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LAW CLERK

IN THE SUPREME COURT OF THE STATE OF IDAHO

Vol. 2 of 13

COPY

John N. Bach
Plaintiff / Appellant

Alva Harris, et. al.
Defendants / Respondents

and

John N. Bach
Plaintiff / Respondent

Alva Harris, et. al.
Defendants / Appellants

Katherine Miller, et. al.
Defendants

Appealed from the District Court of the Seventh *Judicial District of the State of Idaho, in and for* Teton *County*

Hon Richard T. St. Clair, *District Judge*

John N. Bach, *Pro Se*, P.O. Box 101, Driggs, Idaho 83422

Alva A. Harris, Esq. P.O. Box 479, Shelley, Idaho 83274

Attorney-for-Defendants/Respondent and Defendants/Appellants

Filed this _____ *day of* _____, *20*__

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Supreme Court Court of Appeals
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Clerk

By _____ *Deputy*

Volume 2 of 10

Supreme Court No. 31716/31717
Teton County No. CV 02-208

John N. Bach
Plaintiff/Appellant
vs
Alva Harris, et. al.
Defendants/ Respondents

John N. Bach
Plaintiff/Respondent
vs
Alva Harris, et. al.
Defendants/Appellants

and

Katherine Miller et. al.
Defendants

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

JOHN N. BACH, Plaintiff, vs. KATHERINE D. MILLER aka KATHERINE M. MILLER, ALVA HARRIS, Individually & dba SCONA, INC.,JACK LEE McLEAN, BOB FITZGERALD, OLE OLSON, BOB BAGLEY & MAE BAGLEY, husband and wife, BLAKE LYLE, Individually and dba GRAND TOWING, and DOES 1 through 30, Inclusive, Defendants.	Case No. CV-02-208 **FIFTH ORDER ON PENDING MOTIONS**

Pending before the Court are the following motions:

(1) defendant Miller's motion for Rule 11(a)(1) sanctions against plaintiff Bach for filing a motion to disqualify Runyan and Woelk as counsel for Miller filed September 16, 2002;

(2) defendant Miller's motion for Rule 11(a)(1) sanctions against plaintiff Bach for filing motions to reconsider or vacate order requiring a more definite statement of claims with an amended complaint and to enlarge time for filing amended complaint, filed September 17, 2002;

(3) defendant Miller's motion to strike first amended complaint and motion for Rule 11(a)(1) sanctions against plaintiff Bach for including 13 new defendants without leave of court in the first amended complaint, both motions being filed on October 3, 2002;

(4) defendant Miller's motion for order commanding removal of horses for enjoined property, filed October 29, 2002;

(5) defendants Harris, Fitzgerald, Olson, and Lyle's motion to strike the first amended complaint and motion to consolidate this action with Teton County case no. CV-01-191, both motions being filed on November 12, 2002;

(6) plaintiff Bach's motion to strike defendant Miller's motion to remove horses, and motion for Rule 11(a)(1) sanctions against defendant Miller and her attorney Galen Woelk for filing said motion, both motions being filed on November 19, 2002.

Some of the motions were supported by the affidavits of Bach and affidavits of attorney Woelk. Some of the motions were supported by briefs. Defendant Miller waived oral argument on her motions, but plaintiff Bach requested oral argument and initially requested an "evidentiary hearing" on the motions. Miller initially insisted on any hearings being held in Teton County. However, at a hearing on other motions held at the Teton County Courthouse on November 26, 2002, all parties represented

that these pending motions could be orally argued at the Bonneville County Courthouse to accommodate the Court's schedule and without any witnesses being necessary. On January 9, 2003, the Court heard oral argument on these pending motions.

Having considered the aforesaid pending motions, the supporting and opposing affidavits and memorandum, the pleadings, the evidence admitted during previous hearings, judicial notice of the court record in Teton County case no. CV-01-191, and the oral argument of the parties, this Court renders the following decision and order on the pending motions.

1. Defendant Miller's First Rule 11 Motion.

Defendant Miller's first Rule 11 motion seeks sanctions against plaintiff Bach for filing a motion to disqualify Runyan and Woelk as counsel for defendant Miller.

Rule 11(a)(1), I.R.C.P., focuses on the "signor" of pleadings, motions, and other court filed documents, who has made inadequate investigation into relevant facts and law before filing the document, usually an attorney representing a civil litigant. This Rule is to be applied within the trial court's discretion. Durrant v. Christensen, 120 Idaho 886, 821 P.2d 319 (1991). Rule 11(a)(1) was intended to be a narrowly used court management tool. See Landvik v. Herbert, 130 Idaho 54, 61, 936 P.2d 697, 704 (App.1997).

Based on the evidence considered by this Court at the hearing on Bach's motion to disqualify Runyan and Woelk held on October 9, 2002, this Court concludes that Bach's motion was not without a reasonable investigation nor without a reasonable basis in fact or law, although it was not meritorious.

Therefore, this motion for Rule 11 sanctions must be denied.

2. Defendant Miller's Second Rule 11 Motion.

Defendant Miller's second Rule 11 motion seeks sanctions against plaintiff Bach for filing three motions as a result of this Court's granting Miller's Rule 12(e) motion for more definite and certain. Bach's motions were to reconsider the Court's order, to vacate the Court's order, and to enlarge the time for filing a more definite and certain amended complaint.

It is clear that Bach's motions were without any basis in law or fact. Had Bach read the Idaho Rules of Civil Procedure, he would have discovered that his initial complaint did not comply with Rule 10(b), I.R.C.P. The motion for reconsideration or vacate filed by Bach essentially argued that other motions he filed, including a motion to disqualify Runyan and Woelk, should be considered first, yet those other motions had nothing to do with whether Bach's complaint was definite enough for an attorney to figure out the facts alleged and the legal causes of action asserted against each particular

defendant, in order to intelligently frame a response. Bach's motion for enlargement of time until October 31, 2002 to file a more definite amended complaint was not supported by any reasonable justification for the delay. These three motions were a total waste of defendant Miller's time in opposing, and a total waste of the Court's time in reading the motions and having to draft an order denying said motions.

A sanction under Rule 11(a)(1), I.R.C.P., is required. Reasonable expenses and attorney fees incurred by a party having to respond to a frivolous motion are appropriate sanctions under this Rule. No evidence has been presented by defendant Miller as to any expense incurred, nor the amount of attorney fees incurred in drafting her 5 page opposition brief, and motion for sanctions. Attorney fees of $150.00 is a reasonable amount for drafting the brief and motion.

Therefore, defendant Miller's motion should be granted and a sanction of $150.00 awarded to her as a reasonable attorney fee.

3. Miller's Motion to Strike First Amended Complaint and Third Motion for Rule 11 Sanctions

Defendant Miller's motion to strike Bach's first amended complaint is brought under Rule 12(e) & (f), I.R.C.P. Subdivision (e) of this Rule authorizes the trial court to strike the original complaint or "make such order it deems just," if a more definite complaint is not timely filed. Subdivision (f) of this Rule

authorizes the trial court to strike an "insufficient defense" or any "redundant, immaterial, impertinent, or scandalous matter" from any pleading.

Under this Court's Order dated September 3, 2002, requiring Bach to file an amended complaint within 10 days, allowing 3 days for mail, Bach's amended complaint was not due until September 16th. Bach's motion for reconsideration under Rule 11(a), I.R.C.P., suspended the time to file his amended complaint until this Court ruled on such motion. After this Court denied Bach's motion for reconsideration by Order dated September 19, 2002, allowing 3 days for mail, Bach promptly filed his first amended complaint. Therefore, subdivision (e) does not authorize this Court to strike the amended complaint.

Subdivision (f) does not apply to the first amended complaint, because it has no "redundant, immaterial, impertinent, or scandalous matter" in it. The problems with Bach's first amended complaint are that it is vague and ambiguous as "facts" such as dates and places of and which legal causes of action are alleged against which particular defendants. As to a few causes of the first amended complaint is adequate, but as to other attempted causes of action it is even more vague than the original complaint. Further the first amended complaint adds 9 more defendants, to wit: Galen Woelk, Cody Runyan,

Ann-Toy Broughton, Wayne Dawson, Mark Liponis, Earl Hamlin, Stan Nickell, Bret Hill, and Deena Hill.

The purpose of filing an amended complaint after entry of an order to make more definite and certain, is to clarify the date, places and facts that support each separate cause of action, and to allege specifically which defendants each separate cause of action is directed, so that the moving party can frame one answer fairly admitting allegations not reasonably denied and asserting affirmative defenses with a reasonably supported by facts and recognized by case law or statute as a defense to particular causes of action. It is not to add new causes of action based on facts that were not attempted to be alleged in the original complaint, nor to add additional defendants.

On the other hand Rule 15(a), I.R.C.P., provides in pertinent part that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." "Motions" are not "pleadings." Rule 7(a), I.R.C.P. (Defining pleadings as complaint, answer, counterclaim, reply to counterclaim, cross-claim, reply to cross-claim, third-party complaint, third-party answer, and if court ordered a reply to answer or third-party answer); O'Neil v. Schuckardt, 116 Idaho 507, 509, 777 P.2d 729, 731 (1989). Since no answer had been filed by any defendant to the

original complaint, Bach had a one-time right to file his first amended complaint adding new parties.

While this Court may have the discretion to require Bach to file a second amended complaint in order clear up the ambiguities in the first amended complaint, the better course of action is to allow the defendants to file motions to dismiss. Since Bach has had the opportunity to more clearly state his causes of action to comply with the pleading requirements of Rules 8 and 10, I.R.C.P., and with this Court's Order dated September 3, 2002, leave to further amend can be denied Bach as to any presently defective causes of action. Also the Court would have input from any presently un-represented defendants, should Bach elect to serve some of the additional defendants.

Therefore, Miller's motion to strike should be denied.

Defendant Miller's third motion for Rule 11 sanctions seeks expenses and attorney fees for having to move to strike the first amended complaint. Since that motion must denied, Rule 11 sanctions cannot be granted to Miller.

4. Miller's Motion for Removal of Horses.

Defendant Miller's motion for order commanding removal of Bach's horses from their jointly owned tracts of land, previous defined in other Court orders in this case, known as the "Miller Access Parcel" (comprising a strip of 110 feet by 2627 feet of approximately 6.63 acres) and the "Targhee/Miller Property" (comprising a strip of 110

feet by 1320 feet of approximately 3.3 acres) is essentially a motion for modification of the Court's preliminary injunction entered on August 16, 2002.

As pointed out by plaintiff Bach, parties rights in this property are controlled by the Quitclaim Deeds and Easement Agreement dated October 3, 1997 and signed by both of these parties. While this Court questions the wisdom of both parties having undivided one-half fee simple interest in this real property, and then each having super imposed an easement for utilities construction and maintenance and ingress and egress to adjoining properties, this Court cannot re-write their written agreement under its authority to issue a preliminary injunction in Rule 65(e), I.R.C.P. Had the parties agreed that their jointly owned properties would not be used for anything but utilities and access, then this Court could issue the requested modified injunction, but that is not what Miller and Targhee agreed in the Quitclaim Deeds and Easement Agreement. The plain language of these instruments permits both Bach and Miller to improve these properties and use such properties in any legal manner, not amounting to waste. So long as Bach does not have so many livestock on the property to impair Miller's easement rights to construct and maintain utilities or drive or haul equipment across the properties to her adjoining 40 acre tract, no injunction can lie.

Therefore, this motion must be denied.

5. Harris, Fitzgerald, Olson and Lyle's Motion to Strike and Motion to Consolidate Actions.

Defendants Harris, Fitzgerald, Olson and Lyle's motion to strike plaintiff Bach's first amended complaint merely joins in the same motion earlier filed by defendant Miller. For the reasons explained in part 3 above, this motion must be denied.

At the January 9, 2003 hearing, counsel for these defendants withdrew their motion to consolidate this action with Teton County case no. CV-01-191.

6. Bach's Motion to Strike Miller's Horse Removal Motion and Motion for Rule 11 Sanctions.

Bach moved to strike defendant Miller's motion for order commanding removal of Bach's horses because it did not comply with Rule 7(b)(3), I.R.C.P., by indicating whether oral argument was requested or not, because no supporting brief was filed within 14 days, and because no supporting affidavit was filed by Miller.

While Bach's points are well taken, Rule 7, I.R.C.P., does not authorize striking the motion. Motions to strike are authorized by Rule 12(f), I.R.C.P., when pleadings (and presumably other documents filed in the court record) contain "redundant, immaterial, impertinent or scandalous matter." Although this Court has denied defendant Miller's motion, Rule 12 does not contemplate striking a motion just because it may be non-meritorious. Therefore, the motion to strike must be denied.

Bach also moved for Rule 11 sanctions because Miller's motion was not well grounded in fact or law. The Court agrees that a simple reading of the Quitclaim Deeds and Easement Agreement dated October 3, 1997 and signed by Miller and Rule 65(e), I.R.C.P., would inform anyone that Bach and Miller both own undivided one-half fee simple interests in the "Miller Access Parcel" and the "Targhee/Miller Property." However, it appears from the testimony given by Miller at the hearing on October 9, 2002, that she felt that Bach's horses and gates were inhibiting her access, which the Easement Agreement guaranteed. Just because the Court did not conclude, based on an objective standard, that Miller's access was in fact inhibited by a couple horses and a gate that can be opened, does not make the motion frivolous within the meaning of Rule 11(a)(1). Further, even if sanctions were appropriate, since Miller did not "sign" the motion filed by attorney Woelk, Rule 11 would not authorize sanctioning Miller. If the Court were to sanction Woelk, it has no evidence that Bach incurred any expenses because of the motion, and attorney fees cannot be award to a pro se party.

Therefore, Bach's motion for Rule 11 sanctions must be denied.

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. Defendant Miller's first motion for Rule 11 sanctions is DENIED;

2. Defendant Miller's second motion for Rule 11 sanctions is GRANTED, and plaintiff Bach shall pay $150.00 to Miller within 10 days;

3. Defendant Miller's motion to strike the first amended complaint is DENIED;

4. Defendant Miller's motion for order commanding removal of horses is DENIED;

5. Defendants Harris, Fitzgerald, Olson and Lyle's motion to strike first amended complaint is DENIED, and these defendants' motion to consolidate this action with Teton County case CV-01-191 is WITHDRAWN by their counsel;

6. Plaintiff Bach's motion to strike Miller's motion for horse removal and motion for Rule 11 sanctions are both DENIED; and

7. Those defendants who have appeared shall plead in response to the first amended complaint within 10 days.

DATED this 10th day of January, 2003.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of January, 2003, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach
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Galen Woelk
Runyan & Woelk, P.C.
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Telefax No. 208-354-8886 (TELEFAX & MAIL)

RONALD LONGMORE
Clerk of Court
M Southwick
Deputy Court Clerk

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

JOHN N. BACH, Plaintiff, vs. KATHERINE D, MILLER, aka KATHERINE M. MILLER, ALVA A. HARRIS, individually and Dba SCONA, INC., a sham entity JACK LEE McLEAN, BOB FITZGERALD, OLE OLESON, BIB BAGLEY and MAE BAGLEY, husband And wife, BLAKE LYLE, Individually and dba GRANDE TOWING, and DOES 1 through 30, Inclusive, Defendant(s).	)	Case No. CV-2002-208

On the 9th day of January, 2003, Defendant Miller's motion for Rule 11 sanctions re: disqualification of Woelk and his firm, Defendant Miller's motion for Rule 11 sanctions against Bach re: motion to reconsider or vacate motion for more definite statement, Defendant Miller's motion to strike the first amended complaint and for third motion for Rule 11 sanctions for including 13 new defendants, Defendant Miller's motion for an order commanding removal of horses, Defendant Harris' motion to strike first amended complaint and motion to consolidate, and Bach's motion to strike motion to remove horses and motion for Rule 11 sanctions came before the Honorable Richard T. St. Clair, District Judge, in open court at Idaho Falls, Idaho.

Mr. Ross Oviatt, Court Reporter, and Mrs. Marlene Southwick,

Deputy Court Clerk, were present.

Mr. John Bach appeared on his own behalf as Plaintiff.

Mr. Alva Harris appeared on his own behalf as a Defendant and on behalf of Defendants.

Mr. Galen Woelk appeared by telephonic connection on behalf of Defendant Katherine Miller.

Mr. Harris moved to withdraw his motion to consolidate. The Court granted the motion. Mr. Bach stated that he would stipulate to the withdrawal of the motion.

Mr. Harris asked to be excused from the remaining portion of the hearing as his motion to strike mirrors Mr. Woelk's motion to strike. Mr. Harris stated that he would rely on Mr. Woelk's argument and the other motions do not apply to him or his clients. Mr. Bach argued in opposition. The Court excused Mr. Harris.

Mr. Woelk presented Defendant Miller's motion for Rule 11 sanctions against Bach re: disqualification of Woelk and his firm. Mr. Bach argued in opposition to the motion. Mr. Woelk presented rebuttal argument.

The Court will take the matter under advisement and issue an opinion as soon as possible.

Mr. Woelk presented Defendant Miller's motion for Rule 11 sanctions against Bach re: motion to reconsider or vacate motion for more definite statement. Mr. Bach argued in opposition to the motion. Mr. Woelk presented rebuttal argument.

The Court will take the matter under advisement and issue an opinion as soon as possible.

Mr. Woelk presented Defendant Miller's motion to strike first amended complaint and third motion for Rule 11 sanctions for including 13 new defendants. Mr. Bach argued in opposition to the motion. Mr. Woelk presented rebuttal argument.

The Court will take the matter under advisement and issue an opinion as soon as possible.

Mr. Woelk presented Defendant Miller's motion for an order commanding removal of horses. The Court inquired of Mr. Woelk. Mr. Bach argued in opposition to the motion. Mr. Woelk presented rebuttal argument.

The Court will take the matter under advisement and issue an opinion as soon as possible.

Mr. Bach submitted his motion to strike motion to remove horses and for motion for Rule 11 sanctions. Mr. Woelk responded.

The Court will take the matter under advisement and issue an opinion as soon as possible.

Court was thus adjourned.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

h:Bach/CC8171@3320 full over to CC8178 @1620 full over to CC8193

CERTIFICATE OF MAILING

I certify that on the 7th day of January, 2002, I caused a true and correct copy of the foregoing document to be delivered to the following:

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FILED
11:12
JAN 28 2003
TETON CO.
DISTRICT COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff,

v.

KATHERINE D. MILLER, aka KATHERINE M. MILLER, et al.,

Defendants.

/

CASE NO: CV 02-208

PLAINTIFF JOHN N. BACH'S MEMORANDUM BRIEF NO "1", RE HIS OBJECTIONS & OPPOSITION TO DEFENDANT KATHERINE MILLER'S MOTION TO DISMISS (Rule 12(b)(8)); and MOTION TO STRIKE SAID DEFENDANT'S MOTION AND FOR EVIDENTIARY & MONETARY SANCTIONS. (IRCP, Rule 11(a)(1), Rule 56(g) & COURT'S INHERENT POWERS, ETC.

A FULL HEARING IS REQUESTED(IRCP, Rule 56, et seq & IRE, Rule 201

Plaintiff JOHN N. BACH submits his MEMORANDUM BRIEF NO. "1" RE HIS OBJECTIONS & OPPOSITION TO DEFENDANT Katherine Miller's Motion to Dismiss per I.R.C.P., Rule 12(b)(8); and Plaintiff does move this court, to strike/quash and deny outright said motion to dismiss as being frivolous, designed to obstruct, delay and harass plaintiff, causing him unnecessary expense, costs and so interposed for such improper purposes, as prohibited not only by Rules 1(a), (last sentence thereof), Rule 11(a)(1), but, further Rule 56 etc, especially Rule 56(g) of the Idaho Rules of Civil Procedure, and of this court's inherent powers (See Davison's Air. Serv. Inc. v. Montierth, 119 Idaho 967, 812 P.2d 274 (1991)(The I.R.C.P., are not all inclusive, as they do not prescribe everything that takes place in an action, courtroom, trial, pretrial proceeding or post-trial proceeding, since not everything which happens in an action will fit neatly under a particular rule.)

Defendant Miller, again requests no hearing in a deliberate

misrepresentation and obfuscation of such motion, if proper at all, being a motion under Rule 56, et seq, as it requests this court to take judicial notice of two other proceedings, i n/before this Court, CV 01-191, and another before the U.S. District Court, Idaho, CV 01-266-E-TGN; as to the latter, said defendant and her counsel, intentionally mislead this court, as to the true status and last pleading filed therein, which is the SECOND AMENDED COMPLAINT, filed January 15, 2003, which does not have any similar parties nor issues as framed, averred and now admitted, by at least some seven (7) defendants in default on the FIRST AMENDED COMPLAINT herein.

The deliberate, intentional and vexatious bringing NOW the current Miller's specious and utterly frivolous motion is a well orchestrated ploy and scheme by not only herself, her current counsel, her past counsel herein, but still counsel of record in Teton CV 01-191 and said USDC, Idaho, CV 01-266, Alva A. Harris, to delay, frustrate, deprive and preclude access to this court it's processes and jurisdiction to protect plaintiff's person, his properties and future use of investments, which have been assailed, destroyed in part, if not materially, as well as disadvantaged, by other frivolous, specious and harassing actions, as well as prior motions herein, to wit:

1. Teton CV 00-76, filed 5/19/00 by Miller, wherein Miller sought a preliminary injunction against John N. Bach & his Idaho Corporation, Targhee Powder Emporium, Inc., but dismissed without prejudice. Attached to her verified complaint therein was a copy of the December 30, 1194 WARRANT DEED to Targhee Powder Emporium, Inc.; from which, she averred, par. 5 of her complaint:

". . on October 3rd, 1997, . .Miller entered into a certain EASEMENT AGREEMENT with Defendant Bach and Targhee Powder Emporium, where all parties acknowledge that Miller and Targhee would own an undivided one-half interest in the

following properties, referred to as the 'Miller Access Parcel [two parcels of 110 feet wide coowned strip]. ."

2. Teton CV 01-59, filed March 12, 2001 by Miller, wherein she again speciously, frivolously and utterly without merit sought a writ of assistance to have John N. Bach removed from his own properties, on a wholly unsupported factual and legal basis that he was a tenant at will. JOHN BACH filed June 1, 2001, ~~therein~~, his counterclaims which by the Court's Orders and Judgment of May 17, 2002, DISMISSED WITH PREJUDICE Miller's claims, and dismissed without prejudice John Bach's counterclaims which he has refiled in this action, and expanded because of the ongoing tortious, wrongful and even criminal actions by Miller, and all codefendants herein.

3. Teton CV 01-191, was not filed by Miller, until Aug. 28, '01, & after remand from the U.S.D.C., Idaho, Miller, via her counsel, therein, Alva Harris, filed a motion for consolidation of said action with this one, but on January 9, 2003, withdrew said motion to consolidate, which motion plaintiff in open court stated that he would stipulate to consolidating. Plaintiff has neither been properly named in this action, but if said action is not now preempted by the proceedings herein, he is the only party and an indispensible party which Miller and her said counsel, therein, and her counsel, herein, are misusing to obdurately obfuscate this court's preliminary injunctions of August 16, 2002 and Orders entered thereafter to date hereo.

I. OBJECTIONS TO STANDING, CAPACITY AND FOUNDATIONAL TIME AND SHOWING OF MILLER'S MOTION TO DISMISS

A. Miller by her special appearance via Alva A. Harris, her participation via Harris and other defendants at the two day hearing on plaintiff's application for preliminary injunction has waived all factual and legal basis to bring the current motion.

B. Miller by her motions previously brought by her current counsel, Galen Woelk, to wit, motion for a more definite statement and motion to strike, the latter denied January 10, 2003, has further waived all factual and legal basis for bringing the current motion and is further estopped and/or quasi-estopped by virtue of her motion to amend the preliminary injunction to remove horses, etc. from the 110 foot strip, which motion was also denied Jan. 10th.

C. On the above occasions of hearing before this court, some five (5) in number, Miller has consented not only to the jurisdiction of this Court to try the quiet title claims and damage claims averred in the FIRST AMENDED COMPLAINT, but knowingly deceived and misled the Court via her present affidavit, knowing full well that no pendent Idaho claims against any of the defendants herein, are named in that USDC, Idaho action CV 01-266, per the SECOND AMENDED COMPLAINT therein, and that said USDC's ORDER referred to the fact that this action was proceeding, and that any pendent claims in said USDC action were dismissed without prejudice. Any amended complaint refers to back to and is effective as if filed on the date that the original complaint was filed. IRCP, Rule 15 et seq; see FRCP, Rule 15, et seq, [Identical Rules]

D. During this Court's hearing on plaintiff's application for preliminary injunction herein, the entire file in Teton CV 01-59, dismissed with prejudice as to MIller' frivolous complaint therein,

and the dismissal without prejudice of JOHN N. BACH's counterclaims therein, which are refiled herein per the original and current FIRST AMENDED COMPLAINT. It should be noted that in CV 01-59, JOHN N. BACH obtained a restraining order re his exclusive possession, occupancy, use and management of the said properties in question, only to have the court therein allow Miller to supposedly withdraw her stipulation that she had several other easements or access roads to her claimed most westerly 40 acres, & VACATED THE RESTRAINING ORDER.

E. Miller's conjured reliance upon her Teton CV 01-191 action is more than ludicrous and frivolous, as this Court per it's ORDER and PRELIMINARY INJUNCTION OF August 16, 2002 has made findings as to plaintiff's rightful and indisputable claims of ownership to his easterly 40 acres and at least one-half of said 110 foot strip. No application for any prelimination injunction was/has been made in USDC CV 01-266, nor is one sought by plaintiff's current SECOND AMENDED COMPLAINT therein. As plaintiff has stated in his Affidavit filed November 26, 2002, wherein he detailed further wrongs, damages and crimes committed upon himself, his properties and investments from August 15, 2002 through Nov. 26, 2002:

> "4. Affiant has received absolutely no assistance nor protection from either the Teton County sheriff, it's prosecutor or county attorney, who have still removed themselves from providing any protection of affiant, his family, Cindy Miller, his properties or assets from the criminal pursuits of said defendants despite affiant making reports and statements of said defendants' offenses against him."

The current motion to dismiss is again a fraudulent and utterly vexatious ploy to not merely mislead this court but to take away and remove the preliminary injunction which was properly issued herein to grant plaintiff long overdue protection of himself, family members and his properties/investments.

F. The USDC Idaho action, CV 01-266, current complaint seeks no

determination of similar parties and/or similar issues, claims herein currently pursued. Such dissimularities preclude any argument, speculations or even whimiscal application of issue preclusions, claims preclusions, etc. There are no basis or grounds for any such doctrines nor of any judicial estoppel. Miller's affidavit deceptive and misleading as it is to the current pleading status in USDC, CV 01-266 is not even supported by the case she and her attorney cite, to wit: Klaue v. Hern, 133 Idaho 437, 988 P.2d 211 (1999) wherein the Idaho Supreme Court reversed and remanded an order of dismissal per Rule 12(b)(8). Where is the precondition or precursor that even permits this court to utilize it's discretion whatsoever? "First, the court should consider whether the other case has gone to judgment,' in which event the doctrines of claim preclusion and issue preclusion may bar additional litigation. . [Idaho citations omitted]. . The second test is whether the court, although not barred from deciding the case, should nevertheless refrain from deciding it. See Wing 106 Idaho at 908, 684 P.2d 310. .[and referred to the guidelines in Diet Ct., Inc. v. Basford, 124 Idaho 20, 22-23, 855 P.2d 481, 483-84 (Ct. App. 1994)] . ." The Idaho Supreme Court then pointed out that Washington mandamus and probate courts had "not been in a position to determine the whole controvesy and settle all the rights of the parties" . . ."did not adjudicate the issue of the ownership of . . stock [here titles to large parcels]. . .[and concluded there was no other proceeding that]"constituted a 'pending action involving the same issues and parties' that justifies dismissal" with any degree of finality. (NOTE: The Entire USDC action CV 01-266 is on the Internet/Web site, however, per Plaintiff's MEMO #2, he will be supplying within the next seven (7) days his AFFIDAVIT with copies of Judge Nelson's latest Order, and a copy of his complete SECOND AMENDED COM-

PLAINT.

II. SPECIAL OBJECTION IS MADE BY PLAINTIFF, THAT SINCE THE CURRENT MOTION RELIES UPON THE AFFIDAVIT OF MILLER & REQUIRES, SHOULD THIS COURT CONSIDER SAID MOTION OTHERWISE, A COMPLETE SHOWING OF SIMILAR PARTIES, ISSUES ETC., TO BE DECIDED PER THE CURRENT PLEADING OF PLAINTIFF IN USDC CV 01-266, SUCH MAKES SUCH MOTION ONE FOR SUMMARY JUDGMENT WITH STRICT COMPLIANCE REQUIRED PER RULE 56(a) through 56(g) AND A HEARING HELD IN DRIGGS, IDAHO; SUCH HEARING ALSO REQUIRED BY IDAHO RULES OF EVIDENCE, RULE 201, et seq.

Plaintiff's above special objection caption/heading adequately apprises the court that he is entitled to a full hearing to be held in Driggs, Idaho. Such hearing per the provisions of Rule 56 et seq and I.R.E., Rule 201, not only further delays, occasioned by Miller's obfuscations and machinations herein, an answer framing the issues, but creates unnecessary expense for the court and plaintiff, who must have his procedural and substantive rights to due process and equal protection provided him. Defendant Miller having failed to so proceed and set a date certain for hearing as required by said rules, the court, independently should strike and/or quash her current motion, and enter her default as a sanction for her obstreperous and vexatious machinations inflicted on it and plaintiff. Such sanctions and others will be addressed in Plaintiff's said memo number 2 and his affidavit to be filed, as aforesaid. This memo is immediately to apprise the court of Miller's and her counsels' deception and fraud being perpetrated herein. DATED: January 27, 2003

CERTIFICATION OF SERVICE; I the undersigned certify that copies of this document were mailed to each counsel of record & a copy faxed Judge St. Clair, this date, Jan. 27, 2003

John N. Bach

JOHN N. BACH, Plaintiff
Prb Se/Per

FILED
4:11
JAN 28 2003
TETON CO.
MAGISTRATE COURT

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

JOHN N. BACH, Plaintiff, vs. KATHERINE D. MILLER aka KATHERINE M. MILLER, ALVA HARRIS, Individually & dba SCONA, INC.,JACK LEE McLEAN, BOB FITZGERALD, OLE OLSON, BOB BAGLEY & MAE BAGLEY, *husband and* wife, BLAKE LYLE, Individually and dba GRAND TOWING, GALEN WOELK and CODY RUNYAN, Individually & dba RU;N;YAN & WOELK, ANN-TOY BROUGHTON, WAYNE DAWSON, MARK LIPONIS, EARL HAMLIN, STAN NICKELL, BRET HILL & DEENA r. HILL, and DOES 1 through 30, Inclusive, Defendants.	Case No. CV-02-208 **SIXTH ORDER ON PENDING MOTION**

Pending before the Court is the following motion:

(1) plaintiff Bach's *ex parte* motion to excuse service of summons and first amended complaint within the time limits of Rule 4(a)(2), I.R.C.P., and to extend the time for service on defendants Bob Bagley, Mae Bagley, Mark Liponis, and Cody Runyan until March 15, 2003.

The motion is supported by the affidavit of Bach. Oral argument on the motion was waived.

Having considered the aforesaid pending motion, the supporting affidavit, and the pleadings, this Court renders the following order on the pending motion.

Since the first amended complaint was filed on September 27, 2002, Rule 4(a)(2), I.R.C.P., requires that Bach serve all defendants named therein within six (6) months thereafter, or not later than March 27, 2003. All defendants who have appeared were served in September, 2002, as reflected in the certificate of service on the first amended complaint. According to Bach's affidavit defendants Bob Bagley and Mae Bagley were served with the original complaint, but have not appeared in the action, so if Bach intends to proceed against those defendants for relief alleged in the first amended complaint it should be timely served on them. The newly added defendants Liponis and Runyan must be timely served not later than March 27, 2003 as required by Rule 4(a)(2).

Since March 15, 2003 is before March 27, 2003, it is not necessary to extend the time for serving the first amended complaint on newly added parties. It is questionable that Rule 4(a)(2) requires the serving on an amended complaint on an original party within 6 months of the original complaint. If it

does, the granting of an *ex parte* motion to extend time for serving under Rule 4(a)(2) may be reconsidered on motion of the newly served party after such party is served and appears. *See Telford v. Mart Produce, Inc.*, 130 Idaho 932, 950 P.2d 1271 (1998). Since the Court has set a jury trial for June 10, 2003, and does not intend to continue it, delay in serving the first amended complaint may require bifurcating the trial as to newly added defendants who has legitimate reasons for not being ready for trial.

NOW THEREFORE, IT IS HEREBY ORDERED that Bach's *ex parte* motion for service of summons and first amended complaint on Bob Bagley, Mae Bagley, Mark Liponis and Cody Runyan is GRANTED.

DATED this 24th day of January, 2003.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of January, 2003, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach
P. O. Box 101
Driggs, ID 83422
Telefax Nos. 626-441-6673
208-354-8303 (TELEFAX & MAIL)

Alva Harris
P. O. Box 479
Shelley, ID 83274
Telefax No. 208-357-3448 (TELEFAX & MAIL)

Galen Woelk
Runyan & Woelk, P.C.
P.O. 533
Driggs, ID 83422
Telefax No. 208-354-8886 (TELEFAX & MAIL)

RONALD LONGMORE
Clerk of Court

Deputy Court Clerk

STAN NICKELL
P.O. BOX 145
TETONIA, ID 83452
208-456-2649
Defendant in Pro Se

FILED
9:10
JAN 29 2003
TETON CO.
MAGISTRATE COURT

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

JOHN N. BACH,	
Plaintiff,	Case No.: CR-02-208
vs.	**ANSWER**
KATHERINE D. MILLER, aka, KATHERINE M. MILLER, Individually & dba R.E.M., and CACHE RANCH, ALVA A. HARRIS, Individually & dba SCONA, INC., a sham entity, JACK LEE McLEAN, BOB FITZGERALD, Individually & dba CACHE RANCH, OLY OLESEN, BOB BAGLEY & MAE BAGLEY, Husband & wife, BLAKE LYLE, Individually & dba GRANDE BODY & PAINT, GALEN WOELK & CODY RUNYAN, Individually & dba RUNYAN & WOELK, ANN-TOY BROUGHTON, WAYNE DAWSON, MARK LIPONIS, EARL HAMLIN, STAN NICKELL, BRET & DEENA R. HILL, DOES 1 through 30, Inclusive,	
Defendants.	

COMES NOW the Defendant, STAN NICKELL, pro se and answers Plaintiff's First Amended Complaint as follows:

Defendant denies each and every allegation made by the Plaintiff, Jovan Nicholas Bachovich aka John N. Bach, in the above indicated Complaint.

WHEREFORE, Defendant prays that the Plaintiff taking nothing thereunder and that the Complaint be dismissed with prejudice.

DATED this 29 day of January, 2003.

STAN NICKELL, pro se

By: Stan Nickell
Stan Nickell, pro se

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date 1.29.03
Time 11:25
Deputy Clerk BBH

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

JOHN N. BACH, Plaintiff, vs. KATHERINE D. MILLER aka KATHERINE M. MILLER, ALVA HARRIS, Individually & dba SCONA, INC.,JACK LEE McLEAN, BOB FITZGERALD, OLE OLSON, BOB BAGLEY & MAE BAGLEY, husband and wife, BLAKE LYLE, Individually and dba GRAND TOWING, GALEN WOELK and CODY RUNYAN, Individually & dba RU;N;YAN & WOELK, ANN-TOY BROUGHTON, WAYNE DAWSON, MARK LIPONIS, EARL HAMLIN, STAN NICKELL, BRET HILL & DEENA r. HILL, and DOES 1 through 30, Inclusive, Defendants.	Case No. CV-02-208 **SEVENTH ORDER ON PENDING MOTIONS**

Pending before the Court are the following motions:

(1) defendant Scona, Inc.'s and defendant Jack Lee McLean's motion to dismiss[1] Bach's first amended complaint under Rule

[1] Although the motion also lists Targhee Powder Emporium, Inc., Ltd. and Unltd. as moving parties, those purported entities are not named plaintiffs or named defendants in any pleadings in this action.

ORIGINAL

12(b)(8), I.R.C.P., and motion for Rule 11(a)(1), I.R.C.P., sanctions against Bach, served January 21, 2003; and

(2) defendant Miller's motion to dismiss Bach's first amended complaint under Rule 12(b)(8), I.R.C.P., filed on January 22, 2003.

The motions were supported by affidavits having attached thereto various pleadings and orders from the court records of the United State District Court for the District of Idaho in a case entitled John N. Bach v. Teton County, et. al., CV-01-266-E-TGN, and of the Seventh Judicial District Court for the State of Idaho in a case entitled Katherine Miller v. Vasa N. Bach Family Trust, John N. Bach Successor Trustee, CV-01-191. For the purpose of deciding these pending motion, pursuant to Rule 201, I.R.E., this Court shall take judicial notice of the facts contained in said court records in said cases.

NOW THEREFORE, IT IS HEREBY ORDERED that the parties file with this Court in this case file in Teton County, with copies provided the assigned district judge in chambers in Bonneville County, legible and complete copies of all such documents in the aforesaid court records which the parties wish this Court to consider in ruling on the pending motions not later than February 14, 2003. In other words, this Court does not intend to

independently research the court records in the two referenced cases.

DATED this 29th day of January, 2003.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of January, 2003, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach
P. O. Box 101
Driggs, ID 83422
Telefax Nos. 626-441-6673
208-354-8303 (TELEFAX & MAIL)

Alva Harris
P. O. Box 479
Shelley, ID 83274
Telefax No. 208-357-3448 (TELEFAX & MAIL)

Galen Woelk
Runyan & Woelk, P.C.
P.O. 533
Driggs, ID 83422
Telefax No. 208-354-8886 (TELEFAX & MAIL)

RONALD LONGMORE
Clerk of Court

BSN
Deputy Court Clerk

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
Plaintiff Pro Se

FILED
3:59
FEB 11 2003
TETON CO.
MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff,

v.

KATHERINE D. MILLER, aka KATHERINE M. MILLER, et al.

Defendants.

/

CASE NO: CV 02-208

PLAINTIFF JOHN N. BACH'S MEMORANDUM OF OBJECTIONS & OPPOSITION TO DEFENDANTS IN DEFAULT (THE DAWSON'S) MOTION TO SET ASIDE DEFFAULT & TO STRIKE THE AFFIDAVIT OF JARED HARRIS OFFERED PURPORTEDLY IN SUPPORT THEREOF; and PLAINTIFF'S MOTION FOR SANCTIONS, ETC. (IRCP, Rule 12(f), 11(a)(1) & 55(c) and 60(d)(6) A FULL HEARING IS REQUESTED.

Plaintiff JOHN N. BACH does submit his memorandum brief of objections and opposition to defendants WAYNE & DONNA DAWSON'S Motion to Set Aside their entry of default, does further move hereby to strike said motions and all other motions filed herein by said DAWSONS and their attorney JARED HARRIS, and further, moves for sanctions against all said defendants and their counsel.

I. OBJECTIONS TO DAWSONS' MOTION TO SET ASIDE DEFAULT.

Since said motion is solely based on the affidavit of Jared Harris, said affidavit is both factually and legally insufficient and inadequate to give this court any basis or discretion to consider let alone hear and rule upon said defendants' motion. Jared Harris' affidavit is wholly nonspecific, failing to give any factual showing of good cause or basis under Rule 55(c) and Rule 60(b)(?). Defendants DAWSON were clearly served both personally under IRCP, Rule 4(d)(2) at their Chico home, CA., on December 20, 2002. Both an affidavit of

CINDY L. MILLER who did such personal service and that of plaintiff are on file herein, which clearly required said defendants' entry of default. Attached hereto, is a blank copy of the SUMMONS issued on September 27, 2002 on the FIRST AMENDED COMPLAINT, which SUMMONS was identically served on the DAWSON except for the insertion of their complete names. As further clearly stated on said SUMMONS so served on each of the DAWSONS, they were twice each told:

> ". .THE COURT MAY ENTER A JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPONDE WITHIN 20 DAYS, READ THE INFORMATION BELOW.
>
> . . . . . .
>
> YOU ARE HEREBY NOTIFIED, that in order to defend this lawsuit an appropriate 3ritten response must be filed with the above designated court within TWENTY (20) day after service of this SUMMONS you. If you fail to so respond the court may enter judgment against you as demanded by Plaintiff in the FIRST AMENDED COMPLAINT.
>
> A copy of the FIRST AMENDED COMPLAINT is served with this Summons."

Wayne Dawson is a retired physical education professor from Chico State University and Donna Dawson, holds a PHD and does special classes for the Paradise Unified School District. Both have been sued before and know that said 20 days is mandatory to file an answer and defend against the FIRST AMENDED COMPLAINT.

Jared Harris' affidavit fails to specify the exact date he was contacted by each of the Dawsons. fails to state what good and meritorious defense each of them have to said FIRST AMENDED COMPLAINT, fails to disclose that both said defendants were named as creditors in JOHN BACH's Chapter 13 bankruptcy and they and all their claims were discharged therein against him; Harris' affidavit fails to further state, that the Dawson's are barred not only by the statute of limitations as to any of the properties the DAWSONS, along with Alva Harris, Kathy Miller, Jack McLean, Mark Liponis and Scona, Inc., have stolen from plaintiff by void WARRANTY DEEDS and

void and further fraudulent QUIT CLAIMS DEEDS.

Attached hereto, are copies of the following letters which bear on the utter lack of any meritorioys defenses by either of the DAWSONS;

1. Letter of October 22, 1998, from Roy C. Moulton.

2. Letter of January 10, 2001 from Alva Harris on behalf of Katherine Miller, to Wright Law Office with Alva Harris' personal handwritten message to "Kathy Miller" also further signed by/as " lva A. Harris." (This letter was defendant JOHN N. BACH's admitted EXHIBIT 11A in that action brought by Kathy Miller against him, Teton CV 01-59, which was dismissed with prejudice on May 16, 2002.

3. Plaintiff's January 23, 2003 letter to the Dawsons apprising them that their entries of default have been filed and offering to settle plaintiff's claims. No response was received whatsoever from the Dawsons to this letter. (The letter is incorrect that the DAWSONS were served on a Saturday, Dec. 21, 2002; they were served the date before on a Friday, Dec. 20, 2002.)

Thus, the DAWSONS for over 44 days, made absolutely no effort to appear before this court, and on February 3, 2003, when Jared Harris' said motions were sent to this Court, they further failed to comply with the provisions of Rule 55(c) and 60(b) which both ules require detailed factual showing of compliance with Rule 60(b) and secondly, the admissible, relevant and relied upon which facts, which, if established at trial would constitute a meritorious defense, since if there is no real justiciable controversy, it is an idle act to set aside the entry of default. Reeves v. Wisenor, 102 Idaho 271, 629 P.2d 667 (1981); Baldwin v. Baldwin, 114 Idaho 525, 757 P2d 1244 (ct. App. 1988)

But said defendants have further failed to notice or set any date of-hearing on said motion or any of their other specious motions, and utterly fail to state under what specific subparagraphs of Rule 60(b) they are relying upon based on Jared Harris' affidavit. See Pullin v. City of Kimberly, 100 Idaho 34, 592 P2d 849 (1979) (Rule

69(b)(1) and 60(b)(6) are mutually exclusive provisions, such that a ground for relief asserted, falling fairly under 60(b)(1) cannot be granted under 60(b)(6).)

Plaintiff objects to all the foregoing glaring deficiencies of the DAWSONS' motion and offered affidavit in support thereof, and moves to strike the entire motion and such affidavit of Jared Harris, as irrelevant and wholly without merit. Rule 12(g).

II. OBJECTIONS TO DAWSONS' MOTION TO SET ASIDE ENTRY OF DEFAULT; and FOR SANCTIONS AGAINST DAWSONS & THEIR COUNSEL.

It is bromidically stated in numerous cases that said motion lies within the discretion of the court; however, such discretion must require the DAWSONS' strict compliance with Rule 55(c) and whatever subparagraph or subparagraphs of Rule 60(b) which the DAWSONS must have exactingly cited. As to the latter rule, they have failed both to cite the specific subparagraph of Rule 60(b) and failed to meet the required showing factually, via relevant and admissible facts. Even the court in considering the stated policy of favoring a trial on the merits, such is appropriate if a clear showing has been made of meritorious defenses and further, the court must perceive and apply the distinction whether said defendants knowingly and arrogantly failed to take affirmative steps to protect their defense and own case or because they clearly misperceived the intent of the twice given warning and notice of entry of default judgment after 20 days from service upon them. Schraufnagel v. Quinowski. 113 Idaho 747, 747 P.2d 775 (Ct. App. 1987)

But as reaffirmed in McFarland v. Curtis, 123 Idaho 931, 854 P2d 274 when defendant fails to show/present meritorious defense, such def-

endants have not established "good cause" either under Rule 55(c) nor Rule 60(b), for setting aside the default. Nor does said defendants' other motions, to wit, to dismiss for the utterly specious basis per Rule 12(b)(5) of plaintiff not obtaining an order to personally serve the DAWSONS' in California; such argument is contemptous of the power, let along intelligence of this Court. Such argument of purportedly lack of personal service is utterly without merit and frivolous. Said defendants DAWSONS' counsel, Jared Harris, reasonable research and reading of the annotated cases under I.C. 5-508, would have clearly disclosed per the "Compilers notes. This section was made a rule of procedure and practice for the courts of Idaho by order of the Supreme Court promulgated March 19, 1951 which order was rescinded by order of the Supreme Court promulgated October 24, 1974, effective January 1, 1975. [over 28 years ago!]

> The subject matter of at least a part of this section appears to have been aborgated, affected or covered by Idaho Rules of Civil Procedure, Rules 4(e)(1) and 4(e)(2)."

But just a further reading of the low number of annotated cases, would have revealed B.B.P. Ass'n v. Cessna Aircraft Co., 91 Idaho 259, 420 P2d 134 (1966), holding that there is no necessity of verification and affidavit where the outofstate defendant has been personally served and thus has had actual notice of the action. Moreover, Alva A. Harris has been a undisclosed agent for the DAWSONS' along with Jack McLean, Mark Liponis and even Kathy Miller, who have been the DAWSONS' agent, coprincipals and coconspirators, partners, that they could have been served, any of them, individually, as designated agent for the DAWSONS. See Skillern v. Ward, 79 Idaho 350 317 P2d 1050 (1957) Plaintiff's motion for sanctions will be addressed in his opposition to DAWSONS' other motions. DATED: Feb. 11, 2003

JOHN N. BACH

CERTIFICATE OF SERVICE BY MAIL/FAX
I certify this date, Feb. 11, 2003, I did mail copies to each of the attorneys of record herein, & faxed a copy to Judge St. Clair, this date;

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
(Seasonal: P.O. Box 101
Driggs, Idaho 83422
Tel: (208) 354-8303
Plaintiff Pro Se

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

JOHN N. BACH,

Plaintiff,

v.

CASE NO: CV 02-208

SUMMONS ON FIRST AMENDED COMPLAINT

KATHERINE D. MILLER, aka KATHERINE M. MILLER, Individually & dba R.E.M., and CACHE RANCH, ALVA A. HARRIS, Individually & dba SCONA, INC., a sham entity, JACK LEE McLEAN, BOB FITZGERALD, Individually & dba CACHE RANCH, OLY OLESEN, BOB BAGLEY & MAE BAGLEY, husband and wife, BLAKE LYLE, Individually & dba GRANDE TOWING and also GRANDE BODY & PAINT, GALEN WOELK, & CODY RUNYAN, Individually & dba RUNYAN & WOELK, ANN-TOY BROUGHTON, WAYNE DAWSON, MARK LIPONIS, EARL HAMLIN, STAND NICKELL, BRET & DEENA R. HILL, DOES 1 through 30 Inclusive,

Defendants.

NOTICE: YOU HAVE BEEN SUED IN A FIRST AMENDED COMPLAINT BY THE ABOVE NAMED PLAINTIFF, JOHN N. BACH, THE COURT MAY ENTER A JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO:

YOU ARE HEREBY NOTIFIED, that in order to defend this lawsuit an appropriate written response must be filed with the above designated court within TWENTY (20) days after service of this SUMMONS on you. If you fail to so respond the court may enter judgment against you as demanded by the Plaintiff in the FIRST AMENDED COMPLAINT.

A copy of the FIRST AMENDED COMPLAINT is served with this Summons.

you wish to seek the advice of representation of any attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

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

1. The tile and number of this case.

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

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

4. Proof of mailing or delivery of a copy of your response to Intervenor-Complainant as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court at (208) 354-2239.

DATED this 27th day of September, 2002.

CLERK OF THE DISTRICT COURT

By Elaine Smith
Deputy Clerk

W. DAWSON

COPY

Ex. G-1

Roy C. Moulton
Attorney at Law
60 East Wallace Avenue
P.O. Box 631
Driggs, Idaho 83422

October 22, 1998

Mr. Wayne Dawson
1752 Park Vista Drive
Chico, CA 95928-4142

Re: McLean Family Trust

Dear Mr Dawson:

I am representing Jack McLean, to assist him in un-doing and re-doing some of the Trust planning that John Bach did for him, and I am also retained to help him get out of the joint tenancies that he was talked into by Mr. Bach.

Under Idaho Law, a joint tenant has the absolute right in law to get out of the tenancy. If that can be done by partitioning (dividing) the property among the tenants, that will be done. If partition is not available, the Court will order the land sold and the proceeds distributed to each tenant according to the proportion of ownership. It is hoped that all joint tenants will cooperate with Jack in his getting out of this joint tenancy.

The property in question is owned by the following four entities.

McLean Family Trust - Undivided 1/4 Interest
Jack McLean, Trustee

Cheyovich Family Trust - Undivided 1/4 Interest
Milan and Diana Cheyovich, Trustees

Dawson Family Trust - Undivided 1/4 Interest
Wayne Dawson

Targhee Powder Emporium, Ltd - Undivided 1/4 Interest
John Bach

Telephone - (208) 354-2345 *[Facsimile] - (208) 354-2346*

Alva A. Harris
Attorney at Law
P.O. Box 479
Shelley, Idaho 83274
208-357-3448

Re: Katherine M. Miller
Date: January 10, 2001

Roger B. Wright, Esq.
Wright Law Offices
477 Shoup Avenue
Idaho Falls, Idaho 83402
523-4433

Dear Mr Wright,

This letter confirms our prior telephone conversations and discussion in the Bonneville County Courthouse concerning my statement that Mrs. Miller desired an accounting of the funds she issued to your Driggs, Idaho, office on December 12, 1994.

Prior to early February, 1998, she had only received a Warranty Deed for 40 acres of property purchased from your client, Lovell Harrop. At that time she discovered in a lawsuit that your firm had issued refund checks of her monies to a Liponis-Emporium Trust Account as per the directions of one John N. Bach.

My client had no idea of what representations were being made to your office by Mr. Bach in December, 1994. She only knew she was buying 40 acres of real property and had been requested to give your office that sum to pay for the same. She accordingly issued to your office, and it deposited it, the sum of $110,000.00 via her personal check number 4434. I have enclosed a copy of the same.

In February, 1998 she obtained a copy of your office checks involving this matter. A copy of checks numbered 2302, 2303,2304, 2305, and 2307 from your Trust Account is enclosed. You see that numbers 2303 and 2307 are issued to the Liponis-Emporium Trust Account.

Mr. Kurt Taylor's warranty deed, facsimiles dated December 22, 1994, December 27, 1994, December 28, 1994, and December 30, 1994 reveal that he knew she was the buyer of 40 acres. He also knew she had deposited the

DEFENDANT'S EXHIBIT No. 11A: 1 of 2 pgs

purchase price with him. He did not ask her to sign a closing agreement. He did not include her in any closing proceedures. Yet he issued two checks as per the directions of John N. Bach and received nothing in writing from Katerine M. Miller.

That is why I am requesting an accounting and the production of any documents signed by her authorizing the dispersal of her funds to anyone other than her.

If your office is unable to document her authorization, it is respectfully requested that your office issue a check to her for $7250.00. She would waive any demand for interest and attorney fees at this time.

She is aware of the fact that your firm and her have both been victimized by John N. Bach.

Sincerely,

Alva A. Harris

Kathy –

I did not enclose Joyce the check copies. They obviously will say Bach was your agent. We will say "yes – as to the purchase but not as to the money."

Alva A Harris

Remember – They have nothing in writing between you + John. Lipsis, Dawson & Rochaan signed things.

DEFENDANT'S EXHIBIT No 11A 2 of 2 pgs

Mr. Wayne Dawson and
Mrs. Donna Dawson
1752 Park Vista Drive
Chico, CA 95928

RE: BACH v. Miller, WAYNE DAWSON & DONNA DAWSON, et al.,
Teton County, Idaho, Seventh Judicial District Court
Action No: CV 02-208

Mr. and Mrs. Dawson;

Each of you were validly, personally served with process, a copy of the summons on the first amended complaint and a copy of the first amended complaint, filed in this action, September 27, 2002. Such personal service was made upon each of you on Saturday, December 21, 2002, per Idaho Rule of Civil Procedure, Rule 4(d)(2) and the Idaho Long Arm Service Statutes.

You have utterly failed to appear, answer or defend against such FIRST AMENDED COMPLAINT, and I havenow had entries of default filed/recorded against each of you jointly and severally. These entries of default result in your confessing, admitting and accepting all relief, damages and other monetary or equitable relief which the court will grant me in your absence. You are without objection/legal denial for all the damages each of you and all other defendants have inflicted upon me.

If you are receiving either legal or personal advice/counsel from the other defendants, which defendants herein also include, Alva A. Harris, Galen Woelk and his partner, Cody Runyan or that of Roy C. Moulton, I suggest that not only are you ill served and mistakenly advised by them, but that they have irreconcilable conflicts of interests, to adequately and professionally so serve you. But such is your choice.

Besides, giving you notice of the aforesaid facts and status, I am hereby presenting an offer of settlement under Idaho Civil Rules of Evidence, which offer, is once only in time and restriction, and must be accepted by each of you within seven (7) calendar days from date hereof; Such offer is made with an attempt to resolve our differencs and get on with our respective lives; the terms are: (1) You will immediately, by warranty and grant deeds convey to me all your original and all present interests in the Peacock Investment and also the 8.5+/-acres adjacent/contiguous to 195 N. Hwy 33 along with all mineral, water and any other rights and claims; (2) You will immediately sign per the form I present a complete assignment of all rights, claims, indemnification, hold-harmless or any other claims against all other defendants in this action, their insurance companies, all liabilities policies per which you have any coverage for the injuries caused me via the current action; (3) Both of you will sign a complete letter of apology, retraction and invalidation of all accusations, criticisms, slander or libel which you have continued to publish or disseminate against or about me, and a further written statement that you will make no further similar or other related disparaging statements; and (4)You along with myself will execute a COVENANT AGREEMENT, that that you continue in good faith to honor and abide by the foregoing terms, and I will seek no further damages, relief or redress from you in this action or any judgment I obtain therein.

DATED: January 23, 2003 000209 John N. Bach

JOHN N. BACH

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4:42
JAN 22 2003
TETON CO.
MAGISTRATE COURT

Alva A. Harris
Attorney at Law
171 South Emerson
P.O. Box 479
Shelley, Idaho 83274
(208) 357-3448
ISB # 968

Attorney for Defendants Harris, Fitzgerald, Lyle and Olson
Now appearing for Defendants McLean, Scona, Inc. and Targhee Powder Emporium, Inc., Unltd and Ltd.

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

JOHN N. BACH, Plaintiff, vs. KATHERINE D. MILLER, etal Defendants.	)	Case No. CV-02-0208 APPEARANCE MOTION TO DISMISS AND MOTION FOR SANCTIONS

Alva A. Harris, attorney at law, hereby enters his appearance herein for and in behalf of Scona, Inc., Jack Lee McLean, and Targhee Powder Emporium, Inc., Ltd and Unltd.

COMES NOW all the above named defendants, by and through their attorney of record, Alva A. Harris, and respectfully move this Court under authority of Rule 12 (b) (8) for its order dismissing the pleading entitled "First Amended Complaint" filed on September 27, 2002, and which was allowed to go forth by this Court's Fifth Order filed January 10, 2003. In support of this motion these defendants attach hereto copies of Orders issued by Judge Thomas G. Nelson in CV-01-266-E-TGN on December 16, 2002, on July 2, 2002, and June 23, 2002. This case is still pending. These defendants request the Court to take judicial notice of this federal case and all its Orders.

This motion is based upon the documents and pleadings on file herein and attached hereto. Testimony is not necessary and the Court is requested to rule without a hearing.

These defendants move for and request Sanctions against John N. Bach under Rule 11 because this pleading was without any basis in law or fact and Bach certainly is presumed to understand the meaning of Rule 12 (b)(8) since he was the plaintiff in said federal case. The allegations of that case are identical to the allegation in this instance. The Court is requested to take judicial notice of usual costs in these type actions and award attorney fees of at least $500.00 as a proper sanction to Mr. Bach.

This motion is based upon the documents and pleadings on file herein and attached hereto. Testimony is not necessary and the Court is requested to rule without a hearing.

DATED this 21 day of January, 2003.

Alva A. Harris

CERTIFICATE OF SERVICE

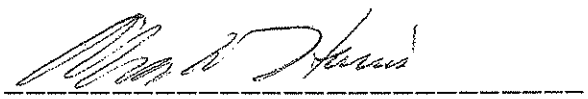
I HEREBY CERTIFY that on the 21 day of Januaary, 2003, I served a true and correct copy of the foregoing document on the following by depositing the same in the United States mail, with the correct postage thereon, in envelopes addressed as follows:

Party Served:

John N. Bach, Pro Se
1858 South Euclid Avenue
San Marino, CA 91108

Attorney Served:

Galen Woelk, Esq.
P. O. Box 533
Driggs, Idaho 83422



Alva A. Harris

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JAMES R. BURKE,
CLERK, IDAHO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

JOHN N. BACH,

Plaintiff,

v.

TETON COUNTY, et al.,

Defendants.

No. CV-01-266-E-TGN

ORDER

Pending before the Court is Plaintiff's motion for an order(s) vacating this Court's orders of June 25, 2002, and July 25, 2002, seeking leave to respond to the order of June 25, 2002, and seeking leave to file a second amended complaint (Docket No. 278). Also pending is the remainder of the Teton County Defendants' Motion to Dismiss (Docket No. 178). *See* Order of June 25, 2002 (Docket No. 242). Also before the Court are the questions of whether to exercise jurisdiction over Plaintiff's pendent state law claims and the dismissal of other defendants not previously dismissed.

Pursuant to Local Civil Rule 7.1(d)(4), the Court finds that these issues may be resolved without oral argument and, therefore, will be decided on the submissions by the parties. For the reasons set forth in this order, the Court grants the Plaintiff's motion in part and denies it in part, and grants the Defendants'

motion in part and denies it in part.

I.

Plaintiff requested leave to file further briefing in support of his motion. The court notes that it granted Plaintiff an extension (Docket No. 279) to file further briefing and that he has done so, filing three briefs in support of his motion: Docket Nos. 280, 281, and 283. The court has considered those filings.

Plaintiff also requests that the court vacate its prior orders and that it allow him to file a second amended complaint. Plaintiff's request to file a second amended complaint will be addressed along with the Teton County Defendants' Motion to Dismiss. The Court denies Plaintiff's request that the Court vacate its prior orders for the reasons set forth below.

In support of his argument for vacation, Plaintiff makes three assertions. First, he asserts that the Court has imposed heightened pleading requirements on him. Plaintiff is incorrect. As the Court explained in its order of March 7, 2002 (Docket No. 155), even though he is pro se, Plaintiff is bound by the Federal Rules of Civil Procedure and by federal law. Plaintiff's initial complaint was so confusing and conclusory as to preclude the defendants from understanding the charges against them. Accordingly, the Court offered Plaintiff the opportunity to amend his complaint and offered some guidance on how he might simplify and

improve it. *See* Docket No. 155. The Plaintiff made some minimal improvements. Unfortunately, however, he did not simplify or clarify his pleadings. Citing several paragraphs from his amended complaint, Plaintiff asserts that he has satisfied his pleading obligations. As quoted, the portions read as follows:

> Plaintiff's verified Amended Complaint has specifically averred as to the TETON COUNTY DEFENDANTS have:
>
> > ". . . acted/acting under 'color of law, custom, practice, patterns of racketeeering [sic] activities, via their respective individual and public positions, employment or arrangements, as a union and/or group of individuals associated in fact,' separately with and for TETON COUNTY, IDAHO. . .acted in multiple conspiracies, with each other, and all other defendants/grouping of defendants, and in further joint ventures, enterprises, common purposes, pursuits and mutual agencies, and pursuant to official policies, actions, non-actions and rejections, deliberately, intentional, maliciously indifferent and with invidious discriminatory animust, [sic] custom, practices, etc., toward plaintiff to violate his constitutional and statutory rights as stated herein. . . ." (Para. 3)
>
> As to the MILLER-McLEAN defendants it is specifically averred:
>
> > "The defendants named j) through x) from or about September 1, 1999 have joined the enterprise, patterns of racketeering, unlawful activities and further, conspired, both individually collectively and as another group of individuals associated in fact, with all other defendants in all groupings to destroy plaintiff's real-personal properties and interfere in plaintiff's contactual, [sic] business and prospective economic relations, interests and opportunities, and committed and threaten, stil [sic] threaten, to commit crimes of violence against plaintiff in violations of the state of Idaho and the United States,

> having further attempted and conspired so to do. . ." (Par. 4, sub. 2)

(Docket No. 280) The inadequacy of these allegations is readily apparent. The terms "vague and conclusory" fully describe what Plaintiff said. The phrase "short and plain statement" does not. Accordingly, having afforded Plaintiff the opportunity to fix the problem, and having offered him advice on how he might do so, the Court dismissed those portions of Plaintiff's amended complaint that were vague and conclusory. *See* Docket No. 241. The Court stands by its dismissal.

Second, Plaintiff argues that the Court should have allowed him to amend his complaint a second time in order to allow him to include Bret and Deena Hill as defendants, in place of Brad and Susan Hill. In the amended complaint, Plaintiff alleged that Brad and Susan Hill purchased property from Defendants Scona, Inc., Harris, and Christensen following a tax lien sale. Now there is some question as to whether Bret and Deena Hill actually purchased the property. The Court denies Plaintiff's request to add Bret and Deena Hill to the Complaint as doing so would be futile.

The Court's previous orders (*see* Docket Nos. 241 and 259) have dismissed Plaintiff's claims relating to the tax lien sale. The dismissals included Scona, Inc., Alva Harris, and Tom Christensen, who were alleged to be purchasers from the United States. The individuals who purchased the property from the original

purchasers, whoever they are, are entitled to dismissal of Plaintiff's claims for the same reasons as were the original purchasers. Accordingly, the action shall be dismissed with prejudice as to Brad and Susan Hill and would be dismissed with prejudice as to Bret and Deena Hill if Plaintiff were allowed to add them. Thus, allowing Plaintiff to add Bret and Deena Hill as named defendants would be futile, and the Court denies the Plaintiff's request.

Third, Plaintiff complains that the Court's dismissal of several defendants who were not timely served was inappropriate. By order dated August 12, 2002 (Docket No. 269), the Court noted that proofs of service had not been filed as to a number of named defendants and referred Plaintiff to the requirements of Rule 4, Federal Rules of Civil Procedure. Plaintiff was given the opportunity to show cause why the action should not be dismissed as to these defendants. The Court accepted Plaintiff's belated response (Docket No. 277). In that response, Plaintiff did not show cause for his failure to serve the other defendants; he only claimed that one defendant, Mary Sarrone, had been served. Plaintiff is correct as Ms. Sarrone filed an answer on April 22, 2002 (Docket No. 167).[1]

Plaintiff *now* argues that the Court was incorrect that the time for service had

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[1] Mary Sarrone's name is spelled "Saron[illegible]" and she will be referred to by the proper spelling hereafter.

expired when it issued its August 12 order. He asserts that "there is still time serve them on even the amended complaint." [sic].

Plaintiff is mistaken. Rule 4(m) provides, in pa :

> If service of the summons and complaint is n ot made upon a defendant within 120 days after the filing of the complain the court, upon motion or on it own initiative after notice to the plaintiff, shall dismiss the action without prejudice . . . provided that if he plaintiff shows good cause for the failure, the court shall exten the time for service for an appropriate period. (emphasis added)

The Amended Complaint was filed on April 8, 002 (Docket No. 163). Pursuant to Rule 6, the 120 days began to run on Apri 9, which was the 99th day of 2002. The 219th day of 2002 was August 7 (99 ph 120 equals 219). Thus, the last day of the service period was August 7. Plaintiff is not requested an extension of time, he has not shown cause for his dela and he still has not served the defendants in question.[2] Accordingly, pursuant to ule 4, the Court shall dismiss the complaint without prejudice as to the rem ning defendants listed in its August 12, 2002, order who have not otherwise been smissed. Those defendants are Louis Gaylor, Lyle Blake, Mark Liponis, Siobhan cNally, and Stan Nickell.

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[2] The Court notes that the Plaintiff has now had more than 240 days to serve the defendants listed in the order. He has not done so.

II.

The Court now turns to the Teton County Defendants' Motion to Dismiss (Docket No. 178) and to Plaintiff's request for leave to file a second amended complaint. In the order of June 25, 2002, the Court dismissed several claims against the Teton County defendants. It left open the possibility that Plaintiff had stated a § 1983 claim against Teton County and several of the Teton County defendants. Those defendants now move to dismiss the § 1983 claim.

Plaintiff makes the following allegations regarding the § 1983 claim in his amended complaint. In Paragraph 18, he alleges that Laura Lowry, the Teton County prosecutor; Ryan Kaufman, the sheriff; and Colin Luke, a Teton County magistrate judge, agreed "not to investigate, prosecute or allow any citizens arrests to be made by plaintiff" of other, private defendants (Fitzgerald and Oleson), and that "until [a] civil action was filed and reached issuing a court order as to plaintiff's properties, his title, ownership and exclusive current possesion [sic] of such lands and personalty or improvements thereon, would not be protected . . . ." ¶ 18.

According to the Plaintiff, the alleged agreement led to a failure to engage in a "true effort [or] attempt to conduct a meaningful investigation" of the alleged poisoning of his horse, *see* ¶ 20. Plaintiff's amended complaint also suggests,

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though it does not say so explicitly, that the Agreement led to a failure to respond to a 911 call on an unspecified date "for assistance in making a citizen's arrest" of Fitzgerald and Oleson. *See* ¶ 18 ("Plaintiff called 911 for assistance in making a citizen's arrest . . . but has been told by Sheriff Ryan Kaufman, Laura Lowry, deputies Hammond and Dewey that per agreement reach [sic] between Kaufman, Lowry and Colin Luke . . . that they agreed not to investigate, prosecute or allow any citizens arrests to be made by plaintiff. . ."). Fitzgerald and Oleson, he alleges, had "repeatedly . . . trespassed" on his property and had engaged in various sorts of criminal behavior, from destruction of property to assault. Plaintiff does not specify precisely what events led to his attempt to execute a citizen's arrest and to call 911.

The allegations that perhaps might support a § 1983 claim do not include the other Teton County defendants Lavell Johnson, Brent Robson, Mark Trupp, Dave Trapp, Jay Calderwood, Eileen Hammon, James Dewey, and Dave Oveson. Having given Plaintiff the opportunity to re-state his claims, the Court interprets the absence of any allegations that would support a § 1983 claim against these defendants as telling. Accordingly, the action is dismissed with prejudice as to those defendants.

The question thus remains whether Plaintiff has stated a claim against

Kaufman, Lowery, and Luke.[3] Plaintiff has not pleaded his claim adequately at this point. However, his pleadings suggest that he might be able to do so. Accordingly, after discussing the problems with the current claim, and the requirements of equal protection claims generally, the Court will dismiss the claim without prejudice, allowing Plaintiff to re-file his claim against Kauffman, Lowery, Luke, and Teton County yet again, if, after consideration, he believes that he has a valid claim against them.

To allege a § 1983 claim, a plaintiff must show: "(1) that a person acting under color of state law committed the conduct at issue, and (2) that the conduct deprived the claimant of some right, privilege, or immunity protected by the constitution of the laws of the United States."[4]

The Plaintiff has satisfied the first requirement with regard to Kauffman, but not with regard to Lowery or Luke. Plaintiff has not alleged that Luke or Lowery engaged in any action or inaction, under color of state law, that damaged the

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[3] To the extent Plaintiff alleges that the three actors' agreement is part of a policy of Teton County of refusing to aid non-Mormons, he may also have a claim against the County. *See Fairley v. Luman*, 281 F.3d 913, 917 (9th Cir. 2002). The County is not liable for its employees' actions under a theory of respondeat superior. *See, e.g., Monell v. Dept. of Soc. Serv. of N.Y. City*, 436 U.S. 658 (1978). However, it may be liable for official, discriminatory policies. *See Fairley*, 281 F.3d at 918 (defining "policy").

[4] *Samuel v. Michaud*, 980 F. Supp. 1381, 1396 (D. Id.), *aff'd* 129 F.3d 127 (9th Cir. 1997) (internal quotation marks omitted).

Plaintiff or that they had anything to do with law enforcement's failure adequately to investigate the death of his horse or respond to his 911 call. He has only alleged that they *agreed* to deprive him of his rights to protect his property. An agreement among several County officials not to protect him provides some support for the theory that the County had a policy that it would not protect him. However, the mere allegation that the agreement existed, without any allegation that individual defendants, acting pursuant to the agreement, caused the Plaintiff harm, does not suffice to state a claim under § 1983 against those individual defendants, except under a conspiracy theory.[5] Accordingly, Plaintiff's amended complaint fails to meet the first requirement of § 1983 against Luke or Lowery, except to the extent it may be read to allege a conspiracy.

As for the second requirement, the question becomes: What constitutional right, privilege, or immunity does Plaintiff allege has been violated? Plaintiff alleges violations of his rights under the First, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Thirteenth, and Fourteenth Amendments. *See* ¶ 25. Taking as favorable a view of the amended complaint as possible, the Court concludes that

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[5] Plaintiff does state that he "was not to call [Teton County Officials] to conduct any investigations, make arrests, *or initiate prosecutions*." ¶ 20. This suggests that he may have attempted to solicit the help of the prosecutor. If that is the case, he should so specify.

Plaintiff may have a claim under the Fourteenth Amendment's equal protection clause.[6]

In order to state a claim for a violation of equal protection, plaintiff must "show intentional discrimination against him because of membership in a particular class, not merely that he was treated unfairly as an individual."[7] Portions of Plaintiff's complaint suggest that Plaintiff believes that County officials have discriminated against him because he is not a member of the L.D.S. church. He might, therefore, state an equal protection claim based on his religious beliefs. At this point, Plaintiff has not claimed that the alleged agreement was "at least in part 'because of,'" his non-membership in the L.D.S. church.[8] If he can do so in good faith, he can meet the initial requirements of an equal protection claim. Thus, his amended complaint suggests the possibility of, but does not actually state, an equal protection violation.

Next, Plaintiff must have suffered damages from the alleged agreement. At this point, Plaintiff has not identified precisely what damages he suffered. He suggests that the "sheriff's office [gave] free reign" to Fitzgerald and Oleson to

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[6] To the extent Plaintiff can allege that he has been denied access to the courts, he may also have a due process claim.

[7] *See Samuels*, 980 F. Supp. at 1399 (internal quotation marks omitted).

[8] *Id.*

terrorize him. Thus, he may be able to allege that damages from the sheriff's alleged inaction include the alleged trespasses and destruction of property previously alleged, including the alleged poisoning of his horse. Similarly, assuming that Plaintiff is indeed alleging that the police failed to respond to his 911 call or calls, he may have sustained some damage from the failure, though at this point, he does not specify it. In addition to identifying damages, if Plaintiff re-files, he should identify what relief he seeks with respect to this claim in particular.

For the foregoing reasons, the Court will dismiss Plaintiff's § 1983 claim without prejudice and with leave to re-file. If Plaintiff wishes to re-file the § 1983 claim, he may do so, but only against the following parties: Kauffman, Lowery, Luke, and Teton County. He may also re-file claims against those individuals dismissed without prejudice. However, the Court wishes to reiterate its previous advice.

In order to provide the defendants and the court with an understanding of his claims, Plaintiff should be mindful of the mandate of Rule 8, Federal Rules of Civil Procedure, that each claim consist of a short, plain statement. Plaintiff is encouraged to avoid "legalisms" and to use plain English, set out in short, declarative sentences. Plaintiff should specify which defendant and which facts correspond to each count rather than alleging facts and asserting claims against

groups of defendants. Plaintiff should also give dates wherever possible (for example, the dates of the alleged 911 calls).

The court is aware that Plaintiff has had legal training and feels confident that he has the ability to comply with the Federal Rules. The court is also aware, however, that Plaintiff's complaints to date have been unnecessarily lengthy, conclusory, and repetitious while, at the same time, devoid of necessary and available facts. Up until now, the court has not imposed a length requirement on the Plaintiff's filings. It is now time to do so. The Plaintiff's much-narrowed second amended complaint shall not exceed twenty pages. With headers, footers, and margins of at least one inch, it will ideally be even less than twenty pages and shall comply with the formatting requirements imposed by the Idaho Local Rules. *See* Id. L.R. 5. The Court notes that, pursuant to Idaho Local Rules, Plaintiff may not refer back to prior pleadings. *See* Id. L.R. 15.1. Thus, if and when he files the very-much narrowed, second amended complaint envisioned in this order, it must be free-standing.

Plaintiff should take note that, having suggested how to fix the problems first with his complaint and now with his amended complaint, and having given him several opportunities to fix the problems, the Court will have few reservations about dismissing his complaint with prejudice for failure to comply with Rule 8 if

he fails to comply with the Court's instructions this time.

III.

In Count 10, Plaintiff asserts a pendent claim under the Idaho racketeering statute, Idaho Code §§ 18-7802 through -7805, against all of the defendants named in his amended complaint. In Count 11, Plaintiff is apparently attempting to assert a pendent state tort claim against all of the named defendants as well, although that is not entirely clear.

This Court has supplemental jurisdiction over state law claims that form part of the same case or controversy as the federal claims.[9] Under § 1367(c), the Court may decline to entertain supplemental jurisdiction over state law claims on several bases. The usual one is when all claims have been dismissed. Exceptional circumstances present a basis for dismissing claims as well. These claims present exceptional circumstances under § 1367(c)(4).

All federal claims have not been dismissed in this and prior orders, but the great bulk of them have been, and many defendants have been dismissed. Only a small fraction of the parties and federal claims Plaintiff was attempting to pursue in this action are now possibly viable against only a small number of remaining defendants.

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[9] 28 U.S.C. § 1367(a).

Further, the Court takes judicial notice of the fact that Plaintiff has filed a case in state district court in Teton County, No. CV-02-208, against a number of the same parties, and asserting some of the claims that Plaintiff attempted to assert in this case. There are also several other state court cases pending involving Mr. Bach and happenings in and around Teton County. In order to avoid jurisdictional conflict between this Court and the state courts, to allow the state courts to have the opportunity to rule on state law claims and to simplify the instant matter for the Court and remaining litigants, this Court declines to exercise supplemental jurisdiction over Plaintiff's pendent state law claims.

As described above, this case presents exceptional circumstances, pursuant to § 1367(c)(4). Accordingly, the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims. Those claims will be dismissed without prejudice.

IV.

Scattered throughout the amended complaint are the names of defendants who have not previously been dismissed from the action. Their status needs to be addressed.

A. Sarone, Beatty, and Stewart

Mary Sarone is mentioned in paragraph 4(x) as "Mary Sarrone, individually

& dba Aunty Em's, Driggs, ID." She is not otherwise mentioned in the amended complaint.

Terrina Beatty is mentioned in paragraph 4(y) as "formerly of Victor, ID., believed to be in New Mexico." The only other mention of her is in paragraph 15 as a defendant in an earlier case.

John J. Stewart is mentioned in paragraph 4(z)[10] as "River Heights, Utah[,] and Tetonia, ID." He is mentioned in paragraph 12 as a "high priest LDS writer . . .," among other things. He is also mentioned in paragraph 16 as being a party to an appeal before the Idaho Supreme Court.

These allegations are clearly inadequate to state a claim against any of those defendants for the reasons stated in the order of June 25, 2002 (Docket No. 241). Since the action has been dismissed as to the other defendants included in the allegations which include these defendants,[11] the action shall be dismissed with prejudice as to each of them.

B. Clint Calderwood

Mr. Calderwood is described in paragraph 3(h) as the son of Jay

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[10] Actually delineated "x" in amended complaint, but it will construed as a typographical error.

[11] *See Silverton v. Department of Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981).

Calderwood, "a coperpetrator, conspirator and actor with his father." He is not otherwise mentioned in the amended complaint. Since the action was dismissed as to Jay Calderwood in the order of June 25, 2002, it should also be dismissed as to Clint Calderwood.[12]

C. Tom Christensen

Mr. Christensen is mentioned in paragraph 4(i) along with Alva Harris as an "alter ego of Scona, Inc.," among other things. He is mentioned in paragraph 14 as a purchaser of Bach's property at the tax sale. Again, in paragraph 21 he is mentioned as being involved in the sale to Brad and Susan Hill. Since other persons and entities involved in the purchase at the tax lien sale have previously been dismissed, Mr. Christensen should also be dismissed.[13]

D. Peter Estay

Mr. Estay is mentioned in paragraph 12 (pages 12 and 13) of the amended complaint as, among other things, "a federal felon," the brother of Laura Lowry, and a Mormon. None of these allegations mention any official position or use of state law to injure Plaintiff. Since the action has been dismissed as to most, if not all, of the other defendants in the group where Mr. Estay is mentioned, the action

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12 *Id.*

13 *Id.*

shall be dismissed as to him also.[14]

E. Casey and Shawn (Sean) Fitzgerald, and Oly Oleson

The Fitzgeralds and Mr. Oleson are mentioned in paragraph 18 as participating in trespassing on Plaintiff's property. There are no allegations, as to any of them, that anything they did was under color of state law or that they had or were exercising any official position. The action shall be dismissed as to each of them.[15]

ORDER

Accordingly, the Teton County Defendants' Motion to Dismiss (Docket No. 178) shall be and hereby is GRANTED, with prejudice, as to all the moving defendants except Ryan Kauffman, Laura Lowery, Colin Luke, and Teton County. The action is dismissed with prejudice as to Defendants Lavell Johnson, Brent Robson, Mark Trupp, Dave Trapp, Jay Calderwood, Eileen Hammon, James Dewey, and Dave Oveson. As to Defendants Kauffman, Lowery, Luke, and Teton County, the Motion to Dismiss shall be and hereby is GRANTED without prejudice and with leave to re-file.

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[14] *Id.*

[15] *Id.*

prejudice and with leave to re-file.

The action is hereby DISMISSED with prejudice as to Defendants Mary Sarone, Terrina Beatty, John J. Stewart, Clint Calderwood, Tom Christensen, Peter Estay, Casey Fitzgerald, Shawn (Sean) Fitzgerald, Oly Oleson, Brad Hill, and Susan Hill.

Plaintiff's motion for an order(s) vacating this Court's orders of June 25, 2002, and July 25, 2002, seeking leave to respond to the order of June 25, 2002, and seeking leave to file a second amended complaint (Docket No. 278) shall be and hereby is DENIED, except that his request to be granted leave to file a second amended complaint is GRANTED in part, as limited by this order. Plaintiff has twenty-eight (28) days from the date of this order in which to file a second amended complaint which complies with this order.

The Amended Complaint is DISMISSED without prejudice as to Defendants Louis Gaylor, Lyle Blake, Mark Liponis, Siobhan McNally, and Stan Nickell.

Finally, Plaintiff's pendent state law claims shall be and hereby are DISMISSED without prejudice.

It is the Court's understanding that two motions are still pending: (1) Defendants Harris, Shan, Perry, and Homer's motion for vexatious litigant

UNITED STATES COURTS
DISTRICT OF IDAHO

JUN 25 2002

M. REC'D
LODGED FILED

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

JOHN N. BACH, Plaintiff, v. TETON COUNTY, et al., Defendants.	No. CV-01-266-E-TGN ORDER

The Court has today entered an order addressing the pending motions. Because the action was dismissed as to many defendants, it is appropriate to withdraw the scheduling order previously entered. This will allow the parties remaining in the case to consider what needs to be done after the Court considers the further briefing invited herein. The scheduling order of March 22, 2002, (docket No. 157) is VACATED and all scheduled conferences are cancelled.

1. The Court denied dismissal as to some of the "Teton County Defendants" because it appears that a claim under § 1983 may have been stated. Defendants Teton County, Laura Lowry, Lavell Johnson, Brent Robson, Mark Trupp, Dave Trapp, Jay Calderwood, Eileen Hammon, James Dewey, and Dave Oveson, and any other defendants in the law enforcement or prosecuting attorney

groups as described in paragraph 3 of the Amended Complaint, are requested to file a brief or briefs not to exceed fifteen (15) pages, addressing specifically and only whether the Amended Complaint, particularly but not limited to paragraph 18, sufficiently alleges a claim upon which relief could be granted to survive a motion to dismiss. The brief(s) shall be filed within twenty-one (21) days of the date of this order. Plaintiff may file one response brief not to exceed fifteen (15) pages within twenty-one (21) days of service of defendants' brief(s). Reply brief(s) of not more than ten (10) pages may be filed within fourteen (14) days of service of Plaintiff's brief.

2. The Court dismissed the claims against the United States based on laches and res judicata. Defendants other than the United States were included in the claims in Case No. 98-CV-383-E-EJG[1] which were the basis of the laches decision. If those defendants have valid laches or res judicata defenses as to some or all of Plaintiff's claims, it would save time and energy to address those defenses at an early point in the proceedings.

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[1] *Bach v. Mason*, 190 F.R.D. 567 (D. Idaho 1999), *aff'd* 2001 WL 177179 (9th Cir. (Idaho)) (mem.), *cert. denied*, 122 S.Ct. 818 (2002).

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Defendants Alva Harris, Scona, Inc., and any other defendants who claim to be within the res judicata or laches effect of the decision in Case No. 98-CV-383-E-EJG are invited to file a brief or briefs not to exceed fifteen (15) pages in length, within twenty-one (21) days of the date of this order, addressing their position on whether defenses of laches or res judicata or other defenses are available to them as a result of the dismissal of Case No. 98-CV-383-E-EJG.

Plaintiff may file one response brief not to exceed fifteen (15) pages within twenty-one (21) days of service of defendant's brief. A reply brief(s) not to exceed ten (10) pages may be filed within fourteen (14) days of service of Plaintiff's brief.

3. The Court's order of May 16, 2002, (docket No. 218) which denied the motions to dismiss which accompanied the answers of certain unrepresented parties is hereby VACATED, and those MOTIONS ARE REINSTATED. Plaintiff is directed to show cause why those motions should not be granted. The showing should be in the form of a brief which shall not exceed fifteen (15) pages and shall be filed within twenty-one (21) days of the date of this order. Any defendants affected by Plaintiff's showing may file a brief of like length within twenty-one (21) days of service of Plaintiff's brief. Plaintiff may file a response not to exceed ten

(10) pages within fourteen (14) days of service of defendants' brief, if any. This paragraph does not apply to those defendants who filed such motions who were dismissed by the order entered today. Those defendants are: Jack Webb, Mary Langdon, Gary Blake, Jan Blake, and Ann-Toy Broughton.

IT IS SO ORDERED.

DATED this 25th day of June, 2002.

THOMAS G. NELSON
United States Circuit Judge
Sitting by Designation

U.S. COURTS
02 JUL 25 PM 3:56
FILED

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

JOHN N. BACH,

Plaintiff,

v.

TETON COUNTY, et al.,

Defendants.

No. CV-01-266-E-TGN

ORDER

On May 16, 2002, the Court entered an order denying a number of motions for judgment on the pleadings without prejudice to later renewal (docket No. 218). On June 25, 2002, the court entered an order (docket No. 242) withdrawing its order of May 16, 2002, and reinstating the motions for judgment on the pleadings. The court also ordered Plaintiff to show cause within twenty-one days why those motions should not be granted. Plaintiff has not filed anything in response to the Court's order.

THEREFORE, IT IS HEREBY ORDERED that the Second Amended Complaint be DISMISSED WITH PREJUDICE as to each and all of the following defendants:

Docket Number	Party
168	Harrop, Lovell & Lorraine
169	Melehes, Mark
170	Bergmeyer, Mori
172	Brink, Roger
176	Runyan, Kathy
181	Byers, Frank
187	Miller, Katherine M.
	McLean, Jack L.
	Ehrler, Paula
188	Harris, Alva A.
	Scona, Inc.
	Targhee Powder Emporium, Inc.
	Targhee Powder Emporium, Unltd.
	Targhee Powder Emporium, Ltd.
189	Dawson, Wayne & Donna
191	Blair, Kenneth & Harlene
196	Ferris, Russell
204	Kemstra, Benjamin
209	Levandoski, Jan
210	Hamblin, Earl
211	Fitzgerald, Bob
212	Johnson, Lavell
213	Curtis, Lowell
214	Blackmar, Bruce

It is now unnecessary to consider the Motion for Summary Judgment filed

by Mark Melehes (docket No. 249) and the objections by Defendants Kathy Runyan and Roger Brink (docket No. 254). Accordingly, the motion and the objections are each DENIED as moot.

DATED this 25th day of July, 2002.

THOMAS G. NELSON
United States Circuit Judge
Sitting by Designation

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
Plaintiff Pro Se

FILED
3:59
FEB 1 1 2003
TETON CO.
MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff,

v.

KATHERINE D. MILLER, aka
KATHERINE M. MILLER, et al.

Defendants.

_____/

CASE NO: CV 02-208

PLAINTIFF JOHN N. BACH'S MEMORANDUM BRIEF RE OBJECTIONS & OPPOSITION TO DEFENDANTS DAWSONS' MOTION TO DISMISS PER RULE 12(b)(5); & PLAINTIFF'S MOTIONS FOR SANCTIONS IRCP, Rule 11(a)(1) & INHERENT POWER OF COURT.

A FULL HEARING IS REQUESTED:

Plaintiff JOHN N. BACH does submit this MEMORANDUM BRIEF RE OBJECTIONS AND OPPOSITION TO DEFENDANTS DAWSONS' MOTION TO DISMISS PER IRCP, Rule 12(B)(5); and IN SUPPORT OF HIS MOTION MADE HEREBY FOR SANCTIONS, AGAINST SAID DEFENDANTS AND THEIR COUNSEL, JARED HARRIS, per IRCP, Rule 11(a)(1) and the Inherent power of this court to control it's proceedings and processes.

I. PLAINTIFF INCORPORATES ALL HIS OTHER MEMORANDUM OF OBJECTIONS AND OPPOSITION TO DEFENDANTS DAWSONS' OTHER MOTION TO SET ASIDE DEFAULT AND TO DISQUALIFY JUDGE ST. CLAIR, ALL OF WHICH DEFENDANTS DAWSONS' MOTIONS ARE UTTERLY WITHOUT MERIT AS IS THIS MOTION TO DISMISS.

The above title point and argument is not repeated herein, except to reaffirm that all of the DAWSONS' motions are utterly without merit and are brought without standing, capacity or right of appearance herein, having deliberately defaulted and failed to meet the foundational requirements of Rule 55(c) and 60(b), citing no subparagarphs thereof, nor any relevant, admissible or meeting of evidentiary showing of good cause to set aside their defaults entered herein.

As stated in objection and opposition by plaintiff in his memorandum to defendants DAWSONS' motion to set aside, default, pages 2-5, plaintiff has personally served said defendants per IRCP, Rule 4(e)(2); moreover, their motion to dismiss cannot be heard, nor considered, nor as well can their attempt at their bogus disqualification of Judge St. Clair, until their defaults are set aside, and such "good cause for even considering setting aside said defaults has not been and cannot be shown. But most significantly, I.C. 5-508 does not require any order to be obtained to serve the DAWSONS, as they have been personally served at their residence in California, which they admitted as having occurred. B.B.P. Ass'n v. Cessna Aircraft Co., 91 Idaho 259, 420 P2d 134. See also "Complier Notes" to annotations under I.C. 5-508.

Defendants DAWSON attempt to construct a house of nonexistent cards and reasons for their intentional and deliberate failures in making a timely appearance, and such misrepresentations of the law and their further deceptive omissions of accurate and relevant cases citations, should cause this Court more than just concern; it should cause this court to strike and dismiss all of their motions and impose drastic sanctions, specifically, confirming the entries of their default and finding of liabilities and all culpabilities to plaintiff for damages, quiet title and other equitable relief sought.

DATED: February 11, 2003

JOHN N. BACH,
Plaintiff Pro Se

CERTIFICATE OF SERVICE BY MAIL/FAX: I the undersigned, certify that on this date, Feb. 11, 2003, I did mail a copy of this document to each of the counsel of record, Galen Woelk, Alva A. Harris and Jared Harris, and did further fax a copy of this document to Judge St. Clair at Idaho Falls, Bonneville County Courthouse, c/o of his clerk, Marlene.

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
Plaintiff Pro Se/Per

FILED
1:59
FEB 11 2003
TETON CO.
MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff,

v.

KATHERINE D. MILLER, aka
KATHERINE M. MILLER, et al.,

Defendants.

_____/

CASE NO: CV 02-208
PLAINTIFF JOHN N. BACH'S MOTION TO STRIKE AND QUASH DEFENDANTS' DAWSONS' MOTION TO DISQUALIFY THE HONORABLE RICHARD T. ST. CLAIR, IRCP, Rule 40(d)(1); and FOR SANCTIONS AGAINST DAWSONS & THEIR COUNSEL, JARED HARRIS, IRCP, RULE 11(a)(1) & INHERENT POWERS OF THE COURT.

A FULL HEARING IS REQUESTED

Plaintiff JOHN N. BACH, does move this Honorable court for an ORDER STRIKING, QUASHING AND DENYING Defendant Wayne Dawson's and Donna Dawson's attempted Motion to Disqualify the Honorable Richard T. St. Clair per the provisions of I.R.C.P., Rule 40(d)(1), on each and all of the basis cited/advanced hereinafter. Sanctions are sought against both defendants and thier counsel, Jared Harris, restricting them from filing any further motions herein, as said defendants' defaults have been entered and, further sanctions of via an ORDER entered by the court finding that both defendants Wayne and Donna Dawson are liable on all basis and claims presented and encompassed in plaintiff's FIRST AMENDED COMPLAINT, that they along with all other named defendants, are further the legal and proximate causes, material and significant in causing and inflicting the damages, injuries and losses sought to be remedied or awarded plaintiff. In addition, costs of $500.00 should be awarded plaintiff.

Defendants DAWSONS are precluded from bringing or even filing said motion for disqualification in that:

1. Until their defaults have been heard, they have no standing or capacities to bring such motion, as not only are they in default but their purported motion to D.Q. is woefully, late, as they had to have filed such, if appropriate on the 21st day after they had been served. IRCP, Rule 40(d)(1)(A), requiring service or having received a copy of the complaint, summons and order of assignment. In this regard, Jared Harris was faxed on Jan. 14, 2003, by the Clerk's office a docket entry list which revealled that Judge St. Clair had been assigned and entered orders on contested applications for preliminary injunction, contempt and modifications of injunction, etc. Even, if from Jan. 14, 2003, DAWSONS were to have any time to file said specious and frivolous D.Q. motion, they further failed to file it within 7 days from Jan. 14 or no later than Jan. 21, but they intentionally waived and relinquished all basis to even have a motion made per Rule 60(b) to file it later, as they did on Feb. 3 or 4th, 2003.
2. Under Rule 40(d)(1)(D), if the DAWSONS could be considered new parties joined in, they had 14 days from having appeared within 20 days after service, such 20th day being through January 9, 2003, and 14 days thereafter, if they had filed their first responsive pleading, through January 23, 2003, but their motions to set aside default, and other motions are not responsive pleadings; they are bogus motions which cannot give this court jurisdiction or basis for any D.Q. of Judge St. Clair. They are again late in such filing.

3. Under Rule 40(d)(1)(B) the DAWSONS are multiple parties who have sufficient interest in common with Jack McLean, Alva A. Harris, Katherine Miller and Mark Liponis, other named defendants herein, and said defendants have more than waived, are estopped and quasi estopped along with the DAWSONS from bringing any D.Q. without cause against Judge St. Clair. A hearing on such sufficient interest in common although seemingly to be held, should require the burden of going forward and the burden of persuasion being upon the DAWSONS to show by clear convincing evidence that they have an adverse interest to each of said defendants or any other defendants herein, which the DAWSONS cannot so prove. The DAWSONS have not set nor requested even a hearing!

4. Defendant Miller having made an application to modify the preliminary injunction, having been represented at the hearing on the issuance of the preliminary injunction by Alva Harris and on the modification application by Galen Woelk, which application was denied, she and said other defendants along with the DAWSONS' have had at least three (3) if not more changes and bites at the apple of D.Q.'ing of Judge St. Clair. See Alumet v. Bear Lake Grazing Co. 119 Idaho 979. 8;2 P2d 286 (1989) modified on other grounds 119 Idaho 946, 812 P2d 253 (1991); Jones v. State, 125 Idaho 294, 870 P2d 1, cert den. 513 U.S. 838 (1994)

5. The DAWSONS have not even met the required showing to set aside their default entries as they have no meritorius defenses & their attempted D.Q. of Judge St. Clair is vexatious and to cause unnecessary delays, greater expense to plaintiff, etc.

6. Clearly, the DAWSONS' and all their counsel, Alva A. Harris, Galen Woelk and now Jared Harris, have sought to obstruct the processes of this Court, it's orders especially the Scheduling ORDER issued herein, to which no objections by any defendants or their counsel have been made and nor have they brought any order per Rule 60(b) to modifiy or excuse them from said orders or to be allowed somehow herein to even file said D.Q. motion. Alva A. Harris, it will be recalled, made a motion to consolidate another action and then withdrew it, and during the hearing on plaintiff's application for prelim-ary injunction, made mention of the fact, that an action brought by DAWSON and McLean, now in federal court, he will allow to remain there, but Alva A. Harris, representing both DAWSON & McLean, therein as plaintiff has been most delinquent and intentionally failed to prosecute said action, as well as three (3) other actions assigned to Judge Shindirling, which face dismissals for lack of diligent prosecution.

7. Said motion by the DAWSONS is in flagrant and maliciously intentional violation of 40(d)(1)(A) as it is more than patently made "to hinder, delay or obstruct the administration of justice. Plaintiff will be filing shortly motions to com-pel production of documents which both Alva A. Harris and Galen Woelk deliberately refused to produce on Feb. 10, 2003.

DATED: Feb. 11, 2003

JOHN N. BACH, Plaintiff
Pro Se/Per

000245

CERTIFICATE OF SERVICE BY MAIL/FAX: I the undersigned certify that on this date, Feb. 11, 2003, I did mail a copy of the foregoing document to each counsel of record, to wit, ALva Harris, Galen Woelk & Jared Harris & faxed a copy to Judge St. Clair, Bonneville Ct. House.

Filed in Chambers
March 4, 2003
11:10 A.m.

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

JOHN N. BACH, Plaintiff, vs. KATHERINE D. MILLER aka KATHERINE M. MILLER, ALVA HARRIS, Individually & dba SCONA, INC., JACK LEE McLEAN, BOB FITZGERALD, OLE OLSON, BOB BAGLEY & MAE BAGLEY, husband and wife, BLAKE LYLE, Individually and dba GRAND TOWING, GALEN WOELK and CODY RUNYAN, Individually & dba RUNYAN & WOELK, ANN-TOY BROUGHTON, WAYNE DAWSON, MARK LIPONIS, EARL HAMLIN, STAN NICKELL, BRET HILL & DEENA R. HILL, and DOES 1 through 30, Inclusive, Defendants.	Case No. CV-02-208 **EIGHTH ORDER ON PENDING MOTIONS**

I. INTRODUCTION

Pending before the Court are the following motions:

(1) defendants Harris, Fitzgerald, Lyle, Olson, Scona, Inc. and Jack Lee McLean's motion to dismiss[1] Bach's first amended complaint under Rule 12(b)(8), I.R.C.P., and motion for Rule 11(a)(1), I.R.C.P., sanctions against Bach, served January 21, 2003;

(2) defendant Miller's motion to dismiss Bach's first amended complaint under Rule 12(b)(8), I.R.C.P., filed on January 22, 2003;

(3) plaintiff Bach's motions for sanctions under Rule 11, I.R.C.P., filed on January 27, February 5 and 19, 2003, against Harris, Fitzgerald, Lyle, Olson, Scona, Inc. Jack Lee McLean, Miller and Runyan & Woelk for having filed the respective Rule 12(b)(8) motions;

(4) plaintiff Bach's motion to amend scheduling order to enlarge time to disclose additional expert witnesses through March 31st, filed on January 31, 2003;

(5) defendant Miller's motion for protective order under Rule 26(c), I.R.C.P., to stay discovery until ruling on previously filed Rule 12(b)(8) motions, filed on February 21, 2003; and

[1] Although the motion also lists Targhee Powder Emporium, Inc., Ltd. and Unltd. as moving parties, those purported entities are not named plaintiffs or named defendants in any pleadings in this action.

(6) plaintiff Bach's motion to compel discovery responses filed on February 25, 2003, seeking an order requiring all defendants to respond to discovery served on January 18th.

The first two motions were supported by affidavits having attached thereto various pleadings and orders from the court records of the United State District Court for the District of Idaho in a case entitled John N. Bach v. Teton County, et. al., CV-01-266-E-TGN, and of the Seventh Judicial District Court for the State of Idaho in a case entitled Katherine Miller v. Vasa N. Bach Family Trust, John N. Bach Successor Trustee, CV-01-191.

On January 27 and February 3 and 5, 2003, Bach filed an affidavit and two memorandums in opposition, with attached additional copies of pleadings and orders from the court records in Teton County CV-01-191 and U.S.D.C. CV-01-266-E-TGN.

On February 11, 2003, Miller filed additional copies of pleadings and orders from the court records in Teton County CV-01-191 and U.S.D.C. CV-01-266-E-TGN.

On February 19, Bach filed another memorandum in opposition to the Rule 12(b)(8) motions.

All parties interested in these present motions have requested this Court to take judicial notice of the facts contained in said court records in said cases. On January 29, 2003, this Court entered its Seventh Order on Pending Motions

ruling that it would take judicial notice of both above mentioned court cases pursuant to Rule 201, I.R.E., so long as the parties filed in this case the pleadings and orders they wanted this Court to read. The parties have now filed all pleadings and orders they believe are relevant to this Court's decision on the pending motions.

Only plaintiff Bach has requested oral argument on the pending motions, and the other moving parties have waived oral argument in their motions. No hearing has been scheduled by Bach. Having read the motions, supporting affidavits and memoranda, and opposing affidavits and memoranda, it is obvious that oral argument will not be helpful in deciding the motions.

II. ANALYSIS

Rule 12(b)(8), I.R.C.P., provides that a trial court may dismiss a civil action where there is another action pending between the same parties for the same cause. Whether to grant the motion invokes the discretion of the trial court. Klau v. Hern, 133 Idaho 437, 439, 988 P.2d 211, 213 (1999). Two tests have been applied to aid the trial court in exercising its discretion, i. e. whether the other case has gone to judgment so that claim preclusion and issue preclusion may bar the second action, and whether the first action if not progressed to

judgment will determine the "whole controversy and settle all the rights of the parties." Id. at 440, 988 P.2d at 214.

1. Harris, Fitzgerald, Lyle, Olson, Scona, Inc. and McLean's Rule 12(b)(8) Motion.

The motion filed by defendants Harris, Fitzgerald, Lyle, Olson, Scona, Inc. and McLean's motion is based on orders entered by 9th Circuit Judge Thomas Nelson (sitting as trial judge by designation) in U.S.D.C. case CV-01-266-E-TGN on "June 23, July 2, and December 16, 2002."

Attached to these defendants' motion are copies of Judge Nelson's orders dated June 25, July 25 and December 16, 2002. In the December 16th order, Judge Nelson wrote:

> Further, the Court takes judicial notice of the fact that Plaintiff [Bach] has filed a case in state district court in Teton County, No CV-02-208, against a number of the same parties, and asserting some of the claims that plaintiff attempted to assert in this case. There are also several other state court cases pending involving Mr. Bach and happenings in and around Teton County. In order to avoid jurisdictional conflict between this Court and the state courts, to allow the state courts to have the opportunity to rule on state law claims and to simplify the instant matter for the Court and remaining litigants, this Court declines to exercise supplemental jurisdiction over Plaintiff's pendent state law claims. (Id. at p. 15)

Following Judge Nelson's December 16th order, Bach filed a second amended complaint in the federal action on January 15, 2003 naming as defendants only Teton County, Laura Lowery (county prosecutor), Ryan Kaufman (county sheriff), and Colin

Luke (county magistrate judge) seeking relief under federal claims pursuant to 42 U.S.C. §§ 1983, 1985(2) & (3), and 1986.

Since the federal district court has expressed declined to exercise its supplemental jurisdiction over Bach's claims against Harris, Fitzgerald, Lyle, Olson, Scona, Inc. and McLean in this case, there is no other action pending between Bach and those defendants. To the extent that Bach's claims in this action have not been ruled on by Judge Nelson in the July 25, 2002 order, it is clear that there will be no judgment on such claims in U.S.D.C. CV-01-266-E-TGN.

It appears that Judge Nelson's July 25, 2002 order dismissed with prejudice certain claims alleged in Bach's amended complaint filed on April 10, 2002 in that federal action against defendants Harris, Fitzgerald, Scona, Inc. and McLean because of Bach's refusal to comply with a show cause order concerning his ambiguous pleading style. (Id. at pp. 1-2) To the extent that any dismissed claims were substantially the same claims as those pending in this case against those five defendants, Judge's Nelson's July 25th order may have claim or issue preclusion effect in this case. However, the moving parties have not cogently argued any factual similarities between the two pleadings, nor briefed applicable case law supporting their motion. Preclusion would not apply to Bach's

claims against defendants Lyle and Olson, who were not mentioned in Judge Nelson's order. Therefore, this Court must deny said defendants' Rule 12(b)(8) motion.

2. Miller's Rule 12(b)(8) Motion.

The foregoing analysis also applies to Miller's Rule 12(b)(8) motion based on the further proceedings in the federal action. While Miller at least supplied this Court with some of the pleadings in the cases, as distinguished from the motion by defendants Harris, Fitzgerald, Lyle, Olson, Scona, Inc. and McLean, nonetheless, this Court has inadequate briefing from Miller to conclude as a matter of law any preclusion effect from Judge Nelson's July 25, 2002 order as to certain of Bach's claims in U.S.D.C. CV-010266-E-TGN dismissed with prejudice. Further not all of Bach's claims in this action were included in the April 10, 2002 amended complaint ruled on by Judge Nelson.

This Court has compared Miller's complaint against the Vasa N. Bach Family Trust in Teton County case CV-01-191 and the amended complaint of Bach against Miller in this action. While the two actions both seek to quiet title to the same 80 plus acres in Teton County, Idaho, the parties are not all the same. Earlier one of the other defendants in this action sought to consolidate the action in CV-01-191, but then withdrew the motion although Bach (who is the named defendant trustee for the

Vasa N. Bach Family Trust) stated in open court that he had no objection to the motion. A judgment in CV-01-191 will not quiet title as and between Miller and Bach personally, and it won't adjudicate Bach's damages claims in this action. In short, CV-01-191 will not determine the "whole controversy" and settle all causes of action between Miller and Bach alleged in this action. Therefore, this Court must deny Miller's Rule 12(b)(8) motion.

In the event Miller or Bach move to consolidate CV-01-191 with this action, the judgment in this action will be binding on the Vasa N. Bach Family Trust. If they don't move to consolidate, it is unlikely that any judgment in that action will be entered before the current trial in this action beginning June 10, 2003. Since CV-01-191 is not currently set for trial it also would be inappropriate to grant the alternatively requested stay.

3. Bach's Motions for Rule 11 Sanctions.

Rule 11(a)(1), I.R.C.P., focuses on the "signor" of pleadings, motions, and other court filed documents, who has made inadequate investigation into relevant facts and law before filing the document, usually an attorney representing a civil litigant. This Rule is to be applied within the trial court's discretion. Durrant v. Christensen, 120 Idaho 886, 821 P.2d 319 (1991). Rule 11(a)(1) was intended to be a narrowly

used court management tool. See Landvik v. Herbert, 130 Idaho 54, 61, 936 P.2d 697, 704 (App.1997).

Bach's motion filed on January 27th seeks Rule 11 sanctions against Miller, but does not specify what sanctions are sought. Miller did not sign the offending motion, so sanctions under Rule 11 cannot be granted against Miller.

Bach's motion filed on February 5th seeks monetary sanctions and also default judgment be entered against defendants Harris, Fitzgerald, Lyle, Olson, Scona, Inc. and McLean. However, only Harris signed the offending motion, so sanctions against non-signing defendants cannot be granted under Rule 11. Since Bach is appearing pro se, attorney fees cannot be awarded. Bach made no showing of any specific expenses incurred because of the filing of Harris' Rule 12(b)(8) motion. Default judgment against Harris would not be appropriate under Rule 11.

Bach's motion filed on February 19th seeks Rule 11 sanctions against Woelk & Runyan. The offending motion was signed by Woelk on behalf of the lawfirm. However, Bach's motion does not specify what sanctions are sought. As stated above attorney fees cannot be awarded to a pro se party. No specific expenses incurred because of the Rule 12(b)(8) motion are shown. Defaults or evidentiary sanctions are not appropriate under Rule 11.

4. Bach's Motion to Amend Scheduling Order.

This motion seeks to enlarge the Court's January 31st, deadline for disclosure of Bach's expert witnesses until March 31st, because the defendants have not responded to his discovery requests. No objections to this motion were filed by any defendant. Bach timely named several expert witnesses, but seeks leave to add more if necessary after seeing the defendants' discovery responses. Good cause having been shown by Bach, this motion for enlargement of time should be granted.

5. Miller's Motion for Protective Order.

Miller's motion seeks an order staying Bach's discovery requests until this Court rules on Miller's Rule 12(b)(8) motion on the grounds that if the action is dismissed it would save the expense of responding. Bach objected to this motion. Apparently, Miller has not responded to the Bach's discovery. Since this order decides Miller's Rule 12(b)(8) motion, it moots Miller's motion for protective order. Miller must now comply with Rules 33 and 34 of the Idaho Rules of Civil Procedure.

6. Bach's Motion to Compel Discovery.

Bach's motion seeks an order under Rule 37, I.R.C.P., requiring all defendants to serve responses to his discovery served on January 18th. No objection to the motion was filed by any defendant. Miller's pending motion for protective order is sufficient justification for Miller's not responding before this

Court ruled on Miller's Rule 12(b)(8) motion. This order now decides Miller's two pending motions.

Good cause exists for granting Bach's motion to compel. All defendants shall comply with Rules 33 and 34, I.R.C.P., and serve responses to Bach's discovery not later than March 20, 2003.

NOW THEREFORE, IT IS HEREBY ORDERED that

1. Defendants Harris, Fitzgerald, Lyle, Olson, Scona, Inc. and McLean's Rule 12(b)(8) motion is DENIED;

2. Defendant Miller's Rule 12(b)(8) motion is DENIED;

3. Plaintiff Bach's three Rule 11 motions for sanctions are DENIED;

4. Bach's motion to amend scheduling order to enlarge deadline for disclosure of plaintiff's expert witness to March 31, 2003, is GRANTED;

5. Defendant Miller's motion for protective order under Rule 26(c) is MOOT;

6. Plaintiff Bach's motion to compel under Rule 37, I.R.C.P., is GRANTED, all defendants shall serve responses to Bach's discovery in compliance with Rules 33 and 34, I.R.C.P., not later than March 20, 2003; and.

7. **There appear to be other motions filed with the Clerk in Teton County that have not been courtesy copied to the**

undersigned judge at chambers in Bonneville County. If the parties, or their attorneys, wish to have those motions decided courtesy copies will need to be sent to the undersigned judge at 605 N. Capital Ave., Idaho Falls, ID 83402, and unless the motions can be decided without a hearing then a hearing date will need to be scheduled with Marlene at 208-529-1340.

DATED this 4th day of March, 2003.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of March, 2003, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach
P. O. Box 101
Driggs, ID 83422
Telefax Nos. 626-441-6673
208-354-8303 (TELEFAX & MAIL)

Alva Harris
P. O. Box 479
Shelley, ID 83274
Telefax No. 208-357-3448 (TELEFAX & MAIL)

Galen Woelk
Runyan & Woelk, P.C.
P.O. 533
Driggs, ID 83422
Telefax No. 208-354-8886 (TELEFAX & MAIL)

Jason Scott
P. O. Box 100
Pocatello, ID 83204
Telefax No. 208-233-1304 (TELEFAX & MAIL)

Jared Harris
P. O. Box 577
Blackfoot, ID 83221
Telefax No. 208-785-6749 (TELEFAX & MAIL)

RONALD LONGMORE
Clerk of Court

BSL
Deputy Court Clerk

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

'03 MAR -7 A10:19

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

JOHN N. BACH, Plaintiff, vs. KATHERINE D. MILLER aka KATHERINE M. MILLER, ALVA HARRIS, Individually & dba SCONA, INC., JACK LEE McLEAN, BOB FITZGERALD, OLE OLSON, BOB BAGLEY & MAE BAGLEY, husband and wife, BLAKE LYLE, Individually and dba GRAND TOWING, GALEN WOELK and CODY RUNYAN, Individually & dba RUNYAN & WOELK, ANN-TOY BROUGHTON, WAYNE DAWSON, MARK LIPONIS, EARL HAMLIN, STAN NICKELL, BRET HILL & DEENA R. HILL, and DOES 1 through 30, Inclusive, Defendants.	Case No. CV-02-208 **NINTH ORDER ON PENDING MOTIONS**

I. INTRODUCTION

Pending before the Court is defendants Wayne and Donna Dawson's motion for disqualification of judge without cause under Rule 40(d)(1), I.R.C.P., filed on February 4, 2003. The motion was supported by the affidavit of counsel Jared Harris.

On February 11, 2003, plaintiff John Bach filed a memorandum in opposition, motion to strike, and motion for sanctions under Rule 11, I.R.C.P.

Dawson filed no reply memorandum. No other party filed any memorandum in support or in opposition. The Dawsons did not request oral argument. Although plaintiff Bach requested a hearing, none was scheduled with the clerk.

Having read the motion, supporting affidavit, and opposing memorandum, it is obvious that oral argument will not be helpful in deciding the motion.

II. ANALYSIS

1. Dawsons' Motion for Disqualification Without Cause.

Rule 40(d)(1)(A), I.R.C.P., provides that any party may disqualify one judge by filing a motion for disqualification without stating any grounds, and if the motion is timely filed it shall be granted.

Rule 40(d)(1)(D) provides:

> If a new party is joined in an action after the time for disqualification without cause of the presiding judge or magistrate has passed, the new party shall have the right to file a motion for disqualification without cause within fourteen (14) days of the filing date of that part's first appearance or from the date when that party's first responsive pleading is due, whichever occurs first.

On September 2, 2002, the Court granted defendant Katherine Miller's motion for more definite statement, and directed

plaintiff Bach to file an amended complaint more clearly stating the causes of action he sought to plead. On September 27, 2002, Bach first an amended complaint adding new parties defendant Dawson.

On December 20, 2002, Bach served the Dawsons with a summons and copy of the amended complaint. On or before January 14, 2003, the Dawsons employed attorney Jared Harris to represent them, and Harris telephoned the clerk seeking a copy of the docket listing. On January 14, 2003, the clerk faxed Harris a copy of the docket listing through December 9, 2002. The docket listing showed judge St. Clair as presiding over the case.

On February 4, 2003, Harris appeared for the Dawsons by filing the motion for disqualification and affidavit, also a motion to set aside the clerk's default entered against the Dawsons, and a motion to dismiss the amended complaint.

Since the Dawsons were served with the summons and amended complaint on December 20, 2002, Rule 12(a), I.R.C.P., required them to file their first responsive pleading on or before January 9, 2003. Under Rule 40(d)(1)(D), I.R.C.P., the Dawson's last day to file a motion for disqualification without cause was 14 days after January 9th, which was January 23, 2003.

Therefore, the Dawsons' motion for disqualification filed on February 4, 2003, was untimely, and must be denied.

2. Bach's Motions to Strike and for Rule 11 Sanctions.

Rule 12(f), I.R.C.P., permits a party to seek an order striking from "any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Even assuming Rule 12(f) applies to motions as well as pleadings, the Dawsons' motion for disqualification is not a defense to any pleaded cause of action, nor is it immaterial, impertinent or scandalous. Therefore, this motion must be denied.

Rule 11(a)(1), I.R.C.P., focuses on the "signor" of pleadings, motions, and other court filed documents, who has made inadequate investigation into relevant facts and law before filing the document, usually an attorney representing a civil litigant. This Rule is to be applied within the trial court's discretion. Durrant v. Christensen, 120 Idaho 886, 821 P.2d 319 (1991). Rule 11(a)(1) was intended to be a narrowly used court management tool. See Landvik v. Herbert, 130 Idaho 54, 61, 936 P.2d 697, 704 (App.1997).

Bach's motion filed on February 11th seeks Rule 11 sanctions against the Dawsons and their attorney Jared Harris. The motion seeks as sanctions $500.00 and an order prohibiting the Dawsons

from filing other motions. The Dawsons did not sign the offending motion, so sanctions under Rule 11 cannot be granted against the Dawsons. Attorney fees cannot be awarded to a pro se party. No specific expenses incurred because of the Dawsons' motion for disqualification are shown. Prohibiting the filing of motions authorized by the Idaho Rules of Civil Procedure is not appropriate under Rule 11.

Therefore, the motion for sanctions must be denied.

NOW THEREFORE, IT IS HEREBY ORDERED that

1. Defendants Dawsons' Rule 40(d)(1) motion for disqualification of judge without cause is DENIED; and

2. Plaintiff Bach's Rule 12(f) motion to strike and Rule 11 motion for sanctions are DENIED.

DATED this 7th day of March, 2003.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of March, 2003, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach
P. O. Box 101
Driggs, ID 83422
Telefax Nos. 626-441-6673
208-354-8303 (TELEFAX & MAIL)

Alva Harris
P. O. Box 479
Shelley, ID 83274
Telefax No. 208-357-3448 (TELEFAX & MAIL)

Galen Woelk
Runyan & Woelk, P.C.
P.O. 533
Driggs, ID 83422
Telefax No. 208-354-8886 (TELEFAX & MAIL)

Jason Scott
P. O. Box 100
Pocatello, ID 83204
Telefax No. 208-233-1304 (TELEFAX & MAIL)

Jared Harris
P. O. Box 577
Blackfoot, ID 83221
Telefax No. 208-785-6749 (TELEFAX & MAIL)

RONALD LONGMORE
Clerk of Court

Deputy Court Clerk

GALEN WOELK
RUNYAN & WOELK, P.C.
P.O. BOX 533
DRIGGS, ID 83422
TELE (208) 354-2244
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IDAHO STATE BAR #5842

FILED
3:10
MAR 17 2003
TETON CO.
DISTRICT COURT

ATTORNEY FOR DEFENDANT

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

JOHN N. BACH, Plaintiff, vs. **KATHERINE M. MILLER, et. al.,** Defendant.	CASE NO. CV-02-208 **ANSWER, COUNTERCLAIM AND JURY DEMAND OF DEFENDANT KATHERINE MILLER** Fee Category: I1b Filing Fee: $14.00
KATHERINE M. MILLER, Third Party Plaintiff Counterclaimant Cross Claimant, vs. **VASA N. BACH FAMILY TRUST, JOHN N. BACH SUCCESSOR TRUSTEE AND TARGHEE POWDER EMPORIUM, INC., (A NON-INCORPORATED ENTITY) ALSO DOING BUSINESS AS TARGHEE POWDER EMPORIUM INVESTMENTS, TARGHEE POWDER EMPORIUM LIMITED, TARGHEE POWDER EMPORIUM UNLIMITED, TARGHEE POWDER EMPORIUM A HOLDING VENTURE OF VASA N.BACH FAMILY TRUST, JOHN N. BACH, TRUSTEE, NOMINEE, CEO,** Third Party Defendant Involuntary Plaintiffs.) Parties Defendant.	**MILLER THIRD PARTY COMPLAINT I.R.C.P. Rule 14(a)** **and** **MILLER CROSS CLAIM/ COUNTERCLAIM I.R.C.P. Rule 13(a), 13(g), 13(h), 17(d), 19(a)(1)** Fee Category: J6b Filing Fee: $8.00

Defendant Katherine Miller in answer to Plaintiff's Complaint, does hereby deny, admit and aver as follows:

FIRST DEFENSE

Plaintiff's Complaint, and each and every allegation contained therein, fails to state a claim upon which relief may be granted as against Defendant.

1. Defendant denies each and every count and allegation of the Complaint not specifically admitted herein.

2. Answering paragraph 2(a) of the Complaint, Defendant admits she is a resident of Tetonia, Idaho, all other allegations of said paragraph are denied.

3. Answering the second paragraph 5 (a) of the Complaint, Defendant admits she is a record owner of a 110 foot by ½ mile strip of land just south of milepost 138 in Driggs, Idaho, and that she is the record owner of a 40 acre parcel of land legally described as Township 5 North, Range 65 East, Section 10: W1/2 S1/4 SE1/4. Defendant specifically denies any and all other allegations of said paragraph.

4. Answering both paragraph 38's of the Complaint, Defendant admits she initiated an unlawful detainer action referenced as Teton County Case No. CV: 01-059. Defendant specifically denies any and all other allegations of said paragraphs.

5. In answering other paragraphs of the Complaint insofar as they purport in any manner to make direct or indirect allegations against the Defendant, Defendant specifically denies such allegations. As to allegations made against other Defendants which do not make direct or indirect allegations as against this Defendant, such allegations are deemed denied for the reason that Defendant does not have sufficient information to admit or deny the same.

SECOND DEFENSE

The Complaint should be dismissed for failure to conform to the requirements of I.R.C.P. 8(a)(1), 8(e)(1) and 9(b).

THIRD DEFENSE

Plaintiff's claims are barred by the doctrines of res judicata, judicial estoppel and/or collateral estoppel.

FOURTH DEFENSE

Plaintiff's claims should be dismissed for the reason that Plaintiff is without legal capacity to sue, and that the action is not brought in the name of the real party in interest.

FIFTH DEFENSE

Plaintiff's claims are barred by Idaho's applicable Statute of Frauds.

SIXTH DEFENSE

Plaintiff's claims are barred for failure of consideration.

SEVENTH DEFENSE

Plaintiff's claims are barred for the reason that his claims are based in whole or in part upon his own fraudulent conduct.

EIGHTH DEFENSE

Plaintiff's claims are barred for the reason of illegality.

NINTH DEFENSE

Plaintiff's Complaint should be dismissed for insufficiency of process and for insufficient and improper service of process.

TENTH DEFENSE

Plaintiff's claims are barred by principles of equity, to include, but not be limited to, estoppel, waiver, unclean hands and laches.

ELEVENTH DEFENSE

Plaintiff's claims are barred by the doctrines of waiver, release and assignment.

TWELFTH DEFENSE

The Complaint should be dismissed for failure to plead predicate acts with particularity to the extent that the

Complaint purports to plead RICO claims against the Defendant.

THIRTEENTH DEFENSE

Plaintiff's damages, if any he suffered, were the consequence of and/or proximate result of his own actions. Further, to the extent that Plaintiff has made any claim against Defendant which constitutes a claim subject to the rule of comparative negligence, Plaintiff's negligence is the sole negligent cause of his damages, if any, or is equal to or greater than the negligence, if any, of Defendant. Therefore, Plaintiff is barred from recovering any damages from Defendant.

FOURTEENTH DEFENSE

Plaintiff's claims for damages, if any, are barred by Defendant's right to abate a nuisance.

FIFTEENTH DEFENSE

Plaintiff's damages, if any, were caused by the acts or omissions of third parties, over whom Defendant had no control.

SIXTEENTH DEFENSE

There are entities and persons, refereed to as Targhee Powder Emporium, Inc., Targhee Powder Emporium Limited, Targhee Powder Emporium Unlimited, Targhee Powder Emporium a holding venture of Vasa N. Bach Family Trust and the Vasa

N. Bach Family Trust, John N. Bach Successor Trustee, which are indispensable and necessary parties to this action, are the Real Parties in Interest and required to be "involuntary plaintiffs" or parties defendant to this action as their actions arise out of the same transactions and occurrences that are the subject matter of Bach's action, and Miller's Counterclaim.

REQUEST FOR ATTORNEY FEES

Defendant alleges that the services of Runyan and Woelk, P.C. have been engaged in the defense of Plaintiff's Complaint and that she is entitled to reasonable attorney fees from Plaintiff as set by the Court pursuant to Idaho Code §§ 12-120, 12-121, and I.R.C.P. Rule 54(e).

WHEREFORE, Defendant KATHERINE MILLER prays that judgment be entered in her favor dismissing the Complaint, with prejudice, together with costs, attorney fees and such other relief as the Court may deem appropriate.

JURY DEMAND

Defendant Miller demands a trial by jury on all issues triable to a jury.

COUNTERCLAIM

Katherine Miller alleges and complains of John Bach as follows:

PRELIMINARY ALLEGATIONS

1. Defendant/Counter-claimant ("Miller") is an individual, residing in Teton County, Idaho.

2. Plaintiff/Counter-defendant ("Bach") is an individual residing in Teton County, Idaho.

3. Jurisdiction and venue properly lie in this state, district and county, because, among other things, the actions, transactions, events and occurrences giving rise to this action occurred in Teton County, Idaho, and the real properties subject of this action, as more fully described below, are located in Teton County, Idaho.

4. The first real property subject of this action is located in Teton County, Idaho, and is more particularly described as follows and referenced herein as ("Parcel 1"):

> Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho Section 10: W1/2 S1/2 SE1/4.

5. The second real property subject of this action is located in Teton County, Idaho, and is more particularly described as follows and referenced herein as ("Parcel 2"):

> Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho Section 10: E1/2 S1/2 SE1/4.

6. The third real property subject of this action is located in Teton County, Idaho, and is more particularly described as follows and referenced herein as ("Parcel 3"):

A part of the S1/2 SW1/4 Section 11, TWP, 5N., RNG. 45E., B.M., Teton County, Idaho, being further described as : From the SW corner of said Section 11; thence N0 02'03"W, 1214.14 feet along the western section line to the true point of beginning: thence N0 02'03"W, 110.00 feet further along the western section line to the NW corner of the S1/2 SW1/4 of Section 11; thence S89 57'55"E, 2627.56 feet along the north line of the S1/2 SW1/4 of Section 11 to a point on the western right-of-way line of State Highway 33; thence S0 09'27"W, 110.00 feet along the western right-of-way line of State Highway 33 to a point; thence N89 57'55"W, 2627.19 feet to the point of beginning. Containing 6.63 acres more or less.

7. The fourth real property subject of this action is located in Teton County, Idaho, and is more particularly described as follows and referenced herein as ("Parcel 4"):

A part of the E1/2 S1/2 SE1/4 of Section 10, Township 5 North, RNG 45 East, Boise Meridian, Teton County, State of Idaho, described as: From the NE Corner of the E1/2 S1/2 SE ¼ of said Section 10; thence West along the North boundary line of the E1/2 S1/2 SE1/4 of said Section 10 to the NW Corner of the E1/2 S1/2 SE ¼ of said Section 10; thence South along the West Boundary line of the E1/2 S1/2 SE1/4 of said Section 10, 110 feet; thence East to the East Boundary line of the E1/2 S1/2 SE1/4 of said Section 10; thence North along the East boundary line of the E1/2 S1/2 SE1/4 of said Section 10 to the point of beginning.

GENERAL ALLEGATIONS

8. The allegations set forth above are hereby realleged and incorporated by this reference, as if fully stated herein.

9. On or about August 16th, 1994, John Bach, acting as agent for various undisclosed principals referred to as "Targhee Powder Emporium Inc." entered into a purchase and sale agreement to purchase 160 acres from Harrop. A portion of those 160 acres were those parcels of land described above as ("Parcels 1, 2, 3 and 4"). Beginning in November of 1994, Bach also entered into an agency relationship with Miller to represent Miller's interests in the purchase of a parcel of that property contracted for by Bach with Harrop on August 16th, 1994. During Miller's course of dealings with Bach, particularly in November and December of 1994, she had developed a great deal of faith, trust and confidence in him during and throughout their course of dealings, and relied upon his advice, representations and fiduciary duties to her. As reported to her by Bach, Miller understood at all times that she would be purchasing a forty acre parcel of land for approximately $120,000.00, and that Mr. Bach's other principals, whom remained undisclosed, would be purchasing a similar and adjoining 40 acre parcel of land for an equal sum of $120,000.00.

10. On or about December 16th, 1994, Miller tendered to the Wright Law Office, pursuant to Bach's instructions, a $110,000.00 payment for the purchase of what she understood

was one-half of the contracted purchase price for 80 acres of land referenced above, to be split between her and Bach's other "undisclosed" principals. At all times Bach represented to Miller that his principals would contribute an equal amount of the purchase price, in cash.

11. On March 16th, 1995, Miller tendered, pursuant to Bach's instructions, an additional $10,000.00 to "Targhee Powder Emporium" for the balance of her purchase of 40 acres of real property. The payment was tendered upon Bach's representation that the payment was necessary to compensate the other "undisclosed" principals (Targhee Powder Emporium) for the additional purchase price they paid to obtain the 80 acres subsequently to be split between them and Miller. Unbeknownst to Miller, and concealed by Bach, the actual purchase price of the entire 80 acres was $105,000.00.

12. On or about May 10th, 1995, Harrop sued Bach, Targhee Powder Emporium and Miller (CV-95-047) for among other things, the breach of that contract entered into for the purchase of 160 total acres of land. Bach at all times advised Miller that he would represent her property interests in the lawsuit and that he was a licensed attorney.

13. Pursuant to directions given to her by Bach during the Harrop/Bach lawsuit, Miller tendered an additional $7,456.73 to the Teton County Clerk on October 8th, 1996 for the purchase of that easement property referenced as "Parcel 3" in paragraph 6 above.

14. Pursuant to settlement agreements and entered into and orders made by the Court in CV-95-047, Title in Teton County real property was quieted by this Court on September 22nd, 1997 as follows:

> To Katherine Miller: Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho Section 10: W1/2 S1/2 SE1/4. ("Parcel 1") herein.
>
> To Katherine Miller: 6.63 Acre 110 foot Easement Strip. ("Parcel 3") herein.
>
> To Targhee Powder Emporium Inc.: Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho Section 10: E1/2 S1/2 SE1/4. ("Parcel 2") and ("Parcel 4") herein.

Judge Herndon's Order Quieting Title to the properties at issue in this action is attached as Exhibit 1.

15. Before Judge Herndon quieted title on September 22, 1997, Bach specifically disavowed any individual ownership of any of the real properties specified above, and assigned any and all rights of CV-95-047 to Katherine Miller. Teton County Instrument # 144284 is attached as Exhibit 2.

16. In October, 1997, Miller entered into certain easement agreements with Targhee Powder Emporium Inc., in order to insure that Targhee Powder Emporium's principals and she were guaranteed access across their respective parcels of land. At that time Miller was still not aware of who the Targhee Powder Emporium principals were, or that that she was in fact one of, if not the only the undisclosed principals referred to as Targhee Powder Emporium, Inc..

17. In approximately November of 2000, Miller discovered that she had been the sole purchaser for value of any and all of that property titled in the name of Targhee Powder Emporium Inc. above, ("Parcels 2, 3 and 4") that she was the de facto undisclosed principal of such entity, and that she had paid the entire purchase price to the Harrop's for the purchase of such real properties.

18. Because Miller was an undisclosed principal of Targhee Powder Emporium Inc., she was included as an officer of that corporation when it was subsequently and properly incorporated in Idaho. Miller was subsequently provided by that corporation with individual title to those properties specified above as ("Parcels 2, 3 and 4") in which Targhee Powder Emporium, Inc. previously had any interest. Those corporate warranty deeds are referenced as

Instrument #'s 141452, 141453 ad 143842 in the Teton County records, respectively.

19. On May 7th, 2002, John Bach drafted, executed and recorded fraudulent warranty deeds deeding those parcels referenced above as ("Parcels 2, 3 and 4") back to himself individually, despite the fact that he never had any individual claim whatsoever to any of said properties. Attached as Exhibit 3 is a true and correct copy of that deed recorded by Bach as Teton County Instrument # 148042.

20. At all times from 1994 to present, Bach has acted as agent for and on behalf of various trusts and defacto partnerships, all necessary parties to this action, referred to as the Vasa N. Bach Family Trust, John N. Bach Successor Trustee, Targhee Powder Emporium, Inc., Targhee Powder Emporium Limited, Unlimited, and Targhee Powder Emporium, a holding venture of the Vasa N. Bach Family Trust.

FIRST CAUSE OF ACTION

Quiet Title

21. Miller incorporates by this reference all allegations set forth above, as though fully set forth herein.

22. Based on the facts and circumstances set forth above, including the fact that Miller was the de facto "undisclosed principal" known as "Targhee Powder Emporium,

Inc." in all dealings originally undertaken with the original property owner Harrop, any individual interest Bach purports to have in the subject properties is adverse to Millers and without right. Bach has no individual, legitimate right, title, claim, estate, lien or interest in or to the subject real properties.

23. Based on the facts set forth above, Miller's interest is superior to any interest Bach has in the subject properties.

24. Bach occupies and alleges a claim of interest in all or a portion of the properties and refuses to vacate said properties, such refusal being deliberate, intentional, willful and designed to damage Miller.

25. Pursuant to the provisions of Idaho Code § 6-401, Miller is entitled to a decree and order of quiet title, decreeing and declaring Miller to be the sole and exclusive owner of the subject real properties, to the exclusion of Bach or any of his assigns, holdings or principals, whether disclosed or undisclosed.

26. Further, and alternatively, Miller is entitled to a decree acknowledging and enforcing this Court's previous September, 1997 order quieting title in the above named parcels, and particularly, Parcel 1, to those persons or

entities previously decreed to be the rightful owners thereof.

SECOND CAUSE OF ACTION

Purchase Money Resulting Trust

27. Miller incorporates by this reference all allegations set forth above, as though set forth fully herein.

28. As previously alleged, Miller had paid all consideration and purchase prices for the properties described in this complaint.

29. By certain warranty deeds, Bach purportedly alleges that he obtained, though Targhee Powder Emporium, Inc., specific interests in all of the above-named parcels of land in Teton County.

30. Any construed legal title Bach or "Targhee Powder Emporium, Inc." could allegedly possess to any of those portions of property previously conveyed to Targhee Powder Emporium, Inc. in 1994 through 1997 were in actuality being held by Bach and/or Targhee Powder Emporium, Inc. in trust for Miller since Bach and/or that entity did not pay any of the purchase price for the properties. Further, Miller had no donative intent to transfer such properties to either Bach or Targhee Powder Emporium, Inc..

31. Because of the fraudulent misrepresentations and breach of fiduciary trusts Bach asserted over Miller, and

because Bach asserted that Targhee Powder Emporium, Inc. consisted of undisclosed principals who were to pay a share of the purchase price equal to Millers for those parcels of property described as ("Parcels 2, 3 and 4"), Miller lacked the requisite legal intent necessary to transfer or allow to be delivered any property interest to Targhee Powder Emporium, Inc. or John Bach.

32. Further, and alternatively, Miller was the de facto undisclosed principal known as "Targhee Powder Emporium", and any property held in the name of that entity was rightfully that property belonging to Katherine Miller and being held in trust for her benefit.

33. As a result of said transfers, Miller has suffered damages as set forth above, and for the purposes of justice and equitable relief where there was no intention by Miller to deliver a permanent or present interest in ("Parcels 2, 3 or 4") to anyone other than herself, and said transfers being contrary to the intention of Miller who provided all consideration for the purchase of said properties, and where there is no express or implied, written or verbal declaration of the trust, a purchase money resulting trust arises in favor of the individual by whom the purchase price is paid, which is Miller.

THIRD CAUSE OF ACTION

Fraud

34. Miller realleges and incorporates by reference Paragraphs 1 through 33.

35. Bach, acting as an agent for Miller and those other entities referenced in paragraph 20 above, made representations to Miller about the nature of the purchase price of the properties specified above that he knew to be false.

36. Bach made representations to Miller about his agency relationship with other "undisclosed principals" that he knew to be false.

37. Bach made representations to Miller about the purchase price paid by non-existent individuals known as Targhee Powder Emporium, Inc. that he knew to be false.

38. Bach made representations to Miller about his agent fee and his capacity to act as a licensed attorney, that he also knew to be false.

39. Bach represented that all of Miller's payments went towards the purchase of Parcel 1, when in fact he diverted funds to his own use, diverted funds for the purchase of other parcels, and failed to disclose that the purchase price of all 80 acres was actually $105,000.00, all knowing that his representations to Miller were patently false.

40. Miller relied upon Bach's representations and those representations were material to her decision to purchase properties in Teton County.

41. Miller was unaware that the representations made by Bach were false and/or misleading.

42. Bach made the representations with the intent to induce Miller to pay monies into Bach's property scheme, and with the intent to fraudulently acquire a large sum of Miller's money without her authorization.

43. Bach's actions in willfully misleading Miller constitutes outrageous and malicious conduct.

44. Miller's reliance on Bach's representations resulted in damages to her in an amount to be proven at trial, and also requiring the return of any proceeds or properties Bach retained or has any interest in as a result of his fraudulent actions.

FOURTH CAUSE OF ACTION

Breach of Fiduciary Duty

45. Miller realleges and incorporates by reference paragraphs 1 through 44.

46. Bach, as an acknowledged agent of Miller, owed Miller duties of loyalty.

47. That duty of loyalty required Bach to disclose to Miller all material information related to the business dealings he was representing her in.

48. Bach refused and intentionally failed to disclose all relevant information relating to the purchase of those properties specified in this counterclaim, including but not limited to informing Miller as to who the "principals" of Targhee Powder Emporium were; that Miller would ultimately pay all consideration for the properties in question; that Bach would abscond with a portion of Miller's monies; that Bach was in fact a disbarred attorney and unlicensed to practice law; that it was Bach's intent to acquire money and property holdings without paying any consideration; and that it was Bach's intent to title properties in the name of various entities in order that Bach could avoid disclosing any alleged property ownership to the Federal Bankruptcy Courts he was involved with.

49. As a result of Bach's failure to disclose all relevant information to Miller, Bach has breached his duty of loyalty to Miller, resulting in damages to be proved at trial.

FIFTH CAUSE OF ACTION

Estoppel

50. Miller realleges and incorporates paragraphs 1 through 49.

51. Bach represented to Miller that he was also the agent for "undisclosed principals" known as Targhee Powder Emporium, Inc., and that those principals would split the purchase price with Miller of those properties specified above.

52. Bach was aware that no such "undisclosed principals" other than Miller actually existed.

53. Bach was further aware that no such entity or "undisclosed persons" would be paying any of the purchase price negotiated with Harrop for transfer of the properties, other than Miller.

54. Miller had no way to discover that Targhee Powder Emporium and/or its principals did not exist as represented to her by Bach, and that they or it did not pay any consideration for the purchase of those properties referred to in this counterclaim as ("Parcels 2, 3 and 4").

55. At the time, Miller had no way of knowing that she was the de-facto "undisclosed" principal known as Targhee Powder Emporium.

56. Miller relied upon Bach's representations to her detriment and the court should affirmatively recognize Miller as the owner/majority shareholder of Targhee Powder Emporium, Inc., and validate those Targhee Powder Emporium, Inc. deeds referenced in paragraph 18 above as providing Miller with legal title to those properties referred to as ("Parcels 2, 3 and 4 above.)

SIXTH CAUSE OF ACTION

Slander of Title

57. Miller realleges and incorporates paragraphs 1 through 56.

58. Miller is, and since 1994 has been, the owner in fee of those parcels of property referenced as ("Parcels 2, 3 and 4") above. Alternatively, Miller owned as Targhee Powder Emporium, Inc., or shared in the ownership with Targhee Powder Emporium, Inc. those parcels of property referenced as ("Parcels 2, 3 and 4").

59. On May 7th, 2002, Bach, with the intent to encumber Miller's property holdings, maliciously and falsely represented and pretended that he, as an individual, owned and had some valid claim on the land described as ("Parcels 2, 3 and 4") above.

60. In conformance with his intent, Bach, on May 7th, 2002, prepared or caused to be prepared what purported to be a

deed wherein Bach, acting through a void power of attorney of Jack McLeans, granted and conveyed to John Bach individually and in their entirety, all right and interest in those properties described as ("Parcels 2, 3 and 4").

61. Bach signed the deed, and maliciously caused the purported deed to be recorded at the Teton County Recorder's Office as Instrument # 148042, and the deed has ever since remained of record in the county and apparently in force and effect and a cloud on Miller's title. A copy of the deed, marked Exhibit 3, is attached.

62. The pretense of Bach in making the purported deed and placing it on record was to create a claim against the properties of Miller.

63. At the time of execution and recordation of the deed, Bach knew that the land described above was Millers, or alternatively, that Miller owned at least an interest or portion of such properties.

64. Further, Bach has never had, and does not now have any individual interest, right, title or claim, directly or indirectly, to any part of the land.

65. By reason of the false pretenses and the fraudulent transfer of properties, Miller is prevented from the free enjoyment, use and disposition of her property, and damaged by reason of the pretended claim of Bach which has resulted

from the recordation of the purported deed under and by which Bach now claims an interest.

66. Bach's recordation of such deed was further made with the intent to defraud Miller from her rightful ownership of land pursuant to I.C. § 55-901, and should be declared void by this Court and cancelled in its entirety.

SEVENTH CAUSE OF ACTION

Forcible Detainer

67. Miller incorporates by reference and realleges paragraphs 1 through 66.

68. At all times prior to May, 2002, Miller had a contractual and legally recorded right of possession to properties described above as ("Parcels 1, 3 and 4").

69. On or before September 15th, 1999, during Miller's temporary absence from her property, Bach, without the consent and against the will of Miller, entered the properties and chained those gates that provide access to Parcels 1,3 and 4, obstructing Miller's right to enter said properties.

70. Bach has, since September 15th, 1999, detained possession of that land from Miller by continually changing locks on the gate, or by blocking access to the property with machinery, equipment or vehicles.

71. Despite Miller's continuous attempts to abate Bach's nuisance by self help remedies including the forced removal of chains and locks and notorious re-entry to the property, Bach continued to prevent Miller's access to the properties.

72. Plaintiff made numerous demands upon Bach for possession and/or a right of egress and ingress onto her properties, however, Bach refused until this Court entered an Injunction in 2002 providing for Miller's unfettered access to the properties.

73. By reason of the wrongful acts of Bach, Miller was deprived of her rights, issues, and profits of her properties to her damage, and Miller is therefore entitled to General damages in an amount which is not fully known at this time and which will be established according to proof, as well as Treble the amount of damages assessed as allowed by Idaho Code § 6-317.

EIGHTH CAUSE OF ACTION

Unjust Enrichment

74. Miller incorporates and realleges paragraphs 1 through 73.

75. Bach presently claims a purported individual interest in real property which Miller purchased, and which was

titled in the name of Miller or Targhee Powder Emporium, Inc..

76. Because Miller purchased such properties in their entirety, and because Bach nor any other entity has never contributed any proportionate share of the purchase price or possessed any individual ownership interest, Bach would be unjustly enriched should he be allowed to retain said real properties without compensating Miller.

77. Bach's acceptance or retention of the benefits as outlined herein is inequitable, and it would be unjust for Bach to retain said benefits without payment of its value or the return of said property. Hence, Miller is entitled to the restitution and/or restoration of her real properties due to the unjust enrichment and benefits Bach is presently enjoying.

NINTH CAUSE OF ACTION

Request For Writ Of Assistance Or Restitution To Enforce Decree

78. That after the issuance of a Judgment herein, that a Writ of Assistance or Restitution be issued directing the Teton County Sheriff to place Miller in possession of the property in conformity to the Judgment obtained.

TENTH CAUSE OF ACTION

Attorney Fees

79. That Miller has been required to secure legal services of Runyan and Woelk, P.C. in the prosecution of Plaintiff's complaint and is entitled to reasonable attorney fees and costs from Bach incurred in the prosecution of this action pursuant to Idaho Code §§ 12-120, 12-121, and pursuant to Rules 54(d) and 54(e) of the Idaho Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

1. For a Decree quieting title to the described properties in Miller's name and against Bach and any other entities, unknown successors and assigns, and against all who claim a right, title or interest in the real properties.

2. For an order imposing a resulting or constructive trust in the name of Katherine Miller on those properties at issue in this action.

3. For an order decreeing that John Bach has no individual interest in any of the properties at issue in this action.

4. For applicable damages resulting from Bach's slander and cloud on Miller's title to property, fraudulent

misrepresentations, and breach of fiduciary duties, to be proved at trial.

5. For the Court's order canceling those fraudulent deeds recorded by Bach on May 7th, 2002.

6. For damages resulting from Bach's forcible detainer, including treble damages pursuant to I.C. § 6-317.

7. For general and special damages in an amount to be determined at trial, and an order commanding Bach to turn over and quitclaim any and all proceeds and properties gained as a result of his fraudulent actions.

8. For a declaration of Miller's ownership interest in Targhee Powder Emporium, Inc. and order allowing the lawful transfer of properties from that Idaho Corporation to Katherine Miller.

9. For a Writ of Assistance or Restitution directing the Teton County Sheriff to enforce this Court's Judgment and place Defendant in possession of the premises.

10. For interest as may be provided by Idaho Statute or rule.

11. For attorney's fees and costs.

12. For equitable relief.

13. For any other further relief as the Court deems just.

Plaintiff Demands a Trial by Jury on All Issues Triable to a Jury.

COMES NOW Third Party Plaintiff, Cross-Claimant and Counter-Claimant Katherine Miller, by and through counsel of record and alleges as follows:

PARTIES AND JURISDICTION

1. Katherine Miller (hereinafter referred to as "Miller") is an individual, residing in Teton County, Idaho.

2. *Defendant/Involuntary Plaintiff* Vasa N. Bach Family Trust, John N. Bach Successor Trustee (hereinafter referred to as "Trust") is an alleged family trust doing business in Teton County, Idaho, with alleged property holdings and investments in Teton County, Idaho.

3. Defendant/Involuntary Plaintiff Targhee Powder Emporium, Inc., (A non-incorporated entity), also dba Targhee Powder Emporium Investments, Targhee Powder Emporium Limited, Targhee Powder Emporium Unlimited, Targhee Powder Emporium A Holding Venture of Vasa N. Bach Family Trust, John N. Bach Trustee, Nominee, CEO (hereinafter collectively referred to as "Targhee"), is an entity and/or defacto partnership consisting of unknown parties, allegedly doing business in Teton County, Idaho,

with alleged property holdings and investments in Teton County, Idaho.

4. Trust and Targhee are persons or entities which claim an interest relating to the subject matter of this action and are so situated that the disposition of Bach or Miller's claims in their absence shall impede Miller's ability to protect her property interests, necessitating their joinder pursuant to I.R.C.P. Rule 19(a)(1).

5. Trust and Targhee allegedly own, pursuant to previously recorded deeds, property interests in those parcels described above as ("Parcels 2, 3 and 4") and are therefore the real parties in interest in Bach and Miller's actions to quiet title, and are thereby necessary party defendants pursuant to I.R.C.P. Rule 17(d).

6. Trust and Targhee have conducted business and engaged in a course of dealings through their agent, John N. Bach, in Teton County, Idaho in the same transactions and occurrences which give rise to Bach and Miller's claims, and are therefore indispensable and necessary parties to the present action pursuant to I.R.C.P. Rule 13(h), 13(g) and 13(a).

FACTUAL BACKGROUND

7. Miller realleges and incorporates by reference those preliminary and general allegations and statement of facts

referenced as paragraphs 1 through 20 of Miller's Counter-claim set forth above.

8. Bach allegedly owns and/or manages and controls all business dealings and interests of Trust and Targhee, and has acted and does act as Trust and Targhee's agent at all times relevant to those transactions and occurrences specified in Bach and Miller's claims and counterclaims in this action. The actions of Bach specified herein and attributable to Bach in Miller's counterclaim above are also the actions of Trust and Targhee.

9. Trust, by and through it's "successor trustee" Bach, has made multiple assertions, delivered to Miller in writing, of its sole ownership of ("Parcels 2, 3 and 4").

10. Pursuant to Judge Herndon's September 22nd, 1997 order quieting title and those additional deeds subsequently executed and recorded in 1997, Targhee became a record owner of some property interest in ("Parcels 2, 3 and 4") and remains the only real party in interest in this action.

FIRST CAUSE OF ACTION

Set Off

11. Miller realleges and incorporates by reference paragraphs 1 through 79 of Miller's counterclaim, and paragraphs 1 through 10 herein.

12. Any damages suffered by Bach individually have been caused not by Miller, but by defendants' Trust and Targhee and the actions of their respective agents and principals, and therefore any of Bach's claims against Miller are subject to a set-off amount and/or remedies to be incurred by Trust and/or Targhee.

SECOND THROUGH NINTH CAUSES OF ACTION

(Quiet Title, Purchase Money Resulting Trust, Fraud, Breach of Fiducicary Duty, Estoppel, Slander of Title, Forcible Detainer, Unjust Enrichment)

13. Miller realleges and incorporates those first eight causes of action and allegations as specified in paragraphs 1 through 79 of Miller's counterclaim above, and paragraphs 1 through 12 herein.

14. All causes of action previously asserted against Bach in Miller's counterclaim are also asserted against Trust and Targhee by way of Bach's alleged ownership interests and agency relationship and capacities with said entities.

TENTH CAUSE OF ACTION

Alternative Cause for Partition of Property and Accounting

15. Miller realleges and incorporates by reference paragraphs 1 through 79 of Miller's counterclaim above, and paragraphs 1 through 14 herein.

16. By way of certain warranty and quitclaim deeds, Targhee was at one time a deeded owner with some record interest in ("Parcels 2, 3 and 4").

17. Miller has no knowledge of any other parties who claim an interest in ("Parcels 2, 3 and 4") or who will be materially affected by the action other than Targhee or Trust, despite Bach's individual assertion of such ownership.

18. As an alternative remedy of last resort, Miller alleges that ("Parcels 2, 3 and 4), or any of them, should be partitioned. Miller alleges that a partition by sale of the properties, or any of them, in proportion to the amount of consideration given by each party, rather than physical division would be more equitable.

19. Alternatively, Miller requests that the properties, or any of them be partitioned and sold as soon as possible for fair market value, with net proceeds divided according to the consideration given by each party.

ELEVENTH CAUSE OF ACTION

Alternative Breach of Contract

20. Miller realleges and incorporates by reference paragraphs 1 through 79 of Miller's counterclaim above, and paragraphs 1 through 19 herein.

21. Should it be determined that Targhee or Trust maintained or maintain an ownership interest in those properties referred to above as ("Parcels 3 and 4"), Miller would allege that on October 3rd, 1997, before Miller became aware that she paid all consideration for all parcels of property, an easement agreement was entered into between Miller and Targhee whereby all parties acknowledged that Miller and Targhee would own an undivided one-half (1/2) interest in those properties referenced as ("Parcels 3 and 4").

22. On the same date, an agreement was entered into between Miller and Targhee whereby all parties acknowledged that the easement agreements were entered into to provide access rights to the respective properties.

23. Further, Miller and Targhee, pursuant to the written agreements, agreed that they would each share an undivided ½ interest in 21 shares of water stock issued by the Grand Teton Canal Company.

24. Since 1999, Targhee has intentionally and physically prevented and obstructed Miller from accessing ("Parcels 1, 3 and 4"), in violation of the contracts and agreements entered into between the parties.

25. Targhee has also constructed a holding pond on the disputed property, and various other impediments that act

to prevent Miller from receiving her appropriate share of water pursuant to her water rights.

26. Despite Miller's notice to Targhee that they have obstructed her right to water, Targhee refuses to provide Miller with water, and continues to interfere with Miller's right to water, all in breach of those written agreements entered into between Miller and Targhee.

27. By reason of Targhee and Trusts' contractual breach and interference with Miller's right to egress, ingress and water rights, Miller has suffered damage, including but not limited to the loss of ability to irrigate, loss of land use, loss of land value, and depreciation of land value, all in an amount to be proven at trial.

PRAYER FOR RELIEF

Katherine Miller prays for relief as follows:

1. That Third-Party defendants be liable to Bach for all or part of any recovery Bach may be awarded in his action against Miller.

2. That in the event Miller is required to pay damages to Bach, that any judgment be had against Targhee or Trust for contribution or setoff as a result of their negligent or fraudulent actions.

3. For a Decree quieting title to the described properties in Miller's name and against Targhee and Trust

and any other who claim a right, title or interest in the real properties.

4. For an order imposing a resulting or constructive trust in the name of Katherine Miller on those properties at issue in this action.

5. For damages resulting from Targhee and Trust's slander and cloud on Miller's title to property, fraudulent misrepresentations, and breach of fiduciary duties.

6. For cancellation of those fraudulent deeds recorded by Targhee and Trust's agent on May 7th, 2002.

7. For damages resulting from Targhee and Trust's forcible detainer, including treble damages pursuant to I.C. § 6-317.

8. For general and special damages in an amount to be determined at trial, and an order commanding Targhee and Trust to turn over and quitclaim any and all proceeds and properties gained as a result of their agent's fraudulent actions.

9. For a declaration of Miller's ownership interest in Targhee Powder Emporium, Inc. and an order allowing the lawful transfer of properties from that Idaho Corporation to Katherine Miller.

10. **Alternatively**, that the real properties be partitioned and sold at fair market value, and that Targhee and Trust

be ordered to account for all rental, lease or any other proceeds obtained from the properties and the net proceeds divided according to consideration given by each party.

11. **Alternatively**, should Targhee and Trust be adjudged to possess a property interest in any of the respective properties, for damages as a result of their breach of easement agreements and forcible detainer, for injunctive relief requiring Targhee and Trust to fill in the holding ponds that disrupt and interfere with Miller's right to water, and for injunctive relief requiring Targhee and Trust to provide Miller with unfettered access to her properties.

12. For attorney's fees and costs.

13. For equitable relief.

14. For any other further relief as the Court deems just.

Plaintiff Demands a Trial by Jury on All Issues Triable to a Jury.

DATED this 17 day of March, 2003.

Galen Woelk

VERIFICATION

STATE OF IDAHO)
) SS.:
County of Teton)

KATHERINE MILLER being first duly sworn, says that she is the Defendant in the above entitled action; that she has read the foregoing Answer and Counterclaim and Third Party Complaint, Cross Claim, and knows the contents thereof and as to the matters and things alleged, affiant believes the same to be true.

Katherine M. Miller
Katherine Miller

SUBSCRIBED AND SWORN to before me this 17th day of March, 2003.

JULIE A. SHAPIRO NOTARY PUBLIC STATE OF IDAHO

Julie A. Shapiro
Notary Public
My Commission Expires: 11/23/07

David C. Nye
Thomas J. Lyons
MERRILL & MERRILL, CHARTERED
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Attorneys for Plaintiffs

FILED IN CHAMBERS AT BLACKFOOT, BINGHAM COUNTY, IDAHO.
September 22, 1997 AT 4:50 P.M.
JAMES C. HERNDON
District Judge

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

W. LOVELL HARROP and LORRAINE M. HARROP, husband and wife,	Case No. CV-95-047
Plaintiffs,	**ORDER AND JUDGMENT**
v.	
JOHN N. BACH and TARGHEE POWDER EMPORIUM, INC., an Idaho corporation,	
Defendants.	

This matter came before the Court in Driggs, Teton County, Idaho, on Thursday, September 4, 1997 at 1:30 p.m. Plaintiffs, Lovell and Lorraine Harrop, were present. They were represented by David C. Nye and Thomas J. Lyons of Merrill & Merrill, Chartered. Defendants were represented by John N. Bach. Two Motions were presented: Plaintiffs' Motion for Order Approving Settlement and Dismissal and Defendants' Motion for Orders Re: (1) terminating any further hearings to complete settlement agreements and reactivating counter-claims and setting of pretrial; (2) allowing amendments to counter-claim; (3) sanctions, etc. The Court heard oral argument and had previously reviewed the

briefs, affidavits, and other documents submitted by the parties. The Court determined that it was not necessary to take additional evidence from the parties or witnesses.

As to Plaintiffs' Motion for Order Approving Settlement and Dismissal, the Court deemed the Motion to be a Motion to Dismiss with Prejudice. Plaintiffs' counsel, in open Court, delivered 21 shares of stock in the Teton Canal Company to John N. Bach. These shares are in the names of Katherine Miller and Targhee Powder Emporium, Inc. as instructed by the Defendants. Mr. Bach refused delivery and handed this stock back to Mr. Nye. ***Plaintiffs' Motion is hereby granted. This matter is dismissed with prejudice.*** All issues are dismissed with prejudice involving these parties regarding the real property described as follows:

> Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho:
>
> Section 10: S ½ SE ¼
> Section 11: S ½ SW ¼
>
> Subject to patent reservations, easements and right-of-ways for highways, roads, ditches, canals, pole, power, and transmission lines as they exist; and to all existing zoning ordinances and applicable building codes, laws and regulations.

As to Defendants' Motions, the Court deem these motions to be a Motion to Set Aside the Settlement and to reopen the case. ***Defendants' Motion is hereby denied in its entirety.***

WHEREFORE, IT IS HEREBY GRANTED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Plaintiffs' Motion for Order Approving Settlement and Dismissal is hereby granted and this entire action is dismissed with prejudice to the bringing of another action. Title to the real property is quieted as follows:

> A. To Katherine Miller: see Exhibit A attached hereto.
> B. To Targhee Powder Emporium, Inc.: see Exhibit B attached hereto.

C. To Lovell and Lorraine Harrop: Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho, Section 11: S ½ SW ¼ excepting therefrom a section containing 6.63 acres more or less being further described as:
From the SW corner of said Section 11, thence N 0° 02' 03" W. 1214.14 feet along the Western Section Line to the true point of beginning;
Thence N 0° 02' 03" W, 110 feet further along the Western Section Line to the NW corner of the S ½ SW ¼ of said Section 11;
Thence S 89° 57' 55" E 2627.56 feet along the North Line of the S ½ SW ¼ of Section 11 to a point on the western Right-of-Way Line of Highway 33;
Thence S 0° 09' 27" W, 110 feet along the Western Right-of-Way Line of State Highway 33 to a point;
Thence N 89° 57' 55" W, 2627.19 feet to the point of beginning.

2. Defendants' Motions are hereby denied in their entirety.

3. Each party bears their own costs and attorney fees.

DATED this 22nd day of September, 1997.

James C. Herndon
District Judge

CLERK'S CERTIFICATE OF SERVICE

I, CLERK OF THE COURT, the undersigned, do hereby certify that a true, full and correct copy of the foregoing document was this 23rd day of September, 1997, served upon the following in the manner indicated below:

John N. Bach, CEO Targhee Powder Emporium, Inc. P.O. Box 101 Driggs, ID 83422-0101	[X] U.S. Mail [ ] Hand Delivery [ ] Overnight Delivery [ ] Telefax
John N. Bach P.O. Box 101 Driggs, ID 83422-0101	[X] U.S. Mail [ ] Hand Delivery [ ] Overnight Delivery [ ] Telefax
David C. Nye MERRILL & MERRILL, CHARTERED P.O. Box 991 Pocatello, ID 83204-0991	[X] U.S. Mail [ ] Hand Delivery [ ] Overnight Delivery [ ] Telefax

ASA J. DRAKE, CLERK
Clerk of the Court

BY: [signature]
for Phyllis Hansen, Deputy Clerk

Warranty Deed

TETON Co. Id.
Clerk Recorder

[redacted]

For Value Received

W. Lovell Harrop and Lorraine M. Harrop, HUSBAND AND WIFE

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

Katherine M. Miller, as her sole and seperate propoerty

whose current address is

P.O. Box 101
Driggs, ID 83422

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

Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho Section 10: W½ S½ SE¼

Together with all mineral rights and 10 shares of water in the Grand Teton Canal Company.

Also together with an easement for roadway and utility purposes 60 feet in width across the s½ SW¼ of Section 11 and the E½ S½ SE¼ of Section 10 township and range aforesaid. Said easement subject to further agreement between all owners and adjacent easterly acreage parcels as to exact location and alignment.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, her heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that she is the owner in fee simple of said premises; that they are free from all incumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: 12-28-94

W. Lovell Harrop — W. Lovell Harrop

Lorraine M. Harrop — Lorraine M. Harrop

STATE OF IDAHO, COUNTY OF Jefferson

On this 28th day of December, 1994 before me, a notary public in and for said State, personally appeared W.S. Lovell Harrop and Lorraine M. Harrop known to me to be the person s whose name s are subscribed to the within instrument, and acknowledged to me that they executed the same.

Notary Public

Residing at Rigby, Idaho

Comm. Expires 5-12-99

116001

FILED

AT THE REQUEST OF American Land

AT 36 MINUTES PAST 2 P M

DATE Dec. 30 1994

Dora J. Drake

CLERK OF RECORDER

BY Dora Rigby DEPUTY

Indexed

Indexed

Platted

Furnished by the AMERICAN LAND TITLE COMPANY, INC.

Exhibit 1

RECEIVED 127067

APR 29 1997

TETON CO., ID
CLERK RECORDER

Warranty Deed

For Value Received, W. LOVELL HARROP and LORRAINE M. HARROP, husband and wife ("Grantors") do hereby grant, bargain, sell and convey unto KATHERINE MILLER ("Grantee"), whose current address is P.O. Box 101, Driggs, Idaho, the following described premises in Teton County, Idaho, to-wit:

PARCEL 1 STRIP (NORTHERN 110 FEET OF THE S½SW¼ SECTION 11)

A PART OF THE S½SW¼ SECTION 11, TWP, 5N., RNG. 45E., B.M., TETON COUNTY, IDAHO, BEING FURTHER DESCRIBED AS:
FROM THE SW CORNER OF SAID SECTION 11, THENCE N 0°02'03"W. 1214.14 FEET ALONG THE WESTERN SECTION LINE TO THE TRUE POINT OF BEGINNING;
THENCE N.0°02'03"W, 110.00 FEET FURTHER ALONG THE WESTERN SECTION LINE TO THE NW CORNER OF THE S½SW¼ OF SAID SECTION 11;
THENCE S 89°57'55"E. 2627.56 FEET ALONG THE NORTH LINE OF THE S½SW¼ OF SECTION 11 TO A POINT ON THE WESTERN RIGHT-OF-WAY LINE OF STATE HIGHWAY 33;
THENCE S 0°09'27"W, 110.00 FEET ALONG THE WESTERN RIGHT-OF-WAY LINE OF STATE HIGHWAY 33 TO A POINT;
THENCE N 89°57'55"W, 2627.19 FEET TO THE POINT OF BEGINNING.

CONTAINS 6.63 ACRES, MORE OR LESS.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and her heirs and assigns forever. The Grantors do hereby covenant to and with the said Grantee, that Grantee is the owner in fee simple of said premises, that the premises are free from all encumbrances and that they will forever warrant and defend the same from all lawful claims whatsoever.

This Warranty Deed satisfies the requirement of an easement in those certain Warranty Deeds dated December 28, 1994, recorded December 30, 1994, as Instruments Nos. 118681 and 118682 in the records of Teton County, Idaho.

DATED: 4-29-97

FILED

127067 FILED
AT THE REQUEST OF
Lovell Harrop
29 April 1997

W. Lovell Harrop

Lorraine M. Harrop

STATE OF IDAHO)
: ss
COUNTY OF Jefferson)

127067

On this 24th day of April, 1997, a Notary Public in and for said State, personally appeared W. LOVELL HARROP, known or identified to me to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he executed the same.

(SEAL)

NOTARY PUBLIC STATE OF IDAHO
Residing at: Rigby, Id
Commission expires: 5-12-99

STATE OF IDAHO)
: ss
COUNTY OF Jefferson)

On this 24th day of April, 1997, a Notary Public in and for said State, personally appeared LORRAINE M. HARROP, known or identified to me to be the person whose name is subscribed to in the within instrument, and acknowledged to me that she executed the same.

(SEAL)

NOTARY PUBLIC STATE OF IDAHO
Residing at: Rigby, Id
Commission expires: 5-12-99

XF

RECEIVED

116662

AMERICAN LAND TITLE CO
P.O. BOX 730
REXBURG, IDAHO 83440

DEC 30 1994

TETON Co. Id.
Clerk Recorder

Warranty Deed

For Value Received

W. Lovell Harrop and Lorraine M. Harrop, HUSBAND AND WIFE

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

Targhee Powder Emporium, Inc.

whose current address is P.O. Box 101
DRiggs, Id. 83422

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

Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho Section 10: E½ S½ SE¼

Together with all mineral rights and 10 shares of water in the Grand Teton Canal Company.

Subject to a 60 foot easement right as set out in that certain Warranty Deed dated December 28, 1994 recorded December 30, 1994 as Instrument No. 116681 records of Teton County, Idaho.

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

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

Dated: 12-28-94

W. Lovell Harrop
W. Lovell Harrop

Lorraine M. Harrop
Lorraine M. Harrop

STATE OF IDAHO, COUNTY OF Jefferson
On this 28th day of December, 1994, before me, a notary public in and for said State, personally appeared W. Lovell Harrop and Lorraine M. Harrop known to me to be the person s whose name s are subscribed to the within instrument, and acknowledged to me that executed the same.

Notary Public
Residing at Rigby, Idaho
Comm. Expires 5-23-99

116662
FILED
AT THE REQUEST OF
American Land
ON THIS DATE IT WAS FILED AT 2 P M
DATE Dec. 30, 1994
Ora J. Drake
CLERK OF RECORDER
BY Dora Rigby
DEPUTY

Fee paid
Indexed
Platted

Provided by the AMERICAN LAND TITLE COMPANY, INC.

144284

RECEIVED
SEP 17 2001
TETON CO., ID
CLERK RECORDER

ASSIGNMENT OF RIGHTS VIA SETTLEMENT AGREEMENT IN TETON COUNTY, IDAHO ACTION NO. CV 95-047 (Harrop v. Bach) TO: KATHERINE M. MILLER

I, JOHN N. BACH, being one of the defendants and counter-claimants in that Teton County, Idaho legal action, CV 95-047 (Harrop v. Bach) do hereby assign, transfer, convey and/or grant my rights per that written settlement letter agreement dated October 2, 1996, and as modified on the record in chambers on Monday, October 7, 1996, as contained within paragraphs 1 through 6 and 9 only to: KATHERINE M. MILLER of Mt. Pleasant, Mich., and Jackson, Wyoming, whose Jackson, Wyoming mailing address is P.O. Box 1332, zip code 83001.

DATED: October 8, 1996

John N. Bach
JOHN N. BACH

Instrument # 144284
DRIGGS, TETON, IDAHO
2001-09-17 02:53:05 No. of Pages: 1
Recorded for : KATHERINE M. MILLER
NOLAN G. BOYLE Fee: 3.00
Ex-Officio Recorder Deputy M Wade
Index to: AGREEMENT

144284

SUBSCRIBED & SWORN TO BEFORE ME THIS 8 DAY OF Oct 1996
Gayle Bressler
NOTARY PUBLIC
RESIDING AT: Victor, Idaho
MY COMMISSION EXPIRES: 4-10-2001

GAYLE BRESSLER NOTARY PUBLIC STATE OF IDAHO

140042

WARRANTY DEED, ANNULLING, VOIDING & RESCINDING WARRANTY DEEDS RECORDED NOVEMBER 21, 2000, BY TARGHEE POWDER EMPORIUM, INC., JACK LEE McLEAN, Vice President, BEING INSTRUMENT NUMBERS 140249, 140248, 140247, 140246 and CORPORATION WARRANTY DEEDS, RECORDED FEBRUARY 22, 2001, INSTRUMENT NO. 141453 AND AUGUST 16, 2002, INSTRUMENT NO. 143842 and REGRANTING, REESTABLISHING ALL OWNERSHIP OF JOHN N. BACH AS SOLE OWNER OF ALL PROPERTIES DESCRIBED IN THE VOIDED DEEDS

THIS INDENTURE, WARRANTY DEED, is made this 7th day of May, 2002, by JACK L. McLEAN, Individually and as Vice-President of TARGHEE POWDER EMPORIUM, INC., a fraudulently formed Idaho Corporation by Alva A. Harris, Jack L. McLean, Katherine M. Miller, a single woman and others;

NOW BY THESE PRESENTS, JACK L. McLEAN in the stated capacities, as Vice President of the fraudulent/void Corporation, Targhee Powder Emporium, Inc., in all of the identified Corporate Warranty Deeds, which he signed for and on behalf of said fraudulently created Idaho corporation of November 21, 2000, recorded as instruments numbers 140249, 140248, 140247, 140246, and that further corporate warranty deeds, recorded February 22, 2001, NO. 141453 and recorded August 16, 2001, NO. 143842, are all individually and jointly, entirely and completely, hereby ANNULLED, REVOKED, RESCINDED and VOIDED; and it is hereby admitted, confessed and stated, that all of said void warranty deeds, were deliberately false, deceptive and contrived documents, which sought to deprive illegally, and otherwise, JOHN N. BACH's ownership in all said properties set forth in said now voided and revoked warranty deeds, and to convert and steal all his ownership, possession, management, use, rights interests and business contracts, opportunities and adavantages, etc., thereof and therefrom.

BY THESE FURTHER PRESENTS, JACK L. McLEAN is such capacity as Vice-President of said false/void Idaho Corporation, Targhee Powder Emporium, Inc., and also individually and as trustee of the McLean Family Trust, does hereby reaffirm, reestablish, grant, assign and forever transfer unto JOHN N. BACH, as owner of that entire parcel of forty (40) acres more or less situated in the County of Teton, Idaho, described more particularly as;

The E1/2S1/2SE1/4 of Section 10, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, 40 acres more or less
Together with all mineral rights and 10 shares of water in the Grantd Teton Canal Company
Together with all water and water rights, ditches and ditch rights, improvement, hereditaments and appurtenances thereto, however evidenced, and subject to all covenants and restrictions if any, applicable building and zoning ordinances, use regulations and restrictions, easements, rights-of-way, and encumbrances of record or established by user with respect thereto.

AND FURTHER, is granted, conveyed, transferred, confirmed and established to JOHN N. BACH, as owner-grantee of that entire real property situated in Teton County, Idaho, as follows:

Tract A: A part of the E 1/2 S 1/2 SE 1/4 of Section 10, Township 5 North, Range 45 East, Boise Meridian, Teton County, State of Idaho, described as: From the NE Corner of the E 1/2 S 1/2 SE 1/4 of said Section 10; thence West along the North Boundary line of the E 1/2 S 1/2 SE 1/4 of said Section 10 to the NW Corner of the E 1/2 S 1/2 SE 1/4 of said Section 10; thence South along the West boundary line of the E 1/2 S 1/2 SE 1/4 of said Section 10, 110 feet; thence East to the East Boundary line of the E 1/2 S 1/2 SE 1/4 of said Section 10; thence North along the East Boundary line of the E 1/2 S 1/2 SE 1/4 of said Section 10 to the point of beginning, and

Tract B: Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho Section 11: A section of the S 1/2 SW 1/4 containing 6.63 acres more or less being further described as:

From the SW corner of said Section 11, thence N 0 02' 03" W, 1214.14 feet along the Western Section Line to the true point of beginning;

Thence N 0 02' 03" W, 110 feet further along the Western Section Line to the NW corner of the S 1/2 SW 1/4 of said Section 11;

Thence S 89 57' 55" E 2627.56 feet along the North Line of the S 1/2 SW 1/4 of Section 11 to a point on the Western Right-of-Way Line of Highway 33;

Thence S 0 09' 27" W, 110 feet along the Western Right-of-Way Line of Highway 33 to a point;

Thence N. 89 57' 55" W, 2627.19 feet to the point of beginning.

Together with all water and water rights, ditches and ditch rights, improvements, hereditaments and appurtenances thereto, however, evidence, and subject to all covenants and restriction, applicable building and zoning ordiances, use regulations and restrictions, easements, rights-of-way, and encumbrances of record or established by user with respect thereto/

AND FURTHER is granted, conveyed, transferred, confirmed and established to JOHN N. BACH as owner-grantee of all/any interest in that real property in Teton County, Idaho, described as follows:

Lot 1, Block 1, Teton Peaks View, Division 1, as per the record plat thereof, Teton County, Idaho,
Together with 20 shares of Grand Teton Canal Company and all mineral, gas, oil and geothermal rights.
Together with all water and water rights, ditches, and ditch rights, improvements, hereditaments and appurtenances thereto, however, evidence, and subject to all covenants nad restrictions, applicable building and zoning ordinances, use regulations, easements, rights-of-way, and encumbrances of record or established by user with respect thereto.

AND FURTHER is granted, conveyed, transferred, confirmed and established to JOHN N. BACH as owner-grantee of an undivided two-thirds interest in that real property in Teton County, Idaho, described as:

The SE 1/4 SW 1/4 of Section 35, Township 6 North, Range 45 East, Boise, Meridian, Teton County, Idaho

Less Beginning at the SE corner of the SW 1/4 of Section 35, Township 6, North Range 45 EBM, thence North 516 feet; thence West 295; then S. 46 feet, thence East 295 feet to the point of beginning.
ALSO LESS: Beginning at a point 516 feet North from the SE corner of the SW 1/4 of the same section 35, Township 6 North, Range 45 EBM; thence North 435 feet; thence West 295 feet; thence South 435; thence East 295 feet to the point of beginning; including a 60-foot wide easement for road access from existing Highway along South line of Clawson Ward property in an east-west direction. Property contains 33.85 acres more or less.

Together with all water and water rights, ditches and ditch rights, improvements, hereditaments and appurtenances thereto; however evidence, and subject to all covenants and restrictions, applicable builidng and zoning ordiances, use regulations and restrictions, easements, rights-of-way, and encumbrances of record or established by user with respect thereto.

AND FURTHER is granted, conveyed, transferred, confirmed and established to JOHN N. BACH as owner-grantee, of an undivided one-half interest in that real property in Teton County, Idaho, described as:

The SW 1/4 SE 1/4 of Section 6, Township 5 North, Range 46 East, Boise Meridian Teton County, Idaho, 40 acres more or less. Also desecribed as: A portionof the South 1/2 South 1/2 of Section 6 as described in the attached schedule of order No. t-757 and signed by grantors agent herein.
Together with all water and water rights, ditches and ditch rights, improvements, hereditaments and appurtenances thereto, however, evidenced, and subject to all covenants and restrictions, easements, rights-0f-way, and encumbrances of record or established by user with respect thereto.

PER THE ATTACHED GENERAL POWER OF ATTORNEY and DESIGNATION OF ALTERNATE TRUSTEE, executed originals by JACK LEE McLEAN, empowering JOHN N. BACH to sign for JACK L. McLEAN in all of the capacities stated herein, JACK L. McLEAN, per said document originals attached, executes this WARRANTY DEED, this 7th day of May, 2002, at Teton County, Idaho.

Jack L. McLear, Individually, & as Vice President of Targhee Powder Emporium, Inc., Idaho Corp, & for his Family Trust.

By JOHN N. BACH, attorney in fact, and said trustee for JACK L. McLEAN

State of Idaho)
Teton County) ss

On May 7, 2002, before me, appeared JOHN N. BACH, known to me, an Idaho Notary Public, Teton County, who did subscribe the name of Jack L. McLean, in the stated capacities, as Jack L. McLean's attorney in fact and alternate trustee, & executed this Warranty Deed, witnessed & acknowledged by me.

NOTARY PUBLIC STATE OF IDAHO

Notary Public
Residing at: Driggs ID
Comm. Expires: 2-1-08

148342

GENERAL POWER OF ATTORNEY FOR CANADA AND ANY STATE OF THE UNITED STATES OF AMERICA--GRANTOR: JACK LEE McLEAN of Driggs, Idaho to Attorney in Fact and General Agent for Him: JOHN N. BACH of Driggs, Idaho 83422

I, JACK LEE McLEAN, P.O. Box 96, Driggs, Idaho, 83422, (208) 354-8528 do by these presents, grant, convey and empower JOHN N. BACH, P.O. 101, Driggs, Idaho, 83422 to be my general attorney in fact and general agent for all matters, purposes, intendments and/or personal, business, legal and all other proceedings, events, circumstances and occurrences in my place and stead, to act in all capacities as my attorney in fact and/or general agent, to do any and all acts, transaction, functions or exercise of my legal rights, interest and/or claims, as if I were personally executing, undertaking and/or carrying/pursuing the same, whether such acts, transctions, functions or exercise of my legal rights, interest and/or claims are in any province of Canadia, such as British Columbia or Alberta, or in any of the states of the United States of America.

I further direct any and all persons in dealing with, or assisting said JOHN N. BACH, to cooperate with, grant and extend to him all good faith and diligent performance and response to any of his requests, inquiries, directions, decisions, and/or legal actions made of them as my attorney in fact and general agent. I especially direct and instruct Mr. RON BUDDENHAGEN, Esquire of Cranbrook, that any actions, decisions, instructions or other determinations by said JOHN N. BACH, regarding as to any legal matters that Mr. RON BUDDENHAGEN may be handling for me, are to be followed to the letter and complete spirit of said JOHN N. BACH's decisions and determinations, including but not limited to: terminating and/or replacing MR. RON BUDDENHAGEN as my personal or business counsel in any and all legal matters or affairs; collecting any and all moneys, receivables/claims or judgments in my favor or on my behalf without any interference, intrusion or further involvement by Mr. RON BUDDENHAGEN; obtaining, securing and/or receiving all and any of my files, records, materials of any kind, character or sort, in the possession, under the control of or via access of Mr. RON BUDDENHAGGEN, any member or employee of his staff; and pursuing, prosecuting and/or advancing any and all claims, legal matters or proceedings before the Canadian Legal Society and/or Supreme Court of British Columbia, Alberta or any other provence and before the Supreme Court of Canada or any other inferior court of original or appellate jurisdiction.

WHEREFORE, by these presents, I do execute and grant this general power of attorney to JOHN N. BACH, this 11 day of April, 1994 at Driggs, Teton County, Idaho, U.S.A.

Jack Lee McLean
JACK LEE McLEAN

STATE OF IDAHO, COUNTY OF Teton

On this 11th day of April, 1994, before me, a notary public in and for said State, personally appeared

Jack Lee McLean

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Dwayne W Rice
Notary Public

Residing at Driggs, Idaho

Comm. Expires 5-10-014

Instrument # 148042
DRIGGS, TETON, IDAHO
2002-05-07 03:50:02 No. of Pages: 6
Recorded for : JOHN BACH
NOLAN G. BOYLE Fee 18.00
Ex-Officio Recorder Deputy
Index to: DEED WARRANTY

148042

EXHIBIT 3

DESIGNATION OF APPOINTMENT OF ALTERNATE TRUSTEE (JOHN N. BACH) OF THE JACK LEE McLEAN FAMILY TRUST

I, JACK LEE McLEAN, trustor/grantor and primary beneficiary of the JACK LEE McLEAN FAMILY TRUST, of February 18, 1994, Driggs, Idaho, do, per the terms, provisions and conditions of parts III and V of said trust agreement and instrument, resign as Trustee and do appointment and establish as alternate and first succeeding Trustee, JOHN N. BACH, also of Driggs, Idaho, to act in all capacities and empowerment as the sole and exclusive Trustee of said JACK LEE McLEAN FAMILY TRUST per all the terms, conditions and provisions therein and all other applications of California and Idaho laws and authorities.

WHEREFORE, I do execute this document this 11th day of April, 1994 at Driggs, Teton County, Idaho, U.S.A.

Jack Lee McLean

JACK LEE McLEAN
P.O. Box 96
Driggs, Idaho 83422

STATE OF IDAHO, COUNTY OF Teton

On this 11th day of April, 1994, before me, a notary public in and for said State, personally appeared

Jack Lee McLean

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Notary Public

Residing at Driggs, Idaho

Comm. Expires 5-19-94

148042

EXHIBIT 3

...legal description of the property. Other element... transaction ... be stated in the summary. If the requirements of ... section are met, the summary of the instrument may be recorded under ... provisions of this chapter and, as to the contents of the summary only, ... shall have the same force and effect as if the original instrument had b... recorded, and constructive notice shall be deemed to be given concerni... the contents of the summary and the existence of the instrument to ... subsequent purchasers, mortgagees or other persons or entities that ... quire an interest in the real property. [I.C., § 55-818, as added by 1987, ... 353, § 1, p. 785; am. 1989, ch. 105, § 2, p. 238.]

Compiler's notes. Section 1 of S.L. 1989, ch. 105 is compiled as § 55-601.

CHAPTER 9

UNLAWFUL TRANSFERS

55-901. Fraudulent conveyances of land. — Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or encumbrancers thereon, is void as against every purchaser or encumbrancer, for value, of the same property, or the rents or profits thereof. [1864, p. 540, § 1; R.S., § 3015; reen. R.C. & C.L., § 3164; C.S., § 5428; I.C.A., § 54-901.]

Cross ref. Decedents' estates, actions to set aside fraudulent conveyances, § 15-3-710.
Fraudulent practices, § 55-1812.

ANALYSIS

Close relationship between debtor and transferee.
Conflict of laws.
Intent.
Question of fact and intent.

Close Relationship Between Debtor and Transferee.
Execution and delivery of trust deed by fa-

148042

Alva A. Harris
Attorney at Law
171 South Emerson
P.O. Box 479
Shelley, Idaho 83274
(208) 357-3448
ISB # 968

FILED
MAR 19 2003
TETON CO.
MAGISTRATE COURT

Attorney for Defendants Harris, Fitzgerald, Lyle and Olesen McLean, and Scona, Inc.

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

JOHN N. BACH,	)	
	)	Case No. CV-02-0208
Plaintiff,	)	
vs.	)	ANSWER
	)	
KATHERINE D. MILLER, etal	)	
Defendants.	)	DEMAND FOR JURY TRIAL
_____	)	

Comes now Alva A. Harris and Answers the various complaints of Plaintiff for the above named Defendants as follows:

1. Each of these defendants deny each and every allegation of all complaints not specifically admitted herein.
2. Each defendant admits he/it are residents of the State of Idaho.

FIRST DEFENSE

These Defendants deny each and every allegation of the bizarre, nonsensical, ambiguous, and gibberish rantings and railings expressed in the Complaint as directed toward these defendants.

SECOND DEFENSE

That Plaintiff is barred from recovery against these answering Defendants, in whole or in part, by the statute of limitations.

THIRD DEFENSE

That the Complaint fails to state a claim against these answering Defendants upon which relief could be granted.

FOURTH DEFENSE

That any damages suffered by Plaintiff were the proximate result of Plaintiff's own acts and omissions, in such a degree as to bar recovery against these answering Defendants.

FIFTH DEFENSE

That any damages suffered by Plaintiff were the proximate result of the acts or omissions of third parties, in such a degree as to bar recovery against these answering Defendants.

SIXTH DEFENSE

That Plaintiff is barred from recovery against these answering Defendants by the doctrines or res judicata, judicial estoppel, and/or collateral estoppel.

SEVENTH DEFENSE

That Plaintiff is barred from recovery against these answering Defendants by the doctrines of waiver and failure to exhaust judicial remedies.

EIGHTH DEFENSE

That Plaintiff is barred from recovery in this action against answering Defendant, Alva A. Harris, by the doctrines of immunity and qualified immunity.

NINTH DEFENSE

That these answering Defendants are entitled to reasonable attorney fees pursuant to Idaho Code Sections 12-120 and 12-121 and Rules 11 and 54 Idaho Rules of Civil Procedure.

TENTH DEFENSE

That Plaintiff is barred from recovery against these answering Defendants by the doctrines of unclean hands and misrepresentation.

ELEVENTH DEFENSE

That the Complaint violates Rules 8(a) and 11 of the Idaho Rules of Civil Procedure .

TWELVETH DEFENSE

Defendants deny each and every allegation of the complaint against them as being the fictional conclusions of a mentally deluded and self concerned individual whose paranoid fears and concerns lead him to babel on about thoughts from his imagination and allege them as legal claims.

WHEREFORE, these defendants pray that plaintiff take nothing and that they be awarded their attorney fees, costs, and whatever other equitable relief is applicable herein.

THESE DEFENDANTS DEMAND A TRIAL BY JURY OF ALL ISSUES ALLEGED HEREIN.

DATED this 19 day of March, 2003.

Alva A. Harris

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19 day of March, 2003, I served a true and correct copy of the foregoing document on the following by depositing the same in the United States mail, with the correct postage thereon, in envelopes addressed as follows:

Party Served: John N. Bach, Pro Se
1858 South Euclid Avenue
San Marino, CA 91108

Alva A. Harris

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
Plaintiff Pro Se

FILED
9:01
MAR 19 2003
TETON CO.
MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff,

v.

KATHERINE D. MILLER, aka KATHERINE M. MILLER, et al.,

Defendants.

CASE NO: CV 02-208

ENTRY OF DEFAULT AGAINST DEFENDANTS: (1) ALVA A. HARRIS, Individually & dba SCONA, INC., a sham entity; (2) TARGHEE POWDER EMPORIUM, INC., an Idaho Corporation; & dba Unltd & Ltd.; (3) JACK LEE McLEAN; (4) OLE OLESEN; (aka OLY OLSON); (5) BOB FITZGERALD, Individually & dba CACHE RANCH; and (6) BLAKE LYLE, Individually & dba GRANDE TOWING, and also dba GRANDE BODY & PAINT (IRCP, Rule 55(a)(1), et seq.)

Proof having been filed herein on March 19, 2003, per the APPLICATION & AFFIDAVIT OF JOHN N. BACH, Plaintiff, for entry of defaults against the herein designated/identified defendants, per I.R.C.P., Rule 55(a)(1), et seq.,

NOW, THEREFORE, ENTRY OF DEFAULT IS HEREBY ENTERED, AGAINST EACH AND ALL OF THE FOLLOWING DEFENDANTS:

1. ALVA A. HARRIS, Individually & dba SCONA, INC., a sham entity;
2. ~~TARGHEE POWDER EMPORIUM, INC., an Idaho Corp; & dba Unltd & Ltd.;~~ pal
3. JACK LEE McLEAN;
4. OLE OLESEN; (aka OLY OLSON);
5. BOB FITZGERALD, Individually & dba CACHE RANCH; and
6. BLAKE LYLE, Individually & dba GRANDE TOWING, and also dba GRANDE BODY & PAINT,

in all capacities, named, served or averred, said defendants having failed, after this Court's ORDER of March 4, 2003, to appear further, defendat or answer Plaintiff's FIRST AMENDED COMPLAINT, as provided by the Idaho Rules of Civil Procedure.

DATED: March 19, 2003

CLERK OF THE COURT

By: Pamela A Hansen

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
Plaintiff Pro Se

FILED
9:01 AM
MAR 19 2003
TETON CO.
MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH, Plaintiff, v. KATHERINE D. MILLER, aka KATHERINE M. MILLER, et al., Defendants. _____/	CASE NO: CV 02-208 APPLICATION & AFFIDAVIT OF JOHN N. BACH, Plaintiff, FOR ENTRY OF DEFAULT PER IRCP, RULE 55(a)(1), et seq, AGAINST DEFENDANTS: (1) ALVA A. HARRIS, Individually & dba SCONA, INC., a sham entity; (2) TARGHEE POWDER EMPORIUM, INC., Unltd and Ltd.; (3) JACK LEE McLEAN; (4) OLE OLESEN; (5) BOB FITZGERALD, Individually & dba CACHE RANCH; and (6) BLAKE LYLE, Individually & dba GRANDE TOWING, and also, dba GRANDE BODY & PAINT.

Plaintiff JOHN N. BACH, being placed under oath, gives his testimony herein of his own personal knowledge, in this APPLICATION & AFFIDAVIT for entry of default against these defendants:

1. ALVA A. HARRIS, Individually & dba SCONA, INC., a sham entity;
2. TARGHEE POWDER EMPORIUM, INC., an Idaho Corporation, served as defendant DOES 2 herein, service having been made on ALVA A. HARRIS, Agent, Manager &/Or Officer of said corporation; appearing also dba "Unltd and Ltd.";
3. JACK LEE McLEAN;
4. OLE OLESEN; (aka OLY OLSON, per his appearance);
5. BOB FITZGERALD; Individually & dba CACHE RANCH;
6. BLAKE LYLE, Individually & dba GRANDE TOWING, and also, dba GRANDE BODY & PAINT.

All, the above designated/identified defendants, were personally served with process herein, and eventually appeared, being represented by ALVA A. HARRIS, Esquire of Shelley, Idaho, who on said defendants behalves, made various motions to dismiss, which motions were formally denied by this Court's SEVENTH ORDER of March 4, 2003, said March 4, 2003 ORDER being faxed to each of said defendants' counsel, and believed also mailed again to their counsel on March 4, 2003.

Since the service by fax and mail of this Court's said ORDER of March 4, 2003, none of said defendants or their said counsel, have filed any ANSWER nor made any effort to defendant or to seek from plaintiff any extension of time or further time to answer the FIRST AMENDED COMPLAINT herein. Plaintiff has recieved no application from any of said defendants to this Court for any further time to so answer or defend, and their time to answer herein has now expired, as of the end of Monday, March 17, 2003.

All of said defendants having therefore failed to appear further as required by Idaho Rules of Civil Procedure, and, further, having failed to defend against any of the averments of the FIRST AMENDED COMPLAINT, Plaintiff JOHN N. BACH, hereby requests, entry of defaults against each and all of the afore-designated/identified defendants, singularly and jointly, in all stated and averred capacities.

DATED: March 19, 2003

John N. Bach
JOHN N. BACH

NOTARY'S ACKNOWLEDGEMENT AND VERIFICATION:

I, the undersigned NOTARY of Idaho, hereby acknowledge, verify, attent and confirm, that JOHN N. BACH, personally known to me, did appear before me, was paced under oath, gave testimony as aforesaid, signing his name and signature in my immediate presence and observation on this date, March 19, 2003.

Teton County
State of Idaho

(SEAL)

KERRY BUXTON NOTARY PUBLIC STATE OF IDAHO

NOTARY: [signature]

ADDRESS: Driggs, ID

Com'n Exp: 2-1-08

000322

Alva A. Harris
Attorney at Law
P.O. Box 479
Shelley, ID 83274
(208) 357-3448
ISB #968

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

JOHN N. BACH Plaintiff, vs. KATHERINE D. MILLER, et al, Defendant.	Case No. CV 2002-208 NOTICE OF APPEARANCE Fee: $47.00

FILED
4:30
APR 01 2003
TETON CO.
DISTRICT COURT

Comes now ALVA A. HARRIS, Attorney at Law, Idaho and enters an appearance of counsel in the above entitled matter for and in behalf of the Defendants, Bret Hill and Deena Hill.

DATED this 1st day of April, 2003.

Alva A. Harris
Attorney at Law

CERTIFICATE OF MAILING

I hereby certify that I served a true copy of the foregoing NOTICE OF APPEARANCE upon the following, by mailing the same to him on this 1st day of April, 2003.

John N. Bach, Pro Se
1958 South Euclid Ave.
San Marino, CA 91108

Alva A. Harris

FILED
3:19
APR 02 2003
TETON CO.
DISTRICT COURT

Alva A. Harris
Attorney at Law
171 South Emerson
P.O. Box 479
Shelley, Idaho 83274
(208) 357-3448
ISB # 968

Attorney for Defendants Harris, Fitzgerald, Lyle and Olson McLean, and Scona, Inc.

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

JOHN N. BACH,	)	
	)	Case No. CV-02-0208
Plaintiff,	)	
vs.	)	
	)	
KATHERINE D. MILLER, etal	)	MOTION TO SET ASIDE
Defendants.	)	DEFAULT
_____	)	

COMES NOW all the above named defendants, by and through their attorney of record, Alva A. Harris, and respectfully move this Court under authority of Rules 5, 55 and 60, I.R.C.P., for its order setting aside the entry of said Default.

This motion is based upon the documents and pleadings on file herein and attached hereto. Testimony is not necessary and the Court is requested to rule after hearing oral argument.

DATED this 1 day of April, 2003.

Alva A. Harris

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1 day of April, 2003, I served a true and correct copy of the foregoing document on the following by depositing the same in the United States mail, with the correct postage thereon, in envelopes addressed as follows:

Party Served:

John N. Bach, Pro Se
1858 South Euclid Avenue
San Marino, CA 91108

Attorney Served:

Galen Woelk, Esq.
P. O. Box 533
Driggs, Idaho 83422

Jason Scott, Esq.
P. O. Box 100
Pocatello, Idaho 83204

Jared M. Harris, Esq.
P. O. Box 577
Blackfoot, Idaho 83221

Alva A. Harris

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date 4/2/03
Time 10:30
Deputy Clerk MSouthwick

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

JOHN N. BACH, Plaintiff, vs. KATHERINE D. MILLER aka KATHERINE M. MILLER, ALVA HARRIS, Individually & dba SCONA, INC., JACK LEE McLEAN, BOB FITZGERALD, OLE OLSON, BOB BAGLEY & MAE BAGLEY, husband and wife, BLAKE LYLE, Individually and dba GRAND TOWING, GALEN WOELK and CODY RUNYAN, Individually & dba RUNYAN & WOELK, ANN-TOY BROUGHTON, WAYNE DAWSON, MARK LIPONIS, EARL HAMLIN, STAN NICKELL, BRET HILL & DEENA R. HILL, and DOES 1 through 30, Inclusive, Defendants.	Case No. CV-02-208 **TENTH ORDER ON PENDING MOTIONS**

I. INTRODUCTION

Pending before the Court is defendant Galen Woelk, individually and dba Runyan & Woelk's motion to dismiss Bach's first amended complaint under Rule 12(b)(8), I.R.C.P., filed on February 11, 2003.[1] The motion was supported by the affidavit of counsel Jason Scott having attached thereto a copy of plaintiff

[1] Defendant Cody Runyan has not appeared generally in this action.

Bach's amended complaint dated April 8, 2002, and a copy of the Court's memorandum decision and order dated June 25, 2002, in the United State District Court for the District of Idaho in a case entitled John N. Bach v. Teton County, et. al., CV-01-266-E-TGN (Judge Thomas G. Nelson, 9th Circuit Judge sitting by designation).

Also before the Court is Bach's motion for sanctions under Rule 11, I.R.C.P., against "said defendants." On February 19, 2003, Bach filed a memorandum in opposition to Woelk's motin, and his Rule 11 motion. On March 5, 2003, Woelk filed a reply memorandum and the supplemental affidavit of counsel Jason Scott, having attached thereto a copy of an order dated December 16, 2002, by Judge Nelson in U.S.D.C. case no. CV-01-266-E-TGN.

Oral argument was heard on these motions on March 28, 2003. Having read the motions, supporting affidavits and memoranda, and opposing memorandum, the Court issues the following decision on the pending motions.

II. ANALYSIS

1. Woelk dba Runyan and Woelk's Rule 12(b)(8) Motion.

Rule 12(b)(8), I.R.C.P., provides that a trial court may dismiss a civil action where there is another action pending between the same parties for the same cause. Whether to grant the motion invokes the discretion of the trial court. Klau v.

Hern, 133 Idaho 437, 439, 988 P.2d 211, 213 (1999). Two tests have been applied to aid the trial court in exercising its discretion, i. e. whether the other case has gone to judgment so that claim preclusion and issue preclusion may bar the second action, and whether the first action if not progressed to judgment will determine the "whole controversy and settle all the rights of the parties." Id. at 440, 988 P.2d at 214.

Woelk argues that Judge Nelson in the federal action dismissed "with prejudice" by order entered on June 25, 2002, the same claims that Bach alleges in his amended complaint filed in this Court on September 27, 2002, and that under the second test of Klau as soon as a final judgment is entered in the federal action the dismissal order will be res judicata. In opposition, Bach argues that Judge Nelson entered an order on December 16, 2002 "declin[ing] to exercise supplemental jurisdiction over [Bach's] pendant state law claims," and dismissing "those claims without prejudice." (Order dated December 16, 2002, at 15) In reply, Woelk argues that Judge Nelson denied Bach's motion to vacate the June 25th order and only dismissed with prejudice pendant state claims in Counts 10 and 11 of Bach's April, 2002 amended complaint in the federal action. (Id. at 14 & 19)

In Bach's amended complaint filed on April 10, 2002, in the federal action, he named Galen Woelk and Cody Runyan both individually and dba Runyan & Woelk as members of "THE ATTORNEYS UNION & GROUP" along with several other defendants. (Am. Comp. ¶5a at 6) Bach further alleged that sometime in 1999 after the filing of Teton County case no. CV-99-014, he sought legal advice and services of Woelk and Runyan and discussed strategies for Bach to use in such litigation and an appeal before the Idaho Supreme Court involving Roy Moulton, John Stewart, Steve Urry and Trout's Teton Ranch. (Id. ¶16 at 17) Bach further alleged that in September, 1999, he discovered that Woelk and Runyan were advising and representing Katherine Mille, Jack McLean, Bob Fitzgerald, Alva Harris, Scona, Inc., Ole Oleson, and other defendants in the federal case, presumably divulging Bach's client confidential information to them, and further Woelk and Runyan conspired with such defendants and others to trespass on Bach's land and to commit criminal acts and threats against his person and property, and further Woelk assaulted, stalked, harassed, threatened, "flipped off," used profanities and obscenities toward Bach. (Id.) Bach further alleged that Woelk and Runyan conspired with Lavell Johnson, Tan Nickell, Lowell Curtis and Earl Hamblin of the Teton Canal Company and

other defendants to misappropriate, convert and divert Bach's water rights to his 40 acres in Teton County. (Id. ¶18 at 19)

Based on the foregoing factual allegations, Bach sought to allege in the federal case the following causes of action against Woelk and Runyan and others: Count 1 -- violation of 42 U.S.C. Sec. 1981 (Id. ¶22 at 24); Count 2 -- violation of 42 U.S.C. Sec. 1982 (Id. ¶23 at 24); Count 3 - violation of 42 U.S.C. Sec. 1983 (Id. ¶¶24 & 25 at 25-26); Count 4 - violation of 42 U.S.C. Sec. 1985(2) (Id. ¶¶25 & 26 at 26-27); Count 5 -- violation of 42 U.S.C. Sec. 1985(3) (Id. ¶¶27 & 28 at 27); Count 6 - violation of 42 U.S.C. Sec. 1986 (Id. ¶¶29 & 30 at 27-28); Count 7 - violation of Cal. Civ. Code Secs. 51 through 53 & Cal. Gov't. Code Secs. 12948 et. seq.(Id. ¶¶31 & 32 at 28); Count 8 - violation of 18 U.S.C. Secs. 1961 & 1962(a) through (c) (Id. ¶¶33, 34 & 35 at 28-30); Count 9 (directed only at FEDERAL GOVERNMENT DEFENDANTS); Count 10 -- violation of Idaho Code Secs. 18-7802 through 7805 (Id. ¶31 at 31); and Count 11 - (incorporating claims stated in "Exhibit 2" being an Idaho Tort Claim Notice describing claims against various Teton County entities and employees, but not mentioning Woelk or Runyan).

In his memorandum decision and order dated June 25, 2002, Judge Nelson analyzed all of the claims directed at Woelk and

Runyan at pages 18 through 20, and wrote in conclusion at page 20:

> In short, the Amended Complaint fails to state a claim in this federal action. The Court gave Plaintiff the opportunity to file an amended complaint. He has now done so. Apparently, even with instructions, he cannot state a claim as to these defendants. The Amended Complaint is dismissed with prejudice as to Defendants Runyan and Woelk.

In the December 16th order, Judge Nelson analyzed Bach's motion to vacate the June 25th order at pages 2 through 6, and concluded that the motion would be denied. At pages 7 through 13 he analyzed the claims against the Teton County defendants. At pages 14 and 15 he analyzed "pendent state claims" in Counts 10 and 11 as against only the remaining defendants, and wrote:

> All federal claims have not been dismissed in this and prior orders, but the great bulk of them have been, and many defendants have been dismissed. Only a small fraction of the parties and federal claims Plaintiff was attempting to pursue in this action are now possibly viable against only a small number of remaining defendants.
>
> Further, the Court takes judicial notice of the fact that Plaintiff [Bach] has filed a case in state district court in Teton County, No CV-02-208, against a number of the same parties, and asserting some of the claims that plaintiff attempted to assert in this case. There are also several other state court cases pending involving Mr. Bach and happenings in and around Teton County. In order to avoid jurisdictional conflict between this Court and the state courts, to allow the state courts to have the opportunity to rule on state law claims and to simplify the instant matter for the Court and remaining litigants, this Court declines to exercise supplemental jurisdiction over Plaintiff's pendent state law claims. (Id. at p. 15) (Emphasis added).

Concluding at pages 15 through 18, Judge Nelson then comments on the remaining defendants "who have not previously been dismissed from the action," namely Mary Sarone, Terrina Beatty, John Stewart, Clint Calderwood, Tom Christensen, Peter Estay, Casey Fitzgerald, Shawn Fitzgerald, and Oly Oleson [sic].

Based on this Court's reading of Judge Nelson's memorandum decision and order dated June 25, 2002, and order dated December 16, 2002, and Bach's amended complaint dated April 10, 2002, all in U.S.D.C. case no. CV-01-266-E-TGN, it appears that Bach's causes of action directed against Woelk and Runyan in that case were dismissed with prejudice for failure to state a claim upon which relief could be granted on June 25th, and that the December 16th order dismissing without prejudice pendent state claims in Counts 10 and 11 applied only to "remaining defendants" and not to Woelk or Runyan. It is obvious that when final judgment is entered in the federal case, Bach will not recover anything against Woelk or Runyan in that case. If Judge Nelson is reversed on appeal as to any of the causes of action alleged against Woelk or Runyan, then Bach can go to trial on those causes. If Judge Nelson is affirmed, then his judgment is res judicata as to those causes.

Therefore, Rule 12(b)(8), I.R.C.P., prevents Bach from relitigating any causes of action based on 42 U.S.C. Secs. 1981,

1982, 1983, 1985(2) & (3), 1986, or Cal. Civ. Code Secs. 51 through 53, or Cal. Gov't. Code Secs. 12948 et. seq., or 18 U.S.C. Secs. 1961 & 1962(a) through (c), or Idaho Code Secs. 18-7802 through 7805.

Bach's first amended complaint filed on September 27, 2002, in this Court Bach alleges causes of action against Woelk in violation of Idaho Code Secs. 18-7802 through 7805 in paragraph 36 at page 22. Those causes of action must be dismissed with prejudice because they are the same causes of action dismissed with prejudice by Judge Nelson in the federal case on June 25, 2002. To that extent the Rule 12(b)(8) motion should be granted.

However, Bach's first amended complaint also seeks relief against Woelk in this case based on causes of action that are markedly different from those ruled on by Judge Nelson, i. e. First Count -- quiet title, nuisance and injunctive relief as to real property; Fifth Count - slander of title; Sixth Count -- intentional interference with business interests; Eighth Count - violation of fiduciary duty, breach of implied covenants, constructive fraud; and Ninth Count -- conversion of personal property. Since these causes of action were not alleged in the federal action, Rule 12(b)(8) would not apply. Therefore, the motion must be denied as to those causes of action.

2. Bach's Motion for Rule 11 Sanctions.

Rule 11(a)(1), I.R.C.P., focuses on the "signor" of pleadings, motions, and other court filed documents, who has made inadequate investigation into relevant facts and law before filing the document, usually an attorney representing a civil litigant. This Rule is to be applied within the trial court's discretion. Durrant v. Christensen, 120 Idaho 886, 821 P.2d 319 (1991). Rule 11(a)(1) was intended to be a narrowly used court management tool. See Landvik v. Herbert, 130 Idaho 54, 61, 936 P.2d 697, 704 (App.1997).

Bach's motion seeks Rule 11 sanctions against Woelk dba Runyan & Woelk, but does not specify what sanctions are sought. Woelk did not sign the offending motion, so sanctions under Rule 11 cannot be granted against Woelk. Default judgment against Woelk would not be appropriate under Rule 11. Attorney fees cannot be awarded to a pro se party. No specific expenses incurred because of the Rule 12(b)(8) motion are shown.

NOW THEREFORE, IT IS HEREBY ORDERED that

1. Defendant Woelk dba Runyan & Woelk's Rule 12(b)(8) motion is DENIED, except as to dismissal of the causes of action based on Idaho Code Secs. 18-7802 through 7805 which is GRANTED; and

2. Plaintiff Bach's Rule 11 motion for sanctions is DENIED.

DATED this 2nd day of April, 2003.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of April, 2003, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

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