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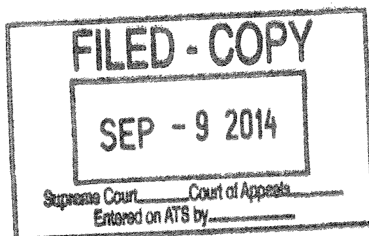

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IN THE SUPREME COURT OF THE STATE OF IDAHO

CHRISTINA J. GREENFIELD, Plaintiff / Appellant, vs. ERIC J. WURMLINGER and ROSALYN D. WURMLINGER, husband and wife, Defendants / Respondents.	Supreme Court Docket No. 41178-2013 Kootenai County No. 2010-8209

APPELLANT'S RESPONSE TO RESPONDENTS' REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
FOR KOOTENAI COUNTY
JUDGE LANSING HAYNES PRESIDING

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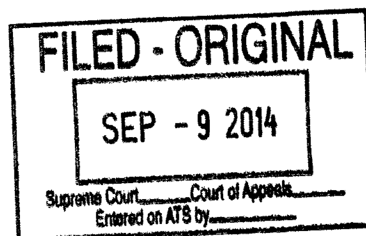

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I. REBUTTAL TO RESPONDENTS' STATEMENT OF FACTS

Appellant agrees that the Respondents built their home in 1994 approximately one (1) year after Appellants home was built (*Pg. 7 Paragraph 2*). The location of Appellants residence was approved by Park Wood Place Architectural Control Committee in 1993. The Respondents were given approval to build their residence in its current location by the Park Wood Place Architectural Control Committee, which said approved location would not block Appellants view of the Spokane River. Appellant's view of the river was established in 1993 when Appellants lot was purchased at a higher premium for said view (*Tr. Vol. I, Pg. 424, Lines 15-23, Pg. 425, Lines 2-11*)

Appellant disagrees with Respondents statement that the "*Wurmlingers planted a row of arborvitae...near the property line...*" (*Pg. 7, Paragraph 2*) as several statements were made by the Respondents stating that the arborvitae shrubs were planted as a "*border planting*", on the "*property line*", and / or "*boundary line*", separating the two properties. The Respondents are

attempting to alter their prior testimony. Respondent, Eric Wurmlinger, testified that the arborvitae shrubs he "*planted approximately ten years earlier as a border planting between our properties...*" and "*...along the property line...*"(*Tr. Vol. I, Pg. 295, Lines 16-19, Pg. 305, Lines 5-25, Pg. 306, Lines 1-2*). In Respondents Trial Brief (*dated May 11, 2012, Pg.5, Paragraph 2(b), under ARGUMENT*), it states: "*the arborvitae hedge had been present on the parties' boundary line since 1995...*" The Respondents Statement of Remaining Issues (*Clerks Record Pg. 184, #2*) Respondents state: "*Do the arborvitae growing along the parties' property line constitute a nuisance*?" and "*Do the arborvitae planted on or near the property line between the appellant's and respondents' real property violate the Park Wood Place CC&Rs*?" (*Clerks Record Pg. 185, #4*) Both Appellant and Respondents believed that the arborvitae hedge (fence) was the boundary line that separated the two properties.

The Respondents state that they have a "*home occupation at their residence*" (*issued by the City of Post Falls*) and have "*operated the home occupation at a consistent level since approximately 2005*" (*Pg. 7, Paragraph 3*). It is true that the Respondents applied for and received a "Home Occupation Permit" from the City of Post Falls, who blindly permits said "Home Occupation Permits" based solely on the applicant's word. However, Respondents statement is NOT accurate where Respondents claim that the business has been "*consistent.*" The Respondents increased their advertising promotions by publications and internet marketing sites, and expanded their wedding venue in summer 2006, by adding a large stream, pond, arbor, and large cement patio to seat patrons during the ceremonies.

The Respondents originally advertised they could accommodate up to twenty-five (25) people at their bed and breakfast in 2005 (*See Plaintiffs Trial Exhibit #2)* and by 2006 were

advertising a newly improved wedding facility that could accommodate up to forty (40) people (*See Appellants Trial Exhibit #26A and Exhibit #54 Spokesman Ad*).

A "Home Occupation Permit" issued by the City of Post Falls has strict guidelines for said permit (*See Plaintiffs Trial Exhibit #4*) most of which the Respondents are violating said permit guidelines as listed: There is a large illuminated sign advertising the "River Cove B & B" that is located by the street on the Respondents property (*See Plaintiff's Trial Exhibit #102 (G, H)*), bright lights are attached to the residence and utilized all year round (*See Plaintiff's Trial Exhibit #102 (I)*) additional street parking is necessary for large weddings (*See Plaintiff's Trial Exhibit #102 (J-O)*), patrons may use the Respondents paddle boat or stay over-night on the Respondents yacht, which offered an additional suite along with dinner cruises, as well as other "off-site" accommodations, and patrons are allowed to use the Respondents outdoor hot tub.

The Respondents designate 72.9% of their home to the bed and breakfast business (*Per 2010 Tax Detail Report / Appellants Trial Exhibit #109 & Exhibit I w/ Affidavit*), wherein the requirements state that no more than 1/3 of the residence can be utilized for a "Home Occupation", and said business uses (described above) are NOT enclosed within the residence. Wurmlingers hire a minister and photographer to operate at the weddings who DO NOT qualify as "Family Members" and the wedding attendees and over-night guests are NOT residents as clearly mandated under the Park Wood Place CC&Rs for "Home Occupations." Appellant submitted several documents to the Court revealing internet "booking" sites that accept payment for the River Cove Bed and Breakfast (Respondents business). Respondent Eric Wurmlinger falsely testified when he stated "*we totally control everyone that comes to our B&B through advance reservations*" (*Trial Vol. I, Pg.229, Lines 18-20*). One cannot "*totally control*" their

business when another business is making the reservations on behalf of the Respondents such as *Booking.com, Kayak.com, Priceline.com, Hotels.com, etc. (Clerks Record Pgs. 633 -646).*

It is further documented that a "Home Occupation" shall NOT "*alter the residential character of the premises*." Appellant contends that it is NOT typical normal activity, in a single family residence; to frequently host weddings, and have a revolving door where of up to eight public guests (non-family members) would pay for over-night accommodations. Respondents state that this constant invasion is compared to "*having company over to their home*" (*Trial Vol. I Pg. 230, Lines 17-18*).

Furthermore, the Respondents are not in compliance with the Park Wood Place CC&Rs "*NO Business*" mandate or the City of Post Falls Zoning Ordinance 18.20.030., which requires that a bed and breakfast facility MUST have a "Special Use Permit" to operate within the City limits of Post Falls, which also requires approval from adjacent home owners. The Respondents bed and breakfast is operating as a full-time commercial business and not as a "Home Occupation."

In April 2006, Respondents admit to cutting the arborvitae hedge to six feet (*Pg. 10, Paragraph 2*). In 2006 the height of the arborvitae hedge was staggered and some reached a height of approximately twelve (12) feet (*See Plaintiffs Trial Exhibit #102(A), a photo taken by Plaintiff in May 2005 showing the height of arborvitae (hedge) shrubs ranging from 7 feet to approximately 12 feet*). Respondent Eric Wurmlinger cut ten (10) of the arborvitae shrubs after mandated to do so (*to the right of the pine tree in the 2005 photo referenced above*) to six (6) feet in height approximately to half their size, severing the main stems of each arborvitae shrub. Mr. Wurmlinger cut off approximately three (3) feet from the remaining fourteen (14) arborvitae shrubs (*to the left of the pine tree in the same 2005 photo referenced above*). The Appellant and her arborist, Joseph Zubaly, confirmed this fact by substantial evidence during testimony that the

main stems of the arborvitae shrubs had already been drastically severed in 2006, prior to the Greenfield trimming in April 2010 (*Trial Testimony Zubaly Vol. I, Pg. 436, Lines 1-2, Pg. 461, Lines 20-25, Pg. 462, Lines 1-3*) (*See Plaintiff's Trial Exhibit #25 where you will notice five (5) of the arborvitae on either side of the newly planted 4 ft. arborvitae that were cut in 2006 by Eric Wurmlinger)* NONE of the ten (10) arborvitae shrubs were damaged or destroyed after the Respondents severe cut in April 2006 or by Appellants trimming of the after growth in April 2010. The arborvitae shrubs resumed their pyramidal shape and had grown to varying heights from six (6) feet to nine (9) feet tall by April 2010 (*NOTE: the last two arborvitae shrubs to the farthest right of the 2005 photo were replaced in May 2008 by Eric Wurmlinger with two - four (4) foot high arborvitae shrubs, See Plaintiffs Trial Exhibit #25*) (*Trial Testimony Zubaly Vol. I, Pg. 432, Lines 21-24, Pg. 437, Lines 1-21*). Both of the Respondents and Appellants arborists testified that the arborvitae shrubs may grow approximately three (3) inches to twelve (12) inches per year with "*perfect*" growing conditions. Arborist Zubaly testified that NO damage was caused by Greenfields slight trimming in April 2010 as the main stalks were already cut in 2006 by Wurmlinger, and the arborvitae shrubs are "*healthy... and growing normally*" (*Trial Testimony Zubaly Vol. I, Pg. 434, Lines 13-25, Pg. 435, Lines 1-20, Pg. 460, Lines 10-18*). Respondents' master arborist, Tim Kastning, testified that the arborvitae shrubs were "*...growing pretty, pretty, pretty good*" (*See Trial Deposition of Tim Kastning Pg. 46, Lines 5-7*).

Therefore, it is NOT even remotely conceivable that the ten (10) arborvitae shrubs grew six (6) feet in four (4) years to twelve (12) feet high as stated by Eric Wurmlinger in his complaint to the Post Falls Police Department (*claiming Greenfield "destroyed" his hedge by cutting them in half* on *Pg. 11 Paragraph 5*). Eric Wurmlinger deceptively submitted photos (*to detective Gunderson*) of the arborvitae hedge dated April 2006, just prior to his cutting of the said hedge in

April 2006 that appeared to be approximately twelve (12) feet high, proclaiming that Greenfield "*...cut down almost in half.*" (*Tr. Vol. II, Pg. 652, Line 25, Pg. 653, Lines 1-11*). Eric Wurmlinger falsely informed Detective Gunderson that the arborvitae hedge was solely located on his property and not on the property line (*Tr. Vol. II, Pg. 616, Lines 18-25*). Due to Eric Wurmlingers false statements and deceptive photos given to law enforcement Greenfield was arrested and charged with a felony. It was Eric Wurmlinger who insisted that Greenfield be charged with a felony (*Tr. Vol. II, Pg. 666, Lines 12-23*) and Wurmlinger kept in constant contact with detective Gunderson on a weekly basis during the criminal proceedings (*Tr. Vol. II, Pg. 657, Lines 1-17*). Greenfield was acquitted nineteen (19) months after her arrest.

The Respondents state "*that the arborvitae trees were not a ""fence"" and thus are not subject to the CC&R restricting fence height*" (*Pg. 10, Paragraph 3*). Appellant disagrees. The CC&Rs are clear and unambiguous and do NOT allow fence heights to exceed five (5) feet.

A row of trees planted along or near the property line between adjoining parcels to separate or mark the boundary between the parcels is a "structure in the nature of a fence" *See Wilson v. Handley, 97 Cal. App. 4th 1301 (2002); Lakes at Mercer Island v. Witrak (1991) 61 Wash.App. 177, 810 P.2d 27; Black's Law Diet. (5th ed.1979) p. 556, col. 2), a "fence" can also be a "structure ... erected ... to separate two contiguous estates" (ibid.) or "a barrier intended ... to mark a boundary" (Merriam-Webster's Collegiate Diet. (10th ed.2000) p. 428, col. 1).*

Furthermore, ignorance of the law is not a remedy for violating the law. The Respondents not only violated the Park Wood Place CC&Rs height restrictions on fences not to exceed five (5) feet in height, but also the City of Post Falls "Fence Ordinance" which requires that all hedges must be kept at the six (6) foot height requirement (*City of Post Falls Fence Ordinance Section 18.24.020*).

The Respondents were informed by the City of Post Falls to "maintain" the hedge at the six (6) foot height indefinitely (*See Plaintiffs Trial Exhibit #14*) and a decision to modify the ordinance after the fact does not change the directive as mandated under City of Post Falls Ordinance 1.01.070: EFFECT OF CODE ON PAST ACTIONS AND OBLIGATIONS:

> *"Neither the adoption of this code nor the repeal or amendments hereby of any ordinance or part or portion of any ordinance of the city shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date of the ordinance codified in this chapter..."*

Also *See* Idaho Code §50-905; REPEAL OF CONFLICTING PROVISIONS, which clarifies the City of Post Falls obligation to protect Greenfields interest in regard to the present fence ordinance violation and continue to enforce said ordinance after the fact.

On page 12, paragraph 2, the Respondents state "*both parties made multiple complaints to the police about one another*" The majority of the "complaints" were made by the Respondents against Appellant as a form of harassment. Appellant testified and presented substantial evidence of this fact. Appellant suffered from habitual trespasses from Eric Wurmlinger onto her property, false complaints (approximately twenty) of alleged crimes, and a false 911 call from Eric Wurmlinger stating that a prowler was in Greenfields yard when in fact, Greenfield was watering her garden. The additional alleged vandalism photos that the Respondents introduced last minute at trial were simply a diversion to shift the blame and direct attention away from Respondents contemptuous continuing behavior toward Greenfield. It is however troubling to the Appellant that the Respondents alleged vandalism on their property began in July 2011, just prior to Greenfields criminal trial, and said alleged vandalism continued until October 2012, just prior to Greenfields civil Trial, and NO additional vandalism has been reported after the Trial concluded.

II. REBUTTAL TO RESPONDENTS' STATEMENT OF THE CASE

(*Pg. 13, Paragraph 2*) Appellant disagrees and contends that all of the Respondents Counter Claims are issues in this Appeal, especially the NIED Claim that was dismissed with prejudice approximately twenty (20) months prior to Trial. The Respondents filed three (3) frivolous counter-claims against the Appellant then revoked two of them (*NIED and Tortious Interference with Prospective Economic Advantage, referring to* *__Business__*) shortly after they introduced them. The Respondents "Intentional Infliction of Emotional Distress" claim was never introduced during trial proceedings and they attempted to deceptively revive the NIED claim. The Respondents waited fourteen months to amend and add two additional counter claims "Trespass and Timber Trespass" a week after Greenfield was acquitted of the bogus felony charge trumped up by the Wurmlingers.

(*Pg. 13, Paragraph 3*) Appellant disagrees as Greenfield discussed her concerns with the Special Verdict form "*off the record*" (*per Judge Haynes*) with Judge Haynes law clerk, Buck Pennington, regarding the "wording" on the Special verdict form. Several discussions, along with several different versions, were presented to the law clerk containing amendments by both parties. It was not until the end of day on November 29, 2012, the day before Trial was scheduled to end that Greenfield viewed the Jury Instructions. No time was set aside at that point to discuss said instructions and the reasoning as to why NONE of Greenfields jury instructions were used and labeled "DENIED."

Greenfield is appealing the remaining matters set forth in the Respondents statement of the case and disagrees with the Court findings for attorney fees awarded to the Respondents, as they have brought their counter-claims frivolously without merit.

III. REBUTTAL TO REPSONDENTS' LEGAL ARGUMENT

Appellant disagrees with Respondents analogy of "pro se litigants" (*Pg. 17, Paragraph* 1). It is NOT Greenfield, a pro se litigant, who has wasted the courts time with countless delays in discovery requests, wherein the Respondents were sanctioned for said discovery delays; a revolving door with multiple attorneys making appearances on behalf of the Respondents; numerous objections; frivolous counter-claims (*two were dismissed prior to trial*); extensions; and several other diversions in an attempt to derail Greenfield's timely presentation of her case.

Greenfields briefing is NOT "*difficult to follow*" and made quite simple for any individual to follow. Respondents are lashing out with ridiculous verbosity as usual in an attempt to discredit the Appellants argument, authority, and / or legal reasoning.

Appellant's substantial evidence far outweighs the Respondents tainted trial testimony's and purported evidence ((*photos of paint vandalism that does NOT have any relevance in this case, Monaco survey, distorted aerial photo (Tr. Vol. II, Pg. 586, Lines 18-20) , hand drawn ill-proportioned lot dimensions, pictures of arborvitae shrubs on other properties, etc.*)).

Appellant makes factual assertions based on substantial evidentiary documents and did NOT waste the Courts time with testimony that had NO substantial evidence to support said testimony.

The Respondents attempt to persuade this court by referring to *Bach v. Bagley,* but fail to acknowledge that Appellants argument does "*...contain the contentions of the appellant with respect to the issues presented on appeal, the reasons therefor, with citations to authorities, statutes and parts of the transcript and the record relied upon.*"

The Idaho Supreme Court has a strong public policy "*in favor of hearing appeals on their merits and of not depriving a party of his right of appeal because of technical noncompliance*

where he is attempting to perfect his appeal in good faith." Id. at 711, 587 P.2d at 1246 (*quoting Brown v. Guy, 167 Cal.App.2d 211, 334 P.2d 67, 69-70 (Dist.Ct.App.1959)*).

A. Rebuttal to the District Court's Equitable Findings Regarding Alleged CC&R Violations: Issues 1 and 2.

1. Rebuttal to Respondents Statement that the District Court's Finding that the Bed and Breakfast Did Not Violate the CC&Rs Is Supported by Substantial Evidence.

What substantial evidence? Appellant disagrees that the Respondents bed and breakfast qualifies as a "Home Occupation" for the reasons stated above. The only qualifying factor that the Respondents can offer in regard to operating under a "Home Occupation" is based on the testimony of Eric Wurmlinger stating that he "*does not have employees*" (*Pg. 21, Paragraph 2*) However, during the wedding ceremonies, a Reverend presides and a photographer takes photos and /or videos of the events. Both are NOT residents and may or may not be "employees", but their presence is required during the wedding nuptials. Neither of the Respondents testified that they are pastors and / or photographers, so said services must be hired out with some sort of compensation.

The Respondents have a "Business Liability Rider" (NOT hobby) through their home insurance policy (*Tr. Vol I, Pg 225, Lines 9-13*) due to their highly profitable commercial business.

Furthermore, "*Eric and Rosalyn Wurmlinger testified that all Bed and Breakfast operations are conducted within the residence*" (*Pg. 22, paragraph 1*). This statement is false as testimony provided by all parties and witnesses verified that weddings at the bed and breakfast are held outside. The Appellant provided evidence where "*Street Signs*" of the "wedding" events were placed in front of the Respondents residence along with photos of many vehicles parked on the

street by the attendees (*See Plaintiff's Trial Exhibit #102*). Wurmlingers boasted of their newly added "outdoor" wedding venue attractions in the Spokesman Review article in spring 2006.

Albert Hutson, a minister who conducted wedding ceremonies at the Bed and Breakfast, made mention of the P.A. system streaming music during the ceremonies "outside."

Rocky Pool, who lived next door to Greenfield moved out in early 2005 (*before Greenfield purchased her home*) and was NOT present when the wedding venue expanded on the Wurmlinger property in 2006. His testimony is moot.

Ashley Labau, who testified she rented the house next door (*Rocky Pools prior residence*) to Greenfield in 2009, for a few months, did NOT live directly next door to Wurmlingers as Greenfield did, and could NOT see the Wurmlingers wedding arbor or patio as the arborvitae hedge blocked her view.

Ms. Camyn, the caretaker who lived next to Wurmlingers stated she "*liked the weddings.*" When asked about the weddings she replied "*Oh, a lot of them were inside, but in the summertime there were several that were out in the backyard*" (*Tr., Vol. II, Pg. 863, Lines 6-8*).

The Respondents claim that "*the court relied heavily on Judy Richardson's testimony, the previous owner of Greenfield's residence between 1993 and 2005*" (*Pg. 22, Paragraph I*), yet Ms. Richardson testified that she lived in her residence from 1993 to approximately 2001, (*Tr., Vol. II, Pg. 717, Line 20*). Ms. Richardson had moved out prior to the expansion of the Wurmlinger wedding venue in 2006.

It is further noted that Ms. Richardson could NOT remember most of the events or any viable facts during her trial testimony. Ms. Richardson, a woman in her seventies, when questioned by Respondents in regard to her previous home now owned by Greenfield, was asked "*...did you have a view?*" (*Tr., Vol. II, Pg. 718, Lines 22-23*), Ms. Richardson replied "*It's hard to remember*"

(*Tr., Vol. II, Pg. 718, Line 24*) When the Respondents asked Ms. Richardson "*Was there a window on the side of your house that faced...the Wurmlingers house...*" Ms. Richardson replied "*No.*" (*Tr., Vol. II, Pg. 720, Lines 11-19*) (*There are two large windows in the master bedroom upstairs and one below in the family room that face the Wurmlingers house*) When Ms. Richardson was asked "*Did there come a time when you determined to sell your home?*" Ms. Richardson replied "*...I can't remember the exact date.*" Even when Respondents answered for her with "*...May of 2005*" Ms. Richardson replied "*That could be...yes.*" When Respondents asked Ms. Richardson if she remembered if Greenfield "*made any comments about the view...the bay...the park...*" Ms. Richardson replied "*No, not that I remember.*" (*Tr., Vol. II, Pg. 725, Lines 11-14*). When the Respondents asked Ms. Richardson "*Do you remember discussing the bed and breakfast with Ms. Greenfield...*" Ms. Richardson replied "*No. We didn't really discuss it.*" (*Tr., Vol. II, Pg. 725, Lines 19-22*), yet the Respondents are claiming Greenfield "knew of it." When Ms. Richardson was asked several questions about the rooms in the Wurmlinger home, the weddings, etc., her answers were the same "*I'm not sure*" (*Tr., Vol. II, Pg. 733, Line 11*), "*...I think I heard about it...*"(*Tr., Vol. II, Pg. 733, Line 14*), "*I'm not sure when he built it*" (*Tr., Vol. II, Pg. 733, Line 23*).

When Appellant questioned Ms. Richardson during trial, Ms. Richardson appeared extremely confused. Appellant asked her "*Did you remember me telling you that I was driving around and I happened to see your sign on your property and that's how I knew it was for sale?*" Ms. Richardson replied "*I didn't have a sign on my property*" Appellant asked "*Didn't you have your house for sale for four years with three different realtors?*" Richardson replied "*No*" (*Tr., Vol. II, Pg. 734, Lines 19-25*) At this point Appellant showed Ms. Richardson three flyers that were dated 2003, 2004, and 2005, that were advertising Ms. Richardson's home "*For Sale.*" Appellant

then asked Ms. Richardson "*Are these all advertisements on how many times your home has been for sale?*" Ms. Richardson replied "*I don't recall. I know I had it for sale...but I don't remember...*" As previously noted, the Respondents "*relied heavily*" on Ms. Richardson's testimony, yet it is obvious that Ms. Richardson's recollection is disputable and erratic.

Appellant disagrees in part with Respondents statement "*While Greenfield contends that Plaintiff's Exhibit #102 proves that the Wurmlingers' Bed and Breakfast caused increased traffic and parking because of its weddings, Eric Wurmlinger testified that the pictures in Plaintiff's Exhibit #102 of traffic and street parking depicts a one-time professional meeting event, and not an illustration of a typical wedding at the Bed and Breakfast.*" (*Pg.23, Paragraph 2*) Once again, this is a false statement. Appellant witnessed weddings on 5/13/2007 *(Plaintiffs Exhibit #102 (J,K)*), on 4/11/2008 exhibiting a sign that says "*...Wedding...*" (*Plaintiffs Exhibit #102 (M,N)*) and a wedding on 9/18/2008 (*Plaintiffs Exhibit #102* (O)). The Respondents advertisements promote weddings that can accommodate up to "forty people." One can assume that most of the attendees will drive to their facility and CANNOT all park in the Respondents driveway.

Greenfield did NOT take time to photograph each and every wedding due to the extensive amount of time and expense it would have taken to do so. Greenfield documented a few weddings to present to City personnel along with her complaints, which verified the excessive amount of traffic due to the large commercial weddings on the Respondents property.

Appellant obviously disagrees with the Courts decision that the Wurmlinger bed and breakfast "*...is not open to the public.*" If the attendees are not relatives then what are they?

Appellant finds the following statement preposterous and obviously false; that the Wurmlingers "*ask questions about the guests, and then the Wurmlingers decide whether to invite*

the guests to stay" (*Pg. 24, Paragraph I*). Appellant has provided evidentiary proof that other "*Booking*" agencies are assisting the Wurmlingers by promoting over-night accommodations (*Clerks Record Pgs. 633-646*) and receiving compensation for doing so as evident under "*Advertising Costs*" on Respondents Tax Statements (*Plaintiff's Trial Exhibit #109*). I highly doubt the "*Booking*" agents personally interview each and every guest on behalf of the Wurmlingers. Hysterical!

2. **Rebuttal to Respondents Statement that the District Court's Finding that the Arborvitae Trees Are Not Subject to the CC&R Section Restricting the Height of Fences Is Supported by Substantial Evidence.**

What evidence? The Park Wood Place CC&Rs are unambiguous and clear that "*No lot, lots or parcels, shall ever be enclosed or fenced by any fence or structure exceeding five (5) feet in height.*" The arborvitae hedge constitutes a fence.

The Respondents state that "*Joe Malloy testified that prior to Greenfield's Complaint, nobody else in the neighborhood had ever contended that arborvitae are fences subject to the five foot CC&R fence height restriction*" (*Pg. 26, Paragraph 2*). Joe Malloy, who moved into the neighborhood in 2003, has no idea if anyone else complained to the City or to other neighbors in regard to arborvitae fences. NO evidence was presented to support his statement. Once again, ignorance of the law is no excuse! Hedges had been part of the City of Post Falls "*Fence*" Ordinance for decades and homeowners must seek approval from the City before erecting fences on their property. Park Wood Place homeowners needed the approval of the Architectural Control Committee for ALL landscaping and fences prior to placement.

B. Rebuttal to Jury Findings On The Non-Equitable Claims

Appellant disputes that substantial, credible, and / or competent evidence that was presented by the Respondents to the Court. Judge Haynes made his determination without a jury in regard

to the Respondents Bed and Breakfast CC&R violation and the Arborvitae Hedge / fence issue. The jury did NOT decide these issues.

1. **Plaintiff Greenfield's Claims: Issues 3, 4 and 5.**

   a. **Rebuttal to the Jury's Finding that the Bed and Breakfast Is Not a Nuisance Is Supported by Substantial Evidence.**

The Respondents commercial business is NOT a *"lawful" and "reasonable use of their property."* The only evidence presented from the Respondents in regard to the illegal business was in the form of tainted testimony. There were NO documents presented to the Court that granted the Respondents authority from ANY Park Wood Place homeowners to operate a commercial business in their home.

The Respondents witnesses had NO knowledge of the bed and breakfast expansion plans (2005) and / or enlargement of the wedding venue. Pool, Richardson, and Labau did NOT live in the neighborhood when the Respondents expanded their business in 2006.

It is further noted that the Respondents witnesses (absent Ms. Richardson) were never directly affected by the Respondents illegal activities due to the fact that none of them lived next door to the Wurmlingers. Greenfield received the brunt of the nuisances and was exposed to constant noise, traffic, and loss of privacy on a daily basis.

It was evident that the Respondents star witness Judy Richardson could not recollect relevant events during her tenancy next door to the Wurmlingers. Ms. Richardson testified that she was vacant from her home from a period of 2001 through 2005, wherein her daughter rented the home. The Respondents statement that the "*Bed and Breakfast operation was substantially similar when Ms. Richardson lived in the home as when Greenfield has lived in the home*" is not truthful. The Respondents expanded their wedding venue in 2006, after Ms. Richardson had moved (*Tr. Vol. II, Pg. 530, Lines 5-23, Pg. 531, Lines 1-6* (*2006 Spokesman article*)).

b. Rebuttal to the Jury's Finding that the Arborvitae Hedge Is Not a Nuisance Is Supported by Substantial Evidence.

The Respondents statement "*the Wurmlingers' use of their property to maintain the arborvitae shrubs for privacy is lawful and was approved by the city*" (*Tr., Vol. I, Pg. 327-328*) is not accurate. The Respondents were mandated (per City of Post Falls) to maintain the arborvitae hedge (fence) at the six (6) foot height indefinitely.

The arborvitae hedge became a nuisance when it grew beyond the six (6) foot height restriction. Eric Wurmlinger refused to maintain said hedge as required by the City and per our mutual contractual agreement. This insubordination became an unlawful use that affected Appellants free use of her property and loss of protected view.

Greenfield had agreed to the six (6) foot height as an acceptable allowance even though the Park Wood Place CC&Rs allowed for a five (5) foot height restriction on fences. It is further recognized that Greenfields view of the river had been established in 1993 when the Richardson's bought the property (*Tr., Vol. I, Pg. 727, Lines 19-25*). As aforementioned, several of the Park Wood Place lots were designed with cross-over views of the river, which were protected by the CC&Rs height restrictions on fences and structures. The Wurmlingers also spitefully planted additional trees and shrubs (from 2006 through 2012) next to the arborvitae hedge to purposely block all of Greenfields established view of the river adding to the nuisance.

In Greenfield's COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND DAMAGES, Greenfield claims "*The Defendants have planted shrubs and trees upon their real property which block the Plaintiff's view of the Spokane River and which infringe upon the Plaintiff's real property*" and "*The actions of the Defendants as described herein constitutes a nuisance*" (*Clerks Record Pg. 34*) therefore "*The Court should enter an Order of Abatement*

requiring the Defendants to remove any and all shrubs and trees located at or near the Parties common property boundary and any and all other trees or shrubs which obstruct the Plaintiff's free use of property, and interfere with the Plaintiff's comfortable enjoyment of life and property" and *"The Court should enter an Injunction prohibiting the Defendants from planting any shrubs or other vegetation upon the common boundary line between the Parties real property and prohibiting the Defendants from planting any trees, shrubs or other vegetation which blocks the Plaintiff's view of the Spokane River or otherwise obstructs the Plaintiff's free use of property, and interferes with the Plaintiff's comfortable enjoyment of life and property" (Clerks Record Pg. 35)* and *"That the Court enter an Order of Abatement requiring the Defendants to remove any and all shrubs and trees located at or near the Parties' common property boundary and any and all other trees or shrubs which obstruct the Plaintiff's free use of property, and interfere with the Plaintiff's comfortable enjoyment of life and property"* and *"That the Court enter an Injunction prohibiting the Defendants from planting any shrubs or other vegetation at or near the common boundary line between the Parties real property and prohibiting the Defendants from* planting *any trees, shrubs or other vegetation which blocks the Plaintiff's view of the Spokane River or otherwise obstructs the Plaintiff's free use of property, and interferes with the Plaintiff's comfortable enjoyment of life and property"* (*Clerks Record Pg. 41-42*) Greenfield has repeatedly stated that the Respondents purposefully and willfully obstructed Greenfields view of the river after Greenfield complained about the Respondents illegal business. Greenfield contends that she has a right to abate the nuisance (arborvitae hedge) under Idaho Code. Judge Haynes did NOT make a ruling on the abatement issue or order an injunction as requested by the Appellant.

When Appellant attempted to read the Idaho Statute 35-102 in regard to "Fences", during Trial proceedings, Respondents objected, and the Court replied: "*Yeah, you can't read* -- the

Court will advise the jury *of what the law is at the end of the matter... You can tell the jury that you did some research and what you believe State law to be" (Tr. Vol. II, Pg. 523, Lines 17-25)*.

c. Rebuttal to the Jury's Finding that the Wurmlingers Did Not Negligently Inflict Emotional Distress on Greenfield is Supported by Substantial Evidence.

Appellant testified that she suffered extreme emotional distress caused by the Respondents. Greenfield was subjected to constant harassment (*Tr. Vol. II, Pg. 549, Lines 21-25, Pg. 550, 1-16, Pg. 551, Lines 2-25, Pg. 552, Lines 1-24, Pg. 556, Lines 1-25, Pg. 617, Lines 20-23, Pg. 620, Lines 20-22*) from the Respondents, which eventually led to her false felony arrest in June 2010. After Appellants arrest, she was fired from her lucrative job as Senior Personal Banker due to the highly publicized "hedge trimming" after Eric Wurmlinger contacted KXLY News (*Tr. Vol. II, Pg. 498, Lines 20-22*) and absences due to court proceedings, lost her "Bonding" ability (felony charge) (*Tr. Vol. II, Pg. 502, Lines 15-22*), was forced to re-finance her home at a higher rate for longer term to pay for a defense attorney, lost her "superior view" of the river (spite plantings) (*Tr. Vol. II, Pg. 511, Lines 16-25, Pg. 553, Lines 6-11*), was subjected to constant noise and traffic from the Respondents business (*Tr. Vol. II, Pg. 514, Lines 17-25, Pg. 515, Lines 1-3*), endured constant stress, suffered from physical manifestations and medical issues (*Tr. Vol. II, Pg. 525, Lines 17-22, Pg. 526, Lines 24-25, Pg. 527, Lines 1-5, Pg. 528, Lines 19-22, Pg. 528, Lines 4-8, Pg.545, Lines 15-21, 25, Pg. 546, Lines 1-5*), loss of privacy (*B & B patrons, police surveillance*), false arrest (*Tr. Vol. II, Pg. 542, Lines 10-25, Pg. 543, Lines 9-17, Pg.555, Lines 1-25, Pg. 620, Lines 23-25, Pg. 621, Lines 16-17, Pg. 622, Lines 3-5,*), slander, humiliation (*Tr. Vol. II, Pg. 544, Lines 21-25, Pg. 545, Lines 1-7*), economic loss (*Tr. Vol. II, Pg. 546, Lines 18-21*), and terror from a false 911 call from Eric Wurmlinger where Greenfield was approached by anxious law enforcement officers (*Tr. Vol. II, Pg. 553, Lines 18-25, 554, Lines 15-24*).

The Respondents made false statements to law enforcement accusing Greenfield of approximately twenty (20) alleged crimes during the course of approximately five (5) years (*Tr. Vol. III, Pg. 954, Lines 2-14, Pg. 955, Lines 4-10*).

Appellant finds it repugnant that the Respondents make light on their claim that "*Greenfield testified that the only untruthful representations Wurmlingers made to the police were that the arborvitae were located on their property, and that the pictures of the arborvitae they provided the police were not accurate.*" (*Pg. 32, Paragraph3*) The Respondents demanded that Greenfield be charged with felony malicious injury to property and it was because of the false declarations that Greenfield was arrested and charged with a felony!

2. Rebuttal to Defendants Wurmlingers' Counterclaims: Issue 7

a. The Jury's Timber Trespass Verdict Was Not Supported by Substantial Evidence.

The jury was tricked into believing that the arborvitae shrubs were "trees" in order to support the Respondents outrageous attempt to further harm Greenfield by accusing her of "Timber Trespass" after Respondents unsuccessful attempt to have Greenfield charged with a felony was dismissed. The Respondent, Eric Wurmlinger falsely testified that Greenfield had drastically cut the arborvitae shrubs "in half" therefore damaging and destroying said shrubs (trees).

The Respondents refer to the arborvitae shrubs as "trees" during trial proceedings, yet their master arborist, Tim Kastning, referred to the arborvitae as "shrubs" approximately thirty (30) times in his trial deposition. When Kastning was asked to draft a proposal to replace the so-called damaged arborvitae "SHRUBS", he made no mention of "damage" and basically gave a quote for "removing and replacing" twelve (12) foot arborvitae "SHRUBS", based on information he received from Eric Wurmlinger (*See Defendants Trial Exhibit #C*). Kastning did

NOT refer to the arborvitae as trees, he simply stated that arborvitae could grow to the height of trees and could be construed as trees, but had no stumpage value.

On May 25, 2008, Greenfield attempted to notify the Wurmlingers by mail stating that she was going to trim the arborvitae hedge as it had grown above the height of six (6) feet (*See Plaintiff's Trial Exhibit #29*) (*Tr. Vol. II, Pg. 540, Lines 17-23*). Wurmlingers never replied, therefore Appellant assumed there were no issues with her trimming the hedge and did NOT violate the law in doing so. Respondents claim that Appellant "*acted willfully and intentionally where the trespasser has notice that the property is in dispute... Weitz v. Green, 148 Idaho 851, 863-864 230 P.3d 743 (2010)*" wherein a court order was in place when Weitz cut the Greens "pine trees" (emphasized). In April 2010, Wurmlinger and Greenfield had no court orders or any other pending matters or disputes in regard to the arborvitae hedge (*Pg. 34, Paragraph 4*)

It is undisputed by testimony that NONE of the Respondents witnesses visually saw the arborvitae hedge before it was cut by Wurmlinger or trimmed by Greenfield. Pool, Richardson, and Labau did NOT live in the neighborhood when Eric Wurmlinger cut the arborvitae hedge in half in April 2006 or when Greenfields agent trimmed the arborvitae hedge in April 2010.

Malloy testified that he was not aware that the arborvitae hedge was ever cut until Eric Wurmlinger informed him of it (*Tr. Vol. II, Pg. 894, Lines 1-7*).

In response to questions about the height of the arborvitae hedge during trial, Ms. Labau was asked "*...you're just kind of guessing about the height of the arborvitae*?" She answered "*Yeah, I said I didn't know exactly how – you know, the height, never standing next to them, no*" (*Tr., Vol. II, Pg. 855 Lines 4-7*). During Ms. Richardson's testimony Appellant asked "*Do you remember how tall the arborvitaes were when I bought your home in 2005*?" Ms. Richardson replied "*No, I don't remember how tall.*" Joe Malloy testified that all he saw was "*...brush getting loaded into*

a truck" (*Tr. Vol. II, Pg. 894, Lines 6-7*) but could NOT recollect what day he noticed this event occur. Malloy never testified as to having any knowledge of the arborvitae hedge and he was working on the day that the hedge was trimmed (*Tr. Vol. II, Pg. 891, Lines 17-25*). Greenfields brother-in-law, Monroe Greenfield, trimmed the after growth on the arborvitae hedge on Thursday April 1, 2010. Mr. Greenfield testified that the height of eight (8) arborvitae shrubs he trimmed ranged from 6 ½ to 9 ½ feet tall and that the center had been previously cut off (*Tr. Vol. I, Pgs. 484-485*). Mr. Greenfield testified that he did NOT trespass onto the Wurmlinger property (*Tr. Vol. I, Pgs. 486-487*). Mr. Greenfield testified that two (2) arborvitae were approximately six (6) feet tall that he trimmed "*...a couple inches off, an inch*" (*Tr. Vol. I, Pg. 487, Lines 6-10*).

The evidentiary facts and testimony confirm that Eric Wurmlinger cut the arborvitae shrub in April 2006 to approximately one-half their size to six (6) feet as mandated by the Post Falls Code Enforcement officer. Therefore, when Greenfields agent trimmed the arborvitae shrubs, the height of said arborvitae at that time becomes a moot issue, as the main stems had already been cut by Wurmlinger.

Appellant and both arborists refer to the arborvitae as shrubs. Gunderson's opinion is moot, he is NOT an arborist. Shrubs do NOT have stumpage value. The aesthetic claim is moot as Wurmlinger had cut the arborvitae prior to Greenfield. Eric Wurmlinger was on contractual notice to maintain the arborvitae hedge at six (6) feet. Greenfields survey provides evidentiary proof that the ten arborvitae shrubs border the adjoining property line and several of the "stalks" are located on her property. Respondents' survey has major defects as stated in Appellants brief.

Greenfield DID object to the version of the Special Verdict Form that the Respondents drafted and informed Judge Haynes law clerk, Buck Pennington, of her disapproval.

C. Rebuttal to the Respondents Claim That The District Court Did Not Abuse its Discretion in Finding that the Wurmlingers' Negligent Infliction of Emotional Distress Claim Was Tried by Consent of the Parties Pursuant to I.R.C.P. 15(b): Issue 6.

The Court dismissed the Respondents Negligent Infliction of Emotional Distress (NIED) claim with prejudice approximately two (2) years prior to trial. The Respondents reintroduced said claim at trial and Appellant does NOT agree with said blatant Abuse of Process.

The Respondents state (*Pg. 37, Paragraph 1*) "*Greenfield understood that if the jury found that there was any type of infliction of emotional distress on the defendants after hearing the proceedings at the trial then maybe they could grant it*" (*Tr. Vol. III, P. 1017, ll. 13-17*). Respondents did NOT affirm "Negligent" in their statement; Greenfield assumed the Respondents were referring to their Intentional Infliction of Emotional Distress (IIED) Claim and had prepared her defense regarding their IIED claim, which refers to "*conduct that results in extreme emotional distress.*" Greenfield was well aware that the Respondents would have a difficult time presenting argument on said intentional emotional distress when both Respondents had never seen a doctor or had any medical evaluation or medication for said alleged extreme inflictions as determined in both depositions taken in 2010 (*Tr. Vol. II, p. 837, ll. 8-17, Vol. III, P. 939, Lines 8-19*).

It is further noted that Greenfield states that the Respondents dismissed their Negligent Emotional Distress Claim because they were NOT suffering from distress as stated in both of the Respondents depositions. (*Tr. Vol. III, Pg. 1017, Lines 22-25, Pg. 1018, Lines 1-4*).

D. Rebuttal to Assertion that Greenfield Never Objected to Any Jury Instructions or the Special Verdict Form, She Has Thus Failed to Preserve Those Issues for Appeal: Issue 8.

Appellant has covered this issue extensively in her brief. When a district court refuses to

give a requested instruction, the Sixth Circuit holds that it is "*reversible only if that instruction is (1) a correct statement of the law, (2) not substantially covered by the charge actually delivered to the jury, and (3) concerns a point so important in the trial that the failure to give it substantially impairs the plaintiffs defense. See United States v. Williams, 952 F.2d 1504, 1512 (6th Cir. 1991) citing United States v. Parrish, 736 F.2d 152, 156 (5th Cir. 1984). See also United States v. Sassak, 881 F.2d 276, 279 (6th Cir. 1989), citing Parrish, 736 F.2d at 156.*"

"*When a defendant fails to object to a jury instruction at trial, the appellate court reviews only for plain error. Federal Rule of Criminal Procedure 52(b); United States v. Olano, 507 U.S. 725, 732 (1993). Before an appellate court can correct an error not raised at trial, there must be (1) error, (2) that is plain, and (3) that affect[s] substantial rights. Johnson v. United States, 520 U.S. 461, 466-67 (1997), quoting Olano, 507 U.S. at 732. If all three conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings. Johnson, 520 U.S. at 467, quoting Olano, 507 U.S. at 732. In Olano, the Supreme Court discussed but did not adopt the miscarriage of justice standard, noting that the miscarriage of justice standard in the collateral review jurisprudence of the Supreme Court meant actual innocence and that it had never held that the Rule 52(b) remedy was limited to cases of actual innocence. Olano, 507 U.S. at 736; see also United States v. Thomas, 11 F.3d 620, 630 (6th Cir. 1993) (While the Court [in Olano] referred to the miscarriage of justice standard, it remarked that it had never held a Rule 52(b) remedy was warranted only in cases of actual innocence. Although the Court did not adopt the miscarriage of justice standard, the Sixth Circuit has occasionally cited this standard. See, e.g., United States v. King, 169 F.3d 1035, 1040 (6th Cir. 1999) (An instruction is not plainly erroneous unless there was an egregious error, one that directly leads to a miscarriage of*

justice); United States v. Wilkinson, 26 F.3d 623, 625 (6th Cir. 1994)." This specifically refers to the erroneous Jury Instructions given to the jury to find Greenfield guilty of alleged criminal "Timber Trespass and Trespass" and the Respondents futile attempt to revive the NIED Claim.

E. Rebuttal to Assertion That The District Court Did Not Abuse its Discretion by Admitting the Monaco Survey: Issue 9.

Appellant objected to the submission of Respondents survey, addressing said flaws with the survey to the Court and Judge Haynes allowed said survey. The Respondents did NOT deny a majority of the assertions brought forth in the Appellants Brief that refer to the flawed survey that was submitted by the Respondents, which include: No signature by the licensed surveyor, Jon Monaco and ; incorrect count on amount of arborvitae shrubs that were planted and actually trimmed and ; incorrect residential lot number; and no actual measurement at the base of the arborvitae shrubs in question.

F. Rebuttal to Assertion That Greenfield's Allegations of Constitutional Rights Violations Are Misplaced: Issue 10.

Appellant asserts her argument in detail in her brief regarding her constitutional rights. According to the principle of procedural due process, if a person is deprived of life, liberty or property, she is entitled to adequate notice, hearing, counsel, and a neutral judge. This principle follows the concept of fundamental fairness. Abuse of process refers to the improper use of a civil or criminal legal procedure for an unintended, malicious, or perverse reason. Examples include filing a frivolous lawsuit without a genuine legal basis in order to gain an unfair or illegal advantage, as is the case in regard to the Respondents malignant claims.

G. Rebuttal to Assertion That Appellant Has Failed to Preserve any Issue Regarding Recusal of Judge Haynes: Issue 11.

The Appellant did not want to consider that Judge Haynes may have been biased against her and it was not until Appellant found evidence after the trial ended that confirmed her suspicions all along.

Appellant listed several undisputed examples in her brief of Judge Haynes disdainful behavior and bias toward Greenfield over the course of the civil proceedings, wherein Haynes ignored his own Court Orders, "...played up the former counsel's (Respondents) decision..." and resuscitated the Respondents NIED Claim after dismissing said claim, and much more (*See Appellants Brief*).

The fact that Judge Haynes abused his discretion by allowing the Respondents survey, and not allowing Greenfields only key witness, Leonard Benes, to testify on her behalf (he was the first homeowner in the subdivision and had crucial testimony in regard to the bed and breakfast and the arborvitae shrubs), was not able to confirm Greenfields findings of fact (*Tr. Vol I, Pg 194-197*).

When Appellant addressed her concerns with Respondents late disclosure of documents during trial Judge Haynes responded "*We met in chambers briefly just a few minutes ago. Ms. Greenfield advised the Court that she believes that she is receiving new discovery from the defense in the form of updated or supplemented exhibit lists that some of which she indicated included diagrams and photographs. And the Court understood in discussion between the parties that some of the photographs may indeed have been photographs that, and I'm not concluding this, but possibly were not disclosed to Ms. Greenfield earlier but were photographs of either her property or the border between her property and the Wurmlinger property and then possibly some photographs around the neighborhood.*" (*Tr. Vol. II, Pg. 493, lines 22-25, Pg. 494, Lines 1-*

10). When Greenfield objected to the admission of the photos during trial, Judge Haynes overruled Greenfields objections without explanation.

Respondents did NOT refute the fact that the Honorable Judge Haynes, his law clerk, Buck Pennington, and the Respondent Eric Wurmlinger, all belong to the Catholic association of Knights of Columbus. Judge Haynes acknowledged that he has visited the Respondents Church on occasion and recognized the Respondent Eric Wurmlinger in court wearing his Knights of Columbus Vest.

H. Rebuttal to Assertion That the District Court Did Not Commit a "Fraud Upon the Court": Issue 12

Appellant disagrees with Respondents statement in regard to Greenfields "Fraud Upon the Court" issue. It is NOT a question as to where Appellant discovered the "fraud" but that she did discover "fraud". As Appellant explained in her brief, she requested the court file at the court house for review and discovered the "*confidential bench memorandum*" in the file where the "public" could view said document.

Judge Haynes has the impartial task of adjudging cases and this example of bias clearly prejudices the Appellant by improperly influencing the jury and unfairly hampering the presentation of Appellants claims and defense of said claims.

The Appellant gave several examples in her brief addressing "Fraud upon the Court" yet the Respondents are addressing this particular concern as if the statements in Judge Haynes memorandum are void from scrutiny.

I. Rebuttal to Assertion That The District Court Did Not Abuse its Discretion by Awarding Costs and Attorney Fees to the Wurmlingers: Issue 13

Appellant disagrees. The Respondents should NOT be awarded costs and attorney fees for all the above stated reasons and arguments, as well as those contained in her brief.

IV. REBUTTAL TO RESPONDENTS REQUEST FOR ATTORNEY FEES ON APPEAL

The Respondents have pursued this appeal frivolously, unreasonably, and without foundation and should not be awarded any compensation in doing so.

V. REINSTATEMENT OF APPELLANTS ISSUES & FACTS

A. ISSUES

1.) The Respondents are intentionally and / or recklessly unlawfully operating a full time, year round commercial business that is open to the public, upon their real property, which is named the "River Cove Bed and Breakfast." The business offers several overnight accommodations and a wedding facility via internet advertising, and other marketing sources. Said commercial business is "PROHIBITED" under the Park Wood Place (PWP) CC&Rs.

2.) The Respondents have planted an arborvitae shrub hedge in a single row upon or near the property line between the parties' real property, which constitutes a "FENCE." The arborvitae hedge continues to grow and violate the height restriction for fences as permitted by the PWP CC&Rs.

3.) Respondents have planted nine (9) additional arborvitae shrubs to existing hedge of twenty-four (24) arborvitae and several large growing trees upon their real property, after Appellant exercised her legal right to enforce the PWP CC&Rs. Said spite plantings obstruct and infringe upon the Appellant's real property blocking her coveted view of the river, the free use of her property and the comfortable enjoyment of life and property.

4.) Respondents entered into an agreement with the Appellant to maintain the arborvitae hedge at the agreed upon height of six (6) feet in May 2006. Respondents breached said agreement by allowing the arborvitae fence to grow to a height in excess of six (6) feet.

5.) Respondents have engaged in a retaliatory course of conduct to harass the Appellant by planting spite shrubs and trees, installing surveillance cameras that face the Appellant's property, intentionally and recklessly making false allegations to local law enforcement about the Appellant, and manufacturing defamatory statements about the Appellant to news sources. One allegation resulted in the Appellant being arrested and charged with a Felony, which she was eventually acquitted of nineteen (19) months later.

6.) Due to the intentional and / or negligent actions of the Respondents as set forth above, the Appellant suffers from severe physical manifestations and emotional distress.

B. FACTS

The Appellant has the right to legally enforce the Park Wood Place (PWP) Covenants, Conditions, and Restrictions (CC&Rs) when said CC&R's are violated.

The Respondents commercial business is a nuisance.

An arborvitae hedge / fence is growing along the property line that separates the parties' properties and constitutes a fence.

Both Appellant and Respondent have a right to maintain the arborvitae hedge / fence.

Appellant has an established view of the Spokane River that has existed since 1993.

Appellant has the right to the free unencumbered use of her property.

Appellant has the right to abate any nuisance that interferes with appellant's free use of her property.

Respondents have been repeatedly harassing Appellant since 2006 by reporting approximately twenty alleged crimes against the Appellant, trespassing unto Appellants property, and filing frivolous counter claims against the Appellant.

Respondents falsely accused Appellant of a crime (trimming ten (10) arborvitae shrubs) wherein Appellant was arrested and charged with a felony.

Appellant was acquitted nineteen (19) months after her initial arrest.

VI. ARGUMENT

The Respondents operation of their illegal commercial business, which continues to operate under a "Home Occupation" is NOT allowed by PWP unambiguous CC&Rs and requires a "Special Use Permit" with the City of Post Falls and permission of adjacent PWP homeowners.

The Respondents business is NOT contained solely in the residence and utilizes 79% of their residence for the bed and breakfast operation. The Respondents advertise their bed and breakfast with a designated yard sign, advertise on multiple internet "booking" sites, is open to the public on a daily basis throughout the year, produces traffic, noise, and congestion, is obstructing Greenfields free use of her property and constitutes a Nuisance.

The Respondents relied heavily on testimony from a prior homeowner, Judy Richardson, who had difficulty remembering facts and did NOT reside in the PWP neighborhood when the Respondents expanded their commercial business. The Respondents also relied on testimony from prior residents who did NOT reside in PWP when the Respondents expanded their commercial business in 2006.

Eric Wurmlinger consistently falsely testified throughout the civil proceedings about the operation of his business.

When Appellant complained to the City of Post Falls regarding the Respondents illegal business venture, Respondents started retaliating against the Appellant by falsely accusing Appellant of crimes that led to her being interrogated on several occasions from law enforcement, unlawful searches and seizures, was under constant surveillance, and finally arrested and charged with a felony after Appellants agent trimmed the arborvitae shrubs that were planted on the parties property line, causing extreme emotional distress to the Appellant.

Eric Wurmlinger testified that he planted the arborvitae shrubs on the property line separating the two properties that constitutes a "fence."

Respondent Eric Wurmlinger repeatedly falsely testified about the height of the arborvitae hedge, its placement in regard to the parties' property line, and his actual cutting in 2006, and the Appellants trimming in 2010, during civil proceedings and to law enforcement.

Respondents attempted to utilize testimony from prior residents who were NOT present when the arborvitae hedge was cut in April 2006 or trimmed in April 2010.

Respondents submitted a survey that was NOT effectively prepared or signed and was deficient in providing facts in regard to the actual location of the arborvitae hedge.

Appellants survey shows the exact location of each arborvitae in relationship to the adjoining property line.

Eric Wurmlinger cut the arborvitae hedge in half in April 2006 from approximately 12 feet to 6 feet severing the main stems of each arborvitae shrub. Greenfield's agent merely trimmed the after growth in April 2010, after proper notification to the Respondents. Eric Wurmlinger gave false information to law enforcement regarding these facts.

Greenfield has lost her coveted view of the river due to the height of the arborvitae hedge / fence exceeding the PWP CC&Rs and City of Post Falls Fence Ordinance.

The Respondents have planted additional trees and shrubs alongside of the arborvitae shrubs to further block Appellants view of the river and are a nuisance.

The Respondents state that they wanted to have an arborvitae hedge (planted on approximately 1/3 of north side on property line) for privacy for their overnight "guests" (two suites are located on south side of property and one suite is located in front of home). The Respondents do NOT have any type of fence surrounding their property. However, when the Respondents purchased their lot, they were aware that a 56 acre City park and bay, that is frequented from the "public" every day especially during the summer months, is located directly behind their residence. It is not rational that the Respondents are claiming that the arborvitae hedge provides privacy for their guests when their business is open to the public. A big question in determining whether expectation of privacy is "reasonable" and protected by the Fourth Amendment arises when you have "knowingly exposed" something to another person or to the public at large. You have a reasonable expectation of privacy in your home or office, so long as it's not "open to the public."

The Respondents made NO mention of their ties with the Knights of Columbus Organization of which Judge Haynes, his law clerk Buck Pennington, and Eric Wurmlinger are all members of said organization. Bias is presumed.

Appellant presented her "Fraud on the Court" claim in her Motion for Reconsideration to the Court.

Appellant found evidence of Judge Haynes bias toward her after trial ended.

The plain error standard of review permits the appellate court to review errors that were not objected to at trial if such errors are extremely unjust or unfair. Plain error is limited to error that is evident, obvious, and clear. To establish plain error based on wrongly allowed evidence, there

must be apparent prejudice to the Appellant (counter-claims Trespass, Timber Trespass and NIED Claim).

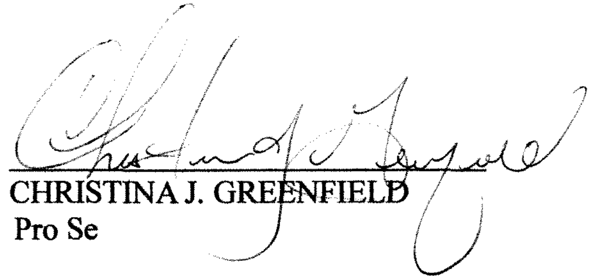
VII. CONCLUSION AND PRAYER FOR RELIEF

Appellant respectfully requests that this Court reverse the rulings of the District Court and remand this case for further proceedings, including the right to perform additional reasonable discovery and / or;

1. Reverse the District Court ruling that the River Cove Bed and Breakfast is not prohibited by the Park Wood Place Subdivision CC&Rs;
2. Reverse the District Court ruling that the Arborvitae hedge does not constitute a Fence;
3. Reverse the District Court ruling that the Arborvitae shrubs are not exceeding the height restrictions for fences as set forth in the Park Wood Place CC&Rs;
4. Reverse the District Court ruling that the Appellant did not suffer from the Respondents negligent actions and Appellant should be awarded damages for Nuisances;
5. Reverse the District Court ruling that the Arborvitae Hedge is not a nuisance and therefore should be Abated;
6. Reverse the District Court ruling that the Respondents should not be required to remove all spite shrubs and trees that are impeding Appellants river view and the free use of property, and interferes with the Appellant's comfortable enjoyment of life and property;
7. Reverse the District Court ruling that the Appellant did not suffer from the Respondents actions and award damages to Appellant for Intentional Infliction of Emotional Distress;
8. Reverse the District Court ruling that the Appellant did not suffer from the Respondents actions and award damages to Appellant for Negligent Infliction of Emotional Distress;

9. Should this Court decide that Judge Lansing Haynes should have disqualified himself from said proceedings, therefore nullifying all Court Orders, then Order a New Trial with all Statute of Limitations kept intact and void all Final Judgments and awards to the Respondents.

DATED this 5th day of September, 2014.



CHRISTINA J. GREENFIELD
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

John C. Riseborough
Paine Hamblen, LLP
717 W. Sprague Avenue, Suite 1200
Spokane, WA 99201

[X] U.S. Mail
[X] HAND DELIVERED

The Supreme Court of Idaho
PO Box 83720
Boise, Idaho 83720-0101

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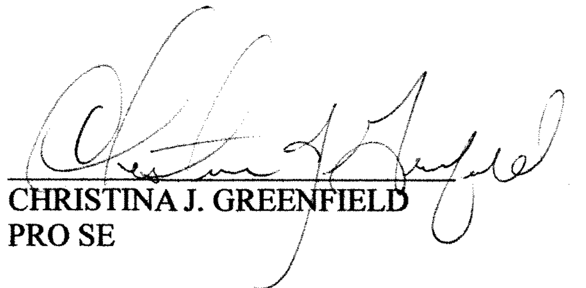

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