

5-6-2013

# April Beguesse, Inc. v. Rammell Clerk's Record v. 1 Dckt. 40212

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Vol. 1 of 1

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

VOLUME I OF III

LAW CLERK

APRIL BEGUESSE, INC., an Idaho Corporation,

Plaintiff / Counterdefendant / Respondent

COPY

vs.

KENNETH RAMMEL, an individual, CHRISTA BEGUESS, INC., an Idaho Corporation,

Defendants / Counterclaimants / Appellants

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. Joel E. Tingev, District Judge

David Alexander, RACINE OLSON NYE BUDGE BAILEY

PO Box 1391, Pocatello, ID 83204-1391

*Attorney for Appellant*

Jeffrey Brunson, BEARD ST. CLAIR GAFFNEY PA

2105 Coronado Street, Idaho Falls, ID 83404-7495

*Attorney for Respondent*

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

FILED - COPY  
MAY - 6 2013  
Supreme Court Court of Appeals  
Entered on A75 by \_\_\_\_\_  
Clerk Deputy

By \_\_\_\_\_ Deputy

410212

IN THE SUPREME COURT OF THE STATE OF IDAHO

APRIL BEGUESSE, INC., an Idaho Corporation,
Plaintiff/Counterdefendant/Respondent,
vs.
KENNETH RAMMEL, an individual,
CHRISTA BEGUESSE, INC., an Idaho Corporation,
Defendants/Counterclaimants/Appellants.
and,
THE ESTATE OF CHRISTA BEGUESSE RAMMELL, by it qualified personal representative, Kenneth Rammell,
Defendant/Counterclaimant.

Case No. CV-2009-2767
Docket No. 40212
VOLUME I of III

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CLERK'S RECORD ON APPEAL

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

HONORABLE JOEL E. TINGEY, District Judge.

\*\*\*\*\*

Attorney for Appellant

David Alexander
RACINE OLSON NYE BUDGE BAILEY
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Pocatello, ID 83204-1391

Attorney for Respondent

Jeffrey Brunson
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April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
5/8/2009	SMIS	ROBBINS	Summons Issued (3)	Joel E. Tingey
	NCOC	ROBBINS	New Case Filed-Other Claims	Joel E. Tingey
	NOAP	ROBBINS	Plaintiff: April Beguesse, Inc., an Idaho Corporation Notice Of Appearance Jeffrey D. Brunson	Joel E. Tingey
		ROBBINS	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Brunson, Jeffrey D. (attorney for April Beguesse, Inc., an Idaho Corporation) Receipt number: 0020910 Dated: 5/8/2009 Amount: \$88.00 (Check) For: April Beguesse, Inc., an Idaho Corporation (plaintiff)	Joel E. Tingey
9/21/2009		LYKE	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: David E. Alexander Receipt number: 0043413 Dated: 9/21/2009 Amount: \$58.00 (Check) For: Christa Beguesse, Inc., and Idaho Corporation (defendant), Rammell, Kenneth (defendant) and The Estate Of Christa Beguesse Rammell (defendant)	Joel E. Tingey
	ANSW	LYKE	Answer, Counterclaim, and Demand for Jury Trial (David E. Alexander for Kenneth Rammell, Christa Beguesse, Inc & Estate of Christa Beguesse Rammell)	Joel E. Tingey
	NDDT	LYKE	Notice Of Deposition Duces Tecum of April Beguesse, Inc	Joel E. Tingey
	NTOS	LYKE	Notice Of Service of Defendants First Set of Production of Documents	Joel E. Tingey
	NOAP	LYKE	Defendant: Rammell, Kenneth Notice Of Appearance David E Alexander	Joel E. Tingey
	NOAP	LYKE	Defendant: Christa Beguesse, Inc., and Idaho Corporation Notice Of Appearance David E Alexander	Joel E. Tingey
	NOAP	LYKE	Defendant: The Estate Of Christa Beguesse Rammell Notice Of Appearance David E Alexander	Joel E. Tingey
10/8/2009	NTOS	DOOLITTL	Notice Of Service (Plaintiff's 1st Set of Discovery Requests to Defendants) (fax)	Joel E. Tingey
		DOOLITTL	Plaintiff's Reply to Defendant, Christa Bequesse, Inc.'s Counterclaim (fax)	Joel E. Tingey
10/19/2009	NTOS	WOOLF	Notice Of Service (P's Response to Defendants' First Set of Requests for Production of Documents)	Joel E. Tingey
10/23/2009	NOTC	WOOLF	Notice Vacating Deposition Duces Tecum of April Beguesse, Inc.	Joel E. Tingey
10/26/2009	NDDT	DOOLITTL	Notice Of Deposition Duces Tecum of april Beguesse, Inc.	Joel E. Tingey
11/17/2009	NDDT	KESTER	Notice Of Deposition Duces Tecum of Kenneth Rammell **fax**	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
12/3/2009	STIP	LYKE	Stipulation for Protective Order	Joel E. Tingey
12/8/2009	ORDR	SOUTHWIC	Protective Order	Joel E. Tingey
12/11/2009	NTOS	LYKE	Notice Of Service - Plaintiff's First Supplemental Response to Defendants' First Set of Requests for Production of Documents	Joel E. Tingey
1/11/2010	MOTN	LYKE	Motion for Leave to File Amended Counterclaim	Joel E. Tingey
1/12/2010	MOTN	WOOLF	Objection to Defendants' Motion for Leave to File Amended Counterclaim	Joel E. Tingey
1/25/2010	NOTH	LYKE	Notice Of Hearing Re: Motion for Leave to File Amended Counterclaim (02/09/10@9:00AM)	Joel E. Tingey
2/8/2010	STIP	WOOLF	Stipulation to Amend Pleadings	Joel E. Tingey
	MOTN	WOOLF	Motion to Amend Complaint	Joel E. Tingey
2/10/2010	ORDR	SOUTHWIC	Order to amend pleadings	Joel E. Tingey
2/18/2010	COMP	WOOLF	First Amended Complaint and Jury Demand	Joel E. Tingey
2/22/2010	NTOS	WOOLF	Notice Of Service (P's Response to Defendants' First Set of Interrogatories, Requests for Admissions and Second Set of Requests for Production	Joel E. Tingey
3/11/2010	ANSW	DOOLITTL	Answer to Amended Complaint and Amended Counterclaim, and Demand for Jury Trial	Joel E. Tingey
	MOTN	DOOLITTL	Motion to Shorten Time	Joel E. Tingey
3/16/2010	NTOS	LYKE	Notice Of Service - Plaintiff's Second Set of Discovery Requests to Defendant	Joel E. Tingey
3/29/2010	MISC	KESTER	Plaintiff's Reply to Defendants' Amended Counterclaim	Joel E. Tingey
3/30/2010	NORT	DOOLITTL	Note Of Issue/request For Trial	Joel E. Tingey
3/31/2010	ORDR	SOUTHWIC	Order for telephonic status conference	Joel E. Tingey
4/22/2010	HRHD	SOUTHWIC	Hearing Held -- in chambers off record	Joel E. Tingey
	ORPT	SOUTHWIC	Order Setting Pretrial Conference/trial	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Jury Trial 01/25/2011 10:00 AM) trial may go into a second week -- 2/02/2011	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Pretrial Conference 01/11/2011 08:30 AM)	Joel E. Tingey
5/24/2010	MOTN	QUINTANA	Motion for Leave to File First Amended Answer	Joel E. Tingey
	NOTC	QUINTANA	Notice Regarding Requests for Admissions Deemed Admitted	Joel E. Tingey
		QUINTANA	Plaintiff's Second Set of Discovery Requests to Defendants	Joel E. Tingey
	NTOS	QUINTANA	Notice Of Service Plaintiff's Second Set of Discovery Requests to Defendants	Joel E. Tingey
5/28/2010	NTOS	TBROWN	Notice Of Service of Def's responses to pl's second set of requests for admissions and resposnes to plaintiffs second set of discovery	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
6/11/2010	NTOS	DOOLITTL	Notice Of Service of Defendant's 2nd Set of Requests for Admissions to Plaintiff	Joel E. Tingey
6/30/2010	NOTC	LYKE	Notice of Telephone Deposition Duces Tecum of Linda Diamond Raznick	Joel E. Tingey
7/8/2010	STIP	SBARRERA	Stipulation For Amended Protective Order	Joel E. Tingey
7/9/2010	NTOS	DOOLITTL	Notice Of Service (Plaintiff's Response to Defendants' 2nd Set of Request for Admissions to Plainff) (fax)	Joel E. Tingey
7/12/2010	ORDR	SOUTHWIC	AMENDED Protective Order	Joel E. Tingey
7/16/2010	NTOS	DOOLITTL	Notice Of Service of Defendants' 3rd Set of Requests for Production of Documents and Defendants' 2nd Set of Interrogatories to Plaintiff	Joel E. Tingey
7/27/2010	NTOS	SOLIS	Notice Of Service Of Defendants' Supplemental Responses To Plaintiff's Requests For Production Of Documents and Interrogatories - 07/26/2010	Joel E. Tingey
	NTOS	DOOLITTL	Notice Of Service (Plaintiff's 2nd Supplemental Response to Defendants' 1st Set of Requests for Production of Documents and Plaintiff's 1st Supplemental Response to Defendants' 1st Set of Interrogatories, Requests for Admissions and 2nd Set of Reequests for Production) (fax)	Joel E. Tingey
	NTOS	LYKE	Notice Of Service of Defendants' Fourth Set of Requests for Production to Plaintiff	Joel E. Tingey
8/17/2010	NTOS	LYKE	Notice Of Service - Plaintiff's Response to Defendants' Third Set of Requests for Production and Plaintiff's Response to Defendant's Second Set of Interrogatories	Joel E. Tingey
8/24/2010	NTOS	LYKE	Notice Of Service - Plaintiff's Response to Defendants' Fourth Set of Requests for Production	Joel E. Tingey
9/1/2010	HRSC	SOUTHWIC	Hearing Scheduled (Motion 10/08/2010 09:00 AM) Alexander's motion for SJ	Joel E. Tingey
9/3/2010	NTOS	LYKE	Notice Of Service of Memorandum of Law, Affidavits and Exhibits Submitted in Support of Defendant's Motion for Summary Judgment Under Seal Pursuant to Protective Order	Joel E. Tingey
			Document sealed	
	MOTN	LYKE	Motion for Summary Judgment	Joel E. Tingey
	NOTH	LYKE	Notice Of Hearing re: Defendant's Motion for Summary Judgment (10/08/10@9:00AM)	Joel E. Tingey
9/16/2010	NTOS	DOOLITTL	Notice Of Service of Indexed Copies of Defendants' Brief and Statement of Facts, Filed Under Seal	Joel E. Tingey
			Document sealed	
	AFFD	DOOLITTL	Affidavit of Pete Masterson	Joel E. Tingey
			Document sealed	

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
9/24/2010	MEMO	SOLIS	Plaintiff's Memorandum In Opposition To Motion For Summary Judgment - IN BLACK BINDER Document sealed	Joel E. Tingey
	AFFD	SOLIS	Affidavit Of Counsel - IN BLACK BINDER Document sealed	Joel E. Tingey
	AFFD	SOLIS	Affidavit April Beguesse - IN BLACK BINDER Document sealed	Joel E. Tingey
	AFFD	SOLIS	Affidavit Of Don Mazzella - IN BLACK BINDER Document sealed	Joel E. Tingey
	AFFD	SOLIS	Second Affidavit Of Linda Diamond Raznick - IN BLACK BINDER Document sealed	Joel E. Tingey
		SOLIS	Statement of Disputed Facts - IN BLACK BINDER Document sealed	Joel E. Tingey
	MOTN	SOLIS	Motion To Strike - IN BLACK BINDER Document sealed	Joel E. Tingey
	MEMO	SOLIS	Plaintiff's Memorandum In Support Of Motion To Strike - IN BLACK BINDER Document sealed	Joel E. Tingey
	NOTH	SOLIS	Notice Of Hearing 10/08/2010 @9:00am RE: Plaintiff's Motion To Strike - IN BLACK BINDER Document sealed	Joel E. Tingey
	NTOS	SOLIS	Notice Of Service - Plaintiffs First Supplemental Response To Defendants' Second Set of Interrogatories, Plaintiff's Second Supplemental Response To Defendants' First Set Of Interrogatories, Requests for Admissions And Second Set Of Requests For Production, and Plaintiff's Third Supplemental Response To Defendants' First Set Of Requests for Production Documents	Joel E. Tingey
	NTOS	DOOLITTL	Notice Of Service (Plaintiff's 1st Supplemental Response to Defendants' 3rd Set of Requests for Production upon the Defendants)	Joel E. Tingey
10/1/2010	NOTC	SBARRERA	Notice Of Filing Of Reply Brief Under Seal	Joel E. Tingey
10/4/2010	NOTH	SHULTS	Notice Of Hearing	Joel E. Tingey
	MOTN	SHULTS	Defendants' Motion to Strike Portions of Affidavits of April Beguesse and Don Mazzella and Second Affidavit of Linda Diamond-Raznick	Joel E. Tingey
10/7/2010		LYKE	Plaintiff's Memorandum in Opposition to Defendants' Motion to Strike Document sealed	Joel E. Tingey
10/8/2010	DCHH	SOUTHWIC	Hearing result for Motion held on 10/08/2010 09:00 AM: District Court Hearing Held Court Reporter: Jack Fuller Number of Transcript Pages for this hearing estimated: Alexander's motion for SJ -- under 100	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User	Judge
10/8/2010	MINE	SOUTHWIC	Joel E. Tingey
			Minute Entry Hearing type: Motion Hearing date: 10/8/2010 Time: 10:19 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander
10/14/2010	NTOS	DOOLITTL	Joel E. Tingey
			Notice Of Service (Plaintiff's 3rd Supplemental Response to Defendants' 1st Set of Interrogatories, Requests for Admissions and 2nd Set of Requests for Production) (fax)
		DOOLITTL	Joel E. Tingey
			Plaintiff's Expert Witness Disclosure (fax)
11/2/2010	ORDR	SOUTHWIC	Joel E. Tingey
11/5/2010		DOOLITTL	Joel E. Tingey
			Defendant's Disclosure of Expert Witnesses
11/18/2010	NTOS	LYKE	Joel E. Tingey
			Notice Of Service of Defendants' Third Set of Interrogatories and Fifth Set of Requests for Production of Documents to Plaintiff
12/9/2010	NTOS	DOOLITTL	Joel E. Tingey
			Notice Of Service (Plaintiff's 4th Supplemental Response to Defendants' 1st Set of Interrogatories, Requests for Admissions and 2nd Set of Request for production upon the Defendants) (fax)
12/13/2010	NTOS	LYKE	Joel E. Tingey
			Notice Of Service of Supplemental Responses to Plaintiff's First Set of Discovery to Defendants
12/15/2010	NTOS	ANDERSEN	Joel E. Tingey
			Notice Of Service (P's Resp to Def's 3rd Set of Interrogatories & 5th Set of Requests)
12/23/2010	MOTN	ANDERSEN	Joel E. Tingey
			Plaintiff's Motion for Reconsideration
	MEMO	ANDERSEN	Joel E. Tingey
			Plaintiff's Memorandum in Support of Plaintiff's Motion for Reconsideration
12/28/2010	MOTN	SBARRERA	Joel E. Tingey
			Plaintiff's Motion In Limine
	MEMO	SBARRERA	Joel E. Tingey
			Plaintiff's Memorandum In Support Of Plaintiff's Motion In Limine
	NOTH	SBARRERA	Joel E. Tingey
			Notice Of Hearing RE: Plaintiff's Motion In Limine (01/11/2011 8:30AM)
1/3/2011	MEMO	SOLIS	Joel E. Tingey
			Memorandum Of Law In Opposition To Motion To Reconsider
1/5/2011	MEMO	LYKE	Joel E. Tingey
			Defendants' Memorandum of Law in Opposition to Motion in Limine



April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
1/6/2011	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry Hearing type: Motion Hearing date: 1/6/2011 Time: 11:01 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander	Joel E. Tingey
	MISC	LYKE	Plaintiff's Witness List	Joel E. Tingey
	MISC	LYKE	Plaintiff's Exhibit List	Joel E. Tingey
	MISC	LYKE	Plaintiff's Proposed Special Verdict Form	Joel E. Tingey
	MISC	LYKE	Plaintiff's Proposed Jury Instructions	Joel E. Tingey
1/7/2011	MOTN	SBARRERA	Plaintiff's Motion For Sanctions Or, In The Alternative, For A Limited Continuance	Joel E. Tingey
	MEMO	SBARRERA	Plaintiff's Memorandum In Support Of Motion For Sanctions Or, In The Aternative, For A Limited Continuance	Joel E. Tingey
	NOTH	SBARRERA	Notice Of Hearing RE: Plaintiff's Motion For Sanctions Or, In The Alternative, For A Limited Continuance (01/11/2011 8:30AM)	Joel E. Tingey
	MOTN	SBARRERA	Motion To Shorten Time	Joel E. Tingey
	AFFD	SBARRERA	Affidavit Of Counsel	Joel E. Tingey
1/10/2011	MISC	LYKE	Defendants' Proposed Jury Instructions and Special Verdict Form	Joel E. Tingey
		DOOLITTL	Defendants' Exhibit List	Joel E. Tingey
		DOOLITTL	Defendant's Witness List	Joel E. Tingey
1/11/2011	DCHH	SOUTHWIC	Hearing result for Pretrial Conference held on 01/11/2011 08:30 AM: District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
1/11/2011	MINE	SOUTHWIC	Minute Entry Hearing type: Pretrial Conference Hearing date: 1/11/2011 Time: 11:04 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander	Joel E. Tingey
	CONT	SOUTHWIC	Hearing result for Jury Trial held on 01/25/2011 10:00 AM: Continued trial may go into a second week -- 2/02/2011	Joel E. Tingey
	ORDR	SOUTHWIC	Order for telephonic status conference	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Status Conference 02/09/2011 08:45 AM)	Joel E. Tingey
	BRIF	DOOLITTL	Defendant's Brief Filed in Opposition to Plaintiff's Motion for Sanctions or Continuance	Joel E. Tingey
1/27/2011	MOTN	SOLIS	Motion In Limine To Exclude Testimony By April Beguesse As To Value Of Business	Joel E. Tingey
	MEMO	SOLIS	Memorandum Of law In Support Of Defendants' Motion In Limine To Exclude Testimony By April Beguesse As To Value Of Business	Joel E. Tingey
	AFFD	SOLIS	Affidavit Of Counsel	Joel E. Tingey
	NOTH	SOLIS	Notice Of Hearing 02/10/2011 @9:00AM RE: Defendants' Motion In Limine To Exclude Testimony By April Beguesse As To The Value Of Business	Joel E. Tingey
1/28/2011	NTOS	DOOLITTL	Notice Of Service (Plaintiff's 5th Supplemental Response to Defendants' 1st Set of Interrogatories, Requests for Admissions and 2nd Set of Requests for Production)	Joel E. Tingey
	ORDR	SOUTHWIC	Order Re: January 6, 2011 Hearing	Joel E. Tingey
	ORDR	SOUTHWIC	Order Regarding January 11, 2011 Hearing	Joel E. Tingey
/3/2011	RESP	LMESSICK	Plaintiff's Response to Defendant's Motion in Limine	Joel E. Tingey
	AFFD	LMESSICK	Affidavit of Counsel	Joel E. Tingey
/8/2011		LYKE	Objection to Plaintiff's Subpoena of Janell Racine	Joel E. Tingey
/9/2011	HRHD	SOUTHWIC	Hearing result for Status Conference held on 02/09/2011 08:45 AM: Hearing Held in chambers off the record	Joel E. Tingey
	ORPT	SOUTHWIC	Order Setting Pretrial Conference/trial	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
2/9/2011	HRSC	SOUTHWIC	Hearing Scheduled (Jury Trial 09/27/2011 10:00 AM) 5-6 days	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Pretrial Conference 09/13/2011 08:30 AM)	Joel E. Tingey
2/10/2011	MINE	QUINTANA	Minute Entry Hearing type: Defendant's Motion in Limine Hearing date: 2/10/2011 Time: 9:04 am Courtroom: Court reporter: Minutes Clerk: Rhonda Quintana Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander	Joel E. Tingey
	DENY	QUINTANA	Motion Denied	Joel E. Tingey
3/2/2011	ASRV	DOOLITTL	Amended Affidavit of Service - 2-10-11 Stephen E. Martin Subpoena	Joel E. Tingey
3/4/2011	MOTN	SOLIS	Plaintiff's Motion To Consolidate	Joel E. Tingey
	AFFD	SOLIS	Affidavit Of Counsel	Joel E. Tingey
	NOTH	SOLIS	Notice Of Hearing 03/22/2011 @9:00AM RE: Plaintiff's Motion To consolidate	Joel E. Tingey
	MOTN	SOLIS	Plaintiff's Motion To Consolidate	Joel E. Tingey
	AFFD	SOLIS	Affidavit Of Counsel	Joel E. Tingey
	NOTH	SOLIS	Notice Of Hearing 03/22/2011 @9:00AM RE: Plaintiff's Motion To Consolidate	Joel E. Tingey
3/15/2011		SOUTHWIC	Objection to motion to consolidate	Joel E. Tingey
		SBARRERA	Objection To Motion To Consolidate	Joel E. Tingey
3/22/2011	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
3/22/2011	MINE	SOUTHWIC	Minute Entry Hearing type: Motion Hearing date: 3/22/2011 Time: 10:20 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander	Joel E. Tingey
3/23/2011	ORDR	SOUTHWIC	Order on Motion to Consolidate (motion to consolidate denied)	Joel E. Tingey
4/1/2011	NTOS	LYKE	Notice Of Service - Plaintiff's Sixth Supplemental Response to Defendant	Joel E. Tingey
4/7/2011	MOTN	LYKE	Plaintiff's Motion for Leave to Amend to Add Claim for Punitive Damages	Joel E. Tingey
	AFFD	LYKE	Affidavit of John M. Avondet	Joel E. Tingey
	MEMO	LYKE	Plaintiff's Memorandum in Support of Motion for Leave to Amend to Add Claim for Punitive Damages	Joel E. Tingey
	NOTH	LYKE	Notice Of Hearing Re: Plaintiff's Motion for Leave to Amend to Add Claim (04/21/11@9:00AM)	Joel E. Tingey
4/12/2011	HRSC	SOUTHWIC	Hearing Scheduled (Motion 04/21/2011 09:00 AM) Brunson - mo punitive damages	Joel E. Tingey
4/15/2011		DOOLITTL	Objection to motion for Leave to Add Claim for Punitive Damages)	Joel E. Tingey
	AFFD	DOOLITTL	Affidavit of Counsel	Joel E. Tingey
4/21/2011	DCHH	SOUTHWIC	Hearing result for Motion held on 04/21/2011 09:00 AM: District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: Brunson - mo punitive damages -- under 100	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
4/21/2011	MINE	SOUTHWIC	Minute Entry Hearing type: Motion Hearing date: 4/21/2011 Time: 10:57 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander	Joel E. Tingey
4/22/2011	ORDR	SOUTHWIC	Order on motion to amend	Joel E. Tingey
5/10/2011	AMCO	LYKE	Second Amended Complaint Filed and Jury Demand	Joel E. Tingey
5/10/2011		DOOLITTL	Plaintiff's Objection to Defendant's Notice of Deposition Duces Tecum of April Beguesse (fax)	Joel E. Tingey
8/11/2011	NTOS	LYKE	Notice Of Service - Supplemental Responses to Plaintiff's First Set of Discovery to Defendants	Joel E. Tingey
8/30/2011	MOTN	LYKE	Motion in Limine to Exclude Testimony of Bruce Denney and Tax Information of Abi and April Beguesse	Joel E. Tingey
	AFFD	LYKE	Affidavit of Jeffrey D. Brunson	Joel E. Tingey
	MEMO	LYKE	Plaintiff's Memorandum in Support of ABI's Motion in Limine to Exclude Testimony of Bruce Denney and Tax Information of Abi and April Beguesse	Joel E. Tingey
	NOTH	LYKE	Notice Of Hearing Re: Motion in Limine (9/13/11@8:30AM)	Joel E. Tingey
9/2/2011	NOTC	SBARRERA	Notice Of Deposition Of Kent Oseen	Joel E. Tingey
9/6/2011	MOTN	LYKE	Plaintiff's Motion for Protective Order	Joel E. Tingey
	NOTH	LYKE	Notice Of Hearing Re: Motion for Protective Order (9/13/11@8:30AM)	Joel E. Tingey
	MOTN	LYKE	Plaintiff's Motion to Shorten Time	Joel E. Tingey
9/7/2011	ORDR	SOUTHWIC	Order Shortening Time	Joel E. Tingey
		SBARRERA	Defendant's Brief In Opposition To Plaintiff's Motions In Limine	Joel E. Tingey
9/8/2011		DOOLITTL	Plaintiff's Witness List	Joel E. Tingey
		DOOLITTL	Plaintiff's Exhibit List	Joel E. Tingey
		DOOLITTL	Plaintiff's Proposed Jury Instruction	Joel E. Tingey
9/9/2011	RTOS	LYKE	Return Of Service - 9/06/11 (Kent Oseen - Subpoena)	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
9/12/2011		LYKE	Defendants' Witness List	Joel E. Tingey
		LYKE	Defendants' Exhibit List	Joel E. Tingey
		LYKE	Defendants' Proposed Special Verdict Form	Joel E. Tingey
		LYKE	Defendants' Proposed Jury Instructions and Special Verdict Form	Joel E. Tingey
9/13/2011	DCHH	SOUTHWIC	Hearing result for Pretrial Conference scheduled on 09/13/2011 08:30 AM: District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: + PI's mo for protective order under 100	Joel E. Tingey
9/14/2011	CONT	SOUTHWIC	Hearing result for Jury Trial scheduled on 09/27/2011 10:00 AM: Continued 5-6 days	Joel E. Tingey
	ORDR	SOUTHWIC	Order on Motion in Limine, Vacating Trial	Joel E. Tingey
9/20/2011	ORDR	SOUTHWIC	Order for status conference - 10/07/11 @ 8:45 a.m.	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Status Conference 10/07/2011 08:45 AM)	Joel E. Tingey
10/7/2011	HRHD	SOUTHWIC	Hearing result for Status Conference scheduled on 10/07/2011 08:45 AM: Hearing Held in chambers off record	Joel E. Tingey
	ORPT	SOUTHWIC	Order Setting Pretrial Conference/trial	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Jury Trial 04/10/2012 10:00 AM) 4-5 days	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Pretrial Conference 03/20/2012 08:45 AM)	Joel E. Tingey
2/16/2012	NTOS	BOULWARE	Notice Of Service - Plaintiff's Seventh Supplemental Response to Defendant's First Set of Interrogatories.	Joel E. Tingey
3/2/2012	HRSC	SOUTHWIC	Hearing Scheduled (Motion 04/06/2012 10:00 AM) Brunson - mo limine 1/2 hr	Joel E. Tingey
3/6/2012	MOTN	DOOLITTL	Plaintiff's 2nd Motion in Limine to Exclude Testimony of Bruce Denney	Joel E. Tingey
	AFFD	DOOLITTL	Affidavit of Jeffrey D. Brunson	Joel E. Tingey
	AFFD	DOOLITTL	Affidavit of David Smith	Joel E. Tingey
	NOTH	DOOLITTL	Plaintiff's Notice Of Hearing 4-6-12 @ 10:00 a.m. (Plaintiff's 2nd Motion in Limine to Exclude Testimony of Bruce Denney)	Joel E. Tingey
4/15/2012		DOOLITTL	Plaintiff's Exhibit List	Joel E. Tingey
		DOOLITTL	Plaintiff's Witness List	Joel E. Tingey
4/19/2012		DOOLITTL	Defendant's Exhibit List	Joel E. Tingey
		DOOLITTL	Defendant's Witness List	Joel E. Tingey
5/20/2012	MOTN	CEARLY	Defendant's- Motion To Withdraw Deemed Admissions	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, etal.

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
3/20/2012		CEARLY	Response To Plaintiff's Motion In Limine To Exclude Testimony Of Bruce Denny	Joel E. Tingey
	AFFD	CEARLY	Affidavit Of Counsel	Joel E. Tingey
	DCHH	SOUTHWIC	Hearing result for Pretrial Conference scheduled on 03/20/2012 08:45 AM: District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
		SOUTHWIC	Request for Jury	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry Hearing type: Pretrial Conference Hearing date: 3/20/2012 Time: 11:26 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander	Joel E. Tingey
3/22/2012	NOTH	CEARLY	Notice Of Hearing RE: Defendants' Motion To Withdraw DEemed Admissions April 6, 2012 @ 10:00 AM	Joel E. Tingey
3/23/2012	MOTN	LYKE	P- Renewed Motion in Limine to Limit the Tax Information of ABI and April Beguesse	Joel E. Tingey
	NOTH	LYKE	Notice of Hearing Re: Renewed Motion (04/06/12@10:00AM)	Joel E. Tingey
3/29/2012	BRIF	DOOLITTL	Defendant's Brief Filed in Opposition to Plaintiff's Renewed Motion In Limine to Limit the tax Information of ABI and April Beguesse	Joel E. Tingey
	ASRV	DOOLITTL	Affidavit of Service - 3-26-12 Crandall and Oseen, PA	Joel E. Tingey
	AFFD	DOOLITTL	Plaintiff's Affidavit of Counsel	Joel E. Tingey
		DOOLITTL	Plaintiff's Objection to Defendant's Motion to Withdraw Deemed Admissions	Joel E. Tingey
4/3/2012		LYKE	Plaintiff's Objection to Defendants' Proposed Jury Instructions and Special Verdict Form	Joel E. Tingey
4/4/2012	BRIF	SOLIS	ABI's Reply Brief In Support OF ABI's Second Motion In Limine To Exclude Testimony Of Bruce Denney	Joel E. Tingey
4/5/2012	AFFD	DOOLITTL	Defendant's 2nd Affidavit of Counsel in Opposition to Motions In Limine (fax)	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User	Judge
4/6/2012	DCHH	SOUTHWIC	Joel E. Tingey
			Hearing result for Motion scheduled on 04/06/2012 10:00 AM: District Court Hearing Held Court Reporter: Jack Fuller Number of Transcript Pages for this hearing estimated: Brunson - mo limine 1/2 hr -- under 100
	MINE	SOUTHWIC	Joel E. Tingey
			Minute Entry Hearing type: Motion Hearing date: 4/6/2012 Time: 11:17 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander
4/9/2012	DCHH	SOUTHWIC	Joel E. Tingey
			District Court Hearing Held Court Reporter: Jack Fuller Number of Transcript Pages for this hearing estimated: under 100
	MINE	SOUTHWIC	Joel E. Tingey
			Minute Entry Hearing type: Motion Hearing date: 4/9/2012 Time: 4:19 pm Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander
	MOTN	SBARRERA	Joel E. Tingey
			(Fax) Defendant- Motion To Quash Subpoena To Janell Racine
	AFFD	SBARRERA	Joel E. Tingey
			Affidavit Of Gary L. Cooper
/10/2012	NOTC	CEARLY	Joel E. Tingey
			Notice Of Videotaped Deposition Of Janell Racine (Fax)
	ANSW	SOLIS	Joel E. Tingey
			Answer To Second Amended Complaint - Kenneth Rammell
	TLST	SOUTHWIC	Joel E. Tingey
			Hearing result for Jury Trial scheduled on 04/10/2012 10:00 AM: Trial Started 4-5 days



April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
4/12/2012	NOTC	SOLIS	Notice Vacating Videotaped Deposition Of Janell Racine (fax)	Joel E. Tingey
4/13/2012	MINE	SOUTHWIC	Minute Entry Hearing type: Jury Trial Hearing date: 4/17/2012 Time: 9:54 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander	Joel E. Tingey
		SOUTHWIC	Verdict Form	Joel E. Tingey
	STATUS	SOUTHWIC	Case Status Changed: Closed	Joel E. Tingey
4/17/2012	CDIS	SOUTHWIC	Civil Disposition entered for: Christa Beguesse, Inc., and Idaho Corporation, Defendant; Rammell, Kenneth, Defendant; The Estate Of Christa Beguesse Rammell, Defendant; April Beguesse, Inc., an Idaho Corporation, Plaintiff. Filing date: 4/17/2012	Joel E. Tingey
	JDMT	SOUTHWIC	Judgment Upon Verdict - PI have jdmt against defs jt & several of \$354,000.00, PI have jdmt against Def Christa Beguesse Inc. for \$190,013.00	Joel E. Tingey
4/25/2012	HRSC	SOUTHWIC	Hearing Scheduled (Motion 06/01/2012 09:00 AM) Brunson - mo att fees/costs	Joel E. Tingey
	STATUS	SOUTHWIC	Case Status Changed: Closed pending clerk action	Joel E. Tingey
4/26/2012	MOTN	CEARLY	Plaintiff-Motion For Award Of Attorney's Fees And Costs	Joel E. Tingey
	MEMO	CEARLY	Memorandum Of Law RE: Award Of Attorney's Fees	Joel E. Tingey
	NOTH	CEARLY	Notice Of Hearing RE: Plaintiff's Motion For Award Of Attorney's Fees And Costs 6-1-12 @ 9:00 AM	Joel E. Tingey
	MEMO	CEARLY	ABI's Memorandum Of Attorney Fees And Costs And Affidavit Of Counsel	Joel E. Tingey
4/30/2012	MOTN	DOOLITTL	Defendant's Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial	Joel E. Tingey
	AFFD	DOOLITTL	Defendant's Affidavit of Counsel	Joel E. Tingey
	MEMO	DOOLITTL	Memorandum in Support of Defendants' Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
5/1/2012	AFFD	SBARRERA	Supplemental Affidavit Of Counsel	Joel E. Tingey
5/2/2012	TRAN	SOUTHWIC	Transcript Filed -- excerpt from Jury trial 4/13/12 before Judge Joel Tingey	Joel E. Tingey
5/4/2012	NOTH	HUMPHREY	Notice Of Hearing June 1, 2012 @9:00am Defendants' Motion for Judgment Notwithstanding the Verdict	Joel E. Tingey
5/8/2012	MOTN	SBARRERA	Motion To Disallow Claimed Costs and Attorneys' Fees	Joel E. Tingey
5/9/2012	MOTN	HUMPHREY	Motion To Disallow Claimed Costs And Attorneys' Fees	Joel E. Tingey
5/25/2012	MEMO	SOLIS	Plaintiff's Memorandum In Opposition To Defendants' Motion For JNOV Or New Trial	Joel E. Tingey
5/31/2012	CONT	SOUTHWIC	Hearing result for Motion scheduled on 06/01/2012 09:00 AM: Continued Brunson - mo att fees/costs	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Motion 06/05/2012 10:30 AM) Brunson - Mo Att fees/Costs Alexander - Mo JNOV	Joel E. Tingey
		SOUTHWIC	Notice of Hearing	Joel E. Tingey
6/1/2012	MEMO	SOUTHWIC	Pl's Memorandum in Opposition to Defs' Motion for JNOV or New Trial	Joel E. Tingey
6/5/2012	DCHH	SOUTHWIC	Hearing result for Motion scheduled on 06/05/2012 10:30 AM: District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: Brunson - Mo Att fees/Costs Alexander - Mo JNOV -- under 100	Joel E. Tingey
	MINE	SOUTHWIC	Minute Entry Hearing type: Motion Hearing date: 6/5/2012 Time: 1:55 pm Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander	Joel E. Tingey
3/12/2012	ORDR	SOUTHWIC	Supplemental Order On Motion For New Trial	Joel E. Tingey
		SBARRERA	Plaintiff's Acceptance Of Court's Remittitur	Joel E. Tingey
3/19/2012	ORDR	SOUTHWIC	Order on Motion For costs and Attorney Fees (PI is awarded \$2409.29 in costs & \$85,000.00 in att fees against Kenneth Rammell and CBI)	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User	Judge	
6/19/2012	JDMT	SOUTHWIC	AMENDED Judgment (PI have jdmt against Defs Kenneth Rammell & Christa Beguesse, Inc, jt and several, in the amt of \$354,000.00 PI also have jdmt against Def Christa Beguesse, Inc in the additional amt of \$99,900 for a total of \$453,900. PI also have jdmt against Defs K Rammell & CBI for costs in the amt of \$2409.29 & att fees in the amt of \$85,000. Resulting in a total jdmt of \$541,309.29 as to CBI and \$441,409.29 as to Kenneth Rammell + int). PI's claim against the Estate of Christa Beguesse is dismissed with prejudice.	Joel E. Tingey
	STATUS	SOUTHWIC	Case Status Changed: Closed	Joel E. Tingey
7/20/2012		SBARRERA	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Racine Olson Receipt number: 0035844 Dated: 7/24/2012 Amount: \$109.00 (Check) For: Christa Beguesse, Inc., and Idaho Corporation (defendant) and Rammell, Kenneth (defendant)	Joel E. Tingey
	NOTC	SBARRERA	Notice Of Appeal (Kenneth Rammell, Crista Beguesse)	Joel E. Tingey
	APSC	LMESSICK	Appealed To The Supreme Court	Joel E. Tingey
7/30/2012	CERTAP	LMESSICK	Clerk's Certificate of Appeal	Joel E. Tingey
	BNDC	LMESSICK	Bond Posted - Cash (Receipt 36676 Dated 7/30/2012 for 100.00)	Joel E. Tingey
	STATUS	LMESSICK	Case Status Changed: Closed pending clerk action	Joel E. Tingey
8/7/2012	AFFD	CEARLY	Affidavit Of Interest	Joel E. Tingey
	MOTN	CEARLY	Motion For Garnishment	Joel E. Tingey
	WRIT	CEARLY	Writ Issued (Estate) \$447,752.75 Bonneville	Joel E. Tingey
	WRIT	CEARLY	Writ Issued (Bank) \$447,752.75 Bonneville	Joel E. Tingey
	WRIT	CEARLY	Writ Issued (Jeep) \$447,752.75 Bonneville	Joel E. Tingey
		CEARLY	Miscellaneous Payment: Writs Of Execution Paid by: Beard St. Clair Gaffney Receipt number: 0038263 Dated: 8/7/2012 Amount: \$6.00 (Check)	Joel E. Tingey
3/10/2012	WRRT	CEARLY	Writ Returned (Jeep)	Joel E. Tingey
	WRIT	CEARLY	Writ Issued (Jeep) \$447,752.75 Bonneville	Joel E. Tingey
		CEARLY	Miscellaneous Payment: Writs Of Execution Paid by: Beard St. Clair Gaffney Receipt number: 0038789 Dated: 8/10/2012 Amount: \$2.00 (Check)	Joel E. Tingey
3/14/2012		LMESSICK	(SC) ORder Re: Amended Notice of Appeal	Joel E. Tingey
3/17/2012	AFFD	SBARRERA	Affidavit Of Interest	Joel E. Tingey
	WRIT	SBARRERA	Writ Issued \$549,660.73 Bonneville	Joel E. Tingey

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User	Judge
8/17/2012		SBARRERA	Miscellaneous Payment: Writs Of Execution Paid by: Beard St. Clair Receipt number: 0040006 Dated: 8/17/2012 Amount: \$2.00 (Check)
	WRTU	CEARLY	Writ returned, Unsatisfied (Bank)
8/21/2012	HRSC	SOUTHWIC	Hearing Scheduled (Motion 09/05/2012 08:30 AM) Brunson -- ABI's objection to Rammell's claim of exemption
	STATUS	SOUTHWIC	Case Status Changed: Reopened
8/22/2012	NOTC	DOOLITTL	Appellants' Amended Notice of Appeal
8/24/2012	WRTU	SBARRERA	Writ returned, Unsatisfied
	MOTN	DOOLITTL	Plaintiff's Motion to Contest Claim of Exemption and for Injunctive Relief
	AFFD	DOOLITTL	Affidavit of Counsel (Plaintiff)
	NOTH	DOOLITTL	Plaintiff's Notice Of Hearing 9-18-12 @ 11:00 a.m. {Motion to Contest Claim of Exemption and for Injunctive Relief}
8/30/2012		LMESSICK	(SC) Amended Notice of Appeal Filed - Record due 12/5/12
9/13/2012	AFFD	SOLIS	Supplemental Affidavit Of Counsel
9/17/2012	NOTH	HUMPHREY	Amended Notice Of Hearing - 10/05/2012 @ 9:00AM RE: Motion To Contest Claim Of Exemption And For Injunctive Relief (Fax)
9/20/2012	CONT	SOUTHWIC	Hearing result for Motion scheduled on 09/18/2012 11:00 AM: Continued Brunson -- ABI's objection to Rammell's claim of exemption
	HRSC	SOUTHWIC	Hearing Scheduled (Motion 10/05/2012 09:00 AM) Brunson - ABI's objection to Rammell's claim of exemption
10/5/2012	HRHD	SOUTHWIC	Hearing result for Motion scheduled on 10/05/2012 09:00 AM: Hearing Held Brunson - ABI's objection to Rammell's claim of exemption
10/18/2012	ORDR	SOUTHWIC	Order
10/24/2012	AFFD	HUMPHREY	Affidavit Of Interest
	WRIT	HUMPHREY	Writ Of Execution Issued \$452,740.99 Bannock
		HUMPHREY	Miscellaneous Payment: Writs Of Execution Paid by: Beard St. Clair Gaffney Receipt number: 0051625 Dated: 10/24/2012 Amount: \$2.00 (Check)
11/13/2012	MOTN	CEARLY	Defendant - Ex Parte Motion To Shorten Time
	MOTN	CEARLY	Motion To Amend Order
	AFFD	CEARLY	Affidavit Of Counsel
	NOTH	CEARLY	Notice Of Hearing RE: Motion To Amend And Motion To shorten Time 11-13-12 @ 4:00 PM

April Beguesse, Inc., an Idaho Corporation vs. Kenneth Rammell, Christa Beguesse, Inc., and Idaho Corporation, The Estate Of Christa Beguesse Rammell

Date	Code	User		Judge
11/13/2012	DCHH	SOUTHWIC	District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
		SOUTHWIC	Objection to Motion to Amend Order and Request to appear Telephonically	Joel E. Tingey
	AFFD	SOUTHWIC	Affidavit of Counsel	Joel E. Tingey
	ORDR	SOUTHWIC	Amended Order	Joel E. Tingey
		DOOLITTL	Plaintiff's Objection to Motion to Amend Order and Request to Appear Telephonic (fax)	Joel E. Tingey
	AFFD	DOOLITTL	Plaintiff's Affidavit of Counsel (fax)	Joel E. Tingey
11/14/2012	MINE	SOUTHWIC	Minute Entry Hearing type: Motion Hearing date: 11/14/2012 Time: 7:54 am Courtroom: Court reporter: Minutes Clerk: Marlene Southwick Tape Number: Party: April Beguesse, Inc., an Idaho Corporation, Attorney: Jeffrey Brunson Party: Christa Beguesse, Inc., and Idaho Corporation, Attorney: David Alexander Party: Kenneth Rammell, Attorney: David Alexander Party: The Estate Of Christa Beguesse Rammell, Attorney: David Alexander	Joel E. Tingey
11/16/2012	WRTU	DOOLITTL	Writ returned, Unsatisfied	Joel E. Tingey
12/26/2012	WRTU	DOOLITTL	Writ returned, Unsatisfied	Joel E. Tingey

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CASE ASSIGNED TO  
HON. JOEL E. TINGEY

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff,

vs.

Kenneth Rammell, an individual, Christa Beguesse, Inc., an Idaho corporation, The Estate of Christa Beguesse Rammell, by its qualified personal representative, Kenneth Rammell,

Defendants.

Case No.: CV-09- 2767

Complaint and Jury Demand

Plaintiff, April Beguesse, Inc., through its attorneys, alleges and complains against the Defendants as follows.

**PARTIES**

1. April Beguesse, Inc. (ABI) is an Idaho Corporation set up under the laws of the State of Idaho.
2. Kenneth Rammell (Rammell) is an individual residing in Bonneville County, Idaho.

3. Christ Beguesse, Inc. (CBI) is an Idaho Corporation set up under the laws of the State of Idaho.

4. The Estate of Christa Beguesse Rammell, by its personal representative, Kenneth Rammell, filed an application for informal probate in Bonneville County, Idaho on March 11, 2009, Case No. CV-09-1682.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the Defendants pursuant to Idaho Code § 5-514.

6. Bonneville County is the proper venue for this action under Idaho Code § 5-404.

### **GENERAL ALLEGATIONS**

7. In November 2001, April Beguesse (April) was contacted by her mother, Christa Beguesse (Christa), regarding the possibility of April taking over Christa's business, CBI. April traveled to Idaho Falls to discuss the possibility with Christa and Rammell.

8. CBI was in the type setting business.

9. Rammell and Christa were both officers and directors in CBI.

10. Rammell and Christa told April that she could purchase and take over the business.

11. Rammell and Christa represented to April that CBI had a guaranteed self-sustaining contract with a customer.

12. Rammell and Christa represented to April that CBI owned a library of proprietary books valued at over \$1,000,000.

13. Rammell and Christa represented to April that CBI owned a proprietary

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software program unique to CBI's business.

14. Rammell and Christa represented that CBI owned intellectual property.

15. Rammell and Christa indicated that they would sell the business for \$12,000 a month for eight years.

16. Rammell stated that they were being very generous and that April would be a fool not to accept the offer.

17. On January 2002, April left a promising career in Boston, Massachusetts to work for CBI.

18. Initially, April worked for CBI as an employee.

19. In November 2003, April formed ABI.

20. Both Rammell and Christa indicated on many occasions that the assets of CBI would be left to April when Christa died.

21. In February 2004, ABI commenced making monthly payments to CBI for \$12,000 month.

22. ABI took ownership of all past and current debts of CBI and started operating the business. ABI paid all the bills including the monthly rent to a third party.

23. ABI purchased all new computers, printers, scanners, phone system, updated programs and hardware and updated the office furniture.

24. Rammell indicated that he had a contract that his brother had used for his business that Rammell had altered.

25. Christa had Rammell remove a clause in the contract that stated in the case of Christa's death payments would continue.

26. Rammell and Christa represented to April that CBI's assets would be bequeathed to her after Christa died.



27. Rammell and Christa represented to April that the payments would cease after Christa's death.

28. Rammell and Christa repeatedly made the representations alleged in the previous paragraphs.

29. Based on the representations of Rammell and Christa, April ultimately signed a document entitled "lease agreement". The purported agreement is between CBI and ABI and made effective January 1, 2004.

30. The purported agreement provides:

BUSINESS AND EQUIPMENT. For and in consideration of the promises set forth in this Lease and the payment of the rents specified in this Lease, Lessor leases, demises and rents unto the Lessee, and Lessee leases, demises and rents from Lessor, that certain business described in Exhibit 'A' attached hereto (the 'Business'), that certain equipment described in Exhibit 'B' attached hereto. (Such business and equipment identified in Exhibits 'A' and 'B', shall collectively be referred to herein as 'the Property', unless otherwise indicated.

31. Exhibits A and B attached to the purported agreement were completely blank.

32. ABI continued making monthly payments to CBI in an amount of \$12,000 until November 1, 2008.

33. ABI also paid Christa for consulting and professional services.

34. On November 10, 2008, Christa died.

35. No will was discovered leaving CBI's assets to April.

36. A holographic paragraph was produced by Rammell that states all of Christa's possessions go to Rammell.

37. After visiting an attorney after her mother's death, April learned for the first time that the representations made by Rammell and Christa alleged in the previous paragraphs were false.

38. There was no guaranteed contract with a major customer. Rather, the

customer could leave at any time.

39. The library referenced by Rammell and Christa is actually owned by the customer.

40. The referenced proprietary software program was a software program that could be purchased off the shelf.

41. On March 1, 2009, April moved to Nevada.

42. On March 11, 2009, Rammell applied for informal probate for Christa's estate in Bonneville County, Idaho, Case No. CV-09-1682.

43. On April 13, 2009, Christa's estate on behalf of CBI filed a complaint against ABI and April individually in Clark County, Nevada, Case No. A587645. The Nevada complaint seeks to enforce the purported agreement.

44. A motion to dismiss the Nevada case is being filed on the basis of forum non conveniens.

#### **COUNT ONE: DECLARATORY RELIEF**

45. ABI incorporates and realleges all previous paragraphs.

46. Critical portions to the purported lease contract between ABI and CBI were left blank.

47. ABI and CBI did not form a lease contract because there was never mutual assent.

48. ABI and CBI did not form a lease contract because the purported agreement is missing essential terms.

49. ABI and CBI never contemplated a lease of the business but rather contemplated a purchase of certain CBI assets.

50. This Court has the power to declare that there is no lease contract between

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ABI and CBI pursuant to Idaho Code § 10-1201.

51. ABI is an interested person as defined by Idaho Code § 10-1202.

52. This Court should declare that:

- a. ABI is under no continuing obligation to make payments to CBI;
- b. Monies previously paid by ABI to CBI should be refunded to ABI; and
- c. There is no enforceable lease contract between ABI and CBI.

53. Alternatively, the lease contract should be reformed to meet the intent of parties.

54. To the extent the Court finds an enforceable contract, the contract should be rescinded due to the defendants' fraudulent conduct and all monies paid should be refunded.

55. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

#### **COUNT TWO: FRAUD**

56. ABI incorporates and realleges all previous paragraphs.

57. The defendants acting individually and on behalf of CBI made numerous representations to ABI and April including but not limited to the following:

- a. Rammell and Christa represented to April that CBI had a guaranteed self-sustaining contract with a major customer.
- b. Rammell and Christa represented to April that CBI owned a library of proprietary books valued at over \$1,000,000.
- c. Rammell and Christa represented to April that CBI owned a proprietary software program unique to CBI's business.

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- d. Rammell and Christa represented that there was intellectual property unique to CBI.
- e. Rammell and Christa represented to April that CBI's assets would be bequeathed to her after Christa died.
- f. Rammell and Christa represented to April that the payments would cease after Christa's death.

58. The defendants failed to disclose that:

- a. There was no guaranteed contract and that the major customer could leave at any time for any reason.
- b. The library of proprietary books was in fact owned by the major customer and not CBI.
- c. That the software program utilized by CBI could be purchased off the shelf.
- d. That CBI did not own any intellectual property.

59. The statements and omissions of the defendants were false.

60. The statements and omissions of the defendants were material.

61. The defendants knew the statements and omissions were false.

62. The defendants intended that ABI rely on the false statements and omissions.

63. ABI and April did not know the statements and omissions were false.

64. ABI relied on the statements and omissions by signing the purported agreement and by paying \$12,000 a month to CBI from February 2004 to November 2008.

65. Such reliance by ABI was justifiable.

66. As a result of the defendants' false statements and omissions, ABI has been

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damaged in an amount to be proven at trial.

67. The defendants' conduct constitutes affirmative fraud, fraud by omission, and fraud in the inducement.

68. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

### **COUNT THREE: CONSTRUCTIVE FRAUD**

69. ABI incorporates and realleges all previous paragraphs.

70. The defendants and ABI had a relationship of trust and confidence because Christa, Rammell, and April were members of the same family and CBI and ABI were in contractual negotiations and ultimately signed an agreement.

71. The defendants breached this relationship of trust and confidence.

72. ABI is not required to establish that the defendants' knew their statement and omissions were false or that the defendants intended ABI rely on their false statements and omissions.

73. The defendants conduct constitutes constructive fraud.

74. As a result of the defendants' conduct, ABI has been damaged in an amount to be proven at trial.

75. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

### **COUNT FOUR: BREACH OF CONTRACT**

76. ABI incorporates and realleges all previous paragraphs.

77. The defendants promised to sell or assign several assets of CBI to ABI in

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exchange for payment of \$12,000/month.

78. These assets include but are not limited to:

- a. a guaranteed contract with a major customer;
- b. a library of proprietary books valued at over a million dollars;
- c. a proprietary software program unique to CBI's business;
- d. other intellectual property.

79. The parties' exchange of promises constitutes a binding contract.

80. ABI substantially performed its obligations under the contract and is not in material breach.

81. The defendants materially breached the contract by failing to provide the agreed upon assets.

82. The defendants conduct constitutes a failure of consideration.

83. The defendants conduct also constitutes a breach of the implied covenant of good faith and fair dealing.

84. The defendants' material breaches are the direct and proximate cause of damages to ABI.

85. ABI has suffered damages in an amount to be proven at trial.

86. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

#### **COUNT FIVE: BREACH OF EXPRESS WARRANTY**

87. ABI incorporates and realleges all previous paragraphs.

88. ABI and the defendants entered a contract for the sale of CBI's assets.

89. ABI substantially performed its obligations under the contract.

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90. As part of the contract the defendants expressly represented and warranted that CBI could transfer the following assets:

- a. a guaranteed contract with a major customer;
- b. a library of proprietary books valued at over a million dollars;
- c. a proprietary software program unique to CBI's business;
- d. other intellectual property.

91. This warranty was a material term of the contract and its breach constitutes a material breach of the contract.

92. Pursuant to Idaho Code § 28-2-312, in every contract for sale there is a warranty of title that the title is good and its transfer is rightful.

93. Pursuant to Idaho Code §§ 28-2-313, 28-121-210, any affirmation of fact or promise made by the seller or lessor to the buyer or lessee, which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

94. Pursuant to Idaho Code § 28-2-313, any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

95. Pursuant to Idaho Code § 28-12-211, there is a warranty that no other person holds a claim to or interest in the goods.

96. Contrary to the defendants' warranties, CBI could not transfer the assets because such assets did not exist or were not owned by CBI and the assets transferred, if any, did not conform.

97. The breach of warranty is the direct and proximate cause of damages to ABI.

98. ABI has suffered damages in an amount to be proven at trial.

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99. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

**COUNT SIX: BREACH OF IMPLIED WARRANTY**

100. ABI incorporates and realleges all previous paragraphs.

101. ABI and the defendants entered a contract for the sale of CBI's assets.

102. ABI substantially performed its obligations under the contract.

103. As part of the contract the defendants impliedly warranted that CBI could transfer the following assets:

- a. a guaranteed contract with a major customer;
- b. a library of proprietary books valued at over a million dollars;
- c. a proprietary software program unique to CBI's business;
- d. other intellectual property.

104. This warranty was a material term of the contract and its breach constitutes a material breach of the contract.

105. As part of the contract, the defendants impliedly warranted that the assets to be transferred would be merchantable, that is to say that it would pass without objection in the trade under the contract description; that it would be fit for the ordinary purpose of such goods; and that it would conform to the promises or affirmations of fact made.

106. As part of the contract the defendants impliedly warranted that the assets was fit for a particular purpose, that is to say that the defendants knew the purpose for which ABI intended it and that the ABI was relying upon the defendants to furnish the assets, and warranted thus impliedly warranted that the assets were suitable for that



purpose.

107. Contrary to the defendants' warranties, CBI could not transfer the assets because such assets did not exist or were not owned by CBI and such assets did not conform or were not suitable for ABI's purposes.

108. The breach of warranty is the direct and proximate cause of damages to ABI.

109. ABI has suffered damages in an amount to be proven at trial.

110. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

#### **COUNT SEVEN: UNJUST ENRICHMENT**

111. ABI incorporates and realleges all previous paragraphs.

112. ABI provided a benefit to the defendants by paying \$12,000 a month from February 2004 to November 2008.

113. Because ABI did not get what was promised, it would be unjust for ABI to retain the benefit.

114. As a result of defendants' conduct, ABI has been damaged in an amount to be proven at trial.

115. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

**COUNT EIGHT: QUASI-ESTOPPEL**

116. ABI incorporates and realleges all previous paragraphs.

117. The defendants took the position that April would no longer make any payments after Christa's death.

118. Christa had Rammell remove a clause in the contract that stated in the case of Christa's death payments would continue.

119. Rammell and Christa represented to April that CBI's assets would be bequeathed to her after Christa died.

120. Rammell and Christa represented to April that the payments would cease after Christa's death.

121. On November 10, 2008, Christa died.

122. No will was discovered leaving CBI's assets to April or ABI.

123. A holographic paragraph was produced by Rammell that states all of Christa's possessions go to Rammell.

124. ABI relied on the representations to its disadvantage.

125. It would be unconscionable to allow the defendants to maintain the inconsistent position that payments were to continue after Christa's death.

126. The defendants should be estopped from claiming that the payments must continue.

127. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

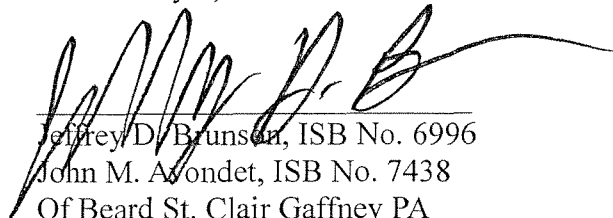
**PRAYER FOR RELIEF**

The Plaintiff prays for relief as follows:

1. Judgment against the defendants in an amount to be proven at trial.
2. A declaration that:
  - a. ABI is under no continuing obligation to make payments to CBI;
  - b. Monies previously paid by ABI to CBI should be refunded to ABI; and
  - c. There is no enforceable lease contract between ABI and CBI.
3. An order estopping the defendants from claiming payments should continue.
4. An award of attorney fees and costs pursuant to agreement Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.
5. Any other relief the Court deems just and proper.

**PURSUANT TO RULE 38 OF THE IDAHO RULES OF CIVIL PROCEDURE,  
PLAINTIFF DEMANDS TRIAL BY JURY**

Dated: May 7, 2009.



Jeffrey D. Brunson, ISB No. 6996  
John M. Avondet, ISB No. 7438  
Of Beard St. Clair Gaffney PA  
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2009 SEP 21 11:09  
 DISTRICT COURT  
 SEVENTH JUDICIAL DISTRICT  
 BONNEVILLE COUNTY

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

APRIL BEGUESSE, INC., an Idaho Corporation,  
 Plaintiff,  
 vs.  
 KENNETH RAMMELL, an individual,  
 CHRISTA BEGUESSE, INC., an Idaho Corporation, ESTATE OF CHRISTA BEGUESSE RAMMELL, by its qualified personal representative, Kenneth Rammell.  
 Defendants.

Case No. CV-09-2767

**ANSWER, COUNTERCLAIM,  
 AND DEMAND FOR JURY TRIAL**

COME NOW the Defendants, KENNETH RAMMELL individually and as personal representative of the ESTATE OF CHRISTA BEGUESSE RAMMELL, and CHRISTA BEGUESSE, INC., an Idaho corporation, by and through their attorney of record, Marcus W. Nye of the firm of Racine, Olson, Nye, Budge & Bailey, Chartered, and in response to the Complaint of the Plaintiff filed herein, admit, deny and allege as follows:

**FIRST DEFENSE**

The Complaint herein fails to state a claim upon which relief can be granted against these

Defendants, and should be dismissed.

## SECOND DEFENSE

1. Defendants deny each and every allegation of the Complaint not specifically admitted herein.

2. Defendants admit the allegations of paragraphs 1 through 9 of the Complaint.

3. Defendants deny the allegations of paragraphs 10 through 14 of the Complaint.

4. In response to paragraph 15 of the Complaint, Defendants state that a contract was entered into between Christa Beguesse, Inc. and April Beguesse, Inc., the terms of which contract speak for themselves.

5. Defendants are without sufficient information to determine the truth of the allegations of Paragraph 16 of the Complaint, and therefore deny the same.

6. Defendants are without sufficient information to form an opinion as to the truth of the allegations in paragraph 17, and therefore deny the same.

7. Defendants admit the allegations of paragraphs 18 and 19 of the Complaint.

8. Defendants deny the allegations of paragraph 20 of the Complaint.

9. Defendants admit the allegations of paragraphs 21 and 22 of the Complaint.

10. Defendants are without sufficient information to form a belief as to the truth of the allegations of paragraph 23 of the Complaint, and therefore deny the same.

11. Paragraph 24 of the Complaint fails to state facts with sufficient clarity to permit these defendants from forming an opinion as to their truth or falsity, and Defendants therefore deny the same. To the extent paragraph 24 makes any allegations regarding the contents of a contract, Defendants respond that said contract speaks for itself.

12. Defendants deny the allegations of paragraph 25 of the Complaint, and state further that the contract speaks for itself.

13. Defendants deny the allegations of paragraphs 26, 27 and 28 of the Complaint.

14. In response to paragraph 29, Defendants deny that April signed the contract “based on the representations of Rammell and Christa.” Defendants admit that April signed a contract entitled “Lease Agreement” between CBI and ABI, effective January 1, 2004.

15. In response to paragraphs 30 and 31 of the Complaint, Defendant states that the alleged contract speaks for itself.

16. The Defendants admit the allegations of paragraphs 32 through 36.

17. The Defendants deny the allegations of paragraph 37.

18. In response to paragraph 38 of the Complaint, to the extent that it alleges the existence of a contract between CBI and a customer, said contract speaks for itself.

19. In response to paragraph 39 of the Complaint, Defendants deny ever having made reference to a “library” owned by CBI, or any representations contrary to the facts.

20. Defendants deny the allegations of paragraph 40 of the complaint.

21. Defendants admit the allegations of paragraphs 41 through 44 of the complaint.

#### **COUNT 1: DECLARATORY RELIEF**

22. In response to paragraph 45 of the complaint, the Defendants restate their responses to paragraphs 1 through 44.

23. Defendants deny the allegations of paragraphs 46 through 50.

24. Defendants admit the allegations of paragraph 51 of the Complaint.

25. Defendants deny the allegations of paragraphs 52 to 55 of the Complaint.

**COUNT 2: FRAUD**

26. In response to paragraph 56 of the Complaint, Defendants restate their responses to paragraphs 1 through 55.

27. Defendants deny the allegations of paragraphs 57 through 68.

**COUNT 3: CONSTRUCTIVE FRAUD**

28. In response to paragraph 69 of the Complaint, Defendants restate their responses to paragraphs 1 through 68.

29. Defendants deny the allegations of paragraphs 70 through 75 of the Complaint.

**COUNT 4: BREACH OF CONTRACT**

30. In response to paragraph 76 of the Complaint, Defendants restate their responses to paragraphs 1-75.

31. Defendants deny the allegations of paragraph 77 and 78.

32. In response to paragraph 79 of the Complaint, Defendant admits that the parties entered into a binding contract, pursuant to which the parties performed from January 2004 until November 2008, and that the terms of the contract speak for themselves.

33. In response to paragraph 80 of the Complaint. Defendant admits that ABI substantially performed its obligations under the contract until November 2008, at which time it ceased performing under the contract, and is currently in material breach thereof.

34. Defendants deny the allegations of 81 through 86 of the Complaint.

**COUNT 5: BREACH OF EXPRESS WARRANTY**

35. In response to paragraph 87 of the Complaint, Defendants restate their responses 1 through 86.

36. Defendants deny the allegations of paragraph 88 of the Complaint.

37. In response to paragraph 89, Defendants allege that Plaintiff is in material breach of its obligations under the contract.

38. Defendants deny the allegations of paragraphs 90 and 91.

39. In response to paragraphs 92 through 95 of the Complaint, the Idaho Statutes referenced therein speak for themselves and are the best evidence of the statutory requirements. Said paragraphs do not otherwise appear to require a response from the Defendants.

40. Defendant deny the allegations of paragraphs 96 through 99.

#### **COUNT 6: BREACH OF IMPLIED WARRANTY**

41. In response to paragraph 100 of the Complaint, Defendants restate their responses to paragraphs 1 through 99.

42. Defendants deny the allegations of paragraph 101.

43. In response to paragraph 102, Defendants admit that ABI substantially performed its obligations under the contract through November 2008, but since that time is in material breach of the contract.

44. Defendants deny the allegations of paragraphs 103 through 110.

#### **COUNT 7: UNJUST ENRICHMENT**

45. In response to paragraph 111 of the Complaint, Defendants restate their responses to paragraphs 1 through 110.

46. In response to paragraph 112, Defendants admit that ABI paid Defendants \$12,000.00 per month for February 2004 to November 2008. Defendants deny all other allegations of paragraph 112.



47. Defendants deny the allegations of paragraphs 113 through 115 of the Complaint.

**COUNT 8: QUASI-ESTOPPEL**

48. In response to paragraph 116 of the Complaint, Defendant restates its responses to paragraphs 1 through 115.

49. Defendants deny the allegations of paragraphs 117 through 120 of the Complaint.

50. Defendants admit the allegation of paragraphs 121 through 122 of the Complaint.

51. In response to Paragraph 123 of the Complaint, Defendants aver that a holographic will was produced.

52. Defendant deny the allegations of paragraphs 124 through 127 of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

The claims of the Plaintiff are barred by the applicable statutes of frauds, including but not limited to Idaho Code § 9-505, § 15-2-701, and § 28-2-201.

**SECOND AFFIRMATIVE DEFENSE**

The claims of the Plaintiff are barred by the applicable of statutes of limitations, including but not limited to I.C. § 5-216, § 5-217, § 5-218, and §§ 15-3-801, *et seq.*

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims for declaratory judgement, fraud, constructive fraud, breach of contract, breach of express and implied warranties and unjust enrichment and quasi-estoppel are barred by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of waiver.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff should be estopped from denying its obligations and duties under the contract.

**SIXTH AFFIRMATIVE DEFENSE**

Defendants expressly disclaimed in the contract all express and implied warranties.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims should be barred by Plaintiff's material breach of the contract at issue in this matter.

**ATTORNEY FEES**

Defendants have been required to retain the services of the law firm of Racine, Olson, Nye, Budge & Bailey, Chtd., and are entitled to a reasonable fee therefor pursuant to Idaho Code, including, but not limited to, I.C. §§ 12-120(3) and 12-121 and paragraph 17 of the Lease Agreement between the parties.

WHEREFORE, Defendants pray that judgment be entered in this action declaring the respective rights and duties of the parties, dismissing the Plaintiff's complaint with prejudice, awarding the Defendants their reasonable attorney's fees and costs, and granting Defendants such other and further relief as is just under the circumstances.

**COUNTERCLAIM**

COMES NOW, Defendant /Counterclaimant Christa Beguesse, Inc., an Idaho corporation, by and through counsel, and for its Counterclaim against the Plaintiff/Counterdefendant, April Beguesse, Inc., and Idaho corporation, as follows:

**PARTIES & JURISDICTION**

1. Defendant/Counterclaimant Christa Beguesse, Inc. (herein "CBI"), is a corporation in good standing registered under the laws of the State of Idaho, having its principal

place of business in Idaho Falls, Bonneville County, Idaho.

2. Plaintiff/Counterdefendant April Beguesse, Inc. (herein "ABI"), is a corporation in good standing registered under the laws of the State of Idaho, having its principal place of business in Idaho Falls, Bonneville County, Idaho.

3. The actions, or failures to act, giving rise to this cause of action occurred or should have occurred in Bonneville County, Idaho.

4. Jurisdiction and venue are proper in this court.

### **BACKGROUND**

5. For several years, CBI operated a profitable business and acquired assets for the operation of the business.

6. On or before January 1, 2004, CBI entered into an agreement with ABI, pursuant to which ABI agreed to lease the business and assets (collectively "the Assets") from CBI for a period of eight consecutive years commencing January 1, 2004. The Lease Agreement (herein "the Agreement") between CBI and ABI required ABI to make rent payments to CBI in the amount of \$12,000 per month, beginning in January 2004 and continuing for ninety-six months, through December 31, 2011. A true and correct copy of the Agreement is attached hereto as **Exhibit A**, and incorporated herein by reference as if set forth fully.

7. The Agreement provided that the Assets leased to ABI were to be described in exhibits attached thereto. Even though the parties inadvertently failed to specifically describe the leased Assets in the exhibits, the parties performed their obligations under the Agreement for a period of almost 5 years, until November 2008. During the years of performance, ABI used CBI's Assets, and ABI also made the required lease payments to CBI, thereby establishing

through the parties' conduct and dealings the specific assets that were intended to be the subject of the Agreement.

8. ABI has failed or refused to make the rent payments to CBI after November 2008, despite having been given notice of default. CBI never received payment from ABI for December 2008 or any month thereafter.

9. Since November 2008, ABI has continued to use CBI's Assets to operate the business that was the subject of the Agreement.

10. On information and belief, since it stopped making the rent payments to CBI, ABI has continued to make profits from the use of CBI's Assets.

**COUNT I**  
**(Breach of Contract)**

11. CBI reasserts the allegations in all prior paragraphs of this Counterclaim by reference and incorporates the same as if set forth fully.

12. The above-described Agreement is a legal and binding contract properly formed between CBI and ABI.

13. ABI's failure or refusal to make the rent payments as required by the Agreement is a material breach of the Agreement.

14. CBI has suffered damages, and continues to suffer damages, as a result of ABI's breach, in the amount of \$12,000 per month for unpaid rent, beginning with December 2008 and continuing until such time as the breach is cured or the lease expires, together with interest accruing on each payment from the due date at the rate of eight percent (8%) per annum.

**COUNT II**  
**(Unjust Enrichment)**

15. CBI reasserts the allegations in all prior paragraphs of this Counterclaim by reference and incorporates the same as if set forth fully.

16. ABI has remained in possession of and continues to use CBI's Assets that were the subject of the lease Agreement even though it has failed to make the rent payments therefor.

17. ABI continues to derive a valuable economic benefit from its wrongful use of the CBI's Assets that were the subject of the lease Agreement.

18. CBI has conferred a benefit upon ABI, which benefit has been appreciated by ABI, and it would be inequitable for ABI to retain the benefit without payment for the value thereof to CBI.

19. ABI has been unjustly enriched and is liable to CBI for the value of the benefit conferred, in an amount to be established at trial.

**COUNT III**  
**(Constructive Trust)**

20. CBI reasserts the allegations in all prior paragraphs of this Counterclaim by reference and incorporates the same as if set forth fully.

21. ABI has remained in possession of and continues to use the Assets that were the subject of the Agreement with CBI even though it has failed to make full payment to CBI for those Assets.

22. ABI's continued use of the Assets without full payment to CBI is wrongful.

23. ABI continues to derive an economic benefit from its wrongful use of the Assets that were the subject of the Agreement.

24. CBI has no adequate remedy at law and is entitled to a constructive trust in its favor for all profits earned by ABI derived from the Assets that were the subject of the

Agreement with CBI and for which ABI has not made full payment.

### **ATTORNEY FEES**

25. CBI has been required to retain the assistance of the law firm Racine, Olson, Nye, Budge & Bailey, Chartered, to pursue and protect its legal interests related to this matter and is entitled to an award of its reasonable attorney fees pursuant to Idaho Code, including sections 12-120(3) and 12-121, and pursuant to paragraph 17 of the Lease Agreement between the parties.

WHEREFORE, CBI prays for judgment against Counterdefendant ABI as follows:

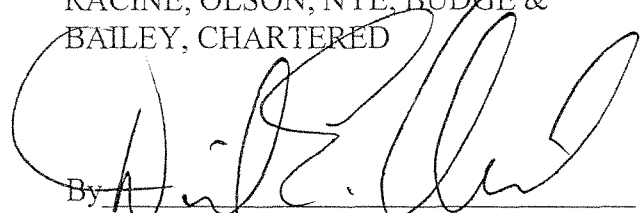
- A. For a money judgment in the amount of \$12,000 per month, beginning with December 2008 through such time as ABI cures its default or is no longer obligated to make payments under the Lease Agreement; or in the alternative, for the value of the benefit CBI has conferred upon ABI for which it is unjust for ABI to retain, in an amount to be established at trial; plus interest thereon from each payment due date at the rate of 8% per annum.
- B. For a constructive trust in favor of CBI for all profits earned by ABI from its use of the Assets it has used pursuant to the Lease Agreement with CBI since November 2008.
- C. For CBI's costs of suit and reasonable attorney fees incurred in this action. In the event of default, a reasonable attorneys fee shall be \$10,000.

### **JURY DEMAND**

Defendant Kenneth Rammel, individually and as personal representative of the estate of Christa Beguesse Rammel, and Defendant/Counterclaimant CBI hereby request a trial by jury on all issues so triable.

Dated this 18<sup>th</sup> day of September, 2009.

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

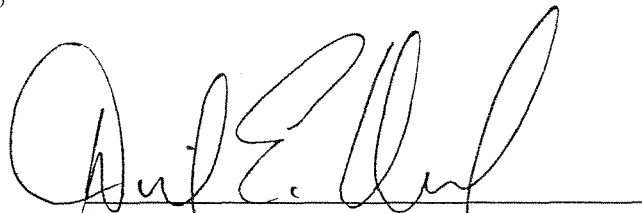
By   
DAVID E. ALEXANDER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8<sup>th</sup> day of September, 2009, I served a true, correct and copy of the above and foregoing document upon the following person(s) as follows:

Jeffrey D. Brunson  
John M. Avondet  
BEARD ST. CLAIR GAFFNEY PA  
2105 Coronado Street  
Idaho Falls, Idaho 83404-7495

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208) 529-9732

  
DAVID E. ALEXANDER

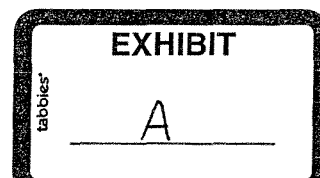
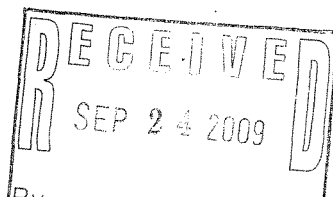
## LEASE AGREEMENT

This Lease Agreement (subsequently called "this Lease") is entered and made effective as the 1<sup>st</sup> day of January, 2004, by and between, CHRISTA BEGUESSE, INC., an Idaho corporation, (subsequently called "Lessor"), and APRIL BEGUESSE, INC., an Idaho corporation, (subsequently called "Lessee"). This Lease is made upon the terms and conditions subsequently set forth in this document. In that regard, Lessor and Lessee each agree to observe and perform each and every term and condition of this Lease, as subsequently set forth in this document, as each such term or condition relates to each such party.

1. **BUSINESS AND EQUIPMENT.** For and in consideration of the promises set forth in this Lease and the payment of the rents specified in this Lease, Lessor leases, demises and rents unto the Lessee, and Lessee leases, demises and rents from Lessor, that certain business described in Exhibit "A" attached hereto (the "Business"), that certain equipment described in Exhibit "B" attached hereto. (Such business and equipment identified in Exhibits "A" and "B", shall collectively be referred to herein as "the Property", unless otherwise indicated.)
2. **TERM.** Lessee shall have and hold the Property, together with any other appurtenances, privileges, rights and easements belonging to the Property, or in any way appertaining to the Property, for a term of eight (8) consecutive years commencing on January 1, 2004, and continuing until midnight on December 31, 2011.
3. **POSSESSION.** Lessee shall be entitled to possession of the Property on January 1, 2004. Prior to taking possession of the Property, Lessee shall pay Lessor the first month's rental installment as subsequently identified and described below, unless otherwise agreed by the parties herein.
4. **RENT.** As rental for the Property, Lessee shall pay the following:
  - A. **BASE RENT.** Lessee shall pay Lessor rent in the amount of Twelve Thousand Dollars (\$12,000.00) per month. Each such monthly rental amount shall be payable in advance, beginning on the last day of January, 2004, and continuing on the last day of each successive month thereafter, for 96 months, until the expiration of the term of this Lease, on December 31, 2011, all as adjusted from year to year as subsequently provided in this Lease. Lessor may assess a late fee on any payment made after the last day of the month in which the payment is due. The amount of the late fee shall be equal to 5% of the late payment.
  - B. **ADDITIONAL RENT.** This Lease allocates all responsibility to Lessee for provision and payment of all "operating costs" as subsequently identified and described in this Lease. In that regard, if any such "operating costs" are paid or incurred by Lessor at any time during this Lease, Lessee shall pay or reimburse to Lessor as additional rent all such "operating costs" so paid or

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1- LEASE AGREEMENT





incurred by Lessor. Lessor shall give Lessee ten days notice of any unexpected "operating costs".

1. "Operating Costs" Defined. For the purpose of this Lease, the term, "operating costs", shall include all costs of operation, management, and maintenance of the Property. The term, "operating costs", shall specifically include the following costs, by way of illustrations, but not by way of limitation, as they relate to the Property:
  - a. licenses, documents, credit reports, permits, inspection fees, and financial statements;
  - b. all taxes, (income, excise, property, withholdings and any other taxes that become due and owing as a result of the Property);
  - c. any costs or fees imposed upon the Property for any reason whatsoever;
  - d. in the event Lessee fails to repair and maintain the Property in a timely manner, as provided in this Agreement, and in the event Lessor hires personnel to repair or maintain the Property, Lessee agrees to reimburse Lessor for wages, salaries and employees benefits of personnel engaged in operation and maintenance of the Property;
  - e. supplies, materials, office equipment, property and tools; and
  - f. any and all expenses related to the operation and management of the Business;

Notwithstanding anything to the contrary herein, Lessee may replace any obsolete equipment, provided however that Lessee is responsible for the payment of any and all costs arising out of said replacement. Said replaced equipment shall at all times be, and remain, the property of the Lessor.

- C. PLACE OF PAYMENT. Lessee specifically acknowledges that all rental payments due under this Lease, including any late fees, shall be made or delivered to Lessor at Lessors place of business or at such other place as Lessor may designate in writing from time to time. The failure of Lessee to pay the full amount of the Base Rent and all other rental payments, including without limitation any additional rent and adjusted rent as previously identified and described, each month as the same comes due shall constitute a material breach of this Lease and a default under this Lease.

5. **COMPLIANCE WITH LAWS.** The Property shall not be used for any unlawful purpose during the term of this Lease. Lessee shall comply with all federal, state, county and city ordinances, laws and regulations, present or future, affecting the use of, or the type the Property. Likewise, compliance with any contracts affecting or relating to the Property.
6. **MAINTENANCE.** Lessee shall at all times from and after delivery of possession of the Property to Lessee (at Lessee's own cost and expense) maintain, repair and/or replace (subsequently called "maintenance") in good and rentable condition the Property and every part thereof. Such maintenance shall be performed by Lessee in a good and workmanlike manner. Lessee shall also perform such items of maintenance or improvement to the Property as may at any time be required by any government agency or private company having jurisdiction over the Property.
7. **NO OBLIGATION OR LIABILITY.** Nothing in this Lease shall imply any duty on the part of the Lessor to do any maintenance or work under any provision of this Lease that the Lessee may be required to do, nor shall it constitute a waiver of Lessee's breach or default in failing to do the same. No exercise by the Lessor of any rights in this Lease shall entitle Lessee to any damages for any injury or inconvenience occasioned thereby, not to any abatement of rent. Once again, in the event that Lessor makes or causes any such repairs to be made or performed, as previously provided herein, Lessee shall pay the cost thereof to Lessor, forthwith, as additional rent upon receipt of a bill therefore.
8. **WASTE.** Lessee shall not commit any waste or damage to the Property, nor permit any waste or damage to be done to the Property.
9. **PROTECTION OF PROPERTY.** Except with respect to any maintenance obligations expressly assumed by Lessor in this Lease, Lessee shall maintain the Property in as good condition as the Property is when Lessee takes possession of the Property, reasonable wear and tear excepted. At the termination of this Lease in any manner, Lessee shall surrender the Property to Lessor in the condition described above.
10. **INSURANCE.**
  - A. **LESSEE'S OBLIGATION.** Lessee shall maintain, and pay for, adequate fire and extended coverage insurance upon the Property. Lessee shall maintain all such policies in force during the term of this Lease and shall provide Lessor with copies of all certificates of insurance or other satisfactory evidence of insurance at the beginning of the term prior to taking possession of the Property and at any other subsequent time requested by Lessor.
  - B. **WAIVER OF SUBROGATION.** Lessee waives any and all rights of recovery against Lessor's managers, members, employees, agents, representatives and insurers for loss of damage to Lessee's property insured

under a standard fire insurance policy with all permissible extension endorsements covering additional perils or under any other policy or insurance carried by Lessee in lieu thereof.

11. **ACCEPTANCE OF PROPERTY.** Lessee has thoroughly inspected the Property prior to executing this Lease, and as a result of that inspection, Lessee accept the Property in their present condition and consider the same to be in a state of good repair. Nevertheless, Lessee shall pay for all cost increased caused by any such variations in the form of adjusted rents as previously identified and described in the Lease.
12. **NON-LIABILITY OF LESSOR.** As part of the consideration for this Lease, Lessor shall not be liable for any injury or damage which may be sustained by the person or property of Lessee, or any other persons or property, resulting from the condition of the Property, or any part thereof, latent or otherwise.
13. **LESSOR'S DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS LEASE, LESSOR DISCLAIMS ALL IMPLIED WARRANTIES RELATING TO THE PROPERTY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY OF COMMERCIAL OR PROFESSIONAL HABITABILITY. BY SIGNING THIS LEASE, LESSEE ACCEPTS THE PROPERTY SUBJECT TO LESSOR'S DISCLAIMER.
14. **TIME OF ESSENCE.** Time and strict and faithful performance of each and every one of the conditions of this Lease is expressly made the essence of this Lease.
15. **DEFAULT.** Lessor shall have the following remedies:
  - A. **Default in Rents or Other Provisions.** If Lessee fails to pay off any part of the rents under this Lease when such rents are due, or if Lessee fails to keep, perform or observe any of the conditions or terms contained in this Lease, and such default in payment or performance remains for a period of thirty (30) days after written notice shall have been sent by certified mail to Lessee, then and in such event, Lessor, at Lessor's election, may declare the term of this Lease ended and this Lease forfeited, and Lessor may enter Lessee's principal place of business to repossess and enjoy the Property.
  - B. **Additional Remedies.** The remedies set forth in this Lease shall be considered optional remedies and not a waiver of any right or remedy that Lessor would otherwise have at law or in equity to enforce the performance of this Lease or to recover damages for breach of any condition or term of this Lease or for default of any promise under this Lease.

- C. **Default Waiver.** A waiver of any default or breach of any term of this Lease by Lessor shall not be deemed to be a waiver of any other default or breach of the same term or of any other term of this Lease. All waivers must be in writing and be signed by Lessor.
16. **LESSOR'S RIGHT TO CURE LESSEE'S DEFAULTS.** If Lessee shall breach any condition or term, or default in the performance of any promise, in this Lease required to be performed by Lessee, the Lessor may, after thirty (30) days written notice to Lessee, in which event Lessee shall reimburse Lessor for all sums paid to effect such cure, together with interest and a reasonable attorney's fees. In order to collect such reimbursement, Lessor shall have all the remedies available under this Lease for a default in the payment of rents, and the provisions of this paragraph shall survive the termination of this Lease. Nothing in this paragraph provided shall in any way require Lessor to perform any such condition or term or correct any such default on the part of Lessee.
17. **ATTORNEYS FEES.** In the event suit is brought to enforce any of the terms and conditions of this Lease, then the successful party to such suit shall be entitled to recover reasonable attorney's fees, together with such other legal costs as may be authorized by law.
18. **INTEREST.** Any right of Lessor to "interest" from Lessee as allowed or indicated in this Lease shall accrue at the rate of eight percent (8%) per annum, unless otherwise specifically stated in the context of this Lease.
19. **NOTICES.** All notices required to be given to Lessee under this Lease shall be given by depositing a copy of such notice in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to Lessee at Lessee's principal place of business, or to such other address as the Lessee shall direct by a writing delivered to the Lessor. Such notice may be given by depositing a copy of such notice in the United States main, postage prepaid by regular mail at said address if Lessee refuses to sign the return receipt requested.
20. **MODIFICATION.** This Lease contains the entire agreement between Lessor and Lessee and the provisions of this Lease may not be modified or changed orally, but only by an agreement in writing and signed by Lessor and Lessee.
21. **BINDING ON SUCCESSORS.** The provisions in this Lease, and any extensions thereof, shall inure to the benefit of, and be binding upon, their heirs personal representatives, successors and assigns in interest of both Lessor and Lessee. Nothing contained in this provision shall negate the prohibition of assignment by Lessee without Lessor's approval as specified if Section 31 of this Lease.
22. **SUBORDINATION.** This Lease shall be subject to, and subordinate and inferior to, at all times, the lien of any mortgage, any deed of trust, or any other method of financing or refinancing now or hereafter existing against all or any part of the

Property, including without limitation any renewals, modifications, replacements, consolidations and extensions of any of the foregoing methods of financing. Lessee shall execute and deliver to Lessor or any other person designated by Lessor all documents requested by Lessor, or by any mortgagee, trustee, beneficiary, or other security holder of Lessor holding a security interest in the Property or lending funds to Lessor with an expectation of acquiring a security interest in the Property, to effect such subordination, including any construction financing. Lessee's failure to execute and deliver such documentation shall constitute a default under this Lease.

23. **SIGNATURE AUTHORITY.** Lessor and Lessee each make the following representations to each other to the extent they are applicable:
- A. Any entity signing this Lease has been legally formed, is in good standing under the laws of the State of Idaho, and has all powers necessary to approve of this transaction.
  - B. Each person signing this Lease on behalf of such entity is duly authorized by such entity to do so.
  - C. No entity signing this Lease is subject to any charter, bylaws, shareholder's agreement, partnership agreement, operating agreement, mortgage, deed of trust, contract, lien, lease, judgement or other requirement or document, including any amendments thereto, which prevents the consummation of this transaction, or if there are any such things, then such things shall be removed or the appropriate consents obtained prior to signing this Lease.
24. **IDAHO LAW GOVERNS.** This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of Idaho.
25. **CONSULTATION.** Lessor hereby agrees to provide consultation regarding the operation and management of the Property, to Lessee, as needed during the term of this Lease.
26. **ACCOUNTING.** Lessee shall provide to Lessor a quarterly accounting of the Business. Each quarterly accounting, which shall cover the prior quarterly period, shall be provided to Lessor within the first week of the quarter (for example: the first quarter accounting shall be due on or before the first week of April; the second quarter accounting shall be due on or before the first week of July; the third quarter accounting shall be due on or before the first week of October; and the fourth quarter accounting shall be due on or before the first week of January).
27. **ASSIGNMENT.** Notwithstanding anything to the contrary herein, Lessee may not assign or sublet its rights, duties, or obligations under this Lease Agreement without first receiving the written consent of Lessor, which may be unreasonably withheld.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals making this Lease effective as of the date and year first written in this Lease.

Lessor:

Lessee:

CHRISTA BEGUESSE, INC.

APRIL BEGUESSE, INC.

By:

President

By:

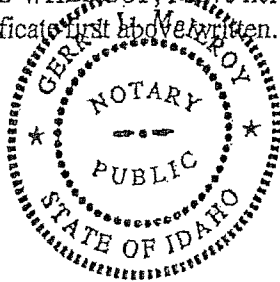
President

ACKNOWLEDGMENTS

STATE OF IDAHO )  
 )ss.  
County of Bonneville )

On this 10<sup>th</sup> October day of ~~January~~, in the year 2004, before me, a Notary Public, personally appeared Christa Beguesse Rammell, known or identified to me, to be the managers of CHRISTA BEGUESSE, INC., the corporation who executed the instrument or the person who executed the instrument on behalf of CHRISTA BEGUESSE, INC., and acknowledged to me that CHRISTA BEGUESSE, executed the same.

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



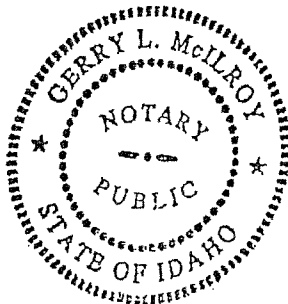
Gerry L. McIlroy  
Notary Public of Idaho  
Residing at 25 S. Highland Dr. Halo Falls  
My Commission Expires 7/23/07

ACKNOWLEDGMENTS

STATE OF IDAHO )  
 )ss.  
County of Bonneville )

On this 1<sup>st</sup> October day of ~~January~~, in the year 2004, before me, a Notary Public, personally appeared APRIL BEGUESSE, known or identified to me, to be the President of APRIL BEGUESSE, INC., the corporation who executed the instrument or the person who executed the instrument on behalf of APRIL BEGUESSE, INC., and acknowledged to me that APRIL BEGUESSE, INC., executed the same.

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



Gerry L. McIlroy  
Notary Public of Idaho  
Residing at 25 S. Highland Dr. Halo Falls  
My Commission Expires 7/23/07





EXHIBIT "A"

BUSINESS

**EXHIBIT "B"**

055

EXHIBIT "B"

EQUIPMENT

BONNEVILLE COUNTY  
IDAHO  
09 OCT -8 PM 4:05

Jeffrey D. Brunson, ISB No. 6996  
John M. Avondet, ISB No. 7438  
BEARD ST. CLAIR GAFFNEY PA  
2105 Coronado Street  
Idaho Falls, ID 83404-7495  
Tel: (208) 523-5171  
Fax: (208) 529-9732  
Email: jeff@beardstclair.com  
javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa  
Beguesse, Inc., an Idaho corporation, The  
Estate of Christa Beguesse Rammell, by its  
qualified personal representative, Kenneth  
Rammell,

Defendants/Counterclaimants.

Case No.: CV-09-2767

PLAINTIFF'S REPLY TO DEFENDANT,  
CHRISTA BEGUESSE, INC.'S,  
COUNTERCLAIM

Plaintiff/Counterdefendant, April Beguesse, Inc. (ABI), by and through counsel of record, denies all allegations of Defendant/Counterclaimant, Christa Beguesse, Inc.'s (CBI), Counterclaim not expressly admitted herein and more specifically responds as follows:

1. ABI does not have sufficient information to admit or deny paragraph 1, and therefore denies paragraph 1.
2. ABI denies paragraph 2.

3. ABI admits paragraph 3.
4. ABI admits paragraph 4.
5. ABI does not have sufficient information to admit or deny paragraph 1, and therefore denies paragraph 5.
6. ABI denies paragraph 6.
7. ABI denies paragraph 7.
8. ABI admits that it has not made a payment to CBI since December 2008 denies the remainder of the allegations contained in paragraph 8.
9. ABI denies paragraph 9.
10. ABI denies paragraph 10.
11. ABI incorporates its responses to paragraphs 1 through 10.
12. ABI denies paragraph 12.
13. ABI denies paragraph 13.
14. ABI denies paragraph 14.
15. ABI incorporates its responses to paragraphs 1 through 14.
16. ABI denies paragraph 16.
17. ABI denies paragraph 17.
18. ABI denies paragraph 18.
19. ABI denies paragraph 19.
20. ABI incorporates its responses to paragraphs 1 through 19.
21. ABI denies paragraph 21.
22. ABI denies paragraph 22.
23. ABI denies paragraph 23.
24. ABI denies paragraph 24.

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25. ABI denies paragraph 25.

### AFFIRMATIVE DEFENSES

ABI asserts the following affirmative defenses:

1. The Counterclaim fails to state a claim upon which relief can be granted.
2. CBI's claims are barred due to fraud.
3. CBI's claims are barred by the doctrine of estoppel.
4. CBI's claims are barred by the doctrine of laches.
5. CBI's claims are barred by the doctrine of unclean hands.
6. CBI's claims are barred because CBI's damages, if any, were caused by

CBI's own conduct.

7. CBI has failed to mitigate its damages.
8. CBI's claims are barred because ABI's conduct is not the proximate cause

of any loss suffered by CBI, if any.

9. CBI has no damages.
10. CBI's claims are subject to offsets.
11. CBI's claims are barred by the doctrine of waiver.
12. CBI's claims are barred by the failure of consideration.
13. CBI's claims are barred by the lack of consideration.
14. If CBI has been damaged, then those damages are a result of CBI's own

conduct.

15. CBI's claims are barred by the doctrine of mutual mistake.
16. CBI's claims are barred by an implied in fact contract.
17. CBI's claims are barred by an implied in law contract.

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18. CBI's claims are barred based on its own breach of contract including the implied covenant of good faith and fair dealing.

19. CBI's claims are barred based on lack of mutual assent.

20. CBI's claims are barred based on its own breach of express and implied warranties.

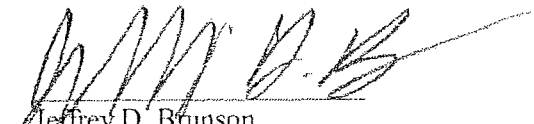
21. CBI's claims are barred based on the claims and facts set forth in ABI's Complaint against CBI, Kenneth Rammell, and the Estate of Christa Beguesse Rammell.

#### PRAYER FOR RELIEF

WHEREFORE, ABI demands judgment:

1. Dismissing CBI's Counterclaim in its entirety;
2. Awarding ABI's reasonable attorneys' fees, costs and disbursements of defending this action pursuant to, Idaho Code §§ 12-120, 12-121, Rule 54 of the Idaho Rules of Civil Procedure, any contract, and any other rule or provision; and
3. Granting such other and further relief as the Court deems just and proper.

DATED: October 8, 2009.

  
\_\_\_\_\_  
Jeffrey D. Brunson  
Of Beard St. Clair Gaffney PA  
Attorneys for Plaintiff

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**CERTIFICATE OF SERVICE**

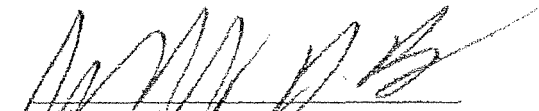
I certify that I am an attorney licensed in the State of Idaho, have my office located in Idaho Falls, Idaho and on October 8, 2009, I served a true and correct copy of the Plaintiff's Reply to Defendant, Christa Beguesse, Inc.'s, Counterclaim upon the following as indicated below:

David E. Alexander  
Racine Olson Nye Budge Bailey  
PO Box 1391  
Pocatello, ID 83204-139  
Fax: 232-6109

U.S. Mail     Hand-Delivered     Facsimile

Bonneville County Courthouse  
605 N Capital Avenue  
Idaho Falls, ID 83402  
Fax: 529-1300

U.S. Mail     Hand-Delivered     Facsimile

  
\_\_\_\_\_  
Jeffrey D. Brunson  
BEARD ST. CLAIR GAFFNEY PA  
Attorney for Plaintiff



9 DEC -8 AM 11:15

Jeffrey D. Brunson, ISB No. 6996  
John M. Avondet, ISB No. 7438  
BEARD ST. CLAIR GAFFNEY PA  
2105 Coronado Street  
Idaho Falls, ID 83404-7495  
Tel: (208) 523-5171  
Fax: (208) 529-9732  
Email: jeff@beardstclair.com  
javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa  
Beguesse, Inc., an Idaho corporation, The  
Estate of Christa Beguesse Rammell, by its  
qualified personal representative, Kenneth  
Rammell,

Defendants/Counterclaimants.

Case No.: CV-09-2767

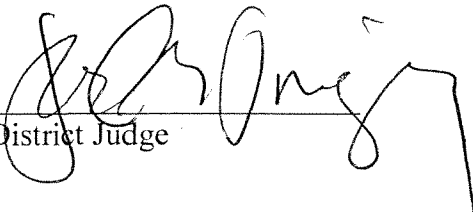
PROTECTIVE ORDER

This matter having come before the Court by means of the Stipulation for Entry of Protective Order executed by the parties, and good cause having been found:

IT IS HEREBY ORDERED that the parties shall not release, disclose, or otherwise cause to be released or disclosed Plaintiff's customer information, financial information, tax information, and other confidential business information, to any person not a party to the pending action between Plaintiff and the Defendants or to any person

not an expert witness in the above action, and shall use such information solely for the purposes of this litigation.

DATED: December 7, 2009.

  
District Judge

**CLERK'S CERTIFICATE OF SERVICE**

I certify that on December 8, 2009, I served a true and correct copy of the

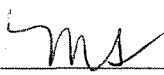
Protective Order upon the following as indicated below:

David E. Alexander  
Racine Olson Nye Budge Bailey  
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Pocatello, ID 83204-139  
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Beard St. Clair Gaffney  
2105 Coronado Street  
Idaho Falls, ID 83404  
Fax: 529-9732

U.S. Mail     Hand-Delivered     Facsimile

  
\_\_\_\_\_  
Clerk of the Court

10 FEB 10 A8:15

Jeffrey D. Brunson, ISB No. 6996  
John M. Avondet, ISB No. 7438  
BEARD ST. CLAIR GAFFNEY PA  
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Email: jeff@beardstclair.com  
javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff,

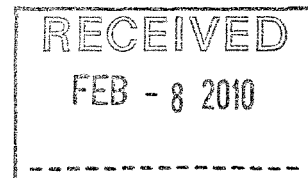
vs.

Kenneth Rammell, an individual, Christa  
Beguesse, Inc., an Idaho corporation, The  
Estate of Christa Beguesse Rammell, by its  
qualified personal representative, Kenneth  
Rammell,

Defendants.

Case No.: CV-09-2767

ORDER TO AMEND PLEADINGS

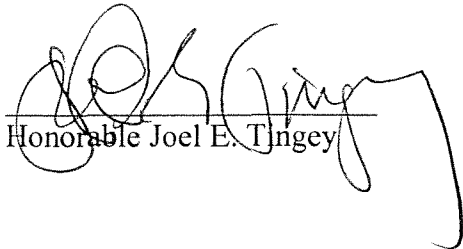


This matter having come before the Court by means of the Stipulation to Amend Pleadings executed by the parties, and good cause having been found:

IT IS HEREBY ORDERED:

1. Plaintiff may file its First Amended Complaint attached to its Motion to Amend filed contemporaneously with this stipulation.
2. Defendants may file their First Amended Counterclaim attached to their motion for leave to file amended counterclaim filed with the Court January 8, 2010.

DATED: February 9, 2010.

  
Honorable Joel E. Tingey

### CLERK'S CERTIFICATE OF SERVICE

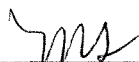
I certify that on February 10, 2010, I served a true and correct copy of the Order to Amend Pleadings upon the following as indicated below:

David E. Alexander  
Racine Olson Nye Budge Bailey  
PO Box 1391  
Pocatello, ID 83204-139  
Fax: 232-6109

U.S. Mail     Hand-Delivered     Facsimile

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2105 Coronado Street  
Idaho Falls, ID 83404  
Fax: 529-9732

U.S. Mail     Hand-Delivered     Facsimile

  
\_\_\_\_\_  
Clerk of the Court

DISTRICT 7TH JUDICIAL COURT  
BONNEVILLE COUNTY IDAHO

10 FEB 18 08:28

Jeffrey D. Brunson, ISB No. 6996  
John M. Avondet, ISB No. 7438  
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javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff,

vs.

Kenneth Rammell, an individual, Christa  
Beguesse, Inc., an Idaho corporation, The  
Estate of Christa Beguesse Rammell, by its  
qualified personal representative, Kenneth  
Rammell,

Defendants.

Case No.: CV-09-2767

FIRST AMENDED COMPLAINT AND  
JURY DEMAND

Plaintiff, April Beguesse, Inc., through its attorneys, alleges and complains  
against the Defendants as follows.

**PARTIES**

1. April Beguesse, Inc. (ABI) is an Idaho Corporation set up under the laws of the State of Idaho.
2. Kenneth Rammell (Rammell) is an individual residing in Bonneville County, Idaho.

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3. Christa Beguesse, Inc. (CBI) is an Idaho Corporation set up under the laws of the State of Idaho.

4. The Estate of Christa Beguesse Rammell, by its personal representative, Kenneth Rammell, filed an application for informal probate in Bonneville County, Idaho on March 11, 2009, Case No. CV-09-1682.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the Defendants pursuant to Idaho Code § 5-514.

6. Bonneville County is the proper venue for this action under Idaho Code § 5-404.

#### **GENERAL ALLEGATIONS**

7. In November 2001, April Beguesse (April) was contacted by her mother, Christa Beguesse (Christa), regarding the possibility of April taking over Christa's business, CBI. April traveled to Idaho Falls to discuss the possibility with Christa and Rammell.

8. CBI was in the type setting business.

9. April believed that Christa was the sole owner of CBI. Christa had been running her business for years before she married Rammell.

10. Rammell and Christa were both officers and directors in CBI.

11. Rammell and Christa told April that she could purchase and take over the business.

12. Rammell and Christa represented to April that CBI had a guaranteed self-sustaining contract with a customer.

13. Rammell and Christa represented to April that CBI owned a library of

proprietary files valued at over \$1,000,000.

14. Rammell and Christa represented to April that CBI owned a proprietary software program unique to CBI's business.

15. Rammell and Christa represented that CBI owned intellectual property.

16. Rammell and Christa indicated that they would sell the business for \$12,000 a month for eight years.

17. Rammell stated that they were being very generous and that April would be a fool not to accept the offer.

18. Initially, April worked for CBI as an employee.

19. In November 2003, April formed ABI.

20. Both Rammell and Christa indicated on many occasions that the assets of CBI would be left to April when Christa died.

21. In February 2004, ABI commenced making monthly payments to CBI for \$12,000 month.

22. ABI took ownership of all past and current debts of CBI and started operating the business. ABI paid all the bills including the monthly rent to a third party.

23. ABI purchased all new computers, printers, scanners, phone system, updated programs and hardware and updated the office furniture.

24. Rammell indicated that he had a contract that his brother had used for his business that Rammell had altered.

25. Christa had Rammell remove a clause in the contract that stated in the case of Christa's death payments would continue.

26. Rammell and Christa represented to April that CBI's assets would be bequeathed to her after Christa died.



27. Rammell and Christa represented to April that the payments would cease after Christa's death.

28. Rammell and Christa repeatedly made the representations alleged in the previous paragraphs.

29. Based on the representations of Rammell and Christa, April ultimately signed a document entitled "lease agreement". The purported agreement is between CBI and ABI and made effective January 1, 2004.

30. The purported agreement provides:

BUSINESS AND EQUIPMENT. For and in consideration of the promises set forth in this Lease and the payment of the rents specified in this Lease, Lessor leases, demises and rents unto the Lessee, and Lessee leases, demises and rents from Lessor, that certain business described in Exhibit 'A' attached hereto (the 'Business'), that certain equipment described in Exhibit 'B' attached hereto. (Such business and equipment identified in Exhibits 'A' and 'B', shall collectively be referred to herein as 'the Property', unless otherwise indicated.

31. Exhibits A and B attached to the purported agreement were completely blank.

32. The purported agreement required CBI to provide consulting services to ABI.

33. ABI continued making monthly payments to CBI in an amount of \$12,000 until November 1, 2008.

34. ABI also paid Christa for consulting and professional services.

35. On November 10, 2008, Christa died.

36. No will was discovered leaving CBI's assets to April.

37. A holographic paragraph was produced by Rammell that states all of Christa's possessions go to Rammell.

38. After visiting an attorney after her mother's death, April learned for the first time that the representations made by Rammell and Christa alleged in the previous paragraphs were false.

39. There was no guaranteed contract with a major customer. Rather, the customer could leave at any time.

40. The library referenced by Rammell and Christa is actually owned by the customer.

41. The referenced proprietary software program was a software program that could be purchased off the shelf.

42. On March 1, 2009, April moved to Nevada.

43. On March 11, 2009, Rammell applied for informal probate for Christa's estate in Bonneville County, Idaho, Case No. CV-09-1682.

44. On April 13, 2009, Christa's estate on behalf of CBI filed a complaint against ABI and April individually in Clark County, Nevada, Case No. A587645. The Nevada complaint seeks to enforce the purported agreement.

45. The Nevada case was dismissed.

#### **COUNT ONE: DECLARATORY RELIEF**

46. ABI incorporates and realleges all previous paragraphs.

47. Critical portions to the purported lease contract between ABI and CBI were left blank.

48. ABI and CBI did not form a lease contract because there was never mutual assent.

49. ABI and CBI did not form a lease contract because the purported agreement is missing essential terms.

50. ABI and CBI never contemplated a lease of the business but rather contemplated a purchase of certain CBI assets.

51. This Court has the power to declare that there is no lease contract between

ABI and CBI pursuant to Idaho Code § 10-1201.

52. ABI is an interested person as defined by Idaho Code § 10-1202.

53. This Court should declare that:

- a. ABI is under no continuing obligation to make payments to CBI;
- b. Monies previously paid by ABI to CBI should be refunded to ABI; and
- c. There is no enforceable lease contract between ABI and CBI.

54. Alternatively, the lease contract should be reformed to meet the intent of parties.

55. To the extent the Court finds an enforceable contract, the contract should be rescinded due to the defendants' fraudulent conduct and all monies paid should be refunded.

56. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

#### **COUNT TWO: FRAUD**

57. ABI incorporates and realleges all previous paragraphs.

58. The defendants acting individually and on behalf of CBI made numerous representations to ABI and April including but not limited to the following:

- a. Rammell and Christa represented to April that CBI had a guaranteed self-sustaining contract with a major customer.
- b. Rammell and Christa represented to April that CBI owned a library of proprietary files valued at over \$1,000,000.
- c. Rammell and Christa represented to April that CBI owned a proprietary software program unique to CBI's business.

- d. Rammell and Christa represented that there was intellectual property unique to CBI.
- e. Rammell and Christa represented to April that CBI's assets would be bequeathed to her after Christa died.
- f. Rammell and Christa represented to April that the payments would cease after Christa's death.

59. The defendants failed to disclose that:

- a. There was no guaranteed contract and that the major customer could leave at any time for any reason.
- b. The library of proprietary files was in fact owned by the major customer and not CBI.
- c. That the software program utilized by CBI could be purchased off the shelf.
- d. That CBI did not own any intellectual property.
- e. That Rammell was an owner of CBI.

60. The statements and omissions of the defendants were false.

61. The statements and omissions of the defendants were material.

62. The defendants knew the statements and omissions were false.

63. The defendants intended that ABI rely on the false statements and omissions.

64. ABI and April did not know the statements and omissions were false.

65. ABI relied on the statements and omissions by signing the purported agreement and by paying \$12,000 a month to CBI from February 2004 to November 2008.

66. Such reliance by ABI was justifiable.

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67. As a result of the defendants' false statements and omissions, ABI has been damaged in an amount to be proven at trial.

68. The defendants' conduct constitutes affirmative fraud, fraud by omission, and fraud in the inducement.

69. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

### **COUNT THREE: CONSTRUCTIVE FRAUD**

70. ABI incorporates and realleges all previous paragraphs.

71. The defendants and ABI had a relationship of trust and confidence because Christa, Rammell, and April were members of the same family and CBI and ABI were in contractual negotiations and ultimately signed an agreement.

72. The defendants breached this relationship of trust and confidence.

73. ABI is not required to establish that the defendants' knew their statement and omissions were false or that the defendants intended ABI rely on their false statements and omissions.

74. The defendants conduct constitutes constructive fraud.

75. As a result of the defendants' conduct, ABI has been damaged in an amount to be proven at trial.

76. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

### **COUNT FOUR: BREACH OF CONTRACT**

77. ABI incorporates and realleges all previous paragraphs.

78. The defendants promised to sell or assign several assets of CBI to ABI in exchange for payment of \$12,000/month.

79. These assets include but are not limited to:

- a. a guaranteed contract with a major customer;
- b. a library of proprietary files valued at over a million dollars;
- c. a proprietary software program unique to CBI's business;
- d. other intellectual property.

80. The parties' exchange of promises constitutes a binding contract.

81. ABI substantially performed its obligations under the contract and is not in material breach.

82. The defendants materially breached the contract by failing to provide the agreed upon assets and failing to provide consulting services required under the contract.

83. The defendants conduct constitutes a failure of consideration.

84. The defendants conduct also constitutes a breach of the implied covenant of good faith and fair dealing.

85. The defendants' material breaches are the direct and proximate cause of damages to ABI.

86. ABI has suffered damages in an amount to be proven at trial.

87. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

#### **COUNT FIVE: BREACH OF EXPRESS WARRANTY**

88. ABI incorporates and realleges all previous paragraphs.

89. ABI and the defendants entered a contract for the sale of CBI's assets.

90. ABI substantially performed its obligations under the contract.

91. As part of the contract the defendants expressly represented and warranted that CBI could transfer the following assets:

- a. a guaranteed contract with a major customer;
- b. a library of proprietary files valued at over a million dollars;
- c. a proprietary software program unique to CBI's business;
- d. other intellectual property.

92. This warranty was a material term of the contract and its breach constitutes a material breach of the contract.

93. Pursuant to Idaho Code § 28-2-312, in every contract for sale there is a warranty of title that the title is good and its transfer is rightful.

94. Pursuant to Idaho Code §§ 28-2-313, 28-12-210, any affirmation of fact or promise made by the seller or lessor to the buyer or lessee, which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

95. Pursuant to Idaho Code § 28-2-313, any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

96. Pursuant to Idaho Code § 28-12-211, there is a warranty that no other person holds a claim to or interest in the goods.

97. Contrary to the defendants' warranties, CBI could not transfer the assets because such assets did not exist or were not owned by CBI and the assets transferred, if any, did not conform.

98. The breach of warranty is the direct and proximate cause of damages to ABI.

99. ABI has suffered damages in an amount to be proven at trial.

100. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

**COUNT SIX: BREACH OF IMPLIED WARRANTY**

101. ABI incorporates and realleges all previous paragraphs.

102. ABI and the defendants entered a contract for the sale of CBI's assets.

103. ABI substantially performed its obligations under the contract.

104. As part of the contract the defendants impliedly warranted that CBI could transfer the following assets:

- a. a guaranteed contract with a major customer;
- b. a library of proprietary files valued at over a million dollars;
- c. a proprietary software program unique to CBI's business;
- d. other intellectual property.

105. This warranty was a material term of the contract and its breach constitutes a material breach of the contract.

106. As part of the contract, the defendants impliedly warranted that the assets to be transferred would be merchantable, that is to say that it would pass without objection in the trade under the contract description; that it would be fit for the ordinary purpose of such goods; and that it would conform to the promises or affirmations of fact made.

107. As part of the contract the defendants impliedly warranted that the assets was fit for a particular purpose, that is to say that the defendants knew the purpose for which ABI intended it and that the ABI was relying upon the defendants to furnish the



assets, and warranted thus impliedly warranted that the assets were suitable for that purpose.

108. Contrary to the defendants' warranties, CBI could not transfer the assets because such assets did not exist or were not owned by CBI and such assets did not conform or were not suitable for ABI's purposes.

109. The breach of warranty is the direct and proximate cause of damages to ABI.

110. ABI has suffered damages in an amount to be proven at trial.

111. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

#### **COUNT SEVEN: UNJUST ENRICHMENT**

112. ABI incorporates and realleges all previous paragraphs.

113. ABI provided a benefit to the defendants by paying \$12,000 a month from February 2004 to November 2008.

114. Because ABI did not get what was promised, it would be unjust for CBI to retain the benefit.

115. As a result of defendants' conduct, ABI has been damaged in an amount to be proven at trial.

116. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

#### **COUNT EIGHT: QUASI-ESTOPPEL**

117. ABI incorporates and realleges all previous paragraphs.

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118. The defendants took the position that April would no longer make any payments after Christa's death.

119. Christa had Rammell remove a clause in the contract that stated in the case of Christa's death payments would continue.

120. Rammell and Christa represented to April that CBI's assets would be bequeathed to her after Christa died.

121. Rammell and Christa represented to April that the payments would cease after Christa's death.

122. On November 10, 2008, Christa died.

123. No will was discovered leaving CBI's assets to April or ABI.

124. A holographic paragraph was produced by Rammell that states all of Christa's possessions go to Rammell.

125. ABI relied on the representations to its disadvantage.

126. It would be unconscionable to allow the defendants to maintain the inconsistent position that payments were to continue after Christa's death.

127. The defendants should be estopped from claiming that the payments must continue.

128. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

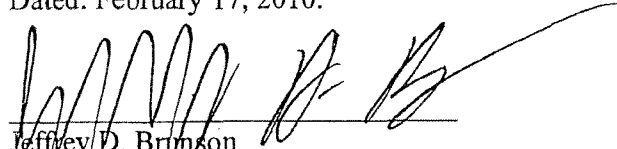
**PRAYER FOR RELIEF**

The Plaintiff prays for relief as follows:

1. Judgment against the defendants in an amount to be proven at trial.
2. A declaration that:
  - a. ABI is under no continuing obligation to make payments to CBI;
  - b. Monies previously paid by ABI to CBI should be refunded to ABI; and
  - c. There is no enforceable lease contract between ABI and CBI.
3. An order estopping the defendants from claiming payments should continue.
4. An award of attorney fees and costs pursuant to agreement Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.
5. Any other relief the Court deems just and proper.

**PURSUANT TO RULE 38 OF THE IDAHO RULES OF CIVIL PROCEDURE,  
PLAINTIFF DEMANDS TRIAL BY JURY**

Dated: February 17, 2010.

  
\_\_\_\_\_  
Jeffrey D. Brunson  
BEARD ST. CLAIR GAFFNEY PA  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I certify that I am an attorney licensed in the State of Idaho, have my office located in Idaho Falls, Idaho and on February 17, 2010, I served a true and correct copy of the First Amended Complaint and Jury Demand upon the following as indicated below:

David E. Alexander  
Racine Olson Nye Budge Bailey  
PO Box 1391  
Pocatello, ID 83204-139  
Fax: 232-6109



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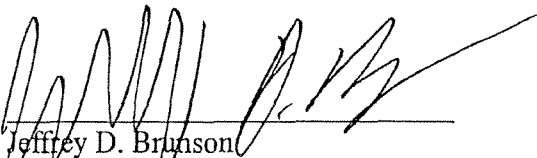
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Hand-Delivered



Facsimile



Jeffrey D. Brunson  
BEARD ST. CLAIR GAFFNEY PA  
Attorney for Plaintiff

W. Marcus W. Nye (ISB#: 1629)  
 David E. Alexander (ISB#: 4489)  
 RACINE, OLSON, NYE,  
 BUDGE & BAILEY, CHARTERED  
 P.O. Box 1391  
 Pocatello, Idaho 83204-1391  
 Telephone: (208)232-6101  
 Fax: (208)232-6109

DISTRICT 7TH JUDICIAL COURT  
 BONNEVILLE, IDAHO

19 SEP 11 10:57 AM

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

APRIL BEGUESSE, INC., an Idaho Corporation,  
 Plaintiff,  
 vs.  
 KENNETH RAMMELL, an individual,  
 CHRISTA BEGUESSE, INC., an Idaho Corporation, ESTATE OF CHRISTA BEGUESSE RAMMELL, by its qualified personal representative, Kenneth Rammell.  
 Defendants.

Case No. CV-09-2767

**ANSWER TO AMENDED COMPLAINT  
 AND AMENDED COUNTERCLAIM,  
 AND DEMAND FOR JURY TRIAL**

COME NOW the Defendants, KENNETH RAMMELL individually and as personal representative of the ESTATE OF CHRISTA BEGUESSE RAMMELL, and CHRISTA BEGUESSE, INC., an Idaho corporation, by and through their attorney of record, Marcus W. Nye of the firm of Racine, Olson, Nye, Budge & Bailey, Chartered, and in response to the Complaint of the Plaintiff filed herein, admit, deny and allege as follows:

**FIRST DEFENSE**

The Complaint herein fails to state a claim upon which relief can be granted against these

Defendants, and should be dismissed.

## **SECOND DEFENSE**

1. Defendants deny each and every allegation of the Complaint not specifically admitted herein.

2. Defendants admit the allegations of paragraphs 1 through 8 of the Amended Complaint.

3. In response to paragraph 9 of the Amended Complaint Defendants deny that “April believed that Christa was the sole owner of CBI” and admits that Christa had been running her business for years before she married Rammell.

4. Defendants admit the allegations of paragraph 10 of the Amended Complaint.

5. Defendants deny the allegations of paragraphs 11 through 15 of the Amended Complaint.

6. In response to paragraph 16 of the Complaint, Defendants state that a contract was entered into between Christa Beguesse, Inc. and April Beguesse, Inc., the terms of which contract speak for themselves.

7. Defendants admit the allegations of paragraphs 17, 18 and 19 of the Complaint.

8. Defendants deny the allegations of paragraph 20 of the Complaint.

9. Defendants admit the allegations of paragraphs 21 and 22 of the Complaint.

10. Defendants are without sufficient information to form a belief as to the truth of the allegations of paragraph 23 of the Complaint, and therefore deny the same.

11. Defendants deny the allegations of Paragraph 24 of the Amended Complaint.

12. Defendants deny the allegations of paragraph 25 of the Complaint, and state further

that the contract speaks for itself.

13. Defendants deny the allegations of paragraphs 26, 27 and 28 of the Complaint.

14. In response to paragraph 29, Defendants deny that April signed the contract “based on the representations of Rammell and Christa.” Defendants admit that April signed a contract entitled “Lease Agreement” between CBI and ABI, effective January 1, 2004.

15. In response to paragraphs 30 and 31 of the Complaint, Defendant states that the alleged contract speaks for itself.

16. The Defendants admit the allegations of paragraphs 32 through 37, and specifically avert that a holographic Will was found.

17. Defendants deny the allegation of paragraph 38.

18. In response to paragraph 39 of the Amended Complaint, to the extent that it alleges the existence of a contract between CBI and a customer, said contract speaks for itself.

19. In response to paragraph 40 of the Amended Complaint, Defendants deny ever having made reference to a “library” owned by CBI, or any representations contrary to the facts. To the extent that this paragraph 40 may make allegations regarding the typesetting working files for the customer’s products, the Defendants deny the allegation that these files are owned by the customer.

20. Defendants deny the allegations of paragraph 41 of the Amended Complaint.

21. Defendants admit the allegations of paragraphs 42 through 45 of the Amended Complaint.

### **COUNT 1: DECLARATORY RELIEF**

22. In response to paragraph 46 of the Amended Complaint, the Defendants restate their responses to paragraphs 1 through 45.

23. Defendants deny the allegations of paragraphs 47 through 51.
24. Defendants admit the allegations of paragraph 52 of the Complaint.
25. Defendants deny the allegations of paragraphs 53 to 56 of the Complaint.

**COUNT 2: FRAUD**

26. In response to paragraph 57 of the Complaint, Defendants restate their responses to paragraphs 1 through 56.

27. Defendants deny the allegations of paragraphs 58 through 69.

**COUNT 3: CONSTRUCTIVE FRAUD**

28. In response to paragraph 70 of the Amended Complaint, Defendants restate their responses to paragraphs 1 through 69.

29. Defendants deny the allegations of paragraphs 71 through 76 of the Complaint.

**COUNT 4: BREACH OF CONTRACT**

30. In response to paragraph 77 of the Amended Complaint, Defendants restate their responses to paragraphs 1-76.

31. Defendants deny the allegations of paragraph 78 and 79.

32. In response to paragraph 80 of the Amended Complaint, Defendant admits that the parties entered into a binding contract, pursuant to which the parties performed from January 2004 until November 2008, and that the terms of the contract speak for themselves.

33. In response to paragraph 81 of the Amended Complaint. Defendant admits that ABI substantially performed its obligations under the contract until November 2008, at which time it ceased performing under the contract, and is currently in material breach thereof.

34. Defendants deny the allegations of 82 through 87 of the Amended Complaint.



**COUNT 5: BREACH OF EXPRESS WARRANTY**

35. In response to paragraph 88 of the Complaint, Defendants restate their responses 1 through 87.

36. Defendants deny the allegations of paragraph 89 of the Amended Complaint.

37. In response to paragraph 90, Defendants allege that Plaintiff is now in material breach of its obligations under the contract.

38. Defendants deny the allegations of paragraphs 91 and 92.

39. In response to paragraphs 93 through 96 of the Amended Complaint, the Idaho Statutes referenced therein speak for themselves and are the best evidence of the statutory requirements. Said paragraphs do not otherwise appear to require a response from the Defendants.

40. Defendant deny the allegations of paragraphs 97 through 100.

**COUNT 6: BREACH OF IMPLIED WARRANTY**

41. In response to paragraph 101 of the Amended Complaint, Defendants restate their responses to paragraphs 1 through 100.

42. Defendants deny the allegations of paragraph 102.

43. In response to paragraph 103, Defendants admit that ABI substantially performed its obligations under the contract through November 2008, but since that time is in material breach of the contract.

44. Defendants deny the allegations of paragraphs 104 through 111.

**COUNT 7: UNJUST ENRICHMENT**

45. In response to paragraph 112 of the Amended Complaint, Defendants restate their responses to paragraphs 1 through 111.

46. In response to paragraph 113, Defendants admit that ABI paid Defendants \$12,000.00 per month for February 2004 to November 2008. Defendants deny all other allegations of paragraph 113.

47. Defendants deny the allegations of paragraphs 114 through 116 of the Complaint.

### **COUNT 8: QUASI-ESTOPPEL**

48. In response to paragraph 117 of the Amended Complaint, Defendant restates its responses to paragraphs 1 through 116.

49. Defendants deny the allegations of paragraphs 118 through 121 of the Amended Complaint.

50. Defendants admit the allegation of paragraphs 122 through 123 of the Amended Complaint.

51. In response to Paragraph 124 of the Amended Complaint, Defendants aver that a holographic will was produced.

52. Defendant deny the allegations of paragraphs 125 through 128 of the Amended Complaint.

### **FIRST AFFIRMATIVE DEFENSE**

The claims of the Plaintiff are barred by the applicable statutes of frauds, including but not limited to Idaho Code § 9-505, § 15-2-701, and § 28-2-201.

### **SECOND AFFIRMATIVE DEFENSE**

The claims of the Plaintiff are barred by the applicable of statutes of limitations, including but not limited to I.C. § 5-216, § 5-217, § 5-218, and §§ 15-3-801, *et seq.*

### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims for declaratory judgement, fraud, constructive fraud, breach of contract, breach of express and implied warranties and unjust enrichment and quasi-estoppel are barred by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of waiver.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff should be estopped from denying its obligations and duties under the contract.

**SIXTH AFFIRMATIVE DEFENSE**

Defendants expressly disclaimed in the contract all express and implied warranties.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims should be barred by Plaintiff's material breach of the contract at issue in this matter.

**ATTORNEY FEES**

Defendants have been required to retain the services of the law firm of Racine, Olson, Nye, Budge & Bailey, Chtd., and are entitled to a reasonable fee therefor pursuant to Idaho Code, including, but not limited to, I.C. §§ 12-120(3) and 12-121 and paragraph 17 of the Lease Agreement between the parties.

WHEREFORE, Defendants pray that judgment be entered in this action declaring the respective rights and duties of the parties, dismissing the Plaintiff's complaint with prejudice, awarding the Defendants their reasonable attorney's fees and costs, and granting Defendants such other and further relief as is just under the circumstances.

**COUNTERCLAIM**

COMES NOW, Defendant /Counterclaimant Christa Beguesse, Inc., an Idaho corporation, by and through counsel, and for its Counterclaim against the Plaintiff/Counterdefendant, April Beguesse, Inc., and Idaho corporation, as follows:

**PARTIES & JURISDICTION**

1. Defendant/Counterclaimant Christa Beguesse, Inc. (herein “CBI”), is a corporation in good standing registered under the laws of the State of Idaho, having its principal place of business in Idaho Falls, Bonneville County, Idaho.

2. Plaintiff/Counterdefendant April Beguesse, Inc. (herein “ABI”), is a corporation in good standing registered under the laws of the State of Idaho, having its principal place of business in Idaho Falls, Bonneville County, Idaho.

3. The actions, or failures to act, giving rise to this cause of action occurred or should have occurred in Bonneville County, Idaho.

4. Jurisdiction and venue are proper in this court.

**BACKGROUND**

5. For several years, CBI operated a profitable business and acquired assets for the operation of the business.

6. On or before January 1, 2004, CBI entered into an agreement with ABI, pursuant to which ABI agreed to lease the business and assets (collectively “the Assets”) from CBI for a period of eight consecutive years commencing January 1, 2004. The Lease Agreement (herein “the Agreement”) between CBI and ABI required ABI to make rent payments to CBI in the amount of \$12,000 per month, beginning in January 2004 and continuing for ninety-six months, through December 31, 2011. A true and correct copy of the Agreement is attached hereto as **Exhibit A**, and

incorporated herein by reference as if set forth fully

7. The Agreement provided that the Assets leased to ABI were to be described in exhibits attached thereto. Even though the parties inadvertently failed to specifically describe the leased Assets in the exhibits, the parties performed their obligations under the Agreement for a period of almost 5 years, until November 2008. During the years of performance, ABI used CBI's Assets, and ABI also made the required lease payments to CBI, thereby establishing through the parties' conduct and dealings the specific assets that were intended to be the subject of the Agreement.

8. ABI has failed or refused to make the rent payments to CBI after November 2008, despite having been given notice of default. CBI never received payment from ABI for December 2008 or any month thereafter.

9. Since November 2008, ABI has continued to use CBI's Assets to operate the business that was the subject of the Agreement.

10. On information and belief, since it stopped making the rent payments to CBI, ABI has continued to make profits from the use of CBI's Assets.

**COUNT I**  
**(Breach of Contract)**

11. CBI reasserts the allegations in all prior paragraphs of this Counterclaim by reference and incorporates the same as if set forth fully.

12. The above-described Agreement is a legal and binding contract properly formed between CBI and ABI.

13. ABI's failure or refusal to make the rent payments as required by the Agreement is

a material breach of the Agreement.

14. CBI has suffered damages, and continues to suffer damages, as a result of ABI's breach, in the amount of \$12,000 per month for unpaid rent, beginning with December 2008 and continuing until such time as the breach is cured or the lease expires, together with interest accruing on each payment from the due date at the rate of eight percent (8%) per annum.

**COUNT II**  
**(Unjust Enrichment)**

15. CBI reasserts the allegations in all prior paragraphs of this Counterclaim by reference and incorporates the same as if set forth fully.

16. ABI has remained in possession of and continues to use CBI's Assets that were the subject of the lease Agreement even though it has failed to make the rent payments therefor.

17. ABI continues to derive a valuable economic benefit from its wrongful use of the CBI's Assets that were the subject of the lease Agreement.

18. CBI has conferred a benefit upon ABI, which benefit has been appreciated by ABI, and it would be inequitable for ABI to retain the benefit without payment for the value thereof to CBI.

19. ABI has been unjustly enriched and is liable to CBI for the value of the benefit conferred, in an amount to be established at trial.

**COUNT III**  
**(Constructive Trust)**

20. CBI reasserts the allegations in all prior paragraphs of this Counterclaim by reference and incorporates the same as if set forth fully.

21. ABI has remained in possession of and continues to use the Assets that were the

subject of the Agreement with CBI even though it has failed to make full payment to CBI for those Assets.

22. ABI's continued use of the Assets without full payment to CBI is wrongful.

23. ABI continues to derive an economic benefit from its wrongful use of the Assets that were the subject of the Agreement.

24. CBI has no adequate remedy at law and is entitled to a constructive trust in its favor for all profits earned by ABI derived from the Assets that were the subject of the Agreement with CBI and for which ABI has not made full payment.

**COUNT IV**  
**(Uniform Trade Secrets Act)**

25. CBI reasserts the allegations in all prior paragraphs of this Counterclaim by reference and incorporates the same as if set forth fully herein.

26. The assets given by CBI to Plaintiff ABI in January 2004, included but are not necessarily limited to its working files, its computer data bases, "scripts" designed for use with the Adobe Pagemaker type-setting program used by CBI to automate certain common procedures performed for its customer, the business relationship between CBI and its customer, and know how concerning the operation and the business relationship. These assets were given to April Beguesse in confidence by CBI and constitute trade secrets within the meaning of the Idaho Uniform Trade Secrets Act, Idaho Code §48-801 et seq.

27. Plaintiff ABI misrepresented its intention to pay the amounts specified in the contract at issue in this case in exchange for the assets of CBI, and has now obtained control of the assets without paying the agreed-on price, through false and fraudulent means.

28. Plaintiff ABI has alleged in its Complaint herein that certain of the assets transferred

to it from CBI are actually the property of its customer, The Rutter Group, Inc., a division of West Publishing Company. Although it is not the case that the customer owns these assets, the allegation that such is true is an indication that ABI may consider itself obliged to transfer possession of said trade secrets on demand by the customer, which would compromise the value of these trade secrets, to the detriment of Defendant/Counterclaimant CBI. In the alternative, the allegation is made in furtherance of ABI's scheme to misappropriate said trade secrets through false and fraudulent means.

29. The actions of ABI in misrepresenting its intentions, in attempting to obtain control of CBI's trade secrets through false and fraudulent means, and in failing to make payments as required under the contract constitute a misappropriation of trade secrets within the meaning of the Idaho Trade Secrets Act.

30. If ABI were to turn over possession of the trade secrets to the customer, ABI would lose its sole customer and would be unable to make payments required under the contract, which would cause damage to Defendant CBI.

31. Plaintiff ABI's belief that it is obligated to turn possession of the trade secrets over to the customer threatens the further misappropriation of CBI's trade secrets.

32. Misappropriation of the trade secrets has caused and will cause irreparable damage to Defendant/Counterclaimant CBI.

33. CBI is entitled to injunctive relief prohibiting the disclosure of trade secrets to Plaintiff's customer or others who could gain economic benefit from them, pursuant to Idaho Code §48-802.

34. CBI is entitled to injunctive relief to prevent the use of misappropriated trade secrets by Plaintiff ABI, to the extent that the misappropriation continues, or, in the alternative, if



exceptional circumstances are found, CBI is entitled to an injunction conditioning future use of the trade secrets upon payment of a reasonable royalty for a sufficient time to ensure full payment of amounts due CBI in exchange for said trade secrets, pursuant to I.C. §48-802(2).

35. Defendant/Counterclaimant CBI has been damaged by Plaintiff's misappropriation of trade secrets in the amount of \$12,000.00 per month beginning November 1, 2008 and continuing through the period of the contract at issue in this case, together with interest, costs, and attorney's fees incurred by Defendant.

36. Plaintiff ABI has been unjustly enriched by its misappropriation of CBI's trade secrets.

37. The actions of Plaintiff ABI in misappropriating CBI's trade secrets have been willful and malicious, and CBI is entitled to exemplary damages pursuant to Idaho Code §48-803(2).

#### **ATTORNEY FEES**

38. CBI has been required to retain the assistance of the law firm Racine, Olson, Nye, Budge & Bailey, Chartered, to pursue and protect its legal interests related to this matter and is entitled to an award of its reasonable attorney fees pursuant to Idaho Code, including §§ 12-120(3) and 12-121, and pursuant to paragraph 17 of the Lease Agreement between the parties.

WHEREFORE, CBI prays for judgment against Counterdefendant ABI as follows:

A. For a money judgment in the amount of \$12,000 per month, beginning with December 2008 through such time as ABI cures its default or is no longer obligated to make payments under the Lease Agreement; or in the alternative, for the value of the benefit CBI has conferred upon ABI for which it is unjust for ABI to retain, in an amount to be established at trial; plus interest thereon from each payment due date at the rate of 8% per annum.

B. For a constructive trust in favor of CBI for all profits earned by ABI from its use of the Assets it received pursuant to the Lease Agreement with CBI since November 2008.

C. For CBI's costs of suit and reasonable attorney fees incurred in this action.

D. For an order granting injunctive relief prohibiting ABI from disclosing trade secrets identified herein to The Rutter Group, West Publishing Company, other customers of ABI, or other persons who may derive economic value from them;

E. For an order granting injunctive relief precluding the use of ABI of trade secrets given to it by CBI, or, in the alternative, an order finding exceptional circumstances and conditioning ABI's continued use of the trade secrets on payment of a reasonable royalty to CBI for such time as necessary to pay those amounts due CBI under the contract at issue in this case;

F. For damages for misappropriation and exemplary damages in an amount to be proven at trial, pursuant to Idaho Code §48-803;

G. For Attorney's fees, cost, interest

H. For further relief as the Court finds just under the circumstances.

### **JURY DEMAND**

Defendant Kenneth Rammel, individually and as personal representative of the estate of Christa Beguesse Rammel, and Defendant/Counterclaimant CBI hereby request a trial by jury on all issues so triable.

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

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

By

  
\_\_\_\_\_  
DAVID-E. ALEXANDER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10<sup>th</sup> day of March, 2010, I served a true, correct and copy of the above and foregoing document upon the following person(s) as follows:

Jeffrey D. Brunson  
John M. Avondet  
BEARD ST. CLAIR GAFFNEY PA  
2105 Coronado Street  
Idaho Falls, Idaho 83404-7495

U.S. Mail, postage prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile (208) 529-9732

  
\_\_\_\_\_  
DAVID E. ALEXANDER

BONNEVILLE COUNTY  
IDAHO

10 MAR 29 PM 5:56

Jeffrey D. Brunson, ISB No. 6996  
John M. Avondet, ISB No. 7438  
BEARD ST. CLAIR GAFFNEY PA  
2105 Coronado Street  
Idaho Falls, ID 83404-7495  
Tel: (208) 523-5171  
Fax: (208) 529-9732  
Email: jeff@beardstclair.com  
javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa  
Beguesse, Inc., an Idaho corporation, The  
Estate of Christa Beguesse Rammell, by its  
qualified personal representative, Kenneth  
Rammell,

Defendants/Counterclaimants.

Case No.: CV-09-2767

PLAINTIFF'S REPLY TO  
DEFENDANTS' AMENDED  
COUNTERCLAIM

Plaintiff/Counterdefendant, April Beguesse, Inc. (ABI), by and through counsel of record, denies all allegations of Defendants/Counterclaimants', Kenneth Rammell, Christa Beguesse, Inc., The Estate of Christa Beguesse Rammell (collectively CBI), Counterclaim not expressly admitted herein and more specifically responds as follows:

1. ABI does not have sufficient information to admit or deny paragraph 1, and therefore denies paragraph 1.
2. ABI denies paragraph 2.

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3. ABI admits paragraph 3.  
4. ABI admits paragraph 4.  
5. ABI does not have sufficient information to admit or deny paragraph 5, and therefore denies paragraph 5.

6. ABI denies paragraph 6.  
7. ABI denies paragraph 7.  
8. ABI admits that it has not made a payment to CBI since December 2008 denies the remainder of the allegations contained in paragraph 8.

9. ABI denies paragraph 9.  
10. ABI denies paragraph 10.  
11. ABI incorporates its responses to paragraphs 1 through 10.  
12. ABI denies paragraph 12.  
13. ABI denies paragraph 13.  
14. ABI denies paragraph 14.  
15. ABI incorporates its responses to paragraphs 1 through 14.  
16. ABI denies paragraph 16.  
17. ABI denies paragraph 17.  
18. ABI denies paragraph 18.  
19. ABI denies paragraph 19.  
20. ABI incorporates its responses to paragraphs 1 through 19.  
21. ABI denies paragraph 21.  
22. ABI denies paragraph 22.  
23. ABI denies paragraph 23.  
24. ABI denies paragraph 24.

25. ABI incorporates its responses to paragraphs 1 through 24.
26. ABI denies paragraph 26.
27. ABI denies paragraph 27.
28. ABI denies paragraph 28.
29. ABI denies paragraph 29.
30. ABI denies paragraph 30.
31. ABI denies paragraph 31.
32. ABI denies paragraph 32.
33. ABI denies paragraph 33.
34. ABI denies paragraph 34.
35. ABI denies paragraph 35.
36. ABI denies paragraph 36.
37. ABI denies paragraph 37.
38. ABI denies paragraph 38.

#### AFFIRMATIVE DEFENSES

ABI asserts the following affirmative defenses:

1. The Counterclaim fails to state a claim upon which relief can be granted.
2. CBI's claims are barred due to fraud.
3. CBI's claims are barred by the doctrine of estoppel.
4. CBI's claims are barred by the doctrine of laches.
5. CBI's claims are barred by the doctrine of unclean hands.
6. CBI's claims are barred because CBI's damages, if any, were caused by

CBI's own conduct.

7. CBI has failed to mitigate its damages.

8. CBI's claims are barred because ABI's conduct is not the proximate cause of any loss suffered by CBI, if any.

9. CBI has no damages.

10. CBI's claims are subject to offsets.

11. CBI's claims are barred by the doctrine of waiver.

12. CBI's claims are barred by the failure of consideration.

13. CBI's claims are barred by the lack of consideration.

14. CBI's claims are barred based on the Idaho Trade Secrets Act, Idaho Code § 48-801 et seq.

15. CBI's Uniform Trade Secrets Act claim is barred by the applicable statute of limitations, Idaho Code § 48-805.

16. CBI's claims are barred by the doctrine of mutual mistake.

17. CBI's claims are barred by an implied in fact contract.

18. CBI's claims are barred by an implied in law contract.

19. CBI's claims are barred based on its own breach of contract including the implied covenant of good faith and fair dealing.

20. CBI's claims are barred based on lack of mutual assent.

21. CBI's claims are barred based on its own breach of express and implied warranties.

22. CBI's claims are barred based on the claims and facts set forth in ABI's Amended Complaint against CBI, Kenneth Rammell, and the Estate of Christa Beguesse Rammell.


#### PRAYER FOR RELIEF

WHEREFORE, ABI demands judgment:

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1. Dismissing CBI's Counterclaim in its entirety;
2. Awarding ABI's reasonable attorneys' fees, costs and disbursements of defending this action pursuant to, Idaho Code §§ 12-120, 12-121, Rule 54 of the Idaho Rules of Civil Procedure, any contract, and any other rule or provision; and
3. Granting such other and further relief as the Court deems just and proper.

DATED: March 29, 2010.



Jeffrey D. Brunson  
Of Beard St. Clair Gaffney PA  
Attorneys for Plaintiff



CERTIFICATE OF SERVICE


I certify that I am an attorney licensed in the State of Idaho, have my office located in Idaho Falls, Idaho and on March 29, 2010, I served a true and correct copy of the PLAINTIFF'S REPLY TO DEFENDANTS' AMENDED COUNTERCLAIM upon the following as indicated below:

David E. Alexander  
Racine Olson Nye Budge Bailey  
PO Box 1391  
Pocatello, ID 83204-139  
Fax: 232-6109

U.S. Mail  Hand-Delivered  Facsimile

Bonneville County Courthouse  
605 N Capital Avenue  
Idaho Falls, ID 83402  
Fax: 529-1300

U.S. Mail  Hand-Delivered  Facsimile

  
\_\_\_\_\_  
Jeffrey D. Brunson  
BEARD ST. CLAIR GAFFNEY PA  
Attorney for Plaintiff

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

10 MAR 31 P3:04

APRIL BEGUESSE, INC., an Idaho )  
corporation, )

Plaintiff, )

vs. )

KENNETH RAMMELL, an individual )  
CHRISTA BEGUESSE, INC., an )  
Idaho corporation, ESTATE of )  
CHRISTA BEGUESSE RAMMELL, by )  
Its qualified personal )  
Representative, Kenneth )  
Rammell, )

Defendants. )

ORDER FOR TELEPHONIC  
STATUS CONFERENCE  
Case No. CV-09-2767

Pursuant to Rule 16, I.R.C.P., it is hereby ordered that a status conference be conducted by and between the Court and the counsel of record in regard to the above-entitled case on April 22, 2010, at 9:00 a.m.

It is further ordered that at least one of the attorneys for each party participating in said status conference have authority to enter into stipulations and to make admissions regarding all matters that the parties may reasonably anticipate being discussed. (See Rule 16 (b) and Rule 16 (c)). Counsel shall also be prepared to furnish the Court with available dates for a pre-trial conference and trial setting.

The Plaintiff is directed to initiate the telephone conference call to the Court. The telephone number is 529-1350 extension 1340.

Dated this 31 day of March, 2010

  
JOEL E. TINGEY  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of March, 2010, that I mailed or hand delivered a true and correct copy of the foregoing document to the following:

RONALD LONGMORE

BY   
DEPUTY CLERK

Jeffrey D. Brunson  
John M. Avondet  
2105 Coronado Street  
Idaho Falls, ID 83404-75495

W. Marcus W. Nye  
David E. Alexander  
PO Box 1391  
Pocatello, ID 83204-1391

BONNEVILLE COUNTY  
IDAHO

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

APRIL BEGUESSE, INC., an Idaho )  
corporation, )

Plaintiff, )

vs. )

KENNETH RAMMELL, an individual )  
CHRISTA BEGUESSE, INC., an )  
Idaho corporation, ESTATE of )  
CHRISTA BEGUESSE RAMMELL, by )  
Its qualified personal )  
Representative, Kenneth )  
Rammell, )

Defendants. )

ORDER AND NOTICE  
SETTING JURY TRIAL  
Case No. CV-09-2767

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure,  
the following pre-trial schedule shall govern all proceedings in  
this case:

**I. IT IS HEREBY ORDERED:**

1. A Pre-trial Conference is scheduled for January 11, 2011 at 8:30 a.m.
2. Jury trial is scheduled for 10:00 a.m. on January 25, 2011. Trial may go into a second week. In that case the second week of trial will continue on Tuesday, February 1, 2011.
3. Dispositive motions must be filed at least 60 days prior to trial.
4. Plaintiff(s) expert witness disclosure, including opinions and conclusions must be filed at least 100 days before trial. Defendant(s) expert witness disclosure including opinions and conclusions must be filed at least 80 days before trial.
5. All discovery shall be completed 45 days prior to trial.
6. The parties and their attorneys shall attend a mediation session before a qualified attorney mediator

ORDER

or district judge selected by the parties. Unless excused by Mediator, lead trial counsel, the parties and a representative of any insurer of a party shall attend the mediation with adequate settlement authority. Mediation should be completed at least 45 days prior to trial.

**II. IT IS FURTHER ORDERED** that each attorney shall, no later than three (3) days prior to the pre-trial conference:

1. File a list of names of persons who may be called to testify.
2. File a descriptive list of all exhibits proposed to be offered into evidence
3. File a brief citing legal authorities upon which the party relies as to each issue of law to be litigated.
4. File proposed jury instructions. The parties need not submit IDJI2 instruction numbers 1.01 through 1.43. All instructions shall be prepared in accordance with I.R.C.P. 51(a).

**III. IT IS FURTHER ORDERED** that each attorney shall no later than seven (7) days before trial:

1. File any objections to the jury instructions requested by an opponent specifying the instruction and the grounds for the objection.

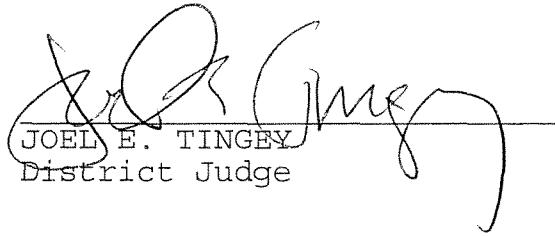
**IV. IT IS FURTHER ORDERED** that:

1. Any exhibits or witnesses discovered after the last required disclosure shall immediately be disclosed to the court and opposing counsel by filing and service stating the date upon which the same was discovered.
2. No witnesses shall testify and no exhibits shall be admitted into evidence at trial other than those disclosed, listed and submitted to the clerk of the court in accordance with this order.
3. On the first day of trial deposit with the clerk of the court all exhibits to be introduced. Plaintiff shall pre-mark and staple exhibits in numerical sequence as outlined in Plaintiff's exhibit list and Defendant's exhibits shall be pre-marked and stapled in alphabetical sequence as outlined in Defendant's exhibit list. Pages of exhibits shall be stapled, with a sticker placed on the first page of the actual exhibit.
4. This order shall control the course of this action

unless modified for good cause shown to prevent manifest injustice.

5. The Court may impose appropriate sanctions for violation of this order.

DATED this 22 day of April, 2010.

  
JOEL E. TINGEY  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of April, 2010, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE

  
\_\_\_\_\_  
Deputy Court Clerk

Jeffrey D. Brunson  
John M. Avondet  
2105 Coronado Street  
Idaho Falls, ID 83404-75495

W. Marcus W. Nye  
David E. Alexander  
PO Box 1391  
Pocatello, ID 83204-1391

2010 MAY 24 PM 2: 56

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO

Jeffrey D. Brunson, ISB No. 6996  
John M. Avondet, ISB No. 7438  
BEARD ST. CLAIR GAFFNEY PA  
2105 Coronado Street  
Idaho Falls, ID 83404-7495  
Tel: (208) 523-5171  
Fax: (208) 529-9732  
Email: jeff@beardstclair.com  
javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa  
Beguesse, Inc., an Idaho corporation, The  
Estate of Christa Beguesse Rammell, by its  
qualified personal representative, Kenneth  
Rammell,

Defendants/Counterclaimants.

Case No.: CV-09-2767

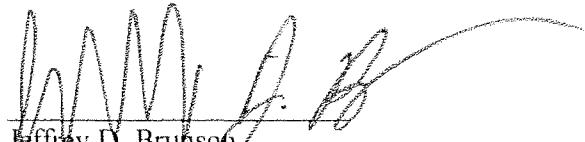
NOTICE REGARDING REQUESTS FOR  
ADMISSIONS DEEMED ADMITTED

COMES NOW, Plaintiff/Counterdefendant, April Beguesse, Inc., by and through its counsel of record, Jeffrey D. Brunson, and the law firm of Beard St. Clair Gaffney PA, and provides notice to this Court and the opposing party that pursuant to I.R.C.P. Rules 36(b)(d), Defendants/Counterclaimants failed to respond to the attached Requests for Admission within the thirty day response period, and thus said Requests for Admissions are deemed admitted and Plaintiff/Counterdefendant intends to use said admissions at the time of trial.

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DATED: May 24, 2010.

  
 \_\_\_\_\_  
 Jeffrey D. Brunson  
 Of Beard St. Clair Gaffney PA  
 Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

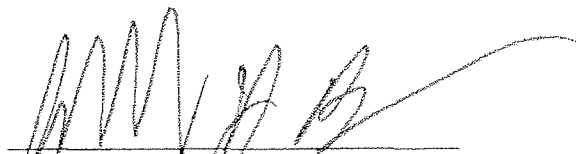
I certify that I am an attorney licensed in the State of Idaho, have my office located in Idaho Falls, Idaho and on May 24, 2010, I served a true and correct copy of the NOTICE REGARDING REQUESTS FOR ADMISSIONS DEEMED ADMITTED upon the following as indicated below:

David E. Alexander  
 Racine Olson Nye Budge Bailey  
 PO Box 1391  
 Pocatello, ID 83204-139  
 Fax: 232-6109

U.S. Mail     Hand-Delivered     Facsimile

Bonneville County Courthouse  
 605 N Capital Avenue  
 Idaho Falls, ID 83402  
 Fax: 529-1300

U.S. Mail     Hand-Delivered     Facsimile

  
 \_\_\_\_\_  
 Jeffrey D. Brunson  
 BEARD ST. CLAIR GAFFNEY PA  
 Attorney for Plaintiff

2010 JUL 12 PM 3:55

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO

Jeffrey D. Brunson, ISB No. 6996  
John M. Avondet, ISB No. 7438  
BEARD ST. CLAIR GAFFNEY PA  
2105 Coronado Street  
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javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa  
Beguesse, Inc., an Idaho corporation, The  
Estate of Christa Beguesse Rammell, by its  
qualified personal representative, Kenneth  
Rammell,

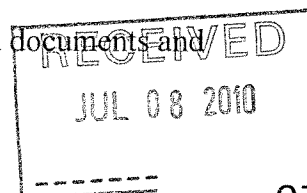
Defendants/Counterclaimants.

Case No.: CV-09-2767

AMENDED PROTECTIVE ORDER

This matter having come before the Court by means of the Stipulation for Amended Protective Order executed by the parties, and good cause having been found:

IT IS HEREBY ORDERED that the parties are to be bound by the provisions of the Protective Order entered by the Court on December 8, 2009, which prohibits public disclosure of certain categories of documents and limits use of said documents and information contained therein to this litigation.



The parties are further ordered that the following categories of documents, which have been previously produced, or which may be exchanged, or produced during this litigation by the parties in response to discovery requests are protected in that the documents and information contained therein can be used by the parties for the purpose of this litigation, and this litigation only, and for no other purpose now or in the future, and the same shall not be disclosed to any person or to any entity who is not involved or associated with this litigation as party, witness, or consultant for a party, or as a person who has prepared or assisted in the preparation of such documents, and/or as a person to whom document or copy thereof was addressed or delivered, provided any such non-party witnesses or other such persons to whom disclosure is permissible hereunder must agree, prior to disclosure, to abide by the terms of the Stipulation and with the protective orders entered by the Court:

1. Any and all documents and/or information pertaining to macros/commands/scripts used by Plaintiff in her business;
2. Any pricing information used by Plaintiff in her business;
3. Any financial information of April Beguesse or April Beguesse, Inc.;
4. Any tax information of April Beguesse or April Beguesse, Inc.;
5. Any wage or other personal financial information of April Beguesse;
6. Any billing records;
7. Any documents and/or information identifying, discussing, or referring to clients or customers of April Beguesse, Inc.;
8. Any financial statements of April Beguesse, Inc.;
9. Any documents containing, discussing, or referring to bank accounts, financial accounts, and/or other financial information;

10. April Beguesse's social security number.

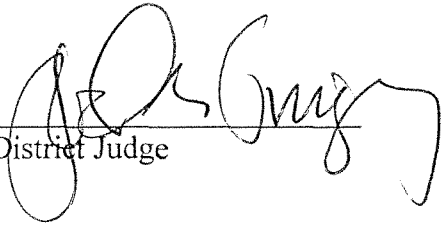
The parties shall not file with the Court any of the foregoing categories of documents produced or exchanged until such time as the parties have reconvened with the Court and obtained further orders regarding the same and/or the parties have stipulated to the same. The parties may mark such documents intended to be protected by the terms of this Stipulation and by any related protective order entered by the Court as "CONFIDENTIAL." Any use of the confidential documents or information subject to this Stipulation for any purpose other than this litigation shall be a breach of the Stipulation and any corresponding protective order.

The protective orders entered by the Court are binding upon all of the parties to this action, the undersigned attorneys for each party, any recipient of the above-referenced documents and information, and any successor, executor, personal or legal representative, heir, assignee, employee, or agent over which any party or attorney or recipient of the documents and information covered by the Stipulation and related protective order may have control.

In the event that any of the above-referenced documents and/or information produced or exchanged are disclosed in contravention of this Stipulation and any related protective order entered by the Court, either willfully or inadvertently, such documents and information shall not lose their protected status through such disclosure, and the parties shall take all steps reasonably required to assure their continued confidentiality.

After termination of this case, the provisions of the Stipulation and any related protective orders entered by the Court shall continue to be binding. The parties agree that all documents produced pursuant to the foregoing, and any copies, shall be returned to the producing party at the conclusion of this matter.

DATED: ~~June~~ <sup>July</sup> 12, 2010.

  
District Judge

**CLERK'S NOTICE OF ENTRY**

I certify that on ~~June~~ <sup>July</sup> 12, 2010, I served a true and correct copy of the Amended

Protective Order upon the following as indicated below:

David E. Alexander  
Racine Olson Nye Budge Bailey  
PO Box 1391  
Pocatello, ID 83204-139  
Fax: 232-6109

U.S. Mail     Hand-Delivered     Facsimile

Jeffrey D. Brunson  
Beard St. Clair Gaffney  
2105 Coronado Street  
Idaho Falls, ID 83404  
Fax: 529-9732

U.S. Mail     Hand-Delivered     Facsimile

  
Clerk of the Court

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

APRIL BEGUESSE, INC., an Idaho )  
corporation, )

Plaintiff, )

vs. )

KENNETH RAMMELL, an individual )  
CHRISTA BEGUESSE, INC., an )  
Idaho corporation, ESTATE of )  
CHRISTA BEGUESSE RAMMELL, by )  
Its qualified personal )  
Representative, Kenneth )  
Rammell, )

Defendants. )

MINUTE ENTRY

Case No. CV-09-2767

On the 8th day of October, 2010, Defendants' motion for summary judgment and motion to strike, Plaintiff's motion to strike came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson and Mr. John Avondet appeared for and on behalf of the Plaintiff.

Mr. David Alexander appeared on behalf of the Defendants.

Mr. Alexander presented Defendants' motion for summary judgment and motion to strike. Mr. Avondet presented argument in opposition to the motion for summary judgment. Mr. Brunson presented argument in opposition to the motion to strike. Mr. Alexander presented rebuttal argument.

The Court will take the matter under advisement and issue a decision as soon as possible.

Court was thus adjourned.

  
JOEL E. TINGEY  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of October, 2010, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE

  
Deputy Court Clerk

Jeffrey D. Brunson  
John M. Avondet  
2105 Coronado Street  
Idaho Falls, ID 83404-75495

W. Marcus W. Nye  
David E. Alexander  
PO Box 1391  
Pocatello, ID 83204-1391

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

APRIL BEGUESSE, INC., an Idaho  
Corporation,

Plaintiff/Counterdefendant,

vs.

KENNETH RAMMELL, an individual,  
CHRISTA BEGUESSE, INC., an Idaho  
Corporation, THE ESTATE OF CHRISTA  
BEGUESSE RAMMELL, by it qualified  
personal representative, Kenneth Rammell,

Defendants/Counterclaimant.

Case No. CV-09-2767

**MEMORANDUM DECISION  
AND ORDER**

THIS MATTER is before the Court on Defendants' Motion for Summary Judgment. The Parties have also moved to strike certain affidavits. Following the hearing and oral argument, the Court took the motions under advisement.

**I. FACTS**

Defendant Kenneth Rammell (Rammell) and Christa Beguesse (Christa) owned and operated Defendant Christa Beguesse, Inc. (CBI), an Idaho corporation that provided typesetting services to a single customer, the Rutter Group (Rutter). In November 2001, Christa and Rammell approached Christa's daughter, April Beguesse (April), with a proposal to purchase the business. The Parties dispute some of the details of the proposal. CBI contends that Christa and Rammell "proposed to April that she work for CBI for two years, learn all aspects of the business, and then taken [sic] over in January 2004, after



which she would make payments to CBI of \$12,000 per month for eight years.” Defs’. Statement of Undisputed Facts, Sept. 3, 2010, ¶ 9. At the end of the eight years, “April would own the business and all of its assets.” *Id.* at ¶ 16. ABI essentially agrees with CBI’s version of the proposal, but claims that Christa and Rammell promised the following additional items: (1) Christa’s consulting services for eight years; (2) a library of files valued at over one million dollars; (3) a guaranteed contractual relationship with Rutter; (4) proprietary software; and (5) other intellectual property. ABI also alleges that the monthly payments to CBI were to cease on Christa’s death and that Christa was to leave the business to April as an inheritance.

In January 2002, April moved to Idaho Falls and began working for CBI. She continued working for CBI through 2003. In January 2004, the business was “transitioned” to Plaintiff April Beguesse, Inc. (ABI), an Idaho corporation wholly-owned by April, which began paying \$12,000 per month to CBI. In October 2004, Christa and April (on behalf of their companies) signed a document titled “Lease Agreement”, which states that it was “entered and made effective as the 1<sup>st</sup> day of January, 2004.” The Agreement is structured as a “lease” of property, with “rental” payments of \$12,000 required each month for eight years. The Agreement states that the property being leased includes the “business” and “equipment” described in exhibits A and B. However, the exhibits are left completely blank. The Agreement requires CBI to provide consultation to ABI throughout the lease term. Although the Parties acknowledge that ABI was to own the business, the Lease Agreement provides that at the end of the lease period, “. . . the Lessee shall surrender the Property to Lessor . . .”. Lease Agreement, ¶ 9.

Christa passed away in November 2008, at which time ABI ceased making monthly payments to CBI. April contacted the vice president of Rutter, Linda Diamond Raznick (Raznick), who informed April that Rutter owned the “library of files” used by ABI and that Rutter was not contractually obligated in any way to ABI. Christa’s will left her entire estate to Rammell.

ABI filed the instant action against Rammell, CBI and Christa’s estate, alleging the following eight counts: (1) declaratory relief; (2) fraud; (3) constructive fraud; (4) breach of contract; (5) breach of express warranty; (6) breach of implied warranty; (7) unjust enrichment; and (8) quasi-estoppel. The Defendants counterclaimed, alleging the following four counts: (1) breach of contract; (2) unjust enrichment; (3) constructive trust; and (4) violation of the Uniform Trade Secrets Act.

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate if “the pleadings, depositions, and admissions on file, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). When considering a motion for summary judgment, any disputed facts are construed in favor of the nonmoving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the nonmoving party. *Finholt v. Cresto*, 143 Idaho 894, 896, 155 P.3d 695, 697 (2007). If reasonable minds might come to different conclusions, summary judgment is inappropriate. *McPheters v. Maile*, 138 Idaho 391, 394, 64 P.3d 317, 320 (2003).

The party moving for summary judgment bears the burden of proving that no genuine issue of material fact exists. *Cramer v. Slater*, 146 Idaho 868, 873, 204 P.3d

508, 513 (2009). Once the moving party establishes the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007). In order to survive a motion for summary judgment, the nonmoving party must show that there is a triable issue. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 524, 808 P.2d 851, 861 (1991). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *McGilvray v. Farmers New World Life Ins. Co.*, 136 Idaho 39, 42, 28 P.3d 380, 383 (2001), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552 (1986). The non-moving party’s case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue. *Corbridge v. Clark Equip. Co.*, 112 Idaho 85, 87, 730 P.2d 960, 963 (1994).

### III. ANALYSIS

#### A. Motions to Strike.

In support of Defendants’ motion, Defendants filed affidavits of Kenneth Rammell and Pete Masterson. Plaintiff has moved to strike portions of the affidavits.

As to the affidavit of Kenneth Rammell, the second line of ¶ 8 will be stricken as constituting inadmissible hearsay. The remaining motion to strike is denied.

As to the affidavit of Pete Masterson, Plaintiff’s motion to strike is denied. Arguments regarding the content of Masterson’s affidavit go to the weight of the testimony.

Defendants have moved to strike portions of the affidavits of April Beguesse on the grounds that statements in the affidavit are inconsistent or contrary to deposition testimony and therefore “sham” testimony. Said motion is denied with the exception of ¶

27 of the affidavit which is wholly inconsistent with the deposition testimony. Defendants also moved to strike ¶ 46 as being conclusory. The Court agrees and said paragraph is stricken.

Defendants have also moved to strike portions of the second affidavit of Linda Raznick as being sham testimony. Defendants' motion is denied with the exception of ¶ 10 which is stricken as being speculative testimony.

Defendants have also moved to strike portions of the affidavit of Don Mazzella. That motion is denied.

## **B. Defendants' Motion for Summary Judgment**

### 1. Declaratory Relief (Count One)

Defendants move the Court for summary judgment on each of ABI's claims. Count One of the Amended Complaint seeks relief by way of a declaratory judgment declaring the Parties' rights or obligations under the alleged contract.

Defendants argue that ABI's claim for declaratory relief is barred by the statute of limitations. In making the argument, Defendants attempt to apply statutes of limitations applicable to contracts. However, a claim for declaratory judgment is not the same as a breach of contract action.

Idaho Code § 10-1201 provides as follows:

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, *whether or not further relief is or could be claimed.* [emphasis added]

The evidence supports an inference that the Parties entered into an ongoing contract for the purchase of a business. Declaratory judgment as to the construction of an ongoing contract is appropriate. There is no statute of limitations precluding a claim for

declaratory judgment as to the alleged contract. Defendants' motion as to Count One is denied.

## 2. Fraud (Count Two)

In Count Two of the Amended Complaint Plaintiff alleges fraud or constructive fraud as to an alleged ongoing contract with Rutter, that Plaintiff would be the owner of a library of files, that Plaintiff would be receiving proprietary software, that Plaintiff would be receiving other "intellectual property", that Plaintiff would receive a bequeath of the subject business' assets upon the death of Christa Beguesse, and that Defendants did not disclose that Rammell was a part owner of CBI, Inc.

Defendants attack these claims on a number of grounds.

### **a. Statute of Limitations**

Defendants argue that ABI's claims for fraud and constructive fraud are barred by the statute of limitations.

A three-year statute of limitation for fraud is established by I.C. § 5-218(4). The statute does not begin to run until the plaintiff knew or reasonably should have known of the facts constituting the fraud. *McCoy v. Lyons*, 120 Idaho 765, 820 P.2d 360 (1991). Application of I.C. § 5-218(4) does not depend on when the plaintiff should have been aware that something was wrong; as used in the statute, "discovery" means the point in time when the plaintiff had actual or constructive knowledge of the facts constituting the fraud. *McCoy*, 120 Idaho at 773, 820 P.2d at 368. Actual knowledge will be inferred if the allegedly aggrieved party could have discovered the fraud by the exercise of due diligence. *Nancy Lee Mines, Inc. v. Harrison*, 95 Idaho 546, 547, 511 P.2d 828, 829 (1973); *Gerlach v. Schultz*, 72 Idaho 507, 514, 244 P.2d 1095, 1099 (1952); *Mason v. Tucker and Associates*, 125 Idaho 429, 435, 871 P.2d 846, 852 (Ct. App. 1994). The question of when the plaintiff discovered the fraud is generally a question for the jury and summary judgment on the issue is only appropriate if there is no factual dispute about when this discovery occurred. *McCoy*, 120 Idaho at 774, 820 P.2d at 369.

*McCorkle v. Northwestern Mut. Life Ins. Co.*, 141 Idaho 550, 554-555, 112 P.3d 838, 842-843 (Ct. App. 2005).

Here, the Parties dispute when ABI discovered the alleged fraud. There is a reasonable inference that the alleged fraud was only discovered within the three years prior to the filing of the complaint. Thus, a factual dispute exists and Defendant is not entitled to summary judgment by way of a statute of limitations.

**b. Course of Performance**

Defendants argue that “the course of performance indicates that the assets she received in January 2004 were the assets for which she bargained.” Course of performance is relevant only to the extent it addresses one or more of the elements of fraud. Any alleged “course of performance” alone does not preclude the fraud allegations. Therefore, Defendants are not entitled to summary judgment on this basis.

**c. Elements of Fraud**

Defendants argue that ABI can not prove each of the elements of fraud with respect to any of the alleged misrepresentations.

Fraud requires: (1) a statement or a representation of fact; (2) its falsity; (3) its materiality; (4) the speaker’s knowledge of its falsity; (5) the speaker's intent that there be reliance; (6) the hearer’s ignorance of the falsity of the statement; (7) reliance by the hearer; (8) justifiable reliance; and (9) resultant injury. *Lindberg v. Roseth*, 137 Idaho 222, 226, 46 P.3d 518, 522 (2002) (citing *Hines v. Hines*, 129 Idaho 847, 851, 934 P.2d 20, 24 (1997)).

*Lettunich v. Key Bank Nat. Ass’n*, 141 Idaho 362, 368, 109 P.3d 1104, 1110 (2005).

Silence may constitute fraud when a duty to disclose exists. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 808 P.2d 851 (1991); *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987); *Bethlahmy v. Bechtel*, 91 Idaho 55, 415 P.2d 698 (1966); *Janinda v. Lanning*, 87 Idaho 91, 390 P.2d 826 (1964). A party may be under a duty to disclose: (1) if there is a fiduciary or other similar relation of trust and confidence

between the two parties; (2) in order to prevent a partial statement of the facts from being misleading; or (3) if a fact known by one party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it.

*Sowards v. Rathbun*, 134 Idaho 702, 707, 8 P.3d 1245, 1250 (2000).

**i. Library of Files**

ABI alleges that CBI represented that it owned a library of files valued at over one million dollars and that ABI would receive these files when it purchased the business. Defendants argue that ABI's claim of fraud based on this alleged misrepresentation fails because the alleged misrepresentation was not false. ABI contends that because Rutter owns the library of files, CBI's alleged representation was false.

Defendants rely on the affidavit of Pete Masterson (Masterson) to establish that ABI owns the library of files. Masterson testified that, absent an agreement to the contrary, trade custom dictates that the typesetter owns the intermediate files used to produce the final product for the customer. Masterson concludes that, because ABI and Rutter do not have an express agreement altering the trade custom, ABI owns the library of files.

ABI presented the affidavit of Don Mazzella (Mazzella) in opposition to Defendants' motion for summary judgment. Mazella's testimony directly contradicts Masterson's testimony. Mazella testified that, absent an agreement to the contrary, trade custom dictates that the customer owns the library of files. Raznick confirmed Mazella's testimony by stating that Rutter owns the library of files.

Based on the record before the Court on summary judgment, a genuine question of fact exists as to ownership of the library of files. Consequently, a reasonable inference

exists that the alleged misrepresentation regarding ownership of the library of files was false. Therefore, Defendants are not entitled to summary judgment on this basis.

**ii. Guaranteed Contract with Rutter**

ABI alleges that CBI represented that Rutter was contractually obligated to do business with CBI and that ABI would own the guaranteed contract when it purchased the business. Defendants argue that, even if CBI promised a guaranteed contract with Rutter, ABI can not prove its ignorance of the falsity of that statement.

Although the record contains testimony from April that CBI promised to transfer a guaranteed contract with Rutter, April's deposition testimony clarifies her understanding of the term "contract."

Q. ... What I would like to know now is to the best of your memory right now what was represented to you about a guaranteed contract? How was that described to you?

A. It was described to me that –

Q. By whom?

A. Christa and Ken both. We were around the kitchen table. That the Rutter Group library was owned by Christa Beguesse, Incorporated. And because of that there was a binding – a contractual obligation for the Rutter Group to continue to use Christa and vice versa. It would be vastly too much money and time for them to ever try to reinvent that type of wheel. It was 30 years in the making. And, again, for the meager fee of \$12,000 a month I could buy these files. And then, like I said, turn around and sell them either back to the Rutter Group or to a third party.

Q. That was your guaranteed contract?

A. I was under the assumption that that was my guaranteed contract, yes.

Q. Am I understanding you correctly that you agree there was not a contract and that the Rutter Group – there was a situation where



the Rutter Group had no reasonable alternative but to deal with your mother and therefore with you?

MR. BRUNSON: I object to the form of the question.

THE WITNESS: We used, your verbiage, in the form of contract. What you just said we would say contract.

Q. Okay. So is it fair to say, then, that you understood that the Rutter Group could, if it wanted to, simply take this business in-house or take it to another vendor, but that it would be prohibitively expensive for them to do so?

A. Yes.

ABI depo., pp. 80-81. See also ABI depo. p. 56, ll. 12-19:

The foregoing testimony reveals that even if ABI was promised a guaranteed contract with Rutter, April understood that no contract existed. April understood that Rutter was not required by contract to do business with CBI (or ABI), but only that the companies had a good working relationship and that it would be expensive for Rutter to take its business elsewhere. ABI knew or should have known that at best, Rutter was, to a degree, a captive client. Any testimony from April that uses the term “contract” must be considered in light of her understanding of that term. Affidavits of Plaintiff attempting to subsequently re-characterize her deposition testimony will not be considered.

Thus, the record establishes that ABI can not prove its ignorance of the falsity of the alleged statement regarding a guaranteed contract with Rutter. Defendants are entitled to summary judgment dismissing ABI’s claim for fraud as it relates to this alleged misrepresentation.

### **iii. Proprietary Software**

ABI alleges that CBI represented that CBI owned proprietary software unique to the typesetting business and that ABI would receive this software when it purchased the business. The only software that ABI received was PageMaker, which can be purchased off the shelf by anyone.

Defendants argue that ABI simply misunderstood the nature of the software that it was receiving and that it can not form the basis for a fraud action. However, at this stage in the litigation, an inference exists based on April's testimony that CBI misrepresented the software that it owned and used. Whether the software used in the business was proprietary or available to the public would reasonably have an effect on the purchase price of the business. Therefore, Defendants are not entitled to summary judgment on this basis.

#### **iv. Other Intellectual Property**

ABI alleges in its complaint that CBI promised to transfer "other intellectual property," however, ABI has failed to state what is meant by this phrase (apart from the library of files and proprietary software). Thus, Defendants are entitled to summary judgment dismissing ABI's claim for fraud as it relates to this alleged misrepresentation.

#### **v. Payments Ceasing on Christa's Death**

ABI alleges that Christa promised to make a will bequeathing the business to April and that, as a result, payments would cease under the contract when Christa died. Defendants argue several theories for why this alleged statement can not serve as a basis for fraud, including statute of frauds, the parol evidence rule, and lack of corroborating evidence. However, these theories would only be applicable if ABI was attempting to enforce the alleged promise to make a will. Here, ABI is simply alleging fraud.

Therefore, the statute of frauds, parol evidence rule and lack of corroborating evidence are not relevant or, at best, only relevant as evidence of whether ABI's reliance was justified. Nevertheless, an alleged promise to make a will can not be the basis of fraud.

As a general rule, fraud cannot be based upon statements promissory in nature that relate to future actions or upon the mere failure to perform a promise or an agreement to do something in the future. *Pacific States Auto. Fin. Corp. v. Addison*, 45 Idaho 270, 261 P. 683 (1927). The allegedly false representation must concern past or existing material facts. *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 114 P.3d 974 (2005). We have recognized two exceptions to the general rule that fraud cannot be based upon the mere failure to perform a promise. One exception is if the speaker made the promise without any intent to keep it, but to induce action on the part of the promisee. *Pocatello Sec. Trust Co. v. Henry*, 35 Idaho 321, 206 P. 175 (1922). The second exception is if the promise was accompanied by statements of existing fact which show the promisor's ability to perform the promise and those statements were false. *Id.*

*Gillespie v. Mountain Park Estates, L.L.C.*, 142 Idaho 671, 673-674, 132 P.3d 428, 430-431 (2006).

In the case at bar, ABI not only alleges that Christa promised to bequeath the business to April, but that Christa's will already spelled out the details. That Christa and Rammell allegedly misrepresented existing facts concerning Christa's will implicates the second exception to the general rule set forth in *Gillespie*. Consequently, the Court finds that, based on the record, an inference exists that would support ABI's fraud claim as it relates to the alleged statement about payments ceasing on Christa's death.

Defendants also contend that the parol evidence rule and statute of frauds prevent ABI from recovering on this portion of its fraud claim. While these theories may be relevant if ABI were attempting to enforce the alleged promise to bequeath the business, the Court finds that they are not dispositive on the issue of fraud. *Gillespie v. Mountain Park Estates, L.L.C.*, 138 Idaho 27, 30, 56 P.3d 1277, 1280 (2002) (“[t]he parol evidence

rule does not apply to averments of fraud, misrepresentation, mutual mistake or other matters which render a contract void or voidable.”); *Idaho Falls Bonded Produce and Supply Co. v. General Mills Restaurant Group, Inc.*, 105 Idaho 46, 50, 665 P.2d 1056, 1060 (1983) (Bistline, J., concurring) (“[C]ourts will not apply the provisions of the Statute of Frauds when to do so would work a fraud.”).

Based on the foregoing, the Court finds that genuine questions of fact exist on Plaintiff’s claim for fraud as it relates to the alleged statement about payments ceasing on Christa’s death. Accordingly, Defendants are not entitled to summary judgment on this part of Plaintiff’s fraud claim.

#### **vi. Rammell’s Ownership Interest**

Defendants’ initial motion and argument does not address the claim of fraud by nondisclosure of Rammell’s ownership interest in CBI. Accordingly, the Court will not address that issue.

#### 3. Constructive Fraud (Count three)

Defendants seek a summary dismissal of Count Three of the Amended Complaint which is denominated as a claim for “Constructive Fraud”. The claim alleges constructive fraud based upon a relationship of trust and confidence. However, the claim does not set out any factual allegations as to what constituted the alleged fraud. Pursuant to Rule 9(b), IRCP, the facts or circumstances of an alleged fraud must be stated with particularity.

Accordingly, Defendants motion as to Count Three will be granted. This ruling does not apply to the allegation in Count Two regarding the alleged nondisclosure of Rammell’s interest in CBI, which is technically a constructive fraud allegation.

#### 4. Breach of Contract (Count Four)

ABI alleges that CBI breached the Agreement by failing to provide the following assets: (1) a library of files worth over one million dollars; (2) a guaranteed contract with Rutter; (3) a proprietary software program; and (4) other intellectual property. ABI also alleges that CBI breached the contract by failing to provide consulting services after Christa died.

Defendants first argue that the breach of contract claim is barred by the statute of limitations. While a lease agreement might implicate I.C. § 28-12-506, the “Lease Agreement” which is an exhibit in this matter bears little resemblance to what the Parties agree was the contract. Specifically, there was no lease but rather the purchase of a business.<sup>1</sup> The subject Lease Agreement was a sham contract for the purpose of avoiding tax consequences and neither Party intended there to be a lease. As such, the Lease Agreement is unenforceable: “When two parties enter into a sham contract, as between themselves, there is no contract and the document is thus unenforceable.” 6A A. Corbin, Corbin on Contracts s 1473 (1962);

The Court finds that the alleged contract in this matter was an oral agreement for the purchase of a business. The statute of limitations applicable to an oral agreement is four years under I.C. § 28-2-725 or I.C. § 5-217.<sup>2</sup> Under both statutes, the statute of limitations begins to run at the time the cause of action accrues.

##### **a. Guaranteed Contract with Rutter**

As previously set out, the evidence does not support an allegation of a guaranteed contract with Rutter. Additionally, such a claim for breach of contract would have

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<sup>1</sup> Portions of the written Lease Agreement may be probative of the terms and conditions of the oral agreement.

<sup>2</sup> All Parties have referred to UCC provisions and consider the transaction to be subject to the UCC.

accrued at the time the business was delivered to ABI, which was more than four years prior to the filing of the lawsuit. *Farmers National Bank v. Wickham Pipeline, Construction*, 114 Idaho 565, 759 P.2d 71 (1988).

Plaintiff has argued that the doctrine of equitable estoppel should bar the application of the statute of limitations.

“The only non-statutory bar to a statute of limitation defense in Idaho is the doctrine of equitable estoppel.” *J.R. Simplot Co. v. Chemetics Int'l, Inc.*, 126 Idaho 532, 534, 887 P.2d 1039, 1041 (1994). The elements of equitable estoppel are as follows:

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

*Id.* Equitable estoppel does not eliminate, toll, or extend the statute of limitations. *Ferro v. Society of Saint Pius X*, 143 Idaho 538, 540, 149 P.3d 813, 815 (2006). It merely bars a party from asserting the statute of limitations as a defense for a reasonable time after the party asserting estoppel discovers or reasonably could have discovered the truth. *Id.*

*City of McCall v. Buxton*, 146 Idaho 656, 663-664, 201 P.3d 629, 636 - 637 (2009).

The Court finds equitable estoppel to be inapplicable to this issue. As set out above, Plaintiff knew or should have known that there was no guaranteed contract with Rutter when she took over the business. Defendants are entitled to summary judgment on this claim.

#### **b. Proprietary Software**

A claim that Plaintiff was not provided proprietary software also arose at the time the business was delivered to Plaintiff and would normally be barred by the four year statute of limitations. However, there is an inference that Plaintiff did not know that the

software was not proprietary until late 2006 when the business performed an update to the PageMaker software. As such, equitable estoppel may apply to prevent the application of the statute of limitations. Defendants are not entitled to summary judgment on this claim.

**c. Intellectual Property**

There is nothing in the record identifying any other intellectual property that was to be provided to the Plaintiff as part of the sale of the business. Not only does the evidence not support such a claim, the claim would also be barred by the four year statute of limitations.

**d. Library Files**

As set out above, there is at least an inference supporting Plaintiff's claim that the agreement included library files worth a substantial amount of money. The cause of action for this claim did not necessarily accrue at the time of delivery of the business inasmuch as that time, there was no adverse claim to the files. Courts have held in similar cases that a cause of action for breach accrues at the time the party becomes aware of an adverse claim to the property which was purchased under the contract i.e., the alleged breach does not occur until an adverse claim is made.

A cause of action for breach of contract accrues upon breach for limitations purposes. *See Simons v. Simons*, 134 Idaho 824, 830, 11 P.3d 20, 26 (2000); *Skaggs v. Jensen*, 94 Idaho 179, 180, 484 P.2d 728, 729 (1971). The five-year statute of limitation for Barraza to bring this breach of contract claim began to run when Barraza became aware of the breach. The breach alleged in Barraza's answer occurred when Cuevas filed the instant quiet title action-April 2, 2007.

*Cuevas v. Barraza*, 146 Idaho 511, 517, 198 P.3d 740, 746 (Idaho App.,2008)

The statute of limitations does not begin to run until a claim accrues upon the breach of the contract. *Prewett v. First Nat'l Bank of Hagerman*, 45

Idaho 451, 457, 262 P. 1057, 1058 (1928). The question of when the breach occurred is a factual one. Therefore, we look to the record to see if there is sufficient and competent evidence to support the findings. *Mays v. Kast*, 96 Idaho 472, 531 P.2d 234 (1975). The evidence of the discovery of the logging and the listing of the property for sale is certainly a point at which the Spences were aware their development was not going forward. Taking the evidence outlined above in a light most favorable to the non-moving party, there was substantial evidence to present the issue to the jury and from which the jury could find that the Spences' agreement with Howell was not breached until 1988.

*Spence v. Howell*, 126 Idaho 763, 770-771, 890 P.2d 714, 721 - 722 (1995).

In this case, there is evidence that an adverse claim to the files arose within the four years prior to the filing of the complaint. Additionally, based upon the disputed evidence equitable estoppel may preclude the application of the statute of limitations to this claim. Accordingly, Defendants' motion for summary judgment on this claim is denied.

#### **e. Consulting Services**

The Parties agreement regarding consulting services from Christa was an agreement for future performance, and no breach arises until the time for performance is to occur. Plaintiff argues that the agreement was breached inasmuch as Christa can not provide consulting services due to her death.

The death of Christa constitutes and "impossibility" and can not be the basis for a breach of contract claim.

The common law doctrine of impossibility of performance operates to excuse a party from liability for nonperformance of his or her obligations under a contract. *See Kessler v. Tortoise Dev., Inc.*, 130 Idaho 105, 108, 937 P.2d 417, 420 (1997); *Haessly v. Safeco Title Ins. Co.*, 121 Idaho 463, 465, 825 P.2d 1119, 1121 (1992); *State v. Chacon*, 146 Idaho 520, 523, 198 P.3d 749, 752 (Ct.App.2008); *Ferguson v. City of Orofino*, 131 Idaho 190, 193, 953 P.2d 630, 633 (Ct.App.1998). Impossibility is proven by showing that a contingency occurred, the nonoccurrence of which was a basic assumption of the agreement and that the contingency made



performance of the contract impossible. *Kessler*, 130 Idaho at 108, 937 P.2d at 420; *Haessly*, 121 Idaho at 465, 825 P.2d at 1121; *Chacon*, 146 Idaho at 523, 198 P.3d at 752.

*State v. Two Jinn, Inc.*, 2010 WL 1980405, 5 (Idaho App.,2010).

In addition to the foregoing, there is no evidence that Defendants failed to provide substitute consulting services upon request of Plaintiff. While Defendants may have an obligation to provide such substitute services, absent a request and failure to provide such services, there is no basis to assert a breach. The Court does not accept Plaintiff's argument that no other person could provide adequate consulting as may be required by Plaintiff.

Accordingly, Defendants are entitled to summary judgment on this issue.

5. Breach of Express Warranty (Count Five) and Implied Warranty (Count Six)

In Count Five and Six of the Amended Complaint, Plaintiff alleges that the Defendants warranted that the transfer of assets included a library of proprietary files worth over one million dollars, a guaranteed contract with Rutter, proprietary software program, and other intellectual property. These warranty claims are subject to the same analysis as set out above. Warranty claims are further subject to the same four year statute of limitations. *Puckett v. Oakfabco, Inc.*, 132 Idaho 816, 824, 979 P.2d 1174, 1182 (1999).

Again, a warranty claim as to a guaranteed contract is not supported by the evidence and barred by the statute of limitations. Disputed issues of fact preclude summary judgment as to the alleged proprietary software. The evidence does not support a claim as to "other intellectual property" and in any event, such a claim is barred by the four year statute of limitations. The claim as to a library of proprietary files is not as a

matter of law barred by the statute of limitations. Additionally, disputed issues of fact preclude summary judgment on that claim.

Accordingly, as to Counts Five and Six, Defendants are entitled to summary judgment in part.

#### 6. Unjust Enrichment (Count Seven)

Plaintiff argues that it would be unjust for Defendants to retain the payments made for the purchase of the business in that Plaintiff did not receive what she was “promised”. Unjust enrichment is an equitable remedy that may be available to a party when there is no adequate remedy at law.

Unjust enrichment occurs where a defendant receives a benefit which would be inequitable to retain without compensating the plaintiff to the extent that retention is unjust. *Beco Constr. Co. v. Bannock Paving Co.*, 118 Idaho 463, 466, 797 P.2d 863, 866 (1990) (quoting *Hertz v. Fiscus*, 98 Idaho 456, 457, 567 P.2d 1, 2 (1977)). A prima facie case of unjust enrichment consists of three elements: (1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof. *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 88, 982 P.2d 917, 923 (1999).

...

The doctrine of unjust enrichment is not permissible where there is an enforceable express contract between the parties which covers the same subject matter. *Wilhelm v. Johnston*, 136 Idaho 145, 152, 30 P.3d 300, 307 (Ct. App. 2001) (citing *DBSI/TRI v. Bender*, 130 Idaho 796, 805, 948 P.2d 151, 160 (1997)). Equity does not intervene when an express contract prescribes the right to compensation. *Shacocass, Inc. v. Arrington Constr. Co.*, 116 Idaho 460, 464, 776 P.2d 469, 473 (Ct. App. 1989); see *Wolford v. Tankersley*, 107 Idaho 1062, 1064, 695 P.2d 1201, 1203 (1984).

*Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 558, 165 P.3d 261, 272 (2007).

Defendants argue that the claim of unjust enrichment is simply a different theory for the same relief sought in the foregoing actions at law. As referenced above, equitable remedies are not available when a party has an adequate remedy at law.

As apparent from the pleadings, legal claims available to Plaintiff included fraud, breach of contract and breach of warranty. If failure to provide proprietary files, etc. constitutes a breach of contract, then the trier of fact can ascertain the damages arising from that breach. Even if an adequate remedy at law becomes barred by a statute of limitations, an equitable claim of unjust enrichment will not apply. *Thomas v. Campbell*, 107 Idaho 398, 690 P.2d 333 (1984); *Farmers Nat. Bank v. Wickham Pipeline Const.*, 114 Idaho 565, 759 P.2d 71 (1988). Rather, as long as an adequate remedy at law existed at some point, an equitable claim will be precluded.

There being adequate remedies at law, unjust enrichment is not available as an alternate theory for the same relief. Defendants are entitled to summary judgment on this claim.

7. Quasi-Estoppel (Count Eight).

ABI alleges that Defendants should be estopped “from taking a position contrary to their previous position that payments would cease upon Christa’s death.” Pl.’s Memo. in Opp. to Mot. for S.J., p. 38. Defendants argue that the doctrine of quasi-estoppel does not apply in this case.

To prevail on a quasi-estoppel theory, the claimant must show:

(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.

*Mortensen v. Stewart Title Guar. Co.*, 235 P.3d 387, 393 (2010) (quoting *Terrazas v. Blaine County*, 147 Idaho 193, 200 n. 3, 207 P. 3d 169, 176 n. 3 (2009)).

As an equitable remedy, quasi-estoppel is not available when there is an adequate remedy at law. As set out above, Plaintiff is pursuing a fraud claim based on the allegation that Defendants represented that an existing will provided that payments would end upon Christa's death. Since a legal remedy is available on this claim, Plaintiff may not pursue an equitable claim for quasi estoppel.

#### 8. Defendants' Counterclaims

Defendants also seek summary judgment on their counterclaims seeking relief for breach of contract, constructive trust, and injunctive relief. Defendants' argument is primarily based on the claim that Plaintiff has breached the contract by failing to pay \$12,000 a month pursuant to the agreement.

While the evidence establishes that Plaintiff has stopped making the monthly payment, there is a disputed issue of fact as to whether the non-payment is a breach of contract. If Plaintiff is successful on the fraud claim, the contract may be considered void and there would be no breach. Additionally, Plaintiff's claims may be the basis of a setoff for any recovery of Defendants.<sup>3</sup> Accordingly, Defendant is not entitled to summary judgment on the unjust enrichment or constructive trust claims based on the disputed issues of fact.

Defendants also seek injunctive relief as to Plaintiff disclosing trade secrets and proprietary information to its customers or other third parties. Under the circumstances of the litigation, Defendants have a legitimate interest in preserving such trade secrets. The Court finds that such injunctive relief is proper during the course of the litigation and all

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<sup>3</sup> A statute of limitations will not preclude a claim or defense for purposes of a setoff. Even though affirmative relief on a claim is barred by the statute of limitations, it may be presented defensively as a setoff against an adverse claim. *Beard v. George*, 135 Idaho 685, 687-688, 23 P.3d 147, 149-50 (2001); *Hirning v. Webb*, 91 Idaho 229, 231, 419 P.2d 671, 673 (1966); *Kelson v. Ahlborn*, 87 Idaho 519, 528, 393 P.2d 578, 583 (1964); *Viehweg v. Thompson*, 103 Idaho 265, 268, 647 P.2d 311, 314 (Ct.App.1982).


Parties are enjoined from disclosing to third parties trade secrets or proprietary information of the subject business.

#### IV. CONCLUSION

Based on the foregoing, the Parties motions to strike are granted in part and denied in part. Defendants' Motion for Summary Judgment is granted in part and denied in part, as set out above.

IT IS SO ORDERED.

Dated this 2 day of November, 2010.

  
JOEL E. TINGEY  
DISTRICT JUDGE

#### CERTIFICATE OF SERVICE

I hereby certify that on this 2 day of November, 2010, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon, or by placement in the courthouse mailbox.

Jeffrey D. Brunson  
BEARD ST. CLAIR GAFFNEY  
2105 Coronado Street  
Idaho Falls, ID 83404-7495

David E. Alexander  
RACINE OLSON NYE BUDGE  
P.O. Box 1391  
Pocatello, ID 83204

Clerk of the District Court  
Bonneville County, Idaho

By ms  
Deputy Clerk

BONNEVILLE COUNTY  
2011 JUL -6 PM 4:43

Jeffrey D. Brunson, ISB No. 6996  
John M. Avondet, ISB No. 7438  
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Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa Beguesse, Inc., an Idaho corporation, The Estate of Christa Beguesse Rammell, by its qualified personal representative, Kenneth Rammell,

Defendants/Counterclaimants.

Case No.: CV-09-2767

PLAINTIFF'S PROPOSED SPECIAL  
VERDICT FORM

We, the jury, answer the interrogatories in the Verdict Form as follows:

**FRAUD**

Question No. 1: Did Kenneth Rammell commit fraud, constructive fraud, or fraud by nondisclosure?

Answer: Yes \_\_\_ No \_\_\_

Question No. 2: Did Christa Beguesse, Inc. commit fraud, constructive fraud, or fraud by nondisclosure?

Answer: Yes \_\_\_ No \_\_\_

Question No. 3: Did The Estate of Christa Beguesse Rammell commit fraud, constructive fraud, or fraud by nondisclosure?

Answer: Yes \_\_\_ No \_\_\_

If you answered "Yes" to questions 1, 2, or 3, answer Question No. 4. If you answered "No" to questions 1, 2, and 3, proceed to Question No. 5.

Question No. 4: What is the total amount of damages to Plaintiff proximately caused by the fraud, constructive fraud, or fraud by nondisclosure?

Answer: \$ \_\_\_\_\_

**BREACH OF CONTRACT**

Question No. 5: Did Kenneth Rammell breach a contract with the Plaintiff?

Answer: Yes \_\_\_ No \_\_\_

Question No. 6: Did Christa Beguesse, Inc. breach a contract with the Plaintiff?

Answer: Yes \_\_\_ No \_\_\_

Question No. 7: Did The Estate of Christa Beguesse Rammell breach a contract with the Plaintiff?

Answer: Yes \_\_\_ No \_\_\_

If you answered "Yes" to questions 5, 6, or 7, please answer Question No. 8. If you answered "No" to questions 5, 6, or 7, then please proceed to Question No. 9.

Question No. 8: What is the total amount of damages to Plaintiff proximately caused by the breaches of contract?

Answer: \$ \_\_\_\_\_

**BREACH OF WARRANTY**

Question No. 9: Did Kenneth Rammell breach an express or implied warranty with the Plaintiff?

Answer: Yes \_\_\_ No \_\_\_

Question No. 10: Did Christa Beguesse, Inc. breach an express or implied warranty with the Plaintiff?

Answer: Yes \_\_\_ No \_\_\_

Question No. 11: Did The Estate of Christa Beguesse Rammell breach an express or implied warranty with the Plaintiff?

Answer: Yes \_\_\_ No \_\_\_

If you answered "Yes" to questions 9, 10, or 11, then please answer Question No. 12. If you answered "No" to questions 9, 10, and 11, then please proceed to Question No. 13.

Question No. 12: What is the total amount of damages to Plaintiff proximately caused by the breaches of express or implied warranties?

Answer: \$ \_\_\_\_\_

**BREACH OF CONTRACT**

Question No. 13: Did the Plaintiff breach a contract with the Defendants?

Answer: Yes \_\_\_ No \_\_\_

If you "Yes" to Question No. 13, then please answer Question No. 14. If you answered "No" to Question No. 13, then please proceed to Question No. 15.

Question No. 14: What is the total amount of damages to Defendants proximately caused by the breaches of contract by the Plaintiff?

Answer: \$ \_\_\_\_\_



**TRADE SECRETS ACT**

Question No. 15: Did the Defendants have a trade secret?

Answer: Yes \_\_\_ No \_\_\_

If you answered "Yes" to Question No. 15, please proceed to Question No. 16. If you answered "No" then you are done. Please sign the verdict and inform the bailiff.

Question No. 16: Did the Plaintiff misappropriate the Defendants' trade secrets in a wrongful manner?

Answer: Yes \_\_\_ No \_\_\_

If you answered "Yes" to Question No. 16, please proceed to Question No. 17. If you answered "No" to Question No. 16 then you are done. Please sign the verdict and inform the bailiff.

Question No. 17: Did the Plaintiff's misappropriation of the Defendants' trade secrets proximately harm the Defendants?

Answer: Yes \_\_\_ No \_\_\_

If you answered "Yes" to Question No. 17, please proceed to Question No. 18. If you answered "No" to Question No. 17 then you are done. Please sign the verdict and inform the bailiff.

Question No. 18: What is the total amount of damages caused to the Defendants by the Plaintiff's misappropriation of the Defendants' trade secrets?

Answer: \$ \_\_\_\_\_

DATED: January \_\_\_\_, 2011

\_\_\_\_\_  
Jury Foreperson

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FILED  
JAN 11 2011  
CLERK OF DISTRICT COURT  
BONNEVILLE COUNTY IDAHO  
PT 14-1-3

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Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa  
Beguesse, Inc., an Idaho corporation, The  
Estate of Christa Beguesse Rammell, by its  
qualified personal representative, Kenneth  
Rammell,

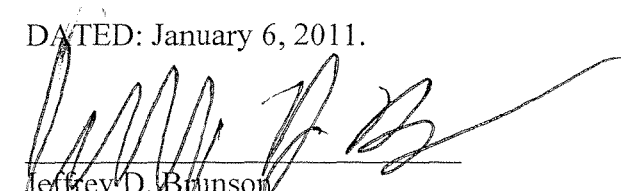
Defendants/Counterclaimants.

Case No.: CV-09-2767

PLAINTIFF'S PROPOSED JURY  
INSTRUCTIONS

COMES NOW the Plaintiff, by and through its counsel of record, Jeffrey D. Brunson and the law firm, Beard St. Clair Gaffney PA, and submits the following proposed jury instructions.

DATED: January 6, 2011.

  
\_\_\_\_\_  
Jeffrey D. Brunson  
John M. Avondet  
Of Beard St. Clair Gaffney PA  
Attorneys for the Plaintiff

IDJI 1.20.1 – Burden of proof – preponderance of evidence

INSTRUCTION NO. 1

When I say that a party has the burden of proof on a proposition, or use the expression "if you find" or "if you decide," I mean you must be persuaded that the proposition is more probably true than not true.

Plaintiff's Requested Instruction

Given  Refused  Modified  Covered  Other

INSTRUCTION NO. 2

One of the named defendants in this case is The Estate of Christa Beguesse Rammell. Statements made by Christa Beguesse Rammell are attributable to The Estate of Christa Beguesse Rammell for purposes of this trial.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

IDJI 1.20.2 – Burden of proof – clear and convincing evidence

INSTRUCTION NO. 3

When I say a party has the burden of proof on a proposition by clear and convincing evidence, I mean you must be persuaded that it is highly probable that such proposition is true. This is a higher burden than the general burden that the proposition is more probably true than not true.

Plaintiff's Requested Instruction

Given  Refused  Modified  Covered  Other

IDJI 1.22 – Deposition testimony (Modified)

INSTRUCTION NO. 4

Certain evidence is about to be presented to you by deposition. A deposition is testimony taken under oath before the trial and preserved in writing. This evidence is entitled to the same consideration you would give had the witness testified from the witness stand.

You will only receive this testimony in open court. Although there is a record of the testimony you are about to hear, this record will not be available to you during your deliberations.

Comment:

The last sentence has been added to IDJI 124 to anticipate inquiry from the jury.

Plaintiff's Requested Instruction

Given  Refused  Modified  Covered  Other

IDJI 1.24.1 – Circumstantial evidence without definition

INSTRUCTION NO. 5

Evidence may be either direct or circumstantial. The law makes no distinction between direct and circumstantial evidence. Each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

Plaintiff's Requested Instruction

Given  Refused  Modified  Covered  Other



IDJI 1.28 – Evidence admitted for limited purpose

INSTRUCTION NO. 6

In this case, certain evidence was admitted for a limited purpose. I called your attention to this when the evidence was admitted. I remind you that whenever evidence was admitted for a limited purpose, you must not consider such evidence for any purpose other than the limited purpose for which it was admitted.

Plaintiff's Requested Instruction

Given  Refused  Modified  Covered  Other

INSTRUCTION NO. 7

The plaintiff has the burden of proving each of the following propositions by clear and convincing evidence:

1. That the defendant stated a fact to the plaintiff;
2. The statement was false;
3. The statement was material;
4. The defendant either knew the statement was false or was unaware of whether the statement was true at the time the statement was made.
5. The plaintiff did not know that the statement was false;
6. The defendant intended for the plaintiff to rely upon the statement and act upon it in a manner reasonably contemplated;
7. The plaintiff did rely upon the truth of the statement;
8. The plaintiff's reliance was reasonable under all the circumstances;
9. The plaintiff suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to the plaintiff, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for the plaintiff on this issue. If you find from your consideration of all the evidence that any of the foregoing propositions has

not been proved by clear and convincing evidence, then your verdict should be for the defendant.

Comment:

A definition of materiality can be found in IDJI 6.08.5.

See Samuel v. Hepworth, Nungester & Lezamiz, Inc., 134 Idaho 84, P.2d 303 (2000); Watts v. Krebbs, 131 Idaho 616, 962 P.2d 387 (1998); Magic Lantern Prods. Inc. v. Dolsot, 126 Idaho 805, 892 P.2d 480 (1995).

See also, Witt v. Jones, 111 Idaho 477, 722 P.2d 474 (1986); Umpfrey v. Sprinkel, 106 Idaho 700, 682 P.2d 1247 (1983); Faw v. Greenwood, 101 Idaho 387, 613 P.2d 1338 (1980); Smith v. King, 100 Idaho 331 597 P.2d 217 (1979); King v. McNeel, Inc., 94 Idaho 444, 489 P.2d 1324.

Plaintiff's Requested Instruction

Given  Refused  Modified  Covered  Other

IDJI 6.01.1 – Elements of contract – introductory (*Modified*)

INSTRUCTION NO. 8

A contract is an agreement between two or more parties to do or not do something that is supported by consideration.

There are four elements to complete a contract. Every contract must have these four elements. The four elements are:

1. Competent parties;
2. A lawful purpose;
3. Valid consideration; and
4. Mutual agreement by all parties to all essential terms.

Comment:

The committee recommends that this instruction be used only where the jury actually needs a "lecture on contracts" The detailed instruction should usually be unnecessary, as only specific issues in dispute need be covered.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

IDJI 6.05.2 – Material terms - offer and acceptance (*Modified*)

INSTRUCTION NO. 9

A contract may consist of an offer by one party that is accepted by another party.

An offer is any proposal that is intended to become binding upon the party making the offer if it is accepted by the party to whom it is directed.

An acceptance of an offer is an expression by the party to whom the offer was directed that accepts the offer in accordance with the terms of the offer.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

IDJI 6.06.1 – Contract may be written or oral

INSTRUCTION NO. 10

A contract may be written or oral, or may contain both written terms and oral terms. So long as all the required elements are present, it makes no difference whether the agreement is in writing.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

IDJI 6.06.5 – Oral contracts are binding

INSTRUCTION NO. 11

An oral agreement that contains all of the elements of a contract is a binding contract.

Plaintiff's Requested Instruction

Given  Refused  Modified  Covered  Other

IDJI 6.08.1 – Interpretation of contracts - intention of parties (*Modified*)

Note: The court must first decide whether determination of the intent of the parties is properly a jury issue. If it is not, obviously the instruction would not be given. Should the court determine that issue is properly before the jury, the following instruction may be appropriate:

INSTRUCTION NO. 12

The terms of the contract are in dispute as to the following provisions:

- Whether the defendants agreed to provide ABI with a library of files worth over one million dollars;
- Whether the defendants agreed to provide ABI with proprietary software owned by CBI;
- Whether the defendants agreed that payments by ABI would cease upon the death of Christa Beguesse.

You must determine what was intended by the parties as evidenced by the contract in this case. In making this determination you should consider, from the evidence, the following:

1. Any communications, conduct or dealings between the contracting parties showing what they intended and how they construed the doubtful language may be considered, provided that such may not completely change the agreement or construe one term inconsistently with the remainder of the terms.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

*Withdrawn.*



IDJI 6.08.4 – Interpretation of contract - definition of material fact

INSTRUCTION NO. 13

A "material fact" is one which constitutes substantially the consideration of the contract, or without which it would not have been made.

Comments:

Black's Law Dictionary (West Pub; Fifth Ed., 1979)

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 14

"Materiality" refers to the importance of the representation in determining the party's course of action. A representation is material if (a) a reasonable person would attach importance to its existence or nonexistence in determining a choice of action in the transaction in question, or (b) the maker of the representation knows or has reason to know that the recipient is likely to regard the matter as important in determining the choice of action, whether or not a reasonable person would so consider.

Comments:

Watts v. Krebs, 131 Idaho 616 (1998) (tort standard, referring to Restatement (Second) of Torts, Sections 538(2).)

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified  Covered \_\_\_\_\_ Other \_\_\_\_\_

IDJI 6.09.1 – Amendments to contracts

INSTRUCTION NO. 15

A contract may be amended or modified by an agreement of the parties. This requires all of the elements of any other contract.

Plaintiff's Requested Instruction

Given  Refused  Modified  Covered  Other

INSTRUCTION NO. 16

The plaintiff has the burden of proving each of the following propositions:

1. A contract existed between plaintiff and defendant;
2. The defendant breached the contract;
3. The plaintiff has been damaged on account of the breach; and
4. The amount of the damages.

If you find from your consideration of all the evidence that each of the propositions required of the plaintiff has been proved, then you must consider the issue of the affirmative defenses raised by the defendant, and explained in the next instruction. If you find from your consideration of all the evidence that any of the propositions in this instruction has not been proved, your verdict should be for the defendant.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified  Covered \_\_\_\_\_ Other \_\_\_\_\_

IDJI 6.11 – Material breach

INSTRUCTION NO. 17

A “material breach of contract,” as that term is used in these instructions, means a breach that defeats a fundamental purpose of the contract.

Comments:

Ervin Const. v. Van Orden, 125 Id. 695, 699 (1993)

Plaintiff’s Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 18

To establish the defense of fraud, ABI has the burden proving by clear and convincing evidence each of the following propositions:

1. The defendants made a representation of a past or present fact;
2. The representation was false;
3. The represented fact was important;
4. The defendants knew the representation was false (or acted with a reckless disregard of the truth of the representation);
5. ABI was not aware of the falsity of the representation;
6. The defendants intended that ABI rely upon the representation in agreeing to enter into the contract;
7. ABI did rely upon the representation;
8. ABI's reliance was justified.

If you find from your consideration of all the evidence in the case that each of the foregoing propositions has been proved, your verdict should be for ABI.

Comment:

Materiality is defined in Instruction 6.08.5

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified  Covered \_\_\_\_\_ Other \_\_\_\_\_

IDJI 6.27.3 - Defense of non-disclosure (Modified)

INSTRUCTION NO. 19

A party is not obligated to perform a contract if that party establishes the defense of nondisclosure. To establish the defense of non-disclosure, ABI has the burden of proving each of the following propositions by clear and convincing evidence.

1. The defendants were aware of a fact vital to the essence of the contract;

2. ABI was unaware of the fact, and could not reasonably learn of it;

3. The defendants knew that ABI was unaware of the true fact and knew that disclosure of the true fact would correct a basic assumption upon which ABI was making the contract;

4. The defendants did not disclose the fact to ABI, intending that ABI would act in ignorance of the fact;

5. The failure to disclose the true fact amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing; [and]

6. ABI entered into the contract upon the reasonable assumption that the non-disclosed fact did not exist.

If you find from your consideration of all the evidence in the case that each of the foregoing propositions has been proved, your verdict should be for ABI.

Comment:

There is not definitive Idaho authority on point. This instruction is felt to be superior to the previous IDJI 651. *See*, Restatement (Second) of Contracts, Section 161; *obiter dicta* in Janinda v. Lanning, 87 Idaho 97 (1964).

The subject of duty to speak was tangentially addressed in Bethlahmy v. Bechtel, 91 Idaho 55, and Tusch Enterprises v. Coffin, 113 Idaho 37, with references to Restatement (Second) of Torts, Section 551. The committee feels the above instruction is consistent with those cases and the tort restatement, although cast in light of the Restatement of Contracts provisions.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_



IDJI 9.00 – Cautionary instruction on damages

INSTRUCTION NO. 20

By giving you instructions on the subject of damages, I do not express any opinion as to whether the plaintiff is entitled to damages.

Plaintiff's Requested Instruction

Given  Refused  Modified  Covered  Other

IDJI 9.03 – Damages for breach of contract – general format (Modified)

INSTRUCTION NO. 21

If the jury decides the plaintiff is entitled to recover from the defendant, the jury must determine the amount of money that will reasonable and fairly compensate the plaintiff for any of the following elements of damages proved by the evidence to have resulted from the defendant's conduct:

- The amounts paid by ABI to the defendants until the date of Christa Beguesse's death;
- The difference between the real value of the property purchased and that value which it would have had the representations been true.

Whether any of these elements of damage has been proved is for you to determine.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified  Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 22

Fraud may be established by silence when a defendant had a duty to speak.

Chiarella v. United States, 445 U.S. 222 (1980).

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 23

A duty to speak “arises in situations where the parties do not deal on equal terms or where information to be conveyed is not already in possession of the other party.”

G&M Farms v. Funk Irr. Co., 119 Idaho 514, 808 P.2d 851 (1991).

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 24

Fraud may be proved by direct or circumstantial evidence.

*Idaho State Tax Comm'n v. Hautzinger*, 137 Idaho 401, 404, 49 P.3d 206, 409 (2002).

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered  Other \_\_\_\_\_

INSTRUCTION NO. 25

A party is under a duty to disclose if a fact known by one party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it.

*Sowards v. Rathbun*, 8 P.3d 1245 (Idaho 2000).

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

IDJI 2.30.2 – Proximate cause – “substantial factor,” without “but for” test. (Modified)

INSTRUCTION NO. 26

When I use the expression "proximate cause," I mean a cause that, in natural or probable sequence, produced the injury, the loss or the damage complained of. It need not be the only cause. It is sufficient if it is a substantial factor in bringing about the injury, loss or damage. It is not a proximate cause if the injury, loss or damage likely would have occurred anyway.

Plaintiff's Requested Instruction

Given  Refused  Modified  Covered  Other

IDJI 9.13 – Present cash value

INSTRUCTION NO. 27

When I use the phrase “present cash value” as to any damage that may accrue in the future, I mean that sum of money determined and paid now which, when invested at a reasonable rate of interest, would be sufficient to pay the future damages at the time and in the amount the future damages will be incurred.

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_



IDJI 9.14 – Mitigation of damages

INSTRUCTION NO. 28

A person who has been damaged must exercise ordinary care to minimize the damage and prevent further damage. Any loss that results from a failure to exercise such care cannot be recovered.

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 29

When considering a claim for constructive fraud, there is no need for the plaintiff to have proved the defendants' intent, i.e., knowledge of falsity or intent to induce reliance, since it is inferred directly from the relationship and the breach."

*Country Cove Dev., Inc. v. Myron*, 143 Idaho 595, 601, 150 P.3d 288, 294 (2006).

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused  Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 30

The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

*Powers v. Am. Honda Motor Co.*, 139 Idaho 333, 335 (Idaho 2003)

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 31

When a buyer has goods that do not conform to express or implied warranties, the buyer keeps the goods and sues for the difference in the value of the goods as received and the value of the goods as warranted plus, in a proper case, any incidental damages and consequential damages.

*Powers v. Am. Honda Motor Co.*, 139 Idaho 333, 335 (Idaho 2003)

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 32

ABI asserts that the defendants warranted that CBI could transfer to ABI certain assets including a library of proprietary files valued at over one million dollars and a proprietary software program unique to CBI's business.

A warranty is defined as a promise that something in furtherance of the contract is guaranteed by one of the contracting parties.

BLACK'S LAW DICTIONARY 7th Ed. 1581 (1999)

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 33

In every contract for sale there is a warranty of title that the title of the goods is good and the transfer rightful.

Idaho Code § 28-2-312.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 34

Any affirmation of fact or promise made by a seller to a buyer, which relates to the goods and becomes a part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

Idaho Code § 28-2-313.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 35

Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

Idaho Code Ann. § 28-2-313.

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_



INSTRUCTION NO. 36

There is a warranty that no other person holds a claim to or interest in the goods  
as a matter of law.

Idaho Code Ann. § 28-12-211

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 37

Warranties may be express or implied.

An express warranty is a warranty created by words or actions of the seller.

Express warranties may be created by affirmations of fact or promises made by the seller to the buyer relating to the goods that becomes the basis of the bargain; (2) a description of the goods that becomes part of the basis of the bargain; or (3) a sample or model made part of the basis of the bargain.

An implied warranty arises because of the circumstances of the sale rather than a seller's express promise.

Idaho Code § 28-2-313; Black's Law Dictionary 7th Ed. 1582 (1999)

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 38

If you find by a preponderance of the evidence that the defendants expressly warranted that they were transferring a library of proprietary files valued over one million dollars and/or a proprietary software program unique to CBI's business to ABI, then your verdict should be for ABI.

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 39

If you find by a preponderance of the evidence that the defendants did not have title to a library of proprietary files valued over one million dollars and/or a proprietary software program unique to CBI's business, then your verdict should be for ABI.

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 40

ABI asserts that the defendants impliedly warranted that the assets to be transferred would be merchantable. This implied warranty means that the property is fit for the ordinary purpose for which it is used and that it would conform to the promises or affirmations of fact made by the defendants.

If you find by a preponderance of the evidence that the defendants impliedly warranted that the library of files and the proprietary software were warranted for a as merchantable, then your verdict should be for ABI.

Black's Law Dictionary 7th Ed. 1582 (1999)

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 41

ABI asserts that the defendants impliedly warranted that the assets were fit for a particular purpose. An implied warranty of fitness for a particular purpose means that if a seller has reason to know of the buyer's special purpose for the property, that the property is suitable for those purposes.

If you find by a preponderance of the evidence that the defendants impliedly warranted that the library of files and the proprietary software were warranted for a particular purpose, then your verdict should be for ABI.

Idaho Code § 28-2-315; Black's Law Dictionary 7th Ed. 1582 (1999).

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 42

The term “consequential damages” is defined as losses that do not flow directly and immediately from an injurious act, but that result indirectly from the act.

Black’s Law Dictionary 7th Ed. 394 (1999).

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Plaintiff’s Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 43

The term “incidental damages” is defined as “losses reasonably associated with or related to actual damages.”

Black’s Law Dictionary 7th Ed. 395 (1999).

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Plaintiff’s Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_



INSTRUCTION NO. 44

In order to prevail in a misappropriation action under the Idaho Trade Secrets Act, the defendants must show that a trade secret actually existed. Without a proven trade secret there can be no misappropriation even if ABI's action was wrongful.

*Basic Am., Inc. v. Shatila*, 133 Idaho 726, 734, 992 P.2d 175, 183 (1999).

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 45

Information is only a trade secret if it derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure and use; and is the subject of effects that are reasonable under the circumstances to maintain its secrecy.

Idaho Code Ann. § 48-801(5)(a)-(b).

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 46

One factor that may be considered when deciding if information constitutes a trade secret is “the ease or difficulty with which the information could be properly acquired or duplicated by others.”

RESTATEMENT (TORTS) § 757 cmt b (1939); *Basic Am., Inc. v. Shatila*, 133 Idaho 726, 735, 992 P.2d 175, 184 (1999).

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 47

"Misappropriation" means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(A) Used improper means to acquire knowledge of the trade secret; or

(B) At the time of disclosure or use, knew or had reason to know that his knowledge

of the trade secret was:

(i) Derived from or through a person who had utilized improper means to acquire it;

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Idaho Code § 48-801

Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 48

In this case, the defendants have asserted that ABI misappropriated its trade secrets by improper means and that such misappropriation has damaged the defendants. In order to enter a verdict for the defendants, the defendants must demonstrate by clear and convincing evidence that ABI misappropriated trade secrets by improper means. If the defendants do not meet their burden, then your verdict must be for ABI.

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

INSTRUCTION NO. 49

The term “improper means” includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

Idaho Code Ann. § 48-801(1).

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Plaintiff's Requested Instruction

Given \_\_\_\_\_ Refused \_\_\_\_\_ Modified \_\_\_\_\_ Covered \_\_\_\_\_ Other \_\_\_\_\_

W. Marcus W. Nye (ISB#: 1629)  
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2011 JAN 10 PM 1:25  
 DISTRICT COURT  
 MAGISTRATE DIVISION  
 BONNEVILLE COUNTY  
 IDAHO

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

April Beguesse, Inc. An Idaho Corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Kenneth Rammell, an individual, Christa , )  
 Beguesse, Inc., an Idaho Corporation. )  
 Estate of Christa Beguesse Rammell, by its )  
 qualified personal representative, Kenneth )  
 Rammell, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

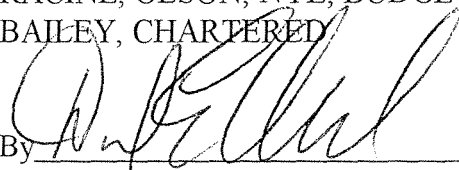
Case No. CV-09-2767

**DEFENDANTS' PROPOSED JURY  
 INSTRUCTIONS AND SPECIAL  
 VERDICT FORM**

COMES NOW, THE Defendants, by and through counsel, and respectfully submit the following proposed Jury Instructions No. 1 through 40 and Special Verdict Form. This Defendant reserves the right to submit additional instructions at trial based upon issues that may arise during the course of the trial or after review of Plaintiff's proposed jury instructions.

DATED this 7th day of January, 2011.

RACINE, OLSON, NYE, BUDGE &  
 BAILEY, CHARTERED

By   
 \_\_\_\_\_  
 DAVID E. ALEXANDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11<sup>th</sup> day of January, 2011, I served a true, correct and copy of the above and foregoing document upon the following person(s) as follows:

Jeffrey D. Brunson  
John M. Avondet  
BEARD ST. CLAIR GAFFNEY PA  
2105 Coronado Street  
Idaho Falls, Idaho 83404-7495

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208) 529-9732  
*and email to shaunie@beardstclair.com*



DAVID E. ALEXANDER



INSTRUCTION NO. 1

The following facts are not in dispute:

Plaintiff April Beguesse, Inc., (ABI) is an Idaho corporation fully owned by April Beguesse. Defendant Christa Beguesse, Inc., (CBI) is an Idaho corporation whose shares are owned by Defendants Kenneth J. Rammell and the Estate of Christa Beguesse-Rammell.

Christa Rammell and Kenneth Rammell were married in California in 1988, and they remained married until her death in November 2008. Christa was the mother from a previous marriage of April Beguesse. Kenneth Rammell was Christa's sole heir under a Last Will and Testament she wrote in September 2007.

Until January 2004, CBI operated a typesetting business located in Idaho Falls. Christa Beguesse started a typesetting business in California in the 1970s. In the early 1980s, she began typesetting law books for a California publisher called The Rutter Group. By the mid-1990s, The Rutter Group represented most of Christa's business. In 1995, Christa Rammell formed CBI as a California corporation. In 1996, she dissolved the California corporation, moved to Idaho Falls with Kenneth Rammell, and formed the Idaho corporation, Christa Beguesse, Inc., which is a party to this case.

After the move to Idaho, CBI retained only one customer, The Rutter Group. CBI had no contract or binding agreement requiring The Rutter Group to use CBI's typesetting services. CBI continued to operate the typesetting business until it sold the business to April Beguesse, Inc. in January 2004.

In November 2001, Ken and Christa Rammell proposed to April Beguesse that she move to Idaho Falls and go to work for CBI in order to learn the business so she could take it over.

April did so and began working for CBI in January 2002. Christa taught April the operation of the business and made sure that the customer approved of the planned change in ownership. April Beguesse was aware that The Rutter Group was not obligated by contract to use her services, and could take its typesetting business to another provider at any time. By this time, The Rutter Group was owned by West Publishing, a division of Thomson Reuters Corporation, one of the largest publishing companies in the world.

In January 2004, the business began operating in the same location and with the same equipment, assets and employees under the ownership of ABI. Under the agreement entered into between ABI and CBI, ABI was to pay to CBI the sum of \$12,000.00 per month for eight years, and Christa Beguesse was to be available to ABI for consulting as needed.

ABI made those payments for four years and 10 months until Christa's death in November 2008. From January 2004 through December 2008, ABI had revenues from its one customer, The Rutter Group, of \$1,929,068.00. During that same time, out of those revenues, ABI made payments to CBI pursuant to the agreement in the amount of \$684,520.00. Also during that time, ABI paid salary, benefits and profits to April Beguesse in the amount of at least \$489,262.00.

ABI is still operating the typesetting business and doing work for The Rutter Group. It has lost none of the work it was doing for The Rutter Group before Christa's death, and has obtained new business since Christa's death. ABI has incurred no monetary damages as a result of the fraud, breach of contract and breach of warranty alleged in this case.

IDJI 1.07 – Facts not in dispute

GIVEN: \_\_\_\_\_

REFUSED : \_\_\_\_\_

MODIFIED: \_\_\_\_\_

COVERED: \_\_\_\_\_

OTHER: \_\_\_\_\_

INSTRUCTION NO. 2

The corporations involved in this case are entitled to the same fair and unprejudiced treatment that an individual would be under like circumstances. You should decide this case with the same impartiality that you would use in deciding a case between individuals.

IDJI 1.02 – Corporate parties

GIVEN:   /    
REFUSED : \_\_\_\_\_  
MODIFIED: \_\_\_\_\_  
COVERED: \_\_\_\_\_  
OTHER: \_\_\_\_\_

INSTRUCTION NO. 3

Certain contracts must be in writing to be enforceable. If such a contract exists but is not in writing, this does not mean that there is no contract, or that it is illegal or improper, it simply means that the contract may not be enforced in court.

IDJI 6.06.4 – Certain agreements must be in writing

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 4

When I say that a party has the burden of proof on a proposition, or use the expression "if you find" or "if you decide," I mean you must be persuaded that the proposition is more probably true than not true.

IDJI 1.20.1

Given:  \_\_\_\_\_  
Refused:  \_\_\_\_\_  
Modified:  \_\_\_\_\_  
Covered:  \_\_\_\_\_  
Other:  \_\_\_\_\_

INSTRUCTION NO. 5

On plaintiff's claim of constructive fraud against the defendants, the plaintiff has the burden of proving each of the following propositions by clear and convincing evidence:

1. That there existed between the plaintiff and the defendants such a relationship of trust and confidence that it created in the defendants an obligation not to exert influence or pressure on the plaintiff, or take selfish advantage of the plaintiff's trust, or deal with the subject matter of the trust in such a way as to benefit themselves or prejudice the plaintiff except in the utmost good faith and with the full knowledge and consent of the plaintiff;

2. That the defendants stated a fact to the plaintiff, or failed to disclose to the plaintiff a fact known to them;

3. The statement was false, or the failure to disclose the fact left the plaintiff with incomplete or incorrect knowledge;

4. The statement or fact was material;

5. The plaintiff did not know that the fact was false, or that his knowledge was incomplete or incorrect;

6. The plaintiff relied upon the truth of the statement, or upon its incomplete or incorrect knowledge;

7. The plaintiff's reliance was reasonable under all the circumstances;

8. The plaintiff suffered damages proximately caused by reliance on the false statement.

9. The nature and extent of the damages to the plaintiff, and the amount thereof.

You will be asked the following question on the jury verdict form:

Did the defendants commit constructive fraud?

If you find from your consideration of all the evidence that the elements of constructive fraud have been proved by clear and convincing evidence, then your verdict should be for the plaintiff on this issue. If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for the defendant.

IDJI 1.41.2 – Charging instruction, plaintiffs case, verdict on special interrogatories



INSTRUCTION NO. 6

On plaintiff's claim of fraud against the defendants, the plaintiff has the burden of proving each of the following propositions by clear and convincing evidence:

1. That the defendant stated a fact to the plaintiff;
2. The statement was false;
3. The statement was material;
4. The defendant either knew the statement was false or was unaware of whether the statement was true at the time the statement was made.
5. The plaintiff did not know that the statement was false;
6. The defendant intended for the plaintiff to rely upon the statement and act upon it in a manner reasonably contemplated;
7. The plaintiff did rely upon the truth of the statement;
8. The plaintiff's reliance was reasonable under all the circumstances;
9. The plaintiff suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to the plaintiff, and the amount thereof.

You will be asked the following question on the jury verdict form:

Did the defendants commit fraud?

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for the plaintiff on this issue. If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for the defendant.

IDJI 1.41.2 – Charging instruction, plaintiffs case, verdict on special interrogatories

Comment:

This instruction is the foundation for a verdict on special interrogatories. A charging instruction such as this should be given for each discrete claim or cause of action covered by a special interrogatory on the verdict form. The introductory sentence may be modified as necessary to specifically refer to each claim or cause of action which is covered by the charging instruction and the special verdict interrogatory to which it relates.

INSTRUCTION NO. 7

When I say a party has the burden of proof on a proposition by clear and convincing evidence, I mean you must be persuaded that it is highly probable that such proposition is true. This is a higher burden than the general burden that the proposition is more probably true than not true.

IDJI 1.20.2 – Burden of proof – clear and convincing evidence

Given:   /    
Refused:         
Modified:         
Covered:         
Other:

INSTRUCTION NO 8

Evidence may be either direct or circumstantial. The law makes no distinction between direct and circumstantial evidence. Each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

IDJI 1.24.1 – Circumstantial evidence without definition

Given:   ✓    
Refused:         
Modified:         
Covered:         
Other:

INSTRUCTION NO. 9

On the issue of fraud, the Plaintiff, April Beguesse Inc., has the burden of proof on each of the following propositions by clear and convincing evidence:

1. That the defendant stated a fact to the plaintiff;
2. The statement was false;
3. The statement was material;
4. The defendant either knew the statement was false or was unaware of whether the statement was true at the time the statement was made.
5. The plaintiff did not know that the statement was false;
6. The defendant intended for the plaintiff to rely upon the statement and act upon it in a manner reasonably contemplated;
7. The plaintiff did rely upon the truth of the statement;
8. The plaintiff's reliance was reasonable under all the circumstances;
9. The plaintiff suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to the plaintiff, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for the plaintiff on this issue. If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for the defendant.

If you find from your consideration of all the evidence in the case that each of the foregoing propositions has been proved, your verdict should be for the Plaintiff. If you find that any of the propositions has not been proved, then your verdict should be for the Defendants.

IDJI 1.40.1– General format, general verdict, and and IDJI 4.60 – Fraud - Issues.

Given:   
Refused:   
Modified:   
Covered:   
Other:

INSTRUCTION NO. 10

On the defendants' counterclaim claim of breach of contract against Plaintiff, the defendants have the burden of proof on each of the following propositions:

1. A contract existed between plaintiff and defendant;
2. The plaintiff ABI breached the contract;
3. The defendants have been damaged on account of the breach; and
4. The amount of the damages.

You will be asked the following question on the jury verdict form:

Did ABI breach a contract with any of the defendants?

If you find from your consideration of all the evidence that each of these propositions has been proved, then you should answer this question "yes." If you find from your consideration of all the evidence that any of these propositions has not been proved, then you should answer this question "no."

IDJI 1.41.3 – Charging instructions on defense claims - special interrogatories

Comment:

The committee recommends that when there are affirmative defenses or counterclaims, and in any case involving multiple claims, cross claims or third party claims, verdicts on special interrogatories be used. Then, each party's claim, counterclaim or cross claim can be isolated into a charging instruction which defines that claim, and sets forth the elements necessary to answer the special interrogatory.

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered:   J

INSTRUCTION NO. 11

On the defendants' claim of implied contract or unjust enrichment against Plaintiff.

The doctrine of unjust enrichment states that in the absence of circumstances indicating otherwise, it is inferred that a person who requests another to transfer property to him thereby bargains to pay for it.

The measure of recovery for services furnished or goods received under the doctrine of unjust enrichment is the value of the actual benefit realized and retained by the plaintiff.

The defendant has the burden of proving the elements of unjust enrichment as follows:

1. That the plaintiff requested the defendant to transfer property to her;
2. That given all the circumstances existing at that time, it appears that the plaintiff agreed to pay for that property; and
3. The value of the actual benefit realized and retained by the plaintiff.

You will be asked the following question on the jury verdict form:

Should the defendants recover from the plaintiff on their claim of unjust enrichment or implied contract?

If you find from your consideration of all the evidence that each of these propositions has been proved, then you should answer this question "yes." If you find from your consideration of all the evidence that any of these propositions has not been proved, then you should answer this question "no."

IDJI 1.41.3 – Charging instructions on defense claims - special interrogatories

*Erickson v. Flynn*, 138 Idaho 430, 434 (App. 2002)

Comment:



The committee recommends that when there are affirmative defenses or counterclaims, and in any case involving multiple claims, cross claims or third party claims, verdicts on special interrogatories be used. Then, each party's claim, counterclaim or cross claim can be isolated into a charging instruction which defines that claim, and sets forth the elements necessary to answer the special interrogatory.

Given: \_\_\_\_\_  
Refused:  \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 12

On defendants' counterclaim for misappropriation of trade secrets against the plaintiff, the defendant has the burden of proof on each of the following propositions:

1. That the defendants possessed trade secrets;
2. That the plaintiff used theft, bribery, or misrepresentation to acquire knowledge of the defendants' trade secrets;
3. That the plaintiff disclosed or used the defendants' trade secrets without the express or implied consent of the defendants; and
4. The nature and extent of the damages to the plaintiff, and the amount thereof.

You will be asked the following question on the jury verdict form:

Did the plaintiff ABI misappropriate trade secrets belonging to one or more of the defendants?

If you find from your consideration of all the evidence that each of these propositions has been proved, then you should answer this question "yes." If you find from your consideration of all of the evidence that any of these propositions has not been proved, then you should answer this question "no."

IDJI 1.41.2 – Charging instruction, plaintiffs case, verdict on special interrogatories, revised

Comment:

This instruction is the foundation for a verdict on special interrogatories. A charging instruction such as this should be given for each discrete claim or cause of action covered by a special interrogatory on the verdict form. The introductory sentence may be modified as necessary to specifically refer to each claim or cause of action which is covered by the charging instruction and the special verdict interrogatory to which it relates.

Given:

Refused:

Modified:

Covered:

Other:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

INSTRUCTION NO. 13

On the plaintiff's claim of breach of contract against the defendants, the plaintiff has the burden of proof on each of the following propositions:

1. A contract existed between plaintiff and defendant;
2. The defendants breached the contract;
3. The plaintiff has been damaged on account of the breach; and
4. The amount of the damages.

You will be asked the following question on the jury verdict form:

Did the defendants breach a contract with plaintiff ABI?

If you find from your consideration of all the evidence that each of these propositions has been proved, then you should answer this question "yes." If you find from your consideration of all the evidence that any of these propositions has not been proved, then you should answer this question "no."

IDJI 1.41.3 – Charging instructions on defense claims - special interrogatories

Comment:

The committee recommends that when there are affirmative defenses or counterclaims, and in any case involving multiple claims, cross claims or third party claims, verdicts on special interrogatories be used. Then, each party's claim, counterclaim or cross claim can be isolated into a charging instruction which defines that claim, and sets forth the elements necessary to answer the special interrogatory.

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered:   J

INSTRUCTION NO. 14

On the plaintiff's claim of breach of express warranty with regard to the so-called proprietary software, the plaintiff has the burden of proof on each of the following propositions:

1. The defendants expressly warranted the existence of proprietary software unique to CBI and authored by Christa Beguesse from scratch;
2. The defendants breached the warranty;
3. The plaintiff has been damaged on account of the breach; and
4. The amount of the damages.

You will be asked the following question on the jury verdict form:

Did the defendants breach an express warranty with ABI relating to the proprietary software?

If you find from your consideration of all the evidence that each of these propositions has been proved, then you should answer this question "yes." If you find from your consideration of all the evidence that any of these propositions has not been proved, then you should answer this question "no."

IDJI 1.41.3 – Charging instructions on defense claims - special interrogatories

Comment:

The committee recommends that when there are affirmative defenses or counterclaims, and in any case involving multiple claims, cross claims or third party claims, verdicts on special interrogatories be used. Then, each party's claim, counterclaim or cross claim can be isolated into a charging instruction which defines that claim, and sets forth the elements necessary to answer the special interrogatory.

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_ ✓  
Other: \_\_\_\_\_

INSTRUCTION NO. 15

The terms of the contract are in dispute as to the following provisions:

Whether the parties agreed that the assets of the business to be transferred from Christa Beguesse, Inc. to April Beguesse, Inc., included (1) the copyrights in the library of publications which the business typeset for its customer, and (2) a proprietary computer program, written by Christa Beguesse, that allowed the Adobe PageMaker program to read files created by Microsoft Word.

You must determine what was intended by the parties as evidenced by the contract in this case. In making this determination you should consider, from the evidence, the following:

1. The contract must be construed as a whole, including all of the circumstances giving rise to it, to give consistent meaning to every part of it.
2. Language must be given its ordinary meaning, unless you find from the evidence that a special meaning was intended.
3. Any communications, conduct or dealings between the contracting parties showing what they intended and how they construed the doubtful language may be considered, provided that such may not completely change the agreement or construe one term inconsistently with the remainder of the terms.
4. The contract should be construed to avoid any contradiction or absurdities.

Persons within a specialized field are deemed to have contracted with reference to any generally known and customarily accepted language in that field, unless you find from the evidence that this was not intended.

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_



INSTRUCTION NO. 16

You may not consider any explanation or interpretation of the contract offered by any witness, or any oral agreement of the parties occurring before execution of the written agreement, which is inconsistent with the plain, ordinary meaning of the written agreement. While you may consider the testimony of witnesses if necessary to clarify an ambiguity, you may not consider such testimony to completely change the agreement, or to construe a term of the agreement in such a fashion that it no longer fits with the other, non-ambiguous terms or parts.

IDJI 6.08.2 – Interpretation of contract - witness's testimony, ambiguity of contract

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 17

A "material fact" is one which constitutes substantially the consideration of the contract, or without which it would not have been made.

IDJI 6.08.4 – Interpretation of contract - definition of material fact

Comments:

Black's Law Dictionary (West Pub; Fifth Ed., 1979)

Given:   J    
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 18

"Materiality" refers to the importance of the representation in determining the party's course of action. A representation is material if (a) a reasonable person would attach importance to its existence or nonexistence in determining a choice of action in the transaction in question, or (b) the maker of the representation knows or has reason to know that the recipient is likely to regard the matter as important in determining the choice of action, whether or not a reasonable person would so consider.

IDJI 6.08.5 – Interpretation of contract - materiality

Comments:

Watts v. Krebs, 131 Idaho 616 (1998) (tort standard, referring to Restatement (Second) of Torts, Sections 538(2).)

INSTRUCTION NO. 19

A contract is an agreement between two or more parties to do or not do something that is supported by consideration.

There are four elements to complete a contract. Every contract must have these four elements. The four elements are:

1. Competent parties;
2. A lawful purpose;
3. Valid consideration; and
4. Mutual agreement by all parties to all essential terms.

It is not disputed that the following elements are present in the contract alleged in this case:

The parties are competent to enter into a contract, and the alleged contract was for a lawful purpose.

IDJI 6.01.1 – Elements of contract - introductory

Comment:

The committee recommends that this instruction be used only where the jury actually needs a "lecture on contracts" The detailed instruction should usually be unnecessary, as only specific issues in dispute need be covered.

Given:   ✓    
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 20

In this case, April Beguesse, Inc. alleges that there was no consideration to support the existence of a contract.

A promise is not enforceable as a contract unless something of value was given or was agreed to be given in exchange for it. In law, the giving of value or agreement to give value is called "consideration." Consideration is the benefit given or agreed to be given by one party in exchange for the other party's performance or promise to perform.

Consideration must have value; if it has no value at all, it is not sufficient. If the parties have agreed upon the specific consideration to be given in this case, then any value, however slight, is sufficient.

IDJI 6.04.1 – Consideration

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 21

In this case, April Beguesse, Inc. alleges that all parties did not agree to all essential terms of the contract. This requirement is sometimes referred to as the "meeting of the minds," and means that all parties to a contract must have understood and accepted all of the essential terms of the contract.

There is no contract unless all of the essential terms have been communicated to all parties, understood by all parties, and accepted by all parties.

IDJI 6.05.1 – Agreement on all material terms

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 22

A contract may be written or oral, or may contain both written terms and oral terms. So long as all the required elements are present, it makes no difference whether the agreement is in writing.

IDJI 6.06.1 – Contract may be written or oral

Given:   /    
Refused:         
Modified:         
Covered:         
Other:



INSTRUCTION NO. 23

Certain contracts must be in writing to be enforceable. If such a contract exists but is not in writing, this does not mean that there is no contract, or that it is illegal or improper, it simply means that the contract may not be enforced in court.

IDJI 6.06.4 – Certain agreements must be in writing

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_ ✓  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 24

An agency relationship exists where one, called the “principal,” has authorized another, called the “agent,” to act on behalf of the principal.

Agency requires the consent of the principal, which consent may be expressed or implied. [A business purpose is not required.] [Compensation of the agent is not required.] [The term “principal” includes employers, and the term “agent” includes employees.]

IDJI 6.40.5 – Agency defined

Comments:

Note: Use bracketed portions applicable to case. See, Thornton v. Budge, 257 P.2d 238, 240, 74 Idaho 103 (Idaho 1953).

Given: \_\_\_\_\_  
Refused:   /    
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 25

In this case the defendant has asserted certain affirmative defenses to the claim of fraud. The defendant has the burden of proof on each of the affirmative defenses asserted.

The Defendant has asserted that the claim of fraud is barred by the statute of limitations. The statute of limitations for fraud begins to run when the plaintiff knew or reasonably should have known of the facts constituting the fraud. You can infer that the plaintiff had actual knowledge of the facts constituting the fraud at the time that the plaintiff could have discovered the fraud by the exercise of due diligence.

If you find from your consideration of all the evidence that the plaintiff knew or reasonably should have known of the facts constituting the fraud on or before May 7, 2006, then your verdict should be for the defense. If you find from your consideration of all the evidence that any of these propositions have not been proved, then the defendant has not proved the affirmative defense in this case.

IDJI 6.10.4 - General contract – affirmative defenses

*McCorkle v. Northwestern Mutual Life Ins. Co.*, 141 Idaho 550, 554-555 (App. 2005)

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 26

A “material breach of contract,” as that term is used in these instructions, means a breach that defeats a fundamental purpose of the contract.

IDJI 6.11 – Material breach

Comments:

Ervin Const. v. Van Orden, 125 Id. 695, 699 (1993)

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 27

When I say that a party must have "substantially performed" the contract or that "substantial performance" of the contract is required, I mean that the important and essential benefits called for by the terms of the contract have been delivered or performed. A contract may be substantially performed even though there may have been some deviations or omissions from the performance called for by the precise language of the contract.

IDJI 6.13 – Performance of contract - substantial performance

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

DEFENDANTS RESERVE THE RIGHT TO SUBMIT AN APPROPRIATE INSTRUCTION ON IMPOSSIBILITY IF THE NATURE OF THE EVIDENCE JUSTIFIES IT

INSTRUCTION NO. 28

In this case, the defendant has claimed the defense of impossibility because of the following circumstance:

[Insert description of circumstance, such as death of essential participant, destruction of essential property, unforeseen change of law, act of God, etc. ]

In order for this defense to apply, the defendant has the burden of proof on each of the following:

1. The circumstance alleged by the defendant exists or existed through no fault of the defendant.
2. The happening of this circumstance could not reasonably have been anticipated by the defendant when the contract was entered into.
3. The happening of this circumstance was not assigned or assumed as the responsibility of any party by the contract itself.
4. The happening of this circumstance prevents the performance of the contract in its essential and important terms.

If you find from your consideration of all the evidence in the case that each of the foregoing propositions has been proved, your verdict should be for the defendant. If you find that any of the propositions has not been proved, then your verdict should be for the plaintiff.

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_



INSTRUCTION NO. 29

The plaintiff has the burden of proving each of the following propositions:

1. A contract existed between plaintiff and defendant;
2. The defendant breached the contract;
3. The plaintiff has been damaged on account of the breach; and
4. The amount of the damages.

If you find from your consideration of all the evidence that each of the propositions required of the plaintiff has been proved, then you must consider the issue of the affirmative defenses raised by the defendant, and explained in the next instruction. If you find from your consideration of all the evidence that any of the propositions in this instruction has not been proved, your verdict should be for the defendant.

IDJI 6.10.1 – Breach of bilateral contract – general case – no affirmative defenses

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered:   ✓    
Other: \_\_\_\_\_

INSTRUCTION NO. 30

In this case the defendant has asserted certain affirmative defenses to the claim of breach of contract. The defendant has the burden of proof on each of the affirmative defenses asserted.

The Defendant has asserted that the claim of breach of contract arising from the ownership of the PageMaker-format files is barred by the statute of limitations. The statute of limitations for breach of contract begins to run when the plaintiff knew or reasonably should have known that a third party was making an adverse claim to ownership of the property.

If you find from your consideration of all the evidence that the plaintiff knew or reasonably should have known that a third party was making an adverse claim to ownership of the PageMaker-format files on or before May 7, 2005, then your verdict should be for the defense. If you find from your consideration of all the evidence that any of these propositions have not been proved, then the defendant has not proved the affirmative defense in this case.

IDJI 6.10.4 - General contract – affirmative defenses

*Cuevas v. Barraza*, 146 Idaho 511, 517 (App. 2008)

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: ✓

INSTRUCTION NO. 31

In this case the defendant has asserted certain affirmative defenses to the claims of breach of contract and breach of warranty. The defendant has the burden of proof on each of the affirmative defenses asserted.

In this case, the Court has found that the claims of breach of contract and breach of warranty arising from the proprietary software claim is barred by the statute of limitations unless the plaintiff proves that an exception to the statute of limitations applies. To prove the exception, the plaintiff must prove each of the following elements :

(1) That defendants made a false representation or concealment of a material fact with actual or constructive knowledge of the truth;

(2) that the plaintiff did not know or could not discover the truth;

(3) that the false representation or concealment was made with the intent that it be relied on;

and

(4) that the plaintiff relied and acted upon the representation or concealment to his prejudice, with the result that the plaintiff was unable to determine that the software was not proprietary before May 7, 2005.

If you found in favor of the plaintiff on its claims of either breach of contract or breach of warranty arising from the proprietary software issue, you must consider whether the plaintiff has proven the four elements above. If you find from your consideration of all the evidence that the plaintiff has proven each of these four elements, then your verdict on the claim for breach of contract arising from the proprietary software issue should be for the plaintiff. If you find from your consideration of all the evidence that any of these propositions have not been proved, then your verdict should be for the defendant.

IDJI 6.10.4 - General contract – affirmative defenses (revised)

*City of McCall v. Buxton*, 146 Idaho 656, 663-64 (2009)

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 32

In this case the defendant has asserted certain affirmative defenses to the claims of fraud, breach of contract and breach of warranty. The defendant has the burden of proof on each of the affirmative defenses asserted.

The Defendant has asserted that the claims are barred by the doctrine of laches. “Laches” means the neglect to assert a right or a claim which, taken together with lapse of time and other circumstances, causes prejudice to the other party, such that it would be unfair to permit the plaintiff to bring the claim at this time. statute of limitations. The statute of limitations for fraud begins to run when the plaintiff knew or reasonably should have known of the facts constituting the fraud. You can infer that the plaintiff had actual knowledge of the facts constituting the fraud at the time that the plaintiff could have discovered the fraud by the exercise of due diligence.

If you find from your consideration of all the evidence that the plaintiff knew or reasonably should have known of the facts constituting the fraud on or before May 7, 2006, then your verdict should be for the defense. If you find from your consideration of all the evidence that any of these propositions have not been proved, then the defendant has not proved the affirmative defense in this case.

IDJI 6.10.4 - General contract – affirmative defenses

BLACK'S LAW DICTIONARY 787 (5th ed. 1979)

*Eldridge v. Idaho State Penitentiary*, 54Idaho 213, 222 (1934)

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 33

By giving you instructions on the subject of damages, I do not express any opinion as to whether the plaintiff is entitled to damages.

IDJI 9.00 – Cautionary instruction on damages

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_



INSTRUCTION NO. 34

If the jury decides the defendants are entitled to recover from the plaintiff on their counterclaim for breach of contract, the jury must determine the amount of money that will reasonable and fairly compensate the defendant for any of the following elements of damages proved by the evidence to have resulted from the plaintiff's breach of contract:

The total amount of payments due from plaintiff to defendants under the agreement between the parties which have not been paid as of today's date, and the total amount of payments, if any, due to the defendants in the future;

Whether any of these elements of damage has been proved is for you to determine.

IDJI 9.03 – Damages for breach of contract – general format – revised

Given: \_\_\_\_\_

Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 35

If the jury decides the defendants are entitled to recover from the plaintiff on their counterclaim for unjust enrichment, the jury must determine the amount of money that will reasonably and fairly compensate the defendant for damages proved by the evidence to have resulted from the unjust enrichment.

The measure of damages is the total value of the actual benefit realized and retained by the plaintiff resulting from the transfer of business property to the plaintiff.

Whether any of these elements of damage has been proved is for you to determine.

IDJI 9.03 – Damages for breach of contract – general format – revised

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_

Covered: \_\_\_\_\_  
Other: \_\_\_\_\_

INSTRUCTION NO. 36

If the jury decides the plaintiff is entitled to recover from the defendant, the jury must determine the amount of money that will reasonable and fairly compensate the plaintiff for any of the following elements of damages proved by the evidence to have resulted from the defendant's breach of contract:

UNKNOWN AT THIS TIME

Whether any of these elements of damage has been proved is for you to determine.

IDJI 9.03 – Damages for breach of contract – general format

Given: \_\_\_\_\_  
Refused: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Covered: \_\_\_\_\_  
Other: \_\_\_\_\_