

5-9-2011

# Clayson v. Zebe Clerk's Record v. 3 Dckt. 38471

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Vol 3 of 4

**SUPREME COURT  
OF THE  
STATE OF IDAHO**

GAYLEN CLAYSON

Plaintiff-Counterdefendant

Respondent

vs.

DON ZEBE, RICK LAWSON, LAZE, LLC

Defendant-Counterclaimant

Appellant LAW CLERK

Hon. Stephen S. Dunn District Judge

Appealed from the District Court of the Sixth  
Judicial District of the State of Idaho, in and for  
Bannock County.

Gary L. Cooper

COOPER & LARSEN, CHARTERED

Attorney X For Appellant X

Blake S. Atkin

ATKIN LAW OFFICES

Attorney X For Respondent X

FILED - COPY		day of
Filed this		
2008	MAY - 9 2011	
		Clerk
		Deputy

38471

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

GAYLEN CLAYSON, )  
 )  
Plaintiff-Counterdefendant-Respondent, )  
 )  
 )  
 )  
vs. )  
 )  
DON ZEBE, RICK LAWSON, LAZE, LLC, )  
 )  
Defendant-Counterclaimant-Appellant, )  
 )  
\_\_\_\_\_ )

Supreme Court No. 38471-2011

*Volume III*

**CLERK'S RECORD**

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

Before **HONORABLE Stephen S. Dunn** District Judge.

For Appellant:

**Gary L. Cooper**  
**COOPER & LARSEN, CHARTERED**  
**P.O. Box 4229**  
**Pocatello, Idaho 83205-4229**

For Respondent:

**Blake S. Atkin**  
**ATKIN LAW OFFICES**  
**7579 North Westside Hwy**  
**Clifton, Idaho 83228**

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## **VOLUME II**

## **VOLUME III**

**VOLUME IV**

Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User	Judge
6/8/2009	NCOC	SHAREE	Clerk's
	COMP	SHAREE	Complaint Filed by Blake S Atkin, Attorney for Plaintiff
		SHAREE	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Atkin Law Office PC Receipt number: 0021684 Dated: 6/8/2009 Amount: \$88.00 (Check) For:
	ATTR	SHAREE	Plaintiff: Clayson, Gaylen Attorney Retained Blake S Atkin
	SMIS	SHAREE	Summons Issued - Don Zebe, 465 Berrett Ave, Pocatello, ID 83201
	SMIS	SHAREE	Summons Issued - Rick Lawson, 431 Chesapeake Ave, Pocatello, ID 83202
	SMIS	SHAREE	Summons Issued - LAZE LLC % Rick Lawson, 431 Chesapeake Ave, Chubbuck, ID 83202
7/24/2009		MARLEA	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: bowers law firm Receipt number: 0028119 Dated: 7/27/2009 Amount: \$58.00 (Check) For: Lawson, Rick (defendant), LAZE, LLC (defendant) and Zebe, Donald I (defendant)
7/27/2009		CAMILLE	Answer, counterclaim and Demand for Jury; aty John Bowers for def
	ATTR	CAMILLE	Defendant: Zebe, Donald I Attorney Retained John D. Bowers
	ATTR	CAMILLE	Defendant: Lawson, Rick Attorney Retained John D. Bowers
	ATTR	CAMILLE	Defendant: LAZE, LLC Attorney Retained John D. Bowers
8/12/2009		CAMILLE	Answer to Counterclaim; aty Blake Atkin for plntf/counterclaim def
		AMYW	Returns of Service of Summons and Complaint to Don Zebe, Rick Lawson, and Laze, LLC; /s/ Blake Atkin, atty for plaintiff/counterclaim def
8/25/2009	ORDR	AMYW	Order of Disqualification and Reference; /s/ J Nye
9/9/2009	ORDR	AMYW	Administrative Order of Reference; matter reassigned to Judge Dunn; /s/ J Nye
9/18/2009	ORDR	KARLA	Order for Submission of Information for Scheduling Order; /s J Dunn 09/18/09
10/2/2009		KARLA	Stipulated Statement (Atkin for Plaintiff)
10/13/2009		CAMILLE	Motion for Leave to Amend Complaint; aty Blake Atkin for plntf/counterclaim Def.
		CAMILLE	Memorandum in support of Motin for Leave to Amend Complaint; aty Blake Atkin for plntf
		CAMILLE	Certificate of service of Plntfs First set of Interrog to Defs; aty Blake Atkin for defs

Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User		Judge
10/13/2009		CAMILLE	Certificate of service of Plaintiffs first set of Document requests to Defendants: aty Blake Atkin for plntf/counterclaim def.	Stephen S Dunn
10/23/2009	NOTC	KARLA	Notice of Hearing; Motion for Leave to Amend; (Atkin for Def)	Stephen S Dunn
	HRSC	KARLA	Hearing Scheduled (Motion 11/23/2009 02:00 PM)	Stephen S Dunn
11/16/2009		CAMILLE	Defendants Motion to Continue Hearing on Motion to Amend; aty John Bowers for defs	Stephen S Dunn
		CAMILLE	Defendants Response to Plntfs Motion to Amend Complaint; aty JohnBowers for def	Stephen S Dunn
		CAMILLE	Certificate of service on Discovery Responses; aty JohnBowers for def	Stephen S Dunn
12/1/2009		DCANO	First Amended Complaint; Blake S. Atkin, Attorney for Plntf. Adding Don Zebe, Rick Lawson and Laze, LLC as Counterclaim Plaintiffs, and Gaylen Clayson as Counterclaim Defendant.	Stephen S Dunn
12/14/2009		CAMILLE	Answer to First Amended Complaint; aty John Bowers for Defs/counterclaim plntfs	Stephen S Dunn
12/17/2009	HRHD	KARLA	Hearing result for Motion held on 11/23/2009 02:00 PM: Hearing Held	Stephen S Dunn
		CAMILLE	Order; Motion for Leave to Amend Complaint is Granted; J Dunn 12-14-09	Stephen S Dunn
12/18/2009		CAMILLE	Stipulated Statement; atyBlake Atkin for plntf/counterclaim def	Stephen S Dunn
12/21/2009		CAMILLE	Notice of Depo of Bill Hudson ; set for 1-8-2010 @ 9am:	Stephen S Dunn
12/23/2009	ORDR	KARLA	Order Setting Jury Trial; /s J Dunn 12/23/09	Stephen S Dunn
	HRSC	KARLA	Hearing Scheduled (Jury Trial 03/23/2010 09:00 AM)	Stephen S Dunn
	HRSC	KARLA	Hearing Scheduled (Jury Trial 11/02/2010 09:00 AM)	Stephen S Dunn
12/24/2009		CAMILLE	Certificate of service - aty John Bowers for defs	Stephen S Dunn
12/28/2009		CAMILLE	Amended notice of Depo of Bill Hudson on 1-12-2010: aty Blake Atkin	Stephen S Dunn
12/31/2009		CAMILLE	Amended Notice of Depo of Bill Hudson on 1-12-2010 @ 9am: aty Blake Atkin for plntf	Stephen S Dunn
1/11/2010		CAMILLE	Subpoena Duces Tecum; aty Blake Atkin	Stephen S Dunn
		CAMILLE	Notice of service of Subpoena Duces Tecum; aty Blake Atkin for plnt/conterclaim def	Stephen S Dunn
		CAMILLE	Return of service - srvd on (copy of Subpoena to Becky Holzemer 12-29-09)	Stephen S Dunn
1/13/2010		CAMILLE	Certificate of Service - aty John Bowers for defs	Stephen S Dunn

Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User	Judge
1/14/2010		CAMILLE	Amended Notice of Depo of Gaylen clayson and Subpoena; aty John Bowers for Def and Counterclaim plntfs
	MOTN	KARLA	Motion for Admission Pro Hac Vice (Bowers for Def)
1/19/2010	MOTN	KARLA	Defendant's Motion to Modify Scheduling Order (Bowers for Def)
1/20/2010		CAMILLE	Notice of Deposition of Jeff Randall; on 1-26-2010 @ 9am: aty John Bowers for def
1/21/2010		CAMILLE	Order modifying deadlines in order setting Jury Trial; J Dunn 1-20-2010
		CAMILLE	Order of Admission Pro Hac Vice; J Dunn 1-20-2010
1/25/2010		CAMILLE	Second Amended Notice of Depo of Gaylen Clayson on 2-2-2010 @ 9am: aty John Bowers for def and counterclaim plntf
		CAMILLE	Amended Notice Depo of Jeff Randall on 2-3-2010 @ 9am: aty John Bowers for defs and counterclaim plntf
2/1/2010		CAMILLE	Motion and Memorandum to Hold Citizen Community Bank in contempt for nonobedience of subpoena; aty Blake Atkin for plntf/counterclaim def
2/3/2010		CAMILLE	Defs Motin to Dismiss and or Motion for summary Judgment; aty John Bowers
		CAMILLE	Defs Memorandum in support of motion to dismiss and or motion for sumary Judgment; aty John Bowers for defs
		CAMILLE	Certificate of service of plntfs Response to Defs First request for Production of Documents; aty Blake Atkin for plntf
		CAMILLE	Third Amended Notice of Depo of T Gaylen Clayson on 2-17-2010 @ 9am: aty John Bowers for defs
		CAMILLE	Amended Notice Depo of Jeff Randall on 2-15-2010 @ 10am: aty John Bowers for defs
2/8/2010		CAMILLE	Subpoena Duces Tecum; (Glanbia Foods)
2/10/2010		CAMILLE	Third Amended Notice of Depo of Jeff Randall; set for 2-15-2010: aty John Bowers for def
		CAMILLE	Fourth Amended Notice of Depo of Gaylen Clayson on 2-17-2010 @ 9am: aty John Bowers for defs
2/12/2010		CAMILLE	Subpoena Returned; left w/ Jerry Femnger
2/18/2010		CAMILLE	Fifth Amended Notice of Deposition of Gaylen Clayson on 2-25-2010 @ 9am: aty John Bowers for def and counterclaim plntf



Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User	Judge
2/22/2010		CAMILLE	Defendants Designation of Fact Witnesses; aty John Bowers for the Def and Counterclaim Plntfs
		CAMILLE	Certificate of service of plntfs response to Defendants Second request for production of documents; aty Blaker Atkin for plntf/counterclaim def
2/24/2010	NOTC	KARLA	Notice of Deposition of Rick Lawson (Atkin for Plaintiff)
	NOTC	KARLA	Notice of Deposition of Don Zebe (Atkin for Plaintiff)
		CAMILLE	Plaintiffs Designation of Fact Witnesses: aty Blake Atkin for plntf
2/26/2010		CAMILLE	Motion and Memorandum to be allowed to file late dsignation of Fact Witnesses: aty Blake Atkin for plntf
		CAMILLE	Defendants Motion to Strike Plaintiffs Witness List;; aty John Bowers for defs
3/1/2010		CAMILLE	Defendants Motion to Compel Discovery; aty John Bowers for def
3/2/2010		CAMILLE	Notice of Hearing; set for Defs Motoin to Dismiss/or Motion for Summary Judgment; aty John Bowers for Def
	HRSC	CAMILLE	Hearing Scheduled (Motion 03/15/2010 02:00 PM)
3/4/2010		CAMILLE	Amended Notice of Deposition of Rick Lawson 3-4-2010 @ 9am: aty Blake Atkin for plntf
		CAMILLE	Amended Notice of Deposition of Don Zebe on 3-3-2010 @ 9am: aty Blake Atkin for plntf
3/11/2010	MOTN	KARLA	Motion to Continue Hearing Date from March 15, 2010 to March 23, 2010 (Bowers for Def)
3/12/2010	ORDR	KARLA	Order Vacating Hearing on March 15, 2010 and rescheduling for March 23, 2010 /s J Dunn 03/12/10
	CONT	KARLA	Continued (Motion 03/23/2010 10:00 AM)
3/18/2010		CAMILLE	Stipulation and understanding of parties concerning Trial date Rescheduling; s/ Don Zebe and Rick Lawson
3/19/2010	STIP	KARLA	Stipulation and Understanding of Parties Concerning Trial Date Rescheduling (Don Zebe; Rick Lawson)
3/22/2010		CAMILLE	Certificate of service of Plaintiffs Third set of Requests for Production of Documents to Defendants: aty Blake Atkin for plnt
		CAMILLE	Certificate of Service of Plaintiffs Second set of Interrog. to Defendants: aty Blake Atkin for plntf/counterclaim Def.

Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User	Judge
3/22/2010		CAMILLE	Certificate of Service of Plaintiffs First set of Requests for Admissions to Defendants: aty Blake Atkin for plntf/counterclaim def.
3/23/2010		CAMILLE	Memorandum in Opposition to Defs Motion to Dismiss and or Motin for Summary Judgment; Memorandum in support of Motion to Amend Plntfs First Amended Complaint to Assert a Claim for PUnitive Damages; and Motion to countinue pursuant to IR CP 56f: aty Blake Atkin for p Intf/counterclaim defendant
		CAMILLE	Affidavit of Blake S Atkin in Support of Plaintiffs Rule 56f Motion; aty Blake Atkin for plntf counterclaim def
	HRHD	KARLA	Hearing result for Motion held on 03/23/2010 10:00 AM: Hearing Held
	MEOR	KARLA	Minute Entry and Order-hrg hld 03/23/10 on Motion to dismiss; Court DENY Motion to Dismiss; Plaintiff Rule 56f GRANTED; Def Motion to Compel taken under advisement; set hrg for Def Motion for Summ Judgment;
3/29/2010		CAMILLE	Certificate of service of Plaintiff Supplemental Response to Defs First Request for Production of documents; aty Blake Atkin for plntf/counterclaim def
3/31/2010	HRVC	KARLA	Hearing result for Jury Trial held on 03/23/2010 09:00 AM: Hearing Vacated
4/1/2010	DEOP	KARLA	Memorandum Decision on Defendant's Motion to Compel Discovery; DENIED except as to Bank of Star Valley records; Plaintiff ordered to produce Bank of Star Valley records within 14 days of this order; No costs or fees awarded to either party; /s J Dunn 04/01/10
4/2/2010	HRSC	KARLA	Hearing Scheduled (Motion for Summary Judgment 07/07/2010 02:00 PM)
4/19/2010		CAMILLE	Notice of Deposition of Don Zebe on 4-29-2010 @ 9am: atyBlake Atkin for plntf
		CAMILLE	Notice of Deposition of Rick Lawson on 4-30-2010 @ 9am: aty Blake Atkin for plntf
		CAMILLE	Certificate of Service of Defs Replies to Plaintiffs First set of Req for Admissions to Defendants; aty John Bowers for def/counterclaimants
4/22/2010		CAMILLE	Motion for Protective ORder concerning Deposition Scheduled for 4-29-2010 and April 30,2010: aty John Bowers for defs and counterclaim plntfs
		CAMILLE	Defendants Response to Plaintfs Motion to Extend Deadline to produce Bank of Star Valley Records; aty John Bowers for defs

Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User		Judge
4/22/2010		CAMILLE	Affidavit of Rod Jensen ; aty John Bowers for defs	Stephen S Dunn
4/23/2010		CAMILLE	Defendants Motion for Contempt; aty John Bowers for Def. and counterclaim Plntfs	Stephen S Dunn
		CAMILLE	Affidavit of John Bowers; aty John Bowers for defs and counterclaim plntfs	Stephen S Dunn
4/26/2010		CAMILLE	Defendants Response to Plaintiffs Motion to Extend Deadline to Produce Bank of Star Valley Records; aty John Bowers for Defs. counterclaim plntf	Stephen S Dunn
		CAMILLE	Affidavit of Rod Jensen; aty John Bowers for def and counterclaim plntfs	Stephen S Dunn
5/10/2010		CAMILLE	Certificate of Service - Counterclaim Plntfs served upon the plntf, their Responses to Plntfs Interrog and req for production : aty John Bowers for Defs and Counterclaim plntfs	Stephen S Dunn
5/17/2010		CAMILLE	Notice of Association of counsel; aty Gary Cooper for def	Stephen S Dunn
5/20/2010	DEOP	KARLA	Memorandum Decision and Order re; Various Motions; Motion for Protective Order and Motion for Extension of Time to Produce are moot; Court DENIES Motion for Contempt; /s J Dunn 05/19/10	Stephen S Dunn
6/7/2010		CAMILLE	Motion to continue Trial; aty Gary Cooper for Def.	Stephen S Dunn
		CAMILLE	Notice of Hearing; on motion to continue set for 6-21-2010 @2pm: aty Gary Cooper for def	Stephen S Dunn
3/17/2010		CAMILLE	Notice of Deposition of Gaylen Clayson and Subpoena ; aty Gary Cooper	Stephen S Dunn
3/18/2010		CAMILLE	Amended Notice of Deposition of Gaylen Clayson and Subpoena; aty Gary Cooper for Def	Stephen S Dunn
3/21/2010		CAMILLE	Notice of Cancellation of the Depo of Don Zebe and Rick Lawson; aty Blake Atkin for plntf/counterclaim def	Stephen S Dunn
3/25/2010		CAMILLE	Amended Notice of Heearing; set for Defs Motion for Summary Judgment on 8-9-2010 @ 2pm: aty Gary Cooper	Stephen S Dunn
3/29/2010	HRSC	CAMILLE	Hearing Scheduled (Motion for Summary Judgment 08/09/2010 02:00 PM)	Stephen S Dunn
3/30/2010	MEOR	KARLA	Minute Entry and Order; hrg 06/21/10; Def Motion to Continue Trial; Court retained trial date; set backup date; reset Motion for Summary Judgment; /s J Dunn 06/24/10	Stephen S Dunn
	HRSC	KARLA	Hearing Scheduled (Jury Trial 01/11/2011 09:00 AM)	Stephen S Dunn
7/13/2010		CAMILLE	Notice of service - Response to Plntfs Second set of requests for Admissions to Def : aty Gary Cooper	Stephen S Dunn

Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User	Judge
7/15/2010		CAMILLE	Notice of Service - Discovery to Plaintiff and this Notice: aty Gary Cooper for Defs Stephen S Dunn
7/16/2010		CAMILLE	Notice of service - Response to Plntfs Thrid set of Document requests to defendants: aty Gary Cooper for def Stephen S Dunn
7/26/2010		CAMILLE	Affidavit of Gary Cooper; aty Gary Cooper Stephen S Dunn
		CAMILLE	Defendants Lawson and Zebe Reply Memorandum in support of Motion ot Dismiss/Motion for Summary Judgment : aty Gary Cooper for Def. Stephen S Dunn
8/6/2010		CAMILLE	Notice of Mediation; s/ Judge Brown 8-3-2010 Stephen S Dunn
8/9/2010		CAMILLE	Affidavit of Blake S Atkin in Opposition to Defs Motin to Dismiss or for summary Judgment; aty Blake Atkin for plntf Stephen S Dunn
	HELD	KARLA	Hearing result for Motion for Summary Judgment held on 08/09/2010 02:00 PM: Motion Held Stephen S Dunn
8/18/2010		CAMILLE	Certificate of Service of Plntfs Response to Defs Discovery to plntf: aty Blake Atkin for plntf Stephen S Dunn
9/15/2010		CAMILLE	Memorandum Decision and Orderon Defendants Motion for Summary Judgment; (Court GRANTS Defs Summary Judgment) Defs Motion for Summary Judgment is DENIED; Plntfs Motion to Amend Plntf First Amended Complaint to Assert a Claim of Punitive Damages is DENIED) s/ Judge Dunn 9-14-2010 Stephen S Dunn
9/21/2010		CAMILLE	Second Amended Notice of Deposition of Gaylen Clayson and Subpoena ; set for 9-30-2010: aty Gary Cooper Stephen S Dunn
10/1/2010		CAMILLE	Defendants Expert and Fact witness Disclosure; aty Gary Cooper Stephen S Dunn
10/4/2010		CAMILLE	Motion to reconsider damage aspects of decision dated september 15, 2010: aty Blake Atkin for plntf Stephen S Dunn
		CAMILLE	Memorandum in Support of Defense Motion in Limine; aty Gary Cooper Stephen S Dunn
		CAMILLE	Second Affidavit of Gary Cooper; aty Gary Cooper Stephen S Dunn
		CAMILLE	Def's Supplemental Expert and Fact Witness Disclosure; aty Gary Cooper for def Stephen S Dunn
		CAMILLE	Defense Motion in Limine; aty Gary Cooper Stephen S Dunn
	HRSC	CAMILLE	Hearing Scheduled (Motion 10/25/2010 01:30 PM) Stephen S Dunn
10/7/2010		CAMILLE	Motion to Dismiss Counterclaim; aty Gary Cooper for def. Stephen S Dunn
		CAMILLE	Notice of hearing; set for Motion to Dismiss on 10-25-2010 @ 1:30 pm; Stephen S Dunn

Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User		Judge
10/8/2010	NOTC	DCANO	Notice of Deposition of Jeff Randall to Preserve Trial Testimony; Gary L. Cooper, Atty for Dfdts.	Stephen S Dunn
10/11/2010	MOTN	KARLA	Motion and Memorandum for Protective Order Re; Deposition of Jeff Randall to Preserve Trial Testimony (Atkins for Plaintiff)	Stephen S Dunn
10/12/2010		NOELIA	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Atkin Law Office Receipt number: 0035333 Dated: 10/12/2010 Amount: \$4.50 (Check)	Stephen S Dunn
		CAMILLE	Joint Pre Trial Stipulation; aty Blake Atkin for plntf	Stephen S Dunn
		CAMILLE	Notice of hearing; set for 10-25-2010 @ 1:30 pm: aty Blake Atkin for def	Stephen S Dunn
	MOTN	KARLA	Motion to Reconsider damage aspects of decision dated September 15, 2010 (Atkin for Plaintiff)	Stephen S Dunn
10/15/2010	RESP	KARLA	Def's Response to Plaintiff's Motion for Protective Order	Stephen S Dunn
10/18/2010	MEMO	KARLA	Memorandum In Opposition to Plaintiff's Motion for Reconsideration Re Damage Aspects of Decision Dated September 15, 2010 (Cooper for Defs)	Stephen S Dunn
10/19/2010		CAMILLE	Notice of hearing; set for Motion on 10-25-2010 @ 1:30pm: aty Gary Cooper	Stephen S Dunn
		CAMILLE	Motion Eliminating Jury; aty Gary Cooper	Stephen S Dunn
10/21/2010		CAMILLE	Defendants Supplemental Expert and Fact Witness Disclosure; aty Gary Cooper for Def.	Stephen S Dunn
		KARLA	Return of Service; subpoena of Jeff Randall 10/05/10	Stephen S Dunn
		CAMILLE	Memorandum in Opposition to Defense Motion in Limine; aty Blake Atkin for plntf/counterclaim def	Stephen S Dunn
10/29/2010	DCHH	KARLA	Hearing result for Motion held on 10/25/2010 01:30 PM: District Court Hearing Held Court Reporter: Sheila Fish Number of Transcript Pages for this hearing estimated: less 100	Stephen S Dunn
	ORDR	KARLA	Order; Counterclaim Dismissed; jury demand dismissed; Plaintiff's Motion to Reconsider denied; Def Motion in Limine deferred until trial; /s J Dunn 10/28/10	Stephen S Dunn
	CONT	KARLA	Continued (Jury Trial 11/04/2010 09:30 AM)	Stephen S Dunn
11/1/2010		CAMILLE	Trial Brief; aty Blake Atkin for plntf/counterclaim;	Stephen S Dunn
11/3/2010		CAMILLE	Designation of Testimony from the Deposition of Morris A Farinella ; on 9-30-2010: aty Gary Cooper for Def.	Stephen S Dunn

Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User	Judge
11/8/2010	HRSC	KARLA	Hearing Scheduled (Status Conference 11/08/2010 12:00 PM)
	HRSC	KARLA	Hearing Scheduled (Jury Trial 11/10/2010 01:30 PM)
11/16/2010	HRVC	KARLA	Hearing result for Jury Trial held on 01/11/2011 09:00 AM: Hearing Vacated
	DCHH	KARLA	Hearing result for Jury Trial held on 11/04/2010 09:30 AM: District Court Hearing Held Court Reporter: Sheila Fish Number of Transcript Pages for this hearing estimated: more than 500
	HRHD	KARLA	Hearing result for Jury Trial held on 11/10/2010 01:30 PM: Hearing Held
	HRHD	KARLA	Hearing result for Status Conference held on 11/08/2010 12:00 PM: Hearing Held
	MEOR	KARLA	Minute Entry and Order; Court Trial held; Parties to submit findings of facts and conclusions by 11/24/10; matter will be taken under advisement and written decision to be issued; /s J Dunn 11/16/10
11/22/2010		KARLA	Plaintiff's Designation of Portions of the Deposition of Morris Ferinella (Atkin for Plaintiffs)
11/24/2010		CAMILLE	Defense Objection to plntfs designation of Deposition excerpts from the Deposition of Morris Farinella : aty Gary Cooper
		CAMILLE	Defense Proposed Findings of Fact, Conclusions of Law and Argument; aty Gary Cooper
11/26/2010	BRFS	KARLA	Plaintiff's Post Trial Brief (Atkin for Plaintiff)
11/29/2010		KARLA	Findings of Fact and Conclusions of Law (Atkin for Plaintiff)
12/6/2010		CAMILLE	Memorandum Decision, findings of Fact and Conclusions of law; court finds in favor of Plntf and awards damages totaling \$97,310.94: s/ Judge Dunn 12-6-2010
12/7/2010	JDMT	CAMILLE	Judgment; ag Don Zebe Rick Lawson and Laze, LLC in the total amount of \$97,310.94; s/ Judge Dunn 12-6-2010
	CSTS	CAMILLE	Case Status Changed: Closed
12/8/2010	MEMO	KARLA	Defense Memorandum on Damage Claim (Cooper for Defs)
	MEMO	KARLA	Palintiff's Trial Memorandum Regarding the Admissibility of Evidence that Defendants Assumed or Ratified Clayson's Entire Bill to Dairy Systems Company (Atkin for Palintiff)
	MEMO	KARLA	Reply Memorandum in support of Motion to Reconsider Damage As[ects of Decision Dated September 15, 2010 (Atkin for Plaintiff)

Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User	Judge
12/20/2010		CAMILLE	Memorandum of costs and Attorney Fees; aty Gary Cooper for def Stephen S Dunn
		CAMILLE	Affidavit of Gary Cooper in support of Memorandum of costs and attorney fees; aty Gary Cooper for def Stephen S Dunn
		CAMILLE	Affidavit of John D Bowers for Attorney Fees and costs; aty John Bowers for defs Stephen S Dunn
12/27/2010		CAMILLE	Memorandum of costs including attorney fees; aty Blake Atkin for plntf Stephen S Dunn
12/28/2010		CAMILLE	Memorandum in support of defs objection to costs and attorney fees claimed by plntfs: aty Gary Cooper Stephen S Dunn
		CAMILLE	Objection to Plaintiffs Memorandum of Costs and Attorney fees: aty Gary Cooper for def Stephen S Dunn
12/29/2010		CAMILLE	Objection to Defendants Memorandum of Costs including attorney fees; aty Blake Atkin Stephen S Dunn
1/4/2011		CAMILLE	Affidavit of Blake Atkin in support of Memorandum of costs including attorney fees; aty Blake Atkin for plntf Stephen S Dunn
		CAMILLE	Memorandum Decision on motion for attorney fees and costs; (Based on the foregoing, the court denies both motions for attorney fees and costs: the judgment will not be amended: s/ Judge Dunn 1-4-2011 Stephen S Dunn
1/14/2011		NOELIA	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Gary L. Cooper Receipt number: 0001682 Dated: 1/14/2011 Amount: \$101.00 (Check) For: Clayson, Gaylen (plaintiff) Stephen S Dunn
	APSC	DCANO	Appealed To The Supreme Court Stephen S Dunn
	NOTC	DCANO	NOTICE OF APPEAL; Gary L. Cooper, Atty for Dfdts. Stephen S Dunn
	MISC	DCANO	Paid \$101.00 check # 25113 for Filing Fee and Supreme court Fee. Paid \$100.00 check # 25114 for deposit of Clerk's Record. Stephen S Dunn
1/21/2011	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL; Signed and Mailed to Counsel and SC on 1-21-11. Stephen S Dunn
1/28/2011	MISC	DCANO	IDAHO SUPREME COURT; Notice of Appeal received in SC on 1-24-11. Docket Number 38471-2011. Clerk's Record and Reporter's Transcript due in SC by 5-5-11. (3-31-11 5 weeks prior to Counsel. The following transcript shall be lodged: Court Trial 11-4-10, 11-5-10 and 11-10-10. Stephen S Dunn
	MISC	DCANO	CORRECTED CLERK'S CERTIFICATE OF APPEAL. Signed and Mailed to SC and Counsel on 2-4-11. Stephen S Dunn

Gaylen Clayson vs. Donald I Zebe, Rick Lawson, LAZE, LLC

Date	Code	User	Judge	
2/8/2011	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Corrected Certificated received in SC on 2-7-11. All parties are to review title and if any corrections please contact the Dist. Clerk. If not the title on the certificate must appear on all documents filed in SC.	Stephen S Dunn
3/30/2011	MISC	DCANO	NOTICE OF LODGING FOR TRANSCRIPTS: Sheila Fish on 3-30-11.	Stephen S Dunn
	MISC	DCANO	REPORTER'S TRANSCRIPTS RECEIVED IN COURT RECORDS FROM SHEILA FISH ON 3-30-11 for the following: Court Trial held 11-4-10, 11-5-10, and 11-10-10.	Stephen S Dunn
4/1/2011	MISC	DCANO	CLERK'S RECORD received in Court Records on 4-1-11.	Stephen S Dunn



Gary L. Cooper - Idaho State Bar #1814  
 COOPER & LARSEN, CHARTERED  
 151 North Third Avenue, Second Floor  
 P.O. Box 4229  
 Pocatello, ID 83205-4229  
 Telephone: (208) 235-1145  
 Facsimile: (208) 235-1182

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 BANNOCK COUNTY  
 DISTRICT COURT  
 2019 OCT -4 PM 4:13  
 BY [Signature] DEPUTY CLERK

*Counsel for Defendant*

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


GAYLEN CLAYSON,	)	
	)	
Plaintiff,	)	CASE NO. CV-2009-0002212-OC
	)	
vs.	)	
	)	<b>DEFENSE MOTION IN LIMINE</b>
DON ZEBE, RICK LAWSON, AND	)	
LAZE, LLC.,	)	
	)	
Defendants,	)	
_____	)	
	)	
DON ZEBE, RICK LAWSON, AND	)	
LAZE, LLC.,	)	
	)	
Counterclaim Plaintiff,	)	
	)	
vs.	)	
	)	
GAYLEN CLAYSON,	)	
	)	
Counterclaim Defendants,	)	
_____	)	

COME NOW the Defendants/Counterclaimants Don Zebe, Rick Lawson and LAZE, LLC,  
 by and through their attorney Gary L. Cooper, and moves this Court for an Order *in limine*.

This motion is made on the grounds and for the reasons stated in the Memorandum filed with this Motion. Defendants request this Court to enter an Order *in limine* preventing Plaintiff from offering evidence or seeking to recover the debt owed to Dairy Systems, except only to the extent of the \$50,000 that Plaintiff alleges he paid Dairy Systems; preventing Plaintiff from offering evidence regarding a partnership or plant agreement or any other kind of an agreement to pay him \$500,000 or buy his milk; preventing Plaintiff from offering evidence of out-of-pocket expenses beyond the \$28,145.94 he identified in his deposition; preventing Plaintiff from offering evidence of the \$50,000 payment by check to Dairy Systems; preventing Plaintiff from offering opinion evidence or expert testimony; and preventing Plaintiff from offering evidence that he expended his own personal time refurbishing or renovating the Star Valley Cheese Plant or the value of his labors.

DATED this 4<sup>th</sup> day of October, 2010.

COOPER & LARSEN

A handwritten signature in black ink, appearing to read "G. Cooper", is written over a horizontal line. The signature is stylized and cursive.

GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>h</sup> day of October, 2010, I served a true and correct copy of the foregoing to:

Blake S. Atkin  
7579 North Westside Hwy  
Clifton, ID 83228

- U.S. mail
- Email: [blake@atkinlawoffices.net](mailto:blake@atkinlawoffices.net)
- Hand delivery
- Fax:

Atkins Law Offices  
837 South 500 West, Ste 200  
Bountiful, UT 84010


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John D. Bowers  
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Afton, WY 83110

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Honorable Stephen S. Dunn  
District Judge  
P. O. Box 4126  
Pocatello, ID 83205


- U.S. mail
- Email: [karlav@bannockcounty.us](mailto:karlav@bannockcounty.us)
- Hand delivery
- Fax: 236-7012



---

GARY L. COOPER

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*Counsel for Defendants*

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

GAYLEN CLAYSON, )  
 )  
 Plaintiff, )

CASE NO. CV-2009-0002212-OC

vs. )

**NOTICE OF HEARING**

DON ZEBE, RICK LAWSON, AND )  
 LAZE, LLC., )  
 )  
 Defendants, )

\_\_\_\_\_ )

DON ZEBE, RICK LAWSON, AND )  
 LAZE. LLC., )  
 )  
 Counterclaim Plaintiff, )

vs. )

GAYLEN CLAYSON, )  
 )  
 Counterclaim Defendants, )

\_\_\_\_\_ )

TO: THE ABOVE NAMED PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that the undersigned will bring on for hearing Defendants' Motion in Limine before the Honorable Stephen S. Dunn, District Judge of the above-entitled Court, on Monday, October 25, 2010, at the hour of 1:30 p.m., or as soon thereafter as counsel can be heard.

DATED this 4<sup>th</sup> day of October, 2010.

FILED  
BANNOCK COUNTY  
CLERK OF THE COURT  
2010 OCT -4 PM 4:13  
BY \_\_\_\_\_  
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COOPER & LARSEN



GARY L. COOPER

**CERTIFICATE OF SERVICE**

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 Hand delivery  
 Fax:

Atkins Law Offies  
837 South 500 West, Ste 200  
Bountiful, UT 84010

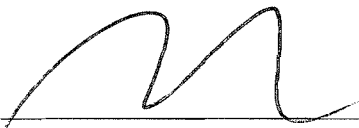
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Honorable Stephen S. Dunn  
District Judge  
P. O. Box 4126  
Pocatello, ID 83205

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 Email: [karlav@bannockcounty.us](mailto:karlav@bannockcounty.us)  
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GARY L. COOPER

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 BANNOCK COUNTY  
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*Counsel for Defendant*


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

GAYLEN CLAYSON,	)	
	)	
Plaintiff,	)	CASE NO. CV-2009-0002212-OC
	)	
vs.	)	
	)	<b>MOTION TO DISMISS</b>
DON ZEBE, RICK LAWSON, AND	)	<b>COUNTERCLAIM</b>
LAZE, LLC.,	)	
	)	
Defendants,	)	
_____	)	
	)	
DON ZEBE, RICK LAWSON, AND	)	
LAZE, LLC.,	)	
	)	
Counterclaim Plaintiff,	)	
	)	
vs.	)	
	)	
GAYLEN CLAYSON,	)	
	)	
Counterclaim Defendants,	)	
_____	)	

COME NOW the Counterclaimants Don Zebe, Rick Lawson and LAZE, LLC and pursuant to IRCP 41 move this Court for an Order dismissing the Counterclaim on the grounds and for the reasons that Counterclaimants do not wish to pursue these claim at the trial of this matter.

DATED this 6<sup>th</sup> day of October, 2010.

COOPER & LARSEN

  
\_\_\_\_\_  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of October, 2010, I served a true and correct copy of the foregoing to:

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Honorable Stephen S. Dunn  
District Judge  
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 Hand delivery  
 Fax: 236-7012

  
\_\_\_\_\_  
GARY L. COOPER

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*Counsel for Plaintiff*

Gary L. Cooper - Idaho State Bar #1814  
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Telephone: (208) 235-1145  
Facsimile: (208) 235-1182

*Counsel for Defendant*

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

GAYLEN CLAYSON, )

Plaintiff, )

vs. )

DON ZEBE, RICK LAWSON, AND )  
LAZE, LLC., )

Defendants, )

\_\_\_\_\_)  
DON ZEBE, RICK LAWSON, AND )  
LAZE, LLC., )

Counterclaim Plaintiff, )

vs. )

GAYLEN CLAYSON, )

Counterclaim Defendants, )

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CASE NO. CV-2009-0002212-OC

**JOINT PRE-TRIAL STIPULATION**



COME NOW the parties, by and through their attorneys of record, and in accordance with this Court's Order Setting Pre-Trial/Jury Trial submit their Joint Pre-Trial Stipulation:

A. EXHIBITS

The parties have exchanged copies of the exhibits the parties intend to introduce into evidence at the trial of this matter. Attached is the Exhibit list with the information regarding party offering the Exhibit, whether it is stipulated and legal grounds for objection. All IRE 1006 summaries are attached and copies of the documents supporting each summary have been provided to the opposing party.

B. USE OF DEPOSITIONS/DISCOVERY RESPONSES IN LIEU OF LIVE TESTIMONY  
PLAINTIFF

1. Plaintiff intends to use the following depositions in lieu of live testimony:
  - (1) Morris Farinella (relevant portions to be designated upon receipt)
2. Plaintiff reserves the right to use the following depositions for impeachment purposes:
  - (1) Deposition Don Zebe
  - (2) Deposition Jeff Randall
3. Plaintiff reserves the right to use the following requests for admission and answer to interrogatories for impeachment purposes:
  - (1) All discovery responses submitted by Defendants.

DEFENDANT

1. Defendants intend to use the following deposition in lieu of live testimony:
  - (1) Morris Farinella (relevant portions to be designated upon receipt)
  - (2) Jeff Randall

2. Defendants reserve the right to use the following depositions for impeachment purposes:

- (1) Gaylen Clayson (Volumes I and II)
- (2) Klark Gailey (taken in Wyoming case)
- (3) John Gailey
- (4) Jeff Randall
- (5) Mike Lowe (taken in Wyoming case)

3. Defendants reserve the right to use the following requests for admission and answer to interrogatories for impeachment purposes:

- (1) All discovery responses submitted by Gaylen Clayson.

C. WITNESS LIST

1. Plaintiff intends to call the following lay witnesses and has not identified any expert witnesses:

- (1) Gaylen Clayson
- (2) Jeff Randall
- (3) Don Zebe
- (4) Rick Lawson
- (5) Morris Farinella
- (6) Joe Farinella
- (7) Val Pendleton
- (8) John E. Gailey
- (9) Klark Gailey
- (10) Josh Flud
- (11) Mike Lowe

(12) Mike Lowe (rebuttal expert witness)

(13) Lance Crockett (rebuttal expert witness)

2. Defendants intend to call the following expert and lay witnesses:

(1) Ron Hansen (expert)

(2) Cal Hansen (expert)

(3) Ryan Jackson (expert)

(4) William Sulzer (expert)

(5) Don Zebe (expert and fact)

(6) Rick Lawson (expert and fact)

(7) Craig Warner (expert)

(8) Louis Stevens and/or Robert Danielson (experts)

(9) Morris Farinella (by deposition – relevant portions to be identified when transcript is available)

(10) Jeff Randall

NOTE: Plaintiff objects to all witnesses designated as experts because Plaintiff claims the witnesses were late disclosed and their testimony is irrelevant. Plaintiff objects to the use of the deposition of Jeff Randall because Mr. Randall is available.

#### D. SUMMARY OF THE FACTUAL NATURE OF THE CASE

##### PLAINTIFF'S STATEMENT:

Gaylen Clayson, a dairy farmer who has been in the milk and milk products industry all his adult life began in February 2010 the refurbishment of the Cheese Plant in Star Valley, Wyoming. He contacted the owner of the cheese Plant and its accompanying restaurant and worked out an arrangement whereby he would operate the restaurant while working on cleaning and refurbishing

the Cheese Plant. An understanding was reached with the owner that Mr. Clayson could do whatever was necessary in order to make the plant operational and that an agreement whereby he could buy the property would be worked out.

Mr. Clayson put in the time, cleaned up the plant and spent significant amounts of his own funds in refurbishing the plant and incurred substantial debt in having the electrical and plumbing upgraded so that the plant would be ready to open in the fall of 2008.

On October 2, 2008, plaintiff and defendants Zebe and Lawson together formed the LLC, SVC, LLC that would continue the work of refurbishment that Plaintiff had started and eventually run the Cheese Plant. SVC, LLC, which plaintiff helped form runs the Cheese Plant to this day.

As earlier agreed, arrangements were made for plaintiff to purchase the property and he entered into a contract with the owner on October 17, 2008 to purchase the property, both restaurant and Cheese Plant for \$800,000.

On November 4, 2008 defendant assigned his rights to purchase the Cheese Plant to the defendants. He also relinquished to the defendants his interest in the operating entity, SVC, LLC.

The Court has determined that any contract between plaintiff and defendants relating to his transfer of his interest in the Restaurant and Cheese Plant and his interest in the operating entity is insufficiently formal and clear to be an enforceable contract. However, the Court has determined that the plaintiff's actions in relinquishing his interest in the cheese plant and the operating agreement could have possibly been part of a larger agreement, or that there were other, separate agreements between the parties, and plaintiff is entitled to prove that the conduct of the parties supports the dual inference that Clayson relinquished his interests at the request of the defendants and the defendants promised to pay him for doing so.

The Court also found that there is no question that the Defendants benefitted from Clayson's efforts and that he is entitled, under a theory of Unjust enrichment or restitution to recover the amount of enrichment which it would be unjust for defendants to retain.

#### DEFENDANTS' STATEMENT:

Plaintiff Gaylen Clayson claims that Defendants Don Zebe, Rick Lawson and/or their limited liability company, Laze, LLC either promised to pay certain expenses and reimburse him for time and money he invested in the Star Valley Cheese Plant to make it operational or that Defendants received a monetary benefit as a result of his efforts that it would be unfair for them to retain. Defendants Don Zebe, Rick Lawson and Laze, LLC respond by alleging that they have paid the expenses Plaintiff incurred which were of benefit to the Star Valley Cheese Plant or which were necessary for its continued operation and deny further responsibility for other expenses. Defendants further respond that there was no agreement to pay further expenses which was an express or implied condition to Plaintiff's assignment of the purchase and sale contract. Defendants further respond that some of the work for which are being claimed was deficient or the improvements were paid from the operation of the restaurant and were incorporated into the building which Defendants paid for when they later purchased it. Defendants specifically deny any responsibility to reimburse Plaintiff for the bills to Dairy Systems because Dairy Systems has sued Defendants in Wyoming and is not claiming that Plaintiff Gaylen Clayson is responsible to Dairy Systems for those expenses. In addition Defendants also deny responsibility for some of the expenses Plaintiff claims because he has been unable to document the amount he incurred or paid.

#### E. SETTLEMENT

The parties state that they, in good faith, mediated this case with Judge Mitch Brown, but the mediation was unsuccessful.

F. DISCOVERY

The parties certify that pre-trial discovery under IRCP 26 - 37 is closed and all discovery responses have been supplemented as required by the rules to reflect facts known to the date of this Stipulation. Witness disclosures have been made pursuant to the Court's Order Setting Pre-Trial and Jury Trial and Order Modifying Deadlines in Order Setting Jury Trial.

G. ISSUES OF FACT AND LAW

PLAINTIFF'S ISSUES OF FACT AND LAW:

1. Whether defendants were enriched by plaintiffs transfer to them of his interest under the purchase agreement for the Restaurant and Cheese Plant and the amount of the benefit which defendants unjustly retained.
2. Whether there are any implied in fact contracts between plaintiff and defendants, what the nature of that agreement or those agreements are, how much was agreed to be paid, and what debts were ratified and agreed to be assumed by defendants.

DEFENDANTS' ISSUES OF FACT AND LAW:

1. **Implied-in-fact Contract/Quantum Meruit.** Clayson has the burden of proving that an implied-in-fact contract was created through the request of the Defendants and the performance of the Plaintiff. If proven, Clayson has the burden of proving the reasonable value of services rendered or material provided on the basis of the implied promise to pay by the Defendants.
2. **Unjust Enrichment.** Clayson has the burden of proving that the Defendants received a benefit which would be unjust for the Defendants to retain. If proven, Clayson has the burden of proving with reasonable certainty the reasonable value of the benefit unjustly retained by the Defendants.

H. ADMISSIONS OR STIPULATIONS

Other than stipulations to the admissions of certain exhibits as identified in the attached Exhibit list, there are no admissions or stipulations of fact and/or documents between the parties. Defendants anticipate dismissing their Counterclaim, but have not made a final decision. Defendants will advise the Court at the time of the hearing on the pending motions which are scheduled for hearing on October 25, 2010.

I. ORDERS TO EXPEDITE TRIAL

1. Plaintiff has pending a Motion to Reconsider this Court's September 15, 2010 Memorandum Decision and Order on Defendants' Motion for Summary Judgment.
2. Defendant has pending a Motion *in Limine*.
3. Counterclaimants have pending a Motion to Dismiss Counterclaim.

J. VOIR DIRE/OPENING STATEMENT

The Defendants are businessmen who have lived in Pocatello for a considerable amount of time. Mr. Lawson was a practicing accountant for several years in Pocatello. Mr. Zebe was and is a real estate agent. If jurors are acquainted with either or both of the Defendants that may delay jury voir dire. However, both parties anticipate that jury voir dire can be completed in approximately 30 minutes per side. Both parties also anticipate that opening statements can be completed within approximately 30 minutes per side.

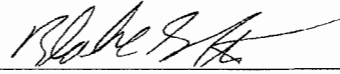
DATED this 12<sup>th</sup> day of October, 2010.

COOPER & LARSEN

*Gary Cooper by Barbara Snell  
as authorized by Gary Cooper*  
GARY L. COOPER  
Attorneys for Defendants/Counter-claimants

DATED this 12<sup>th</sup> day of October, 2010.

ATKIN LAW OFFICES



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BLAKE S. ATKIN  
Attorneys for Plaintiff/Counter-Defendant



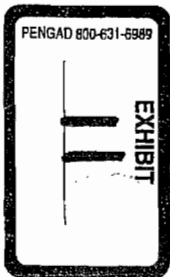
A	2,250	00	Plumbing July
B	12,800	50	Plumbing Sept - Dec
C	823	00	Ref on Restaurant
D	750	00	Registration Exam IMPA
E	180	00	TOOTHES Rest.
F	13,100	00	Jensen part plant
G	3,250	00	other part plant
H	1,100	00	FATHERS EXPENSE PLANT
I	5,600	00	Josh Labor
J	6,200	00	APPROX LEONARD'S PLANT
K	5,400	00	MARK Labor Plant & Co
L	1,800	00	Ref Repair supplies
M	10,23	00	Special Cleaning 15 gal p
N	140	00	VACCINE CLEANER
O	4,940	00	OFFICE Furniture 3000 notes &
P	2,430	00	UPCHURCH Eq check of
Q	400	00	Computer
R	360	00	CASH Receipts
S	320	00	TRUCK CLOCK
T	11,300	00	Restaurant (John)

Viking

Gaylen Clayson invoices paid by SVC, LLC

			Check #	Date Paid	
Lower Valley Energy	3324.18	Power bill	1002, 1045	11/4, 11/25/08	Dons c card \$2108.60
Fire Services of Idaho	2200	Ansul system in kitchen	1138	2/26/2009	
Wyoming dept of Revenue	3000	Back sales taxes	175	10/30/2008	
High Sierra Enterprises	8000	Kitchen hood for fryers	cc1, 1140	10/28/08, 2/26/09	
Roger Worrick	2593.49	Lighting for restaurant	1143	2/26/2009	
Suburban propane	32131.74	Propane	1134	2/26/2009	
Sysco Foods	7797	Restaurant food	cash ck, 165	10/17/08, 10/17/08	
April McMurdo	575	Bad check Galen gave her	149	10/24/2008	
Freedom Refrigeration	526.1	Repairs	151	10/24/2008	
Waxie Sanitary Supply	391.08	Cleaning supplies	157	10/29/2008	
Valley Tech LLC	173.25	Computer work	159	10/29/2008	
Silverstar Communications	970.23	phone bill	1001	10/31/2008	
Payroll for week ended 10/4/08	4586.07	payroll	101-115	10/9/2008	
Payroll taxes for week ended 10/4/08	356.97	FICA, UI and W/C	56277	11/17/2008	
Payroll for week ended 10/11/08	5988.01	payroll	116-130	10/17/2008	
Payroll taxes for week ended 10/11/08	468.8	FICA, UI and W/C	56277	11/17/2008	
Town of Thayne	68	sewer	1036	11/21/2008	
Tonys Glass	694.19	glass and doors	1018	3/17/2009	
High Mountain Mechanical	315.5	metal	1139	2/26/2009	
Bird welding	1229.18	work at plant	1137	2/26/2009	
Little Pines Inc.	976.5	Computer work	1142	2/26/2009	
A-Core	375	Concrete work	1149	2/26/2009	
Lidsey Tile	1497.5	Tile work	1020	3/17/2009	
<b>Total</b>	<b>78237.79</b>				

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**PLAINTIFF'S AND DEFENDANTS'  
EXHIBIT LIST**

Stephen S. Dunn, District Judge  
Karla Holm, Deputy Clerk  
Sheila Fish, Court Reporter

Case No. CV-2009-02212-OC

November 2, 2010

Gaylen Clayson  
v.  
Don Zebe, Rick Lawson, and Laze, LLC.

<i><b>NO.</b></i>	<i><b>DESCRIPTION</b></i>	<i><b>STIPULATED</b></i>	<i><b>BASIS FOR OBJECTION</b></i>
A	Chapter 11 Final Report & Account & Application for Final Decree dated June 26, 2007		Hearsay; relevance and requires expert opinions. See Motion in Limine
B	Final Decree and Order Closing Case, July 2, 2007		Hearsay; relevance and requires expert opinions. See Motion in Limine
C	E-mail: Pendleton to M. Marin with contract; Val Pendleton. February 7, 2008		Relevance. This offer was not accepted and is not relevant to any issue remaining in this case.
D	Contract to buy real estate; Gaylen Clayson, August 17, 2008	X	
E	Permit application and docs; Mike Lowe, August 19, 2008		Relevance; late disclosure
F	Summary of expenses with backup docs; Gaylen Clayson, August -October 2008		IRE 1006 summary without supporting documentation and late disclosure of supporting documentation. See Motion in Limine

G	Invoices and statements Dairy systems; Dairy Systems August 2008 - June 2009		Relevance. Clayson has not assumed responsibility for these bills, has not paid these bills and Defendants are being sued in a separate lawsuit in Wyoming for payment by Dairy Systems Company. See Motion in Limine.
H	Equipment Appraisal; Bill Sulzer, September 29, 2008		Hearsay, requires expert testimony. See Motion in Limine
I	Star Valley Cheese, SVC, LLC Business Plan; Don Zebe, October 2008		Hearsay, relevance, requires expert testimony. See Motion in Limine
J	Article of Organization DVC, LLC; Rick Lawson, October 2, 2008		Relevance
K	Annual Report form, Milk Market Management, OLLC; Rick Lawson, October 2, 2008		Relevance
L	Notice of Right to Claim Lien; CED, October 31, 2008		Relevance. Clayson has not assumed responsibility for these bills, has not paid these bills and Defendants are being sued in a separate lawsuit in Wyoming for payment by Dairy Systems Company. See Motion in Limine.
M	Fed Ex Bill; Don Zebe, November 4, 2008		Relevance, foundation
N	Addendum A1 Assignment Gaylen Clayson, November 4, 2008	X	
O	E-mail: Val Pendleton to M. Marin; Val Pendleton, December 16, 2008	X	

P	E-mail: Val Pendleton to M. Marin 2; Val Pendleton, December 16, 2008	X	
Q	SVC Financials from Dec 31, 2008 - June 30, 2009		Relevance, requires expert opinions. See Motion in Limine
R	Opinion of Value; Val Pendleton, January 13, 2009		Lack of foundation, speculation, requires expert opinion. See Motion in Limine
S	E-mail Don Zebe to Val Pendleton: Don Zebe, January 14, 2009		Foundation
T	E-mail: Val Pendleton to M. Marin; Val Pendleton, January 19, 2009	X	
U	E-mail: Don Zebe to Klark Gailey; Don Zebe, January 31, 2009		Relevance
V	E-mail: Don Zebe to Klark Gailey; don Zebe, February 19, 2009		Relevance
W	E-mail: Don Zebe to Klark Gailey; Don Zebe, February 25, 2009		Relevance
X	E-mail: Don Zebe to Klark Gailey; Don Zebe, March 7, 2009		Relevance
Y	Affidavit of Don Zebe, October 23, 2009		Hearsay, relevance
Z	Gaylen Clayson Invoices paid by SVC, LLC; Rick Lawson		Foundation
AA	Exemption Certificate; Gaylen Clayson		Hearsay, foundation, relevance

BB	Third Party Complaint in no. CV-2009-89-DC		Hearsay. Clayson has not assumed responsibility for the Dairy System bills, has not paid the Dairy System bills and Defendants are being sued in a separate lawsuit in Wyoming for payment by Dairy Systems Company. See Motion in Limine.
1	Contract to Buy and Sell Real Estate (Commercial) dated October 17, 2008 (Farinella Depo Exhibit 4)	X	
2.	Addendum to Contract dated October 18, 2008 (Farinella Depo Exhibit 5)	X	
3	E-mail: Joe Farinella to Don Zebe dated October 31, 2008 (Clayson Depo Exhibit 22)		Lack of Foundation, Hearsay
3-A	Email from Don Zebe to Joe Farinella & Rick Lawson dated 10-31-08		Late disclosure, lack of foundation, hearsay
4	Contract Addendum/Assignment dated 11/4/2008 (Clayson depo Exhibit 24)	X	
5	Agreement to Amend/Extend dated December 16, 2008 (Farinella Depo Exhibit 7)	X	
6	E-mail: Don Zebe to Joe Farinella dated December 30, 2008 (Clayson Depo Exhibit 26)		Lack of foundation, hearsay

7	Agreement to Amend/Extend dated January 19, 2009 (Farinella Depo Exhibit 8)	X	
8	Agreement to Amend/Extend dated February 12, 2009 and February 19, 2009 (Farinella Depo Exhibit 10)	X	
9	Warranty Deed - S.V. Cheese Corp. To Laze, LLC, dated February 18, 2009	X	
10	Bill of Sale (Farinella Depo Exhibit 2)	X	
11	IRE 1006, Summary of Clayson Invoices paid by SVC, LLC		Late disclosure, lack of foundation, hearsay
11-A	Bills paid through November 25, 2008		Late disclosure, lack of foundation, hearsay
12	Ryan Jackson, CV		Hearsay, lack of foundation, relevance
13	Code Violation List		Hearsay, lack of foundation, relevance
14	Cal Hansen, CV		Hearsay, lack of foundation, relevance
15	Cost Calculation for dairy systems work		Hearsay, lack of foundation, relevance
16	Hansen Evaluation of dairy system electrical work.		Hearsay, lack of foundation, relevance
17	JP Electrical Invoices for labor and materials to finish/repair dairy systems work.		Hearsay, lack of foundation, relevance
18	William Sulzer, CV		Hearsay, lack of foundation, relevance
19	William Sulzer's evaluation of MCC		Hearsay, lack of foundation, relevance
20	Craig Warren, CV		Hearsay, lack of foundation, relevance
21	MAI Appraisal dated November 18,		Hearsay, lack of

	2009		foundation, relevance
22	1-6-2010 Loan Documents	X	
23	2-17-2009 Loan #1	X	
24	2-17-2009 Loan #2	X	
25	Statco proposal and bills		Hearsay, lack of foundation, relevance



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*Attorney for Plaintiff/Counterclaim Defendant*

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

<p>GAYLEN CLAYSON, Plaintiff,  v. DON ZEBE, RICK LAWSON, and LAZE, LLC, Defendants,</p> <hr/> <p>DON ZEBE, RICK LAWSON, and LAZE, LLC, Counterclaim Plaintiffs,  v. GAYLEN CLAYSON, Counterclaim Defendant.</p>	<p>Motion to reconsider damage aspects of decision dated September 15, 2010</p> <p>Case No: CV-2009-02212-OC</p> <p>Judge: Stephen S. Dunn</p>
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Plaintiff respectfully moves the Court, pursuant to rule 11(a)(2)(B), to reconsider its rulings with regard to damages made in its order dated September 15, 2010. Plaintiff does not make this motion lightly nor simply because the Plaintiff disagrees with the Court's decision. This motion is made because Plaintiff believes the Court may not have been fully informed about the nature of the damages in this case and how they should be quantified in an action on a contract implied in law. Because a significant portion of trial preparation is the presentation of evidence regarding damages, plaintiff seeks this clarification at this juncture which will greatly aid trial preparation.

The Plaintiff is a Dairy Farmer. For many years he has seen profits from Dairy operations being eaten up by the "middle man"--- milk product producers to whom he and other dairymen sell their milk.

The Cheese Plant in Thayne Wyoming has been in moth balls for several years and needed significant cleaning and upgrading of its electrical and plumbing fixtures in order to become operational. Mr. Clayson contacted the owner of the cheese plant who told him the plant was for sale and that if he wanted to put in the effort to reopen the plant they could work out something for him to buy the plant.

Mr. Clayson also cultivated a contact in the United States Department of Agriculture who assured Mr. Clayson that he could arrange government backed loans for the operation of the Plant.

Mr. Clayson, knowing that he needed partners and investors that had the financial ability and the business acumen to put the deal together and obtain the financing was introduced to defendants Zebe and Lawson as potential investors.

The parties organized an LLC, SVC, LLC that runs the cheese plant to this day with plaintiff, and defendants as members. Then plaintiff relinquished his interest in that LLC, in the agreement to purchase the cheese plant that had an appraised value of over \$4 million for only \$800,000 and all of the contacts and relationships he had developed and the business plan he had devised to make this an operational cheese plant. Plaintiff agreed to relinquish the interest he had in all of that on terms that the Court has determined were not sufficiently definite or formal to create a contract.

In its decision the Court found that plaintiff's express contract with defendants did not rise to the level of enforceability because of a lack in formality and clarity. The Court did

however determine that the circumstances were such that a Jury would have to decide whether there was a contract implied in fact or a contract implied in law. Plaintiff has no quarrel with this holding. See, Erickson v. Flynn 138 Idaho 430, 437, 64 P.3d 959, 966 (Idaho App., 2002):

Both unjust enrichment and quantum meruit are referred to as species of “quasi-contract” or implied-in-law contract, *Peavey*, 97 Idaho at 658-60, 551 P.2d at 613-15; *Hausam*, 126 Idaho at 573, 887 P.2d at 1080; *Idaho Lumber, Inc.*, 109 Idaho at 745, 710 P.2d at 655, and both may serve, as Erickson attempted to use them in this case, as an alternative basis for recovery where an alleged agreement was too indefinite to be enforced. See *Anderson*, 118 Idaho 362, 796 P.2d 1035; JOSEPH M. PERILLO, CORBIN ON CONTRACTS, § 1.20, 71-72 (1993).

This Court then went on to suggest in its ruling that the measure of damages would be limited to the value of the labor performed by Clayson in refurbishing the plant and the debts he incurred to that end. See, page 22-23 and p. 28 n. 82. Those suggestions are far too restrictive as they relate to the measure of damages in an unjust enrichment claim, and particularly as applied to the facts that plaintiff can prove in this case.

The measure of damages in a claim for unjust enrichment is the value of the benefit bestowed upon the defendant which, in equity, would be unjust for him or her to retain without compensating the plaintiff. *Idaho Lumber, Inc.*, 109 Idaho at 747, 710 P. 2d at 657. In re Estate of Boyd 134 Idaho 669, 674, 8 P.3d 664, 669 (Idaho App., 2000)

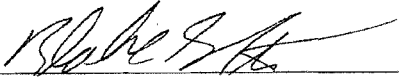
Thus the focus in this case needs to be on the benefit the defendant received. The Court’s focus on what it cost Gaylen Clayson out of pocket to put this deal together misses the essence of what the plaintiff gave up and the benefit defendants received. Plaintiff was not giving the defendants a piece of land with a building on it. Instead he was conveying to defendants a business plan, the raw resources to carry it out, and the contacts and relationships, with Morris Farinella, with Val Pendleton, the broker, with the department of Agriculture, with milk producers, and with cheese brokers, necessary to make it happen. While the out of pocket expenses of the Plaintiff help to measure a part of that benefit, it is only a miniscule part.

Focusing solely on the value of the improvements and refurbishment Plaintiff put into the plant is like telling a plaintiff who sold an antique car to a friend that he could recover the cost of the paint job, but that the car and the value the paint job added to the antique car was not recoverable. That obviously would not be fair. Likewise in this case, Gaylen Clayson was able to get the Cheese plant under contract for only \$800,000. He was able to get it under contract for that price because of the work he had done and the relationship that he had developed with Morris Farinella and the broker Val Pendleton. Defendants could not have contracted to purchase the Plant for that amount. Indeed, Don Zebe was unable to purchase the plant at any cost because of his poor relationship with the parties involved. Jeff Randall deposition at Page 39. Plaintiff has evidence to show that the value of the Plant and equipment he delivered to the defendants exceeded \$4 million. The Trier of fact needs to determine what portion of that \$4 million in value it is just for defendants to retain without payment to the person who made it all possible for them, Gaylen Clayson.

In this case the plaintiff needs to be accorded the opportunity to present his case to the Trier of fact relating to the particular facts of this case and have the jury determine the amount of enrichment these defendants obtained from plaintiff and what portion of that enrichment it would be unjust for the defendants to retain.

Dated this 1<sup>st</sup> day of October, 2010.

**ATKIN LAW OFFICES, P.C.**

  
\_\_\_\_\_  
Blake S. Atkin  
*Attorney for the Plaintiff/Counterclaim  
Defendant*



Gary L. Cooper - Idaho State Bar #1814  
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 BY [Signature]  
 DEPUTY CLERK

*Counsel for Defendant*

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

GAYLEN CLAYSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DON ZEBE, RICK LAWSON, AND )  
 LAZE, LLC., )  
 Defendants, )  
 \_\_\_\_\_ )  
 )  
 DON ZEBE, RICK LAWSON, AND )  
 LAZE, LLC., )  
 Counterclaim Plaintiff, )  
 )  
 vs. )  
 )  
 GAYLEN CLAYSON, )  
 )  
 Counterclaim Defendants, )  
 \_\_\_\_\_ )

CASE NO. CV-2009-0002212-OC

**MEMORANDUM IN OPPOSITION TO  
 PLAINTIFF'S MOTION FOR  
 RECONSIDERATION RE; DAMAGE  
 ASPECTS OF DECISION DATED  
 SEPTEMBER 15, 2010**

**STATEMENT OF FACTS AND BACKGROUND**

Plaintiff requests this Court to reconsider its Memorandum Decision dated September 14, 2010, because it suggests "that the measure of damages would be limited to the value of the labor performed by Clayson in refurbishing the plant and the debts he incurred to that end." (Motion to

Reconsider, p. 3) Plaintiff goes on to suggest that “Plaintiff has evidence to show that the value of the Plant and equipment he delivered to the defendants exceeded \$4 million. The Trier of fact needs to determine what portion of that \$4 million in value it is just for defendants to retain without payment to the person who made it all possible for them, Gaylen Clayson.” Motion to Reconsider, p. 4)

Defendants filed a Motion *in Limine* which addresses this very issue and those arguments. The Court is, therefore referred to the Memorandum in Support of Motion *in Limine*, specifically Sections “B” at pp. 7 - 8 and “E” at pp. 16 - 19.

### **DISCUSSION OF LAW AND ARGUMENT**

#### ***I. PLAINTIFF MUST PROVE THE UNJUST ENRICHMENT WITH REASONABLE CERTAINTY***

The Plaintiff has the burden of proving the value of the unjust enrichment with reasonable certainty and failure to provide the proof necessary results in a failure of proof of unjust enrichment:

In cases of quasi-contract, such as this one, the measure of damages is not the value of the money, labor and materials supplied to increase the value of the estate, but rather the amount of enrichment which results from that money, labor and services which would be unjust for the enriched party to retain.

*Nielson v. Davis*, 96 Idaho 314, 315-316 (Idaho 1974)

Although damages need not be proven with mathematical precision, the damages, i. e., the value of any benefit unjustly received by the defendant in an action based upon unjust enrichment, must be proven to a reasonable certainty.

*Gillette v. Storm Circle Ranch*, 101 Idaho 663, 667 (Idaho 1980)

Unjust enrichment is an equitable doctrine and is inapplicable where the plaintiff in an action fails to provide the proof necessary to establish the value of the benefit conferred upon the defendant.

*Gillette v. Storm Circle Ranch*, 101 Idaho 663, 667 (Idaho 1980)

In this case, Plaintiff has not identified any expert witnesses who will testify in his case in chief<sup>1</sup>. (See Joint Pre-Trial Stipulation, §C1 at page 3 “Plaintiff intends to call the following lay witnesses and **has not identified any expert witnesses**”) Plaintiff has identified two exhibits which Defendant assumes form the basis for his claim that the “Plant and equipment he delivered to the defendants exceeded \$4 million.” (See Second Affidavit of Gary L. Cooper submitted with Motion *in Limine*, specifically Exhibit 38A to the Deposition of Clayson, Vol. II at pp. 10 - 11; Deposition of Clayson, Vol. II , pp. 274 - 275 and pp. 284 - 286) These exhibits are identified in Joint Pre-Trial Stipulation as Plaintiff’s Exhibits H (equipment appraisal by Bill Sulzer dated 9/29/08) and R (opinion of value by Val Pendleton dated January 13, 2009), neither of which have been stipulated to by Defendants. (See Exhibit List attached to Joint Pre-Trial Stipulation) Bill Sulzer has not been identified as a witness for Plaintiff and Val Pendleton has only been identified as a fact witness. (See Joint Pre-Trial Stipulation, §C1 at pp. 3 - 4)

Defendants requested Plaintiff to identify witnesses he intended to call at trial and provide a brief summary of their expected testimony in pre-trial discovery. No witness or witnesses were identified who would testify “that the value of the Plant and equipment he [Clayson] delivered to the defendants exceeded \$4 million.”<sup>2</sup> (See Second Affidavit of Gary L. Cooper submitted with Motion *in Limine*, specifically Exhibit 38A to the Deposition of Clayson, Vol. II at pp. 7 - 8) Plaintiff refused to disclose his exhibits until the Joint Pre-Trial Stipulation was being formulated. (See Second Affidavit of Gary L. Cooper submitted with Motion *in Limine*, specifically Exhibit 38A to

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<sup>1</sup>Clayson has identified two rebuttal experts, Mike Lowe and Lance Crockett (See Joint Pre-Trial Stipulation, §C1 at pp. 3 - 4)

<sup>2</sup>Clayson did disclose in discovery responses that there were appraisals valuing the property and equipment over \$4 million, but never disclosed the witnesses or documents supporting the allegation. (See Second Affidavit of Gary L. Cooper submitted with Motion *in Limine*, specifically Exhibit 38A to the Deposition of Clayson, Vol. II at p. 11)



the Deposition of Clayson, Vol. II at p. 9) This Court's pre-trial order states that expert witnesses not disclosed "in the manner and with the specificity required by IRCP 26(b)(4)(A)(I)" will be excluded. No expert witnesses supporting this theory of that defendants have been unjustly enriched to the tune of \$4 million or some part thereof have been identified or named by Plaintiff.

Any testimony that Plaintiff proposes to elicit to prove the foundation necessary to admit Plaintiff's Exhibits H and R would require qualified expert testimony, but Plaintiff has failed to name any expert witnesses for trial. Any other evidence on these issues would be speculative for a lay witness or would lack the necessary foundation. Because Plaintiff cannot meet his burden of proving an alleged \$4 million dollar value to the Plant and equipment, his Motion to Reconsider should be denied.

#### CONCLUSION

Plaintiff cannot prove that the Plant and equipment had a value of \$4 million. This claim is at the heart of his Motion to Reconsider. Since it cannot be proven, the Motion to Reconsider should be denied.

DATED this 18<sup>th</sup> day of October, 2010.

COOPER & LARSEN



---

GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of October, 2010, I served a true and correct copy of the foregoing to:

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7579 North Westside Hwy  
Clifton, ID 83228

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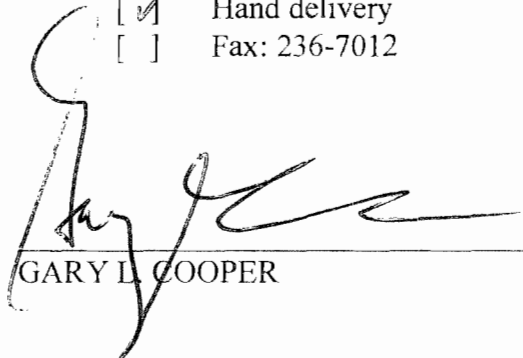
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Honorable Stephen S. Dunn  
District Judge  
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Pocatello, ID 83205

- U.S. mail
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FILED  
2010 OCT 21 AM 9:58  
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**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR  
BANNOCK COUNTY, STATE OF IDAHO**

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GAYLEN CLAYSON,

Plaintiff,

v.

DON ZEBE, RICK LAWSON, and LAZE,  
LLC,

Defendants,

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DON ZEBE, RICK LAWSON, and LAZE,  
LLC,

Counterclaim Plaintiffs,

v.

GAYLEN CLAYSON,

Counterclaim Defendant.

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**MEMORANDUM IN OPPOSITION  
TO DEFENSE  
MOTION IN LIMINE**

Case No: CV-2009-02212-OC

Judge: Stephen S. Dunn

Gaylen Clayson, a dairy farmer who has been in the milk and milk products industry all his adult life, began in February 2008 the refurbishment of the Cheese Plant in Star Valley,

Wyoming. He contacted the owner of the Cheese Plant and its accompanying restaurant and worked out an arrangement whereby he would operate the restaurant while working on cleaning and refurbishing the Cheese Plant. An understanding was reached with the owner that Mr. Clayson could do whatever was necessary in order to make the plant operational and that an agreement whereby he could buy the property would be worked out.

Mr. Clayson put in the time, cleaned up the plant and spent significant amounts of his own funds in refurbishing the plant, and incurred substantial debt in having the electrical and plumbing upgraded so that the plant would be ready to open in the fall of 2008.

On October 2, 2008, Plaintiff and Defendants Don Zebe and Rick Lawson together formed SVC, LLC, the limited liability company that would continue the work of refurbishment that Plaintiff had started, purchase the cheese plant, and eventually run the Cheese Plant. SVC, LLC, which Plaintiff helped form, runs the Cheese Plant to this day.

As earlier agreed, arrangements were made for Plaintiff to purchase the property and he entered into a contract with the owner on October 17, 2008 to purchase the property, both restaurant and Cheese Plant for \$800,000.

On November 4, 2008, Plaintiff assigned his rights to purchase the Cheese Plant to the Defendants. He also relinquished to the Defendants his interest in the operating entity, SVC, LLC.

The Court has determined that any contract between Plaintiff and Defendants relating to his transfer of his interest in the Restaurant and Cheese Plant and his interest in the operating entity is insufficiently formal and clear to be an enforceable contract. However, the Court has determined that the Plaintiff's actions in relinquishing his interest in the cheese plant and the

operating agreement could have possibly been part of a larger agreement, or that there were other, separate agreements between the parties, and Plaintiff is entitled to prove that the conduct of the parties supports the dual inference that Clayson relinquished his interests at the request of the Defendants and the Defendants promised to pay him for doing so.

The Court also found that there is no question that the Defendants benefitted from Clayson's efforts and that he is entitled, under a theory of unjust enrichment or restitution to recover the amount of enrichment which it would be unjust for Defendants to retain.

### **ARGUMENT**

#### **I. THERE IS NO BASIS FOR PROHIBITING PLAINTIFF FROM PROVING HIS CLAIMS CONCERNING THE WORK HE HIRED DAIRY SYSTEMS TO DO.**

In their Memorandum in Support of their Motion in Limine, Defendants mistakenly assert that the debt owing to Dairy Systems Company, Inc. is not the only debt which Clayson claims Laze, LLC, Don Zebe ("Zebe") and/or Rick Lawson ("Lawson") owes as part of his claim for an implied-in-fact contract or unjust enrichment. Actually, the debt to Dairy Systems is the only debt incurred by Clayson in the refurbishment of the Cheese Plant and restaurant that has not been paid by the Defendants. The rest of the debts incurred have been paid.

However, Defendants are correct that making sure that Dairy Systems got paid the substantial amounts they were owed was one of the primary motivations behind Mr. Clayson's agreement to relinquish his interest in the Restaurant and Cheese Plant. Defendants' assumption and ratification of that debt is enforceable by this Plaintiff notwithstanding the fact that Dairy Systems filed a lien foreclosure action in Wyoming.<sup>1</sup> Defendants appear to be arguing that a

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<sup>1</sup> Plaintiff is not asserting that Dairy Systems Company, Inc. can be paid twice. As with any contract, Zebe and Lawson's assumption of the contract does not relieve Clayson of the legal obligation to pay Dairy Systems

benefit is bestowed by Clayson on Defendants through his relationship with Dairy Systems only if Clayson had paid Dairy Systems in full before this litigation began.<sup>2</sup> That is not the law and would not be equitable. As this Court held in its decision on Summary Judgment:

the trier of fact could reasonably infer that Zebe, on behalf of SVC, LLC, had agreed to assume some of the debts owed by Clayson, and it is reasonably possible that Clayson assigned his rights over to the Defendants to purchase the Plant in reliance of these payments or assumptions of debt, or that a separate implied-in-fact agreement had been entered into where SVC, LLC agreed to make such payments. When Zebe stated an agreement to pay for “most of what was done while Gaylen was in charge . . . to the tune of 245K” or to pay the Dairy Systems debt . . . a question of fact arises as to the extent of that obligation, whether pursuant to an implied-in-fact contract or by way of unjust enrichment. What the nature of the agreement was, how much was agreed to be paid, and for what, are questions the jury must decide.

Memorandum Decision and Order on Defendants’ Motion for Summary Judgment at p. 21.<sup>3</sup>

None of the legal doctrines cited by Defendants in their motion would support dismissal of Plaintiff’s claims that the Defendants assumed and ratified Dairy Systems’ debt and need to be ordered by this Court to pay.

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Company, Inc. First Nat. Bank in Evanston v. Sims, 78 Idaho 286, 301 P.2d 110 (Idaho 1956). Nor does the fact that Dairy Systems has not yet sued Clayson for the debt relieve him of the legal or moral obligation to see that they are paid. And even if Clayson’s obligation to Dairy Systems is only a moral one, one who owes another a moral obligation has a sufficient right to contract with a third party to pay that obligation. McCoy v. Kregel, 52 Idaho 626, 17 P.2d 547 (Idaho 1932). Presumably, Clayson also has a legal right to force these Defendants to fulfill their obligation to Dairy Systems without that creditor having to incur the legal cost of obtaining a judgment in Wyoming.<sup>2</sup> For instance, the Defendants make the absurd argument that “Clayson did not render the service or provide the material except possibly to the extent that Clayson allegedly paid Dairy Systems \$50,000 to get the work started.” Clayson’s \$50,000 got the work started, and his contract and promise to pay Dairy Systems kept the work going. A person is entitled to compensation for the benefit he conferred on the Defendants even if he was not the only one holding a hammer and much of the work was performed by people he contracted to do the job. This argument ignores the fact that Clayson, through his relationship with Dairy Systems was able to get \$245,000 worth of work performed on the plant, preserving and protecting it and making it possible for Defendants to eventually make cheese at the plant.

<sup>3</sup> Defendants state that Clayson is a party to the Wyoming lawsuit and then make the unfounded assertion that Dairy Systems and Clayson “are united in their effort to collect the debt from the Defendants in this case.” What Defendants fail to point out is that Clayson is a party to that lawsuit only because these Defendants brought him into that action as a Third Party Defendant and refused Clayson’s offer to consolidate the two actions. See, Third Party Complaint in Wyoming case No. 2009-89-DC.

There is no quasi-estoppel or judicial estoppel applicable to the facts of this case. Even to recite the doctrine as it is quoted by Defendants on page 6 of their Memorandum in Support of Motion in Limine shows its total inapplicability to this case:

... doctrine of quasi-estoppel applies when: (1) the offending party took a different position than his or her original position, and (2) either (a) the offending party gained an advantage or caused a disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one he or she has already derived a benefit or acquiesced in. Terrazas v. Blaine County, 147 Idaho 193, 200 (Idaho 2009).

In this case, Clayson has not taken a position different in this case than the position he has taken in Wyoming. In both cases, Clayson takes the position that he contracted with Dairy Systems to perform the refurbishment work on the cheese plant and that Defendants agreed with him that in exchange for relinquishing his interest in the plant and the limited liability company that was set up by the parties to refurbish and run the plant, that the Defendants would assume that obligation. Nor is there any evidence that Defendants were disadvantaged, were induced to change positions, or that it would be unconscionable for Clayson to continue to pursue Defendants for their failure to pay Dairy Systems.

Judicial estoppel is even more remote. Before judicial estoppel is applicable, a party must, in a prior proceeding “obtain a judgment, advantage, or consideration from one party . . .” Indian Springs, LLC v. Indian Springs Land Inv., LLC, 147 Idaho 737, 748 (2009). Defendants’ Third Party Complaint in the Wyoming case was filed after this action and has not come to judgment. Moreover, even after judgment in the prior proceeding, judicial estoppel only prevents a party from taking a position contrary to the position taken in the prior proceeding in “sworn statements.” In this case, Clayson is taking the same position in this case as he took in

the “subsequently” filed third party complaint in Wyoming—namely that he contracted with Dairy Systems to confer a benefit on himself and his partners Don Zebe and Rick Lawson which they agreed to satisfy when he agreed to relinquish his interest in the plant and the LLC set up by the parties to refurbish and run the plant.

**II. PLAINTIFF CANNOT BE PRECLUDED FROM INTRODUCING EVIDENCE THAT THE PARTIES CONTEMPLATED A PARTNERSHIP EVEN IF THE COURT RULES AS A MATTER OF LAW THAT A PARTNERSHIP DID NOT EXIST.**

Interestingly, in their Motion in Limine, the Defendants point out that after the summary judgment decision by this Court, the Defendants continued to pursue discovery. Based on the facts uncovered in that discovery, this Court has the authority to review and modify its summary judgment order. See, Rule 54(b), Idaho Rules of Civil Procedure (“any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the actions as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment . . . .”)

Looking at all the evidence that now exists in the record, the Court might decide that the prudent course to follow would be to allow the fact finder to determine whether a partnership agreement existed between these parties. For instance, in the deposition of Morris Farinella for which the transcript is not yet available, Mr. Farinella testified that both Don Zebe and Gaylen Clayson told him that they were partners with regard to the cheese plant. Add to that the fact that the parties created SVC, LLC to refurbish the plant and run it and the testimony of Gaylen Clayson cited in Defendants’ Motion in Limine and it becomes compelling that the parties at least thought they had teamed up to purchase the plant, refurbish it and put it to work making



cheese. Then, Gaylen Clayson “voluntarily” relinquished his interest in the LLC, and signed over his contractual rights to purchase the cheese plant.

While the Court may determine that those facts do not technically add up to a partnership, it would be impossible to give the jury a correct feel for the actual relationship of these parties without discussing the fact that they both considered themselves and held themselves out to third parties as partners, and further, Gaylen Clayson’s decision to relinquish his interest in the business was with the understanding that it was being taken over by those he considered to be his partners.

If, after considering the new evidence the continuing discovery has produced, the Court determines that there still is not enough evidence to support a legal partnership agreement, the Court should nonetheless allow the parties to testify about their understanding of their relationship and then instruct the jury that the Court has determined that what the parties thought was a partnership does not legally equate to a partnership.

**A. Defendants’ view of “evidence” is much too narrow. Plaintiff has supported his out of pocket expenses with admissible evidence, and that evidence should go to the trier of fact.**

Defendants admit that when they asked for evidence of the out of pocket expenses Clayson incurred in refurbishing the cheese plant, he provided them with a handwritten list of the categories of expenses with the amounts that had been paid in each of those categories. In his deposition, Clayson testified that he prepared the handwritten list from receipts and other records that were kept at the cheese plant and left there when Defendants took over and to which he now does not have access. Although Clayson requested that Defendants produce those documents, they have not, to this day, been produced. Deposition transcript of Gaylen Clayson, p. 13.

In addition, Clayson provided Defendants with his credit card statements for the period during which he was living 24 hours a day at the plant. He will testify that those credit cards were used exclusively for cheese plant and restaurant expenses. Deposition transcript of Gaylen Clayson, p. 223. The statements show no purchases before the refurbishment began. Deposition transcript of Gaylen Clayson, p. 223, Plaintiff's Trial Exhibit F, sub-exhibits D, G, M, P, and U. In addition, Clayson provided Defendants with the cancelled checks that were drawn on his Star Valley Cheese account.

The concern over the \$50,000 check is a tempest in a teapot. The fact that Mr. Clayson paid \$50,000 to Dairy Systems is an undisputed fact in this case. On March 7, 2009, Mr. Zebe emailed Klark Gailey referencing the \$50,000 payment and claiming the benefit of that payment. See Plaintiff's Trial Exhibit X. The \$50,000 check to Dairy Systems and the bill from Dairy Systems that acknowledged its receipt and was an exhibit to a previous deposition in this case was faxed to Mr. Cooper the morning after the deposition. When he emailed saying the check was not legible on the fax, counsel obtained a clearer copy from the bank that was then emailed to Mr. Cooper. Similarly, the other checks that were referenced in the statements that had been produced, were obtained from the banks involved and provided to Defendants in a supplemental discovery response the next week.

Idaho Rule of Evidence 402 makes relevance the touchstone of admissibility and provides that all relevant evidence is admissible unless prohibited by the rules. Evidence that makes a material fact more or less likely is relevant. Idaho Rule of Evidence 401.

Clayson's testimony that he spent money from his checking accounts and his credit cards refurbishing the cheese plant and his handwritten recap of those expenditures created from

records that once existed and which do not now exist is the best evidence of those expenditures, is admissible, and is sufficient to support a jury verdict of the amounts so proved. Defendants' arguments might go to the weight of the evidence and might convince a jury not to award amounts to Plaintiff for which there are no current copies of the receipts, but the arguments do not make the evidence inadmissible.

**III. PLAINTIFF HAS ADMISSIBLE EVIDENCE OF THE VALUE OF THE CHEESE PLANT AT THE TIME IT WAS CONVEYED TO THE DEFENDANTS.**

Shortly after joining Gaylen Clayson in the SVC, LLC venture to refurbish and bring the Cheese plant on line, Defendants prepared a business plan for the purpose of soliciting money to purchase the cheese plant and to bring it on line. Zebe Deposition at pp. 6-11, 21-22. As part of that effort, Defendants commissioned two appraisals on the property. One was an appraisal of the plant equipment by William Sulzer, and the other was an appraisal of the real estate by the broker Val Pendleton. Mr. Sulzer appraised the equipment at \$2,760,100.00 and Mr. Pendleton appraised the plant, restaurant, and acreage at \$2,100,000.00. These appraisals were appended to the business plan and referred to in the business plan under the title of "funding." The business plan also included financial statements of SVC, LLC which represented the value of the equipment at \$1,150,000. Defendants then used the business plan with its financials and appraisals to obtain loans from the bank of at least \$1.6 million . See, Deposition transcript of Don Zebe, p.38. The business plan with its opinions of value and the loan documents, although hearsay, are admissible as exceptions to the hearsay rule.

The fact that the bank loaned substantial amounts on the plant and equipment on the basis of the business plan with its representations as to the value of the property is admissible evidence

of the value of the property. See, U.S. v. Licavoli, 604 F. 2d 613 (9<sup>th</sup> Cir. 1979) cert denied, 446 U.S. 935 (1980)(fact that insurer relied on appraisal before any litigation made appraisal reliable).

It is not true that appraisals and the like must be excluded as hearsay. The business plan with its attached financials and appraisals are business records and thus exceptions to the hearsay rule. This business plan and the appraisals were prepared in the course of SVC's attempts to obtain the financing necessary to purchase the cheese plant and was in fact used for that purpose. Zebe deposition at pp. 11-12, 21, 39-46. The copy of the appraisal we have today was kept by SVC and is the only copy of the business plan that was ever created. Zebe deposition at pp. 10-11. The business plan was assembled using information provided to Mr. Zebe by Gaylen Clayson, Val Pendleton, and William Sulzer, with the best information they had at the time. Zebe deposition at pp. 24, 39-46. It was prepared by the Defendants at a time when they were still working with the Plaintiff, [Plaintiff relinquished his interest in SVC, LLC on October 2, 2008 and entered into the contract to purchase the Cheese Plant and Restaurant on October 17, 2008 and assigned that contract to Defendants on November 4, 2008] and not for the purpose of litigation, was submitted to banks, financial institutions, and government agencies who guarantee loans, and loans were actually obtained from those institutions to purchase the Plant and restaurant. Zebe deposition at pp. 8-9, 11-14, 37. Appraisals, even when standing alone and not as part of a business record and even when offered without the presence of the appraiser, are often admitted under the business records exception to the hearsay rule, Rule 803(6), or the general exception, Rule 803(24). In fact, rule 803(6) specifically allows admission of "opinions" if found within a business record such as defendants business plan. Both exceptions apply in this

case. U.S. v. Licavoli, 604 F. 2d 613, (9<sup>th</sup> cir. 1979) cert. denied 446 U.S. 935 (1980); Selig v. U.S., 740 F. 2d 572 (6<sup>th</sup> cir. 1984); Aero Union Corp. v. U.S., 1981 WL 30814 (ct. cl. 1981). As the analysis of these cases show, the focus is on the circumstances surrounding the creation and use of the documents that indicate trustworthiness. See, Christensen v. Rice, 114 Id. 929, 763 P. 2d 302 (Ct. App. 1988)(Certain types of hearsay evidence are admissible because the circumstances behind their creation implies a high degree of veracity). The fact that an appraisal was not created for purposes of litigation is one such compelling fact that supports admissibility of the document. See, Aero Union Corp. v. U.S., 1981 WL 30814 (Ct. cl. 1981). Similarly, the fact that persons other than the proponent of the document relied on the appraisal before the litigation began is strong support for its reliability and therefore its admissibility. U.S. v. Licavoli, 604 F. 2d 613, (9<sup>th</sup> cir. 1979). In this case, Defendants relied on the appraisals in the business plan that they submitted to the bank that provided their purchase money for the cheese plant.

In addition to the business record exception, the business plan with its financials and appraisals fit cleanly in the “other exceptions” of Rule 803(24). A document is admissible under this rule if (A) it is offered as evidence of a material fact, (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purpose of the rules of evidence and the interests of justice will best be served by admission of the statement.

The values of the business that Gaylen Clayson relinquished and conveyed to Defendants is a material question in this case and the business plan, its financials and its appraisals offer cogent and reliable evidence of that material fact. The values that Defendants assigned to the

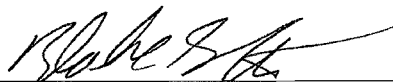
opportunity they obtained from Gaylen Clayson before the litigation was commenced is more probative of those values than any hired gun expert could provide, and because this document was created before the litigation, indeed before the falling out between the parties, was relied upon by the Defendants in attempting to procure financing, and was relied upon by the lenders in loaning over \$2,000,000.00 to the Defendants, the business plan and its values serve the purpose of the rules of evidence and the interests of justice.

**A. Evidence of Plaintiff's countless hours spent at the cheese plant and restaurant is admissible.**

The evidence from everyone involved, the Plaintiff, Morris Farinella, Jeff Randall, Klark Gailey and even the Defendants is that from about February 2008 to October 8, 2008, Gaylen Clayson lived and worked ten to 12 hours per day, six days a week at the restaurant and cheese plant. Clayson deposition at p. 120. Plaintiff testified that he considered his time to be worth about 10 to 15 dollars per hour for that work. *Id.* A jury with a pencil could deduce a total value from those figures without a chart prepared by the Plaintiff. While Defendants may argue that Plaintiffs' testimony is not believable, it is certainly admissible for the weight the jury decides to give it.

Dated this 18<sup>th</sup> day of October, 2010.

**ATKIN LAW OFFICES, P.C.**



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Blake S. Atkin  
*Attorney for the Plaintiff/Counterclaim Defendant*



COURT MINUTES

CV-2009-0002212-OC

Gaylen Clayson vs. Donald I Zebe, etal.

Hearing type: Motion

Hearing date: 10/25/2010

Time: 1:29 pm

Judge: Stephen S Dunn

Courtroom:

Court reporter: Sheila Fish

Minutes Clerk: Karla Holm

Tape Number:

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- 130 Blake Atkins; Gary Cooper;  
Def Motion to Dismiss Counterclaim; no objection; Motion is Granted; Cooper to submit Order
- 131 Def Motion to Eliminate Jury; Atkin no objection; Motion granted; proceed as Court Trial; Cooper to include in Order
- 133 Plaintiff Motion to Reconsider; Court
- 145 Atkin argument for Motion for Reconsider
- 159 Cooper argument
- 202 Atkin
- 204 Court; decision; Motion regarding damage DENIED; Cooper include decision in Order
- 206 Court; Def Motion in Limine;
- 206 Cooper-decision resolves 2, 5;



207 Court-remaining issues in Motion in Limine  
209 Atkin  
210 Cooper response  
217 Court will deal with remaining limine issues at time of trial;  
218 Atkin  
219 Court;  
220 Atkin-regarding number of trial days; 2-3 days  
220 Cooper-  
221 Court; begin 11/4/10; Thursday, 9:30 a.m.




1. IT IS HEREBY ORDERED that the Counterclaim filed by Don Zebe, Rick Lawson and LAZE, LLC is dismissed on motion of Counterclaimants which was not opposed by Counterdefendants;

2. IT IS HEREBY ORDERED that pursuant to IRCP 39(a)(2) the jury demand is dismissed because the remaining issues are equitable in nature, there is no right to a jury trial in an equitable action and judicial economy will not be served in this case by having an advisory jury;

3. IT IS HEREBY ORDERED that Plaintiff's Motion to Reconsider is denied for the reasons explained on the record at the hearing on October 25, 2010;

4. IT IS HEREBY ORDERED that the Defendants' Motion in Limine is taken under advisement and deferred until evidence is presented at trial.

DATED this 28<sup>th</sup> day of October, 2010.

  
\_\_\_\_\_  
STEPHEN S. DUNN  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of October, 2010, I served a true and correct copy of the foregoing to:

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Deputy Clerk

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*Attorney for Plaintiff/Counterclaim Defendant*

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

GAYLEN CLAYSON,

Plaintiff,

v.

DON ZEBE, RICK LAWSON, and LAZE,  
LLC,

Defendants,

DON ZEBE, RICK LAWSON, and LAZE,  
LLC,

Counterclaim Plaintiffs,

v.

GAYLEN CLAYSON,

Counterclaim Defendant.

**TRIAL BRIEF**

Case No: CV-2009-02212-OC

Judge: Stephen S. Dunn

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Gaylen Clayson is a dairy farmer. As such, he has been involved in the milk products business for many years. Over the years he has supplied milk to the Star Valley Cheese Plant when it was operated by Morris Farinella.

In the winter of 2007, Morris Farinella contacted Mr. Clayson while he was serving a mission in California. He knew from his prior business with Gaylen that he had the resources to supply the needed milk to make the cheese plant operational. He offered to help Gaylen buy the closed cheese plant. Morris and his son, Joe, would broker the cheese.

Gaylen told him that he would not be available until the spring of 2008. Mr. Farinella responded that it would take that long to clear the title to the property. In response to Mr. Farinella's invitation, Gaylen moved to the cheese plant in July 2008 and began making preparations to reopen the plant.

Gaylen operated the restaurant, cleaned up the plant and hired various people to paint the plant, upgrade the lighting, and dejunk the plant. He also contacted Dairy Systems Company, Inc. ("Dairy Systems"), a contractor with whom he had a long term relationship, and asked them to do whatever was necessary to upgrade the plumbing and electrical so that the plant could come on line as soon as possible.

Timely opening of the plant was important to Gaylen because his contract to sale his milk came up for renewal in October 2008, and if he renewed the contract it would be another year before he could shift his milk supply to the cheese plant.

Because of their long term relationship with Gaylen Clayson, Dairy Systems went to work on refurbishing the plant on an expedited basis. Each month, Dairy Systems sent its billing

to Gaylen Clayson and to Don Zebe and Rick Lawson. No objection was raised to any of the monthly billings by Gaylen Clayson, Don Zebe or Rick Lawson. In fact, at one meeting the three confirmed that they would pay Dairy Systems once their funding was obtained. \$150,000 was paid toward the bill in September, 2008, with three \$50,000 checks. Mr. Clayson told Dairy Systems that he had funded one of the checks and the other two would be funded by Mr. Zebe and Mr. Lawson. Only one of the checks cleared.

Mr. Zebe was initially introduced to Mr. Clayson to help him prepare a business plan. In the fall of 2008, Mssrs. Clayson, Zebe and Lawson agreed to work together to bring about the reopening of the cheese plant. To that end, they formed, on October 2, 2008, a limited liability company called SVC, LLC, to complete the work of refurbishing the plant and operating it to make cheese.

Then plans changed. Gaylen Clayson agreed to relinquish his interest in SVC, LLC, and his interest in the contract to purchase the cheese plant and restaurant in exchange for Defendants' agreement to pay the debts Gaylen had incurred, including the Dairy Systems' debt, reimbursement of Clayson's out of pocket expenses, and payment of \$500,000.

The court has ruled that the agreement between Clayson and Defendants was not sufficiently formal to be enforceable at law, but that in this case "there is no question that the Defendants benefitted from Clayson's refurbishment efforts and expenses," that included "Clayson's out of pocket expenses and labor, and the debts that Clayson incurred in an effort to refurbish the Plant." The court ruled that "conflicting evidence in this case demonstrates that the assignment of Rights Contract could have possibly been part of a larger agreement, or that there

were other, separate agreements between the parties, thus not precluding the claims of an implied in fact and/or implied in law contract.”

## **LEGAL ISSUES LIKELY TO ARISE**

### **I. EVIDENTIARY ISSUES**

#### **Admissibility of SVC, LLC business plan, Plaintiff’s Trial Exhibit I.**

In pretrial procedures, the admissibility of the business plan came up in the context of proving the value of the Cheese Plant and equipment Gaylen Clayson conveyed to the Defendants, appraisals for which were included in the business plan. The Court ruled that those values were not an issue in the case. The business plan is needed by the Plaintiff for other purposes however, and Plaintiff anticipates that Defendants will continue to object to its admission. Plaintiff therefore provides the Court with the following explanation of the law of hearsay and why the business plan is not hearsay and thus admissible.

Don Zebe wrote the business plan, Zebe deposition transcript at p. 5. By definition, this business plan and the statements it makes about the relationship of the parties, written by Mr. Zebe, a party opponent, is not hearsay. Rule 801(d)(1)(2) (A) provides that “A statement is not hearsay if . . . . The statement is offered against a party and is (A) the party’s own statement, in either an individual or representative capacity . . . .”

Don Zebe, who prepared the business plan which was submitted to the bank for the purpose of obtaining financing, included in that business plan discussions about his relationship with Gaylen Clayson such as the fact that SVC, LLC, of which Mr. Clayson was a member during the time the business plan was being prepared, was the entity that would complete the



refurbishment of the plant that had been started by Mr. Clayson, Exhibit I at 4, that “the facility has and is undergoing cosmetic and physical renovations. To include but not limited to: an electrical retrofit of the plant, resurfacing floors, plastering of walls, cleaning, removal of old equipment, maintenance, repairs and painting.” Exhibit I at 6. The business plan sets out that “Ninety percent of the electrical retrofit has been completed at a cost of \$225,000.00 which has been paid by the principles of SVC, LLC.” Exhibit I at 6. (emphasis added). Finally the business plan sets out that Gaylen had committed the entire production of his dairy to the Cheese Plant, Exhibit I at 6.

No doubt, Mr. Zebe will try to distance himself from his own admissions made in the business plan by suggesting that much of the information came from Mr. Clayson or other sources. Those arguments will not prevent the admission of the business plan however, because rule 801(d)(1)(2)(B) of the Idaho Rules of Evidence provides that “A statement is not hearsay if . . . The statement is offered against a party and is a statement of which the party has manifested an adoption . . . .”

White Industries, Inc. v. Cessna Aircraft Company, 611 F.Supp 1049 (W.D. Mo. 1985), discusses when a party’s use of a document represents that party’s intended assertion of the truth of the information contained in that document and therefore an adoptive admission can be found. While the White case relied on the Federal Rules of Evidence, Rule 801(d)(2)(B) of the Idaho Rules is the same as the corresponding federal rule. The White court points out that while it may be difficult to find adoption when “the document (or information from it) is merely used in some internal fashion by the party”, Id. at 1063, “there is no doubt that where a party’s use of a

document supplied by another in fact represents the party's intended assertion of the truth found in the information therein, an adoptive admission can be found." Id. at 1063.

Don Zebe prepared the business plan. Depo. of Don Zebe at p. 5. One of the purposes of writing a business plan is to convince lending institutions to lend you money. Depo. of Don Zebe at p. 21. Mr. Zebe provided the business plan to the lending institutions that Defendants were seeking to borrow the money from, including Citizens Community Bank. Depo. of Don Zebe at pp. 11-12. Defendants ultimately borrowed at least \$1.6 million from Citizens Community Bank as a result of the business plan submitted previously. Depo. of Don Zebe at p. 38.

By submitting that business plan to the bank for the purpose of obtaining financing, which they did obtain in the amount of at least \$1.6 million, Depo. of Don Zebe at p. 38, Defendants can not now claim that the business plan is hearsay and cannot be admitted. This information is admissible because the admission of a party opponent is not hearsay under Idaho Rule of Evidence 801(d)(2)(B).

**Admissibility of Summary of Expenses with backup documents, Plaintiff's Trial Exhibit F.**

Defendants have indicated their objection to the admissibility of Plaintiff's Exhibit F based on Idaho Rule of Evidence 1006, which states:

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

Exhibit F consists of a summary of Gaylen Clayson's out of pocket expenses incurred while working on the Cheese Plant as well as supporting documentation, to the extent that documentation is available to Mr. Clayson at this point. While Plaintiff acknowledges that only some, but not all of the supporting documents are attached to Exhibit F, the rule only requires that, as in cases such as this where Exhibit F is a summary of Mr. Clayson's out of pocket expenses, that the documents be made available to the other parties.

The summary which constitutes the first page of Exhibit F was prepared by Gaylen Clayson during the time that he still had access to all the supporting documents at the Cheese Plant offices and are documents which were maintained by Mr. Clayson in the ordinary course of business. Since the time that the summary page was created by Mr. Clayson, he no longer has access to all of the supporting documents; those documents are now in the sole control of Defendants since he left and turned control of the property over to Defendants on October 8, 2008. Defendants have never produced those documents to Plaintiff.

Considering that Defendants are the sole party with access to the remaining documents which provide support for Exhibit F, if in fact those documents still exist, it is very disingenuous for Defendants to now object to this Exhibit F based on Rule 1006. Defendants are the only party with control over those documents, not Plaintiff.

Exhibit F is thus both admissible under both Idaho Rule of Evidence 1006 and Rule 803(6) as a summary of documents kept in the ordinary course of business and prepared in the ordinary course of business before there was any litigation between these parties.

## **II. SUBSTANTIVE LEGAL ISSUES**

The fundamental legal principles governing this case were set out in the Court's memorandum decision as follows:

### **Implied-in-fact Contract**

“An implied in fact contract is defined as one where the terms and existence of the contract are manifested by the conduct of the parties with the request of one party and the performance by the other often being inferred from the circumstances attending the performance.” Farnworth v. Femling, 125 Idaho 283, 287, 869 P.2d 1378, 1382 (1994) (citing Clements v. Jungert, 90 Idaho 143, 153, 408 P.2d 810, 815 (1965)). “The general rule is that where the conduct of the parties allows the dual inferences that one performed at the other's request and that the requesting party promised payment, then the court may find a contract implied in fact.” Homes by Bell-Hi, Inc. v. Wood, 110 Idaho 319, 321, 715 P.2d 989, 991 (1986) (citing Clements v. Jungert, 90 Idaho 143, 153, 408 P.2d 810, 815 (1965); Bastian v. Gafford, 98 Idaho 324, 325, 563 P.2d 48, 49 (1977)).

Fox v. Mountain West Elec., Inc., 137 Idaho 703, 708, 52 P.3d 848, 853 (2002).

### **Implied-in-law Contract**

Unjust enrichment, or restitution, is the measure of recovery under contract implied in law. Barry v. Pacific West Const., Inc., 140 Idaho 827, 834, 103 P.3d 440, 447 (2004). “A contract implied in law... ‘is not a contract at all, but an obligation imposed by law for the purpose of bringing about justice and equity without reference to the intent of the agreement of the parties...’” *Id.* The measure of recovery on an unjust enrichment claim “is not the actual amount of the enrichment, but the amount of enrichment which, as between two parties it would be unjust for one party to retain.” Beco Constr. Co., Inc. v. Bannock Paving Co., Inc., 118 Idaho 436, 466, 797 P.2d 863, 866 (1990). The plaintiff has the burden of proving that the defendant received a benefit and of proving that amount of the benefit which defendant unjustly retained. Blaser v. Cameron, 121 Idaho 1012, 1017, 829 P.2d 1361, 1366 (Ct.App.1992). “The value of services rendered can be used as evidence of the value of the benefit bestowed under the theory of unjust enrichment.” *Id.* “Although damages need not be proven with mathematical precision, the damages, i.e., the value of any benefit unjustly received by the defendant in an action based upon unjust enrichment, must be proven to a reasonable certainty.” Gillette v. Storm Circle Ranch, 101 Idaho 663, 667, 619 P.2d 1116, 1120 (1980).

Gray v. Tri-Way Const. Services, Inc., 147 Idaho 378, 388-89, 210 P.3d 63, 73-74 (2009).

Some of the substantive legal issues that will be presented by the facts Plaintiff will put into evidence will include whether there were implied in fact or implied in law contracts between the Plaintiff and the Defendants whereby Defendants manifested by their conduct, or Clayson manifested by the nature of his performance, that Defendants would reimburse him for the value of his efforts at restoration and refurbishment of the restaurant and cheese plant, and whether Defendants assumed the debts Clayson incurred in that process including the credit card debts and the Dairy Systems' debt and whether they ratified the Dairy Systems debt. Some legal principles relating to those issues are set out below:

A corporation, like a natural person, can ratify any act it can perform. Rowley v. Stock Gibbs Lumber Co., 19 Idaho 107, 112 P. 1041 (Id. 1916). Ratification is the affirmance by a person of a prior act which did not bind him whereby the act as the some or all persons, is given effect as if originally authorized by him. The essence of ratification is manifestation of a mental determination to affirm the act, and this may be manifested by written word or by spoken word or by conduct, or may be inferred from known circumstances and acts in relation thereto. The essence of ratification is a manifestation of intent to approve or sanction an act operating with knowledge of all material facts. Manning v. Twin Falls Clinic & Hosp., 122 Id. 47, 830 P. 2d 1185 (1992).

It is anticipated that Defendants will claim that the debt to Dairy Systems was pursuant to a contract between Clayson and Dairy Systems of which they were not a party. Plaintiff believes the evidence will show that Defendants, both by word and by deed affirmed the debt to Dairy

Systems after being fully informed about the amount of the Dairy Systems debt and after being on site for several months to observe the work done. It is Plaintiff's position that those acts and words of the Defendants affirmed the Dairy Systems contract and that they would pay it once their funding was obtained.

Plaintiff anticipates that Defendants will try to say that they only ratified the Dairy Systems contract to the extent of "work we can use." It is Plaintiff's position that a Court of equity should reject the notion that Defendants were free to pick and choose what efforts on the part of Clayson they would pay for and those for which they would not reimburse. A party cannot ratify only a part of an agreement. Honesty and fair dealing require him to stand by the contract "in toto." Henry Gold Mining Co v. Henry, 25 Idaho 333, 137 P. 523 (Id. 1913).

The evidence will show that although Dairy Systems provided Mr. Clayson and the Defendants with monthly statements setting out the amount of their bill, Mr. Clayson never objected to the bills, and six months went by, with ongoing discussions about Dairy Systems finishing the work and Defendants manifesting their intent to make payment once their funding was available. During that entire time, Defendants did not make any objection to the Dairy Systems bills. In fact, \$150,000 in payments was made during that period, although only \$50,000 of the payment cleared the bank. A party can ratify a contract by remaining silent about the matter for several months after full knowledge of all the facts. Henry Gold Mining Co v. Henry, 25 Idaho 333, 137 P. 523 (Id. 1913).

A contract entered into when a party did not have authority to contract can be ratified after authority arises. Indian Cove Irrigation Dist v. Prideaux, 25 Id. 112, 136 P. 618 (Id. 1913).

The vender (purchaser) under an executory contract for the sale of land is the beneficial owner of the land. Walker v. Nunnenkamp, 84 Id. 485, 373 P. 2d 559 (1962). The evidence will show that the acts of ratification and assumption described above occurred while Gaylen Clayson and/or Defendants were the beneficial owners of the property under oral and/or written contracts that Defendants eventually closed upon.

### **III. INADMISSIBILITY OF DEFENDANTS EXPERT EVIDENCE**

Plaintiff will object at trial to admission of Defendant's expert evidence on two grounds. First, that the experts were not timely designated to testify at this trial. And secondly, that the expert evidence is not relevant to any facts in this case.

#### **A. Defendants' expert witnesses were not timely designated.**

Defendants will argue that the expert witnesses were timely designated because they were identified in a disclosure of witnesses to be used at trial filed 30 days before trial pursuant to the Courts' order that a final witness list be provided by that time. The problem with Defendant's approach is that in preparation for the first trial setting defendants provided plaintiffs with a list of their witnesses. See, Pretrial Stipulated Statement attached hereto as Exhibit A. Unless we are returning to trial by ambush, having provided that list of witnesses for the first trial setting, it was incumbent on Defendants that if they were going to use additional expert witnesses, to notify Plaintiff of that fact while discovery was ongoing and well in advance of the final witness list.

After learning of the new experts, Plaintiff informed Defendants that he would object to their use at trial, and designated potential rebuttal experts—Mike Lowe and Lance Crockett to be

used by Plaintiff in the event the Court were to allow use of Defendants experts. See Joint Pre-Trial Stipulation at p. 4.

**B. Defendants' expert evidence is not relevant given the facts of this case.**

In order to be admissible, evidence must be relevant to a material fact in the case. Rules 401 and 402 of the Idaho Rules of Evidence.

A perusal of Defendants expert designations shows that Defendants intend to challenge the value of the Dairy Systems work in an attempt to justify their position that they are entitled to renegotiate the Dairy Systems debt rather than fulfill Mr. Clayson's expectation that they would discharge that debt. Under time honored principles of law, they cannot be allowed to do that leaving Mr. Clayson to deal with the aftermath.

As set out above, honesty and fair dealing require them to stand by the contract "in toto". Henry Gold Mining Co v. Henry, 25 Idaho 333, 137 P. 523 (Id. 1913). In addition, when there is a document, a writing, which exhibits the state of account between parties and the balance owed one to the other, and when assented to, either expressly or impliedly, it becomes a new contract. There must be some form of assent to the account that is a definite acknowledgement of an indebtedness in a certain sum. Shaw v. Lobe, 58 Wash. 219, 108 P. 450, 451 (1910). Assent must appear in some form. *Id.* In some circumstances, assent may be inferred from a failure to timely object when a statement is rendered by one party to another. Argonaut Ins. Cos. v. Tri-West Constr., 107 Idaho 643, 691 P.2d 1258 (Ct.App.1984); Meagher v. Kavli, 251 Minn. 477, 88 N.W.2d 871 (1958); 15 S. WILLISTON ON CONTRACTS § 1863. Also, a debtor may show assent by making a part payment on the account. Richey v. Pedersen, 100 Cal.App.2d 512,

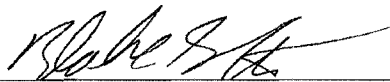


224 P.2d 100, 105 (1950). Modern Mills, Inc. v. Havens, 112 Idaho 1101, 739 P. 2d 400 (1987).

The evidence will leave little doubt that Defendants intended to step into the shoes of Mr. Clayson—at least as to some of the work performed and materials supplied, and with respect to the \$50,000 that Mr. Clayson paid. Plaintiff believes that the evidence will show that Defendants, through their silence and through affirmative manifestation of intent to pay the Dairy Systems debt once they obtained their funding and closed on the purchase of the plant, left little doubt in the minds of the people they were dealing with, both Mr. Clayson and Dairy Systems, that they had assumed that debt. Under principles of equity they are now precluded from attempting to assume only a portion of that debt.

Dated this 28<sup>th</sup> day of October, 2010.

**ATKIN LAW OFFICES, P.C.**



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Blake S. Atkin

*Attorney for the Plaintiff/Counterclaim Defendant*



# Exhibit A

Blake S. Atkin ISB# 6903  
7579 North Westside Highway  
Clifton, Idaho 83228  
Telephone: (208) 747-3414

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*Attorney for Plaintiff/Counterclaim Defendant*

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

GAYLEN CLAYSON,

Plaintiff,

v.

DON ZEBE, RICK LAWSON, and LAZE,  
LLC,

Defendants,

DON ZEBE, RICK LAWSON, and LAZE,  
LLC,

Counterclaim Plaintiffs,

v.

GAYLEN CLAYSON,

Counterclaim Defendant.

**PRETRIAL STIPULATED  
STATEMENT**

Case No: CV-2009-02212-OC

Judge: Stephen S. Dunn

Pursuant to the Court's Order, the parties through, counsel of record, hereby submit the following joint Pre-Trial Stipulated Statement:

(A) All exhibits to be offered at the trial have been provided to all other parties. Plaintiff's Exhibit list is attached hereto. Defendant's exhibit list is attached hereto. Plaintiff's objections to Defendants' exhibit list is attached hereto. Defendants' objections to Plaintiff's exhibit list is attached hereto. Except as objected to, the parties have stipulated to the admission of the exhibits.

(B) Plaintiff does intend to offer some evidence via deposition, answers to admissions and answer to interrogatories. The deposition testimony and answers to admissions and to interrogatories will be read to the jury.

(C) Plaintiff's witnesses shall be:

1. Gaylen Clayson, c/o Atkin Law Offices, P.C. 837 South 500 West, Suite 200, Bountiful, Utah 84010. Mr. Clayson is the Plaintiff in this matter and has personal knowledge of all facts in this matter.
2. Jeff Randall, 117 W. 475 S., Pingree, Idaho 83262.
3. Don Zebe, 132 S. Main Street, Thayne, Wyoming 83127. Mr. Zebe is a named Defendant in this matter in addition to being a member of Laze, LLC.
4. Rick Lawson, 132 S. Main Street, Thayne, Wyoming 83127. Mr. Lawson is a named Defendant in this matter in addition to being a member of Laze, LLC.
5. Morris Farinella, c/o Atkin Law Offices, P.C. 837 South 500 West, Suite 200, Bountiful, Utah 84010.
6. Joe Farinella.
7. Val Pendelton, 15 Cedar Creek Road, Thayne, Wyoming 83127.
8. John E. Gailey, c/o Atkin Law Offices, P.C. 837 South 500 West, Suite 200,

Bountiful, Utah 84010.

9. Klark Gailey, c/o Atkin Law Offices, P.C. 837 South 500 West, Suite 200, Bountiful, Utah 84010.

Defendant's witnesses shall be:

1. Don Zebe, 132 S. Main Street, Thayne, WY 83127. Don is a member of Laze, LLC and has knowledge regarding all facts in this matter.
2. Rick Lawson, 132 S. Main Street, Thayne, WY 83127. Rick is a member of Laze, LLC and has knowledge regarding all facts in this matter.
3. Bill Sulzer, Statco Engineering, 2500 Decker Lane Blvd., Salt Lake City, Utah 84119-2055, 801 975-0102. Mr. Sulzer is familiar with plant, equipment and value of equipment. Mr. Sulzer had conversations with Mr. Clayson and has knowledge about when the cheese plant could make cheese.
4. Viking Machine and Design, Inc., 1408 Viking Lane, De Pere, Wisconsin 54115. Mr. Clayson contracted with Viking to do work but did not pay for the work.
5. Homestead Log Home Builders, 73 Pine Dr., Thayne, WY 83127, 307 883-5416. Homestead Log Home Builders is owed money by Gaylen Clayson. Mr. Clayson wrote them a check which was returned for insufficient funds.
6. Keith Remalong, Idaho Falls, ID, 208 351-3963. Mr. Clayson owes Mr. Remalong money.
7. Thayne True Value Hardware, 120 Petersen Parkway, Thayne, WY 83127, 307 883-2464. Mr. Clayson owes money to True Value Hardware.
8. Snyders Rustic Inn, 473 North Main Street, Thayne, WY 83127, 307 883-2490.

- Snyders Rustic Inn had business dealings with Mr. Clayson.
9. Tony's Glass, 190 Osmond Street, Thayne, WY 83127, 307 883-2490. Mr. Clayson owes money to Tony's Glass.
  10. John Holman, Fire Safety, Pocatello, ID. Mr. Clayson wrote a check to Fire Safety which was returned for insufficient funds and owes Fire Safety money.
  11. Key Bank, Bart Brown, 15 North Ask Street, Blackfoot, ID 83221-2101, 208 785-2100 ext. 5. Has worked with Mr. Clayson for banking and loan purposes.
  12. Suburban Propane, Anthony Owens, 1355 Gregory Lane, Jackson, WY 83001, 307 733-3628. Mr. Clayson represented to Suburban Propane that he was the owner of the cheese plant and incurred a large bill for propane which Mr. Clayson never paid.
  13. Reed Dairy, Allen Reed, Twin Falls, ID, 208 681-2836. Mr. Clayson owes money to Reed Dairy for product ordered by Mr. Clayson for the restaurant. Mr. Clayson admitted to Mr. Reed that Mr. Clayson owes Reed Dairy money for product delivered to the Star Valley Cheese Factory/Restaurant rather than the debt being owed by the Defendants.
  14. Glacier Foods, 695 West 1800 North, Logan, UT 84321, 435 752-2249. Mr. Clayson owes money to Glacier Foods for product ordered by Mr. Clayson for the restaurant.
  15. Julie Haws. Upon information and belief, Mrs. Haws is Mr. Clayson's accountant.
  16. Sysco Foods, Attn: Kevin, 5710 Pan Am Avenue, Boise, ID 83716, 208 345-9500. Mr. Clayson owes money to Sysco for product ordered by Mr. Clayson for the restaurant.
  17. Louis Steven, GS Metal, 720 261-7070. Mr. Stevens owns a business which

purchased scrap metal from the Star Valley Cheese Plant from Gaylen Clayson. Mr. Clayson required that Mr. Stevens pay Mr. Clayson in cash.

18. Idaho Material Handling, Inc., 4800 North Yellowstone Highway, Idaho Falls, ID 83401-1300, 208 529-2322. Mr. Clayson owes this business money stemming from Mr. Clayson's involvement with the cheese plant.

19. Karen Schneider, Wyoming Department of Labor, 246 S. Center Street, Casper, WY 82602, 307 473-3807. Works for Wyoming Department of Labor. Has knowledge of Mr. Clayson's dealings and reputation. Complaints were filed with her against Mr. Clayson.

20. Silver Star Communications, 104101 Highway 89, Freedom, WY 83120, 307 883-2411. Mr. Clayson owes this business money stemming from Mr. Clayson's involvement with the cheese plant.

21. Alsco, 542 Dewey Street, Blackfoot, ID 83221-3558, 208 785-3000. Mr. Clayson owes this business money stemming from Mr. Clayson's involvement with the restaurant.

22. JW Electrical, Jackson, WY. Mr. Clayson owes this business money stemming from Mr. Clayson's involvement with the cheese plant.

23. Roger Worrick, Aurora, Colorado. Mr. Clayson owes this business money stemming from Mr. Clayson's involvement with the cheese plant.

24. Bird Welding & Repair, Bedford, WY 83112, 307 883-3339. Mr. Clayson owes this business money stemming from Mr. Clayson's involvement with the cheese plant.

25. Waxie Sanitary Supply, 5107 W. 1730 S., Salt Lake City, UT 84120, 801 886-3700.



Mr. Clayson owes this business money stemming from Mr. Clayson's involvement with the cheese plant.

26. Tracy Cook, Freedom Refrigeration, 102891 Highway 89, Freedom, WY 83120, 307 883-2212. Mr. Clayson owes this business money stemming from Mr. Clayson's involvement with the cheese plant.

27. Dairy Systems Company, Inc., 4004 North Highway 91, Hyde Park, Utah 84318. Mr. Clayson contracted with Dairy Systems Company, Inc. to perform work in plant, but failed to pay for the work.

28. Rosio Gonzales/Urquiza, Thayne, WY. Employee of restaurant when Mr. Clayson ran the restaurant.

29. Linda Gonzales, Idaho Falls, Idaho. Employee of restaurant when Mr. Clayson ran the restaurant.

30. Josh Flud, Thayne, WY 83127, 307 883-2710. Mr. Flud was an employee at plant while Mr. Clayson was involved at the cheese plant. Mr. Flud also has knowledge regarding the whey dryer that Mr. Clayson sold for scrap metal and the ice cream machine.

31. Val Pendelton, 15 Cedar Creek Rd, Thayne, WY 83127, 307 883-8000. Mr. Pendelton was the realtor involved in the sale of the cheese plant and restaurant.

32. Tami Luthi, Freedom, WY 83120. Employee of restaurant when Mr. Clayson ran the restaurant.

33. Heidi McMurdo, Afton, WY 83110. Employee of restaurant when Mr. Clayson ran the restaurant.

34. Carrie Artigo, Freedom, WY 83120. Employee of restaurant when Mr. Clayson ran the restaurant.
35. Jeff Randall, 117 W. 475 S., Pingree Idaho 83262, 208 681-5849. Mr. Randall was the co-buyer with Gaylen Clayson on the contract to purchase the plant and restaurant. He has information regarding the circumstances surrounding the assignment and any agreements in relation thereto. He also has knowledge of Mr. Clayson through business dealings with Mr. Clayson.
36. Art Poulsen, Idaho Falls, Idaho. Mr. Clayson attempted to sell the ice cream machine to Mr. Poulsen.
37. Amy Eastwood, Alpine, WY. Employee of restaurant when Mr. Clayson ran the restaurant.
38. Ted Bingham, Utah. Knows Mr. Clayson and has done business with Mr. Clayson.
39. Don Jensen, Dairy Farmers of America, 1140 South 3200 West, Salt Lake City, UT 84101-4561, 801 977-3000. Knows Mr. Clayson and has done business with Mr. Clayson.
40. Mark Pitman, Texas. Partner of Mr. Clayson who worked with Mr. Clayson at the cheese factory.
41. Max and Rodney Nichols, Eastern Idaho, 208 624-7277. Dairy farmers who have done business with Mr. Clayson.
42. Cache Valley Bank, Brad Peterson, 1710 North Main, Logan, UT 84341, 435 753-3020. Has worked with Mr. Clayson for banking and loan purposes.
43. Todd Feld, Sandy, Utah. Knows Mr. Clayson and has done business with Mr.

- Clayson.
44. Jody Gardener, Lincoln County Sheriff's Office, 421 Jefferson, Suite 300, Afton, WY 83110, 307 885-5231. Mr. Gardener investigated the theft of the ice cream machine. He interviewed Mr. Clayson, Art Poulsen, and Morris Farinella.
  45. Morris Farinella, Star Valley Cheese, 6180 Alcoa Ave, Vernon, CA 90058. Mr. Farinella was the owner of the cheese plant through his company, Star Valley Cheese while Mr. Clayson worked at the plant. Mr. Farinella has information regarding what Gaylen Clayson was authorized to do with respect to the plant and restaurant.
  46. Bank of Star Valley, 113 Peterson Parkway, Thayne, WY 83127, 307 883-0000. Mr. Clayson had an account with this bank.
  47. Lowell Carlson, Firth, ID. Mr. Carlson has had business and other dealings with Mr. Clayson.
  48. Merita Morgan, Southeast Idaho. Mr. Morgan has had business and other dealings with Mr. Clayson.
  49. Ken Olson, Eastern Idaho. Mr. Olson has had business and other dealings with Mr. Clayson.
  50. Mont Howard, Shelley. Mr. Howard has had business and other dealings with Mr. Clayson.
  51. Craig Johansen, Shelley. Mr. Johansen has had business and other dealings with Mr. Clayson.
  52. Frank Vandersloot, Idaho Falls, ID. Mr. Vandersloot has had business and other dealings with Mr. Clayson.

Plaintiff objects to Defendant's witnesses as follows:

1. Viking Machine and Design, Inc., 1408 Viking Lane, De Pere, Wisconsin 54115.

Mr. Clayson contracted with Viking to do work but did not pay for the work.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

2. Homestead Log Home Builders, 73 Pine Dr., Thayne, WY 83127, 307 883-5416.

Homestead Log Home Builders is owed money by Gaylen Clayson. Mr. Clayson wrote them a check which was returned for insufficient funds.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

3. Keith Remalong, Idaho Falls, ID, 208 351-3963. Mr. Clayson owes Mr. Remalong money.

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that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

4. Thayne True Value Hardware, 120 Petersen Parkway, Thayne, WY 83127, 307 883-2464. Mr. Clayson owes money to True Value Hardware.

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5. Snyders Rustic Inn, 473 North Main Street, Thayne, WY 83127, 307 883-2490. Snyders Rustic Inn had business dealings with Mr. Clayson.

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7. John Holman, Fire Safety, Pocatello, ID. Mr. Clayson wrote a check to Fire Safety which was returned for insufficient funds and owes Fire Safety money.

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8. Julie Haws. Upon information and belief, Mrs. Haws is Mr. Clayson's accountant.

- Objection. Plaintiff objects to this witness on the ground that its testimony would violate the accountant/client privilege and would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

9 Idaho Material Handling, Inc., 4800 North Yellowstone Highway, Idaho Falls, ID 83401-1300, 208 529-2322. Mr. Clayson owes this business money stemming from Mr. Clayson's involvement with the cheese plant.

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- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

12. Tami Luthi, Freedom, WY 83120. Employee of restaurant when Mr. Clayson ran the restaurant.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

13. Heid. McMurdo, Afton, WY 83110. Employee of restaurant when Mr. Clayson ran the restaurant.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

14. Carrie Artigo, Freedom, WY 83120. Employee of restaurant when Mr. Clayson ran the restaurant.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because



"its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

15. Jeff Randall, 117 W. 475 S., Pingree, Idaho 83262, 208 681-5849. Mr. Randall was the co-buyer with Gaylen Clayson on the contract to purchase the plant and restaurant. He has information regarding the circumstances surrounding the assignment and any agreements in relation thereto. He also has knowledge of Mr. Clayson through business dealings with Mr. Clayson.

16. Art Poulsen, Idaho Falls, Idaho. Mr. Clayson attempted to sell the ice cream machine to Mr. Poulsen.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

17. Amy Eastwood, Alpine, WY. Employee of restaurant when Mr. Clayson ran the restaurant.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice,

confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

18. Ted Bingham, Utah. Knows Mr. Clayson and has done business with Mr. Clayson.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

19. Don Jensen, Dairy Farmers of America, 1140 South 3200 West, Salt Lake City, UT 84101-4561, 801 977-3000. Knows Mr. Clayson and has done business with Mr. Clayson.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

20. Mark Pittman, Texas. Partner of Mr. Clayson who worked with Mr. Clayson at the cheese factory.

21. Max and Rodney Nichols, Eastern Idaho, 208 624-7277. Dairy farmers who have done business with Mr. Clayson.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

22. Cache Valley Bank, Brad Peterson, 1710 North Main, Logan, UT 84341, 435 753-3020. Has worked with Mr. Clayson for banking and loan purposes.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

23. Todd Feld, Sandy, Utah. Knows Mr. Clayson and has done business with Mr. Clayson.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

24. Jody Gardener, Lincoln County Sheriff's Office, 421 Jefferson, Suite 300, Afton, WY 83110, 307 885-5231. Mr. Gardener investigated the theft of the ice cream machine. He interviewed Mr. Clayson, Art Poulsen, and Morris Farinella.

25. Morris Farinella, Star Valley Cheese, 6180 Alcoa Ave, Vernon, CA 90058. Mr. Farinella was the owner of the cheese plant through his company, Star Valley Cheese while Mr. Clayson worked at the plant. Mr. Farinella has information regarding what Gaylen Clayson was authorized to do with respect to the plant and restaurant.

26. Bank of Star Valley, 113 Peterson Parkway, Thayne, WY 83127, 307 883-0000. Mr. Clayson had an account with this bank

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

27. Lowell Carlson, Firth, ID. Mr. Carlson has had business and other dealings with Mr. Clayson.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay,

waste of time, or needless presentation of cumulative evidence.”

28. Merlin Morgan, Southeast Idaho. Mr. Morgan has had business and other dealings with Mr. Clayson.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

29. Ken Olson, Eastern Idaho. Mr. Olson has had business and other dealings with Mr. Clayson.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

30. Mont Howard, Shelley. Mr. Howard has had business and other dealings with Mr. Clayson.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because

"its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

31. Craig Johansen, Shelley. Mr. Johansen has had business and other dealings with Mr. Clayson.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

32. Frank Vandersloot, Idaho Falls, ID. Mr. Vandersloot has had business and other dealings with Mr. Clayson.

- Objection. Plaintiff objects to this witness on the ground that its testimony would be irrelevant to the matter before the Court and even if the Court should determine that it might be relevant, Plaintiff objects under Idaho Rule of Evidence 403, because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

(D) Nature of the claims:

Plaintiff claims that the Defendants breached a contract they had with him to purchase his interest in a partnership between himself and Defendants or to purchase an

opportunity he had developed to buy the Cheese Plant in Thayne, Wyoming. The terms of that purchase were that Defendants would pay Plaintiff \$500,000.00, would reimburse Plaintiff's out of pocket expenses, would assume and pay the debts Plaintiff had incurred in preparing the plant to reopen, and would agree to take his production of milk from his dairy at class III prices.

Defendants breached the contract by failing to do any of the things they agreed to do.

In the event Defendants claim that they do not have a contract with the Plaintiff as set out above, then Plaintiff claims that the Defendants are indebted to him for the value of the opportunity that he conveyed to them, the benefit of which they appreciated and accepted, under equitable doctrines of quantum meruit and contract implied in fact and law. The plaintiff will prove that the value of that opportunity was as least \$2,700,000.

- E. [John: I do not believe we have met the requirement of this paragraph that the parties in good faith try to settle. Call me.]
- F. At the date of this stipulation, Plaintiff is still awaiting production of documents from the Defendants and is yet to complete the noticed depositions of the Defendants. Otherwise discovery is complete.
- G. Issues of fact and law to be litigated:

Whether there was a contract between Plaintiff and Defendants for Defendants to purchase Plaintiff's interest in the partnership or in the opportunity to purchase the Cheese Plant for \$500,000.00, take over debts, reimburse Plaintiff's out of pocket expenses, and take Plaintiff's production of milk. Plaintiff has the burden of proof on this issue.

Whether Defendants should pay Plaintiff the value of the benefit he conferred upon

them by assigning his interest in the Star Valley Cheese plant? Plaintiff has the burden of proof on this issue.

What is the amount of damages to which Plaintiff is entitled? The Plaintiff has the burden of proof on this issue.

H. none

I. none

J. More time than 30 minutes may be required for voir dire, but 30 minutes is adequate for opening statements.

DATED this \_\_\_\_ day of February, 2010.

**ATKIN LAW OFFICES, P.C.**

---

Blake S. Atkin  
*Attorney for the Plaintiff/Counterclaim  
Defendant*

DATED this \_\_\_\_ day of February, 2010.

**BOWERS LAW FIRM, PC**

---

John D. Bowers  
*Attorney for the Defendants/Counterclaim  
Plaintiffs*



CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_ day of February, 2010, I served a true and correct copy of the foregoing **PRE-TRIAL STIPULATED STATEMENT** by faxing and placing the same in the United States Mail, first class, postage prepaid, at Bountiful, Utah, correctly addressed to the following:

John D. Bowers  
Bowers Law Firm, PC  
685 South Washington  
P.O. Box 1550  
Afton, Wyoming 83110  
Facsimile: 307-885-1002

Bannock County Court  
624 E. Center St.  
Pocatello, ID 83205  
Facsimile: (208) 236-7208

Judge Dunn  
P.O. Box 4126  
Pocatello, ID 83276  
Facsimile: (208) 236-7012

Gary L. Cooper - Idaho State Bar #1814  
 COOPER & LARSEN, CHARTERED  
 151 North Third Avenue, Second Floor  
 P.O. Box 4229  
 Pocatello, ID 83205-4229  
 Telephone: (208) 235-1145  
 Facsimile: (208) 235-1182

2010 NOV -3 PM 03:00  
 BY CW  
 DEPUTY CLERK

*Counsel for Defendant*

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

GAYLEN CLAYSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DON ZEBE, RICK LAWSON, AND )  
 LAZE, LLC., )  
 )  
 Defendants, )  
 \_\_\_\_\_ )  
 )  
 DON ZEBE, RICK LAWSON, AND )  
 LAZE, LLC., )  
 )  
 Counterclaim Plaintiff, )  
 )  
 vs. )  
 )  
 GAYLEN CLAYSON, )  
 )  
 Counterclaim Defendants, )  
 \_\_\_\_\_ )

CASE NO. CV-2009-0002212-OC

**DESIGNATION OF TESTIMONY  
 FROM THE DEPOSITION OF  
 MORRIS A. FARINELLA**

COME NOW the Defendants, by and through their attorney of record, and offers the Court the following designation of testimony to be read from the deposition of Morris A. Farinella taken on September 30, 2010:

1. Page 5, Lines 11 through 18.

CS

2. Page 6, Lines 16 through 22.
3. Page 7, Lines 21 through 25.
4. Page 8, Lines 1 through 8.
5. Page 8, Lines 18 through 25.
6. Page 9, Lines 1 through 8.
7. Page 9, Lines 12 through 15.
8. Page 10, Lines 1 through 25.
9. Page 11, Lines 1 through 25.
10. Page 12, Lines 1 through 23.
11. Page 13, Lines 4 through 9.
12. Page 18, Lines 11 through 25.
13. Page 19, Lines 1 through 6.
14. Page 66, Lines 19 through 25.
15. Page 67, Lines 1 and 2.

DATED this 3<sup>rd</sup> day of November, 2010.

COOPER & LARSEN



GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of November, 2010, I served a true and correct copy of the foregoing to:

Blake S. Atkin  
7579 North Westside Hwy  
Clifton, ID 83228


U.S. mail  
 Express mail  
 Hand delivery  
 Fax:

Atkins Law Offices  
837 South 500 West, Ste 200  
Bountiful, UT 84010

U.S. mail  
 Express mail  
 Hand delivery  
 Fax: 801-533-0380

John D. Bowers  
Bowers Law Firm  
PO Box 1550  
Afton, WY 83110

U.S. mail  
 Express mail  
 Hand delivery  
 Fax: 307-885-1002

  
\_\_\_\_\_  
GARY L. COOPER

**Deposition of**

**MORRIS A. FARINELLA**

**LAZE, LLC v. DAIRY SYSTEMS COMPANY, INC.**

*Taken On  
September 30, 2010*

Transcript provided by:

**HUTCHINGS**<sup>SM</sup>  
COURT REPORTERS, LLC  
CSR 649

GLOBAL LEGAL SERVICES

800.697.3210

CERTIFIED COPY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF LINCOLN, STATE OF WYOMING

LAZE, LLC, a Wyoming Limited Liability  
Company, DON ZEBE, RICK LAWSON,

Petitioners,

vs.

DAIRY SYSTEMS COMPANY, INC., a  
Utah Corporation,

Respondent.

No. 2009-89-DC

AND RELATED COUNTER-CLAIMS.

DEPOSITION OF MORRIS A. FARINELLA, a defendant  
herein, noticed by Bowers Law Firm, PC, taken at  
6055 East Washington Boulevard, Los Angeles,  
California, at 9:10 a.m., on Thursday,  
September 30, 2010, before Lori S. Turner, CSR  
9102, CP, RPR.

Hutchings Number 279888

Page 2

1 APPEARANCES OF COUNSEL:  
 2  
 3 For LAZE, LLC; DON ZEBE and RICK LAWSON:  
 4 BOWERS LAW FIRM, PC  
 5 BY JOHN D. BOWERS (Present telephonically)  
 6 685 South Washington Street  
 7 Afton, Wyoming 83110  
 8  
 9 - AND -  
 10  
 11 COOPER & LARSEN  
 12 BY GARY L. COOPER (Present telephonically)  
 13 151 North 3rd Avenue, Suite 210  
 14 Pocatello, Idaho 83205  
 15  
 16 For MORRIS A. FARINELLA:  
 17 ATKIN LAW OFFICES, PC  
 18 BY BLAKE S. ATKIN (Present telephonically)  
 19 837 South 500 West, Suite 200  
 20 Bountiful, Utah 84010  
 21  
 22 Also Present: MANNY MARIN  
 23  
 24  
 25

Page 4

EXHIBIT	DESCRIPTION	IDENTIFIED	MARKED
7	Documents Bates stamped 23 through 26 [EXH-7]	40	41
8	Documents Bates stamped 27 through 30 [EXH-8]	42	42
9	1-page document Bates stamped 31 [EXH-9]	43	43
10	Documents Bates stamped 32 through 39 [EXH-10]	44	44

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1 INDEX  
 2 WITNESS: MORRIS A. FARINELLA  
 3 EXAMINATION BY: PAGE  
 4 MR. BOWERS 5  
 5 MR. ATKIN 68  
 6  
 7  
 8 EXHIBITS  
 9 Exhibit identification within the transcript is flagged with "[EXH]" as an identifier.  
 10  
 11 EXHIBIT DESCRIPTION IDENTIFIED MARKED  
 12 1 2-page document Bates stamped 19 19  
 13 1 through 2 entitled "Warranty Deed" [EXH-1]  
 14  
 15 2 1-page document Bates stamped 22 22  
 16 3 entitled "Bill of Sale" [EXH-2]  
 17  
 18 3 4-page document Bates stamped 24 24  
 19 4 through 7 entitled "Bill of Sale" [EXH-3]  
 20  
 21 4 Documents Bates stamped 8 through 26 26  
 22 19 referred to a "Offer to Purchase" [EXH-4]  
 23  
 24 5 2-page document Bates stamped 37 37  
 25 20 and 21 [EXH-5]  
 26  
 27 6 1-page document Bates stamped 38 38  
 28 22 [EXH-6]  
 29  
 30

Page 5

1 MORRIS A. FARINELLA,  
 2 a defendant herein, having been sworn, testifies as  
 3 follows:  
 4  
 5 -EXAMINATION-  
 6  
 7 BY MR. BOWERS:  
 8 Q. Mr. Farinella. My name is John Bowers. I  
 9 represent Rick Lawson, Don Zebe and Laze, LLC in this  
 10 matter.  
 11 Would you please state your full name for the  
 12 record.  
 13 A. Morris A. Farinella, F-a-r-i-n-e-l-l-a.  
 14 Q. Great.  
 15 And your current address?  
 16 MR. MARIN: 9323 --  
 17 THE WITNESS: 9323 Tweedy Lane, Downey, California  
 18 "90240."  
 19 MR. BOWERS: Thank you.  
 20 Q. Mr. Farinella, have you ever had your  
 21 deposition taken before?  
 22 A. Yes.  
 23 Q. So you understand the procedure? I get to ask  
 24 the questions and you get to answer them; correct?  
 25 A. To the best of my ability, yes.

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1 Q. And just a couple things.  
 2 On the telephone, this will make it easier, because  
 3 we'll be more likely to answer questions verbally, but  
 4 sometimes in human nature, we have a habit of shrugging  
 5 and shaking our heads, and our court reporter Lori won't  
 6 be able to take that down. So we'll verbalize our  
 7 answers.  
 8 The other things is we have to slow down. I have a  
 9 habit of talking over people. So if you have that same  
 10 habit, just wait until I finish my question before you  
 11 answer.  
 12 Okay?  
 13 A. Yes.  
 14 Q. Are you on any type of medication today, sir?  
 15 A. No.  
 16 Q. How old are you?  
 17 A. 87.  
 18 Q. Any reason medically, or there's no medication  
 19 that would prevent you from understanding and answering  
 20 my questions today truthfully?  
 21 A. No.  
 22 The only thing I take is aspirin.  
 23 Q. Great.  
 24 Okay. Can you tell me what you did in preparation  
 25 for this deposition?

Page 7

1 A. Nothing.  
 2 Q. Did you talk to anybody?  
 3 A. No.  
 4 Q. Okay.  
 5 Did you talk to Gaylen Clayson?  
 6 A. No.  
 7 Q. When is the last time you spoke with  
 8 Mr. Clayson?  
 9 A. A year, I guess, ago. Maybe a year, year and a  
 10 half. I don't know.  
 11 Q. Did you review any documents?  
 12 A. No.  
 13 Q. Have you ever spoken to Clark Gayley?  
 14 A. I don't know him.  
 15 Q. John Gayley?  
 16 A. I don't know him.  
 17 Q. That would mean you haven't spoken to them?  
 18 A. If I don't know them, I don't think I talked to  
 19 them.  
 20 Q. That's right. Okay.  
 21 Mr. Farinella, you, through a company that I  
 22 understand that you own, were the owners for a long  
 23 period of time of a business located in Thayne, Wyoming  
 24 that we refer to as Star Valley Cheese Plant; is that  
 25 true?

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1 A. Yes. Since 1975.  
 2 Q. Thank you. '75.  
 3 And in 2008, that plant was in bankruptcy; is that  
 4 correct?  
 5 A. I believe so.  
 6 Q. Or under the direction of bankruptcy?  
 7 A. Well, under a Chapter 11 and Chapter 7, I  
 8 think.  
 9 Q. Okay.  
 10 And did there come a time when you sold the plant?  
 11 A. No.  
 12 Q. When I refer to plant, I'll -- whether it's  
 13 plant or Star Belly Cheese Factory or Star Belly Plant,  
 14 it's all the same thing.  
 15 A. Yes.  
 16 No, we haven't sold it.  
 17 Q. Okay.  
 18 So can you tell me about -- Apparently there was a  
 19 time when you were allowed to sell the plant even though  
 20 it was in bankruptcy.  
 21 Can you tell me how that transpired?  
 22 A. You don't understand the procedure of a  
 23 bankruptcy.  
 24 Q. Yes, I do.  
 25 A. You say "bankruptcy" -- a bankruptcy lawyer was

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1 there, and he runs the show. The Court runs the show;  
 2 not me.  
 3 So when it went in bankruptcy, we took bids to get  
 4 the money to pay the people. And the bids had to be  
 5 okayed by the court. I was appointed as president to  
 6 take the bids with the broker from Wyoming, the real  
 7 estate broker, who had the authority to sell the plant  
 8 for the bankruptcy court.  
 9 Q. Okay.  
 10 So just to make sure I understand this.  
 11 A. Okay.  
 12 Q. You would receive bids or offers to purchase  
 13 it. Then you would forward that information to the  
 14 bankruptcy trustee for his approval?  
 15 A. That's correct.  
 16 Q. And so, hypothetically, let's say, you wanted  
 17 to sell the plant to a friend or somebody else for a  
 18 lower price. You couldn't do that because you had to  
 19 send the offer to the bankruptcy trustee; correct?  
 20 A. I think that would be fraud.  
 21 Q. Fair enough.  
 22 A. I couldn't sell it to a friend of mine. I'm  
 23 sure it has to go to the bankruptcy court. They had to  
 24 approve everything.  
 25 Q. Fair enough.



1 So in 2008 -- just kind of short circuit this -- my  
 2 understanding is you were receiving offers.  
 3 Val D. Pendleton of Caldwell Bankers was working  
 4 with you a little bit or, I guess, soliciting offers; is  
 5 that correct?  
 6 A. We worked together, yes.  
 7 Q. Worked together.  
 8 And during that time period of time, did you  
 9 have a -- did you run into or did you know a Gaylen  
 10 Clayson?  
 11 A. I don't know what year that was, but he did  
 12 approach the broker, which was Pendleton, and said "I'd  
 13 like to put a bid in to buy the plant."  
 14 Q. Okay.  
 15 And when you say "a bid," if he puts a bid in, it's  
 16 got to go through the same process you've already  
 17 explained to me.  
 18 A. Yes.  
 19 And we had meetings at the plant with open bids  
 20 with other people while Gaylen was there.  
 21 Q. And what about -- Let me back up just a little  
 22 bit.  
 23 In 2008, did you ever allow him to operate the  
 24 restaurant on the premises?  
 25 A. I don't know what year it was, but at the time

1 the restaurant -- during the bankruptcy, the lawyer says  
 2 let the restaurant operate in front of the plant so we  
 3 can have some revenue come in.  
 4 So we hired two little Mexican girls there to run  
 5 the plant for the bankruptcy court. Okay?  
 6 But they were a little mixed up. And Gaylen was  
 7 there everyday. And I asked him to help to take care of  
 8 the restaurant while I'm living in L. A., and -- I  
 9 couldn't do it. You know, here, Wyoming, hear, back and  
 10 forth. I couldn't go. So I says, "Take care of that  
 11 restaurant with those two girls."  
 12 And he says, "I will look after it," and that was  
 13 all.  
 14 Q. And when you said your agreement with Gaylen --  
 15 and I separate the two. I separate in my mind the  
 16 restaurant out in front and then the cheese plant, the  
 17 manufacturing plant in the back.  
 18 A. Yes. They were separated.  
 19 In other words, the plant was closed, but the  
 20 restaurant was open. And they kept it open to get  
 21 revenue to -- for the bankruptcy court to put it in  
 22 there.  
 23 Q. Okay.  
 24 And what was -- What was Gaylen to do, if anything,  
 25 with the plant in the back?

1 A. Nothing. Until he bought it.  
 2 Nobody had nothing to do with the plant. It's in  
 3 bankruptcy.  
 4 Q. So it was just sit there, and then he could run  
 5 the restaurant out front and -- What was your  
 6 understanding of the terms of the agreement to allow him  
 7 to run the restaurant?  
 8 A. Just to watch over it so those two little girls  
 9 knew what they were doing there. That's all.  
 10 Q. Okay.  
 11 How was he to be paid for that?  
 12 A. He wasn't going to get paid anything. He was  
 13 doing me a favor.  
 14 Q. He was doing you --  
 15 A. Not me. He was doing the bankruptcy people a  
 16 favor.  
 17 Q. The bankruptcy court?  
 18 A. Yeah.  
 19 Q. Where was the money to go? You know, each day  
 20 you have the money that comes in from the sales.  
 21 A. It was supposed to go into a bank account that  
 22 we had for the restaurant.  
 23 Q. Okay.  
 24 A. I think it was Wells Fargo Bank.  
 25 THE WITNESS: Wasn't it?

1 MR. MARIN: Yeah.  
 2 THE WITNESS: Wells Fargo Bank in Star Valley.  
 3 MR. BOWERS:  
 4 Q. Was Mr. Clayson allowed to spend any of that  
 5 money on his personal needs?  
 6 A. He had to pay the bills with the providers, the  
 7 people who brought the food there for the restaurant to  
 8 operate. That's all he had to do. Make sure the people  
 9 got paid.  
 10 Q. For lack of a better word, was he allowed to  
 11 convert any of that money to pay his own personal bills  
 12 not related to the restaurant?  
 13 A. Not as -- that I know of, no.  
 14 Q. Was -- did he have authority to take any of  
 15 that money and put into his own personal account?  
 16 A. He had no authority to do that, no.  
 17 Q. Do you remember where the -- I'm going to call  
 18 it the trustee receivership account for the restaurant.  
 19 Do you know where that account, which bank it was held  
 20 at?  
 21 A. Receivership or the -- I think it was Wells  
 22 Fargo.  
 23 MR. MARIN: Wells Fargo.  
 24 THE WITNESS: Wells Fargo.  
 25 MR. BOWERS:

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1 Q. I know, Mr. Farinella, this is a dumb question,  
 2 but I'll ask it anyway.  
 3 You don't by chance have any documents with you  
 4 that would give us the account numbers for that, would  
 5 you?  
 6 A. I don't have them anymore.  
 7 Gaylen offered to run the restaurant after he made  
 8 the offer to -- was accepted.  
 9 After he bought the -- he made the offer to buy the  
 10 plant at the time. So with that in mind, I figured he  
 11 can be trusted to run the restaurant. That's the way  
 12 that happened. Just to run it so -- to keep it open.  
 13 Q. Because you assumed that at some point he would  
 14 be able to buy the whole thing?  
 15 A. It was already in process of him buying it  
 16 through the bankruptcy court.  
 17 Q. Okay.  
 18 A. He made an initial bid for it.  
 19 After the -- we had three different bids there when  
 20 it first started.  
 21 And one was from somebody out of L. A., another one  
 22 was from another place. And me and the broker decided  
 23 that let's go -- we had the same two bids from two  
 24 different people. So me and the lawyer, myself and the  
 25 lawyer -- I mean the lawyer -- the real estate for the

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1 bankruptcy court, decided to go with Gaylen because he  
 2 was a local, he had the milk, and it was good for the  
 3 environment there, and hire some people in that area to  
 4 run the plant.  
 5 The other people that were going to bid on it, they  
 6 were just going to tear it apart and pull it out.  
 7 Q. Did they -- Do you remember what the numbers  
 8 were they bid?  
 9 A. The numbers what? What was bid?  
 10 Q. Yes.  
 11 A. Yeah.  
 12 800,000.  
 13 Q. That was Gaylen Clayson's bid?  
 14 A. That was his bid and somebody else's too. I  
 15 forget the other guy.  
 16 Q. Oh. So the other two bids weren't higher, but  
 17 they were --  
 18 A. No.  
 19 Q. -- at least the same?  
 20 A. One was lower. One was less. 500,000.  
 21 Q. Okay.  
 22 So Mr. Clayson's was one of the highest bids?  
 23 A. Well, no.  
 24 We -- actually we started at 1.5, 1.2, and nobody  
 25 bid. And you know how the bids go. And we go lower and

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1 lower until it came down to 800,000.  
 2 Then with that in mind, I proceeded to go to the  
 3 bankruptcy lawyer and give him the information that the  
 4 most we could have got with the broker, real estate  
 5 broker, was 800,000. And he okayed it.  
 6 Q. Okay.  
 7 So it was the bankruptcy trustee or attorney as you  
 8 call it --  
 9 A. Right.  
 10 Q. -- that approved the sale?  
 11 A. Absolutely.  
 12 Q. Okay.  
 13 Let's see. During the time that the plant was  
 14 under -- under the direction of the bankruptcy court,  
 15 did you have authority to sell equipment out of there?  
 16 MR. ATKIN: Objection. Calls for a legal  
 17 conclusion.  
 18 THE WITNESS: Would you repeat that, please.  
 19 MR. ATKIN: Calls for a legal conclusion.  
 20 THE REPORTER: I can read it back to you.  
 21 (The record is read by the reporter.)  
 22 THE WITNESS: No.  
 23 THE REPORTER: He answered "No."  
 24 MR. BOWERS:  
 25 Q. Did the bankruptcy trustee or the bankruptcy

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1 court give Gaylen Clayson authority to sell equipment  
 2 out of the plant?  
 3 A. No.  
 4 Nothing was to be touched until escrow closed.  
 5 Q. "Escrow closed." You mean the actual sale?  
 6 A. Sale of the plant when escrow closed.  
 7 Q. I just want to make sure my definition is the  
 8 same as yours.  
 9 That's the day the money transfers and there's a  
 10 deed issued?  
 11 A. Absolutely.  
 12 Q. Fair enough.  
 13 If there was any equipment that was sold, should  
 14 that money have been returned back -- if there was any  
 15 equipment sold by Gaylen Clayson, should that money have  
 16 been returned back to the bankruptcy court?  
 17 A. I don't know how to answer that because I don't  
 18 know if he sold anything.  
 19 Q. Okay.  
 20 So -- We've got some documents here that I think  
 21 may help us as we walk through this.  
 22 The first one is -- Well, do you remember,  
 23 ultimately who the plant was sold to?  
 24 A. At the very end when it was sold?  
 25 Q. Yes.

1 A. Well, you know, really -- where is that -- this  
 2 guy -- wait a minute.  
 3 I think you're jumping in -- you're going ahead.  
 4 You're talking about Gaylen, and now you're going who  
 5 bought the plant.  
 6 Q. I know, and I apologize.  
 7 The reason for that is when I e-mailed the  
 8 documents to you, two of them are out of order. So  
 9 we're going to have to jump ahead so it's going to mess  
 10 up the documents.  
 11 A. Do you want me to sit here and tell it the way  
 12 it was?  
 13 Q. Yeah. Let's do that.  
 14 A. Okay.  
 15 Q. Perfect.  
 16 A. As far as I know, Gaylen made the bid.  
 17 Everything was okay, and the bankruptcy lawyer agreed  
 18 and the real estate broker agreed and we backed off, and  
 19 that was it. It was gone into escrow. They had to come  
 20 up with the money.  
 21 At that time, the second visit to Wyoming, Gaylen  
 22 introduced me to these two people that I do not know  
 23 very well. One of them is Don Zebe. Don Zebe and Rick.  
 24 Rick "Larson."  
 25 I really don't know them at all -- at all except

1 from Gaylen telling me they got the money; they're going  
 2 to buy it.  
 3 So I told Gaylen, "I don't care who comes up with  
 4 the money, but just buy it." The bid was okay, and  
 5 everything's -- "buy it."  
 6 And that's where it ended up with me.  
 7 Q. Okay. Fair enough.  
 8 So let's jump ahead then and then it will get back  
 9 in order here in a second, Mr. Farinella.  
 10 A. Okay.  
 11 MR. BOWERS: If I can have the court reporter mark  
 12 Bates stamped 1 through 2, which is a Warranty Deed, two  
 13 pages, as Exhibit 1. [EXH-1]  
 14 Q. I'll have you look at that Mr. Farinella when  
 15 she's ready.  
 16 (Whereupon the document referred to is marked by  
 17 the reporter as Exhibit 1 for identification.)  
 18 MR. BOWERS:  
 19 Q. As you pointed out, Mr. Farinella, these are a  
 20 little bit out of order.  
 21 This -- I'll represent to you what my understanding  
 22 is -- is the warranty deed that was executed as -- you  
 23 call it the escrow, I call it the closing -- when the  
 24 cheese plant was sold.  
 25 Is that what your understanding of Exhibit 1 is?

1 A. Look, I'm not a lawyer and I'm not an  
 2 accountant, and I don't know where this come from.  
 3 Because once it was out, I was out of it.  
 4 It was taken -- taken by the --  
 5 THE WITNESS: Who is the one that did the closing  
 6 up there? The escrow company?  
 7 MR. MARIN: Alliance.  
 8 THE WITNESS: Alliance. Yeah. Alliance.  
 9 So where this came from, I have no idea.  
 10 MR. BOWERS:  
 11 Q. Why don't you look at page one on the bottom.  
 12 Is that your signature there?  
 13 MR. MARIN: This one (indicating).  
 14 THE WITNESS: Yeah, that's my signature.  
 15 Warranty --  
 16 MR. BOWERS:  
 17 Q. Do you remember signing this warranty deed?  
 18 A. Not really, but I guess I did.  
 19 What does it say there?  
 20 Yeah, I signed it, I guess.  
 21 THE WITNESS: But who did I sign this for?  
 22 MR. MARIN: It was for the escrow company.  
 23 THE WITNESS: For the escrow company, yeah.  
 24 MR. BOWERS:  
 25 Q. Right.

1 And this is what's been represented to me as the  
 2 warranty deed that you signed to sell the cheese plant  
 3 at the close of escrow when the property was transferred  
 4 to my client.  
 5 A. After he put up the money I guess, yeah.  
 6 Q. Okay.  
 7 And that's all I'm asking you. I just need you to  
 8 validate, first of all, that that's your signature.  
 9 A. Yeah.  
 10 Q. You did sign the warranty deed?  
 11 A. You know what? Why did I sign a warranty deed?  
 12 I held the mortgage on that property.  
 13 MR. MARIN: You were representing Star Valley.  
 14 THE WITNESS: Okay.  
 15 I represent Star Valley Cheese Corporation. I  
 16 guess that's why I signed it.  
 17 Go ahead.  
 18 MR. BOWERS:  
 19 Q. Okay.  
 20 Mr. Farinella is this -- is this a warranty deed  
 21 that you signed?  
 22 A. I guess I did, yes.  
 23 Q. All right. Thank you.  
 24 I know it's hard to go back and look at documents.  
 25 A. Yeah. We're talking eight years.

1 Q. Whatever time you need, just take it.  
 2 Now I'll have you look at what I'll have the court  
 3 reporter -- Bates stamp 3, the Bill of Sale, and ask  
 4 that Lori mark that as deposition Exhibit 2. [EXH-2]  
 5 When she gets done, I'll have you take a look at  
 6 that, Mr. Farinella.  
 7 (Whereupon the document referred to is marked by  
 8 the reporter as Exhibit 2 for identification.)  
 9 THE REPORTER: Okay.  
 10 MR. BOWERS:  
 11 Q. Mr. Farinella, I'll have you look at deposition  
 12 Exhibit 2 and it's Bates stamp 3.  
 13 First of all, is that your signature on the bottom  
 14 towards the bottom of the page?  
 15 A. Yes.  
 16 Q. And I understand that this was executed at the  
 17 same time as the warranty deed as part of the close of  
 18 the escrow or the sale. Is that your understanding?  
 19 A. My understanding says this is from the escrow  
 20 company that made me sign it, yes.  
 21 Q. Okay.  
 22 Was this part of the sale of the plant?  
 23 A. From the bankruptcy court, I guess, yes.  
 24 Can I talk to you one minute?  
 25 Q. Sure. Go ahead.

1 Q. Okay.  
 2 A. I didn't get a letter. I just got a "voice"  
 3 from my attorney telling me.  
 4 Q. Okay.  
 5 Well sometime if your attorney and you want to talk  
 6 to me about it, we'll be glad to talk to you about it  
 7 outside of this setting.  
 8 A. No, I don't want to talk to nobody.  
 9 MR. BOWERS: Now I'll ask the court reporter if  
 10 she'll mark as deposition Exhibit 3 for identification  
 11 purposes, what's Bates stamped 4 through 7. [EXH-3]  
 12 (Whereupon the document referred to is marked by  
 13 the reporter as Exhibit 3 for identification.)  
 14 MR. BOWERS:  
 15 Q. I'm going to have you look at what's been  
 16 marked for identification purposes deposition Exhibit 3.  
 17 On top of it is "Bill of Sale."  
 18 And my understanding is this was in reference to  
 19 the closing of the escrow, but does that -- is that your  
 20 signature about three-quarters of the way down on the  
 21 first page?  
 22 A. Yes, I signed this.  
 23 Q. And was that part of the closing on the plant  
 24 too?  
 25 A. I guess, 'cause I'm not familiar with --

1 A. Why -- I say why am I being sued? I'm not -- I  
 2 want to know why I'm being sued.  
 3 Q. That's something I can probably talk to you  
 4 about with you and your attorney when we're not in a  
 5 deposition.  
 6 How does that sound?  
 7 A. No, it doesn't sound right.  
 8 I'm here to get a question from you. Why am I  
 9 getting sued?  
 10 Q. Mr. Farinella, unfortunately this is a  
 11 situation where I don't have to answer your questions.  
 12 A. I'll retract that.  
 13 Q. That's a legitimate question, and I'll answer  
 14 it when we're done with the -- when we can talk  
 15 sometime.  
 16 In fact, while I'm thinking of it, Mr. Farinella, I  
 17 sent a letter -- I don't know -- asking if I can talk to  
 18 you or talk to your personal attorney about this matter.  
 19 Have you received a copy of that?  
 20 A. I don't know.  
 21 MR. MARIN: Your attorney called --  
 22 THE WITNESS: My attorney -- my attorney in Wyoming  
 23 told me about it. And I told him "No, I don't want to  
 24 talk to Don Zebe or anybody up there."  
 25 MR. BOWERS:

1 THE WITNESS: I got this from the escrow company;  
 2 didn't I?  
 3 MR. MARIN: Yes.  
 4 THE WITNESS: Yeah. I guess it is a bill of sale.  
 5 MR. BOWERS:  
 6 Q. And then would you mind looking at the second  
 7 page -- the second, third, fourth page on there. The  
 8 list of equipment.  
 9 A. Where is the list of equipment?  
 10 MR. MARIN: That one.  
 11 THE WITNESS: Yes.  
 12 MR. BOWERS:  
 13 Q. Does that look like equipment that would have  
 14 been at Star Valley Cheese Plant that was sold pursuant  
 15 to the sale?  
 16 A. I guess.  
 17 THE WITNESS: Who took this here? This inventory,  
 18 who took it?  
 19 MR. MARIN: That was the list from --  
 20 THE WITNESS: That was the list from who?  
 21 MR. MARIN: That was from the list of Frank Dana.  
 22 THE WITNESS: Oh. I guess it is, yes.  
 23 It is a list from the plant manager.  
 24 MR. BOWERS:  
 25 Q. It sounded like Frank Dana?

1 A. Yeah.  
 2 MR. MARIN: Before he died.  
 3 THE WITNESS: Before he died.  
 4 MR. BOWERS:  
 5 Q. Is this a fair and accurate representation of  
 6 the bill of sale that was signed at the time of closing  
 7 with my client?  
 8 A. Yes, I guess. Yes.  
 9 Q. Okay. Perfect.  
 10 MR. BOWERS: Now let's go -- I'll have the court  
 11 reporter -- this is a little longer. If you wouldn't  
 12 mind marking as deposition Exhibit 4 what's been marked  
 13 as Bates stamp 8 through 19. [EXH-4]  
 14 (Whereupon the document referred to is marked by  
 15 the reporter as Exhibit 4 for identification.)  
 16 MR. BOWERS:  
 17 Q. If you would look, Mr. Farinella, at deposition  
 18 Exhibit 4. Now we're maybe a little back on order  
 19 pursuant to our previous conversation.  
 20 I believe this is the offer to purchase that you  
 21 made reference to initially -- in fact it's dated  
 22 October 17th, 2008 -- that you were talking about Gaylen  
 23 Clayton.  
 24 Would you mind taking a look at the front page and  
 25 see if that refreshes your memory that this looks like

1 Q. You know, I understand it's hard when you look  
 2 at these documents and --  
 3 A. That's why I wanted to know why I'm being sued.  
 4 Q. There you go. There you go.  
 5 A. I've gone through this, which you should have  
 6 the broker here who handled the sale, not me. I'm not a  
 7 real estate broker.  
 8 All I was there for is to take the bids for the  
 9 bankruptcy lawyer and submit them to him. That's all.  
 10 Q. Okay.  
 11 A. And as president, I signed all -- and the  
 12 escrow company. That's all I know.  
 13 So I don't know why you don't have -- Go ahead.  
 14 Excuse me. I'm sorry.  
 15 Q. I told you I have a habit of talking over. I  
 16 apologize.  
 17 A. I apologize too.  
 18 Q. So to clarify. Your job was just to submit,  
 19 receive the bids, but it was the bankruptcy trustee that  
 20 approved them; correct?  
 21 A. Absolutely.  
 22 Q. Do you know if -- and you may not because of  
 23 what you just told me, but on page one of deposition  
 24 Exhibit 4, Bates stamped 8, it says it was to be an  
 25 "Earnest Money" paid at \$10,000, on paragraph ten there.

1 the document that you were talking about that --  
 2 A. I've never seen this document. This is  
 3 Caldwell Banker's, the broker.  
 4 Q. You've never seen this document?  
 5 A. No, I've never seen this. It went to the  
 6 broker, Coldwell Banker.  
 7 MR. MARIN: I know, but this refers to you.  
 8 THE WITNESS: He made me sign it.  
 9 MR. BOWERS:  
 10 Q. Yeah, I think your signature -- or at least  
 11 somebody signed it.  
 12 If you look at Bates stamped 13.  
 13 THE WITNESS: I guess I've seen it, but I don't  
 14 remember it.  
 15 MR. BOWERS:  
 16 Q. Is that your signature on Bates stamp 14 of  
 17 Exhibit 4?  
 18 A. That's not my signature. That's not my  
 19 signature.  
 20 MR. MARIN: That was a stamp.  
 21 THE WITNESS: Oh, that's a stamp. I signed it.  
 22 10/4/08 it says.  
 23 MR. BOWERS:  
 24 Q. Right.  
 25 A. Is that correct?

1 Do you see that?  
 2 A. I see it, yeah.  
 3 Q. Do you know if that was ever paid by  
 4 Mr. Clayson or Mr. Randall?  
 5 MR. MARIN: Whatever money --  
 6 THE WITNESS: I don't know if it was paid.  
 7 MR. MARIN: -- it went to the broker.  
 8 THE WITNESS: It went to the broker.  
 9 If it did, it went to the broker. I never seen it;  
 10 I never heard it.  
 11 This must have been with the broker, the real  
 12 estate broker.  
 13 Is it the deposit or what? Is that what it is?  
 14 MR. BOWERS:  
 15 Q. It speaks for itself, but that's what I would  
 16 understand it would be, a deposit.  
 17 A. Why would I know about it?  
 18 Q. Well you were soliciting the bids. That's my  
 19 question. I didn't know if you did or not.  
 20 A. No.  
 21 But the money, everything, transaction goes to the  
 22 real estate broker.  
 23 Like I said, I was not a real estate broker. I was  
 24 taking the bids and it went to the real estate broker  
 25 who in turn referred to the bankruptcy court to approve.

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1 As far as that goes, that's all I know.  
 2 I didn't know he put up \$10,000.  
 3 I don't know.  
 4 MR. MARIN: It went to escrow.  
 5 THE WITNESS: It went to the Pendleton, I guess.  
 6 MR. MARIN: It was escrow. Escrow company.  
 7 THE WITNESS: Escrow company.  
 8 Maybe it went to the escrow company. I have no  
 9 idea.  
 10 But I don't know. The answer is I don't know.  
 11 MR. BOWERS:  
 12 Q. You know, there's nothing wrong with an "I  
 13 don't know."  
 14 A. You know, I really don't know.  
 15 Q. Okay.  
 16 Would you mind looking on deposition Exhibit 4.  
 17 Would you mind looking on the Bates stamp Number 13 at  
 18 the top of the page.  
 19 A. Just a minute.  
 20 Here I got it in front of me.  
 21 Q. And right down there, there's a Roman XVI. Off  
 22 to the side there's a line -- is it 228 -- "Consents And  
 23 Acknowledgments."  
 24 It's about the middle -- top of the middle of the  
 25 page.

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1 Do you see that?  
 2 A. Yeah.  
 3 Q. Okay.  
 4 It says "All prior representations made in the  
 5 negotiations of this sale have been incorporated herein,  
 6 and there are no oral agreements or representations  
 7 between Buyer, Seller or Brokers to modify the terms and  
 8 conditions of this Contract."  
 9 Did you read that before you signed this document?  
 10 A. No.  
 11 Q. You didn't read that?  
 12 A. No.  
 13 Q. When you signed this agreement --  
 14 THE WITNESS: Where did this paper come from?  
 15 MR. MARIN: It's --  
 16 THE WITNESS: It's what?  
 17 MR. MARIN: -- part of the offer with the --  
 18 THE WITNESS: Of the offer from?  
 19 MR. MARIN: From --  
 20 THE WITNESS: To the real estate broker?  
 21 MR. MARIN: Yes.  
 22 THE WITNESS: No, I didn't even see this.  
 23 MR. BOWERS:  
 24 Q. If you look to the next page. I just want to  
 25 clarify on Bates stamp 14, the next page, that that's

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1 your signature on this document; correct?  
 2 A. There's a lot of signatures on here.  
 3 MR. MARIN: This one (indicating).  
 4 MR. BOWERS:  
 5 Q. Right.  
 6 A. I see my signature there.  
 7 Q. I know you -- Do you normally sign legal  
 8 documents without reading them?  
 9 A. Like I told you, I'm not a broker and I'm not a  
 10 lawyer. I trust the people who are giving me the  
 11 documents from either the broker or the escrow company.  
 12 Q. Okay.  
 13 Well, Mr. Farinella, let me just --  
 14 A. You know what? You're going around and around  
 15 in circles. Why don't you get to the bottom of this  
 16 what you really want to know?  
 17 This is all bullshit you pay time over here. Get  
 18 to the point you really want to know. I know what  
 19 you're going around and around about because all of this  
 20 is --  
 21 Q. Unfortunately, what I want to ask, I can't.  
 22 A. Get to the point what you really want to know.  
 23 Q. I'm an attorney. I have to do the round and  
 24 round.  
 25 A. I know you do.

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1 Q. I don't like it any more than you do.  
 2 A. I hope not.  
 3 Q. So on page -- on the front page of Exhibit 4,  
 4 if I understand when I read this -- just there may be --  
 5 To move this along. Star Valley -- your company is the  
 6 seller, even though we know that it has to be approved  
 7 by the bankruptcy trustee; Caldwell Banker is the  
 8 broker, and then at least on this document it lists  
 9 Gaylen Clayson and Jeff Randall.  
 10 Do you know who Jeff Randall is?  
 11 A. No.  
 12 Q. Have you ever met him before?  
 13 A. Hell no. No.  
 14 Q. Okay.  
 15 When you signed this document, were there any other  
 16 agreements, oral or written, between yourself as the  
 17 seller of the property and Gaylen Clayson and Jeff  
 18 Randall about the sale of the property?  
 19 A. No, there was no oral agreement at all.  
 20 Q. Okay.  
 21 So whatever -- Basically the agreement was what was  
 22 in this offer which you signed, which is Exhibit 4;  
 23 correct?  
 24 A. Yes.  
 25 You have to put it in -- I live in Los Angeles and

1 this all took place in Wyoming.  
 2 And what was going on there is between the broker  
 3 and the bankruptcy court had to go between me. So when  
 4 they sent me papers up here and papers down there, it  
 5 was kind of confusing what they're doing because I was  
 6 completely out of it. I was out of it.  
 7 I know I'm signing here, but once a company goes  
 8 into bankruptcy, it's handled by the bankruptcy court,  
 9 the realtor who is trying to sell it and the bankruptcy  
 10 lawyer.  
 11 All I was there was helping them out. Or I could  
 12 have walked away from it all. But I helped them out  
 13 trying to get the bids.  
 14 You do understand that?  
 15 Q. I do.  
 16 A. So if they send me a paper down here and say  
 17 "Sign this because you've got to do it," I signed it.  
 18 I didn't go get a lawyer to look it over and see  
 19 it. I signed it because that's what I had to do.  
 20 Q. Well, Mr. Farinella, you asked me to kind of  
 21 cut to the chase.  
 22 A. Yeah, I did.  
 23 Q. Here's what I'm trying to get at.  
 24 A. I know. Let's get to it.  
 25 Q. I have a whole bunch of documents that I want

1 to go through with you, and I'll move along pretty  
 2 quick, but all the documents say there was no other oral  
 3 representations or agreement.  
 4 A. No.  
 5 Q. But your attorney has alleged in some pleadings  
 6 that there was some other agreements, full agreements.  
 7 And I don't understand them.  
 8 And so I want -- I'm just trying to find out -- I'm  
 9 confused because the documents say there are no other  
 10 agreements, and I just need to go through these --  
 11 A. I understand.  
 12 Q. -- and find out if there was another agreement.  
 13 A. I understand what you're going through, but  
 14 there was no oral agreement other than what I told you  
 15 what he did. And once he bid for it, it was out of my  
 16 hands. They agreed to the bid, and I backed off after  
 17 that.  
 18 Until I found out Gaylen had a partner, and then I  
 19 said, "Do what you want to do, both of you." So I came  
 20 back to L. A.  
 21 Q. And it was out of your hands?  
 22 A. Naturally it's out of my hands. They already  
 23 bid it, it went into escrow, and what they did between  
 24 the two of them over there God only knows.  
 25 Q. Okay. That's a nice summary.

1 Mr. Farinella, here's what I'm going to do. I've  
 2 got some more documents I'm going to go through, and  
 3 I'll tell you what I'm going to do.  
 4 A. All right.  
 5 Q. It looks like a whole bunch of these documents  
 6 are extensions. It looks like there was a closing date  
 7 and it keeps getting extended, extended.  
 8 The only reason I'm going through with these is I'm  
 9 going to have them show you the document.  
 10 A. All right.  
 11 Q. I'm going to probably ask you two questions.  
 12 One is "Is your signature on the document," have you  
 13 look at that.  
 14 A. Okay.  
 15 Q. There's some more -- I already alluded to this.  
 16 There's some more wording on the documents that says  
 17 there was no oral agreement.  
 18 So my second question will be to have you think  
 19 back see if there were any other agreements other than  
 20 what's on the paper; okay? And we'll try to move  
 21 through as quick as possible.  
 22 How's that?  
 23 A. That's fine. Thank you.  
 24 Q. You bet.  
 25 Let's -- the court reporter can look at -- or pull

1 up the next two pages, which is Bates stamped 20 and 21,  
 2 and mark that as deposition Exhibit 5. [EXH-5]  
 3 (Whereupon the document referred to is marked by  
 4 the reporter as Exhibit 5 for identification.)  
 5 MR. BOWERS:  
 6 Q. Mr. Farinella?  
 7 A. Yes.  
 8 Q. Exhibit 5 appears to me to be a -- a change of  
 9 deadline on this real estate contract that we talked  
 10 about, I think it was Exhibit 4.  
 11 But would you look at deposition Exhibit 5. Is  
 12 that your signature on the bottom?  
 13 A. Yes.  
 14 Q. Okay.  
 15 And then would you look at "D" in the middle of the  
 16 page.  
 17 A. D is --  
 18 Q. "All prior representations" -- Let me say,  
 19 quote, "All prior representations made in the  
 20 negotiations of this sale have been incorporated herein,  
 21 and there are no oral agreements or representations  
 22 between Buyer, Seller or their agents to modify the  
 23 terms and conditions of this Contract."  
 24 Are you aware of any other oral agreements other  
 25 than this real estate -- this extension and the real

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1 estate contract?  
 2 A. No.  
 3 There was no oral -- No, none of that. None at  
 4 all.  
 5 Q. All right.  
 6 MR. BOWERS: Lori, if you wouldn't mind taking  
 7 Bates stamped number 22 and mark it as  
 8 Exhibit 6. [EXH-6]  
 9 (Whereupon the document referred to is marked by  
 10 the reporter as Exhibit 6 for identification.)  
 11 MR. BOWERS:  
 12 Q. On deposition Exhibit "8," Mr. Farinella I  
 13 don't see your signature on there anywhere.  
 14 Do you?  
 15 THE REPORTER: You said "8."  
 16 THE WITNESS: You said "8."  
 17 MR. BOWERS:  
 18 Q. Deposition Exhibit 6.  
 19 A. I don't see any signature on here.  
 20 I see Zebe's here. No, it's not Zebe.  
 21 Who is this? Oh, Jeff Randall and Gaylen. That's  
 22 on this page.  
 23 Q. Okay. This -- have you seen -- Do you remember  
 24 ever seeing this document before?  
 25 A. Never.

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1 Q. Okay. Then we'll just move on.  
 2 Let me -- and then I want to clarify.  
 3 When you talk about, on my notes here -- when you  
 4 talk about the escrow again, you're talking about the  
 5 closing when money is paid, deed's transferred and the  
 6 property is completed and sold; correct?  
 7 A. Right.  
 8 Q. So up to that point, I want to clarify that no  
 9 one had the authority to do anything on the property as  
 10 far as, I guess, unusual expenses without the authority  
 11 of the bankruptcy trustee; correct?  
 12 MR. ATKIN: Objection. Calls for a legal  
 13 conclusion.  
 14 Blake Atkins.  
 15 THE WITNESS: You want me to answer that?  
 16 MR. BOWERS:  
 17 Q. Yes, please.  
 18 A. That nobody had authority to do anything or to  
 19 spend any money at the plant while it was in process of  
 20 escrow to close. Is that what you're trying to say?  
 21 Q. Yes. Without the bankruptcy trustee's  
 22 permission; correct?  
 23 A. That's normal. Yes. That's right.  
 24 Q. Okay.  
 25 MR. BOWERS: Lori, if you would now take Bates

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1 stamp number 23 through 26 and mark that as deposition  
 2 Exhibit 7. [EXH-7]  
 3 A. John?  
 4 Q. Yes.  
 5 A. Gaylen submitted his offer and was accepted at  
 6 the time.  
 7 Then Gaylen suggested to run the plant and  
 8 restaurant --  
 9 MR. MARIN: (Indicating.)  
 10 THE WITNESS: What the hell is this?  
 11 MR. MARIN: Familiarize.  
 12 THE WITNESS: To what?  
 13 MR. MARIN: To familiarize on the operation.  
 14 THE WITNESS: -- to familiarize on the operation.  
 15 Gaylen then suggested --  
 16 What the hell is this?  
 17 MR. MARIN: To clean.  
 18 THE WITNESS: -- to clean the plant. Yeah, I  
 19 remember that.  
 20 He says, "I'll clean the plant and get it ready.  
 21 As soon as escrow closes, we can start opening and make  
 22 cheese at the time."  
 23 And I told him "Go ahead and do what you want as  
 24 long as it doesn't cost the bankruptcy or me or anybody  
 25 any money to spend."

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1 That's where we -- that's the thing that I -- I  
 2 think that's where we're going in the first place,  
 3 aren't we?  
 4 MR. BOWERS: It sounds reasonable.  
 5 (Whereupon the document referred to is marked by  
 6 the reporter as Exhibit 7 for identification.)  
 7 MR. BOWERS:  
 8 Q. Deposition Exhibit 7, when you look on the  
 9 second page -- no, it's not the second -- yours isn't on  
 10 the second. There's so many pages to this.  
 11 Would you look on the fourth page and see if that's  
 12 your signature.  
 13 A. Yes.  
 14 Q. Okay.  
 15 And then up above there, two paragraphs up, number  
 16 two states, "All representations made in the  
 17 negotiations of this sale have been incorporated herein,  
 18 there are no verbal agreements between Buyer, Seller  
 19 and/or any other Brokers to modify terms and  
 20 conditions."  
 21 Was that a fair statement at the time?  
 22 A. I think so, yes.  
 23 Q. Were you aware of any other oral or agreements  
 24 other than what was spelled out in these documents we've  
 25 discussed?



1 A. No.  
 2 Except what I read to you.  
 3 Q. Okay.  
 4 Basically that Gaylen could familiarize himself and  
 5 run the plant as long as it didn't cost anybody any  
 6 money?  
 7 A. Right.  
 8 And it was agreed by him and his partners.  
 9 Q. Okay.  
 10 A. That he was going to get the plant ready to  
 11 operate as soon as escrow closed.  
 12 Q. Okay.  
 13 A. But Gaylen slept there I think. He slept  
 14 there. He never went home.  
 15 Q. Okay.  
 16 MR. BOWERS: Lori, if you would look at  
 17 deposition -- or Bates stamp 27 through 30.  
 18 That is deposition Exhibit 8. [EXH-8]  
 19 (Whereupon the document referred to is marked by  
 20 the reporter as Exhibit 8 for identification.)  
 21 MR. BOWERS:  
 22 Q. Okay.  
 23 Deposition Exhibit 8. Would you look at the very  
 24 last page.  
 25 MR. ATKIN: Would you say the pages again.

1 Let's go to Bates stamp -- Lori, if you'll pull  
 2 Bates stamp 32 through 39. Mark that as deposition  
 3 Exhibit Number 10. [EXH-10]  
 4 (Whereupon the document referred to is marked by  
 5 the reporter as Exhibit 10 for identification.)  
 6 MR. BOWERS:  
 7 Q. And would you mind looking at Exhibit 10 Bates  
 8 stamp 39. That would be the very last page.  
 9 MR. MARIN: Last page.  
 10 MR. BOWERS:  
 11 Q. And see if that's your signature,  
 12 Mr. Farinella?  
 13 A. Yes.  
 14 Q. See up above there, two paragraphs up, it  
 15 states "All representations made in the negotiations of  
 16 this sale have been incorporated herein, there are no  
 17 verbal agreements between Buyer, Seller and/or Brokers  
 18 to modify the terms and conditions."  
 19 Other than what you explained to us, which really  
 20 doesn't have to do with the terms of the sale, but  
 21 taking that into account, was there any other agreement  
 22 referenced in the sale that is not -- was not contained  
 23 in these real estate documents we've discussed?  
 24 MR. ATKIN: Object to the question as  
 25 argumentative.

1 MR. BOWERS: It's Bates stamp 30.  
 2 THE WITNESS: That's my signature.  
 3 MR. BOWERS:  
 4 Q. Again, on paragraph two, it states there's no  
 5 other representations or oral agreement.  
 6 Do you agree with that --  
 7 A. Yes.  
 8 Q. -- that when you signed this there was no other  
 9 oral agreement?  
 10 A. Yes. Yes. Yes. Yes. Yes.  
 11 That's the same as the other ones; right?  
 12 Q. Same as the other ones.  
 13 A. Okay.  
 14 Q. And I'll say except for what you explained to  
 15 me. How's that?  
 16 A. That's fine. That's exactly fine.  
 17 Q. Okay.  
 18 MR. BOWERS: Lori, if you wouldn't mind taking  
 19 Bates stamp 31. If you could mark that deposition  
 20 Exhibit 9. [EXH-9]  
 21 (Whereupon the document referred to is marked by  
 22 the reporter as Exhibit 9 for identification.)  
 23 THE WITNESS: I got it.  
 24 MR. BOWERS: Actually, we've covered that. So  
 25 we'll skip that one.

1 You can go ahead and answer.  
 2 This is Blake Atkin.  
 3 THE WITNESS: I don't know how to answer that.  
 4 Can you repeat it again.  
 5 MR. BOWERS: Lori, can you read that back to him,  
 6 please.  
 7 (The record is read by the reporter.)  
 8 THE WITNESS: No, there was no other agreement.  
 9 MR. BOWERS:  
 10 Q. All right. Thank you.  
 11 A. This is all real estate stuff from the broker.  
 12 MR. BOWERS: You know, if we could take a -- about  
 13 a two-minute break. If everybody can stay on the line,  
 14 we've covered a lot of the materials I have, and if we  
 15 can take two to five minutes, we'll be able to move this  
 16 along.  
 17 (A recess is taken.)  
 18 MR. BOWERS:  
 19 Q. Mr. Farinella, do you have documents in front  
 20 of you today that you brought or Manny brought?  
 21 A. What kind of documents?  
 22 Q. Did you bring documents, any documents?  
 23 A. I got one here.  
 24 THE WITNESS: Is that what we --  
 25 MR. MARIN: (Nods head in the affirmative.)

1 MR. BOWERS:  
 2 Q. Tell me what it is.  
 3 MR. MARIN: It's an e-mail.  
 4 THE WITNESS: What the hell is it?  
 5 It's an e-mail.  
 6 MR. BOWERS:  
 7 Q. Can you read it to me.  
 8 A. Well, it's a long one.  
 9 What do you want? You're supposed to ask me  
 10 questions.  
 11 Q. I am asking you questions. Does it have  
 12 reference to this case?  
 13 A. Only if he asks me a question.  
 14 Q. Have you been referring to it during this  
 15 deposition?  
 16 A. Okay. I'll read it to you.  
 17 This is an e-mail sent by Zebe.  
 18 MR. MARIN: Don Zebe.  
 19 THE WITNESS: Don Zebe.  
 20 I can't read too much, Manny. You want to read it  
 21 to them?  
 22 The writing is so little, I told you before about  
 23 my --  
 24 Read it for them. It's an e-mail.  
 25 MR. BOWERS:

1 you or somebody -- what you did to prepare for this.  
 2 It sounds to me, correct me if I'm wrong, somebody  
 3 sent you an e-mail with a copy of an old e-mail from my  
 4 client to prep you and influence you for this  
 5 deposition.  
 6 A. No. No.  
 7 They sent me an e-mail to answer any questions that  
 8 you ask me.  
 9 Q. Oh, they sent you an e-mail to answer --  
 10 A. No. Nobody sent -- I have an e-mail that was  
 11 sent to the -- the real estate --  
 12 MR. MARIN: Yeah.  
 13 THE WITNESS: Was it sent to Pendleton?  
 14 MR. MARIN: Yeah, he sent it to Pendleton.  
 15 THE WITNESS: -- to Pendleton that we had on file  
 16 here.  
 17 MR. BOWERS:  
 18 Q. But it was just sent to you in the last day or  
 19 so to prepare you for this deposition?  
 20 A. No. No.  
 21 This was sent -- Do you want to read the date on  
 22 there? January 14th --  
 23 MR. MARIN: 2009.  
 24 THE WITNESS: -- 2009.  
 25 MR. BOWERS:

1 Q. Is it -- Well, let me ask you this.  
 2 Is it an e-mail from -- is it an e-mail from Manny  
 3 reference the accounts?  
 4 A. No. From Donald Zebe.  
 5 Q. Who gave you that e-mail today?  
 6 MR. MARIN: We have that.  
 7 THE WITNESS: We had it.  
 8 MR. MARIN: We have this on file.  
 9 MR. BOWERS:  
 10 Q. So you just decided to bring that today?  
 11 A. Yeah.  
 12 MR. MARIN: No. Because we -- we have this file.  
 13 This was sent to you.  
 14 THE WITNESS: Yeah.  
 15 MR. MARIN: To my e-mail address.  
 16 THE WITNESS: It was sent to your e-mail?  
 17 MR. MARIN: Yeah.  
 18 MR. BOWERS:  
 19 Q. So somebody sent you this document --  
 20 A. I don't understand why you're asking me this.  
 21 What documents did I bring? What relevance --  
 22 Q. Let me finish, Mr. Farinella.  
 23 You're a business man?  
 24 A. I'm not a lawyer.  
 25 Q. I want to know if anybody tried to influence

1 Q. So my question is why didn't you bring other  
 2 things from the file other than this?  
 3 A. You must think I'm a stupid jerk over here. I  
 4 know what you're getting at over here. I have to answer  
 5 your question.  
 6 MR. MARIN: We brought the listing agreement.  
 7 THE WITNESS: We brought all the listings from the  
 8 Caldwell "Banks" we've got here, and all the listings --  
 9 but I have an e-mail.  
 10 I don't know why you're asking me about an e-mail.  
 11 Would you please explain that.  
 12 MR. BOWERS:  
 13 Q. It sounded to me like somebody had sent you an  
 14 e-mail --  
 15 A. It sounds like. It sounds like.  
 16 Is that the way a lawyer talks? It sounds like.  
 17 Q. Yes.  
 18 It sounds like they sent you --  
 19 A. It don't sound like that.  
 20 Q. In the last five days, did anybody e-mail you  
 21 material, either you or Manny, in reference to this  
 22 upcoming deposition?  
 23 A. No.  
 24 MR. MARIN: I prepared it.  
 25 THE WITNESS: Manny prepared it.

1 He prepared it for this deposition. He prepared it  
 2 for this deposition.  
 3 MR. BOWERS:  
 4 Q. Good.  
 5 Do you have -- you can ask him. Does he have or do  
 6 you have in front of you the August 28, 2008  
 7 authorization which you signed in which you gave  
 8 Mr. Clayson permission to run the operations of the Star  
 9 Valley restaurant?  
 10 MR. MARIN: It was in that e-mail.  
 11 THE WITNESS: It was in that e-mail?  
 12 MR. MARIN: Yes.  
 13 THE WITNESS: You got it with you?  
 14 MR. MARIN: So I don't have it, but I know it was  
 15 in the file. That's the reason you signed this.  
 16 THE WITNESS: Yeah, this is why I signed this.  
 17 Yeah.  
 18 MR. BOWERS:  
 19 Q. Okay.  
 20 Do you have that? Can you review that, the  
 21 August 28, 2008 letter authorization?  
 22 MR. MARIN: This is exactly what was in there. We  
 23 didn't bring that.  
 24 THE WITNESS: We didn't bring it with us, that part  
 25 of it.

1 MR. BOWERS:  
 2 Q. Okay.  
 3 A. October 8, the owner of Star Valley Cheese --  
 4 You know, these words are --  
 5 Listen, I'm not a lawyer, but when you go bankrupt,  
 6 how do you own it anymore?  
 7 Do you own anything after you're bankrupt? Do you  
 8 still own it? As a lawyer, answer me. Do you still own  
 9 it after a place goes bankrupt?  
 10 Q. Let me ask you this: Did you believe you owned  
 11 it or you didn't when it went bankrupt?  
 12 A. No, the court owns it. The court takes it  
 13 over.  
 14 You might be a principal there, but you don't own  
 15 it.  
 16 Q. So --  
 17 A. So here it says -- it says that "As I was the  
 18 owner of Star Valley Cheese Plant in Thayne, Wyoming to  
 19 the company of Star Valley Cheese Corporation."  
 20 I was always working for the courts, not as an  
 21 individual owner. So I want you to straighten that one  
 22 out.  
 23 I'm not going to get any deeper with this thing  
 24 because I have nothing to do with any of you guys. I'm  
 25 getting a little --

1 Q. Since you weren't the owner, then you didn't  
 2 have authorization to have Gaylen Clayton --  
 3 A. Only -- only for the restaurant. Don't put  
 4 words in my mouth. Only for the restaurant.  
 5 I had the right to keep it open as much as I could,  
 6 but the people there weren't running it right, and  
 7 Gaylen was staying there and living there. I told him  
 8 to look after it, to take care of it, to keep it open.  
 9 Otherwise, I would have had to close the  
 10 restaurant, and it wouldn't look good for the courts.  
 11 Q. But you didn't have the authorization or power  
 12 to allow Gaylen Clayson to sell equipment out of the  
 13 plant?  
 14 A. Hell no. No. Excuse me. No.  
 15 MR. ATKIN: This is Blake Atkin.  
 16 Object to the question. Calls for a legal  
 17 conclusion.  
 18 MR. BOWERS: Okay.  
 19 Q. If Mr. Clayton sold -- during the time prior to  
 20 the closing of the escrow, if Mr. Clayton sold equipment  
 21 out of the plant, then he did so without your approval;  
 22 correct?  
 23 A. If anything came out of that plant it was  
 24 absolutely without my approval.  
 25 As I said, again -- I will read it again to you.

1 After Gaylen submitted and the offer was accepted, he  
 2 suggested to run the plant and restaurant and keep it  
 3 familiarized and to operations -- keep it in operation.  
 4 That I didn't mind as long as it didn't cost any  
 5 money to the courts.  
 6 Q. Let me clarify -- While we're on that subject,  
 7 let me clarify then.  
 8 It wasn't sold -- when there was money coming into  
 9 the restaurant, because you have customers paying, did  
 10 Gaylen Clayton have any authority to withdraw or use any  
 11 of that money for his personal use?  
 12 A. No. Nobody.  
 13 Neither did Don Zebe.  
 14 Q. Neither did Don Zebe?  
 15 A. As far as I know, both of them were over there.  
 16 Q. So the money was to go back into either paying  
 17 for the suppliers --  
 18 A. Right, exactly.  
 19 And the help. Which we had -- I got sued by the  
 20 state of Wyoming.  
 21 THE WITNESS: What was that? The -- the labor  
 22 department.  
 23 What was the name of this?  
 24 MR. MARIN: For state tax.  
 25 THE WITNESS: For state tax.

1 MR. MARIN: Sales tax.  
 2 THE WITNESS: Sales tax.  
 3 They weren't paying. I got sued.  
 4 And I called up Gaylen and the girls that worked  
 5 there and said, "You have to pay this." Between Don  
 6 Zebe and Gaylen, whoever, they paid it.  
 7 MR. BOWERS:  
 8 Q. And did there come a time before the sale of  
 9 the property that the bankruptcy was discharged and you  
 10 were what is referred to as a debtor in possession?  
 11 A. Did -- Can you clarify that?  
 12 You mean in simple words was the -- was the  
 13 bankrupt taken out?  
 14 Q. Was it --  
 15 A. No. Never.  
 16 Q. Ever?  
 17 A. Never.  
 18 Q. Let me tell you -- You know, I have it in front  
 19 of you, and I'll just read it to you what I have in  
 20 front of you.  
 21 It's an August 28, 2008. I think you told me that  
 22 you reviewed this.  
 23 It says, "To whom it may concern. This will  
 24 authorize Mr. Gaylen Clayton to run the operations of  
 25 the Star Valley restaurant" --

1 him until he paid it.  
 2 Q. And, again, he didn't have any -- it was  
 3 basically -- the only authorization you gave him in  
 4 August 28th on the plant was to just maintain the  
 5 cleanliness; correct?  
 6 A. Yeah. That's what he wanted to do.  
 7 He wanted -- he suggested that himself after --  
 8 Here, I'll read it to you again.  
 9 Gaylen then suggested to clean the plant and fix  
 10 the electrical and plumbing. And it was confirmed -- it  
 11 was confirmed by John -- Don Zebe. He authorized it  
 12 also that he should do that.  
 13 Q. Who told you that?  
 14 A. Don Zebe.  
 15 He -- he became his partner. When he became his  
 16 partner he had it noted too that he was going to do the  
 17 cleaning and fix the plant so it could be running when  
 18 escrow closed.  
 19 Q. Who told you that Don Zebe was his partner?  
 20 MR. MARIN: Don Zebe.  
 21 THE WITNESS: Don Zebe himself told me.  
 22 MR. BOWERS: Manny, I can hear you in the  
 23 background telling him the answers.  
 24 THE WITNESS: Well, that's why I brought him here.  
 25 MR. BOWERS: Yeah, well, I'm not deposing him.

1 A. Right.  
 2 Q. -- "and he will also be responsible for  
 3 providing workers' compensation insurance" --  
 4 A. Yeah.  
 5 Q. -- "for the restaurant employees."  
 6 A. Correct.  
 7 Q. And the next line, "In addition, Mr. Clayson  
 8 will also take care of the cleanliness of the plant.  
 9 Sincerely, Morris A. Farinella."  
 10 Is that the authorization you reviewed you were  
 11 making reference to earlier?  
 12 MR. MARIN: Yes.  
 13 THE WITNESS: Yes.  
 14 MR. BOWERS:  
 15 Q. So he was to pay for workers' compensation  
 16 insurance for employees of the restaurant?  
 17 A. Correct.  
 18 Q. Did he do that?  
 19 A. After we told him that it was being sued by the  
 20 state, then he paid, I think. I believe he paid it.  
 21 Yes, he paid it.  
 22 Q. You thought he paid it after you got sued;  
 23 correct?  
 24 A. No. You know, the state sent him letters and  
 25 they're going to sue you this and that, and I kept on

1 And I don't mind you giving documents and helping,  
 2 but I've got to ask that you refrain from giving the  
 3 answers.  
 4 Will you do that for me?  
 5 THE WITNESS: Okay.  
 6 MR. MARIN: Okay.  
 7 MR. BOWERS: Otherwise, we'll set up another  
 8 deposition.  
 9 THE WITNESS: No. No. Just get to the point here.  
 10 MR. BOWERS: Okay.  
 11 Q. So he told -- you have an independent  
 12 recollection outside of what Manny just told you --  
 13 A. I didn't even hear what Manny said, to tell you  
 14 the truth. I didn't hear what he said. Okay?  
 15 Q. Okay.  
 16 When did Don Zebe tell you that he was partners  
 17 with Gaylen?  
 18 A. The last time I was at Wyoming when he made the  
 19 bid and it was accepted.  
 20 And I told Man- -- told Gaylen, "You're going to  
 21 have to come up with the money."  
 22 He said, "No, Don Zebe has got the money. Both of  
 23 us are going to. He's my partner."  
 24 And I came back to L. A., and that was the end of  
 25 that.

1 Q. So he said he was -- did Gaylen tell you he was  
 2 going to be his partner?  
 3 A. Yeah.  
 4 Q. He was going to be partners with Don Zebe?  
 5 A. Yeah. He introduced him to me at the time. I  
 6 didn't know Don Zebe.  
 7 Q. Did he introduce him as his partner?  
 8 A. He said he was going to be his partner.  
 9 Q. Okay. Okay.  
 10 So Gaylen told you that he was going to be Don  
 11 Zebe's partner; correct?  
 12 A. Don Zebe said it too.  
 13 Q. Okay.  
 14 So did you ever enter into any agreement with Don  
 15 Zebe?  
 16 A. Never.  
 17 Q. Okay.  
 18 A. He wanted to borrow money from me. After he  
 19 closed it, he says "Lend me" -- "lend me 2- or 300,000,"  
 20 what it was. And I told him "No, I couldn't do it."  
 21 Q. All right.  
 22 So let me just get back. We got off track.  
 23 So I just want to clarify because here's -- and I'm  
 24 just paraphrasing. My understanding now is that at  
 25 least in some document Gaylen Clayson has alleged that

1 he had the right to withdraw money out of the restaurant  
 2 and use it for his personal use.  
 3 That's not true; correct?  
 4 A. No.  
 5 Q. You never gave him authority to do that?  
 6 A. No.  
 7 Q. I also understand that Gaylen Clayton sold some  
 8 equipment.  
 9 One, I think somebody's alleged that he sold a  
 10 dryer for over -- was it \$10,000 or 12,000, some --  
 11 A. Where did you get that information from?  
 12 Q. That's what we --  
 13 A. Don Zebe.  
 14 Q. I'm trying to --  
 15 THE REPORTER: Wait. You guys are talking at the  
 16 same time. I couldn't hear.  
 17 THE WITNESS: Where did you get information that he  
 18 sold equipment?  
 19 That I don't know about.  
 20 MR. BOWERS:  
 21 Q. Actually, Mr. Clayson admitted that he sold the  
 22 equipment, but he claims you gave him permission.  
 23 A. Nobody gave him permission. I haven't got the  
 24 right to give him permission.  
 25 Q. So if he sold any equipment out -- you don't

1 remember giving him permission to sell any equipment;  
 2 correct?  
 3 A. I don't have the right in the bankruptcy court  
 4 they give permission to sell equipment out of a bankrupt  
 5 plant. I didn't do it. It's impossible.  
 6 Q. Do you remember ever -- ever remember in the  
 7 history of your relationship with Gaylen Clayson giving  
 8 him permission to sell equipment out of that plant?  
 9 A. Never.  
 10 Q. All right.  
 11 A. To cleanup -- he could have cleaned up -- You  
 12 know, if there was junk in the -- You know what I mean  
 13 by cleanup?  
 14 Are you familiar with the cleanup -- what it means  
 15 cleanup the plant outside and in? So it will look  
 16 decent.  
 17 In fact, you want me to tell you the truth. I told  
 18 him don't clean it too good because other bidders are  
 19 coming. They're going to bid higher than you.  
 20 But he cleaned the outside, which was a job, the  
 21 garbage around the plant. That's what I thought he was  
 22 cleaning. And he cleaned inside.  
 23 And I said, "Okay. As long as it don't cost the  
 24 bankruptcy lawyer."  
 25 Q. So at one point you assumed there was going to

1 be higher bidders than Gaylen Clayton; correct?  
 2 A. I'll back off.  
 3 Before he wanted to clean the plant, I said, "No."  
 4 When he wanted to fix the plant I said, "No."  
 5 The bids were not in at that time. So I'll read it  
 6 back to you what I did.  
 7 After he -- after he submitted the offer and was  
 8 accepted is when I told him you can go and clean it and  
 9 get ready for it, as long as it don't cost no money,  
 10 until this escrow closes, to the bankruptcy court.  
 11 Q. Okay.  
 12 A. And Gaylen -- he suggested he clean the plant  
 13 and fix the electrical, plumbing.  
 14 Why would I tell him that without -- Yeah, they're  
 15 not going pay for all of this. The bankruptcy court is  
 16 not going to pay for that. It's in bankruptcy.  
 17 So he was doing it for his purpose and Don Zebe's  
 18 purpose. And John, whatever his name is, knew it too.  
 19 Q. Did you ever give Gaylen permission to have a  
 20 couple hundred thousand dollars worth of electrical work  
 21 done on the plant?  
 22 A. No, I didn't know anything about it. That  
 23 was -- that was the two partner's idea, both Don and  
 24 Gaylen.  
 25 Q. And who told you that?

1 A. Gaylen and Don. Don Zebe too.  
 2 Q. He told you that he was -- that he wanted to  
 3 spend a couple hundred thousand dollars to get  
 4 electrical work --  
 5 A. Yeah. That's what he told me.  
 6 Q. Okay.  
 7 When was that?  
 8 A. That was on January 14th, 2009 at 2:36 p.m.  
 9 Q. Okay.  
 10 And what are you looking at?  
 11 A. At an e-mail that he sent to the real  
 12 "estater," and he sent one here -- he sent me one too.  
 13 Q. Okay.  
 14 Other than that, do you have any -- did you have  
 15 any independent recollection of that without looking at  
 16 that document?  
 17 A. Recollection about what? That Don Zebe was a  
 18 partner?  
 19 Q. Here's how it's supposed to work, and it's hard  
 20 from the telephone.  
 21 A. I know it's hard.  
 22 Q. I'm supposed to ask you a question.  
 23 A. Go ahead.  
 24 Q. If you don't know, you don't know.  
 25 If you need to look at a document, you're supposed

1 A. I don't remember.  
 2 Q. Well, let's look.  
 3 A. You are going to get me to the point where I'm  
 4 going to say I don't remember anything and forget about  
 5 it because you haven't answered me.  
 6 Q. No, no, no.  
 7 You got to understand the rules. I get to ask you  
 8 the questions.  
 9 A. I know the rules.  
 10 You're asking the questions, but I'm asking them of  
 11 you now.  
 12 This is the point that we came here for in the  
 13 first place.  
 14 Q. That's right. We can go all day and I won't  
 15 answer your questions. We can get through a lot quicker  
 16 if you just answer the questions.  
 17 A. Go ahead.  
 18 Q. Would you look at deposition Exhibit 4. That's  
 19 the real estate contract.  
 20 A. Why don't you tell it to the real estate guy?  
 21 I never read it.  
 22 Q. Well you signed it; correct?  
 23 A. Well he sent it to me.  
 24 That's not my signature.  
 25 Q. That's not your signature?

1 to say "I need to look at a document."  
 2 A. Okay. I'm sorry.  
 3 Q. That's okay.  
 4 Let's see here.  
 5 A. I got to get new glasses. I can hardly read  
 6 the little writing.  
 7 You didn't ask me if you wanted to hear what the  
 8 e-mail says.  
 9 Q. I've seen the e-mail.  
 10 A. Did you see the paragraph where Zebe says he's  
 11 going to do it for \$200,000. And he's going to take  
 12 full responsibility and prepared to pay for it himself?  
 13 Did you read that part of it?  
 14 Q. I did.  
 15 A. Actually we're on the same page.  
 16 Q. No. No, we're not.  
 17 A. Why not? You've got this e-mail.  
 18 Q. No, we're not on because --  
 19 A. Doesn't it say that he's prepared to pay?  
 20 Q. No, it doesn't.  
 21 A. No?  
 22 Q. So Mr. Farinella, let me ask you this --  
 23 A. Yeah.  
 24 Q. -- the offer was accepted on October 17th;  
 25 correct? The date that --

1 A. It's a thousand miles away.  
 2 THE REPORTER: Let us get the exhibit.  
 3 MR. BOWERS:  
 4 Q. After --  
 5 THE REPORTER: Wait. Wait. Wait.  
 6 Let us get the exhibit.  
 7 Okay. Ready.  
 8 MR. BOWERS:  
 9 Q. When you talked about once the offer was  
 10 accepted from Gaylen and you allowed him to go in and  
 11 take care of the restaurant; correct?  
 12 A. Well, I allowed him. I asked him to.  
 13 As long as he's going buy the place and I'm having  
 14 problems with the help over there in the restaurant,  
 15 rather than closing it, to keep it open while escrow  
 16 closed to run it and take care of it.  
 17 Q. I'm trying to figure these dates out.  
 18 So then that would be sometime after October 17th,  
 19 2008?  
 20 A. I don't remember.  
 21 Q. Well you said that once the offer was  
 22 accepted -- Your exact testimony was something along  
 23 that line --  
 24 A. Yeah.  
 25 Q. -- after the offer was accepted, I told him he

1 could do this and this.  
 2 A. Yeah.  
 3 Q. Okay.  
 4 So then prior to October 17th, 2008, he didn't have  
 5 permission; correct?  
 6 A. No.  
 7 Neither did Don Zebe either. Because he was in  
 8 that restaurant too, you know, taking money out too.  
 9 Q. So Don Zebe was taking money out too?  
 10 A. Yeah. Absolutely.  
 11 As far as I know, they were both fighting over  
 12 there and you guys got me involved up there.  
 13 That's a circus going on up there. You know that.  
 14 Excuse me, off the record. That is a circus going on  
 15 between the two of them.  
 16 Q. Well, we're not off the record. Everything is  
 17 on the record.  
 18 A. Okay.  
 19 Q. Did you -- Did you ever tell Gaylen Clayson or  
 20 authorize him as your agent to do whatever he needed to  
 21 get the plant running?  
 22 A. No. He's not my agent.  
 23 Q. Did you -- would you ever authorize him to do  
 24 anything to get the plant running?  
 25 A. I wouldn't authorize him or Don Zebe without

1 signing a piece of paper in front of a lawyer. I don't  
 2 trust either one of them.  
 3 Q. Fair enough. Fair enough.  
 4 A. They're a bunch of crooks up there.  
 5 MR. MARIN: (Indicating).  
 6 THE WITNESS: I know.  
 7 MR. BOWERS: Okay. Let's take another 30 seconds  
 8 to 2-minute break and we may be wrapping up.  
 9 (A recess is taken.)  
 10 MR. BOWERS: Mr. Farinella, I don't have anymore  
 11 questions.  
 12 Mr. Atkins will have the right.  
 13 I just wanted to throw this out one more time.  
 14 THE WITNESS: Go ahead.  
 15 MR. BOWERS: And Manny, I'm sorry, I don't know  
 16 your last name. I don't mean any disrespect for calling  
 17 you that.  
 18 MR. MARIN: Marin, M-a-r-i-n.  
 19 MR. BOWERS: The only thing is -- apparently you  
 20 got it, but I would still throw out there that I would  
 21 like to talk to Mr. Farinella and Manny and their  
 22 personal attorney about settling this case between us  
 23 when there's the time convenient for you.  
 24 THE WITNESS: Settle the case.  
 25 MR. BOWERS: I don't have any more questions.

1 THE WITNESS: You want to settle? How do we settle  
 2 this case?  
 3 MR. MARIN: You can arrange it with Blake as far as  
 4 that schedule.  
 5 Morris he wanted to talk to you and me so that's  
 6 fine.  
 7 THE WITNESS: Who wanted to talk to me?  
 8 MR. ATKIN: I do have a couple questions if that's  
 9 okay, Morris.  
 10 THE WITNESS: Yeah.  
 11  
 12 -EXAMINATION-  
 13  
 14 BY MR. ATKIN:  
 15 Q. Do you recall, you know, you --  
 16 MR. BOWERS: Wait a minute. Wait a minute. Are we  
 17 deposing Morris? I'm sorry. I thought you said Manny.  
 18 MR. ATKIN: I said "Morris."  
 19 THE WITNESS: Morris.  
 20 MR. BOWERS: You did.  
 21 MR. ATKIN:  
 22 Q. You were asked some questions by Mr. Bowers  
 23 about this document that we've marked, the offer that  
 24 was accepted in October of 2008.  
 25 Do you recall that Gaylen had made an offer earlier

1 in the year in 2008, sometime back in February 2008?  
 2 A. Yes.  
 3 Q. And so some of those conversations that you  
 4 talked about with Gaylen about running the restaurant  
 5 and doing whatever was necessary to make the plant  
 6 operational, those conversations, didn't they occur  
 7 before October of 2008 as to that first offer in  
 8 February?  
 9 A. Well, he made an offer and it was not accepted.  
 10 Gaylen made the first offer. I don't know. I think it  
 11 was February -- I think it was --  
 12 THE WITNESS: Was it February 7th that he made his  
 13 offer? February 7. That's 2008.  
 14 MR. MARIN: Yes.  
 15 THE WITNESS: 2008, February 7, and he offered  
 16 500,000. And it was not accepted. It was turned down.  
 17 MR. ATKIN:  
 18 Q. In any event, he started running the restaurant  
 19 at about that time, didn't he, February 2008?  
 20 A. It was much later than February though. It was  
 21 after -- after the 500,000 was rejected, he offered  
 22 \$800,000 with another offer of 800-, and we accepted  
 23 his. And that's when I found out Don Zebe was a  
 24 partner. He made -- he accepted the offer of 800,000 --  
 25 we accepted that.

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1 So when we accepted that, that means that the thing  
 2 was closed. Like I said, I read it to you again.  
 3 After the accepting of the offer, Gaylen asked me  
 4 if he can clean it up and get it ready to run.  
 5 Which I said go ahead, as long as it don't cost the  
 6 court any money.  
 7 Q. All right.  
 8 A. And they said, "Okay."  
 9 Because I got an e-mail from Don Zebe that says  
 10 they're willing to pay anything -- that they -- you  
 11 know, that they -- Gaylen -- Gaylen and Don Zebe will  
 12 accept up to 200 something thousand -- \$245,000 to  
 13 cleanup the plant. They will pay for it and not charge  
 14 us or the courts or anybody.  
 15 I got an e-mail to that it effect.  
 16 Q. And that's the e-mail that you talked about  
 17 earlier that you received in January of 2009?  
 18 A. Right.  
 19 Q. Okay.  
 20 And --  
 21 A. The plant was closed for a couple of years.  
 22 That's why it got so dirty and crumby and everything.  
 23 That's why it wasn't cleaned. It was closed for two  
 24 years.  
 25 Any piece of property that has been closed --

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1 Q. Wasn't there junk on the property that had been  
 2 used that was no longer usable? It was considered junk  
 3 on the property?  
 4 A. Yes.  
 5 And in fact, we had what we call a junkyard. We  
 6 used to throw the equipment that was not good or didn't  
 7 work no more out in the back.  
 8 Q. And wasn't that weigh dryer part of that junk?  
 9 A. I believe so. I believe we had an old weigh  
 10 dryer -- Well, it was a pan. They call it a pan. It  
 11 was thrown in the back. It couldn't be used at all. It  
 12 wasn't worth anything. It was scrap.  
 13 Q. And you authorized Gaylen to get rid of that?  
 14 A. I didn't authorize him to get rid of that or  
 15 any particular item. Only to clean it up.  
 16 If that meant to get rid of that, I guess he did  
 17 it. But not to cost any money to court -- not to cost  
 18 me or the bankruptcy court. Because they would have  
 19 come -- I had no authority to tell him anything anyway.  
 20 He might as well ask a monkey on a tree what he  
 21 could do. I had no authority.  
 22 MR. ATKIN: That's all I have.  
 23 THE WITNESS: Okay.  
 24 MR. BOWERS: That's all. I have nothing else.  
 25 THE REPORTER: So we're off the record.

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1 MR. BOWERS: We're off the record.  
 2 (The proceedings concluded at 10:40 a.m.)  
 3 \*\*\*  
 4  
 5 I declare under penalty of perjury under the laws  
 6 of the State of California that the foregoing is true  
 7 and correct.  
 8  
 9 Executed at \_\_\_\_\_, California,  
 10 on \_\_\_\_\_.  
 11  
 12  
 13  
 14  
 15  
 16  
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 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

\_\_\_\_\_  
 MORRIS A. FARINELLA

Page 73

1 STATE OF CALIFORNIA ) ss  
 2  
 3 I, Lori S. Turner, CSR 9102, CP, RPR, do hereby  
 4 declare:  
 5  
 6 That, prior to being examined, the witness named in  
 7 the foregoing deposition was by me duly sworn pursuant  
 8 to Section 2093(b) and 2094 of the Code of Civil  
 9 Procedure;  
 10  
 11 That said deposition was taken down by me in  
 12 shorthand at the time and place therein named and  
 13 thereafter reduced to text under my direction.  
 14  
 15 I further declare that I have no interest in the  
 16 event of the action.  
 17  
 18 I declare under penalty of perjury under the laws  
 19 of the State of California that the foregoing is true  
 20 and correct.  
 21  
 22 WITNESS my hand this \_\_\_\_\_ day of  
 23 \_\_\_\_\_,  
 24 \_\_\_\_\_  
 25  
 Lori S. Turner, CSR 9102, CP, RPR



Gary L. Cooper - Idaho State Bar #1814  
COOPER & LARSEN, CHARTERED  
151 North Third Avenue, Second Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182

2310NDV -3 PM 3:03  
DEPUTY CLERK

*Counsel for Defendant*

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

GAYLEN CLAYSON, )  
)  
Plaintiff, )

CASE NO. CV-2009-0002212-OC

vs. )

**DESIGNATION OF TESTIMONY  
FROM THE DEPOSITION OF  
MORRIS A. FARINELLA**

DON ZEBE, RICK LAWSON, AND )  
LAZE, LLC., )  
)  
Defendants, )

\_\_\_\_\_)  
)  
DON ZEBE, RICK LAWSON, AND )  
LAZE, LLC., )  
)  
Counterclaim Plaintiff, )

vs. )

GAYLEN CLAYSON, )  
)  
Counterclaim Defendants, )  
\_\_\_\_\_)

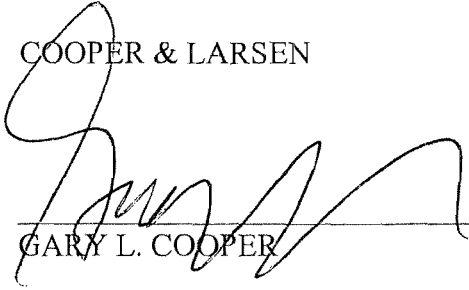
COME NOW the Defendants, by and through their attorney of record, and offers the Court the following designation of testimony to be read from the deposition of Morris A. Farinella taken on September 30, 2010:

1. Page 5, Lines 11 through 18.

2. Page 6, Lines 16 through 22.
3. Page 7, Lines 21 through 25.
4. Page 8, Lines 1 through 8.
5. Page 8, Lines 18 through 25.
6. Page 9, Lines 1 through 8.
7. Page 9, Lines 12 through 15.
8. Page 10, Lines 1 through 25.
9. Page 11, Lines 1 through 25.
10. Page 12, Lines 1 through 23.
11. Page 13, Lines 4 through 9.
12. Page 18, Lines 11 through 25.
13. Page 19, Lines 1 through 6.
14. Page 66, Lines 19 through 25.
15. Page 67, Lines 1 and 2.

DATED this 3<sup>rd</sup> day of November, 2010.

COOPER & LARSEN



GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of November, 2010, I served a true and correct copy of the foregoing to:

Blake S. Atkin  
7579 North Westside Hwy  
Clifton, ID 83228


- U.S. mail
- Express mail
- Hand delivery
- Fax:

Atkins Law Offies  
837 South 500 West, Ste 200  
Bountiful, UT 84010

- U.S. mail
- Express mail
- Hand delivery
- Fax: 801-533-0380

John D. Bowers  
Bowers Law Firm  
PO Box 1550  
Afton, WY 83110

- U.S. mail
- Express mail
- Hand delivery
- Fax: 307-885-1002

  
\_\_\_\_\_  
GARY L. COOPER

**Deposition of**

**MORRIS A. FARINELLA**

**LAZE, LLC v. DAIRY SYSTEMS COMPANY, INC.**

*Taken On  
September 30, 2010*

Transcript provided by:

**HUTCHINGS<sup>SM</sup>**  
COURT REPORTERS, LLC  
CSR 649

GLOBAL LEGAL SERVICES

800.697.3210

CERTIFIED COPY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF LINCOLN, STATE OF WYOMING

LAZE, LLC, a Wyoming Limited Liability  
Company, DON ZEBE, RICK LAWSON,

Petitioners,

vs.

DAIRY SYSTEMS COMPANY, INC., a  
Utah Corporation,

Respondent.

No. 2009-89-DC

AND RELATED COUNTER-CLAIMS.

DEPOSITION OF MORRIS A. FARINELLA, a defendant  
herein, noticed by Bowers Law Firm, PC, taken at  
6055 East Washington Boulevard, Los Angeles,  
California, at 9:10 a.m., on Thursday,  
September 30, 2010, before Lori S. Turner, CSR  
9102, CP, RPR.

Hutchings Number 279888

1 APPEARANCES OF COUNSEL:  
 2  
 3 For LAZE, LLC; DON ZEBE and RICK LAWSON:  
 4 BOWERS LAW FIRM, PC  
 5 BY JOHN D. BOWERS (Present telephonically)  
 6 685 South Washington Street  
 7 Afton, Wyoming 83110  
 8  
 9 - AND -  
 10  
 11 COOPER & LARSEN  
 12 BY GARY L. COOPER (Present telephonically)  
 13 151 North 3rd Avenue, Suite 210  
 14 Pocatello, Idaho 83205  
 15  
 16 For MORRIS A. FARINELLA:  
 17 ATKIN LAW OFFICES, PC  
 18 BY BLAKE S. ATKIN (Present telephonically)  
 19 837 South 500 West, Suite 200  
 20 Bountiful, Utah 84010  
 21  
 22 Also Present: MANNY MARIN  
 23  
 24  
 25

1 EXHIBITS (Continued)  
 2 EXHIBIT DESCRIPTION IDENTIFIED MARKED  
 3 7 Documents Bates stamped 40 41  
 23 through 26  
 4 [EXH-7]  
 5 8 Documents Bates stamped 27 42 42  
 through 30  
 6 [EXH-8]  
 7 9 1-page document Bates stamped 43 43  
 31  
 8 [EXH-9]  
 9 10 Documents Bates stamped 32 44 44  
 through 39  
 10 [EXH-10]  
 11  
 12  
 13  
 14  
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1 INDEX  
 2 WITNESS: MORRIS A. FARINELLA  
 3 EXAMINATION BY: PAGE  
 4 MR. BOWERS 5  
 5 MR. ATKIN 68  
 6  
 7  
 8 EXHIBITS  
 9 Exhibit identification within the transcript is flagged  
 with "[EXH]" as an identifier.  
 10  
 11 EXHIBIT DESCRIPTION IDENTIFIED MARKED  
 12 1 2-page document Bates stamped 19 19  
 1 through 2 entitled "Warranty  
 13 Deed"  
 [EXH-1]  
 14  
 15 2 1-page document Bates stamped 22 22  
 3 entitled "Bill of Sale"  
 [EXH-2]  
 16  
 17 3 4-page document Bates stamped 24 24  
 4 through 7 entitled "Bill of  
 18 Sale"  
 [EXH-3]  
 19 4 Documents Bates stamped 8 through 26 26  
 19 referred to a "Offer to  
 20 Purchase"  
 [EXH-4]  
 21  
 22 5 2-page document Bates stamped 37 37  
 20 and 21  
 [EXH-5]  
 23  
 24 6 1-page document Bates stamped 38 38  
 22  
 [EXH-6]  
 25

1 MORRIS A. FARINELLA,  
 2 a defendant herein, having been sworn, testifies as  
 3 follows:  
 4  
 5 -EXAMINATION-  
 6  
 7 BY MR. BOWERS:  
 8 Q. Mr. Farinella. My name is John Bowers. I  
 9 represent Rick Lawson, Don Zebe and Laze, LLC in this  
 10 matter.  
 11 Would you please state your full name for the  
 12 record.  
 13 A. Morris A. Farinella, F-a-r-i-n-e-l-l-a.  
 14 Q. Great.  
 15 And your current address?  
 16 MR. MARIN: 9323 --  
 17 THE WITNESS: 9323 Tweedy Lane, Downey, California  
 18 "90240."  
 19 MR. BOWERS: Thank you.  
 20 Q. Mr. Farinella, have you ever had your  
 21 deposition taken before?  
 22 A. Yes.  
 23 Q. So you understand the procedure? I get to ask  
 24 the questions and you get to answer them; correct?  
 25 A. To the best of my ability, yes.

09:13 1 Q. And just a couple things.  
 2 On the telephone, this will make it easier, because  
 3 we'll be more likely to answer questions verbally, but  
 4 sometimes in human nature, we have a habit of shrugging  
 09:13 5 and shaking our heads, and our court reporter Lori won't  
 6 be able to take that down. So we'll verbalize our  
 7 answers.  
 8 The other things is we have to slow down. I have a  
 9 habit of talking over people. So if you have that same  
 09:13 10 habit, just wait until I finish my question before you  
 11 answer.  
 12 Okay?  
 13 A. Yes.  
 14 Q. Are you on any type of medication today, sir?  
 09:13 15 A. No.  
 16 Q. How old are you?  
 17 A. 87.  
 18 Q. Any reason medically, or there's no medication  
 19 that would prevent you from understanding and answering  
 09:13 20 my questions today truthfully?  
 21 A. No.  
 22 The only thing I take is aspirin.  
 23 Q. Great.  
 24 Okay. Can you tell me what you did in preparation  
 09:14 25 for this deposition?

09:15 1 A. Yes. Since 1975.  
 2 Q. Thank you. '75.  
 3 And in 2008, that plant was in bankruptcy; is that  
 4 correct?  
 09:15 5 A. I believe so.  
 6 Q. Or under the direction of bankruptcy?  
 7 A. Well, under a Chapter 11 and Chapter 7, I  
 8 think.  
 9 Q. Okay.  
 09:15 10 And did there come a time when you sold the plant?  
 11 A. No.  
 12 Q. When I refer to plant, I'll -- whether it's  
 13 plant or Star Belly Cheese Factory or Star Belly Plant,  
 14 it's all the same thing.  
 09:15 15 A. Yes.  
 16 No, we haven't sold it.  
 17 Q. Okay.  
 18 So can you tell me about -- Apparently there was a  
 19 time when you were allowed to sell the plant even though  
 09:15 20 it was in bankruptcy.  
 21 Can you tell me how that transpired?  
 22 A. You don't understand the procedure of a  
 23 bankruptcy.  
 24 Q. Yes, I do.  
 09:16 25 A. You say "bankruptcy" -- a bankruptcy lawyer was

09:14 1 A. Nothing.  
 2 Q. Did you talk to anybody?  
 3 A. No.  
 4 Q. Okay.  
 09:14 5 Did you talk to Gaylen Clayson?  
 6 A. No.  
 7 Q. When is the last time you spoke with  
 8 Mr. Clayson?  
 9 A. A year, I guess, ago. Maybe a year, year and a  
 09:14 10 half. I don't know.  
 11 Q. Did you review any documents?  
 12 A. No.  
 13 Q. Have you ever spoken to Clark Gayley?  
 14 A. I don't know him.  
 09:14 15 Q. John Gayley?  
 16 A. I don't know him.  
 17 Q. That would mean you haven't spoken to them?  
 18 A. If I don't know them, I don't think I talked to  
 19 them.  
 09:14 20 Q. That's right. Okay.  
 21 Mr. Farinella, you, through a company that I  
 22 understand that you own, were the owners for a long  
 23 period of time of a business located in Thayne, Wyoming  
 24 that we refer to as Star Valley Cheese Plant; is that  
 09:15 25 true?

09:16 1 there, and he runs the show. The Court runs the show;  
 2 not me.  
 3 So when it went in bankruptcy, we took bids to get  
 4 the money to pay the people. And the bids had to be  
 09:16 5 okayed by the court. I was appointed as president to  
 6 take the bids with the broker from Wyoming, the real  
 7 estate broker, who had the authority to sell the plant  
 8 for the bankruptcy court.  
 9 Q. Okay.  
 09:16 10 So just to make sure I understand this.  
 11 A. Okay.  
 12 Q. You would receive bids or offers to purchase  
 13 it. Then you would forward that information to the  
 14 bankruptcy trustee for his approval?  
 09:16 15 A. That's correct.  
 16 Q. And so, hypothetically, let's say, you wanted  
 17 to sell the plant to a friend or somebody else for a  
 18 lower price. You couldn't do that because you had to  
 19 send the offer to the bankruptcy trustee; correct?  
 09:17 20 A. I think that would be fraud.  
 21 Q. Fair enough.  
 22 A. I couldn't sell it to a friend of mine. I'm  
 23 sure it has to go to the bankruptcy court. They had to  
 24 approve everything.  
 09:17 25 Q. Fair enough.

09:17 1 So in 2008 -- just kind of short circuit this -- my  
 2 understanding is you were receiving offers.  
 3 Val D. Pendleton of Caldwell Bankers was working  
 4 with you a little bit or, I guess, soliciting offers; is  
 09:17 5 that correct?  
 6 A. We worked together, yes.  
 7 Q. Worked together.  
 8 And during that time period of time, did you  
 9 have a -- did you run into or did you know a Gaylen  
 09:17 10 Clayson?  
 11 A. I don't know what year that was, but he did  
 12 approach the broker, which was Pendleton, and said "I'd  
 13 like to put a bid in to buy the plant."  
 14 Q. Okay.  
 09:18 15 And when you say "a bid," if he puts a bid in, it's  
 16 got to go through the same process you've already  
 17 explained to me.  
 18 A. Yes.  
 19 And we had meetings at the plant with open bids  
 09:18 20 with other people while Gaylen was there.  
 21 Q. And what about -- Let me back up just a little  
 22 bit.  
 23 In 2008, did you ever allow him to operate the  
 24 restaurant on the premises?  
 09:18 25 A. I don't know what year it was, but at the time

09:19 1 A. Nothing. Until he bought it.  
 2 Nobody had nothing to do with the plant. It's in  
 3 bankruptcy.  
 4 Q. So it was just sit there, and then he could run  
 09:20 5 the restaurant out front and -- What was your  
 6 understanding of the terms of the agreement to allow him  
 7 to run the restaurant?  
 8 A. Just to watch over it so those two little girls  
 9 knew what they were doing there. That's all.  
 09:20 10 Q. Okay.  
 11 How was he to be paid for that?  
 12 A. He wasn't going to get paid anything. He was  
 13 doing me a favor.  
 14 Q. He was doing you --  
 09:20 15 A. Not me. He was doing the bankruptcy people a  
 16 favor.  
 17 Q. The bankruptcy court?  
 18 A. Yeah.  
 19 Q. Where was the money to go? You know, each day  
 09:20 20 you have the money that comes in from the sales.  
 21 A. It was supposed to go into a bank account that  
 22 we had for the restaurant.  
 23 Q. Okay.  
 24 A. I think it was Wells Fargo Bank.  
 09:20 25 THE WITNESS: Wasn't it?

09:18 1 the restaurant -- during the bankruptcy, the lawyer says  
 2 let the restaurant operate in front of the plant so we  
 3 can have some revenue come in.  
 4 So we hired two little Mexican girls there to run  
 09:18 5 the plant for the bankruptcy court. Okay?  
 6 But they were a little mixed up. And Gaylen was  
 7 there everyday. And I asked him to help to take care of  
 8 the restaurant while I'm living in L. A., and -- I  
 9 couldn't do it. You know, here, Wyoming, hear, back and  
 09:19 10 forth. I couldn't go. So I says, "Take care of that  
 11 restaurant with those two girls."  
 12 And he says, "I will look after it," and that was  
 13 all.  
 14 Q. And when you said your agreement with Gaylen --  
 09:19 15 and I separate the two. I separate in my mind the  
 16 restaurant out in front and then the cheese plant, the  
 17 manufacturing plant in the back.  
 18 A. Yes. They were separated.  
 19 In other words, the plant was closed, but the  
 09:19 20 restaurant was open. And they kept it open to get  
 21 revenue to -- for the bankruptcy court to put it in  
 22 there.  
 23 Q. Okay.  
 24 And what was -- What was Gaylen to do, if anything,  
 09:19 25 with the plant in the back?

09:20 1 MR. MARIN: Yeah.  
 2 THE WITNESS: Wells Fargo Bank in Star Valley.  
 3 MR. BOWERS:  
 4 Q. Was Mr. Clayson allowed to spend any of that  
 09:20 5 money on his personal needs?  
 6 A. He had to pay the bills with the providers, the  
 7 people who brought the food there for the restaurant to  
 8 operate. That's all he had to do. Make sure the people  
 9 got paid.  
 09:21 10 Q. For lack of a better word, was he allowed to  
 11 convert any of that money to pay his own personal bills  
 12 not related to the restaurant?  
 13 A. Not as -- that I know of, no.  
 14 Q. Was -- did he have authority to take any of  
 09:21 15 that money and put into his own personal account?  
 16 A. He had no authority to do that, no.  
 17 Q. Do you remember where the -- I'm going to call  
 18 it the trustee receivership account for the restaurant.  
 19 Do you know where that account, which bank it was held  
 09:21 20 at?  
 21 A. Receivership or the -- I think it was Wells  
 22 Fargo.  
 23 MR. MARIN: Wells Fargo.  
 24 THE WITNESS: Wells Fargo.  
 09:21 25 MR. BOWERS:



09:21 1 Q. I know, Mr. Farinella, this is a dumb question,  
 2 but I'll ask it anyway.  
 3 You don't by chance have any documents with you  
 4 that would give us the account numbers for that, would  
 09:21 5 you?  
 6 A. I don't have them anymore.  
 7 Gaylen offered to run the restaurant after he made  
 8 the offer to -- was accepted.  
 9 After he bought the -- he made the offer to buy the  
 09:22 10 plant at the time. So with that in mind, I figured he  
 11 can be trusted to run the restaurant. That's the way  
 12 that happened. Just to run it so -- to keep it open.  
 13 Q. Because you assumed that at some point he would  
 14 be able to buy the whole thing?  
 09:22 15 A. It was already in process of him buying it  
 16 through the bankruptcy court.  
 17 Q. Okay.  
 18 A. He made an initial bid for it.  
 19 After the -- we had three different bids there when  
 09:22 20 it first started.  
 21 And one was from somebody out of L. A., another one  
 22 was from another place. And me and the broker decided  
 23 that let's go -- we had the same two bids from two  
 24 different people. So me and the lawyer, myself and the  
 09:22 25 lawyer -- I mean the lawyer -- the real estate for the

09:23 1 lower until it came down to 800,000.  
 2 Then with that in mind, I proceeded to go to the  
 3 bankruptcy lawyer and give him the information that the  
 4 most we could have got with the broker, real estate  
 09:24 5 broker, was 800,000. And he okayed it.  
 6 Q. Okay.  
 7 So it was the bankruptcy trustee or attorney as you  
 8 call it --  
 9 A. Right.  
 09:24 10 Q. -- that approved the sale?  
 11 A. Absolutely.  
 12 Q. Okay.  
 13 Let's see. During the time that the plant was  
 14 under -- under the direction of the bankruptcy court,  
 09:24 15 did you have authority to sell equipment out of there?  
 16 MR. ATKIN: Objection. Calls for a legal  
 17 conclusion.  
 18 THE WITNESS: Would you repeat that, please.  
 19 MR. ATKIN: Calls for a legal conclusion.  
 09:25 20 THE REPORTER: I can read it back to you.  
 21 (The record is read by the reporter.)  
 22 THE WITNESS: No.  
 23 THE REPORTER: He answered "No."  
 24 MR. BOWERS:  
 09:25 25 Q. Did the bankruptcy trustee or the bankruptcy

09:22 1 bankruptcy court, decided to go with Gaylen because he  
 2 was a local, he had the milk, and it was good for the  
 3 environment there, and hire some people in that area to  
 4 run the plant.  
 09:23 5 The other people that were going to bid on it, they  
 6 were just going to tear it apart and pull it out.  
 7 Q. Did they -- Do you remember what the numbers  
 8 were they bid?  
 9 A. The numbers what? What was bid?  
 09:23 10 Q. Yes.  
 11 A. Yeah.  
 12 800,000.  
 13 Q. That was Gaylen Clayson's bid?  
 14 A. That was his bid and somebody else's too. I  
 09:23 15 forget the other guy.  
 16 Q. Oh. So the other two bids weren't higher, but  
 17 they were --  
 18 A. No.  
 19 Q. -- at least the same?  
 09:23 20 A. One was lower. One was less. 500,000.  
 21 Q. Okay.  
 22 So Mr. Clayson's was one of the highest bids?  
 23 A. Well, no.  
 24 We -- actually we started at 1.5, 1.2, and nobody  
 09:23 25 bid. And you know how the bids go. And we go lower and

09:25 1 court give Gaylen Clayson authority to sell equipment  
 2 out of the plant?  
 3 A. No.  
 4 Nothing was to be touched until escrow closed.  
 09:25 5 Q. "Escrow closed." You mean the actual sale?  
 6 A. Sale of the plant when escrow closed.  
 7 Q. I just want to make sure my definition is the  
 8 same as yours.  
 9 That's the day the money transfers and there's a  
 09:25 10 deed issued?  
 11 A. Absolutely.  
 12 Q. Fair enough.  
 13 If there was any equipment that was sold, should  
 14 that money have been returned back -- if there was any  
 09:25 15 equipment sold by Gaylen Clayson, should that money have  
 16 been returned back to the bankruptcy court?  
 17 A. I don't know how to answer that because I don't  
 18 know if he sold anything.  
 19 Q. Okay.  
 09:26 20 So -- We've got some documents here that I think  
 21 may help us as we walk through this.  
 22 The first one is -- Well, do you remember,  
 23 ultimately who the plant was sold to?  
 24 A. At the very end when it was sold?  
 09:26 25 Q. Yes.

09:26 1 A. Well, you know, really -- where is that -- this  
 2 guy -- wait a minute.  
 3 I think you're jumping in -- you're going ahead.  
 4 You're talking about Gaylen, and now you're going who  
 09:26 5 bought the plant.  
 6 Q. I know, and I apologize.  
 7 The reason for that is when I e-mailed the  
 8 documents to you, two of them are out of order. So  
 9 we're going to have to jump ahead so it's going to mess  
 09:27 10 up the documents.  
 11 A. Do you want me to sit here and tell it the way  
 12 it was?  
 13 Q. Yeah. Let's do that.  
 14 A. Okay.  
 09:27 15 Q. Perfect.  
 16 A. As far as I know, Gaylen made the bid.  
 17 Everything was okay, and the bankruptcy lawyer agreed  
 18 and the real estate broker agreed and we backed off, and  
 19 that was it. It was gone into escrow. They had to come  
 09:27 20 up with the money.  
 21 At that time, the second visit to Wyoming, Gaylen  
 22 introduced me to these two people that I do not know  
 23 very well. One of them is Don Zebe. Don Zebe and Rick.  
 24 Rick "Larson."  
 09:27 25 I really don't know them at all -- at all except

09:28 1 A. Look, I'm not a lawyer and I'm not an  
 2 accountant, and I don't know where this come from.  
 3 Because once it was out, I was out of it.  
 4 It was taken -- taken by the --  
 09:29 5 THE WITNESS: Who is the one that did the closing  
 6 up there? The escrow company?  
 7 MR. MARIN: Alliance.  
 8 THE WITNESS: Alliance. Yeah. Alliance.  
 9 So where this came from, I have no idea.  
 09:29 10 MR. BOWERS:  
 11 Q. Why don't you look at page one on the bottom.  
 12 Is that your signature there?  
 13 MR. MARIN: This one (indicating).  
 14 THE WITNESS: Yeah, that's my signature.  
 09:29 15 Warranty --  
 16 MR. BOWERS:  
 17 Q. Do you remember signing this warranty deed?  
 18 A. Not really, but I guess I did.  
 19 What does it say there?  
 09:29 20 Yeah, I signed it, I guess.  
 21 THE WITNESS: But who did I sign this for?  
 22 MR. MARIN: It was for the escrow company.  
 23 THE WITNESS: For the escrow company, yeah.  
 24 MR. BOWERS:  
 09:29 25 Q. Right.

09:27 1 from Gaylen telling me they got the money; they're going  
 2 to buy it.  
 3 So I told Gaylen, "I don't care who comes up with  
 4 the money, but just buy it." The bid was okay, and  
 09:27 5 everything's -- "buy it."  
 6 And that's where it ended up with me.  
 7 Q. Okay. Fair enough.  
 8 So let's jump ahead then and then it will get back  
 9 in order here in a second, Mr. Farinella.  
 09:28 10 A. Okay.  
 11 MR. BOWERS: If I can have the court reporter mark  
 12 Bates stamped 1 through 2, which is a Warranty Deed, two  
 13 pages, as Exhibit 1. [EXH-1]  
 14 Q. I'll have you look at that Mr. Farinella when  
 09:28 15 she's ready.  
 16 (Whereupon the document referred to is marked by  
 17 the reporter as Exhibit 1 for identification.)  
 18 MR. BOWERS:  
 19 Q. As you pointed out, Mr. Farinella, these are a  
 09:28 20 little bit out of order.  
 21 This -- I'll represent to you what my understanding  
 22 is -- is the warranty deed that was executed as -- you  
 23 call it the escrow, I call it the closing -- when the  
 24 cheese plant was sold.  
 09:28 25 Is that what your understanding of Exhibit 1 is?

09:29 1 And this is what's been represented to me as the  
 2 warranty deed that you signed to sell the cheese plant  
 3 at the close of escrow when the property was transferred  
 4 to my client.  
 09:30 5 A. After he put up the money I guess, yeah.  
 6 Q. Okay.  
 7 And that's all I'm asking you. I just need you to  
 8 validate, first of all, that that's your signature.  
 9 A. Yeah.  
 09:30 10 Q. You did sign the warranty deed?  
 11 A. You know what? Why did I sign a warranty deed?  
 12 I held the mortgage on that property.  
 13 MR. MARIN: You were representing Star Valley.  
 14 THE WITNESS: Okay.  
 09:30 15 I represent Star Valley Cheese Corporation. I  
 16 guess that's why I signed it.  
 17 Go ahead.  
 18 MR. BOWERS:  
 19 Q. Okay.  
 09:30 20 Mr. Farinella is this -- is this a warranty deed  
 21 that you signed?  
 22 A. I guess I did, yes.  
 23 Q. All right. Thank you.  
 24 I know it's hard to go back and look at documents.  
 09:30 25 A. Yeah. We're talking eight years.

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09:30 1 Q. Whatever time you need, just take it.  
 2 Now I'll have you look at what I'll have the court  
 3 reporter -- Bates stamp 3, the Bill of Sale, and ask  
 4 that Lori mark that as deposition Exhibit 2. [EXH-2]  
 09:31 5 When she gets done, I'll have you take a look at  
 6 that, Mr. Farinella.  
 7 (Whereupon the document referred to is marked by  
 8 the reporter as Exhibit 2 for identification.)  
 9 THE REPORTER: Okay.  
 09:31 10 MR. BOWERS:  
 11 Q. Mr. Farinella, I'll have you look at deposition  
 12 Exhibit 2 and it's Bates stamp 3.  
 13 First of all, is that your signature on the bottom  
 14 towards the bottom of the page?  
 09:31 15 A. Yes.  
 16 Q. And I understand that this was executed at the  
 17 same time as the warranty deed as part of the close of  
 18 the escrow or the sale. Is that your understanding?  
 19 A. My understanding says this is from the escrow  
 09:32 20 company that made me sign it, yes.  
 21 Q. Okay.  
 22 Was this part of the sale of the plant?  
 23 A. From the bankruptcy court, I guess, yes.  
 24 Can I talk to you one minute?  
 09:32 25 Q. Sure. Go ahead.

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09:32 1 A. Why -- I say why am I being sued? I'm not -- I  
 2 want to know why I'm being sued.  
 3 Q. That's something I can probably talk to you  
 4 about with you and your attorney when we're not in a  
 09:32 5 deposition.  
 6 How does that sound?  
 7 A. No, it doesn't sound right.  
 8 I'm here to get a question from you. Why am I  
 9 getting sued?  
 09:32 10 Q. Mr. Farinella, unfortunately this is a  
 11 situation where I don't have to answer your questions.  
 12 A. I'll retract that.  
 13 Q. That's a legitimate question, and I'll answer  
 14 it when we're done with the -- when we can talk  
 09:32 15 sometime.  
 16 In fact, while I'm thinking of it, Mr. Farinella, I  
 17 sent a letter -- I don't know -- asking if I can talk to  
 18 you or talk to your personal attorney about this matter.  
 19 Have you received a copy of that?  
 09:33 20 A. I don't know.  
 21 MR. MARIN: Your attorney called --  
 22 THE WITNESS: My attorney -- my attorney in Wyoming  
 23 told me about it. And I told him "No, I don't want to  
 24 talk to Don Zebe or anybody up there."  
 09:33 25 MR. BOWERS:

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09:33 1 Q. Okay.  
 2 A. I didn't get a letter. I just got a "voice"  
 3 from my attorney telling me.  
 4 Q. Okay.  
 09:33 5 Well sometime if your attorney and you want to talk  
 6 to me about it, we'll be glad to talk to you about it  
 7 outside of this setting.  
 8 A. No, I don't want to talk to nobody.  
 9 MR. BOWERS: Now I'll ask the court reporter if  
 09:33 10 she'll mark as deposition Exhibit 3 for identification  
 11 purposes, what's Bates stamped 4 through 7. [EXH-3]  
 12 (Whereupon the document referred to is marked by  
 13 the reporter as Exhibit 3 for identification.)  
 14 MR. BOWERS:  
 09:34 15 Q. I'm going to have you look at what's been  
 16 marked for identification purposes deposition Exhibit 3.  
 17 On top of it is "Bill of Sale."  
 18 And my understanding is this was in reference to  
 19 the closing of the escrow, but does that -- is that your  
 09:34 20 signature about three-quarters of the way down on the  
 21 first page?  
 22 A. Yes, I signed this.  
 23 Q. And was that part of the closing on the plant  
 24 too?  
 09:34 25 A. I guess, 'cause I'm not familiar with --

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09:34 1 THE WITNESS: I got this from the escrow company;  
 2 didn't I?  
 3 MR. MARIN: Yes.  
 4 THE WITNESS: Yeah. I guess it is a bill of sale.  
 09:34 5 MR. BOWERS:  
 6 Q. And then would you mind looking at the second  
 7 page -- the second, third, fourth page on there. The  
 8 list of equipment.  
 9 A. Where is the list of equipment?  
 09:34 10 MR. MARIN: That one.  
 11 THE WITNESS: Yes.  
 12 MR. BOWERS:  
 13 Q. Does that look like equipment that would have  
 14 been at Star Valley Cheese Plant that was sold pursuant  
 09:35 15 to the sale?  
 16 A. I guess.  
 17 THE WITNESS: Who took this here? This inventory,  
 18 who took it?  
 19 MR. MARIN: That was the list from --  
 09:35 20 THE WITNESS: That was the list from who?  
 21 MR. MARIN: That was from the list of Frank Dana.  
 22 THE WITNESS: Oh. I guess it is, yes.  
 23 It is a list from the plant manager.  
 24 MR. BOWERS:  
 09:35 25 Q. It sounded like Frank Dana?

7 (Pages 22 to 25)

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09:35 1 A. Yeah.  
 2 MR. MARIN: Before he died.  
 3 THE WITNESS: Before he died.  
 4 MR. BOWERS:  
 09:35 5 Q. Is this a fair and accurate representation of  
 6 the bill of sale that was signed at the time of closing  
 7 with my client?  
 8 A. Yes, I guess. Yes.  
 9 Q. Okay. Perfect.  
 09:35 10 MR. BOWERS: Now let's go -- I'll have the court  
 11 reporter -- this is a little longer. If you wouldn't  
 12 mind marking as deposition Exhibit 4 what's been marked  
 13 as Bates stamp 8 through 19. [EXH-4]  
 14 (Whereupon the document referred to is marked by  
 09:36 15 the reporter as Exhibit 4 for identification.)  
 16 MR. BOWERS:  
 17 Q. If you would look, Mr. Farinella, at deposition  
 18 Exhibit 4. Now we're maybe a little back on order  
 19 pursuant to our previous conversation.  
 09:36 20 I believe this is the offer to purchase that you  
 21 made reference to initially -- in fact it's dated  
 22 October 17th, 2008 -- that you were talking about Gaylen  
 23 Clayton.  
 24 Would you mind taking a look at the front page and  
 09:37 25 see if that refreshes your memory that this looks like

09:38 1 Q. You know, I understand it's hard when you look  
 2 at these documents and --  
 3 A. That's why I wanted to know why I'm being sued.  
 4 Q. There you go. There you go.  
 09:38 5 A. I've gone through this, which you should have  
 6 the broker here who handled the sale, not me. I'm not a  
 7 real estate broker.  
 8 All I was there for is to take the bids for the  
 9 bankruptcy lawyer and submit them to him. That's all.  
 09:38 10 Q. Okay.  
 11 A. And as president, I signed all -- and the  
 12 escrow company. That's all I know.  
 13 So I don't know why you don't have -- Go ahead.  
 14 Excuse me. I'm sorry.  
 09:38 15 Q. I told you I have a habit of talking over. I  
 16 apologize.  
 17 A. I apologize too.  
 18 Q. So to clarify. Your job was just to submit,  
 19 receive the bids, but it was the bankruptcy trustee that  
 20 approved them; correct?  
 21 A. Absolutely.  
 22 Q. Do you know if -- and you may not because of  
 23 what you just told me, but on page one of deposition  
 24 Exhibit 4, Bates stamped 8, it says it was to be an  
 09:39 25 "Earnest Money" paid at \$10,000, on paragraph ten there.

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09:37 1 the document that you were talking about that --  
 2 A. I've never seen this document. This is  
 3 Caldwell Banker's, the broker.  
 4 Q. You've never seen this document?  
 09:37 5 A. No, I've never seen this. It went to the  
 6 broker, Coldwell Banker.  
 7 MR. MARIN: I know, but this refers to you.  
 8 THE WITNESS: He made me sign it.  
 9 MR. BOWERS:  
 09:37 10 Q. Yeah, I think your signature -- or at least  
 11 somebody signed it.  
 12 If you look at Bates stamped 13.  
 13 THE WITNESS: I guess I've seen it, but I don't  
 14 remember it.  
 09:37 15 MR. BOWERS:  
 16 Q. Is that your signature on Bates stamp 14 of  
 17 Exhibit 4?  
 18 A. That's not my signature. That's not my  
 19 signature.  
 09:38 20 MR. MARIN: That was a stamp.  
 21 THE WITNESS: Oh, that's a stamp. I signed it.  
 22 10/4/08 it says.  
 23 MR. BOWERS:  
 24 Q. Right.  
 09:38 25 A. Is that correct?

09:39 1 Do you see that?  
 2 A. I see it, yeah.  
 3 Q. Do you know if that was ever paid by  
 4 Mr. Clayton or Mr. Randall?  
 09:39 5 MR. MARIN: Whatever money --  
 6 THE WITNESS: I don't know if it was paid.  
 7 MR. MARIN: -- it went to the broker.  
 8 THE WITNESS: It went to the broker.  
 9 If it did, it went to the broker. I never seen it;  
 09:39 10 I never heard it.  
 11 This must have been with the broker, the real  
 12 estate broker.  
 13 Is it the deposit or what? Is that what it is?  
 14 MR. BOWERS:  
 09:39 15 Q. It speaks for itself, but that's what I would  
 16 understand it would be, a deposit.  
 17 A. Why would I know about it?  
 18 Q. Well you were soliciting the bids. That's my  
 19 question. I didn't know if you did or not.  
 09:40 20 A. No.  
 21 But the money, everything, transaction goes to the  
 22 real estate broker.  
 23 Like I said, I was not a real estate broker. I was  
 24 taking the bids and it went to the real estate broker  
 09:40 25 who in turn referred to the bankruptcy court to approve.

8 (Pages 26 to 29)

09:40 1 As far as that goes, that's all I know.  
 2 I didn't know he put up \$10,000.  
 3 I don't know.  
 4 MR. MARIN: It went to escrow.  
 09:40 5 THE WITNESS: It went to the Pendleton, I guess.  
 6 MR. MARIN: It was escrow. Escrow company.  
 7 THE WITNESS: Escrow company.  
 8 Maybe it went to the escrow company. I have no  
 9 idea.  
 09:40 10 But I don't know. The answer is I don't know.  
 11 MR. BOWERS:  
 12 Q. You know, there's nothing wrong with an "I  
 13 don't know."  
 14 A. You know, I really don't know.  
 09:40 15 Q. Okay.  
 16 Would you mind looking on deposition Exhibit 4.  
 17 Would you mind looking on the Bates stamp Number 13 at  
 18 the top of the page.  
 19 A. Just a minute.  
 09:41 20 Here I got it in front of me.  
 21 Q. And right down there, there's a Roman XVI. Off  
 22 to the side there's a line -- is it 228 -- "Consents And  
 23 Acknowledgments."  
 24 It's about the middle -- top of the middle of the  
 09:41 25 page.

09:42 1 your signature on this document; correct?  
 2 A. There's a lot of signatures on here.  
 3 MR. MARIN: This one (indicating).  
 4 MR. BOWERS:  
 09:42 5 Q. Right.  
 6 A. I see my signature there.  
 7 Q. I know you -- Do you normally sign legal  
 8 documents without reading them?  
 9 A. Like I told you, I'm not a broker and I'm not a  
 09:42 10 lawyer. I trust the people who are giving me the  
 11 documents from either the broker or the escrow company.  
 12 Q. Okay.  
 13 Well, Mr. Farinella, let me just --  
 14 A. You know what? You're going around and around  
 09:42 15 in circles. Why don't you get to the bottom of this  
 16 what you really want to know?  
 17 This is all bullshit you pay time over here. Get  
 18 to the point you really want to know. I know what  
 19 you're going around and around about because all of this  
 09:43 20 is --  
 21 Q. Unfortunately, what I want to ask, I can't.  
 22 A. Get to the point what you really want to know.  
 23 Q. I'm an attorney. I have to do the round and  
 24 round.  
 09:43 25 A. I know you do.

09:41 1 Do you see that?  
 2 A. Yeah.  
 3 Q. Okay.  
 4 It says "All prior representations made in the  
 09:41 5 negotiations of this sale have been incorporated herein,  
 6 and there are no oral agreements or representations  
 7 between Buyer, Seller or Brokers to modify the terms and  
 8 conditions of this Contract."  
 9 Did you read that before you signed this document?  
 09:41 10 A. No.  
 11 Q. You didn't read that?  
 12 A. No.  
 13 Q. When you signed this agreement --  
 14 THE WITNESS: Where did this paper come from?  
 09:41 15 MR. MARIN: It's --  
 16 THE WITNESS: It's what?  
 17 MR. MARIN: -- part of the offer with the --  
 18 THE WITNESS: Of the offer from?  
 19 MR. MARIN: From --  
 09:42 20 THE WITNESS: To the real estate broker?  
 21 MR. MARIN: Yes.  
 22 THE WITNESS: No, I didn't even see this.  
 23 MR. BOWERS:  
 24 Q. If you look to the next page. I just want to  
 09:42 25 clarify on Bates stamp 14, the next page, that that's

09:43 1 Q. I don't like it any more than you do.  
 2 A. I hope not.  
 3 Q. So on page -- on the front page of Exhibit 4,  
 4 if I understand when I read this -- just there may be --  
 09:43 5 To move this along. Star Valley -- your company is the  
 6 seller, even though we know that it has to be approved  
 7 by the bankruptcy trustee; Caldwell Banker is the  
 8 broker, and then at least on this document it lists  
 9 Gaylen Clayson and Jeff Randall.  
 09:43 10 Do you know who Jeff Randall is?  
 11 A. No.  
 12 Q. Have you ever met him before?  
 13 A. Hell no. No.  
 14 Q. Okay.  
 09:43 15 When you signed this document, were there any other  
 16 agreements, oral or written, between yourself as the  
 17 seller of the property and Gaylen Clayson and Jeff  
 18 Randall about the sale of the property?  
 19 A. No, there was no oral agreement at all.  
 09:44 20 Q. Okay.  
 21 So whatever -- Basically the agreement was what was  
 22 in this offer which you signed, which is Exhibit 4;  
 23 correct?  
 24 A. Yes.  
 09:44 25 You have to put it in -- I live in Los Angeles and

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09:44 1 this all took place in Wyoming.  
 2 And what was going on there is between the broker  
 3 and the bankruptcy court had to go between me. So when  
 4 they sent me papers up here and papers down there, it  
 09:44 5 was kind of confusing what they're doing because I was  
 6 completely out of it. I was out of it.  
 7 I know I'm signing here, but once a company goes  
 8 into bankruptcy, it's handled by the bankruptcy court,  
 9 the realtor who is trying to sell it and the bankruptcy  
 09:44 10 lawyer.  
 11 All I was there was helping them out. Or I could  
 12 have walked away from it all. But I helped them out  
 13 trying to get the bids.  
 14 You do understand that?  
 09:45 15 Q. I do.  
 16 A. So if they send me a paper down here and say  
 17 "Sign this because you've got to do it," I signed it.  
 18 I didn't go get a lawyer to look it over and see  
 19 it. I signed it because that's what I had to do.  
 09:45 20 Q. Well, Mr. Farinella, you asked me to kind of  
 21 cut to the chase.  
 22 A. Yeah, I did.  
 23 Q. Here's what I'm trying to get at.  
 24 A. I know. Let's get to it.  
 09:45 25 Q. I have a whole bunch of documents that I want

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09:45 1 to go through with you, and I'll move along pretty  
 2 quick, but all the documents say there was no other oral  
 3 representations or agreement.  
 4 A. No.  
 09:45 5 Q. But your attorney has alleged in some pleadings  
 6 that there was some other agreements, full agreements.  
 7 And I don't understand them.  
 8 And so I want -- I'm just trying to find out -- I'm  
 9 confused because the documents say there are no other  
 09:45 10 agreements, and I just need to go through these --  
 11 A. I understand.  
 12 Q. -- and find out if there was another agreement.  
 13 A. I understand what you're going through, but  
 14 there was no oral agreement other than what I told you  
 09:46 15 what he did. And once he bid for it, it was out of my  
 16 hands. They agreed to the bid, and I backed off after  
 17 that.  
 18 Until I found out Gaylen had a partner, and then I  
 19 said, "Do what you want to do, both of you." So I came  
 09:46 20 back to L. A.  
 21 Q. And it was out of your hands?  
 22 A. Naturally it's out of my hands. They already  
 23 bid it, it went into escrow, and what they did between  
 24 the two of them over there God only knows.  
 09:46 25 Q. Okay. That's a nice summary.

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09:46 1 Mr. Farinella, here's what I'm going to do. I've  
 2 got some more documents I'm going to go through, and  
 3 I'll tell you what I'm going to do.  
 4 A. All right.  
 09:46 5 Q. It looks like a whole bunch of these documents  
 6 are extensions. It looks like there was a closing date  
 7 and it keeps getting extended, extended.  
 8 The only reason I'm going through with these is I'm  
 9 going to have them show you the document.  
 09:46 10 A. All right.  
 11 Q. I'm going to probably ask you two questions.  
 12 One is "Is your signature on the document," have you  
 13 look at that.  
 14 A. Okay.  
 09:46 15 Q. There's some more -- I already alluded to this.  
 16 There's some more wording on the documents that says  
 17 there was no oral agreement.  
 18 So my second question will be to have you think  
 19 back see if there were any other agreements other than  
 09:47 20 what's on the paper; okay? And we'll try to move  
 21 through as quick as possible.  
 22 How's that?  
 23 A. That's fine. Thank you.  
 24 Q. You bet.  
 09:47 25 Let's -- the court reporter can look at -- or pull

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09:47 1 up the next two pages, which is Bates stamped 20 and 21,  
 2 and mark that as deposition Exhibit 5. [EXH-5]  
 3 (Whereupon the document referred to is marked by  
 4 the reporter as Exhibit 5 for identification.)  
 09:47 5 MR. BOWERS:  
 6 Q. Mr. Farinella?  
 7 A. Yes.  
 8 Q. Exhibit 5 appears to me to be a -- a change of  
 9 deadline on this real estate contract that we talked  
 09:48 10 about, I think it was Exhibit 4.  
 11 But would you look at deposition Exhibit 5. Is  
 12 that your signature on the bottom?  
 13 A. Yes.  
 14 Q. Okay.  
 09:48 15 And then would you look at "D" in the middle of the  
 16 page.  
 17 A. D is --  
 18 Q. "All prior representations" -- Let me say,  
 19 quote, "All prior representations made in the  
 20 negotiations of this sale have been incorporated herein,  
 21 and there are no oral agreements or representations  
 22 between Buyer, Seller or their agents to modify the  
 23 terms and conditions of this Contract."  
 24 Are you aware of any other oral agreements other  
 09:48 25 than this real estate -- this extension and the real

10 (Pages 34 to 37)

09:48 1 estate contract?  
 2 A. No.  
 3 There was no oral -- No, none of that. None at  
 4 all.  
 09:48 5 Q. All right.  
 6 MR. BOWERS: Lori, if you wouldn't mind taking  
 7 Bates stamped number 22 and mark it as  
 8 Exhibit 6. [EXH-6]  
 9 (Whereupon the document referred to is marked by  
 09:49 10 the reporter as Exhibit 6 for identification.)  
 11 MR. BOWERS:  
 12 Q. On deposition Exhibit "8," Mr. Farinella I  
 13 don't see your signature on there anywhere.  
 14 Do you?  
 09:49 15 THE REPORTER: You said "8."  
 16 THE WITNESS: You said "8."  
 17 MR. BOWERS:  
 18 Q. Deposition Exhibit 6.  
 19 A. I don't see any signature on here.  
 09:49 20 I see Zebe's here. No, it's not Zebe.  
 21 Who is this? Oh, Jeff Randall and Gaylen. That's  
 22 on this page.  
 23 Q. Okay. This -- have you seen -- Do you remember  
 24 ever seeing this document before?  
 09:50 25 A. Never.

09:51 1 stamp number 23 through 26 and mark that as deposition  
 2 Exhibit 7. [EXH-7]  
 3 A. John?  
 4 Q. Yes.  
 09:51 5 A. Gaylen submitted his offer and was accepted at  
 6 the time.  
 7 Then Gaylen suggested to run the plant and  
 8 restaurant --  
 9 MR. MARIN: (Indicating.)  
 09:52 10 THE WITNESS: What the hell is this?  
 11 MR. MARIN: Familiarize.  
 12 THE WITNESS: To what?  
 13 MR. MARIN: To familiarize on the operation.  
 14 THE WITNESS: -- to familiarize on the operation.  
 09:52 15 Gaylen then suggested --  
 16 What the hell is this?  
 17 MR. MARIN: To clean.  
 18 THE WITNESS: -- to clean the plant. Yeah, I  
 19 remember that.  
 09:52 20 He says, "I'll clean the plant and get it ready.  
 21 As soon as escrow closes, we can start opening and make  
 22 cheese at the time."  
 23 And I told him "Go ahead and do what you want as  
 24 long as it doesn't cost the bankruptcy or me or anybody  
 25 any money to spend."

09:50 1 Q. Okay. Then we'll just move on.  
 2 Let me -- and then I want to clarify.  
 3 When you talk about, on my notes here -- when you  
 4 talk about the escrow again, you're talking about the  
 09:50 5 closing when money is paid, deed's transferred and the  
 6 property is completed and sold; correct?  
 7 A. Right.  
 8 Q. So up to that point, I want to clarify that no  
 9 one had the authority to do anything on the property as  
 09:50 10 far as, I guess, unusual expenses without the authority  
 11 of the bankruptcy trustee; correct?  
 12 MR. ATKIN: Objection. Calls for a legal  
 13 conclusion.  
 14 Blake Atkins.  
 09:51 15 THE WITNESS: You want me to answer that?  
 16 MR. BOWERS:  
 17 Q. Yes, please.  
 18 A. That nobody had authority to do anything or to  
 19 spend any money at the plant while it was in process of  
 09:51 20 escrow to close. Is that what you're trying to say?  
 21 Q. Yes. Without the bankruptcy trustee's  
 22 permission; correct?  
 23 A. That's normal. Yes. That's right.  
 24 Q. Okay.  
 09:51 25 MR. BOWERS: Lori, if you would now take Bates

09:52 1 That's where we -- that's the thing that I -- I  
 2 think that's where we're going in the first place,  
 3 aren't we?  
 4 MR. BOWERS: It sounds reasonable.  
 09:53 5 (Whereupon the document referred to is marked by  
 6 the reporter as Exhibit 7 for identification.)  
 7 MR. BOWERS:  
 8 Q. Deposition Exhibit 7, when you look on the  
 9 second page -- no, it's not the second -- yours isn't on  
 09:53 10 the second. There's so many pages to this.  
 11 Would you look on the fourth page and see if that's  
 12 your signature.  
 13 A. Yes.  
 14 Q. Okay.  
 09:53 15 And then up above there, two paragraphs up, number  
 16 two states, "All representations made in the  
 17 negotiations of this sale have been incorporated herein,  
 18 there are no verbal agreements between Buyer, Seller  
 19 and/or any other Brokers to modify terms and  
 09:53 20 conditions."  
 21 Was that a fair statement at the time?  
 22 A. I think so, yes.  
 23 Q. Were you aware of any other oral or agreements  
 24 other than what was spelled out in these documents we've  
 09:54 25 discussed?

09:54 1 A. No.  
 2 Except what I read to you.  
 3 Q. Okay.  
 4 Basically that Gaylen could familiarize himself and  
 09:54 5 run the plant as long as it didn't cost anybody any  
 6 money?  
 7 A. Right.  
 8 And it was agreed by him and his partners.  
 9 Q. Okay.  
 09:54 10 A. That he was going to get the plant ready to  
 11 operate as soon as escrow closed.  
 12 Q. Okay.  
 13 A. But Gaylen slept there I think. He slept  
 14 there. He never went home.  
 09:54 15 Q. Okay.  
 16 MR. BOWERS: Lori, if you would look at  
 17 deposition -- or Bates stamp 27 through 30.  
 18 That is deposition Exhibit 8. [EXH-8]  
 19 (Whereupon the document referred to is marked by  
 09:55 20 the reporter as Exhibit 8 for identification.)  
 21 MR. BOWERS:  
 22 Q. Okay.  
 23 Deposition Exhibit 8. Would you look at the very  
 24 last page.  
 09:55 25 MR. ATKIN: Would you say the pages again.

09:56 1 Let's go to Bates stamp -- Lori, if you'll pull  
 2 Bates stamp 32 through 39. Mark that as deposition  
 3 Exhibit Number 10. [EXH-10]  
 4 (Whereupon the document referred to is marked by  
 09:56 5 the reporter as Exhibit 10 for identification.)  
 6 MR. BOWERS:  
 7 Q. And would you mind looking at Exhibit 10 Bates  
 8 stamp 39. That would be the very last page.  
 9 MR. MARIN: Last page.  
 09:57 10 MR. BOWERS:  
 11 Q. And see if that's your signature,  
 12 Mr. Farinella?  
 13 A. Yes.  
 14 Q. See up above there, two paragraphs up, it  
 09:57 15 states "All representations made in the negotiations of  
 16 this sale have been incorporated herein, there are no  
 17 verbal agreements between Buyer, Seller and/or Brokers  
 18 to modify the terms and conditions."  
 19 Other than what you explained to us, which really  
 09:57 20 doesn't have to do with the terms of the sale, but  
 21 taking that into account, was there any other agreement  
 22 referenced in the sale that is not -- was not contained  
 23 in these real estate documents we've discussed?  
 24 MR. ATKIN: Object to the question as  
 09:57 25 argumentative.

09:55 1 MR. BOWERS: It's Bates stamp 30.  
 2 THE WITNESS: That's my signature.  
 3 MR. BOWERS:  
 4 Q. Again, on paragraph two, it states there's no  
 09:55 5 other representations or oral agreement.  
 6 Do you agree with that --  
 7 A. Yes.  
 8 Q. -- that when you signed this there was no other  
 9 oral agreement?  
 09:55 10 A. Yes. Yes. Yes. Yes. Yes.  
 11 That's the same as the other ones; right?  
 12 Q. Same as the other ones.  
 13 A. Okay.  
 14 Q. And I'll say except for what you explained to  
 09:55 15 me. How's that?  
 16 A. That's fine. That's exactly fine.  
 17 Q. Okay.  
 18 MR. BOWERS: Lori, if you wouldn't mind taking  
 19 Bates stamp 31. If you could mark that deposition  
 09:55 20 Exhibit 9. [EXH-9]  
 21 (Whereupon the document referred to is marked by  
 22 the reporter as Exhibit 9 for identification.)  
 23 THE WITNESS: I got it.  
 24 MR. BOWERS: Actually, we've covered that. So  
 09:56 25 we'll skip that one.

09:57 1 You can go ahead and answer.  
 2 This is Blake Atkin.  
 3 THE WITNESS: I don't know how to answer that.  
 4 Can you repeat it again.  
 09:58 5 MR. BOWERS: Lori, can you read that back to him,  
 6 please.  
 7 (The record is read by the reporter.)  
 8 THE WITNESS: No, there was no other agreement.  
 9 MR. BOWERS:  
 09:58 10 Q. All right. Thank you.  
 11 A. This is all real estate stuff from the broker.  
 12 MR. BOWERS: You know, if we could take a -- about  
 13 a two-minute break. If everybody can stay on the line,  
 14 we've covered a lot of the materials I have, and if we  
 09:58 15 can take two to five minutes, we'll be able to move this  
 16 along.  
 17 (A recess is taken.)  
 18 MR. BOWERS:  
 19 Q. Mr. Farinella, do you have documents in front  
 10:10 20 of you today that you brought or Manny brought?  
 21 A. What kind of documents?  
 22 Q. Did you bring documents, any documents?  
 23 A. I got one here.  
 24 THE WITNESS: Is that what we --  
 10:10 25 MR. MARIN: (Nods head in the affirmative.)



10:10 1 MR. BOWERS:  
 2 Q. Tell me what it is.  
 3 MR. MARIN: It's an e-mail.  
 4 THE WITNESS: What the hell is it?  
 10:10 5 It's an e-mail.  
 6 MR. BOWERS:  
 7 Q. Can you read it to me.  
 8 A. Well, it's a long one.  
 9 What do you want? You're supposed to ask me  
 10 questions.  
 11 Q. I am asking you questions. Does it have  
 12 reference to this case?  
 13 A. Only if he asks me a question.  
 14 Q. Have you been referring to it during this  
 15 deposition?  
 16 A. Okay. I'll read it to you.  
 17 This is an e-mail sent by Zebe.  
 18 MR. MARIN: Don Zebe.  
 19 THE WITNESS: Don Zebe.  
 10:11 20 I can't read too much, Manny. You want to read it  
 21 to them?  
 22 The writing is so little, I told you before about  
 23 my --  
 24 Read it for them. It's an e-mail.  
 10:11 25 MR. BOWERS:

10:12 1 you or somebody -- what you did to prepare for this.  
 2 It sounds to me, correct me if I'm wrong, somebody  
 3 sent you an e-mail with a copy of an old e-mail from my  
 4 client to prep you and influence you for this  
 10:12 5 deposition.  
 6 A. No. No.  
 7 They sent me an e-mail to answer any questions that  
 8 you ask me.  
 9 Q. Oh, they sent you an e-mail to answer --  
 10:12 10 A. No. Nobody sent -- I have an e-mail that was  
 11 sent to the -- the real estate --  
 12 MR. MARIN: Yeah.  
 13 THE WITNESS: Was it sent to Pendleton?  
 14 MR. MARIN: Yeah, he sent it to Pendleton.  
 10:12 15 THE WITNESS: -- to Pendleton that we had on file  
 16 here.  
 17 MR. BOWERS:  
 18 Q. But it was just sent to you in the last day or  
 19 so to prepare you for this deposition?  
 10:12 20 A. No. No.  
 21 This was sent -- Do you want to read the date on  
 22 there? January 14th --  
 23 MR. MARIN: 2009.  
 24 THE WITNESS: -- 2009.  
 10:13 25 MR. BOWERS:

10:11 1 Q. Is it -- Well, let me ask you this.  
 2 Is it an e-mail from -- is it an e-mail from Manny  
 3 reference the accounts?  
 4 A. No. From Donald Zebe.  
 10:11 5 Q. Who gave you that e-mail today?  
 6 MR. MARIN: We have that.  
 7 THE WITNESS: We had it.  
 8 MR. MARIN: We have this on file.  
 9 MR. BOWERS:  
 10:11 10 Q. So you just decided to bring that today?  
 11 A. Yeah.  
 12 MR. MARIN: No. Because we -- we have this file.  
 13 This was sent to you.  
 14 THE WITNESS: Yeah.  
 10:11 15 MR. MARIN: To my e-mail address.  
 16 THE WITNESS: It was sent to your e-mail?  
 17 MR. MARIN: Yeah.  
 18 MR. BOWERS:  
 19 Q. So somebody sent you this document --  
 10:11 20 A. I don't understand why you're asking me this.  
 21 What documents did I bring? What relevance --  
 22 Q. Let me finish, Mr. Farinella.  
 23 You're a business man?  
 24 A. I'm not a lawyer.  
 10:12 25 Q. I want to know if anybody tried to influence

10:13 1 Q. So my question is why didn't you bring other  
 2 things from the file other than this?  
 3 A. You must think I'm a stupid jerk over here. I  
 4 know what you're getting at over here. I have to answer  
 10:13 5 your question.  
 6 MR. MARIN: We brought the listing agreement.  
 7 THE WITNESS: We brought all the listings from the  
 8 Caldwell "Banks" we've got here, and all the listings --  
 9 but I have an e-mail.  
 10:13 10 I don't know why you're asking me about an e-mail.  
 11 Would you please explain that.  
 12 MR. BOWERS:  
 13 Q. It sounded to me like somebody had sent you an  
 14 e-mail --  
 15 A. It sounds like. It sounds like.  
 16 Is that the way a lawyer talks? It sounds like.  
 17 Q. Yes.  
 18 It sounds like they sent you --  
 19 A. It don't sound like that.  
 10:13 20 Q. In the last five days, did anybody e-mail you  
 21 material, either you or Manny, in reference to this  
 22 upcoming deposition?  
 23 A. No.  
 24 MR. MARIN: I prepared it.  
 10:13 25 THE WITNESS: Manny prepared it.

10:13 1 He prepared it for this deposition. He prepared it  
 2 for this deposition.  
 3 MR. BOWERS:  
 4 Q. Good.  
 10:14 5 Do you have -- you can ask him. Does he have or do  
 6 you have in front of you the August 28, 2008  
 7 authorization which you signed in which you gave  
 8 Mr. Clayson permission to run the operations of the Star  
 9 Valley restaurant?  
 10:14 10 MR. MARIN: It was in that e-mail.  
 11 THE WITNESS: It was in that e-mail?  
 12 MR. MARIN: Yes.  
 13 THE WITNESS: You got it with you?  
 14 MR. MARIN: So I don't have it, but I know it was  
 10:14 15 in the file. That's the reason you signed this.  
 16 THE WITNESS: Yeah, this is why I signed this.  
 17 Yeah.  
 18 MR. BOWERS:  
 19 Q. Okay.  
 10:14 20 Do you have that? Can you review that, the  
 21 August 28, 2008 letter authorization?  
 22 MR. MARIN: This is exactly what was in there. We  
 23 didn't bring that.  
 24 THE WITNESS: We didn't bring it with us, that part  
 10:14 25 of it.

10:16 1 Q. Since you weren't the owner, then you didn't  
 2 have authorization to have Gaylen Clayton --  
 3 A. Only -- only for the restaurant. Don't put  
 4 words in my mouth. Only for the restaurant.  
 10:16 5 I had the right to keep it open as much as I could,  
 6 but the people there weren't running it right, and  
 7 Gaylen was staying there and living there. I told him  
 8 to look after it, to take care of it, to keep it open.  
 9 Otherwise, I would have had to close the  
 10:16 10 restaurant, and it wouldn't look good for the courts.  
 11 Q. But you didn't have the authorization or power  
 12 to allow Gaylen Clayton to sell equipment out of the  
 13 plant?  
 14 A. Hell no. No. Excuse me. No.  
 10:16 15 MR. ATKIN: This is Blake Atkin.  
 16 Object to the question. Calls for a legal  
 17 conclusion.  
 18 MR. BOWERS: Okay.  
 19 Q. If Mr. Clayton sold -- during the time prior to  
 10:16 20 the closing of the escrow, if Mr. Clayton sold equipment  
 21 out of the plant, then he did so without your approval;  
 22 correct?  
 23 A. If anything came out of that plant it was  
 24 absolutely without my approval.  
 10:17 25 As I said, again -- I will read it again to you.

10:14 1 MR. BOWERS:  
 2 Q. Okay.  
 3 A. October 8, the owner of Star Valley Cheese --  
 4 You know, these words are --  
 10:15 5 Listen, I'm not a lawyer, but when you go bankrupt,  
 6 how do you own it anymore?  
 7 Do you own anything after you're bankrupt? Do you  
 8 still own it? As a lawyer, answer me. Do you still own  
 9 it after a place goes bankrupt?  
 10:15 10 Q. Let me ask you this: Did you believe you owned  
 11 it or you didn't when it went bankrupt?  
 12 A. No, the court owns it. The court takes it  
 13 over.  
 14 You might be a principal there, but you don't own  
 10:15 15 it.  
 16 Q. So --  
 17 A. So here it says -- it says that "As I was the  
 18 owner of Star Valley Cheese Plant in Thayne, Wyoming to  
 19 the company of Star Valley Cheese Corporation."  
 10:15 20 I was always working for the courts, not as an  
 21 individual owner. So I want you to straighten that one  
 22 out.  
 23 I'm not going to get any deeper with this thing  
 24 because I have nothing to do with any of you guys. I'm  
 10:15 25 getting a little --

10:17 1 After Gaylen submitted and the offer was accepted, he  
 2 suggested to run the plant and restaurant and keep it  
 3 familiarized and to operations -- keep it in operation.  
 4 That I didn't mind as long as it didn't cost any  
 10:17 5 money to the courts.  
 6 Q. Let me clarify -- While we're on that subject,  
 7 let me clarify then.  
 8 It wasn't sold -- when there was money coming into  
 9 the restaurant, because you have customers paying, did  
 10:17 10 Gaylen Clayton have any authority to withdraw or use any  
 11 of that money for his personal use?  
 12 A. No. Nobody.  
 13 Neither did Don Zebe.  
 14 Q. Neither did Don Zebe?  
 10:17 15 A. As far as I know, both of them were over there.  
 16 Q. So the money was to go back into either paying  
 17 for the suppliers --  
 18 A. Right, exactly.  
 19 And the help. Which we had -- I got sued by the  
 10:18 20 state of Wyoming.  
 21 THE WITNESS: What was that? The -- the labor  
 22 department.  
 23 What was the name of this?  
 24 MR. MARIN: For state tax.  
 10:18 25 THE WITNESS: For state tax.

10:18 1 MR. MARIN: Sales tax.  
 2 THE WITNESS: Sales tax.  
 3 They weren't paying. I got sued.  
 4 And I called up Gaylen and the girls that worked  
 10:18 5 there and said, "You have to pay this." Between Don  
 6 Zebe and Gaylen, whoever, they paid it.  
 7 MR. BOWERS:  
 8 Q. And did there come a time before the sale of  
 9 the property that the bankruptcy was discharged and you  
 10 were what is referred to as a debtor in possession?  
 11 A. Did -- Can you clarify that?  
 12 You mean in simple words was the -- was the  
 13 bankrupt taken out?  
 14 Q. Was it --  
 10:18 15 A. No. Never.  
 16 Q. Ever?  
 17 A. Never.  
 18 Q. Let me tell you -- You know, I have it in front  
 19 of you, and I'll just read it to you what I have in  
 10:19 20 front of you.  
 21 It's an August 28, 2008. I think you told me that  
 22 you reviewed this.  
 23 It says, "To whom it may concern. This will  
 24 authorize Mr. Gaylen Clayton to run the operations of  
 10:19 25 the Star Valley restaurant" --

10:20 1 him until he paid it.  
 2 Q. And, again, he didn't have any -- it was  
 3 basically -- the only authorization you gave him in  
 4 August 28th on the plant was to just maintain the  
 10:20 5 cleanliness; correct?  
 6 A. Yeah. That's what he wanted to do.  
 7 He wanted -- he suggested that himself after --  
 8 Here, I'll read it to you again.  
 9 Gaylen then suggested to clean the plant and fix  
 10 the electrical and plumbing. And it was confirmed -- it  
 11 was confirmed by John -- Don Zebe. He authorized it  
 12 also that he should do that.  
 13 Q. Who told you that?  
 14 A. Don Zebe.  
 10:20 15 He -- he became his partner. When he became his  
 16 partner he had it noted too that he was going to do the  
 17 cleaning and fix the plant so it could be running when  
 18 escrow closed.  
 19 Q. Who told you that Don Zebe was his partner?  
 10:21 20 MR. MARIN: Don Zebe.  
 21 THE WITNESS: Don Zebe himself told me.  
 22 MR. BOWERS: Manny, I can hear you in the  
 23 background telling him the answers.  
 24 THE WITNESS: Well, that's why I brought him here.  
 10:21 25 MR. BOWERS: Yeah, well, I'm not deposing him.

10:19 1 A. Right.  
 2 Q. -- "and he will also be responsible for  
 3 providing workers' compensation insurance" --  
 4 A. Yeah.  
 10:19 5 Q. -- "for the restaurant employees."  
 6 A. Correct.  
 7 Q. And the next line, "In addition, Mr. Clayson  
 8 will also take care of the cleanliness of the plant.  
 9 Sincerely, Morris A. Farinella."  
 10:19 10 Is that the authorization you reviewed you were  
 11 making reference to earlier?  
 12 MR. MARIN: Yes.  
 13 THE WITNESS: Yes.  
 14 MR. BOWERS:  
 10:19 15 Q. So he was to pay for workers' compensation  
 16 insurance for employees of the restaurant?  
 17 A. Correct.  
 18 Q. Did he do that?  
 19 A. After we told him that it was being sued by the  
 10:19 20 state, then he paid, I think. I believe he paid it.  
 21 Yes, he paid it.  
 22 Q. You thought he paid it after you got sued;  
 23 correct?  
 24 A. No. You know, the state sent him letters and  
 10:20 25 they're going to sue you this and that, and I kept on

10:21 1 And I don't mind you giving documents and helping,  
 2 but I've got to ask that you refrain from giving the  
 3 answers.  
 4 Will you do that for me?  
 10:21 5 THE WITNESS: Okay.  
 6 MR. MARIN: Okay.  
 7 MR. BOWERS: Otherwise, we'll set up another  
 8 deposition.  
 9 THE WITNESS: No. No. Just get to the point here.  
 10:21 10 MR. BOWERS: Okay.  
 11 Q. So he told -- you have an independent  
 12 recollection outside of what Manny just told you --  
 13 A. I didn't even hear what Manny said, to tell you  
 14 the truth. I didn't hear what he said. Okay?  
 10:21 15 Q. Okay.  
 16 When did Don Zebe tell you that he was partners  
 17 with Gaylen?  
 18 A. The last time I was at Wyoming when he made the  
 19 bid and it was accepted.  
 10:22 20 And I told Man- -- told Gaylen, "You're going to  
 21 have to come up with the money."  
 22 He said, "No, Don Zebe has got the money. Both of  
 23 us are going to. He's my partner."  
 24 And I came back to L. A., and that was the end of  
 10:22 25 that.

10:22 1 Q. So he said he was -- did Gaylen tell you he was  
 2 going to be his partner?  
 3 A. Yeah.  
 4 Q. He was going to be partners with Don Zebe?  
 10:22 5 A. Yeah. He introduced him to me at the time. I  
 6 didn't know Don Zebe.  
 7 Q. Did he introduce him as his partner?  
 8 A. He said he was going to be his partner.  
 9 Q. Okay. Okay.  
 10:22 10 So Gaylen told you that he was going to be Don  
 11 Zebe's partner; correct?  
 12 A. Don Zebe said it too.  
 13 Q. Okay.  
 14 So did you ever enter into any agreement with Don  
 10:22 15 Zebe?  
 16 A. Never.  
 17 Q. Okay.  
 18 A. He wanted to borrow money from me. After he  
 19 closed it, he says "Lend me" -- "lend me 2- or 300,000,"  
 10:23 20 what it was. And I told him "No, I couldn't do it."  
 21 Q. All right.  
 22 So let me just get back. We got off track.  
 23 So I just want to clarify because here's -- and I'm  
 24 just paraphrasing. My understanding now is that at  
 10:23 25 least in some document Gaylen Clayton has alleged that

10:24 1 remember giving him permission to sell any equipment;  
 2 correct?  
 3 A. I don't have the right in the bankruptcy court  
 4 they give permission to sell equipment out of a bankrupt  
 10:24 5 plant. I didn't do it. It's impossible.  
 6 Q. Do you remember ever -- ever remember in the  
 7 history of your relationship with Gaylen Clayton giving  
 8 him permission to sell equipment out of that plant?  
 9 A. Never.  
 10:24 10 Q. All right.  
 11 A. To cleanup -- he could have cleaned up -- You  
 12 know, if there was junk in the -- You know what I mean  
 13 by cleanup?  
 14 Are you familiar with the cleanup -- what it means  
 10:24 15 cleanup the plant outside and in? So it will look  
 16 decent.  
 17 In fact, you want me to tell you the truth. I told  
 18 him don't clean it too good because other bidders are  
 19 coming. They're going to bid higher than you.  
 10:25 20 But he cleaned the outside, which was a job, the  
 21 garbage around the plant. That's what I thought he was  
 22 cleaning. And he cleaned inside.  
 23 And I said, "Okay. As long as it don't cost the  
 24 bankruptcy lawyer."  
 10:25 25 Q. So at one point you assumed there was going to

10:23 1 he had the right to withdraw money out of the restaurant  
 2 and use it for his personal use.  
 3 That's not true; correct?  
 4 A. No.  
 10:23 5 Q. You never gave him authority to do that?  
 6 A. No.  
 7 Q. I also understand that Gaylen Clayton sold some  
 8 equipment.  
 9 One, I think somebody's alleged that he sold a  
 10:23 10 dryer for over -- was it \$10,000 or 12,000, some --  
 11 A. Where did you get that information from?  
 12 Q. That's what we --  
 13 A. Don Zebe.  
 14 Q. I'm trying to --  
 10:23 15 THE REPORTER: Wait. You guys are talking at the  
 16 same time. I couldn't hear.  
 17 THE WITNESS: Where did you get information that he  
 18 sold equipment?  
 19 That I don't know about.  
 10:24 20 MR. BOWERS:  
 21 Q. Actually, Mr. Clayton admitted that he sold the  
 22 equipment, but he claims you gave him permission.  
 23 A. Nobody gave him permission. I haven't got the  
 24 right to give him permission.  
 10:24 25 Q. So if he sold any equipment out -- you don't

10:25 1 be higher bidders than Gaylen Clayton; correct?  
 2 A. I'll back off.  
 3 Before he wanted to clean the plant, I said, "No."  
 4 When he wanted to fix the plant I said, "No."  
 10:25 5 The bids were not in at that time. So I'll read it  
 6 back to you what I did.  
 7 After he -- after he submitted the offer and was  
 8 accepted is when I told him you can go and clean it and  
 9 get ready for it, as long as it don't cost no money,  
 10:25 10 until this escrow closes, to the bankruptcy court.  
 11 Q. Okay.  
 12 A. And Gaylen -- he suggested he clean the plant  
 13 and fix the electrical, plumbing.  
 14 Why would I tell him that without -- Yeah, they're  
 10:26 15 not going pay for all of this. The bankruptcy court is  
 16 not going to pay for that. It's in bankruptcy.  
 17 So he was doing it for his purpose and Don Zebe's  
 18 purpose. And John, whatever his name is, knew it too.  
 19 Q. Did you ever give Gaylen permission to have a  
 10:26 20 couple hundred thousand dollars worth of electrical work  
 21 done on the plant?  
 22 A. No, I didn't know anything about it. That  
 23 was -- that was the two partner's idea, both Don and  
 24 Gaylen.  
 10:26 25 Q. And who told you that?

0:26 1 A. Gaylen and Don. Don Zebe too.  
 2 Q. He told you that he was -- that he wanted to  
 3 spend a couple hundred thousand dollars to get  
 4 electrical work --  
 10:26 5 A. Yeah. That's what he told me.  
 6 Q. Okay.  
 7 When was that?  
 8 A. That was on January 14th, 2009 at 2:36 p.m.  
 9 Q. Okay.  
 10:27 10 And what are you looking at?  
 11 A. At an e-mail that he sent to the real  
 12 "estater," and he sent one here -- he sent me one too.  
 13 Q. Okay.  
 14 Other than that, do you have any -- did you have  
 10:27 15 any independent recollection of that without looking at  
 16 that document?  
 17 A. Recollection about what? That Don Zebe was a  
 18 partner?  
 19 Q. Here's how it's supposed to work, and it's hard  
 10:27 20 from the telephone.  
 21 A. I know it's hard.  
 22 Q. I'm supposed to ask you a question.  
 23 A. Go ahead.  
 24 Q. If you don't know, you don't know.  
 10:27 25 If you need to look at a document, you're supposed

10:28 1 A. I don't remember.  
 2 Q. Well, let's look.  
 3 A. You are going to get me to the point where I'm  
 4 going to say I don't remember anything and forget about  
 10:28 5 it because you haven't answered me.  
 6 Q. No, no, no.  
 7 You got to understand the rules. I get to ask you  
 8 the questions.  
 9 A. I know the rules.  
 10:28 10 You're asking the questions, but I'm asking them of  
 11 you now.  
 12 This is the point that we came here for in the  
 13 first place.  
 14 Q. That's right. We can go all day and I won't  
 10:29 15 answer your questions. We can get through a lot quicker  
 16 if you just answer the questions.  
 17 A. Go ahead.  
 18 Q. Would you look at deposition Exhibit 4. That's  
 19 the real estate contract.  
 10:29 20 A. Why don't you tell it to the real estate guy?  
 21 I never read it.  
 22 Q. Well you signed it; correct?  
 23 A. Well he sent it to me.  
 24 That's not my signature.  
 10:29 25 Q. That's not your signature?

10:27 1 to say "I need to look at a document."  
 2 A. Okay. I'm sorry.  
 3 Q. That's okay.  
 4 Let's see here.  
 10:27 5 A. I got to get new glasses. I can hardly read  
 6 the little writing.  
 7 You didn't ask me if you wanted to hear what the  
 8 e-mail says.  
 9 Q. I've seen the e-mail.  
 10:28 10 A. Did you see the paragraph where Zebe says he's  
 11 going to do it for \$200,000. And he's going to take  
 12 full responsibility and prepared to pay for it himself?  
 13 Did you read that part of it?  
 14 Q. I did.  
 10:28 15 A. Actually we're on the same page.  
 16 Q. No. No, we're not.  
 17 A. Why not? You've got this e-mail.  
 18 Q. No, we're not on because --  
 19 A. Doesn't it say that he's prepared to pay?  
 10:28 20 Q. No, it doesn't.  
 21 A. No?  
 22 Q. So Mr. Farinella, let me ask you this --  
 23 A. Yeah.  
 24 Q. -- the offer was accepted on October 17th;  
 10:28 25 correct? The date that --

10:29 1 A. It's a thousand miles away.  
 2 THE REPORTER: Let us get the exhibit.  
 3 MR. BOWERS:  
 4 Q. After --  
 10:29 5 THE REPORTER: Wait. Wait. Wait.  
 6 Let us get the exhibit.  
 7 Okay. Ready.  
 8 MR. BOWERS:  
 9 Q. When you talked about once the offer was  
 10:30 10 accepted from Gaylen and you allowed him to go in and  
 11 take care of the restaurant; correct?  
 12 A. Well, I allowed him. I asked him to.  
 13 As long as he's going buy the place and I'm having  
 14 problems with the help over there in the restaurant,  
 10:30 15 rather than closing it, to keep it open while escrow  
 16 closed to run it and take care of it.  
 17 Q. I'm trying to figure these dates out.  
 18 So then that would be sometime after October 17th,  
 19 2008?  
 10:30 20 A. I don't remember.  
 21 Q. Well you said that once the offer was  
 22 accepted -- Your exact testimony was something along  
 23 that line --  
 24 A. Yeah.  
 10:30 25 Q. -- after the offer was accepted, I told him he

10:30 1 could do this and this.  
 2 A. Yeah.  
 3 Q. Okay.  
 4 So then prior to October 17th, 2008, he didn't have  
 10:31 5 permission; correct?  
 6 A. No.  
 7 Neither did Don Zebe either. Because he was in  
 8 that restaurant too, you know, taking money out too.  
 9 Q. So Don Zebe was taking money out too?  
 10:31 10 A. Yeah. Absolutely.  
 11 As far as I know, they were both fighting over  
 12 there and you guys got me involved up there.  
 13 That's a circus going on up there. You know that.  
 14 Excuse me, off the record. That is a circus going on  
 10:31 15 between the two of them.  
 16 Q. Well, we're not off the record. Everything is  
 17 on the record.  
 18 A. Okay.  
 19 Q. Did you -- Did you ever tell Gaylen Clayson or  
 10:31 20 authorize him as your agent to do whatever he needed to  
 21 get the plant running?  
 22 A. No. He's not my agent.  
 23 Q. Did you -- would you ever authorize him to do  
 24 anything to get the plant running?  
 10:32 25 A. I wouldn't authorize him or Don Zebe without

10:35 1 THE WITNESS: You want to settle? How do we settle  
 2 this case?  
 3 MR. MARIN: You can arrange it with Blake as far as  
 4 that schedule.  
 10:36 5 Morris he wanted to talk to you and me so that's  
 6 fine.  
 7 THE WITNESS: Who wanted to talk to me?  
 8 MR. ATKIN: I do have a couple questions if that's  
 9 okay, Morris.  
 10:36 10 THE WITNESS: Yeah.  
 11  
 12 -EXAMINATION-  
 13  
 14 BY MR. ATKIN:  
 10:36 15 Q. Do you recall, you know, you --  
 16 MR. BOWERS: Wait a minute. Wait a minute. Are we  
 17 deposing Morris? I'm sorry. I thought you said Manny.  
 18 MR. ATKIN: I said "Morris."  
 19 THE WITNESS: Morris.  
 10:36 20 MR. BOWERS: You did.  
 21 MR. ATKIN:  
 22 Q. You were asked some questions by Mr. Bowers  
 23 about this document that we've marked, the offer that  
 24 was accepted in October of 2008.  
 10:36 25 Do you recall that Gaylen had made an offer earlier

10:32 1 signing a piece of paper in front of a lawyer. I don't  
 2 trust either one of them.  
 3 Q. Fair enough. Fair enough.  
 4 A. They're a bunch of crooks up there.  
 10:32 5 MR. MARIN: (Indicating).  
 6 THE WITNESS: I know.  
 7 MR. BOWERS: Okay. Let's take another 30 seconds  
 8 to 2-minute break and we may be wrapping up.  
 9 (A recess is taken.)  
 10:35 10 MR. BOWERS: Mr. Farinella, I don't have anymore  
 11 questions.  
 12 Mr. Atkins will have the right.  
 13 I just wanted to throw this out one more time.  
 14 THE WITNESS: Go ahead.  
 10:35 15 MR. BOWERS: And Manny, I'm sorry, I don't know  
 16 your last name. I don't mean any disrespect for calling  
 17 you that.  
 18 MR. MARIN: Marin, M-a-r-i-n.  
 19 MR. BOWERS: The only thing is -- apparently you  
 10:35 20 got it, but I would still throw out there that I would  
 21 like to talk to Mr. Farinella and Manny and their  
 22 personal attorney about settling this case between us  
 23 when there's the time convenient for you.  
 24 THE WITNESS: Settle the case.  
 10:35 25 MR. BOWERS: I don't have any more questions.

10:36 1 in the year in 2008, sometime back in February 2008?  
 2 A. Yes.  
 3 Q. And so some of those conversations that you  
 4 talked about with Gaylen about running the restaurant  
 10:37 5 and doing whatever was necessary to make the plant  
 6 operational, those conversations, didn't they occur  
 7 before October of 2008 as to that first offer in  
 8 February?  
 9 A. Well, he made an offer and it was not accepted.  
 10:37 10 Gaylen made the first offer. I don't know. I think it  
 11 was February -- I think it was --  
 12 THE WITNESS: Was it February 7th that he made his  
 13 offer? February 7. That's 2008.  
 14 MR. MARIN: Yes.  
 15 THE WITNESS: 2008, February 7, and he offered  
 16 500,000. And it was not accepted. It was turned down.  
 17 MR. ATKIN:  
 18 Q. In any event, he started running the restaurant  
 19 at about that time, didn't he, February 2008?  
 10:37 20 A. It was much later than February though. It was  
 21 after -- after the 500,000 was rejected, he offered  
 22 \$800,000 with another offer of 800-, and we accepted  
 23 his. And that's when I found out Don Zebe was a  
 24 partner. He made -- he accepted the offer of 800,000 --  
 10:38 25 we accepted that.

10:38 1 So when we accepted that, that means that the thing  
 2 was closed. Like I said, I read it to you again.  
 3 After the accepting of the offer, Gaylen asked me  
 4 if he can clean it up and get it ready to run.  
 10:38 5 Which I said go ahead, as long as it don't cost the  
 6 court any money.  
 7 Q. All right.  
 8 A. And they said, "Okay."  
 9 Because I got an e-mail from Don Zebe that says  
 10:38 10 they're willing to pay anything -- that they -- you  
 11 know, that they -- Gaylen -- Gaylen and Don Zebe will  
 12 accept up to 200 something thousand -- \$245,000 to  
 13 cleanup the plant. They will pay for it and not charge  
 14 us or the courts or anybody.  
 10:38 15 I got an e-mail to that it effect.  
 16 Q. And that's the e-mail that you talked about  
 17 earlier that you received in January of 2009?  
 18 A. Right.  
 19 Q. Okay.  
 10:39 20 And --  
 21 A. The plant was closed for a couple of years.  
 22 That's why it got so dirty and crumby and everything.  
 23 That's why it wasn't cleaned. It was closed for two  
 24 years.  
 10:39 25 Any piece of property that has been closed --

1 MR. BOWERS: We're off the record.  
 2 (The proceedings concluded at 10:40 a.m.)  
 3 \*\*\*  
 4  
 5 I declare under penalty of perjury under the laws  
 6 of the State of California that the foregoing is true  
 7 and correct.  
 8  
 9 Executed at \_\_\_\_\_, California,  
 10 on \_\_\_\_\_.  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

MORRIS A. FARINELLA

10:39 1 Q. Wasn't there junk on the property that had been  
 2 used that was no longer usable? It was considered junk  
 3 on the property?  
 4 A. Yes.  
 10:39 5 And in fact, we had what we call a junkyard. We  
 6 used to throw the equipment that was not good or didn't  
 7 work no more out in the back.  
 8 Q. And wasn't that weigh dryer part of that junk?  
 9 A. I believe so. I believe we had an old weigh  
 10:39 10 dryer -- Well, it was a pan. They call it a pan. It  
 11 was thrown in the back. It couldn't be used at all. It  
 12 wasn't worth anything. It was scrap.  
 13 Q. And you authorized Gaylen to get rid of that?  
 14 A. I didn't authorize him to get rid of that or  
 10:40 15 any particular item. Only to clean it up.  
 16 If that meant to get rid of that, I guess he did  
 17 it. But not to cost any money to court -- not to cost  
 18 me or the bankruptcy court. Because they would have  
 19 come -- I had no authority to tell him anything anyway.  
 10:40 20 He might as well ask a monkey on a tree what he  
 21 could do. I had no authority.  
 22 MR. ATKIN: That's all I have.  
 23 THE WITNESS: Okay.  
 24 MR. BOWERS: That's all. I have nothing else.  
 10:40 25 THE REPORTER: So we're off the record.

1 STATE OF CALIFORNIA ) ss  
 2  
 3 I, Lori S. Turner, CSR 9102, CP, RPR, do hereby  
 4 declare:  
 5  
 6 That, prior to being examined, the witness named in  
 7 the foregoing deposition was by me duly sworn pursuant  
 8 to Section 2093(b) and 2094 of the Code of Civil  
 9 Procedure;  
 10  
 11 That said deposition was taken down by me in  
 12 shorthand at the time and place therein named and  
 13 thereafter reduced to text under my direction.  
 14  
 15 I further declare that I have no interest in the  
 16 event of the action.  
 17  
 18 I declare under penalty of perjury under the laws  
 19 of the State of California that the foregoing is true  
 20 and correct.  
 21  
 22 WITNESS my hand this \_\_\_\_\_ day of  
 23 \_\_\_\_\_, \_\_\_\_\_.  
 24  
 25  
 Lori S. Turner, CSR 9102, CP, RPR

COURT MINUTES

CV-2009-0002212-OC

Gaylen Clayson vs. Donald I Zebe, etal.

Hearing type: Court Trial

Hearing date: 11/04/2010

Time: 9:33 am

Judge: Stephen S Dunn

Courtroom: Room #301, Third Floor

Court reporter: Sheila Fish

Minutes Clerk: Karla Holm

Tape Number:

Party: Donald Zebe, Attorney: Gary Cooper

Party: Gaylen Clayson, Attorney: Blake Atkin

- 
- 933 Begin; Blake Atkin associate sitting at table; Cooper no objection
- 934 Cooper Motion to Exclude Witnesses; Granted; witnesses excused
- 935 Plaintiff called sworn and testified; Gaylen W. Clayson
- 1046 Cooper-objection on record regarding issues requested during discovery that was not provided
- 1047 Court-overruled objection
- 1050 Recess
- 1104 Reconvene; continue with Palintiff
- 1109 Plaintiff Exhibit F-document prepared by Plaintiff-summary of work completed by Plaintiff; offered;
- 1110 Cooper objection



1111 Atkin argument  
1113 Court;  
1114 Atkin  
1119 Court-deny Plaintiff Exhibit F  
1126 Cooper objection  
1127 Court-allow testimony regarding items marked by arrows on Exhibits F/a-u,  
those supporting documents maybe admitted  
1129 Cooper advise Court of items not provided or identified during deposition  
1130 Atkin  
1131 Cooper continue with identifying documents not provided or identified at  
deposition  
1139 Court will take under advisement this documents and will make decision at later  
time;  
1140 Atkin  
1146 Cooper-Motion to strike; argument; Atkin  
1147 Court objection overruled  
1207 Cooper Motion to Strike; Sustained  
1210 Cooper Motion to Strike; Court grant motion to Strike  
1215 Cooper Motion to Strike; Court Grant Motion to Strike  
1223 Cooper question in aid of objection; Motion to Strike; Court overruled  
1225 Cooper Motion to Strike; Overruled  
1227 Cooper-Motion to Strike; Overruled  
1228 Exhibit L  
1230 Motion to Strike; sustained  
1230 Exhibit M

1231 Motion to Strike; Sustained

1231 Exhibit P

1234 Exhibit T

1237 Motion to Strike; sustained

1238 Cooper question in aid of objection; Objection; Overruled

1239 Exhibit U

1240 Atkin-move to remove striking of check to High Sierra for \$9100; Court granted

1245 Motion to Strike-Sustained

1246 Cooper-question in aid of objection; Motion to Strike

1247 Court-motion granted

1251 Motion to Strike; Overruled

1255 Cooper-question; Objection-Grant to all charges except at Thayne True Valley Hardware

1257 Motion to Strike-granted

1258 Atkin; Court Exhibit F/a-u admitted except as stricken by Court and subject to further ruling by Court on issue of timeliness

1259 Lunch recess until 2 pm

159 Reconvene

159 Cooper-correction of earlier statement regarding supplemental discovery response; Exhibit F/f, F/u, F/t; not withdrawing objection

203 Motion to Publish Deposition Vol 1 and Vol 2 with attached exhibits; Court GRANTED;

204 Continue testimony of Plaintiff

210 Cooper-Objection

211 Court-objection overruled

217 Exhibit G

223 Offered 1<sup>st</sup> 4 pages of Exhibit G; objection; Admitted as foundational  
301 Exhibit F offered; Cooper objection;  
301 Court-objection overruled; admitted for limited purpose only, not for proof of  
what actual out of pocket expenses were  
324 Plaintiff Exhibit D; offered; admitted as stipulated  
325 Plaintiff Exhibit N-offered as stipulated; no objection; admitted  
326 Recess  
340 Reconvene  
340 Cooper cross examination  
341 Court Publishing deposition Vol 1 and 2 of Mr Clayson with no objection  
356 Def Exhibit 5A offered; Atkin objection; Admitted  
419 Atkin-redirect examination  
430 Witness excused  
430 Plaintiff witness , Don Zebe, called sworn and testified  
436 Plaintiff Exhibit J offered and admitted  
440 Plaintiff Exhibit K, Annual Report from, Milk Market Management; offered  
441 Cooper objection; Court admitted  
445 Deposition of Don Zebe published without objection (photocopy in lieu of  
original submitted to Court)  
456 Plaintiff Exhibit I, Star Valley Cheese Business Plan, offered; Cooper objected  
456 Atkin argument; Court admitted for limited purpose as Atkin stated on record  
509 Plaintiff Exhibit Q, SVC Financials from Dec 31, 2008-June 30, 2009  
520 Recess for night; begin 8:30 am Friday, November 5, 2010



COURT MINUTES

CV-2009-0002212-OC

Gaylen Clayson vs. Donald I Zebe, etal.

Hearing type: Court Trial

Hearing date: 11/05/2010

Time: 8:26 am

Judge: Stephen S Dunn

Courtroom:

Court reporter: Sheila Fish

Minutes Clerk: Karla Holm

Tape Number:

Party: Donald Zebe, Attorney: Gary Cooper

Party: Gaylen Clayson, Attorney: Blake Atkin

- 
- 826 Ruling on timeliness of Plaintiff's Exhibits; (see log notes)
- 845 Continued testimony of Don Zebe
- 850 Plaintiff Exhibit S; Email Don Zebe to Val Pendleton, 1/14/09; offered and admitted
- 857 Plaintiff Exhibit U, Email Don Zebe to Klark Gailey 1/31/09; offered; objection
- 858 Cooper argument; Court admitted for portion dealing with Dairy Systems in the past
- 908 Ruling on testimony regarding Dairy Systems bill; case limited to \$50,000 paid by Clayson; Objection to last question sustained
- 913 Plaintiff Exhibit W, email from Don Zebe to Klark Gailey, 02/25/09, offered
- 914 Cooper-objection

915 Court-admitted

9123 Plaintiff Exhibit X, email from Don Zebe to Klark Gailey 03/07/09; offered

923 Cooper-objection; argument

924 Court-objection overruled; Exhibit X admitted

934 Recess

946 Reconvene; Court addresses party regarding additional research to be done;

947 Atkin comments

948 Cooper comments

948 Cooper direct examination of Don Zebe

1013 Def Exhibit 11-A, Offered

1014 Atkin-objection argument

1015 Cooper

1016 Atkin withdraw objection; Court admitted Def Exhibit 11-A

1030 Exhibit N, admitted by stipulation

1038 Atkin-re-cross examination

1043 Plaintiff Exhibit V, email Don Zebe to Klark Gailey, offered

1043 Cooper-objection

1044 Atkin

1044 Court-Admitted for purpose of challenging credibility

1051 Witness excused

1051 Atkin-identify witness and offer of testimony to be presented

1100 Cooper-objection to offer of testimony

1101 Court-testimony not admissible; ruling; Objection sustained

1102 Atkin

1102 Plaintiff rests subject to Court reconsideration of prior issue

1103 Recess

100 Reconvene; update of witnesses; tel conf 12 pm Monday; Court to instigate call; no Court on Tuesday; Wednesday 1:30 pm; any submissions by Saturday at 12 pm by email;

104 Cooper-highlighted deposition of Morris Ferineli submitted to Court

106 Atkin

106 Def witness-Ricky Layne Lawson called sworn and testified

125 Atkin-question in aid of objection; objection

126 Court-overruled

129 Def Exhibit 11, IRE 1006, summary of Clayson Invoices paid by SVC, offered; no objection; admitted

139 Court questions witness

141 Atkin cross examination

143 Plaintiff Exhibit Q, SVC Financials from 12/31/08-06/30/09

145 Offered-pages 7 & 8-only; Cooper objections

146 Atkin; Court overruled objection; Admitted

204 Cooper-re-direct examination

205 Exhibit Q, last 2 pages, offered; Atkin objected

206 Court -admitted

209 Witness excused;

209 Recess; Court instructions to parties regarding submissions on pending issues;

212 end





COURT MINUTES

CV-2009-0002212-OC

Gaylen Clayson vs. Donald I Zebe, etal.

Hearing type: Status Conference

Hearing date: 11/08/2010

Time: 11:59 am

Judge: Stephen S Dunn

Courtroom: Room #301, Third Floor

Court reporter: Sheila Fish

Minutes Clerk: Karla Holm

Tape Number:

Party: Donald Zebe, Attorney: Gary Cooper

Party: Gaylen Clayson, Attorney: Blake Atkin

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1200 Court's decision on pending issue  
1201 Decision  
1206 Resume trial 1:30 pm Wednesday;  
1206 Atkin-rebuttal witnesses

COURT MINUTES

CV-2009-0002212-OC

Gaylen Clayson vs. Donald I Zebe, etal.

Hearing type: Jury Trial

Hearing date: 11/10/2010

Time: 1:54 pm

Judge: Stephen S Dunn

Courtroom: Room #301, Third Floor

Court reporter: Sheila Fish

Minutes Clerk: Karla Holm

Tape Number:

Party: Donald Zebe, Attorney: Gary Cooper

Party: Gaylen Clayson, Attorney: Blake Atkin

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154 Court Trial Continued  
155 Atkin regarding exclusion of witnesses  
156 Def witness Jeff Randall called sworn and testified  
222 Court questions witness  
223 Atkin cross examination  
228 Plaintiff Exhibit CC, declaration of Jeff Randall, marked,  
233 Exhibit CC, offered; Cooper objection; Court admitted  
242 Cooper redirect  
246 Witness excused; Defense rests  
246 Plaintiff Rebuttal witness, Don Zebe, called and testified

251 Witness excused  
251 Plaintiff Rebuttal witness, Gaylen Clayson  
253 Cooper cross examination  
253 Witness excused; Plaintiff rests; 5 minute recess  
306 Reconvene; Cooper-no sur rebuttal  
306 Court-Atkin;  
307 Cooper;  
308 Court-require proposed findings and conclusions from both parties; due  
11/24/10; taken under advisement at that time; decision shall be issued by  
12/24/10;  
311 end

NOV 16 2010 8:03 AM

*[Handwritten signature]*

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

Register No.CV-2009-02212-OC

GAYLEN CLAYSON, )

Plaintiff, )

-vs- )

DON ZEBE, RICK LAWSON, AND LAZE, )  
LLC., )

Defendants. )

MINUTE ENTRY & ORDER

On November 4, 2010, the above entitled matter came before the Court for the purpose of a Court Trial. Blake Atkin, appeared on behalf of the Plaintiff and Gary Cooper, appeared for the Defendants.

Sheila Fish performed as Court Reporter for this proceeding.

At the outset, counsel for the Defendants made an oral motion for the exclusion of witnesses. Counsel for the Plaintiff had no objection. Court granted motion and witnesses were excused.

The Plaintiff was called, sworn and testified.

Plaintiff's Exhibit F, and supplemental Exhibits F/a-u, were offered, objected to and admitted into evidence, except as stricken by the Court, or admitted for a limited purpose as outlined by the Court.

Plaintiff's Exhibits G, pages 1-4 Invoices and Statements of Dairy Systems, August 2008-June 2009, D, Contract to buy real estate, and N, Addendum A1 Assignment, were offered and admitted.

Defendant's Exhibit 5A, Ferinella deposition, offered and admitted.

Plaintiff's witness, Don Zebe, called, sworn and testified.

Plaintiff's Exhibit J, Article of Organization DVC, LLC, Exhibit K, Annual Report from, Milk Market Management, Exhibit I, Star Valley Cheese business plan, were offered and admitted. Exhibit I being admitted for a limited purpose as stated by the Court.

Recess for night at 5: 21 p.m. Court instructed parties to reconvene Friday, November 5, 2010, at 8:30 a.m.

The Court reconvened at 8:26 a.m. on November 5, 2010.

At the outset, the Court advised the parties of its ruling regarding the Defendant's objection to the timeliness of Plaintiff's Exhibits.

Testimony of Plaintiff's witness, Don Zebe, continued.

Plaintiff's Exhibit S, email from Don Zebe to Val Pendleton dated January 14, 2009, Plaintiff Exhibit W, email from Don Zebe to Klark Gailey, dated February 25, 2009, Plaintiff Exhibit X, email from Don Zebe to Klark Gailey, dated march 7, 2009, Plaintiff Exhibit V, email from Don Zebe to Klark Gailey dated February 19, 2009, were offered and admitted into evidence.

Plaintiff Exhibit U, email from Don Zebe to Klark Gailey, January 31, 2009, offered and objected to. The Court admitted Exhibit U limited to the portion regarding Dairy Systems dealings in the past.

Defendant Exhibit 11-A, bills paid through November 25, 2008, was offered and admitted into evidence.

Plaintiff Exhibit N, Addendum A1 Assignment Gaylen Clayson, November 4, 2008, was admitted by stipulation of parties.

The witness was excused.

Plaintiff's counsel made an offer of proof of the proposed testimony of Klark Gailey. Defendant objected. The Court sustained the objection.

The Plaintiff rests.

The Court recessed for lunch at 11:03 a.m.

The Court reconvened at 1 p.m.

The Court reviewed the pending trial schedule with the parties.

Counsel for the Defendant submitted a highlighted copy of the deposition of Morris Ferinella to the Court for review.

Defendant Ricky L. Lawson was called sworn and testified.

Defendant Exhibit 11, IRE 1006, Summary of Clayson Invoices paid by SVC, LLC, was offered and admitted into evidence.

Plaintiff's Exhibit Q, SVC Financials from December 31, 2008 to June 30, 2009, pages 7 and 8, and last two pages, were offered and admitted into evidence.

The Court recessed for the night at 2:13 p.m. The Court instructed counsel for the parties as to the submission of briefings to the Court regarding pending issues. The Court also instructed the parties as to the pending trial schedule.

The Court held a telephonic hearing on Monday, November 8, 2010 at 12 p.m. At that time the Court issued its ruling on the record on the pending issues.

The Court reconvened on Tuesday, November 10, 2010 at the hour of 1:54 p.m.

Defendant's witness, Jeff Randall, was called sworn and testified.

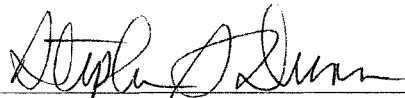
Plaintiff's Exhibit CC, Affidavit of Jeff Randall, was marked, offered and admitted into evidence as limited by the Court.

Defense rests.

Plaintiff's Rebuttal Witnesses, Don Zebe and Gaylen Clayson, were recalled and testified.

The Court required that proposed findings of facts and conclusions be submitted by both parties no later than November 24, 2010. At that time, this issue will be deemed under advisement and a written decision shall be issued by the Court.

DATED November 16, 2010.



STEPHEN S. DUNN  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11 day of Nov, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Blake S. Atkin  
7579 North Westside Highway  
Clifton, ID 83228

- U.S. Mail
- Email
- Hand Deliver
- Facsimile

Blake S. Atkin  
Atkin Law Office  
837 South 500 West, Ste 200  
Bountiful, UT 84010

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Gary L. Cooper  
Cooper & Larsen  
PO Box 4229  
Pocatello, ID 83205-4229

- U.S. Mail
- Email
- Hand Deliver
- Facsimile

DATED this 11 day of November, 2010.

Kate Helm  
Deputy Clerk



JUL 22 11:25

Blake S. Atkin (ISB# 6903)  
7579 North Westside Highway  
Clifton, Idaho 83228  
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Attorney for Defendants

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

GAYLEN CLAYSON,

Plaintiff,

v.

DON ZEBE, RICK LAWSON, and LAZE,  
LLC,

Defendants.

DON ZEBE, RICK LAWSON, and LAZE,  
LLC,

Counterclaim Plaintiffs,

v.

GAYLEN CLAYSON,

Counterclaim Defendant.

PLAINTIFF'S DESIGNATION OF  
PORTIONS OF THE DEPOSITION OF  
MORRIS FARINELLA

Case No: CV-2009-02212-OC

Judge: Dunn

The Plaintiff, Gaylen Clayson designates the following portions of the deposition of Morris Farinella attached hereto as exhibit A.

P. 14 lines 7 through 17.

P. 14 line 18 through P. 15 line 4.

P. 18 line 16 through P. 19 line 6.

P. 35 lines 13 through 20.

P. 40 lines 14 through 25.

P. 42 lines 4 through 15.

P. 43 lines 4 through 17.

P. 46 line 3 through P. 50 line 17.

P. 56 line 2 through <sup>line</sup> P. 21.

P. 58 line 5 through line 13.

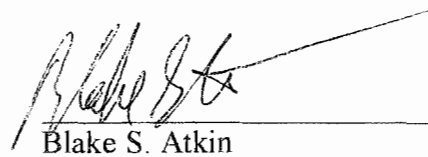
P. 61 line 19 through P. 62 line 13.

P. 63 line 7 through 14.

P. 65 line 9 through line 20.

Dated this 10<sup>th</sup> day of November, 2010

Atkin Law Offices, P.C.

  
\_\_\_\_\_  
Blake S. Atkin  
Attorneys for the Plaintiff

**Deposition of**

**MORRIS A. FARINELLA**

**LAZE, LLC v. DAIRY SYSTEMS COMPANY, INC.**

*Taken On  
September 30, 2010*

Transcript provided by:

**HUTCHINGS<sup>SM</sup>**  
COURT REPORTERS, LLC  
CSR 929

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF LINCOLN, STATE OF WYOMING

LAZE, LLC, a Wyoming Limited Liability  
Company, DON ZEBE, RICK LAWSON, )

Petitioners, )

vs. )

No. 2009-89-DC

DAIRY SYSTEMS COMPANY, INC., a  
Utah Corporation, )

Respondent. )

AND RELATED COUNTER-CLAIMS. )

DEPOSITION OF MORRIS A. FARINELLA, a defendant  
herein, noticed by Bowers Law Firm, PC, taken at  
6055 East Washington Boulevard, Los Angeles,  
California, at 9:10 a.m., on Thursday,  
September 30, 2010, before Lori S. Turner, CSR  
9102, CP, RPR.

Hutchings Number 279888

HUTCHINGS COURT REPORTERS, LLC - GLOBAL LEGAL SERVICES  
800.697.3210

1 APPEARANCES OF COUNSEL:  
 2  
 3 For LAZE, LLC; DON ZEBE and RICK LAWSON:  
 4 BOWERS LAW FIRM, PC  
 5 BY JOHN D. BOWERS (Present telephonically)  
 6 685 South Washington Street  
 7 Afton, Wyoming 83110  
 8  
 9 - AND -  
 10  
 11 COOPER & LARSEN  
 12 BY GARY L. COOPER (Present telephonically)  
 13 151 North 3rd Avenuc, Suite 210  
 14 Pocatello, Idaho 83205  
 15  
 16 For MORRIS A. FARINELLA:  
 17 ATKIN LAW OFFICES, PC  
 18 BY BLAKE S. ATKIN (Present telephonically)  
 19 837 South 500 West, Suite 200  
 20 Bountiful, Utah 84010  
 21  
 22 Also Present: MANNY MARIN  
 23  
 24  
 25

EXHIBIT	DESCRIPTION	IDENTIFIED	MARKED
7	Documents Bates stamped 23 through 26 [EXH-7]	40	41
8	Documents Bates stamped 27 through 30 [EXH-8]	42	42
9	1-page document Bates stamped 31 [EXH-9]	43	43
10	Documents Bates stamped 32 through 39 [EXH-10]	44	44

1 INDEX  
 2 WITNESS: MORRIS A. FARINELLA  
 3 EXAMINATION BY: PAGE  
 4 MR. BOWERS 5  
 5 MR. ATKIN 68  
 6  
 7  
 8 EXHIBITS  
 9 Exhibit identification within the transcript is flagged  
 10 with "[EXH]" as an identifier.  
 11  

EXHIBIT	DESCRIPTION	IDENTIFIED	MARKED
1	2-page document Bates stamped 1 through 2 entitled "Warranty Deed" [EXH-1]	19	19
2	1-page document Bates stamped 3 entitled "Bill of Sale" [EXH-2]	22	22
3	4-page document Bates stamped 4 through 7 entitled "Bill of Sale" [EXH-3]	24	24
4	Documents Bates stamped 8 through 19 referred to a "Offer to Purchase" [EXH-4]	26	26
5	2-page document Bates stamped 20 and 21 [EXH-5]	37	37
6	1-page document Bates stamped 22 [EXH-6]	38	38

1 MORRIS A. FARINELLA,  
 2 a defendant herein, having been sworn, testifies as  
 3 follows:  
 4  
 5 -EXAMINATION-  
 6  
 7 BY MR. BOWERS:  
 8 Q. Mr. Farinella. My name is John Bowers. I  
 9 represent Rick Lawson, Don Zebe and Laze, LLC in this  
 10 matter.  
 11 Would you please state your full name for the  
 12 record.  
 13 A. Morris A. Farinella, F-a-r-i-n-e-l-l-a.  
 14 Q. Great.  
 15 And your current address?  
 16 MR. MARIN: 9323 -  
 17 THE WITNESS: 9323 Tweedy Lane, Downey, California  
 18 "90240."  
 19 MR. BOWERS: Thank you.  
 20 Q. Mr. Farinella, have you ever had your  
 21 deposition taken before?  
 22 A. Yes.  
 23 Q. So you understand the procedure? I get to ask  
 24 the questions and you get to answer them; correct?  
 25 A. To the best of my ability, yes.

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09:13 1 Q. And just a couple things.  
 2 On the telephone, this will make it easier, because  
 3 we'll be more likely to answer questions verbally, but  
 4 sometimes in human nature, we have a habit of straggling  
 09:13 5 and shaking our heads, and our court reporter Lori won't  
 6 be able to take that down. So we'll verbalize our  
 7 answers.  
 8 The other things is we have to slow down. I have a  
 9 habit of talking over people. So if you have that same  
 09:13 10 habit, just wait until I finish my question before you  
 11 answer.  
 12 Okay?  
 13 A. Yes.  
 14 Q. Are you on any type of medication today, sir?  
 09:13 15 A. No.  
 16 Q. How old are you?  
 17 A. 87.  
 18 Q. Any reason medically, or there's no medication  
 19 that would prevent you from understanding and answering  
 09:13 20 my questions today truthfully?  
 21 A. No.  
 22 The only thing I take is aspirin.  
 23 Q. Great.  
 24 Okay. Can you tell me what you did in preparation  
 09:14 25 for this deposition?

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09:14 1 A. Nothing.  
 2 Q. Did you talk to anybody?  
 3 A. No.  
 4 Q. Okay.  
 09:14 5 Did you talk to Gaylen Clayson?  
 6 A. No.  
 7 Q. When is the last time you spoke with  
 8 Mr. Clayson?  
 9 A. A year, I guess, ago. Maybe a year, year and a  
 09:14 10 half. I don't know.  
 11 Q. Did you review any documents?  
 12 A. No.  
 13 Q. Have you ever spoken to Clark Gayley?  
 14 A. I don't know him.  
 09:14 15 Q. John Gayley?  
 16 A. I don't know him.  
 17 Q. That would mean you haven't spoken to them?  
 18 A. If I don't know them, I don't think I talked to  
 19 them.  
 09:14 20 Q. That's right. Okay.  
 21 Mr. Farinella, you, through a company that I  
 22 understand that you own, were the owners for a long  
 23 period of time of a business located in Thayne, Wyoming  
 24 that we refer to as Star Valley Cheese Plant; is that  
 09:15 25 true?

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09:15 1 A. Yes. Since 1975.  
 2 Q. Thank you. '75.  
 3 And in 2008, that plant was in bankruptcy; is that  
 4 correct?  
 09:15 5 A. I believe so.  
 6 Q. Or under the direction of bankruptcy?  
 7 A. Well, under a Chapter 11 and Chapter 7, I  
 8 think.  
 9 Q. Okay.  
 09:15 10 And did there come a time when you sold the plant?  
 11 A. No.  
 12 Q. When I refer to plant, I'll -- whether it's  
 13 plant or Star Belly Cheese Factory or Star Belly Plant,  
 14 it's all the same thing.  
 09:15 15 A. Yes.  
 16 No, we haven't sold it.  
 17 Q. Okay.  
 18 So can you tell me about -- Apparently there was a  
 19 time when you were allowed to sell the plant even though  
 09:15 20 it was in bankruptcy.  
 21 Can you tell me how that transpired?  
 22 A. You don't understand the procedure of a  
 23 bankruptcy.  
 24 Q. Yes, I do.  
 09:16 25 A. You say "bankruptcy" -- a bankruptcy lawyer was

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09:16 1 there, and he runs the show. The Court runs the show;  
 2 not me.  
 3 So when it went in bankruptcy, we took bids to get  
 4 the money to pay the people. And the bids had to be  
 09:16 5 okayed by the court. I was appointed as president to  
 6 take the bids with the broker from Wyoming, the real  
 7 estate broker, who had the authority to sell the plant  
 8 for the bankruptcy court.  
 9 Q. Okay.  
 09:16 10 So just to make sure I understand this.  
 11 A. Okay.  
 12 Q. You would receive bids or offers to purchase  
 13 it. Then you would forward that information to the  
 14 bankruptcy trustee for his approval?  
 09:16 15 A. That's correct.  
 16 Q. And so, hypothetically, let's say, you wanted  
 17 to sell the plant to a friend or somebody else for a  
 18 lower price. You couldn't do that because you had to  
 19 send the offer to the bankruptcy trustee; correct?  
 09:17 20 A. I think that would be fraud.  
 21 Q. Fair enough.  
 22 A. I couldn't sell it to a friend of mine. I'm  
 23 sure it has to go to the bankruptcy court. They had to  
 24 approve everything.  
 09:17 25 Q. Fair enough.

09:17 1 So in 2008 -- just kind of short circuit this -- my  
 2 understanding is you were receiving offers.  
 3 Val D. Pendleton of Caldwell Bankers was working  
 4 with you a little bit or, I guess, soliciting offers; is  
 09:17 5 that correct?  
 6 A. We worked together, yes.  
 7 Q. Worked together.  
 8 And during that time period of time, did you  
 9 have a -- did you run into or did you know a Gaylen  
 09:17 10 Clayton?  
 11 A. I don't know what year that was, but he did  
 12 approach the broker, which was Pendleton, and said "I'd  
 13 like to put a bid in to buy the plant."  
 14 Q. Okay.  
 09:18 15 And when you say "a bid," if he puts a bid in, it's  
 16 got to go through the same process you've already  
 17 explained to me.  
 18 A. Yes.  
 19 And we had meetings at the plant with open bids  
 09:18 20 with other people while Gaylen was there.  
 21 Q. And what about -- Let me back up just a little  
 22 bit.  
 23 In 2008, did you ever allow him to operate the  
 24 restaurant on the premises?  
 09:18 25 A. I don't know what year it was, but at the time

09:19 1 A. Nothing. Until he bought it.  
 2 Nobody had nothing to do with the plant. It's in  
 3 bankruptcy.  
 4 Q. So it was just sit there, and then he could run  
 09:20 5 the restaurant out front and -- What was your  
 6 understanding of the terms of the agreement to allow him  
 7 to run the restaurant?  
 8 A. Just to watch over it so those two little girls  
 9 knew what they were doing there. That's all.  
 09:20 10 Q. Okay.  
 11 How was he to be paid for that?  
 12 A. He wasn't going to get paid anything. He was  
 13 doing me a favor.  
 14 Q. He was doing you --  
 09:20 15 A. Not me. He was doing the bankruptcy people a  
 16 favor.  
 17 Q. The bankruptcy court?  
 18 A. Yeah.  
 19 Q. Where was the money to go? You know, each day  
 09:20 20 you have the money that comes in from the sales.  
 21 A. It was supposed to go into a bank account that  
 22 we had for the restaurant.  
 23 Q. Okay.  
 24 A. I think it was Wells Fargo Bank.  
 09:20 25 THE WITNESS: Wasn't it?

09:18 1 the restaurant -- during the bankruptcy, the lawyer says  
 2 let the restaurant operate in front of the plant so we  
 3 can have some revenue come in.  
 4 So we hired two little Mexican girls there to run  
 09:18 5 the plant for the bankruptcy court. Okay?  
 6 But they were a little mixed up. And Gaylen was  
 7 there everyday. And I asked him to help to take care of  
 8 the restaurant while I'm living in L. A., and -- I  
 9 couldn't do it. You know, here, Wyoming, hear, back and  
 09:19 10 forth. I couldn't go. So I says, "Take care of that  
 11 restaurant with those two girls."  
 12 And he says, "I will look after it," and that was  
 13 all.  
 14 Q. And when you said your agreement with Gaylen --  
 09:19 15 and I separate the two. I separate in my mind the  
 16 restaurant out in front and then the cheese plant, the  
 17 manufacturing plant in the back.  
 18 A. Yes. They were separated.  
 19 In other words, the plant was closed, but the  
 09:19 20 restaurant was open. And they kept it open to get  
 21 revenue to -- for the bankruptcy court to put it in  
 22 there.  
 23 Q. Okay.  
 24 And what was -- What was Gaylen to do, if anything,  
 09:19 25 with the plant in the back?

09:20 1 MR. MARIN: Yeah.  
 2 THE WITNESS: Wells Fargo Bank in Star Valley.  
 3 MR. BOWERS:  
 4 Q. Was Mr. Clayton allowed to spend any of that  
 09:20 5 money on his personal needs?  
 6 A. He had to pay the bills with the providers, the  
 7 people who brought the food there for the restaurant to  
 8 operate. That's all he had to do. Make sure the people  
 9 got paid.  
 09:21 10 Q. For lack of a better word, was he allowed to  
 11 convert any of that money to pay his own personal bills  
 12 not related to the restaurant?  
 13 A. Not as -- that I know of, no.  
 14 Q. Was -- did he have authority to take any of  
 09:21 15 that money and put into his own personal account?  
 16 A. He had no authority to do that, no.  
 17 Q. Do you remember where the -- I'm going to call  
 18 it the trustee receivership account for the restaurant.  
 19 Do you know where that account, which bank it was held  
 09:21 20 at?  
 21 A. Receivership or the -- I think it was Wells  
 22 Fargo.  
 23 MR. MARIN: Wells Fargo.  
 24 THE WITNESS: Wells Fargo.  
 09:21 25 MR. BOWERS:

09:21 1 Q. I know, Mr. Farinella, this is a dumb question,  
 2 but I'll ask it anyway.  
 3 You don't by chance have any documents with you  
 4 that would give us the account numbers for that, would  
 09:21 5 you?  
 6 A. I don't have them anymore.  
 7 Gaylen offered to run the restaurant after he made  
 8 the offer to -- was accepted.  
 9 After he bought the -- he made the offer to buy the  
 09:22 10 plant at the time. So with that in mind, I figured he  
 11 can be trusted to run the restaurant. That's the way  
 12 that happened. Just to run it so -- to keep it open.  
 13 Q. Because you assumed that at some point he would  
 14 be able to buy the whole thing?  
 09:22 15 A. It was already in process of him buying it  
 16 through the bankruptcy court.  
 17 Q. Okay.  
 18 A. He made an initial bid for it.  
 19 After the -- we had three different bids there when  
 09:22 20 it first started.  
 21 And one was from somebody out of L. A., another one  
 22 was from another place. And me and the broker decided  
 23 that let's go -- we had the same two bids from two  
 24 different people. So me and the lawyer, myself and the  
 09:22 25 lawyer -- I mean the lawyer -- the real estate for the

09:23 1 lower until it came down to 800,000.  
 2 Then with that in mind, I proceeded to go to the  
 3 bankruptcy lawyer and give him the information that the  
 4 most we could have got with the broker, real estate  
 09:24 5 broker, was 800,000. And he okayed it.  
 6 Q. Okay.  
 7 So it was the bankruptcy trustee or attorney as you  
 8 call it --  
 9 A. Right.  
 09:24 10 Q. -- that approved the sale?  
 11 A. Absolutely.  
 12 Q. Okay.  
 13 Let's see. During the time that the plant was  
 14 under -- under the direction of the bankruptcy court,  
 09:24 15 did you have authority to sell equipment out of there?  
 16 MR. ATKIN: Objection. Calls for a legal  
 17 conclusion.  
 18 THE WITNESS: Would you repeat that, please.  
 19 MR. ATKIN: Calls for a legal conclusion.  
 09:25 20 THE REPORTER: I can read it back to you.  
 21 (The record is read by the reporter.)  
 22 THE WITNESS: No.  
 23 THE REPORTER: He answered "No."  
 24 MR. BOWERS:  
 09:25 25 Q. Did the bankruptcy trustee or the bankruptcy

09:22 1 bankruptcy court, decided to go with Gaylen because he  
 2 was a local, he had the milk, and it was good for the  
 3 environment there, and hire some people in that area to  
 4 run the plant.  
 09:23 5 The other people that were going to bid on it, they  
 6 were just going to tear it apart and pull it out.  
 7 Q. Did they -- Do you remember what the numbers  
 8 were they bid?  
 9 A. The numbers what? What was bid?  
 09:23 10 Q. Yes.  
 11 A. Yeah.  
 12 800,000.  
 13 Q. That was Gaylen Clayson's bid?  
 14 A. That was his bid and somebody else's too. I  
 09:23 15 forget the other guy.  
 16 Q. Oh. So the other two bids weren't higher, but  
 17 they were --  
 18 A. No.  
 19 Q. -- at least the same?  
 09:23 20 A. One was lower. One was less. 500,000.  
 21 Q. Okay.  
 22 So Mr. Clayson's was one of the highest bids?  
 23 A. Well, no.  
 24 We -- actually we started at 1.5, 1.2, and nobody  
 09:23 25 bid. And you know how the bids go. And we go lower and

09:25 1 court give Gaylen Clayson authority to sell equipment  
 2 out of the plant?  
 3 A. No.  
 4 Nothing was to be touched until escrow closed.  
 09:25 5 Q. "Escrow closed." You mean the actual sale?  
 6 A. Sale of the plant when escrow closed.  
 7 Q. I just want to make sure my definition is the  
 8 same as yours.  
 9 That's the day the money transfers and there's a  
 09:25 10 deed issued?  
 11 A. Absolutely.  
 12 Q. Fair enough.  
 13 If there was any equipment that was sold, should  
 14 that money have been returned back -- if there was any  
 09:25 15 equipment sold by Gaylen Clayson, should that money have  
 16 been returned back to the bankruptcy court?  
 17 A. I don't know how to answer that because I don't  
 18 know if he sold anything.  
 19 Q. Okay.  
 09:26 20 So -- We've got some documents here that I think  
 21 may help us as we walk through this.  
 22 The first one is -- Well, do you remember,  
 23 ultimately who the plant was sold to?  
 24 A. At the very end when it was sold?  
 09:26 25 Q. Yes.



09:26 1 A. Well, you know, really -- where is that -- this  
 2 guy -- wait a minute.  
 3 I think you're jumping in -- you're going ahead.  
 4 You're talking about Gaylen, and now you're going who  
 09:26 5 bought the plant.  
 6 Q. I know, and I apologize.  
 7 The reason for that is when I e-mailed the  
 8 documents to you, two of them are out of order. So  
 9 we're going to have to jump ahead so it's going to mess  
 09:27 10 up the documents.  
 11 A. Do you want me to sit here and tell it the way  
 12 it was?  
 13 Q. Yeah. Let's do that.  
 14 A. Okay.  
 09:27 15 Q. Perfect.  
 16 A. As far as I know, Gaylen made the bid.  
 17 Everything was okay, and the bankruptcy lawyer agreed  
 18 and the real estate broker agreed and we backed off, and  
 19 that was it. It was gone into escrow. They had to come  
 09:27 20 up with the money.  
 21 At that time, the second visit to Wyoming, Gaylen  
 22 introduced me to these two people that I do not know  
 23 very well. One of them is Don Zebe. Don Zebe and Rick.  
 24 Rick "Larson."  
 09:27 25 I really don't know them at all -- at all except

09:28 1 A. Look, I'm not a lawyer and I'm not an  
 2 accountant, and I don't know where this come from.  
 3 Because once it was out, I was out of it.  
 4 It was taken -- taken by the --  
 09:29 5 THE WITNESS: Who is the one that did the closing  
 6 up there? The escrow company?  
 7 MR. MARIN: Alliance.  
 8 THE WITNESS: Alliance. Yeah. Alliance.  
 9 So where this came from, I have no idea.  
 09:29 10 MR. BOWERS:  
 11 Q. Why don't you look at page one on the bottom.  
 12 Is that your signature there?  
 13 MR. MARIN: This one (indicating).  
 14 THE WITNESS: Yeah, that's my signature.  
 09:29 15 Warranty --  
 16 MR. BOWERS:  
 17 Q. Do you remember signing this warranty deed?  
 18 A. Not really, but I guess I did.  
 19 What does it say there?  
 09:29 20 Yeah, I signed it. I guess.  
 21 THE WITNESS: But who did I sign this for?  
 22 MR. MARIN: It was for the escrow company.  
 23 THE WITNESS: For the escrow company, yeah.  
 24 MR. BOWERS:  
 09:29 25 Q. Right.

09:27 1 from Gaylen telling me they got the money; they're going  
 2 to buy it.  
 3 So I told Gaylen, "I don't care who comes up with  
 4 the money, but just buy it." The bid was okay, and  
 09:27 5 everything's -- "buy it."  
 6 And that's where it ended up with me.  
 7 Q. Okay. Fair enough.  
 8 So let's jump ahead then and then it will get back  
 9 in order here in a second, Mr. Farinella.  
 09:28 10 A. Okay.  
 11 MR. BOWERS: If I can have the court reporter mark  
 12 Bates stamped 1 through 2, which is a Warranty Deed, two  
 13 pages, as Exhibit 1. [EXH-1]  
 14 Q. I'll have you look at that Mr. Farinella when  
 09:28 15 she's ready.  
 16 (Whereupon the document referred to is marked by  
 17 the reporter as Exhibit 1 for identification.)  
 18 MR. BOWERS:  
 19 Q. As you pointed out, Mr. Farinella, these are a  
 09:28 20 little bit out of order.  
 21 This -- I'll represent to you what my understanding  
 22 is -- is the warranty deed that was executed as -- you  
 23 call it the escrow, I call it the closing -- when the  
 24 cheese plant was sold.  
 09:28 25 Is that what your understanding of Exhibit 1 is?

09:29 1 And this is what's been represented to me as the  
 2 warranty deed that you signed to sell the cheese plant  
 3 at the close of escrow when the property was transferred  
 4 to my client.  
 09:30 5 A. After he put up the money I guess, yeah.  
 6 Q. Okay.  
 7 And that's all I'm asking you. I just need you to  
 8 validate, first of all, that that's your signature.  
 9 A. Yeah.  
 09:30 10 Q. You did sign the warranty deed?  
 11 A. You know what? Why did I sign a warranty deed?  
 12 I held the mortgage on that property.  
 13 MR. MARIN: You were representing Star Valley.  
 14 THE WITNESS: Okay.  
 09:30 15 I represent Star Valley Cheese Corporation. I  
 16 guess that's why I signed it.  
 17 Go ahead.  
 18 MR. BOWERS:  
 19 Q. Okay.  
 09:30 20 Mr. Farinella is this -- is this a warranty deed  
 21 that you signed?  
 22 A. I guess I did, yes.  
 23 Q. All right. Thank you.  
 24 I know it's hard to go back and look at documents.  
 09:30 25 A. Yeah. We're talking eight years.

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09:30 1 Q. Whatever time you need, just take it.  
 2 Now I'll have you look at what I'll have the court  
 3 reporter -- Bates stamp 3, the Bill of Sale, and ask  
 4 that Lori mark that as deposition Exhibit 2. [EXH-2]  
 09:31 5 When she gets done, I'll have you take a look at  
 6 that Mr. Farinella.  
 7 (Whereupon the document referred to is marked by  
 8 the reporter as Exhibit 2 for identification.)  
 9 THE REPORTER: Okay.  
 09:31 10 MR. BOWERS:  
 11 Q. Mr. Farinella, I'll have you look at deposition  
 12 Exhibit 2 and it's Bates stamp 3.  
 13 First of all, is that your signature on the bottom  
 14 towards the bottom of the page?  
 09:31 15 A. Yes.  
 16 Q. And I understand that this was executed at the  
 17 same time as the warranty deed as part of the close of  
 18 the escrow or the sale. Is that your understanding?  
 19 A. My understanding says this is from the escrow  
 09:32 20 company that made me sign it, yes.  
 21 Q. Okay.  
 22 Was this part of the sale of the plant?  
 23 A. From the bankruptcy court, I guess, yes.  
 24 Can I talk to you one minute?  
 09:32 25 Q. Sure. Go ahead.

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09:32 1 A. Why -- I say why am I being sued? I'm not -- I  
 2 want to know why I'm being sued.  
 3 Q. That's something I can probably talk to you  
 4 about with you and your attorney when we're not in a  
 09:32 5 deposition.  
 6 How does that sound?  
 7 A. No, it doesn't sound right.  
 8 I'm here to get a question from you. Why am I  
 9 getting sued?  
 09:32 10 Q. Mr. Farinella, unfortunately this is a  
 11 situation where I don't have to answer your questions.  
 12 A. I'll retract that.  
 13 Q. That's a legitimate question, and I'll answer  
 14 it when we're done with the -- when we can talk  
 09:32 15 sometime.  
 16 In fact, while I'm thinking of it, Mr. Farinella, I  
 17 sent a letter -- I don't know -- asking if I can talk to  
 18 you or talk to your personal attorney about this matter.  
 19 Have you received a copy of that?  
 09:33 20 A. I don't know.  
 21 MR. MARIN: Your attorney called --  
 22 THE WITNESS: My attorney -- my attorney in Wyoming  
 23 told me about it. And I told him "No, I don't want to  
 24 talk to Don Zebe or anybody up there."  
 09:33 25 MR. BOWERS:

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09:33 1 Q. Okay.  
 2 A. I didn't get a letter. I just got a "voice"  
 3 from my attorney telling me.  
 4 Q. Okay.  
 09:33 5 Well sometime if your attorney and you want to talk  
 6 to me about it, we'll be glad to talk to you about it  
 7 outside of this setting.  
 8 A. No, I don't want to talk to nobody.  
 9 MR. BOWERS: Now I'll ask the court reporter if  
 09:33 10 she'll mark as deposition Exhibit 3 for identification  
 11 purposes, what's Bates stamped 4 through 7. [EXH-3]  
 12 (Whereupon the document referred to is marked by  
 13 the reporter as Exhibit 3 for identification.)  
 14 MR. BOWERS:  
 09:34 15 Q. I'm going to have you look at what's been  
 16 marked for identification purposes deposition Exhibit 3.  
 17 On top of it is "Bill of Sale."  
 18 And my understanding is this was in reference to  
 19 the closing of the escrow, but does that -- is that your  
 09:34 20 signature about three-quarters of the way down on the  
 21 first page?  
 22 A. Yes, I signed this.  
 23 Q. And was that part of the closing on the plant  
 24 too?  
 09:34 25 A. I guess, 'cause I'm not familiar with --

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09:34 1 THE WITNESS: I got this from the escrow company;  
 2 didn't I?  
 3 MR. MARIN: Yes.  
 4 THE WITNESS: Yeah. I guess it is a bill of sale.  
 09:34 5 MR. BOWERS:  
 6 Q. And then would you mind looking at the second  
 7 page -- the second, third, fourth page on there. The  
 8 list of equipment.  
 9 A. Where is the list of equipment?  
 09:34 10 MR. MARIN: That one.  
 11 THE WITNESS: Yes.  
 12 MR. BOWERS:  
 13 Q. Does that look like equipment that would have  
 14 been at Star Valley Cheese Plant that was sold pursuant  
 09:35 15 to the sale?  
 16 A. I guess.  
 17 THE WITNESS: Who took this here? This inventory,  
 18 who took it?  
 19 MR. MARIN: That was the list from --  
 09:35 20 THE WITNESS: That was the list from who?  
 21 MR. MARIN: That was from the list of Frank Dana.  
 22 THE WITNESS: Oh. I guess it is, yes.  
 23 It is a list from the plant manager.  
 24 MR. BOWERS:  
 09:35 25 Q. It sounded like Frank Dana?

09:35 1 A. Yeah.  
 2 MR. MARIN: Before he died.  
 3 THE WITNESS: Before he died.  
 4 MR. BOWERS:  
 09:35 5 Q. Is this a fair and accurate representation of  
 6 the bill of sale that was signed at the time of closing  
 7 with my client?  
 8 A. Yes, I guess. Ycs.  
 9 Q. Okay. Perfect.  
 09:35 10 MR. BOWERS: Now let's go -- I'll have the court  
 11 reporter -- this is a little longer. If you wouldn't  
 12 mind marking as deposition Exhibit 4 what's been marked  
 13 as Bates stamp 8 through 19. [EXH-4]  
 14 (Whereupon the document referred to is marked by  
 09:36 15 the reporter as Exhibit 4 for identification.)  
 16 MR. BOWERS:  
 17 Q. If you would look, Mr. Farinella, at deposition  
 18 Exhibit 4. Now we're maybe a little back on order  
 19 pursuant to our previous conversation.  
 09:36 20 I believe this is the offer to purchase that you  
 21 made reference to initially -- in fact it's dated  
 22 October 17th, 2008 -- that you were talking about Gaylen  
 23 Clayton.  
 24 Would you mind taking a look at the front page and  
 09:37 25 see if that refreshes your memory that this looks like

09:38 1 Q. You know, I understand it's hard when you look  
 2 at these documents and --  
 3 A. That's why I wanted to know why I'm being sued.  
 4 Q. There you go. There you go.  
 09:38 5 A. I've gone through this, which you should have  
 6 the broker here who handled the sale, not me. I'm not a  
 7 real estate broker.  
 8 All I was there for is to take the bids for the  
 9 bankruptcy lawyer and submit them to him. That's all.  
 09:38 10 Q. Okay.  
 11 A. And as president, I signed all -- and the  
 12 escrow company. That's all I know.  
 13 So I don't know why you don't have -- Go ahead.  
 14 Excuse me. I'm sorry.  
 09:38 15 Q. I told you I have a habit of talking over. I  
 16 apologize.  
 17 A. I apologize too.  
 18 Q. So to clarify. Your job was just to submit,  
 19 receive the bids, but it was the bankruptcy trustee that  
 09:39 20 approved them; correct?  
 21 A. Absolutely.  
 22 Q. Do you know if -- and you may not because of  
 23 what you just told me, but on page one of deposition  
 24 Exhibit 4, Bates stamped 8, it says it was to be an  
 09:39 25 "Earnest Money" paid at \$10,000, on paragraph ten there.

09:37 1 the document that you were talking about that --  
 2 A. I've never seen this document. This is  
 3 Caldwell Banker's, the broker.  
 4 Q. You've never seen this document?  
 09:37 5 A. No, I've never seen this. It went to the  
 6 broker, Coldwell Banker.  
 7 MR. MARIN: I know, but this refers to you.  
 8 THE WITNESS: He made me sign it.  
 9 MR. BOWERS:  
 09:37 10 Q. Yeah, I think your signature -- or at least  
 11 somebody signed it.  
 12 If you look at Bates stamped 13.  
 13 THE WITNESS: I guess I've seen it, but I don't  
 14 remember it.  
 09:37 15 MR. BOWERS:  
 16 Q. Is that your signature on Bates stamp 14 of  
 17 Exhibit 4?  
 18 A. That's not my signature. That's not my  
 19 signature.  
 09:38 20 MR. MARIN: That was a stamp.  
 21 THE WITNESS: Oh, that's a stamp. I signed it.  
 22 10/4/08 it says.  
 23 MR. BOWERS:  
 24 Q. Right.  
 09:38 25 A. Is that correct?

09:39 1 Do you see that?  
 2 A. I see it, yeah.  
 3 Q. Do you know if that was ever paid by  
 4 Mr. Clayson or Mr. Randall?  
 09:39 5 MR. MARIN: Whatever money --  
 6 THE WITNESS: I don't know if it was paid.  
 7 MR. MARIN: -- it went to the broker.  
 8 THE WITNESS: It went to the broker.  
 9 If it did, it went to the broker. I never seen it;  
 09:39 10 I never heard it.  
 11 This must have been with the broker, the real  
 12 estate broker.  
 13 Is it the deposit or what? Is that what it is?  
 14 MR. BOWERS:  
 09:39 15 Q. It speaks for itself, but that's what I would  
 16 understand it would be, a deposit.  
 17 A. Why would I know about it?  
 18 Q. Well you were soliciting the bids. That's my  
 19 question. I didn't know if you did or not.  
 09:40 20 A. No.  
 21 But the money, everything, transaction goes to the  
 22 real estate broker.  
 23 Like I said, I was not a real estate broker. I was  
 24 taking the bids and it went to the real estate broker  
 09:40 25 who in turn referred to the bankruptcy court to approve.

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09:40 1 As far as that goes, that's all I know.  
 2 I didn't know he put up \$10,000.  
 3 I don't know.  
 4 MR. MARIN: It went to escrow.  
 09:40 5 THE WITNESS: It went to the Pendleton, I guess.  
 6 MR. MARIN: It was escrow. Escrow company.  
 7 THE WITNESS: Escrow company.  
 8 Maybe it went to the escrow company. I have no  
 9 idea.  
 09:40 10 But I don't know. The answer is I don't know.  
 11 MR. BOWERS:  
 12 Q. You know, there's nothing wrong with an "I  
 13 don't know."  
 14 A. You know, I really don't know.  
 09:40 15 Q. Okay.  
 16 Would you mind looking on deposition Exhibit 4.  
 17 Would you mind looking on the Bates stamp Number 13 at  
 18 the top of the page.  
 19 A. Just a minute.  
 09:41 20 Here I got it in front of me.  
 21 Q. And right down there, there's a Roman XVI. Off  
 22 to the side there's a line -- is it 228 -- "Consents And  
 23 Acknowledgments."  
 24 It's about the middle -- top of the middle of the  
 09:41 25 page.

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09:41 1 Do you see that?  
 2 A. Yeah.  
 3 Q. Okay.  
 4 It says "All prior representations made in the  
 09:41 5 negotiations of this sale have been incorporated herein,  
 6 and there are no oral agreements or representations  
 7 between Buyer, Seller or Brokers to modify the terms and  
 8 conditions of this Contract."  
 9 Did you read that before you signed this document?  
 09:41 10 A. No.  
 11 Q. You didn't read that?  
 12 A. No.  
 13 Q. When you signed this agreement --  
 14 THE WITNESS: Where did this paper come from?  
 09:41 15 MR. MARIN: It's --  
 16 THE WITNESS: It's what?  
 17 MR. MARIN: -- part of the offer with the --  
 18 THE WITNESS: Of the offer from?  
 19 MR. MARIN: From --  
 09:42 20 THE WITNESS: To the real estate broker?  
 21 MR. MARIN: Yes.  
 22 THE WITNESS: No, I didn't even see this.  
 23 MR. BOWERS:  
 24 Q. If you look to the next page. I just want to  
 09:42 25 clarify on Bates stamp 14, the next page, that that's

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09:42 1 your signature on this document; correct?  
 2 A. There's a lot of signatures on here.  
 3 MR. MARIN: This one (indicating).  
 4 MR. BOWERS:  
 09:42 5 Q. Right.  
 6 A. I see my signature there.  
 7 Q. I know you -- Do you normally sign legal  
 8 documents without reading them?  
 9 A. Like I told you, I'm not a broker and I'm not a  
 09:42 10 lawyer. I trust the people who are giving me the  
 11 documents from either the broker or the escrow company.  
 12 Q. Okay.  
 13 Well, Mr. Farinella, let me just --  
 14 A. You know what? You're going around and around  
 09:42 15 in circles. Why don't you get to the bottom of this  
 16 what you really want to know?  
 17 This is all bullshit you pay time over here. Get  
 18 to the point you really want to know. I know what  
 19 you're going around and around about because all of this  
 09:43 20 is --  
 21 Q. Unfortunately, what I want to ask, I can't.  
 22 A. Get to the point what you really want to know.  
 23 Q. I'm an attorney. I have to do the round and  
 24 round.  
 09:43 25 A. I know you do.

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09:43 1 Q. I don't like it any more than you do.  
 2 A. I hope not.  
 3 Q. So on page -- on the front page of Exhibit 4,  
 4 if I understand when I read this -- just there may be --  
 09:43 5 To move this along. Star Valley -- your company is the  
 6 seller, even though we know that it has to be approved  
 7 by the bankruptcy trustee; Caldwell Banker is the  
 8 broker, and then at least on this document it lists  
 9 Gaylen Clayson and Jeff Randall.  
 09:43 10 Do you know who Jeff Randall is?  
 11 A. No.  
 12 Q. Have you ever met him before?  
 13 A. Hell no. No.  
 14 Q. Okay.  
 09:43 15 When you signed this document, were there any other  
 16 agreements, oral or written, between yourself as the  
 17 seller of the property and Gaylen Clayson and Jeff  
 18 Randall about the sale of the property?  
 19 A. No, there was no oral agreement at all.  
 09:44 20 Q. Okay.  
 21 So whatever -- Basically the agreement was what was  
 22 in this offer which you signed, which is Exhibit 4;  
 23 correct?  
 24 A. Yes.  
 09:44 25 You have to put it in -- I live in Los Angeles and

09:44 1 this all took place in Wyoming.  
 2 And what was going on there is between the broker  
 3 and the bankruptcy court had to go between me. So when  
 4 they sent me papers up here and papers down there, it  
 09:44 5 was kind of confusing what they're doing because I was  
 6 completely out of it. I was out of it.  
 7 I know I'm signing here, but once a company goes  
 8 into bankruptcy, it's handled by the bankruptcy court,  
 9 the realtor who is trying to sell it and the bankruptcy  
 09:44 10 lawyer.  
 11 All I was there was helping them out. Or I could  
 12 have walked away from it all. But I helped them out  
 13 trying to get the bids.  
 14 You do understand that?  
 09:45 15 Q. I do.  
 16 A. So if they send me a paper down here and say  
 17 "Sign this because you've got to do it," I signed it.  
 18 I didn't go get a lawyer to look it over and see  
 19 it. I signed it because that's what I had to do.  
 09:45 20 Q. Well, Mr. Farinella, you asked me to kind of  
 21 cut to the chase.  
 22 A. Yeah, I did.  
 23 Q. Here's what I'm trying to get at.  
 24 A. I know. Let's get to it.  
 09:45 25 Q. I have a whole bunch of documents that I want

09:46 1 Mr. Farinella, here's what I'm going to do. I've  
 2 got some more documents I'm going to go through, and  
 3 I'll tell you what I'm going to do.  
 4 A. All right.  
 09:46 5 Q. It looks like a whole bunch of these documents  
 6 are extensions. It looks like there was a closing date  
 7 and it keeps getting extended, extended.  
 8 The only reason I'm going through with these is I'm  
 9 going to have them show you the document.  
 09:46 10 A. All right.  
 11 Q. I'm going to probably ask you two questions.  
 12 One is "Is your signature on the document," have you  
 13 look at that.  
 14 A. Okay.  
 09:46 15 Q. There's some more -- I already alluded to this.  
 16 There's some more wording on the documents that says  
 17 there was no oral agreement.  
 18 So my second question will be to have you think  
 19 back see if there were any other agreements other than  
 09:47 20 what's on the paper; okay? And we'll try to move  
 21 through as quick as possible.  
 22 How's that?  
 23 A. That's fine. Thank you.  
 24 Q. You bet.  
 09:47 25 Let's -- the court reporter can look at -- or pull

09:45 1 to go through with you, and I'll move along pretty  
 2 quick, but all the documents say there was no other oral  
 3 representations or agreement.  
 4 A. No.  
 09:45 5 Q. But your attorney has alleged in some pleadings  
 6 that there was some other agreements, full agreements.  
 7 And I don't understand them.  
 8 And so I want -- I'm just trying to find out -- I'm  
 9 confused because the documents say there are no other  
 09:45 10 agreements, and I just need to go through these --  
 11 A. I understand.  
 12 Q. -- and find out if there was another agreement.  
 13 A. I understand what you're going through, but  
 14 there was no oral agreement other than what I told you  
 09:46 15 what he did. And once he bid for it, it was out of my  
 16 hands. They agreed to the bid, and I backed off after  
 17 that.  
 18 Until I found out Gaylen had a partner, and then I  
 19 said, "Do what you want to do, both of you." So I came  
 09:46 20 back to L. A.  
 21 Q. And it was out of your hands?  
 22 A. Naturally it's out of my hands. They already  
 23 bid it, it went into escrow, and what they did between  
 24 the two of them over there God only knows.  
 09:46 25 Q. Okay. That's a nice summary.

09:47 1 up the next two pages, which is Bates stamped 20 and 21,  
 2 and mark that as deposition Exhibit 5. [EXH-5]  
 3 (Whereupon the document referred to is marked by  
 4 the reporter as Exhibit 5 for identification.)  
 09:47 5 MR. BOWERS:  
 6 Q. Mr. Farinella?  
 7 A. Yes.  
 8 Q. Exhibit 5 appears to me to be a -- a change of  
 9 deadline on this real estate contract that we talked  
 09:48 10 about, I think it was Exhibit 4.  
 11 But would you look at deposition Exhibit 5. Is  
 12 that your signature on the bottom?  
 13 A. Yes.  
 14 Q. Okay.  
 09:48 15 And then would you look at "D" in the middle of the  
 16 page.  
 17 A. D is --  
 18 Q. "All prior representations" -- Let me say,  
 19 quote, "All prior representations made in the  
 09:48 20 negotiations of this sale have been incorporated herein,  
 21 and there are no oral agreements or representations  
 22 between Buyer, Seller or their agents to modify the  
 23 terms and conditions of this Contract."  
 24 Are you aware of any other oral agreements other  
 09:48 25 than this real estate -- this extension and the real

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09:48	1	estate contract?	09:51	1	stamp number 23 through 26 and mark that as deposition
	2	A. No.		2	Exhibit 7. [EXH-7]
	3	There was no oral -- No, none of that. None at		3	A. John?
	4	all.		4	Q. Yes.
09:48	5	Q. All right.	09:51	5	A. Gaylen submitted his offer and was accepted at
	6	MR. BOWERS: Lori, if you wouldn't mind taking		6	the time.
	7	Bates stamped number 22 and mark it as		7	Then Gaylen suggested to run the plant and
	8	Exhibit 6. [EXH-6]		8	restaurant --
	9	(Whereupon the document referred to is marked by		9	MR. MARIN: (Indicating.)
09:49	10	the reporter as Exhibit 6 for identification.)	09:52	10	THE WITNESS: What the hell is this?
	11	MR. BOWERS:		11	MR. MARIN: Familiarize.
	12	Q. On deposition Exhibit "8," Mr. Farinella I		12	THE WITNESS: To what?
	13	don't see your signature on there anywhere.		13	MR. MARIN: To familiarize on the operation.
	14	Do you?		14	THE WITNESS: -- to familiarize on the operation.
09:49	15	THE REPORTER: You said "8."	09:52	15	Gaylen then suggested --
	16	THE WITNESS: You said "8."		16	What the hell is this?
	17	MR. BOWERS:		17	MR. MARIN: To clean.
	18	Q. Deposition Exhibit 6.		18	THE WITNESS: -- to clean the plant. Yeah, I
	19	A. I don't see any signature on here.		19	remember that.
09:49	20	I see Zebe's here. No, it's not Zebe.	09:52	20	He says, "I'll clean the plant and get it ready.
	21	Who is this? Oh, Jeff Randall and Gaylen. That's		21	As soon as escrow closes, we can start opening and make
	22	on this page.		22	cheese at the time."
	23	Q. Okay. This -- have you seen -- Do you remember		23	And I told him "Go ahead and do what you want as
	24	ever seeing this document before?		24	long as it doesn't cost the bankruptcy or me or anybody
09:50	25	A. Never.	09:52	25	any money to spend."
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09:50	1	Q. Okay. Then we'll just move on.	09:52	1	That's where we -- that's the thing that I -- I
	2	Let me -- and then I want to clarify.		2	think that's where we're going in the first place,
	3	When you talk about, on my notes here -- when you		3	aren't we?
	4	talk about the escrow again, you're talking about the		4	MR. BOWERS: It sounds reasonable.
09:50	5	closing when money is paid, deed's transferred and the	09:53	5	(Whereupon the document referred to is marked by
	6	property is completed and sold; correct?		6	the reporter as Exhibit 7 for identification.)
	7	A. Right.		7	MR. BOWERS:
	8	Q. So up to that point, I want to clarify that no		8	Q. Deposition Exhibit 7, when you look on the
	9	one had the authority to do anything on the property as		9	second page -- no, it's not the second -- yours isn't on
09:50	10	far as, I guess, unusual expenses without the authority	09:53	10	the second. There's so many pages to this.
	11	of the bankruptcy trustee; correct?		11	Would you look on the fourth page and see if that's
	12	MR. ATKIN: Objection. Calls for a legal		12	your signature.
	13	conclusion.		13	A. Yes.
	14	Blake Atkins.		14	Q. Okay.
09:51	15	THE WITNESS: You want me to answer that?	09:53	15	And then up above there, two paragraphs up, number
	16	MR. BOWERS:		16	two states, "All representations made in the
	17	Q. Yes, please.		17	negotiations of this sale have been incorporated herein,
	18	A. That nobody had authority to do anything or to		18	there are no verbal agreements between Buyer, Seller
	19	spend any money at the plant while it was in process of		19	and/or any other Brokers to modify terms and
09:51	20	escrow to close. Is that what you're trying to say?	09:53	20	conditions."
	21	Q. Yes. Without the bankruptcy trustee's		21	Was that a fair statement at the time?
	22	permission; correct?		22	A. I think so, yes.
	23	A. That's normal. Yes. That's right.		23	Q. Were you aware of any other oral or agreements
	24	Q. Okay.		24	other than what was spelled out in these documents we've
09:51	25	MR. BOWERS: Lori, if you would now take Bates	09:54	25	discussed?

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09:54 1 A. No.  
 2 Except what I read to you.  
 3 Q. Okay.  
 4 Basically that Gaylen could familiarize himself and  
 09:54 5 run the plant as long as it didn't cost anybody any  
 6 money?  
 7 A. Right.  
 8 And it was agreed by him and his partners.  
 9 Q. Okay.  
 09:54 10 A. That he was going to get the plant ready to  
 11 operate as soon as escrow closed.  
 12 Q. Okay.  
 13 A. But Gaylen slept there I think. He slept  
 14 there. He never went home.  
 09:54 15 Q. Okay.  
 16 MR. BOWERS: Lori, if you would look at  
 17 deposition -- or Bates stamp 27 through 30.  
 18 That is deposition Exhibit 8. [EXH-8]  
 19 (Whereupon the document referred to is marked by  
 09:55 20 the reporter as Exhibit 8 for identification.)  
 21 MR. BOWERS:  
 22 Q. Okay.  
 23 Deposition Exhibit 8. Would you look at the very  
 24 last page.  
 09:55 25 MR. ATKIN: Would you say the pages again.

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09:55 1 MR. BOWERS: It's Bates stamp 30.  
 2 THE WITNESS: That's my signature.  
 3 MR. BOWERS:  
 4 Q. Again, on paragraph two, it states there's no  
 09:55 5 other representations or oral agreement.  
 6 Do you agree with that --  
 7 A. Yes.  
 8 Q. -- that when you signed this there was no other  
 9 oral agreement?  
 09:55 10 A. Yes. Yes. Yes. Yes. Yes.  
 11 That's the same as the other ones; right?  
 12 Q. Same as the other ones.  
 13 A. Okay.  
 14 Q. And I'll say except for what you explained to  
 09:55 15 me. How's that?  
 16 A. That's fine. That's exactly fine.  
 17 Q. Okay.  
 18 MR. BOWERS: Lori, if you wouldn't mind taking  
 19 Bates stamp 31. If you could mark that deposition  
 09:55 20 Exhibit 9. [EXH-9]  
 21 (Whereupon the document referred to is marked by  
 22 the reporter as Exhibit 9 for identification.)  
 23 THE WITNESS: I got it.  
 24 MR. BOWERS: Actually, we've covered that. So  
 09:56 25 we'll skip that one.

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09:56 1 Let's go to Bates stamp -- Lori, if you'll pull  
 2 Bates stamp 32 through 39. Mark that as deposition  
 3 Exhibit Number 10. [EXH-10]  
 4 (Whereupon the document referred to is marked by  
 09:56 5 the reporter as Exhibit 10 for identification.)  
 6 MR. BOWERS:  
 7 Q. And would you mind looking at Exhibit 10 Bates  
 8 stamp 39. That would be the very last page.  
 9 MR. MARIN: Last page.  
 09:57 10 MR. BOWERS:  
 11 Q. And see if that's your signature,  
 12 Mr. Farinella?  
 13 A. Yes.  
 14 Q. See up above there, two paragraphs up, it  
 09:57 15 states "All representations made in the negotiations of  
 16 this sale have been incorporated herein, there are no  
 17 verbal agreements between Buyer, Seller and/or Brokers  
 18 to modify the terms and conditions."  
 19 Other than what you explained to us, which really  
 09:57 20 doesn't have to do with the terms of the sale, but  
 21 taking that into account, was there any other agreement  
 22 referenced in the sale that is not -- was not contained  
 23 in these real estate documents we've discussed?  
 24 MR. ATKIN: Object to the question as  
 09:57 25 argumentative.

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09:57 1 You can go ahead and answer.  
 2 This is Blake Atkin.  
 3 THE WITNESS: I don't know how to answer that.  
 4 Can you repeat it again.  
 09:58 5 MR. BOWERS: Lori, can you read that back to him,  
 6 please.  
 7 (The record is read by the reporter.)  
 8 THE WITNESS: No, there was no other agreement.  
 9 MR. BOWERS:  
 09:58 10 Q. All right. Thank you.  
 11 A. This is all real estate stuff from the broker.  
 12 MR. BOWERS: You know, if we could take a -- about  
 13 a two-minute break. If everybody can stay on the line,  
 14 we've covered a lot of the materials I have, and if we  
 09:58 15 can take two to five minutes, we'll be able to move this  
 16 along.  
 17 (A recess is taken.)  
 18 MR. BOWERS:  
 19 Q. Mr. Farinella, do you have documents in front  
 10:10 20 of you today that you brought or Manny brought?  
 21 A. What kind of documents?  
 22 Q. Did you bring documents, any documents?  
 23 A. I got one here.  
 24 THE WITNESS: Is that what we --  
 10:10 25 MR. MARIN: (Nods head in the affirmative.)

10:10 1 MR. BOWERS:  
 2 Q. Tell me what it is.  
 3 MR. MARIN: It's an e-mail.  
 4 THE WITNESS: What the hell is it?  
 10:10 5 It's an e-mail.  
 6 MR. BOWERS:  
 7 Q. Can you read it to me.  
 8 A. Well, it's a long one.  
 9 What do you want? You're supposed to ask me  
 10:10 10 questions.  
 11 Q. I am asking you questions. Does it have  
 12 reference to this case?  
 13 A. Only if he asks me a question.  
 14 Q. Have you been referring to it during this  
 10:10 15 deposition?  
 16 A. Okay. I'll read it to you.  
 17 This is an e-mail sent by Zebe.  
 18 MR. MARIN: Don Zebe.  
 19 THE WITNESS: Don Zebe.  
 10:11 20 I can't read too much, Manny. You want to read it  
 21 to them?  
 22 The writing is so little, I told you before about  
 23 my --  
 24 Read it for them. It's an e-mail.  
 10:11 25 MR. BOWERS:

10:12 1 you or somebody -- what you did to prepare for this.  
 2 It sounds to me, correct me if I'm wrong, somebody  
 3 sent you an e-mail with a copy of an old e-mail from my  
 4 client to prep you and influence you for this  
 10:12 5 deposition.  
 6 A. No. No.  
 7 They sent me an e-mail to answer any questions that  
 8 you ask me.  
 9 Q. Oh, they sent you an e-mail to answer --  
 10:12 10 A. No. Nobody sent -- I have an e-mail that was  
 11 sent to the -- the real estate --  
 12 MR. MARIN: Yeah.  
 13 THE WITNESS: Was it sent to Pendleton?  
 14 MR. MARIN: Yeah, he sent it to Pendleton.  
 10:12 15 THE WITNESS: -- to Pendleton that we had on file  
 16 here.  
 17 MR. BOWERS:  
 18 Q. But it was just sent to you in the last day or  
 19 so to prepare you for this deposition?  
 10:12 20 A. No. No.  
 21 This was sent -- Do you want to read the date on  
 22 there? January 14th --  
 23 MR. MARIN: 2009.  
 24 THE WITNESS: -- 2009.  
 10:13 25 MR. BOWERS:

10:11 1 Q. Is it -- Well, let me ask you this.  
 2 Is it an e-mail from -- is it an e-mail from Manny  
 3 reference the accounts?  
 4 A. No. From Donald Zebe.  
 10:11 5 Q. Who gave you that e-mail today?  
 6 MR. MARIN: We have that.  
 7 THE WITNESS: We had it.  
 8 MR. MARIN: We have this on file.  
 9 MR. BOWERS:  
 10:11 10 Q. So you just decided to bring that today?  
 11 A. Yeah.  
 12 MR. MARIN: No. Because we -- we have this file.  
 13 This was sent to you.  
 14 THE WITNESS: Yeah.  
 10:11 15 MR. MARIN: To my e-mail address.  
 16 THE WITNESS: It was sent to your e-mail?  
 17 MR. MARIN: Yeah.  
 18 MR. BOWERS:  
 19 Q. So somebody sent you this document --  
 10:11 20 A. I don't understand why you're asking me this.  
 21 What documents did I bring? What relevance --  
 22 Q. Let me finish, Mr. Farinella.  
 23 You're a business man?  
 24 A. I'm not a lawyer.  
 10:12 25 Q. I want to know if anybody tried to influence

10:13 1 Q. So my question is why didn't you bring other  
 2 things from the file other than this?  
 3 A. You must think I'm a stupid jerk over here. I  
 4 know what you're getting at over here. I have to answer  
 10:13 5 your question.  
 6 MR. MARIN: We brought the listing agreement.  
 7 THE WITNESS: We brought all the listings from the  
 8 Caldwell "Banks" we've got here, and all the listings --  
 9 but I have an e-mail.  
 10:13 10 I don't know why you're asking me about an e-mail.  
 11 Would you please explain that.  
 12 MR. BOWERS:  
 13 Q. It sounded to me like somebody had sent you an  
 14 e-mail --  
 15 A. It sounds like. It sounds like.  
 16 Is that the way a lawyer talks? It sounds like.  
 17 Q. Yes.  
 18 It sounds like they sent you --  
 19 A. It don't sound like that.  
 10:13 20 Q. In the last five days, did anybody e-mail you  
 21 material, either you or Manny, in reference to this  
 22 upcoming deposition?  
 23 A. No.  
 24 MR. MARIN: I prepared it.  
 10:13 25 THE WITNESS: Manny prepared it.



10:13 1 He prepared it for this deposition. He prepared it  
 2 for this deposition.  
 3 MR. BOWERS:  
 4 Q. Good.  
 10:14 5 Do you have -- you can ask him. Does he have or do  
 6 you have in front of you the August 28, 2008  
 7 authorization which you signed in which you gave  
 8 Mr. Clayton permission to run the operations of the Star  
 9 Valley restaurant?  
 10:14 10 MR. MARIN: It was in that e-mail.  
 11 THE WITNESS: It was in that e-mail?  
 12 MR. MARIN: Yes.  
 13 THE WITNESS: You got it with you?  
 14 MR. MARIN: So I don't have it, but I know it was  
 10:14 15 in the file. That's the reason you signed this.  
 16 THE WITNESS: Yeah, this is why I signed this.  
 17 Yeah.  
 18 MR. BOWERS:  
 19 Q. Okay.  
 10:14 20 Do you have that? Can you review that, the  
 21 August 28, 2008 letter authorization?  
 22 MR. MARIN: This is exactly what was in there. We  
 23 didn't bring that.  
 24 THE WITNESS: We didn't bring it with us, that part  
 10:14 25 of it.

10:16 1 Q. Since you weren't the owner, then you didn't  
 2 have authorization to have Gaylen Clayton --  
 3 A. Only -- only for the restaurant. Don't put  
 4 words in my mouth. Only for the restaurant.  
 10:16 5 I had the right to keep it open as much as I could,  
 6 but the people there weren't running it right, and  
 7 Gaylen was staying there and living there. I told him  
 8 to look after it, to take care of it, to keep it open.  
 9 Otherwise, I would have had to close the  
 10:16 10 restaurant, and it wouldn't look good for the courts.  
 11 Q. But you didn't have the authorization or power  
 12 to allow Gaylen Clayton to sell equipment out of the  
 13 plant?  
 14 A. Hell no. No. Excuse me. No.  
 10:16 15 MR. ATKIN: This is Blake Atkin.  
 16 Object to the question. Calls for a legal  
 17 conclusion.  
 18 MR. BOWERS: Okay.  
 19 Q. If Mr. Clayton sold -- during the time prior to  
 10:16 20 the closing of the escrow, if Mr. Clayton sold equipment  
 21 out of the plant, then he did so without your approval;  
 22 correct?  
 23 A. If anything came out of that plant it was  
 24 absolutely without my approval.  
 10:17 25 As I said, again -- I will read it again to you.

10:14 1 MR. BOWERS:  
 2 Q. Okay.  
 3 A. October 8, the owner of Star Valley Cheese --  
 4 You know, these words are --  
 10:15 5 Listen, I'm not a lawyer, but when you go bankrupt,  
 6 how do you own it anymore?  
 7 Do you own anything after you're bankrupt? Do you  
 8 still own it? As a lawyer, answer me. Do you still own  
 9 it after a place goes bankrupt?  
 10:15 10 Q. Let me ask you this: Did you believe you owned  
 11 it or you didn't when it went bankrupt?  
 12 A. No, the court owns it. The court takes it  
 13 over.  
 14 You might be a principal there, but you don't own  
 10:15 15 it.  
 16 Q. So --  
 17 A. So here it says -- it says that "As I was the  
 18 owner of Star Valley Cheese Plant in Thayne, Wyoming to  
 19 the company of Star Valley Cheese Corporation."  
 10:15 20 I was always working for the courts, not as an  
 21 individual owner. So I want you to straighten that one  
 22 out.  
 23 I'm not going to get any deeper with this thing  
 24 because I have nothing to do with any of you guys. I'm  
 10:15 25 getting a little --

10:17 1 After Gaylen submitted and the offer was accepted, he  
 2 suggested to run the plant and restaurant and keep it  
 3 familiarized and to operations -- keep it in operation.  
 4 That I didn't mind as long as it didn't cost any  
 10:17 5 money to the courts.  
 6 Q. Let me clarify -- While we're on that subject,  
 7 let me clarify then.  
 8 It wasn't sold -- when there was money coming into  
 9 the restaurant, because you have customers paying, did  
 10:17 10 Gaylen Clayton have any authority to withdraw or use any  
 11 of that money for his personal use?  
 12 A. No. Nobody.  
 13 Neither did Don Zebe.  
 14 Q. Neither did Don Zebe?  
 10:17 15 A. As far as I know, both of them were over there.  
 16 Q. So the money was to go back into either paying  
 17 for the suppliers --  
 18 A. Right, exactly.  
 19 And the help. Which we had -- I got sued by the  
 10:18 20 state of Wyoming.  
 21 THE WITNESS: What was that? The -- the labor  
 22 department.  
 23 What was the name of this?  
 24 MR. MARIN: For state tax.  
 10:18 25 THE WITNESS: For state tax.

10:18 1 MR. MARIN: Sales tax.  
 2 THE WITNESS: Sales tax.  
 3 They weren't paying. I got sued.  
 4 And I called up Gaylen and the girls that worked  
 10:18 5 there and said, "You have to pay this." Between Don  
 6 Zebe and Gaylen, whoever, they paid it.  
 7 MR. BOWERS:  
 8 Q. And did there come a time before the sale of  
 9 the property that the bankruptcy was discharged and you  
 10:18 10 were what is referred to as a debtor in possession?  
 11 A. Did -- Can you clarify that?  
 12 You mean in simple words was the -- was the  
 13 bankrupt taken out?  
 14 Q. Was it --  
 10:18 15 A. No. Never.  
 16 Q. Ever?  
 17 A. Never.  
 18 Q. Let me tell you -- You know, I have it in front  
 19 of you, and I'll just read it to you what I have in  
 10:19 20 front of you.  
 21 It's an August 28, 2008. I think you told me that  
 22 you reviewed this.  
 23 It says, "To whom it may concern. This will  
 24 authorize Mr. Gaylen Clayton to run the operations of  
 10:19 25 the Star Valley restaurant" --

10:20 1 him until he paid it.  
 2 Q. And, again, he didn't have any -- it was  
 3 basically -- the only authorization you gave him in  
 4 August 28th on the plant was to just maintain the  
 10:20 5 cleanliness, correct?  
 6 A. Yeah. That's what he wanted to do.  
 7 He wanted -- he suggested that himself after --  
 8 Here, I'll read it to you again.  
 9 Gaylen then suggested to clean the plant and fix  
 10:20 10 the electrical and plumbing. And it was confirmed -- it  
 11 was confirmed by John -- Don Zebe. He authorized it  
 12 also that he should do that.  
 13 Q. Who told you that?  
 14 A. Don Zebe.  
 10:20 15 He -- he became his partner. When he became his  
 16 partner he had it noted too that he was going to do the  
 17 cleaning and fix the plant so it could be running when  
 18 escrow closed.  
 19 Q. Who told you that Don Zebe was his partner?  
 10:21 20 MR. MARIN: Don Zebe.  
 21 THE WITNESS: Don Zebe himself told me.  
 22 MR. BOWERS: Manny, I can hear you in the  
 23 background telling him the answers.  
 24 THE WITNESS: Well, that's why I brought him here.  
 10:21 25 MR. BOWERS: Yeah, well, I'm not deposing him.

10:19 1 A. Right.  
 2 Q. -- "and he will also be responsible for  
 3 providing workers' compensation insurance" --  
 4 A. Yeah.  
 10:19 5 Q. -- "for the restaurant employees."  
 6 A. Correct.  
 7 Q. And the next line, "In addition, Mr. Clayson  
 8 will also take care of the cleanliness of the plant.  
 9 Sincerely, Morris A. Farinella."  
 10:19 10 Is that the authorization you reviewed you were  
 11 making reference to earlier?  
 12 MR. MARIN: Yes.  
 13 THE WITNESS: Yes.  
 14 MR. BOWERS:  
 10:19 15 Q. So he was to pay for workers' compensation  
 16 insurance for employees of the restaurant?  
 17 A. Correct.  
 18 Q. Did he do that?  
 19 A. After we told him that it was being sued by the  
 10:19 20 state, then he paid, I think. I believe he paid it.  
 21 Yes, he paid it.  
 22 Q. You thought he paid it after you got sued;  
 23 correct?  
 24 A. No. You know, the state sent him letters and  
 10:20 25 they're going to sue you this and that, and I kept on

10:21 1 And I don't mind you giving documents and helping,  
 2 but I've got to ask that you refrain from giving the  
 3 answers.  
 4 Will you do that for me?  
 10:21 5 THE WITNESS: Okay.  
 6 MR. MARIN: Okay.  
 7 MR. BOWERS: Otherwise, we'll set up another  
 8 deposition.  
 9 THE WITNESS: No. No. Just get to the point here.  
 10:21 10 MR. BOWERS: Okay.  
 11 Q. So he told -- you have an independent  
 12 recollection outside of what Manny just told you --  
 13 A. I didn't even hear what Manny said, to tell you  
 14 the truth. I didn't hear what he said. Okay?  
 10:21 15 Q. Okay.  
 16 When did Don Zebe tell you that he was partners  
 17 with Gaylen?  
 18 A. The last time I was at Wyoming when he made the  
 19 bid and it was accepted.  
 10:22 20 And I told Man -- told Gaylen, "You're going to  
 21 have to come up with the money."  
 22 He said, "No, Don Zebe has got the money. Both of  
 23 us are going to. He's my partner."  
 24 And I came back to L. A., and that was the end of  
 10:22 25 that.

10:22 1 Q. So he said he was -- did Gaylen tell you he was  
 2 going to be his partner?  
 3 A. Yeah.  
 4 Q. He was going to be partners with Don Zebe?  
 10:22 5 A. Yeah. He introduced him to me at the time. I  
 6 didn't know Don Zebe.  
 7 Q. Did he introduce him as his partner?  
 8 A. He said he was going to be his partner.  
 9 Q. Okay. Okay.  
 10:22 10 So Gaylen told you that he was going to be Don  
 11 Zebe's partner; correct?  
 12 A. Don Zebe said it too.  
 13 Q. Okay.  
 14 So did you ever enter into any agreement with Don  
 10:22 15 Zebe?  
 16 A. Never.  
 17 Q. Okay.  
 18 A. He wanted to borrow money from me. After he  
 19 closed it, he says "Lend me" -- "lend me 2- or 300,000,"  
 10:23 20 what it was. And I told him "No, I couldn't do it."  
 21 Q. All right.  
 22 So let me just get back. We got off track.  
 23 So I just want to clarify because here's -- and I'm  
 24 just paraphrasing. My understanding now is that at  
 10:23 25 least in some document Gaylen Clayton has alleged that

10:24 1 remember giving him permission to sell any equipment;  
 2 correct?  
 3 A. I don't have the right in the bankruptcy court  
 4 they give permission to sell equipment out of a bankrupt  
 10:24 5 plant. I didn't do it. It's impossible.  
 6 Q. Do you remember ever -- ever remember in the  
 7 history of your relationship with Gaylen Clayton giving  
 8 him permission to sell equipment out of that plant?  
 9 A. Never.  
 10:24 10 Q. All right.  
 11 A. To cleanup -- he could have cleaned up -- You  
 12 know, if there was junk in the -- You know what I mean  
 13 by cleanup?  
 14 Are you familiar with the cleanup -- what it means  
 10:24 15 cleanup the plant outside and in? So it will look  
 16 decent.  
 17 In fact, you want me to tell you the truth. I told  
 18 him don't clean it too good because other bidders are  
 19 coming. They're going to bid higher than you.  
 10:25 20 But he cleaned the outside, which was a job, the  
 21 garbage around the plant. That's what I thought he was  
 22 cleaning. And he cleaned inside.  
 23 And I said, "Okay. As long as it don't cost the  
 24 bankruptcy lawyer."  
 10:25 25 Q. So at one point you assumed there was going to

10:23 1 he had the right to withdraw money out of the restaurant  
 2 and use it for his personal use.  
 3 That's not true; correct?  
 4 A. No.  
 10:23 5 Q. You never gave him authority to do that?  
 6 A. No.  
 7 Q. I also understand that Gaylen Clayton sold some  
 8 equipment.  
 9 One, I think somebody's alleged that he sold a  
 10:23 10 dryer for over -- was it \$10,000 or 12,000, some --  
 11 A. Where did you get that information from?  
 12 Q. That's what we --  
 13 A. Don Zebe.  
 14 Q. I'm trying to --  
 10:23 15 THE REPORTER: Wait. You guys are talking at the  
 16 same time. I couldn't hear.  
 17 THE WITNESS: Where did you get information that he  
 18 sold equipment?  
 19 That I don't know about.  
 10:24 20 MR. BOWERS:  
 21 Q. Actually, Mr. Clayton admitted that he sold the  
 22 equipment, but he claims you gave him permission.  
 23 A. Nobody gave him permission. I haven't got the  
 24 right to give him permission.  
 10:24 25 Q. So if he sold any equipment out -- you don't

10:25 1 be higher bidders than Gaylen Clayton; correct?  
 2 A. I'll back off.  
 3 Before he wanted to clean the plant, I said, "No."  
 4 When he wanted to fix the plant I said, "No."  
 10:25 5 The bids were not in at that time. So I'll read it  
 6 back to you what I did.  
 7 After he -- after he submitted the offer and was  
 8 accepted is when I told him you can go and clean it and  
 9 get ready for it, as long as it don't cost no money,  
 10:25 10 until this escrow closes, to the bankruptcy court.  
 11 Q. Okay.  
 12 A. And Gaylen -- he suggested he clean the plant  
 13 and fix the electrical, plumbing.  
 14 Why would I tell him that without -- Yeah, they're  
 10:26 15 not going pay for all of this. The bankruptcy court is  
 16 not going to pay for that. It's in bankruptcy.  
 17 So he was doing it for his purpose and Don Zebe's  
 18 purpose. And John, whatever his name is, knew it too.  
 19 Q. Did you ever give Gaylen permission to have a  
 10:26 20 couple hundred thousand dollars worth of electrical work  
 21 done on the plant?  
 22 A. No, I didn't know anything about it. That  
 23 was -- that was the two partner's idea, both Don and  
 24 Gaylen.  
 10:26 25 Q. And who told you that?

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10:26 1 A. Gaylen and Don. Don Zebe too.  
 2 Q. He told you that he was -- that he wanted to  
 3 spend a couple hundred thousand dollars to get  
 4 electrical work --  
 10:26 5 A. Yeah. That's what he told me.  
 6 Q. Okay.  
 7 When was that?  
 8 A. That was on January 14th, 2009 at 2:36 p.m.  
 9 Q. Okay.  
 10:27 10 And what are you looking at?  
 11 A. At an e-mail that he sent to the real  
 12 "estater," and he sent one here -- he sent me one too.  
 13 Q. Okay.  
 14 Other than that, do you have any -- did you have  
 10:27 15 any independent recollection of that without looking at  
 16 that document?  
 17 A. Recollection about what? That Don Zebe was a  
 18 partner?  
 19 Q. Here's how it's supposed to work, and it's hard  
 10:27 20 from the telephone.  
 21 A. I know it's hard.  
 22 Q. I'm supposed to ask you a question.  
 23 A. Go ahead.  
 24 Q. If you don't know, you don't know.  
 10:27 25 If you need to look at a document, you're supposed

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10:27 1 to say "I need to look at a document."  
 2 A. Okay. I'm sorry.  
 3 Q. That's okay.  
 4 Let's see here.  
 10:27 5 A. I got to get new glasses. I can hardly read  
 6 the little writing.  
 7 You didn't ask me if you wanted to hear what the  
 8 e-mail says.  
 9 Q. I've seen the e-mail.  
 10:28 10 A. Did you see the paragraph where Zebe says he's  
 11 going to do it for \$200,000. And he's going to take  
 12 full responsibility and prepared to pay for it himself?  
 13 Did you read that part of it?  
 14 Q. I did.  
 10:28 15 A. Actually we're on the same page.  
 16 Q. No. No, we're not.  
 17 A. Why not? You've got this e-mail.  
 18 Q. No, we're not on because --  
 19 A. Doesn't it say that he's prepared to pay?  
 10:28 20 Q. No, it doesn't.  
 21 A. No?  
 22 Q. So Mr. Farinella, let me ask you this --  
 23 A. Yeah.  
 24 Q. -- the offer was accepted on October 17th;  
 10:28 25 correct? The date that --

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10:28 1 A. I don't remember.  
 2 Q. Well, let's look.  
 3 A. You are going to get me to the point where I'm  
 4 going to say I don't remember anything and forget about  
 10:28 5 it because you haven't answered me.  
 6 Q. No, no, no.  
 7 You got to understand the rules. I get to ask you  
 8 the questions.  
 9 A. I know the rules.  
 10:28 10 You're asking the questions, but I'm asking them of  
 11 you now.  
 12 This is the point that we came here for in the  
 13 first place.  
 14 Q. That's right. We can go all day and I won't  
 10:29 15 answer your questions. We can get through a lot quicker  
 16 if you just answer the questions.  
 17 A. Go ahead.  
 18 Q. Would you look at deposition Exhibit 4. That's  
 19 the real estate contract.  
 10:29 20 A. Why don't you tell it to the real estate guy?  
 21 I never read it  
 22 Q. Well you signed it, correct?  
 23 A. Well he sent it to me.  
 24 That's not my signature.  
 10:29 25 Q. That's not your signature?

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10:29 1 A. It's a thousand miles away.  
 2 THE REPORTER: Let us get the exhibit.  
 3 MR. BOWERS:  
 4 Q. After --  
 10:29 5 THE REPORTER: Wait. Wait. Wait.  
 6 Let us get the exhibit.  
 7 Okay. Ready.  
 8 MR. BOWERS:  
 9 Q. When you talked about once the offer was  
 10:30 10 accepted from Gaylen and you allowed him to go in and  
 11 take care of the restaurant; correct?  
 12 A. Well, I allowed him. I asked him to.  
 13 As long as he's going buy the place and I'm having  
 14 problems with the help over there in the restaurant,  
 10:30 15 rather than closing it, to keep it open while escrow  
 16 closed to run it and take care of it.  
 17 Q. I'm trying to figure these dates out.  
 18 So then that would be sometime after October 17th,  
 19 2008?  
 10:30 20 A. I don't remember.  
 21 Q. Well you said that once the offer was  
 22 accepted -- Your exact testimony was something along  
 23 that line --  
 24 A. Yeah.  
 10:30 25 Q. -- after the offer was accepted, I told him he

10:30 1 could do this and this.  
 2 A. Yeah.  
 3 Q. Okay.  
 4 So then prior to October 17th, 2008, he didn't have  
 10:31 5 permission; correct?  
 6 A. No.  
 7 Neither did Don Zebe either. Because he was in  
 8 that restaurant too, you know, taking money out too.  
 9 Q. So Don Zebe was taking money out too?  
 10:31 10 A. Yeah. Absolutely.  
 11 As far as I know, they were both fighting over  
 12 there and you guys got me involved up there.  
 13 That's a circus going on up there. You know that.  
 14 Excuse me, off the record. That is a circus going on  
 10:31 15 between the two of them.  
 16 Q. Well, we're not off the record. Everything is  
 17 on the record.  
 18 A. Okay.  
 19 Q. Did you -- Did you ever tell Gaylen Clayson or  
 10:31 20 authorize him as your agent to do whatever he needed to  
 21 get the plant running?  
 22 A. No. He's not my agent.  
 23 Q. Did you -- would you ever authorize him to do  
 24 anything to get the plant running?  
 10:32 25 A. I wouldn't authorize him or Don Zebe without

10:35 1 THE WITNESS: You want to settle? How do we settle  
 2 this case?  
 3 MR. MARIN: You can arrange it with Blake as far as  
 4 that schedule.  
 10:36 5 Morris he wanted to talk to you and me so that's  
 6 fine.  
 7 THE WITNESS: Who wanted to talk to me?  
 8 MR. ATKIN: I do have a couple questions if that's  
 9 okay, Morris.  
 10:36 10 THE WITNESS: Yeah.  
 11  
 12 -EXAMINATION-  
 13  
 14 BY MR. ATKIN:  
 10:36 15 Q. Do you recall, you know, you --  
 16 MR. BOWERS: Wait a minute. Wait a minute. Are we  
 17 deposing Morris? I'm sorry. I thought you said Manny.  
 18 MR. ATKIN: I said "Morris."  
 19 THE WITNESS: Morris.  
 10:36 20 MR. BOWERS: You did.  
 21 MR. ATKIN:  
 22 Q. You were asked some questions by Mr. Bowers  
 23 about this document that we've marked, the offer that  
 24 was accepted in October of 2008.  
 10:36 25 Do you recall that Gaylen had made an offer earlier

10:32 1 signing a piece of paper in front of a lawyer. I don't  
 2 trust either one of them.  
 3 Q. Fair enough. Fair enough.  
 4 A. They're a bunch of crooks up there.  
 10:32 5 MR. MARIN: (Indicating).  
 6 THE WITNESS: I know.  
 7 MR. BOWERS: Okay. Let's take another 30 seconds  
 8 to 2-minute break and we may be wrapping up.  
 9 (A recess is taken.)  
 10:35 10 MR. BOWERS: Mr. Farinella, I don't have anymore  
 11 questions.  
 12 Mr. Atkins will have the right  
 13 I just wanted to throw this out one more time.  
 14 THE WITNESS: Go ahead.  
 10:35 15 MR. BOWERS: And Manny, I'm sorry, I don't know  
 16 your last name. I don't mean any disrespect for calling  
 17 you that.  
 18 MR. MARIN: Marin, M-a-r-i-n.  
 19 MR. BOWERS: The only thing is -- apparently you  
 10:35 20 got it, but I would still throw out there that I would  
 21 like to talk to Mr. Farinella and Manny and their  
 22 personal attorney about settling this case between us  
 23 when there's the time convenient for you.  
 24 THE WITNESS: Settle the case.  
 10:35 25 MR. BOWERS: I don't have any more questions.

10:36 1 in the year in 2008, sometime back in February 2008?  
 2 A. Yes.  
 3 Q. And so some of those conversations that you  
 4 talked about with Gaylen about running the restaurant  
 10:37 5 and doing whatever was necessary to make the plant  
 6 operational, those conversations, didn't they occur  
 7 before October of 2008 as to that first offer in  
 8 February?  
 9 A. Well, he made an offer and it was not accepted.  
 10:37 10 Gaylen made the first offer. I don't know. I think it  
 11 was February -- I think it was --  
 12 THE WITNESS: Was it February 7th that he made his  
 13 offer? February 7. That's 2008.  
 14 MR. MARIN: Yes.  
 10:37 15 THE WITNESS: 2008, February 7, and he offered  
 16 500,000. And it was not accepted. It was turned down.  
 17 MR. ATKIN:  
 18 Q. In any event, he started running the restaurant  
 19 at about that time, didn't he, February 2008?  
 10:37 20 A. It was much later than February though. It was  
 21 after -- after the 500,000 was rejected, he offered  
 22 \$800,000 with another offer of 800-, and we accepted  
 23 his. And that's when I found out Don Zebe was a  
 24 partner. He made -- he accepted the offer of 800,000 --  
 10:38 25 we accepted that.

10:38 1 So when we accepted that, that means that the thing  
 2 was closed. Like I said, I read it to you again.  
 3 After the accepting of the offer, Gaylen asked me  
 4 if he can clean it up and get it ready to run.  
 10:38 5 Which I said go ahead, as long as it don't cost the  
 6 court any money.  
 7 Q. All right.  
 8 A. And they said, "Okay."  
 9 Because I got an e-mail from Don Zebe that says  
 10:38 10 they're willing to pay anything -- that they -- you  
 11 know, that they -- Gaylen -- Gaylen and Don Zebe will  
 12 accept up to 200 something thousand -- \$245,000 to  
 13 cleanup the plant. They will pay for it and not charge  
 14 us or the courts or anybody.  
 10:38 15 I got an e-mail to that it effect.  
 16 Q. And that's the e-mail that you talked about  
 17 earlier that you received in January of 2009?  
 18 A. Right.  
 19 Q. Okay.  
 10:39 20 And --  
 21 A. The plant was closed for a couple of years.  
 22 That's why it got so dirty and crumbly and everything.  
 23 That's why it wasn't cleaned. It was closed for two  
 24 years.  
 10:39 25 Any piece of property that has been closed --

1 MR. BOWERS: We're off the record.  
 2 (The proceedings concluded at 10:40 a.m.)  
 3 \*\*\*  
 4  
 5 I declare under penalty of perjury under the laws  
 6 of the State of California that the foregoing is true  
 7 and correct.  
 8  
 9 Executed at \_\_\_\_\_, California,  
 10 on \_\_\_\_\_.  
 11  
 12  
 13  
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 25

MORRIS A. FARINELLA

10:39 1 Q. Wasn't there junk on the property that had been  
 2 used that was no longer usable? It was considered junk  
 3 on the property?  
 4 A. Yes.  
 10:39 5 And in fact, we had what we call a junkyard. We  
 6 used to throw the equipment that was not good or didn't  
 7 work no more out in the back.  
 8 Q. And wasn't that weigh dryer part of that junk?  
 9 A. I believe so. I believe we had an old weigh  
 10:39 10 dryer -- Well, it was a pan. They call it a pan. It  
 11 was thrown in the back. It couldn't be used at all. It  
 12 wasn't worth anything. It was scrap.  
 13 Q. And you authorized Gaylen to get rid of that?  
 14 A. I didn't authorize him to get rid of that or  
 10:40 15 any particular item. Only to clean it up.  
 16 If that meant to get rid of that, I guess he did  
 17 it. But not to cost any money to court -- not to cost  
 18 me or the bankruptcy court. Because they would have  
 19 come -- I had no authority to tell him anything anyway.  
 10:40 20 He might as well ask a monkey on a tree what he  
 21 could do. I had no authority.  
 22 MR. ATKIN: That's all I have.  
 23 THE WITNESS: Okay.  
 24 MR. BOWERS: That's all. I have nothing else.  
 10:40 25 THE REPORTER: So we're off the record.

1 STATE OF CALIFORNIA ) ss  
 2  
 3 I, Lori S. Turner, CSR 9102, CP, RPR, do hereby  
 4 declare:  
 5  
 6 That, prior to being examined, the witness named in  
 7 the foregoing deposition was by me duly sworn pursuant  
 8 to Section 2093(b) and 2094 of the Code of Civil  
 9 Procedure;  
 10  
 11 That said deposition was taken down by me in  
 12 shorthand at the time and place therein named and  
 13 thereafter reduced to text under my direction.  
 14  
 15 I further declare that I have no interest in the  
 16 event of the action.  
 17  
 18 I declare under penalty of perjury under the laws  
 19 of the State of California that the foregoing is true  
 20 and correct.  
 21  
 22 WITNESS my hand this \_\_\_\_\_ day of  
 23 \_\_\_\_\_,  
 24 \_\_\_\_\_  
 25  
 Lori S. Turner, CSR 9102, CP, RPR

Gary L. Cooper - Idaho State Bar #1814  
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2010 NOV 24 AM 10:36  
 BY *cu*  
 DEPUTY CLERK

*Counsel for Defendants*

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

GAYLEN CLAYSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DON ZEBE, RICK LAWSON, AND )  
 LAZE, LLC., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

CASE NO. CV-2009-0002212-OC

**DEFENSE  
 OBJECTION TO PLAINTIFF'S  
 DESIGNATION OF DEPOSITION  
 EXCERPTS FROM THE DEPOSITION  
 OF MORRIS FARINELLA**

COME NOW the Defendants and object to the Plaintiff's designation of excerpts from the deposition of Morris Farinella as follows:

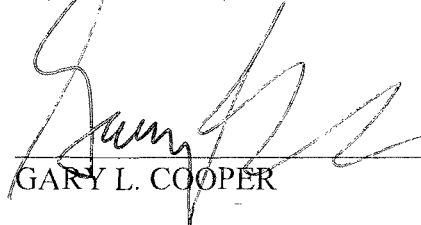
DESIGNATION	OBJECTION
Page 14, lines 7 - 17	No objection
Page 14, line 18 - Page 15, line 4	No objection
Page 18, line 16 - Page 19, line 6	No objection (part of the Defense designation)
Page 35, lines 13 - 20	No question designated. Answer was non-responsive and the answer to the extent it seeks to raise the issue of "partnership" is not relevant to the claims and defenses at issue in this trial

**ORIGINAL**

Page 40, lines 14 - 25	No objection
Page 42, lines 4 - 15	To the extent the answer raises the issue of "partnership" it was not responsive and is not relevant to the claims and defenses at issue in this trial
Page 43, lines 4 - 17	Answer makes no sense because the exhibit is not identified
Page 46 line 3 - Page 50, line 17	relevance
Page 56, lines 2 - 21	To the extent the answer raises the issue of "partnership" it was not responsive and is not relevant to the claims and defenses at issue in this trial
Page 58, lines 5 - 13	To the extent the answer raises the issue of "partnership" it was not responsive and is not relevant to the claims and defenses at issue in this trial
Page 61, line 19 - Page 62, line 13	To the extent the answer raises the issue of "partnership" it was not responsive and is not relevant to the claims and defenses at issue in this trial
Page 63, lines 7 - 14	No question designated. Answer was non-responsive and the answer to the extent it seeks to raise the issue of "partnership" is not relevant to the claims and defenses at issue in this trial
Page 65, lines 9 - 20	relevance

DATED this 24<sup>th</sup> day of November, 2010.

COOPER & LARSEN



GARY L. COOPER



**CERTIFICATE OF SERVICE**

I hereby certify that on the 24<sup>th</sup> day of November, 2010, I served a true and correct copy of the foregoing to:

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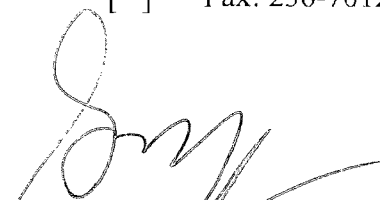
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\_\_\_\_\_  
GARY L. COOPER