

10-22-2014

Smith v. Treasure Valley Seed Clerk's Record Dckt. 42596

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IN THE SUPREME COURT OF THE STATE OF IDAHO

VICTORIA H. SMITH, by and through her attorney
in fact, Vernon K. Smith, by and through his
Durable and Irrevocable Power of Attorney,

Plaintiff-Appellant-Cross Respondent,
vs.

TREASURE VALLEY SEED COMPANY, LLC,
and DON TOLMIE in his individual capacity, and
as an owner, representative and authorized agent of
Treasure Valley Seed Co., LLC,

Defendants-Respondents-Cross Appellants.

Supreme Court Case No. 42596

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE RICHARD D. GREENWOOD

VERNON K. SMITH

ATTORNEY FOR APPELLANT

BOISE, IDAHO

RICHARD B. EISMANN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Victoria H Smith vs. Treasure Valley Seed Company Llc, Don Tolmie

Date	Code	User		Judge
12/13/2013	NCOC	CCSWEECE	New Case Filed - Other Claims	Richard D. Greenwood
	COMP	CCSWEECE	Complaint Filed	Richard D. Greenwood
	SMFI	CCSWEECE	Summons Filed	Richard D. Greenwood
1/24/2014	AFFD	CCHEATJL	Affidavit Establishing Service Of Summons And Complaint Upon Defendants	Richard D. Greenwood
	AFOS	CCHEATJL	(2) Affidavit Of Service 01.02.2014	Richard D. Greenwood
	MOTN	CCHEATJL	Motion For Entry Of Default	Richard D. Greenwood
	AFSM	CCHEATJL	Affidavit In Support Of Motion Of Entry Of Default	Richard D. Greenwood
1/27/2014	NOAP	CCMARTJD	Notice Of Appearance (Eismann for Treasure Valley Seed Company LLC and Don Tolmie)	Richard D. Greenwood
1/28/2014	ANSW	TCRUDZES	Answer with Counterclaims and Demand for Jury Trial (Eismann for Treasure Valley Seed Company)	Richard D. Greenwood
	ANSW	TCRUDZES	Answer (Eismann for Dan Tolmie)	Richard D. Greenwood
	MOTN	TCRUDZES	Defendant's Motion for Change of Venue	Richard D. Greenwood
	MISC	TCRUDZES	First Declaration of Don Tolmie	Richard D. Greenwood
	MISC	TCRUDZES	First Declaration of James L. Stein	Richard D. Greenwood
1/29/2014	NOTS	CCTHIEKJ	Notice Of Service	Richard D. Greenwood
2/5/2014	HRSC	TCJOHNKA	Hearing Scheduled (Scheduling Conference 03/03/2014 04:45 PM)	Richard D. Greenwood
	NOTC	CCSWEECE	Notice to the Court of Service of 2nd Request for Admissions by Defendants	Richard D. Greenwood
2/10/2014	ORDR	DCJOHNSI	Order for Scheduling Conf. and Order Re: Motion Practice	Richard D. Greenwood
2/12/2014	NOHG	CCMARTJD	Notice Of Hearing re Motion for Change of Venue (3.24.14@3pm)	Richard D. Greenwood
	HRSC	CCMARTJD	Hearing Scheduled (Motion for Change of Venue 03/24/2014 03:00 PM)	Richard D. Greenwood
3/3/2014	DCHH	TCPATAKA	Hearing result for Scheduling Conference scheduled on 03/03/2014 04:45 PM: District Court Hearing Held Court Reporter: None Number of Transcript Pages for this hearing estimated: held in chambers	Richard D. Greenwood
	HRVC	TCPATAKA	Hearing result for Motion for Change of Venue scheduled on 03/24/2014 03:00 PM: Hearing Vacated	Richard D. Greenwood
	HRSC	TCPATAKA	Hearing Scheduled (Hearing Scheduled 04/02/2014 04:30 PM) issue of status of plaintiff	Richard D. Greenwood
3/4/2014	CERT	CCSWEECE	Certificate Of Compliance to Defendants Second Set of Requests for Admissions	Richard D. Greenwood
	CERT	CCSWEECE	Certificate Of Compliance to Defendants First Set of Requests for Admissions	Richard D. Greenwood
3/18/2014	MOTD	CCHEATJL	Defendant's Motion To Dismiss	Richard D. Greenwood

Victoria H Smith vs. Treasure Valley Seed Company Llc, Don Tolmie

Date	Code	User		Judge
3/18/2014	MEMO	CCHEATJL	Memorandum In Support Of Motion	Richard D. Greenwood
4/1/2014	OBJT	TCLAFFSD	Response & Objection To Defendant's Motion To Dismiss And Motion To Substitute Parties With Vernon K. Smith, As Real Party In Interest	Richard D. Greenwood
	MOTN	TCLAFFSD	Motion For Joinder Of Real Party In Interest And Permissive Joinder of Parties, Pursuant To Rules 17(a) and 20(a), IRCP	Richard D. Greenwood
4/2/2014	DCHH	DCELLISJ	Hearing result for Hearing Scheduled scheduled on 04/02/2014 04:30 PM: District Court Hearing Held Court Reporter: FRAN CASE& Number of Transcript Pages for this hearing estimated: issue of status of plaintiff LESS THAN 100 pages	Richard D. Greenwood
4/4/2014	JDMT	TCPATAKA	Judgment Dismissing Case	Richard D. Greenwood
	CDIS	TCPATAKA	Civil Disposition entered for: Tolmie, Don, Defendant; Treasure Valley Seed Company Llc., Defendant; Smith, Victoria H, Plaintiff. Filing date: 4/4/2014	Richard D. Greenwood
	STAT	TCPATAKA	STATUS CHANGED: Closed	Richard D. Greenwood
4/17/2014	MEMO	CCHOLMEE	Memorandum of Costs	Richard D. Greenwood
	AFFD	CCHOLMEE	Affidavit of Richard B Eismann in Support of Memorandum	Richard D. Greenwood
4/30/2014	RSPS	CCMARTJD	Response and Objection to Defendants Request for Attorney Fees	Richard D. Greenwood
6/23/2014	NOHG	CCMCLAPM	Notice Of Hearing RE: Defendants Memorandum of Costs and Plaintiffs Response and Objection 7.9.14 @ 3:00PM	Richard D. Greenwood
	HRSC	CCMCLAPM	Hearing Scheduled (Objection to Attorney Fees and Costs 07/09/2014 03:00 PM)	Richard D. Greenwood
	STAT	CCMCLAPM	STATUS CHANGED: Closed pending clerk action	Richard D. Greenwood
6/30/2014	MOTN	CCTHIEKJ	Motion to Vacate and Reset Oral Argument for Objection to Attorney Fees and Costs	Richard D. Greenwood
7/2/2014	CONT	TCPATAKA	Continued (Objection to Attorney Fees and Costs 07/28/2014 03:00 PM)	Richard D. Greenwood
7/3/2014	AMEN	TCLAFFSD	Amended Notice Of Hearing on Defendants Memorandum Of Costs & Plaintiffs Response & Objection (7.28.14 at 3:00 PM)	Richard D. Greenwood
7/28/2014	DCHH	TCPATAKA	Hearing result for Motion for Attorney fees and Costs scheduled on 07/28/2014 03:00 PM: District Court Hearing Held Court Reporter: Fran Casey Number of Transcript Pages for this hearing estimated: less than 50 pages	Richard D. Greenwood
8/28/2014	JDMT	CCNELSRF	Judgment \$15,826.50	Richard D. Greenwood

Case: CV-OC-2013-22179 Current Judge: Richard D. Greenwood
Victoria H Smith vs. Treasure Valley Seed Company Llc, etal.

Victoria H Smith vs. Treasure Valley Seed Company Llc, Don Tolmie

Date	Code	User		Judge
8/28/2014	CDIS	CCNELSRF	Civil Disposition entered for: Tolmie, Don, Defendant; Treasure Valley Seed Company Llc,, Defendant; Smith, Victoria H, Plaintiff. Filing date: 8/28/2014	Richard D. Greenwood
	STAT	CCNELSRF	STATUS CHANGED: Closed	Richard D. Greenwood
10/8/2014	APSC	CCTHIEBJ	Appealed To The Supreme Court	Richard D. Greenwood
	NOTA	CCTHIEBJ	NOTICE OF APPEAL	Richard D. Greenwood
10/23/2014	NOTA	CCTHIEBJ	NOTICE OF CROSS-APPEAL	Richard D. Greenwood

NO
FILED
AM P.M. 3

DEC 13 2013

CHRISTOPHER D. RICH, Clerk
By CHRISTINE SWEET
DEPUTY

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

vs.

TREASURE VALLEY SEED
COMPANY, LLC, and Don Tolmie
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC

Defendant(s).

CV OC 1322179

Case No. _____

COMPLAINT FOR RECOVERY
UPON A BREACH OF CONTRACT,
OR IN THE ALTERNATIVE,
RECOVERY UPON AN IMPLIED
CONTRACT IN FACT OR AN
IMPLIED CONTRACT IN LAW.

COMES NOW The Plaintiff above-named, Victoria H. Smith, by and through her attorney of fact, Vernon K. Smith, pursuant to his durable and irrevocable power of attorney, and by and through his legal representation as counsel of record, and for cause of actions against said Defendant(s) for recovery upon a written contract, or in the alternative recovery upon an implied contract in fact, or in the alternative recovery upon an implied contract in law, does hereby allege as follows:

I.

ORIGINAL
000005

That Plaintiff herein, Victoria H. Smith, at all times herein, is a resident of Ada County, Idaho, having engaged in certain farming operations in Ada County, Idaho, raising various agricultural crops and commodities, including baby lima beans, through her attorney in fact, to and including the growing season of 2007.

II.

That Vernon K. Smith, son, and attorney in fact for Victoria H Smith, during all times mentioned herein, was acting as Plaintiff's attorney in fact, pursuant to his durable and irrevocable power of attorney, thereby including all of his activities in the farming operations, marketing, merchandising and selling said agricultural commodities, including the baby lima beans grown in the year 2007, and purchased by Treasure Valley Seed Company, LLC.

III.

That Treasure Valley Seed Company, LLC, is an Idaho limited liability company, having its principal place of business located in Homedale Idaho, with a post office reference of P.O. Box 2184, Homedale, Idaho, 83628.

IV.

That Don Tolmie, upon information and belief, is a resident of Idaho, at all times herein was acting as an authorized representative, agent, and participating owner of Treasure Valley Seed Company, LLC, and was the responsible agent, representative, and authorize filed representative, acting for and in behalf of Treasure Valley Seed Company, LLC, including, but not limited to all inducements, promises, representations and sale agreement made with said Plaintiff, through said attorney in fact.

JURISDICTION AND VENUE

V.

This Court has personal jurisdiction over the above-named Defendant(s) pursuant to § 5-514, *Idaho Code*, as well as other applicable laws, statutes and rules in effect in the State of Idaho.

VI.

This Court has subject matter jurisdiction over this dispute, pursuant to and by virtue of § 1-705, § 10-1203, *Idaho Code*, and such other applicable laws, rules and statutes governing the creation and enforcement of contracts and commercial transactions, including those contracts implied in fact, and implied in law.

VII.

The amount in controversy in this action and dispute, for which recovery and monetary judgment is sought by Plaintiff does exceed the sum of \$10,000.00.

VIII.

That pursuant to §§ 5-401 and 5-404, *Idaho Code*, venue for this cause of action and dispute is proper in Ada County, Idaho, as all representations, promises, inducements and agreements were made and took place in Ada County, Idaho; that the agricultural commodity in question, baby lima beans, was grown and harvested by Plaintiff on her farm in Ada County, Idaho, and the baby lima beans were removed by Defendant(s) from Plaintiff's farm in Ada County, Idaho, upon the representation and inducement that said baby lima beans would be marketed for the benefit of Plaintiff, and payment made thereon by disbursement of proceeds to Plaintiff in Ada County, Idaho.

GENERAL ALLEGATIONS

IX.

That on December 15, 2008, said Don Tolmie, acting in his official capacity as an agent, representative, and as an owner of Treasure Valley Seed Company, LLC, did commit, agree and contract to purchase all of Plaintiff's 2007 crop of baby lima beans, representing a net weight sum of 1,245.52 one hundred weight (cwt), at a net purchase price of \$55.00 per hundred weight (cwt), for a total net purchase price of \$68,503.60.

X.

That pursuant to the above representation, purchase commitment and contract agreement, it was specifically agreed no storage would be charged for any period said beans were being stored by Defendant(s), and no further costs or expenses would be incurred, attributed to, or deducted from that net purchase price, thereby representing the agreement for a net purchase price of said commodity of baby lima beans in the sum of \$68,503.60.

XI.

That a true and correct copy of the Purchase and Sale Agreement, identified as Order Number 4054, and referring to Plaintiff as a Customer Number 37470, is attached hereto and made a part hereof as Exhibit A, and incorporated by reference herein.

XII.

That a true and correct copy of the envelope in which the above Purchase and Sale Agreement was delivered, to Plaintiff at said farm in Ada County, Idaho, is attached hereto and incorporated herein as Exhibit B and incorporated by reference herein, depicting the written introduction thereon.

XIII.

That a true and correct copy of the calculated total clean weight of said baby lima beans, generated by said Treasure Valley Seed Co., LLC, from the results of their cleaning process, is attached hereto as Exhibit C and incorporated by reference herein.

XIV.

That Defendant(s) herein did take physical possession of said baby lima beans at the conclusion of the harvest of said crop, at the completion of the growing season of 2007; that at all times thereafter, said Defendant(s) have exercised the exclusive dominion and control over said baby lima beans, and having failed or refused to pay the purchase price agreed to, has failed and refused to surrender the beans back to Plaintiff, or make any other acceptable payment to Plaintiff for the agreed purchase price as identified above.

XV.

That following the above Purchase and Sale Agreement transaction, Plaintiff, through her attorney in fact, did cause to be written to Don Tolmie, at Treasure Valley Seed Co., LLC, a letter on December 26, 2008, therein confirming certain conversations, and verifying the prior agreement, as had been reached on December 15, 2008, and express concerns about the sale of the 2007 commercial grade baby lima beans, as Mr. Tolmie had not delivered confirmation of his represented "sale" of the beans to the third-party, as he promised he would do, and said Treasure Valley Seed Co., LLC was "supposedly" still holding the beans in their warehouse in Homedale, Idaho, a true and correct copy of said letter is attached hereto as Exhibit D and incorporated by reference herein.

COUNT I.

CAUSE OF ACTION FOR BREACH OF PURCHASE AND SALE AGREEMENT

XVI.

That Plaintiff does re-allege each of the allegations as set forth in the paragraphs above, which are hereby incorporated by reference, as if fully set forth herein.

XVII.

That pursuant to the Purchase and Sale Agreement, a copy of which is attached hereto as Exhibit A, said Defendant(s), as buyers therein, agreed to pay Plaintiff a net sum of \$55.00 per hundred weight (cwt), for 1,245.52 hundred weight(cwt), constituting a purchase price and sum due and owing to Plaintiff in the amount of \$68,503.60.

XVIII.

That Plaintiff did perform fully pursuant to the acceptance of said Purchase and Sale Agreement, as further reflected and identified in the correspondence written to Don Tolmie, Treasure Valley Seed Company on December 26, 2008; Exhibit D, that said Defendant(s) did, notwithstanding their failure to pay as agreed, did then continue to retain the possession of said baby lima beans, and continued their exercise of their dominion and control over the entire quantity of said baby lima beans, as they remained in storage with Treasure Valley Seed Co., LLC, having been taken there under the direction and activity of Don Tolmie, upon his representations and commitments to do that which is identified and reflected in said letter of December 26, 2008 correspondence, as attached hereto as Exhibit D.

XIX.

That Defendant(s) have failed to pay under the terms of the agreement, and remain indebted to Plaintiff for the entire principal sum of \$68,503.60, for which now said principal sum has accrued interest at the rate of 12% per annum from and after December 15, 2008, pursuant to and in accordance with § 28-22-104, *Idaho Code*, for which a money judgment should be entered by the Court against said Defendant(s).

COUNT II.

CAUSE OF ACTION FOR BREACH OF IMPLIED CONTRACT IN FACT

XX.

That Plaintiff does re-allege each of the allegations as set forth in the paragraphs above, which are hereby incorporated by reference, as if fully set forth herein.

XXI.

That as a result of the transactions, representations, agreements, commitments, and performance by the Parties herein, regarding the purchase and sale of said baby lima beans, a contract has been created in accordance with the equitable doctrine of implied contract in fact, thereby entitling Plaintiff to equitable relief in accordance with a recovery under the theory of *quantum meruit*, for which a recovery of the entire principal sum in the amount of \$68,503.60, together with all accrued interest thereon from and after December 15, 2008, is due and owing pursuant to and in accordance with § 28-22-104, *Idaho Code*, together with recovery of such other and additional costs, expenses, disbursements and fees which may be incurred by Plaintiff in the course of seeking and obtaining a money judgment in the recovery upon this cause of action.

COUNT III.

CAUSE OF ACTION FOR BREACH OF IMPLIED CONTRACT IN LAW

XXII.

That Plaintiff does re-allege each of the allegations as set forth in the paragraphs above, which are hereby incorporated by reference, as if fully set forth herein.

XXIII.

That as a result of the transactions, representations, agreements, commitments, and performance by the Parties herein, regarding the purchase and sale of said baby lima beans, a contract has been created in accordance with the equitable doctrine of implied contract in law, thereby entitling Plaintiff to equitable relief in accordance with a recovery under the theory of unjust enrichment, for which a recovery of the entire principal sum in the amount of \$68,503.60, together with all accrued interest thereon from and after December 15, 2008, is due and owing pursuant to and in accordance with § 28-22-104, *Idaho Code*, together with recovery of such other and additional costs, expenses, disbursements and fees which may be incurred by Plaintiff in the course of seeking and obtaining a money judgment in the recovery upon this cause of action.

COUNT IV.

CLAIM FOR RECOVERY OF ATTORNEY FEES

XXIV.

That Plaintiff does re-allege each of the allegations as set forth in the paragraphs above, which are hereby incorporated by reference, as if fully set forth herein.

XXV.

That Plaintiff is entitled to recover all attorney fees incurred by Plaintiff in obtaining a money judgment recovery and relief to which Plaintiff is entitled under a legal remedy, or under the doctrines of equitable relief; that said Plaintiff is entitled to recover all attorney fees pursuant to § 12-120(3), *Idaho Code*, as the transaction and conduct of the Parties described above has at all times been a commercial transaction, for which attorney fees are recoverable in such disputes arising over commercial transactions.

WHEREFORE, Plaintiff prays for entry of a money judgment against these Defendant(s) as follows:

1. For recovery of the entire principal sum of \$ 68,503.60, together with all interest accruing thereon, pursuant to § 28-22-101, *Idaho Code*, in accordance with the allegations of Count I above, pursuant to the adequate legal remedy to which Plaintiff is entitled to recover in accordance with Idaho law.
2. For recovery of the entire principal sum \$68,503.60, together with all interest accruing thereon, from December 15, 2008, pursuant to § 28-22-104, *Idaho Code*, as alleged and an ordinance with Count II above, as an appropriate equitable right to recovery of a money judgment under the doctrine of *quantum meruit*, pursuant to and implied contract in fact, should this Court deem Plaintiff is not entitled to recover under an adequate legal remedy in accordance with Count I above.
3. For recovery of the entire principal sum of \$68,503.60, together with all interest accruing thereon, from December 15, 2008, pursuant to § 28-22-104, *Idaho Code*, as alleged, and in an ordinance with to Count III above, as in appropriate equitable right to recovery of a money judgment under the equitable doctrine of


unjust enrichment, pursuant to an implied contract in law, should it be determined by this Court Plaintiff does not have an adequate legal remedy under Count I, or does not meet the criteria for an equitable recovery under *quantum meruit* under the implied equitable theory of implied contract in fact, under Count II, but is entitled to recovery of money judgment under a theory of unjust enrichment, pursuant to the equitable doctrine of implied contract in law.

4. For recovery of all costs and attorney fees, disbursements, expenses and any other miscellaneous or other expenditures, pursuant to and in accordance with Rule 54, *I.R.C.P.*, and § 12-120 (3), *Idaho Code*, as the dispute herein constitutes a commercial transaction.

5. That Plaintiff does reserve the right to amend this Complaint to include further claims, further allegations, and further rights for recovery, to and including a claim for damages against said Defendant(s), as a result of the conduct, behavior and apparent bad faith of said Defendant(s), for their clear breach of their duty of good faith and fair dealings, and to also reserve the right to amend said pleadings to include a punitive damage claim against said Defendant(s) at a later date.

6. For such other and further relief as this Court may deem just and proper in the premises.

Dated this 13th day of December, 2013.



Vernon K. Smith
Attorney for Plaintiff

000014

NO. _____ FILED _____ P.M. _____
DEC 13 2013
CHRISTOPHER D. RICH, Clerk
By CHRISTINE SWEET
DEPUTY

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

RICHARD D. GREENWOOD

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

vs.

TREASURE VALLEY SEED
COMPANY, LLC, and Don Tolmie
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC

Defendant(s).

Case No. _____

CV DC 1322179

SUMMONS

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE NAMED PLAINTIFF.
THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER
NOTICE UNLESS YOU RESPOND WITHIN TWENTY (20) DAYS. READ THE
INFORMATION BELOW.

TO: TREASURE VALLEY SEED COMPANY, LLC AND DON TOLMIE

YOU ARE HEREBY NOTIFIED That in order to defend this lawsuit, an
appropriate written response must be filed with the above designated court within
20 days after service of this Summons on you. If you fail to so respond the Court
may enter judgment against you as demanded by the Plaintiff in the Complaint.

promptly so that your written response, if any, may be filed in time and other legal rights protected.

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

1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of this Complaint and other defenses you may claim, and must be filed with the Court.
3. You're signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

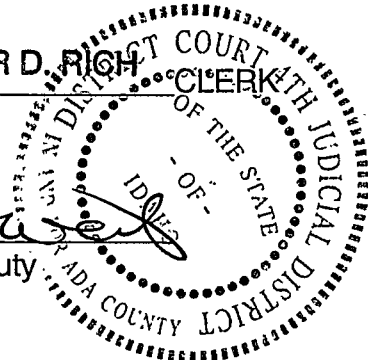
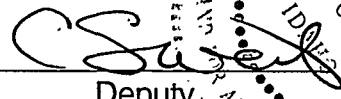
To determine whether you must pay a filing fee with your response, contact the clerk of the above named Court.

WITNESS my hand and the seal of said District Court, this 13th day of December, 2013.

CHRISTOPHER D. RICH

By

Deputy



JAN 24 2014

CHRISTOPHER D. RICH, Clerk
By ELAINE RUDZINSKI
DEPUTY

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

vs.

TREASURE VALLEY SEED
COMPANY, LLC, and Don Tolmie
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC

Defendant(s).

STATE OF IDAHO)
) ss.
County of Ada)

Vernon K. Smith, being duly sworn upon oath, deposes and says:


1. That your Affiant is the attorney for the Plaintiff, Victoria H. Smith, and attached hereto is the original Affidavit and Return of Service, showing service of process was effectuated upon each of these Defendants by

ORIGINAL

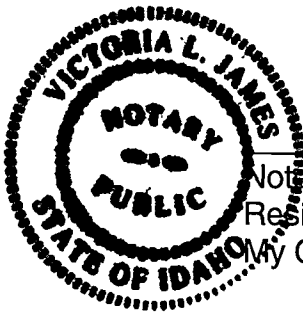
Mike Ridgeway, of Tri-County Process Serving, LLC, on January 2, 2014.

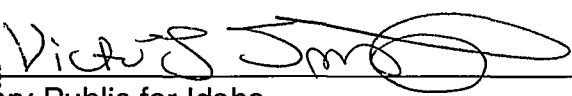
2. That said Affidavit of Service was submitted to Affiant on January 6, 2014, therein confirming that each of the Defendants were served a true copy of the Summons and Complaint on January 2, 2014, at 10:45 a.m.
3. That Affiant does present said Affidavit of Service, thereby establishing service of said Summons and Complaint upon said Defendants, and the statements contained herein are true and correct, to Affiant's personal knowledge and belief.

By


Vernon K. Smith, Affiant, and attorney in fact for
Victoria H. Smith

SUBSCRIBED AND SWORN to before me this 24th day of January, 2014.




Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 6/3/2014

CERTIFICATE OF SERVICE

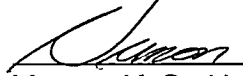
I HEREBY CERTIFY That on the 24th day of January, 2014, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Clerk of the Court
Fourth Judicial District
200 West Front Street
Boise, Idaho 83702

()
()
(x)

U.S. Mail
Fax 287-6919
Hand Delivered

Dated this 24th day of January, 2014.



Vernon K. Smith
Attorney for Plaintiff

Victoria H. Smith

VS.

Treasure Valley Seed Company, LLC et al. Defendant(s):

Case Number: CV OC 1322179

STATE OF IDAHO

) :SS)

COUNTY OF ADA

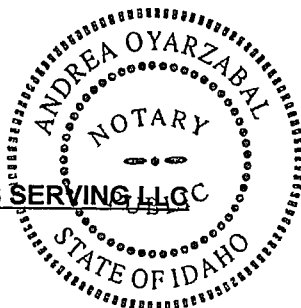
I, Mike Ridgeway, who being duly sworn, depose and say that on Thursday, January 2, 2014, at 10:45 AM, I:

SERVED the within named person(s) by delivering to and leaving with **DON TOLMIE** a true copy of the **Summons and Complaint**. Said service was effected at **17781 Highway 95, Wilder, ID 83676**.


I hereby acknowledge that I am a Process Server in the county in which service was effected. I am over the age of Eighteen years and not a party to the action.

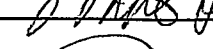
Our Reference Number: 134183
Client Reference:

Subscribed and sworn before me today
Monday, January 6, 2014



TRI-COUNTY PROCESS SERVING LLC
P.O. Box 1224
Boise, ID, 83701
(208) 344-4132





Notary Public for the State of Idaho
Residing at Boise, Idaho
My Commission Expires on November 25, 2016

January 6, 2014

TRI-COUNTY PROCESS SERVING L.L.C.

P.O. Box 1224
Boise, ID, 83701
(208) 344-4132 Business
(208) 338-1530 Fax
Federal Tax ID: 82-0348092

Invoice #134183

VERNON K. SMITH
1900 W. MAIN STREET
BOISE ID 83702
345-1125 Business
345-1129 Fax

Reference Job **#134183** when remitting.

Victoria H. Smith vs Treasure Valley Seed Company, LLC
Case Number: CV-OC 1322179

Documents: Summons and Complaint

Service Upon: Don Tolmie

Personal Service to Don Tolmie on January 2, 2014 at 10:45 AM,
at: 17781 Highway 95, Wilder, ID 83676
by Mike Ridgeway

Additional Affidavit \$36.00

Total: \$36.00

DUE ON RECEIPT: \$36.00

Thank You for Choosing
TRI-COUNTY PROCESS SERVING LLC!

000021

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Victoria H. Smith

Plaintiff(s):

vs.

AFFIDAVIT OF SERVICE

Treasure Valley Seed Company, LLC et al. Defendant(s):

Case Number: CV OC 1322179

For:
Vernon K. Smith
1900 W. Main Street
Boise, ID 83702

STATE OF IDAHO)
)
) ss
COUNTY OF ADA)

Received by TRI-COUNTY PROCESS SERVING LLC on December 17, 2013 to be served on
TREASURE VALLEY SEED COMPANY, LLC.

I, Mike Ridgeway, who being duly sworn, depose and say that on Thursday, January 2, 2014, at 10:45 AM,
I:

SERVED the within named **Treasure Valley Seed Company, LLC** by delivering a true copy of the
Summons and Complaint to Don Tolmie, Authorized Agent, a person authorized to accept service on
behalf of Treasure Valley Seed Company, LLC. Said service was effected at **17781 Highway 95, Wilder,**
ID 83676.

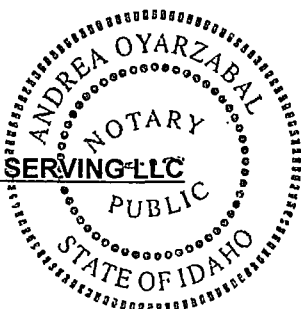
I hereby acknowledge that I am a Process Server in the county in which service was effected. I am over
the age of Eighteen years and not a party to the action.

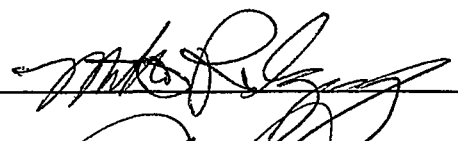

Our Reference Number: 134182

Client Reference:

Subscribed and sworn before me today
Monday, January 6, 2014

TRI-COUNTY PROCESS SERVING LLC
P.O. Box 1224
Boise, ID, 83701
(208) 344-4132



Notary Public for the State of Idaho
Residing at Boise, Idaho
My Commission Expires on November 25, 2016

000022

January 6, 2014

TRI-COUNTY PROCESS SERVING L.L.C.

P.O. Box 1224
Boise, ID, 83701
(208) 344-4132 Business
(208) 338-1530 Fax
Federal Tax ID: 82-0348092

Invoice #134182

VERNON K. SMITH
1900 W. MAIN STREET
BOISE ID 83702
345-1125 Business
345-1129 Fax

Reference Job **#134182** when remitting.

Victoria H. Smith vs Treasure Valley Seed Company, LLC
Case Number: CV OC 1322179

Documents: Summons and Complaint

Service Upon: Treasure Valley Seed Company, LLC

Personal Service to Don Tolmie, Authorized Agent, on January 2, 2014 at 10:45 AM,
at: Treasure Valley Seed Company, LLC, 17781 Highway 95, Wilder, ID 83676
by Mike Ridgeway

Mileage Fee \$73.80
Service Fee \$41.00

Total: \$114.80

DUE ON RECEIPT: \$114.80

Thank You for Choosing
TRI-COUNTY PROCESS SERVING LLC!

3/6
150.80

000023

JAN 24 2014

CHRISTOPHER D. RICH, Clerk
By ELAINE RUDZINSKI
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Victoria H. Smith

Plaintiff(s):

vs.

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Treasure Valley Seed Company, LLC et al. Defendant(s):

Case Number: CV OC 1322179

For:
Vernon K. Smith
1900 W. Main Street
Boise, ID 83702

STATE OF IDAHO)
)
) :ss
COUNTY OF ADA)

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I, Mike Ridgeway, who being duly sworn, depose and say that on Thursday, January 2, 2014, at 10:45 AM,
I:

SERVED the within named **Treasure Valley Seed Company, LLC** by delivering a true copy of the
Summons and Complaint to Don Tolmie, Authorized Agent, a person authorized to accept service on
behalf of Treasure Valley Seed Company, LLC. Said service was effected at **17781 Highway 95, Wilder,**
ID 83676.

I hereby acknowledge that I am a Process Server in the county in which service was effected. I am over
the age of Eighteen years and not a party to the action.

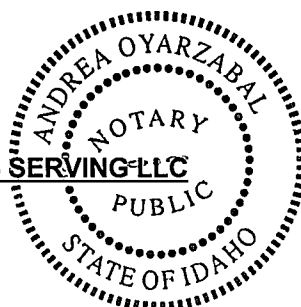
Our Reference Number: 134182



Client Reference:

Subscribed and sworn before me today
Monday, January 6, 2014

TRI-COUNTY PROCESS SERVING LLC

P.O. Box 1224
Boise, ID, 83701
(208) 344-4132





Notary Public for the State of Idaho
Residing at Boise, Idaho
My Commission Expires on November 25, 2016

January 6, 2014

TRI-COUNTY PROCESS SERVING L.L.C.

P.O. Box 1224
Boise, ID, 83701
(208) 344-4132 Business
(208) 338-1530 Fax
Federal Tax ID: 82-0348092

Invoice #134182

VERNON K. SMITH
1900 W. MAIN STREET
BOISE ID 83702
345-1125 Business
345-1129 Fax

Reference Job **#134182** when remitting.

Victoria H. Smith vs Treasure Valley Seed Company, LLC
Case Number: CV OC 1322179

Documents: Summons and Complaint

Service Upon: Treasure Valley Seed Company, LLC

Personal Service to Don Tolmie, Authorized Agent, on January 2, 2014 at 10:45 AM,
at: Treasure Valley Seed Company, LLC, 17781 Highway 95, Wilder, ID 83676
by Mike Ridgeway

Mileage Fee \$73.80
Service Fee \$41.00

Total: \$114.80

DUE ON RECEIPT: \$114.80

36
150.80

Thank You for Choosing
TRI-COUNTY PROCESS SERVING LLC!

000025

JAN 24 2014

CHRISTOPHER D. RICH, Clerk
By **ELAINE RUDZINSKI**
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

Victoria H. Smith

Plaintiff(s):

vs.

AFFIDAVIT OF SERVICE

Treasure Valley Seed Company, LLC et al. Defendant(s):

Case Number: CV OC 1322179

For:
Vernon K. Smith
1900 W. Main Street
Boise, ID 83702

STATE OF IDAHO)
)
COUNTY OF ADA)
 :ss

Received by TRI-COUNTY PROCESS SERVING LLC on December 17, 2013 to be served on **DON TOLMIE**.

I, Mike Ridgeway, who being duly sworn, depose and say that on Thursday, January 2, 2014, at 10:45 AM, I:

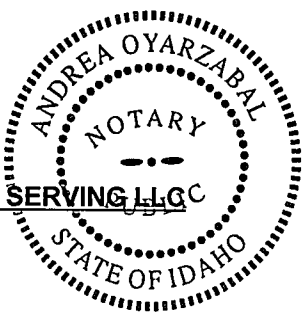
SERVED the within named person(s) by delivering to and leaving with **DON TOLMIE** a true copy of the **Summons and Complaint**. Said service was effected at **17781 Highway 95, Wilder, ID 83676**.

I hereby acknowledge that I am a Process Server in the county in which service was effected. I am over the age of Eighteen years and not a party to the action.

Our Reference Number: 134183
Client Reference:

Subscribed and sworn before me today
Monday, January 6, 2014

TRI-COUNTY PROCESS SERVING LLC
P.O. Box 1224
Boise, ID, 83701
(208) 344-4132



[Signature]

[Signature]

Notary Public for the State of Idaho
Residing at Boise, Idaho
My Commission Expires on November 25, 2016

OK

January 6, 2014

TRI-COUNTY PROCESS SERVING L.L.C.

P.O. Box 1224
Boise, ID, 83701
(208) 344-4132 Business
(208) 338-1530 Fax
Federal Tax ID: 82-0348092

Invoice #134183

VERNON K. SMITH
1900 W. MAIN STREET
BOISE ID 83702
345-1125 Business
345-1129 Fax

Reference Job **#134183** when remitting.

Victoria H. Smith vs Treasure Valley Seed Company, LLC
Case Number: CV OC 1322179

Documents: Summons and Complaint

Service Upon: Don Tolmie

Personal Service to Don Tolmie on January 2, 2014 at 10:45 AM,
at: 17781 Highway 95, Wilder, ID 83676
by Mike Ridgeway

Additional Affidavit \$36.00

Total: \$36.00

DUE ON RECEIPT: \$36.00

Thank You for Choosing
TRI-COUNTY PROCESS SERVING LLC!

000027

JAN 24 2014

CHRISTOPHER D. RICH, Clerk
By ELAINE RUDZINSKI
DEPUTY

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

vs.

TREASURE VALLEY SEED
COMPANY, LLC, and Don Tolmie
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC


Defendant(s).

Case No. CV OC 1322179

MOTION FOR ENTRY OF DEFAULT

COMES NOW The Plaintiff above-named, Victoria H. Smith, by and through her attorney in fact, Vernon K. Smith, pursuant to his Durable and Irrevocable Power of Attorney, and in his representative capacity as counsel of record for Plaintiff, and does move this Court, pursuant to Rule 55(a)(1), *I.R.C.P.*, for entry of default against each of the above-named Defendants, as each said Defendant, Treasure Valley Seed Company, LLC, and Don Tolmie have failed to plead or otherwise defend this action seeking affirmative relief as provided by the Idaho Rules of Civil Procedure.

Dated this 24th day of January, 2014.


Vernon K. Smith
Attorney for Plaintiff


CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 24th day of January, 2014, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Clerk of the Court
Fourth Judicial District
Ada County
200 West Front Street
Boise, Idaho 83702

() U.S. Mail
() Fax 287-6919
(x) Hand Delivered

Dated this 24th day of January, 2014.


Vernon K. Smith
Attorney for Plaintiff

JAN 24 2014

CHRISTOPHER D. RICH, Clerk
By **ELAINE RUDZINSKI**
DEPUTY

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

VS.

TREASURE VALLEY SEED
COMPANY, LLC, and Don Tolmie
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC

Defendant(s).

Case No. CV OC 1322179

**AFFIDAVIT IN SUPPORT OF
MOTION FOR ENTRY OF DEFAULT**

[illegible]

Vernon K. Smith, being duly sworn upon oath, deposes and says:

1. That Affiant is the attorney in fact for the Plaintiff, Victoria H. Smith, acting for her pursuant to and in accordance with his durable and irrevocable power of attorney, acting in her place and stead, and said Affiant is the attorney of record for the attorney in fact herein.
2. That Affiant does present this Affidavit in support of the Motion for

ORIGINAL

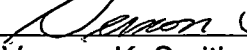
Entry of Default, and the statements contained herein are based upon Affiant's personal knowledge and belief.

3. That the Summons and Complaint filed in this action were served upon each of the Defendants on January 2, 2014, at 10:45 a.m., as reflected in that Affidavit of personal service as made by Mike Ridgeway, of Tri-County Process Serving, LLC, upon each of the Defendants, by delivering a true copy of the Summons and Complaint to Don Tolmie, authorized agent, acting on behalf of Treasure Valley Seed Company, LLC, and to him personally, by delivering a true copy of said Summons and Complaint to said Don Tolmie, personally, each being served on the same date, all of which service was effectuated at the location of 17781 Highway 95, Wilder, Idaho, 83676, the Affidavit and return of service of said Mike Ridgeway is filed with the Court simultaneously with this Affidavit being submitted by Affiant.
4. That pursuant to Rule 55(a)(2), *I.R.C.P.*, the time allowed by the Idaho Rules of Civil Procedure for each of the Defendants to make an appearance or defend this action has expired, and it would be appropriate for the default to be entered, and thereafter a judgment by default be entered, without further notice to the defaulting parties.
5. That each of the said Defendants have failed to make any appearance in this action; that neither Defendant is an infant or an incompetent person; that Treasure Valley Seed Company, LLC, has been served through its authorized agent, Don Tolmie, and said Don Tolmie has been served individually, and no appearance has been made by any

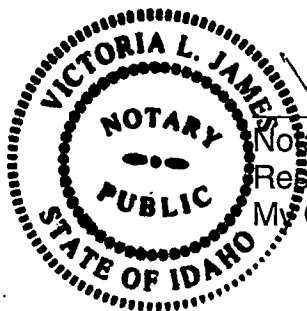
attorney or representative in their behalf. That neither Defendant is known to be on active duty in the United States Armed Forces, or a member of the Armed Services and neither of the Defendants are entitled to the protections or limitations as provided by the Service Members Civil Relief Act, formally known and referred to as the Soldiers' and Sailors' Civil Relief Act of 1940;


6. That no reason or cause is known to exist to prevent or delay the entry of default against each of these Defendants, and default should now be entered.

7. FURTHER YOUR AFFIANT SAYETH NAUGHT.

By 
Vernon K. Smith, Affiant and attorney in fact for
Victoria H. Smith

SUBSCRIBED AND SWORN to before me this 24th day of January, 2014.




Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 6/3/2014


CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 24th day of January, 2014, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Clerk of the Court
Fourth Judicial District
Ada County
200 West Front Street
Boise, Idaho 83702

() U.S. Mail
() Fax 287-6919
(x) Hand Delivered

Dated this 24th day of January, 2014.



Vernon K. Smith
Attorney for Plaintiff

Greenwood
1-28-14

ORIGINAL

NO. 1144 FILED
A.M. 11:44 P.M.

JAN 27 2014

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendant, Don Tolmie

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.


Case No. CV 0C 13-22179

NOTICE OF APPEARANCE BY COUNSEL
FOR THE DEFENDANTS

NOTICE IS GIVEN that the undersigned hereby appears in this action as counsel for the defendants.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: January 24, 2014

SIGNED: 
Richard B. Eismann
Counsel for the Defendant, Treasure Valley Seed Co., LLC

ORIGINAL

NO. 10- FILED
A.M. 10- P.M.

JAN 28 2014

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendants

CHRISTOPHER D. RICH, Clerk
By ELAINE RUDZINSKI
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

**TREASURE VALLEY SEED CO., LLC'S ANSWER TO COMPLAINT
WITH COUNTERCLAIMS
AND DEMAND FOR JURY TRIAL**

COMES NOW the defendant, **Treasure Valley Seed Co., LLC** and alleges as follows:

DEFINITIONS

When used in this answer and these counterclaims, the terms following shall have the meanings following:

- "Smith" refers to Victoria H. Smith.
- "Seed Company" refers to the Treasure Valley Seed Co., LLC.
- "Don" refers to Donald Tolmie.
- "Bean Plant" refers to the Seed Company's offices, bean processing facilities and storages located off of Highway 95 in Canyon County, Idaho, North of Homedale, Idaho.
- "2007 Lima Bean Crop" refers to the lima bean crop grown by Smith in the year 2007 and delivered to the Seed Company's Bean Plant between October 25, 2007, and November 2, 2007.

Smith, in answering these counterclaims, does not need to admit or deny the definitions set forth above but is required to apply the definitions in answering these counterclaims.

ANSWER TO COMPLAINT

COUNT ONE---FIRST DEFENSE:

The first count of such complaint fails to state a claim against the Seed Company upon which relief can be granted.

COUNT ONE---SECOND DEFENSE:

1. The Seed Company admits the allegations contained in each paragraph of the first count of such complaint following:

III, except the Seed Company denies that the principal place of business of the Seed Company is in Homedale, Idaho;

V;

VI;

XI, a document Order Number 5054 is attached to the complaint, is not marked Exhibit A and Don prepared that document;

XII, a picture of an envelope is attached to the complaint, is not marked Exhibit B and Don wrote the words on that document;

XIII, a document showing "Green Baby Lima total clean weight 124,552" is attached to the complaint, is not marked Exhibit C and is the clean weight of the Green Baby Lima which the Seed Company cleaned for Virginia and Vern Smith; and

XV, Vernon Smith wrote the letter attached to the complaint, it is not marked Exhibit D and the statements made therein are denied and this letter is only one letter of several letters exchanged between the plaintiff and the defendants through their respective counsel.

2. The Seed Company alleges that the Seed Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in each paragraph of the first count of such complaint following: I; and II.

3. The Seed Company denies each and every other allegation contained in the first count of such complaint which is not hereinabove expressly admitted.

4. The course of dealings between the Seed Company and Smith includes the series of communications between Smith and the Seed Company and between counsel for Smith and counsel for the Seed Company following:

(a) The December 8, 2008, phone message left by Attorney Smith for Don, a true transcript of which is attached hereto as Exhibit 301.

- (b) The December 15, 2008, written offer from the Seed Company to Attorney Smith together with the instructions for accepting such offer which are attached hereto as Exhibit 302.
- (c) The December 26, 2008, letter from Attorney Smith to Don attached to the Smith complaint referred to as Exhibit D and attached hereto as Exhibit 303.
- (d) The December 30, 2008, letter from Attorney Eismann to Attorney Smith attached hereto as Exhibit 304.
- (e) The January 8, 2009, letter from Attorney Eismann to Attorney Smith attached hereto as Exhibit 305.
- (f) The January 12, 2009, letter from Attorney Smith to Attorney Eismann attached hereto as Exhibit 306.
- (g) The January 14, 2009, letter from Attorney Eismann to Attorney Smith attached hereto as Exhibit 307.
- (h) The January 26, 2009, letter from Attorney Eismann to Attorney Smith attached hereto as Exhibit 308.
- (i) The January 28, 2009, letter from Attorney Smith to Attorney Eismann attached hereto as Exhibit 309.
- (j) The March 12, 2009, letter from Attorney Eismann to Attorney Smith attached hereto as Exhibit 310.
- (k) The March 23, 2009, letter from Attorney Eismann to Attorney Smith attached hereto as Exhibit 311.
- (l) The April 24, 2009, letter from Attorney Eismann to Attorney Smith attached hereto as Exhibit 312.

- (m) The July 10, 2009, letter from Attorney Eismann to Attorney Smith attached hereto as Exhibit 313.
- (n) The October 20, 2010, letter from Attorney Eismann to Attorney Smith attached hereto as Exhibit 314.
- (o) The December 14, 2010, letter from Attorney Eismann to Attorney Smith attached hereto as Exhibit 315.
- (p) The December 17, 2010, letter from Attorney Smith to Attorney Eismann attached hereto as Exhibit 316.

The Seed Company specifically denies that an enforceable oral contract was entered into on December 15, 2008 in a telephone conversation between Attorney Smith and Don and specifically denies that the terms of that oral contract are set forth in the letter dated December 26, 2008 from Smith to Don. The December 26, 2008 letter is not a writing sufficient to indicate that a contract had been made between the parties and is not signed by the party against whom enforcement is sought within the requirements of IC § 28-2-201 – Formal requirements – Statute of frauds.

COUNT TWO----FIRST DEFENSE:

The second count of such complaint fails to state a claim against the Seed Company upon which relief can be granted.

COUNT TWO----SECOND DEFENSE:

1. The Seed Company answers each allegation incorporated into this count from any other count or any other part of such complaint with the same answer made by the Seed Company to such allegation in such other count or such other part of such complaint from which such allegation is incorporated.
2. The Seed Company denies each and every other allegation contained in the second count of such complaint which is not hereinabove expressly admitted.

COUNT THREE---FIRST DEFENSE:

The third count of such complaint fails to state a claim against the Seed Company upon which relief can be granted.

COUNT THREE---SECOND DEFENSE:

1. The Seed Company answers each allegation incorporated into this count from any other count or any other part of such complaint with the same answer made by the Seed Company to such allegation in such other count or such other part of such complaint from which such allegation is incorporated.
2. The Seed Company denies each and every other allegation contained in the third count of such complaint which is not hereinabove expressly admitted.

AFFIRMATIVE DEFENSES TO ALL COUNTS OF COMPLAINT

1. **PLAINTIFF'S CLAIMS WAIVED:** Prior to the commencement of this action, the alleged claims of Smith were waived.
2. **LACHES:** Smith is barred to assert the alleged claims set forth in the complaint by the doctrine of laches.
3. **STATUTE OF LIMITATIONS BAR'S CLAIMS:** Smith's claims are barred by Idaho Code Sections 28-2-725 and 5-224 because the complaint was not filed within four years after the alleged causes of action accrued.
4. **THE PLAINTIFF FAILED TO MITIGATE DAMAGES:** Smith reasonably could have but failed to mitigate the damages claimed by Smith.
5. **FAILURE TO COMPLY WITH THE STATUTE OF FRAUDS:** The contract alleged by Smith does not comply with the statute of frauds set forth in Idaho Code Section 28-2-201.
6. **RULE 11 RESERVATIONS:** The Seed Company has considered and believes that the Seed Company may have additional defenses as well as additional claims but does not have

enough information at this time to assert such additional defenses and such additional claims and to comply with Rule 11 of the Idaho Rules of Civil Procedure. The Seed Company does not intend to waive any such defenses and any such claims and specifically gives notice that the Seed Company intends to amend this answer and/or add counterclaims if facts come to light through research and after discovery that give rise to any such additional defenses and to any such additional counterclaims.

7. **COUNTERCLAIMS INCORPORATED:** The Seed Company has no liability to Smith by reason of facts set forth in the counterclaims which are incorporated in and made a part of this defense.

COUNTERCLAIMS
STATEMENT OF FACTS

1. At all times herein mentioned, the Seed Company was and now is a limited liability company formed under the laws of the State of Idaho.
2. Smith grew and delivered or caused the 2007 Lima Bean Crop to be delivered to the Seed Company's Bean Plant.
3. In June, 2007, Smith requested and the Seed Company provided the bean seed used to plant the 2007 Lima Bean Crop for a total of 9,700 pounds of bean seed at the agreed price which is the reasonable value thereof of \$38.00 per hundred weight for a total of \$3,686.00.
4. During the last week in October and the first week in November, 2007, the 2007 Lima Bean Crop was harvested by Smith and delivered to the Bean Plant where the Seed Company dried, cleaned and eyed the 2007 Lima Bean Crop and placed the 2007 Lima Bean Crop in bins in the Seed Company's storage at its Bean Plant and that is where the 2007 Lima Bean Crop is located today.
5. The net pounds of clean bean seed obtained after drying, cleaning and eyeing the 2007 Lima Bean Crop was 124,552 pounds.

6. The Seed Company's charge for processing (drying, cleaning and eyeing) 124,552 pounds of the 2007 Lima Bean Crop was \$18.00 per hundred weight which is the reasonable value thereof and which totals \$22,419.36.

7. The balance of the account receivable owing by Smith to the Seed Company on November 30, 2007 was the sums following:

(a) for the bean seed	\$ 3,686.00
(b) for the drying, cleaning and eyeing of 124,552 pounds of beans of the 2007 Lima Bean Crop	<u>\$ 22,419.36</u>
Total as of November 30, 2007	\$ 26,105.36

8. The Seed Company's charge for storing beans is 15¢ per hundred weight per month which is the reasonable value thereof. The storage charge for the 2007 Lima Bean Crop from December 1, 2007 through December 31, 2013 is 73 months for 124,552 pounds of beans at 15¢ per hundred weight for a total of \$13,638.44.

9. The Seed Company's interest charge is 12% per annum interest on accounts receivables which is the interest rate fixed by Idaho Code Section 28-22-104 and the interest from February 1, 2008 through December 31, 2013 is $\$26,105.36 \times 12\% \times 2,161 \text{ days} \div \text{by } 365$ equals a total of \$18,546.96.

10. As of December 31, 2013 Smith owes the Seed Company \$26,105.56 plus storage of \$13,638.44 plus interest of \$18,546.96 for a total of \$58,290.76.

11. The Seed Company has liens on the 2007 Lima Bean Crop pursuant to the statutes following: under Idaho Code §28-7-209 and §28-7-210 for storing that crop; and under Idaho Code §45-805 and §45-806 for protection, improvement, safe keeping and altering that crop.

FIRST COUNT

(Open Account)

12. Paragraphs numbered 1 through 11 of this counterclaim are incorporated in this count.

13. By reason of the foregoing, Smith became indebted to the Seed Company in the sum of \$26,105.36 principal plus storage charges of \$13,638.44 through December 31, 2013, plus interest of \$18,546.96 as of December 31, 2013, for a total of \$58,290.76 plus accruing storage and interest until paid.

14. Although the Seed Company has duly made demand for payment on Smith for the payment of such sum, Smith has paid nothing and there is now owing the unpaid balance of \$58,290.76 plus accruing storage and interest until paid.

SECOND COUNT

(Implied Contract)

15. Paragraphs numbered 1 through 11 of this counterclaim are incorporated in this count.

16. The Seed Company at the request of Smith furnished to Smith the subject items of account which were of the reasonable value and the agreed value of \$26,105.36.

17. By reason of the foregoing, Smith became indebted to the Seed Company in the sum of \$58,290.76 plus accruing storage and interest until paid.

18. Although the Seed Company has duly made demand for payment on Smith for the payment of such sum, Smith has paid nothing and there is now owing the unpaid balance of \$58,290.76 plus accruing storage and interest until paid.

THIRD COUNT

(Unjust Enrichment)

19. Paragraphs numbered 1 through 11 of this counterclaim are incorporated in this count.

20. By reason of the foregoing, Smith has been unjustly enriched at the expense of the Seed Company in the sum of \$58,290.76.

21. Although the Seed Company has duly made demand for payment on Smith for the payment of such sum, Smith has paid nothing and there is now owing the unpaid balance of \$58,290.76 plus accruing storage and interest until paid.

FOURTH COUNT

(Foreclosure of Liens)

22. Paragraphs numbered 1 through 21 of this counterclaim are incorporated in this count.

23. By reason of the foregoing, Smith became indebted to the Seed Company in the sum of \$58,290.76 plus accruing storage and interest until paid.

24. Although the Seed Company has duly made demand for payment on Smith for the payment of such sum, Smith has paid nothing and there is now owing the unpaid balance of \$58,290.76 plus accruing storage and interest until paid.

25. At all times herein mentioned, Smith was and now is the owner of the 2007 Lima Bean Crop.

26. The items of account were furnished by the Seed Company to Smith.

SEED COMPANY'S COSTS AND ATTORNEY FEES IN DEFENDING AGAINST THE COMPLAINT AND PROSECUTING THE COUNTERCLAIMS. The Seed Company has been required to employ an attorney to represent the Seed Company to defend against the Smith complaint and has employed Eismann Law Offices to represent the Seed Company. The Seed Company seeks recovery of the costs and attorney fees incurred by the Seed Company from Smith and/or her counsel in defending against the complaint and prosecuting the counterclaims:

(a) pursuant to Idaho Code Section 12-120 and more particularly subparagraph (3) thereof which provides that in any civil action to recover on an open account,

account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, and pursuant to subparagraph (6) thereof for reasonable post judgment attorney's fees and costs incurred in attempting to collect on the judgment obtained; and/or

- (b) pursuant to Idaho Code Section 12-121 and Rule 54(e)(1) on the grounds that the complaint was brought and pursued frivolously, unreasonably and without foundation and that the counterclaims are and will be defended frivolously, unreasonably and without foundation; and/or
- (c) pursuant to Idaho Code Sections 12-123 for sanctions on the grounds that the conduct of Smith and/or her counsel in filing and pursuing the complaint is frivolous and in defending against the counterclaims are and will be frivolous; and/or
- (d) pursuant to IRCP 11(a)(1) for sanctions on the grounds that the filing and prosecution of the complaint and the defending against the counterclaims is not well grounded in fact, is not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and is interposed for an improper purpose such as to harass or cause unnecessary delay or needless increase in the costs of litigation.

WHEREFORE, the Seed Company demands judgment against Smith as follows:

On the Complaint:

1. That on count one of such complaint, Smith recover nothing from the Seed Company and that the first count of such complaint be dismissed with prejudice.
2. That on count two of such complaint, Smith recover nothing from the Seed Company and that the second count of such complaint be dismissed with prejudice.

3. That on count three of such complaint, Smith recover nothing from the Seed Company and that the third count of such complaint be dismissed with prejudice.

4. That the Seed Company recover costs expended herein including reasonable attorney's fees in the amount of \$5,000.00 in case judgment is entered by default, but if not then in an amount fixed by the court.

On the Counterclaims:

1. On the first count, for the sum of \$58,290.76 plus accruing storage and interest damages; **or in the alternative**

2. On the second count, for the sum of \$58,290.76 plus accruing storage and interest damages; **or in the alternative**

3. On the third count for the sum of \$58,290.76 plus accruing storage and interest damages; **or in the alternative**

4. On the fourth count:

(a) That the Seed Company be determined to have a valid and subsisting lien on the 2007 Lima Bean Crop for the amount of such judgment on the first count or the second count or the third count.

(b) That such lien be foreclosed as provided by law, that the 2007 Lima Bean Crop be sold according to law, that the net proceeds of such sale be applied to such judgment granted herein, and that the Seed Company recover a deficiency judgment from Smith for any deficiency remaining.


5. On all counts, reasonable attorney's fees in the sum of \$7,500.00 if this action is uncontested or judgment is entered by default for the failure of Smith to defend against the counterclaims plus an additional reasonable sum if this action is contested pursuant to the requests for attorney's fees set forth herein.

6. On all counts, interest and costs.
7. On all counts, for such other and further relief as may be just.

DEMAND FOR JURY TRIAL: A jury trial in this action is hereby demanded by the Seed Company and the Seed Company will not stipulate to a six person jury or to a jury consisting of any other number of persons less than twelve.

SERVICE BY HAND DELIVERY: The undersigned hereby certifies that a true copy hereof was this date hand delivered to: Vernon K. Smith, Attorney at Law, at 1900 West Main Street, Boise, ID 83702.

DATED: JAN 28 2014

SIGNED: 
Richard B. Eismann
Counsel for the Seed Company


VERIFICATION

STATE OF IDAHO, County of Canyon) ss

Donald Tolmie, the affiant, being first duly sworn, on oath deposes and says: that the affiant is the production manager of the Seed Company named in the foregoing Answer and Counterclaims; that the affiant has read the foregoing Answer and Counterclaims; that the affiant knows the contents thereof; and that the affiant believes the facts therein stated to be true.

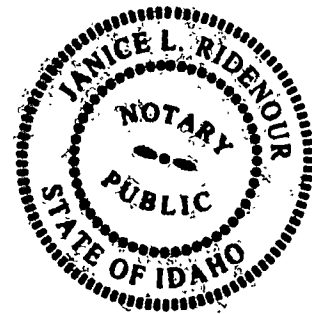

Donald Tolmie, affiant

SUBSCRIBED AND SWORN to before me on JAN 28 2014.



Residing at: Nampa, Idaho. Notary Public for Idaho.

My Commission Expires: 9/25/2015



MESSAGE LEFT BY VERNON K. SMITH
ON DON TOLMIE'S CELL PHONE ON DECEMBER 8, 2008

SMITH: Don, Vern here. I've talked to Richard Durant and to the... his conversations with Carter. They want us to a.. submit a bid, so I need to figure a ... a figure to submit to 'em. I gotta know what quantity I might wanna sell 'em, and I need to know where I'm at with you a.. on totes, if we sell 'em in totes or if we bag 'em or where we're at with cleaning... where I.. I've just gotta..... and where I'm at with you on storage. I just have to know all that so I can figure out this figure, so it all comes together. So, get back to me as soon as you get this message so we talk some and go from there. Thanks, Don.

EXHIBIT 301

Treasure Valley Seed Co.

P.O. Box 2184
Homedale, ID 83628
(208) 337-4626 • Fax: 337-3545

4054

ORDER NUMBER

GROWER PURCHASE / SALE

CUSTOMER NAME	Victoria H. Smith		
ADDRESS			
Cust CHECK NUMBER	37470	DATE	12/15/08
DESCRIPTION			
Purchase open balance of 2007 crop Green baby Limas, net of seed invoice. No storage will be deducted. 1245.52 cwt. @ \$55/cwt.			
X		ALL CLAIMS AND RETURNED GOODS MUST BE ACCOMPANIED BY THIS BILL.	
RECEIVED BY			

SAFEGUARD BUSINESS SYSTEMS (208) 343 7731

File No. G 2510040

EXHIBIT 302

000051

Van Please
sign white copy
return to TV and
Keep pink
for yourself



To locate a distributor in your area, visit www.gosafeguard.com
or call 800-573-2422 (U.S.) or 800-565-0559 (Canada).

SGCE 2085

EXHIBIT 302

000052

VERNON K. SMITH
Attorney At Law
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone (208) 345-1125
Facsimile (208) 345-1129

December 26, 2008

Don Tolmie
Treasure Valley Seed Company
P.O. Box 2184
Homedale, Idaho 83628

Dear Mr. Tolmie:

I take this opportunity to confirm our conversation and verify the agreement we reached on Monday, December 15, 2008, concerning the sale of my 2007 commercial grade baby lima beans you are presently holding in the Treasure Valley Seed warehouse in Homedale, Idaho.

This agreement is upon the clear understanding you had committed, subject to my approval, to a gross sale price of 73 cents per pound, and that I have agreed to accept 55 cents per pound, net price to me, on the sale of 124,552 lbs of my commercial grade lima beans, resulting in a check from Treasure Valley Seed Company made payable to Victoria H. Smith, in the sum of \$68,503.60.

As agreed, the 18 cents per pound remaining out of that gross sales price will cover any and all costs Treasure Valley Seed Company has incurred.

Should you receive more than 73 cents per pound, your 18 cents per pound remains the same, and we receive the additional sales proceeds. That is the only authorization you have in any attempt at a sale of these beans. Nothing beyond 18 cents will be retained by you or Treasure Valley Seed.

I felt it necessary to reduce our present arrangement and agreement into a written instrument, as our conversations of late have been rather contentious, and rather disappointing, in part, due to what I have characterized to you in our discussions as a failure in communication in the manner and way in which you have chosen to address the issues and direct your responses to my concerns about market values and what the value of these beans were on the open market, recognizing you had no contract to purchase the beans from us, and we remained the owners.

I wanted to sell these beans on the open market and avoid what middleman costs and commissions that otherwise might possibly be assessed, and you understood that fact. In essence, we needed to recover as much as possible with these beans in the marketplace, as I lost substantially from the 2006 disaster with the custom harvest services you provided us in combine services that year.

Clearly, with your continued involvement in the events of our beans, it was my understanding you were representing my interests in attempting to market and you were

EXHIBIT 303 1
000053

doing so in a manner that at all times would be agreeable to me. I believed you were acting as our selling agent, and I rightfully relied upon what you were telling me.

I do expect transparency in this transaction, and I will expect documentation and the appropriate paperwork that describes and discloses completely and unconditionally all of the transactions concerning any sale or movement of these beans, and to whom you propose to sell them, and for what price, and all the associated and related details regarding that event will be unconditionally disclosed to me.

If you cannot find it within your nature or your business dealings to provide that transparency and full disclosure, then I want you to make that directly clear to me, and I will proceed with other arrangements to market the beans.

We have already had an exchange of words that included your reference to litigation, as may be needed to resolve this matter. However, you subsequently have expressed your reasons and preference not to pursue that course of action.

Although I would not want to encourage litigation, I do understand its application and ramifications. Additionally, there are some interesting issues that could come from such course of action in the event this matter is not concluded as I understood your December 15, 2008 proposal and acceptance of 18 cents per pound out of the gross sales price of our beans.

We have yet to address the sale of my remaining "mud tag" lima beans, weighing approximately 12,000 lbs, which initially comprised seven bins as generated from your cleaning process, and there still remain not less than four bins of these beans in your possession.

I trust I have made my position clear, and you will elect to perform properly and in accordance with your fiduciary duty and my expectations, in a genuine effort to preserve our future relationship, and if you cannot, then you must step aside and terminate this effort to resolve this marketing endeavor. I will return to again raising beans after the 2009 season, and I would hope we can restore this misunderstanding and restore a level of expectation for future transaction opportunities. As always, I remain,

Yours very truly,


Vernon K. Smith

VKS/vlj

EXHIBIT 303₂

000054

*** RX REPORT ***

RECEPTION OK

TX/RX NO	7488	
CONNECTION TEL		2083373584
SUBADDRESS		
CONNECTION ID		
ST. TIME	12/29 10:57	
USAGE T	01'12	
PGS.	3	
RESULT	OK	

EXHIBIT 303



T Valley Seed Co., LLC
P.O. Box 2184
Homedale, ID 83628
(208) 337-4626
FAX (208) 337-3553

RBE
SLY

4 227

FAX COVER SHEET

DATE:	12-29-08
TO:	R. B. Disgarn
FROM:	Don Volney
SUBJECT:	Vermon R Smith
FAX #:	466-4498
PAGES:	(including cover) 3

Dick please call after you have time
to review

Heather

CONFIDENTIALITY NOTE: The documents accompanying this telecopy transmission contain information belonging to TVS, which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify the sender by telephone (call collect if long distance) to arrange for return of the original document. Thank you.

EXHIBIT 303
000056

Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES

3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

RICHARD B. EISMANN
DEBRA L. EISMANN

FAXED
vn/1

December 30, 2008

DELIVERY BY FAX
(345-1129)

Mr. Vernon K. Smith
Law Offices of Vernon K. Smith
1900 W. Main St.
Boise, ID 83702

Re: Treasure Valley Seed Company - Smith

Dear Vernon:

Your letter dated December 26, 2008, directed to Treasure Valley Seed Company has been forwarded to me as the company's attorney for this matter to make a response.

I do not have the time available to gather the necessary information and documents and to respond in detail to your letter at this time. I will respond to the portion of your letter relating to the purchase of the 124,552 pounds of the 2007 bean crop on or before January 8, 2009, and in full to your letter on or before January 15, 2009.

Thank you for your consideration.

Very truly yours,



Richard B. Eismann

RBE/vn/1

CLT: *Client*

EXHIBIT 304

000057

Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES

3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

FAXED
VN/1

RICHARD B. EISMANN
DEBRA L. EISMANN

January 8, 2009

DELIVERY BY FAX
(345-1129)

Mr. Vernon K. Smith
Law Offices of Vernon K. Smith
1900 W. Main St.
Boise, ID 83702

Re: Treasure Valley Seed Co., LLC - Smith

Dear Vernon:

I represent Treasure Valley Seed Co., LLC (the Company) in the matters to which you refer in your letter of December 26, 2008, and the 124,552 pounds of the 2007 lima bean crop ("subject beans") held in the storage facilities of the Company.

Upon your receipt of my fax to you dated December 30, 2008, you called and asked me if the subject beans were still on hand, and I told you they were. I thought that was an odd question since you parties had been discussing a sale of the subject beans so I double-checked with the Company, and the subject beans have not been sold and are in the Company's storage.

The Company denies all of your provocative statements, allegations, inferences and innuendoes contained in your letter of December 26, 2008, relating to the honesty, credibility, integrity and business ethics of the Company and its employees.

Because in your letter you ask that the check for the subject beans be made payable to your mother, Victoria Smith, the Company assumes that your mother is the owner of all of the subject beans, and as the owner of the subject beans is responsible for payment of the bean seed used for planting and for the services provided by the Company relating to the subject beans.

Please confirm in writing that your mother is the sole owner of the subject beans and that neither you nor any other person has any right or title or interest in or lien on all or any part of the subject beans and that your mother is the person liable and responsible to pay that account.

Because you used your letterhead for your law practice, I assume that you are writing as your mother's attorney and not solely as her son, and therefore, no contact has been or will be made with your mother.

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Vernon K. Smith
Treasure Valley Seed Co., LLC – Smith
January 8, 2009
Page 2

A copy of your mother's account with the Company as it now stands is as follows:

SCHEDULE OF ACCOUNT					
	QTY	DESCRIPTION	WEIGHT	PRICE/CWT	PRICE
1.	46	50# SEED GREEN BABY LIMA THORO G06	2300	38.000	\$874.00
2.	198	50# SEED GREEN BABY LIMA THORO G06	9900	38.000	\$3,762.00
3.	1	CLEANING CHARGE @ LBS/UNIT	124552	13.000	\$16,191.76
4.	1	EYEING (PICKING) CHARGE @ LBS/UNIT	124552	5.000	\$6,227.60
5.	50	50# SEED GREEN BABY LIMA THORO G06	-2500	38.000	<u>-\$950.00</u>
			SUBTOTAL		\$26,105.36
6.		INTEREST FOR 2008 @12%			\$3,132.64
7.		STORAGE FOR DECEMBER 2007 THRU JANUARY 2009 @ 15¢ PER MONTH PER 100 WT.			\$2,615.59
			TOTAL DUE		<u><u>\$31,853.59</u></u>

The Company's business is trading in beans which includes both buying and selling beans. The Company is **not the agent of a grower** (i) when the Company contracts with a grower for that grower to grow and deliver beans at a price to the Company or (ii) when the Company buys beans from a grower which that grower has not grown under contract with the Company. These transactions are and must remain arms-length transactions. The subject beans grown by your mother fall into category (ii) above.

The Company's business also includes and the Company makes separate custom charges to the owner of beans who is usually a grower for milling, eyeing, storing and packaging beans for delivery.

Whether the Company is buying beans or is selling beans, the Company must accept certain risks in those transactions which include, but are not limited to, market changes, delivery issues, quality issues, claims, claim settlements and credit issues. The transactions of buying and selling beans must cover the expenses incurred in connection with those risks.

EXHIBIT 305

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Vernon K. Smith
Treasure Valley Seed Co., LLC – Smith
January 8, 2009
Page 3

These potential risks and the expenses resulting therefrom are not covered by the custom charges made by the Company to a grower for milling, eyeing, storing and packaging beans for delivery.

The Company understands your desire to eliminate the “charges” of the “middle man” in selling the subject beans, but to do that you must do what is done by and you must assume the risks which are assumed by that “middle man.” This means that you must initiate the contact with, come to an agreement with and complete the sale and delivery of the subject beans to the buyer, all in your name, all at your expense and all at your risk.

Your position appears to be that the Company is the “middle man” whose “charges” you expect to eliminate, and you expect the Company to perform the functions of such “middle man” without charge. The Company does not accept your position.

The Company’s confidential proprietary information includes, but is not limited to, the following:

- (a) The Company’s actual costs in providing the custom work it performs as opposed to the Company’s custom charges to a grower for the custom work of milling, eyeing, storage and packaging beans for delivery;
- (b) The price at which the Company buys beans in a transaction in which the Company is selling beans;
- (c) The price at which the Company sells beans in a transaction in which the Company is buying beans;
- (d) The Company’s customer list of bean sellers;
- (e) The Company’s customer list of bean buyers; and
- (f) The Company’s market position.

The Company’s confidential proprietary information is similar to the confidential proprietary information for all other businesses, and such other businesses protect their confidential proprietary information just as the Company protects its confidential proprietary information by not disclosing its confidential proprietary information.

Your proposal is that the Company provide you with the Company’s confidential proprietary information to assure you and your mother that the Company sells the subject beans at the highest price possible, and that the Company doesn’t receive any money from the sale of the

EXHIBIT 305
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Vernon K. Smith
Treasure Valley Seed Co., LLC – Smith
January 8, 2009
Page 4

subject beans except its custom charges of 18¢ per pound, or if it does, that such money will be paid to your mother. The Company does not accept your proposal.

Beans are a commodity, and market reports relating to bean supply and markets are available to the general public. Those market reports can be used by you and your mother when making decisions on selling the subject beans and by the Company in buying and selling the subject beans. In addition, you and your mother can, and the Company urges you to, contact other firms dealing in beans for market information.

In the case of the subject beans, Mr. Tolmie has related to me his recollection and understanding, and your letter contains your recollection and understanding of certain conversations. While market conditions for the subject beans were discussed, it is obvious and your letter confirms that there was no meeting of the minds. This being so, there is nothing to be gained by arguing about what was or was not said by either person in those conversations.

The Company's objective is to do business with your mother and offer to buy the subject beans in an arms-length transaction (not as her agent and not establishing a fiduciary relationship and without disclosing its confidential proprietary information) if both parties can agree on the price, but if the parties cannot agree on the price, then both the Company and your mother should move on and do business with other persons with whom agreements can be made.

The Company's offer to purchase the subject beans:

The Company will pay 73¢ per pound for 124,552 pounds of the subject beans which is \$90,922.95. If your mother accepts this offer which includes the agreement that neither party will make any further claims against the other relating to the 2007 bean crop, the Company will waive the storage charges for the subject beans for the 14 months of December 2007 through January 2009 which amounts to \$3,055.92, and the Company will waive the interest on your mother's account for the year 2008 which amounts to \$2,615.59 for a total of \$5,671.51. Your mother's account of \$26,105.36 will be deducted from the sale price of \$90,922.95; and your mother will be paid the balance of \$64,817.59. In this sale, the Company will not be acting as your mother's agent, there will be no fiduciary relationship created and the Company will not provide you or your mother with any of the Company's confidential proprietary information.

Because the bean market is subject to changes, this offer can only be accepted by an unconditional acceptance in a writing signed by your mother stating that she is the sole owner of the subject beans and that the subject beans are free and clear of all liens. Such acceptance must be received at my office **on or before 5:00 P.M. on January 12, 2009**. If this offer is not so accepted, then this offer is withdrawn.

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000064

Vernon K. Smith
Treasure Valley Seed Co., LLC – Smith
January 8, 2009
Page 5

If your mother does not accept the above offer:

If your mother does not accept the above offer as above provided, then your mother should, at her expense, remove the subject beans from the Company's storage to any location your mother selects, but prior to such removal your mother's account plus accruing interest and storage charges added to your mother's account must be paid in full. Your mother can of course sell the subject beans or employ other persons or entities to sell the subject beans on her behalf as she determines so long as the subject beans are not sold under this Company's name as the seller and this Company is not otherwise involved in such sale.

The subject beans are currently stored loose in bins. The Company will, upon your mother's request, transfer the subject beans to tote bags which will handle about 3,000 pounds each so that the subject beans can be removed from the Company's storage. The charge for this is \$10.00 per hundred weight. If you can obtain other bins, the charge for transferring the subject beans from the Company's bins to such other bins would be \$3.00 per hundred weight.

The above transfer charges will be added to your mother's account and must be paid before the subject beans are removed from the Company's storage.

In any event, your mother will remove all of the subject beans from the Company's storage **on or before June 30, 2009**. The Company needs to clear its storage in preparation for the new crop.

In my letter to you dated December 30, 2008, I told you that I would make two responses to your letter dated December 26, 2008, but I have been able to obtain the information needed, and this letter will not be followed by a second letter.

If you have any questions, please contact me.

Thank you for your consideration.

Very truly yours,



Richard B. Eismann
RBE/vn/1
CLT: Client

EXHIBIT 305

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5/4
RBE

VERNON K. SMITH
Attorney At Law
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone (208) 345-1125
Facsimile (208) 345-1129

January 12, 2009

Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Id. 83651

Dear Mr. Eismann,

I have your letter of January 8, 2009, concerning the subject of the lima beans we own, and that are currently in possession of Treasure Valley Seed Company.

When I reviewed your earlier fax on December 30, 2008, I called your office to determine if the sale under the Federal Institutional Program had been consummated, as that was the only sale I authorized Don Tolmie to process, based upon his representation he had placed an offer with them, subject to my approval, and that offer was to sell those commercial grade quality lima beans (124,552 lbs.) on the Government Institutional Program, for a gross sale price of 73 cents per pound, from which he was authorized to retain 18 cents per pound, as full satisfaction for any claimed costs or expenses associated with these beans, and to issue a check made payable to Victoria H. Smith for 55 cents per pound, representing a disbursement to my mother in the amount of \$68,503.60.

In the event you are not aware, our total weight of lima beans received by Treasure Valley Seed was 157,851 pounds, which includes the 124,552 pounds referred to as what was the cleaned weight, as reported to me for the first time by fax on March 25 2008, and in addition to the clean weight as revealed, there was not less than 12,000 lbs. of "mud tag" lima beans, meaning that was the quantity of beans that were stained from the dirt/chaff that gathers on the rough skin of the bean, and by virtue of the presence of moisture, as the bean "sweats" in the drying process, that portion of the beans had become stained to some degree. Those "mud tag" beans are being held separately by Treasure Valley Seed in 4 large bin boxes, and were represented to weigh in excess of 12,000 pounds.

Your attempt to recreate or "formulate" a history on my involvement with Mr. Tolmie is quite interesting, misleading and quite to the contrary. My involvement with Don Tolmie began in 2006, when he signed me up on contract to raise lima beans for Treasure Valley Seed, and Don Tolmie was then our field representative for that year of 2006. I had a contract with him to sell the lima beans to Treasure Valley Seed. When it came time to harvest the beans, he then selected the custom harvester to harvest the beans, an individual named Mr. Andrews, who attempted to make the fall harvest, but because of his other commitments, his particular machine, his improper settings, and

EXHIBIT 306 1000063

needed adjustments, together with his hurried attitude, and conflicting schedule with other pressing commitments, we were then confronted with the fact the lima beans he harvested were rejected by Mr. Tolmie, as they were too badly stained from what night shade was in the fields, as Don, acting as the field representative, failed to observe the degree or significance of the nightshade present in the fields, and had failed to indicate any need for further chemical control, or that it could result in an issue with his selected custom separation process.

Don expressed his remorse over the situation, said Mr. Andrew should have handled the matter differently, and he too, could have been more vigilant in looking for the nightshade, and apologized for not coming out to observe the growth and development during the 2006 season. I accepted his recognition of the event, and in his effort to make up for the disaster, he agreed to clean the beans that were harvested, and return them to me for use by me as seed for the 2007 season, and he also agreed he would supplement any shortfall on my seed needs with whatever additional lima bean seed I needed, and he would do so at his own cost.

Between what he cleaned and the additional seed he provided, I grew the 2007 bean crop, with the clear understanding I would be raising those beans on the open market, and I would not enter into any new contract with him, as we intended to do our own field inspections, our own chemical applications, and our own weed control efforts, and would be doing our own harvesting, and I would then pursue my own sales on the open market.

Don appeared to be sincere, as he shared his thoughts on what options I should consider on weed control, and which were most successful with what was out there on the weed control market and what he was using with his growers, and as fall was approaching, he came out, and readily saw the potential yield looked very good, and expressed his desire to assist me in marketing the beans, as he knew I wanted to secure a premium price in the open market, as he again expressed his awareness that he well understood I had to make up for the losses over the 2006 harvesting disaster. I took his intentions and involvement as genuine and sincere, given what losses took place in 2006, and his willingness to help find the best market.

He agreed to bring out his empty bean boxes, so we could load the beans into them as they were being harvested, and he said he would take them back to Treasure Valley Seed, not to store them, but to help me market them. The quality was excellent, though we had some high moisture found in some boxes, and Don then returned 7 boxes filled with beans to us, which we then sorted, tumbled, and returned to him 4 full boxes, which were taken by Don, along with the return of the remaining empty boxes. It was my thought the 4 boxes (12,000 lbs. +) could be blended with the other beans and a composite sample(s) could be sent out to prospective buyers. Don expressed reluctance to blend the 4 boxes with the others, as he said he had already pulled samples from the others, and he had tests run on the percentages (green to white ratios), and the tests were good, as the ratios could become a factor in marketing in some areas, depending on supply and demand. They were not blended, and remain separated, and were then referred to by us in our subsequent conversations as the "mud tag" beans.

Your letter appears to question the existence of the fiduciary relationship between us and Treasure Valley Seed. Treasure Valley Seed had no contract with us, and there was never any conversation or discussion with Don where he was seeking any authority

EXHIBIT 306

2 000064

to do anything with the beans, and clearly, he was not authorized to take any action, other than inform me on the market conditions, as he represented he wanted to help me find the premium market. There was no expression or suggestion he wanted now to charge storage, as I made it repeatedly clear to Don in our many conversations that if he cannot successfully find a market for me to sell our beans, then I wanted him to bring them back to the ranch, as I had adequate accommodations to store them, and I was not looking for a commercial place to store the beans. It was his idea to take them, as he claimed he wanted to help me find a market where I could get the best price to recover the loss from the prior year. He understood what I repeatedly said; he acknowledged there would be no storage costs, as he understood we would not be charged for or pay any storage costs, and each occasion we frequently spoke about the market developments, his all too often comments were to the effect he hadn't had the time to watch the market, was dealing with his own customers, and needed to take the time to do more market research on where the market was going on lima beans. I stressed to him on numerous occasions that I was watching the market; that I was reporting to him what I was hearing and finding in the market; that I was aware lima beans were in very short supply, the supply was so light and so tight that it was routinely shown as "to tight to estimate" and that national sales were to few to report a national sales trend and what was selling were selling high. The lowest prices I found in quoted published reports were 70 cents per pound and better, and the reports on acres and yields were confirmed to be fewer and yields average or less, and there was no fundamental reason on the horizon to believe there would be any reduction of market pricing for 2008.

I began to form the opinion that Don was truly uninformed about what was going on with the lima bean market, and I again told him it might be best to return the beans to the ranch (possibly July or August, 2008), as I needed to get the beans sold. I knew what I had found in the market, and I didn't want to hear about how long it was taking him to find a market, and I made it again clear to him that I didn't allow him to take the beans and because of his lack of time to research the market, for me to miss out on a good price in the market, well knowing what I was finding, yet him apparently unable to confirm what I had informed him the market was. Don was always quick to admit he needed to spend more research time, and he was busy on other matters, and the concerns over missing a sale were quite minimal as the he had come to understand the forecast yields were not going to drop the price. He sought to focus on his reasons why he thought it best for him to be holding the beans for me, and it ranged from being able to verify the samples he pulled had pulled earlier, as the beans were then still in his possession in the warehouse; that the beans were in his warehouse and be protected under his bond certification, and that he could send out more samples as needed, and it would not require him to go out and get more samples, and avoid and unnecessary handling and inconvenience on sample certifications, as otherwise would be the case if I had them, and if he were required to return them, we would then need to decide if I could find my own boxes, or would I keep them in his, and if he found a market agreeable to me, he would then need to arrange to come out to the ranch and retrieve them for the delivery anyway.

I never heard even a word about any accruing account or even a suggestion he claimed "costs" that had to be paid as a condition for returning these beans to the ranch. He was always offering what to me appeared to be a good faith purpose and objective in continuing his efforts to sell the beans for us and for our benefit.

EXHIBIT 306

3000065

It was in mid-summer that Don was again told to return the beans, as I had concluded he was not making any effort to find me a market, and his new approach was now to say he had just started to work closely with an Australian market, and his thoughts were the beans would meet their quality and certification standards, and he would be in touch with me in those efforts as his discussions progressed.. He got back to me, said quality was made, and now for the first time attempted to beguile me into believing he could get me 50 cents per pound out of this international market.. Needless to say, I was taken back by his thoughts about that market price, after all this "effort", and then to tell me he could only get them to pay me 50 cents per pound. I made my position abundantly clear, the market locally, in California, is 70 to 75 cents per pound, and I'm not about to sell to the Australians for 50 cents when I can get 75 cents here. His efforts to explain that away was now showing to be somewhat troublesome for him, and I flatly told him to get the beans back to the ranch, and I could market them myself for more than that. Don remained friendly, said he would attempt to increase their offer, and get back to me. Not one word about your claimed "storage" or "interest" I now see flowing in your letter. While he was pursuing this Australian avenue, and supposedly trying to improve the Australian offer to me, I took the opportunity to make contact with local warehouses, spoke to Richard Durrant, and he made contact with several of his bean contacts, and in the weeks that past, I then let Don know what I could do right here locally, and I asked Don to send new samples to Richard, and that I'll then proceed to market the beans through the assistance of other bean marketers.

My subsequent discussions with Don now became contentious; he didn't deliver the samples to Richard, and instead I had to have Richard go over to Treasure Valley Seed and get a sample from the fellows in the warehouse. Don now offered to buy the beans from me for 48 cents per pound, suggesting that I had lost the Australian market, and the beans were now only worth 48 cents a pound on the market he was able to sell to. I again no to his 48 cent offer, and repeated to him I will pursue my own market, and I reminded him I had already confirmed the market offers locally (as reported to me) were 75 cents per pound, and I intended to pursue that market avenue, with Richard's help and another bean trader.

Don and I exchanged contentious thoughts on Thursday, December 11, 2008, and he then called me on December 15, 2008, saying he knew or found out where Richard and Carter were intending to go with the beans for me, and that he went ahead, on Friday, December 12, 2008, and undertook to make contact with the Federal Government bean bidding program and he placed a tentative bid with them, subject to my approval for 73 cents a pound, as he thought the bids were going to be at 75 cents, and that way he felt quite comfortable I was more likely to have the bid accepted. That call was anything but friendly, and it was during those contentious moments that he acknowledged he wanted to resolve the matter and said if I would agree with the 73 cent figure, would I then agree to an amount he could get for his involvement, and we agreed that I authorized him to sell under that Government program for 73 cents, and out of that he could have 18 cents and we would receive the 55 cents per pound. As I understood his rationale for his claimed expenses, Don wanted 10 cents for cleaning and 6 cents for eyeing the beans (supposedly twice), and 2 cents for what I took to be reference to bond fees, warehouse tax, etc. for a total of 18 cents to him in full resolution and settlement of his involvement.. There would be no storage, just as repeatedly understood all along, and he would dispose of the

EXHIBIT 306

4000066

mud tag beans as I would request or ask of him, at no further change or fee. The agreement Don and I reached is set out in my letter of December 26, 2008. He also went out to the ranch and left his signed agreement, which I have herewith enclosed.

You now make the statement in your letter:

"The Company denies all of your provocative statements, allegations, inferences, and innuendoes contained in your letter of December 26, 2008, relating to honesty, credibility, integrity, and business ethics of the Company and its employees."

With all due respect to Don, I stand by any statements I have made relating to the honesty, credibility, integrity and business ethics of Don Tolmie, and Treasure Valley Seed, as I have had ample discussions and listened to the reasons and inconsistencies in his positions, his explanations and excuses, and I have listened to his comments he made as the communications became more intensified and contentious, as the situation was then unfolding.

As you have inquired, Victoria H. Smith, is the sole owner of the beans; I have exclusive, irrevocable, and durable power of attorney from my mother, acting as her agent, and it has been only through my agency, Mr. Tolmie has dealt on matters from 2006 to the present. The beans are clear of any liens or encumbrances, and Treasure Valley Seed does not have any disclosed lien or right to possess the beans. There is no "account" ever before disclosed to me from which my mother is or was to be charged, be it for bean seed or what has now become expressed in your letter for storage charges of interest.

There has never been an invoice for seed, as my belief was there was no charge. I had at least 25 acres of lima beans left in the fields in 2006 when Don's custom bean "expert" abandoned the bean harvest because of his lateness in removal, his apparent inability to harvest, and the high moisture content that fall that had then set in the area. His custom service agent and his involvement cost us far more loss in 2006 than the supplemental seed he brought out to the ranch to make up for the damage he caused.

He brought out far more supplemental seed than we actually needed, and after storing it for him, and being reminded numerous times that there was seed left over and he was welcome to come out and take it back to the warehouse, he finally picked up the remaining sacks (50) and took them back to Treasure Valley Seed on Wednesday, December 17, 2008, after leaving the signed agreement that Monday, December 15, and told Orin of our arrangement on the 124,552 pounds of quality grade beans.

Please rest assured, there is no basis for you to now come forward, in behalf of Mr. Tolmie or Treasure Valley Seed, to claim "interest", "storage", or any other recently developed concept to yield a settlement of the developing dispute.

There most assuredly was a fiduciary relationship created in this transaction; Mr. Tolmie could have gotten possession of our beans, in only a limited number of ways; either by deliberate theft, which I will assume was not the intent at the time, or upon a promise and an expressed pretence, sufficient to induce me, an attorney, to believe his sincerity in his representation he wanted to help me recover for our losses we incurred the prior year, directly caused through my involvement with him, and he would help me find a premium market for our beans being raised on the open market. It was upon that

EXHIBIT 306 5000067

express representation I agreed he could assist me market these beans; he most definitely became my agent, and precisely it was so understood; and in fact, it was made repeatedly evident when he would ask me if I would agree to a sale price with the Australians, and when that ended in a no sale, he said on Monday, December 15, 2008, that he placed a tentative offer to the Federal Government Institutional Bean Purchase Program for 73 cents per pound, "subject to my approval", and if I agreed, then we would receive 55 cents per pound for 124,552 pounds (\$68,503.60), and he would help me with the mud tag beans, and either he would help me find a sheep or pig fed source, or he would bring them back, if I wanted them delivered to the ranch.

Mr. Tolmie was repeatedly told to return the beans to the ranch, but for reasons he artfully portrayed as his ongoing good faith efforts to find me a market, he chose to prolong his involvement, and retain possession of the beans..

There is no basis for the "storage", and there will be no storage fees. Similarly, there is no basis for this new development of "interest", as there was no account to be assessed for seed or services. I recognize there is a basis for a reasonable charge for cleaning and sorting, and although his fee of 18 cents as he proposed to resolve all of his efforts is uncustomarily high, as a good faith effort to resolve this matter, I agreed to allow that amount, but no other amount to be deducted from the sale price of 73 cents per pound for the 124,552 pounds, and he well understood all remaining beans could and if I wanted, would be returned to the ranch at no further cost to us..

If you continue to maintain a position that Don Tolmie and Treasure Valley Seed were not acting as my agent, then you need to reveal to me his explanation for how he postured his involvement with me after the 2006 growing season.

I was not one of his growers, as I would not sign a contract to sell to him. He fully understood I wanted to sell on the open market. I did not grow those beans for Treasure Valley Seed, and I was certainly not his grower, as I refused to contract with him. The prior year was reason enough why I would not subject the operation to more of the same likely failure with contract services. It was certainly my belief Don and Treasure Valley Seed owed me some compensation for the failures under their contract for the 2006 season, as those limas in 2006 were under contract, and to the extent they were harvested, through Don's custom harvesting agent, Don declined to pay us for what beans were harvested and under contract to him. He instead agreed he would clean what was harvested, at no charge to me for his cleaning efforts, and he would deliver it back to the ranch for my use as seed for the 2007 season, and he would deliver it back, along with enough additional seed, at his cost, for me to grow limas on the open market, as I wanted to do for 2007, and as I had discussed with him, I felt the 2007-2008 years would be good bean years, because of the focus on grains and corn. He agreed with me and we both thought it would be premium years, because of planting forecasts and probable yield expectations.

There has been nothing presented to me over the years by Don to contradict my understanding of his apparently sincere intentions in his attempt to resolve the 2006 disaster, and I accepted that as his way to settle the 2006 matter. Reading your letter now seems to suggest that may now not be the case, and if Don is seeking seed reimbursement, I have the right to revisit the 2006 bean disaster issue which I thought was resolved, and now address that matter somewhat differently.

EXHIBIT 306

6 000068

In the spirit of compromise, and recognizing you have made an "offer to purchase the subject beans", and understanding I had a firm agreement with Don Tolmie and Treasure Valley Seed, as my agent, and he has represented he would sell the beans, with my approval, and I gave that approval to sell the beans on the Government program for 73 cents per pound as he asked of me on December 15, 2008, with the clear understanding 18 cents would be going to Treasure Valley Seed, I will agree (again) to the following resolution:

1. Treasure Valley Seed (the Company) will be allowed to buy our 124,552 pounds of lima beans for 73 cents per pound, representing a gross sale price of \$90,922.96. From that sum, Treasure Valley Seed may deduct the 18 cents per pound as before agreed, as payment for any and all services, claims, fees or costs, representing the sum of \$22,419.36 (not \$26,105.36 as your letter suggests), and the sum of \$68,503.60, representing 55 cents per pound, shall be made payable to and paid immediately to Victoria H. Smith.
2. Treasure Valley Seed shall immediately deliver, at no charge, the "mud tag" beans to the ranch, in totes, and we will secure our own containers and perform the removal of the beans from their totes, and we will then return their totes to them, either then or a reasonable time thereafter.
3. There will be no further claims by either party against the other relating to the 2007 bean crop.
4. There will be no storage fees or claims asserted.
5. There will be no interest assessments or claims asserted.
6. There will be no seed account charges or claims asserted.
7. There will be no claim for attorney fees, if this offer is accepted.
8. There will be transparency in the representation Don made to me about the offer to sale under the Government Program, and if he has lied to me, as I have now come to question because of your statement the beans are still in the warehouse, having given him the authority, as my agent, to sell to them earlier, I will require him to be forthright with me, and disclose the new market of choice with whom he has sought to sell our beans, without the required authority, and upon what terms. We had agreed to 18 cents to Treasure Valley Seed, no more and no less, and if he has other intentions, he has again deceived me.

If this offer is not accepted by January 19, 2009, it will be deemed withdrawn, and I will proceed with the litigation and the appropriate warehouse bonds claims I deem fitting and appropriate for what now appears to be an ongoing and deliberate web of

deceit and fraud by Mr. Tolmie, in his efforts to keep his hands on our product, in an effort to capitalize upon his artful ability to deliberately delay a sale that would benefit us, and pursue a proclaimed state of ignorance of the market conditions and market pricing status, hoping to discourage me from waiting out what he was now choosing to call an uncertain bean market, and apparently hoping I would agree to then sell the beans for a falsely represented figure, substantially less than true market value, without any documentation so he could avoid being exposed to the fact it was instead a non existent sale , and really only a deception for him to buy the beans below market and take advantage of the situation he had fraudulently created. If Don Tolmie wants to resolve this matter, he needs to become honest in the final hours of our discussions.

I await your response, and until then, I remain,

Yours very truly,

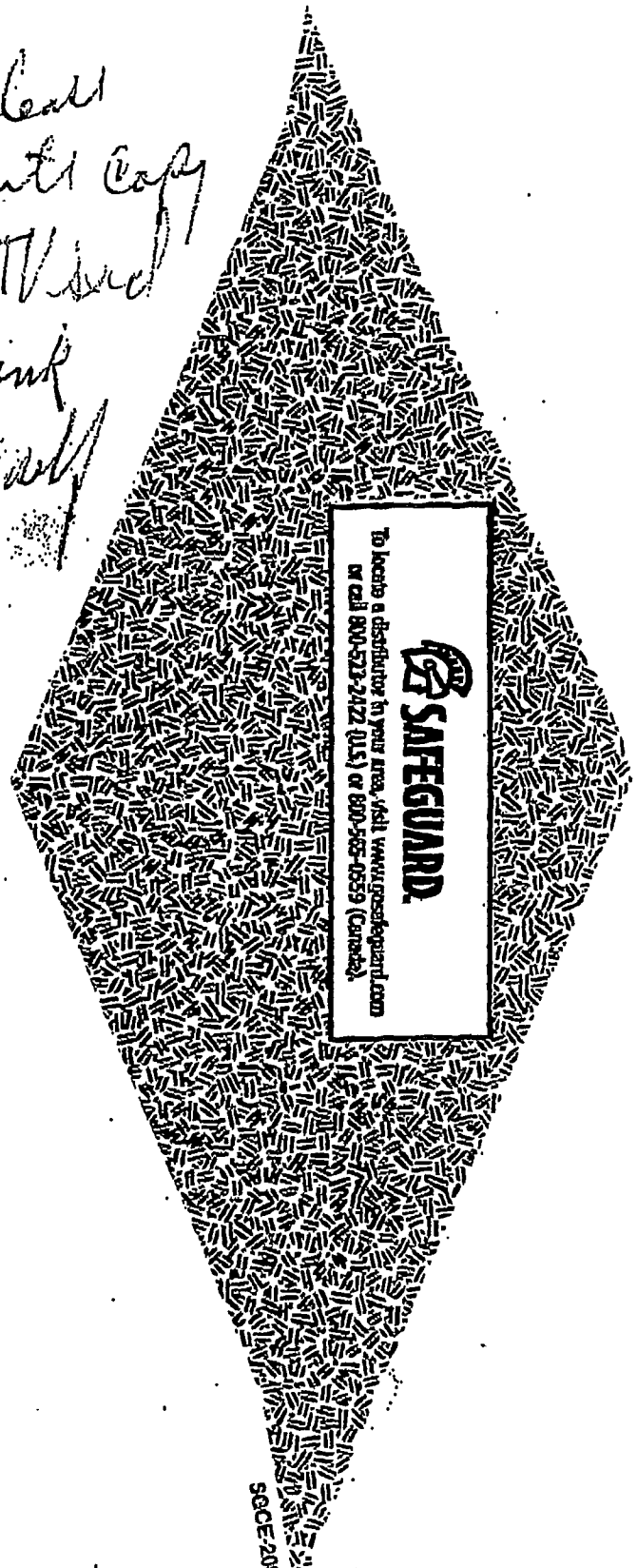

Vernon K. Smith

VKS/vlj

EXHIBIT 306

8000070

Vern Please
sign white copy
return to TVS
Keep pink
for yourself



To locate a distributor in your area, visit www.safeguard.com
or call 800-523-2422 (U.S.) or 800-565-0559 (Canada).

SAFEGUARD

SCCE-2085

EXHIBIT 306

000071



Treasure Valley Seed Co.
P.O. Box 2184
Homedale, ID 83628
(208) 337-4626 • Fax: 337-3545

4054

ORDER NUMBER

GROWER PURCHASE / SALE

CUSTOMER NAME	Victoria H. Smith		
ADDRESS			
CHECK NUMBER	37470	DATE	12/15/08
DESCRIPTION			
Purchase per balance of 2007 crop Green baby Limas, net y seed invoice. No storage will be deducted 1245.52 cwt. @ \$55/cwt.			
RECEIVED BY		ALL CLAIMS AND RETURNED GOODS MUST BE ACCOMPANIED BY THIS BILL.	

SAFEGUARD BUSINESS SYSTEMS (800) 343-7751

Ref No: 23102307

EXHIBIT 306

000072

Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES

3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

RICHARD B. EISMANN
DEBRA L. EISMANN

FAXED
vn/1

January 14, 2009

DELIVERY BY FAX
(345-1129)

Mr. Vernon K. Smith
Law Offices of Vernon K. Smith
1900 W. Main St.
Boise, ID 83702

Re: Treasure Valley Seed Co., LLC - Smith

Dear Vernon:

Your letter dated January 12, 2009, which you faxed to me at 9:32 P.M. on that date was first seen by me the morning of January 13, 2009.

On January 13 and 14, 2009, I have been fully engaged in preparing for a trial scheduled for January 20, 2009.

Today I contacted Don Tolmie to set an appointment with him for January 15 or 16, 2009, and found out that he will be traveling on business out of state and won't return until January 19 or 20, 2009.

When he returns, he and I will review your letter and reply to it on or before January 23, 2009.

Very truly yours,

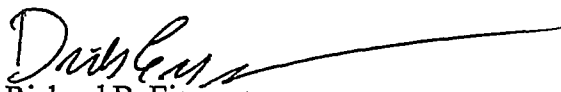

Richard B. Eismann
RBE/vn/1
CLT: / Client

EXHIBIT 307

000073

Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES

3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

FAXED
BC

RICHARD B. EISMANN
DEBRA L. EISMANN

January 26, 2009

DELIVERY BY FAX
(345-1129)

Mr. Vernon K. Smith
Law Offices of Vernon K. Smith
1900 W. Main St.
Boise, ID 83702

Re: Treasure Valley Seed Co., LLC - Smith

Dear Vernon:

I have now had the time to review your letter faxed to me on January 12, 2009 with the representatives of Treasure Valley Seed Co., LLC. I was unable to get this letter to you on or before Friday, January 23, 2009 as I stated in my last letter.

A. First, the company's response to your mother's claims relating to the 2006 bean crops:

1. There were two bean crops grown by your mother. One was the navy bean crop which was timely harvested and delivered to the Company and the other was the lima bean crop with which your mother had problems.
2. Those beans were grown under contract with the company.
3. The contracts provide that your mother will grow the crops in a good and farmerlike manner.
4. Your mother is the grower and is responsible for and assumes all risks in growing and harvesting the bean crop, including weather at harvest. The Company buys and sells the beans and does not have any liability for failures in growing and harvesting the crop.
5. Combiner Andrews was not an employee or agent of the Company. The Company, at your request, gave you the names of persons who combine beans. He was an independent contractor who contracted with your mother, or you acting as your mother's agent, to combine the 2006 bean crop. How Mr. Andrews set up his combine is between your mother, or you as your mother's agent, and Mr. Andrews.

EXHIBIT 308
000074

6. Your mother's 2006 bean crop came into the company's plant with a very high moisture content.
- B. Second, the Company's response to your mother's claims relating to the 2007 bean crop:
1. Lima beans was the only variety of beans grown in 2007.
 2. Those beans were not grown under contract.
 3. You acknowledge that your mother, or you on her behalf, as the grower was responsible for and assumed all risks in growing and harvesting the bean crop, including weather at harvest.
 4. You knew that your mother had an account with the Company for bean seed, cleaning, and storage and any other charges which relate to that bean crop.
 5. You knew that the Company has a statutory lien on those beans in the amount of your mother's account which would have to be paid before the beans would be removed from the Company storage.
 6. You knew that the Company's business is trading in beans.
 7. You knew when you returned the cull beans from this 2007 bean crop to the Company's plant that they had a high moisture content and were in metal bins.
 8. When those cull beans began to decay, the Company had no choice but to dump them, which it did.
 9. You make many allegations in your 8-page letter. Those allegations are not the facts relating to your mother's 2006 and 2007 bean crops. Again, there is nothing to be gained by arguing about what was or was not said by you or by Mr. Tolmie.
- C. The Company does not accept your mother's offer.
- D. To buy its peace, the Company offers to return the subject beans so that your mother has immediate possession of the 2007 bean crop. The Company will waive the

EXHIBIT 308

E. Company's charges following:

- [1] the charges for transferring the subject beans to poly totes;
- [2] the custom charges for transporting the subject beans to your mother's farm storage where the crop was grown;
- [3] all storage charges accrued to the date of transporting the subject beans; and
- [4] all interest charges accrued to the date of transporting the subject beans.

Your mother must pay the balance of her account of \$26,105.36 before such beans are transferred to poly totes or otherwise removed from the Company's storage.

The Company's waiver of the above charges is conditional in that:

- [a] your mother can pay her account under protest and thereby preserve her right to contest any item on her account and protect her right to make any claims against the Company relating to her 2007 bean crop, provided,
- [b] that if your mother does accept this offer and later contests any item of her account or later makes any claims against the Company relating to her 2007 bean crop, then the Company has the right to offset those charges waived by the Company in this offer against your mother's later contest of her account and your mother's later claims against the Company relating to her 2007 bean crop.

This offer can only be accepted by an unconditional acceptance in a writing signed by your mother stating that she is the sole owner of the subject beans and that the subject beans are free and clear of all liens. If she accepts, such acceptance must be received at my office **on or before 5:00 p.m. on February 3, 2009**. If you have a power of attorney signed by your mother, and if you provide a true copy of that power of attorney, and if it gives the authority necessary for you to act for your mother in this transaction, then your signature will be sufficient on the acceptance of this offer.

- F. If your mother does not accept the Company's offer set forth in paragraph D above, then the Company's position set forth in my letter to you dated January 8, 2009 under the bolded heading **"If your mother does not accept the above offer"** will continue in full force and effect.

EXHIBIT 308

If you need any further clarification of the Company's offer set forth above, then please contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Rich B. Eismann", with a long horizontal flourish extending to the right.

Richard B. Eismann
RBE/bc /2
CLT: Client

EXHIBIT 308

000077

VERNON K. SMITH
Attorney At Law
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone (208) 345-1125
Facsimile (208) 345-1129

Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Id. 83651

January 28, 2009

Re: Smith – Treasure Valley Seed Company

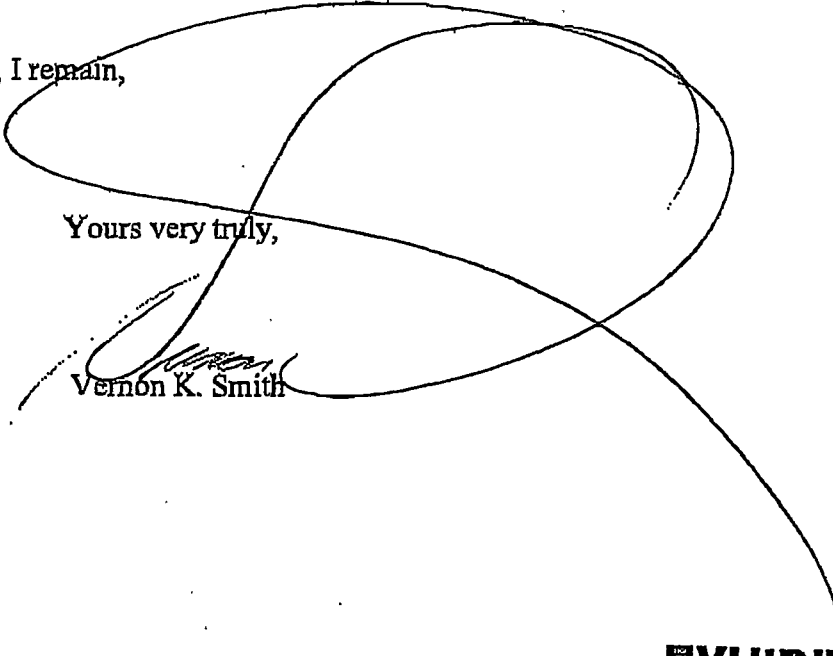
Dear Mr. Eismann,

I have your letter of January 26, 2009. I will be out of Idaho January 29, 2009, and will return February 9, 2009.

I will then respond further or undertake to prepare and proceed with litigation and necessary claims.

Until then, I remain,

Yours very truly,


Vernon K. Smith

VKS/vlj

EXHIBIT 309

000078

EISMANN LAW OFFICES

Telephone (208) 467-3100
Facsimile (208) 466-4498

3016 CALDWELL BLVD.
Nampa, IDAHO 83651 - 6416

FAXED
WV/

RICHARD B. EISMANN
DEBRA L. EISMANN

March 12, 2009

DELIVERY BY FAX
(345-1129)

Mr. Vernon K. Smith
Law Offices of Vernon K. Smith
1900 W. Main St.
Boise, ID 83702

Re: Treasure Valley Seed Company - Smith

Dear Vernon:

At page 5 of my letter to you dated January 8, 2009, you were informed as follows:

"In any event, your mother will remove all of the subject beans from the Company's storage **on or before June 30, 2009**. The Company needs to clear its storage in preparation for the new crop."

The above paragraph was again referred to on page 3 of my letter to you dated January 26, 2009.

As the Company starts into its 2009 season, it is apparent that the Company will need additional time to prepare its storage for use.

The Company understands your mother has storage on her farm to store her 2007 bean crop which is now stored in the Company's storage.

The Company has decided to move the date your mother's beans need to be removed from the Company's storage from June 20, 2009, up to May 31, 2009.

Please make arrangements for your mother to pay her account with the Company and then remove her 2007 bean crop from the Company's storage by May 31, 2009.

If your mother doesn't have available storage on her farm, please let me know immediately.

EXHIBIT 310

000079

Vernon K. Smith
Treasure Valley Seed Company
March 12, 2009
Page 2

Your cooperation in this change will be very much appreciated. If you have any questions or suggestions, please contact me.

Very truly yours,



Richard B. Eismann

RBE/vn/1

CLT Client

EXHIBIT 310

000080

3016 Caldwell Boulevard, Nampa, ID 83651-6416
Telephone: (208) 467-3100 Facsimile: (208) 466-4498

**EISMANN LAW
OFFICES**

Fax

To: VERNON K. SMITH

From: RICHARD B. EISMANN

Fax: 345-1129

Pages: 3 (including cover)

Phone: 345-1125

Date: MARCH 12, 2009

Re: TREASURE VALLEY SEED/SMITH

CC:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:** LETTER

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Thank you.

By Viki/1

Operator

EXHIBIT 310

000081

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Telephone: (208) 467-3100 Facsimile: (208) 466-4498

**EISMANN LAW
OFFICES**

Fax

To: VERNON K. SMITH

From: RICHARD B. EISMANN

Fax: 345-1129

Pages: 3 (including cover)

Phone: 345-1125

Date: MARCH 12, 2009

Re: TREASURE VALLEY SEED/SMITH

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments: LETTER

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Thank you.

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Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES

3016 CALDWELL BLVD.
NAMP, IDAHO 83651 - 6416

FAXED

3-23-09 5/4

RICHARD B. EISMANN
DEBRA L. EISMANN

March 23, 2009

DELIVERY BY FAX
(345-1129)

Mr. Vernon K. Smith
Law Offices of Vernon K. Smith
1900 W. Main St.
Boise, ID 83702

Re: Treasure Valley Seed Company - Smith

Dear Vernon:

My client has a customer interested in some Green Baby Lima's which could be sold today.

My client is willing to buy the 124552 pounds of Limas from your mother @ .51 for a total of \$63,521.52 less the \$3,686.00 for seed and less \$442.32 interest on the seed. This would net your mother \$59,393.20.

Your mother's unconditional acceptance of this offer or your acceptance as her agent accompanied with a true copy of your power of attorney must be received in my office by fax on or before **2:00 o'clock P.M. EST (12:00 P.M. Idaho time) today, Monday, March 23, 2009**, or such offer will be withdrawn and cannot after that time and date be accepted, and the charges set forth on the schedule contained in our January 8, 2009, letter will remain.

Very truly yours,



Richard B. Eismann
RBE/4

CLT: Client

EXHIBIT 311

000083

3016 Caldwell Boulevard, Nampa, ID 83651-6416
Telephone: (208) 467-3100 Facsimile: (208) 466-4498

EISMANN LAW OFFICES

Fax

To: VERNON K. SMITH

From: RICHARD B. EISMANN

Fax: 345-1129

Pages: 2 (including cover)

Phone: 345-1125

Date: MARCH 23, 2009

Re: TREASURE VALLEY SEED/SMITH

CC:

☒ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:** LETTER ATTACHED

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Thank you.

By Viki/1 by S/4

Operator

EXHIBIT 311
000084

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 4851
CONNECTION TEL 3451129
SUBADDRESS
CONNECTION ID
ST. TIME 03/23 09:25
USAGE T 00'40
PGS. 2
RESULT OK

3016 Caldwell Boulevard, Nampa, ID 83651-6416
Telephone: (208) 467-3100 Facsimile: (208) 466-4498

**EISMANN LAW
OFFICES**

Fax

To: VERNON K. SMITH **From:** RICHARD B. EISMANN
Fax: 345-1129 **Pages:** 2 (including cover)
Phone: 345-1125 **Date:** MARCH 23, 2009
Re: TREASURE VALLEY SEED/SMITH **CC:**
☒ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:** LETTER ATTACHED

EXHIBIT 311

CONFIDENTIALITY AND PRIVILEGE NOTICE: This transmission is intended only for the use of the individual(s) named as recipient(s). It may contain information that is privileged, confidential and/or protected from disclosure under applicable law including, but not limited to, the attorney-client privilege and/or work product doctrine. If you are not the intended recipient(s) of this transmission, please notify the sender immediately by telephone. Do not deliver, distribute or copy this transmission, disclose its contents or take any action in reliance on the information it contains.

000085

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Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES

3016 CALDWELL BLVD.
NAMP, IDAHO 83651 - 6416

RICHARD B. EISMANN
DEBRA L. EISMANN

April 24, 2009

Mr. Vernon K. Smith
Law Offices of Vernon K. Smith
1900 W. Main St.
Boise, ID 83702

FAXED

4-24-09 8:42 AM
5/4

DELIVERY BY FAX
(345-1129)

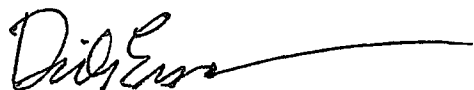
Re: Treasure Valley Seed Company - Smith

Dear Vernon:

Attached is an Option to Purchase your mother's bean crop.

If you as your mother's attorney-in-fact will grant such option and fax me a signed copy thereof so that I receive it here in my office by 2:00 o'clock P.M., April 24, 2009, the Company will attempt to close a sale of your mother's beans during the term of the option.

Very truly yours,



Richard B. Eismann
RBE/4
Enclosure

CLT: Client

EXHIBIT 312

.000086

OPTION TO PURCHASE

VICTORIA SMITH ("Grower" herein) hereby grants to the TREASURE VALLEY SEED CO., INC. ("the Company" herein) an irrevocable option to purchase her 124,552 pounds of her 2007 crop of Lima Beans now in storage with the Company at 45¢ per pound which amounts to \$56,048.40 from which the Company will withhold \$3,686.00 for seed provided by the Company and interest thereon of \$589.76 (1% per month x 16 months) for a net payment to the Grower of \$51,772.64. The term of this option begins at 11:00 o'clock A.M., Homedale, Idaho time on April 24, 2009, and expires at 12:00 o'clock Noon Homedale, Idaho time on April 29, 2009. The Company can exercise this option by fax transmission sent to Fax No. 208-345-1129 before this offer expires. If the Company does not purchase such Lima Beans under this option, then the amount set forth in Attorney Eismann's letter to the Grower dated January 8, 2009, and the date when such Lima Beans must be removed from the Company's storage in Attorney Eismann's letter to the Grower dated March 12, 2009, shall remain in full force and effect.

Dated April 24, 2009.

VICTORIA SMITH

by

Vernon K. Smith.

Her Attorney-in-Fact

EXHIBIT 312

000087

3016 Caldwell Boulevard, Nampa, ID 83651-6416
Telephone: (208) 467-3100 Facsimile: (208) 466-4498

**EISMANN LAW
OFFICES**

Fax

To: VERNON K. SMITH

From: RICHARD B. EISMANN

Fax: 345-1129

Pages: 3 (including cover)

Phone: 345-1125

Date: APRIL 24, 2009

Re: TREASURE VALLEY SEED/SMITH

CC:

☒ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

● **Comments:** LETTER WITH ENCLOSURE ATTACHED

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Thank you.

By Viki/1 by S/4

Operator

EXHIBIT 312

000088

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 0009
CONNECTION TEL 3451129
SUBADDRESS
CONNECTION ID
ST. TIME 04/24 08:42
USAGE T 01'02
PGS. 3
RESULT OK

3016 Caldwell Boulevard, Nampa, ID 83651-6416
Telephone: (208) 467-3100 Facsimile: (208) 466-4498

**EISMANN LAW
OFFICES**

Fax

To: VERNON K. SMITH **From:** RICHARD B. EISMANN
Fax: 345-1129 **Pages:** 3 (including cover)
Phone: 345-1125 **Date:** APRIL 24, 2009
Re: TREASURE VALLEY SEED/SMITH **CC:**

☒ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:** LETTER WITH ENCLOSURE ATTACHED

EXHIBIT 312

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Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES

3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

FAXED

7-10-09 10:58 AM
5/4

RICHARD B. EISMANN
DEBRA L. EISMANN

July 10, 2009

DELIVERY BY FAX
(345-1129)

Mr. Vernon K. Smith
Law Offices of Vernon K. Smith
1900 W. Main St.
Boise, ID 83702

Re: Treasure Valley Seed Company - Smith

Dear Vernon:

The time has come and gone within which your mother was asked to remove her 2007 bean crop from storage at Treasure Valley Seed, Inc. ("Company" herein).

Your mother's account relating to her 2007 bean crop through June 30, 2009, is set forth below.

SCHEDULE OF ACCOUNT					
	QTY	DESCRIPTION	WEIGHT	PRICE/CWT	PRICE
1.	46	50# SEED GREEN BABY LIMA THORO G06	2300	38.000	\$874.00
2.	198	50# SEED GREEN BABY LIMA THORO G06	9900	38.000	\$3,762.00
3.	1	CLEANING CHARGE @ LBS/UNIT	124552	13.000	\$16,191.76
4.	1	EYEING (PICKING) CHARGE @ LBS/UNIT	124552	5.000	\$6,227.60
5.	50	50# SEED GREEN BABY LIMA THORO G06	-2500	38.000	-\$950.00
6.		INTEREST ON \$26,105.36 FOR 2008 @12%			\$3,132.64
7.		STORAGE FOR DECEMBER 2007 THRU JANUARY 2009 @ 15¢ PER MONTH PER 100 WT.			\$2,615.59
8.		INTEREST ON \$26,105.36 FOR 2009 THRU 6/30/09 @12%			\$1,566.32
9.		STORAGE FOR FEBRUARY 2009 THRU JUNE 2009 @ 15¢ PER MONTH PER 100 WT.			\$ 934.14
TOTAL DUE					<u>\$34,354.05</u>

EXHIBIT 313

As you know, under I.C. §45-805 and §28-7-210 the Company has a lien on your mother's 2007 bean crop which depends on the Company keeping possession of the beans. If the Company releases the beans to your mother before your mother pays her account, the Company would lose its lien and the security for payment of your mother's account. Your mother has paid nothing on her account for the 2007 Lima Beans.

The Company suggests that your mother consider the choices following:

1. Your mother can sell her beans to the Company. If your mother so elects, the Company will buy the 124,552 pounds of Lima Beans from your mother at .55 per pound for a total of \$68,503.60. If your mother decides to sell her beans to the Company at that price, the Company will deduct her account of \$34,354.05 and this sale would net your mother \$34,149.55.
2. Your mother can pay her full account of the balance of \$34,354.05 and remove her beans from the Company's storage. If your mother decides to remove her beans, the Company will transfer her beans into new 2000# poly totes. The added charge to your mother's account for transferring the beans from the Company bins into totes is \$1.00 per hundred weight or \$1,245.52 loaded on the truck provided by her.
3. If your mother has any plan by which she will pay her account and then remove her beans from the Company's storage, please let me know by July 23, 2009, and it will be considered by the Company.

As stated above, pursuant to Idaho Code §45-805 and §28-7-210 the Company has a lien on your mother's beans for processing, storage and interest. If your mother has no plans and decides to do nothing, the Company's only choice to resolve these matters is to proceed to sell her beans at a public sale as provided by I.C. §45-805 and §28-7-210, reduce her account balance by \$4,349.48, which is for bean seed and interest on the bean seed, to \$30,004.57, deduct her account balance and the costs of sale from the sale proceeds and return to her all money received at the sale over and above her account balance and the costs of sale.

If I do not hear from you by 4:00 o'clock P.M. on July 27, 2009, the Company will proceed to sell the beans as provided by Idaho Code §45-805 and §28-7-210.

Mr. Vernon K. Smith
July 10, 2009
Page 3

If you have any questions or suggestions, please contact me before July 27, 2009.

Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard B. Eismann", followed by a long horizontal flourish line.

Richard B. Eismann
RBE/4

CLT: Client

EXHIBIT 313

000092

3016 Caldwell Boulevard, Nampa, ID 83651-6416
Telephone: (208) 467-3100 Facsimile: (208) 466-4498

**EISMANN LAW
OFFICES**

Fax

To: VERNON K. SMITH

From: RICHARD B. EISMANN

Fax: 345-1129

Pages: 4 (including cover)

Phone: 345-1125

Date: JULY 10, 2009

Re: TREASURE VALLEY SEED/SMITH

CC:

☒ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:** LETTER ATTACHED

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Thank you.

By Viki/1 by S/4

Operator

EXHIBIT 313
000093

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	0362	
CONNECTION TEL		3451129
SUBADDRESS		
CONNECTION ID		
ST. TIME	07/10 10:58	
USAGE T	01'27	
PGS.	4	
RESULT	OK	

3016 Caldwell Boulevard, Nampa, ID 83651-6416
 Telephone: (208) 467-3100 Facsimile: (208) 466-4498

**EISMANN LAW
OFFICES**

Fax

To: VERNON K. SMITH

From: RICHARD B. EISMANN

Fax: 345-1129

Pages: 4 (including cover)

Phone: 345-1125

Date: JULY 10, 2009

Re: TREASURE VALLEY SEED/SMITH

CC:

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

● Comments:

LETTER ATTACHED

EXHIBIT 313

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000094

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Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES

3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

FAKED
10-20-10 5/4

RICHARD B. EISMANN
DEBRA L. EISMANN

October 20, 2010

DELIVERY BY FAX
(345-1129)

Mr. Vernon K. Smith
Law Offices of Vernon K. Smith
1900 W. Main St.
Boise, ID 83702

Re: Treasure Valley Seed Company - Smith

Dear Vernon:

As you may remember, I represent Treasure Valley Seed Company (the Company).

Your mother's 2007 bean crop is still held in storage by the Company.

Your mother's account is set forth in my letter to you dated July 10, 2009, where the balance of her account was \$34,354.05. Storage charges and interest have continued to accrue.

The value of your mother's bean crop has continued to decline.

None of the offers made by the Company have been accepted, your mother or you acting for your mother have not paid anything on the Company's account and your mother or you acting for your mother have not removed the 2007 beans from the Company's storage.

The Company now demands payment of its account and the removal of the 2007 bean crop from the Company's storage in that order on or before November 20, 2010.

If you have any questions or suggestions on how the above matters can be accomplished, please get them to me in writing, I will forward them to the Company and get back to you with the Company's response.

Very truly yours,



Richard B. Eismann
RBE/4

EXHIBIT 314

CLT: Client

000095

3016 Caldwell Boulevard, Nampa, ID 83651-6416
Telephone: (208) 467-3100 Facsimile: (208) 466-4498

**EISMANN LAW
OFFICES**

Fax

To: Vernon K. Smith **From:** Richard B. Eismann
Fax: 345-1129 **Pages:** 2 (including cover)
Phone: 345-1125 **Date:** OCTOBER 20, 2010
Re: Treasure Valley Seed/Smith 2007 Bean Crop **CC:**

☒ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:** Letter attached.

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Thank you.

By Viki/1 by S/4

Operator

EXHIBIT 314

Message Confirmation Report

OCT-20-2010 02:31 PM WED

Fax Number : 2084664498
Name : EISMANN LAW

Name/Number : 3451129
Page : 2
Start Time : OCT-20-2010 02:30PM WED
Elapsed Time : 00'31"
Mode : STD, ECM
Results : [O.K.]

3018 Caldwell Boulevard, Nampa, ID 83651-8416
Telephone: (208) 467-3100 Facsimile: (208) 468-4499

**EISMANN LAW
OFFICES**

Fax

To: Vernon K. Smith	From: Richard B. Eismann
Fax: 345-1129	Pages: 2 (including cover)
Phone: 345-1125	Date: OCTOBER 20, 2010
Re: Treasure Valley Seed/Smith 2007 Bean Crop CC:	
<input checked="" type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle	

• Comments: Letter attached.

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Thank you.

By _____ Vik/1 by S/4
Operator

EXHIBIT 314

000097

Telephone (208) 467-3100
Facsimile (208) 466-4498

EISMANN LAW OFFICES

3016 CALDWELL BLVD.
NAMPA, IDAHO 83651 - 6416

FAXED

12-14-10 5/4

RICHARD B. EISMANN
DEBRA L. EISMANN

December 14, 2010

DELIVERY BY FAX
(345-1129)

Mr. Vernon K. Smith
Law Offices of Vernon K. Smith
1900 W. Main St.
Boise, ID 83702

Re: Treasure Valley Seed Company - Smith

Dear Vernon:

Treasure Valley Seed Company ("Company" herein) has received an offer to purchase beans which your mother's beans can fill.

The Company's offer ("Company's offer" herein) to purchase your mother's beans is "as is" and "where is" @ 35 cents per pound for 124,552 pounds which amounts to \$43,593.20 less your mother's account and in the amounts following:

SCHEDULE OF ACCOUNT

	QTY	DESCRIPTION	WEIGHT	PRICE/CWT	PRICE
1.	46	50# SEED GREEN BABY LIMA THORO G06	2300	38.000	\$874.00
2.	198	50# SEED GREEN BABY LIMA THORO G06	9900	38.000	\$3,762.00
3.	1	CLEANING CHARGE @ LBS/UNIT	124552	13.000	\$16,191.76
4.	1	EYEING (PICKING) CHARGE @ LBS/UNIT	124552	5.000	\$6,227.60
5.	50	50# SEED GREEN BABY LIMA THORO G06	-2500	38.000	-\$950.00
6.		INTEREST ON \$26,105.36 FOR 2008 @12%			\$3,132.64
7.		STORAGE FOR DECEMBER 2007 THRU JANUARY 2009 @ 15¢ PER MONTH PER 100 WT.			\$2,615.59
8.		INTEREST ON \$26,105.36 FOR 2009 THRU 6/30/09 @12%			\$1,566.32
9.		STORAGE FOR FEBRUARY 2009 THRU JUNE 2009 @ 15¢ PER MONTH PER 100 WT.			\$ 934.14

NET OWING ON 7/10/09

\$34,354.05

EXHIBIT 315 00098

Mr. Vernon K. Smith
December 14, 2010
Page 2

PLUS:

10.	INTEREST ON \$26,105.36 FROM 7/10/09 THRU 12/10/10 @ 12% (518 DAYS)	\$4,445.78
11.	STORAGE FOR JULY 2009 THRU NOVEMBER 2010 (17 MONTHS) @ 15¢ PER MONTH PER 100 WT.	\$3,176.11
	ACCOUNT BALANCE ON 12/10/10	<u>\$41,975.94</u>

The total sale price would be \$43,593.20. The account balance deducted therefrom would be \$41,975.94. The net sum received by your mother would be \$1,617.26.

The Company's offer to purchase your mother's beans set forth above terminates without notice to you at 12:00 o'clock Noon, Boise time, on December 17, 2010.

Your mother or you acting on her behalf can accept the Company's offer set forth above by a written acceptance received at my office before the Company's offer terminates.

The Company suggests that you make your decision to sell or not to sell immediately.

Very truly yours, .



Richard B. Eismann
RBE/4

CLT: Client

EXHIBIT 315

3016 Caldwell Boulevard, Nampa, ID 83651-6416
Telephone: (208) 467-3100 Facsimile: (208) 466-4498

**EISMANN LAW
OFFICES**

Fax

To: Vernon K. Smith

From: Richard B. Eismann

Fax: 345-1129

Pages: 3 (including cover)

Phone: 345-1125

Date: December 14, 2010

Re: Treasure Valley Seed/Smith 2007 Bean Crop **CC:**

☒ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

● **Comments:** Letter attached.

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Thank you.

By Viki/1 by S/4

Operator

EXHIBIT 315

000100

Message Confirmation Report

DEC-14-2010 10:19 AM TUE

Fax Number : 2084664498
Name : EISMANN LAW

Name/Number : 3451129
Page : 3
Start Time : DEC-14-2010 10:19AM TUE
Elapsed Time : 00' 25"
Mode : STD ECM
Results : [O.K.]

3016 Caldwell Boulevard, Nampa, ID 83851-6416
Telephone: (208) 467-3100 Facsimile: (208) 466-4498

**EISMANN LAW
OFFICES**

Fax

To: Vernon K. Smith From: Richard B. Eismann
Fax: 345-1129 Pages: 3 (including cover)
Phone: 345-1125 Date: December 14, 2010
Re: Treasure Valley Seed/Smith 2007 Bean Crop CC:

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments: Letter attached.

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If you are not receiving properly or should for some reason not receive all pages, please telephone this office immediately at (208) 467-3100.

Thank you.

By _____ Vik/1 by S/4
Operator

EXHIBIT 315

000101

RBE
S/1

VERNON K. SMITH
Attorney At Law
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone (208) 345-1125
Facsimile (208) 345-1129

December 17, 2010

Richard Eismann
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Id. 83651

Re: Bean Dispute Smith – Treasure Valley Seed Company

Dear Mr. Eismann,

I have before corresponded with your office and informed you as to the dispute that had been ongoing with the Treasure Valley Seed Company with our green baby lima beans. I explained the history of how Mr. Tolmie took possession of our lima beans under the pretense it was his intention to assist me in marketing our beans because he led me to believe he felt responsible for the damage he caused when he arranged to have our crop harvested by his personnel the year before.

I made demand upon Mr. Tolmie to return our beans to the Ranch so I could undertake to secure my own market to sell our beans for what was then a market of 73-76 cents per pound. I enclose a copy of the letter I sent Mr. Tolmie, agreeing to the sale, but he would not produce the sale confirmation to verify what he was telling me. Mr. Tolmie then refused to produce a confirmed transaction and refused to surrender possession of our beans or allow me to take back possession.

He had agreed to market the beans at 73 cents per pound to resolve any dispute we had ongoing, and agreed to pay us a net \$55.00/cwt. for 1,245.52 cwt.'s, for a total settlement of \$68,503.60.

He delivered a grower purchase/sale receipt to me in an envelope, which I accepted as the net sale price \$55.00/cwt. in full settlement of our dispute.

Because of his deceptive nature and his attempt to capitalize on available markets in Australia to sell our beans at a higher price, I wanted verification of the represented sale he said he had for our beans. I wanted to verify he was not once again lying to me, as I had come to believe he had our beans committed to a sale for a higher return than what he was representing to me, and for what I could sell them myself.

True to form, Mr. Tolmie declined to verify the transaction, confirming in my mind he had found a market for more than what he represented to me, and the gross sale price was above the \$73.00/cwt. price he told me it would be.

EXHIBIT 316

000102

As you remember, you then got involved and I again demanded return of our beans, but you also indicated Treasure Valley Seed would not surrender possession, and you leave me to understand he has converted ownership of our beans. The market at that time was \$73.00/cwt. and I am entitled to receive not less than \$55.00/cwt. I will accept nothing less than \$55.00/cwt., net to us, and there will be no deductions, as that was the net value to which we were entitled to receive when Treasure Valley Seed Company elected to convert our beans and refused to return them to us, and had taken possession of our beans under a pretense he was going to assist me in marketing them because of the damage he caused us to encounter the year before.

I expect to receive a check for \$68,503.60, as that is the value of our beans at the time Mr. Tolmie chose to convert them upon the representation and inducement he had a sale, yet refused to produce verification of that sale to me.

We deem the actions of Treasure Valley Seed Company to have actually converted our beans as of December 15, 2008, when he did represent to me the net return to us would be \$68,503.60, and we are entitled to interest upon those proceeds at the rate of 12% per annum.

You should well know the nature and propensities of Mr. Tolmie, as I know you have had past dealings and have represented his interests in past litigation. He appears to use deceptive practices in order to get possession of products, only later to capitalize on an opportunity to take advantage of a situation, if possible.

I again enclose a copy of his sale receipt at the time he undertook to commit conversion of our beans on December 15, 2008, together with the envelope in which it was contained when he delivered to me, together with my letter to him on December 26, 2008.

I will settle for nothing less than what is owed in accordance with the sale commitment he made to me for \$55.00/cwt. net to us, to resolve this matter.

I remain,

Yours very truly,


Vernon K. Smith

VKS/vls

EXHIBIT 316

000103

Kim Please
sign white copy
return to the
Keep pink
for yourself

SC052085

EXHIBIT 316

000105

VERNON K. SMITH
Attorney At Law
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone (208) 345-1125
Facsimile (208) 345-1129

December 26, 2008

Don Tolmie
Treasure Valley Seed Company
P.O. Box 2184
Homedale, Idaho 83628

Dear Mr. Tolmie:

I take this opportunity to confirm our conversation and verify the agreement we reached on Monday, December 15, 2008, concerning the sale of my 2007 commercial grade baby lima beans you are presently holding in the Treasure Valley Seed warehouse in Homedale, Idaho.

This agreement is upon the clear understanding you had committed, subject to my approval, to a gross sale price of 73 cents per pound, and that I have agreed to accept 55 cents per pound, net price to me, on the sale of 124,552 lbs of my commercial grade lima beans, resulting in a check from Treasure Valley Seed Company made payable to Victoria H. Smith, in the sum of \$68,503.60.

As agreed, the 18 cents per pound remaining out of that gross sales price will cover any and all costs Treasure Valley Seed Company has incurred.

Should you receive more than 73 cents per pound, your 18 cents per pound remains the same, and we receive the additional sales proceeds. That is the only authorization you have in any attempt at a sale of these beans. Nothing beyond 18 cents will be retained by you or Treasure Valley Seed.

I felt it necessary to reduce our present arrangement and agreement into a written instrument, as our conversations of late have been rather contentious, and rather disappointing, in part, due to what I have characterized to you in our discussions as a failure in communication in the manner and way in which you have chosen to address the issues and direct your responses to my concerns about market values and what the value of these beans were on the open market, recognizing you had no contract to purchase the beans from us, and we remained the owners.

I wanted to sell these beans on the open market and avoid what middleman costs and commissions that otherwise might possibly be assessed, and you understood that fact. In essence, we needed to recover as much as possible with these beans in the marketplace, as I lost substantially from the 2006 disaster with the custom harvest services you provided us in combine services that year.

Clearly, with your continued involvement in the events of our beans, it was my understanding you were representing my interests in attempting to market and you were

EXHIBIT 316

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000106

doing so in a manner that at all times would be agreeable to me. I believed you were acting as our selling agent, and I rightfully relied upon what you were telling me.

I do expect transparency in this transaction, and I will expect documentation and the appropriate paperwork that describes and discloses completely and unconditionally all of the transactions concerning any sale or movement of these beans, and to whom you propose to sell them, and for what price, and all the associated and related details regarding that event will be unconditionally disclosed to me.

If you cannot find it within your nature or your business dealings to provide that transparency and full disclosure, then I want you to make that directly clear to me, and I will proceed with other arrangements to market the beans.

We have already had an exchange of words that included your reference to litigation, as may be needed to resolve this matter. However, you subsequently have expressed your reasons and preference not to pursue that course of action.

Although I would not want to encourage litigation, I do understand its application and ramifications. Additionally, there are some interesting issues that could come from such course of action in the event this matter is not concluded as I understood your December 15, 2008 proposal and acceptance of 18 cents per pound out of the gross sales price of our beans.

We have yet to address the sale of my remaining "mud tag" lima beans, weighing approximately 12,000 lbs, which initially comprised seven bins as generated from your cleaning process, and there still remain not less than four bins of these beans in your possession.

I trust I have made my position clear, and you will elect to perform properly and in accordance with your fiduciary duty and my expectations, in a genuine effort to preserve our future relationship, and if you cannot, then you must step aside and terminate this effort to resolve this marketing endeavor. I will return to again raising beans after the 2009 season, and I would hope we can restore this misunderstanding and restore a level of expectation for future transaction opportunities. As always, I remain,

Yours very truly,


Vernon K. Smith

VKS/vlj

EXHIBIT 316
2

000107

Law Office of Vernon K. Smith
1900 West Main Street, Boise, Idaho 83702
Telephone: (208) 345-1125
Fax: (208) 345-1129



Fax

To: Richard Eismann From: Vicki Smith
Fax: 466-4498 Pages: 6
Phone: _____ Date: 12/17/10
Re: _____ CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Original by U.S. Mail

● **Comments:** The pages comprising this facsimile transmission contain confidential information from Vernon K. Smith. This information is solely for use by the individual entity named as the recipient hereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so we may arrange to retrieve this transmission at no cost to you.

Smith - Folmer

EXHIBIT 316

000108

ORIGINAL

JAN 28 2014

CHRISTOPHER D. RICH, Clerk
By ELAINE RUDZINSKI
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

**DON TOLMIE'S ANSWER TO COMPLAINT
AND DEMAND FOR JURY TRIAL**

COMES NOW the defendant, **Don Tolmie**, and alleges as follows:

ANSWER TO COMPLAINT

DEFINITIONS: When used in this pleading, the terms following shall have the meanings following:

--- "Don" refers to Don Tolmie.

--- "Seed Company" refers to Treasure Valley Seed Co., LLC.

COUNT ONE----FIRST DEFENSE:

The first count of such complaint fails to state a claim against Don upon which relief can be granted.

COUNT ONE----SECOND DEFENSE:

1. Don admits the allegations contained in each paragraph of the first count of such complaint following: III, except Don denies that the principal place of business of the Seed Company is in Homedale, Idaho; V; VI; XI, a document Order Number 5054 is attached to the complaint, is not marked Exhibit A and Don prepared that document; XII, a picture of an envelope is attached to the complaint, is not marked Exhibit B and Don wrote the words on that document; XIII, a document showing "Green Baby Lima total clean weight 124,552" is attached to the complaint, is not marked Exhibit C and is the clean weight of the Green Baby Lima which the Seed Company cleaned for Virginia and Vern Smith; XV, Vernon Smith wrote the letter attached to the complaint, it is not marked Exhibit D and the statements made therein are denied and is only one letter of several letters exchanged between the plaintiffs and the defendants through their respective counsel.

2. Don alleges that Don is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in each paragraph of the first count of such complaint following: I; and II.

3. Don denies each and every other allegation contained in the first count of such complaint which is not hereinabove expressly admitted.

COUNT TWO----FIRST DEFENSE:

The second count of such complaint fails to state a claim against Don upon which relief can be granted.

COUNT TWO----SECOND DEFENSE:

1. Don answers each allegation incorporated into this count from any other count or any other part of such complaint with the same answer made by Don to such allegation in such other count or such other part of such complaint from which such allegation is incorporated.
2. Don denies each and every other allegation contained in the second count of such complaint which is not hereinabove expressly admitted.

COUNT THREE----FIRST DEFENSE:

The third count of such complaint fails to state a claim against Don upon which relief can be granted.

COUNT THREE----SECOND DEFENSE:

1. Don answers each allegation incorporated into this count from any other count or any other part of such complaint with the same answer made by Don to such allegation in such other count or such other part of such complaint from which such allegation is incorporated.
2. Don denies each and every other allegation contained in the third count of such complaint which is not hereinabove expressly admitted.

DON'S COSTS AND ATTORNEY FEES: Don has been required to employ an attorney to represent Don to defend against these proceedings filed by the plaintiff against Don and has employed Eismann Law Offices to represent Don. Don seeks recovery of costs and attorney fees incurred by Don from the plaintiff in these proceedings:

- (a) pursuant to Idaho Code Section 12-120 and more particularly subparagraph (3) thereof which provides that in any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, and pursuant to subparagraph (6) thereof for reasonable post judgment attorney's fees and costs incurred in attempting to collect on the judgment obtained; and/or
- (b) pursuant to Idaho Code Section 12-121 and Rule 54(e)(1) on the grounds that these proceedings were brought and pursued frivolously, unreasonably and without foundation; and/or
- (c) pursuant to Idaho Code Sections 12-123 for sanctions from the plaintiff on the grounds of the plaintiff's conduct in these proceedings is frivolous; and/or
- (d) pursuant to IRCP 11(a)(1) for sanctions on the grounds that the plaintiff's pleading is not well grounded in fact, is not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and is interposed for an improper purpose such as to harass or cause unnecessary delay or needless increase in the costs of litigation.

AFFIRMATIVE DEFENSES TO ALL COUNTS OF COMPLAINT

1. **PLAINTIFF'S CLAIMS WAIVED:** Prior to the commencement of this action, the alleged claims of the plaintiff were waived.
2. **LACHES:** The plaintiff is barred to assert the alleged claims set forth in the complaint by the doctrine of laches.
3. **STATUTE OF LIMITATIONS BAR'S CLAIMS:** The claims of the plaintiff are barred by Idaho Code Section 28-2-725 because the complaint was not filed within four years after the alleged causes of action accrued.

4. **THE PLAINTIFF FAILED TO MITIGATE DAMAGES:** The plaintiff reasonably could have but failed to mitigate the damages claimed by the plaintiff.
5. **FAILURE TO COMPLY WITH THE STATUTE OF FRAUDS:** The contract alleged by the plaintiff does not comply with the statute of frauds set forth in Idaho Code Section 28-2-201.
6. **RULE 11 RESERVATIONS:** Don has considered and believes that he may have additional defenses as well as additional claims but does not have enough information at this time to assert such additional defenses under Rule 11 of the Idaho Rules of Civil Procedure. Don does not intend to waive any such defenses and specifically gives notice that Don intends to amend this answer if facts come to light through research and after discovery that give rise to any such additional defenses.
7. **AGENT NOT LIABLE ON CONTRACTS FOR PRINCIPAL:** Don, as the agent and employee of the Seed Company, by making a contract on behalf of the Seed Company which was within the scope of his employment and which discloses that the contract made was with the employer, is not personally liable under that contract.

WHEREFORE, Don demands judgment as follows:


1. That on count one of such complaint, the plaintiff recover nothing from Don and that the first count of such complaint be dismissed with prejudice.
2. That on count two of such complaint, the plaintiff recover nothing from Don and that the second count of such complaint be dismissed with prejudice.
3. That on count three of such complaint, the plaintiff recover nothing from Don and that the third count of such complaint be dismissed with prejudice.
4. That Don recover costs expended herein including reasonable attorney's fees in the amount of \$4,500.00 in case judgment is entered by default, but if not then in an amount fixed by the court.

5. That such other and further relief be granted to Don as may be just.

DEMAND FOR JURY TRIAL: A jury trial in this action is hereby demanded by Don and Don will not stipulate to a six person jury or to a jury consisting of any other number of persons less than twelve.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: JAN 28 2014

SIGNED: 
Richard B. Eismann
Counsel for the Defendant, Don Tolmie

JAN 28 2014

CHRISTOPHER D. RICH, Clerk
By ELAINE RUDZINSKI
DEPUTY

ORIGINAL

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

DEFENDANT'S MOTION FOR CHANGE OF VENUE

ORAL ARGUMENT REQUESTED BY DEFENDANT – HEARING TO BE SET

DEFINITIONS: When used in this motion, the terms following shall have the meanings following:

- "defendant," while used herein in the singular for convenience, means **Treasure Valley Seed Co., LLC, and Don Tolmie.**
- "verified statement" means and includes an affidavit sworn to by the affiant before a notary public and a declaration under the penalty of perjury certified by the declarant.

THE RELIEF OR ORDER SOUGHT BY THIS MOTION: This motion ("this motion" herein) is made by the defendant to have this Court enter its order providing as follows:

1. That the place of trial in this action is changed from the County of Ada, Idaho, where this action was commenced and is now pending to the County of Canyon, Idaho.
2. That the defendant recover from the plaintiff and/or the plaintiff's counsel sanctions as hereinafter requested in this motion.
3. That the defendant recover from the plaintiff and/or the plaintiff's counsel the defendant's costs and attorney's fees as hereinafter requested in this motion.
4. That the Court grant such other and further relief to the defendant as the court deems just.

GROUND OF THIS MOTION: This motion is made on the grounds following:

1. That the defendant, **Don Tolmie**, was at the commencement of this action and now is a resident of the County of Canyon, Idaho, and not a resident of the County of Ada, Idaho, in which this action was commenced.

2. The principal place of business and the offices and facilities of the defendant, **Treasure Valley Seed Co., LLC**, ("Seed Company" herein) are located in Canyon County, Idaho, off Highway 95 on the North side of and across the Snake River from Homedale, Idaho.
3. The 2007 Lima Bean Crop referred to in the complaint was delivered to the principal place of business where the plant and facilities of the Seed Company are located between October 25 and November 2, 2007.
4. The 2007 Lima Bean Crop since the delivery thereof to the Seed Company's plant and facilities have been and still are located at the principal place of business of the Seed Company.
5. The causes of action, if any, set forth in the complaint arose in Canyon County, Idaho.
6. This action was filed in the county of improper venue without good cause.
7. **The ends of justice will be served by granting this motion.**

VERIFIED STATEMENTS SUPPORTING THIS MOTION: The grounds on which this motion is made and based include, but are not limited to, the grounds set forth in those verified statements ("VS" herein) numbered and listed below. Those verified statements are by this reference incorporated in and made a part of this motion and are described as follows:

VS No. 1. The 1st verified statement signed by **Don Tolmie** and filed in support of this motion.

VS No. 2. The 2nd verified statement signed by **James L. Stein** and filed in support of this motion.

OTHER DOCUMENTS AND EVIDENCE SUPPORTING THIS MOTION: The grounds on which this motion is made and based include, but are not limited to, the grounds set forth in those documents and that evidence ("Add" herein) numbered and listed below. Those

documents and that evidence are by this reference incorporated in and made a part of this motion and are described as follows:

Add No. 1. If opposing verified statements are filed by the plaintiff opposing this motion, then such additional verified statements shall be filed by the defendant as may be advisable to meet the allegations of those opposing verified statements.

Add No. 2. All of the other records and files in this action.

LEGAL AUTHORITY: The legal authority supporting this motion includes the following:

Idaho Code Section 5-404 which reads as follows:

"5-404. Other actions – Venue determined by residence – Exceptions. -- In all other cases the action must be tried in the county in which the defendants, or some of them, reside, at the commencement of the action; or, if none of the defendants reside in the state, or if residing in this state, the county in which they reside is unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if the defendant is about to depart from the state, such action may be tried in any county where either of the parties reside, or service is had, subject, however, to the power of the court to change the place of trial, as provided in this code; provided, that [in] all actions against life or fire insurance companies, suit or action may be commenced and tried in the county where the death occurred or the loss was sustained; and provided, further, that in all actions against any corporation organized under the laws of the state of Idaho, suit or action shall be commenced and tried in any county of this state where the defendant has its principal place of business or in the county in which the cause of action arose."

CIVIL RULES APPLICABLE: This motion is made under all of the civil rules applicable to this motion including, but not limited to, the rules following:

Rule 12(b). How defenses and objections presented.

Rule 40. Change of venue.

Rule 6(b). Enlargement.

Rule 6(e)(2). Setting hearings by court.

Rule 7(b)(1). Motions and other papers.

Rule 7(b)(3). Time limits for filing and serving motions, affidavits and briefs.

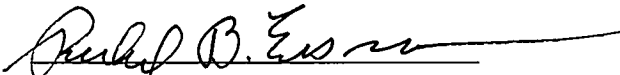
Rule 7(b)(4). Hearings by telephone or video teleconference.

Rule 43(e). Evidence on motions.

ORAL ARGUMENT REQUESTED BY DEFENDANT – HEARING TO BE SET: Oral argument on this motion is hereby requested by the defendant. A hearing will be set and noticed by the defendant.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: JAN 28 2014

SIGNED: 
Richard B. Eismann
Counsel for the Defendants

NO. 10 FILED
A.M. 10 P.M.

ORIGINAL

JAN 28 2014

CHRISTOPHER D. RICH, Clerk
By ELAINE RUDZINSKI
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

FIRST DECLARATION OF DON TOLMIE

I, Don Tolmie, ("I" or "declarant" herein), certify (or declare) as follows:

FIRST DECLARATION OF DON TOLMIE - PAGE 1

A. I am a natural person over the age of majority, of sound mind, and in all respects competent to testify to the matters set forth in this declaration.

B. I am one of the defendants named in the above-entitled action.

C. I am the production manager of Treasure Valley Seed Co., LLC, ("Seed Company" herein) which is one of the defendants named in the above-entitled action.

D. I hereby further certify (or declare) as follows:

1) I have resided in Canyon County, Idaho, since before 2006, I am still a resident of Canyon County, Idaho, and my present address is 23595 Wamstad Road, Parma, ID 83660.

2) I do not now have and I have never had an ownership interest or a membership interest in the Seed Company.

3) The plaintiff caused the plaintiff's 2007 Lima Bean Crop to be delivered to the Seed Company's plant between October 25, 2007, and November 2, 2007, for drying, cleaning, processing, eyeing and storing at the Seed Company's principal place of business.

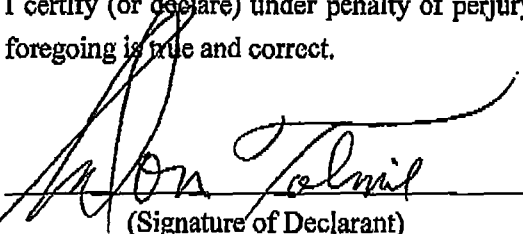
4) The 2007 Lima Bean Crop has been and still is located in the storage facility of the Seed Company at its principal place of business.

5) The Seed Company's position is that the 2007 Lima Bean Crop is the property of the plaintiff subject to liens thereon held by the Seed Company for seed provided to the plaintiff to plant the 2007 Lima Bean Crop, and to liens for processing and storing the 2007 Lima Bean Crop.

6) The Seed Company will in this action foreclose such liens on such 2007 Lima Bean Crop and apply the proceeds to the accounts owing by the plaintiff to the Seed Company.

**DECLARATIONS UNDER THE PENALTY OF PERJURY
PURSUANT TO I.C. § 9-1406 AND IRCP 7(d)**

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.


(Signature of Declarant)


(Date Signed)

Don Tolmie
(Printed name of Declarant)

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: JAN 28 2014

SIGNED:


Richard B. Eismann

Counsel for the defendant, Don Tolmie

Greenwood

Jan 27 14 06:50p

Jim Stein

9896562331

p.1

1-29-14
DS

NO. 10- FILED
A.M. 10- P.M.

ORIGINAL

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendants

JAN 28 2014

CHRISTOPHER D. RICH, Clerk
By ELAINE RUDZINSKI
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

FIRST DECLARATION OF JAMES L. STEIN

I, James L. Stein, ("I" or "declarant" herein), certify (or declare) as follows:

A. I am a natural person over the age of majority, of sound mind, and in all respects competent to testify to the matters set forth in this declaration.

B. I am the manager member of Treasure Valley Seed Co., LLC, ("Seed Company" herein) which is one of the defendants named in the above-entitled action.

C. I hereby further certify (or declare) as follows:

1) The principal place of business of the Seed Company and its offices, the bean plant and facility have been since before 2005 and still are located off Highway 95 in Canyon County, Idaho, North of Homedale, Idaho.

2) Don Tolmie ("Don" herein) was in 2006 and still is employed by the Seed Company as production manager of its Bean Plant and Facilities located in Canyon County, Idaho, off of Highway 95 near Homedale, Idaho.

3) Don has no ownership interest in and has never had any ownership interest in the Seed Company.

4) The plaintiff caused the plaintiff's 2007 Lima Bean Crop to be delivered to the Seed Company's plant between October 25, 2007, and November 2, 2007, for drying, cleaning, processing, eyeing and storing at the Seed Company's principal place of business.

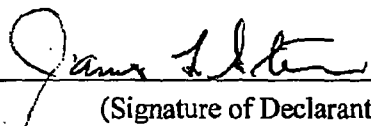
5) The 2007 Lima Bean Crop has been and still is located in the storage facility of the Seed Company at its principal place of business.

6) The Seed Company's position is that the 2007 Lima Bean Crop is the property of the plaintiff subject to liens thereon held by the Seed Company for seed provided to the plaintiff to plant the 2007 Lima Bean Crop, and to liens for processing and storing the 2007 Lima Bean Crop.

7) The Seed Company will in this action foreclose such liens on such 2007 Lima Bean Crop and apply the proceeds to the accounts owing by the plaintiff to the Seed Company.

**DECLARATIONS UNDER THE PENALTY OF PERJURY
PURSUANT TO I.C. § 9-1406 AND IRCP 7(d)**

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

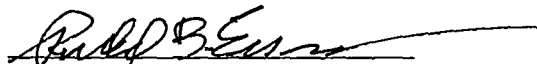

(Signature of Declarant)

1/24/14
(Date Signed)

James L. Stein
(Printed name of Declarant)

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: JAN 28 2014

SIGNED: 
Richard B. Eismann
Counsel for the Defendants

Greenwood
kathy
SAB
1/30/2014

NO. _____
FILED _____
A.M. _____ P.M. 1:40

JAN 29 2014

CLERK OF COURT
BY KATHARINE THIESSEN
CLERK

ORIGINAL

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
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RBE/4
Attorney for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
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Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

NOTICE TO THE COURT OF SERVICE OF
1st SET OF DEFENDANTS' REQUESTS FOR ADMISSIONS

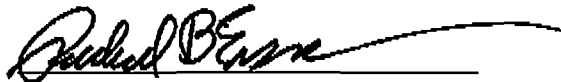
SUBMITTED BY --- DEFENDANTS
DIRECTED TO --- PLAINTIFF
DATE SERVED --- JANUARY 29, 2014

REQUEST FOR ADMISSIONS: The request for admissions referred to above were served as set forth above.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: **VERNON K. SMITH**, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: January 29, 2014

SIGNED:



Richard B. Eismann
Counsel for the defendants

NO 14
Greenwood
Valley
RBE
2-6-14

ORIGINAL

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendant, Treasure Valley Seed Co., LLC

NO. _____
A.M. _____ FILED PM _____

FEB 05 2014

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

NOTICE TO THE COURT OF SERVICE OF
2ND REQUEST FOR ADMISSIONS BY DEFENDANTS

ORIGINAL
000128

SUBMITTED BY -- DEFENDANTS
DIRECTED TO -- PLAINTIFF
DATE SERVED -- FEBRUARY 5, 2014

REQUEST FOR ADMISSIONS: The request for admissions referred to above were served as set forth above.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: February 5, 2014

SIGNED: *Richard B. Eismann*

Richard B. Eismann
Counsel for the defendants

FEB 10 2014

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H SMITH,

Plaintiff,

vs.

TREASURE VALLEY SEED COMPANY
LLC, DON TOLMIE,

Defendant.

Case No. CV-OC-2013-22179

ORDER FOR SCHEDULING
CONFERENCE AND ORDER RE:
MOTION PRACTICE

IT IS HEREBY ORDERED that the above-captioned case is scheduled for a scheduling conference to commence on March 3, 2014 at 4:45 p.m. by telephone conference; plaintiff's counsel shall initiate the conference call.

The purpose of the conference will be to enter a scheduling order regarding the deadlines contained in the attached schedule. Counsel must be the handling attorney, or be fully familiar with the case and have authority to bind his/her client and law firm on all matters set forth in I.R.C.P. 16(a) and 16(b).

In lieu of this scheduling conference, all parties may stipulate to deadlines and other information required in the enclosed **Stipulation for Scheduling and Planning**. This stipulation must be completed and signed by all parties, and filed with the court at least three (3) working days before the scheduling conference. The hearing will not be vacated until: 1) the attached stipulation is received by the court; and 2) counsel has contacted the court's clerk at the number set forth below to confirm that the hearing is vacated. The foregoing notwithstanding, THE STIPULATION MAY NOT ALTER THE TIME REQUIREMENTS SPECIFIED IN THIS ORDER, EXCEPT AS TO THE TIME OF DISCRETIONARY DEADLINES.

IT IS FURTHER ORDERED that the following shall apply to motions filed in this case.

1. **SCHEDULING AND HEARINGS.** The Court holds its regular civil law and motion calendar on Mondays, Wednesdays and Thursday afternoons commencing at 3:00 P.M. Scheduling conferences and miscellaneous matters shall be heard starting at 4:00 P.M. Motions shall be generally heard commencing at 3:00 P.M. Absent an order shortening time, all motion practice other than motions for summary judgment will be governed by I.R.C.P. 7. Counsel is expected to contact the Court's Deputy Clerk, Kathy Johnson (phone 208-287-7531) to schedule hearings as provided by local rules of court and to confirm the availability of opposing counsel for proposed hearing dates. ANY MATTER REQUIRING TESTIMONY TOTALING MORE THAN 30 MINUTES SHALL NOT BE SCHEDULED ON THE COURT'S REGULAR MOTION CALENDAR. As an accommodation to out-of-town counsel and parties, hearings on any pretrial motion (except motions for summary judgment, motions in limine or hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b) (4). Unless ordered by the court, telephone conferences will be held ONLY if all counsel so stipulate and the court approves that stipulation. Counsel requesting a hearing by conference call will be responsible for arranging for placement of the call and the cost thereof. The telephone conference must be pre-arranged with the clerk before the date of the hearing. Counsel must be available by land lines. CELL PHONES ARE NOT ACCEPTABLE FOR CONFERENCE CALLS.

2. **MOTIONS GENERALLY** (applies to every motion).

- a. One additional copy marked or stamped "**Judge's Copy**" of any motion, supporting papers and opposing papers (including affidavits, and briefs) must be submitted to the judge's chambers when such documents are filed or lodged with the clerk of the court.

- b. Pursuant to the local rules each side will be allotted 15 minutes for oral argument on a motion except for summary judgments. Each side will be allowed 30 minutes on motions for summary judgment, including rebuttal argument.
- c. If a notice of hearing is not filed within fourteen (14) days after the motion is filed, the motion will be deemed withdrawn. In the alternative the court may rule on the motion as provided in I.R.C.P. 7(b)(3)(D).

3. **WITNESS DISCLOSURES/EXPERT WITNESSES:** Unless the parties stipulate otherwise or the court orders otherwise at the request of a party, the following governs disclosure of witnesses before the pre-trial conference. With the exception of impeachment witnesses I.R.C.P. 16(e)(6)(J), each party shall disclose the existence and identity of intended or potential expert or lay witnesses to the extent required by interrogatories or other discovery requests propounded by another party. There is no independent duty to disclose expert or lay witnesses except as required to adequately respond to discovery requests or supplement prior responses. If discovery requests seeking disclosure of expert witnesses are propounded, the plaintiff upon whom such requests are served shall, in good faith, disclose the existence and identity of potential or intended expert witnesses and the subject matter and the substance of any opinions of such experts at the earliest opportunity, and in no event later than one hundred-twenty (120) days before trial. A defendant upon whom such requests are served shall, in good faith, identify any potential or intended expert witnesses and the subject matter and substance of any opinions of such experts at the earliest opportunity, and in no event later than eighty-five (85) days before trial. THIS PROVISION MEANS THAT WHEN AN EXPERT IS IDENTIFIED, HE OR SHE MUST HAVE PERFORMED SUCH INVESTIGATION AS MAY BE NECESSARY, REVIEWED SUCH DOCUMENTS AS MAY BE NECESSARY, AND REACHED CONCLUSIONS OR OPINIONS AS MAY BE REQUIRED SO THAT DISCLOSURE OF THAT INFORMATION, OR SUCH OTHER INFORMATION AS MAY BE REQUESTED BY DISCOVERY OR BY I.R.E. 703 AND 705 WILL BE DISCLOSED NO LATER THAN 120 DAYS OR 85 DAYS PRIOR TO TRIAL.

THE EXPECTATION THAT AN EXPERT MAY BE DEPOSED IS NOT A GROUND FOR FAILURE TO MAKE DISCLOSURES CALLED FOR BY DISCOVERY, BY RULE OF EVIDENCE, OR BY RULE 26(b)(4) I.R.C.P. EXPERTS MAY BE PROHIBITED FROM TESTIFYING TO ANY OPINIONS OR FOUNDATION FOR SUCH OPINIONS THAT HAVE NOT BEEN THE SUBJECT OF TIMELY AND PROPER DISCLOSURE. IF AN OPINION OR FOUNDATION FOR AN OPINION OF AN EXPERT CHANGES IN ANY FASHION AFTER PREVIOUS DISCLOSURES HAVE BEEN MADE THERE IS A DUTY TO IMMEDIATELY SUPPLEMENT SUCH INFORMATION PURSUANT TO RULE 26(e) I.R.C.P.

Any party upon whom discovery is served who intends or reserves the right to call any expert witness in rebuttal or sur-rebuttal shall, in good faith, identify such experts at the earliest opportunity, and in no event later than forty-two (42) days before trial. A DEFENSE EXPERT INTENDED TO BE CALLED DURING DEFENSE CASE IN CHIEF IS NOT A "REBUTTAL" WITNESS WITHIN THE TERMS OF THIS ORDER. Any party upon whom discovery requests are served seeking disclosure of lay witnesses shall, in good faith, disclose the identity of all such witnesses at the earliest opportunity, and in no event later than forty-two (42) days before trial. Absent a showing of good cause and a lack of unfair prejudice to any other party, any witness who has not been timely disclosed will not be permitted to testify at trial.

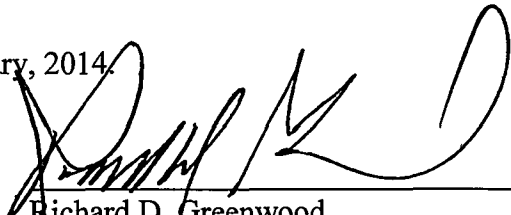
4. MOTIONS TO COMPEL DISCOVERY.

- a. A motion to compel discovery must contain a certification as required by I.R.C.P. 37(a) (2) (that efforts were made to resolve the dispute before the motion was filed).
- b. The motion to compel must SPECIFICALLY ADDRESS THAT PORTION OF THE DISCOVERY AT ISSUE and CONTAIN A STATEMENT OF REQUESTED RELIEF.
- c. Reasonable expenses incurred when successfully prosecuting or opposing a motion to compel discovery will be awarded as provided in Rule 37(a)(4) of the Idaho Rules of Civil Procedure.

5. **MOTIONS FOR FULL OR PARTIAL SUMMARY JUDGMENT.**

- a. The party moving for summary judgment shall prepare as **separate** documents: (a) a motion; and (b) a legal memorandum containing a written statement of reasons and legal authority in support of the motion. A concise statement of the claimed undisputed material facts alleged by movant shall be included at the beginning of the memorandum following a concise statement of the nature of the case. Each statement of facts shall include a reference to the particular place in the record which supports the claimed fact. The legal memorandum shall **ALSO** include a statement, supported by authority, of the elements of any claim or defense relevant to the motion.
- b. The party opposing a motion for summary judgment shall prepare a legal memorandum containing a written statement of reasons in opposition to the motion, which shall include a concise statement of claimed genuine issues of material fact and/or which are material facts omitted from the moving party's statement of facts. Each statement of a fact shall include a reference to the particular place in the record which supports the factual dispute. The legal memorandum shall include a statement, supported by authority, of the elements of any claim or defense relevant to the motion.
- c. The schedule for serving briefs and affidavits shall be as set forth in Idaho Rule of Civil Procedure 56(c). **COUNSEL ARE EXPECTED TO STRICTLY COMPLY WITH TIME REQUIREMENT.**
- d. Motion for summary judgment must be filed in time to be heard at least 60 days before trial. The hearing on a motion for summary judgment will be set **AFTER** the moving party has submitted the motion, legal memorandum and statement of facts. The hearing date can then be obtained from the judge's court clerk.

DATED this 6 day of February, 2014.



Richard D. Greenwood
District Judge

CERTIFICATE OF MAILING


I HEREBY CERTIFY that on the 10 day of February, 2014, I have mailed (served), by United States Mail, one true and correct copy of the within instrument to each of the following:

Vernon K Smith Jr.
Attorney at Law
1900 Main
Boise ID 83702

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express

Richard B Eismann
Attorney at Law
3016 Caldwell Blvd
Nampa ID 83651-6416

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express

By: 
Kathy Johnson
Deputy Clerk

Seal of the District Court of the Fourth Judicial District of Idaho, County of Ada. The seal is circular with a dotted border. Inside the border, the text "DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO" is written in a circular path. In the center, the text "COUNTY OF ADA" is written. Overlaid on the seal is the signature of Kathy Johnson and the text "By: Kathy Johnson Deputy Clerk".

EXHIBIT LIST

Before the date set for the pretrial conference, the parties shall contact the clerk for assignment of exhibit numbers.

Richard D. Greenwood, DISTRICT JUDGE
Kathy Johnson, DEPUTY CLERK
Fran Casey, COURT REPORTER

CASE NO: **CV-OC-2013-22179**

DATE(S): _____

VICTORIA H SMITH

vs.

**TREASURE VALLEY SEED COMPANY
LLC, ETAL.**

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT
1						
2						
3						

Exhibit 1

RECEIVED

FEB 12 2014

Ada County Clerk

ORIGINAL

NO. 909 FILED
A.M. 9:09 P.M.

FEB 12 2014

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

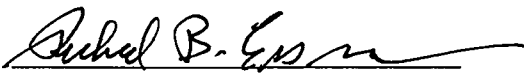
Case No. CV 0C 13-22179

NOTICE OF HEARING ON
DEFENDANT'S MOTION FOR CHANGE OF VENUE
(Hearing Set for: March 24, 2014, at 3:00 o'clock P.M.)

NOTICE OF HEARING: The undersigned will bring the motion entitled "Defendant's Motion for Change of Venue" ("subject motion" herein) filed herein by the defendants on for hearing before this Court sitting in open session at the courtroom of this Court in the courthouse of the above-named county on the date of March 24, 2014, at 3:00 o'clock P.M., or as soon thereafter as counsel can be heard.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: FEB 11 2014

SIGNED: 
Richard B. Eismann
Counsel for the Defendants

ORIGINAL**MAR 04 2014**
 CHRISTOPHER D. RICH, Clerk
 By KATRINA THIESSEN
 DEPUTY

VERNON K. SMITH
 ATTORNEY AT LAW
 1900 West Main Street
 Boise, Idaho 83702
 Idaho State Bar No. 1365
 Telephone: (208) 345-1125
 Fax: (208) 345-1129

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VICTORIA H. SMITH, by and through
 her attorney in fact, Vernon K. Smith,
 by and through his Durable and
 Irrevocable Power of Attorney,

Plaintiff,

vs.

TREASURE VALLEY SEED
 COMPANY, LLC, and Don Tolmie
 in his individual capacity, and as an
 owner, representative and authorized
 agent of Treasure Valley Seed Co., LLC

Defendant(s).

Case No. CV OC 13-22179

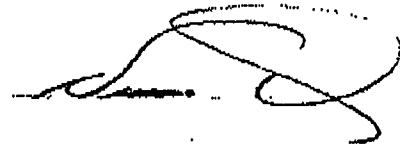
CERTIFICATE OF COMPLIANCE
 TO DEFENDANTS' SECOND SET
 OF REQUESTS FOR ADMISSIONS

I HEREBY CERTIFY That on the 4th day of March, 2014, a true and correct
 copy of the Plaintiff's Response to Defendants' First Set of Requests for
 Admissions, was served to the following person at the following address by the
 method so indicated below:

Richard B. Eismann
 Eismann Law Offices
 3016 Caldwell Blvd.
 Nampa, Idaho 83651

Sent by Facsimile to 466-4498

Dated this 4th day of March, 2014.

A handwritten signature in black ink, appearing to be 'Vernon K. Smith', written over a horizontal line.

Vernon K. Smith
Attorney for Plaintiff

ORIGINAL

 NO. _____
 A.M. _____ P.M. 4:50

VERNON K. SMITH
 ATTORNEY AT LAW
 1900 West Main Street
 Boise, Idaho 83702
 Idaho State Bar No. 1365
 Telephone: (208) 345-1125
 Fax: (208) 345-1129

MAR 04 2014

CHRISTOPHER D. RICH, Clerk
 By KATRINA THIESSEN
 DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VICTORIA H. SMITH, by and through
 her attorney in fact, Vernon K. Smith,
 by and through his Durable and
 Irrevocable Power of Attorney,

Plaintiff,

vs.

TREASURE VALLEY SEED
 COMPANY, LLC, and Don Tolmie
 in his individual capacity, and as an
 owner, representative and authorized
 agent of Treasure Valley Seed Co., LLC

Defendant(s).

Case No. CV OC 13-22179

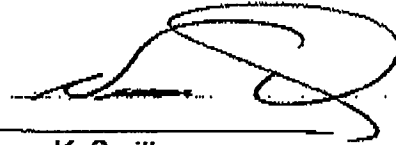
CERTIFICATE OF COMPLIANCE
 TO DEFENDANTS' FIRST SET
 OF REQUESTS FOR ADMISSIONS

I HEREBY CERTIFY That on the 4th day of March, 2014, a true and correct
 copy of the Plaintiff's Response to Defendants' First Set of Requests for
 Admissions, was served to the following person at the following address by the
 method so indicated below:

Richard B. Elsmann
 Elsmann Law Offices
 3016 Caldwell Blvd.
 Nampa, Idaho 83651

Sent by Facsimile to 466-4498

Dated this 4th day of March, 2014.

A handwritten signature in black ink, appearing to read 'Vernon K. Smith', written over a horizontal line.

Vernon K. Smith
Attorney for Plaintiff

MAR 18 2014

CHRISTOPHER D. RICH, Clerk
By JERI HEATON
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4/2
Attorney for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

DEFENDANT'S MOTION TO DISMISS

ORAL ARGUMENT REQUESTED BY DEFENDANT - NOTICE OF HEARING

(Hearing Set: 4:30 o'clock P.M., on April 2, 2014)

1. **DEFINITIONS:** When used in this motion, the terms following shall have the meanings following:

--- "defendant," while used herein in the singular for convenience, means **Treasure Valley Seed Company, LLC, and Don Tolmie.**

--- "plaintiff's counsel" means **Vernon K. Smith.**

--- "defendant's counsel" means **Richard B. Eismann.**

--- "verified statement" means and includes an affidavit sworn to by the affiant before a notary public and a declaration under the penalty of perjury certified by the declarant.

2. **THE RELIEF OR ORDER SOUGHT BY THIS MOTION TO DISMISS:** This motion to dismiss ("this motion" herein) is made by the defendant to have this Court enter its order providing as follows:

- (a) That this action is dismissed on the grounds that the complaint fails to state a claim on which relief can be granted.
- (b) That this action be dismissed on the grounds that the court never obtained jurisdiction over the person of Victoria H. Smith.
- (c) That this action is dismissed on the grounds that the complaint failed to join a necessary party, Victoria H. Smith or her estate.
- (d) That this motion is dismissed on the grounds that the power of attorney of plaintiff's counsel terminated on the date of the death of Victoria H. Smith.
- (e) That the defendant shall recover from the plaintiff's counsel the defendant's costs and attorney's fees as hereinafter requested in this motion.

- (f) That the Court grant such other and further relief to the defendant as the court deems just.

Or in the alternative that this court treat this motion as a motion for summary judgment and proceed with this motion under IRCP 56 and grant the relief to the defendants which is requested for relief in this motion.

3. VERIFIED GROUNDS OF THIS MOTION TO DISMISS: This motion is made on the grounds following:

- (a) Victoria H. Smith who is named as plaintiff in this action died on September 11, 2013, or thereabouts.
- (b) This action was filed by plaintiff's counsel on December 13, 2013 naming Victoria H. Smith as plaintiff, and naming plaintiff's counsel as her attorney in fact and her attorney at law thereby representing that Victoria H. Smith is then living.
- (c) Paragraph I of the complaint alleges that "Victoria H. Smith at all times herein is a resident of Ada County, Idaho".
- (d) Paragraph II of the complaint alleges that plaintiff's counsel is the son of Victoria H. Smith and possesses a durable and irrevocable power of attorney.
- (e) Plaintiff's counsel is an attorney licensed to practice law in the State of Idaho.
- (f) Plaintiff's counsel signed the complaint as the attorney for plaintiff in this action.
- (g) On March 3, 2014, the defendant and their counsel first learned that Victoria H. Smith died on September 11, 2013, and therein fact when the Court asked plaintiff's counsel in a telephone conference call if Victoria H. Smith was plaintiff's counsel's mother and is she living. Plaintiff's counsel replied that Victory H. Smith was his mother and that she died on September 11, 2013.

- (h) As of March 14, 2014, no probate proceedings had been filed in the office of the Clerk of the Court in Ada County, Idaho.
- (i) This action was filed after the death of Victoria H. Smith and plaintiff's counsel knew that Victoria H. Smith was deceased.
- (ii) **The ends of justice will be served by granting this motion.**

4. **CIVIL RULES APPLICABLE:** This motion is made under all of the civil rules applicable to this motion including, but not limited to, the rules following:

- | | |
|--------------------|--------------------------------------------------------------------|
| IRE Rule 201. | Judicial notice of adjudicative facts. |
| IRCP Rule 6(b). | Enlargement. |
| IRCP Rule 6(e)(2). | Setting hearings by court. |
| IRCP Rule 7(b)(1). | Motions and other papers. |
| IRCP Rule 7(b)(3). | Time limits for filing and serving motions, affidavits and briefs. |
| IRCP Rule 7(b)(4). | Hearings by telephone or video teleconference. |
| IRCP Rule 12(b). | How defenses and objections presented. |
| IRCP Rule 43(e). | Evidence on motions. |

5. **DEFENDANT'S REQUEST FOR COSTS AND ATTORNEY'S FEES:** The defendant was required to employ counsel to represent the defendant to bring and pursue this motion and has employed Eismann Law Offices to represent the defendant. The defendant

requests that the defendant recover from the plaintiff's counsel the defendant's costs and attorney fees incurred by the defendant relating to this motion:

- (a) pursuant to Idaho Code Section 12-121 and IRCP 54(e)(1) on the grounds that the conduct of plaintiff's counsel was frivolous, unreasonable and without foundation in filing and pursuing this motion after the death of Victoria H. Smith; and/or
- (b) pursuant to Idaho Code Section 12-123 for sanctions on the grounds that the plaintiff's counsel's conduct in filing and pursuing this motion after the death of Victoria H. Smith is frivolous considering the facts of this case; and/or
- (c) pursuant to IRCP 11(a)(1) for sanctions on the grounds that the plaintiff's counsel's complaint considering the facts of this case is not well grounded in fact, is not warranted by existing law or a good faith extension, modification or reversal of existing law and is interposed for any improper purpose such as to harass or cause unnecessary delay or needless increase in the costs of litigation.

6. ORAL ARGUMENT REQUESTED BY DEFENDANT - NOTICE OF HEARING:

Oral argument on this motion is hereby requested by the defendant who will bring this motion on for hearing before this Court sitting in open session at the courtroom of this Court in the courthouse of the above-named county at the time of 4:30 o'clock P.M. on the date of April 2, 2014, or as soon thereafter as counsel can be heard or, at the time and on the date and at the place to which such hearing is continued or postponed.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

requests that the defendant recover from the plaintiff's counsel the defendant's costs and attorney fees incurred by the defendant relating to this motion:

- (a) pursuant to Idaho Code Section 12-121 and IRCP 54(e)(1) on the grounds that the conduct of plaintiff's counsel was frivolous, unreasonable and without foundation in filing and pursuing this motion after the death of Victoria H. Smith; and/or
- (b) pursuant to Idaho Code Section 12-123 for sanctions on the grounds that the plaintiff's counsel's conduct in filing and pursuing this motion after the death of Victoria H. Smith is frivolous considering the facts of this case; and/or
- (c) pursuant to IRCP 11(a)(1) for sanctions on the grounds that the plaintiff's counsel's complaint considering the facts of this case is not well grounded in fact, is not warranted by existing law or a good faith extension, modification or reversal of existing law and is interposed for any improper purpose such as to harass or cause unnecessary delay or needless increase in the costs of litigation.

6. ORAL ARGUMENT REQUESTED BY DEFENDANT - NOTICE OF HEARING:

Oral argument on this motion is hereby requested by the defendant who will bring this motion on for hearing before this Court sitting in open session at the courtroom of this Court in the courthouse of the above-named county at the time of 4:30 o'clock P.M. on the date of April 2, 2014, or as soon thereafter as counsel can be heard or, at the time and on the date and at the place to which such hearing is continued or postponed.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED:

3/17/2014

SIGNED:

Eismann Law Offices

By Richard B. Eismann

Richard B. Eismann

Counsel for the Defendant

**DECLARATIONS UNDER THE PENALTY OF PERJURY
PURSUANT TO I.C. § 9-1406 AND IRCP 7(d)**

I certify (or declare) under penalty of perjury pursuant to the laws of the State of Idaho that each of the foregoing verified grounds of this motion is true and correct to the best of my knowledge.

Richard B. Eismann
(Signature of Declarant)

3/17/2014
(Date)

Richard B. Eismann
(Printed Name of Declarant)

MAR 18 2014

CHRISTOPHER D. RICH, Clerk
By JERI HEATON
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4/2
Attorney for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC; and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

MEMORANDUM SUPPORTING MOTION

DEFENDANT'S MOTION TO DISMISS THIS ACTION STATEMENT OF FACTS

The facts supporting this motion to dismiss this case include the facts following:

- (a) Victoria H. Smith who is named as plaintiff in this action died on September 11, 2013, or thereabouts.
- (b) This action was filed by plaintiff's counsel on December 13, 2013 naming Victoria H. Smith as plaintiff, and naming plaintiff's counsel as her attorney in fact as her attorney at law thereby representing that Victoria H. Smith is then living.
- (c) Paragraph I of the complaint alleges that "Victoria H. Smith at all times herein is a resident of Ada County, Idaho".
- (d) Paragraph II of the complaint alleges that plaintiff's counsel is the son of Victoria H. Smith and possesses a durable and irrevocable power of attorney.
- (e) Plaintiff's counsel is an attorney licensed to practice law in the State of Idaho.
- (f) Plaintiff's counsel signed the complaint as the attorney for plaintiff in this action.
- (g) On March 3, 2014, the defendant and their counsel first learned that Victoria H. Smith died on September 11, 2013. During the course of a status conference the Court asked plaintiff's counsel in that telephone conference call if Victoria H. Smith was plaintiff's counsel's mother and if she is living. Plaintiff's counsel replied that Victory H. Smith was his mother and that she died on September 11, 2013.
- (h) As of March 14, 2014, no probate proceedings had been filed in the office of the Clerk of the Court in Ada County, Idaho.
- (i) This action was filed after the death of Victoria H. Smith and plaintiff's counsel knew that Victoria H. Smith was deceased.

It can be assumed without being admitted that Victoria H. Smith had issued a durable and irrevocable power of attorney to Vernon K. Smith, under which he was authorized to file this action.

Idaho Code Section 15-12-110 provides as follows:

(1) a power or attorney terminates when:

(a) the principal dies

(2) an agent's authority terminates when:

(d) the power of attorney terminates.

Under Idaho Code Section 15-12-110, the assumed durable and irrevocable power of attorney terminated upon the death of Victoria H. Smith on September 11, 2013 or thereabouts.

All authority under that power of attorney no longer existed. Victoria H. Smith was no longer Vernon K. Smith's client. No personal representative of Victoria H. Smith's estate has been appointed.

Rule 12(b). How defenses and objections presented. This rule provides as follows:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses shall be made by motion

(2) lack of jurisdiction over the person,

(6) failure to state a claim upon which relief can be granted,

(7) failure to join an indispensable party,

If, on a motion asserting the defense numbered, (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

The Idaho court of appeals in the case of Hellickson v. Jenkins, 118 Idaho 273, 796 P.2d 150 (1990) ruled on a motion to dismiss, under IRCP 12(b)(6) that the only facts which the trial court may properly consider for failure to state a claim are those appearing in the complaint. IRCP 12(b)(6) so provides.

In the Hellickson case, the court of appeals stated as follows:

However, a trial court, in considering a Rule 12(b)(6) motion to dismiss, has no right to hear evidence; and since judicial notice is merely a substitute for the conventional method of taking evidence to establish facts, the court has no right to take judicial notice of anything, with the possible exception of *facts of common knowledge* which controvert averments of the complaint.

IRE Rule 201. Judicial notice of adjudicative facts. This rule provides as follows:

- (a) **Scope of rule.** This rule governs only judicial notice of adjudicative facts.
- (b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- (c) **When discretionary.** A court may take judicial notice, whether requested or not. When a court takes judicial notice of records, exhibits, or transcripts from the court file in the

ORIGINALNO. _____
A.M. _____ FILED P.M. 3:10**APR 01 2014**CHRISTOPHER D. RICH, Clerk
By KATRINA THIESSEN
DEPUTYVERNON K. SMITH
ATTORNEY AT LAW
1900 W. Main St.
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

vs.

TREASURE VALLEY SEED
COMPANY, LLC, and Don Tolmie
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC

Defendant(s).

Case No.CV OC 13-22179

RESPONSE AND OBJECTION TO
DEFENDANT'S MOTION TO DISMISS
AND MOTION TO SUBSTITUTE PARTIES
WITH VERNON K. SMITH, AS REAL
PARTY IN INTEREST.

Comes now Plaintiff herein, through counsel, Vernon K. Smith, and does herewith object to Defendant's Motion to Dismiss this action as requested in their motion. Simultaneous with the filing of this objection, Vernon K. Smith has filed a motion with the court, pursuant to Rule 17(a) and 20(a), I.R.C.P., to substitute the identity of the Plaintiff from that of Victoria H. Smith, who died September 11, 2013, to that of Vernon K. Smith, as being the Party Plaintiff as the Real Party in Interest, and preserving the right to thereafter include, should it become necessary, any filing for probate of the estate of the decedent, should it be determined that a probate of the estate is an appropriate event to occur at this time.

RESPONSE AND OBJECTION TO DEFENDANT'S MOTION TO DISMISS AND MOTION TO SUBSTITUTE
PARTIES WITH VERNON K. SMITH, AS REAL PARTY IN INTEREST.

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Vernon K. Smith, the son of the decedent, Victoria H. Smith, is the Real Party in Interest in this action and for that reason does herewith object to Defendant's Motion to Dismiss this action as their Motion was so filed with the court, on March 17, 2014.

The transaction involved in this litigation was an event that occurred in 2007, as identified in the complaint on file in this action. The agreement that was entered into came about solely by the involvement of Vernon K. Smith, and Treasure Valley Seed Company, LLC, though its agent and owner, Don Tolmie, pursuant to the representations, agreements and commitments made by said Don Tolmie, on behalf of Treasure Valley Seed Company, LLC. In 2007, Vernon K. Smith operated the farms, and he entered into the agreement in his individual capacity, and at all times vigilant of the interests of Victoria H. Smith, his mother, who owned the farms and had an interest in the proceeds derived from sale of the farm commodities generated in the activity of those farming operations. Consequently, Vernon K. Smith, acting in his own capacity, and also protecting his mother's interest, through his dual capacity as her attorney, and pursuant to his durable and irrevocable power of attorney, sought to protect the interests of Victoria H. Smith. Any and all documents concerning the 2007 transaction are signed by Vernon K. Smith; though at all times it was recognized Victoria H. Smith had an interest in the crop proceeds grown on the property in 2007, due to her ownership of the real property.

It has always been recognized that Victoria H. Smith held an interest in the lima bean sales proceeds, but in the final analysis, that would be a matter between Vernon K. Smith and his mother, Victoria H. Smith, who is now deceased, and the formation of the identity of the Party Plaintiff in the pleadings was based upon the recognition she held an interest, by virtue of the proceeds to be distributed from Treasure Valley Seed Co. LLC.

The Real Party in Interest, the Party who entered into the transaction, is only Vernon K. Smith. The interest that Victoria H. Smith would have was being recognized through the durable and irrevocable power of attorney held by Vernon K. Smith, but since he is the sole heir of her interests, that interest she held has merged to be that of Vernon K. Smith from and after her death.

As it is alleged in the complaint, Victoria H. Smith, in the year 2007, was in fact a resident of Ada County, Idaho, and Vernon K. Smith did protect her interests in 2007.

As it is identified in paragraph 2 of the complaint, Vernon K. Smith was acting as the attorney-in-fact for Victoria H. Smith, as well as pursuant to his durable and irrevocable power of attorney in 2007, thereby including all of the activities in the farming operations, including marketing, merchandising and selling the agricultural commodities. The purpose of that allegation was to include Victoria H. Smith's interest in the crop proceeds, but that interest has now become his since her death.

The relevant period of time for the creation of this subject matter transaction was 2007, at which time all parties were alive, and Victoria H. Smith interests were being represented by her son, as her attorney and pursuant to his power of attorney as referenced above.

Since Vernon K. Smith is the sole heir to inherit all interests of Victoria H. Smith, pursuant to her holographic will executed in February, 1990, Vernon K. Smith holds all interests in the subject matter in their litigation, and these pleadings may reflect him as the real Party in interest.

The complaint does properly state a claim upon which relief can be granted, as there was an agreement entered into between Vernon K. Smith and Don Tolmie, and there has been a breach of that agreement by Don Tolmie and his limited liability company, Treasure Valley Seed Company, LLC. Victoria H. Smith, who held an interest in the proceeds, having died September 11, 2013, the court may not have "jurisdiction" over the person of Victoria H. Smith, but would obtain

jurisdiction over Vernon K. Smith, as well as an estate, if one were filed, if it were deemed to be necessary. Victoria H. Smith was properly named as a Party in this action, as she held an interest in the proceeds by virtue of her agreement with Vernon K. Smith, and as a benefactor, by virtue of the agreement created with Don Tolmie. Given the death of Victoria H. Smith, and termination of the durable power of attorney upon the death of Victoria H. Smith, the Real Party in Interest is Vernon K. Smith, as he is the sole heir of her interests, which would merge all ownership, and he is the Real Party in Interest and, in all respects, it was his transaction alone with Don Tolmie that established the agreement between the parties. The necessary Party, and Real Party in Interest, under Rules 17(a) and 20(a), *I.R.C.P.* is Vernon K. Smith, and he no longer needs to sue to protect the interests of his mother, Victoria H. Smith, as he alone holds all interests in all proceeds of the crop sales referred to in the subject matter of this litigation.

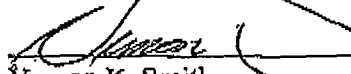
Therefore, Vernon K. Smith has requested this court to allow an amendment be made to the pleadings so as to identify him as the sole Plaintiff, acting in his own behalf, as the contract made was with him alone, and with Don Tolmie acting in behalf of his company, and Don Tolmie knew that he was dealing with Vernon K. Smith as the grower of the baby lima beans, and all discussions, conversations, representations, inducements and agreements took place between Don Tolmie and Vernon K. Smith only.

Plaintiff's counsel has moved this court to allow that amendment, pursuant to Rule 17(a) and 20(a), *I.R.C.P.*, as those Rules specifically provides for substitution of the Real Party in Interest, and that no action shall be dismissed on the grounds that it is not prosecuted in the name of the Real Party in Interest, until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the Real Party in Interest, and such

ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the Real Party in Interest from the inception.

Vernon K. Smith, by inheritance, has become the exclusive and Real Party in Interest, and there is no need to further protect the interests of his deceased mother, as he is the sole heir of all her interests and the entire transaction involved only Vernon K. Smith and Don Tolmie, and his mother had engaged no physical involvement in the event whatsoever.

Dated this 1st day of April, 2014.



Vernon K. Smith
Real Party in Interest
Attorney for the Party Plaintiff

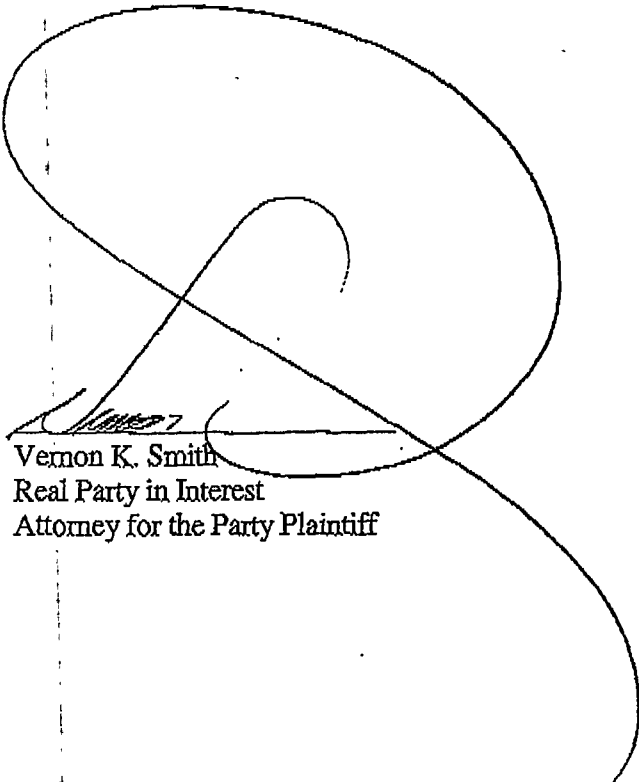
CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 1st day of April, 2014, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Clerk of the Court	()	U.S. Mail
Fourth Judicial District	(x)	Fax 287-6919
200 West Front Street	()	Hand Delivered
Boise, Idaho 83702		

Richard B. Eismann.	()	U.S. Mail
Eismann Law Office	(x)	Fax 466-4498
3016 Caldwell Blvd.	()	Hand Delivered
Nampa, Idaho 83651-6416		

Dated this 1st day of April, 2014.



Vernon K. Smith
Real Party in Interest
Attorney for the Party Plaintiff

Greenwood
Kathy
SAB
4/2/14

ORIGINAL

VERNON K. SMITH
ATTORNEY AT LAW
1900 W. Main St.
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

NO. _____
FILED P.M. 3:10
A.M. _____

APR 01 2014

CHRISTOPHER D. RICH, Clerk
By KATRINA THIESSEN
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

vs.

TREASURE VALLEY SEED
COMPANY, LLC, and Don Tolmie
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC

Defendant(s).

Case No. CV OC 13-22179

MOTION FOR JOINDER OF REAL
PARTY IN INTEREST AND
PERMISSIVE JOINDER OF PARTIES,
PURSUANT TO RULES 17(a) AND 20(a),
I.R.C.P.

Comes now counsel for the Plaintiff herein, and does move this court for entry of an order allowing amendment of the pleadings on file herein so as to allow the permissive joinder of the real and sole Party in Interest, Vernon K. Smith, pursuant to Rule 20(a), I.R.C.P., so that said Party Plaintiff may then become identified as the Real Party in Interest pursuant to Rule 17(a), I.R.C.P., by and through the substitution of Victoria H. Smith with that of Vernon K. Smith, as it was his transaction that brought about the agreement with the Defendants, the agreement that gave rise to the subject matter of this litigation, and any interests before held by Victoria H.

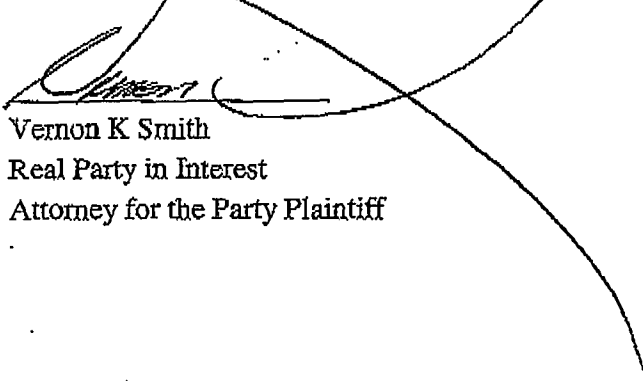
MOTION FOR JOINDER OF REAL PARTY IN INTEREST AND PERMISSIVE JOINDER OF PARTIES PURSUANT
TO RULE 17(a) AND 20(a), I.R.C.P. P. 1

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Smith in the proceeds from the sale of the baby lima beans have been merged and joined to the sole interest of Vernon K. Smith, following her demise on September 11, 2013, as Vernon K. Smith is the sole heir, by inheritance, to the interests of Victoria H. Smith. The pleadings that before identified Victoria H. Smith, as the Party Plaintiff, was counsel's historic commitments to preserve the right to the interests of his mother, Victoria H. Smith, as she also had an interest in the subject matter dispute as she owned the property where the beans were grown, and held a beneficial interest from the transactions created by Vernon K. Smith with Don Tolmie, as she held an interest in the sale's proceeds and has a right to a recovery. An estate had not been established following her demise, and because Vernon K. Smith is her sole heir, pursuant to her holographic will executed in February, 1990, there may be no need to open an estate for this case, as Vernon K. Smith is the sole owner of the cause of action identified in the pleadings. This substitution of the Party Plaintiff will resolve the objection currently raised by Defendants, as the Real Party in Interest will hereafter be identified as Vernon K. Smith, pursuant to the permissive joinder as the Real Party in Interest as he holds all claims after September 11, 2013.

Dated this 1st day April, 2014.



Vernon K Smith
Real Party in Interest
Attorney for the Party Plaintiff

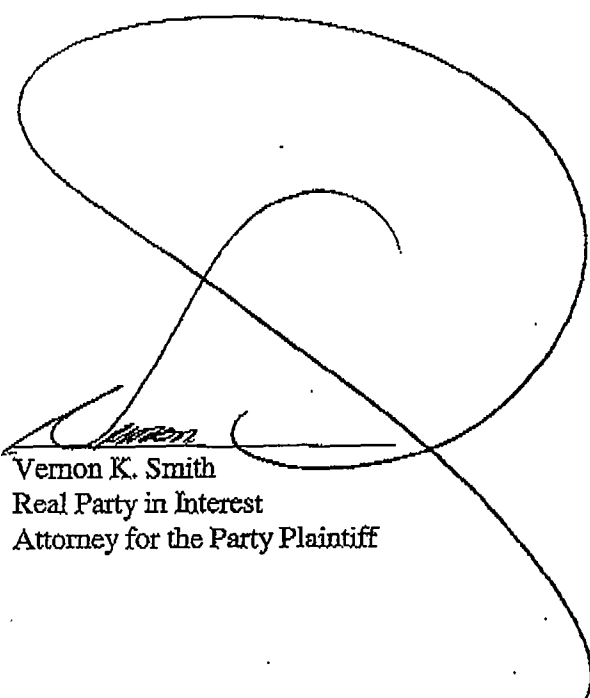
CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 1st day of April, 2014, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Clerk of the Court	()	U.S. Mail
Fourth Judicial District	(x)	Fax 287-6919
200 West Front Street	()	Hand Delivered
Boise, Idaho 83702		

Richard B. Eismann	()	U.S. Mail
Eismann Law Office	(x)	Fax 466-4498
3016 Caldwell Blvd.	()	Hand Delivered
Nampa, Idaho 83651-6416		

Dated this 1st day of April, 2014.



Vernon K. Smith
Real Party in Interest
Attorney for the Party Plaintiff

APR 04 2014

CHRISTOPHER D. RICH, Clerk
By KATHY PATARO
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through her
attorney in fact, Vernon K. Smith, by and
through his Durable and Irrevocable Power
of Attorney,

Plaintiff,

vs.

TREASURE VALLEY SEED COMPANY,
LLC, and Don Tolmie in his individual
capacity, and as an owner, representative and
authorized agent of Treasure Valley Seed
Co., LLC,

Defendant(s).

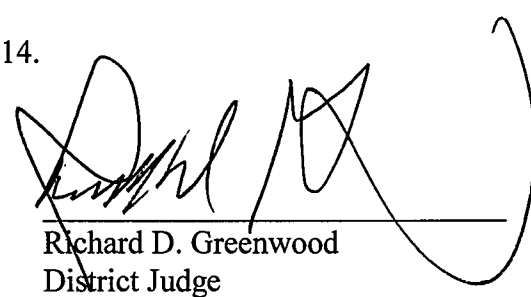
Case No. CVOC 2013-22179

JUDGMENT DISMISSING CASE

The above case is dismissed without prejudice subject to the Court's retaining
jurisdiction to rule on any timely filed request for costs and attorney fees.

IT IS SO ORDERED.

Dated this 3 day of April 2014.


Richard D. Greenwood
District Judge




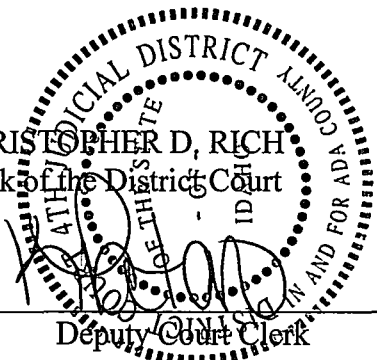
CERTIFICATE OF MAILING

I hereby certify that on this 4th day of April 2014, I mailed a true and correct copy of
the within instrument to:

Vernon K. Smith Jr.
ATTORNEY AT LAW
1900 W Main
Boise, ID 83702

Richard B. Eismann
EISMANN LAW OFFICES
3016 Caldwell Blvd
Nampa, ID 83651-6416

CHRISTOPHER D. RICH
Clerk of the District Court
By: 
Deputy Court Clerk



The seal is circular with a dotted border. The text "JUDICIAL DISTRICT ADA COUNTY IDAHO" is written around the top half, and "CLERK OF THE DISTRICT COURT" is written around the bottom half. The text "OFFICE OF THE CLERK OF THE DISTRICT COURT" is written in the center.

ORIGINAL

NO. _____
A.M. _____ FILED P.M. 4:30

APR 17 2014

CHRISTOPHER D. RICH, Clerk
By PATRICK McLAUGHLIN
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorneys for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

DEFENDANT'S MEMORANDUM OF COSTS

DEFINITIONS: When used in this memorandum of costs, the terms following shall have the meanings following:

- “defendant” refers to the defendant **Don Tolmie**, and the defendant **Treasure Valley Seed Company, LLC**.
- “plaintiff’s counsel” refers to **Vernon K. Smith**.
- “defendant’s counsel” refers to **Richard B. Eismann**.
- “these proceedings” means the matters relating to the above entitled cause in the above entitled court.

PART A: COSTS AS A MATTER OF RIGHT: **AMOUNT**

(1.) Court filing fees:

(a) Defendant’s Initial Appearance Fee \$66.00

SUB-TOTAL PART A: \$66.00

PART B: DISCRETIONARY COSTS:

(1.) No other discretionary costs are claimed:

SUB-TOTAL PART B: \$00.00

PART C: ATTORNEY'S FEES:

(1.) The defendant is the prevailing party:

(2.) Reasonable attorney's fees:

Reasonable attorney's fees as a
cost as a matter of right and as
a discretionary cost.

(3.) Such attorney's fees are claimed

on the basis set forth in Part D hereof
and are computed as set forth in the
affidavit filed herewith:

SUB-TOTAL PART C \$15,760.50

TOTAL PARTS A, B & C \$15,826.50

PART D: DEFENDANT'S REQUEST FOR COSTS AND ATTORNEY FEES.

The defendant has been required to employ an attorney to represent the defendant to defend against these proceedings filed by plaintiff's counsel against the defendant and has employed Eismann Law Offices to represent the defendant. The defendant seeks recovery of costs and attorney fees incurred by the defendant from plaintiff's counsel in these proceedings:


- (a) pursuant to IRCP 54(d)(1) **on the grounds that** the defendant is the prevailing party in these proceedings;
- (b) pursuant to Idaho Code Section 12-120 and more particularly subparagraph (3) thereof which provides that in any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, and pursuant to subparagraph (6) thereof for reasonable post judgment attorney's fees and costs incurred in attempting to collect on the judgment obtained; all **on the grounds that** the gist of these legal proceedings is the purchase and sale of goods and services.
- (c) pursuant to Idaho Code Section 12-121 and Rule 54(e)(1) **on the grounds that** these proceedings were brought and pursued frivolously, unreasonably and without foundation by plaintiff's counsel; and/or
- (d) pursuant to IRCP 11(a)(1) for sanctions against plaintiff's counsel **on the grounds that** the complaint allegations in these proceedings are not well grounded in fact, are not warranted by existing law or a good faith argument for the extension,

modification or reversal of existing law and are interposed for an improper purpose such as to harass or cause unnecessary delay or needless increase in the costs of litigation.

VERIFICATION

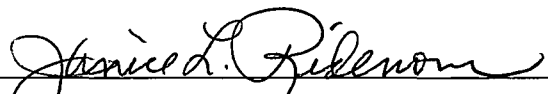
STATE OF IDAHO, County of Canyon) ss

Richard B. Eismann, being first duly sworn, on oath deposes and says: that I am counsel for the defendant in the above-entitled action, and as such I am informed relative to the costs in the above-entitled action; that to the best of my knowledge and belief the items of costs set forth above in this memorandum of costs are correct and were necessarily incurred in the above-entitled action; that the costs set forth in this memorandum of costs are billed monthly and all billings made as of the date hereof have been paid; and that the costs set forth in this memorandum of costs are in compliance with the subdivisions of Rule 54(d) of the Idaho Rules of Civil Procedure.

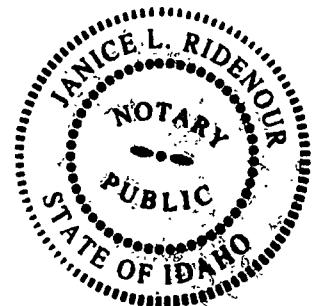


Richard B. Eismann

SIGNED AND SWORN to before me on APR 17 2014

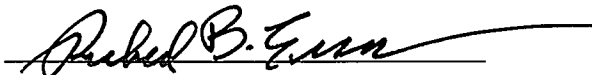


Notary Public for Idaho.
Name: Janice L. Ridenour
Residing at: Nampa, Idaho
My Commission Expires: 9/25/15



SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: APR 17 2014

SIGNED: 
Richard B. Eismann
Counsel for the Defendant

ORIGINAL

NO. _____ FILED _____
A.M. _____ P.M. 4:30

APR 17 2014

CHRISTOPHER D. RICH, Clerk
By PATRICK McLAUGHLIN
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorneys for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

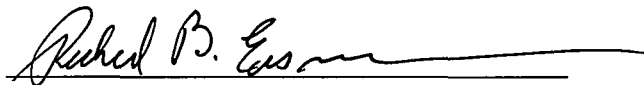
Case No. CV 0C 13-22179

**AFFIDAVIT OF RICHARD B. EISMANN
IN SUPPORT OF MEMORANDUM OF COSTS FILED BY THE DEFENDANTS**

STATE OF IDAHO, County of Canyon) ss

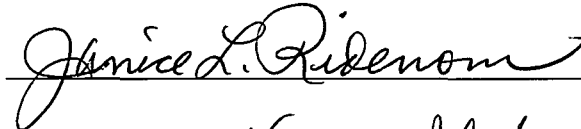
Richard B. Eismann, ("counsel" herein), being first duly sworn, on oath deposes and says:

1. Counsel was the attorney for the defendants ("client" herein) in the above-entitled legal proceedings.
2. That the matters set forth in the attached statement of counsel are true and correct to the personal knowledge of counsel.



Richard B. Eismann

SUBSCRIBED AND SWORN to before me on APR 17 2014



Notary Public for Idaho.

Residing at: Nampa, Idaho

My Commission Expires: 9/25/15



SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: Vernon K. Smith, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: APR 17 2014

SIGNED: 

Richard B. Eismann

Counsel for the Defendants

STATEMENT OF RICHARD B. EISMANN

1. **Qualification of Counsel.** The qualifications of each attorney working on this case are as follows:

--- **Richard B. Eismann: (RBE)** On November 5, 1949, Richard B. Eismann was duly admitted to practice law in all courts of the State of Idaho and has at all times since such date actively engaged in the practice of law within the State of Idaho.

--- During the years Attorney Eismann has practiced, Attorney Eismann has been admitted to practice and has practiced before all of the state courts of Idaho, the United States District Court, the United States Ninth Circuit Court of Appeals, the United States Claims Court and the United States Tax Court.

--- During the years Attorney Eismann has practiced, Attorney Eismann has been a member of the Idaho State Bar Association, the American Bar Association, the Association of Trial Lawyers of America, the Phi Alpha Delta Law Fraternity and the American Judicature Society.

--- **Debra L. Eismann: (DLE)** On September 20, 1990, Debra L. Eismann was duly admitted to practice law in all courts of the State of Idaho and has at all times since such date actively engaged in the practice of law within the State of Idaho.

--- **Ryan Martinat: (RM)** On September 29, 2011, Ryan Martinat was duly admitted to practice law in all courts of the State of Idaho and has at all time since such date actively engaged in the practice of law within the State of Idaho. Ryan was also admitted to the United States District and Bankruptcy Court for the district of Idaho. Ryan was employed by Eismann Law Offices for more than six years while he attended Boise State University and the University of Idaho School of Law during which time he performed various kinds of law related work and legal research.

2. **Qualification of Each Staff Member.** The term “staff member” means a person who is employed by Eismann Law Offices to assist counsel in representing the client in these legal

proceedings. The qualifications and experience of each staff member performing services in these legal proceedings is as follows:

- Geraldine Eismann: (GE) - legal assistant and senior staff member, is the wife of Richard B. Eismann and has worked in Eismann Law Offices part time for 12 years and full time for the last 35 years.
- Janice Ridenour: (JR) - legal assistant and senior staff member, has been employed in law offices for more than 40 years and has been employed by Eismann Law Offices for more than 34 years.
- Jerri Clark: (JC) - legal assistant and senior staff member, has been employed in law offices for more than 26 years and has been employed by Eismann Law Offices for more than 25 years.
- Edna Wells: (EW) - senior staff member, has been employed by the Eismann Law Offices for more than 5 years.
- Shantra Hannibal: (SH) – junior staff member, was employed by Eismann Law Offices in May of 2012. She has wide experiences and responsibilities in her 8 years of prior employment.
- Alyssa Fiscus: (AF) - junior staff member has been employed by Eismann Law Offices since February 2014. She has 6 years previous experience in office work and customer service with 2 ½ years of higher education.

It is my opinion that each staff member whose time is charged for work on this case is qualified as a paralegal for that work by that staff member as that term is used in I.R.C.P. 54(e)(1). While employed at Eismann Law Offices, these qualifications include, but are not limited to, the following: (a) the years of experience and training stated above while working at Eismann Law Offices and working at other law offices before working at Eismann Law Offices; (b) being responsible for and managing the litigation case files assigned to that staff member and the scheduling required in those cases; (c) having substantial legal research capabilities, and doing

legal research as needed; (d) preparing legal instruments of all kinds relating to litigation such as pleadings, motions and responses to motions, orders, initiating and responding to discovery and preparing pretrial and post trial memorandums; (e) capably handling written and verbal communications with clients, witnesses, other attorneys and court personnel; (f) capably handling case investigations and witness interviews as necessary in preparation for trials as well as being responsible for extensive trial preparation and organization; and (g) preparing other legal instruments such as contracts, leases, assignments, promissory notes, mortgages, deeds of trust, wills and trusts.

3. **Staff Utilized in These Legal Proceedings.** Counsel utilized the staff members in the legal representation provided to the client in these legal proceedings. Counsel assigns the tasks to be accomplished by each staff member, consults and directs such staff member during the course of the work being done on the task so assigned, reviews the progress made on such task and makes the final decisions on the conclusions reached and application of each task so assigned.

4. **Rule 54(e)(3). Factors on the Amount of Attorney's Fees.** The factors relating to the determination of an award of attorney's fees in these legal proceedings are as follows:

(A) **(The time and labor required.)**

(1) The time of counsel required and devoted to the representation of the client in these legal proceedings and the time of the staff members employed by counsel required and devoted to the representation of the client in these legal proceedings to and including the service of the memorandum of costs are set forth in **Exhibit A**.

(B) **(The novelty and difficulty of the questions.)**

(1) The questions involved in these legal proceedings were novel or difficult in that the question of whether there was or was not an enforceable contract entered into under the Uniform Commercial Code and in that whether an action can be filed after the plaintiff died.

(C) (The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.)

(1) The skill requisite to perform the legal services and the experience and ability of counsel in this particular field of law are not significant factors. Counsel's knowledge and experience in growing, harvesting and marketing of crops and particularly bean crops was helpful.

(D) (The prevailing charges for like work.)

(1) The usual and customary charge made by each attorney at Eismann Law Offices for legal services in actions of this kind is as follows:

<u>Attorney</u>	<u>Hourly Charge</u>
Richard B. Eismann	\$230.00
Debra L. Eismann	\$230.00
Ryan Martinat	\$160.00

So far as is known to counsel, the prevailing charges made by other law offices for like work are similar to the charges made by this office in the 3rd Judicial District but the prevailing charges for like work are higher in the 4th Judicial District.

(2) The usual and customary charge made for services of each staff member are as follows:

<u>Staff Member</u>	<u>Hourly Charge</u>
Geri	\$ 50.00
Jan	\$ 50.00
Jerri	\$ 50.00
Shantra	\$ 50.00
Edna	\$ 32.00
Alyssa	\$ 25.00

(E) (Whether the fee is fixed or contingent.)

(1) The fees are fixed by a written contract at the rates set forth in (D) above.

(F) (The time limitations imposed by the client or the circumstances of the case.)

(1) There were no time limitations imposed by the client or applicable under the circumstances of these proceedings except that the client has had to deal with the claims made by the plaintiff since 2007 and has done what can be done to expedite this case towards a final judgment.

(G) (The amount involved and the results obtained.)

(1) The amounts involved are not of particular importance. The results obtained were that the client prevailed.

(H) (The undesirability of the case.)

(1) There were not significant undesirability aspects in these legal proceedings.

(I) (The nature and length of the professional relationship with the client.)

(1) Counsel has represented this client for more than the last five years.

(J) (Awards in similar cases.)

(1) Awards in similar cases are not known. Counsel has not previously handled a case which was filed by a plaintiff after the plaintiff's death.

(K) (The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.)

(1) RM spent 1 hour on automated legal research in this case, and charges were made for that time. No charge was made for the charges of the legal research provider such as Westlaw, etc.

(L) (Any other factor which the court deems appropriate in the particular case.)

(1) Attorney Smith informed the Court at the hearings in this case of the following:

(a) Upon a question by the Court, that Victoria H. Smith was his mother and that Victoria H. Smith passed away on September 11, 2013.

(b) That he had made the decision to file this action in his mother's name as plaintiff after his mother's death and did file the complaint on December 13, 2013.

(c) That he was the sole heir and devisee to all of his mother's interests under his mother's will.

(d) That he has not chosen yet to do a probate of his mother's estate.

(e) That he is in fact the real party in interest.

(2) Had Attorney Smith included an allegation in the plaintiff's complaint that his mother died on September 11, 2013, it would have been truthful and it would have been obvious:

(a) That his irrevocable durable power of attorney terminated as a matter of law on September 11, 2013.

(b) That Victoria H. Smith could not be the plaintiff in the complaint Attorney Smith filed on December 13, 2013.

(c) That Victoria H. Smith was survived by her children Vernon K. Smith II, Joseph Haverl Smith and Vicky Anne Converse.

(d) That Attorney Smith may be avoiding probate of his mother's estate because as her sole beneficiary his inheritance could be levied upon under judgments against him including the judgment in Ada County Case No. CV-DR-1990-12684 where Sharon Kay Smith appears as plaintiff and Attorney Smith appears as defendant, entered on April 8, 2002, and regularly renewed to and including the last renewal filed on January 14, 2014.

(3) Had Attorney Smith included an allegation in the plaintiff's complaint that his mother died on September 11, 2013, then the defendants would have immediately,

(a) Filed a motion to dismiss under Rule 12(b)(6).

(b) Upon the hearing, this case would have been dismissed.

(c) The defendants' costs including attorney's fees incurred in this case would have been substantially reduced.

5. **Time Expended by Counsel and Staff.** The time of each counsel and of each staff member employed by counsel required in and devoted to the representation of the client in these legal proceedings are set forth in **Exhibit A** which is attached hereto.

6. **Total Reasonable Attorney's Fees to and Including the Service of the Memorandum of Costs.** It is the opinion of counsel that the reasonable charges for counsel's services and for staff members' services to the client in these legal proceedings to and including the preparation and service of the memorandum of costs is the sum of \$15,826.50.

7. **Total Estimated Time and Charges Required if Objections to Memorandum of Costs Filed.** If the adverse party files objections to the memorandum of costs, counsel estimates the time required of counsel to review and research such objections, prepare for, attend the hearing on and prepare the court's order on such objections of the adverse party to this memorandum of costs will be as follows:

(A)	RBE Attorney's time = 3 hours at \$230.00 per hour	\$ 690.00
(B)	JR Staff time = 2 hours at \$50.00 per hour	\$ 100.00
	Total Preparation and Hearing Time Charges	\$ <u>790.00</u>

EXHIBIT A
TO
AFFIDAVIT OF RICHARD B. EISMANN IN SUPPORT OF
MEMORANDUM OF COSTS FILED BY THE DEFENDANTS

<u>PROFESSIONAL SERVICES RENDERED</u>		<u>HRS/RATE</u>	<u>AMT</u>
1/6/2014	- Reviewing email from clt re: attaching Smith complaint. Reviewing & analyzing complaint.(1.5) Reviewing email from clt re: recalculated to update to current amount due by Smith.(0.2)	RBE 1.7 230.00/hr	391.00
	- Preparing email to clt - Jim Stein re: will respond to email by 1-10-14.	JR 0.1 50.00/hr	5.00
1/10/2014	- Phone from clt re: records.(0.1) Phone from clt - Don Tolmie re: records.(0.2) Reviewing email from Cheri Franko - records and documents relating to case.(0.1) Receiving & evaluating clts - Smith transaction documents. Reviewing & evaluating our files on same.(1.3)	RBE 1.7 230.00/hr	391.00
	- Access Internet to check repository docket for filings - print same.(0.2) Copying statutes re: venue.(0.2) Programming court title.(0.1) Preparing pleading index.(0.1) Opening box for file.(0.2)(0.8 SS)	JR 0.0 50.00/hr	N/C
1/10/2014	- Preparing letter to clt re: issues and fee agreement. Copy was emailed to clt.(0.5) Receiving and copying email from Treasure Valley Seed to RBE.(0.3)	SH 0.8 50.00/hr	40.00
1/13/2014	- Work on answer for Don.	RBE 0.5 230.00/hr	115.00
	- Preparing email to clt re: RBE will review and email Cheri with any questions.(0.1) Copying emails with client.(0.2) Organizing and copying all correspondence.(0.4)	SH 0.7 50.00/hr	35.00
1/15/2014	- Reviewing & evaluating company records from 12-26-08 thru 7-10-09.	RBE 2.5 230.00/hr	575.00
1/16/2014	- Phone to clt re: Don on 1st sequence of communications.(0.2) Drafting email to clt re: Don to review communications, etc.(0.3) Reviewing & evaluating correspondence between Victoria Smith and Attorney Eismann in 2007, 2008 and 2009.(0.5) Drafting email to clt Jim re: there may be insurance coverage.(0.2)	RBE 1.2 230.00/hr	276.00

<u>PROFESSIONAL SERVICES RENDERED</u>		<u>HRS/RATE</u>	<u>AMT</u>
	- Reviewing client's file from 2008 - correspondence; copying correspondence between Vernon Smith and RBE.(0.6) Preparing email to clt re: contact liability insurance to see if they will provide defense.(0.3) Work on correspondence, email with RBE.(0.4) Transfer computer files done in 2014 to new folder.(0.2) Preparing subfile index and index of notebooks. Opening subfiles - pending, index, proof of service, original correspondence from 2008 file.(0.5) Locate memo agree and transcript of phone message.(0.2) Reviewing and copying correspondence between memo agree of 12-15-08 and transcript of phone message of 1-21-09.(0.4) Side punch and assemble original correspondence.(0.2) Opening subfile - client material.(0.1) Organizing client's file.(0.1)	JR 3.0 50.00/hr	150.00
1/17/2014	- Scanning letters, etc. from 2008 and 2009 to attach to email.(0.2) Preparing email to Don Tolmie. Copy was emailed to clt Jim Stein with 12-15-08 memo and letters thru 1-21-09 phone message for review and comment.(0.2)	JR 0.4 50.00/hr	20.00
1/19/2014	- Researching statute of frauds and statute of limitation.	RBE 1.5 230.00/hr	345.00
1/21/2014	- Reviewing email from Don Tolmie - thoughts on letter from Smith dated 1-12-09.(0.3) Phone to Don Tolmie re: same.(0.1) Drafted and instructed staff on & reviewed today's staff work done by JR.(3.2)	RBE 3.6 230.00/hr	828.00
	- Work on attorney fees provision for motion.(0.5) Work on answer - Don's.(0.9) Work on motion to change venue under Rule 40(e).(1.1) Preparing declaration by Stein.(0.4) Preparing declaration by Tolmie.(0.4) Work on affirmative defenses.(0.4) Work on answer - Treasure Valley's.(0.5) Researching and copying lien statuses.(0.5) Work on provision re: 2007 lima bean crop.(0.3)	JR 5.0 50.00/hr	250.00
1/23/2014	- Phone from Don Tolmie.(0.1) Reviewing fax from Don Tolmie re: 1st declaration of Don Tolmie.(0.1) Drafting fax to & instructed staff on & reviewed today's staff work done by JR.(2.7)	RBE 2.9 230.00/hr	667.00
	- Work continuing on & finished on answer - Don's.(0.3) Work continuing on provision re: 2007 lima bean crop.(0.2) Researching re: attorney's fee and re: warehouses.(0.8) Work continuing on & finished on motion to change venue under Rule 40(e).(0.4) Work continuing on & finished on declaration by James L. Stein.(0.2) Work continuing on & finished on declaration by Don Tolmie.(0.2) Preparing email to Jim Stein with attachments and requesting he sign and fax declaration back.(0.2) Preparing email to Don Tolmie with attachments and requesting he sign and fax declaration back.(0.2) Work continuing on answer by Treasure Valley.(0.4) Preparing statement of account.(0.7) Revising attorney's fees provision for Treasure Valley.(0.2) Work on counterclaims.(1.0)	JR 4.8 50.00/hr	240.00

<u>PROFESSIONAL SERVICES RENDERED</u>		<u>HRS/RATE</u>	<u>AMT</u>
1/24/2014	- Reviewing email from Jim Stein re: item #6 - take out the word "treating".(0.1) Reviewing email from Don Tolmie - signed declaration of Don Tolmie.(0.1) Drafting continuing on seed company answer and counterclaim.(3.7)	RBE 3.9 230.00/hr	897.00
	- Reviewing email from Jim Stein re: declaration.(0.1) Revising declaration by Jim Stein.(0.1) Revising declaration by Don Tolmie.(0.1) Preparing email to Jim Stein with revised declarations.(0.1) Preparing email to Don Tolmie with revised declarations.(0.1) Work continuing answer and counterclaims.(3.8) Revising statement of account.(0.2)	JR 4.5 50.00/hr	225.00
	- Programming correspondence summary.(1.1) Programming notice of appearance and check for \$66.00.(0.4)	SH 1.5 50.00/hr	75.00
1/27/2014	- Draft of Don Tolmie re: phone message with Mr. Smith and FDA letter to David Durrant.(0.2) Reviewing email from Jim Stein - he faxed declaration on 1-24-14.(N/C) Reviewing fax from Jim Stein - signed first declaration.(0.1) Working with staff on today's staff work done by JR.(2.5) Review continued & finished on answer and counterclaim.(1.3) Reviewing Don's answer.(0.6)	RBE 4.7 230.00/hr	1,081.00
	- Research on implied in law and implied in fact contracts and statutes of limitation on both.	RM 1.0 160.00/hr	160.00
	- Work on email to Don Tolmie - draft re: telephone call message by Vern Smith. Reviewing clt's files to verify date of message; listen to tape located; sending.(0.9) Work continuing on answer and counterclaims.(2.8) Work on provision re: oral agreement claimed by Smith.(0.6) Preparing email to clt re: Don's answer.(0.1) Preparing email to clt re: clt's motion to change venue under Rule 40(e) and declarations.(0.1) Preparing email to clt re: answer and counterclaims - draft.(0.2) Programming letter to court staff re: Don's answer.(0.2) Programming letter to court staff re: clt's motion.(0.2) Preparing faxes to adv atty to serve same.(0.2) Copying and marking exhibits.(0.9)	JR 6.2 50.00/hr	310.00
1/28/2014	- Phone from Don Tolmie re: date of service.(0.1) Reviewing email from Jim Stein - thanks.(N/C) Phone from Mike Ridgeway re: service date of 1-2-14.(0.2) Reviewing email from Don Tolmie - recap of time and date of service.(0.2) Phone from Don Tolmie re: date of service.(0.1) Reviewing fax from Don Tolmie - answer to complaint with counterclaim and demand for jury trial. Reviewing email from Don Tolmie - looks good to him.(0.2) Finalizing today's staff work by JR.(0.9) Receiving & reviewing Smith's filing for default - summons served on Don on 1-2-14 not 1-6-14.(0.2) Researching Law & facts default.(2.0)	RBE 3.9 230.00/hr	897.00
	- Research on entry of default.(0.6) Research on parties required to be served.(0.4)	RM 1.0 160.00/hr	160.00

<u>PROFESSIONAL SERVICES RENDERED</u>		<u>HRS/RATE</u>	<u>AMT</u>
	- Preparing fax covers - final form to adv atty.(0.1) Preparing answer - Don's - final form.(0.1) Preparing letters to court staff - final form to file answer - Don's and clt's motion to change venue under Rule 40(e).(0.1) Access Internet repository to verify filing of notice of appearance.(0.1) Conference with RBE re: adv prt's motion for default.(0.1) Copying and assembling answer - Don's - clt's motion to change venue under Rule 40(e), and declarations; serve adv atty.(0.5) Oversee signing of and notarizing verification by Don; copying and assembling answer and counterclaim and exhibits.(0.4) Prepared staff memo re: service on Don per Don's recollection.(0.1) Scanning faxes to adv atty and preparing email to clt attaching same.(0.2) Phone from adv atty's office - missing pages on motion.(0.1) Preparing fax to adv atty re: motion - refax per call.(0.1) Prepared staff memo on the same.(0.1) Access Internet - Secretary of State - registered agent for clt and SVM Seed.(0.2) Preparing email to clt re: default - date of service and registered agent.(0.6)	JR 2.8 50.00/hr	140.00
1/28/2014	- Travel time to/from Boise. Filing answers and declarations, motion for change of venue. Hand delivery to Vernan K. Smith's office.	GE 2.0 50.00/hr	N/C
1/29/2014	- Reviewing email from Jim Stein re; statutory agents. Replied to this by email.(0.2) Reviewing email from Jim Stein re: registered agent being a person. Replied to this by email.(0.3) Work continuing on & finished on today's staff work JR.(0.8) Drafting continuing on & finishing on - the 1st set of - our admission requests to adverse party.(1.3)	RBE 2.6 230.00/hr	598.00
	- Copying exhibits to answer and counterclaim for our admission requests to adverse party.(0.1) Access Internet - Case Maker - researching statutes on statutory agents.(0.4) Preparing email to clt re: requirements for statutory agents.(0.7) Faxing notice of service to the court of our admission requests to adverse party.(0.1) Faxing to adv atty our admission requests to adverse party.(0.1) Save scanned discovery into client folder.(0.1) Scanning and save filed answer and counterclaim.(0.1) Preparing email to clts (Jim and Don) with filed answer and counterclaim, notice of service to the court of our admission requests to adverse party, and our admission requests to adverse party.(0.2) Organizing and copying and assembling correspondence with clt for notebook.(1.2) Preparing email to clt Jim - question on using person as registered agent.(0.1)	JR 3.1 50.00/hr	155.00
	- Programming admission number 1.(1.4) Programming first request for admissions.(0.6) Programming notice of service for 1st request for admissions.(0.3)	SH 2.3 50.00/hr	115.00
1/30/2014	- Reviewing email from Jim Stein - ok to use Don Tolmie as registered agent.(0.1) Instructed staff on & reviewed today's staff work done by JR.(0.8)	RBE 0.9 230.00/hr	207.00

<u>PROFESSIONAL SERVICES RENDERED</u>		<u>HRS/RATE</u>	<u>AMT</u>
	- Work continuing on & finished on update of communications notebook; re-label the same.(0.5) Work continuing on & finished on update of pleadings for notebook.(0.6) Revising index to pleadings.(0.2) Opening subfiles - account information; adv prt's mtion for default; clt's motion to change venue under Rule 40(e) and on our admission requests to adverse party; preparing indexes. Organizing the same.(1.3) Preparing change of registered agent - TVS.(0.2) Preparing email to clt (Jim) on the same.(0.2) Preparing change of registered agent - SVM.(0.2) Revising and sending email with forms.(0.2) Opening notebook discovery - defendant to plaintiff.(0.2)	JR 3.6 50.00/hr	180.00
1/31/2014	- Instructed staff on today's staff work - SH for researching.	RBE 0.4 230.00/hr	92.00
	- Preparing fax to adv atty re: available dates. Scanning the same.(0.2) Copy was emailed to clts (Jim and Don).(0.1) Access Internet - case docket - no new filings.(0.2) Opening notebook - legal research.(0.1) Scanning exhibit 302, save into clt's folder.(0.1) Preparing email to clt (Don) re: intent of exhibit 302.(0.1)	JR 0.8 50.00/hr	40.00
	- Programming Idaho Reports - brief points.	SH 0.5 50.00/hr	25.00
2/3/2014	- Researching law & facts re: existence of contract. Work on our admission requests to adverse party.	RBE 1.4 230.00/hr	322.00
	- Programming brief points from Idaho Reports.	SH 1.7	N/C
2/4/2014	- Exchange e-mails with Don on 12-15-08 offer.(0.3) Work continuing on our admission requests to adverse party.(0.7) Researched law & facts.(0.6)	RBE 1.6 230.00/hr	368.00
	- Preparing email to clt (Don) re: 12-15-08 grower purchase/sale form. Copy was emailed to clt (Jim).(0.2) Work on our admission requests to adverse party.(0.4)	JR 0.6	N/C
	- Programming brief points - Idaho Reports.	SH 1.1	N/C
2/5/2014	- Work on - the 2nd set of - our admission requests to adverse party.	RBE 1.4 230.00/hr	322.00
	- Programming continuing on Idaho Reports brief points.(0.7) Programming continuing & finished on 2nd request for admissions.(0.7) Programming continuing & finished on notice of service for 2nd request for admissions.(0.4) Copying and preparing fax to court with notice and 2nd request.(0.3) Copying and preparing fax to adv prt with notice and 2nd request.(0.3) Scanning and copying and filing same. Copy was emailed to clt.(0.3)	SH 2.7 50.00/hr	135.00

<u>PROFESSIONAL SERVICES RENDERED</u>		<u>HRS/RATE</u>	<u>AMT</u>
2/6/2014	- Scheduling reminder deadlines for their admission responses to us.(0.1) Copying correspondence for notebook.(0.1) Opening subfile - the 2nd set of - our admission requests to adverse party.(0.1) Phone from Vicki from adv atty on dates available for motion hearing on clt's motion.(0.1)	JR 0.4 50.00/hr	20.00
2/7/2014	- Access Internet - Ada County website - judicial directory for Judge Greenwood.(0.1) Phone to court clerk & left word for return call re: motion hearing on clt's motion to change venue under Rule 40(e).(0.1)	JR 0.2 50.00/hr	10.00
2/7/2014	- Programming summary of adv atty's 2008 letter to Tolmie	SH 0.8 50.00/hr	40.00
2/10/2014	- Phone from court clerk motion hearing on clt's motion to change venue under Rule 40(e).(0.1) Phone to adv atty's staff - confirm motion hearing on clt's motion.(0.1) Preparing notice of hearing.(0.1)	JR 0.3 50.00/hr	15.00
2/11/2014	- Reviewing letter from court and scheduling conference, motion practice and planning.	RBE 0.4 230.00/hr	92.00
	- Preparing fax to adv atty re: serving notice of hearing.(0.1) Calendaring motion hearing on clt's motion to change venue under Rule 40(e).(0.1) Scanning notice of hearing. Preparing email to clts (Jim and Don) with notice of hearing and re: strategy for early disposition.(0.4) Preparing letter to court to file notice of hearing.(0.2) Scheduling reminder for conformed copy.(0.1) Revising subfile index.(0.1)	JR 1.0 50.00/hr	50.00
2/12/2014	- Copying and side punch - work copies of scheduling order and stipulation.(0.1) Preparing email to clt attaching order and default instruments.(0.1) Reviewing order.(0.2) Copying clt's motion to change venue under Rule 40(e) declarations and notice of hearing - Judge's copies.(0.2) Preparing letter to court for Judge Greenwood enclosing copies per order.(0.3) Copy was emailed to clt.(0.1) Filing same.(0.1)	JR 1.1 50.00/hr	55.00
2/18/2014	- Programming on analysis of Smith letter.	SH 0.3 50.00/hr	15.00
2/28/2014	- Access Internet - Ada County courts - Daily Civil calendar to conform 3-3-14 telephone conference. Preparing confirmation report.	JR 0.1 50.00/hr	5.00
3/3/2014	- Preparing for court status conference.(0.3) Phone from adv atty re: placing conference call.(0.1) Phone conf call with Judge and Attorney Smith.(0.2) Examined & analyzed Smith's January 2013 letter.(0.4)	RBE 1.0 230.00/hr	230.00
	- Copying letter from Smith to RBE.(0.1) Calendaring status conference; vacate motion to withdraw clt's motion to change venue under Rule 40(e).(0.2)	JR 0.3 50.00/hr	15.00

<u>PROFESSIONAL SERVICES RENDERED</u>		<u>HRS/RATE</u>	<u>AMT</u>
3/4/2014	- Received & analyzed fax from adv atty re: response to 1st and 2nd requests for admission.(0.7) Email to clt re: status report on status conference.(0.2)	RBE 0.9 230.00/hr	207.00
	- Preparing email to clts (Jim Stein and Don Tolmie) re: status conference.(0.2) Entered in CES for response from clt.(0.1) Access Internet - court docket for any notices for service on admission answers.(0.1) Phone from adv atty secretary re: our admission requests to adverse party.(0.1) Preparing email to adv atty re: our admission requests to adverse party in WORD format.(0.1)	JR 0.6 50.00/hr	30.00
3/5/2014	- Email from clt re: response to status conference.	RBE 0.1 230.00/hr	23.00
	- Preparing fax to adv atty re: their admission responses to us.(0.7) Copy was emailed to clt.(0.1) Entered in CES.(0.1) Organizing client's file. Revising discovery index.(0.3)	JR 1.2 50.00/hr	60.00
3/11/2014	- Email from Jim Stein re: recovering fees/disposing of inventory.	RBE 0.0 230.00/hr	N/C
3/11/2014	- Preparing email to clts (Jim and Don) re: questions on Finality; holding inventory and for memo of costs & atty fees under Rule 54(d)(5).	JR 0.3 50.00/hr	15.00
3/14/2014	- Researching and drafting clt's motion to dismiss. Work on clt's motion to dismiss.	RBE 4.5 230.00/hr	1,035.00
	- Copying email re: motion to dismiss.(0.1) Access Internet - search for probate of Victoria H. Smith.(0.3) Phone to court clerk for filing of probate.(0.1) Working on clt's motion to dismiss.(0.9)	JR 1.4 50.00/hr	70.00
3/17/2014	- Working on letters to court staff, judge and adv atty - final form.(0.1) Preparing fax covers to court staff and adv atty.(0.1) Scanning letter to judge. Preparing email to judge attaching letter, clt's motion and legal memorandum.(0.2)	JR 0.4 50.00/hr	20.00
	- Reviewing & revising clt's motion to dismiss. Programming on memorandum supporting clt's motion to dismiss. Programming on notes/Idaho Codes & Rules.(1.8) Proofread same.(0.5) Preparation continuing on & finished on clt's motion to dismiss.(0.4) Programming on misc. provision.(0.1) Work on memorandum supporting clt's motion to dismiss.(0.7)	AF 3.5 25.00/hr	N/C
3/18/2014	- Email from clt re: motion and memorandum.	RBE 0.1 230.00/hr	23.00
	- Preparing email to clts Jim & Don - attached copies of clt's motion, letter to court, letter to adv atty and letter to Judge Greenwood that were sent yesterday.	AF 0.2 25.00/hr	N/C
4/1/2014	- Received & analyzed fax from adv atty re: response and objection to motion to dismiss, motion to substitute parties and motion for joinder of parties of interest.	RBE 0.4 230.00/hr	92.00

<u>PROFESSIONAL SERVICES RENDERED</u>		<u>HRS/RATE</u>	<u>AMT</u>
	- Access Internet - repository to confirm hearing.(0.1) Phone to court & left word for return call hearing.(0.1) Copying work copies clt's motion and legal memorandum.(0.1) Access Internet - repository to check for probate.(0.2) Copying obituary of Victoria H. Smith.(0.1) Copying opposing adv prt's motion/objection to clt's motion. Opening subfile the same. Filing in notebook.(0.4) Phone to court & left word for return call hearing.(2nd)(0.1) Copying rules cited in opposing adv prt's motion/objection to clt's motion.(0.3) Organizing motion/pleading notebook.(0.1) Email to clt re: opposing adv prt's motion/objection to clt's motion.(0.1)	JR 1.6 50.00/hr	80.00
4/2/2014	- Reviewing clt's file to prep for hearing on motion to dismiss.	RBE 1.5 230.00/hr	345.00
	- Travel time to/from Boise. Attending hearing on status conference – motion to dismiss.	RBE 2.0 230.00/hr	460.00
	- Access Internet - Ada County court calendar for courtroom number for hearing.(0.1) Copying complaint, answers, and exhibits.(0.2) Locate and print clt's analysis of adv prt's letter of 12-26-08.(0.1)	JR 0.4 50.00/hr	20.00
4/3/2014	- Drafting email to clt re: Smith case dismissed.	RBE 0.1 230.00/hr	23.00
	- Email to clts (Jim and Don) re: hearing results.	JR 0.3 50.00/hr	15.00
4/3/2014	- Email from Don Tolmie - Smith's lawsuit dropped.	RBE 0.0 230.00/hr	N/C
4/8/2014	- Email from Jim Stein - "interesting".	RBE 0.0 230.00/hr	N/C
	- Instructed staff on today's staff work done by AF.	RBE 0.2 230.00/hr	46.00
	- Drafting email to Atty Swafford for judgment, etc.	RBE 0.2 230.00/hr	46.00
	- Access Internet - locate address and fax number for Attorney Ronald Swafford.(0.1) Fax to Attorney Swafford requesting copies of judgments and order re: Vernon Smith Divorce.(0.3) Scanning letter. Copy emailed to clts (Jim & Don).(0.2)	JR 0.6 50.00/hr	30.00
	- for mail to court - copy of CD from hearing.(0.3) Preparing same for mailing.(0.1) Opening subfile - memorandum of costs.(0.3) Programming on memorandum of costs.(0.6)	AF 1.3 25.00/hr	32.50
4/9/2014	- Copying correspondence for notebook.(0.1) Opening notebook case search re: Vernon K. Smith.(0.1)	JR 0.2 50.00/hr	10.00
4/10/2014	- Received & examined judgment.	RBE 0.2 230.00/hr	46.00

<u>PROFESSIONAL SERVICES RENDERED</u>		<u>HRS/RATE</u>	<u>AMT</u>
-	Email to clts Don & Jim re: copy of judgment.	AF 0.2 25.00/hr	5.00
4/11/2014	- Preparing email to clts (Jim and Don) re: questions on finality; holding inventory and for memo of costs & atty fees under Rule 54(d)(5).	JR 0.3 50.00/hr	15.00
4/16/2014	- Drafting, organizing and verifying the client's account.(1.8) Drafting the counselor's affidavit.(1.5) Drafting the defendant's memorandum of cost.(1.7)	RBE 5.0 230.00/hr	1,150.00
-	Preparing the affidavit of counsel.(0.9) Preparing memorandum of costs.(1.2)	RBE 2.1 230.00/hr	483.00
SUBTOTAL			15,760.50
<u>Additional Charges:</u>			
1/24/2014	- Check #20498 Court Clerk - filing fee – first appearance		66.00
<u>TOTAL</u>			<u>15,826.50</u>

NO. 876 FILED 5-
A.M. P.M.

APR 30 2014

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

vs.

TREASURE VALLEY SEED
COMPANY, LLC, and Don Tolmie
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC

Defendant(s).

Case No. CV OC 13-22179

RESPONSE AND OBJECTION
TO DEFENDANTS' REQUEST
FOR ATTORNEY FEES

COMES NOW the Plaintiff above named, through counsel, Vernon K. Smith, and appearing herein as the real party in interest, as previously having informed the court, and does herewith respond to and object to the request for attorney fees by the Defendants in this action, as requested by the motion, affidavit and memorandum submitted by Defendants, pursuant to the court's dismissal of the above action.

This court has found that it did not have jurisdiction over the subject matter, and the party identified as the plaintiff in the Complaint, Victoria H. Smith, had

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become deceased, and as such, is no longer the real party in interest, and the court therefore had no subject matter jurisdiction, or *in personam* jurisdiction to proceed further with the case.

By virtue of the court's decision, there has been no disposition upon the merits of this dispute, and therefore there has been no prevailing party action upon the merits of the claim advanced by Plaintiff, and as thought to be advanced by the real party in interest.

In the absence of a prevailing party as to the merits of the dispute, there is no basis for defendants to seek attorney fees under Rule 54, *I. R. C. P.*, as there is no claim to attorney fees as a matter of right, as there has been no prevailing party from which the court can make a determination on that issue.

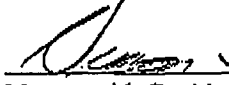
As the matter currently stands, the Defendant, Treasure Valley Seed Company, LLC and its owner – agent, Don Tolmie, have thus far been successful in appropriating and converting the ownership right of these baby lima beans of a value identified in the Complaint. It would serve only to add insult to injury for this court to allow Defendants to now seek attorney fees upon the court's determination it did not have subject matter or *in personam* jurisdiction to hear the dispute, when they have already taken possession of an entire year's crop of beans and have chosen to withhold payment thereon for what is believed to be there deceptive practices in their commercial business ventures.

If the Smith family is unable to secure relief for this conduct through the judicial system, they will be left with the remaining option to seek administrative relief to both the Idaho Bean Commission and recovery upon the warehouseman bond filed by Treasure Valley Seed Company, LLC with the State of Idaho,

designed and implemented to provide a form of redress to agricultural produce growers who have surrendered possession of their product, and not received payment thereon.

It would be unfair, inappropriate and unjust for this court to award Defendants any attorney fees, as they could never be a prevailing party upon the merits of this action, and the request should be denied entirely at this stage of the proceedings.

Dated this 30th day of April, 2014.



Vernon K. Smith
Attorney for Plaintiff and real party
in interest

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the this 30th day of April, 2014, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Clerk of the Court
Fourth Judicial District
Ada County
200 West Front Street
Boise, Idaho 83702



() U.S. Mail
(x) Fax 287-6919
() Hand Delivered

Dated this 30th day of April, 2014.

Vernon K. Smith
Attorney for Plaintiff and real
party in interest

JUN 23 2014

CHRISTOPHER D. RICH, Clerk
By PATRICK McLAUGHLIN
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

NOTICE OF HEARING ON DEFENDANT'S
MEMORANDUM OF COSTS
AND
PLAINTIFF'S RESPONSE AND OBJECTION
(Hearing: July 9, 2014, at 3:00 P.M.)

pm

THE PARTIES, THEIR COUNSEL, ETC.: When used herein the references to the parties, their counsel and other matters are as follows:

- "defendant," while used herein in the singular for convenience, means **Treasure Valley Seed Company, LLC, and Don Tolmie.**
- "plaintiff's counsel" means **Vernon K. Smith.**
- "defendant's counsel" means **Richard B. Eismann.**
- "subject motion" means the Defendant's Memorandum of Costs and the Plaintiff's Response and Objection to Defendants' Request for Attorney Fees.

NOTICE OF HEARING: Oral argument on the subject motion is hereby requested by the undersigned who will bring the subject motion on for hearing before this court sitting in open session at the courtroom of this court in the courthouse of the above-named county on the date of July 9, 2014, at 3:00 o'clock P.M., or as soon thereafter as counsel can be heard.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: **Vernon K. Smith**, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: JUN 20 2014

SIGNED:



Richard B. Eismann
Counsel for the Defendant

NO. _____
 A.M. _____ P.M. _____

JUN 30 2014

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

VERNON K. SMITH
 ATTORNEY AT LAW
 1900 West Main Street
 Boise, Idaho 83702
 Idaho State Bar No. 1365
 Telephone: (208) 345-1125
 Fax: (208) 345-1129

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VICTORIA H. SMITH, by and through)	
her attorney in fact, Vernon K. Smith,)	
by and through his Durable and)	Case No. CV OC 1322179
Irrevocable Power of Attorney,)	
)	
Plaintiff,)	MOTION TO VACATE AND RESET
)	ORAL ARGUMENT FOR
vs.)	OBJECTION TO ATTORNEY FEES
)	AND COSTS
TREASURE VALLEY SEED)	
COMPANY, LLC, and Don Tolmie)	
in his individual capacity, and as an)	
owner, representative and authorized)	
agent of Treasure Valley Seed Co., LLC)	
)	
Defendant(s).)	

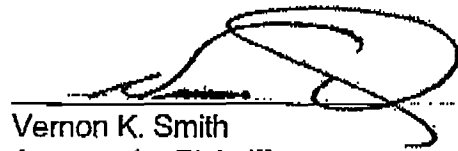
COMES NOW The Plaintiff above-named, Victoria H. Smith, by and through her attorney in fact, Vernon K. Smith, pursuant to his Durable and Irrevocable Power of Attorney, and in his representative capacity as counsel of record for Plaintiff, and does move this Court to vacate and reset the Oral Argument for Objection to Attorney Fees and Costs scheduled for July 9, 2014 at 3:00 p.m. and the same be rescheduled to Monday July 28, 2014, or a later date, for the reasons and upon the grounds Plaintiff's counsel will be in a civil trial which began on June

ORIGINAL

30, 2014, and will conclude on July 24, 2014, in the matter of Sallaz v. Rice, Case No. CV OC-1107253.

Mr. Smith has attempted to stipulate to vacate and reset Oral Argument for Objection to Attorney Fees and Costs and Mr. Eismann is not agreeable to rescheduling. See attached letter.

Dated this 30th day of June, 2014.



Vernon K. Smith
Attorney for Plaintiff

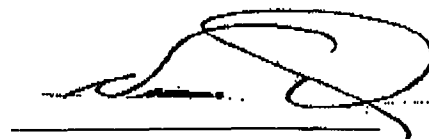
CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 30th day of June, 2014, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Clerk of the Court	()	U.S. Mail
Fourth Judicial District	(x)	Fax 287-6919
Ada County	()	Hand Delivered
200 West Front Street		
Boise, Idaho 83702		

Richard B. Eismann	()	U.S. Mail
Eismann Law Offices	(x)	Fax 466-4498
3016 Caldwell Blvd.	()	Hand Delivered
Nampa, Idaho 83651		

Dated this 30th day of June, 2014.



Vernon K. Smith
Attorney for Plaintiff

EISMANN LAW OFFICES

3016 Caldwell Blvd.
Nampa, Idaho 83651-6416

Telephone (208) 467-3100
Facsimile (208) 466-4498
Email counsel@eismannlaw.com

Richard B. Eismann
Debra L. Eismann
Ryan Martinat

June 30, 2014

DELIVERY BY FAX
208-345-1129

Mr. Vernon K. Smith
Attorney at Law
1900 West Main Street
Boise, ID 83702

Re: Smith – Treasure Valley Seed

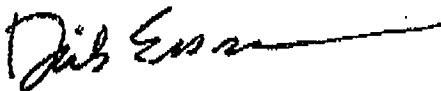
Vernon,

Kathy from Judge Greenwood's Office informs me that Judge Greenwood is not available on Fridays.

I will go forward with the hearing as now scheduled for 3:00 o'clock P.M. on July 9, 2014.

I will consider any date you can arrange depending on my availability and how far out the date you propose is from today.

Very truly yours,



Richard B. Eismann
RBE/4

CLT: Client

ORIGINAL

NO. 10:13 FILED
A.M. 10:13 P.M.

JUL 03 2014

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

Case No. CV 0C 13-22179

AMENDED NOTICE OF HEARING ON DEFENDANT'S
MEMORANDUM OF COSTS
AND
PLAINTIFF'S RESPONSE AND OBJECTION
(Hearing: July 28, 2014, at 3:00 P.M.)


THE PARTIES, THEIR COUNSEL, ETC.: When used herein the references to the parties, their counsel and other matters are as follows:

- "defendant," while used herein in the singular for convenience, means **Treasure Valley Seed Company, LLC, and Don Tolmie.**
- "plaintiff's counsel" means **Vernon K. Smith.**
- "defendant's counsel" means **Richard B. Eismann.**
- "subject motion" means the Defendant's Memorandum of Costs and the Plaintiff's Response and Objection to Defendants' Request for Attorney Fees.

AMENDED NOTICE OF HEARING: Oral argument on the subject motion is hereby requested by the undersigned who will bring the subject motion on for hearing before this court sitting in open session at the courtroom of this court in the courthouse of the above-named county on the date of July 28, 2014, at 3:00 o'clock P.M., or as soon thereafter as counsel can be heard.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this date faxed to: **Vernon K. Smith**, Attorney at Law, 1900 West Main Street, Boise, ID 83702, at 208-345-1129.

DATED: JUL 2 2014

SIGNED: 
Richard B. Eismann
Counsel for the Defendant

ORIGINAL

NO. _____
A.M. _____ P.M. 199

AUG 28 2014

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
RBE/4
Attorney for the Defendants

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants.

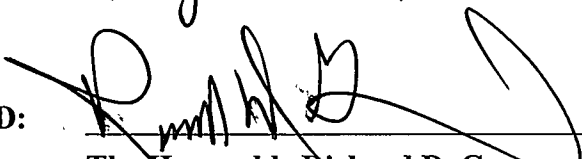
Case No. CV 0C 13-22179

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. ~~The defendants are the prevailing parties.~~ ^{POA}
2. ~~This case was filed by Vernon K. Smith on behalf of his mother, Victoria H. Smith who passed away before this case was filed, pursuant to a power of attorney held by Vernon K. Smith which terminated on his mother's death and was therefore brought and pursued unreasonably and without foundation.~~ ^{R06}
3. ~~The defendants' costs and attorney fees incurred in this action as set forth in the defendants' memorandum of costs are fixed and approved in the sum of \$15,826.50 under Idaho Code Section 12-121 and I.R.C.P. 54(e)(1).~~ ^{POA}
4. The defendants shall recover from Attorney Vernon K. Smith and the plaintiff, jointly and severly, the costs and attorney fees of \$15,826.50 which sum shall bear interest from the date of this judgment until paid at the judgment rate fixed by Idaho Code Section 28-22-104(2) which on the date of this judgment is 5.125 percent per annum.

DATED: August 26, 2014

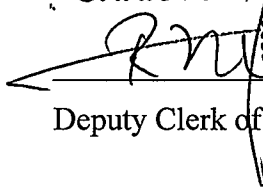
SIGNED: 
The Honorable Richard D. Greenwood
District Judge

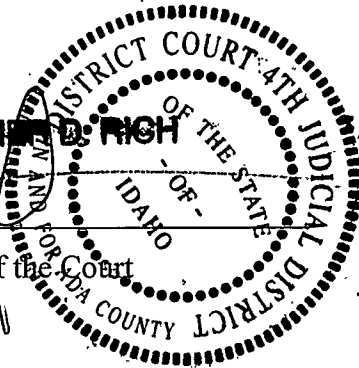
CERTIFICATE OF SERVICE: The undersigned hereby certifies that a true copy hereof was on this 28 day of August, 2014, forwarded to the following persons:

RICHARD B. EISMANN
EISMANN LAW OFFICES
3016 Caldwell Boulevard
Nampa, Idaho 83651-6416

VERNON K. SMITH
Attorney at Law
1900 West Main Street
Boise, ID 83702

SIGNED:


Deputy Clerk of the Court



OCT 08 2014

CHRISTOPHER D. RICH, Clerk
By PATRICK McLAUGHLIN
DEPUTY

VERNON K. SMITH
ATTORNEY AT LAW
1900 West Main Street
Boise, Idaho 83702
Idaho State Bar No. 1365
Telephone: (208) 345-1125
Fax: (208) 345-1129

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

VICTORIA H. SMITH, by and through)	
her attorney in fact, Vernon K. Smith,)	
by and through his Durable and)	Case No. CV OC 1322179
Irrevocable Power of Attorney,)	
)	
Plaintiff,)	NOTICE OF APPEAL
)	
vs.)	Fee:
)	
TREASURE VALLEY SEED)	
COMPANY, LLC, and Don Tolmie)	
in his individual capacity, and as an)	
owner, representative and authorized)	
agent of Treasure Valley Seed Co., LLC)	
)	
Defendant(s).)	

TO: THE ABOVE NAMES RESPONDENTS, Treasure Valley Seed Company, LLC, and Don Tolmie, and Respondents' attorneys, Richard B. Eismann and Ryan Martinat, Eismann Law offices, 3016 Caldwell Blvd., Nampa, Idaho, 83605, and the Clerk of the above entitled court.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, acting through Vernon K. Smith, at the time the cause of action arose, through his Durable and Irrevocable Power of

000202

Attorney, does appeal against the above-named respondents to the Idaho Supreme Court from that Judgment awarding attorney fees and costs in the above entitled action, as entered on August 28, 2014, by the Honorable Richard D. Greenwood, District Judge, presiding, as provided by Idaho Appellate Rule 17e(1).

2. That the above-named Appellant has a right to appeal to the Idaho Supreme Court, and the judgment or order described in paragraph 1 above, is identified as an appealable order under and pursuant to Rule 11(a)(2).

3. A preliminary statement of the issue on appeal which the Appellant intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal:

a.) Was the award of attorney fees and costs, as entered by the court, supported in fact, and law under the Statutes and Rules of Procedure in Idaho.

4. Has an order been entered sealing all or any portion of the record?
No.

5. Is a reporter's transcript requested? Yes.

6. A Standard Record as provided under I.A.R. 28(b), is requested and as provided by I.A.R. 28(b)(1), and the Appellant requests all documents filed with the court clerk's record on this appeal.

7. I certify:

(a) That a copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Name and address: Fran Casey, Trial Court Administrator, Ada County Courthouse, 200 W. Front Street, Boise, Idaho 83702

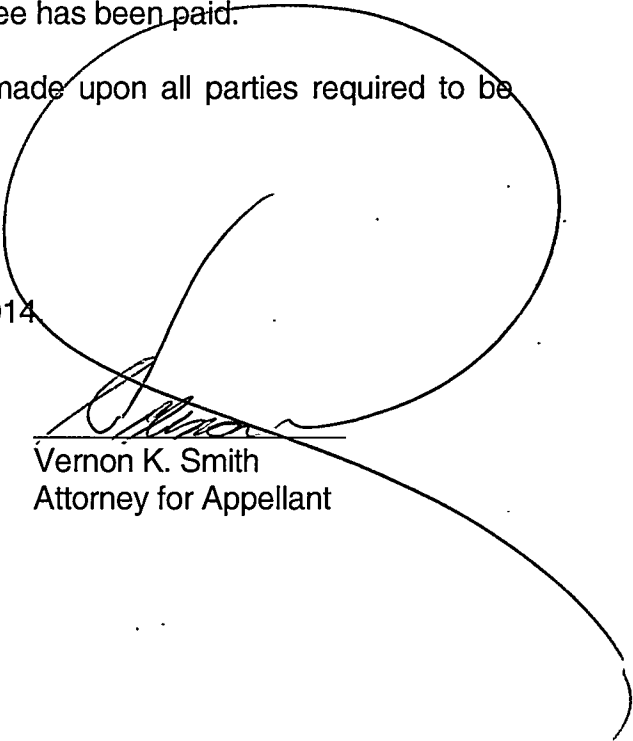
(b) That the Clerk of the District Court or administrative agency has been paid an estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the Clerk's Record has been paid.

(d) That the Appellant filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

Dated this 8th day of October, 2014



Vernon K. Smith
Attorney for Appellant

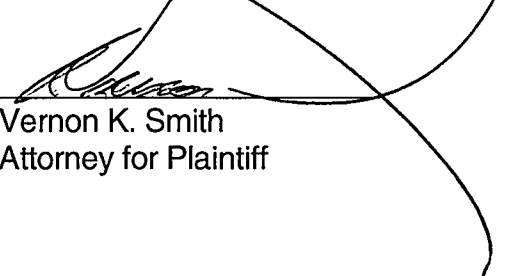
CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 8th day of October, 2014, I caused a true and correct copy of the above and foregoing to be delivered to the following persons at the following addresses as follows:

Clerk of the Court	()	U.S. Mail
Fourth Judicial District	()	Fax 287-6919
Ada County	(x)	Hand Delivered
200 West Front Street		
Boise, Idaho 83702		

Richard B. Eismann	()	U.S. Mail
Eismann Law Offices	(x)	Fax 466-4498
3016 Caldwell Blvd.	()	Hand Delivered
Nampa, Idaho 83651		

Dated this 8th day of October, 2014.



Vernon K. Smith
Attorney for Plaintiff

RECEIVED
OCT 23 2014
Ada County Clerk

ORIGINAL

NO. _____
A.M. _____ FILED P.M. 4:00

OCT 23 2014

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

Richard B. Eismann, ISB # 557
Ryan Martinat, ISB #8789
Eismann Law Offices
3016 Caldwell Blvd.
Nampa, Idaho 83651-6416
Telephone: (208) 467-3100
Facsimile: (208) 466-4498
Email: counsel@eismannlaw.com
RBE/4

Attorney for the Defendants/Cross-Appellants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through
her attorney in fact, Vernon K. Smith,
by and through his Durable and
Irrevocable Power of Attorney,

Plaintiff and Cross-Respondent,

-vs-

TREASURE VALLEY SEED
COMPANY, LLC, and DON TOLMIE
in his individual capacity, and as an
owner, representative and authorized
agent of Treasure Valley Seed Co., LLC,

Defendants and Cross-Appellants.

Case No. CV 0C 13-22179

NOTICE OF CROSS-APPEAL

TO: THE ABOVE NAMED CROSS-RESPONDENT, VICTORIA H. SMITH, BY AND
THROUGH HER ATTORNEY IN FACT, VERNON K. SMITH, BY AND THROUGH
HIS DURABLE AND IRREVOCABLE POWER OF ATTORNEY, AND THE PARTY'S

**ATTORNEY, VERNON K. SMITH, ATTORNEY AT LAW, 1900 WEST MAIN STREET,
BOISE, ID 83702; AND THE CLERK OF THE ABOVE ENTITLED COURT.**

NOTICE IS HEREBY GIVEN THAT:

1. The above named cross-appellants, Treasure Valley Seed Company, LLC, and Don Tolmie, appeal against the above named cross-respondent to the Idaho Supreme Court from the final Judgment awarding attorney's fees and costs entered in the above entitled action on the 28th day of August, 2014, by the Honorable Richard D. Greenwood, District Judge, presiding.

2. That the parties have a right to cross-appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.

3. A preliminary statement on appeal which the cross-appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the cross-appellant from asserting other issues on appeal.

(a) Should the cross-appellants be entitled to recover attorney's fees under Idaho Code § 12-120(3) and (5).

(b) - Should the cross-appellants be entitled to recover attorney's fees under Rule 11(a)(1) of the Idaho Rules of Civil Procedure.

4. (a) Is additional reporter's transcript requested? No

5. The cross-appellant requests the following documents to be included in the clerk's (agency's) record in addition to those automatically included under Rule 28, I.A.R. and those designated by the appellant in the initial notice of appeal: Nothing further.

6. Civil Cases Only. The cross-appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court in addition to those requested in the original notice of appeal. Nothing further.

7. I certify:

(a) That a copy of this notice of cross-appeal and any request for additional transcript have been served on the reporter: Not Applicable.

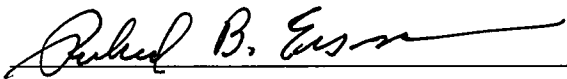
(b) (1) ☐ That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript and any additional documents requested in the cross-appeal. Not Applicable.

(2) ☐ That the cross-appellant is exempt from paying the estimated transcript fee because: Not Applicable.

(c) That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

SERVICE BY FACSIMILE: The undersigned hereby certifies that a true copy hereof was this day faxed to: **Vernon K. Smith, Attorney at Law**, 1900 West Main Street, Boise, ID 83702, at (208) 345-1129.

DATED: OCT 22 2014

SIGNED: 
Richard B. Eismann
Attorney for Defendants/Cross-Appellants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

VICTORIA H. SMITH, by and through her attorney
in fact, Vernon K. Smith, by and through his
Durable and Irrevocable Power of Attorney,

Plaintiff-Appellant-Cross Respondent,
vs.

TREASURE VALLEY SEED COMPANY, LLC,
and DON TOLMIE in his individual capacity, and
as an owner, representative and authorized agent of
Treasure Valley Seed Co., LLC,

Defendants-Respondents-Cross Appellants.

Supreme Court Case No. 42596

CERTIFICATE OF EXHIBITS

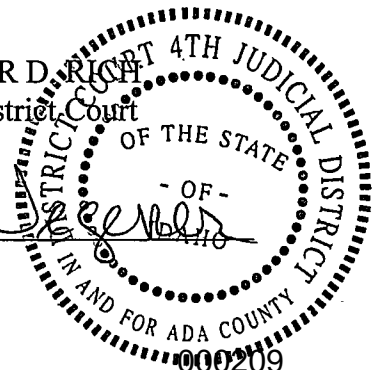
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of
the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the
course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
Court this 21st day of November, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. [Signature]
Deputy Clerk



CERTIFICATE OF EXHIBITS

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CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of
the following:

CLERK'S RECORD

to each of the Attorneys of Record in this cause as follows:

VERNON K. SMITH

ATTORNEY FOR APPELLANT

BOISE, IDAHO

RICHARD B. EISMANN

ATTORNEY FOR RESPONDENT

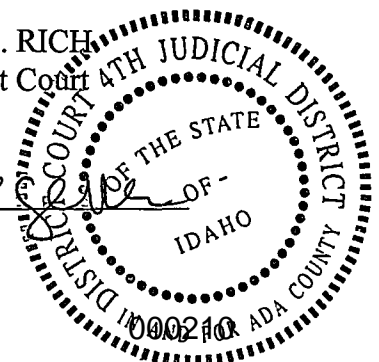
BOISE, IDAHO

Date of Service: _____

NOV 21 2014

CHRISTOPHER D. RICH
Clerk of the District Court

By K. Weir
Deputy Clerk



CERTIFICATE OF SERVICE

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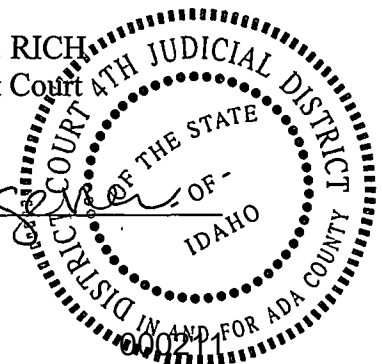
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 8th day of October, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. Jensen
Deputy Clerk



CERTIFICATE TO RECORD