

UIdaho Law

## Digital Commons @ UIdaho Law

---

[Idaho Supreme Court Records & Briefs, All](#)

[Idaho Supreme Court Records & Briefs](#)

---

4-11-2019

### Gregory v. Stallings Clerk's Record Dckt. 46818

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/  
idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

#### Recommended Citation

"Gregory v. Stallings Clerk's Record Dckt. 46818" (2019). *Idaho Supreme Court Records & Briefs, All.* 7872.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/7872](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7872)

---

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

\*\*\*\*\*

Appeal from the District Court of the Seventh Judicial District  
of the State of Idaho, in and for the County of Bingham.

HONORABLE DARREN B. SIMPSON, DISTRICT JUDGE

Counsel for Appellant: David N. Parmenter, Esq., 53 South Shilling, Blackfoot, ID 83221; iCourt Email – parlaw@gmail.com

Counsel for Respondents: Jared M. Harris, Esq., 266 West Bridge St., Blackfoot, ID 83221; iCourt Email – efiling@bakerharrislaw.com

**BINGHAM COUNTY DISTRICT COURT**  
**CASE SUMMARY**  
**CASE NO. CV-2017-1651**

**Jonathon Clyde Gregory**  
vs.  
**Richard R Stallings, Eileen Stallings**

§ § § § §

**Location:** Bingham County District Court  
**Judicial Officer:** Simpson, Darren B.  
**Filed on:** 09/06/2017  
**Appellate Case Number:** 46818-2019

### CASE INFORMATION

**Bonds** Case Type: AA- All Initial District Court Filings (Not E, F, and H1)  
Transcript Bond #Estimated Transcript on Appeal \$200.00  
3/7/2019 Posted  
Counts: 1 Case 02/27/2019Appealed Case -  
Status: Supreme Court Appeal

DATE	CASE ASSIGNMENT
<b>Current Case Assignment</b>	
Case Number	CV-2017-1651
Court	Bingham County District Court
Date Assigned	09/07/2017
Judicial Officer	Simpson, Darren B.

## PARTY INFORMATION

<b>Plaintiff</b>	<b>Gregory, Jonathon Clyde</b>	<i>Lead Attorneys</i> <b>Parmenter, David Newell</b> <i>Retained</i> 208-785-5618(W)
<b>Defendant</b>	<b>Stallings, Eileen</b>	<b>Harris, Jared M.</b> <i>Retained</i> 208-785-2310(W)
	<b>Stallings, Richard R</b>	<b>Harris, Jared M.</b> <i>Retained</i> 208-785-2310(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
09/06/2017	Appearance through Attorney (Judicial Officer: Simpson, Darren B. ) <i>Plaintiff: Gregory, Jonathon Clyde Appearance Through Attorney Nathan Rivera</i>	
09/06/2017	Summons Issued	
09/06/2017	New Case Filed Other Claims	
09/06/2017	 Complaint Filed	
09/06/2017	Appeal Cover>Title Page	
09/06/2017	Case Summary	
09/07/2017	ROA - Converted Event (Judicial Officer: Simpson, Darren B. ) <i>Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: Parmenter Rivera, LLP Receipt number: 0012301 Dated: 9/7/2017 Amount: \$221.00 (Check) For: Gregory, Jonathon Clyde (plaintiff)</i>	
09/07/2017	Civil Case Information Sheet - Plaintiff	

**BINGHAM COUNTY DISTRICT COURT**  
**CASE SUMMARY**  
**CASE NO. CV-2017-1651**

02/20/2018	Return of Service - <i>Substitute</i>
03/02/2018	Appearance through Attorney (Judicial Officer: Simpson, Darren B.) <i>Defendant: Stallings, Richard R. Appearance Through Attorney Jared M Harris</i>
03/02/2018	Appearance through Attorney (Judicial Officer: Simpson, Darren B.) <i>Defendant: Stallings, Eileen Appearance Through Attorney Jared M Harris</i>
03/02/2018	 Answer
03/06/2018	Initial Appearance <i>by persons other than the plaintiff or petitioner Paid by: Baker &amp; Harris Receipt number: 0002930 Dated: 3/6/2018 Amount: \$136.00 (Check) For:</i>
03/06/2018	Civil Case Information Sheet
03/06/2018	Notice <i>of Alternative Judges Pursuant to IRCP 40(d)(1)(G)</i>
03/06/2018	Hearing Scheduled <i>(Telephonic Status Conference 04/23/2018 10:00 AM)</i>
03/06/2018	Notice of Hearing
03/07/2018	Notice of Service
03/09/2018	Miscellaneous <i>Note of Issue and Request for Trial Setting</i>
03/19/2018	Response <i>to Note of Issue and Request for Trial Setting</i>
04/23/2018	DC Hearing Held: Court Reporter: # of Pages: (Judicial Officer: Woodland, William H. ) <i>Hearing result for Telephonic Status Conference scheduled on 04/23/2018 10:00 AM: District Court Hearing Held; Courtroom No. 1 Court Reporter: Mary Ann Elliott Number of transcript pages for this hearing estimated: less than 50</i>
04/23/2018	<b>Telephone Conference</b> (10:00 AM) (Judicial Officer: Simpson, Darren B.) <i>David Parmenter - (208) 785-5618 Jared M. Harris - (208) 785-2310 Hearing result for Telephonic Status Conference scheduled on 04/23/2018 10:00 AM: District Court Hearing Held; Courtroom No. 1 Court Reporter: Mary Ann Elliott Number of transcript pages for this hearing estimated: less than 50</i>
04/23/2018	Minute Entry <i>Hearing type: Telephonic Status Conference Hearing date: 4/23/2018 Time: 10:03 am Courtroom: Court reporter: Mary Ann Elliott Minutes Clerk: Brandee Cammack Tape Number: Digital Plaintiff's Attorney - David Parmenter Defendant's Attorney - Jared Harris Courtroom No. 1</i>
04/23/2018	Hearing Scheduled <i>(Telephonic Status Conference 07/30/2018 09:00 AM)</i>

**BINGHAM COUNTY DISTRICT COURT**  
**CASE SUMMARY**  
**CASE NO. CV-2017-1651**

04/23/2018	Hearing Scheduled <i>(Pretrial 10/15/2018 10:00 AM)</i>
04/23/2018	Hearing Scheduled <i>(Jury Trial 11/14/2018 09:00 AM) Three days</i>
04/23/2018	Notice of Hearing
04/23/2018	Scheduling Order <i>- Jury Trial</i>
05/15/2018	Miscellaneous <i>Nomination of Mediator</i>
07/05/2018	Motion for Summary Judgment
07/05/2018	Memorandum In Support of Motion <i>for Summary Judgment</i>
07/05/2018	Affidavit <i>of Richard Stallings in support of Motion for Summary Judgment</i>
07/05/2018	Notice of Hearing
07/06/2018	Hearing Scheduled <i>(Motion for Summary Judgment 08/06/2018 09:30 AM) Defendants' Motion</i>
07/19/2018	Memorandum <i>in Opposition to Defendants' Motion for Summary Judgment</i>
07/19/2018	Motion <i>to Extend Time for filing responsive Affidavits and Briefing in response to Defendants' Motion for Summary Judgment and Motion to Continue August 6, 2018 hearing</i>
07/19/2018	Affidavit <i>of Jon Gregory</i>
07/19/2018	Affidavit <i>of Garrett Sandow</i>
07/23/2018	Notice of Hearing
07/24/2018	Motion to Shorten Time
07/24/2018	Notice <i>of Compliance</i>
07/26/2018	Notice of Hearing
07/30/2018	DC Hearing Held: Court Reporter: # of Pages: (Judicial Officer: Simpson, Darren B. ) <i>Hearing result for Telephonic Status Conference scheduled on 07/30/2018 09:00 AM: District Court Hearing Held; Courtroom No. 1</i> <i>Court Reporter: None</i> <i>Number of transcript pages for this hearing estimated: less than 50</i>
07/30/2018	<b>Telephone Conference</b> (9:00 AM) (Judicial Officer: Simpson, Darren B.) + Plaintiff's Motion to Extend Time and Motion to Cont.

**BINGHAM COUNTY DISTRICT COURT**  
**CASE SUMMARY**  
**CASE NO. CV-2017-1651**

	<p><i>David Parmenter - (208) 785-5618 Jared M. Harris - (208) 785-2310 Hearing result for Telephonic Status Conference scheduled on 07/30/2018 09:00 AM: District Court Hearing Held; Courtroom No. 1 Court Reporter: None Number of transcript pages for this hearing estimated: less than 50</i></p>
07/30/2018	<p>Continued <i>(Motion for Summary Judgment 08/21/2018 09:00 AM) Defendants' Motion</i></p>
07/31/2018	<p>Minute Entry <i>Hearing type: Telephonic Status Conference Hearing date: 7/30/2018 Time: 9:04 am Courtroom: Court reporter: Minutes Clerk: Brandee Cammack Tape Number:</i></p>
07/31/2018	<p>Notice of Hearing</p>
07/31/2018	<p>Order <i>Shortening Time</i></p>
08/14/2018	<p> Objection <i>to the Affidavits of Garrett Sandow and Jon Gregory</i></p>
08/14/2018	<p> Reply <i>brief in support of Defendants' Motion for Summary Judgment</i></p>
08/14/2018	<p> Affidavit <i>of Jared M. Harris in Support of Reply Brief in Support of Defendants' Motion for Summary Judgment</i></p>
08/21/2018	<p>DC Hearing Held: Court Reporter: # of Pages: (Judicial Officer: Simpson, Darren B. ) <i>Hearing result for Motion for Summary Judgment scheduled on 08/21/2018 09:00 AM: District Court Hearing Held; Courtroom No. 1 Court Reporter: None, Admin Notice Given Number of transcript pages for this hearing estimated: less than 50</i></p>
08/21/2018	<p><b>Motion for Summary Judgment (9:00 AM)</b> (Judicial Officer: Simpson, Darren B.) <i>Defendants' Motion Hearing result for Motion for Summary Judgment scheduled on 08/21/2018 09:00 AM: District Court Hearing Held; Courtroom No. 1 Court Reporter: None, Admin Notice Given Number of transcript pages for this hearing estimated: less than 50</i></p>
08/21/2018	<p> Minute Entry <i>Hearing type: Motion for Summary Judgment Hearing date: 8/21/2018 Time: 9:00 am Courtroom: Court reporter: Minutes Clerk: Brandee Cammack Tape Number:</i></p>
08/21/2018	<p>Case Taken Under Advisement</p>
10/10/2018	<p> Pretrial Memorandum</p>
10/10/2018	

**BINGHAM COUNTY DISTRICT COURT**  
**CASE SUMMARY**  
**CASE NO. CV-2017-1651**

	 Motion <i>to Extend Discovery Cutoffs</i>
10/10/2018	 Affidavit <i>of Jared M. Harris in support of Motion to Extend Discovery Cutoffs</i>
10/15/2018	<b>Pre Trial</b> (10:00 AM) (Judicial Officer: Simpson, Darren B. ;Location: Courtroom 1)
10/15/2018	 Order <i>Granting Defendants' Motion for Summary Judgment</i>
10/15/2018	 Judgment
10/16/2018	<b>Dismissed With Prejudice</b> (Judicial Officer: Simpson, Darren B.) Comment () Party (Stallings, Richard R; Stallings, Eileen; Gregory, Jonathon Clyde)
10/16/2018	Civil Disposition Entered
10/22/2018	 Motion <i>for Award of Attorney's Fees and Costs</i>
10/22/2018	 Memorandum of Costs & Attorney Fees
10/23/2018	 Court Minutes <i>- Pre trial</i>
10/29/2018	 Affidavit <i>of Jon Gregory in Support of Motion for Reconsideration</i>
10/29/2018	 Memorandum In Support of Motion <i>for Reconsideration</i>
10/29/2018	 Motion for Reconsideration <i>- Plaintiff</i>
11/05/2018	 Objection <i>to Attorneys Fees and Costs</i>
11/07/2018	 Notice of Hearing
11/14/2018	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Simpson, Darren B.) <i>Vacated</i> <i>Three days</i>
11/16/2018	 Objection <i>and Response to Motion to Reconsider</i>
11/16/2018	 Affidavit <i>in Support of Objection and Response to Motion to Reconsider</i>
11/16/2018	 Motion

BINGHAM COUNTY DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. CV-2017-1651**

	<i>to Strike</i>
11/16/2018	Objection <i>to Affidavit of Jon Gregory</i>
11/26/2018	Amended <i>Notice of Hearing</i>
11/30/2018	Notice <i>to Vacate Hearing</i>
12/03/2018	<b>CANCELED Motion for Reconsideration</b> (10:30 AM) (Judicial Officer: Simpson, Darren B.) <i>Vacated</i> 11/26/2018 <i>Continued to 12/03/2018 - Cont - Illness or family emergency - Gregory, Jonathon Clyde</i>
12/12/2018	Stipulation <i>to Submit on Briefing</i>
12/14/2018	Order <i>to Submit on Briefing and Notice Vacating Hearing</i>
12/17/2018	<b>CANCELED Motion for Reconsideration</b> (9:45 AM) (Judicial Officer: Simpson, Darren B.) <i>Vacated</i>
12/17/2018	Case Taken Under Advisement <i>Plaintiff's Motion to Reconsider / Defendants' Motion to Strike</i>
01/18/2019	Order <i>Denying Plaintiff's Motion for Reconsideration</i>
01/25/2019	Motion <i>for Award of Attorney's Fees and Costs - Amended</i>
01/25/2019	Memorandum of Costs & Attorney Fees <i>- Amended</i>
02/21/2019	<b>Final Judgment</b> (Judicial Officer: Simpson, Darren B.) Comment () Party (Stallings, Richard R; Stallings, Eileen; Gregory, Jonathon Clyde) Monetary/Property Award In Favor Of: Stallings, Richard R; Stallings, Eileen Against: Gregory, Jonathon Clyde Entered Date: 02/21/2019 Current Judgment Status: Status: Active Status Date: 02/21/2019 Monetary Award: Amount: \$18,536.00
02/27/2019	Order <i>Granting Amended Motion for Award of Attorney's Fees and Costs</i>
02/27/2019	Judgment

**BINGHAM COUNTY DISTRICT COURT**  
**CASE SUMMARY**  
**CASE NO. CV-2017-1651**

02/27/2019	Civil Disposition Entered
02/27/2019	Appeal Filed in Supreme Court
02/27/2019	Notice of Appeal
02/27/2019	Objection <i>to Amended Motion for Award of Attorneys Fees and Costs &amp; Motion for Enlargement of Time</i>
02/27/2019	Affidavit <i>Jennifer Godinez</i>
03/01/2019	Affidavit <i>Regarding Computation of Interest</i>
03/01/2019	Writ Issued <i>Bingham Co. / \$18,584.22</i>
03/29/2019	Notice <i>of Balance Due for Clerk's Record on Appeal</i>
04/03/2019	Notice <i>of Balance Due for Clerk's Record on Appeal - Amended</i>
04/09/2019	Transcript Lodged <i>/ Motion for Summary Judgment 8-21-18</i>
04/09/2019	Reporter's Notice of Transcript(s) Lodged <i>/ Reporter Jack Fuller / Motion for Summary Judgment 8-21-18</i>
04/11/2019	Exhibit List/Log <i>- Clerk's Certificate of Exhibits on Appeal</i>
04/11/2019	Clerk's Certificate of Appeal

DATE	FINANCIAL INFORMATION	
<b>Defendant</b> Stallings, Eileen		
Total Charges		136.00
Total Payments and Credits		136.00
<b>Balance Due as of 4/11/2019</b>		<b>0.00</b>
<b>Defendant</b> Stallings, Richard R		
Total Charges		0.00
Total Payments and Credits		0.00
<b>Balance Due as of 4/11/2019</b>		<b>0.00</b>
<b>Plaintiff</b> Gregory, Jonathon Clyde		
Total Charges		645.00
Total Payments and Credits		645.00
<b>Balance Due as of 4/11/2019</b>		<b>0.00</b>
<b>Payor of Cash Bond</b> Parmenter Rivera, LLP		
Civil Cash Bond Account Type Balance as of 4/11/2019		<b>200.00</b>

**BINGHAM COUNTY DISTRICT COURT**  
**CASE SUMMARY**  
**CASE NO. CV-2017-1651**

DAVID N. PARMENTER, ISB # 2441  
NATHAN D. RIVERA, ISB # 8339  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, ID 83221  
(208)785-5618  
(208)785-4858 (fax)  
parlaw@gmail.com

2017 SEP -6 PM 1:41

RECEIVED  
SHERIFF'S OFFICE  
BY [Signature]

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM  
DISTRICT COURT

JON GREGORY, an individual,	)	Case No.: CV-2017- 1651
Plaintiff,	)	
v.	)	VERIFIED COMPLAINT
	)	
RICHARD STALLINGS, an individual,	)	FILING FEE: \$ 221.00
and EILEEN STALLINGS, an individual.	)	
Defendants.	)	

NOTICE: This Case is assigned to  
Darren B. Simpson, District Judge

COMES NOW Plaintiff, JON GREGORY, through counsel NATHAN D. RIVERA, and  
alleges and complains against the Defendants, RICHARD AND EILEEN STALLINGS, as follows:

**PARTIES**

1. Plaintiff is a resident of Blackfoot, Bingham County, State of Idaho.
2. Defendants are residents of Blackfoot, Bingham County, State of Idaho.

VERIFIED COMPLAINT-

1

## JURISDICTION

3. Jurisdiction is proper in District Court in that the amount of damages exceeds \$10,000.00.

## FACTS

4. Plaintiff became interested in a break or parcel of property owned by Mary Ann Beck of Rexburg, Idaho, which he wanted to purchase for development of student housing and/or similar commercial development.

5. Plaintiff purchased 2 of the 4 acres by paying cash of \$205,000.00, but needed to acquire the other 2 acres to complete the plan development.

6. Defendant Richard Stallings contacted the Plaintiff, and advised that he had an interest in purchasing the other 2 acres, and going in as partners on the development.

7. Defendants thereafter obtained a bank loan in order to finance their share of necessary \$200,000.00 for the other 2 acres.

8. A third party, Summit Development also known as Pioneer Point LLC (Heath Johnston) became involved as the developers for the project. It was to develop the property, put in road, parking lots, sewer, water, and begin with at least two buildings on the property.

9. Plaintiff's 2 acres were subordinated to a Bank of Commerce Loan obtained by Defendants, so that the Defendants could obtain their financing for the purchase of the property. Defendants actually borrowed \$289,000.00, the difference above \$200,000.00 which they requested for other matters or investments.

10. Somewhat thereafter, Century Mortgage Company, also had Defendants execute a Construction Loan Agreement and Assignment of Trust, a copy of which is attached hereto as Exhibit A.

11. Further, Defendants executed a Promissory Note around the same time, a copy of which is attached hereto as Exhibit B.

12. The Construction Loan Agreement and Assignment of Trust was financed by Century Mortgage Company, who had acquired several individual investors to finance the mortgage, and who were also parties of interest through their investments.

13. The Plaintiff also owned an adjacent but separate property known as G's Dairy Delights, LLC, which he leased to an individual who operated that business.

14. Around 2007, the market in residential and commercial values crashed and fell, causing considerable economic turmoil in the United States, and as it related to the property in question.

15. Century Mortgage advised the Plaintiff that they could not provide him a draw for construction work, and essentially went out of business. Summit had done some initial work, and had provided some initial development. However, they were unable to complete the project.

16. Plaintiff immediately began working on trying to sell the property and to try and recoup the investments that he, Defendants, and the other investors for the mortgage had put into the property.

17. During the process, in order to keep project viable, The Plaintiff further sold his property known as G's Dairy Delights, LLC, and took the proceeds from that sale and invested them

in the Marian Beck property and project. Those funds were approximately \$292,629.43. See attached Exhibit C.

18. The Plaintiff also began working on efforts to sell the Mary Ann Beck property and project, in order to recoup their losses, given the economic crash.

19. The Plaintiff was able to locate a buyer, Rockwell Court Limited Partnership, who is willing to purchase the property for the sum of \$1,086,000.00. With that sale, all of the mortgage investors were paid back their initial investments. See attached Exhibit D.

20. The balance of the proceeds from the sale of the property was to be divided between the original investors, the Plaintiff and Defendants.

21. The parties had originally agreed to divide the anticipated balance of the proceeds of \$433,000.00 by 2, each of them receiving \$216,758.86.

22. Thereafter, despite Plaintiffs greater investment in supplying the additional \$292,000.00 from the sale of G's Dairy Delights, LLC, and having paid as well additional interest payments, Defendants sent a statement to Plaintiff, from the sale of the proceeds of \$300,000.00, paying to Plaintiff the sum of \$155,482.28, and to the Defendants, the sum of \$144,517.72.

23. Even though the Plaintiff had by far the greater investment, needed the money at the time, and was willing to acquiesce to that proposal and offer.

24. Thereafter, despite his previous statement, and the fact that they were partners in the project, Defendants thereafter advised the Plaintiff that they were keeping all proceeds from the sale with Rockwell Court Limited Partnership, and that the Plaintiff should receive nothing.

25. Defendant thereafter kept and retained all of the proceeds from the sale of property with Rockwell Court Limited partnership, and paid nothing to Plaintiff.

**COUNT I-BREACH OF CONTRACT.**

26. Plaintiff re-alleges the allegations set forth herein above in paragraphs 1 through 25 of this complaint as if the same were herein set forth in full.

27. Plaintiff entered into an express agreement with Defendants whereby Plaintiff agreed to pay for one half of the land necessary to develop and to otherwise achieve improvement of the Subject Property.

28. Plaintiff performed all obligations required of it under the Contract, and more in the investment and development of the subject property, and actually invested more than double the financial resources provided by Defendants.

29. Plaintiff kept Defendants informed of the progress of the Subject Property, and ultimately its sale.

30. Defendants breached the Contract by , *inter alia*, failing and refusing to pay or reimburse Plaintiff for his contributions and investments, both of time and money.

31. As a direct and proximate result of the foregoing breach of contract, Plaintiff has been damaged in the amount to be proven at trial, but not less than for the sum of \$492,000.00, together with accruing interest for pre and post judgment pursuant to I.C. 28-22-104.

32. Plaintiff has been required to retain the services of an attorney to bring this action and is entitled to an award of reasonable attorney fees and costs incurred pursuant to, *inter alia*, Idaho Code §§ 12-120(1)(3), 12-121 and I.R.C.P. 54(e).

**COUNT II- BREACH OF IMPLIED CONTRACT.**

33. Plaintiff re-alleges the allegations set forth herein above in paragraphs 1 through 25 of this complaint as if the same were herein set forth in full.

34. Plaintiff entered into an implied agreement with Defendants whereby Plaintiff agreed to pay for one half of the land necessary to develop and to otherwise achieve improvement of the Subject Property.

35. Plaintiff performed all obligations required of it under the Implied Contract, and more in the investment and development of the subject property, and actually invested more than double the financial resources provided by Defendants.

36. Plaintiff kept Defendants informed of the progress of the Subject Property, and ultimately its sale.

37. Defendants breached the Contract by , *inter alia*, failing and refusing to pay or reimburse Plaintiff for his contributions and investments, both of time and money.

38. As a direct and proximate result of the foregoing breach of contract, Plaintiff has been damaged in the amount to be proven at trial, but not less than for the sum of \$492,000.00, together with accruing interest for pre and post judgment pursuant to I.C. 28-22-104.

39. Plaintiff has been required to retain the services of an attorney to bring this action and is entitled to an award of reasonable attorney fees and costs incurred pursuant to, *inter alia*, Idaho Code §§ 12-120(1)(3), 12-121 and I.R.C.P. 54(e).

### **COUNT III- QUANTUM MERUIT/QUASI CONTRACT.**

40. Plaintiff re-alleges the allegations set forth herein above in paragraphs 1 through 25 of this complaint as if the same were herein set forth in full.

41. Plaintiff furnished financial/ resources in excess of \$500,000.00 as well as services and labor to develop and make improvements on the Subject Property at the request of Defendants and to the mutual benefit of both parties.

42. The sum of \$492,000.00, together with accruing interest for pre and post judgment pursuant to I.C. § 28-22-104 was and is the reasonable value of the investment and expenses furnished by Plaintiff at the request of Defendants for which the benefit has been realized by Defendants but payment has not been received.

43. As such, there remains due, owing and unpaid from Defendants the sum of \$492,000.00, together with accruing interest for pre and post judgment pursuant to I.C. § 28-22-104.

44. Plaintiff has been required to retain the services of an attorney to bring this action and is entitled to an award of reasonable attorney fees and costs incurred pursuant to, inter alia, the Contract, Idaho Code §§ 12-120(1)(3), 12-121 and I.R.C.P. 54(e).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for Judgment against the Defendants as follows:

1. That Plaintiff be granted judgment in its favor on each of the Counts of its Complaint.
2. That Plaintiff be entitled to a money judgment against Defendants in the amount of \$492,000.00, together with accruing interest for pre and post judgment pursuant to I.C. § 28-22-104 or the maximum rate otherwise allowed by law together with an award of attorney fees and costs pursuant to I.C. §§ 12-120(1)(3), 12-121, and I.R.C.P. 54(e);
3. That, in the event this action is uncontested, that Plaintiff be granted an award of attorney fees and costs in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) as reasonable attorney fees in such other amount as the court may determine as just in the event the matter is contested.

4. That Plaintiff be granted such other and further relief as the Court may deem just and equitable.

DATED this 6<sup>th</sup> day of September, 2017



NATHAN D. RIVERA,  
Attorney for Plaintiff

## Verification

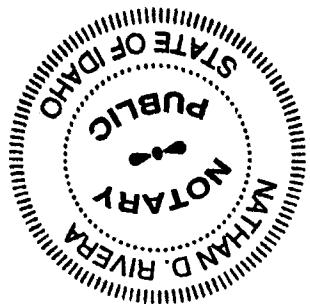
State of Idaho )  
                  :ss.  
County of Bingham )

JON GREGORY, being first sworn, states:

I am the Plaintiff in this case. I have read the foregoing Complaint and believe the facts and statements set out therein to be true and correct to the best of my knowledge, information, and belief.

By: Jon G. Gregory  
JON GREGORY

Subscribed and sworn to before me on this 6 day of September 2017.



By: [Signature]  
Notary Public for Idaho  
Residing at: Pocatello  
My Commission Expires: 02/09/2017

# **EXHIBIT A**

CENTURY MORTGAGE COMPANY  
45 NORTH 300 EAST  
ST. GEORGE, UTAH 84770

CONSTRUCTION LOAN AGREEMENT AND ASSIGNMENT OF TRUST ACCOUNT

THIS AGREEMENT, is made on December 10, 2008 by and between the undersigned Pioneer Point LLC (Heath Johnston) and Richard and Eileen Stallings (borrower) and Century Mortgage, as agent for investors The Leland Alvin Laub Trust 6.78% interest; The Ludlow Trust 13.54% interest; Tiffany Meredith .63% interest; Laurine Meredith 6.35% interest; Ray Schmutz Family Trust 1.16% interest; David & Olive Esplin 2.12% interest; Howard Bingham or Dale Bingham 2.12%; Peacock Revocable Trust 8.57% interest; Dona Randall 3.17% interest; Richard I Burch 10.58% interest; Ray Schmutz Family Partnership 6.56% interest; Ronald A Ludlow 2.54% interest; Earle Revocable Trust 1.27% interest; Cleon & Joyce Davies 3.50% interest; Charles & Lorena Lambert 14.18% interest; Donald J Larkin Living Trust 6.35% interest; Alan & Dayle Baird 10.58% interest inconsideration of the granting of a loan by lenders and as part of said loan transaction, which loan is evidence by Note of the undersigned for \$945,000.00 at 12% interest dated December 10, 2008.

Attached hereto and by this reference made part thereof, in favor of the Lenders, and secured by a first Trust Deed on real property located in Washington County, State of Utah, and described as:

**Property Description:** First Trust Deed on Parcel 1 Rexburg, Idaho development with student housing and Parcel 3 Lot 2 Pioneer Village. 2<sup>nd</sup> Trust Deed position Parcel 2 Rexburg, ID.

The purpose of said loan is to finance a part of the cost of construction of certain improvements upon the described premises in accordance with plans and specifications that have been or will be deposited by Borrower with the Lenders. The parties desire to set forth the terms and conditions of this transaction, the agreement of the Parties, and the rights and remedies of the Lenders, in connection with the disbursement of the proceeds and construction of the improvements.

**IT IS, THEREFORE, AGREED AS FOLLOWS:** Upon the recordation of the Trust Deed, the net proceeds of the loan will be available to be disbursed by the Lenders to the undersigned Borrower or others as hereinafter provided which shall be conclusively deemed full consideration for the Note and that such consideration has fully passed and been paid to the Borrower. Subject to the provisions of this Agreement, each of the undersigned Borrower hereby irrevocably assigns to the lenders, as security for the obligation secured by the Deed of Trust, all rights, title and interest of the Borrower in the undisbursed balance. Each of the undersigned Borrowers acknowledges that he has no right to the moneys in the Undisbursed Account other than to have the same used by the Lenders in accordance with this Agreement, which, upon acceptance by Lenders hereon, Lenders agrees to do.

Borrower, jointly and severally, further agrees as follows:

1. To commence actual construction work of the improvements to be constructed on the property within forty-five (45) calendar days from the date of this Agreement, and to complete the same, including all necessary utility connections, promptly and in any event within seven (7) calendar months from the date of this Agreement and in

- accordance with the plans and specifications submitted by Borrower to and approved by Lender, and in accordance with the requirements of all state and local authorities, laws and regulations of the Federal Housing Administration, Veterans Administration, or other public authority having a future interest in the long term financing of said improvements in the finished Home.
2. To furnish to Lender, before any funds are disbursed from the account, a policy of title insurance satisfactory to Lender, insuring that the Trust Deed is a first lien on the property. Should any work of any character be commenced on, or any materials delivered upon or to, the real property or in connection with said improvements prior to the time the Lender approves the title and records the Trust Deed, the Lender, at his sole option, may apply so much of the fund in the Trust Account as may be required to satisfy in full all indebtedness secured by the Trust Deed and to pay all expenses incurred in connection with the transaction and to be relieved from any and all obligation to proceed with the loan.
  3. To make all payments of principal and interest in accordance with the terms of the Note and Trust Deed. Interest during construction shall be computed on the full amount of the loan from the date of the note and such interest will be payable monthly by the Borrower with funds that have been set aside as a reserve for such purpose, unless the lender shall otherwise agree in writing. In such case, if such interest payments are not made when due and payable, the Lender is authorized, at its election, to pay the same or itself from proceeds of the loan or has the option to call the note due for non-payment of interest.
  4. To use such funds from the net proceeds of the loan for the purposes in aid for the construction of said improvements which funds are hereby assigned to the Lender for such purpose. To deposit in the Trust Account upon demand of Lender, such further sums estimated by Lender as being necessary to cover all items provided or contemplated to be paid or expended under this Agreement.
  5. That no materials, equipment, fixtures or any other part of the improvements shall be purchased or installed under conditional sales agreement or other arrangements wherein the right is reserved or accrues to anyone to remove or repossess any such item or to consider them as personal property.
  6. That subject to the provisions of this Agreement, the loan is to be disbursed by the Lender to provide funds for construction of the contemplated improvements and may be paid to any of the undersigned, or, at the option of the Lender, may be paid to contractors, material men and laborers, or any of them, and if any of the undersigned are to receive a disbursement, they must furnish a signed waiver from subcontractor who performed the work.
  7. That before requesting any payments or advances, the Borrower agrees to furnish the Lender, if requested, lien waivers or lien subordination receipts in form and substance satisfactory to the Lender, covering work done or materials furnished for the improvements. Said documents shall show the expenditure of an amount equal to the amount proposed to be disbursed from the Account. The Borrower agrees that all funds disbursed to any of the undersigned will be immediately used to pay bills and charges for the labor and materials and not to use the money for any other purposes. Borrower further agrees to keep records satisfactory to and open to the inspection of the Lender showing that funds advanced by the Lender are used only in said construction as herein specified. Any written order, receipt or other document signed by any of the undersigned shall be binding upon all of the undersigned and the Lender shall be fully protected in acting thereupon.
  8. Not to alter in any way the construction of the improvement as shown on the plans and specifications herein referred to. Provided however, that in the event extras or additions not called for in said plans and specifications are contemplated,

Borrower agrees that, before any such changes, extras or additions are ordered or placed into effect, he will immediately notify the Lender in writing of such contemplated changes. If Lender does not approve such changes Borrower hereby agrees to immediately deposit to the Trust Account, a sum of money requested to cover the cost of said alterations, additions or extras.

9. To pay all loan expenses. Without limiting the generality of the foregoing, such expenses shall include all recording charges, title insurance charges, cost of surveys, cash deposits required to be made with the title insurance company issuing the title insurance policy, and cost of premiums of surety company bonds required by said title insurance company in connection with the insurance of preliminary reports of title, and title insurance policy or removal of title exceptions there from, fees of outside appraisers, if any, Lender's service fee, and cost of recordation. Lender may also set aside reasonable reserve for estimated future loan expenses and for interest, insurance, and taxes to accrue during the period of construction, offsite improvements, and initial tax and insurance deposits to be set aside under the terms of the Deed of Trust and for other contingencies.
10. That anything in this Agreement contained to the contrary notwithstanding, it is expressly understood and agreed that the loan hereunder shall at all times be in balance. The loan shall be deemed to be in balance only when the un-disbursed proceeds of the loan, after provisions for all reserves authorized by this Agreement, shall equal or exceed the amount necessary, based upon Lender's estimation of construction costs and loan expenses, to pay for all work done or to be done for completion of the construction of the improvements including the installation of fixtures and equipment. If for any reason, the loan should at any time after commencement of disbursements of the proceeds become out of balance, Borrower will, within five (5) days after written request by Lender, deposit with the Lender an amount of cash sufficient to correct the deficiency, which deposits shall first be exhausted before any further disbursements of the proceeds of the Loan shall be made.
11. That lender shall not be obligated to make advances except during the progress of construction, said advances to be made on the basis of Lender's estimate of the value of the work and improvements in place of the cost of completion of construction, and of the amount of reserves required to be retained by Lender for its protection. Lender may retain, in addition to all reserves, an amount sufficient, in Lender's sole judgment, to insure that there will be proper retainage from contractors, subcontractors, and material man to assure their performance of their contractors and to cover the contingency of insufficiency of cost estimated or of additional expenses being incurred in relation to contracts or subcontractors. In any event, Lender may provide a reserve for contingencies of ten (10) percent of the estimated cost of construction.
12. That lender shall have no responsibility, beyond the exercise of good faith, for the character or value of any work for which payments may be made or for any claims for mechanic's liens or for extras that may be asserted by and claimed in connection with any of the work performed or to be performed. Lenders may, in its discretion, make payments for labor and materials directly to any contractor or subcontractors without prior approval by Borrower, and shall be held harmless by Borrower for any payments so made by Lender in good faith.
13. That the Lender shall have the right to inspect said property at any reasonable time, but such inspection is for its protection only. It is agreed that the undersigned Borrower has or will, at its own responsibility, select all architects, builders, contractors, subcontractors, material man, laborers, materials, equipment, and appliances, and that Lender has no responsibility therefore.

14. That in the event any liens or claims of lien are asserted or filed against the property, the Lender, after five (5) days notice to the undersigned of its intention so to do, may pay any or all of such liens or claims, or purchase assignments thereof, or may contest the validity of any of them, paying all costs and expenses of contesting the same, including reasonable attorney's fees and all payments to be made out of the Trust Account, then such additional amounts may be expended by the Lender at its option, and all funds paid or expended by the Lender, together with interest thereon at the rate of sixteen percent (16%) per annum from the date of advance, shall be secured by the Trust Deed and shall be due and payable without notice on demand.
15. That should any of the undersigned Borrowers default in the performance of any agreement hereunder; or should work cease on the improvements, especially including stoppage by the Lender under the terms of this Agreement, or for any reason whatsoever, for fifteen (15) calendar days; or if the improvements shall be damaged or destroyed by fire or other casualty; or in the case of death of any of the undersigned; or if a petition in bankruptcy or under any debtor's relief law shall be filed by or against any of the undersigned; or if any of the premises covered by the Trust Deed without the written consent of the Lender, or if any of the undersigned makes an assignment for the benefit of creditors, or the filing of a lis pendens naming any of the undersigned or any action affecting the title of the real property described in the Trust Deed, or if any of the undersigned have judgments entered against them, or should any lien be asserted, filed, or recorded against the property; or should the Lender, in its sole discretion decide that the funds in the Trust Account are insufficient to complete the construction of said improvements and pay all charges and bills for labor and materials used in connection therewith; or if it would be imprudent to disburse funds from said Trust Account or any part thereof, or should any condition or circumstance arise or exist at any time by reason of any governmental order, decree or regulation, shortage of material or labor, or for any reason whatsoever which would prevent or preclude the construction and completion of the improvement in compliance with the plans and specifications therefore in an orderly and expeditious manner without delay, or in the event of any other default of any nature or kind not specified herein, then in any of such events, at its option, the Lender may, without notice:
- (a) Declare all indebtedness secured by the Trust Deed immediately due and payable and thereupon the Lender shall be released from all obligations to the undersigned under this Agreement; such application shall not operate to waive or cure any default existing under the Note or Trust Deed, nor to invalidate any notice of Default or any act done pursuant to such notice and shall not prejudice any rights of the Lender under the Trust Deed or Note; or,
- (b) Lender may take possession of the premises and let contracts for or proceed with the finishing of the improvements, and to commence or appear in any action or proceedings to enforce any contracts made by the undersigned in connection with or for the construction of the building as aforesaid, as the agent of the undersigned, and all sums paid or expended by the Lender under the terms of this Agreement in excess of the Trust Deed amount shall be considered and be an additional loan to the undersigned and the repayment thereof, together with interest thereon at the rate of sixteen percent (16%) per annum and shall be secured by the Trust Deed and shall be due and payable without notice on demand.
16. That the undersigned do hereby irrevocably appoint and authorize the Lender, as agent to execute and file or record any Notice which the Lender deems necessary or advisable to protect the interest of the Lender under this Agreement or the security of the Trust Deed. This appointment is hereby expressly declared or be that of an agent coupled with an interest and therefore irrevocable.

17. That no waiver or any default or breach by Borrower hereunder shall be implied from any omission by Lender to take action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in the waiver and it shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, terms or conditions.
- The consent or approval by Lender to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.
18. That the Lender shall have the right to commence, appear in, or to defend any action or proceeding purporting to affect the right or duties of the parties hereunder, or the security of Lender in the subject property, or the payment of any funds in the Trust Account and in connection therewith pay necessary expenses, employ counsel and pay his reasonable fee. All sums paid or expended by the lender under the terms of this Agreement in additional loan to the Borrower and the repayment thereof, together with interest thereto as set forth herein, shall be secured by the Trust Deed and shall be due and payable without notice, on demand, and the undersigned jointly and severally agree to pay the same.
19. That this Agreement is made and entered into for the sole protection and benefit of Lender and Borrower, the successors and assigns of Lender and the successor and permitted assigns of Borrower, and no other person or persons shall have any right of action on this Agreement or right to the funds at any time on deposit in the Trust Account. The un-disbursed balance of the loan shall be property of and under the exclusive control of the Lender up to the time of disbursements, and shall not be subject to attachment or garnish by Borrower's creditors.
20. It is intended that the provisions of this Agreement are supplemental to the provisions of the Trust Deed, and that the two documents be construed together in all respects. In the event that an inconsistency between the two documents is found, so that the provisions of both cannot be given effect, it is intended that the Trust Deed shall be the controlling instrument.
21. The principal amount of the loan and accrued interest thereon shall be due and payable, if not sooner paid as set forth in the note. If any dwelling securing the loan is not sold, the loan closed to the permanent buyer, and the release price applied to the loan balance by the date full payment is due, Borrower will have the option to.
22. Pay the loan in full.
23. Must approach Lender to see if Investor will consider allowing Borrower to pay to Lender a minimum extension fee equal to 1 percent of the loan amount to extend the loan term for a period of two months.
24. The Lender may require a reserve up to 5% of the loan amount to be held back. This amount may be used to cover accrued interest and other expenses that may be incurred prior to payoff. After 30 days from end of construction, when all lien releases become unconditional, all outstanding obligations will be paid.
25. Borrower/Buyer may not and must not occupy home until loan is paid in full or

written approval is obtained from Lender.

26. A complete insurance policy of fire, liability, etc., must be taken out on the project in an amount at least equal to the construction loan principal, before construction begins and before any funds are distributed after purchase of land. Century Mortgage should be named as loss payee and shall receive a copy of the policy naming Century Mortgage as loss payee.
27. Borrower to provide "Waiver of Lien" on all payments to subcontractors if lender requests.

EXECUTED at ST. GEORGE, UTAH, this 10<sup>th</sup> day of December 2008

---

Pioneer Point LLC  
Heath Jay Johnston (Managing Member)

Heath Jay Johnston (Personally)

---

Richard Stallings

---

Eileen Stallings

ACCEPTED \_\_\_\_\_, 2009 for Century Mortgage

By \_\_\_\_\_

Title \_\_\_\_\_

# **EXHIBIT B**

## PROMISSORY NOTE

\$ 945,000.00

Rexburg, Idaho

December 10, 2008

For Value received, the undersigned promise to pay to the order of Leland Laub Trustee of The Leland Alvin Laub Trust as to 6.78% interest, Gwen Ludlow Trustee of The Ludlow Trust as to 13.54% interest, Tiffany Meredith as to .63% interest, Laurine Meredith as to 6.35% interest, Mary Lou Schmutz Trustee of Ray Schmutz Family Trust as to 1.16% interest, David S. or Olive Esplin (J/T w/ right of survivorship) as to 2.12% interest, Howard Bingham or Dale Bingham as to 2.12% interest, George Peacock Trustee of Peacock Revocable Trust as to 8.57% interest, Don Randall as to 3.17% interest, Richard I. Burch as to 10.58% interest, Ray Schmutz Family Partnership as to 6.56% interest, Ronald A Ludlow as to 2.54% interest, Reba Earle Trustee of Earle Revocable Trust, as to 1.27% interest, Cleon O. Davies or Joyce Davies as to 3.5% interest, Charles R. and Lorena Lambert (JT) as to 14.18% interest, Donald Larkin Trustee of Donald J. Larkin Living Trust as to 6.35% interest, and Alan G. and Dayle Baird as to 10.58% interest.

At such place as the holder may designate in writing, **THE PRINCIPAL SUM OF \$945,000.00** together with interest at the rate of 12% percent per annum, lawful money of the United States of America in installments as follows:

**Monthly interest only payments. Interest payments will be in the amount of \$9,450.00 per month with the first payment due January 10, 2009 with the loan coming due June 10, 2009, or upon long-term loan being obtained, whichever comes first. There will be no prepayment penalty for early payoff.**

**Late fee of 5% of payment if not paid within 10 days of the due date.**

**Terms: Six (6) months with option to extend another 6 months**

If default be made in the payment of any installment under this note, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this note. The failure of the holder of this note to enforce its rights upon default in any of the terms of this note shall not constitute a waiver of any such right in the event of a subsequent default. If suit is instituted to collect this note or any portion thereof, I agree to pay, in addition to the costs and disbursements as are allowed by law, such additional sums as the court may adjudge reasonable on attorney's fees in such suit. The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, protest, notice of protest and of non-payment of this note.

The indebtedness evidenced by this Note is secured by a Deed of Trust of even date, and reference is made to the Deed of Trust for rights as to acceleration of the indebtedness evidenced by this note.

You are instructed to furnish to any broker or lender identified with this transaction or anyone behalf of such lender, any information concerning this escrow upon request of said broker or any reason funds are retained or remain in escrow after closing date, you are to deduct therefrom reasonable monthly charge as custodian thereof of not less than \$10.00 per month.

**ADDITIONAL INSTRUCTIONS**

None

**DECLARATION OF ESCROW SERVICES:**

Borrower(s) hereby acknowledge the following by their signature(s) below:

I/We have been specifically informed that Alliance Title & Escrow Corp. is not licensed to provide legal advice has been offered by Alliance Title & Escrow Corp. or any of its employees. I/We have been further informed that Alliance Title & Escrow Corp. is acting only as escrow holder, forbidden by law from offering any advice to any party with respect to the merits of this escrow or the nature and content of the documents executed herein, and that they have not done so.

We have been requested by Alliance Title & Escrow Corp. to seek legal and/or accounting advice at our own expense, if we have any doubt concerning any aspect of this transaction.

I/We further declare all instruments to which we are a party, if prepared by Alliance Title & Escrow Corp., have been prepared under the direction of my/our attorney(s) or myself/ourselves. We have advised that we can obtain a copy of the privacy policy of Alliance Title & Escrow Corp. by request.

I/We have been afforded adequate time and opportunity to read and understand these escrow instructions and all other documents referred to therein.

These escrow closing instructions constitute the entire agreement between Alliance Title & Escrow Corp. and the undersigned parties. Any amendment and/or supplement to these instructions must be in writing.

I/We further understand that Alliance Title & Escrow Corp. assumes no liability as to any law or governmental regulations including, but not limited to, building, zoning and division of land or assumes no responsibility for determining that the parties to the escrow have complied with the requirements of the Truth in Lending, Consumer Protection Act (Public Law 90-321), or similar laws.

**THE FOREGOING TERMS, CONDITIONS, CONSIDERATION AND INSTRUCTIONS  
ARE HEREBY UNDERTAKEN AND APPROVED IN THEIR ENTIRETY BY THE UNDERSIGNED  
TO PAY ON DEMAND USUAL BORROWER'S CHARGES INCLUDING RECORDING  
SETTLEMENT FEES, TITLE POLICIES, UNPAID BALANCES OF ANY ENCUMBRANCE  
RECORD THAT IS TO BE ELIMINATED FROM THE TITLE COMMITMENT PRIOR  
TO CLOSING, DOCUMENT PREPARATION FEES AND LENDERS FEES PROVIDED  
INSTRUCTIONS.**

Richard Stallings

Eilene Stallings

Pioneer Point LLC

By: Heath Jay Johnston, Managing Member

Heath Jay Johnston

ADDRESS: 1270 W 1130 S  
Orem, UT 84058

The foregoing instructions have been acknowledged and received by Alliance Title & Escrow Corp.

By: Dana Berhoff

DATE: Jan

**Due: June 10, 2009**

Richard Stallings

Pioneer Point LLC

By: Heath Jay Johnston, Managing Member

Eilene Stallings

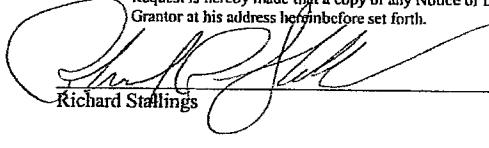
Heath Jay Johnston

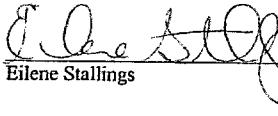
or, if the note has been pledged, the pledgee thereof. In this Deed, whenever the context so requires, the masculine or feminine and/or neuter, and the singular number includes the plural.

8. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless brought by Trustee.

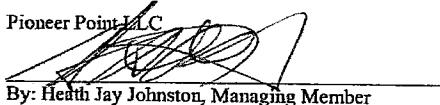
9. In the event of dissolution or resignation of the Trustee, the Beneficiary may substitute a trustee or execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder which the property herein described is situated, it shall be conclusive evidence of the appointment of such trustee or new trustee or trustees shall succeed to all of the powers and duties of the trustee or trustees named herein,

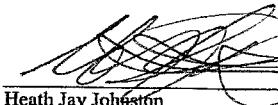
Request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale hereunder be sent to the Grantor at his address hereinbefore set forth.

  
Richard Stallings

  
Eilene Stallings

Pioneer Point LLC

  
By: Heath Jay Johnston, Managing Member

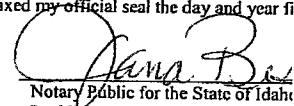
  
Heath Jay Johnston

State of ID }  
County of Madison } ss.  
}

On this 2 day of February, in the year 2009 before me, a Notary Public in and for said state, person appeared Richard Stallings & Eilene Stallings known or identified to me to be person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first written.

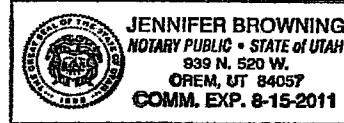


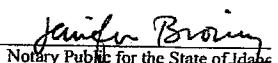
  
Dana Bishoff  
Notary Public for the State of Idaho  
Residing at:  
Commission Expires:  
Residing  
Commiss

State of ~~Idaho~~ Utah }  
County of Madison ~~Utah~~ } ss.  
}

On this 9<sup>th</sup> day of February, in the year 2009 before me, a Notary Public in and for said state, person appeared Heath Jay Johnston known or identified to me to be person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first written.

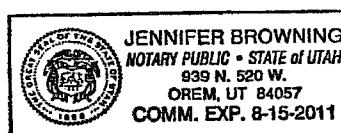


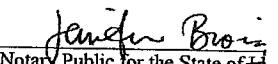
  
Jennifer Browning  
Notary Public for the State of Idaho  
Residing at: Orem, UT  
Commission Expires: 8-15-2011

State of ~~Idaho~~ Utah }  
County of Madison ~~Utah~~ } ss.  
}

On this 9<sup>th</sup> day of January, 2009, before me, a Notary Public in and for said state, personally Heath Jay Johnston known or identified to me to be the Managing Member in the Limited Liability Company known as Pioneer Point LLC who executed the foregoing instrument, and acknowledged that he executed the same in said LLC name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



  
Jennifer Browning  
Notary Public for the State of Idaho  
Residing at: Orem, UT  
Commission Expires: 8-15-2011

# **EXHIBIT C**



4. <input type="checkbox"/> VA	5. <input type="checkbox"/> CONV. INS.
6. FILE NUMBER: 3041000241JS	
7. LOAN NUMBER	
8. MORTGAGE INS. CASE NO.:	

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME & ADDRESS OF BORROWER:	G's Dairy Delights, LLC 6886 S 3100 W, Rexburg, ID 83440		
E. NAME & ADDRESS OF SELLER:	Pioneer Point LLC P.O. Box 1296, Blackfoot, ID 83215		
F. NAME & ADDRESS OF LENDER:	Celtic Bank Corporation 340 E 400 S, Salt Lake City, UT 84111		
G. PROPERTY LOCATION:	600 Handcart Lane, Rexburg, ID 83440		
H. SETTLEMENT AGENT:	Alliance Title & Escrow Corp. PLACE OF SETTLEMENT: 130 E. Main St., Rexburg, ID 83440 (208) 356-9323		
I. SETTLEMENT DATE:	12/10/2010 Final		
J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower:		400. Gross Amount Due To Seller:	
101. Contract sales price		401. Contract sales price	430,000.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower: (line 1400)		403.	
104.		404.	
105.		405.	
Adjustments For Items Paid By Seller In Advance:		Adjustments For Items Paid By Seller In Advance:	
106. City/town taxes	to	406. City/town taxes	to
107. County taxes	to	407. County taxes	12/10/10 to 12/31/10 298.15
108. Assessments	to	408. Assessments	to
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
116.		416.	
120. Gross Amount Due From Borrower:		420. Gross Amount Due To Seller:	430,298.15
200. Amounts Paid By Or In Behalf Of Borrower:		500. Reductions In Amount Due To Seller:	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	2,486.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff 1st Mtg Ln. Century Mortgage And Pioneer Po	292,629.42
205.		505. Payoff 2nd Mtg. Ln.	
206.		506. Property Tax-2010 Full Year Taxes	5,182.76
207.		507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller:		Adjustments For Items Unpaid By Seller:	
210. City/town taxes	to	510. City/town taxes	to
211. County taxes	to	511. County taxes	to
212. Assessments	to	512. Assessments	to
213.		513. Rent Applied towards downpayment	90,151.84
214.		514. Tenant Improvements - applied to downpayment	39,848.16
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower:		520. Total Reductions In Amount Due Seller:	430,298.15
300. Cash At Settlement From/To Borrower:		600. Cash At Settlement From/To Seller:	
301 Gross amount due from borrower (line 120)		601 Gross amount due to seller (line 420)	430,298.15



## DEED OF TRUST

THIS DEED OF TRUST, Made this December 10, 2008 BETWEEN Pioneer Point, LLC, Limited Liability Company and Richard Stallings and Eileen Stallings herein called GRANTOR whose address is: 1270 W 1130 S Suite 145, Orem, Utah 84058 AND Alliance Title & Escrow, herein called TRUSTEE, AND Leland Laub Trustee of The Leland Alvin Lar to 6.78% interest, Gwen Ludlow Trustee of The Ludlow Trust as to 13.5 Tiffany Meredith as to .63% interest, Laurine Meredith as to 6.35% interest, Lou Schmutz Trustee of Ray Schmutz Family Trust as to 1.16% interest or Olive Esplin (J/T w/ right of survivorship) as to 2.12% interest, Howard Dale Bingham as to 2.12% interest, George Peacock Trustee of Peaco Revocable Trust as to 8.57% interest, Don Randall as to 3.17% interest, Burch as to 10.58% interest, Ray Schmutz Family Partnership as to 6.5% Ronald A Ludlow as to 2.54% interest, Reba Earle Trustee of Earle Rev Trust, as to 1.27% interest, Cleon O. Davies or Joyce Davies as to 3.5% interest Charles R. and Lorena Lambert (JT) as to 14.18% interest, Donald Lark of Donald J. Larkin Living Trust as to 6.35% interest, and Alan G. and L as to 10.58% interest, herein called BENEFICIARY, whose address is 45 North 300 George, Ut 84770.

WITNESSETH: That Grantor does hereby irrevocably GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST WITH POWER OF SALE, that property in the county of Madison, described as follows and containing not more than eighty acres:

### PARCEL 1:

A parcel of land located in Section 25, Township 6 North, Range 39 East, Boise Madison County, Idaho, described as follows:

Beginning at a point on the Section line that is 130.00 feet South 89°56'40" East Quarter corner of said Section 25, and continuing thence South 89°56'40" East thence North 00°00'59" East (North, deed) 329.70 feet; thence North 89°55'27" 89°56'26" West, (deed) 649.96 feet; thence South 00°00'59" West 107.93 feet; thene 89°56'40 East 120.00 feet; thence South 00°00'59" East 222.00 feet to the point of beginning.

SUBJECT To a road right of way along the South side of the above described property.

LESS AND EXCEPTING therefrom the following described parcel:  
A portion of the South Half Southwest Quarter Southwest Quarter Southeast Quarter Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County described as:

Beginning at the South Quarter corner of Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho; and running thence North a distance of 358.98 feet along a line joining the South Quarter corner and the Center of the Section South 89°57'15" East a distance of 358.98 feet to the POINT OF BEGINNING; continuing South 89°57'14" East a distance of 300.98 feet; thence South a distance of 329.42 feet to the South section line; thence North 89°56'40" West a distance of 300.98 feet North a distance of 329.42 feet, more or less, to the point of beginning.

### PARCEL 2:

A portion of the South Half Southwest Quarter Southwest Quarter Southeast Quarter Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County described as:

Beginning at the South Quarter corner of Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho; and running thence North a distance of 358.98 feet along a line joining the South Quarter corner and the Center of the Section South 89°57'15" East a distance of 358.98 feet to the POINT OF BEGINNING; continuing South 89°57'14" East a distance of 300.98 feet; thence South a distance of 329.42 feet to the South section line; thence North 89°56'40" West a distance of 300.98 feet North a distance of 329.42 feet, more or less, to the point of beginning.

**SUBJECT** To a road right of way along the South side of the above described

**PARCEL 3:**

Lot 2 in Block 2 of the Pioneer Village Final Plat, being a replat of a portion of Westates Subdivision No. 1, Madison County, Idaho, as shown on the plat recorded February 28, 2005, as Instrument No. 317999.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the purpose of securing payment of the indebtedness evidenced by a promissory note, of even date herewith, in the sum of \$945,000.00, with final payment due: June 10, 2009 and to secure payment of all such further sums to be loaned or advanced by the Beneficiary herein to the Grantor herein, or any or either of them, while record owner for any purpose, and of any notes, drafts or other instruments representing such further loans, advances or expenditures interest on all such sums at the rate therein provided. Provided, however, that the making of such further loans, advances or expenditures shall be optional with the Beneficiary, and provided further, that it is the express intention of the parties that it shall stand as continuing security until paid for all such advances together with interest thereon.

A. To protect the security of this Deed of Trust, Grantor agrees:

1. To keep said property in good condition and repair, not to remove or demolish any building thereon promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts in character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the

2. To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable The amount collected under any fire or other insurance policy may be applied by beneficiary upon any indebtedness and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any portion released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder done pursuant to such notice.

3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in: any such action or proceeding in which Beneficiary or Trustee may appear.

4. To pay, at least ten days before delinquency all taxes and assessments affecting said property, whether encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or subsequent to the date of this Trust. In addition to the payments due in accordance with the terms of the note he Grantor shall at the option, and on demand of the Beneficiary, pay each month 1/12 of the estimated annual taxes and insurance premiums, maintenance and other charges upon the property, nevertheless in trust for Grantor's use and payment by Beneficiary of any such items when due. Grantor's failure so to pay shall constitute a default under this

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to hereof, with interest from date of expenditure at the rate of interest specified in the above described promissory note.

6. Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise a charge or lien which in the judgement of either appears to be prior or superior hereto; and, in exercising any such power, enforcing this Deed of Trust by judicial foreclosure, pay necessary expenses, employ counsel and pay his reasonable expenses.

B. It is mutually agreed that:

1. Any award of damages in connection with any condemnation for public use of or injury to said property is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3. At any time or from time to time, without liability thereto and without notice, upon written request and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person, the indebtedness secured hereby, Trustee may: Reconvey all or any part of said property; consent to the making of a conveyance of the same; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating to hereof.

4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon cancellation and retention upon payment of its fees, Trustee shall reconvey without property then held hereunder. The Grantor in such reconveyance may be described as "the person or persons legally entitled."

5. As additional security, Grantor hereby gives to and confers upon Beneficiary the right, power and the continuance of these Trusts, to collect rents, issues and profits of said property, reserving unto Grantor the right, default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security, collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses and collection, including reasonable attorney's fees, upon and indebtedness secured hereby, and in such order as he determines. The entering upon and taking possession of said property, the collection of such rents, issues and profits application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder of invalidate any such notice.

6. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to repossess the herein described property to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of each county wherein said real property or some part thereof is situated.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed without demand on Grantor, shall sell said property at the time and place fixed by it in said notice of sale, either as a separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money, payable at time of sale. Trustee shall deliver to the purchaser its Deed conveying the property so sold, but without covenant or warranty express or implied. The recitals in such deed of any matters or facts shall be conclusive proof thereof. Any person, including Grantor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title and reasonable compensation in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, with accrued interest at the rate specified in the above described promissory note; all other sums then secured, remainder, if any, to the person or persons legally entitled thereto.

7. This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the holder and owner of the note.

When Recorded Return To:  
CENTURY MORTGAGE  
45 North 300 East  
St. George, UT 84770

**Instrument # 356344**

REXBURG, MADISON, IDAHO  
9-8-2009 12:12:57 No. of Pages: 2  
Recorded for : CENTURY MORTGAGE  
MARILYN R. RASMUSSEN Fee: 6.00  
Ex-Officio Recorder Deputy

**ASSIGNMENT OF TRUST DEED**

For VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Reba Earle Trustee of the Earle Revocable Trust, dated March 21, 2000, hereby assigns to, Century Mortgage LLC, as to an undivided 0.21% interest and Reba D. Earle and Aileen Earle as CO-Trustees of the Earle Revocable Trust dated 3-21-00 Amended 7-18-09 as to an undivided 1.06% interest of the beneficial interest and rights accrued or to accrue under that certain Trust Deed. Which Trust Deed is dated 10<sup>th</sup> day of December 2008, and recorded on February 11, 2009, as Document No.351772, in the Office of the Recorder of Madison County, State of Idaho, executed by Pioneer Point LLC and Richard and Eilene Stallings as Trustor; in which Alliance Title & Escrow, as Trustee, in the records of the Office of the Recorder of Madison County. The Trust Deed which covers real property situated in Madison County is described as follows:

**PARCEL 1:**

A parcel of land located in Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho, described as follows:

Beginning at a point on the Section line that is 130.00 feet South 89°56'40" East of the South Quarter corner of said Section 25, and continuing thence South 89°56'40" East 529.96 feet; thence North 00°00'59" East (North, deed) 329.70 feet; thence North 89°55'27" West (North 89°56'26" West, deed) 649.96 feet; thence South 00°00'59" West 107.93 feet; thence South 89°56'40" East 120.00 feet; thence South 00°00'59" East 222.00 feet to the point of beginning.

**SUBJECT** To a road right of way along the South side of the above described parcel.

**LESS AND EXCEPTING** therefrom the following described parcels:

A portion of the South Half Southwest Quarter Southwest Quarter Southeast Quarter in Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho, described as:

Beginning at the South Quarter corner of Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho; and running thence North a distance of 329.31 feet along a line joining the South Quarter corner and the Center of the Section; thence South 89°57'15" East a distance of 358.98 feet to the POINT OF BEGINNING; thence continuing South 89°57'14" East a distance of 300.98 feet; thence South a distance of 329.42 feet to the South section line; thence North 89°56'40" West a distance of 300.98 feet; thence North a distance of 329.42 feet, more or less, to the point of beginning.

**PARCEL 2:**

A portion of the South Half Southwest Quarter Southwest Quarter Southeast Quarter in Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho, described as:

Beginning at the South Quarter corner of Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho; and running thence North a distance of 329.31 feet along a line joining the South Quarter corner and the Center of the Section; thence South 89°57'15" East a distance of 358.98 feet to the POINT OF BEGINNING; thence continuing South 89°57'14" East a distance of 300.98 feet; thence South a distance of 329.42 feet to the South section line; thence North 89°56'40" West a distance of 300.98 feet; thence North a distance of 329.42 feet, more or less, to the point of beginning.

**SUBJECT** To a road right of way along the South side of the above described parcel.

**PARCEL 3:**

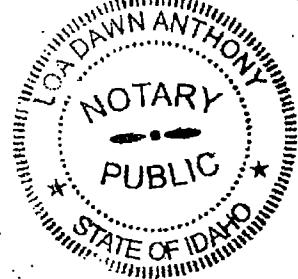
Lot 2 in Block 2 of the Pioneer Village Final Plat, being a replat of a portion of the plat of Westgate Subdivision No. 1, Madison County, Idaho, as shown on the plat recorded February 28, 2005, as Instrument No. 317999.

Aileen Earle

Aileen Earle, Surviving Trustee  
Earle Revocable Trust

State Of IDAHO )  
County of BONNEVILLE ) ss

On the 26<sup>th</sup> day of May, 2010, personally appeared before me: Aileen Earle the signer of the above instrument, who acknowledged to me that he/she executed the same.



Residing 235 E 14th 1F ID 83404

L. Anthony  
Notary Public  
My Commission expires: 10-03-2014

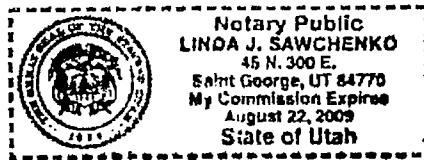
Dated this 20<sup>th</sup> day of August, 2009

Reba D. Earle

Reba Earle, Trustee

State of Utah              )  
                                )  
County of Washington    ) ss

On the 20 day of August, 2009 personally appeared before me: Reba Earle the signer of the above instrument, who acknowledged to me that he/she executed the same.



Residing Utah

Linda J. Sawchenko  
Notary Public  
My Commission expires: August 22, 2009

When Recorded Return To:  
CENTURY MORTGAGE  
45 North 300 East  
St. George, UT 84770

Instrument # 361544

REXBURG, MADISON, IDAHO

6-4-2010 02:03:30 No. of Pages: 2

Recorded for : CENTURY MORTGAGE

MARILYN R. RASMUSSEN Fee: 8.00

Ex-Officio Recorder Deputy

ASSIGNMENT OF TRUST DEED

For VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged,  
Aileen Earle Surviving Trustee of the Earle Revocable Trust Dated 3-21-00 and amended 7-18-09 hereby  
assigns to, Century Mortgage LLC as to an undivided 0.74% of the beneficial interest and rights accrued or  
to accrue under that certain Trustee's Deed recorded on December 10, 2008 and recorded on February 11,  
2009 as Document No. 351772, in the records of the Office of the Recorder of Madison County, State of  
Idaho, executed by Pioneer Point LLC and Richard and Eilene Stallings as Trustees; in which Alliance Title &  
Escrow, as Trustee, in the records of the Office of the Recorder of Madison County, State of Idaho, which  
covers real property situated in said described as follows:

Dated this 26<sup>th</sup> day of May, 2010

PARCEL 1:

A parcel of land located in Section 25, Township 6 North, Range 39 East, Boise Meridian,  
Madison County, Idaho, described as follows:

Beginning at a point on the Section line that is 130.00 feet South 89°56'40" East of the South  
Quarter corner of said Section 25, and continuing thence South 89°56'40" East 529.96 feet;  
thence North 00°00'59" East (North, dead) 329.70 feet; thence North 89°55'27" West (North  
89°56'26" West, dead) 649.96 feet; thence South 00°00'59" West 107.93 feet; thence South  
89°56'40" East 120.00 feet; thence South 00°00'59" East 227.00 feet to the point of beginning.

SUBJECT To a road right of way along the South side of the above described parcel.

LESS AND EXCEPTING therefrom the following described parcels:

A portion of the South Half Southwest Quarter Southwest Quarter Southeast Quarter in  
Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho,  
described as:

Beginning at the South Quarter corner of Section 25, Township 6 North, Range 39 East,  
Boise Meridian, Madison County, Idaho; and running thence North a distance of 329.31  
feet along a line joining the South Quarter corner and the Center of the Section; thence  
South 89°57'15" East a distance of 358.98 feet to the POINT OF BEGINNING; thence  
continuing South 89°57'14" East a distance of 300.98 feet; thence South a distance of 329.42  
feet to the South section line; thence North 89°56'40" West a distance of 300.98 feet; thence  
North a distance of 329.42 feet, more or less, to the point of beginning.

PARCEL 2:

A portion of the South Half Southwest Quarter Southwest Quarter Southeast Quarter in  
Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho,  
described as:

Beginning at the South Quarter corner of Section 25, Township 6 North, Range 39 East,  
Boise Meridian, Madison County, Idaho; and running thence North a distance of 329.31  
feet along a line joining the South Quarter corner and the Center of the Section; thence  
South 89°57'15" East a distance of 358.98 feet to the POINT OF BEGINNING; thence  
continuing South 89°57'14" East a distance of 300.98 feet; thence South a distance of 329.42  
feet to the South section line; thence North 89°56'40" West a distance of 300.98 feet; thence  
North a distance of 329.42 feet, more or less, to the point of beginning.

SUBJECT To a road right of way along the South side of the above described parcel.

PARCEL 3:

Lot 2 in Block 2 of the Pioneer Village Final Plat, being a replat of a portion of the plat of  
Westgate Subdivision No. 1, Madison County, Idaho, as shown on the plat recorded  
February 28, 2005, as Instrument No. 317999.

When Recorded Return To:  
CENTURY MORTGAGE  
45 North 300 East  
St. George, UT 84770

Instrument # 363807

REXBURG, MADISON, IDAHO  
10-6-2010 11:03:12 No. of Pages: 2  
Recorded for: CENTURY MORTGAGE  
MARILYN R. RASMUSSEN + FEE: 13.00  
Ex-Officio Recorder Deputy

ASSIGNMENT OF TRUST DEED

For VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Gwen Ludlow Trustee of the Ludlow Trust dated dated 05-06-86 hereby assigns to, David Ludlow as to an undivided 1.27% of the beneficial interest and rights accrued or to accrue under that certain Trust Deed recorded on December 10, 2008 and recorded on February 11, 2009 as Document No. 351772, in the records of the Office of the Recorder of Madison County, State of Idaho, executed by Pioneer Point LLC and Richard and Eilene Stallings as Trustees; in which Alliance Title & Escrow, as Trustee, in the records of the Office of the Recorder of Madison County, State of Idaho, which covers real property situated in said described as follows:

Dated this 3 day of July, 2010

PARCEL 1:

A parcel of land located in Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho, described as follows:

Beginning at a point on the Section line that is 130.00 feet South 89°56'40" East of the South Quarter corner of said Section 25, and continuing thence South 89°56'40" East 529.96 feet; thence North 00°00'59" East (North, dead) 329.70 feet; thence North 89°55'27" West (North 89°56'26" West, dead) 649.96 feet; thence South 00°00'59" West 107.93 feet; thence South 89°56'40" East 120.00 feet; thence South 00°00'59" East 221.00 feet to the point of beginning.

SUBJECT To a road right of way along the South side of the above described parcel.

LESS AND EXCEPTING therefrom the following described parcel:

A portion of the South Half Southwest Quarter Southwest Quarter Southeast Quarter in Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho, described as:

Beginning at the South Quarter corner of Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho; and running thence North a distance of 329.31 feet along a line joining the South Quarter corner and the Center of the Section; thence South 89°57'15" East a distance of 358.98 feet to the POINT OF BEGINNING; thence continuing South 89°57'14" East a distance of 300.98 feet; thence South a distance of 329.42 feet to the South section line; thence North 89°56'40" West a distance of 300.98 feet; thence North a distance of 329.42 feet, more or less, to the point of beginning.

PARCEL 2:

A portion of the South Half Southwest Quarter Southwest Quarter Southeast Quarter in Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho, described as:

Beginning at the South Quarter corner of Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho; and running thence North a distance of 329.31 feet along a line joining the South Quarter corner and the Center of the Section; thence South 89°57'15" East a distance of 358.98 feet to the POINT OF BEGINNING; thence continuing South 89°57'14" East a distance of 300.98 feet; thence South a distance of 329.42 feet to the South section line; thence North 89°56'40" West a distance of 300.98 feet; thence North a distance of 329.42 feet, more or less, to the point of beginning.

SUBJECT To a road right of way along the South side of the above described parcel.

PARCEL 3:

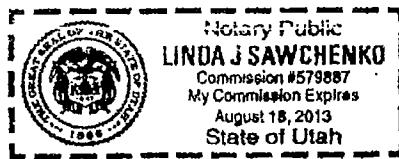
Lot 2 in Block 2 of the Pioneer Village Final Plat, being a replat of a portion of the plat of Westgate Subdivision No. 1, Madison County, Idaho, as shown on the plat recorded February 28, 2008, as Instrument No. 317999.

Gwen Ludlow, Trustee

Gwen Ludlow, Trustee  
The Ludlow Trust

Sate Of UTAH )  
County of Washington) ss

On the 2 day of July, 2010, personally appeared before me: Gwen Ludlow the signer of the above instrument, who acknowledged to me that he/she executed the same.



Residing UTAH

Linda J. Sawchenko  
Notary Public  
My Commission expires: August 18, 2013

# **EXHIBIT D**



**First American Title Insurance Company  
National Commercial Services**  
13924 Gold Circle • Omaha, NE 68144

**Seller's Final Settlement Statement**

**Property:**

File No: NCS-513618-OMHA  
Officer: James Odonnell/ds  
New Loan No:  
Settlement Date: 12/21/2012  
Disbursement Date: 12/21/2012  
Print Date: 12/21/2012, 9:31 AM

Buyer: Rockwell Court Limited Partnership  
Address: , Rexburg, ID  
Seller: Richard Stallings; Eilene Stallings  
Address:

Charge Description	Seller Charge	Seller Credit
<b>Adjustments:</b>		
Consideration		786,000.00
Extension Fee(s)	9,000.00	
Land Improvements		300,000.00
<b>Prorations:</b>		
County Tax (60 units @ 242.72 per unit) 12/21/12 to 01/01/13 @\$14563.20/yr		438.89
<b>Payoff Loan(s):</b>		
Lender: Beehive Credit Union		
Payoff - Beehive Credit Union	11,785.27	
Lender: L Laub Trust		
Payoff Balance - L Laub Trust	46,739.68	
Lender: Gwen Ludlow, trustee of the Ludlow Trust		
Payoff Balance - Gwen Ludlow, trustee of the Ludlow Trust	84,715.83	
Lender: David Ludlow		
Payoff Balance - David Ludlow	8,798.40	
Lender: Tiffany Meredith-Hanson		
Payoff Balance - Tiffany Meredith-Hanson	4,381.92	
Lender: Laurine Meredith		
Payoff Balance - Laurine Meredith	43,818.10	
Lender: Ray Schmutz Family Partnership		
Payoff Balance - Ray Schmutz Family Partnership	8,428.83	
Lender: Ray Schmutz Family Partnership		
Payoff Balance - Ray Schmutz Family Partnership	44,883.49	
Lender: Esplin Revocable Trust Dated 12-12-06		
Payoff Balance - Esplin Revocable Trust Dated 12-12-06	14,606.31	
Lender: Howard Bingham or Dale Bingham		
Payoff Balance - Howard Bingham or Dale Bingham	14,606.31	
Lender: Mikell C. Peacock		
Payoff Balance - Mikell C. Peacock	29,577.34	
Lender: Beverly Anne Wilson		
Payoff Balance - Beverly Anne Wilson	14,788.67	
Lender: Cool Family Trust		
Payoff Balance - Cool Family Trust	14,788.67	
Lender: Don Randall		
Payoff Balance - Don Randall	21,909.25	
Lender: Richard Burch		
Payoff Balance - Richard Burch	73,031.01	
Lender: Ronald Ludlow		
Payoff Balance - Ronald Ludlow	17,527.13	
Lender: Cleon Davies		
Payoff Balance - Cleon Davies	24,100.13	
Lender: Charles Lambert		
Payoff Balance - Charles Lambert	97,861.13	
Lender: Baird Family Trust		
Payoff Balance - Baird Family Trust	73,031.01	
<b>Title/Escrow Charges to:</b>		
Holdback Fee to First American Title Insurance Company National Commercial Services	100.00	
Closing-Escrow Fee to First American Title Insurance Company National Commercial Services	750.00	
Owners Policy-Standard Coverage to First American Title Insurance Company National Commercial Services	2,527.00	
<b>Disbursements Paid:</b>		
Tax Installment Amount to Treasurer	30,986.40	

Initials: PR.S EDS

Continued From Page 1

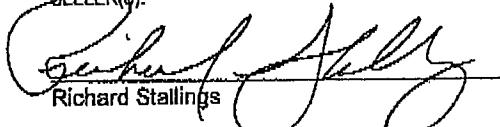
*Seller's Final Settlement Statement*

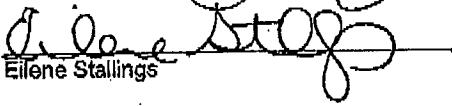
Settlement Date: 12/21/2012  
Print Date: 12/21/2012

File No: NCS-513618-OMHA  
Officer: James Odonnell/ds

Charge Description	Seller Charge	Seller Credit
<b>Funds Held:</b>		
Funds Held Memphis	282,000.00	
Funds Held Canyon County Admin Fee	18,000.00	
Cash (X To) ( From) Seller	93,697.01	
<b>Totals:</b>	<b>1,086,438.89</b>	<b>1,086,438.89</b>

SELLER(S):

  
Richard Stallings

  
Eilene Stallings

Jared M. Harris  
**BAKER & HARRIS**  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

RECEIVED - 7/16/16  
30

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**ANSWER**

Filing Category: I.1.

Filing Fee: \$136.00

COMES NOW, the Defendants Richard Stallings and Eileen Stallings, and for answer alleges

as follows:

**FIRST AFFIRMATIVE DEFENSE**

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

2. Defendant denies each and every allegation not admitted or qualified.

**ANSWER**

3. Answering paragraph 1, admit.
4. Answering paragraph 2, admit.

**ANSWER - 1**

5. Answering paragraph 3, admit.
6. Answering paragraph 4, Defendants are without sufficient information to form a belief as to the truthfulness or untruthfulness and therefore deny the same.
7. Answering paragraph 5, Defendants are without sufficient information to form a belief as to the truthfulness or untruthfulness and therefore deny the same.
8. Answering paragraph 6, deny.
9. Answering paragraph 7, deny.
10. Answering paragraph 8, deny.
11. Answering paragraph 9, deny.
12. Answering paragraph 10, deny.
13. Answering paragraph 11, admit that Defendants executed a Promissory Note. Deny remaining allegations.
14. Answering paragraph 12, Defendants are without sufficient information to form a belief as to the truthfulness or untruthfulness and therefore deny the same.
15. Answering paragraph 13, Defendants are without sufficient information to form a belief as to the truthfulness or untruthfulness and therefore deny the same.
16. Answering paragraph 14, Defendants are without sufficient information to form a belief as to the truthfulness or untruthfulness and therefore deny the same.
17. Answering paragraph 15, Defendants are without sufficient information to form a belief as to the truthfulness or untruthfulness and therefore deny the same.
18. Answering paragraph 16, Defendants are without sufficient information to form a belief as to the truthfulness or untruthfulness and therefore deny the same.

## **ANSWER - 2**

19. Answering paragraph 17, deny.
20. Answering paragraph 18, deny.
21. Answering paragraph 19, deny.
22. Answering paragraph 20, deny.
23. Answering paragraph 21, deny.
24. Answering paragraph 22, deny.
25. Answering paragraph 23, Defendants are unable to make sense of the statement. The statement is not a sentence nor does it appear to be an allegation. Accordingly, Defendants deny.
26. Answering paragraph 24, deny.
27. Answering paragraph 25, admit that Defendants sold Defendants' property to Rockwell Court, LP. Deny remaining allegations.
28. Answering paragraph 26, Defendants herein reallege the foregoing answers as if set forth in full herein.
29. Answering paragraph 27, deny.
30. Answering paragraph 28, deny.
31. Answering paragraph 29, deny.
32. Answering paragraph 30, deny.
33. Answering paragraph 31, deny.
34. Answering paragraph 32, deny.
35. Answering paragraph 33, Defendants herein reallege the foregoing answers as if set forth in full herein.

**ANSWER - 3**

36. Answering paragraph 34, deny.
37. Answering paragraph 35, deny.
38. Answering paragraph 36, deny.
39. Answering paragraph 37, deny.
40. Answering paragraph 38, deny.
41. Answering paragraph 39, deny.
42. Answering paragraph 40, Defendants herein reallege the foregoing answers as if set forth in full herein.
43. Answering paragraph 41, deny.
44. Answering paragraph 42, deny.
45. Answering paragraph 43, deny.
46. Answering paragraph 44, deny.

#### **AFFIRMATIVE DEFENSES**

47. Plaintiff's Complaint is barred under statutes of limitations, including: Idaho Code §§ 5-216 and 5-217.
48. Plaintiff's claim is barred by the statute of frauds.
49. Plaintiff has failed to mitigate its damages, if any.
50. Plaintiffs are not the real parties in interest as it respects to some or all of their claims, contrary to Rule 17 of the Idaho Rules of Civil Procedure.
51. Plaintiffs may have failed to join, as parties to this action, one or more persons or entities necessary for a just adjudication. If so, said persons or entities would be indispensable, and this action should be dismissed pursuant to I.R.C.P. 12(b)(7) and 19(a) due to their absence.

**ANSWER - 4**

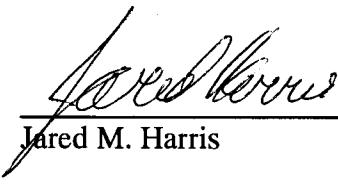
52. Plaintiff's claim was caused by a fellow servant.
53. The contract, if any, is unenforceable for lack of consideration.
54. The contract, if any, is unenforceable due to failure of consideration.

WHEREFORE, Defendants, Richard Stallings and Eileen Stallings, pray for judgment of this Court against Plaintiff Jon Gregory as follows:

55. That Plaintiff's Complaint be dismissed with prejudice, that Plaintiff take nothing thereby and that judgment be entered for the Defendant.
56. That Defendant be awarded costs and attorney's fees in defending this action pursuant to Idaho Code §12-120(3) and I.R.C.P. 54.
57. For such other and further relief as the court may deem just and proper.

DATED this 2<sup>nd</sup> day of March, 2018.

BAKER & HARRIS

  
\_\_\_\_\_  
Jared M. Harris

CERTIFICATE OF SERVICE

I certify that on this 2<sup>nd</sup> day of March, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **ANSWER**

Person(s) Served:	Nathan Rivera PARMENTER & RIVERA, LLP 53 South Shilling Blackfoot, ID 83221 Fax No. (208) 785-4858	( <input type="checkbox"/> ) Mail ( <input checked="" type="checkbox"/> ) Fax ( <input type="checkbox"/> ) Hand Delivered
-------------------	--	---

  
\_\_\_\_\_  
Jared M. Harris

**ANSWER - 5**

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

2018 JUL 15 PM 4:09

  
BY \_\_\_\_\_

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW Defendants, Richard Stallings and Eileen Stallings, (hereinafter "Defendants") by and through its attorney of record, Jared M. Harris of the law firm of BAKER & HARRIS, and pursuant to Rule of Civil Procedure 56 moves this Court for Summary Judgment against Plaintiff.

This Motion is supported by the Memorandum of the Law and the Affidavit of Richard Stallings filed herewith.

DATED this 3<sup>rd</sup> day of July, 2018.

BAKER & HARRIS

  
\_\_\_\_\_  
Jared M. Harris

**MOTION FOR SUMMARY JUDGMENT - 1**

**CERTIFICATE OF SERVICE**

I certify that on this 3<sup>rd</sup> day of July, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **MOTION FOR SUMMARY JUDGMENT**

Person(s) Served:	David N. Parmenter PARMENTER & RIVERA, LLP 53 South Shilling Blackfoot, ID 83221 Fax No. (208) 785-4858	( <input type="checkbox"/> ) Mail ( <input checked="" type="checkbox"/> ) Fax ( <input type="checkbox"/> ) Hand Delivered
-------------------	---	---

  
Jared M. Harris  
Jared M. Harris

**MOTION FOR SUMMARY JUDGMENT - 2**

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

2017-1651-3

JD  
BH  
by [Signature]

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**MEMORANDUM IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW Defendants, Richard Stallings and Eileen Stallings, (hereinafter "Defendant") by and through their attorney of record, Jared M. Harris of the law firm of BAKER & HARRIS, and hereby submits the following Memorandum in Support of its Motion for Summary Judgment.

**I. STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. On or about the September 27, 2007, Richard Stallings purchased a piece of property of approximately 2 acres located in Madison County Idaho (hereinafter "Property"). See Affidavit of Richard Stallings ¶ 2 Exhibit A.
2. The Property was contiguous to property owned by Jon Gregory. See Affidavit of Richard Stallings ¶ 3.

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1**

3. That Plaintiff transferred his property to Pioneer Point, LLC on or about February 11, 2009. See Affidavit of Richard Stallings ¶ 4 Exhibit B.
4. That on or about May 2, 2012 Pioneer Point, LLC transferred Plaintiff's Property to Defendants. See Affidavit of Richard Stallings ¶ 5 Exhibit C.
5. That on or about December 21, 2012 the Defendant sold his Property and the Property that he had received from Pioneer Point, LLC. See Affidavit of Richard Stallings ¶ 6 Exhibit D.
6. On or about September 6, 2017 Plaintiff filed a lawsuit against Defendant. See Affidavit of Richard Stallings ¶ 7.

## **II. LEGAL STANDARD**

Idaho Rule of Civil Procedure 56(c) provides that a judgment "shall be rendered forthwith 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 judgment as a matter of law." See also Thompson v. City of Idaho Falls, 126 Idaho 587, 887 P.2d 1094 (Ct. App. 1994); G & M Farms v. Funk Irrigation Co., 119 Idaho 514, 808 P.2d 851 (1991); Burgess v. Salmon River Canal Co. Ltd., 119 Idaho 299, 805 P.2d 1223 (1991). The burden is, at all times, on the moving party to demonstrate the absence of a genuine issue of material fact. Petricevich v. Salmon River Canal Co. 92 Idaho 865, 452 P.2d 362 (1969).

To withstand a motion for summary judgment, the non-moving party's case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue. Edwards v. Conchero, Inc., 111 Idaho 851, 727 P.2d 1279 (Ct. App. 1986).

## **III. ARGUMENT**

### **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 2**

Plaintiff alleges three causes of action against Defendants: Breach of Contract, Breach of Implied Contract, and finally for Quantum Meruit or Quasi Contract. Defendants assert that these claims are barred by the statute of limitations, and by the statute of frauds.

**a. Statute of Limitations**

Idaho Code § 5-216 provides for a five (5) year statute of limitations based upon a written contract. Defendants assert that there is no contract, nonetheless a written contract between Plaintiff and Defendant. Defendants propounded discovery requests to Plaintiff requesting a copy of the contract upon which they based their allegations. Plaintiff has failed to produce an agreement signed by the Parties, or even one signed by the Defendants. Defendants assert that there was no agreement, nonetheless an agreement in writing, between the parties.

By pleading the Breach of Implied contract and Quantum Meruit/Quasi Contract, Plaintiff is acknowledging the lack of a written contract between the parties. To the extent there is an agreement, Idaho Code § 5-217 provides that there is a four year statute of limitations for breach of an oral contract. At the latest, that breach would have occurred on December 21, 2012 at the sale. Accordingly, any claim for breach of contract would have run well before the lawsuit herein was filed on September 6, 2017.

**b. Statute of Frauds**

This matter is also barred by the statute of frauds.

Idaho Code § 9-505 states:

In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof ...

4. An agreement for the leasing, for a longer period than one (1) year, or for the sale, of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

There is no contract, memorandum, or written document signed by the Defendants which reflect any alleged terms. Accordingly, Plaintiff cannot produce admissible evidence of any such agreement. In Hoffman v. S V Co., Inc. 102 Idaho 187, 190, 628 P.2d 218, 221 (1981) the Supreme Court stated:

for the oral agreement to be enforceable, there must exist a sufficient memorandum signed by the parties evidencing that agreement. The only document signed by both parties is the \$5,000 deposit check (signed by payor Hoffman and endorsed by payee Sun Valley). [1] Although the majority of jurisdictions require that the memorandum be signed only by the party against whom enforcement is sought, this Court in Houser v. Hobart, 22 Idaho 735, 127 P. 997 (1912), has construed the Idaho statute to require both parties to a bilateral contract to sign the memorandum. Houser has consistently been reaffirmed by this Court. Rouker v. Richardson, 49 Idaho 337, 288 P. 167 (1930); Kerr v. Finch, 25 Idaho 32, 135 P. 1165 (1913). Accord, C. Forsman Real Estate Co. v. Hatch, 97 Idaho 511, 547 P.2d 1116 (1976).

Although no particular form of language or instrument is necessary to constitute a note or memorandum required by the statute, 72 Am.Jur.2d Statute of Frauds § 295 (1974), the essentials of the oral agreement must be contained in the writing(s). Remlinger v. Dravo Corporation, 94 Idaho 292, 486 P.2d 1005 (1971); Blumauer-Frank Drug Co. v. Young, 30 Idaho 501, 167 P. 21 (1917); Houser v. Hobart, supra. The memorandum must plainly set forth the parties to the contract, the subject matter thereof, the price or consideration, a description of the property and all the essential terms and conditions of the agreement. Pettigrew v. Denwalt, 431 P.2d 333 (Okl.1967). See, Gaskill v. Jacobs, 38 Idaho 795, 225 P. 499 (1924).

There is no contract, memorandum or written document signed by Defendants which reflect any alleged terms of a contract. Accordingly, Plaintiffs's Complaint should be dismissed.

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 4**

#### IV. CONCLUSION

Accordingly, Defendant respectfully request this Court grant their Motion for Summary Judgment.

DATED this 3<sup>rd</sup> day of July, 2018.

BAKER & HARRIS

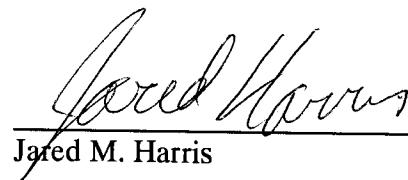
  
\_\_\_\_\_  
Jared M. Harris

#### CERTIFICATE OF SERVICE

I certify that on this 3<sup>rd</sup> day of July, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Person(s) Served: David N. Parmenter ( ) Mail  
PARMENTER & RIVERA, LLP ( ) Fax  
53 South Shilling ( ) Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-4858

  
\_\_\_\_\_  
Jared M. Harris

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 5**

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

*Attala - 3 Bingham*  
*RE*  
*BD*

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**AFFIDAVIT OF RICHARD  
STALLINGS IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT**

Richard Stallings, deposes and says:

1. That he is the Defendant in the referenced matter, is of legal age, competent to testify, and makes this Affidavit based on his own personal knowledge.
2. That on or about September 27, 2007 I purchased a piece of property of approximately 2 acres located in Madison County Idaho. A true and correct copy of the deed reflecting the property purchased is attached hereto as Exhibit A.
3. That the Property was contiguous to property owned by Jon Gregory.

**AFFIDAVIT OF RICHARD STALLINGS IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT - 1**

4. That Pioneer Point, LLC obtained Jon Gregory's property on or about February 11, 2009. A true and correct copy of the deed reflecting the transfer to Pioneer Point, LLC is attached hereto as Exhibit B.
5. That on or about May 2, 2012, Pioneer Point, LLC transferred what had been Jon Gregory's property to me. A true and correct copy of the deed reflecting the transfer from Pioneer Point, LLC is attached hereto as Exhibit C.
6. That on or about December 21, 2012 I sold my Property and the Property that I had received from Pioneer Point, LLC. A true and correct copy of the deed reflecting the sale is attached hereto as Exhibit D.
7. That on or about September 6, 2017 Jon Gregory filed a lawsuit against me and my spouse.
8. That I have read the foregoing affidavit, and I hereby certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

FURTHER your affiant saith not.

DATED this 3<sup>rd</sup> day of July, 2018.



A handwritten signature in black ink, appearing to read "Richard Stallings".

Richard Stallings

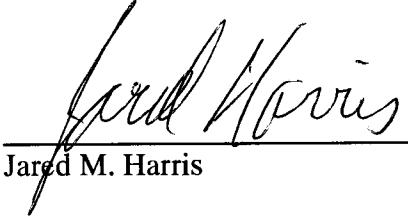
**AFFIDAVIT OF RICHARD STALLINGS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 2**

CERTIFICATE OF SERVICE

I certify that on this 8 day of July, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **AFFIDAVIT OF RICHARD STALLINGS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Person(s) Served: David N. Parmenter  Mail  
PARMENTER & RIVERA, LLP  Fax  
53 South Shilling  Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-4858

  
\_\_\_\_\_  
Jared M. Harris

**AFFIDAVIT OF RICHARD STALLINGS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 3**

**RECORDING REQUESTED BY**  
First American Title Company

**AND WHEN RECORDED MAIL TO:**  
First American Title Company  
168 West Pacific/P.O. Box 868  
Blackfoot, ID 83221

**Instrument # 340753**

REXBURG, MADISON, IDAHO  
2007-10-02 03:59:00 No. of Pages: 2  
Recorded for : FIRST AMERICAN TITLE  
MARILYN R. RASMUSSEN Fee: 6.00  
Ex-Officio Recorder Deputy *[Signature]*

Space Above This Line for Recorder's Use Only

**WARRANTY DEED**

File No.: 220648-B (Id)

Date: September 27, 2007

For Value Received, **Jon C Gregory**, an unmarried man, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Richard Stallings and Ellene Stallings, husband and wife**, hereinafter called the Grantee, whose current address is **186 North 380 West, Blackfoot, ID 83221**, the following described premises, situated in **Madison County, Idaho**, to-wit:



**A PORTION OF THE S½SW¼SW¼SE¼ IN SECTION 25, TOWNSHIP 6 NORTH, RANGE 39 E.B.M., MADISON COUNTY, IDAHO, DESCRIBED AS:**

**BEGINNING AT THE S½ CORNER OF SECTION 25, TOWNSHIP 6 NORTH, RANGE 39E.B.M., MADISON COUNTY, IDAHO; AND RUNNING THENCE NORTH A DISTANCE OF 329.31 FEET ALONG A LINE JOINING THE S½ CORNER AND THE CENTER OF THE SECTION; THENCE S. 89°57'14" E. A DISTANCE OF 358.98 FEET TO THE POINT OF BEGINNING. THENCE CONTINUING S. 89°57'14" E. A DISTANCE OF 300.98 FEET; THENCE SOUTH A DISTANCE OF 329.42 FEET TO THE SOUTH SECTION LINE; THENCE N. 89°56'40" W. A DISTANCE OF 300.98 FEET; THENCE NORTH A DISTANCE OF 329.42 FEET, MORE OR LESS, 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.

**EXHIBIT**

tabbed

**A**

Date: 09/26/2007

Warranty Deed  
- continued

File No.: 220648-B (Id)

Jon C. Gregory  
Jon C Gregory

STATE OF Idaho )  
ss.  
COUNTY OF Bingham )

On this 27th day of September, 2007, before me, a Notary Public in and for said State, personally appeared Jon C Gregory, 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.



Jon C. Gregory  
Notary Public for the State of Idaho  
Residing at: Blackfoot, Idaho  
My Commission Expires: 10/21/2009



## WARRANTY DEED

Order No.:3040818746TD

Microfile No. 351771  
11 DAY FEB 2009  
At 12 O'Clock 27 M  
MARILYN RASMUSSEN  
MADISON CO RECORDER  
Fee \$3.00  
NChandler Deputy  
Recorded at Request of  
ALLIANCE TITLE - REXBURG

FOR VALUE RECEIVED

Jon C. Gregory, an unmarried person

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Pioneer Point LLC, an Idaho Limited Liability Company

whose current address is 1270 W 1130 S Suite 145, Orem, Utah 84058

the grantee(s), the following described premises, in Madison County, Idaho, TO WIT:

**PARCEL 1:**

A parcel of land located in Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho, described as follows:

Beginning at a point on the Section line that is 130.00 feet South 89°56'40" East of the South Quarter corner of said Section 25, and continuing thence South 89°56'40" East 529.96 feet; thence North 00°00'59" East (North, deed) 329.70 feet; thence North 89°55'27" West (North 89°56'26" West, deed) 649.96 feet; thence South 00°00'59" West 107.93 feet; thence South 89°56'40 East 120.00 feet; thence South 00°00'59" East 222.00 feet to the point of beginning.

SUBJECT To a road right of way along the South side of the above described parcel.

**LESS AND EXCEPTING** therefrom the following described parcel:

A portion of the South Half Southwest Quarter Southwest Quarter Southeast Quarter in Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho, described as:

Beginning at the South Quarter corner of Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho; and running thence North a distance of 329.31 feet along a line joining the South Quarter corner and the Center of the Section; thence South 89°57'15" East a distance of 358.98 feet to the POINT OF BEGINNING; thence continuing South 89°57'14" East a distance of 300.98 feet; thence South a distance of 329.42 feet to the South section line; thence North 89°56'40" West a distance of 300.98 feet; thence North a distance of 329.42 feet, more or less, to the point of beginning.

**PARCEL 3:**

Lot 2 in Block 2 of the Pioneer Village Final Plat, being a replat of a portion of the plat of Westates Subdivision No. 1, Madison County, Idaho, as shown on the plat recorded February 28, 2005, as Instrument No. 317999.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

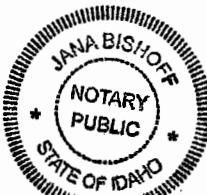
And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: 2/8/09

\_\_\_\_\_  
Jon C. Gregory

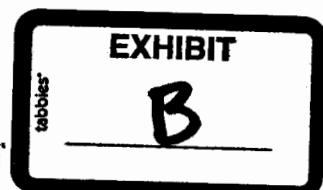
State of ID }  
              }  
County of Madison     }

On this 1 day of February, in the year 2009 before me, a Notary Public in and for said state, personally appeared Jon C. Gregory known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same. IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Jana Bishoff  
Notary Public for the State of Idaho  
Residing at:

Residing in Fremont County  
Commission Expires: 6-21-2011



**QUIT CLAIM DEED**

THIS INDENTURE made this 7 day of <sup>May</sup> 2012, between Pioneer Point, LLC, Grantor, to Richard Stallings, 398 W. 193 N., Blackfoot, Idaho, 83221, Grantee.

WITNESSETH: That the said Grantor, for and in consideration of good and valuable consideration paid by the said Grantee, the receipt whereof is hereby acknowledged, do by these presents demise, release and forever quit claim unto the said Grantee, and to its heirs and assigns all the certain land situate, lying and being in the County of Madison, State of Idaho, described as follows, to wit:

See Exhibit "A" attached hereto.

TOGETHER WITH all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, including all water and water rights, ditch and ditch rights.

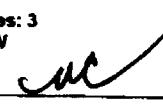
SUBJECT TO Reservations in United States Patent, existing and recorded rights-of-way and easements, zoning and building ordinances, and taxes and assessments.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said Grantee and to its heirs and assigns forever.

IN WITNESS WHEREOF, the said Grantor hereunto sets his hand the day and year first above written.

  
Pioneer Point, LLC  
By: Heath Jay Johnston

**Instrument # 376767**

REXBURG, MADISON, IDAHO  
6-28-2012 11:05:58 No. of Pages: 3  
Recorded for : GARRETT H. SANDOW  
KIM H. MUIR Fee: 16.00  
Ex-Officio Recorder Deputy 

**QUIT CLAIM DEED - 1**

**EXHIBIT**

tabbies®

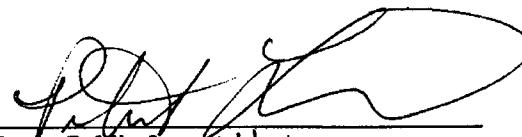
**C**

STATE OF Utah)  
County of Utah) ss.

On this 2<sup>nd</sup> day of May, 2012, before me, the undersigned, a Notary Public in and for the State of Utah, personally appeared HEATH JAY JOHNSTON, known to me to be an authorized member of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.



  
\_\_\_\_\_  
Notary Public for Utah  
Residing at: 947 S 500 E #200 American Fork UT  
My Commission Expires: 10/3/2015 84003

**QUIT CLAIM DEED - 2**

## **EXHIBIT "A"**

Form No. 1068-2

Commitment No.: NCS-513618-ONHA

ALTA Plain Language Commitment

Page 1 of 16

The land referred to in this Commitment is situated in the State of Idaho, County of Madison, and is described as follows:

A portion of Pioneer Point Condominiums recorded October 12, 2010 as Instrument No. 363925 in the records of Madison County, Idaho and being described as follows:

A parcel of land located in Section 25, Township 6 North, Range 39 East, Boise Meridian, Madison County, Idaho, described as follows:

Beginning at a point on the Section line that is 130 feet South 89°56'40" East of the South Quarter

corner of said Section 25, and continuing thence South 89°56'40" East 529.96 feet; thence North 00°00'59" East (North, deed) 329.70 feet; thence North 89°55'27" West (North 89°56'26" West, deed) 649.96 feet; thence South 00°00'59" West 107.93 feet; thence South 89°56'40" East 120.00 feet; thence South 00°00'59" East 222.00 feet to the point of beginning.

Less and excepting therefrom the following described parcel:

A portion of the S½SW¼SW¼SE¼ in Section 25, Township 6 North, Range 39 E.B.M., Madison County, Idaho, described as:

Beginning at the S¼ corner of Section 25, Township 6 North, Range 39 E.B.M., Madison County, Idaho; and running thence North a distance of 329.31 feet along a line joining the S¼ corner and the center of the section; thence S. 89°57'14" E. a distance of 358.98 feet to the point of beginning, thence continuing S. 89°57'14" E. a distance of 300.98 feet; thence South a distance of 329.42 feet to the South Section Line; thence N. 89°56'40" W. a distance of 300.98 feet; thence North a distance of 329.42 feet, more or less, to the point of beginning.

Microfile No. 379527  
27 DAY Dec 2012  
At 03 O'Clock 06 PM  
KIM H. MUIR  
MADISON CO RECORDER  
Fee \$16.00  
NChandier Deputy  
Recorded at Request of  
FIRST AMERICAN TITLE - OMAHA CO

After recording return to: Rockwell Court Limited Partnership  
4110 Eaton Avenue, Suite A, Caldwell, Idaho 83607  
Attn: Chance Hobbs

**WARRANTY DEED**

For the consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other valuable consideration, RICHARD STALLINGS and EILENE STALLINGS, husband and wife, whose current address is 398 W. 193 N., Blackfoot, ID 83221 (together, "Grantor"), do hereby grant, sell and convey unto Rockwell Court Limited Partnership, an Idaho limited partnership ("Grantee"), whose address is 4110 Eaton Avenue, Suite A, Caldwell, Idaho 83607, and its successors and assigns forever, the following described real property located in Madison County, Idaho, as described in Exhibit A, attached hereto and incorporated by this reference (the "Property").

TOGETHER WITH all and singular the tenements, hereditaments, easements, rights and appurtenances thereunto belonging or in any way appertaining, the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all estate, right, and interest in and to the Property, as well in law as in equity.

SUBJECT to such matters as described in Exhibit B, attached hereto and incorporated by this reference ("Permitted Exceptions").

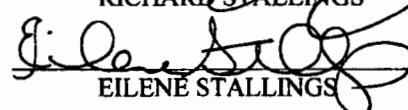
Grantor hereby, for itself and its successors and assigns, covenants and agrees with Grantee that Grantor is lawfully seized in fee simple of the Property herein conveyed; that it has good right to sell and convey the same in the manner set forth herein and the Property is free and clear of all liens, claims and encumbrances by and through and under the Grantor, except for the Permitted Exceptions; that Grantor, its successors and assigns shall warrant and defend the same unto Grantee forever against the lawful claims and demands of all persons claiming by, through or under Grantor, but against none other.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed this 7 day of Dec, 2012.

GRANTOR:



RICHARD STALLINGS



EILENE STALLINGS

Prepared by: Bryan W. Aydelotte, Esq.  
4110 Eaton Avenue, Caldwell, Idaho 83607

**EXHIBIT**

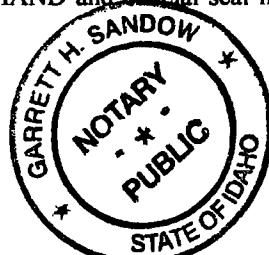
tabbies®

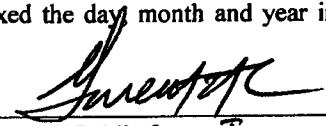


STATE OF IDAHO )  
COUNTY OF BINNIM ) SS.

On the 7th day of DECEMBER 2012, before me personally appeared RICHARD STALLINGS, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

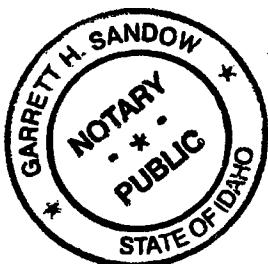


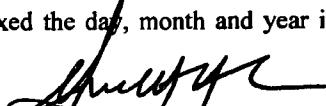
  
Notary Public for Idaho  
Residing at BLACKFOOT  
My Commission Expires 5/12/2014

STATE OF IDAHO )  
COUNTY OF BINNIM ) SS.

On the 7th day of DECEMBER 2012, before me personally appeared EILENE STALLINGS, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.



  
Notary Public for Idaho  
Residing at BLACKFOOT  
My Commission Expires 5/12/2014

379527

EXHIBIT A

Legal Description

A PORTION OF THE S1/2SW1/4SW1/4SE1/4 IN SECTION 25 TOWNSHIP 6 NORTH, RANGE 39  
EAST B.M. MADISON COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SECTION LINE THAT IS 130.00 FEET S89°46'26"E OF THE  
SOUTH QUARTER CORNER OF SAID SECTION 25; THENCE N00°15'55"W 40.00 FEET, TO THE  
TRUE POINT OF BEGINNING RUNNING THENCE N00°15'55"W 142.00 FEET; THENCE  
N00°13'20"W 40.00 FEET; THENCE S89°46'40"W 120.00 FEET; THENCE N00°15'55"W 107.92  
FEET; THENCE N89°47'39"E 649.93 FEET; THENCE S00°16'01"E 289.70 FEET; THENCE  
S89°46'26"W 529.97 FEET TO THE POINT OF BEGINNING.

379527

DAVID N. PARMENTER, ISB # 2441  
NATHAN D. RIVERA, ISB # 8339  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, ID 83221  
(208)785-5618  
(208)785-4858 (fax)  
parlaw@gmail.com

2018 JUL 19 PM 2:29

RECEIVED  
BLACKFOOT CIRCUIT CLERK  
BY  DEPUTY

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Case No. CV-2017-1651

Plaintiff,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

**MOTION TO EXTEND TIME FOR  
FILING RESPONSIVE AFFIDAVITS  
AND BRIEFING IN RESPONSE TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND  
MOTION TO CONTINUE AUGUST 6,  
2018 HEARING**

COMES NOW Plaintiff herein, through counsel, and moves the court for an order continuing the date scheduled for the hearing, and requesting an additional 10 days to file responsive affidavits or pleadings, memoranda of law, and affidavits. Said motion is made on the basis that Plaintiff's counsel has been out of town for about 10 days, and did not receive Defendant's motion until July 9, 2018 while he was still on vacation. Counsel needs additional time in order to finalize preparation of the brief of memorandum in response to Defendant's

**MOTION TO EXTEND TIME AND  
MOTION TO CONTINUE HEARING - 1**

Motion and may have additional affidavits to file as well. Said motion is made pursuant to Idaho Rules of Civil Procedure, Rule 56(b)(3) and such other rules as may be applicable.

Further, Plaintiff's counsel has a previously scheduled vacation and trip with a group of young man from his church which has been scheduled the week of August 6th through the 9th, and would otherwise be unavailable on the date presently set for notice of hearing in the matter. Because of the inability to make other arrangements to reschedule the trip, or to find someone else who can take care of and supervise the group, Plaintiff requests that the hearing be rescheduled for another hearing at a subsequent date and time, convenient to the court and counsel. Said motion is made pursuant to IRCP Rule 56(b)(3).

DATED this 19<sup>6</sup> day of July, 2018.

  
DAVID N. PARMENTER  
Attorney for Plaintiff

**MOTION TO EXTEND TIME AND  
MOTION TO CONTINUE HEARING - 2**

CERTIFICATE OF SERVICE

I certify that on this 19<sup>b</sup> day of July, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **MOTION TO EXTEND TIME FOR FILING RESPONSIVE AFFIDAVITS AND BRIEFING IN RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO CONTINUE AUGUST 4, 2018 HEARING**

Person(s) Served: Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, ID 83221  
Fax No. (208) 785-6749

() Mail  
() Fax  
() Hand Delivered

  
DAVID N. PARMENTER

**MOTION TO EXTEND TIME AND  
MOTION TO CONTINUE HEARING - 3**

DAVID N. PARMENTER, ISB # 2441  
NATHAN D. RIVERA, ISB # 8339  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, ID 83221  
(208)785-5618  
(208)785-4858 (fax)  
parlaw@gmail.com

2010 JUL 19 PM 2:29

BY  DEPUTY

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiff,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**PLAINTIFF'S MEMORANDUM IN  
OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

**I. LEGAL STANDARD**

Summary judgment will be granted if the moving party can show that there is no genuine issue as to any material fact. I.R.C.P. 56(a). In ruling on a motion for summary judgment, the court must liberally construe all disputed facts in favor of the non-moving party, and all reasonable inferences that can be drawn from the record must be drawn in favor of the non-moving party. *Gem State Ins. Co. v. Hutchison*, 145 Idaho 10, 13, 175 P.3d 172, 175 (2007); *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 793, 134 P.3d 641, 644

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(2006). Summary judgment must be denied if the record contains conflicting inferences or reasonable minds might reach different conclusions. *Kline v. Clinton*, 103 Idaho 116, 120, 645 P.2d 350, 354 (1982). At all times, the burden is on the moving party to prove that there is no genuine issue of material fact. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 868, 452 P.2d 362, 365 (1969).

## **II. ARGUMENT**

Defendants move for summary judgment alleging Plaintiff's claims are barred by the statute of limitations and by the statute of frauds. Additionally, Defendants allege that no contract exists between Plaintiff and Defendants. Plaintiff asserts that Plaintiff and Defendants have an enforceable contract, by way of an express contract, or in the alternative, an implied contract or a quasi-contract. Plaintiff further argues that his claims are not barred by the statute of limitations or by the statute of frauds. Plaintiff provides a sufficient showing to establish that genuine disputes exist as to material facts in Plaintiff's case. Thus, the Defendants' Motion for Summary Judgement should be denied.

### **1. A valid contract exists between Plaintiff and Defendants.**

An express contract exists when the parties expressly agree on a transaction. *Continental Forest Prods, Inc. v. Chandler Supply Co.*, 95 Idaho 739, 743, 518 P.2d 1201, 1205 (1974). The parties involved must come to a distinct understanding of all of its terms. *Templeton Patents, Ltd. v. J. R. Simplot Co.*, 220 F.Supp. 48, 60 (D.C.Idaho, 1963); *Brothers v. Arave*, 67 Idaho 171, 175, 174 P.2d 202, 205 (1946).

Plaintiff and Defendants entered into an express agreement whereby Plaintiff and

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants, together, would develop commercial and/or residential housing on the Subject Property, in which Plaintiff had already purchased half of. Defendants thereafter obtained a bank loan in order to purchase the remaining half of the Subject Property, with the intent on working together to develop and improve the Subject Property. Plaintiff and Defendants had a distinct understanding that they would purchase the Subject Property for the purpose of developing and improving said property, and this distinct understanding created an express contract.

a. **In the alternative, an implied contract exists between Plaintiff and Defendants.**

An implied contract exists where, in the absence of an express agreement, the parties' behavior implies an agreement from which an obligation in contract exists. *Kennedy v Forest*, 129 Idaho 584, 587, 930 P.2d 1026, 1029 (1997); *Continental Forest Prods, Inc.*, 518 P.2d at 1205.

By Plaintiff and Defendants taking on the required actions to develop and improve the Subject Property, an implied contract existed between Plaintiff and Defendants. Plaintiff performed all actions required of it under the implied contract, and more, in the investment and development of the Subject Property. Summit Development, a third party, was brought in as the developers of the project. In addition, Plaintiff subordinated its half of the Subject Property to the Construction Loan obtained by Summit Development, so that Defendants could obtain their financing for the development. Plaintiff kept Defendants informed of the progress of the Subject Property, and ultimately its sale. Plaintiff and Defendants continued actions to develop and improve the Subject Property constitutes an implied contract.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

b. **At the very least, a quasi-contract exists between Plaintiff and Defendants.**

A quasi contract, also known as an implied-in-law contract, “is not a contract at all, but an obligation imposed by law for the purpose of bringing about justice and equity without reference to the intent or the agreement of the parties and, in some cases, in spite of an agreement between the parties. *Kennedy*, 930 P.2d at 1029; *Continental Forest Prods, Inc.*, 518 P.2d at 1205. The core of a quasi-contract is that one party inequitably received a benefit in which it would be unjust for that party to retain. *Continental Forest Prods, Inc.*, 518 P.2d at 1205.

Defendants, in this case, unjustly received proceeds from the sale of the Subject Property. Plaintiff not only provided financial resources in excess of \$500,000, but also put in his own time, labor, and services to develop the Subject Property at the request of Defendants and to the mutual benefit of both parties. When the commercial and residential market crashed, Plaintiff immediately began work on selling the Subject Property, and Plaintiff even sold his property known as G’s Dairy Delights, LLC to keep the sale of the Subject Property alive. Plaintiff contributed more of his own labor and services, as well as more financial resources, to the development of the Subject property than Defendants. It would be unjust for Defendants to retain Plaintiff’s rightful reimbursement from the sale of the Subject Property.

2. **Plaintiff commenced this lawsuit within the four-year statute of limitations period based on Defendants’ breach of either the express, implied, or quasi contract it had with Plaintiff.**

Section 5-217 of the Idaho Code states that a four-year statute of limitations applies to actions based on oral contracts. The statute of limitations begins to run when a claim arises upon the breach of the contract. *Spence v. Howell*, 126 Idaho 763, 770, 890 P.2d 714, 721 (1995). The time at which a breach occurs is a factual question, and the court should look to the record to determine whether competent and adequate evidence exists to support the findings of a breach.

*Id.*

The forwarded email from Tim Cobb to Garrett Sandow, and in effect, to Plaintiff, dated September 9, 2013, is the point in time at which Plaintiff was made aware that Defendants were not going to pay or reimburse Plaintiff for his contributions of both time and money, from the sale of the Subject Property. *See Exhibit I.* Plaintiff commenced this lawsuit September 6, 2017, which is within the four-year statute of limitations period that began to run September 9, 2013. At no point before this did Defendants relay any information to Plaintiff that Defendants would not pay or reimburse Plaintiff. On the contrary, Defendants stated in two separate emails a breakdown of draws and the amount that Defendants were going to pay Plaintiff. *See Exhibits M and N.*

**3. Plaintiff and Defendants oral contract does not fall within the purview of the statute of frauds.**

Section 9-505 of the Idaho Code provides, in part, the following:

In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof...
4. An agreement for the leasing, for a longer period than one (1) year, or for the sale, of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

In examining whether an oral contract is capable of being completed in one year, the Idaho Supreme Court has narrowly construed this provision. *Spence*, P.2d at 722; *Whitlock v. Haney Seed Co.*, 110 Idaho 347, 348, 715 P.2d 1017, 1018 (Ct.App.1986). An oral contract that might have been fully completed within a year is not governed by the Statute of Frauds. *Spence*, P.2d at 722.

At the time Defendants purchased the remaining half of the Subject Property, Plaintiff was already seeking out developers for the project. However, at around this same time, the commercial and residential market crashed. This caused great financial strain, and likely impacted the timeframe in which the development could have been completed. The agreement between Plaintiff and Defendants might have been completed within a year, and thus, is not subject to the statute of frauds.

In determining whether an oral contract was purely for the sale of real property, the Court in *Spence* decided that the oral contract was to form a partnership for the development of a religious retreat, and that prior to the oral contract, the land had already been purchased and designated for the retreat. *Spence*, P.2d at 722.

Similarly, here, Plaintiff and Defendants made an oral agreement to work together to develop and improve the Subject Property. Plaintiff had already purchased half of the Subject Property and had plans to develop the land for commercial and/or residential housing before

Defendants bought the remaining half of the Subject Property. Plaintiff and Defendants' oral contract was for the development of commercial and/or residential housing, and not purely for the sale of the Subject Property.

**4. Even if Plaintiff and Defendants' oral contract is subject to the statute of frauds, written notes exist to evidence the oral agreement.**

Although no particular form of language or instrument is necessary to constitute a note or memorandum required by the statute of frauds, I.C. s 9-505, the essentials of the oral agreement must be contained in the writing(s). *Hoffman v. Sun Valley Co., Inc.*, 102 Idaho 187, 190, 628 P.2d 218, 221 (1981).

Defendants' email sets forth the essentials of the oral agreement between Plaintiff and Defendants. See Exhibit M. In Exhibit M, Defendants acknowledged the Subject Property (stated as the "Rexburg Property" in Exhibit M), Defendants acknowledged that Plaintiff was involved in the project, Defendants acknowledge investments contributed to the project by Plaintiff and Defendants, Defendants acknowledge repayment of investments to Plaintiff and Defendants from the sale of the Subject Property, and Defendants acknowledge the fact that potential profits, at one point, were aspired to. Defendants' email constitutes a written note evidencing the oral agreement.

**5. In the alternative, equitable estoppel should be used to prevent Defendants from receiving unjust results from the statute of limitations or the statute of frauds.**

The Idaho Supreme Court has previously held that equitable estoppel can be used as a bar to the statute of frauds. *Ogden v. Griffith*, 149 Idaho 489, 495, 236 P.3d 1249, 1255 (2010); *Boesiger v. Freer*, 85 Idaho 551, 556, 381 P.2d 802, 804 (1963). The doctrine of equitable estoppel can also be used as a bar to the statute of limitations. *Ferro v. Society of Saint Pius X*, 143 Idaho 538, 541, 149 P.3d 813, 816 (2006).

To use equitable estoppel as a means of defeating the statute of limitations or the statute of frauds, the aggrieved party must show the following:

(1) a false representation or concealment of a material fact with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not know or could not discover the truth; (3) that the false representation or concealment was made with the intent that it be relied upon; and (4) that the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his prejudice.

*Ogden*, 236 P.3d at 1255; *Ferro*, 149 P.3d at 816.

Defendants falsely represented to Plaintiff two separate offers payable to Plaintiff from the sale of the Subject Property. See Exhibits M and N. Likely, Defendants had no true intention of ever paying Plaintiff any proceeds from the sale. Because the Subject Property had been transferred out of Plaintiff's name, Plaintiff had no way of knowing the truth about the distribution of the proceeds of the sale. Defendants likely wanted Plaintiff to believe that Defendants would eventually pay Plaintiff, so as to keep the relationship civil and not invoke action on Plaintiff's part. Plaintiff believed that, after ongoing negotiations with Defendants, he would be paid some portion of his investment. Plaintiff relied on that representation, to his

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

detriment, by being out a large sum of money, and by not sooner filing a suit. For these reasons, equitable estoppel should apply and bar Defendants from asserting a statute of limitations or statute of frauds defense.

**6. In the alternative, quasi-estoppel should be used to prevent Defendants from receiving unjust results from the statute of limitations or the statute of frauds.**

The purpose of Quasi-estoppel is “to prevent a party from reaping an unconscionable advantage, or from imposing an unconscionable disadvantage upon another, by changing positions. Quasi estoppel, unlike equitable estoppel, does not require misrepresentation by one party or actual reliance by the other.” *Lunders v. Estate of Snyder*, 131 Idaho 689, 695, 963 P.2d 372, 378 (1998) (quoting *Keesee v. Fetzek*, 111 Idaho 360, 362, 723 P.2d 904, 906 (Ct.App.1986)).

Plaintiff and Defendants had an agreement to develop and improve the Subject Property for purposes of commercial and/or residential housing. After some time, Plaintiff and Defendants realized the sale of the Subject Property was the only way to recoup their investments. Thus, Plaintiff shifted his efforts into putting together a viable sale, even selling some of his separate property to keep the sale alive. Plaintiff had invested a huge sum of money into this project, more than double the financial resources Defendants invested. Plaintiff also invested more time, labor, and services compared to Defendants. After the sale took place, Defendants made multiple representations that Defendants would pay Plaintiff a certain sum of proceeds from the sale of the Subject Property. *See* Exhibits M and N. However, Defendants changed their position by stating that they would no longer distribute any money to Plaintiff. *See*

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Exhibit I. By changing positions, Defendants reaped an unconscionable advantage and also caused an unconscionable financial disadvantage upon Plaintiff.

#### CONCLUSION

Plaintiff makes a sufficient showing of genuine disputes as to material facts in Plaintiff's case. Thus, for this reason, and all other reasons listed above, Plaintiff respectfully asks this Court to deny Defendants' Motion for Summary Judgment.

DATED this 19<sup>th</sup> day of July, 2018.



---

DAVID N. PARMENTER  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on this 19<sup>b</sup> day of July, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Person(s) Served: Jared M. Harris     Mail  
BAKER & HARRIS     Fax  
266 West Bridge Street     Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-6749

  
DAVID N. PARMENTER

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

DAVID N. PARMENTER, ISB # 2441  
NATHAN D. RIVERA, ISB # 8339  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, ID 83221  
(208)785-5618  
(208)785-4858 (fax)  
parlaw@gmail.com

2019 JUN 19 PM 2:29

W. Parmenter  
by DC - D. Parmenter

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Case No. CV-2017-1651

Plaintiff,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

**AFFIDAVIT OF JON GREGORY**

Defendants.

JON GREGORY, being first duly sworn on oath, deposes and says:

1. I am the Plaintiff in the above-entitled matter.
2. I have enclosed a copy of my response to Defendant's first set of interrogatories, which essentially outlines the facts and circumstances in the above-entitled matter (Exhibit A).
3. In summary, I had invested \$205,000 in the purchase of 2 of 4 acres of property.

Richard Stallings purchased the other 2 acres for a similar amount.

**AFFIDAVIT OF JON GREGORY- 1**

4. To keep the project financially viable, I subsequently liquidated and invested an additional \$292,629.43 of property, whereas Richard's primary investment for real property was the \$207,000 approximately he had paid for his 2 acres.

5. Over the course of my working with Summit Mortgage on several projects, including this one, it was common for me to purchase the original property, and then transfer my interest to them or subordinate my interest so they could complete their part of the development. I generally received at the end of each project with Summit reimbursement for my expenditures for the ground, and 50% of any profits or proceeds from the development or sale thereof.

6. We also generally set up a limited liability company for each of the several projects - and used the name Pioneer Point, LLC for this particular project.

7. I may have transferred my interest to Summit on paper, but it was a similar transaction and business operation that we had engaged in several times before.

8. Further, in order to assist with the transition and sale of the property, I had been required to subordinate my interest to that of Pioneer Point, given the investments of some of the parties they were working with to come up with the money. Nevertheless, that did not change mutual interests and ownership that Richard and I had between ourselves.

9. I was aware that Pioneer Point LLC had transferred back their interest in the property to us or Mr. Stallings because they had no funds to pay for construction funding, and wanted us to take the project back over by quitclaim deed but we continued to work on sale together, in order to try and accomplish a liquidation of the property that would benefit our interest mutually.

10. I was instrumental in attempting to develop the property, and subsequently, in obtaining a purchaser for the property for the sum of \$1,086,000.

11. Richard Stallings and I were using Garrett Sandow, Esq., to help review contracts, other matters, and to work as an intermediary for communication and other matters with other parties involved in the sale.

12. Mr. Stallings agreed to pay me the balance of any funds from the sale after he received back his original investment amount. That was the reason he forwarded the letter from Terri Merkley (Exhibit O) from Empire Funding to establish his original investment amount minus the \$30,000.00 draw he had already taken. He also received at least one extension fee to his credit from the buyers, which was an additional several thousand dollars.

13. I thought he was good to his word, relied on what he told me he would do around the time of the sale. It was not until I received the email on or after September 9, 2013 that I realized he was going back on his word.

14. I received an email through Garrett Sandow dated November 14, 2012, from Richard, advising that he was proposing paying me the balance of the sale proceeds after deducting \$256,000 out of the proceeds of the sale (Exhibit M). Although I was not happy about the proposed division, because of my greater investment in the properties, I was willing to accept the same, given my circumstances at the time.

15. I conveyed that to Garrett.

16. On or about December 27, 2012, I received, through Mr. Sandow, another statement, proposing a payment to me of 155,482.28 (Exhibit N). I reviewed that with Mr. Sandow.

17. In the meantime, I believe that Mr. Stallings presumably received the funds from the sale of the mutual property.

18. On September 9, 2013, I was forwarded an email that I received from Mr. Sandow, advising that Mr. Stallings felt he owed me nothing, and that he was keeping all of the funds and money from the sale of the property (Exhibit I). He also advised me that I had four years from the date of the notice I received, September 9, 2013, to file legal action.

FURTHER AFFIANT SAYETH NOT:

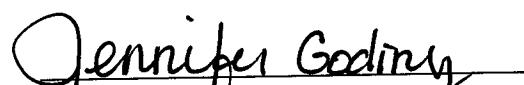
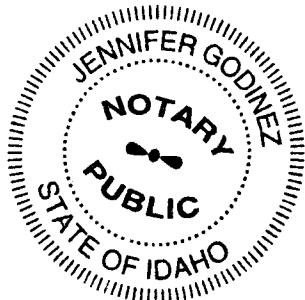
DATED this 19<sup>th</sup> day of July, 2018.



JON GREGORY  
Affiant

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of July, 2018.

My cmn exprs:  
02/09/2021



Jennifer Godinez  
NOTARY PUBLIC in and for the  
State of Idaho, residing at  
Blackfoot therein

#### CERTIFICATE OF SERVICE

#### AFFIDAVIT OF JON GREGORY- 4

I certify that on this 19<sup>th</sup> day of July, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: Affidavit of Jon Gregory

Person(s) Served: Jared M. Harris (  Mail  
BAKER & HARRIS (  Fax  
266 West Bridge Street (  Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-6749



---

DAVID N. PARMENTER

# **EXHIBIT**

# **A**

occupation of the individual; and a summary of the particular knowledge which each individual has pertaining to the facts and issues involved in this case.

ANSWER: Presently, Plaintiff is unaware of anyone else who has any particular knowledge of the facts or matters at dispute in this action.

INTERROGATORY NO. 4: Describe each and every document or other writing in your possession, including any written notes, memoranda or written statements of any kind, whether in your possession, or your attorney's, which in any way pertain to the facts and circumstances at issue in this particular action.

ANSWER: See attached Exhibits/ Documents list.

INTERROGATORY NO. 5: Please state the name and address of each person whom you expect to call as an expert witness at trial. For each person please provide:

- (a) A complete statement of all opinions to be expressed and the basis and reasons therefore;
- (b) A description of the data or other information considered by the witness in forming the opinions;
- (c) A description of any exhibits to be used as a summary of or support for the opinions;
- (d) A description of any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
- (e) A statement of the compensation to be paid for the testimony; and
- (f) A listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

ANSWER: Plaintiff has not yet determined what expert witnesses; if any, he intends to call.

INTERROGATORY NO. 6: Please set forth with particularity each and every fact upon which you assert any of your claims and for each fact indicate the source of the fact and how evidence will be introduced regarding the alleged fact.

ANSWER: The facts are essentially as follows:

1. Plaintiff became interested in a parcel of property owned by Mary Ann Beck of Rexburg, Idaho, which he wanted to purchase for development of student housing and/or similar commercial/ multi-family housing development.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 4**

2. Plaintiff purchased 2 of the 4 acres by paying cash of \$205,000.00, but needed to acquire the other 2 acres to complete the plan development.

3. Defendant Richard Stallings contacted the Plaintiff, and advised that he had an interest in purchasing the other 2 acres, and going in as partners or associates in a joint venture on the development.

4. Defendants thereafter obtained a bank loan in order to finance their share of the necessary \$205,000.00 to \$207,000.00 for the purchase of the other 2 acres.

5. A third party, Summit Development also known as Pioneer Point LLC (Heath Johnston) became involved as the developers for the project. It was to develop the property, put in road, parking lots, sewer, water, and begin with at least two buildings on the property.

6. Plaintiff's 2 acres were subordinated to The Construction Loan obtained by Summit Development, so that the Defendants could obtain their financing for the development of the property. Plaintiff was on a first Deed of Trust for his 2 acres and Mrs. Gregory's property to Century Mortgage. Defendants had actually borrowed \$289,000.00, the difference above approximately \$205,000.00 which they requested for other matters or investments. Defendants were on a second Deed of Trust for their 2 acres, to Century Mortgage; their first Deed of Trust was to The Bank of Commerce/ Empire Funding for their original loan.

7. Some time thereafter, Century Mortgage Company, also had Defendants execute a Construction Loan Agreement and Assignment of Trust, a copy of which is attached hereto as Exhibit A.

8. Further, Defendants executed a Promissory Note around the same time, a copy of which is attached hereto as Exhibit B.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 5**

9. The Construction Loan Agreement and Assignment of Trust was financed by Century Mortgage Company, who had acquired several individual investors to finance the mortgage, and who were also parties of interest through their investments.

10. The Plaintiff also owned an adjacent but separate property known as G's Dairy Delights, LLC, which he leased to an individual who operated that business.

11. Around 2007, the market in residential and commercial values crashed and fell, causing considerable economic turmoil in the United States, and as it related to the property in question.

12. Century Mortgage advised the Plaintiff that they could not provide him a draw for construction work, and essentially went out of business. Summit Development had done some initial work, and had provided some initial development. However, they were unable to complete the project.

13. Plaintiff immediately began working on trying to sell the property and to try and recoup the investments that he, Defendants, and the other investors for the mortgage had put into the property.

14. During the process, in order to keep project viable, The Plaintiff further sold his property known as G's Dairy Delights, LLC, and took the proceeds from that sale and invested them in the Marian Beck property and project. Those funds were approximately \$292,629.43. See attached Exhibit C.

15. The Plaintiff also began working on efforts to sell the Mary Ann Beck property and project, in order to recoup their investments for both himself, Defendants, and the other witnesses, given the economic crash.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 6**

16. The Plaintiff was able to locate a buyer, Rockwell Court Limited Partnership, who was willing to purchase the property for the sum of \$1,086,000.00. With that sale, all of the mortgage investors were paid back their initial investments. See attached Exhibit D.

17. The balance of the proceeds from the sale of the property was to be divided between the original investors, the Plaintiff and Defendants.

18. The parties had originally agreed to divide the anticipated balance of the proceeds of \$433,000.00 by 2, each of them receiving \$216,758.86.

19. Thereafter, despite Plaintiffs greater investment in supplying the additional \$292,000.00 from the sale of G's Dairy Delights, LLC, and having paid as well additional interest payments, Defendants sent a statement to Plaintiff, from the sale of the proceeds proposing to pay Plaintiff the sum of \$256,000.00 (through Garrett Sandow).

20. Even though Plaintiff had by far the greater investment, he needed the money at the time, and was willing to acquiesce to that proposal and offer of the initial \$256,000.00 offer. Defendants subsequently proposed paying to Plaintiff the sum of \$300,000.00, paying to Plaintiff the sum of \$155,482.28, and to the Defendants, the sum of \$144,517.72.

21. Thereafter, despite his previous statement, and the fact that they were partners in the project, Defendants thereafter advised the Plaintiff through Mr. Sandow that they were keeping all proceeds from the sale with Rockwell Court Limited Partnership, and that the Plaintiff should receive nothing.

22. Defendant thereafter kept and retained all of the proceeds from the sale of property with Rockwell Court Limited partnership, and paid nothing to Plaintiff.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 7**

The source of those facts will come through the testimony of Plaintiff and other witnesses, as well as the several documents, emails, contracts, loan agreements, promissory notes, deeds of trust, settlement statements, and other documents that are sent, involved, or signed in this case.

INTERROGATORY NO. 7: Please set forth the amount and the computation of your damages in this matter.

ANSWER: The amount is based on Plaintiff's original purchase of the 2 acres for \$205,000.00 plus the sale of G's Dairy and inclusion of those funds in the investment of \$292,000.00, and taking into consideration Defendants original offer, his loans, and other factors.

INTERROGATORY NO. 8: Please set forth the terms of any alleged partnership between Plaintiff and Defendants.

ANSWER: The parties were partners/ a joint venture to share profits equally after consideration and repayment of their original respective investments.

INTERROGATORY NO. 9: Please set forth all terms of the alleged implied contract, including the date it was entered into, its terms, and any alleged breach of said contract.

ANSWER: The terms and agreements were as set forth above in Answer # 8. Furthermore, Defendant, Richard Stallings, sent an email stating he would pay \$256,000.00 to Plaintiff after the property was sold.

INTERROGATORY NO. 10: Have you ever been convicted of a felony? If so, please state:

- (a) The case number and Court;
- (b) Each crime to which a guilty plea or verdict was entered;
- (c) The sentence enforced for each crime to which a guilty plea or verdict was entered.

ANSWER: No.

INTERROGATORY NO. 11: For each of the Requests for Admissions set forth below, in which your answer is anything but an unqualified admission, please describe in full and complete detail the factual basis upon which said Request for Admission was answered.

ANSWER: See Answers/ Complaint.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 8**

## **REQUESTS FOR PRODUCTION**

REQUEST FOR PRODUCTION NO. 1: Please produce a true and correct copy of any letter, memorandum, contract, exhibit, warranty, statement, advertisement, brochure, pamphlet, invoice, receipt, or other document which you intend to introduce as an exhibit at trial.

REQUEST FOR PRODUCTION NO. 2: Please produce correct, complete and legible copies of every document, record or other writing identified by you in response to any of the above Interrogatories. For each document produced, please state the Interrogatory to which the document relates.

REQUEST FOR PRODUCTION NO. 3: Please produce a true and correct copy of any letter, e-mail, deleted e-mail, memorandum, contract, or other document which relates to the relationship of Richard and Eileen Stallings and Jon Gregory.

REQUEST FOR PRODUCTION NO. 4: Please produce a true and correct copy of any letter, e-mail, deleted e-mail, memorandum, warranty, statement, advertisement, brochure, invoice, receipt or other document upon which you base any portion of your claims.

REQUEST FOR PRODUCTION NO. 5: Please produce a true and correct copy of the written agreement entered into between Plaintiff and Defendants which forms the basis of this lawsuit.

REQUEST FOR PRODUCTION NO. 6: Please produce true and correct copies of any deeds showing your ownership interest in the subject property.

REQUEST FOR PRODUCTION NO. 7: Please produce a true and correct copy of any document showing your alleged ownership interest in the two acre parcel.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 9**

REQUEST FOR PRODUCTION NO. 8: Please produce all documents verifying allegations that the Defendants obtained a bank loan to purchase the two acres.

REQUEST FOR PRODUCTION NO. 9: Please produce any subordination agreement you entered into regarding the two or four acre parcels of property.

REQUEST FOR PRODUCTION NO. 10: Please produce all documentation regarding the sale of G's Dairy Delights LLC's property.

REQUEST FOR PRODUCTION NO. 11: Please produce all documentation regarding your allegation that \$292,629.43 of your funds were invested in the Mary Ann Beck project.

REQUEST FOR PRODUCTION NO. 12: Please produce copies of statements allegedly made set forth in paragraph 22 of the Complaint.

REQUEST FOR PRODUCTION NO. 13: Please produce verification of all improvements made by Plaintiff to the four acre properties.

REQUEST FOR PRODUCTION NO. 14: Please produce copies of all requests made by Plaintiff to Defendants for labor and improvements to the properties.

REQUEST FOR PRODUCTION NO. 15: Please produce the tax returns for G's Dairy Delights, LLC for the years 2000 through 2017.

These requests are deemed continuing, and your answers thereto are to be supplemented as additional information, knowledge or documents become available or known to you.

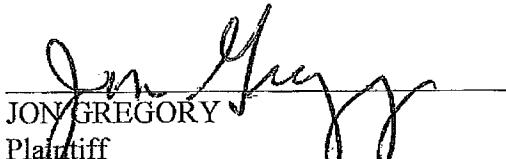
DATED this 19<sup>th</sup> day of April, 2018.

  
DAVID N. PARMENTER  
Attorney for Plaintiff

**PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 10**

VERIFICATION

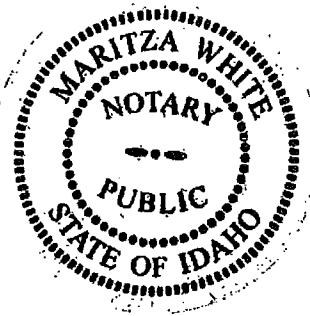
DATED this 19 day of APRIL 2018

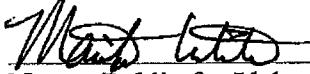
  
JON GREGORY  
Plaintiff

STATE OF IDAHO )  
ss:  
County of Bingham )

On the 19 day of April, 2018, before me, a Notary Public in and for said state, personally appeared Plaintiff, JON GREGORY, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at: Pocatello  
My Commission Expires: 12/10/22

PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 11

CERTIFICATE OF SERVICE

I certify that on this 19<sup>th</sup> day of April, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF  
INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Person(s) Served: Jared M. Harris ( ) Mail  
BAKER & HARRIS ( ) Fax  
266 West Bridge Street (✓) Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-6749

DAVID N. PARMENTER

**PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS - 12**

# **EXHIBIT I**

**From:** Tim Cobb <tim@Constructionenhancement.com>  
**To:** Gsandowlaw <Gsandowlaw@aol.com>  
**Subject:** Fwd: Rexburg Property  
**Date:** Mon, Sep 9, 2013 5:26 pm

---

Garrett-

Hope you are doing well... I received the below from Richard Stallings in the past few weeks, and then followed up with a call to him and conversation, in which he mentioned some of the items that went wrong in this deal.

Give me a call when you get a moment.

509-990-2324

Sent from Tim's iPad

Begin forwarded message:

**From:** "State Recovery, Inc ." <staterecovery@hotmail.com>  
**Date:** August 27, 2013, 2:01:42 PM PDT  
**To:** Tim Cobb <tim@Constructionenhancement.com>  
**Subject:** Rexburg Property

Tim I have been doing a lot of thinking in reference to John Gregory and the sale of the Rexburg property. When John had the IRS call me it really caught me off guard. In that they asked me if I had anything to do with John Gregory and I assured them that we had no partnership and that I owed him no money in this transaction. Then shortly after that John told me that in selling of the property that the buyer only wanted to deal with one person not two, I thought that was strange but said nothing at that time. Latter I learned that the whole reason for this is because the IRS is after John for past taxes. I am very unhappy with John in trying to put me in the middle of his problems.. As I review this entire project I was no more than an investor in that John made all the decisions on this property. The only thing I did is purchase my ground and John thought he could market it. About two years ago John called up and said for us to go up to Rexburg and sign some papers. We thought we were selling the property and when we got up to Rexburg they had us sign a guarantee for 950,000.00. The closing agent said we were in good shape and it was a normal procedure. John should have said something to me. I am upset that John allowed this project to borrow hard money that took all the profits.. I look at the opportunity cost of this project that was given away through Johns poor management of this property. I feel that I should get the full opportunity cost back on my risk of my investment. Beside the opportunity cost, by John having me talk to the IRS put me in a position that I am very uncomfortable with. I feel John is way out of line in putting me in any position that could threaten my financial position. In conclusion I feel in order for me to get a return on my investment there is no money owed to John from the current sell.

Thank you  
Richard Stallings

STATE RECOVERY  
100 MARK LN  
BLACKFOOT, ID 83221  
208-785-6591

# **EXHIBIT M**

Subj: **Rexburg Property**  
 Date: 11/14/2012 10:24:26 A.M. Mountain Standard Time  
 From: [staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)  
 To: [Gsandowlaw@aol.com](mailto:Gsandowlaw@aol.com)  
 Garrett Sandow

The following facts are the reasons why the payoff on the Rexburg property should be allocated as stated.

1. My principle and interest paid out at the time my bank went broke was 287,000.
2. When my bank, America West closed down I had the F.D.I.C. come after me threatening to go after everything that I have. Neither Larkins or John had any interest or financial responsibility in helping me at all. Just because I was able to get out of that problem does not mean that I share that risk with John.
3. Tim Cobb told me he was really disappointed in dealing with John because he could not get him to follow through in a promptly time. He commended me for getting things back in a efficient time. Tim Cobb told me that he would not have any future dealings with John.
4. This entire project was under John watch. I totally left everything up to his disgression. I am very disappointed that we sold this property under his advisment to some one who barrowed hard money on it. This ruined potential profits that would have been good for both of us.
5. Since this property has drug on. I have been forced to sell some other property at a discount for need capital on a project in Caldwell.

#### Conclusion

My mistake was putting this in Johns hands. I feel if he would have been more assertive we would not be in this position. For this reason I feel that I should at least get the money that I invested into this property back.

Investment	286,000.	\$ 200,000 -
I received a draw balanced left	30,000. ← 256,000.	30,000

I plan on taking the following amounts and then giving the balance of each draw to Garret Sandow for Johns dispersel.

First draw 106,000  
 second draw 150,000 100  
 200

\$ 850,000.00

STATE RECOVERY

100 MARK LN  
 BLACKFOOT, ID 83221  
 208-785-6591

150

\$ 300,000.00 Inf

200

1.1

290

350

200

100

100

650,000

590

150,000

\$ 170,000.00 240

150

100

200

30

250

170

80

# **EXHIBIT N**

# **EXHIBIT O**

## STATEMENT

Richard Stallings

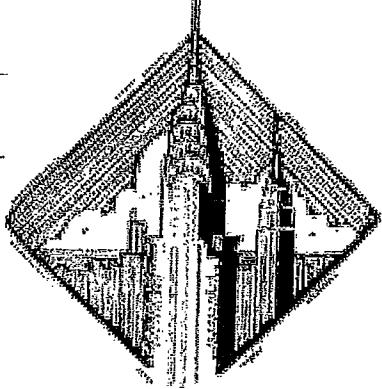
186 W 380 N  
Blackfoot, ID 83221  
(208)317-1133  
[staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)

STATEMENT NO. [100]  
DATE December 27, 2012  
CUSTOMER ID Rexburg Property

Next Pay-out end of January or first of February 2013	
Total	300,000.00
Paid to John	155,482.28
Paid to Richard	144,517.72

E MAILED FROM  
RICHARD STALLINGS  
TO GARRETT SANDOW

R. M. H. GOT \$0,000  
IN ADV + 9,000 IN CASH  
EXTENSIONS  
11/7/80 - 27 - CREDIT  
UNION LIQUORS 1/1/81  
ACCT TO OPEN SOON  
HEAVY



## EMPIRE FUNDING

---

175 N 300 W • Blackfoot ID 83221 • Tel 208-681-7546 • Fax 208-785-1809

---

December 6, 2012

Dear Garrett Sandow,

This letter is to inform you of a loan that my company Brokered to America West Bank on October 2, 2007. This loan was made to Richard and Eileen Stallings in the amount of \$235,000.00. Since the original funding date, with interest and penalties, the FDIC called the note due in the amount of \$289,000.00.

If you have any questions please feel free to call me at 208-681-7546.

Sincerely,

Terri L. Merkley  
Owner / Broker

DAVID N. PARMENTER, ISB # 2441  
NATHAN D. RIVERA, ISB # 8339

Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, ID 83221  
(208)785-5618  
(208)785-4858 (fax)  
parlaw@gmail.com

2018-06-19 PM 2:29

  
David N. Parmenter  
ParLaw

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Case No. CV-2017-1651

Plaintiff,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

**AFFIDAVIT OF GARRETT SANDOW**

Defendants.

GARRETT SANDOW, being first duly sworn on oath, deposes and says:

1. I am a licensed attorney, practicing in the State of Idaho. My office is in Blackfoot, Idaho.
2. Around 2011 or so, I was contacted by Jon Gregory to assist him in reviewing contracts and other matters, relative to a mutual interest he had in certain property with Richard Stallings. I was advised generally that they each had ownership in certain property in Rexburg, which they were in the process of developing as Pioneer Point, LLC. My only role was to act as a

**AFFIDAVIT OF GARRETT SANDOW- 1**

communication intermediary between Jon Gregory, Richard Stallings, and others involved in liquidating the investment property, and the subsequent sale thereof.

3. I had worked with Richard Stallings several times previously in other matters, and knew Jon Gregory as well. They are both businessman who I had dealt with at other times in the past, and agreed to act only as a liason or intermediary for their mutual interests.

4. I became involved about the time they were attempting to liquidate or sell their interests. Most of my personal communications were with Jon Gregory; however, I did have some communication with Richard Stallings, particularly by email.

5. Exhibit O is a letter I received from Terri Merkley relative to a loan made to Richard and Eileen Stallings in the matter, directed to me.

6. I understand they had a joint, mutual interest because of their separate, individual investments in the property in question.

7. As the property was being sold, Mr. Stallings communicated to me, and I passed on to Jon Gregory, what Stallings had agreed to settle for on the division of their mutual interests.

8. On November 14, 2012 I received an email from Richard Stallings (Exhibit M). In that email, he advised of his proposed division of Stallings and Gregory's mutual interest, by proposing to pay, through me, Jon Gregory's share in their mutual interests upon sale of the property.

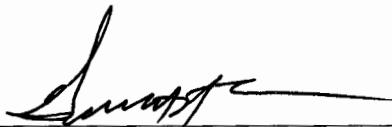
9. On or about December 27, 2012, I received a second email, a statement from Richard Stallings, proposing that the amount to be paid to Jon Gregory was \$155,482.28 (Exhibit N).

10. I discussed both amounts with Jon Gregory, and even though he was not excited about the proposed division, having had a greater investment in the property, he was willing to accept the original proposal and decide later what to do about the balance Jon claimed.

11. I did not hear much more on the matter from Mr. Stallings or Mr. Gregory, until I received an email from Tim Cobb, another individual who is involved in the matter peripherally. The email was dated September 9, 2013, and included an email from Richard Stallings essentially advising me that he had decided that he was not going to pay Jon Gregory anything for his mutual interests, and that according to him, there was no money owed to Jon Gregory from the current sale. I passed that information on to Jon Gregory, as I had the other emails (Exhibit I). His decision not to pay Jon Gregory was a breach of my understanding of their joint venture and mutual interest in the property.

FURTHER AFFIANT SAYETH NOT:

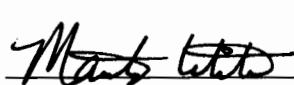
DATED this 19 day of July, 2018.



GARRETT SANDOW  
Affiant

SUBSCRIBED AND SWORN to before me this 19 day of July, 2018.

My cmn exprs: 12/16/22



MARITZA WHITE  
NOTARY  
PUBLIC  
STATE OF IDAHO  
AFFIDAVIT OF GARRETT SANDOW

NOTARY PUBLIC in and for the  
State of Idaho, residing at  
Blackfoot therein  
Pocatello

## **CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_\_ day of July, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: Affidavit of Garrett Sandow

Person(s) Served: Jared M. Harris ( ) Mail  
BAKER & HARRIS ( ) Fax  
266 West Bridge Street ( ) Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-6749

DAVID N. PARMENTER

# **EXHIBIT I**

**From:** Tim Cobb <tim@Constructionenhancement.com>  
**To:** Gsandowlaw <Gsandowlaw@aol.com>  
**Subject:** Fwd: Rexburg Property  
**Date:** Mon, Sep 9, 2013 5:26 pm

---

Garrett-

Hope you are doing well... I received the below from Richard Stallings in the past few weeks, and then followed up with a call to him and conversation, in which he mentioned some of the items that went wrong in this deal.

Give me a call when you get a moment.

509-990-2324

Sent from Tim's iPad

Begin forwarded message:

**From:** "State Recovery, Inc. " <[staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)>  
**Date:** August 27, 2013, 2:01:42 PM PDT  
**To:** Tim Cobb <[tim@Constructionenhancement.com](mailto:tim@Constructionenhancement.com)>  
**Subject:** Rexburg Property

Tim I have been doing a lot of thinking in reference to John Gregory and the sale of the Rexburg property. When John had the IRS call me it really caught me off guard. In that they asked me if I had anything to do with John Gregory and I assured them that we had no partnership and that I owed him no money in this transaction. Then shortly after that John told me that in selling of the property that the buyer only wanted to deal with one person not two, I thought that was strange but said nothing at that time. Latter I learned that the whole reason for this is because the IRS is after John for past taxes. I am very unhappy with John in trying to put me in the middle of his problems.. As I review this entire project I was no more than an investor in that John made all the decisions on this property. The only thing I did is purchase my ground and John thought he could market it. About two years ago John called up and said for us to go up to Rexburg and sign some papers. We thought we were selling the property and when we got up to Rexburg they had us sign a guarantee for 950,000.00. The closing agent said we were in good shape and it was a normal procedure. John should have said something to me. I am upset that John allowed this project to borrow hard money that took all the profits. I look at the opportunity cost of this project that was given away through Johns poor management of this property. I feel that I should get the full opportunity cost back on my risk of my investment. Beside the opportunity cost, by John having me talk to the IRS put me in a position that I am very uncomfortable with. I feel John is way out of line in putting me in any position that could threaten my financial position. In conclusion I feel in order for me to get a return on my investment there is no money owed to John from the current sell.

Thank you  
Richard Stallings

STATE RECOVERY  
100 MARK LN  
BLACKFOOT, ID 83221  
208-785-6591

# **EXHIBIT M**

Subj: **Rexburg Property**  
 Date: 11/14/2012 10:24:26 A.M. Mountain Standard Time  
 From: [staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)  
 To: [Gsandowlaw@aol.com](mailto:Gsandowlaw@aol.com)  
 Garrett Sandow

The following facts are the reasons why the payoff on the Rexburg property should be allocated as stated.

1. My principle and interest paid out at the time my bank went broke was 287,000.
2. When my bank, America West closed down I had the F.D.I.C. come after me threatening to go after everything that I have. Neither Larkins or John had any interest or financial responsibility in helping me at all. Just because I was able to get out of that problem does not mean that I share that risk with John.
3. Tim Cobb told me he was really disappointed in dealing with John because he could not get him to follow through in a promptly time. He commended me for getting things back in a efficient time. Tim Cobb told me that he would not have any future dealings with John.
4. This entire project was under John watch. I totally left everything up to his disgression. I am very disappointed that we sold this property under his advisment to some one who barrowed hard money on it. This ruined potential profits that would have been good for both of us.
5. Since this property has drug on. I have been forced to sell some other property at a discount for need capital on a project in Caldwell.

#### Conclusion

My mistake was putting this in Johns hands. I feel if he would have been more assertive we would not be in this position. For this reason I feel that I should at least get the money that I invested into this property back.

Investment	286,000.	\$ 200,000 -
I received a draw balanced left	30,000. ← 256,000.	30,000

I plan on taking the following amounts and then giving the balance of each draw to Garret Sandow for Johns dispersel.

First draw 106,000  
 second draw 150,000      100  
~~200~~

\$ 850,000.00

STATE RECOVERY  
 100 MARK LN  
 BLACKFOOT, ID 83221  
 208-785-6591

150      \$ 300,000.00 Inf

200

1.1

290

200

100

650,000

590

150,000

150

100

250

170

80

200

30

350

200

100

590

240

170,000.00

# **EXHIBIT N**

## STATEMENT

Richard Stallings

186 W 380 N  
Blackfoot, ID 83221  
(208)317-1133  
[staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)

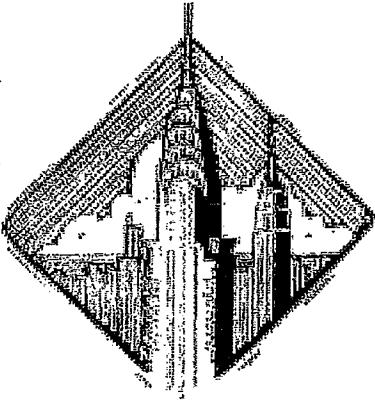
STATEMENT NO. [100]  
DATE December 27, 2012  
CUSTOMER ID Rexburg Property

Next Pay out end of January or first of February 2013	
Total	300,000.00
Paid to John	155,402.28
Paid to Richard	144,517.72

EMAILED FROM  
RICHARD STALLINGS  
TO GARRETT SANDOW

RICOH GOT 30,000  
PAPERS + 9,000 COPIES  
EXCLUSIVELY

# **EXHIBIT O**



## EMPIRE FUNDING

---

175 N 300 W • Blackfoot ID 83221 • Tel 208-681-7546 • Fax 208-785-1809

---

December 6, 2012

Dear Garrett Sandow,

This letter is to inform you of a loan that my company Brokered to America West Bank on October 2, 2007. This loan was made to Richard and Eileen Stallings in the amount of \$235,000.00. Since the original funding date, with interest and penalties, the FDIC called the note due in the amount of \$289,000.00.

If you have any questions please feel free to call me at 208-681-7546.

Sincerely,

Terri L. Merkley  
Owner / Broker

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT  
BLACKFOOT, IDAHO  
CLERK'S OFFICE  
2010 AUG 14 PM 4:05  
CASE #  
PAMELA ANN FRAZER CLERK  
BY *CMH* DEPUTY

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**REPLY BRIEF IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

COMES NOW Defendants, Richard Stallings and Eileen Stallings, (hereinafter "Defendant") by and through their attorney of record, Jared M. Harris of the law firm of BAKER & HARRIS, and hereby submits the following Reply Brief in support of Defendants' Motion for Summary Judgment.

In their Opposition, Plaintiff asserts that issues of fact exist, but fail to point out any factual issues.

Plaintiff asserts that the parties entered into an express agreement, but have failed to submit any documentation to support that allegation or even state what the agreement was. Plaintiff takes the position that the parties had an agreement to develop and improve the subject property. The property got improved. Accordingly, there is no breach of any such alleged contract. The Plaintiff

**REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT- 1**

then asserts that there was an implied agreement or a quasi agreement and again fails to set forth the terms of any such alleged agreement.

The terms of the alleged agreement are not set forth in the Complaint. The only representation as to what the Plaintiff asserts are the terms of any alleged agreement are set forth in Plaintiff's discovery response to Interrogatories No. 8 and 9, noticeably not referenced to the Court.

The answers state:

**INTERROGATORY NO.8:** Please set forth the terms of any alleged partnership between Plaintiff and Defendants.

**ANSWER:** The parties were partners/ a joint venture to share profits equally after consideration and repayment of their original respective investments.

**INTERROGATORY NO.9:** Please set forth all terms of the alleged implied contract, including the date it was entered into, its terms, and any alleged breach of said contract.

**ANSWER:** The terms and agreements were as set forth above in Answer# 8. Furthermore, Defendant, Richard Stallings, sent an email stating he would pay \$256,000.00 to Plaintiff after the property was sold.

See Affidavit of Jared M. Harris.

This matter is barred by the statute of limitations. Plaintiff argues that the statute starts to run on September 9, 2013 based on an alleged representation that Defendants were not going to make payment to Plaintiff. However, Plaintiff is starting from the wrong date. If the parties had an agreement, Plaintiff would have been entitled to be paid at the point in time when Defendants received money from the sale of the property which was on December 21, 2012. See Affidavit of Richard Stallings at Paragraph 6. In Spence v. Howard, 26 Id. 763, 770, 890 P.2d 714,771 (1995) the Court stated, "The statute of limitations does not begin to run until a claim accrues upon the breach of contract. Prewett v. First Nat'l Bank of Hagerman, 45 Idaho 451, 457, 262 P. 1057, 1058 (1928)." The statute of limitations would have started on December 12, 2012, when Defendants

**REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT- 2**

allegedly failed to pay, not on September 9, 2013, when Plaintiff was allegedly informed that they would not be paid. Accordingly, any suit should have been initiated by December 21, 2016.

Further, Plaintiff transferred his interest in his portion of the property to Pioneer Point, LLC who then transferred his interest in the property to Defendants. Any claim that Petitioner has should be against Pioneer Point, LLC, not Defendants.

For the first time, Plaintiff now asserts an equitable estoppel argument. Plaintiff should be prohibited from asserting that argument inasmuch as equitable estoppel has not been pled. Further, the Plaintiff has failed to set forth the required facts for application of equitable estoppel.

The elements of equitable estoppel are:

1) a false representation or concealment of a material fact with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not know or could not discover the truth; (3) that the false representation or concealment was made with the intent that it be relied upon; and (4) that the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his prejudice.

Ferro v. Society of St. Pius X, 143 Idaho 538, 540-41, 149 P.3d 813, 815 (2006)

Plaintiff has not pled the elements of equitable estoppel, nor do they exist in this matter. Defendants made no false representation or concealment of material fact. The Plaintiff did not know or could not discover the truth. No false representation was made with intent to be relied upon and the Plaintiff did not rely upon any alleged misrepresentation of Defendants. Further, equitable estoppel is not a catch all bar.

Even if equitable estoppel had been pled it is not applicable in this matter because Plaintiff clearly learned of any alleged concealed facts within adequate time to bring the lawsuit prior to the running of the statute of limitations. In Ferro v. Society of St. Pius X, 143 Idaho 538, 540-41, 149

**REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT- 3**

P.3d 813, 815 (2006)(emphasis added) the Supreme Court explained some limitations on the application of equitable estoppel and the statute of limitations:

'Equitable estoppel does eliminate, toll, or extend the statute of limitations.' J.R. Simplot Company v. Chemetics International, Inc. 126 Idaho 532, 887 P.2d 1039 (1994). It merely bars a party from asserting the statute of limitations as a defense, that bar does not last forever, however. It only lasts for a reasonable time after the party asserting equitable estoppel discovers or reasonably could have discovered the truth. Knudson v. Agee, 128 Idaho 776, 918 P.2d 1221 (1996) (estoppel did not bar defendants from relying on the statute of limitations where Plaintiff learned of an allegedly concealed fact within adequate time to bring the lawsuit prior to the run of the statute of limitations); ... Once the party claiming the estoppel discovers the truth with respect to the alleged misrepresentations upon which the estoppel is based, that party must act with due diligence in asserting the claim.

According to Plaintiff, Plaintiff was notified by Defendant on September 9, 2013 that Defendant did not intend to pay him any monies. Accordingly, the defense of equitable estoppel is at best a red herring. It is interesting that Plaintiff did not site this controlling argument to this Court.

Similarly, Plaintiff has not pled quasi estoppel. Quasi estoppel is not a defense to the statute of limitations. In Ferro v. Society of St. Pius X, 143 Idaho 538, 540, 149 P.3d 813, 815 (2006) the Supreme Court stated: "The only non-statutory bar to the statue of limitations defense in Idaho is the doctrine of equitable estoppel.' J.R. Simplot Company v. Chemetics International, Inc. 126 Idaho 532, 534, 887 P.2d 1039, 1041 (1994)". Additionally, factually, there is no evidence that Defendants ever changed their position in this matter. If Defendants changed their position, they did so well within the time for Plaintiff to file an action, which Plaintiff failed to do.

This matter is also barred by the application of the Statute of Frauds. Idaho Code § 9-505 (1) and (4) states:

In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his

**REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT- 4**

agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof ...

4. An agreement for the leasing, for a longer period than one (1) year, or for the sale, of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

Because of lack specificity, it's difficult to know if the contract could be performed within a year. As a practical matter the development and sale of real property is virtually impossible to be done within a year. In any event, the alleged agreement is clearly for the sale of real property. In an attempt to dance around the application of the statute, Plaintiff makes the following statement in their briefing at pg. 6, "Similarly, here, Plaintiff and Defendant made an oral agreement to work together to develop and improve the subject property." If that were the extent of the agreement, then there was absolutely no basis for this lawsuit because the property was in fact developed. But the full agreement was for the development and sale of the property. The holding in Spence v. Howell, 126 Idaho 763, 890 P.2d 714 (1995) does not change the application of the statute. In Spence the Court was faced factually with a completely different situation. The parties in that matter wanted to have a religious retreat. They formed a partnership for the development of the retreat, and the land had already been purchased. The court noted:

The oral contract was for the formation of a partnership for the purpose of developing a Christian retreat ranch. Incidental to this oral contract was a transaction involving the land, but the initial agreement did not depend on the transfer of the land, except for the alleged tax purposes. The land had already been purchased and designated for the retreat, prior to the oral contract.

**REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT- 5**

Id at 771, 890 P.2d at 722. In this matter, the very terms of the agreement, are allegedly to share in the profits from the sale of the property. Accordingly, the statute of frauds applies here. There is no appropriate memorandum signed by both parties setting forth the terms of the alleged deal.

The memorandum must plainly set forth the parties to the contract, the subject matter thereof, the price or consideration, a description of the property and all the essential terms and conditions of the agreement. Pettigrew v. Denwalt, 431 P.2d 333 (Okl.1967). See, Gaskill v. Jacobs, 38 Idaho 795, 225 P. 499 (1924).

Hoffman v. S V Co., Inc. 102 Idaho 187, 190, 628 P.2d 218, 221 (1981).

Plaintiff takes the position that Exhibit M to his affidavit sets forth the required terms. This argument fails. Defendants name is not listed on Exhibit M. Plaintiff's name is not listed on Exhibit M. The price or consideration and description of the property and all the essential terms and conditions of the agreement are not listed on Exhibit M. Plaintiff did not sign Exhibit M. Defendant did not sign Exhibit M. Accordingly, the document is not sufficient to take the matter out of the statute of frauds.

Accordingly, Defendants assert there is no disputed issue of fact and defendants are entitled to judgment as a matter of law.

DATED this 14<sup>th</sup> day of August, 2018.

BAKER & HARRIS



Jared M. Harris

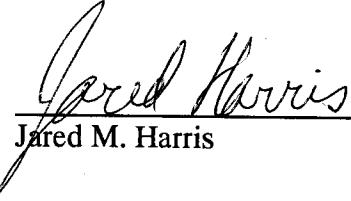
**REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT- 6**

CERTIFICATE OF SERVICE

I certify that on this 14<sup>a</sup> day of August, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Person(s) Served: David N. Parmenter  Mail  
PARMENTER & RIVERA, LLP  Fax  
53 South Shilling  Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-4858

  
\_\_\_\_\_  
Jared M. Harris

**REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT- 7**

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT  
BLACKFOOT, IDAHO

2018 AUG 14 PM 4:05

CLERK  
MELISSA TAYLOR CLERK  
BY  DEPUTY

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**AFFIDAVIT OF JARED M.  
HARRIS IN SUPPORT OF REPLY  
BRIEF IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Jared M. Harris, deposes and says:

1. That he is now the attorney for the Defendants Richard Stallings and Eileen Stallings, and makes this Affidavit based on personal knowledge.
2. That attached hereto as Exhibit A is a true and correct copy of Plaintiff's Answers to Interrogatory No. 8 and 9.
3. That I have read the foregoing affidavit, and I hereby certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

FURTHER your affiant saith not.

**AFFIDAVIT OF JARED M. HARRIS IN SUPPORT OF REPLY BRIEF IN SUPPORT OF  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 1**

DATED this 14<sup>th</sup> day of August, 2018.

  
\_\_\_\_\_  
Jared M. Harris

CERTIFICATE OF SERVICE

I certify that on this 14<sup>th</sup> day of August, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **AFFIDAVIT OF JARED M. HARRIS IN SUPPORT OF REPLY BRIEF  
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

Person(s) Served: David N. Parmenter  Mail  
PARMENTER & RIVERA, LLP  Fax  
53 South Shilling  Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-4858

  
\_\_\_\_\_  
Jared M. Harris

**AFFIDAVIT OF JARED M. HARRIS IN SUPPORT OF REPLY BRIEF IN SUPPORT OF  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 2**

The source of those facts will come through the testimony of Plaintiff and other witnesses, as well as the several documents, emails, contracts, loan agreements, promissory notes, deeds of trust, settlement statements, and other documents that are sent, involved, or signed in this case.

INTERROGATORY NO. 7: Please set forth the amount and the computation of your damages in this matter.

ANSWER: The amount is based on Plaintiff's original purchase of the 2 acres for \$205,000.00 plus the sale of G's Dairy and inclusion of those funds in the investment of \$292,000.00, and taking into consideration Defendants original offer, his loans, and other factors.

INTERROGATORY NO. 8: Please set forth the terms of any alleged partnership between Plaintiff and Defendants.

ANSWER: The parties were partners/ a joint venture to share profits equally after consideration and repayment of their original respective investments.

INTERROGATORY NO. 9: Please set forth all terms of the alleged implied contract, including the date it was entered into, its terms, and any alleged breach of said contract.

ANSWER: The terms and agreements were as set forth above in Answer # 8. Furthermore, Defendant, Richard Stallings, sent an email stating he would pay \$256,000.00 to Plaintiff after the property was sold.

INTERROGATORY NO. 10: Have you ever been convicted of a felony? If so, please state:

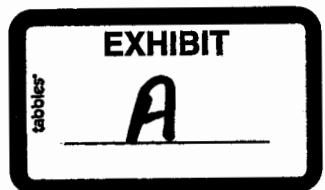
- (a) The case number and Court;
- (b) Each crime to which a guilty plea or verdict was entered;
- (c) The sentence enforced for each crime to which a guilty plea or verdict was entered.

ANSWER: No.

INTERROGATORY NO. 11: For each of the Requests for Admissions set forth below, in which your answer is anything but an unqualified admission, please describe in full and complete detail the factual basis upon which said Request for Admission was answered.

ANSWER: See Answers/ Complaint.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 8**



2018 AUG 14 PM 4:05

PAGE 4  
PAUL W. GREGORY CLERK  
BY  DEPUTY

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**OBJECTION TO THE  
AFFIDAVITS OF GARRETT  
SANDOW AND JON GREGORY**

COMES NOW Defendants, Richard Stallings and Eileen Stallings, (hereinafter "Defendant") by and through their attorney of record, Jared M. Harris of the law firm of BAKER & HARRIS, and hereby objects to portions of the Affidavits of Garrett Sandow and Jon Gregory as follows:

1. Defendant objects to any portion of Garrett Sandow's Affidavit (hereinafter "Sandow Affidavit") that references to statements made by Jon Gregory and Richard Stallings on the basis of hearsay and lack of foundation. There is no indication as to when, where, or with whom the discussions occurred.
2. Defendant objects to ¶ 5 of the Sandow Affidavit on relevance.
3. Defendant objects to ¶ 6 of the Sandow Affidavit as hearsay and lacking foundation.

**OBJECTION TO THE AFFIDAVITS OF GARRETT SANDOW AND JON GREGORY - 1**

4. Defendant objects of ¶¶ 8 and 9 of the Sandow Affidavit on the best evidence rule.
5. Defendant objects to ¶ 11 of the Sandow Affidavit as hearsay, lacking foundation, and on the best evidence rule.
6. Defendant objects to ¶¶ 5, 6, and 7 of the Affidavit of Jon Gregory (hereinafter "Gregory Affidavit") on relevance.
7. Defendant objects to ¶ 8 of the Gregory Affidavit on relevance and the paragraph states a legal conclusion.
8. Defendant objects to ¶ 9 of the Gregory Affidavit on hearsay and lacking foundation.
9. Defendant objects to ¶ 11 of the Gregory Affidavit as lacking foundation as to what if anything Richard Stallings was using Garrett Sandow for.
10. Defendant objects to ¶ 12 of the Gregory Affidavit as speculation, hearsay, and lacking foundation.
11. Defendant objects to ¶ 18 of the Gregory Affidavit on the best evidence rule.
12. Defendant objects to Exhibit A of the Gregory Affidavit because of lack of foundation, hearsay, and the best evidence rule.

DATED this 14 day of August, 2018.

BAKER & HARRIS



Jared M. Harris  
Jared M. Harris

**OBJECTION TO THE AFFIDAVITS OF GARRETT SANDOW AND JON GREGORY - 2**

CERTIFICATE OF SERVICE

I certify that on this 14<sup>th</sup> day of August, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **OBJECTION TO THE AFFIDAVITS OF GARRETT SANDOW AND JON GREGORY**

Person(s) Served: David N. Parmenter  Mail  
PARMENTER & RIVERA, LLP  Fax  
53 South Shilling  Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-4858

  
\_\_\_\_\_  
Jared M. Harris

**OBJECTION TO THE AFFIDAVITS OF GARRETT SANDOW AND JON GREGORY - 3**

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

JON GREGORY, an individual,	)	<b>CASE NO. CV-2017-1651</b>
	)	
Plaintiff,	)	<b>ORDER GRANTING</b>
	)	<b>DEFENDANTS' MOTION FOR</b>
vs.	)	<b>SUMMARY JUDGMENT</b>
	)	
RICHARD STALLINGS, an individual,	)	
and EILEEN STALLINGS, an individual,	)	
	)	
Defendants.	)	
	)	

**I. STATEMENT OF THE CASE**

Plaintiff Jon Gregory (hereinafter “Gregory”) filed the above-numbered lawsuit against Defendants Richard Stallings, an individual, and Eileen Stallings, an individual (hereinafter collectively referred to as the “Stallings”) and claimed breach of contract, breach of implied contract, and *quantum meruit*.<sup>1</sup> The Stallings now move for summary judgment as to all of Gregory’s claims.<sup>2</sup> Gregory objects to the Stallings’ Motion.<sup>3</sup>

---

<sup>1</sup> Verified Complaint, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed September 6, 2017) (hereinafter “**Gregory’s Complaint**”).

<sup>2</sup> Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 5, 2018) (hereinafter the “**Stallings’ Motion**”).

<sup>3</sup> Plaintiff’s Memorandum in Opposition to Defendants’ Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 19, 2018) (hereinafter “**Gregory’s Opposition**”).

A hearing was held on the Stallings' Motion on August 21, 2018.<sup>4</sup> Based upon the record, the parties' arguments, and the relevant authorities, the Stallings' Motion shall be granted.

## II. ISSUES

The Stallings contend that Gregory's three causes of action against them are barred by the statute of limitations and by the Statute of Frauds.<sup>5</sup> Gregory responds that a valid contract existed between him and the Stallings,<sup>6</sup> which does not fall within the Statute of Frauds.<sup>7</sup> In the alternative, Gregory maintains that an implied contract existed between the parties.<sup>8</sup> At the very least, Gregory argues, a quasi-contract existed between the parties.<sup>9</sup> If the Statute of Frauds bars enforcement of the alleged contract, Gregory pleads equitable estoppel or quasi-estoppel to prevent the Stallings from allegedly receiving "unjust results."<sup>10</sup>

The Stallings object to the affidavits of Garrett Sandow<sup>11</sup> and Jon Gregory<sup>12</sup> on the bases of hearsay, lack of foundation, relevance, the best evidence rule, stating a legal conclusion, and speculation.<sup>13</sup>

The parties' arguments raise the following issues in light of the relevant authorities:

---

<sup>4</sup> Minute Entry, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed August 21, 2018).

<sup>5</sup> Memorandum in Support of Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 5, 2018) (hereinafter the "**Stallings' Memorandum**"), at pp. 3-4.

<sup>6</sup> Gregory's Opposition, at pp. 2-3.

<sup>7</sup> Gregory's Opposition, at pp. 5-7.

<sup>8</sup> Gregory's Opposition, at pp. 3.

<sup>9</sup> Gregory's Opposition, at p. 4.

<sup>10</sup> Gregory's Opposition, at pp. 7-10.

<sup>11</sup> See; Affidavit of Garrett Sandow, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 19, 2018) (hereinafter the "**Sandow Affidavit**").

<sup>12</sup> See; Affidavit of Jon Gregory, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 19, 2018) (hereinafter the "**Gregory Affidavit**").

1. Should portions of the Sandow Affidavit be stricken from consideration on summary judgment?
2. Should portions of the Gregory Affidavit be stricken from consideration on summary judgment?
3. Is Gregory's breach of contract action barred by the Idaho Statute of Frauds?
4. Is Gregory's breach of contract action barred by the applicable statute of limitations?

### **III. FINDINGS OF FACT**

1. Gregory purchased two (2) acres of a four (4) acre parcel of land in Rexburg, Idaho because he wanted to develop the property into student housing or a similar commercial venture.<sup>14</sup>
2. On September 27, 2007, Gregory sold an approximately two (2) acre parcel of land to the Stallings.<sup>15</sup> The two-acre parcel purchased by the Stallings was contiguous to the two-acre parcel owned by Gregory.<sup>16</sup> According to Gregory, this purchase represented the other two acres of the four-acre parcel in Rexburg.<sup>17</sup>
3. On February 2, 2009, Gregory transferred his interest in his two-acre parcel to Pioneer Point LLC.<sup>18</sup> Gregory asserts that Pioneer Point LLC was to develop

---

<sup>13</sup> Objection to the Affidavits of Garrett Sandow and Jon Gregory, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed August 14, 2018) (hereinafter the “**Stallings’ Objections to Affidavits**”).

<sup>14</sup> Gregory’s Complaint, at p. 2, ¶ 5.

<sup>15</sup> Affidavit of Richard Stallings in Support of Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 5, 2018) (hereinafter the “**Stallings Affidavit**”), at p. 1, ¶ 2; and at Exhibit A.

<sup>16</sup> Stallings Affidavit, at p. 1, ¶ 3.

<sup>17</sup> Gregory’s Complaint, at p. 2, ¶¶ 6, 7.

<sup>18</sup> Stallings Affidavit, at p. 2, ¶ 4; and at Exhibit B.

the property, put in roads, parking lots, sewer, and water, and to begin construction on at least two buildings.<sup>19</sup>

4. On December 8, 2010, Pioneer Point LLC and the Stallings entered into a construction loan with Century Mortgage Company

... to finance a part of the cost of construction of certain improvements upon the described premises in accordance with plans and specifications that have been or will be deposited by [Pioneer Point, LLC and the Stallings] with [Century Mortgage Company].<sup>20</sup>

The construction work was to be completed seven calendar months from December 8, 2010.<sup>21</sup>

5. On the same date, December 8, 2010, Pioneer Point LLC and the Stallings signed a promissory note, in the amount of \$945,000, to various lenders, with the promise to pay the note within six (6) months, or by June 10, 2009, with an option to extend for another six (6) months.<sup>22</sup>

6. On May 2, 2012, Pioneer Point LLC transferred what had been Gregory's property to Richard Stallings.<sup>23</sup>

7. On December 21, 2012, the Stallings sold both parcels of property to Rockwell Court Limited Partnership for the sum of \$1,086,438.89.<sup>24</sup> According to Gregory, following the sale of the property, all of the mortgage investors were paid back their initial investments.<sup>25</sup>

---

<sup>19</sup> Gregory's Complaint, at p. 2, ¶ 8.

<sup>20</sup> Gregory's Complaint, at Exhibit A.

<sup>21</sup> Gregory's Complaint, at Exhibit A, p. 1, ¶ 1.

<sup>22</sup> Gregory's Complaint, at Exhibit B.

<sup>23</sup> Stallings Affidavit, at p. 2, ¶ 5.

<sup>24</sup> Gregory's Complaint, at Exhibit D.

<sup>25</sup> Gregory's Complaint, at p. 4, ¶ 19; and at Exhibit D, p. 1.

8. Prior to the sale, on November 14, 2012, Richard Stallings informed Gregory, through attorney Garrett Sandow, that he “plan[ned] on taking the following amounts and then giv[e] the balance of each draw to Garret Sandow for Johns [sic] dispersel [sic]. First draw 106,000 second draw 150,000.”<sup>26</sup>

9. On September 9, 2013, an e-mail from Richard Stallings (originally date August 27, 2013) was forwarded to attorney Garrett Sandow.<sup>27</sup> In his e-mail, Richard Stallings wrote, *inter alia*: “In conclusion I feel in order for me to get a return on my investment there is no money owed to John from the current sell.”<sup>28</sup>

10. Gregory sued the Stallings for breach of contract on September 6, 2017.<sup>29</sup>

#### **IV. RELEVANT PRINCIPLES OF LAW**

##### **A. Standard of Review – Motion for Summary Judgment.**

1. If the pleadings, depositions, and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, summary judgment may be granted.<sup>30</sup> Disputed facts are construed in favor of the non-moving party and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.<sup>31</sup>

2. The party moving for summary judgment (in this case, the Stallings) has the burden of presenting admissible evidence showing that there is an absence of any

---

<sup>26</sup> Sandow Affidavit, at Exhibit M.

<sup>27</sup> Sandow Affidavit, at Exhibit I.

<sup>28</sup> *Id.*

<sup>29</sup> Gregory’s Complaint, at p. 1.

<sup>30</sup> Idaho Rule of Civil Procedure 56(a); *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 768, 203 P.3d 694, 698 (2009); *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 516-7, 808 P.2d 851, 853-4 (1991).

<sup>31</sup> *Bushi v. Sage Health Care, PLLC*, 146 Idaho at 768, 203 P.3d at 698; *Lockheed Martin Corp. v. Idaho State Tax Commission*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006).

genuine issue of material fact with respect to the issues raised by the summary judgment motion.<sup>32</sup>

3. If the moving party demonstrates the absence of a question of material fact, the burden shifts to the nonmoving party to demonstrate an issue of material fact that will preclude summary judgment.<sup>33</sup>

4. The non-moving party (in this case, Gregory) cannot merely rest on its pleadings.<sup>34</sup> When faced with supporting affidavits or depositions, the opposing party must show material issues of fact which preclude the issuance of summary judgment.<sup>35</sup>

5. While the moving party must prove the absence of a genuine issue of material fact,<sup>36</sup> the opposing party cannot simply speculate.<sup>37</sup> A mere scintilla of evidence is not enough to create a genuine factual issue.<sup>38</sup> Summary judgment is appropriate when the non-moving party cannot establish the essential elements of the claim.<sup>39</sup>

6. If reasonable persons could reach differing conclusions on material issues, or draw conflicting inferences therefrom, then the motion for summary judgment must be denied.<sup>40</sup>

---

<sup>32</sup> *Sadid v. Idaho State University*, 151 Idaho 932, 938, 265 P.3d 1144, 1150 (2011).

<sup>33</sup> *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 317, 246 P.3d 961, 970 (2010).

<sup>34</sup> *Partout v. Harper*, 145 Idaho 683, 688, 183 P.3d 771, 776 (2008); *R.G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 410, 797 P.2d 117, 118 (1990).

<sup>35</sup> *Esser Electric v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008).

<sup>36</sup> *Watkins v. Peacock*, 145 Idaho 704, 708, 184 P.3d 210, 214 (2008); *Wait v. Leavell Cattle, Inc.*, 136 Idaho 792, 798, 41 P.3d 220, 226 (2001).

<sup>37</sup> *Cantwell v. City of Boise*, 146 Idaho 127, 133, 191 P.3d 205, 211 (2008).

<sup>38</sup> *Van v. Portneuf Medical Center*, 147 Idaho 552, 556, 212 P.3d 982, 986 (2009); *West v. Sonke*, 132 Idaho 133, 138, 968 P.2d 228, 233 (1998).

<sup>39</sup> *Summers v. Cambridge Joint School District No. 432*, 139 Idaho 953, 956, 88 P.3d 772, 775 (2004); *Dekker v. Magic Valley Regional Medical Center*, 115 Idaho 332, 333, 766 P.2d 1213, 1214 (1989).

<sup>40</sup> *Van v. Portneuf Medical Center*, 147 Idaho at 556, 212 P.3d at 986; *Cramer v. Slater*, 146 Idaho 868, 873, 204 P.3d 508, 513 (2009).

## **B. Admissibility of Affidavit Testimony.**

1. Admissibility of evidence contained in affidavits in support of or in opposition to a motion for summary judgment is a threshold matter to be addressed before applying the liberal construction and reasonable inferences rule to determine whether the evidence creates a genuine issue of material fact for trial.<sup>41</sup>

2. Affidavits may be used to support or defend a motion for summary judgment as long as they are “made on personal knowledge, set out facts which would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.”<sup>42</sup> These requirements “are not satisfied by an affidavit that is conclusory, based on hearsay, and not supported by personal knowledge.”<sup>43</sup>

3. Affidavits may be used to show a genuine issue of material fact where the affiant is competent to testify on matters stated.<sup>44</sup>

4. “Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness.”<sup>45</sup> Thus, “an affidavit need not contain an explicit recital of personal knowledge when it can be reasonably inferred from its contents that the material parts thereof are within the affiant’s personal knowledge.”<sup>46</sup>

5. A trial court’s determination of the admissibility of testimony offered in connection with a motion for summary judgment is discretionary.<sup>47</sup> In exercising its discretion, a trial court must: (a) correctly perceive the issue as one of discretion; (b) act

---

<sup>41</sup> *MFG Financial, Inc. v. Vigos*, 163 Idaho 252, 409 P.3d 832, 835 (2018).

<sup>42</sup> *MFG Financial, Inc. v. Vigos*, 163 Idaho at \_\_\_, 409 P.3d at 836 [citing: Idaho Rule of Civil Procedure 56(c)(4)].

<sup>43</sup> *Mitchell v. State*, 160 Idaho 81, 369 P.3d 299 (2016) [citing: *State v. Shama Resources Limited Partnership*, 127 Idaho 267, 271, 899 P.2d 977, 981 (1995)].

<sup>44</sup> *Id.*

<sup>45</sup> Idaho Rule of Evidence 602.

<sup>46</sup> *Mitchell v. State*, 160 Idaho at 86, 369 P.3d at 304 [citing: 2A J.S. Affidavit § 47].

within the outer boundaries of its discretion and consistently with the legal standards applicable to the consideration of the issue; (c) reach its decision by an exercise of reason.<sup>48</sup>

**C. Relevance of Evidence.**

1. When a trial court is being asked to admit or to strike evidence, the initial inquiry is whether the evidence is relevant.<sup>49</sup>

2. “Evidence that tends to prove the existence of a fact of consequence in the action, and has any tendency to make the existence of a fact more probable than it would be without the evidence, is relevant.”<sup>50</sup>

3. All relevant evidence is admissible, while evidence which is not relevant is not admissible.<sup>51</sup>

4. Relevant evidence can be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues , ... waste of time, or needless presentation of cumulative evidence.”<sup>52</sup>

**D. The Best Evidence Rule.**

1. The best evidence rule states that “to prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.”<sup>53</sup>

---

<sup>47</sup> *Green v. Green*, 161 Idaho 675, 679, 389 P.3d 961, 965 (2017).

<sup>48</sup> *Sun Valley Shopping Center v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

<sup>49</sup> *Elliott v. Murdock*, 161 Idaho 281, 287, 385 P.3d 459, 465 (2016).

<sup>50</sup> Id; Idaho Rule of Evidence 401.

<sup>51</sup> Id; Idaho Rule of Evidence 402.

<sup>52</sup> Id; Idaho Rule of Evidence 403.

<sup>53</sup> *State v. Rodriguez*, 161 Idaho 368, 370, 386 P.3d 509, 511 (Ct. App. 2017) [citing: Idaho Rule of Evidence 1002].

2. The purpose of the best evidence rule is to safeguard against inaccuracies or fraud by requiring the production of original documents.<sup>54</sup>

3. The best evidence rule directs a party that to prove content, the party must produce the original, a duplicate, or offer an adequate explanation why the party cannot do so.<sup>55</sup>

**E. Real Party in Interest.**

1. An action must be prosecuted in the name of the real party in interest.<sup>56</sup>

2. The Idaho Supreme Court has clarified the phrase “real party in interest” as follows:

The real party in interest is the one who has a real, actual, material or substantial interest in the subject matter of the action, the primary object being to save a defendant from further suits covering the same demand or subject matter, i.e., the real party in interest is the person who can discharge the claim upon which the suit is brought and control the action brought to enforce it, and who is entitled to the benefits of the action, if successful, and can fully protect the one paying the claim or judgment against subsequent suits covering the same subject matter, by other persons.<sup>57</sup>

3. An assignee is the real party in interest to bring an action, and the assignor is not the real party in interest and has no standing to prosecute an action on the chose in action.<sup>58</sup>

---

<sup>54</sup> *State v. Rodriguez*, 161 Idaho at 370, 386 P.3d at 511 [citing: Federal Rule of Evidence 1001, advisory committee’s note 1972].

<sup>55</sup> *State v. Rodriguez*, 161 Idaho at 370, 386 P.3d at 511 [citing: Idaho Rule of Evidence 1002, 1003; Federal Rule of evidence 1002, 1003].

<sup>56</sup> Idaho Rule of Civil Procedure 17(a).

<sup>57</sup> *MFG Financial, Inc. v. Vigos*, 163 Idaho at \_\_\_, 409 P.3d at 835 [citing: *Caughey v. George Jensen & Sons*, 74 Idaho 132, 134-5, 258 P.2d 357, 359 (1953)].

<sup>58</sup> *MFG Financial, Inc. v. Vigos*, 163 Idaho at \_\_\_, 409 P.3d at 835 [citing: *McCluskey v. Galland*, 95 Idaho 472, 474-5, 511 P.2d 289, 291-2 (1973)].

## **F. Breach of Contract Actions.**

1. The elements for a claim for breach of contract are: (a) the existence of the contract, (b) the breach of the contract, (c) the breach caused damages, and (d) the amount of those damages.<sup>59</sup>

2. A contract will be enforced if it is “complete, definite and certain in all its material terms, or contain[s] provisions which are capable in themselves of being reduced to a certainty.”<sup>60</sup>

3. The question as to the existence of an oral contract is one of fact.<sup>61</sup>

## **G. Statute of Frauds.**

1. An interest in real property (other than leases not exceeding one year) cannot be created without a written instrument.<sup>62</sup>

2. An agreement that by its terms is not to be performed within a year from the making of the agreement is invalid unless the agreement, or some note or memorandum thereof, is in writing and subscribed by the party charged, or his agent.<sup>63</sup>

## **H. Statute of Limitations.**

1. Generally, a cause of action accrues when one party may maintain a lawsuit against another.<sup>64</sup>

2. A cause of action for breach of contract accrues upon breach for limitation purposes.<sup>65</sup>

---

<sup>59</sup> *Franklin Building Supply Company, Inc. v. Hymas*, 157 Idaho 632, 637, 339 P.3d 357, 362 (2014).

<sup>60</sup> *Spence v. Howell*, 126 Idaho 763, 770, 890 P.2d 714, 721 (1995).

<sup>61</sup> *Id.*

<sup>62</sup> Idaho Code § 9-503.

<sup>63</sup> Idaho Code § 9-505.1.

<sup>64</sup> *Western Corporation v. Vanek*, 144 Idaho 150, 151, 158 P.3d 313, 314 (Ct. App. 2006).

<sup>65</sup> *Cuevas v. Barraza*, 146 Idaho 511, 517, 198 P.3d 740, 746 (Ct. App. 2008).

3. The question of when the breach occurred is a factual one.<sup>66</sup> Courts must look to the record for sufficient and competent evidence to support the findings.<sup>67</sup>

## V. DISCUSSION

### A. The Sandow Affidavit.

The Stallings object to “any portion” of the Sandow Affidavit that references statements made by Gregory or by Richard Stallings.<sup>68</sup> The Stallings argue that such references are hearsay.<sup>69</sup> They also contend that the references lack foundation because ‘[t]here is no indication when, where, or with whom the discussions occurred.’<sup>70</sup> Gregory did not respond to the Stallings’ Objections to Affidavits.

The Stallings’ broad objection to any references to statements by Gregory or Richard Stallings does not provide appropriate identification of the specific statements the Stallings seek to exclude. This Court should not be required to search the record for error.<sup>71</sup>

Next, the Stallings object to paragraph 5 of the Sandow Affidavit on the grounds of relevance.<sup>72</sup> In paragraph 5, Sandow states:

Exhibit O is a letter I received from Terri Merkley relative to a loan made to Richard and Eileen Stallings in the matter, directed to me.<sup>73</sup>

Exhibit O, attached to the Sandow Affidavit, evinces the December 6, 2012 letter from Terri L. Merkley, owner/broker of Empire Funding, to Sandow.<sup>74</sup>

---

<sup>66</sup> *Spence v. Howell*, 126 Idaho at 770, 890 P.2d at 721.

<sup>67</sup> *Id.*

<sup>68</sup> Stallings’ Objections to Affidavits, at p. 1, ¶ 1.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Vulk v. Haley*, 112 Idaho 855, 857, 736 P.2d 1309, 1311 (1987).

<sup>72</sup> Stallings’ Objections to Affidavit, at p. 1, ¶ 2.

<sup>73</sup> Sandow Affidavit, at p. 2, ¶ 5

<sup>74</sup> Sandow Affidavit, at Exhibit O.

Sandow may testify as to correspondence he received. As the Stallings point out, however, nothing in Exhibit O appears to be relevant to Gregory's claims in this lawsuit. For these reasons, paragraph 5 of the Sandow Affidavit, together with Exhibit O, shall be stricken for purposes of the Stallings' Motion.

The Stallings then object to paragraph 6 of the Sandow Affidavit as hearsay and lacking foundation.<sup>75</sup> Paragraph 6 of the Sandow Affidavit reads:

I understand they had a joint, mutual interest because of their separate, individual investments in the property in question.<sup>76</sup>

This statement is corroborated by the affidavit of Richard Stallings, wherein Richard Stallings states that both he and Gregory bought real property, the portions being contiguous to each other, Gregory's property was transferred to Pioneer Point, LLC and then to Richard Stallings, and that Richard Stallings sold both pieces of property.<sup>77</sup> The Stallings Affidavit provides dates of the land sale purchases and sales.<sup>78</sup> Because Sandow's statements in paragraph 6 of his Affidavit are corroborated by the Stallings Affidavit, paragraph 6 of the Sandow Affidavit shall be admitted.

Next, the Stallings object to paragraphs 8 and 9 of Sandow's Affidavit as violating the best evidence rule.<sup>79</sup> Paragraphs 8 and 9 read:

On November 14, 2012 I received an email from Richard Stallings (Exhibit M). In that email, he advised of his proposed division of Stallings and Gregory's mutual interest, by proposing to pay, through me, Jon Gregory's share in their mutual interests upon sale of the property.<sup>80</sup>

---

<sup>75</sup> Stallings' Objections to Affidavit, at p. 1, ¶ 3.

<sup>76</sup> Sandow Affidavit, at p. 2, ¶ 6.

<sup>77</sup> Stallings Affidavit, at pp. 1-2.

<sup>78</sup> *Id.*

<sup>79</sup> Stallings' Objections to Affidavit, at p. 2, ¶ 4.

<sup>80</sup> Sandow Affidavit, at p. 2, ¶ 8.

On or about December 27, 2012, I received a second email. A statement from Richard Stallings, proposing that the amount to be paid to Jon Gregory was \$155,482.28 (Exhibit N).<sup>81</sup>

Exhibit M to the Sandow Affidavit is an e-mail communication from Richard Stallings to Garrett Sandow, dated November 14, 2012.<sup>82</sup> It contains unidentified handwriting on it, which shall not be considered. Exhibit N reveals a statement to Richard Stallings, showing an amount due of \$144,517.72.<sup>83</sup>

Sandow may testify as to what he received by e-mail, but Exhibits M and N are the best evidence of the information communicated in those e-mails. Exhibits M and N shall be admitted for consideration of the Stallings' Motion, except for the unidentified handwriting on Exhibit M.

The first sentence of paragraph 8 to the Sandow Affidavit shall also be admitted. The second sentence of paragraph 8 shall not be considered, since Exhibit M is the best evidence of the November 14, 2012 e-mail's contents.

The portion of paragraph 9 to the Sandow Affidavit which reads "On or about December 27, 2012, I received a second email, a statement from Richard Stallings...." The remainder of paragraph 9 shall not be considered.

Finally, the Stallings object to paragraph 11 of the Sandow Affidavit as hearsay, lacking foundation, and in violation of the best evidence rule.<sup>84</sup> Sandow's paragraph 11 states:

I did not hear much more on the matter from Mr. Stallings or Mr. Gregory, until I received an email from Tim Cobb, another individual who is involved in the matter peripherally. The email was dated September 9,

---

<sup>81</sup> Sandow Affidavit, at p. 2, ¶ 9.

<sup>82</sup> Sandow Affidavit, at Exhibit M.

<sup>83</sup> Sandow Affidavit, at Exhibit N.

<sup>84</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 5.

2013, and included an email from Richard Stallings essentially advising me that he had decided that he was not going to pay Jon Gregory anything for his mutual interests, and that according to him, there was no money owed to Jon Gregory from the current sale. I passed that information on to Jon Gregory, as I had the other emails (Exhibit I). His decision not to pay Jon Gregory was a breach of my understanding of their joint venture and mutual interest in the property.<sup>85</sup>

Sandow may testify as to his contacts with various persons, and the dates of those contacts. The contents of Exhibit I should be interpreted pursuant to the best evidence rule: that is, the communications in Exhibit I speak for themselves. The underlined portions of paragraph 11 shall be considered within the adjudication of the Stallings' Motion, as shall be the contents of Exhibit I. The remainder of the paragraph (the portions that are not underlined), shall not be considered.

#### **B. The Gregory Affidavit.**

The Stallings also object to paragraphs 5, 6, and 7 of the Gregory Affidavit on the basis of relevance.<sup>86</sup> Those paragraphs read as follows:

Over the course of my working with Summit Mortgage on several projects, including this one, it was common for me to purchase the original property, and then transfer my interest to them or subordinate my interest so they could complete their part of the development. I generally received at the end of each project with Summit reimbursement for my expenditures for the ground, and 50% of any profits or proceeds from the development or sale thereof.

We also generally set up a limited liability company for each of the several projects – and used the name Pioneer Point, LLC for this particular project.

I may have transferred my interest to Summit on paper, but it was a similar transaction and business operation that we had engaged in several times before.<sup>87</sup>

---

<sup>85</sup> Sandow Affidavit, at p. 3, ¶ 11 (emphasis added).

<sup>86</sup> Stallings' Objections to Affidavits, at p. 2,

<sup>87</sup> Gregory Affidavit, at p. 2, ¶¶ 5, 6, 7.

In his Complaint, Gregory alleges that Summit Development is also known as Pioneer Point, LLC.<sup>88</sup> Whether or not Gregory engaged in a similar course of conduct with regard to land development in the past is not relevant insofar as the statute of limitations and the Statute of Frauds, which are ultimately dispositive of Gregory's lawsuit, are concerned. Therefore, any facts regarding former courses of dealings between Gregory and Summit Development, also known as Pioneer Point, LLC, shall not be considered in the adjudication of the Stallings' Motion.

The Stallings object to paragraph 8 of the Gregory Affidavit on the grounds of relevance and stating a legal conclusion.<sup>89</sup> In paragraph 8 of his Affidavit, Gregory testified:

Further, in order to assist with the transition and sale of the property, I had been required to subordinate my interest to that of Pioneer Point, given the investments of some of the parties they were working with to come up with the money. Nevertheless, that did not change mutual interests and ownership that Richard and I had between ourselves.<sup>90</sup>

That Gregory transferred his interest in the property to Pioneer Point is found elsewhere in the record.<sup>91</sup> Ownership of property, on the other hand, is determined by the law, rather than any tacit understanding between parties. Therefore, the second sentence in paragraph 8 of the Gregory Affidavit shall not be considered herein.

The Stallings object to paragraph 9 of the Gregory Affidavit as hearsay and lacking foundation.<sup>92</sup> Paragraph 9 states:

I was aware that Pioneer Point LLC had transferred back their interest in the property to us or Mr. Stallings because they had no funds to pay for

---

<sup>88</sup> Gregory's Complaint, at p. 2, ¶ 8.

<sup>89</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 7.

<sup>90</sup> Gregory Affidavit, at p. 2, ¶ 8.

<sup>91</sup> See: Stallings Affidavit, at p. 2, ¶ 4.

<sup>92</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 8.

construction funding, and wanted us to take the project back over by quitclaim deed but we continued to work on sale together in order to try and accomplish a liquidation of the property that would benefit our interest mutually.<sup>93</sup>

The reasons for the transfer of property ownership, and the continuing business relations of the parties have no bearing upon the dispositive statute of limitations and Statute of Frauds determinations. Accordingly, paragraph 9 of the Gregory Affidavit shall not bear further consideration herein.

The Stallings object to paragraph 11 of the Gregory Affidavit "as lacking foundation as to what if anything Richard Stallings was using Garrett Sandow for."<sup>94</sup> Gregory may testify as to the reasons why he consulted attorney Garrett Sandow. Gregory may not speak for Richard Stallings, however. That portion of paragraph 11 which refers to the reasons why Richard Stallings consulted Sandow shall not be considered in this opinion.

The Stallings complain of Gregory's statements in paragraph 12 of his Affidavit as hearsay and lacking foundation.<sup>95</sup> In paragraph 12 of his Affidavit, Gregory affies:

Mr. Stallings agreed to pay me the balance of any funds from the sale after he received back his original investment amount. That was the reason he forwarded the letter from Terry Merkley (Exhibit O) from Empire Funding to establish his original investment amount minus the \$30,000.00 draw he had already taken. He also received at least one extension fee to his credit from the buyers, which was an additional several thousand dollars.<sup>96</sup>

Richard Stallings' November 14, 2012 e-mail to Garrett Sandow<sup>97</sup> states:

I plan on taking the following amounts and then giving the balance of each draw to Garret Sandow for Johns dispersel [sic].

---

<sup>93</sup> Gregory Affidavit, at p. 2, ¶ 9.

<sup>94</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 9.

<sup>95</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 10.

<sup>96</sup> Gregory Affidavit, at p. 3, ¶ 12.

<sup>97</sup> See: Sandow Affidavit, Exhibit M.

First draw 106,000  
second draw 150,000<sup>98</sup>

Such language may signify an intent to pay, but does not amount to a written agreement to pay the balance of the draws to Gregory.

Although Exhibit M to the Sandow Affidavit shall be considered in adjudicating the Stallings' Motion, Gregory's interpretation of Exhibit M shall not be considered. Neither shall Gregory's opinion as to the reasons other people took certain actions be considered herein.

The Stallings object to paragraph 18 of the Gregory Affidavit as a violation of the best evidence rule.<sup>99</sup> Paragraph 18 reads:

On September 9, 2013, I was forwarded an email that I received from Mr. Sandow, advising that Mr. Stallings felt he owed me nothing, and that he was keeping all of the funds and money from the sale of the property (Exhibit I). He also advised me that I had four years from the date of the notice I received, September 9, 2013, to file legal action.<sup>100</sup>

Gregory may testify as to the date he received an e-mail from Mr. Sandow. The content of Richard Stallings' communication, contained in Exhibit I to the Sandow Affidavit, speaks for itself. As for any legal advice Gregory received from Mr. Sandow, that is hearsay and shall be excluded from further consideration.

#### **C. The Statute of Frauds does Not Apply to Gregory's Lawsuit against the Stallings.**

In support of their argument that the contract alleged by Gregory is barred by the Idaho Statute of Frauds, the Stallings simply aver: "There is no contract, memorandum or

---

<sup>98</sup> *Id.*

<sup>99</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 11.

<sup>100</sup> Gregory Affidavit, at p. 4, ¶ 18.

written document signed by Defendants which reflect any alleged terms of a contract. Accordingly, Plaintiffs's [sic] Complaint should be dismissed.”<sup>101</sup>

In light of the evidence in the record, it appears an oral agreement between Gregory and the Stallings was formed. Gregory alleges that he wanted to develop a parcel of land for commercial purposes.<sup>102</sup> He alleges that he purchased two (2) of the four (4) desired acres of land, but sought to acquire the other two acres to complete the planned development.<sup>103</sup> He contends that Richard Stallings agreed to purchase the other two acres of land for the purpose of going into partnership with Gregory to commercially develop the entire four acres.<sup>104</sup>

Richard Stallings concedes he did purchase the contiguous two-acre parcel.<sup>105</sup> In his November 14, 2012 e-mail to Garrett Sandow, Stallings wrote:

The entire project was under John [sic] watch. I totally left everything up to his disgression [sic]. I am very disappointed that we sold this property under his advisment [sic] to some one who barrowed [sic] hard money on it. This ruined potential profits thst [sic] would have been good for both of us.

...  
My mistake was putting this in Johns [sic] hands. I feal [sic] if he would have been more ascertive [sic] we would not be in this position. For this reason I feal [sic] that Ishould [sic] at least get the money that I invested into this property back.<sup>106</sup>

Gregory alleges that Summit Development, also known as Pioneer Point LLC became involved as the developers for the commercial venture.<sup>107</sup> Gregory transferred his

---

<sup>101</sup> Stallings' Memorandum, at p. 4.

<sup>102</sup> Gregory's Complaint, at p. 2, ¶ 4.

<sup>103</sup> Gregory's Complaint, at p. 2, ¶ 5.

<sup>104</sup> Gregory's Complaint, at p. 2, ¶¶ 6, 7.

<sup>105</sup> Stallings Affidavit, at p. 1, ¶ 2.

<sup>106</sup> Sandow Affidavit, at Exhibit I.

<sup>107</sup> Gregory's Complaint, at p. 2, ¶ 8.

interest in his two-acre parcel to Summit Development.<sup>108</sup> He asserts that the reason for the transfer in interest was to allow Summit Mortgage to “complete their part of the development.”<sup>109</sup>

Gregory maintains that the real estate market crashed around 2007 and defeated his (and Richard Stallings’) mutual efforts to develop the properties, causing Gregory and the Stallings to take efforts to sell the properties.<sup>110</sup> They ultimately sold the properties for \$1,086,438.89.<sup>111</sup> Gregory claims that the Stallings kept all of the proceeds of the sale.<sup>112</sup> Richard Stallings’ e-mails indicate that he initially planned to give some of the property sale proceeds to Gregory,<sup>113</sup> but later determined to retain all of the proceeds for himself.<sup>114</sup>

In his answers to interrogatories, Gregory defined the agreement as: “The parties were partners/a joint venture to share profits equally after consideration and repayment of their original respective investments.”<sup>115</sup> Garrett Sandow understood that he was to assist Gregory in reviewing contracts and other matters relative to a mutual interest Gregory and Richard Stallings had in certain real property.<sup>116</sup>

Thus, the record reflects that Gregory and the Stallings formed an understanding with regard to the commercial development of property in Rexburg, and took action in

---

<sup>108</sup> Gregory Affidavit, at p. 2, ¶ 7.

<sup>109</sup> Gregory Affidavit, at p. 2, ¶ 5.

<sup>110</sup> Gregory’s Complaint, at pp. 3-4, ¶¶ 14-18.

<sup>111</sup> Gregory’s Complaint, at Exhibit D.

<sup>112</sup> Gregory’s Complaint, at p. 4, ¶ 25.

<sup>113</sup> Sandow Affidavit, at Exhibit M.

<sup>114</sup> Sandow Affidavit, at Exhibit I.

<sup>115</sup> Affidavit of Jared M. Harris in Support of Reply Brief in Support of Defendants’ Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed August 14, 2018) (hereinafter the “**Harris Affidavit**”), at Exhibit A.

<sup>116</sup> Sandow Affidavit, at p. 1, ¶ 2.

furtherance of that end. The Stallings contend that the property “got improved.”<sup>117</sup> Although nothing in the record show what improvements were ultimately completed on the property, the Stallings’ Reply infers that indeed the nature of the parties’ relationship with regard to the two two-acre parcels of land in Rexburg had to do with improving the property.

Furthermore, although the Stallings argue that any claim Gregory may have to the proceeds should be against Pioneer Point LLC,<sup>118</sup> to whom Gregory transferred his parcel before the parcel was transferred to Richard Stallings,<sup>119</sup> Richard Stallings specifically stated that he planned to pay part of the proceeds from the property sale to Gregory.<sup>120</sup> Richard Stallings made no mention whatsoever of Pioneer Point LLC in his November 14, 2012 e-mail regarding the proceeds of the land sale.<sup>121</sup> Neither is Pioneer Point LLC mentioned in Richard Stallings’ August 27, 2013 e-mail (forwarded to Garrett Sandow on September 9, 2013).<sup>122</sup> Richard Stallings never asserted, in either of his communications regarding the payout from the land sale, that Gregory should look to Pioneer Point LLC for his share of the sale proceeds.<sup>123</sup> Furthermore, on the “Seller’s Final Settlement Statement,” which show the sale of the property to Rockwell Court Limited Partnership, the “seller” is listed as Richard and Eileen Stallings.<sup>124</sup> Richard and Eileen Stallings

---

<sup>117</sup> Reply Brief in Support of Defendants’ Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed August 14, 2018) (hereinafter the “Stallings’ Reply”).

<sup>118</sup> Stallings’ Reply, at p. 3.

<sup>119</sup> Stallings Affidavit, at p. 2, ¶ 5; and at Exhibit C.

<sup>120</sup> Sandow Affidavit, at Exhibit M.

<sup>121</sup> Id.

<sup>122</sup> Sandow Affidavit, at Exhibit I.

<sup>123</sup> Sandow Affidavit, at Exhibits I, M.

<sup>124</sup> Gregory’s Complaint, at Exhibit D, p. 1.

signed the “Seller’s Final Settlement Statement.”<sup>125</sup> No place is included on the statement for a signature by Pioneer Point LLC.

Instead, the record infers that the “agreement” upon which Gregory sues was between Gregory and the Stallings. It appears that a number of complex interactions took place in order to promote the land development project, but Richard Stallings ultimately looked to Gregory, not any of the other third-party players, as the person to whom final proceeds might be due.

In summary, the oral contract in this case was not a contract for the sale of land. It was an agreement for the development of commercial property. The commercial loan for construction of the development expected completion within seven (7) months. Thus, the project could arguably have been performed within one year. The sale of the property after the venture failed (or perhaps after the venture ran out of funding before ultimate completion) was incidental to the overall agreement.<sup>126</sup>

For these reasons, the Statute of Frauds has no bearing on this lawsuit and does not form a basis for granting the Stallings’ Motion.

#### **D. The Statute of Limitations for Oral Contracts Bars Gregory’s Lawsuit.**

The statute of limitations applicable to an oral contact is four (4) years.<sup>127</sup> The Stallings argue, and the record reflects that if an agreement existed between the parties, then the agreement was made orally.<sup>128</sup> Gregory counters that the parties had an express

---

<sup>125</sup> Gregory’s Complaint, at Exhibit D, p. 2.

<sup>126</sup> See: *Spence v. Howell*, 126 Idaho at 771, 890 P.2d at 722.

<sup>127</sup> Idaho Code § 5-217.

<sup>128</sup> Stallings’ Memorandum, at p. 3.

agreement that the parties would develop commercial and/or residential housing on the two pieces of adjoining property purchased separately by the parties.<sup>129</sup>

An express contract is defined as a “contract whose terms the parties have explicitly set out.”<sup>130</sup> An oral or parol contract, on the other hand, is defined as a “contract or modification of a contract that is not in writing or is only partially in writing.”<sup>131</sup>

Under Idaho law, the statute of limitations for an action upon a contract in writing is five years,<sup>132</sup> as opposed to the four-year limitation period on an oral contract. Since the record does not reflect a written agreement between Gregory and the Stallings, the four-year statute of limitations for oral contracts shall apply in this lawsuit.

The Stallings argue that the four-year statute of limitations upon an oral contract would have begun to run on December 21, 2012,<sup>133</sup> the date both properties were sold to Rockwell Court Limited Partnership.<sup>134</sup> The Stallings offer no authority for assigning the date of sale of the properties as the start of the limitations period.<sup>135</sup> Gregory counters that the four-year statute began to run on September 9, 2013, the date Gregory was made aware that the Stallings were not going to pay or reimburse Gregory for any of his contributions to the project out of the proceeds of the sale of the properties.<sup>136</sup>

Assuming a contract existed between Gregory and Stallings, which is appropriate for purposes of adjudicating the Stallings’ Motion, Richard Stallings received the payout

---

<sup>129</sup> Gregory’s Opposition, at pp. 2-3.

<sup>130</sup> Black’s Law Dictionary, 8<sup>th</sup> ed., at pp. 344-5.

<sup>131</sup> Black’s Law Dictionary, 8<sup>th</sup> ed., at p. 347.

<sup>132</sup> Idaho Code § 5-216.

<sup>133</sup> Stallings’ Memorandum, at p. 3.

<sup>134</sup> Gregory’s Complaint, at Exhibit D.

<sup>135</sup> Stallings’ Memorandum, at p. 3.

<sup>136</sup> Gregory’s Opposition, at p. 5.

from the sale of the two properties on or about December 21, 2012.<sup>137</sup> On that date, Gregory knew that the Stallings held funds, a portion of which Gregory expected to recover. He could have sued the Stallings on that date to recover the proceeds he believed should have gone to him. That the Stallings might have paid Gregory in the future would not toll or delay the running of the statute of limitations.<sup>138</sup>

The record reflects Richard Stallings' e-mail of November 14, 2012, wherein Stallings informed Garrett Sandow that some portion of the sale proceeds should be given to Gregory.<sup>139</sup> If anything, this e-mail put Gregory on notice that, upon receipt of the payout, Stallings should pay Gregory a portion of the proceeds. Clearly, Richard Stallings did not provide any portion of the proceeds to Gregory because, almost a year later, on September 9, 2013, Mr. Sandow received notice that Stallings did not intend to pay any part of the proceeds to Gregory.<sup>140</sup>

As of September 9, 2013, Gregory still had over three (3) years in which to file this lawsuit against the Stallings. He waited until September of 2017 to take action. Unfortunately, given the fact that he could have filed suit against the Stallings as of December 21, 2012, Gregory's failure to file his suit earlier ran afoul of the four-year statute of limitations. His action is now barred as against the Stallings.

For these reasons, this lawsuit shall be dismissed pursuant to Idaho Code § 5-217.

## VI. CONCLUSIONS OF LAW

Based upon the foregoing findings and analyses, the following conclusions are appropriate:

---

<sup>137</sup> Gregory's Complaint, at Exhibit D.

<sup>138</sup> *Lapham v. Stewart*, 137 Idaho 582, 586, 51 P.3d 396, 400 (2002).

<sup>139</sup> Sandow Affidavit, at Exhibit M.

1. Portions of the Sandow Affidavit should be stricken from consideration on summary judgment.

2. Portions of the Gregory Affidavit should be stricken from consideration on summary judgment.

3. Gregory's breach of contract action is not barred by the Idaho Statute of Frauds.

4. Gregory's breach of contract action is barred by the applicable statute of limitations.

## VII. ORDER

Accordingly, the Stallings' Motion for Summary Judgment is **granted**. Gregory shall take nothing by his lawsuit against the Stallings.

A separate judgment shall issue.

**IT IS SO ORDERED.**

DATED this 15th day of October 2018.



\_\_\_\_\_  
Darren B. Simpson  
District Judge      Signed: 10/15/2018 03:30 PM

---

<sup>140</sup> Sandow Affidavit, at Exhibit I.

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Order Granting Defendants' Motion for Summary Judgment was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by e-mail this 15th day of October 2018, to:

David N. Parmenter, Esq.  
Nathan D. Rivera, Esq.  
Attorneys at Law  
53 S. Shilling  
P.O. Box 700  
Blackfoot, Idaho 83221

U.S. Mail       Courthouse Box       E-Mail

Jared M. Harris, Esq.  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221

U.S. Mail       Courthouse Box       E-Mail

PAMELA W. ECKHARDT, Clerk of the Court

Signed: 10/15/2018 05:36 PM

By: \_\_\_\_\_  
Deputy Clerk



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

JON GREGORY, an individual,	)	<b>CASE NO. CV-2017-1651</b>
	)	
Plaintiff,	)	<b>JUDGMENT</b>
	)	
vs.	)	
	)	
RICHARD STALLINGS, an individual,	)	
and EILEEN STALLINGS, an individual,	)	
	)	
Defendants.	)	
	)	

---

**JUDGMENT IS ENTERED AS FOLLOWS:**

Plaintiff Jon Gregory shall take nothing by his lawsuit against Defendants Richard Stallings, an individual, and Eileen Stallings, an individual.

**IT IS SO ORDERED.**

DATED this 15th day of October 2018.

  
\_\_\_\_\_  
Darren B. Simpson  
District Judge      Signed: 10/15/2018 03:33 PM

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Judgment was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by e-mail this 16th day of October 2018, to:

David N. Parmenter, Esq.

U.S. Mail       Courthouse Box       E-Mail

Nathan D. Rivera, Esq.  
Attorneys at Law

53 S. Shilling  
P.O. Box 700  
Blackfoot, Idaho 83221

Jared M. Harris, Esq.

U.S. Mail       Courthouse Box       E-Mail

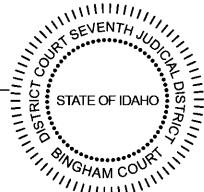
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221

PAMELA W. ECKHARDT, Clerk of the Court

Signed: 10/16/2018 09:49 AM

By: \_\_\_\_\_

Brandee Cammack  
Deputy Clerk



Jared M. Harris  
**BAKER & HARRIS**  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**MOTION FOR AWARD OF  
ATTORNEY'S FEES AND COSTS**

COMES NOW Defendants, Richard Stallings and Eileen Stallings, (hereinafter "Defendants") by and through their attorney of record, Jared M. Harris of the law firm of **BAKER & HARRIS**, and hereby moves this Court for an order awarding attorney's fees and costs incurred in defending this matter.

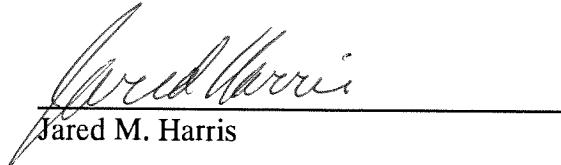
Plaintiff asserted a breach of contract claim and sought attorney's fees pursuant to Idaho Code §§ 12-120(1) and (3). As set forth in their Complaint this action was a commercial transaction between the parties and that was the gravamen of the relationship between the parties. Therefore, Defendants are entitled to an award of attorney fees and costs under Idaho Code §§ 12-120(1) and (3). Further, Defendants are entitled to attorney's fees and costs pursuant to Idaho Code § 12-121.

**MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS - 1**

This Motion is supported by an Affidavit and Memorandum of Costs and Fees.

DATED this 27 day of October, 2018.

BAKER & HARRIS



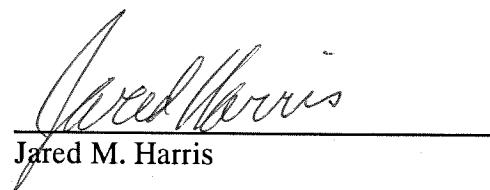
Jared M. Harris

CERTIFICATE OF SERVICE

I certify that on this 27 day of October, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS**

Person(s) Served:	David N. Parmenter	( <input type="checkbox"/> ) Mail
	PARMENTER & RIVERA, LLP	( <input type="checkbox"/> ) Fax
	53 South Shilling	( <input type="checkbox"/> ) Hand Delivered
	Blackfoot, ID 83221	( <input checked="" type="checkbox"/> ) Email
	Fax No. (208) 785-4858	
	parlaw@gmail.com	



Jared M. Harris

**MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS - 2**

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**MEMORANDUM AND  
AFFIDAVIT OF ATTORNEY'S  
FEES AND COSTS**

Jared M. Harris, deposes and says:

1. That he is an attorney licensed to practice law in the State of Idaho, and is the attorney for Plaintiff in the above-entitled action, and has personal knowledge of the costs and attorney's fees enumerated.

COSTS AS A MATTER OF RIGHT

2. That the following enumerated costs have been necessarily incurred in the representation of Plaintiffs in said action and are claimed as a matter of right pursuant to IRCP 54(d)(1)(C):

a. Filing Fees for Answer (IRCP 54(d)(1)(C)(i)) \$ 136.00

TOTAL COSTS \$ 136.00

**MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS - 1**

## ATTORNEY FEES

3. That your I hav been engaged in the active practice of law since 1992 and is currently a partner in the law firm of BAKER & HARRIS, Blackfoot, Idaho.
4. That the hourly rates charged during the time period of representation of the Plaintiff between February 14, 2018 and October 18, 2018 were as follows:
  - a. Jared M. Harris - \$250.00 per hour.
5. That the hourly rate set forth in the foregoing paragraph is consistent with comparable services and rates in southeastern Idaho during the time period involved.
6. That the total amount of attorneys' fees is reasonable in consideration of the factors set forth in IRCP 54(e)(3).

Date	Description	Hours	Amount
2/14/18	Telephone conference with R. Stallings; Extended office conference with R. Stallings regarding defense of lawsuit.	1.5	\$ 375.00
2/16/18	Telephone conference with R. Stallings; Draft answer; Draft discovery request; Telephone calls to T. Cobb; review legal descriptions.	2.0	\$ 500.00
2/27/18	Research regarding service of complaint; Draft notice of appearance; begin drafting answer.	1.6	\$ 400.00
2/27/18	Revise Answer; Research regarding statute of frauds.	.6	\$ 150.00
3/5/18	Extended office conference with R. Stallings; Revise discovery request.	1.0	\$ 250.00
3/7/18	Office conference with R. Stallings regarding legal description issues; Telephone conference with R. Stallings.	.5	\$ 125.00

**MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS - 2**

3/8/18	Receipt and review of request for trial setting; Draft response to request for trial setting; Draft letter to Court; Receipt and review of Notice of hearing; Draft letter to R. Stallings.	.9	\$ 225.00
3/13/18	Telephone call to and with R. Stallings.	.4	\$ 100.00
3/20/18	Receipt and review of Exhibits; Draft letter to R. Stallings.	.3	\$ 75.00
4/2/18	Receipt and review of letter; Draft letter to attorney.		\$ 0.00
4/6/18	Receipt and review of answers to request form admissions; Draft letter to R. Stallings.	.3	\$ 75.00
4/16/18	Extended office conference with R. Stallings regarding status; Draft letter to attorney.	1.3	\$ 325.00
4/20/18	Receipt and review of discovery responses; Draft letter to R. Stallings; Research; Draft motion for summary judgment, memorandum and affidavit.	2.8	\$ 700.00
4/23/18	Attend pre-trial; draft letter to R. Stallings.	.6	\$ 150.00
4/24/18	Receipt and review of Order; Draft letter to R. Stallings; Draft letter to attorney.	.6	\$ 150.00
5/2/18	Telephone conference with R. Stalling.	.2	\$ 50.00
5/10/18	Receipt and review of letter; Draft notice; Draft letter to Court.	.6	\$ 150.00
6/4/18	Research; Revise motion for summary judgment and memorandum,	3.0	\$ 750.00
6/6/18	Revise memorandum.	.3	\$ 75.00
6/8/18	Revise motion for summary judgment and memorandum; Research; Extended office conference with R. and E. Stallings.	2.5	\$ 625.00
6/11/18	Review documents and interplay between documents; Conference with title company to review legal descriptions and transactions; Telephone conference with R. Stallings; Revise memorandum; Office conference with R. Stallings.	6.0	\$ 1,500.00

### MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS - 3

6/12/18	Revise memorandum.	.3	\$ 75.00
6/26/18	Receipt and review of discovery request; Draft letter to R. Stallings.	.3	\$ 75.00
6/28/18	Extended office conference with R. Stallings; Telephone call to and with creditor; Extended telephone conference with title company.	2.00	\$ 500.00
6/29/18	Draft letter to creditor.	.3	\$ 75.00
7/2/18	Receipt and review of letter; Draft letter to R. Stallings regarding mediation; Revise memorandum, affidavit regarding motion for summary judgment.	.6	\$ 150.00
7/3/18	Telephone conference with R. Stallings; Office conference with R. Stallings to review and sign affidavit and discuss status of case and arguments to be presented.	.8	\$ 200.00
7/6/18	Research.	1.0	\$ 250.00
7/9/18	Telephone conference with creditor.	.2	\$ 50.00
7/10/18	Research regarding statute of frauds.	1.0	\$ 250.00
7/11/18	Review judicial filings; Telephone conference with attorney's office; Telephone conference with R. Stallings.	1.2	\$ 300.00
7/16/18	Research regarding judgments.	.4	\$ 100.00
7/23/18	Draft discovery responses; Draft notice; Draft letter to Court.	.9	\$ 225.00
7/24/18	Receipt and review of motions; Draft letter to R. Stallings; Research; Prepare preliminary draft of objection; prepare preliminary draft of reply brief.	2.0	\$ 500.00
7/27/18	Research; Revise brief.	1.8	\$ 450.00
8/8/18	Receipt and review of order; Draft letter to R. Stallings.	.3	\$ 75.00
8/10/18	Research.	.8	\$ 200.00
8/13/18	Research; Revise brief.	2.5	\$ 625.00

#### MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS - 4

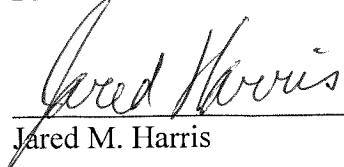
8/14/18	Revise brief; Draft letter to Court; Telephone calls to and with R. Stallings.	2.2	\$ 550.00
8/20/18	Conference with R. Stallings; Prepare for hearing.	1.8	\$ 450.00
8/21/18	Prepare for and attend hearing; Present argument; Conference with R. and E. Stallings.	1.0	\$ 250.00
9/14/18	Receipt and review of minute entry; Draft letter to R. Stallings.	.3	\$ 75.00
10/9/18	Conference with Court Clerk; Draft pretrial memorandum; Draft motion to extend discovery cutoffs.	2.0	\$ 500.00
10/16/18	Receipt and review of decision; Draft letter to R. Stallings.	.4	\$ 100.00
10/17/18	Prepare for and attend pretrial; Telephone conference with R. Stallings; Draft motion for attorney's fees and costs; Draft affidavit.	1.5	\$ 375.00
10/18/18	Prepare for and attend pretrial; Telephone conference with R. Stallings; Draft motion for attorney's fees and costs; Draft affidavit.	.6	\$ 150.00
<b>TOTAL ATTORNEY'S FEES:</b>		<b>53.2</b>	<b>\$ 13,300.00</b>

7. To the best of my knowledge and belief the above enumerated costs and fees are correct, and that the costs and fees claimed are in compliance with IRCP 54.
8. That I have read the foregoing affidavit, and I hereby certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

FURTHER your affiant saith not.

DATED this 27<sup>th</sup> day of October, 2018.

BAKER & HARRIS



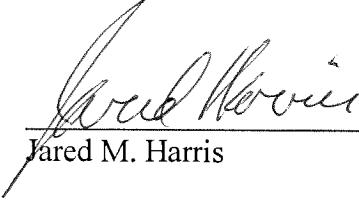
Jared M. Harris

CERTIFICATE OF SERVICE

I certify that on this 23rd day of October, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS**

Person(s) Served:	David N. Parmenter	( <input type="checkbox"/> ) Mail
	PARMENTER & RIVERA, LLP	( <input type="checkbox"/> ) Fax
	53 South Shilling	( <input type="checkbox"/> ) Hand Delivered
	Blackfoot, ID 83221	( <input checked="" type="checkbox"/> ) Email
	Fax No. (208) 785-4858	
	parlaw@gmail.com	

  
\_\_\_\_\_  
Jared M. Harris

**MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS - 6**

DAVID N. PARMENTER  
NATHAN D. RIVERA  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, Idaho 83221  
(208) 785-5618  
(208)785-4858 FAX  
parlaw@gmail.com

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual	)	
	)	
Plaintiff,	)	Case No. CV-2017-1651
	)	
vs.	)	MOTION FOR RECONSIDERATION
	)	
RICHARD STALLINGS, an individual and	)	
EILEEN STALLING, an individual	)	
Defendants.	)	
	)	

COMES NOW the plaintiff, through counsel, David N. Parmenter, and moves the court for reconsideration of the court's order granting defendant's motion for summary judgment and entering judgment on October 15, 2018, pursuant to Idaho Rules of Civil Procedure, Rule 11.2 (b)(1).

Said motion is made on the following grounds, for the following reasons:

First, even though Stallings referred to a closing on or about December 21, 2012, there was no reason for plaintiff to be at the sale, since he did not anticipate receiving funds for several months thereafter. As set forth in the attached memorandum, or draws, the payments were to be made to both parties in several draws, over a period of time following the actual closing.

Second, as set forth in Exhibit N, payouts to Stallings and Gregory were to continue through "January or first part of February 2013". It is also unclear when the various investors were paid back, but presumably that took place around or on the date of closing of December 21, 2012.

Third, based on Exhibit M, which also referred to the first and second draw which would be taken by Stallings, there was never any specification, as to when those draws would be received. Mr. Stallings advised Gregory that he would pay off the investors first, then would take his cut, and then Gregory would be the last one to receive his share of the funds. However, the parties anticipated and knew that that would not be until sometime in 2013.

Fourth, because anticipated funds are not all paid out on the day of closing in late December, 2012, but would rather be doled out in several draws over a period of time, Mr. Gregory had no way of knowing when his funds would actually be received, or paid to him during the first part of 2013. Delays in construction, which needed to be completed for payout of the last \$300,000 extended payout through the spring and summer of 2013. It was not until Richard Stallings actually advised by email September 9, 2013, that he would not pay anything that plaintiff became aware that he was not honoring his previous agreement. Plaintiff asserts that at a minimum, there is a factual issue as to when the cause of action (and breach) accrued, which still remains to be decided.

Lastly, pursuant to Idaho Rules of Civil Procedure, plaintiff has propounded discovery request to defendants, which have not been fully or completely answered. (Exhibit 1). Defendants have not answered plaintiff's interrogatories or request for production of documents. Some of the most important documents would relate to a supposed closing, payouts, and other funds received by defendants, or distributed by them to either themselves or to investors.

A request for discovery was propounded to Stallings on June 21, 2018, including interrogatories, request for admissions, and request for production of documents. (Exhibit A). Stallings filed their motion for summary judgment on or about July 7, 2018 but failed to respond to the interrogatories or requests for production—presumably because of the pendency of their motion for summary judgment. They did answer the requests for admissions on July 23, 2018 (Exhibit 2).

However, they have still never provided any of the requested documents from closing, or any information regarding the amounts or timing of draws—or communication or emails between the parties and others—documents which may help clarify when the draws were actually received and how much they were.

For these and other reasons, plaintiff moves for reconsideration of the court's ruling granting defendant's motion for summary judgment and entering judgment.

DATED this 29<sup>th</sup> day of December, 2018

  
\_\_\_\_\_  
DAVID N. PARMENTER  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 28<sup>th</sup> day of October, 2018 upon the following:

Mail  
 Fax  
 Hand Delivery

Jared M. Harris  
Baker & Harris  
266 W. Bridge St.  
Blackfoot, ID 83221

  
DAVID N. PARMENTER

# **EXHIBIT A**

CENTURY MORTGAGE COMPANY  
45 NORTH 300 EAST  
ST. GEORGE, UTAH 84770

CONSTRUCTION LOAN AGREEMENT AND ASSIGNMENT OF TRUST ACCOUNT

THIS AGREEMENT, is made on December 10, 2008 by and between the undersigned Pioneer Point LLC (Heath Johnston) and Richard and Eileen Stallings (borrower) and Century Mortgage, as agent for investors The Leland Alvin Laub Trust 6.78% interest; The Ludlow Trust 13.54% interest; Tiffany Meredith .63% interest; Laurine Meredith 6.35% interest; Ray Schmutz Family Trust 1.16% interest; David & Olive Esplin 2.12% interest; Howard Bingham or Dale Bingham 2.12%; Peacock Revocable Trust 8.57% interest; Dona Randall 3.17% interest; Richard I Burch 10.58% interest; Ray Schmutz Family Partnership 6.56% interest; Ronald A Ludlow 2.54% interest; Earle Revocable Trust 1.27% interest; Cleon & Joyce Davies 3.50% interest; Charles & Lorena Lambert 14.18% interest; Donald J Larkin Living Trust 6.35% interest; Alan & Dayle Baird 10.58% interest inconsideration of the granting of a loan by lenders and as part of said loan transaction, which loan is evidence by Note of the undersigned for \$945,000.00 at 12% interest dated December 10, 2008.

Attached hereto and by this reference made part thereof, in favor of the Lenders, and secured by a first Trust Deed on real property located in Washington County, State of Utah, and described as:

Property Description: First Trust Deed on Parcel 1 Rexburg, Idaho development with student housing and Parcel 3 Lot 2 Pioneer Village. 2<sup>nd</sup> Trust Deed position Parcel 2 Rexburg, ID.

The purpose of said loan is to finance a part of the cost of construction of certain improvements upon the described premises in accordance with plans and specifications that have been or will be deposited by Borrower with the Lenders. The parties desire to set forth the terms and conditions of this transaction, the agreement of the Parties, and the rights and remedies of the Lenders, in connection with the disbursement of the proceeds and construction of the improvements.

IT IS, THEREFORE, AGREED AS FOLLOWS: Upon the recordation of the Trust Deed, the net proceeds of the loan will be available to be disbursed by the Lenders to the undersigned Borrower or others as hereinafter provided which shall be conclusively deemed full consideration for the Note and that such consideration has fully passed and been paid to the Borrower. Subject to the provisions of this Agreement, each of the undersigned Borrower hereby irrevocably assigns to the lenders, as security for the obligation secured by the Deed of Trust, all rights, title and interest of the Borrower in the undisbursed balance. Each of the undersigned Borrowers acknowledges that he has no right to the moneys in the Undisbursed Account other than to have the same used by the Lenders in accordance with this Agreement, which, upon acceptance by Lenders hereon, Lenders agrees to do.

Borrower, jointly and severally, further agrees as follows:

1. To commence actual construction work of the improvements to be constructed on the property within forty-five (45) calendar days from the date of this Agreement, and to complete the same, including all necessary utility connections, promptly and in any event within seven (7) calendar months from the date of this Agreement and in

accordance with the plans and specifications submitted by Borrower to and approved by Lender, and in accordance with the requirements of all state and local authorities, laws and regulations of the Federal Housing Administration, Veterans Administration, or other public authority having a future interest in the long term financing of said improvements in the finished Home.

2. To furnish to Lender, before any funds are disbursed from the account, a policy of title insurance satisfactory to Lender, insuring that the Trust Deed is a first lien on the property. Should any work of any character be commenced on, or any materials delivered upon or to, the real property or in connection with said improvements prior to the time the Lender approves the title and records the Trust Deed, the Lender, at his sole option, may apply so much of the fund in the Trust Account as may be required to satisfy in full all indebtedness secured by the Trust Deed and to pay all expenses incurred in connection with the transaction and to be relieved from any and all obligation to proceed with the loan.
3. To make all payments of principal and interest in accordance with the terms of the Note and Trust Deed. Interest during construction shall be computed on the full amount of the loan from the date of the note and such interest will be payable monthly by the Borrower with funds that have been set aside as a reserve for such purpose, unless the lender shall otherwise agree in writing. In such case, if such interest payments are not made when due and payable, the Lender is authorized, at its election, to pay the same or itself from proceeds of the loan or has the option to call the note due for non-payment of interest.
4. To use such funds from the net proceeds of the loan for the purposes in and for the construction of said improvements which funds are hereby assigned to the Lender for such purpose. To deposit in the Trust Account upon demand of Lender, such further sums estimated by Lender as being necessary to cover all items provided or contemplated to be paid or expended under this Agreement.
5. That no materials, equipment, fixtures or any other part of the improvements shall be purchased or installed under conditional sales agreement or other arrangements wherein the right is reserved or accrues to anyone to remove or repossess any such item or to consider them as personal property.
6. That subject to the provisions of this Agreement, the loan is to be disbursed by the Lender to provide funds for construction of the contemplated improvements and may be paid to any of the undersigned, or, at the option of the Lender, may be paid to contractors, material men and laborers, or any of them, and if any of the undersigned are to receive a disbursement, they must furnish a signed waiver from subcontractor who performed the work.
7. That before requesting any payments or advances, the Borrower agrees to furnish the Lender, if requested, lien waivers or lien subordination receipts in form and substances satisfactory to the Lender, covering work done or materials furnished for the improvements. Said documents shall show the expenditure of an amount equal to the amount proposed to be disbursed from the Account. The Borrower agrees that all funds disbursed to any of the undersigned will be immediately used to pay bills and charges for the labor and materials and not to use the money for any other purposes. Borrower further agrees to keep records satisfactory to and open to the inspection of the Lender showing that funds advanced by the Lender are used only in said construction as herein specified. Any written order, receipt or other document signed by any of the undersigned shall be binding upon all of the undersigned and the Lender shall be fully protected in acting thereupon.
8. Not to alter in any way the construction of the improvement as shown on the plans and specifications herein referred to. Provided however, that in the event extras or additions not called for in said plans and specifications are contemplated,

Borrower agrees that, before any such changes, extras or additions are ordered or placed into effect, he will immediately notify the Lender in writing of such contemplated changes. If Lender does not approve such changes Borrower hereby agrees to immediately deposit to the Trust Account, a sum of money requested to cover the cost of said alterations, additions or extras.

9. To pay all loan expenses. Without limiting the generality of the foregoing, such expenses shall include all recording charges, title insurance charges, cost of surveys, cash deposits required to be made with the title insurance company issuing the title insurance policy, and cost of premiums of surety company bonds required by said title insurance company in connection with the insurance of preliminary reports of title, and title insurance policy or removal of title exceptions there from, fees of outside appraisers, if any, Lender's service fee, and cost of recordation. Lender may also set aside reasonable reserve for estimated future loan expenses and for interest, insurance, and taxes to accrue during the period of construction, offsite improvements, and initial tax and insurance deposits to be set aside under the terms of the Deed of Trust and for other contingencies.
10. That anything in this Agreement contained to the contrary notwithstanding, it is expressly understood and agreed that the loan hereunder shall at all times be in balance. The loan shall be deemed to be in balance only when the un-disbursed proceeds of the loan, after provisions for all reserves authorized by this Agreement, shall equal or exceed the amount necessary, based upon Lender's estimation of construction costs and loan expenses, to pay for all work done or to be done for completion of the construction of the improvements including the installation of fixtures and equipment. If for any reason, the loan should at any time after commencement of disbursements of the proceeds become out of balance, Borrower will, within five (5) days after written request by Lender, deposit with the Lender an amount of cash sufficient to correct the deficiency, which deposits shall first be exhausted before any further disbursements of the proceeds of the Loan shall be made.
11. That lender shall not be obligated to make advances except during the progress of construction, said advances to be made on the basis of Lender's estimate of the value of the work and improvements in place of the cost of completion of construction, and of the amount of reserves required to be retained by Lender for its protection. Lender may retain, in addition to all reserves, an amount sufficient, in Lender's sole judgment, to insure that there will be proper retainage from contractors, subcontractors, and material man to assure their performance of their contractors and to cover the contingency of insufficiency of cost estimated or of additional expenses being incurred in relation to contracts or subcontractors. In any event, Lender may provide a reserve for contingencies of ten (10) percent of the estimated cost of construction.
12. That lender shall have no responsibility, beyond the exercise of good faith, for the character or value of any work for which payments may be made or for any claims for mechanic's liens or for extras that may be asserted by and claimed in connection with any of the work performed or to be performed. Lenders may, in its discretion, make payments for labor and materials directly to any contractor or subcontractors without prior approval by Borrower, and shall be held harmless by Borrower for any payments so made by Lender in good faith.
13. That the Lender shall have the right to inspect said property at any reasonable time, but such inspection is for its protection only. It is agreed that the undersigned Borrower has or will, at its own responsibility, select all architects, builders, contractors, subcontractors, material man, laborers, materials, equipment, and appliances, and that Lender has no responsibility therefore.

14. That in the event any liens or claims of lien are asserted or filed against the property, the Lender, after five (5) days notice to the undersigned of its intention so to do, may pay any or all of such liens or claims, or purchase assignments thereof, or may contest the validity of any of them, paying all costs and expenses of contesting the same, including reasonable attorney's fees and all payments to be made out of the Trust Account, then such additional amounts may be expended by the Lender at its option, and all funds paid or expended by the Lender, together with interest thereon at the rate of sixteen percent (16%) per annum from the date of advance, shall be secured by the Trust Deed and shall be due and payable without notice on demand.
15. That should any of the undersigned Borrowers default in the performance of any agreement hereunder; or should work cease on the improvements, especially including stoppage by the Lender under the terms of this Agreement, or for any reason whatsoever, for fifteen (15) calendar days; or if the improvements shall be damaged or destroyed by fire or other casualty; or in the case of death of any of the undersigned; or if a petition in bankruptcy or under any debtor's relief law shall be filed by or against any of the undersigned; or if any of the premises covered by the Trust Deed without the written consent of the Lender, or if any of the undersigned makes an assignment for the benefit of creditors, or the filing of a lis pendens naming any of the undersigned or any action affecting the title of the real property described in the Trust Deed, or if any of the undersigned have judgments entered against them, or should any lien be asserted, filed, or recorded against the property; or should the Lender, in its sole discretion decide that the funds in the Trust Account are insufficient to complete the construction of said improvements and pay all charges and bills for labor and materials used in connection therewith; or if it would be imprudent to disburse funds from said Trust Account or any part thereof, or should any condition or circumstance arise or exist at any time by reason of any governmental order, decree or regulation, shortage of material or labor, or for any reason whatsoever which would prevent or preclude the construction and completion of the improvement in compliance with the plans and specifications therefore in an orderly and expeditious manner without delay, or in the event of any other default of any nature or kind not specified herein, then in any of such events, at its option, the Lender may, without notice:
- (a) Declare all indebtedness secured by the Trust Deed immediately due and payable and thereupon the Lender shall be released from all obligations to the undersigned under this Agreement; such application shall not operate to waive or cure any default existing under the Note or Trust Deed, nor to invalidate any notice of Default or any act done pursuant to such notice and shall not prejudice any rights of the Lender under the Trust Deed or Note; or,
- (b) Lender may take possession of the premises and let contracts for or proceed with the finishing of the improvements, and to commence or appear in any action or proceedings to enforce any contracts made by the undersigned in connection with or for the construction of the building as aforesaid, as the agent of the undersigned, and all sums paid or expended by the Lender under the terms of this Agreement in excess of the Trust Deed amount shall be considered and be an additional loan to the undersigned and the repayment thereof, together with interest thereon at the rate of sixteen percent (16%) per annum and shall be secured by the Trust Deed and shall be due and payable without notice on demand.
16. That the undersigned do hereby irrevocably appoint and authorize the Lender, as agent to execute and file or record any Notice which the Lender deems necessary or advisable to protect the interest of the Lender under this Agreement or the security of the Trust Deed. This appointment is hereby expressly declared or be that of an agent coupled with an interest and therefore irrevocable.

17. That no waiver or any default or breach by Borrower hereunder shall be implied from any omission by Lender to take action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in the waiver and it shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, terms or conditions.
- The consent or approval by Lender to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.
18. That the Lender shall have the right to commence, appear in, or to defend any action or proceeding purporting to affect the right or duties of the parties hereunder, or the security of Lender in the subject property, or the payment of any funds in the Trust Account and in connection therewith pay necessary expenses, employ counsel and pay his reasonable fee. All sums paid or expended by the lender under the terms of this Agreement in additional loan to the Borrower and the repayment thereof, together with interest thereto as set forth herein, shall be secured by the Trust Deed and shall be due and payable without notice, on demand, and the undersigned jointly and severally agree to pay the same.
19. That this Agreement is made and entered into for the sole protection and benefit of Lender and Borrower, the successors and assigns of Lender and the successor and permitted assigns of Borrower, and no other person or persons shall have any right of action on this Agreement or right to the funds at any time on deposit in the Trust Account. The un-disbursed balance of the loan shall be property of and under the exclusive control of the Lender up to the time of disbursements, and shall not be subject to attachment or garnish by Borrower's creditors.
20. It is intended that the provisions of this Agreement are supplemental to the provisions of the Trust Deed, and that the two documents be construed together in all respects. In the event that an inconsistency between the two documents is found, so that the provisions of both cannot be given effect, it is intended that the Trust Deed shall be the controlling instrument.
21. The principal amount of the loan and accrued interest thereon shall be due and payable, if not sooner paid as set forth in the note. If any dwelling securing the loan is not sold, the loan closed to the permanent buyer, and the release price applied to the loan balance by the date full payment is due, Borrower will have the option to.
22. Pay the loan in full.
23. Must approach Lender to see if Investor will consider allowing Borrower to pay to Lender a minimum extension fee equal to 1 percent of the loan amount to extend the loan term for a period of two months.
24. The Lender may require a reserve up to 5% of the loan amount to be held back. This amount may be used to cover accrued interest and other expenses that may be incurred prior to payoff. After 30 days from end of construction, when all lien releases become unconditional, all outstanding obligations will be paid.
25. Borrower/Buyer may not and must not occupy home until loan is paid in full or

written approval is obtained from Lender.

26. A complete insurance policy of fire, liability, etc., must be taken out on the project in an amount at least equal to the construction loan principal, before construction begins and before any funds are distributed after purchase of land. Century Mortgage should be named as loss payee and shall receive a copy of the policy naming Century Mortgage as loss payee.
27. Borrower to provide "Waiver of Lien" on all payments to subcontractors if lender requests.

EXECUTED at ST. GEORGE, UTAH, this 10<sup>th</sup> day of December 2008

---

Pioneer Point LLC  
Heath Jay Johnston (Managing Member)

Heath Jay Johnston (Personally)

---

Richard Stallings

---

Eileen Stallings

ACCEPTED \_\_\_\_\_, 2009 for Century Mortgage

By \_\_\_\_\_

Title \_\_\_\_\_

# **EXHIBIT M**

Subj: **Rexburg Property**  
 Date: 11/14/2012 10:24:26 A.M. Mountain Standard Time  
 From: [staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)  
 To: [Gsandowlaw@aol.com](mailto:Gsandowlaw@aol.com)  
 Garrett Sandow

The following facts are the reasons why the payoff on the Rexburg property should be allocated as stated.

1. My principle and interest paid out at the time my bank went broke was 287,000.
2. When my bank, America West closed down I had the F.D.I.C. come after me threatening to go after everything that I have. Neither Larkins or John had any interest or financial responsibility in helping me at all. Just because I was able to get out of that problem does not mean that I share that risk with John.
3. Tim Cobb told me he was really disappointed in dealing with John because he could not get him to follow through in a promptly time. He commended me for getting things back in a efficient time. Tim Cobb told me that he would not have any future dealings with John.
4. This entire project was under John watch. I totally left everything up to his disgression. I am very disappointed that we sold this property under his advisment to some one who barrowed hard money on it. This ruined potential profits thst would have been good for both of us.
5. Since this property has drug on. I have been forced to sell some other property at a discount for need capital on a project in Caldwell.

#### Conclusion

My mistake was putting this in Johns hands. I feel if he would have been more assertive we would not be in this position. For this reason I feel that I should at least get the money that I invested into this property back.

Investment	286,000.	\$ 200,000 -
I received a draw balanced left	30,000. - 256,000.	<u>30,000</u>

I plan on taking the following amounts and then giving the balance of each draw to Garret Sandow for Johns dispersel.

First draw 106,000  
 second draw 150,000      100  
                               200

\$ 860,000.00

STATE RECOVERY  
 100 MARK LN  
 BLACKFOOT, ID 83221  
 208-785-6591

150  
 200  
350      \$ 300,000.00 Inf

150	200	350	290	200	100	650,000
100	30		200	100		
<u>250</u>	<u>200</u>	<u>350</u>	<u>290</u>	<u>200</u>	<u>100</u>	<u>650,000</u>
<u>170</u>	<u>170</u>	<u>170</u>	<u>590</u>	<u>240</u>		<u>150,000</u>
80						

# **EXHIBIT N**

## STATEMENT

Richard Stallings

106 W 380 N  
Blackfoot, ID 83221  
(208)317-1133  
[staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)

STATEMENT NO. [100]  
DATE December 27, 2013  
CUSTOMER ID Rexburg Property

Next Pay-out end of January or first of February 2013	
Total	300,000.00
Paid to John	155,482.35
Paid to Richard	144,517.75

E MAILED FROM  
RICHARD STALLINGS  
TO GARRETT SANDOW

RICHARD GOT \$0,000  
DOWN + 9,000<sup>00</sup> CASH  
EXTRA 10% —  
117BS. 21 — CREDIT  
CASH ON THE MUST HAVE  
USED TO OBTAIN SOME OF  
MONEY.

**FAXED**  
6/21/18

DAVID N. PARMENTER, ISB # 2441  
NATHAN D. RIVERA, ISB # 8339  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, ID 83221  
(208)785-5618  
(208)785-4858 (fax)  
parlaw@gmail.com

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiff,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**PLAINTIFF'S FIRST SET OF  
INTERROGATORIES, REQUESTS FOR  
PRODUCTION OF DOCUMENTS AND  
REQUESTS FOR ADMISSIONS TO  
DEFENDANTS**

**TO: RICHARD STALLINGS, an individual, and EILEEN STALLINGS, an individual, by  
and through his attorney of record JARED M. HARRIS of the firm BAKER &  
HARRIS.**

Under authority of Rule 33 of the Idaho Rules of Civil Procedure, Plaintiff Jon Gregory requests that the Defendants Richard Stallings and Eileen Stallings answer in writing and under oath, within thirty (30) days from the receipt hereof, the following interrogatories; pursuant to Rule 34(a) of the Idaho Rules of Civil Procedure, Plaintiff Jon Gregroy requests that the Defendants Richard Stallings and Eileen Stallings produce the following documents or things for inspection or copying at the offices of Parmenter Rivera, LLP, 53 South Shilling Street, Blackfoot, Idaho 83221,

**PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND REQUESTS FOR ADMISSIONS TO DEFENDANTS - 1**

within thirty (30) days hereof; and pursuant to Rule 36(a) of the Idaho Rules of Civil Procedure, Plaintiff Jon Gregroy requests that the Defendants Richard Stallings and Eileen Stallings answer in writing and under oath by admitting or denying the following facts within thirty (30) days from the receipt hereof.

## **INTRODUCTION**

In responding to these discovery requests make a diligent search of your records and furnish all information available to you, or subject to your reasonable inquiry, including information in the possession of your attorneys, investigators, employees, agents, consultants, experts, or any other person or persons acting on your behalf or retained by either you or your attorney.

If you cannot answer the following 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 and knowledge you have concerning the unanswered portion.

These discovery requests are deemed continuing and your answers thereto are to be supplemented as additional information and knowledge become available to you.

## **INTERROGATORIES**

INTERROGATORY NO. 1: With respect to all witnesses who you intend or expect to call at the trial of this action, please provide the name of the witness; the address and telephone number of the witness; the current occupation of the witness; and a summary of the substance of the respective expected testimony of each witness.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS TO DEFENDANTS - 2**

INTERROGATORY NO. 2: You are hereby requested to 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 exhibits' expected relevance to the cause.

INTERROGATORY NO. 3: With respect to any and all individuals not intended or expected to be witnesses at the trial of this action, and known to you or your attorneys who have any knowledge regarding the particular facts and matters in dispute in this action, please provide the name of the individual; the address and telephone number of the individual; the current occupation of the individual; and a summary of the particular knowledge which each individual has pertaining to the facts and issues involved in this case.

INTERROGATORY NO. 4: Describe each and every document or other writing in your possession, including any written notes, memoranda or written statements of any kind, whether in your possession, or your attorney's, which in any way pertain to the facts and circumstances at issue in this particular action.

INTERROGATORY NO. 5: Please state the name and address of each person whom you expect to call as an expert witness at trial. For each person please provide:

- (a) A complete statement of all opinions to be expressed and the basis and reasons therefore;
- (b) A description of the data or other information considered by the witness in forming the opinions;
- (c) A description of any exhibits to be used as a summary of or support for the opinions;

- (d) A description of any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
- (e) A statement of the compensation to be paid for the testimony; and
- (f) A listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

INTERROGATORY NO. 6: Please set forth with particularity each and every fact upon which you assert any of your defenses or claims and for each fact indicate the source of the fact and how evidence will be introduced regarding the alleged fact.

INTERROGATORY NO. 7: For each written or verbal communications with Plaintiff or other individuals relative to the Beck transaction and property purchase of development, please describe the following:

- a. The substance of the communication.
- b. The party or parties in the communication.
- c. When and where such communications took place.

INTERROGATORY NO. 8: Please describe in detail any understanding you had with Plaintiff in this matter, and set forth the terms of any agreement, arrangement, or understanding with Plaintiff.

INTERROGATORY NO. 9: Please set forth all terms of any arrangement of agreement with Plaintiff, including the date it was entered into, its terms, and any alleged breach of said contract.

INTERROGATORY NO. 10: Have you ever been convicted of a felony? If so, please state:

- (a) The case number and Court;
- (b) Each crime to which a guilty plea or verdict was entered;

(c) The sentence enforced for each crime to which a guilty plea or verdict was entered.

INTERROGATORY NO. 11: For each of the Requests for Admissions set forth below, in which your answer is anything but an unqualified admission, please describe in full and complete detail the factual basis upon which said Request for Admission was answered.

INTERROGATORY NO. 12: Describe in detail the initial contact with Plaintiff regarding this matter, the nature of the conversation or conversations, and what action each party took following such communications.

INTERROGATORY NO. 13: Describe how and what amounts you raised to purchase and otherwise develop the property in question.

INTERROGATORY NO. 14: Describe who developed the property, and what the relationship and duties were of each of the respective parties, as well as any third parties.

INTERROGATORY NO. 15: Describe what security was provided by you or any other party to proceed with purchase, development, or construction on the properties, including your two acres.

INTERROGATORY NO. 16: Describe any and all amounts borrowed by you, including the amounts, lenders, and timing for such loans.

INTERROGATORY NO. 17: Please set forth each and every fact upon which you rely in denying that Plaintiff further sold his property known as G's Dairy Delights LLC, and took the proceeds from the sale and invested them in the Marian Beck property and project.

INTERROGATORY NO. 18: Describe each and every fact upon which you deny that the funds from G's Dairy Delights LLC, were \$292,629.43.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS TO DEFENDANTS - 5**

INTERROGATORY NO. 19: Describe in detail what efforts were made to sell or liquidate the Mary Beck property, or otherwise recoup any losses from the project, and specify who participated in those efforts.

INTERROGATORY NO. 20: Describe in detail the role of Rockwell Court Limited Partnership and any other participants, including Summit Development, Century Mortgage in the process or project.

INTERROGATORY NO. 21: Describe in detail you role, as well as Plaintiff's role in this process and dividing up any respective interests that you had in the process.

INTERROGATORY NO. 22: Please set forth fully all facts and circumstances upon which you assert that Plaintiff's claim is barred by the statute of frauds.

INTERROGATORY NO. 23: Please set forth fully all facts and circumstances upon which you assert that Plaintiff's claim is barred by the applicable statutes of limitations.

INTERROGATORY NO. 24: Please set forth fully all facts and circumstances upon which you assert that Defendants are not the real parties in interest. Please specify who you believe are the real parties in interest and why.

INTERROGATORY NO. 25: Please set forth fully all facts and circumstances upon which you assert that Plaintiff's have failed to join one or more persons or entities necessary for a just adjudication.

INTERROGATORY NO. 26: Please set forth fully all facts and circumstances upon which you assert that Plaintiff's have failed to mitigate damages.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS TO DEFENDANTS - 6**

INTERROGATORY NO. 27: Please set forth fully all facts and circumstances upon which you assert that Plaintiff's claim was caused by a fellow servant.

INTERROGATORY NO. 28: Please set forth fully all facts and circumstances upon which you assert that the contract is unenforceable for lack of or due to failure of consideration.

### **REQUESTS FOR ADMISSIONS**

REQUEST FOR ADMISSION NO. 1: Admit that you executed a Construction Loan Agreement and Assignment of Trust. (Exhibit A)

REQUEST FOR ADMISSION NO. 2: Admit that you executed a Promissory Note. (Exhibit B).

REQUEST FOR ADMISSION NO. 3: Admit that you forwarded a proposal to Plaintiff, proposing to pay the sum of \$256,000.00 from the sale proceeds. (Exhibit C)

REQUEST FOR ADMISSION NO. 4: Admit that you forwarded a second proposal, proposing to pay Plaintiff the sum of \$155,482.28, and yourselves \$144,517.72 from the sale proceeds. (Exhibit D)

REQUEST FOR ADMISSION NO. 5: Admit that Plaintiff had a greater financial investment in the purchase and project than you did.

### **REQUESTS FOR PRODUCTION**

REQUEST FOR PRODUCTION NO. 1: Please produce a true and correct copy of any letter, memorandum, contract, exhibit, warranty, statement, advertisement, brochure, pamphlet, invoice, receipt, or other document which you intend to introduce as an exhibit at trial.

REQUEST FOR PRODUCTION NO. 2: Please produce correct, complete and legible copies of every document, record or other writing identified by you in response to any of the above Interrogatories. For each document produced, please state the Interrogatory to which the document relates.

REQUEST FOR PRODUCTION NO. 3: Please produce a true and correct copy of any letter, e-mail, deleted e-mail, memorandum, contract, or other document which relates to the subject of this action, or to the relationship of Plaintiff and Defendants and/or purchase or development of the Beck Property.

REQUEST FOR PRODUCTION NO. 4: Please produce a true and correct copy of any letter, e-mail, deleted e-mail, memorandum, warranty, statement, advertisement, brochure, invoice, receipt or other document which relates to the purchase of development of the Beck Property or the subject of this action.

REQUEST FOR PRODUCTION NO. 5: For each communication referred to in Interrogatory No. 7, please provide a true and correct copy of any such letter, email, deleted email, memorandum, note, or other such document.

REQUEST FOR PRODUCTION NO. 6: Please produce a copy of any and all closing or loan documents, title reports, settlement statements, deeds, or other information from the purchase by Defendant's of the property in question, including title company, bank, or other funding, or financial institution documents.

REQUEST FOR PRODUCTION NO. 7: Please produce true and correct copies of any deeds showing your ownership interest in the subject property.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS TO DEFENDANTS - 8**

REQUEST FOR PRODUCTION NO. 8: Please produce a true and correct copy of any document showing your alleged ownership interest in the two acre parcel.

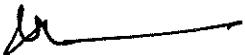
REQUEST FOR PRODUCTION NO. 9: Please produce all documents regarding any financing or loan you obtained pertaining to the property in question, including any improvements, development or purchase thereof.

REQUEST FOR PRODUCTION NO. 10: Please produce any subordination agreement you entered into regarding the two or four acre parcels of property.

REQUEST FOR PRODUCTION NO. 11: Please produce your tax returns for years 2008 through 2015.

These requests are deemed continuing, and your answers thereto are to be supplemented as additional information, knowledge or documents become available or known to you.

DATED this 18 day of <sup>June</sup> May, 2018.



---

DAVID N. PARMENTER  
Attorney for Plaintiff

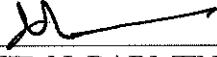
**PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS TO DEFENDANTS - 9**

CERTIFICATE OF SERVICE

I certify that on this 21<sup>st</sup> day of May, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS TO DEFENDANTS**

Person(s) Served: Jared M. Harris    () Mail  
BAKER & HARRIS    () Fax  
266 West Bridge Street    () Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-6749

  
DAVID N. PARMENTER

**PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSIONS TO DEFENDANTS - 10**

Law Offices of  
**BAKER & HARRIS**

Dwight E. Baker, of counsel  
Jared M. Harris \*  
Jonathan W. Harris  
\* Also Admitted in Utah

266 W. BRIDGE STREET  
BLACKFOOT, ID 83221  
Telephone (208) 785-2310  
Facsimile (208) 785-6749  
E-Mail —jharris@bakerharrislaw.com  
Web — www.bakerharrislaw.com

July 23, 2018

Bingham County District Court  
Bingham County Courthouse  
501 N Maple  
Blackfoot, ID 83221

Re: Jon Gregory v. Richard Stallings and Eileen Stallings  
Case No. CV-2017-1651  
B&H File No. 11248

Dear Madam Clerk:

Enclosed please find the following for filing in the above-entitled matter:

- 1) Notice of Compliance.

We thank you in advance for your usual courtesy. If you have any question or concern, please do not hesitate to contact me.

Sincerely,

BAKER & HARRIS



Jared M. Harris

JMH/cb

Enclosures

cc: David Parmenter, via facsimile (208) 785-4858  
Richard Stallings

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

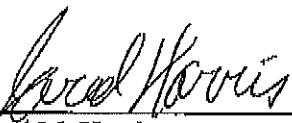
Case No. CV-2017-1651

**NOTICE OF COMPLIANCE**

NOTICE IS HEREBY GIVEN, pursuant to Rule 36(c)(2) of the Idaho Rules of Civil Procedure, that Defendants' answers and responses to Plaintiff's First Set of Requests for Admissions were served upon Plaintiff, by and through his attorney of record, David N. Parmenter, of the law firm of PARMENTER & RIVERA, LLP.

DATED this 23<sup>rd</sup> day of July, 2018.

BAKER & HARRIS

  
\_\_\_\_\_  
Jared M. Harris

**NOTICE OF COMPLIANCE - 1**

CERTIFICATE OF SERVICE

I certify that on this 27<sup>th</sup> day of July, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **NOTICE OF COMPLIANCE**

Person(s) Served: David N. Parmenter  Mail  
PARMENTER & RIVERA, LLP  Fax  
53 South Shilling  Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-4858



---

Jared M. Harris

**NOTICE OF COMPLIANCE - 2**

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S FIRST SET OF  
REQUEST FOR ADMISSIONS**

COMES NOW the Defendants, by and through their counsel of record Jared M. Harris of the firm of BAKER & HARRIS, and pursuant to Rule 36, Idaho Rules of Civil Procedure, responds to Plaintiff's First Set of Requests for Admissions to Defendants as follows:

**REQUESTS FOR ADMISSIONS**

**REQUEST FOR ADMISSION NO. 1:** Admit that you executed a Construction Loan Agreement and Assignment of Trust. (Exhibit A)

**RESPONSE:** No Exhibit A was attached, accordingly deny.

**REQUEST FOR ADMISSION NO. 2:** Admit that you executed a Promissory Note. (Exhibit B).

**DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST SET OF REQUEST FOR ADMISSIONS - 1**

RESPONSE: No Exhibit B was attached, accordingly deny.

REQUEST FOR ADMISSION NO. 3: Admit that you forwarded a proposal to Plaintiff, proposing to pay the sum of \$256,000.00 from the sale proceeds. (Exhibit C)

RESPONSE: No Exhibit C was attached, accordingly deny.

REQUEST FOR ADMISSION NO. 4: Admit that you forwarded a second proposal, proposing to pay Plaintiff the sum of \$155,482.28, and yourselves \$144,517.72 from the sale proceeds. (Exhibit D)

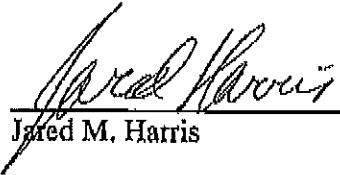
RESPONSE: No Exhibit D was attached, accordingly deny.

REQUEST FOR ADMISSION NO. 5: Admit that Plaintiff had a greater financial investment in the purchase and project than you did.

RESPONSE: Defendant does not know the extent of Plaintiff's financial investment. Defendant has made reasonable inquiry and only knows what Defendant paid for his property. Information that he knows or can easily be obtained is insufficient to enable him to more fully admit or deny this allegation.

DATED this 23<sup>rd</sup> day of July, 2018.

BAKER & HARRIS

  
\_\_\_\_\_  
Jared M. Harris

**DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST SET OF REQUEST FOR ADMISSIONS - 2**

CERTIFICATE OF SERVICE

I certify that on this 23<sup>rd</sup> day of July, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST SET OF REQUEST FOR ADMISSIONS**

Person(s) Served: David N. Parmenter  
PARMENTER & RIVERA, LLP  
53 South Shilling  
Blackfoot, ID 83221  
Fax No. (208) 785-4858

( ) Mail  
(X) Fax  
( ) Hand Delivered

  
\_\_\_\_\_  
Jared M. Harris

**DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST SET OF REQUEST FOR ADMISSIONS - 3**

DAVID N. PARMENTER  
NATHAN D. RIVERA  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, Idaho 83221  
(208) 785-5618  
(208)785-4858 FAX  
parlaw@gmail.com

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual	)	
	)	
Plaintiff,	)	Case No. CV-2017-1651
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR RECONSIDERATION
RICHARD STALLINGS, an individual and	)	
EILEEN STALLING, an individual	)	
Defendants.	)	
	)	

COMES NOW the plaintiff, through counsel, David N. Parmenter, and submits the following memorandum, in support of his motion for reconsideration.

**I. Statute of Limitations.**

Both parties recognize this case hinges upon the application of the four-year statute of limitations for oral contracts, I.C. § 5-217. The generally accepted rule is the statute of limitations begins to run when a breach of the contract occurs, or a party reasonably should have known a breach occurred.

In addressing this issue, the Court stated as follows:

Assuming a contract existed between Gregory and Stallings, which is appropriate for purposes of adjudicating the Stallings' Motion, Richard Stallings received the

payout from the sale of the two properties on or about December 21, 2012. On that date, Gregory knew that Stallings held funds, a portion of which Gregory expected to recover. He could have sued the Stallings on that date to recover the proceeds he believed should have gone to him. Order Granting Defendants' Motion for Summary Judgment, page 22, 23.

Based upon this paragraph, we believe the Court determined that all funds were paid to Stallings at closing on December 21, 2012. This factual finding is in error. Neither party to this suit was paid in full on December 21, 2017. Only a portion of the proceeds was paid to Stallings on December 21, 2012. Based upon Exhibit "N," it appears the sum of \$93,697.01 was paid to Stallings on that date. (See line entitled "First payment" on Exhibit N). Exhibit M also alluded to at least two draws, which is what the parties had anticipated.

However, and this is absolutely critical to this lawsuit, the remaining \$300,000.00 was paid over time, after the date of closing referred to as December 21, 2018.. The remaining \$300,000.00 was paid over the course of several draws in 2013, pursuant to the Real Estate Option Agreement with the purchaser, Memphis Development Group. Pursuant to the Real Estate Purchase Agreement these funds were to be paid as the development progressed to completion.

If the Court looks closely at Exhibit "N," Richard Stallings indicates in his "Statement" (which was dated December 27, 2012 - after the closing date) that the remaining \$300,000.00 was anticipated in January or February, 2013. It was a portion of those funds that were to be paid to Gregory. Stallings even sets out his proposed distribution to each party to happen when the rest of the money is paid - later in 2013—in Exhibit N..

Unfortunately, as many construction projects experience, delays caused the draws to be extended through the summer of 2013. At all times, Mr. Gregory was assured he would get a portion of the final draw received.

Around the date of August 27, 2013, Stallings was to receive the final draw. (We are unsure as to the exact date, as discovery responses for interrogatories and request for production of documents from Defendants were severely overdue and never answered). It was at this time Stallings sent an email to Tim Cobb, a representative of the Buyer making payments to Stallings, which finally indicated he would not pay any portion to Gregory. (Exhibit I) This email was forwarded to Garrett Sandow on September 9, 2013, and received by Gregory on September 12, 2013. This was the first time Stallings declined to pay a portion of the draws to Gregory.

As cited by this Court, the question of when a breach occurred is a factual one. Spence v. Howell, 126 Idaho at 770, 890 P.2d at 721. The record before this Court establishes that a substantial portion of the funds were paid through 2013. As late as August 27, 2013, Stallings was receiving funds from the sale. This was not communicated to Gregory until at least September 9, 2013 (the date of the email to Garrett Sandow), or a few days later when it was delivered to Gregory on September 12, 2013. Either way, this lawsuit was filed within the four-year statute of limitations, based on the breach occurring when Gregory learned of it, or reasonably should have learned of it.

At a minimum, there is a factual issue to be determined on when the cause of action accrued. With factual issues remaining, we respectfully request the District Court reconsider its decision and deny Defendants' motion for summary judgment.

DATED this 29<sup>th</sup> day of October, 2018

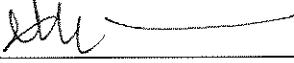
  
DAVID N. PARMENTER  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 29<sup>th</sup>, day of October, 2018 upon the following:

- Mail  
 Fax  
 Hand Delivery

Jared M. Harris  
Baker & Harris  
266 W. Bridge St.  
Blackfoot, ID 83221

  
DAVID N. PARMENTER

# **EXHIBIT I**

From: Tim Cobb <tim@Constructionenhancement.com>  
To: Gsandowlaw <Gsandowlaw@aol.com>  
Subject: Fwd: Rexburg Property  
Date: Mon, Sep 9, 2013 5:26 pm

Garrett-

Hope you are doing well... I received the below from Richard Stallings in the past few weeks, and then followed up with a call to him and conversation, in which he mentioned some of the items that went wrong in this deal.

Give me a call when you get a moment.

509-990-2324

Sent from Tim's iPad

Begin forwarded message:

**From:** "State Recovery, Inc ." <[staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)>  
**Date:** August 27, 2013, 2:01:42 PM PDT  
**To:** Tim Cobb <[tim@Constructionenhancement.com](mailto:tim@Constructionenhancement.com)>  
**Subject:** Rexburg Property

Tim I have been doing a lot of thinking in reference to John Gregory and the sale of the Rexburg property. When John had the IRS call me it really caught me off guard. In that they asked me if I had anything to do with John Gregory and I assured them that we had no partnership and that I owed him no money in this transaction. Then shortly after that John told me that in selling of the property that the buyer only wanted to deal with one person not two, I thought that was strange but said nothing at that time. Latter I learned that the whole reason for this is because the IRS is after John for past taxes. I am very unhappy with John in trying to put me in the middle of his problems.. As I review this entire project I was no more than an investor in that John made all the decisions on this property. The only thing I did is purchase my ground and John thought he could market it. About two years ago John called up and said for us to go up to Rexburg and sign some papers. We thought we were selling the property and when we got up to Rexburg they had us sign a guarantee for 950,000.00. The closing agent said we were in good shape and it was a normal procedure. John should have said something to me. I am upset that John allowed this project to borrow hard money that took all the profits. I look at the opportunity cost of this project that was given away through Johns poor management of this property. I feel that I should get the full opportunity cost back on my risk of my investment. Beside the opportunity cost, by John having me talk to the IRS put me in a position that I am very uncomfortable with. I feel John is way out of line in putting me in any position that could threaten my financial position. In conclusion I feel in order for me to get a return on my investment there is no money owed to John from the current sell.

Thank you  
Richard Stallings

STATE RECOVERY  
100 MARK LN  
BLACKFOOT, ID 83221  
208-785-6591

# **EXHIBIT M**

Subj: Rexburg Property  
 Date: 11/14/2012 10:24:26 A.M. Mountain Standard Time  
 From: [staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)  
 To: [Gsandowlaw@aol.com](mailto:Gsandowlaw@aol.com)  
 Garrett Sandow

The following facts are the reasons why the payoff on the Rexburg property should be allocated as stated.

1. My principle and interest paid out at the time my bank went broke was 287,000.
2. When my bank, America West closed down I had the F.D.I.C. come after me threatening to go after everything that I have. Neither Larkins or John had any interest or financial responsibility in helping me at all. Just because I was able to get out of that problem does not mean that I share that risk with John.
3. Tim Cobb told me he was really disappointed in dealing with John because he could not get him to follow through in a promptly time. He commended me for getting things back in a efficient time. Tim Cobb told me that he would not have any future dealings with John.
4. This entire project was under John watch. I totally left everything up to his disgression. I am very disappointed that we sold this property under his advisment to some one who barrowed hard money on it. This ruined potential profits that would have been good for both of us.
5. Since this property has drug on. I have been forced to sell some other property at a discount for need capital on a project in Caldwell.

#### Conclusion

My mistake was putting this in Johns hands. I feel if he would have been more assertive we would not be in this position. For this reason I feel that I should at least get the money that I invested into this property back.

Investment	286,000.	\$ 86,000.00
I received a draw balanced left	30,000. ← 256,000.	\$ 200,000 ← 30,000

I plan on taking the following amounts and then giving the balance of each draw to Garret Sandow for Johns dispersel.

First draw 106,000  
 second draw 150,000      100  
                               200

\$ 860,000.00

STATE RECOVERY  
 100 MARK LN  
 BLACKFOOT, ID 83221  
 208-785-6591

150      \$ 300,000.00 Inf  
 200                              

150	200	350	290	200	100	650,000
100	30	350	290	200	100	650,000
<u>250</u>	<u>200</u>	<u>350</u>	<u>290</u>	<u>200</u>	<u>100</u>	<u>650,000</u>
<u>170</u>	<u>170</u>	<u>170</u>	<u>590</u>	<u>590</u>	<u>590</u>	<u>590</u>
80						

\$ 170,000.00      240      150,000

# **EXHIBIT N**

4

## STATEMENT

Richard Stallings

186 W 380 N  
Blackfoot, ID 83221  
(208)317-1133  
[staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)

STATEMENT NO. [100]  
DATE December 27, 2012  
CUSTOMER ID Resburg Property

Next Pay-out end of January or first of February 2013	
Total	300,000,00
Paid to John	155,482,28
Paid to Richard	144,517,72

E MAILED FROM  
RICHARD STALLINGS  
TO GARRETT SANDOW

RECHARD GOT 30,000<sup>00</sup>  
DRAW + 9,000<sup>00</sup> UNION  
EXTENSIONS —  
11,785.47 — CREDIT  
UNION IS ~~TOOK~~ MUST HAVE  
USED TO OBTAIN SOME OF  
MONEY.

DAVID N. PARMENTER  
NATHAN D. RIVERA  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, Idaho 83221  
(208) 785-5618  
(208)785-4858 FAX  
parlaw@gmail.com

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual	)	
	)	
Plaintiff,	)	Case No. CV-2017-1651
	)	
vs.	)	AFFIDAVIT OF JON GREGORY IN
	)	SUPPORT OF MOTION
RICHARD STALLINGS, an individual and	)	FOR RECONSIDERATION
EILEEN STALLING, an individual	)	
Defendants.	)	
	)	

Jon Gregory being first duly sworn on oath, deposes and says:

1. I am the plaintiff in this matter.
2. I was aware of the closing scheduled on December 21, 2012, but knew that I had no money due at that time, because of further conditions, development, and draws. The agreement under the Real Estate Option Agreement with Memphis Development Group (Exhibit X), provided for a purchase price of \$800,000, as well as reimbursement to me and Stallings for reimbursement of engineering costs and existing infrastructure in the sum of \$300,000, which “cost shall be paid no later than 50% completion of the final development.”
3. Exhibit N specifies that Stallings did receive some payment and credits around the

time of closing—but further specifies that we would be receiving draws in January or early February 2013.

4. The construction project took longer to complete than anticipated, thus delaying the payouts or draws to me and Stallings for several months, well into 2013. The draws were sent directly to Stallings, but it was my understanding that there were several smaller draws paid out over the spring and summer of 2013. Further, Stallings had advised me that I would receive my money last—from the final draw or draws.

5. I continued to receive information regarding the progress of the development and assurances that the draws would be forthcoming through 2013, until I actually received information by email from Stallings to Tim Cobb and forwarded to Mr. Sandow (as of September 9, 2018) that he did not intend to pay me, as he previously had agreed (Exhibit I).

FURTHER AFFIANT SAYETH NOT.

Dated this 29 day of OCTOBER, 2018.



JON GREGORY

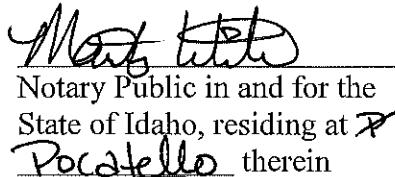
STATE OF IDAHO )

:ss

County of Bingham)

SUBSCRIBED AND SWORN TO before me this 29 day of October, 2018.

My cmn exprs: 12/16/22



Maritza White  
Notary Public in and for the  
State of Idaho, residing at P  
Pocatello therein



# **EXHIBIT I**

From: Tim Cobb <tim@Constructionenhancement.com>  
To: Gsandowlaw <Gsandowlaw@aol.com>  
Subject: Fwd: Rexburg Property  
Date: Mon, Sep 9, 2013 5:26 pm

Garrett-

Hope you are doing well... I received the below from Richard Stallings in the past few weeks, and then followed up with a call to him and conversation, in which he mentioned some of the items that went wrong in this deal.

Give me a call when you get a moment.

509-990-2324

Sent from Tim's iPad

Begin forwarded message:

**From:** "State Recovery, Inc ." <[staterecovery@hotmail.com](mailto:staterecovery@hotmail.com)>  
**Date:** August 27, 2013, 2:01:42 PM PDT  
**To:** Tim Cobb <[tim@Constructionenhacement.com](mailto:tim@Constructionenhacement.com)>  
**Subject:** Rexburg Property

Tim I have been doing a lot of thinking in reference to John Gregory and the sale of the Rexburg property. When John had the IRS call me it really caught me off guard. In that they asked me if I had anything to do with John Gregory and I assured them that we had no partnership and that I owed him no money in this transaction. Then shortly after that John told me that in selling of the property that the buyer only wanted to deal with one person not two, I thought that was strange but said nothing at that time. Latter I learned that the whole reason for this is because the IRS is after John for past taxes. I am very unhappy with John in trying to put me in the middle of his problems.. As I review this entire project I was no more than an investor in that John made all the decisions on this property. The only thing I did is purchase my ground and John thought he could market it. About two years ago John called up and said for us to go up to Rexburg and sign some papers. We thought we were selling the property and when we got up to Rexburg they had us sign a guarantee for 950,000.00. The closing agent said we were in good shape and it was a normal procedure. John should have said something to me. I am upset that John allowed this project to borrow hard money that took all the profits. I look at the opportunity cost of this project that was given away through Johns poor management of this property. I feel that I should get the full opportunity cost back on my risk of my investment. Beside the opportunity cost, by John having me talk to the IRS put me in a position that I am very uncomfortable with. I feel John is way out of line in putting me in any position that could threaten my financial position. In conclusion I feel in order for me to get a return on my investment there is no money owed to John from the current sell.

Thank you  
Richard Stallings

STATE RECOVERY  
100 MARK LN  
BLACKFOOT, ID 83221  
208-785-6591

# **EXHIBIT N**

✓

## STATEMENT

Richard Stallings

180 W 380 N  
Blackfoot, ID 83221  
(208)317-1133  
[statererecovery@hotmail.com](mailto:statererecovery@hotmail.com)

STATEMENT NO. [100]  
DATE December 27, 2012  
CUSTOMER ID Rexburg Property

Next Pay-out end of January or first of February 2013	
Total	300,000.00
Paid to John	155,482.39
Paid to Richard	144,517.72

E MAILED FROM  
RICHARD STALLINGS  
TO GARRETT SANDOW

RICHARD GOT \$0,500  
DEPOT + 9,000<sup>00</sup> LOTIN  
EXTENSIONS —  
11/18/55 E? — CREDIT  
UNION ~~RE~~ MUST HAVE  
USED TO OBTAIN SOME OF  
MONEY.

# **EXHIBIT X**

*Tim Cobb*

X

## **REAL ESTATE OPTION AGREEMENT**

Contract ID #VP1108

THIS REAL ESTATE OPTION AGREEMENT (the "Option Agreement") is entered into as of July 19, 2011 by and between John Gregory and or Assigns ("Seller") located at P.O. Box 1296 Blackfoot, ID 8322, and Memphis Development Group, its successors and/or assigns ("Purchaser"), located at 4110 Eaton Avenue, Suite A, Caldwell, Idaho, 83607.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration received, Seller is willing to grant Purchaser an Option to purchase the Option Property on the terms and conditions set forth herein:

**1. PROPERTY DESCRIPTION:**

The property is located at and is described as Four (4) + acres on the North side of west 7<sup>th</sup> South commonly known as Pioneer Pointe in Rexburg, Idaho (full legal description to be included in final closing documents agreeable to Purchaser), an recorded plat, see 'Exhibit A', together with all of Seller's right, title, and interest in all common areas, amenities, appurtenances, fixtures, chattels, mineral rights and the underlying fee land (collectively referred to as the "Option Property").

**2. GRANT OF OPTION:**

Seller hereby grants to Purchaser the exclusive right and option to purchase the Option Property on the terms and conditions set forth herein ("the Option").

**3. PURCHASE PRICE:**

The purchase price shall be Eight Hundred Thousand (\$800,000.00) Dollars. In addition Purchaser shall reimburse Seller for cost of engineering plans and existing infrastructure a sum of Three Hundred Thousand (\$300,000.00) Dollars, said cost shall be paid no later than 50% completion of the final development. Third party verification of percentage completion shall be approved by both Purchaser and Seller. In addition said cost shall be carried out under the terms of an AIA contract between the Purchaser and Seller to be completed at land closing.

**4. EXERCISE OF OPTION:**

The Purchaser may exercise the Option at any time after the execution of this Option Agreement and prior to the expiration of the Option Term by notifying Seller of its intent to exercise the Option.

**5. OPTION TERM:**

The term of the Option shall commence upon execution of this Option Agreement and automatically expire if the Option is not exercised by December 31<sup>st</sup>, 2011 or extended as provided in Section 11 herein.

**6. OPTION PAYMENT:**

A Five thousand (\$5,000.00) Dollar Option Payment shall be placed in Purchaser's agent's trust account in the form of a note upon execution of the Option Agreement by Seller and Purchaser. Upon Purchaser's acceptance and approval of all items listed under "Initial Due Diligence Items" in Section 8 and upon receipt of approvals for financing and other items as listed in Section 9, "Conditions Precedent to Option Payment," the Option Payment shall be deemed nonrefundable, Said time to meet these requirements not to exceed December 15<sup>th</sup> 2011. Purchaser shall notify Seller in writing indicating the election to proceed and will release the Five Thousand (\$5,000.00) Dollar note Option Payment (the "Option Payment") to the Seller. The Option Payment shall be applied against the Purchase price as of the Closing Date.

**7. INITIAL DUE DILIGENCE PERIOD:**

Purchaser shall have one hundred fifty (145) days following the receipt from Seller of the "Initial Due Diligence Items" listed below to review said items and notify the Seller in writing of (a) its approval and acceptance of the Initial Due Diligence items, which approval and acceptance shall not be unreasonably withheld, and its election to proceed, or (b) if one or more of the Initial Due Diligence Items are not unacceptable, the reason(s) for not approving such item(s). In the event any such items are unacceptable to Purchaser, Seller shall have 10 business days following receipt of Purchaser's notification to notify Purchaser of any actions it intends to take to address the unapproved item to Purchaser's satisfaction. If any such item remains unapproved by Purchaser for any reason, Purchaser shall have the option of waiving the item and electing to proceed, or terminating this Option Agreement. In the event Purchaser elects not to continue this transaction during the initial Due Diligence Period, then this Option Agreement shall be null and void and all option notes or payments shall be returned to the Purchaser and neither party shall have any further liability or responsibility related to this transaction.

**8. INITIAL DUE DILIGENCE:**

No later than 15 business days following execution of this Option Agreement Seller shall provide Purchaser with:

- A. A preliminary title commitment including copies of all easements and other agreements in effect with respect to all or a portion of the Property, all permits, all tax statements and notices of actual or proposed adjustment of tax valuations, and all appraisals, topographical maps, geotechnical or soil studies, feasibility studies, engineering studies, utility locations, environmental and Hazardous Materials reports and studies and other reports and studies relative to the Option Property or its use or development in Seller's possession and/or control;
- B. Copies of all correspondence in Seller's possession and/or control with all governmental entities relative to the Option Property;

- C. A copy of all current leases, maintenance/service contracts and agreements, and any other contracts relating to the ownership, operation and maintenance of the Option Property, if any;
  - D. Evidence as to local improvement districts and governmental assessments affecting the Option Property and proposed assessments and easements.
9. **CONDITIONS PRECEDENT TO OPTION PAYMENT:**  
Conditions precedent to making the Option Payment non-refundable shall include:
- A. **Zoning:**  
The Option Property is currently zoned (Medium Residential 2). Purchaser wishes to develop the Option Property as Multi-Family Apartments. The Purchaser's proposed development shall consist of a minimum of Sixty(60) units of residential apartment housing units. This Option Agreement is contingent upon the completion of all planning and zoning approvals required by the City of Rexburg and all other government entities having jurisdiction over the proposed development for said density requirement, Seller to support the proposed use. Purchaser's application for such approvals shall not be unnecessarily delayed.
  - B. **Entitlements:**  
All federal, state, county and city permits, approvals and licenses necessary for Purchaser's intended development of the Property including any zoning changes, annexations, site plan approvals, variances or platting required (including legal access to the parcel). This shall be deemed to include confirmation of the availability to the Option Property at reasonable expense of water, sewer, gas, power, telephone, cable and all other necessary utilities, but does not include the building permits required for construction of the proposed development.
  - C. **Financing:**  
Commitments for all financing including but not limited to Low Income Housing Tax Credits, Federal HOME funds, other HUD or USDA funding, Federal Home Loan Bank loans and/or grants, construction and permanent loans, and investment partnership approvals. It is expressly understood that said commitments will be contingent upon completion and approval of a Phase 1 Environmental Site Assessment and, if direct federal funding is involved, a federal environmental review conducted in accordance with the National Environmental Policies Act of 1969 (NEPA).
10. **ADDITIONAL CONDITIONS PRECEDENT FOR CLOSING:**  
In addition to the conditions described in Section 9, which shall be conditions precedent for closing as well as conditions precedent for making the Option Payment non-refundable, the following conditions shall be additional conditions for closing:

- A. Survey:  
Purchaser's receipt and review, at Purchaser's expense, of an acceptable ALTA survey of the Option Property from a licensed surveyor, and Purchaser's approval of the same, which shall not be unreasonably withheld.
- B. Deed:  
Purchaser's receipt and approval, which shall not be unreasonably withheld, of a good and sufficient warranty, free of all liens and encumbrances not previously approved by Purchaser, except: for:
1. All easements, rights of way, covenants and restrictions of record approved by Purchaser.
  2. Current and future year's real estate taxes.
  3. Assessments existing as of the date of this Option Agreement.
  4. Zoning and other governmental laws and regulations provided none of the foregoing interfere with the intended use of the Option Property by Purchaser.
- C. Status of Property:  
As of the closing date, the Subject Property shall be free of all occupants, tenants and personal possessions of Seller.
- D. Condition of Property:  
Purchaser's acceptance of the physical condition of all improvements located on the Option Property; if any exist. Seller agrees to allow Purchaser reasonable access to all improvements for the purpose of a physical inspection by Purchaser and Purchaser's representatives. In the event Seller cannot deliver to Purchaser good and marketable title to the Option Property, or the conditions of improvements on the Option Property; if any exist, do not meet Purchaser's approval upon final inspection, Purchaser shall have the option of waiving the item and electing to proceed, or terminating this Option Agreement. In the event Purchaser notifies Seller that Purchaser will not continue this transaction, then this Option Agreement shall be null and void and all option notes and payments shall be returned to the Purchaser and neither party shall have any further liability or responsibility related to this transaction.
11. EXTENSION OF OPTION:  
Purchaser shall be granted up to two (2) extensions of Sixty (60) days each to close the transaction upon the deposit of an additional Three Thousand (\$3,000.00) Dollar cash Option Payment for each extension (the "Extension Payment"). Said Extension Payment(s) shall be released to seller on the first of each extension month to be deemed nonrefundable at that time. These option payments shall also be applied against the Purchase price as of the Closing Date.

- 12. ASSIGNMENT:**  
Purchaser shall have the right, after giving written notice to Seller, to assign its rights under this Option Agreement to any entity controlled by, or under common control of the Purchaser. Should the proposed use change from multifamily apartments, Sellers written approval shall be required.
- 13. RIGHT TO ENTER:**  
Seller agrees to provide access to the Property to Purchaser, Purchaser's agents, inspectors and engineers or surveyors for the purpose of determining the suitability of the Property for the Purchaser's purposes. Purchaser shall be allowed to perform surveys, environmental and geotechnical testing, water and soils testing or any other studies or testing deemed necessary on the Property, with Seller's standard form of indemnity as addressed in the Option Agreement. Purchaser shall in no event allow liens to be placed on the property prior to closing and shall be responsible for insuring their own contractors and employees.
- 14. TITLE COMPANY:**  
Title and escrow shall be handled by Pioneer Title Company.
- 15. CLOSING:**  
Closing shall occur according to the usual and customary closing procedures in effect in Madison County, Idaho, within 30 days of the date that Purchaser notifies Seller of its intent to close, however; no later than January 15th, 2012 (unless extended as indicated in Section 11 herein).
- 16. CLOSING COSTS:**  
Seller shall pay the costs of a standard coverage title insurance policy, transfer or sale taxes, and any title curative work it elects to undertake and all real estate sales commissions. Purchaser shall pay recording fees, cost of additional title insurance required by lenders and/or investors and all costs in connection with physical inspections, and any other investigations made in connection with Purchaser's Due Diligence Review, including additional Engineering Fees required by the development only agreed upon in advance in writing. The Purchaser and Seller shall pay for their own respective attorney fees. All escrow fees shall be paid equally by Purchaser and Seller, except as otherwise provided in the Option Agreement.
- 17. NOTICES:**  
All notices and other communications provided for in this Option Agreement shall be in writing, effective on the date hand delivered, sent by facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as below, or to such other address as the parties may designate to the other parties in writing.

**PURCHASER:**

Community Development, Inc.

**SELLER:**

Jon C Gregory

4110 Eaton Avenue, Suite A  
Caldwell, Idaho 83607  
Attn: C. Fred Cornforth, CEO

P.O. Box 1296  
Blackfoot, ID 83221  
Attn: Jon C Gregory

**18. BROKER COMMISSION / MULTI STATE REFFERAL FEE:**

Seller agrees to pay a Three (3%) percent commission of the final sales price, NOT including any reimbursable items as stated in section 3 herein, payable at closing, to Tim Cobb Broker of Vantage Partners LLC.

**19. TIME IS OF THE ESSENCE; NO WAIVER:**

Time is of the essence regarding the dates set forth in this Option Agreement. Any extensions of deadlines set forth in this Option Agreement must be agreed to in writing by both parties. Unless otherwise explicitly stated in this Option Agreement:

- (a) performance under each paragraph of this Option Agreement which references a date shall be required by 5:00 p.m. Mountain Time on the stated date; and
- (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the time requirement.

In the event that the date upon which any action is to be taken pursuant to this Option Agreement is a Saturday, Sunday, or legal holiday, the action may be taken upon the next business day. No waiver of the breach of any provision of this Option Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Option Agreement.

**20. PURCHASER'S DEFAULT:**

Upon default by Purchaser and subsequent termination of this Option Agreement by Seller, Seller may, as its sole remedy, retain any non-refundable Option Payment and any additional cash Extension Payments deposited by Purchaser as liquidated damages.

**21. SELLER'S DEFAULT:**

Upon default by Seller, Purchaser may enforce this Option Agreement and pursue any and all remedies available at law or equity, including taking action for specific performance and damages.

**22. FEDERAL FUNDS:**

Purchaser hereby informs Seller that Purchaser or Purchaser's successor or assignee may utilize federal funds with respect to the acquisition of the Option Property. Because federal funds may be so used, Purchaser discloses to Seller as follows:

- A. This sale is voluntary. The Purchaser, or its successor or assignee, is not a governmental entity and does not possess the power of eminent domain.

- B. Purchaser estimates the fair market value of the Option Property to be Purchaser's proposed purchase price of Eight Hundred Thousand (\$800,000.00) Dollars.

**23. SELLER'S WARRANTIES; INDEMNITY:**

- A. If, prior to closing, Seller becomes aware of any fact or circumstance which would materially change a representation, then Seller will immediately give notice of such changed fact or circumstance to Purchaser, but such notice shall not relieve the Seller of its liabilities or obligations hereunder.
- B. Seller shall issue a certificate at the closing stating that all of Seller's representations and warranties are true and correct as of said date, except as to facts, if any, concerning which Purchaser was previously notified in writing.
- C. If Seller gives notice of a material change prior to closing, Purchaser shall have the right without penalties to terminate the Option Agreement and have the deposited promissory note and Option Payment and all interest thereon immediately returned without further liability. Seller shall reimburse Purchaser for its due diligence costs incurred in connection with this Option Agreement within ten (10) days after presentation of a schedule thereof to Seller.
- D. Seller shall indemnify, defend, and hold Purchaser harmless from and against any and all losses, claims, fines, penalties, causes of action, suits, losses, costs, expenses (including attorneys' fees), and damages arising from or out of the inaccuracy of Seller's representations or warranties herein or a breach of its covenants hereunder and shall pay all of Purchaser's costs and expenses, including reasonable attorneys' fees incurred in enforcing this duty to indemnify and hold harmless, up until closing and recording of the property in Canyon County.
- E. Seller shall provide Purchaser at closing any and all building plans, specifications and inspection reports pertaining to this sale not already provided hereunder.

**24. SELLER REPRESENTATION TO PURCHASER:**

As an inducement to Purchaser to enter this transaction, Seller makes the following representations, warranties and agreements.

- A. The Option Property and Seller's use and occupancy thereof do not, to the best of Seller's knowledge, and will not at closing, violate any applicable covenant, condition or restriction or any applicable statute, ordinance, regulation, order, permit, rule, agreement or law, including, without limitation, any building, zoning, hazardous or toxic waste, health or environmental restriction or any governmental requirement concerning fill, use, construction, maintenance, repair, replacement, operation or occupancy of the Option Property.

To the best of Seller's knowledge, no hazardous or toxic waste or other hazardous or toxic material or substance has been deposited or spilled on or under or released from the Option Property or exists on or under the Option Property. Any Hazardous Wastes removed from the property by the previous or current owner have been properly disposed of and are not or will not become the responsibility of any Purchaser. Seller hereby indemnifies Purchaser from any claim arising from the disposal of any Hazardous Materials in the past.

- B. Seller has not received any notice of the existence of any current violation of any applicable covenant, condition or restriction or any applicable statute, ordinance, regulation, order, permit, rule or law, including, without limitation, any building, zoning or environmental restriction or requirement concerning filling, use, construction, maintenance, repair, replacement, operation or occupancy of the Option Property which has not been disclosed to Purchaser and will not have been resolved to Purchaser's satisfaction.
- C. There are no obligations in connection with the Option Property which will be binding upon Purchaser after closing, except the leases, loan obligations and those other agreements relative to the Option Property which Purchaser elects in writing to assume at closing.
- D. To the best of Seller's knowledge, there is no plan, study or effort being made by any governmental or quasi-governmental authority or agency or any non-governmental person.
- E. There is no written or oral agreement which will prevent or impede Seller's timely and full performance of all of Seller's obligations under this Option Agreement.
- F. There are no assessments for public improvements or other governmental or quasi-governmental fees, charges or assessments, except real property taxes, levied against or, to the best of Seller's knowledge, threatened with respect to the Option Property or its use.
- G. All permits and approvals required for the Option Property's present use and status have been obtained and all conditions contained therein have been satisfied, except as set forth in paragraph (A) above.
- H. There are no claims, actions, suits or governmental investigations or proceedings existing or, to the best of Seller's knowledge, threatened against or involving the Option Property (including, without limitation any condemnation or eminent domain proceeding or matter related to the formation of or assessment by a local improvement district), except as set forth in paragraph (A) above.
- I. Any and all agreements with third parties with respect to the Option Property, including, but not limited to, brokerage agreements, management agreements,

maintenance agreements and janitorial agreements will be canceled by Seller upon closing without cost, penalty or expense to Purchaser, unless otherwise specifically authorized by Purchaser in writing.

- J. To Seller's knowledge, there are no attachments, executions, or assignments for the benefit of creditors, or voluntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or threatened by or against Seller or the Option Property that could affect the Option Property or Seller's transfer of the Option Property.
- K. All insurance policies now maintained on the Option Property will be kept in effect, up to and including the closing. Seller has received no notice from any insurance company or rating organization of any defects in the condition of the Option Property, or of conditions that would prevent the continuation of existing coverage or would increase the present rate of premium.
- L. All documentation heretofore or hereafter furnished to the Purchaser relative to the Option Property is true, complete and correct, contains no factual inaccuracies and accurately represents all factual matters stated therein.
- M. No representation made by Seller contains any untrue statement of material fact or fails to state a material fact necessary in order to make statements contained therein not misleading or necessary in order to provide a prospective Purchaser of the Option Property with adequate information as to the Option Property.

**25. ATTORNEY'S FEES:**

In the event of any litigation, both parties agree to submit to binding mediation as a means of conflict resolution between the parties relating to this Option Agreement. The prevailing party shall be entitled to recover all costs and expenses incurred, including reasonable attorney's fees, if any.

**26. ENTIRE AGREEMENT:**

This Agreement contains the entire Option Agreement and understanding between the parties and is subject to no understandings, conditions or representations that are not set forth herein. This Option Agreement may only be amended in writing and signed by both parties. Time is of the essence in the performance of this Option Agreement.

**27. JOINT AND SEVERAL LIABILITY:**

Each individual, corporation or agency signing this Option Agreement as Seller and Purchaser shall be jointly and severally liable for the performance of every term and condition of this Option Agreement.

**28. INVALID PROVISION:**

If any provision of this Option Agreement shall be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**29. PARTIES BOUND:**

This Option Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

**30. GOVERNING LAW:**

This Option Agreement shall be governed by and enforced in accordance with the laws of the State of Idaho.

**31. CAPTIONS:**

The captions in this Option Agreement are inserted only for convenience and in no way construe or interpret the provisions hereof or affect their scope or intent.

**32. RIDERS:**

The riders and exhibits or addendums, if any, attached hereto, signed and initialed by the parties are made a part of this Option Agreement hereof.

**33. MULTIPLE ORIGINALS:**

This Option Agreement may be executed as facsimile originals and each copy of this Option Agreement bearing the facsimile transmitted signature of any party's authorized representative shall be deemed to be an original. Notwithstanding the validity of the facsimile originals, it is intended that this Option Agreement be manually executed in two originals and that each party shall receive a fully executed original.

**34. ACCEPTANCE:** This Option agreement is made subject to the acceptance of Seller and Buyer on or before (Date) August 12<sup>th</sup> 2011 at 5:00 pm (MST). If acceptance of this Option agreement is no received within the time specified, the offer is withdrawn and the entire Earnest / Option Money, if any, shall be refunded to Buyer on demand.

Seller acknowledges receipt of a completely filled in copy of the option agreement which the Seller has fully read and has had all desired opportunity to review with an attorney of his/her/its choosing. In the event that the Purchaser fails to complete the Purchase as herein provided, the Option Payment shall be distributed as follows: After deduction of any title insurance and escrow cancellation charges, the Option Payment shall be distributed 100% to Seller.

**PURCHASER:**

Memphis Development Group

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**SELLER:**

A *Jon Gregory*  
By: *Jon Gregory*  
Its: \_\_\_\_\_

DAVID N. PARMENTER, JSB # 2441  
NATHAN D. RIVERA, ISB # 8339  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, Idaho 83221  
(208) 785-5618  
(208) 785-4858 FAX  
parlaw@gmail.com

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual )  
                                    )  
Plaintiff,                      ) Case No. CV-2017-1651  
                                    )  
vs                                 ) OBJECTION TO ATTORNEYS FEES  
                                    ) AND COSTS  
RICHARD STALLINGS, an individual and )  
EILEEN STALLING, an individual )  
Defendants.                     )  
                                    )

---

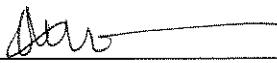
COMES NOW, the Plaintiff, by and through his attorney, DAVID N. PARMENTER, and hereby objects to an award of attorneys fees and costs incurred in the above entitled matter, pursuant to Idaho Code §12-120, and Idaho Code § 12-121, and I.R. CP 54 (E)(6).

Plaintiff objects to the motion for award of attorneys fees, in part because he has filed a motion for reconsideration, which has not yet been ruled upon by the Court. If the court rules in plaintiff's favor, in the pending motion for reconsideration, and if it asserts that defendant would not be the prevailing party, so the award of attorneys fees is contingent upon the ruling on the outstanding motion.

Plaintiff further objects to the attorneys fees requested as being unreasonable and excessive, under the facts and circumstances of the case.

Finally, plaintiff reserves the right to check on such further basis as may be appropriate, as the court rules on any additional matters, including whether defendants are entitled to attorneys fees pursuant to Idaho Code Sections 12-120 and 12-121.

DATED this 5 day of November, 2018

  
DAVID N. PARMENTER  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 5<sup>L</sup> day of November, 2018 upon the following:

Mail  
 Fax  
 Hand Delivery

Jared M. Harris  
Baker & Harris  
266 W. Bridge St.  
Blackfoot, ID 83221



---

DAVID N. PARMENTER

Jared M. Harris  
**BAKER & HARRIS**  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: [jharris@bakerharrislaw.com](mailto:jharris@bakerharrislaw.com)  
Idaho State Bar No. 4488

Attorneys for Defendants

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

**JON GREGORY, an individual,**

**Plaintiffs,**

**v.**

**RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,**

**Defendants.**

**Case No. CV-2017-1651**

**OBJECTION AND RESPONSE  
TO MOTION TO RECONSIDER**

COMES NOW Defendants, Richard Stallings and Eileen Stallings, (hereinafter "Defendants") by and through their attorney of record, Jared M. Harris of the law firm of **BAKER & HARRIS**, and hereby objects and responds to the Plaintiff's Motion to Reconsider.

**RESPONSE TO MOTION TO RECONSIDER**

This Court properly ruled that this matter is barred by the statute of limitations. This Court correctly stated:

Assuming a contract existed between Gregory and Stallings, which is appropriate for purposes of adjudicating the Stallings Motion, Richard Stallings received the payout from the sale of the two properties on or about December 21, 2012. On that date, Gregory knew that the Stallings held the funds, a portion of which Gregory expected to recover. He could have sued the Stallings on that date to recover the proceeds he

**OBJECTION AND RESPONSE TO MOTION TO RECONSIDER - 1**

believed should have gone to him. That the Stallings might have paid Gregory in the future would not toll or delay the running of the statute of limitations.

Order Granting Defendants' Motion for Summary Judgment at page 22-23.

In this matter the statute of limitations begins to run when a breach occurred. This statement of law is acknowledged by Gregory. "The generally accepted rule is the statute of limitations begins to run when a breach of the contract occurs..." Memorandum in support of Motion for Reconsideration, page 1. Case law clearly supports this conclusion: "A cause of action for breach of contract accrues upon a breach even though no damage may incur until later." Mason v. Tucker & Associates, 125 Idaho 429, 436, 871 P.2d 846, 853 (Ct. App. 1994) see also McCormack v. Cadwell 152 Idaho 15, 20, 266 P.3d 490, 495 (2011) (Ct. App. rev. den) ("[A] cause of action generally accrues 'when a party may maintain a lawsuit against another.'") (quoting Western Corp. v. Vanek 144 Idaho 150, 151, 158 P.3d 313, 314 (Ct. App. 2008)); Peterson v. Gentillon, 154 Idaho 184, 189, 296 P.3d 390, 395 (2013) (quoting Singleton v. Pitchon, 102 Idaho 588, 590, 635 P.2d 254, 256 (1982)) ("The statute of limitations also begins to run following the accrual of a cause of action and statute of limitations may only be asserted as a bar after the expiration of the statutory period following the accrual of the cause of action.")

In this matter (assuming that an agreement was reached) the agreement was that the parties were to "share profits equally after consideration repayment of their original respective investments." See Exhibit A to the Affidavit of Jared M. Harris in support of Reply Brief in support of Defendants' Motion for Summary Judgment. That agreement would have been breached on December 21, 2012 when Stallings received funds and did not pay Gregory. This is when the cause of action accrued. Nowhere in that "agreement" was there an agreement that Stallings would receive all of their funds

## **OBJECTION AND RESPONSE TO MOTION TO RECONSIDER - 2**

first and that only after Stallings was completely paid was Gregory to receive any monies. Gregory could have brought this lawsuit immediately after December 21, 2012 when Stallings received any funds from the sale of this property. Under Gregory's analysis, Stallings apparently had the ultimate right to determine when or if Gregory was to receive any monies. This is contrary to the alleged agreement.

Gregory had the right to bring the lawsuit on December 21, 2012 and simply waited too long to do so. This Court's conclusion that as of December 21, 2012 "Gregory knew that Stallings held funds, a portion of which Gregory expected to recover. He could have sued the Stallings on that date to recover the proceeds he believed should have gone to him. That the Stallings might have paid Gregory in the future would not toll or delay the running of the statute of limitations." is accurate and should not be reconsidered.

Counsel for Gregory implies that this matter should have been delayed to allow discovery to be completed. However, counsel for Gregory obtained a continuance of the hearing to accommodate counsel's schedule, and at no time did Plaintiff ask this Court for additional time to obtain facts. Further, counsel for Gregory expressly agreed to defer Stallings' response to discovery pending the summary judgement. See Affidavit of Jared M. Harris submitted herewith. It is disingenuous at best for counsel to now assert that responses were supposed to have been made. In Stapleton v. Cushman Drilling & Pump Company, 153 Idaho 735, 742, 291 P.3d 418, 425 (2012) the Court stated:

Nevertheless he did not ask the district court for a continuance under rule 56(f) of the Idaho Rules of Civil Procedure, and it is therefore too late to assert that he needed more time to respond to the Defendant's motion for summary judgment.

### **OBJECTION AND RESPONSE TO MOTION TO RECONSIDER - 3**

Plaintiff additionally implies, without citing any authority, that there should be a discovery rule in connection with the breach of contract. This bold assertion is contrary to the law.

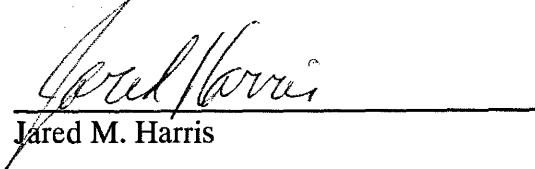
However, McCormick does not point to us, and we have not found, any Idaho authority allowing discovery exceptions for the running of the statute of limitation other than those authorized by Idaho Code §§ 5-218(4) and 5-219(4) which are inapplicable here. In deference to the authority of the Idaho Legislature to draft discovery exceptions onto to statute of limitations when it elects to do so, the Idaho Supreme Court has declined to recognize additional discovery exceptions.

McCormack v. Cadwell 152 Idaho 15, 20, 266 P.3d 490,495 (Ct. App. (2011) rev. den)

Accordingly, this motion should be denied.

DATED this 15<sup>th</sup> day of November, 2018.

BAKER & HARRIS

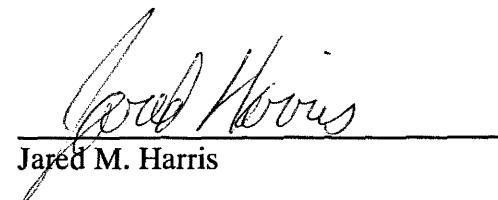
  
\_\_\_\_\_  
Jared M. Harris

CERTIFICATE OF SERVICE

I certify that on this 16 day of November, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **OBJECTION AND RESPONSE TO MOTION TO RECONSIDER**

Person(s) Served:	David N. Parmenter PARMENTER & RIVERA, LLP 53 South Shilling Blackfoot, ID 83221 parlaw@gmail.com	( <input type="checkbox"/> ) Mail ( <input type="checkbox"/> ) Hand Delivered ( <input checked="" type="checkbox"/> ) iCourt Email
-------------------	---	--

  
\_\_\_\_\_  
Jared M. Harris

**OBJECTION AND RESPONSE TO MOTION TO RECONSIDER - 4**

Jared M. Harris  
**BAKER & HARRIS**  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**AFFIDAVIT OF JARED M.  
HARRIS IN SUPPORT  
OBJECTION AND RESPONSE  
TO MOTION TO RECONSIDER**

Jared M. Harris, deposes and says:

1. That he is now the attorney for the Defendants Richard Stallings and Eileen Stallings, and makes this Affidavit based on personal knowledge.
2. That after receiving the discovery requests from Plaintiff on or about June 21, 2018, I had a conversation with counsel for Plaintiff. In that discussion it was expressly agreed that Defendant would not have to answer the discovery until the Motion for Summary Judgment was resolved.
3. That I have read the foregoing affidavit, and I hereby certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

**AFFIDAVIT OF JARED M. HARRIS IN SUPPORT OBJECTION AND RESPONSE TO  
MOTION TO RECONSIDER - 1**

FURTHER your affiant saith not.

DATED this 15<sup>th</sup> day of November, 2018.

  
\_\_\_\_\_  
Jared M. Harris

CERTIFICATE OF SERVICE

I certify that on this 16<sup>th</sup> day of November, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **AFFIDAVIT OF JARED M. HARRIS IN SUPPORT OBJECTION AND RESPONSE TO MOTION TO RECONSIDER**

Person(s) Served: David N. Parmenter  Mail  
PARMENTER & RIVERA, LLP  Fax  
53 South Shilling  Hand Delivered  
Blackfoot, ID 83221  
Fax No. (208) 785-4858 *+ file*

  
\_\_\_\_\_  
Jared M. Harris

**AFFIDAVIT OF JARED M. HARRIS IN SUPPORT OBJECTION AND RESPONSE TO MOTION TO RECONSIDER - 2**

Jared M. Harris  
**BAKER & HARRIS**  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

**JON GREGORY**, an individual,

Plaintiffs,

v.

**RICHARD STALLINGS**, an individual, and  
**EILEEN STALLINGS**, an individual,

Defendants.

Case No. CV-2017-1651

**MOTION TO STRIKE**

COMES NOW Defendants, Richard Stallings and Eileen Stallings, (hereinafter “Defendants”) by and through their attorney of record, Jared M. Harris of the law firm of **BAKER & HARRIS**, and hereby moves this Court to strike the references to a August 27, 2013 payment.

Plaintiff on the last page of memorandum states: “Around the date of August 27, 2013, Stallings was to receive the final draw.” Plaintiff additionally asserts on the last page of his memorandum, “As late as August 27, 2013, Stallings was receiving funds from the sale.” Neither statement is supported by any authority. There are no admissible facts supporting these statements and the same should be stricken.

**MOTION TO STRIKE - 1**

DATED this 15<sup>th</sup> day of November, 2018.

BAKER & HARRIS

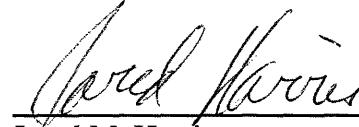
  
\_\_\_\_\_  
Jared M. Harris

**CERTIFICATE OF SERVICE**

I certify that on this 16<sup>th</sup> day of November, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **MOTION TO STRIKE**

Person(s) Served:	David N. Parmenter	( <input type="checkbox"/> ) Mail
	PARMENTER & RIVERA, LLP	( <input type="checkbox"/> ) Fax
	53 South Shilling	( <input type="checkbox"/> ) Hand Delivered
	Blackfoot, ID 83221	( <input checked="" type="checkbox"/> ) Email
	Fax No. (208) 785-4858	
	parlaw@gmail.com	

  
\_\_\_\_\_  
Jared M. Harris

**MOTION TO STRIKE - 2**

Jared M. Harris  
**BAKER & HARRIS**  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

**JON GREGORY, an individual,**

Plaintiffs,

v.

**RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,**

Defendants.

Case No. CV-2017-1651

**OBJECTION TO AFFIDAVIT OF  
JON GREGORY**

COMES NOW Defendants, Richard Stallings and Eileen Stallings, (hereinafter "Defendants") by and through their attorney of record, Jared M. Harris of the law firm of **BAKER & HARRIS**, and hereby objects to portions of the Affidavit of Jon Gregory.

Defendants object to Exhibit X referenced in the Affidavit of Jon Gregory for lack of foundation. The affidavit does not say what Exhibit X is. Exhibit X is not signed by both parties. There was no statement or indication that it is the agreement that resulted in the sale of Defendant's property. In fact, the purchaser shown in Exhibit X is the Memphis Development Group. The actual purchaser as evidenced by Exhibit D previously attached to the Affidavit of Richard Stallings is Rockwell Corp Limited Partnership. Further, Exhibit X is signed by Jon Gregory as the seller as of

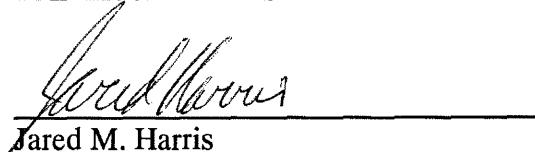
**OBJECTION TO AFFIDAVIT OF JON GREGORY - 1**

July 19, 2011. However, Jon had no ownership interest in the property as of February 11, 2009 (See Exhibit B attached to the Affidavit of Richard Stallings previously submitted.) The purchase price in Exhibit X and the actual purchase price are not the same. Further, according to Exhibit X, the option has to be exercised by December 31, 2011 unless extended for possible 120 days more (Exhibit X ¶ 5 and 11).

Defendants also object to ¶ 4 for lack of foundation. There is no statement as to how Mr. Gregory knows the alleged facts asserted there. Further, the allegation contain hearsay as to how Mr. Gregory has an understanding as to how the draws were to be paid.

DATED this 15 day of November, 2018.

BAKER & HARRIS



Jared M. Harris

CERTIFICATE OF SERVICE

I certify that on this 16 day of November, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **OBJECTION TO AFFIDAVIT OF JON GREGORY**

Person(s) Served:	David N. Parmenter PARMENTER & RIVERA, LLP 53 South Shilling Blackfoot, ID 83221 Fax No. (208) 785-4858 parlaw@gmail.com	( <input type="checkbox"/> ) Mail ( <input type="checkbox"/> ) Fax ( <input type="checkbox"/> ) Hand Delivered ( <input checked="" type="checkbox"/> ) iCourt Email
-------------------	---	--



Jared M. Harris

**OBJECTION TO AFFIDAVIT OF JON GREGORY - 2**

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

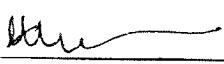
Defendants.

Case No. CV-2017-1651

**STIPULATION TO SUBMIT ON  
BRIEFING**

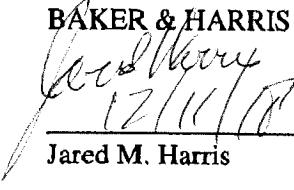
COMES NOW, Defendants, Richard Stalling and Eileen Stalings, by and through counsel, Jared M. Harris, of BAKER & HARRIS and Plaintiff, Jon Gergory, by and through counsel, David N. Parmenter, of PARMENTER & RIVERA, LLP and hereby stipulate and agree that the parties are waiving their oral argument on the Plaintiff's Motion to Reconsider and Defendant's Motion to Strike and stipulate that the matter is submitted on briefing and that the hearing scheduled for December 17, 2018 be vacated.

PARMENTER & RIVERA, LLP

 12/10/2018  
\_\_\_\_\_  
David N. Parmenter

Date

BAKER & HARRIS

 12/11/18  
\_\_\_\_\_  
Jared M. Harris

Date

**STIPULATION TO SUBMIT ON BRIEFING - 1**

Filed:12/14/2018 13:11:23  
Seventh Judicial District, Bingham County  
Pamela Eckhardt, Clerk of the Court  
By: Deputy Clerk -Cammack, Brandee

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**ORDER TO SUBMIT ON  
BRIEFING AND NOTICE  
VACATING HEARING**

HAVING CONSIDERED THE STIPULATION OF THE PARTIES and otherwise being advised in the law and the premises;

It is hereby ORDERED, ADJUDGED and DECREED that Plaintiff's Motion to Reconsider and Defendant's Motion to Strike is submitted on briefing and that the hearing scheduled for Monday, December 17, 2018 at 9:45 a.m. is vacated.

DATED 12-14-2018.

  
\_\_\_\_\_  
Darren B. Simpson, District Judge  
Signed: 12/14/2018 10:47 AM

**ORDER TO SUBMIT ON BRIEFING AND NOTICE VACATING HEARING - 1**

CLERK'S CERTIFICATE OF SERVICE

I certify that on this 14th day of December, 2018, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **ORDER TO SUBMIT ON BRIEFING AND NOTICE VACATING HEARING**

Person(s) Served:	Jared M. Harris BAKER & HARRIS 266 West Bridge Street Blackfoot, Idaho 83221 jharris@bakerharrislaw.com cblackburn@bakerharrislaw.com	( <input type="checkbox"/> Mail <input checked="" type="checkbox"/> iCourt E-Mail ( <input type="checkbox"/> Hand Delivered)
	PARMENTER & RIVERA, LLP 53 South Shilling Blackfoot, ID 83221 parlaw@gmail.com	( <input type="checkbox"/> Mail <input checked="" type="checkbox"/> iCourt E-Mail ( <input type="checkbox"/> Hand Delivered)

Pamela W. Eckhardt

---

CLERK OF THE COURT

By:

Brandee Cammack

Deputy Clerk Signed: 12/14/2018 01:11 PM



**ORDER TO SUBMIT ON BRIEFING AND NOTICE VACATING HEARING - 2**

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,	)	<b>CASE NO. CV-2017-1651</b>
	)	
Plaintiff,	)	<b>ORDER DENYING</b>
	)	<b>PLAINTIFF'S MOTION FOR</b>
vs.	)	<b>RECONSIDERATION</b>
	)	
RICHARD STALLINGS, an individual,	)	
and EILEEN STALLINGS, an individual,	)	
	)	
Defendants.	)	
	)	

**I. STATEMENT OF THE CASE**

Plaintiff Jon Gregory (hereinafter “Gregory”) filed the above-numbered lawsuit against Defendants Richard Stallings, an individual, and Eileen Stallings, an individual (hereinafter collectively referred to as the “Stallings”) and claimed breach of contract, breach of implied contract, and *quantum meruit*.<sup>1</sup> The Stallings summarily prevailed against Gregory based upon the applicable statute of limitations.<sup>2</sup>

Gregory now moves for reconsideration pursuant to Idaho Rule of Civil Procedure 11.2(b)(1).<sup>3</sup> The Stallings object to Gregory’s Motion.<sup>4</sup>

---

<sup>1</sup> Verified Complaint, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed September 6, 2017) (hereinafter “**Gregory’s Complaint**”).

<sup>2</sup> Order Granting Defendant’s Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed October 15, 2018) (hereinafter the “**Summary Judgment Order**”).

<sup>3</sup> Motion for Reconsideration, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed October 29, 2018) (hereinafter “**Gregory’s Motion**”).

<sup>4</sup> Objection and Response to Motion to Reconsider, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed November 16, 2018) (hereinafter the “**Stallings’ Objection**”).

The parties stipulated to submit Gregory's Motion on the briefing.<sup>5</sup> Based upon the record, the parties' arguments, and the relevant authorities, Gregory's Motion shall be denied.

## II. ISSUE

Gregory concedes that the four-year statute of limitations for oral contracts, Idaho Code § 5-217, governs the parties' interactions in this case.<sup>6</sup> He argues that all of the funds from the sale of the parties' Property were not paid to the Stallings on December 21, 2012, but were paid in installments over the course of several draws in 2013.<sup>7</sup> Gregory argues that the oral contract was not breached until on or about August 27, 2013, when the Stallings received the last draw.<sup>8</sup> The Stallings respond that the parties' agreement did not include a requirement that Gregory was to be paid out of the last draw, that Gregory knew of the December 21, 2012 sale, and that he waited too long to file his lawsuit.<sup>9</sup>

The parties' arguments raise the following issue in light of the relevant authorities: Has Gregory shown that the *Summary Judgment Order* should be reconsidered?

---

<sup>5</sup> Stipulation to Submit on Briefing, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed December 12, 2018).

<sup>6</sup> Memorandum in Support of Motion for Reconsideration, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed October 29, 2018) (hereinafter “**Gregory’s Memorandum**”), at p. 1.

<sup>7</sup> Gregory’s Memorandum, at p. 2.

<sup>8</sup> *Id.*

<sup>9</sup> Stallings’ Objection, at pp. 1-3.

### III. FINDINGS OF FACT

1. Gregory purchased two (2) acres of a four (4) acre parcel of land in Rexburg, Idaho because he wanted to develop the property into student housing or a similar commercial venture.<sup>10</sup> (The entire four-acre parcel is hereinafter referred to as the “Property.”)

2. On September 27, 2007, Gregory sold an approximately two (2) acre parcel of land to the Stallings.<sup>11</sup> The two-acre parcel purchased by the Stallings was contiguous to the two-acre parcel owned by Gregory.<sup>12</sup> According to Gregory, this purchase represented the other two acres of the four-acre Property in Rexburg.<sup>13</sup>

3. On February 2, 2009, Gregory transferred his interest in his two-acre portion of the Property to Pioneer Point LLC.<sup>14</sup> Gregory asserts that Pioneer Point LLC was to develop the Property, put in roads, parking lots, sewer, and water, and to begin construction on at least two buildings.<sup>15</sup>

4. On December 8, 2010, Pioneer Point LLC and the Stallings entered into a construction loan with Century Mortgage Company

... to finance a part of the cost of construction of certain improvements upon the described premises in accordance with plans and specifications that have been or will be deposited by [Pioneer Point, LLC and the Stallings] with [Century Mortgage Company].<sup>16</sup>

---

<sup>10</sup> Gregory’s Complaint, at p. 2, ¶ 5.

<sup>11</sup> Affidavit of Richard Stallings in Support of Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 5, 2018) (hereinafter the “**Stallings Affidavit**”), at p. 1, ¶ 2; and at Exhibit A.

<sup>12</sup> Stallings Affidavit, at p. 1, ¶ 3.

<sup>13</sup> Gregory’s Complaint, at p. 2, ¶¶ 6, 7.

<sup>14</sup> Stallings Affidavit, at p. 2, ¶ 4; and at Exhibit B.

<sup>15</sup> Gregory’s Complaint, at p. 2, ¶ 8.

<sup>16</sup> Gregory’s Complaint, at Exhibit A.

5. On the same date, December 8, 2010, Pioneer Point LLC and the Stallings signed a promissory note, in the amount of \$945,000, to various lenders, with the promise to pay the note within six (6) months, or by June 10, 2009, with an option to extend for another six (6) months.<sup>17</sup>

6. On May 2, 2012, Pioneer Point LLC transferred what had been Gregory's portion of the Property to Richard Stallings.<sup>18</sup>

7. On December 21, 2012, the Stallings sold both parcels of the Property to Rockwell Court Limited Partnership for the sum of \$1,086,438.89.<sup>19</sup> According to Gregory, following the sale of the Property, all of the mortgage investors were paid back their initial investments.<sup>20</sup>

8. Prior to the sale, on November 14, 2012, Richard Stallings informed Gregory, through attorney Garrett Sandow, that he "plan[ned] on taking the following amounts and then giv[e] the balance of each draw to Garret Sandow for Johns [sic] dispersel [sic]. First draw 106,000 second draw 150,000."<sup>21</sup>

9. On September 9, 2013, an e-mail from Richard Stallings (originally dated August 27, 2013) was forwarded to attorney Garrett Sandow.<sup>22</sup> In his e-mail, Richard Stallings wrote, *inter alia*: "In conclusion I feel in order for me to get a return on my investment there is no money owed to John from the current sell."<sup>23</sup>

---

<sup>17</sup> Gregory's Complaint, at Exhibit B.

<sup>18</sup> Stallings Affidavit, at p. 2, ¶ 5.

<sup>19</sup> Gregory's Complaint, at Exhibit D.

<sup>20</sup> Gregory's Complaint, at p. 4, ¶ 19; and at Exhibit D, p. 1.

<sup>21</sup> Affidavit of Garrett Sandow, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 19, 2018) (hereinafter the "**Sandow Affidavit**"), at Exhibit M.

<sup>22</sup> Sandow Affidavit, at Exhibit I.

<sup>23</sup> Id.

10. Gregory sued the Stallings for breach of contract on September 6, 2017.<sup>24</sup>

#### **IV. RELEVANT PRINCIPLES OF LAW**

##### **A. Standard of Review – Motion for Reconsideration.**

1. Idaho Rule of Civil Procedure 11.2(b)(1) provides:

A motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to or within 14 days after the entry of a final judgment. A motion to reconsider an order entered after the entry of final judgment must be made within 14 days after entry of the order.

2. A party requesting reconsideration of an interlocutory order is permitted to present new evidence, but is not required to do so.<sup>25</sup> The burden of proof on a motion for reconsideration is upon the requesting party (in this matter, Gregory).<sup>26</sup>

3. When deciding a motion for reconsideration, the same standard of review relevant to the original order is applied to the order under reconsideration.<sup>27</sup> In other words, if the original order was a matter within this Court's discretion, then the same standard applies to the decision to grant or deny the motion for reconsideration.<sup>28</sup> (If the original order was governed by a different standard, then that standard applies to the motion for reconsideration.)<sup>29</sup>

4. This Court has no discretion on whether to entertain a motion for reconsideration under Rule 11.2(b).<sup>30</sup>

---

<sup>24</sup> Gregory's Complaint, at p. 1.

<sup>25</sup> *Johnson v. Lambros*, 143 Idaho 468, 472-3, 147 P.3d 100, 104-5 (Ct. App. 2006).

<sup>26</sup> *Johnson v. Lambros*, 143 Idaho at 472, 147 P.3d at 104.

<sup>27</sup> *Fagnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012).

<sup>28</sup> *Fagnella v. Petrovich*, 153 Idaho at 276, 281 P.3d at 113.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* [decided under former Rule 11(a)(2)(b)].

## **B. Standard of Review – Motion for Summary Judgment.**

1. If the pleadings, depositions, and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, summary judgment may be granted.<sup>31</sup> Disputed facts are construed in favor of the non-moving party and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.<sup>32</sup>

2. The party moving for summary judgment (in this case, the Stallings) has the burden of presenting admissible evidence showing that there is an absence of any genuine issue of material fact with respect to the issues raised by the summary judgment motion.<sup>33</sup>

3. If the moving party demonstrates the absence of a question of material fact, the burden shifts to the nonmoving party to demonstrate an issue of material fact that will preclude summary judgment.<sup>34</sup>

4. The non-moving party (in this case, Gregory) cannot merely rest on its pleadings.<sup>35</sup> When faced with supporting affidavits or depositions, the opposing party must show material issues of fact which preclude the issuance of summary judgment.<sup>36</sup>

5. While the moving party must prove the absence of a genuine issue of material fact,<sup>37</sup> the opposing party cannot simply speculate.<sup>38</sup> A mere scintilla of evidence is

---

<sup>31</sup> Idaho Rule of Civil Procedure 56(a); *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 768, 203 P.3d 694, 698 (2009); *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 516-7, 808 P.2d 851, 853-4 (1991).

<sup>32</sup> *Bushi v. Sage Health Care, PLLC*, 146 Idaho at 768, 203 P.3d at 698; *Lockheed Martin Corp. v. Idaho State Tax Commission*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006).

<sup>33</sup> *Sadid v. Idaho State University*, 151 Idaho 932, 938, 265 P.3d 1144, 1150 (2011).

<sup>34</sup> *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 317, 246 P.3d 961, 970 (2010).

<sup>35</sup> *Partout v. Harper*, 145 Idaho 683, 688, 183 P.3d 771, 776 (2008); *R.G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 410, 797 P.2d 117, 118 (1990).

not enough to create a genuine factual issue.<sup>39</sup> Summary judgment is appropriate when the non-moving party cannot establish the essential elements of the claim.<sup>40</sup>

6. If reasonable persons could reach differing conclusions on material issues, or draw conflicting inferences therefrom, then the motion for summary judgment must be denied.<sup>41</sup>

## V. DISCUSSION

Gregory premises his Motion largely on the timing of the payouts from Rockwell Court Limited Partnership.<sup>42</sup> Initially, Gregory argues “there was no reason for [Gregory] to be at the [December 21, 2012 closing] sale, since he did not anticipate receiving funds for several months thereafter. ... [T]he payments were to be made to both parties in several draws, over a period of time following the actual closing.”<sup>43</sup> In his Complaint, Gregory alleged that the balance of the proceeds of the sale of the Property to Rockwell Court Limited Partnership was to be divided between the original investors, Gregory, and the Stallings.<sup>44</sup> In August of 2013, the Stallings advised Gregory that they were keeping the proceeds from the sale and that Gregory would receive nothing.<sup>45</sup>

Regardless of when Gregory anticipated receiving funds, the oral contract of which he complains began on December 21, 2012 when the Stallings sold the Property to

---

<sup>36</sup> *Esser Electric v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008).

<sup>37</sup> *Watkins v. Peacock*, 145 Idaho 704, 708, 184 P.3d 210, 214 (2008); *Wait v. Leavell Cattle, Inc.*, 136 Idaho 792, 798, 41 P.3d 220, 226 (2001).

<sup>38</sup> *Cantwell v. City of Boise*, 146 Idaho 127, 133, 191 P.3d 205, 211 (2008).

<sup>39</sup> *Van v. Portneuf Medical Center*, 147 Idaho 552, 556, 212 P.3d 982, 986 (2009); *West v. Sonke*, 132 Idaho 133, 138, 968 P.2d 228, 233 (1998).

<sup>40</sup> *Summers v. Cambridge Joint School District No. 432*, 139 Idaho 953, 956, 88 P.3d 772, 775 (2004); *Dekker v. Magic Valley Regional Medical Center*, 115 Idaho 332, 333, 766 P.2d 1213, 1214 (1989).

<sup>41</sup> *Van v. Portneuf Medical Center*, 147 Idaho at 556, 212 P.3d at 986; *Cramer v. Slater*, 146 Idaho 868, 873, 204 P.3d 508, 513 (2009).

<sup>42</sup> Gregory’s Motion, at pp. 1-2; Gregory’s Memorandum, at p. 3.

<sup>43</sup> Gregory’s Motion, at p. 1.

<sup>44</sup> Gregory’s Complaint, at p. 4, ¶ 20.

Rockwell Court Limited Partnership. On that date, the subject of the oral contract (the Stallings' sale of the Property) took place, for a set price of \$1,086,438.89.<sup>46</sup> Gregory knew on that date that a certain amount was due to him, regardless of when the Stallings promised to remit that amount to him. Indeed, Gregory knew before December 21, 2012 that he was due some portion of the sale proceeds.<sup>47</sup> Gregory had four years from December 21, 2012 (or until December 21, 2016) in which to file his lawsuit. He took no action until September 6, 2017, some eight and one-half months past the deadline set for suits on oral contracts under Idaho Code § 5-217.

Gregory contends that "payouts to Stallings and Gregory were to continue through 'January or first part of February 2013.'"<sup>48</sup> Gregory relies upon Exhibit N, attached to his Motion and to the Gregory Affidavit.<sup>49</sup> Exhibit N evinces a statement dated December 27, 2012 from Richard Stallings, showing a "First Payment (Kept by Richard)" in the amount of \$93,697.01.<sup>50</sup> At the bottom of the statement is an annotation:

Next Pay out end of January or first of February 2013

Total	300,000.00
Paid to John	155,482.28
Paid to Richard	144,517.72

Although unclear, if Exhibit N is an accounting of monies received from the December 21, 2012 Property sale, then Gregory was certainly put on notice as of December 27, 2012 that the Stallings did not intend to pay a dividend to Gregory with

---

<sup>45</sup> Gregory's Complaint, at p. 4, ¶ 24; Sandow Affidavit, at Exhibit I.

<sup>46</sup> Gregory's Complaint, at Exhibit D.

<sup>47</sup> Sandow Affidavit, at Exhibit M.

<sup>48</sup> Gregory's Motion, at p. 2.

<sup>49</sup> Gregory's Motion, at Exhibit N; Affidavit of Jon Gregory in Support of Motion for Reconsideration, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed October 29, 2018), at Exhibit N.

<sup>50</sup> Id.

each draw. Gregory had the ability to bring the matter to the court at that time, but chose not to do so.

Gregory also contends there was never any specification as to when draws would be received.<sup>51</sup> Thus, Gregory concedes that fixed dates for payments were not agreed upon or required. The parties' contract did not include a schedule for payments, only a mercurial understanding that payments would be made in the future. Nevertheless, Gregory knew he was owed money as of December 12, 2012 and that he received nothing on that date. He knew as of December 27, 2012 that he would receive nothing from the first pay out. Clearly, Gregory had a cause of action against the Stallings on December 12, 2012, and no later than December 27, 2012.

A cause of action for breach of contract accrues upon breach for limitation purposes.<sup>52</sup> Regardless of whether or not future payments were anticipated, Gregory's ability to sue the Stallings on the oral contract arose on December 12, 2012 when Gregory received no proceeds of the Property sale. For these reasons, Gregory has not shown a valid reason to reconsider summary judgment in the Stallings favor.

On a final note, Gregory infers that the Stallings refused to fully and completely answer Gregory's discovery requests.<sup>53</sup> The Stallings argue that the parties agreed that the Stallings' discovery responses would not be due until after this Court rendered a decision on the Stallings' summary judgment motion.<sup>54</sup> Regardless of the reasons why discovery was not completed, Gregory bore the responsibility of either filing a motion to

---

<sup>51</sup> Gregory's Motion, at p. 2.

<sup>52</sup> *Cuevas v. Barraza*, 146 Idaho 511, 517, 198 P.3d 740, 746 (Ct. App. 2008).

<sup>53</sup> Gregory's Motion, at p. 2.

<sup>54</sup> Affidavit of Jared M. Harris in Support [of] Objection and Response to Motion to Reconsider, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed November 16, 2018).

compel, or requesting additional time to respond to the Stallings' summary judgment motion in order to complete discovery.<sup>55</sup> Since Gregory did not move to compel complete responses, and did not request additional time to complete discovery, he has waived his contention regarding discovery responses.<sup>56</sup>

## VI. CONCLUSION OF LAW

Based upon the foregoing findings and analyses, the following conclusion is appropriate: Gregory has not shown that the *Summary Judgment Order* should be reconsidered.

## VII. ORDER

Accordingly, Gregory's Motion for reconsideration is **denied**.

**IT IS SO ORDERED.**

DATED this 18th day of January 2019.



Darren B. Simpson  
District Judge

Signed: 1/18/2019 04:26 PM

---

<sup>55</sup> Stallings' Objection, at pp. 3-4 [citing: *Stapleton v. Cushman Drilling & Pump Company*, 153 Idaho 735, 742, 291 P.3d 418, 425 (2012)]; Idaho Rule of Civil Procedure 56(d); Idaho Rule of Civil Procedure 37.

<sup>56</sup> *Stapleton v. Cushman Drilling & Pump Company*, 153 Idaho at 742, 291 P.3d at 425.

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Order Denying Plaintiff's Motion for Reconsideration was sent by e-mail, ICourt e-mail, or facsimile, this 18th day of January 2019, to:

David N. Parmenter, Esq.

Nathan D. Rivera, Esq.

Attorneys at Law

53 S. Shilling

P.O. Box 700

Blackfoot, Idaho 83221

E-Mail

ICourt E-Mail

Facsimile

Jared M. Harris, Esq.

BAKER & HARRIS

266 West Bridge Street

Blackfoot, Idaho 83221

E-Mail

ICourt E-Mail

Facsimile

PAMELA W. ECKHARDT, Clerk of the Court

By Brandee Cammack  
Deputy Clerk

Signed: 1/18/2019 04:40 PM



Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**AMENDED MOTION FOR  
AWARD OF ATTORNEY'S FEES  
AND COSTS**

COMES NOW Defendants, Richard Stallings and Eileen Stallings, (hereinafter "Defendants") by and through their attorney of record, Jared M. Harris of the law firm of BAKER & HARRIS, and hereby moves this Court for an order awarding attorney's fees and costs incurred in defending this matter.

Plaintiff asserted a breach of contract claim and sought attorney's fees pursuant to Idaho Code §§ 12-120(1) and (3). As set forth in their Complaint, this action was a commercial transaction between the parties and that was the gravamen of the relationship between the parties. Therefore, Defendants are entitled to an award of attorney fees and costs under Idaho Code §§ 12-120(1) and (3). Further, Defendants are entitled to attorney's fees and costs pursuant to Idaho Code § 12-121.

**AMENDED MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS - 1**

This Motion is supported by an Amended Memorandum and Affidavit of Costs and Fees.

DATED this 25 day of January, 2019.

BAKER & HARRIS

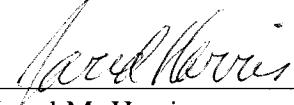
  
\_\_\_\_\_  
Jared M. Harris

CERTIFICATE OF SERVICE

I certify that on this 25 day of January, 2019, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **AMENDED MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS**

Person(s) Served: David N. Parmenter ( ) Mail  
PARMENTER & RIVERA, LLP ( ) Hand Delivered  
53 South Shilling (X) ICourt Email  
Blackfoot, ID 83221  
Fax No. (208) 785-4858  
parlaw@gmail.com

  
\_\_\_\_\_  
Jared M. Harris

**AMENDED MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS - 2**

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**AMENDED MEMORANDUM  
AND AFFIDAVIT OF  
ATTORNEY'S FEES AND COSTS**

Jared M. Harris, deposes and says:

1. That he is an attorney licensed to practice law in the State of Idaho, and is the attorney for Plaintiff in the above-entitled action, and has personal knowledge of the costs and attorney's fees enumerated.

**COSTS AS A MATTER OF RIGHT**

2. That the following enumerated costs have been necessarily incurred in the representation of Plaintiffs in said action and are claimed as a matter of right pursuant to IRCP 54(d)(1)(C):

a. Filing Fees for Answer (IRCP 54(d)(1)(C)(i)) \$ 136.00

**TOTAL COSTS** \$ 136.00

**AMENDED MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS**  
**- 1**

## ATTORNEY FEES

3. That your I hav been engaged in the active practice of law since 1992 and is currently a partner in the law firm of BAKER & HARRIS, Blackfoot, Idaho.
4. That the hourly rates charged during the time period of representation of the Plaintiff between February 14, 2018 and October 18, 2018 were as follows:
  - a. Jared M. Harris - \$250.00 per hour.
5. That the hourly rate set forth in the foregoing paragraph is consistent with comparable services and rates in southeastern Idaho during the time period involved.
6. That the total amount of attorneys' fees is reasonable in consideration of the factors set forth in IRCP 54(e)(3).

Date	Description	Hours	Amount
2/14/18	Telephone conference with R. Stallings; Extended office conference with R. Stallings regarding defense of lawsuit.	1.5	\$ 375.00
2/16/18	Telephone conference with R. Stallings; Draft answer; Draft discovery request; Telephone calls to T. Cobb; review legal descriptions.	2.0	\$ 500.00
2/27/18	Research regarding service of complaint; Draft notice of appearance; begin drafting answer.	1.6	\$ 400.00
2/27/18	Revise Answer; Research regarding statute of frauds.	.6	\$ 150.00
3/5/18	Extended office conference with R. Stallings; Revise discovery request.	1.0	\$ 250.00
3/7/18	Office conference with R. Stallings regarding legal description issues; Telephone conference with R. Stallings.	.5	\$ 125.00

**AMENDED MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS**  
**- 2**

3/8/18	Receipt and review of request for trial setting; Draft response to request for trial setting; Draft letter to Court; Receipt and review of Notice of hearing; Draft letter to R. Stallings.	.9	\$ 225.00
3/13/18	Telephone call to and with R. Stallings.	.4	\$ 100.00
3/20/18	Receipt and review of Exhibits; Draft letter to R. Stallings.	.3	\$ 75.00
4/2/18	Receipt and review of letter; Draft letter to attorney.		\$ 0.00
4/6/18	Receipt and review of answers to request form admissions; Draft letter to R. Stallings.	.3	\$ 75.00
4/16/18	Extended office conference with R. Stallings regarding status; Draft letter to attorney.	1.3	\$ 325.00
4/20/18	Receipt and review of discovery responses; Draft letter to R. Stallings; Research; Draft motion for summary judgment, memorandum and affidavit.	2.8	\$ 700.00
4/23/18	Attend pre-trial; draft letter to R. Stallings.	.6	\$ 150.00
4/24/18	Receipt and review of Order; Draft letter to R. Stallings; Draft letter to attorney.	.6	\$ 150.00
5/2/18	Telephone conference with R. Stallings.	.2	\$ 50.00
5/10/18	Receipt and review of letter; Draft notice; Draft letter to Court.	.6	\$ 150.00
6/4/18	Research; Revise motion for summary judgment and memorandum,	3.0	\$ 750.00
6/6/18	Revise memorandum.	.3	\$ 75.00
6/8/18	Revise motion for summary judgment and memorandum; Research; Extended office conference with R. and E. Stallings.	2.5	\$ 625.00
6/11/18	Review documents and interplay between documents; Conference with title company to review legal descriptions and transactions; Telephone conference with R. Stallings; Revise memorandum; Office conference with R. Stallings.	6.0	\$ 1,500.00

**AMENDED MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS**  
**- 3**

6/12/18	Revise memorandum.	.3	\$ 75.00
6/26/18	Receipt and review of discovery request; Draft letter to R. Stallings.	.3	\$ 75.00
6/28/18	Extended office conference with R. Stallings; Telephone call to and with creditor; Extended telephone conference with title company.	2.00	\$ 500.00
6/29/18	Draft letter to creditor.	.3	\$ 75.00
7/2/18	Receipt and review of letter; Draft letter to R. Stallings regarding mediation; Revise memorandum, affidavit regarding motion for summary judgment.	.6	\$ 150.00
7/3/18	Telephone conference with R. Stallings; Office conference with R. Stallings to review and sign affidavit and discuss status of case and arguments to be presented.	.8	\$ 200.00
7/6/18	Research.	1.0	\$ 250.00
7/9/18	Telephone conference with creditor.	.2	\$ 50.00
7/10/18	Research regarding statute of frauds.	1.0	\$ 250.00
7/11/18	Review judicial filings; Telephone conference with attorney's office; Telephone conference with R. Stallings.	1.2	\$ 300.00
7/16/18	Research regarding judgments.	.4	\$ 100.00
7/23/18	Draft discovery responses; Draft notice; Draft letter to Court.	.9	\$ 225.00
7/24/18	Receipt and review of motions; Draft letter to R. Stallings; Research; Prepare preliminary draft of objection; prepare preliminary draft of reply brief.	2.0	\$ 500.00
7/27/18	Research; Revise brief.	1.8	\$ 450.00
8/8/18	Receipt and review of order; Draft letter to R. Stallings.	.3	\$ 75.00
8/10/18	Research.	.8	\$ 200.00
8/13/18	Research; Revise brief.	2.5	\$ 625.00

**AMENDED MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS**  
**- 4**

8/14/18	Revise brief; Draft letter to Court; Telephone calls to and with R. Stallings.	2.2	\$ 550.00
8/20/18	Conference with R. Stallings; Prepare for hearing.	1.8	\$ 450.00
8/21/18	Prepare for and attend hearing; Present argument; Conference with R. and E. Stallings.	1.0	\$ 250.00
9/14/18	Receipt and review of minute entry; Draft letter to R. Stallings.	.3	\$ 75.00
10/9/18	Conference with Court Clerk; Draft pretrial memorandum; Draft motion to extend discovery cutoffs.	2.0	\$ 500.00
10/16/18	Receipt and review of decision; Draft letter to R. Stallings.	.4	\$ 100.00
10/17/18	Prepare for and attend pretrial; Telephone conference with R. Stallings; Draft motion for attorney's fees and costs; Draft affidavit.	1.5	\$ 375.00
10/18/18	Prepare for and attend pretrial; Telephone conference with R. Stallings; Draft motion for attorney's fees and costs; Draft affidavit.	.6	\$ 150.00
10/22/18	Draft letter to R. Stallings regarding attorney's fees and costs.	.3	\$ 75.00
10/23/18	Receipt and review of minute entry; Draft letter to R. Stallings.	.3	\$ 75.00
10/30/18	Receipt and review of motion to reconsider, memorandum and affidavit; Draft letter to R. Stallings; Research.	1	\$ 250.00
10/31/18	Research; Telephone conference with R. Stallings.	.7	\$ 175.00
11/2/18	Telephone conference with R. Stallings.	.2	\$ 50.00
11/6/18	Receipt and review of objection; Draft letter to R. Stallings.	.3	\$ 75.00
11/7/18	Draft notice of hearing.	.3	\$ 75.00
11/13/18	Research; Draft brief; Telephone call to and with R. Stallings.	3.7	\$ 925.00

**AMENDED MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS**  
**- 5**

11/14/18	Extended office conference with R. Stallings; Research.	1.7	\$ 425.00
11/15/18	Research; Revise memorandum and objection; Draft motion to strike; Draft letter to R. Stallings.	3.4	\$ 850.00
11/26/18	Telephone conference with attorney; Telephone calls to and with R. Stallings; Draft amended notice of hearing; Draft letter to R. Stallings.	1.10	\$ 275.00
11/29/18	Telephone conferences with attorney regarding hearing date.	.4	\$ 100.00
11/30/18	Telephone call to attorney; Telephone conference with R. Stallings.	.4	\$ 100.00
12/1/18	Telephone conference with attorney.	.2	\$ 50.00
12/3/18	Telephone call to and with D. Parameter; Telephone conference with R. Stallings; Attend hearing; Receipt and review of notice; Draft letter to R. Stallings.	1.10	\$ 275.00
12/4/18	Telephone conference with attorney regarding status of hearing.	.2	\$ 50.00
12/5/18	Receipt and review of text; Draft text message to attorney.	.1	\$ 25.00
12/6/18	Telephone conference with attorney; Draft stipulation; Draft letter to D. Parameter.	.9	\$ 225.00
12/7/18	Receipt and review of notice; Draft letter to R. Stallings.	.3	\$ 75.00
12/11/18	Telephone conference with R. Stallings regarding vacated hearing; Draft letter to R. Stallings; Draft order.	.5	\$ 125.00
12/17/18	Receipt and review of order; Draft letter to R. Stallings.	.3	\$ 75.00
1/18/19	Receipt and review of decision; Draft letter to R. Stallings; Telephone conference with R. Stallings; Draft supplemental affidavit.	1.3	\$ 325.00
1/21/19	Extended office conference with R. Stallings regarding decision and possibility of appeal.	1.7	\$ 425.00
<b>TOTAL ATTORNEY'S FEES:</b>		<b>70.6</b>	<b>\$ 18,400.00</b>

**AMENDED MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS**  
**- 6**

7. To the best of my knowledge and belief the above enumerated costs and fees are correct, and that the costs and fees claimed are in compliance with IRCP 54.
8. That I have read the foregoing affidavit, and I hereby certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

FURTHER your affiant saith not.

DATED this 25 day of January, 2019.

BAKER & HARRIS

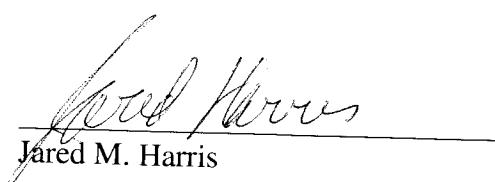
  
\_\_\_\_\_  
Jared M. Harris

CERTIFICATE OF SERVICE

I certify that on this 25 day of January, 2019, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **AMENDED MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS**

Person(s) Served:	David N. Parmenter PARMENTER & RIVERA, LLP 53 South Shilling Blackfoot, ID 83221 Fax No. (208) 785-4858 parlaw@gmail.com	( <input type="checkbox"/> Mail ( <input type="checkbox"/> Hand Delivered ( <input checked="" type="checkbox"/> iCourt Email
-------------------	---	--

  
\_\_\_\_\_  
Jared M. Harris

**AMENDED MEMORANDUM AND AFFIDAVIT OF ATTORNEY'S FEES AND COSTS**  
- 7

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

Case No. CV-2017-1651

**ORDER GRANTING AMENDED  
MOTION FOR AWARD OF  
ATTORNEY'S FEES AND COSTS**

THE UNDERSIGNED, having considered the foregoing Amended Motion for Award of Attorney's Fees and Costs filed on January 25, 2019. and with no objection having been filed, and it appearing that the Court being fully advised in the law and the premises and good cause appearing therefore;

IT IS HEREBY ORDERED that the Defendants' Amended Motion for Award of Attorney's Fees and Costs and Defendants are granted costs in the sum of \$136.00 and attorney's fees in the sum of \$18,400.00 for total judgment in the sum of \$18,536.00.

DATED 2-21-2019.

  
Darren B. Simpson, District Judge

Signed: 2/21/2019 09:28 AM

**ORDER GRANTING AMENDED MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS - 1**

CLERK'S CERTIFICATE OF SERVICE

I certify that on this 27th day of February, 2019, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **ORDER GRANTING AMENDED MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS**

Person(s) Served: Jared M. Harris (✓) iCourt E-Mail  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
efiling@bakerharrislaw.com

David N. Parmenter  
PARMENTER & RIVERA, LLP  
53 South Shilling  
Blackfoot, ID 83221  
Fax No. (208) 785-4858  
parlaw@gmail.com

Pamela W. Eckhardt  
CLERK OF THE COURT  
Brandee Lammack  
Deputy Clerk      Signed: 2/27/2019 01:48 PM



**ORDER GRANTING AMENDED MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS - 2**

Filed: 02/27/2019 13:48:47  
Seventh Judicial District, Bingham County  
Pamela Eckhardt, Clerk of the Court  
By: Deputy Clerk - Cammack, Brandee

Jared M. Harris  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221  
Telephone: (208) 785-2310  
Facsimile: (208) 785-6749  
E-Mail: jharris@bakerharrislaw.com  
Idaho State Bar No. 4488

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,

Plaintiffs,

v.

Case No. CV-2017-1651

**JUDGMENT**

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants.

JUDGMENT IS ENTERED AS FOLLOWS: IT IS HEREBY ORDERED AND  
ADJUDGED that Defendants Richard Stallings and Eileen Stallings, have and recover from Plaintiff  
Jon Gregory, judgment as follows:

Costs	\$ 136.00
Attorney's Fees	\$ 18,400.00
<b>TOTAL JUDGMENT</b>	<b>\$ 18,536.00</b>

The total judgment shall accrue interest at the lawful rate of 7.375%; that execution may issue on  
the foregoing instrument

DATED 2-21-2019.

  
\_\_\_\_\_  
 Darren B. Simpson, District Judge  
Signed: 2/21/2019 09:31 AM

**JUDGMENT- 1**

**CLERK'S CERTIFICATE OF SERVICE**

I certify that on this 27th day of February, 2019, I served a true and correct copy of the following-described document on the person(s) listed below by the method indicated.

Document Served: **JUDGMENT**

Person(s) Served:	Jared M. Harris BAKER & HARRIS 266 West Bridge Street Blackfoot, Idaho 83221 efiling@bakerharrislaw.com	(✓) iCourt E-Mail
	David N. Parmenter PARMENTER & RIVERA, LLP 53 South Shilling Blackfoot, ID 83221 Fax No. (208) 785-4858 parlaw@gmail.com	(✓) iCourt E-Mail

Pamela W. Eckhardt

CLERK OF THE COURT

By:

*Brandee Cammack*

Deputy Clerk Signed: 2/27/2019 01:49 PM



**JUDGMENT- 2**

DAVID N. PARMENTER  
NATHAN D. RIVERA  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, Idaho 83221  
(208) 785-5618  
(208)785-4858 FAX  
parlaw@gmail.com

Attorney for Appellant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY,

Appellant,

vs.

RICHARD STALLINGS, an  
individual, and EILEEN  
STALLINGS, an individual,

Respondents.

Case. No. CV-2017-1651

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENTS, RICHARD STALLINGS  
AND EILEEN STALLINGS, AND THE PARTY'S ATTORNEY, JARED HARRIS, 266 W.  
Bridge St., Blackfoot, Idaho 83221, AND THE CLERK OF THE ABOVE ENTITLED COURT.  
NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, JON GREGORY an individual, appeals against the above-named Respondent to the Idaho Supreme Court from the Order Denying Motion for Reconsideration, entered in the above entitled action on the 18<sup>th</sup> Day of January 2019, Honorable Darren B. Simpson, presiding. A copy of the judgment or order being appealed is attached to this

notice, as well as a copy of the final judgment since this is an appeal from an order entered after final judgment.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11 (a) I.A.R. This appeal is taken upon matters of law and upon matters of fact.

3. A preliminary statement of the issues on appeal which the appellant then 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. A preliminary statement of the issues is as follows:

Whether the District Court erred in denying appellant's motion for reconsideration?

Whether the statute of limitations for breach of contract runs from when the respondent advised appellant that he decided not to pay his just obligations, or from some earlier time?

Whether a claim accrues for breach of contract before appellant is made aware that respondent was determined not to pay him?

Whether the facts and circumstances would have put a reasonably prudent person on notice of breach prior to the actual notice, or whether the evidence supports appellant's claim that he was lulled into a false sense of security as to the time of the breach?

Whether the equitable doctrines of unjust enrichment or equitable estoppel prevent respondent from raising a statute of limitations defense prior to actually notifying appellant of his intent not to pay appellant?

4. No order has been entered sealing any portion of the record.

5. The Appellant requests the preparation of the following portions of the Reporter's transcript in both hard copy and electronic format:

Motion for Summary Judgment held on August 21, 2018 in its entirety.

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

7. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

There was no court reporter; Motion for Summary Judgment was only recorded.

(b) That the clerk of the district court will be paid the estimated fee for preparation of the reporter's transcript upon receipt by the Appellant of the estimated costs.

(c) That the estimated fee for preparation of the clerk's record will be paid upon receipt by the Appellant of the estimated cost.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 26<sup>th</sup> day of February, 2019.

  
\_\_\_\_\_  
DAVID N. PARMENTER  
Attorney for Appellant

Jon Gregory being sworn, deposes and says:

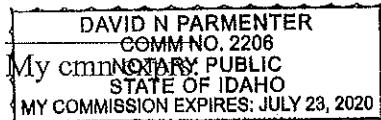
That the party is the appellant in the above-entitled appeal and that all statements in this notice of appeal are true and correct to the best of his knowledge and belief.

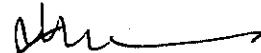
  
JOHN GREGORY

STATE OF IDAHO )

:ss  
County of Blackfoot

SUBSCRIBED AND SWORN TO before me this 27<sup>th</sup> day of February 2019.



  
Notary Public in and for the  
State of Idaho, residing at  
Blackfoot therein

#### CERTIFICATE OF SERVICE

I HERBY CERTIFY that on the 27<sup>th</sup> day of February 2019, I served a true and correct copy of the foregoing to the following parties in the manner noted below:

**Attorney for the Respondents RICHARD STALLINGS AND EILEEN STALLINGS**

Jared Harris  
Baker & Harris  
266 W. Bridge St.  
Blackfoot, Idaho 83221

- By pre-paid post
- By hand delivery
- By facsimile transmission
- By iCourt email

  
David N. Parmenter  
Attorney for Appellant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,	)	<b>CASE NO. CV-2017-1651</b>
	)	
Plaintiff,	)	<b>ORDER GRANTING</b>
	)	<b>DEFENDANTS' MOTION FOR</b>
vs.	)	<b>SUMMARY JUDGMENT</b>
	)	
RICHARD STALLINGS, an individual,	)	
and EILEEN STALLINGS, an individual,	)	
	)	
Defendants.	)	
	)	

**I. STATEMENT OF THE CASE**

Plaintiff Jon Gregory (hereinafter “Gregory”) filed the above-numbered lawsuit against Defendants Richard Stallings, an individual, and Eileen Stallings, an individual (hereinafter collectively referred to as the “Stallings”) and claimed breach of contract, breach of implied contract, and *quantum meruit*.<sup>1</sup> The Stallings now move for summary judgment as to all of Gregory’s claims.<sup>2</sup> Gregory objects to the Stallings’ Motion.<sup>3</sup>

---

<sup>1</sup> Verified Complaint, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed September 6, 2017) (hereinafter “Gregory’s Complaint”).

<sup>2</sup> Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 5, 2018) (hereinafter the “Stallings’ Motion”).

<sup>3</sup> Plaintiff’s Memorandum in Opposition to Defendants’ Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 19, 2018) (hereinafter “Gregory’s Opposition”).

A hearing was held on the Stallings' Motion on August 21, 2018.<sup>4</sup> Based upon the record, the parties' arguments, and the relevant authorities, the Stallings' Motion shall be granted.

## II. ISSUES

The Stallings contend that Gregory's three causes of action against them are barred by the statute of limitations and by the Statute of Frauds.<sup>5</sup> Gregory responds that a valid contract existed between him and the Stallings,<sup>6</sup> which does not fall within the Statute of Frauds.<sup>7</sup> In the alternative, Gregory maintains that an implied contract existed between the parties.<sup>8</sup> At the very least, Gregory argues, a quasi-contract existed between the parties.<sup>9</sup> If the Statute of Frauds bars enforcement of the alleged contract, Gregory pleads equitable estoppel or quasi-estoppel to prevent the Stallings from allegedly receiving "unjust results."<sup>10</sup>

The Stallings object to the affidavits of Garrett Sandow<sup>11</sup> and Jon Gregory<sup>12</sup> on the bases of hearsay, lack of foundation, relevance, the best evidence rule, stating a legal conclusion, and speculation.<sup>13</sup>

The parties' arguments raise the following issues in light of the relevant authorities:

---

<sup>4</sup> Minute Entry, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed August 21, 2018).

<sup>5</sup> Memorandum in Support of Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 5, 2018) (hereinafter the "Stallings' Memorandum"), at pp. 3-4.

<sup>6</sup> Gregory's Opposition, at pp. 2-3.

<sup>7</sup> Gregory's Opposition, at pp. 5-7.

<sup>8</sup> Gregory's Opposition, at pp. 3.

<sup>9</sup> Gregory's Opposition, at p. 4.

<sup>10</sup> Gregory's Opposition, at pp. 7-10.

<sup>11</sup> See; Affidavit of Garrett Sandow, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 19, 2018) (hereinafter the "Sandow Affidavit").

<sup>12</sup> See; Affidavit of Jon Gregory, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 19, 2018) (hereinafter the "Gregory Affidavit").

1. Should portions of the Sandow Affidavit be stricken from consideration on summary judgment?
2. Should portions of the Gregory Affidavit be stricken from consideration on summary judgment?
3. Is Gregory's breach of contract action barred by the Idaho Statute of Frauds?
4. Is Gregory's breach of contract action barred by the applicable statute of limitations?

### **III. FINDINGS OF FACT**

1. Gregory purchased two (2) acres of a four (4) acre parcel of land in Rexburg, Idaho because he wanted to develop the property into student housing or a similar commercial venture.<sup>14</sup>
2. On September 27, 2007, Gregory sold an approximately two (2) acre parcel of land to the Stallings.<sup>15</sup> The two-acre parcel purchased by the Stallings was contiguous to the two-acre parcel owned by Gregory.<sup>16</sup> According to Gregory, this purchase represented the other two acres of the four-acre parcel in Rexburg.<sup>17</sup>
3. On February 2, 2009, Gregory transferred his interest in his two-acre parcel to Pioneer Point LLC.<sup>18</sup> Gregory asserts that Pioneer Point LLC was to develop

---

<sup>13</sup> Objection to the Affidavits of Garrett Sandow and Jon Gregory, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed August 14, 2018) (hereinafter the "Stallings' Objections to Affidavits").

<sup>14</sup> Gregory's Complaint, at p. 2, ¶ 5.

<sup>15</sup> Affidavit of Richard Stallings in Support of Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 5, 2018) (hereinafter the "Stallings Affidavit"), at p. 1, ¶ 2; and at Exhibit A.

<sup>16</sup> Stallings Affidavit, at p. 1, ¶ 3.

<sup>17</sup> Gregory's Complaint, at p. 2, ¶¶ 6, 7.

<sup>18</sup> Stallings Affidavit, at p. 2, ¶ 4; and at Exhibit B.

the property, put in roads, parking lots, sewer, and water, and to begin construction on at least two buildings.<sup>19</sup>

4. On December 8, 2010, Pioneer Point LLC and the Stallings entered into a construction loan with Century Mortgage Company

... to finance a part of the cost of construction of certain improvements upon the described premises in accordance with plans and specifications that have been or will be deposited by [Pioneer Point, LLC and the Stallings] with [Century Mortgage Company].<sup>20</sup>

The construction work was to be completed seven calendar months from December 8, 2010.<sup>21</sup>

5. On the same date, December 8, 2010, Pioneer Point LLC and the Stallings signed a promissory note, in the amount of \$945,000, to various lenders, with the promise to pay the note within six (6) months, or by June 10, 2009, with an option to extend for another six (6) months.<sup>22</sup>

6. On May 2, 2012, Pioneer Point LLC transferred what had been Gregory's property to Richard Stallings.<sup>23</sup>

7. On December 21, 2012, the Stallings sold both parcels of property to Rockwell Court Limited Partnership for the sum of \$1,086,438.89.<sup>24</sup> According to Gregory, following the sale of the property, all of the mortgage investors were paid back their initial investments.<sup>25</sup>

---

<sup>19</sup> Gregory's Complaint, at p. 2, ¶ 8.

<sup>20</sup> Gregory's Complaint, at Exhibit A.

<sup>21</sup> Gregory's Complaint, at Exhibit A, p. 1, ¶ 1.

<sup>22</sup> Gregory's Complaint, at Exhibit B.

<sup>23</sup> Stallings Affidavit, at p. 2, ¶ 5.

<sup>24</sup> Gregory's Complaint, at Exhibit D.

<sup>25</sup> Gregory's Complaint, at p. 4, ¶ 19; and at Exhibit D, p. 1.

8. Prior to the sale, on November 14, 2012, Richard Stallings informed Gregory, through attorney Garrett Sandow, that he “plan[ned] on taking the following amounts and then giv[e] the balance of each draw to Garret Sandow for Johns [sic] dispersel [sic]. First draw 106,000 second draw 150,000.”<sup>26</sup>

9. On September 9, 2013, an e-mail from Richard Stallings (originally date August 27, 2013) was forwarded to attorney Garrett Sandow.<sup>27</sup> In his e-mail, Richard Stallings wrote, *inter alia*: “In conclusion I feel in order for me to get a return on my investment there is no money owed to John from the current sell.”<sup>28</sup>

10. Gregory sued the Stallings for breach of contract on September 6, 2017.<sup>29</sup>

#### **IV. RELEVANT PRINCIPLES OF LAW**

##### **A. Standard of Review – Motion for Summary Judgment.**

1. If the pleadings, depositions, and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, summary judgment may be granted.<sup>30</sup> Disputed facts are construed in favor of the non-moving party and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.<sup>31</sup>

2. The party moving for summary judgment (in this case, the Stallings) has the burden of presenting admissible evidence showing that there is an absence of any

---

<sup>26</sup> Sandow Affidavit, at Exhibit M.

<sup>27</sup> Sandow Affidavit, at Exhibit I.

<sup>28</sup> *Id.*

<sup>29</sup> Gregory’s Complaint, at p. 1.

<sup>30</sup> Idaho Rule of Civil Procedure 56(a); *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 768, 203 P.3d 694, 698 (2009); *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 516-7, 808 P.2d 851, 853-4 (1991).

<sup>31</sup> *Bushi v. Sage Health Care, PLLC*, 146 Idaho at 768, 203 P.3d at 698; *Lockheed Martin Corp. v. Idaho State Tax Commission*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006).

genuine issue of material fact with respect to the issues raised by the summary judgment motion.<sup>32</sup>

3. If the moving party demonstrates the absence of a question of material fact, the burden shifts to the nonmoving party to demonstrate an issue of material fact that will preclude summary judgment.<sup>33</sup>

4. The non-moving party (in this case, Gregory) cannot merely rest on its pleadings.<sup>34</sup> When faced with supporting affidavits or depositions, the opposing party must show material issues of fact which preclude the issuance of summary judgment.<sup>35</sup>

5. While the moving party must prove the absence of a genuine issue of material fact,<sup>36</sup> the opposing party cannot simply speculate.<sup>37</sup> A mere scintilla of evidence is not enough to create a genuine factual issue.<sup>38</sup> Summary judgment is appropriate when the non-moving party cannot establish the essential elements of the claim.<sup>39</sup>

6. If reasonable persons could reach differing conclusions on material issues, or draw conflicting inferences therefrom, then the motion for summary judgment must be denied.<sup>40</sup>

---

<sup>32</sup> *Sadid v. Idaho State University*, 151 Idaho 932, 938, 265 P.3d 1144, 1150 (2011).

<sup>33</sup> *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 317, 246 P.3d 961, 970 (2010).

<sup>34</sup> *Partout v. Harper*, 145 Idaho 683, 688, 183 P.3d 771, 776 (2008); *R.G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 410, 797 P.2d 117, 118 (1990).

<sup>35</sup> *Esser Electric v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008).

<sup>36</sup> *Watkins v. Peacock*, 145 Idaho 704, 708, 184 P.3d 210, 214 (2008); *Wait v. Leavell Cattle, Inc.*, 136 Idaho 792, 798, 41 P.3d 220, 226 (2001).

<sup>37</sup> *Cantwell v. City of Boise*, 146 Idaho 127, 133, 191 P.3d 205, 211 (2008).

<sup>38</sup> *Van v. Portneuf Medical Center*, 147 Idaho 552, 556, 212 P.3d 982, 986 (2009); *West v. Sonke*, 132 Idaho 133, 138, 968 P.2d 228, 233 (1998).

<sup>39</sup> *Summers v. Cambridge Joint School District No. 432*, 139 Idaho 953, 956, 88 P.3d 772, 775 (2004); *Dekker v. Magic Valley Regional Medical Center*, 115 Idaho 332, 333, 766 P.2d 1213, 1214 (1989).

<sup>40</sup> *Van v. Portneuf Medical Center*, 147 Idaho at 556, 212 P.3d at 986; *Cramer v. Slater*, 146 Idaho 868, 873, 204 P.3d 508, 513 (2009).

## **B. Admissibility of Affidavit Testimony.**

1. Admissibility of evidence contained in affidavits in support of or in opposition to a motion for summary judgment is a threshold matter to be addressed before applying the liberal construction and reasonable inferences rule to determine whether the evidence creates a genuine issue of material fact for trial.<sup>41</sup>

2. Affidavits may be used to support or defend a motion for summary judgment as long as they are “made on personal knowledge, set out facts which would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.”<sup>42</sup> These requirements “are not satisfied by an affidavit that is conclusory, based on hearsay, and not supported by personal knowledge.”<sup>43</sup>

3. Affidavits may be used to show a genuine issue of material fact where the affiant is competent to testify on matters stated.<sup>44</sup>

4. “Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness.”<sup>45</sup> Thus, “an affidavit need not contain an explicit recital of personal knowledge when it can be reasonably inferred from its contents that the material parts thereof are within the affiant’s personal knowledge.”<sup>46</sup>

5. A trial court’s determination of the admissibility of testimony offered in connection with a motion for summary judgment is discretionary.<sup>47</sup> In exercising its discretion, a trial court must: (a) correctly perceive the issue as one of discretion; (b) act

---

<sup>41</sup> *MFG Financial, Inc. v. Vigos*, 163 Idaho 252, 409 P.3d 832, 835 (2018).

<sup>42</sup> *MFG Financial, Inc. v. Vigos*, 163 Idaho at \_\_\_, 409 P.3d at 836 [citing: Idaho Rule of Civil Procedure 56(c)(4)].

<sup>43</sup> *Mitchell v. State*, 160 Idaho 81, 369 P.3d 299 (2016) [citing: *State v. Shama Resources Limited Partnership*, 127 Idaho 267, 271, 899 P.2d 977, 981 (1995)].

<sup>44</sup> Id.

<sup>45</sup> Idaho Rule of Evidence 602.

<sup>46</sup> *Mitchell v. State*, 160 Idaho at 86, 369 P.3d at 304 [citing: 2A J.S. Affidavit § 47].

within the outer boundaries of its discretion and consistently with the legal standards applicable to the consideration of the issue; (c) reach its decision by an exercise of reason.<sup>48</sup>

**C. Relevance of Evidence.**

1. When a trial court is being asked to admit or to strike evidence, the initial inquiry is whether the evidence is relevant.<sup>49</sup>

2. "Evidence that tends to prove the existence of a fact of consequence in the action, and has any tendency to make the existence of a fact more probable than it would be without the evidence, is relevant."<sup>50</sup>

3. All relevant evidence is admissible, while evidence which is not relevant is not admissible.<sup>51</sup>

4. Relevant evidence can be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues , ... waste of time, or needless presentation of cumulative evidence."<sup>52</sup>

**D. The Best Evidence Rule.**

1. The best evidence rule states that "to prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute."<sup>53</sup>

---

<sup>47</sup> *Green v. Green*, 161 Idaho 675, 679, 389 P.3d 961, 965 (2017).

<sup>48</sup> *Sun Valley Shopping Center v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

<sup>49</sup> *Elliott v. Murdock*, 161 Idaho 281, 287, 385 P.3d 459, 465 (2016).

<sup>50</sup> Id.; Idaho Rule of Evidence 401.

<sup>51</sup> Id.; Idaho Rule of Evidence 402.

<sup>52</sup> Id.; Idaho Rule of Evidence 403.

<sup>53</sup> *State v. Rodriguez*, 161 Idaho 368, 370, 386 P.3d 509, 511 (Ct. App. 2017) [citing: Idaho Rule of Evidence 1002].

2. The purpose of the best evidence rule is to safeguard against inaccuracies or fraud by requiring the production of original documents.<sup>54</sup>

3. The best evidence rule directs a party that to prove content, the party must produce the original, a duplicate, or offer an adequate explanation why the party cannot do so.<sup>55</sup>

**E. Real Party in Interest.**

1. An action must be prosecuted in the name of the real party in interest.<sup>56</sup>

2. The Idaho Supreme Court has clarified the phrase “real party in interest” as follows:

The real party in interest is the one who has a real, actual, material or substantial interest in the subject matter of the action, the primary object being to save a defendant from further suits covering the same demand or subject matter, i.e., the real party in interest is the person who can discharge the claim upon which the suit is brought and control the action brought to enforce it, and who is entitled to the benefits of the action, if successful, and can fully protect the one paying the claim or judgment against subsequent suits covering the same subject matter, by other persons.<sup>57</sup>

3. An assignee is the real party in interest to bring an action, and the assignor is not the real party in interest and has no standing to prosecute an action on the chose in action.<sup>58</sup>

---

<sup>54</sup> *State v. Rodriguez*, 161 Idaho at 370, 386 P.3d at 511 [citing: Federal Rule of Evidence 1001, advisory committee’s note 1972].

<sup>55</sup> *State v. Rodriguez*, 161 Idaho at 370, 386 P.3d at 511 [citing: Idaho Rule of Evidence 1002, 1003; Federal Rule of evidence 1002, 1003].

<sup>56</sup> Idaho Rule of Civil Procedure 17(a).

<sup>57</sup> *MFG Financial, Inc. v. Vigos*, 163 Idaho at \_\_\_, 409 P.3d at 835 [citing: *Caughey v. George Jensen & Sons*, 74 Idaho 132, 134-5, 258 P.2d 357, 359 (1953)].

<sup>58</sup> *MFG Financial, Inc. v. Vigos*, 163 Idaho at \_\_\_, 409 P.3d at 835 [citing: *McCluskey v. Galland*, 95 Idaho 472, 474-5, 511 P.2d 289, 291-2 (1973)].

#### **F. Breach of Contract Actions.**

1. The elements for a claim for breach of contract are: (a) the existence of the contract, (b) the breach of the contract, (c) the breach caused damages, and (d) the amount of those damages.<sup>59</sup>

2. A contract will be enforced if it is “complete, definite and certain in all its material terms, or contain[s] provisions which are capable in themselves of being reduced to a certainty.”<sup>60</sup>

3. The question as to the existence of an oral contract is one of fact.<sup>61</sup>

#### **G. Statute of Frauds.**

1. An interest in real property (other than leases not exceeding one year) cannot be created without a written instrument.<sup>62</sup>

2. An agreement that by its terms is not to be performed within a year from the making of the agreement is invalid unless the agreement, or some note or memorandum thereof, is in writing and subscribed by the party charged, or his agent.<sup>63</sup>

#### **H. Statute of Limitations.**

1. Generally, a cause of action accrues when one party may maintain a lawsuit against another.<sup>64</sup>

2. A cause of action for breach of contract accrues upon breach for limitation purposes.<sup>65</sup>

---

<sup>59</sup> *Franklin Building Supply Company, Inc. v. Hymas*, 157 Idaho 632, 637, 339 P.3d 357, 362 (2014).

<sup>60</sup> *Spence v. Howell*, 126 Idaho 763, 770, 890 P.2d 714, 721 (1995).

<sup>61</sup> *Id.*

<sup>62</sup> Idaho Code § 9-503.

<sup>63</sup> Idaho Code § 9-505.1.

<sup>64</sup> *Western Corporation v. Vanek*, 144 Idaho 150, 151, 158 P.3d 313, 314 (Ct. App. 2006).

<sup>65</sup> *Cuevas v. Barraza*, 146 Idaho 511, 517, 198 P.3d 740, 746 (Ct. App. 2008).

3. The question of when the breach occurred is a factual one.<sup>66</sup> Courts must look to the record for sufficient and competent evidence to support the findings.<sup>67</sup>

## V. DISCUSSION

### A. The Sandow Affidavit.

The Stallings object to “any portion” of the Sandow Affidavit that references statements made by Gregory or by Richard Stallings.<sup>68</sup> The Stallings argue that such references are hearsay.<sup>69</sup> They also contend that the references lack foundation because “[t]here is no indication when, where, or with whom the discussions occurred.”<sup>70</sup> Gregory did not respond to the Stallings’ Objections to Affidavits.

The Stallings’ broad objection to any references to statements by Gregory or Richard Stallings does not provide appropriate identification of the specific statements the Stallings seek to exclude. This Court should not be required to search the record for error.<sup>71</sup>

Next, the Stallings object to paragraph 5 of the Sandow Affidavit on the grounds of relevance.<sup>72</sup> In paragraph 5, Sandow states:

Exhibit O is a letter I received from Terri Merkley relative to a loan made to Richard and Eileen Stallings in the matter, directed to me.<sup>73</sup>

Exhibit O, attached to the Sandow Affidavit, evinces the December 6, 2012 letter from Terri L. Merkley, owner/broker of Empire Funding, to Sandow.<sup>74</sup>

---

<sup>66</sup> *Spence v. Howell*, 126 Idaho at 770, 890 P.2d at 721.

<sup>67</sup> Id.

<sup>68</sup> Stallings’ Objections to Affidavits, at p. 1, ¶ 1.

<sup>69</sup> Id.

<sup>70</sup> Id.

<sup>71</sup> *Vulk v. Haley*, 112 Idaho 855, 857, 736 P.2d 1309, 1311 (1987).

<sup>72</sup> Stallings’ Objections to Affidavit, at p. 1, ¶ 2.

<sup>73</sup> Sandow Affidavit, at p. 2, ¶ 5

<sup>74</sup> Sandow Affidavit, at Exhibit O.

Sandow may testify as to correspondence he received. As the Stallings point out, however, nothing in Exhibit O appears to be relevant to Gregory's claims in this lawsuit. For these reasons, paragraph 5 of the Sandow Affidavit, together with Exhibit O, shall be stricken for purposes of the Stallings' Motion.

The Stallings then object to paragraph 6 of the Sandow Affidavit as hearsay and lacking foundation.<sup>75</sup> Paragraph 6 of the Sandow Affidavit reads:

I understand they had a joint, mutual interest because of their separate, individual investments in the property in question.<sup>76</sup>

This statement is corroborated by the affidavit of Richard Stallings, wherein Richard Stallings states that both he and Gregory bought real property, the portions being contiguous to each other, Gregory's property was transferred to Pioneer Point, LLC and then to Richard Stallings, and that Richard Stallings sold both pieces of property.<sup>77</sup> The Stallings Affidavit provides dates of the land sale purchases and sales.<sup>78</sup> Because Sandow's statements in paragraph 6 of his Affidavit are corroborated by the Stallings Affidavit, paragraph 6 of the Sandow Affidavit shall be admitted.

Next, the Stallings object to paragraphs 8 and 9 of Sandow's Affidavit as violating the best evidence rule.<sup>79</sup> Paragraphs 8 and 9 read:

On November 14, 2012 I received an email from Richard Stallings (Exhibit M). In that email, he advised of his proposed division of Stallings and Gregory's mutual interest, by proposing to pay, through me, Jon Gregory's share in their mutual interests upon sale of the property.<sup>80</sup>

---

<sup>75</sup> Stallings' Objections to Affidavit, at p. 1, ¶ 3.

<sup>76</sup> Sandow Affidavit, at p. 2, ¶ 6.

<sup>77</sup> Stallings Affidavit, at pp. 1-2.

<sup>78</sup> Id.

<sup>79</sup> Stallings' Objections to Affidavit, at p. 2, ¶ 4.

<sup>80</sup> Sandow Affidavit, at p. 2, ¶ 8.

On or about December 27, 2012, I received a second email. A statement from Richard Stallings, proposing that the amount to be paid to Jon Gregory was \$155,482.28 (Exhibit N).<sup>81</sup>

Exhibit M to the Sандow Affidavit is an e-mail communication from Richard Stallings to Garrett Sандow, dated November 14, 2012.<sup>82</sup> It contains unidentified handwriting on it, which shall not be considered. Exhibit N reveals a statement to Richard Stallings, showing an amount due of \$144,517.72.<sup>83</sup>

Sандow may testify as to what he received by e-mail, but Exhibits M and N are the best evidence of the information communicated in those e-mails. Exhibits M and N shall be admitted for consideration of the Stallings' Motion, except for the unidentified handwriting on Exhibit M.

The first sentence of paragraph 8 to the Sандow Affidavit shall also be admitted. The second sentence of paragraph 8 shall not be considered, since Exhibit M is the best evidence of the November 14, 2012 e-mail's contents.

The portion of paragraph 9 to the Sандow Affidavit which reads "On or about December 27, 2012, I received a second email, a statement from Richard Stallings...." The remainder of paragraph 9 shall not be considered.

Finally, the Stallings object to paragraph 11 of the Sандow Affidavit as hearsay, lacking foundation, and in violation of the best evidence rule.<sup>84</sup> Sандow's paragraph 11 states:

I did not hear much more on the matter from Mr. Stallings or Mr. Gregory, until I received an email from Tim Cobb, another individual who is involved in the matter peripherally. The email was dated September 9,

---

<sup>81</sup> Sандow Affidavit, at p. 2, ¶ 9.

<sup>82</sup> Sандow Affidavit, at Exhibit M.

<sup>83</sup> Sандow Affidavit, at Exhibit N.

<sup>84</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 5.

2013, and included an email from Richard Stallings essentially advising me that he had decided that he was not going to pay Jon Gregory anything for his mutual interests, and that according to him, there was no money owed to Jon Gregory from the current sale. I passed that information on to Jon Gregory, as I had the other emails (Exhibit I). His decision not to pay Jon Gregory was a breach of my understanding of their joint venture and mutual interest in the property.<sup>85</sup>

Sandow may testify as to his contacts with various persons, and the dates of those contacts. The contents of Exhibit I should be interpreted pursuant to the best evidence rule: that is, the communications in Exhibit I speak for themselves. The underlined portions of paragraph 11 shall be considered within the adjudication of the Stallings' Motion, as shall be the contents of Exhibit I. The remainder of the paragraph (the portions that are not underlined), shall not be considered.

#### B. The Gregory Affidavit.

The Stallings also object to paragraphs 5, 6, and 7 of the Gregory Affidavit on the basis of relevance.<sup>86</sup> Those paragraphs read as follows:

Over the course of my working with Summit Mortgage on several projects, including this one, it was common for me to purchase the original property, and then transfer my interest to them or subordinate my interest so they could complete their part of the development. I generally received at the end of each project with Summit reimbursement for my expenditures for the ground, and 50% of any profits or proceeds from the development or sale thereof.

We also generally set up a limited liability company for each of the several projects – and used the name Pioneer Point, LLC for this particular project.

I may have transferred my interest to Summit on paper, but it was a similar transaction and business operation that we had engaged in several times before.<sup>87</sup>

---

<sup>85</sup> Sandow Affidavit, at p. 3, ¶ 11 (emphasis added).

<sup>86</sup> Stallings' Objections to Affidavits, at p. 2,

<sup>87</sup> Gregory Affidavit, at p. 2, ¶¶ 5, 6, 7.

In his Complaint, Gregory alleges that Summit Development is also known as Pioneer Point, LLC.<sup>88</sup> Whether or not Gregory engaged in a similar course of conduct with regard to land development in the past is not relevant insofar as the statute of limitations and the Statute of Frauds, which are ultimately dispositive of Gregory's lawsuit, are concerned. Therefore, any facts regarding former courses of dealings between Gregory and Summit Development, also known as Pioneer Point, LLC, shall not be considered in the adjudication of the Stallings' Motion.

The Stallings object to paragraph 8 of the Gregory Affidavit on the grounds of relevance and stating a legal conclusion.<sup>89</sup> In paragraph 8 of his Affidavit, Gregory testified:

Further, in order to assist with the transition and sale of the property, I had been required to subordinate my interest to that of Pioneer Point, given the investments of some of the parties they were working with to come up with the money. Nevertheless, that did not change mutual interests and ownership that Richard and I had between ourselves.<sup>90</sup>

That Gregory transferred his interest in the property to Pioneer Point is found elsewhere in the record.<sup>91</sup> Ownership of property, on the other hand, is determined by the law, rather than any tacit understanding between parties. Therefore, the second sentence in paragraph 8 of the Gregory Affidavit shall not be considered herein.

The Stallings object to paragraph 9 of the Gregory Affidavit as hearsay and lacking foundation.<sup>92</sup> Paragraph 9 states:

I was aware that Pioneer Point LLC had transferred back their interest in the property to us or Mr. Stallings because they had no funds to pay for

---

<sup>88</sup> Gregory's Complaint, at p. 2, ¶ 8.

<sup>89</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 7.

<sup>90</sup> Gregory Affidavit, at p. 2, ¶ 8.

<sup>91</sup> See: Stallings Affidavit, at p. 2, ¶ 4.

<sup>92</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 8.

construction funding, and wanted us to take the project back over by quitclaim deed but we continued to work on sale together in order to try and accomplish a liquidation of the property that would benefit our interest mutually.<sup>93</sup>

The reasons for the transfer of property ownership, and the continuing business relations of the parties have no bearing upon the dispositive statute of limitations and Statute of Frauds determinations. Accordingly, paragraph 9 of the Gregory Affidavit shall not bear further consideration herein.

The Stallings object to paragraph 11 of the Gregory Affidavit "as lacking foundation as to what if anything Richard Stallings was using Garrett Sandow for."<sup>94</sup> Gregory may testify as to the reasons why he consulted attorney Garrett Sandow. Gregory may not speak for Richard Stallings, however. That portion of paragraph 11 which refers to the reasons why Richard Stallings consulted Sandow shall not be considered in this opinion.

The Stallings complain of Gregory's statements in paragraph 12 of his Affidavit as hearsay and lacking foundation.<sup>95</sup> In paragraph 12 of his Affidavit, Gregory affies:

Mr. Stallings agreed to pay me the balance of any funds from the sale after he received back his original investment amount. That was the reason he forwarded the letter from Terry Merkley (Exhibit O) from Empire Funding to establish his original investment amount minus the \$30,000.00 draw he had already taken. He also received at least one extension fee to his credit from the buyers, which was an additional several thousand dollars.<sup>96</sup>

Richard Stallings' November 14, 2012 e-mail to Garrett Sandow<sup>97</sup> states:

I plan on taking the following amounts and then giving the balance of each draw to Garret Sandow for Johns dispersel [sic].

---

<sup>93</sup> Gregory Affidavit, at p. 2, ¶ 9.

<sup>94</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 9.

<sup>95</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 10.

<sup>96</sup> Gregory Affidavit, at p. 3, ¶ 12.

<sup>97</sup> See: Sandow Affidavit, Exhibit M.

First draw 106,000  
second draw 150,000<sup>98</sup>

Such language may signify an intent to pay, but does not amount to a written agreement to pay the balance of the draws to Gregory.

Although Exhibit M to the Sandow Affidavit shall be considered in adjudicating the Stallings' Motion, Gregory's interpretation of Exhibit M shall not be considered. Neither shall Gregory's opinion as to the reasons other people took certain actions be considered herein.

The Stallings object to paragraph 18 of the Gregory Affidavit as a violation of the best evidence rule.<sup>99</sup> Paragraph 18 reads:

On September 9, 2013, I was forwarded an email that I received from Mr. Sandow, advising that Mr. Stallings felt he owed me nothing, and that he was keeping all of the funds and money from the sale of the property (Exhibit I). He also advised me that I had four years from the date of the notice I received, September 9, 2013, to file legal action.<sup>100</sup>

Gregory may testify as to the date he received an e-mail from Mr. Sandow. The content of Richard Stallings' communication, contained in Exhibit I to the Sandow Affidavit, speaks for itself. As for any legal advice Gregory received from Mr. Sandow, that is hearsay and shall be excluded from further consideration.

**C. The Statute of Frauds does Not Apply to Gregory's Lawsuit against the Stallings.**

In support of their argument that the contract alleged by Gregory is barred by the Idaho Statute of Frauds, the Stallings simply aver: "There is no contract, memorandum or

---

<sup>98</sup> *Id.*

<sup>99</sup> Stallings' Objections to Affidavits, at p. 2, ¶ 11.

<sup>100</sup> Gregory Affidavit, at p. 4, ¶ 18.

written document signed by Defendants which reflect any alleged terms of a contract. Accordingly, Plaintiffs's [sic] Complaint should be dismissed.”<sup>101</sup>

In light of the evidence in the record, it appears an oral agreement between Gregory and the Stallings was formed. Gregory alleges that he wanted to develop a parcel of land for commercial purposes.<sup>102</sup> He alleges that he purchased two (2) of the four (4) desired acres of land, but sought to acquire the other two acres to complete the planned development.<sup>103</sup> He contends that Richard Stallings agreed to purchase the other two acres of land for the purpose of going into partnership with Gregory to commercially develop the entire four acres.<sup>104</sup>

Richard Stallings concedes he did purchase the contiguous two-acre parcel.<sup>105</sup> In his November 14, 2012 e-mail to Garrett Sandow, Stallings wrote:

The entire project was under John [sic] watch. I totally left everything up to his disgression [sic]. I am very disappointed that we sold this property under his advisment [sic] to some one who barrowed [sic] hard money on it. This ruined potential profits thst [sic] would have been good for both of us.

My mistake was putting this in Johns [sic] hands. I feal [sic] if he would have been more ascertive [sic] we would not be in this position. For this reason I feal [sic] that Ishould [sic] at least get the money that I invested into this property back.<sup>106</sup>

Gregory alleges that Summit Development, also known as Pioneer Point LLC became involved as the developers for the commercial venture.<sup>107</sup> Gregory transferred his

---

<sup>101</sup> Stallings' Memorandum, at p. 4.

<sup>102</sup> Gregory's Complaint, at p. 2, ¶ 4.

<sup>103</sup> Gregory's Complaint, at p. 2, ¶ 5.

<sup>104</sup> Gregory's Complaint, at p. 2, ¶¶ 6, 7.

<sup>105</sup> Stallings Affidavit, at p. 1, ¶ 2.

<sup>106</sup> Sandow Affidavit, at Exhibit I.

<sup>107</sup> Gregory's Complaint, at p. 2, ¶ 8.

interest in his two-acre parcel to Summit Development.<sup>108</sup> He asserts that the reason for the transfer in interest was to allow Summit Mortgage to “complete their part of the development.”<sup>109</sup>

Gregory maintains that the real estate market crashed around 2007 and defeated his (and Richard Stallings') mutual efforts to develop the properties, causing Gregory and the Stallings to take efforts to sell the properties.<sup>110</sup> They ultimately sold the properties for \$1,086,438.89.<sup>111</sup> Gregory claims that the Stallings kept all of the proceeds of the sale.<sup>112</sup> Richard Stallings' e-mails indicate that he initially planned to give some of the property sale proceeds to Gregory,<sup>113</sup> but later determined to retain all of the proceeds for himself.<sup>114</sup>

In his answers to interrogatories, Gregory defined the agreement as: “The parties were partners/a joint venture to share profits equally after consideration and repayment of their original respective investments.”<sup>115</sup> Garrett Sandow understood that he was to assist Gregory in reviewing contracts and other matters relative to a mutual interest Gregory and Richard Stallings had in certain real property.<sup>116</sup>

Thus, the record reflects that Gregory and the Stallings formed an understanding with regard to the commercial development of property in Rexburg, and took action in

---

<sup>108</sup> Gregory Affidavit, at p. 2, ¶ 7.

<sup>109</sup> Gregory Affidavit, at p. 2, ¶ 5.

<sup>110</sup> Gregory's Complaint, at pp. 3-4, ¶¶ 14-18.

<sup>111</sup> Gregory's Complaint, at Exhibit D.

<sup>112</sup> Gregory's Complaint, at p. 4, ¶ 25.

<sup>113</sup> Sandow Affidavit, at Exhibit M.

<sup>114</sup> Sandow Affidavit, at Exhibit I.

<sup>115</sup> Affidavit of Jared M. Harris in Support of Reply Brief in Support of Defendants' Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed August 14, 2018) (hereinafter the “Harris Affidavit”), at Exhibit A.

<sup>116</sup> Sandow Affidavit, at p. 1, ¶ 2.

furtherance of that end. The Stallings contend that the property “got improved.”<sup>117</sup> Although nothing in the record show what improvements were ultimately completed on the property, the Stallings’ Reply infers that indeed the nature of the parties’ relationship with regard to the two two-acre parcels of land in Rexburg had to do with improving the property.

Furthermore, although the Stallings argue that any claim Gregory may have to the proceeds should be against Pioneer Point LLC,<sup>118</sup> to whom Gregory transferred his parcel before the parcel was transferred to Richard Stallings,<sup>119</sup> Richard Stallings specifically stated that he planned to pay part of the proceeds from the property sale to Gregory.<sup>120</sup> Richard Stallings made no mention whatsoever of Pioneer Point LLC in his November 14, 2012 e-mail regarding the proceeds of the land sale.<sup>121</sup> Neither is Pioneer Point LLC mentioned in Richard Stallings’ August 27, 2013 e-mail (forwarded to Garrett Sandow on September 9, 2013).<sup>122</sup> Richard Stallings never asserted, in either of his communications regarding the payout from the land sale, that Gregory should look to Pioneer Point LLC for his share of the sale proceeds.<sup>123</sup> Furthermore, on the “Seller’s Final Settlement Statement,” which show the sale of the property to Rockwell Court Limited Partnership, the “seller” is listed as Richard and Eileen Stallings.<sup>124</sup> Richard and Eileen Stallings

---

<sup>117</sup> Reply Brief in Support of Defendants’ Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed August 14, 2018) (hereinafter the “Stallings’ Reply”).

<sup>118</sup> Stallings’ Reply, at p. 3.

<sup>119</sup> Stallings Affidavit, at p. 2, ¶ 5; and at Exhibit C.

<sup>120</sup> Sandow Affidavit, at Exhibit M.

<sup>121</sup> *Id.*

<sup>122</sup> Sandow Affidavit, at Exhibit I.

<sup>123</sup> Sandow Affidavit, at Exhibits I, M.

<sup>124</sup> Gregory’s Complaint, at Exhibit D, p. 1.

signed the “Seller’s Final Settlement Statement.”<sup>125</sup> No place is included on the statement for a signature by Pioneer Point LLC.

Instead, the record infers that the “agreement” upon which Gregory sues was between Gregory and the Stallings. It appears that a number of complex interactions took place in order to promote the land development project, but Richard Stallings ultimately looked to Gregory, not any of the other third-party players, as the person to whom final proceeds might be due.

In summary, the oral contract in this case was not a contract for the sale of land. It was an agreement for the development of commercial property. The commercial loan for construction of the development expected completion within seven (7) months. Thus, the project could arguably have been performed within one year. The sale of the property after the venture failed (or perhaps after the venture ran out of funding before ultimate completion) was incidental to the overall agreement.<sup>126</sup>

For these reasons, the Statute of Frauds has no bearing on this lawsuit and does not form a basis for granting the Stallings’ Motion.

#### **D. The Statute of Limitations for Oral Contracts Bars Gregory’s Lawsuit.**

The statute of limitations applicable to an oral contact is four (4) years.<sup>127</sup> The Stallings argue, and the record reflects that if an agreement existed between the parties, then the agreement was made orally.<sup>128</sup> Gregory counters that the parties had an express

---

<sup>125</sup> Gregory’s Complaint, at Exhibit D, p. 2.

<sup>126</sup> See: *Spence v. Howell*, 126 Idaho at 771, 890 P.2d at 722.

<sup>127</sup> Idaho Code § 5-217.

<sup>128</sup> Stallings’ Memorandum, at p. 3.

agreement that the parties would develop commercial and/or residential housing on the two pieces of adjoining property purchased separately by the parties.<sup>129</sup>

An express contract is defined as a “contract whose terms the parties have explicitly set out.”<sup>130</sup> On oral or parol contract, on the other hand, is defined as a “contract or modification of a contract that is not in writing or is only partially in writing.”<sup>131</sup>

Under Idaho law, the statute of limitations for an action upon a contract in writing is five years,<sup>132</sup> as opposed to the four-year limitation period on an oral contract. Since the record does not reflect a written agreement between Gregory and the Stallings, the four-year statute of limitations for oral contracts shall apply in this lawsuit.

The Stallings argue that the four-year statute of limitations upon an oral contract would have begun to run on December 21, 2012,<sup>133</sup> the date both properties were sold to Rockwell Court Limited Partnership.<sup>134</sup> The Stallings offer no authority for assigning the date of sale of the properties as the start of the limitations period.<sup>135</sup> Gregory counters that the four-year statute began to run on September 9, 2013, the date Gregory was made aware that the Stallings were not going to pay or reimburse Gregory for any of his contributions to the project out of the proceeds of the sale of the properties.<sup>136</sup>

Assuming a contract existed between Gregory and Stallings, which is appropriate for purposes of adjudicating the Stallings’ Motion, Richard Stallings received the payout

---

<sup>129</sup> Gregory’s Opposition, at pp. 2-3.

<sup>130</sup> Black’s Law Dictionary, 8<sup>th</sup> ed., at pp. 344-5.

<sup>131</sup> Black’s Law Dictionary, 8<sup>th</sup> ed., at p. 347.

<sup>132</sup> Idaho Code § 5-216.

<sup>133</sup> Stallings’ Memorandum, at p. 3.

<sup>134</sup> Gregory’s Complaint, at Exhibit D.

<sup>135</sup> Stallings’ Memorandum, at p. 3.

<sup>136</sup> Gregory’s Opposition, at p. 5.

from the sale of the two properties on or about December 21, 2012.<sup>137</sup> On that date, Gregory knew that the Stallings held funds, a portion of which Gregory expected to recover. He could have sued the Stallings on that date to recover the proceeds he believed should have gone to him. That the Stallings might have paid Gregory in the future would not toll or delay the running of the statute of limitations.<sup>138</sup>

The record reflects Richard Stallings' e-mail of November 14, 2012, wherein Stallings informed Garrett Sandoval that some portion of the sale proceeds should be given to Gregory.<sup>139</sup> If anything, this e-mail put Gregory on notice that, upon receipt of the payout, Stallings should pay Gregory a portion of the proceeds. Clearly, Richard Stallings did not provide any portion of the proceeds to Gregory because, almost a year later, on September 9, 2013, Mr. Sandoval received notice that Stallings did not intend to pay any part of the proceeds to Gregory.<sup>140</sup>

As of September 9, 2013, Gregory still had over three (3) years in which to file this lawsuit against the Stallings. He waited until September of 2017 to take action. Unfortunately, given the fact that he could have filed suit against the Stallings as of December 21, 2012, Gregory's failure to file his suit earlier ran afoul of the four-year statute of limitations. His action is now barred as against the Stallings.

For these reasons, this lawsuit shall be dismissed pursuant to Idaho Code § 5-217.

## **VI. CONCLUSIONS OF LAW**

Based upon the foregoing findings and analyses, the following conclusions are appropriate:

---

<sup>137</sup> Gregory's Complaint, at Exhibit D.

<sup>138</sup> *Lapham v. Stewart*, 137 Idaho 582, 586, 51 P.3d 396, 400 (2002).

<sup>139</sup> Sandoval Affidavit, at Exhibit M.

1. Portions of the Sandow Affidavit should be stricken from consideration on summary judgment.
2. Portions of the Gregory Affidavit should be stricken from consideration on summary judgment.
3. Gregory's breach of contract action is not barred by the Idaho Statute of Frauds.
4. Gregory's breach of contract action is barred by the applicable statute of limitations.

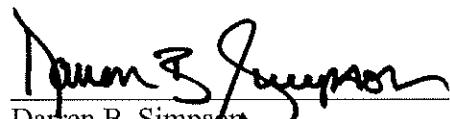
## VII. ORDER

Accordingly, the Stallings' Motion for Summary Judgment is granted. Gregory shall take nothing by his lawsuit against the Stallings.

A separate judgment shall issue.

**IT IS SO ORDERED.**

DATED this 15th day of October 2018.



\_\_\_\_\_  
Darren B. Simpson  
District Judge      Signed: 10/15/2018 03:30 PM

---

<sup>140</sup> Sandow Affidavit, at Exhibit I.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Order Granting Defendants' Motion for Summary Judgment was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by e-mail this 15th day of October 2018, to:

David N. Parmenter, Esq.  
Nathan D. Rivera, Esq.  
Attorneys at Law  
53 S. Shilling  
P.O. Box 700  
Blackfoot, Idaho 83221

U.S. Mail       Courthouse Box       E-Mail

Jared M. Harris, Esq.  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221

U.S. Mail       Courthouse Box       E-Mail

PAMELA W. ECKHARDT, Clerk of the Court

Signed: 10/15/2018 05:36 PM

By: \_\_\_\_\_

Deputy Clerk



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual,	)	CASE NO. CV-2017-1651
	)	
Plaintiff,	)	<b>ORDER DENYING</b>
	)	<b>PLAINTIFF'S MOTION FOR</b>
vs.	)	<b>RECONSIDERATION</b>
	)	
RICHARD STALLINGS, an individual,	)	
and EILEEN STALLINGS, an individual,	)	
	)	
Defendants.	)	
	)	

**I. STATEMENT OF THE CASE**

Plaintiff Jon Gregory (hereinafter “Gregory”) filed the above-numbered lawsuit against Defendants Richard Stallings, an individual, and Eileen Stallings, an individual (hereinafter collectively referred to as the “Stallings”) and claimed breach of contract, breach of implied contract, and *quantum meruit*.<sup>1</sup> The Stallings summarily prevailed against Gregory based upon the applicable statute of limitations.<sup>2</sup>

Gregory now moves for reconsideration pursuant to Idaho Rule of Civil Procedure 11.2(b)(1).<sup>3</sup> The Stallings object to Gregory’s Motion.<sup>4</sup>

---

<sup>1</sup> Verified Complaint, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed September 6, 2017) (hereinafter “Gregory’s Complaint”).

<sup>2</sup> Order Granting Defendant’s Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed October 15, 2018) (hereinafter the “Summary Judgment Order”).

<sup>3</sup> Motion for Reconsideration, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed October 29, 2018) (hereinafter “Gregory’s Motion”).

<sup>4</sup> Objection and Response to Motion to Reconsider, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed November 16, 2018) (hereinafter the “Stallings’ Objection”).

The parties stipulated to submit Gregory's Motion on the briefing.<sup>5</sup> Based upon the record, the parties' arguments, and the relevant authorities, Gregory's Motion shall be denied.

## II. ISSUE

Gregory concedes that the four-year statute of limitations for oral contracts, Idaho Code § 5-217, governs the parties' interactions in this case.<sup>6</sup> He argues that all of the funds from the sale of the parties' Property were not paid to the Stallings on December 21, 2012, but were paid in installments over the course of several draws in 2013.<sup>7</sup> Gregory argues that the oral contract was not breached until on or about August 27, 2013, when the Stallings received the last draw.<sup>8</sup> The Stallings respond that the parties' agreement did not include a requirement that Gregory was to be paid out of the last draw, that Gregory knew of the December 21, 2012 sale, and that he waited too long to file his lawsuit.<sup>9</sup>

The parties' arguments raise the following issue in light of the relevant authorities: Has Gregory shown that the *Summary Judgment Order* should be reconsidered?

---

<sup>5</sup> Stipulation to Submit on Briefing, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed December 12, 2018).

<sup>6</sup> Memorandum in Support of Motion for Reconsideration, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed October 29, 2018) (hereinafter "Gregory's Memorandum"), at p. 1.

<sup>7</sup> Gregory's Memorandum, at p. 2.

<sup>8</sup> *Id.*

<sup>9</sup> Stallings' Objection, at pp. 1-3.

### III. FINDINGS OF FACT

1. Gregory purchased two (2) acres of a four (4) acre parcel of land in Rexburg, Idaho because he wanted to develop the property into student housing or a similar commercial venture.<sup>10</sup> (The entire four-acre parcel is hereinafter referred to as the "Property.")

2. On September 27, 2007, Gregory sold an approximately two (2) acre parcel of land to the Stallings.<sup>11</sup> The two-acre parcel purchased by the Stallings was contiguous to the two-acre parcel owned by Gregory.<sup>12</sup> According to Gregory, this purchase represented the other two acres of the four-acre Property in Rexburg.<sup>13</sup>

3. On February 2, 2009, Gregory transferred his interest in his two-acre portion of the Property to Pioneer Point LLC.<sup>14</sup> Gregory asserts that Pioneer Point LLC was to develop the Property, put in roads, parking lots, sewer, and water, and to begin construction on at least two buildings.<sup>15</sup>

4. On December 8, 2010, Pioneer Point LLC and the Stallings entered into a construction loan with Century Mortgage Company

... to finance a part of the cost of construction of certain improvements upon the described premises in accordance with plans and specifications that have been or will be deposited by [Pioneer Point, LLC and the Stallings] with [Century Mortgage Company].<sup>16</sup>

---

<sup>10</sup> Gregory's Complaint, at p. 2, ¶ 5.

<sup>11</sup> Affidavit of Richard Stallings in Support of Motion for Summary Judgment, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 5, 2018) (hereinafter the "Stallings Affidavit"), at p. 1, ¶ 2; and at Exhibit A.

<sup>12</sup> Stallings Affidavit, at p. 1, ¶ 3.

<sup>13</sup> Gregory's Complaint, at p. 2, ¶¶ 6, 7.

<sup>14</sup> Stallings Affidavit, at p. 2, ¶ 4; and at Exhibit B.

<sup>15</sup> Gregory's Complaint, at p. 2, ¶ 8.

<sup>16</sup> Gregory's Complaint, at Exhibit A.

5. On the same date, December 8, 2010, Pioneer Point LLC and the Stallings signed a promissory note, in the amount of \$945,000, to various lenders, with the promise to pay the note within six (6) months, or by June 10, 2009, with an option to extend for another six (6) months.<sup>17</sup>

6. On May 2, 2012, Pioneer Point LLC transferred what had been Gregory's portion of the Property to Richard Stallings.<sup>18</sup>

7. On December 21, 2012, the Stallings sold both parcels of the Property to Rockwell Court Limited Partnership for the sum of \$1,086,438.89.<sup>19</sup> According to Gregory, following the sale of the Property, all of the mortgage investors were paid back their initial investments.<sup>20</sup>

8. Prior to the sale, on November 14, 2012, Richard Stallings informed Gregory, through attorney Garrett Sandow, that he "plan[ned] on taking the following amounts and then giv[e] the balance of each draw to Garret Sandow for Johns [sic] dispersel [sic]. First draw 106,000 second draw 150,000."<sup>21</sup>

9. On September 9, 2013, an e-mail from Richard Stallings (originally dated August 27, 2013) was forwarded to attorney Garrett Sandow.<sup>22</sup> In his e-mail, Richard Stallings wrote, *inter alia*: "In conclusion I feel in order for me to get a return on my investment there is no money owed to John from the current sell."<sup>23</sup>

---

<sup>17</sup> Gregory's Complaint, at Exhibit B.

<sup>18</sup> Stallings Affidavit, at p. 2, ¶ 5.

<sup>19</sup> Gregory's Complaint, at Exhibit D.

<sup>20</sup> Gregory's Complaint, at p. 4, ¶ 19; and at Exhibit D, p. 1.

<sup>21</sup> Affidavit of Garrett Sandow, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed July 19, 2018) (hereinafter the "Sandow Affidavit"), at Exhibit M.

<sup>22</sup> Sandow Affidavit, at Exhibit I.

<sup>23</sup> Id.

10. Gregory sued the Stallings for breach of contract on September 6, 2017.<sup>24</sup>

#### IV. RELEVANT PRINCIPLES OF LAW

##### A. Standard of Review – Motion for Reconsideration.

1. Idaho Rule of Civil Procedure 11.2(b)(1) provides:

A motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to or within 14 days after the entry of a final judgment. A motion to reconsider an order entered after the entry of final judgment must be made within 14 days after entry of the order.

2. A party requesting reconsideration of an interlocutory order is permitted to present new evidence, but is not required to do so.<sup>25</sup> The burden of proof on a motion for reconsideration is upon the requesting party (in this matter, Gregory).<sup>26</sup>

3. When deciding a motion for reconsideration, the same standard of review relevant to the original order is applied to the order under reconsideration.<sup>27</sup> In other words, if the original order was a matter within this Court's discretion, then the same standard applies to the decision to grant or deny the motion for reconsideration.<sup>28</sup> (If the original order was governed by a different standard, then that standard applies to the motion for reconsideration.)<sup>29</sup>

4. This Court has no discretion on whether to entertain a motion for reconsideration under Rule 11.2(b).<sup>30</sup>

---

<sup>24</sup> Gregory's Complaint, at p. 1.

<sup>25</sup> *Johnson v. Lambros*, 143 Idaho 468, 472-3, 147 P.3d 100, 104-5 (Ct. App. 2006).

<sup>26</sup> *Johnson v. Lambros*, 143 Idaho at 472, 147 P.3d at 104.

<sup>27</sup> *Fagnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012).

<sup>28</sup> *Fagnella v. Petrovich*, 153 Idaho at 276, 281 P.3d at 113.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* [decided under former Rule 11(a)(2)(b)].

**B. Standard of Review – Motion for Summary Judgment.**

1. If the pleadings, depositions, and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, summary judgment may be granted.<sup>31</sup> Disputed facts are construed in favor of the non-moving party and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.<sup>32</sup>

2. The party moving for summary judgment (in this case, the Stallings) has the burden of presenting admissible evidence showing that there is an absence of any genuine issue of material fact with respect to the issues raised by the summary judgment motion.<sup>33</sup>

3. If the moving party demonstrates the absence of a question of material fact, the burden shifts to the nonmoving party to demonstrate an issue of material fact that will preclude summary judgment.<sup>34</sup>

4. The non-moving party (in this case, Gregory) cannot merely rest on its pleadings.<sup>35</sup> When faced with supporting affidavits or depositions, the opposing party must show material issues of fact which preclude the issuance of summary judgment.<sup>36</sup>

5. While the moving party must prove the absence of a genuine issue of material fact,<sup>37</sup> the opposing party cannot simply speculate.<sup>38</sup> A mere scintilla of evidence is

---

<sup>31</sup> Idaho Rule of Civil Procedure 56(a); *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 768, 203 P.3d 694, 698 (2009); *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 516-7, 808 P.2d 851, 853-4 (1991).

<sup>32</sup> *Bushi v. Sage Health Care, PLLC*, 146 Idaho at 768, 203 P.3d at 698; *Lockheed Martin Corp. v. Idaho State Tax Commission*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006).

<sup>33</sup> *Sadid v. Idaho State University*, 151 Idaho 932, 938, 265 P.3d 1144, 1150 (2011).

<sup>34</sup> *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 317, 246 P.3d 961, 970 (2010).

<sup>35</sup> *Partout v. Harper*, 145 Idaho 683, 688, 183 P.3d 771, 776 (2008); *R.G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 410, 797 P.2d 117, 118 (1990).

not enough to create a genuine factual issue.<sup>39</sup> Summary judgment is appropriate when the non-moving party cannot establish the essential elements of the claim.<sup>40</sup>

6. If reasonable persons could reach differing conclusions on material issues, or draw conflicting inferences therefrom, then the motion for summary judgment must be denied.<sup>41</sup>

## V. DISCUSSION

Gregory premises his Motion largely on the timing of the payouts from Rockwell Court Limited Partnership.<sup>42</sup> Initially, Gregory argues “there was no reason for [Gregory] to be at the [December 21, 2012 closing] sale, since he did not anticipate receiving funds for several months thereafter. ... [T]he payments were to be made to both parties in several draws, over a period of time following the actual closing.”<sup>43</sup> In his Complaint, Gregory alleged that the balance of the proceeds of the sale of the Property to Rockwell Court Limited Partnership was to be divided between the original investors, Gregory, and the Stallings.<sup>44</sup> In August of 2013, the Stallings advised Gregory that they were keeping the proceeds from the sale and that Gregory would receive nothing.<sup>45</sup>

Regardless of when Gregory anticipated receiving funds, the oral contract of which he complains began on December 21, 2012 when the Stallings sold the Property to

---

<sup>36</sup> *Esser Electric v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008).

<sup>37</sup> *Watkins v. Peacock*, 145 Idaho 704, 708, 184 P.3d 210, 214 (2008); *Wait v. Leavell Cattle, Inc.*, 136 Idaho 792, 798, 41 P.3d 220, 226 (2001).

<sup>38</sup> *Cantwell v. City of Boise*, 146 Idaho 127, 133, 191 P.3d 205, 211 (2008).

<sup>39</sup> *Van v. Portneuf Medical Center*, 147 Idaho 552, 556, 212 P.3d 982, 986 (2009); *West v. Sonke*, 132 Idaho 133, 138, 968 P.2d 228, 233 (1998).

<sup>40</sup> *Summers v. Cambridge Joint School District No. 432*, 139 Idaho 953, 956, 88 P.3d 772, 775 (2004); *Dekker v. Magic Valley Regional Medical Center*, 115 Idaho 332, 333, 766 P.2d 1213, 1214 (1989).

<sup>41</sup> *Van v. Portneuf Medical Center*, 147 Idaho at 556, 212 P.3d at 986; *Cramer v. Slater*, 146 Idaho 868, 873, 204 P.3d 508, 513 (2009).

<sup>42</sup> Gregory’s Motion, at pp. 1-2; Gregory’s Memorandum, at p. 3.

<sup>43</sup> Gregory’s Motion, at p. 1.

<sup>44</sup> Gregory’s Complaint, at p. 4, ¶ 20.

Rockwell Court Limited Partnership. On that date, the subject of the oral contract (the Stallings' sale of the Property) took place, for a set price of \$1,086,438.89.<sup>46</sup> Gregory knew on that date that a certain amount was due to him, regardless of when the Stallings promised to remit that amount to him. Indeed, Gregory knew before December 21, 2012 that he was due some portion of the sale proceeds.<sup>47</sup> Gregory had four years from December 21, 2012 (or until December 21, 2016) in which to file his lawsuit. He took no action until September 6, 2017, some eight and one-half months past the deadline set for suits on oral contracts under Idaho Code § 5-217.

Gregory contends that "payouts to Stallings and Gregory were to continue through 'January or first part of February 2013.'"<sup>48</sup> Gregory relies upon Exhibit N, attached to his Motion and to the Gregory Affidavit.<sup>49</sup> Exhibit N evinces a statement dated December 27, 2012 from Richard Stallings, showing a "First Payment (Kept by Richard)" in the amount of \$93,697.01.<sup>50</sup> At the bottom of the statement is an annotation:

Next Pay out end of January or first of February 2013

Total	300,000.00
Paid to John	155,482.28
Paid to Richard	144,517.72

Although unclear, if Exhibit N is an accounting of monies received from the December 21, 2012 Property sale, then Gregory was certainly put on notice as of December 27, 2012 that the Stallings did not intend to pay a dividend to Gregory with

---

<sup>45</sup> Gregory's Complaint, at p. 4, ¶ 24; Sandow Affidavit, at Exhibit I.

<sup>46</sup> Gregory's Complaint, at Exhibit D.

<sup>47</sup> Sandow Affidavit, at Exhibit M.

<sup>48</sup> Gregory's Motion, at p. 2.

<sup>49</sup> Gregory's Motion, at Exhibit N; Affidavit of Jon Gregory in Support of Motion for Reconsideration, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed October 29, 2018), at Exhibit N.

<sup>50</sup> *Id.*

each draw. Gregory had the ability to bring the matter to the court at that time, but chose not to do so.

Gregory also contends there was never any specification as to when draws would be received.<sup>51</sup> Thus, Gregory concedes that fixed dates for payments were not agreed upon or required. The parties' contract did not include a schedule for payments, only a mercurial understanding that payments would be made in the future. Nevertheless, Gregory knew he was owed money as of December 12, 2012 and that he received nothing on that date. He knew as of December 27, 2012 that he would receive nothing from the first pay out. Clearly, Gregory had a cause of action against the Stallings on December 12, 2012, and no later than December 27, 2012.

A cause of action for breach of contract accrues upon breach for limitation purposes.<sup>52</sup> Regardless of whether or not future payments were anticipated, Gregory's ability to sue the Stallings on the oral contract arose on December 12, 2012 when Gregory received no proceeds of the Property sale. For these reasons, Gregory has not shown a valid reason to reconsider summary judgment in the Stallings favor.

On a final note, Gregory infers that the Stallings refused to fully and completely answer Gregory's discovery requests.<sup>53</sup> The Stallings argue that the parties agreed that the Stallings' discovery responses would not be due until after this Court rendered a decision on the Stallings' summary judgment motion.<sup>54</sup> Regardless of the reasons why discovery was not completed, Gregory bore the responsibility of either filing a motion to

---

<sup>51</sup> Gregory's Motion, at p. 2.

<sup>52</sup> *Cuevas v. Barraza*, 146 Idaho 511, 517, 198 P.3d 740, 746 (Ct. App. 2008).

<sup>53</sup> Gregory's Motion, at p. 2.

<sup>54</sup> Affidavit of Jared M. Harris in Support [of] Objection and Response to Motion to Reconsider, *Gregory v. Stallings*, Bingham County case no. CV-2017-1651 (filed November 16, 2018).

compel, or requesting additional time to respond to the Stallings' summary judgment motion in order to complete discovery.<sup>55</sup> Since Gregory did not move to compel complete responses, and did not request additional time to complete discovery, he has waived his contention regarding discovery responses.<sup>56</sup>

## VI. CONCLUSION OF LAW

Based upon the foregoing findings and analyses, the following conclusion is appropriate: Gregory has not shown that the *Summary Judgment Order* should be reconsidered.

## VII. ORDER

Accordingly, Gregory's Motion for reconsideration is **denied**.

**IT IS SO ORDERED.**

DATED this 18th day of January 2019.



\_\_\_\_\_  
Darren B. Simpson  
District Judge  
Signed: 1/18/2019 04:26 PM

<sup>55</sup> Stallings' Objection, at pp. 3-4 [citing *Stapleton v. Cushman Drilling & Pump Company*, 153 Idaho 735, 742, 291 P.3d 418, 425 (2012)]; Idaho Rule of Civil Procedure 56(d); Idaho Rule of Civil Procedure 37.

<sup>56</sup> *Stapleton v. Cushman Drilling & Pump Company*, 153 Idaho at 742, 291 P.3d at 425.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Order Denying Plaintiff's Motion for Reconsideration was sent by e-mail, ICourt e-mail, or facsimile, this 18th day of January 2019, to:

David N. Parmenter, Esq.  
Nathan D. Rivera, Esq.  
Attorneys at Law  
53 S. Shilling  
P.O. Box 700  
Blackfoot, Idaho 83221

E-Mail       ICourt E-Mail       Facsimile

Jared M. Harris, Esq.  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221

E-Mail       ICourt E-Mail       Facsimile

PAMELA W. ECKHARDT, Clerk of the Court

By: Brandee Cammack  
Deputy Clerk

Signed: 1/18/2019 04:40 PM



Filed:10/16/2018 09:48:55  
Seventh Judicial District, Bingham County  
Pamela Eckhardt, Clerk of the Court  
By: Deputy Clerk -Cammack, Brandee

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

JON GREGORY, an individual,	)	<b>CASE NO. CV-2017-1651</b>
	)	
Plaintiff,	)	<b>JUDGMENT</b>
	)	
vs.	)	
	)	
RICHARD STALLINGS, an individual,	)	
and EILEEN STALLINGS, an individual,	)	
	)	
Defendants.	)	
	)	

JUDGMENT IS ENTERED AS FOLLOWS:

Plaintiff Jon Gregory shall take nothing by his lawsuit against Defendants Richard Stallings, an individual, and Eileen Stallings, an individual.

**IT IS SO ORDERED.**

DATED this 15th day of October 2018.

  
\_\_\_\_\_  
Darren B. Simpson  
District Judge      Signed: 10/15/2018 03:33 PM

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Judgment was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by e-mail this 16th day of October 2018, to:

David N. Parmenter, Esq.  
Nathan D. Rivera, Esq.  
Attorneys at Law  
53 S. Shilling  
P.O. Box 700  
Blackfoot, Idaho 83221

U.S. Mail       Courthouse Box       E-Mail

Jared M. Harris, Esq.  
BAKER & HARRIS  
266 West Bridge Street  
Blackfoot, Idaho 83221

U.S. Mail       Courthouse Box       E-Mail

PAMELA W. ECKHARDT, Clerk of the Court

Signed: 10/16/2018 09:49 AM

By: \_\_\_\_\_  
*Brandee Cammack*  
Deputy Clerk



DAVID N. PARMENTER  
NATHAN D. RIVERA  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, Idaho 83221  
(208) 785-5618  
(208)785-4858 FAX  
parlaw@gmail.com

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual	)	
	)	
Plaintiff,	)	Case No. CV-2017-1651
	)	
vs.	)	OBJECTION TO AMENDED MOTION
	)	FOR AWARD OF ATTORNEYS FEES
RICHARD STALLINGS, an individual and	)	AND COSTS & MOTION FOR
EILEEN STALLING, an individual	)	ENLARGEMENT OF TIME
Defendants.	)	
	)	

Comes now plaintiff, Jon Gregory, and objects to defendant's request for attorney's fees pending the matter for the following reasons and on the following grounds:

Plaintiff objects for the same reasons as he did in his original objection to the request – that the request for attorney's fees is excessive, and unreasonable, under the circumstances and time spent in the case. Further, he originally objected to attorney's fees on the basis of Idaho Code Section 12-120 and 12-121.

Plaintiff further objects to an award of fees and pursuant to Idaho Code Section 12-121, as the case was not brought, or pursued frivolously, unreasonably or without foundation. While the Court denied the plaintiff's motion for reconsideration, there were still arguable matters of law and issues that certainly were anything but frivolous, unreasonable or without foundation.

Furthermore, Idaho Code Section 12 – 120 (1) does not apply, since the amount pled was more than \$25,000. Idaho Code Section 12 – 120 (3) could arguably apply as a commercial transaction, but there are legitimate questions about the application of that subsection as well. In conclusion, there is no basis for an award of fees, unless the Court determines that the foregoing was a commercial transaction within the definition of Idaho Code Section 12-120(3)—something that is questionable at best.

Further, plaintiff requests an enlargement of time for filing this objection—in part because he had previously filed an objection to defendant's original motion for attorney's fees, and second, did not actually see defendant's affidavit and memorandum for additional fees until February 15, 2019. See attached affidavit.

For these reasons and others, plaintiff objects to defendant's motion for attorneys fees.

DATED this 26<sup>th</sup> day of February, 2019



DAVID N. PARMENTER  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 26 day of February, 2019 upon the following:

- Mail  
 Fax  
 Hand Delivery

Jared M. Harris  
Baker & Harris  
266 W. Bridge St.  
Blackfoot, ID 83221

  
DAVID N. PARMENTER

DAVID N. PARMENTER  
NATHAN D. RIVERA  
Attorney at Law  
53 S. Shilling  
PO Box 700  
Blackfoot, Idaho 83221  
(208) 785-5618  
(208)785-4858 FAX  
parlaw@gmail.com

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual	)	
	)	
Plaintiff,	)	Case No. CV-2017-1651
	)	
vs.	)	AFFIDAVIT OF JENNIFER GODINEZ
	)	
RICHARD STALLINGS, an individual and	)	
EILEEN STALLING, an individual	)	
	)	
<u>Defendants.</u>	)	

Jennifer Godinez being first duly sworn on oath, deposes and says:

1. I am one of Mr. Parmenter's assistants.
2. On February 19, 2019, Mr. Parmenter asked me to contact the court to get the supporting documents that were mentioned in the Amended Motion for Award of Attorney's Fees and Costs, because he had not seen them and they were not attached to the motion that was printed for him.
3. I am not familiar with iCourt e-filing, so when I saw the filing I did not see an attachment.
4. Marybel Cortez is who assists Mr. Parmenter in his civil and criminal cases. I waited a few minutes for her to get in the office, shortly after I spoke to Mr. Parmenter, to follow up with her. I asked her if we had received the supporting documents referred to in the motion. She stated that we had and reprinted them.
5. Marybel put them in Mr. Parmenter's box for his review.

FURTHER AFFIANT SAYETH NOT.

Dated this 27<sup>th</sup> day of February, 2019.

  
JENNIFER GODINEZ

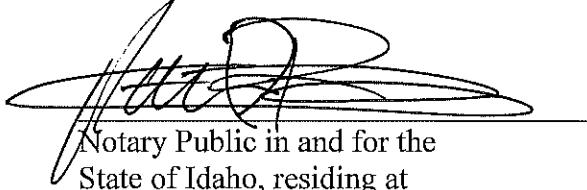
STATE OF IDAHO )

:ss

County of Bingham )

SUBSCRIBED AND SWORN TO before me this 27<sup>th</sup> day of February, 2019.



  
Notary Public in and for the  
State of Idaho, residing at

**Jack L. Fuller, CSR  
Official Court Reporter  
Seventh Judicial District  
Bonneville County Courthouse  
605 N Capital Ave  
Idaho Falls, Idaho 83402  
(208) 529-1350 Ext. 1138  
E-Mail: jfuller@co.bonneville.id.us**

\*\*\*\*\*  
**NOTICE OF TRANSCRIPT LODGED**  
\*\*\*\*\*

**DATE:** April 9, 2019

**TO:** Karel A. Lehrman, Clerk of the Court  
Supreme Court / Court of Appeals  
P.O. Box 83720  
Boise, ID 83720-0101

**SUPREME COURT DOCKET NO:** 46818-2019

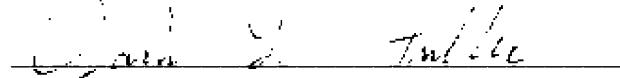
**DISTRICT COURT CASE NO:** CV-2017-1651 (Bingham County)

**CAPTION OF CASE:** Jonathon Clyde Gregory vs. Richard R. Stallings, an individual, and Eileen Stallings, an individual

You are hereby notified that a reporter's appellate transcript in the above-entitled and numbered case has been lodged with the Appeals Clerk of the County of Bingham in the Seventh Judicial District. Said transcript consists of the following proceedings, totaling 22 pages:

1. Hearing on Defendants' Motion for Summary Judgment  
(August 21, 2018)

Respectfully,



JACK L. FULLER  
Idaho CSR #762

cc: Bingham County Appeals Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY,	)	SUPREME COURT NO.: 46818-2019
Plaintiff / Appellant,	)	District Court No.: CV-2017-1651
-vs-	)	
RICHARD STALLINGS, an individual,	)	CLERK'S CERTIFICATE
and EILEEN STALLINGS, an	)	OF EXHIBITS
individual,	)	
Defendants / Respondents.	)	
	)	

I, Brandee Cammack, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bingham, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Blackfoot, Idaho, this April 11, 2019.

PAMELA W. ECKHARDT,  
CLERK OF THE COURT

*Brandee Cammack*

Deputy Clerk Signed: 4/11/2019 03:16 PM



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

JON GREGORY,

Plaintiff / Appellant,

-vs-

RICHARD STALLINGS, an individual, and  
EILEEN STALLINGS, an individual,

Defendants / Respondents.

**SUPREME COURT NO.: 46818-2019  
District Court No.: CV-2017-1651**

**CLERK'S CERTIFICATE  
OF SERVICE ON APPEAL**

On April 11, 2019, I, Brandee Cammack, Deputy Clerk of the District Court of the Seventh Judicial District, State of Idaho, County of Bingham, do hereby certify that the electronic Clerk's Record in the above-entitled cause was electronically compiled, and is a true, full and correct electronic Clerk's Record of the pleadings and documents as requested by the parties.

I further certify that I have caused to be served the following:

- Clerk's Record;
- Reporter's Transcript; and
- No Exhibits were submitted.

to each of the Attorneys of Record or Parties in this case as follows:

David N. Parmenter, Esq.,  
*Appellant's counsel*

- iCourt Email – parlaw@gmail.com
- U.S. Mail, postage prepaid

Jared M. Harris, Esq.,  
*Respondents' counsel*

- iCourt Email – efiling@bakerharrislaw.com
- U.S. Mail, postage prepaid

PAMELA W. ECKHARDT,  
CLERK OF THE COURT

  
Brandee Cammack  
Deputy Clerk Signed: 4/11/2019 03:15 PM

