long as the trial court recognizes the matter as discretionary and acts within the boundaries of its discretion, reaching its conclusions through an exercise of reason, the decision will not be disturbed on appeal. *Slaathaug v. Allstate Ins. Co.,* 132 Idaho 705, 979 P.2d 107 (1999)." *Van Brunt v. Stoddard*, 136 Idaho 681, 690, 39 P.3d 621, 630 (2001).

DISCUSSION

In granting summary judgment for the Defendants, this Court determined the disputed boundary line was established as a matter of law in favor of the Talbots, and the Talbots had a legal right to maintain the current location of their sprinkler system, lawn and structures. That decision was based on long-established Idaho law pertaining to the construction of deeds in cases when the delineated boundary does not comport to the deed description. Idaho law provides that when two parties orally establish boundaries of property to be transferred from one to the other, and the subsequent written deed does not match those boundaries, the orally agreed upon boundaries will prevail. Such oral agreement is also binding upon all subsequent purchasers who have notice of the agreement, or who are put on notice at the time of purchase that the property as described by the inaccurate deed is claimed by someone other than the seller. *See, Campbell v. Weisbrod*, 73 Idaho 82, 245 P.2d 1052 (1952); *Paurley v. Harris*, 75 Idaho 112, 268 P.2d 351

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(1954); *Reid v. Duzet*, 140 Idaho 389, 94 P.3d 694 (2004). In its decision, this Court set forth the law governing such situations in detail.

This Court applied the relevant law to the circumstances of this case and first determined that an undisputed boundary agreement had existed over decades between the original and all subsequent owners of the Nielson and Talbot properties. This Court further found there was no question that all of the owners had honored that original boundary line, first through a fence, then through the planting of lilacs and a yard, the placement of a shed, the installation of sprinklers, and the creation of a driveway and a carport. Then, based on a review of the records, exhibits and affidavits submitted, this Court determined there was no question the Plaintiffs were put on notice of the agreed boundary line. As such, summary judgment was granted in favor of the Defendants, and the boundary line between the Talbot Property and the Nielson Property was established to be where the fence originally stood and was then subsequently replaced by the lilacs, grass, yard, sprinklers, shed, driveway and carport.

Because the boundary has thus been established by Idaho law, and the Nielsons were successors in interest with notice of the agreement that altered or changed the metes and bounds descriptions contained in the written deed, the Plaintiff's Warranty Deed, including the legal description contained therein, was changed by the agreement found to be evidenced and described by all the previous owners of the properties. As such, the Warranty Deed provided by the Defendant Parkers, *in its changed state*, has been established by law and through the subsequent Judgment and is accurate and cannot be the basis of any claim for breach of warranty

Memorandum Decision and Order Case No. CV-2015-132-OC *Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment*

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and/or a duty to defend. Based on a clear reading of the settled law, the legal descriptions in all the deeds associated with the Talbot and Nielson properties were altered and replaced by the intentions of the parties as evidenced by decades of agreement concerning the boundary line. Thus, despite the argument raised by the Plaintiffs in their motion to amend the Judgment, the deed here was merely altered to reflect the true intentions of the original buyer and seller and all subsequent owners who purchased with notice. It has been determined that the Nielsons purchased with notice. Therefore, in its discretion, this Court DENIES the Plaintiffs' request to amend or alter the Judgment. By nature of the original Memorandum Decision and Order and Judgment, all of the parties' claims, including the Plaintiffs' claims raised against the Defendant Parkers have been resolved, and the dismissal of this case with prejudice must stand.

CONCLUSION

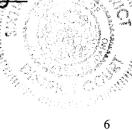
The Plaintiffs' Motion for New Trial or to Alter or Amend Judgment Dated October 12, 2016 is hereby DENIED. As such, no claims remain for either party in this case.

IT IS SO ORDERED.

DATED this 15th day of December 2016.

 $\mathcal{E}C.\log$

ROBERT C. NAFTZ District Judge



Memorandum Decision and Order Case No. CV-2015-132-OC Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on, <u>December</u> 15, 2016 I mailed/served a true copy of

the MEMORANDUM DECISION AND ORDER to the attorney(s)/person(s) listed below by mail

with correct postage thereon or causing the same to be hand delivered.

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, ID 83228 Fax: (801)533-0380

🗌 U.S. Mail
🗌 E-Mail
Courthouse Box
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Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED 201 East Center P.O. Box 1391 Pocatello, ID 83204-1391 Fax: (208)232-7352 b109 U.S. Mail E-Mail Courthouse Box Fax:

SHAUNA T. GEDDES, Clerk

By: Linda Hampton

Deputy Clerk

Memorandum Decision and Order Case No. CV-2015-132-OC Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net

Attorneys for Plaintiffs

FILED 17 JAN 12 PM 2: 26 BRANDOLING CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife,	
Plaintiffs,	NOTICE OF APPEAL
v. ROBERT TALBOT and MICHELE TALBOT, husband and wife, and	Case No. CV-2015-132 Judge: Naftz
PAUL PARKER AND SAUNDRA PARKER, husband and wife,	
Defendants.	

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

TO THE ABOVE NAMED DEFENDANTS, ROBERT TALBOT AND MICHELE TALBOT, HUSBAND AND WIFE, AND PAUL PARKER AND SAUNDRA PARKER, HUSBAND WIFE, AND DEFENDANTS' ATTORNEY, LANE V. ERICKSON, RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED, 201 EAST CENTER, P.O. BOX 1391, POCATELLO, IDAHO, 83204-1391, FACSIMILE: (208) 232-7352, EMAIL: LVE@RACINELAW.NET AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, GLEN WAYNE NIELSON AND CHERYL E. NIELSON, HUSBAND AND WIFE, appeals against the above-named Respondent, to the Idaho Supreme Court from the Memorandum Decision and Order dated December 15, 2016 by the Honorable Judge Robert C. Naftz presiding, and all preceding orders and rulings. A copy of the decision and order is attached to this notice.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the said decisions described in paragraph 1 above are appealable decisions under and pursuant to Rule 11 I.A.R.

3. A preliminary statement of the issues on appeal which the Appellant intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal, are as follows:

- A. Did the trial court err in finding that he did not have authority to disqualify counsel for two Defendants, one who had sold the property by warranty deed describing the property by metes and bounds and was being sued by the Plaintiff for breach of warranty of title, and the other Defendant who had encroached on that metes and bounds description by building a carport and shed over that property boundary?
- B. Did the trial Court err in granting summary judgment to the encroaching Defendants who acknowledged that the facts of this case did not establish a boundary by acquiescence but Idaho law nevertheless, under some undefined rule of law that requires only one of the elements of the doctrine of boundary by acquiescence, allows conveyance of property without consideration or agreement?
- C. Did the Trial Court err in declaring a modification of the warranty deed by which the defendant conveyed property to Plaintiff by metes and bounds description, where

there was no evidence of mutual mistake between the parties and a cause of action for modification of the deeds had not been pleaded?

- 4. No order has been entered sealing all or any portion of the record.
- 5. The reporter's transcript has been ordered and paid for.
- 6. The Appellants request the following documents to be included in the clerk's record, in addition to those automatically included under Rule 28, I.A.R.: None
- 7. The Appellants request that all exhibits offered or admitted at the trial be included in the record.
- 8. I certify:
 - a) That a transcript has been ordered and paid for.
 - b) That the estimated fee for preparation of the clerk's or agency's record has been paid.
 - c) That the appellate filing fee has been paid.
 - d) That service has been made upon all parties required to be served pursuant to Rule20, I.A.R.

DATED this 12th day of January, 2017.

Atkin Law Offices

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Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the NOTICE OF APPEAL as indicated below:

Lane V. Erickson	Х	U.S. Mail	Х	E-mail		Facsimile
RACINE, OLSON, NYE, BUDGE						
& BAILEY CHARTERED						
201 East Center						
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Facsimile: (208) 232-7352						
Email: lve@racinelaw.net						
-						
Robert C. Naftz		_ U.S. Mail		E-mail	Х	Facsimile
District Judge						
Bannock County Courthouse						
624 E. Center, Room 220						
Pocatello, ID 83201						
Fax: 208-236-7290						
Franklin County Court		_U.S. Mail		E-mail	Х	Facsimile
39 West Oneida						
Preston, Idaho 83263						
Via Fax: (208) 852-2926						

Dated this 12th day of January, 2017.

Gennifer Mariscal

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- ANXLIN COUNTY CLERK

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IN THE DISTRICT	COURT OF THE	SIXTH JUDICIAL	DISTRICT OF THE	tr‡ traj₹

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife, Plaintiffs/Appellants, vs.	<pre>)) Supreme Docket No) Supreme Docket No) Franklin Co. Case No.: CV-2015-132)</pre>
ROBERT TALBOT and MICHELE TALBOT, husband and wife,)) CLERK'S CERTIFICATE OF APPEAL)
and	
PAUL PARKER and SAUNDRA PARKER, husband and wife,)))
Defendants/Respondents.)))

Appeal from:Sixth Judicial District, Franklin County
Honorable Robert C. Naftz

Case number from court: CV-2015-132

Order or judgment appealed from: Memorandum Decision and Order dated December 15, 2016

Attorney for Appellants: Blake S. Atkin - <u>batkin@atkinlawoffices.net</u> Atkin Law Office

Attorney for Respondents:	Lane V. Erickson - <u>lve@racinelaw.net</u>
	RACINE OLSON NYE BUDGE & BAILEY CHARTERED

Appealed by: Plaintiffs

Appeal against: Defendants

Notice of Appeal filed: January 12, 2017

Appellate fee paid: Yes

Request for additional (clerk's) record filed: No

Request for additional reporter's transcript filed: No

Was reporter's transcript requested? Yes

Name of reporter:

Dated this 24th day of February, 2017.

SHAUNA T. GEDDES By Jinda Hampton, Deputy Cleare

DOCKET NO. <u>44864</u>
(
(
(<u>GLENN NIELSON, et al</u>
(
((VS.
(
(ROBERT TALBOT, et al

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on <u>3/15/2017</u> I lodged a transcript including the following proceedings: (9/12/2016-Deft's Mot for SJ) for the above-referenced appeal with the Sixth Judicial District, District Court Clerk of the County indicated:

() BANNOCK () POWER
() ONEIDA () BEAR LAKE
(XX) FRANKLIN () CARIBOU

via:

() Hand-Delivery

() U.S. Mail

(XX) Electronic Copy to ISC/COA

(Signature of Reporter)

	S. DAVIS
	(Typed name of Reporter)
	3/15/2017
	(Date)

cc:

ISC/COA- sfilings@idcourts.net

Linda Hampton - Franklin Co. linda@franklincountyidaho.org

FILED 17 MAR -8 PM 4: 16 EANALLY COUNTY CLERK K

Lane V. Erickson [ISBN 5979]
RACINE, OLSON, NYE, & BUDGE CHARTERED
201 East Center
P.O. Box 1391
Pocatello, Idaho 83204-1391
Phone (208) 232-6101
Fax (208) 232-7352
E-mail lve@racinelaw.net

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

CASE NO. CV 15-132

NOTICE OF HEARING

v.

ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

PLEASE TAKE NOTICE that the undersigned will bring on for hearing Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, (hereafter "Defendants"), Motion For Order Awarding Attorneys' Fees And Costs, before the above-entitled Court on <u>Tuesday, April 4, 2017</u> at <u>1:30 p.m.</u>, before the Honorable Judge Robert C. Naftz at the Franklin County Courthouse, 39 W. Oneida, Preston, Idaho.

NOTICE OF HEARING-1

DATED this 8¹ Day of March, 2017.

RACINE, OLSON, NYE, & BUDGE **CHARTERED**

By:

LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3^{\pm} day of March, 2017, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 Fax: 801-533-0380

U. S. Mail Postage Prepaid Hand Delivery Overnight Mail Facsimile E-Mail

LANE V. ERICKSON

NOTICE OF HEARING-2

Lane V. Erickson [ISBN 5979] RACINE, OLSON, NYE, & BUDGE CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Phone (208) 232-6101 Fax (208) 232-7352 E-mail lve@racinelaw.net FILED 17 MAR 10 MMII: 17 FRANKLIN GOONTY CLERK

DEPUTY

Attorneys for Plaintiff Defendants

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiffs,

v.

**

ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife,

Defendants.

CASE NO. CV 15-132

NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring on for hearing Defendants ROBERT TALBOT and MICHELLE TALBOT, husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife, (hereafter "Defendants"), Motion For Order Awarding Attorneys' Fees And Costs, before the above-entitled Court on <u>Tuesday, April 4, 2017</u> at <u>1:30 p.m.</u>, before the Honorable Judge Robert C. Naftz at the Franklin County Courthouse, 39 W. Oneida, Preston, Idaho.

NOTICE OF HEARING-1

DATED this St Day of March, 2017.

RACINE, OLSON, NYE, & BUDGE CHARTERED

By: LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3^{++} day of March, 2017, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Hwy Clifton, Idaho 83228 Fax: 801-533-0380 U. S. Mail Postage Prepaid
Hand Delivery
Overnight Mail
Facsimile
E-Mail

LANE V. ERICKSON

Blake S. Atkin #6903 ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, Idaho 83228 Telephone: (801) 533-0300 Facsimile: (801) 533-0380 Email: batkin@atkinlawoffices.net FILED 17 MAR 15 AM 11: 42 HALM COUNTY CLERK DEPUTY

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife, Plaintiffs, V.

ROBERT TALBOT and MICHELE TALBOT, husband and wife,

and

PAUL PARKER AND SAUNDRA PARKER, husband and wife,

Defendants.

Case No. CV-2015-132

Judge: Naftz

TO THE ABOVE NAMED DEFENDANTS, ROBERT TALBOT AND MICHELE

TALBOT, HUSBAND AND WIFE, AND PAUL PARKER AND SAUNDRA PARKER,

HUSBAND WIFE, AND DEFENDANTS' ATTORNEY, LANE V. ERICKSON, RACINE,

OLSON, NYE, BUDGE & BAILEY CHARTERED, 201 EAST CENTER, P.O. BOX 1391,

POCATELLO, IDAHO, 83204-1391, FACSIMILE: (208) 232-7352, EMAIL:

LVE@RACINELAW.NET AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, GLEN WAYNE NIELSON AND CHERYL E. NIELSON, HUSBAND AND WIFE, appeals against the above-named Respondent, to the Idaho Supreme Court from the Memorandum Decision and Order dated December 15, 2016 by the Honorable Judge Robert C. Naftz presiding, and all preceding orders and rulings including but not limited to the October 12, 2016 Judgment. A copy of the decision and order and judgment are attached to this notice.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the said decisions described in paragraph 1 above are appealable decisions under and pursuant to Rule 11 I.A.R.

3. A preliminary statement of the issues on appeal which the Appellant intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal, are as follows:

- A. Did the trial court err in finding that he did not have authority to disqualify counsel for two Defendants, one who had sold the property by warranty deed describing the property by metes and bounds and was being sued by the Plaintiff for breach of warranty of title, and the other Defendant who had encroached on that metes and bounds description by building a carport and shed over that property boundary?
- B. Did the trial Court err in granting summary judgment to the encroaching Defendants who acknowledged that the facts of this case did not establish a boundary by acquiescence but Idaho law nevertheless, under some undefined rule of law that requires only one of the elements of the doctrine of boundary by acquiescence, allows conveyance of property without consideration or agreement?

- C. Did the Trial Court err in declaring a modification of the warranty deed by which the defendant conveyed property to Plaintiff by metes and bounds description, where there was no evidence of mutual mistake between the parties and a cause of action for modification of the deeds had not been pleaded?
- 4. No order has been entered sealing all or any portion of the record.
- The reporter's transcript for the September 12, 2016 hearing has been ordered and paid for.
 The court reporter is Stephanie Davis.
- 6. The Appellants request the following documents to be included in the clerk's record, in addition to those automatically included under Rule 28, I.A.R.: None
- 7. The Appellants request that all exhibits offered or admitted at the trial be included in the record.
- 8. I certify:
 - a) That a transcript has been ordered and paid for.
 - b) That the estimated fee for preparation of the clerk's or agency's record has been paid.
 - c) That the appellate filing fee has been paid.
 - d) That service has been made upon all parties required to be served pursuant to Rule20, I.A.R.

DATED this 14th day of March, 2017.

Atkin Law Offices

Makest

Blake S. Atkin Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the

AMENDED NOTICE OF APPEAL as indicated below:

Lane V. Erickson X U.S. Mail X E-mail ____ Facsimile RACINE, OLSON, NYE, BUDGE & BAILEY CHARTERED 201 East Center P.O. Box 1391 Pocatello, Idaho 83204-1391 Facsimile: (208) 232-7352 Email: lve@racinelaw.net Robert C. Naftz ____ U.S. Mail ____ E-mail X Facsimile **District Judge** Bannock County Courthouse 624 E. Center, Room 220 Pocatello, ID 83201 Fax: 208-236-7290 Franklin County Court ____U.S. Mail ____ E-mail X In-person 39 West Oneida Preston, Idaho 83263 Via Fax: (208) 852-2926 Dated this 14th day of March, 2017.

Gennifer Mariscal

FILED.

16 DEC 15 PH 4:55

ANNE STORE COLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

)

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife,

Plaintiff/Counterdefendants,

VS.

ROBERT TALBOT and MICHELE TALBOT, Husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife. Case No. CV-2015-132-OC

MEMORANDUM DECISION AND ORDER

Defendants/Counterclaimants.

NATURE OF THE ACTION

This is a boundary line dispute. This Court previously granted summary judgment for the defendants/counterclaimants, Robert and Michele Talbot and Paul and Saundra Parker (collectively referred to as "the Defendants".) That decision quieted title in the Defendants' favor to the portion of land that was in dispute as to the boundary claims made by the plaintiffs, Glen and Cheryl Nielson. Judgment was entered, and this case was dismissed with prejudice on October 12, 2016. On October 13, 2016, the Plaintiffs filed a "Motion for New Trial or To Alter or Amend Judgment Dated October 12, 2016." The Plaintiffs are specifically seeking an additional opportunity to "address Plaintiffs' claims against the Parkers for breach of warranty and failure to defend the title they conveyed by metes and bounds to the Plaintiffs that the Court now has found to have been lost." (Mot. for New Trial or to Alter or Amend J. ("Mot. for New

Trial"), Oct. 13, 2016, 1.)

Memorandum Decision and Order Case No. CV-2015-132-OC Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment

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The Plaintiffs submitted a memorandum in support of their motion. The Defendants then filed an opposition brief, which was followed by the Plaintiffs' reply. Oral arguments were scheduled; however, the Plaintiffs later requested this Court decide the motion on the briefing alone. Having now reviewed the briefs and considered the entire file and the relevant law, this Court issues the following Memorandum Decision and Order.

ISSUE

1. Should this Court alter or amend the Judgment?

FACTUAL AND PROCEDURAL BACKGROUND

In its previous Memorandum Decision and Order, this Court set forth the relevant factual history in great detail. There is no need to repeat those facts here. It is sufficient to note that in granting summary judgment for the Defendants, this Court defined the boundary line between the Nielson Property and the Talbot Property to be where all of the previous parties had agreed it to be and where the parties have continued to maintain it. Based on that finding, this Court further determined that the Talbot Plaintiffs have a legal right to maintain the current location of their sprinkler system, lawn and existing structures, and this Court quieted title in favor of the Talbots consistent with that finding. This Court also asked the Defendants to submit a decree establishing the accurate legal description for the disputed boundary line, which description would reflect the original intent of the parties, as determined by this Court. The case was then dismissed with prejudice, and a Judgment was entered.

Memorandum Decision and Order Case No. CV-2015-132-OC Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment

Pursuant to their request to alter or amend the Judgment, the Plaintiffs now argue this Court's ruling did not address the Plaintiffs' claims "against the Parker Defendants for breach of their warranty and their duty to defend the title conveyed by metes and bounds." (Mem. in Supp. of Mot. for New Trial or to Alter or Amend J., Oct. 13, 2016, 5.) The Plaintiffs contend they still "have viable claims against the Parkers for breach of warranty and breach of the duty under the warranty deed" for the Parkers' failure to defend the title conveyed by the warranty deed. The Plaintiffs maintain that by virtue of this Court's ruling to quiet the disputed property in the Talbots, the "Parkers have breached their warranty of title and are liable for the loss of property suffered by Plaintiffs in addition to their damages (attorney fees) incurred in defending the title." (*Id.* at 8.)

STANDARD OF REVIEW

The Plaintiffs brought their motion pursuant to Idaho Rule of Civil Procedure 59(e)¹. Rule 59 pertains to motions to alter or amend the judgment and "affords the trial court the opportunity to correct errors both of fact or law that had occurred in its proceedings; it thereby provides a mechanism for corrective action short of an appeal. *First Security Bank v. Neibaur*, 98 Idaho 598, 570 P.2d 276 (1977)." *Lowe v. Lym*, 103 Idaho 259, 263, 646 P.2d 1030, 1034 (Idaho Ct. App. 1982). "A Rule 59(e) motion to amend a judgment is addressed to the discretion of the court. *Cohen v. Curtis Publishing Co.*, 333 F.2d 974 (8th Cir. 1964)." *Id.* Thus, "[a]n order

Memorandum Decision and Order Case No. CV-2015-132-OC Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment.

Rule 59. New trial; Altering or amending a judgment

⁽e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment must be filed and served no later than 14 days after entry of the judgment.

denying a motion made under Rule 59(e) to alter or amend a judgment is appealable, but only on the question of whether there has been a manifest abuse of discretion." *Id.* (internal citation omitted). "The rule provides to the trial court a mechanism to correct legal and factual errors occurring in the proceedings before it; and as long as the trial court recognizes the matter as discretionary and acts within the boundaries of its discretion, reaching its conclusions through an exercise of reason, the decision will not be disturbed on appeal. *Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 979 P.2d 107 (1999)." *Van Brunt v. Stoddard*, 136 Idaho 681, 690, 39 P.3d 621, 630 (2001).

DISCUSSION

In granting summary judgment for the Defendants, this Court determined the disputed boundary line was established as a matter of law in favor of the Talbots, and the Talbots had a legal right to maintain the current location of their sprinkler system, lawn and structures. That decision was based on long-established Idaho law pertaining to the construction of deeds in cases when the delineated boundary does not comport to the deed description. Idaho law provides that when two parties orally establish boundaries of property to be transferred from one to the other, and the subsequent written deed does not match those boundaries, the orally agreed upon boundaries will prevail. Such oral agreement is also binding upon all subsequent purchasers who have notice of the agreement, or who are put on notice at the time of purchase that the property as described by the inaccurate deed is claimed by someone other than the seller. *See, Campbell v. Weisbrod*, 73 Idaho 82, 245 P.2d 1052 (1952); *Paurley v. Harris*, 75 Idaho 112, 268 P.2d 351

Memorandum Decision and Order

Case No. CV-2015-132-OC

Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment

(1954); Reid v. Duzet, 140 Idaho 389, 94 P.3d 694 (2004). In its decision, this Court set forth the law governing such situations in detail.

This Court applied the relevant law to the circumstances of this case and first determined that an undisputed boundary agreement had existed over decades between the original and all subsequent owners of the Nielson and Talbot properties. This Court further found there was no question that all of the owners had honored that original boundary line, first through a fence, then through the planting of lilacs and a yard, the placement of a shed, the installation of sprinklers, and the creation of a driveway and a carport. Then, based on a review of the records, exhibits and affidavits submitted, this Court determined there was no question the Plaintiffs were put on notice of the agreed boundary line. As such, summary judgment was granted in favor of the Defendants, and the boundary line between the Talbot Property and the Nielson Property was established to be where the fence originally stood and was then subsequently replaced by the lilacs, grass, yard, sprinklers, shed, driveway and carport.

Because the boundary has thus been established by Idaho law, and the Nielsons were successors in interest with notice of the agreement that altered or changed the metes and bounds descriptions contained in the written deed, the Plaintiff's Warranty Deed, including the legal description contained therein, was changed by the agreement found to be evidenced and described by all the previous owners of the properties. As such, the Warranty Deed provided by the Defendant Parkers, *in its changed state*, has been established by law and through the subsequent Judgment and is accurate and cannot be the basis of any claim for breach of warranty

Memorandum Decision and Order

Case No. CV-2015-132-OC

Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment

and/or a duty to defend. Based on a clear reading of the settled law, the legal descriptions in all the deeds associated with the Talbot and Nielson properties were altered and replaced by the intentions of the parties as evidenced by decades of agreement concerning the boundary line. Thus, despite the argument raised by the Plaintiffs in their motion to amend the Judgment, the deed here was merely altered to reflect the true intentions of the original buyer and seller and all subsequent owners who purchased with notice. It has been determined that the Nielsons purchased with notice. Therefore, in its discretion, this Court DENIES the Plaintiffs' request to amend or alter the Judgment. By nature of the original Memorandum Decision and Order and Judgment, all of the parties' claims, including the Plaintiffs' claims raised against the Defendant Parkers have been resolved, and the dismissal of this case with prejudice must stand.

CONCLUSION

The Plaintiffs' Motion for New Trial or to Alter or Amend Judgment Dated October 12,

2016 is hereby DENIED. As such, no claims remain for either party in this case.

IT IS SO ORDERED.

DATED this 15th day of December 2016.

ROBERT C. NAFTZ District Judge

Memorandum Decision and Order Case No. CV-2015-132-OC Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on, December 15, 2016 I mailed/served a true copy of

the MEMORANDUM DECISION AND ORDER to the attorney(s)/person(s) listed below by mail

with correct postage thereon or causing the same to be hand delivered.

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, ID 83228 Fax: (801)533-0380

U.S. Mail	
E-Mail	
Courthouse	Box
Fax:	

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED 201 East Center P.O. Box 1391 Pocatello, ID 83204-1391 Fax: (208)232-7352 6169

	U.S. Mail
\Box	E-Mail
	Courthouse Box
\square	Fax:

SHAUNA T. GEDDES, Clerk

By:

Linda Hampton Deputy Clerk

Memorandum Decision and Order Case No. CV-2015-132-OC Re: Plaintiffs' Motion for New Trial or to Alter or Amend Judgment

01/12/2016/WED 02:53 PM

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FRANKLIN COUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STAT OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

GLEN WAYNE NIELSON and CHERYL E. NIELSON husband and wife, Plaintiff/Counterdefendants, vs. ROBERT TALBOT and MICHELE TALBOT, Husband and wife, and PAUL PARKER and SAUNDRA PARKER, husband and wife. Defendants/Counterclaimants.

Case No. CV-2015-132

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS: Summary judgment is granted in favor of

the Defendants/Counterclaimants. This case is dismissed with prejudice.

IT IS SO ORDERED.

DATED this 12th day of October, 2016



ROBERT C. NAFTZ DISTRICT JUDGE

JUDGMENT Case No. CV-2015-132

1 753 of 759

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on, <u>OLTODIA 12, 2016</u> I mailed/served a true copy of the MEMORANDUM DECISION AND ORDER to the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, ID 83228 Fax: (801)533-0380

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED 201 East Center P.O. Box 1391 Pocatello, ID 83204-1391 Fax: (208)232-7352 [p109] U.S. Mail E-Mail Courthouse Box Fax:

	U.S. Mail	
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X	Fax:	

SHAUNA T. GEDDES, Clerk

By: LINDA HAN Deputy Clerk

	FILED
17 M IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT O	
FRANK STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKL	IN COUNTY CLERK
* * * * *	DEPUTY

GLEN WAYNE NIELSON and CHERYL)
E. NIELSON, husband and wife,)
)
Plaintiffs,) Case No. CV-2015-132
)
vs.)
) MINUTE ENTRY AND ORDER
ROBERT TALBOT and MICHELLE)
TALBOT, husband and wife, and)
PAUL PARKER and SAUNDRA PARKER,)
husband and wife,)
)
Defendants.)
)

This matter came before the Court on Defendants Motion for Order Awarding Attorneys' Fees and Costs. Lane V. Erickson appeared for and on behalf of Defendants. Robert Talbot was also present in the courtroom. Stephanie Davis was the court reporter.

This matter was set for hearing at 10:00 a.m. The Court called the case at 10:16 a.m. and Mr. Blake Atkin did not appear. Attempts have been made by the court clerk to contact Mr. Atkin by email and telephone. Mr. Erickson stated that he had sent out notice of said hearing on January 19, 2017 to the address on the Plaintiffs' pleadings.

Therefore The Court asked Mr. Erickson if he would like to supplement the record or is comfortable with what has been submitted. The Court heard additional argument from Mr. Erickson and thereafter GRANTED Defendants' Motion for Order Awarding Attorneys' Fees and Costs. Further, the Court ordered that Mr. Erickson prepare and submit to the Court the order and amended judgment.

Upon further inquiry it was discovered that Plaintiffs and their counsel did not receive notice of the hearing set March 3, 2017. Therefore, this Court's order granting attorney fees and costs is hereby WITHDRAWN and the matter is reset for hearing on April 4, 2017 at 1:30 p.m.

IT IS SO ORDERED.

Dated this 21st day of March, 2017.

ACI Loc

ROBERT C. NAFTZ District Judge



CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 21st day of March, 2017, I mailed/served/faxed a true copy of the foregoing Minute Entry and Order to the attorney(s)/party(s) below by the method indicated:

Attorney(s)/Person(s):

Blake S. Atkin ATKIN LAW OFFICES, P.C. Counsel for Plaintiffs

Lane V. Erickson RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED Counsel for Defendants Method of Service:

Faxed: (801) 533-0380

Faxed: 232-6109

SHAUNA T. GEDDES, Clerk

BY: Linda Hampton, Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

 GLEN WAYNE NIELSON and CHERYL

 E. NIELSON, husband and wife,

 Plaintiffs/Appellants,

 Plaintiffs/Appellants,

 Franklin Co. Case No.: CV-2015-132

 vs.

 ROBERT TALBOT and MICHELE

 TALBOT, husband and wife,

 Image: Certific Are of EXHIBITS

 and

 PAUL PARKER and SAUNDRA PARKER,

 husband and wife,

 Image: Defendants/Respondents.

I, Shauna T. Geddes, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Franklin, do hereby certify that the following is a list of exhibits which were offered or admitted into evidence during the hearing in this cause: NONE

IN WITNESS WHEREOF, I have here unto set my hand and affixed the seal of the said Court this 6^{th} day of April, 2017.

SHAUNA T. GEDDES CLERK OF THE DISTRICT COURT สมเมิยย a Hampton, Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * *

GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife, Plaintiffs/Appellants, vs.)))) Supreme Docket No. 44864)) Franklin Co. Case No.: CV-2015-132)
ROBERT TALBOT and MICHELE TALBOT, husband and wife,))) CERTIFICATE OF CLERK
and)
PAUL PARKER and SAUNDRA PARKER, husband and wife,	/))
Defendants/Respondents.	,))

I, Shauna T. Geddes, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Franklin, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all no exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Preston, Idaho, this 6th day of April, 2017.

SHAUNA T. GEDDES CLERK OF THE DISTRICT COURS BY: Junda a Hampton, Deputy Clerk DISTRIC

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

	* * * * *
GLEN WAYNE NIELSON and CHERYL E. NIELSON, husband and wife, Plaintiffs/Appellants,)))) Supreme Docket No. 44864)) Franklin Co. Case No.: CV-2015-132
vs.)
ROBERT TALBOT and MICHELE TALBOT, husband and wife,))) CERTIFICATE OF SERVICE)
and)
PAUL PARKER and SAUNDRA PARKER, husband and wife,)))
Defendants/Respondents.)

I, Shauna T. Geddes, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Franklin, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the REPORTER'S TRANSCRIPT AND CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

Blake S. Atkin ATKIN LAW OFFICES, P.C. 7579 North West Side Highway Clifton, ID 83228 Lane V. Erickson RACINE LAW OFFICE PO Box 1391 Pocatello, ID 83204-1391

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 6th day of April, 2017.

SHAUNA T. GEDDES CLERK OF THE DISTRICT CO inda Hampton. Deputy STRIC the man and the second