

2-24-2015

Wolford v. Montee Clerk's Record v. 2 Dckt. 42719

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IN THE 2, 3
SUPREME COURT
OF THE
STATE OF IDAHO

LAW CLERK

ROBERT WOLFORD

SEE AUGMENTATION RECORD

Plaintiff/Respondent,

v.

SHAWN MONTEE and HEATHER MONTEE, husband and wife; SHAWN MONTEE, INC., an Idaho corporation dba SHAWN MONTEE TIMBER COMPANY; and ABCO WOOD RECYCLING, LLC, an Idaho limited liability company,

Defendants/Appellants.

Appealed from the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai.

PAUL W. DAUGHARTY
110 E. WALLACE AVE.
COEUR D'ALENE, ID 83814

MARK A. ELLINGSEN
608 NORTHWEST BLVD.,
STE. 300
COEUR D'ALENE, ID

FILED - COPY
FEB 24 2015

Supreme Court Court of Appeals
Entered on ATS by

Attorney for Appellants

Attorney for Respondent

VOL. II

42719

Exhibit A

Exhibit A

Exhibit A

Exhibit A

Fax From : 14254866613

05/13/2009 11:40 AM

05-13-14 10:20 PG: 1/1/23

05-14-14 15:51 PG: 1/1/23
97778123 FAX: 1/1/23

Promise to pay

I Shawn Montee agree to pay

Bobby Wolford the sum of \$1.153mm dollars

I owe him for a number of legal malpractice lawsuits

me. In addition I agree to pay him

\$250K for a 90 day extension all due

& payable by July 31st. 09. This loan

will be paid back by sale of the

Tea Cup River Ranch (\$4.8mm) or by

the funds the U.S. Forest Service (\$3.9mm)

owes Shawn Montee Timber Co.

~~Shawn Montee~~ 5/12/09

Exhibit B

Exhibit B

Exhibit B

Exhibit B

PROMISSORY NOTE**Date: 2/16/2010****Principle: 1,283,461 w/penalty****Interest: 10%****Borrower: Shawn Montee, Inc. &
Abco Wood Recycling, LLC
PO Box 1329
Post Falls, ID 83877****Lender: Bobby Wolford
22014 W. Boston Rd.
Woodinville, WA 98072**

Promise To Pay. Shawn Montee, Inc &/or Abco Wood Recycling, LLC (Borrower) promises to pay the 10% monthly interest on the above principle balance (starting January 2010) to Bobby Wolford (Lender), in lawful money of the United States of America.

Payment Plan: TBD (between Shawn Montee & Bobby Wolford)

Borrower:~~Shawn Montee~~
**Shawn Montee, Inc. &
Abco Wood Recycling, LLC****Lender:**~~Bobby Wolford~~
Bobby Wolford

Exhibit C

Exhibit C

Exhibit C

Exhibit C

Gotby Medical Loan to 3rd Party
Based on 10% annual simple interest

Activity	Date	Days	Per Diem Interest Rate	Loan	Payment	Interest Accrued	Interest Paid	Principal Paid	Interest	Balance Due	Total
Loan	1/16/2007	158	54.7545	200,000.00		6,468.75	-	-	6,468.75	200,000.00	200,000.00
Loan	5/15/2007 *	146	82.1918	200,000.00		12,000.00	-	-	12,000.00	200,000.00	200,000.00
Loan	10/2/2007	87	133.8337	200,000.00		11,548.53	-	-	11,548.53	200,000.00	200,000.00
Loan	1/3/2008	163	242.6834	200,000.00		24,938.67	-	-	24,938.67	200,000.00	200,000.00
Interest Accrued to date	9/31/2008	163	283.1883			39,978.68			39,978.68		
Payment	9/31/2008				(35,412.00)		35,412.00				
Interest Accrued to date	12/16/2008	104	283.1883			29,461.68			29,461.68		
Payment	12/16/2008				(8,500.00)		8,500.00				
Loan Extension Fee	5/13/2009 **			250,000.00							
Interest Accrued to date	7/1/2010	562	283.1883			159,152.39			159,152.39		
Payment	7/1/2010				(25,000.00)		25,000.00				
Loan	11/16/2010	138	283.1883	200,000.00		39,000.12			39,000.12		
Interest Accrued to date	3/31/2012 *	500	337.8838			168,594.98			168,594.98		
Payment	3/31/2012				(37,000.00)		37,000.00				
Interest Accrued to date	9/30/2012	183	337.8838			61,851.04			61,851.04		
Payment	9/30/2012				(79,000.00)		79,000.00				
Interest Accrued to date	7/31/2014	809	337.8838			226,111.16			226,111.16		
Totals		2751		3,483,641.00	(135,912.00)	779,612.89	835,917.10	64,685.79	3,483,641.00	3,317,885.79	

* Days adjusted for calendar year 365 days per year
 ** This amount is a non interest bearing loan extension fee. It is included in the principal balance due but was not used in calculating interest due

PAUL W. DAUGHARTY
PAUL W. DAUGHARTY, P.A.
Attorney at Law
110 E. Wallace Avenue
Coeur d'Alene, ID 83814
Telephone No.: (208) 664-3799
Facsimile No.: (208) 666-0550
E-mail: paul@pdaughartylaw.com
ISB# 4520

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2014 OCT -9 PM 4:00

CLERK DISTRICT COURT
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY; and ABCO WOOD RECYCLING,
LLC, an Idaho limited liability company,

Defendants.

CASE NO. CV-14-4713

MOTION TO ALTER OR AMEND
JUDGMENTS

COMES NOW, the above-named Defendants by and through their attorney, Paul W. Daugharty of the Law Firm PAUL W. DAUGHARTY, P.A., and hereby move this Court for an Order altering and amending the Judgments entered by this Court on September 26, 2014. The Judgments as entered have created a double recovery for the Plaintiff. This motion is made pursuant to Idaho Rules of Civil Procedure 7(b)(1), 7(b)(3) and 59(e) and is supported by the Affidavit of Paul W. Daugharty.

Oral argument is hereby requested at hearing.

DATED this 9 day of October, 2014.

PAUL W. DAUGHARTY, P.A.

By: Paul W. Daugharty

PAUL W. DAUGHARTY
Attorney for Defendants

MOTION TO ALTER OR AMEND - 1

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be served a true and correct copy of the foregoing on this 9 day of October, 2014, to:

Mark A. Ellingsen
Jason M. Gray
WITHERSPOON KELLEY
Attorneys & Counselors
608 Northwest Blvd., Suite 300
Coeur d'Alene, ID 83814

☐ Via Mail, postage prepaid thereon
☒ Via Facsimile: 208-667-8470
☐ Via Hand Delivery
☒ Via E-Mail: mae@witherspoonkelley.com
jmg@witherspoonkelley.com



PAUL W. DAUGHARTY

MOTION TO ALTER OR AMEND - 2

2014 OCT 14 AM 9:11

CLERK DISTRICT COURT

Shelle Degener
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470
E-mail: mae@witherspoonkelley.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho Limited Liability
Company,

Defendants.

No. CV 2014-4713

MOTION FOR BANK
GARNISHMENT AND ISSUANCE
OF WRIT OF EXECUTION


COMES NOW the Plaintiff Robert Wolford by and through his attorneys of record,
Mark A. Ellingsen of Witherspoon Kelley, and moves this Court, pursuant to Idaho Code § 8-
507, for an order for a bank garnishment in the above-captioned matter against Washington Trust
Bank, Umpqua Bank, Mountain West Bank, Wells Fargo Bank and US Bank and for the
issuance of a writ of execution for collection of monies due under the judgment entered in this
case on September 26, 2014, in the First Judicial District Court, County of

ORIGINAL

1 Kootenai, in favor of Plaintiff, and against the Defendants Shawn Montee, Inc., an Idaho
2 Corporation dba Shawn Montee Timber Company and ABCO Recycling, LLC an Idaho Limited
3 Liability Company.

4 DATED this 9 day of October, 2014.

5 WITHERSPOON KELLEY

6 
7

8 Mark A. Ellingsen
9 *Attorneys for Plaintiff*
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2014 OCT 14 AM 9:11

CLERK DISTRICT COURT
[Signature]
DEPUTY

Mark A. Ellingsen, ISB No. 4720
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Attorneys & Counselors
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Email: mae@witherspoonkelley.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho Limited Liability
Company,

Defendants.

No. CV 2014-4713

AFFIDAVIT OF AMOUNT DUE AND
OWING ON JUDGMENT AGAINST
DEFENDANTS SHAWN MONTEE,
INC. d/b/a SHAWN MONTEE TIMBER
COMPANY AND ABCO WOOD
RECYCLING, LLC IN SUPPORT OF
WRIT OF EXECUTION AND BANK
GARNISHMENT

STATE OF IDAHO)
: ss.
County of Kootenai)

MARK A. ELLINGSEN, being first duly sworn, deposes and says:

1. I am a member of the firm of Witherspoon Kelley and am the attorney of record for the above-named Plaintiff in the above-entitled matter.

2. The Judgment was entered in favor of the Plaintiff in the above-entitled action on or about September 26, 2014, against SHAWN MONTEE, INC., an Idaho corporation d/b/a SHAWN MONTEE TIMBER COMPANY; and ABCO WOOD RECYCLING, LLC, an Idaho Limited Liability Company, jointly and severally in the amount of \$2,145,587.91.

ORIGINAL

3. That pursuant to Rule 69 of the Idaho Rules of Civil Procedure, I have calculated the interest due on the Judgment entered in this case on September 26, 2014, based on a base rate determined by the Idaho State Treasurer, which is 5.125%, commencing September 27, 2014 through and including October 9 which calculates out to be \$301.26 per diem.

5. That the calculated interest accrued on the Judgment entered in this action is at the rate of accruing interest of 5.125% per annum (\$301.26 per diem) from September 27, 2014 through October 9, 2014 (13 days) is \$3,916.38.

6. That execution costs to date in the sum of \$2.00 are due and owing from the Defendant to the Plaintiff.

7. That said Writ of Execution shows the true and correct amount of the Judgment due and owing by Defendant to Plaintiff, herein in the aggregate sum of \$2,149,506.29 as of October 9, 2014.

8. That your affiant believes that Defendants Shawn Montee, Inc., an Idaho Corporation, dba Shawn Montee Timber Company and ABCO Wood Recycling, LLC an Idaho Limited Liability Company may have funds in bank accounts which are located at **Washington Trust Bank, Umpqua Bank, Mountain West Bank, Wells Fargo Bank, and US Bank** and said funds may be utilized to satisfy the Judgment.

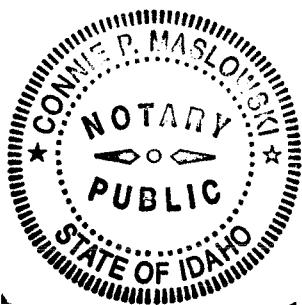
DATED this 9 day of October, 2014.

WITHERSPOON, KELLEY

Mark A. Ellinger

Mark A. Ellingsen

SUBSCRIBED AND SWORN TO before me this 9th day of October, 2014.



Connie P. Markowski
Notary Public for the State of Idaho
Residing at: Hayden
My commission expires: 02/27/2015

2014 OCT 14 AM 9:16

CLERK DISTRICT COURT
Robert Wolford
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
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E-mail: mae@witherspoonkelley.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho Limited Liability
Company,

Defendants.

No. CV 2014-4713

WRIT OF EXECUTION FOR BANK
GARNISHMENT

TO: THE SHERIFF OF KOOTENAI COUNTY

WHEREAS, on September 26, 2014, Plaintiff Robert Wolford recovered a judgment in the above-entitled action against Defendants Shawn Montee, Inc., an Idaho Corporation dba Shawn Montee Timber Company and ABCO Wood Recycling, LLC, an Idaho limited liability company.

\$2,145,587.91	September 26, 2014 Judgment Amount as of October 9, 2014
\$ 3,916.38	Interest calculated at 5.125% (\$301.26 per diem) on the principal balance of the September 26, 2014 Judgment amount through October 9, 2014 (13 days).
\$ 2.00	Filing Fees and Costs
\$2,149,506.29	TOTAL

WRIT OF EXECUTION FOR BANK GARNISHMENT—PAGE 1

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COPY

1 Together with interest accruing thereon at the rate of 5.125% per annum on the principal
2 balance of \$2,149,506.29 with a per diem of \$301.26, hereafter, together with sheriff's costs and
3 fees.

4 NOW YOU, the said Sheriff, are hereby requested to satisfy said Judgment, with
5 interest as set out above, plus accruing costs and sheriff's fees, until this Judgment is fully
6 satisfied.

7 YOU ARE FURTHER DIRECTED to satisfy said Judgment, with interest as aforesaid,
8 and attorney's fees, from the money, equipment, inventory, accounts receivables, chattel paper,
9 instruments, negotiable documents of title, funds, and general intangibles, and any other
10 personal property which is kept by Defendants Shawn Montee, Inc., an Idaho Corporation dba
11 Shawn Montee Timber Company and ABCO Wood Recycling, LLC, an Idaho limited liability
12 company at **Washington Trust Bank, Umpqua Bank, Mountain West Bank, Wells Fargo**
13 **Bank and US Bank** or if sufficient proper personal property cannot be found then out of the
14 real property in your county belonging to the Defendants on the date upon which said judgment
15 was docketed in Kootenai County, or any time thereafter, and make return of the Writ within
16 sixty (60) days after receipt hereof, with what you have endorsed thereon.

17 ATTEST my hand and seal of said Court this 14 day of October, 2014.

18 JIM BRANNON, Kootenai County
19 Clerk of District Court

20 **Bobee Deglman**

21 By: _____
22 Deputy
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2014 OCT 14 AM 9:11

CLERK DISTRICT COURT
Robert Segura
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
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Facsimile: (208) 667-8470
E-mail: mae@witherspoonkelley.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho Limited Liability
Company,

Defendants.

No. CV 2014-4713

MOTION FOR BANK
GARNISHMENT AND ISSUANCE
OF WRIT OF EXECUTION

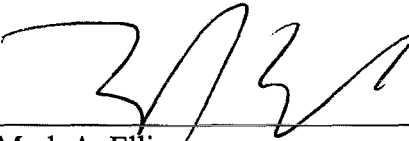
COMES NOW the Plaintiff Robert Wolford by and through his attorneys of record,
Mark A. Ellingsen of Witherspoon Kelley, and moves this Court, pursuant to Idaho Code § 8-
507, for an order for a bank garnishment in the above-captioned matter against Washington Trust
Bank, Umpqua Bank, Mountain West Bank, Wells Fargo Bank, and US Bank and for the
issuance of a writ of execution for collection of monies due under the judgment entered in this
case on September 26, 2014, in the First Judicial District Court, County of

ORIGINAL

1 Kootenai, in favor of Plaintiff, and against the Defendants Shawn Montee and the Marital
2 Community Comprised of Shawn Montee and Heather Montee, Husband and Wife.

3 DATED this 9 day of October, 2014.

4 WITHERSPOON KELLEY

5 
6

7 Mark A. Ellingsen
8 *Attorneys for Plaintiff*
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2014 OCT 14 AM 9:11

CLERK DISTRICT COURT
[Signature]
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
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Email: mae@witherspoonkelley.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho Limited Liability
Company,

Defendants.

No. CV 2014-4713

AFFIDAVIT OF AMOUNT DUE AND
OWING ON JUDGMENT AGAINST
SHAWN MONTEE AND HEATHER
MONTEE, HUSBAND AND WIFE IN
SUPPORT OF WRIT OF EXECUTION
AND BANK GARNISHMENT

STATE OF IDAHO)
: ss.
County of Kootenai)

MARK A. ELLINGSEN, being first duly sworn, deposes and says:

1. I am a member of the firm of Witherspoon Kelley and am the attorney of record
for the above-named Plaintiff in the above-entitled matter.

2. The Judgment was entered in favor of the Plaintiff in the above-entitled action on
or about September 26, 2014, in the amount of \$2,305,160.71.

3. That pursuant to Rule 69 of the Idaho Rules of Civil Procedure, I have calculated
the interest due on the Judgment entered in this case on September 26, 2014, based on a base rate

1 determined by the Idaho State Treasurer, which is 5.125%, commencing September 27, 2014
2 through and including October 9 which calculates out to be \$323.66 per diem.

3 5. That the calculated interest accrued on the Judgment entered in this action is at the
4 rate of accruing interest of 5.125% per annum (\$323.66 per diem) from September 27, 2014
5 through October 9, 2014 (13 days) is \$4,207.58.

6 6. That execution costs to date in the sum of \$2.00 are due and owing from the
7 Defendant to the Plaintiff.

8 7. That said Writ of Execution shows the true and correct amount of the Judgment
9 due and owing by Defendant to Plaintiff, herein in the aggregate sum of \$2,309,370.29 as of
10 October 9, 2014.

11 8. That your affiant believes that Defendant Shawn Montee and the marital
12 community comprised of Shawn Montee and Heather Montee, husband and wife, may have
13 funds in a bank account at **Washington Trust Bank, Umpqua Bank, Mountain West Bank,**
14 **Wells Fargo Bank, and US Bank** and said funds may be utilized to satisfy the Judgment.

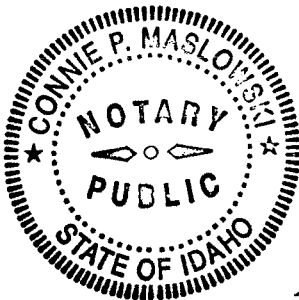
15 DATED this 9 day of October, 2014.

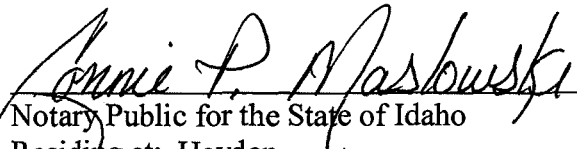
16 WITHERSPOON, KELLEY

17 

18 Mark A. Ellingsen

19 SUBSCRIBED AND SWORN TO before me this 9th day of October, 2014.




Notary Public for the State of Idaho
Residing at: Hayden
My commission expires: 02/27/2015

2014 OCT 14 AM 9:11

CLERK DISTRICT COURT
[Signature]
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470
E-mail: mae@witherspoonkelley.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho Limited Liability
Company,

Defendants.

No. CV 2014-4713

WRIT OF EXECUTION FOR BANK
GARNISHMENT

TO: THE SHERIFF OF KOOTENAI COUNTY

WHEREAS, on September 26, 2014, Plaintiff Robert Wolford recovered a judgment in the above-entitled action against Defendant Shawn Montee and the Marital Community Comprised of Shawn Montee and Heather Montee, Husband and Wife.

\$2,305,160.71	September 26, 2014 Judgment Amount as of October 9, 2014
\$ 4,207.58	Interest calculated at 5.125% (\$323.66 per diem) on the principal balance of the September 26, 2014 Judgment amount through October 9, 2014 (13 days).
\$ 2.00	Filing Fees and Costs
\$2,309,370.29	TOTAL

COPY

1 Together with interest accruing thereon at the rate of 5.125% per annum on the principal
2 balance of \$2,305,160.71 with a per diem of \$323.66, hereafter, together with sheriff's costs and
3 fees.

4 NOW YOU, the said Sheriff, are hereby requested to satisfy said Judgment, with
5 interest as set out above, plus accruing costs and sheriff's fees, until this Judgment is fully
6 satisfied.

7 YOU ARE FURTHER DIRECTED to satisfy said Judgment, with interest as aforesaid,
8 and attorney's fees, from the money, equipment, inventory, accounts receivables, chattel paper,
9 instruments, negotiable documents of title, funds, and general intangibles, and any other
10 personal property which is kept by Defendant Shawn Montee and the Marital Community
11 Comprised of Shawn Montee and Heather Montee, Husband and Wife at **Washington Trust**
12 **Bank, Umpqua Bank, Mountain West Bank, Wells Fargo Bank, and US Bank** or if
13 sufficient proper personal property cannot be found then out of the real property in your county
14 belonging to the Defendant on the date upon which said judgment was docketed in Kootenai
15 County, or any time thereafter, and make return of the Writ within sixty (60) days after receipt
16 hereof, with what you have endorsed thereon.

17 ATTEST my hand and seal of said Court this 14 day of October, 2014.

18 JIM BRANNON, Kootenai County
19 Clerk of District Court

20 **Babee Deglman**

21 By: _____
22 Deputy
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PAUL W. DAUGHARTY
PAUL W. DAUGHARTY, P.A.
Attorney at Law
110 E. Wallace Avenue
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ISB# 4520

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED
2014 OCT 16 PM 4: 12

CLERK DISTRICT COURT
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY; and ABCO WOOD RECYCLING,
LLC, an Idaho limited liability company,

Defendants.

CASE NO. CV-14-4713

OBJECTION TO MEMORANDUM OF
ATTORNEY'S FEES AND COSTS
AND MOTION TO DISALLOW

COMES NOW, the above-named Defendants by and through their attorney, Paul W. Daugharty of the Law Firm PAUL W. DAUGHARTY, P.A., and hereby object to the Memorandum of Costs and Fees submitted by Plaintiff and further moves this Court to disallow the same. It is respectfully submitted that the attorney's fees claimed are unreasonable, excessive and not allowable. This objection and/or motion is made pursuant to Idaho Rules of Civil Procedure 7(b)(1), 7(b)(3), 54(e)(3), 54(d)(6) and 54(e)(6) and is supported by the Affidavit of Paul W. Daugharty.

Oral argument is hereby requested at hearing.

DATED this 16 day of October, 2014.

PAUL W. DAUGHARTY, P.A.

By: 

PAUL W. DAUGHARTY
Attorney for Defendants

OBJECTION TO MEMORANDUM OF COSTS AND FEES
AND MOTION TO DISALLOW - 1

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be served a true and correct copy of the foregoing on this 16 day of October, 2014, to:

Mark A. Ellingsen Jason M. Gray WITHERSPOON KELLEY Attorneys & Counselors 608 Northwest Blvd., Suite 300 Coeur d'Alene, ID 83814	<input type="checkbox"/> Via Mail, postage prepaid thereon <input checked="" type="checkbox"/> Via Facsimile: 208-667-8470 <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-Mail: mae@witherspoonkelley.com jmg@witherspoonkelley.com
---	--



PAUL W. DAUGHARTY

**OBJECTION TO MEMORANDUM OF COSTS AND FEES
AND MOTION TO DISALLOW - 2**

Ellingsen, the Plaintiff, ROBERT WOLFORD, is seeking an award of attorney's fees for time claimed to have been incurred by Mr. Ellingsen (\$12,516.00), Mr. Jason M. Gray (\$3,128.00) and Mr. DeWay M. Davis (\$87.00). However, neither Mr. Gray nor Mr. Davis have submitted affidavits in compliance with Idaho Rules of Civil Procedure 54(d)(5) or 54(4)(5). As such, any claim to fees attributed to either Mr. Gray or Mr. Davis has been waived pursuant to Idaho Rule of Civil Procedure 54(d)(5) and are not allowable. Without waiving objection, your affiant on behalf of Defendants, asserts the fees attributed to Mr. Gray are unreasonable and excessive when considered in light of Idaho Rule of Civil Procedure 54(e)(3). Additionally your affiant, on behalf of Defendants, asserts the fees claimed by Mr. Ellingsen are also unreasonable and excessive when considered in light of Idaho Rule of Civil Procedure 54(e)(3).

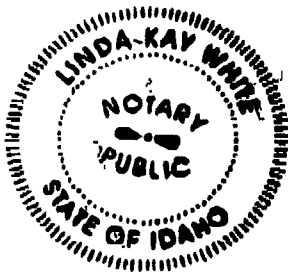
DATED this 16 day of October, 2014.

PAUL W. DAUGHARTY, P.A.

By: [Signature]
PAUL W. DAUGHARTY, Attorney for Defendants

SUBSCRIBED AND SWORN TO before me this 16th day of October, 2014.

[Signature]
NOTARY PUBLIC in and for the State of Idaho
Residing at: Spirit Lake
My Commission Expires: 4-7-2018



AFFIDAVIT IN SUPPORT OF OBJECTION TO MEMORANDUM OF COSTS
AND FEES AND MOTION TO DISALLOW - 2

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be served a true and correct copy of the foregoing on this 16 day of October, 2014, to:

<p>Mark A. Ellingsen Jason M. Gray WITHERSPOON KELLEY Attorneys & Counselors 608 Northwest Blvd., Suite 300 Coeur d'Alene, ID 83814</p>	<p>[<input checked="" type="checkbox"/>] Via Mail, postage prepaid thereon [<input checked="" type="checkbox"/>] Via Facsimile: 208-667-8470 [<input type="checkbox"/>] Via Hand Delivery [<input type="checkbox"/>] Via E-Mail: mae@witherspoonkelley.com jmg@witherspoonkelley.com</p>
---	--



PAUL W. DAUGHARTY

AFFIDAVIT IN SUPPORT OF OBJECTION TO MEMORANDUM OF COSTS
AND FEES AND MOTION TO DISALLOW - 3

PAUL W. DAUGHARTY
PAUL W. DAUGHARTY, P.A.
Attorney at Law
110 E. Wallace Avenue
Coeur d'Alene, ID 83814
Telephone No.: (208) 664-3799
Facsimile No.: (208) 666-0550
E-mail: paul@pdaughartylaw.com
ISB# 4520

STATE OF IDAHO)
COUNTY OF KOOTENAI) ss
FILED:

2014 OCT 17 PM 1:57

CLERK DISTRICT COURT
Lisa L. Olson
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY; and ABCO WOOD RECYCLING,
LLC, an Idaho limited liability company,

Defendants.

CASE NO. CV-14-4713

AFFIDAVIT OF PAUL W.
DAUGHARTY IN SUPPORT OF
EMERGENCY MOTION TO QUASH
WRITS OF EXECUTION

STATE OF IDAHO)
ss.
County of Kootenai)

PAUL W. DAUGHARTY, being first duly sworn upon oath, deposes and says:

1. I am the attorney for the above-named Defendants in the above-entitled matter. I am personally familiar with the documents and issues in this matter and I am make this Affidavit of my own personal knowledge.

2. I submit this Affidavit in support of Defendants' Emergency Motion to Quash Writs of Execution made pursuant to Idaho Rules of Civil Procedure 54(a) and 69 concerning the writs of execution issued on October 14, 2014.

3. Your affiant had previously filed an objection to the form of proposed Judgments

AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION TO QUASH
WRITS OF EXECUTION - 1

pursuant to Idaho Rule of Civil Procedure 54(a) and a Motion to Prohibit Issuance of Writ pursuant to Idaho Rules of Civil Procedure 54(a) and 69 scheduled to be heard on November 4, 2014. On October 15, 2014 your Affiant learned from checking the Idaho Repository that writs were issued on October 14, 2014. Although counsel for Plaintiff, ROBERT WOLFORD filed Motions for Bank Garnishment and Issuance of Writ of Execution on October 14, 2014 no copy was provided to your Affiant.

4. Your Affiant had previously filed an Affidavit in Support of Motion to Prohibit Issuance of Writ on October 6, 2014. This affidavit was served upon counsel for Plaintiff, ROBERT WOLFORD. Attached to the affidavit as Exhibit "A" was a certified copy of Order Conditionally Dismissing Appeal without Prejudice issued by the Idaho Supreme Court in *Reed v. Reed*, Supreme Court Docket No. 41013-2013 on August 1, 2014. It is respectfully submitted that the certified copy of the Order clearly establishes that proposed judgments and/or judgments that do not comply with the strict requirements of Idaho Rule of Civil Procedure 54(a) are not final judgments. It is also respectfully submitted that Idaho Rule of Civil Procedure 69 requires that a judgment be an "appealable final judgment" before a writ of execution may be issued upon it.

5. It is respectfully submitted that the writs of execution issued on October 14, 2014 in violation of Idaho Rules of Civil Procedure 54(a) and 69 will cause Defendants to suffer immediate and irreparable harm.

6. Defendants have filed a Motion to Alter or Amend Judgments pursuant to Idaho Rule of Civil Procedure 59(e). This motion is scheduled for hearing on November 4, 2014. Your Affiant filed an Affidavit in Support of the Motion to Alter or Amend Judgments. This affidavit was served upon counsel for Plaintiff, ROBERT WOLFORD. Attached to the affidavit as Exhibit "A" was a true and correct copy of the Affidavit of Robert Wolford filed in support of Plaintiff's Motion for Summary Judgment. It is respectfully submitted that this Exhibit "A" establishes that the judgments entered by the Court on September 26, 2014 have created a double recovery for Plaintiff, ROBERT WOLFORD in excess of what was alleged due and owing. Unless the writs of execution issued on October 14, 2014 are quashed it is likely that this double recovery will occur and immediate and irreparable harm will result.

7. Defendants seek an emergency Order quashing the writs of execution issued

AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION TO QUASH
WRITS OF EXECUTION - 2

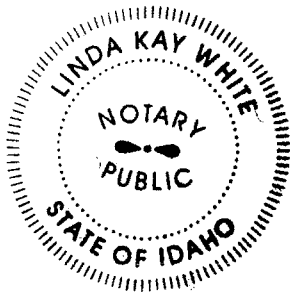
October 14, 2014 and further prohibiting the issuance of any further writs pending the Court's determination of Defendants' Motion to Prohibit Issuance of Writs and Motion to Alter or Amend Judgments.

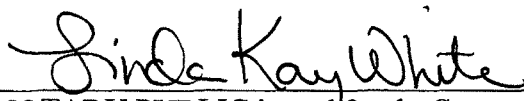
DATED this 17 day of October, 2014.

PAUL W. DAUGHARTY, P.A.

By: 
PAUL W. DAUGHARTY, Attorney for Defendants

SUBSCRIBED AND SWORN TO before me this 17 day of October, 2014.




NOTARY PUBLIC in and for the State of Idaho
Residing at: Spunk Lake
My Commission Expires: 4-7-2014

AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION TO QUASH
WRITS OF EXECUTION - 3

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be served a true and correct copy of the foregoing on this 17 day of October, 2014, to:

Mark A. Ellingsen
Jason M. Gray
WITHERSPOON KELLEY
Attorneys & Counselors
608 Northwest Blvd., Suite 300
Coeur d'Alene, ID 83814

Honorable John T. Mitchell
Kootenai County Courthouse
324 West Garden Avenue
Coeur d'Alene, Idaho 83816

☐ Via Mail, postage prepaid thereon
☒ Via Facsimile: 208-667-8470
☐ Via Hand Delivery
☐ Via E-Mail: mae@witherspoonkelley.com

☒ Chamber Copy Via Hand Delivery



PAUL W. DAUGHARTY

AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION TO QUASH
WRITS OF EXECUTION - 4

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2014 OCT 17 PM 1:57

CLERK DISTRICT COURT

Lisa Dixon
DEPUTY

PAUL W. DAUGHARTY
PAUL W. DAUGHARTY, P.A.
Attorney at Law
110 E. Wallace Avenue
Coeur d'Alene, ID 83814
Telephone No.: (208) 664-3799
Facsimile No.: (208) 666-0550
E-mail: paul@pdaughartylaw.com
ISB# 4520

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY; and ABCO WOOD RECYCLING,
LLC, an Idaho limited liability company,

Defendants.

CASE NO. CV-14-4713

EMERGENCY MOTION TO QUASH
WRITS OF EXECUTION

COMES NOW, the above-named Defendants by and through their attorney, Paul W. Daugharty of the Law Firm PAUL W. DAUGHARTY, P.A., and hereby move this Court for an Order quashing the writs of execution issued October 14, 2014. The grounds for this motion are that the Judgments entered by this Court on September 26, 2014 do not comply with the strict requirements of Idaho Rule of Civil Procedure 54(a) and are not final judgments. Accordingly, the writs were issued in violation of Idaho Rule of Civil Procedure 69.

This motion is made pursuant to Idaho Rules of Civil Procedure 7(b)(1), 7(b)(3), 54(a), 69 and 78, and is supported by the Affidavit of Paul W. Daugharty.

It is respectfully requested that this Court enter an Order quashing the writs of execution issued October 14, 2014 and further prohibiting the issuance of any further writs on said judgments

EMERGENCY MOTION TO QUASH WRITS OF EXECUTION - 1

pending the Court's determination of Defendants' Motion to Prohibit Issuance of Writ and Motion to Alter or Amend Judgments noticed for hearing November 4, 2014.

Oral argument is hereby requested.

DATED this 17 day of October, 2014.

PAUL W. DAUGHARTY, P.A.

By: 

PAUL W. DAUGHARTY
Attorney for Defendants

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be served a true and correct copy of the foregoing on this 17 day of October, 2014, to:

<p>Mark A. Ellingsen Jason M. Gray WITHERSPOON KELLEY Attorneys & Counselors 608 Northwest Blvd., Suite 300 Coeur d'Alene, ID 83814</p> <p>Honorable John T. Mitchell Kootenai County Courthouse 324 West Garden Avenue Coeur d'Alene, Idaho 83816</p>	<p><input type="checkbox"/> Via Mail, postage prepaid thereon <input checked="" type="checkbox"/> Via Facsimile: 208-667-8470 <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-Mail: mae@witherspoonkelley.com</p> <p><input checked="" type="checkbox"/> Chamber Copy Via Hand Delivery</p>
--	---



PAUL W. DAUGHARTY

EMERGENCY MOTION TO QUASH WRITS OF EXECUTION - 2

2014 OCT 17 PM 1:57

CLERK DISTRICT COURT

Shirley Dixon
DEPUTY

PAUL W. DAUGHARTY
PAUL W. DAUGHARTY, P.A.
Attorney at Law
110 E. Wallace Avenue
Coeur d'Alene, ID 83814
Telephone No.: (208) 664-3799
Facsimile No.: (208) 666-0550
E-mail: paul@pdaughartylaw.com
ISB# 4520

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY; and ABCO WOOD RECYCLING,
LLC, an Idaho limited liability company,

Defendants.

CASE NO. CV-14-4713

DECLARATION OF SERVICE

I, Paul W. Daugharty, certify that on October 17, 2013, I caused a true and correct copy of the following documents to be served on the following person(s) using the method of service indicated below:

- (1) Proposed Order Granting Motion to Quash.


Mark A. Ellingsen Jason M. Gray WITHERSPOON KELLEY Attorneys & Counselors 608 Northwest Blvd., Suite 300 Coeur d'Alene, ID 83814	<input type="checkbox"/> Via Mail, postage prepaid thereon <input checked="" type="checkbox"/> Via Facsimile: 208-667-8470 <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-Mail: mae@witherspoonkelley.com
---	---

DECLARATION OF SERVICE

Honorable John T. Mitchell Kootenai County Courthouse 324 West Garden Avenue Coeur d'Alene, Idaho 83816	<input checked="" type="checkbox"/> Chamber Copy Via Hand Delivery
--	--

Dated this 17 day of October, 2014.

PAUL W. DAUGHARTY, P.A.

By: 
PAUL W. DAUGHARTY
Attorney for Defendants

DECLARATION OF SERVICE

CLERK DISTRICT COURT
DEPUTY

1 **A. The Judgments are Final Judgments With a Rule 54(b) Certificate Upon**
2 **Which a Writ of Execution Can Issue.**

3 Defendants' claim is truly an argument of form over substance. I.R.C.P. 69 specifically
4 provides in pertinent part that:

5 (a) Process to enforce an appealable final judgment or partial
6 judgment certified as final under Rule 54(b) for the payment of money, or a court
7 order for the payment of money, shall be a writ of execution, unless the court
8 directs otherwise; but no writ of execution may issue on a partial judgment which
9 is not certified as final under Rule 54(b)

10 In this case, this Court granted Plaintiff's motion for summary judgment on all claims raised by
11 Plaintiff in his complaint. Further, this Court entered separate judgments against both Defendant
12 Shawn Montee/Heather Montee and Defendants Shawn Montee, Inc./Abco Wood Recycling,
13 LLC. Both of the judgments entered by this Court were for the payment of money and both
14 judgments contained a Rule 54(b) certificate—certifying that each judgment was a final
15 judgment upon which execution may issue and which an appeal may be taken as provided by the
16 Idaho Appellate Rules.

17 Accordingly, both judgments contain a Rule 54(b) certificate which certifies that these
18 judgments are final judgments. Since these judgments have been deemed final with a Rule 54(b)
19 certificate, Plaintiff has a right to obtain a writ of execution based upon these judgments pursuant
20 to I.R.C.P. 69. Therefore, Defendants' motion must be denied.

21 **B. No Evidence Presented That Garnishment Efforts by Plaintiff Will Result in**
22 **Double Recovery.**

23 Defendants claim that the garnishment which has been issued regarding the Writ of
24 Execution might result in "double recovery"—an amount over and above what is due and owing
25 pursuant to the respective judgments.
26
27
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1 If the Defendants would like to tender payment in full of the amount due and owing
2 pursuant to the Judgments, then Plaintiff will be happy to withdraw any further efforts to collect
3 on the judgments. There has been no effort on the Defendants' part, to date, to tender any
4 payment to Plaintiff. By virtue of the Affidavit of Paul Daugharty filed in support of the Motion
5 to Quash Writs of Execution, Defendants are aware of the bank garnishment being initiated by
6 Plaintiff. However, other than unsubstantiated arguments, Defendants have failed to present any
7 evidence that the subject garnishments will actually result in recovery by Plaintiff of an amount
8 which would exceed the in excess of \$2 million which is due in owing by all the Defendants
9 pursuant to the respective judgments. Plaintiff has the right to move forward with garnishment
10 efforts based upon the liability attributed to both judgments. Further, Idaho Code § 8-509(b),
11 provides that Plaintiff is responsible that the amounts garnished do not exceed the amounts
12 which are due and owing on the judgment. In the event that Plaintiff obtains a response from the
13 garnishment that evidences that there may be an amount recovered which might exceed the
14 amounts which are due and owing on the respective judgments, Plaintiff will immediately have
15 any excess funds returned to the Defendants. Therefore, Defendants' motion must be denied.
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19 DATED this 21st day of October, 2014.

20 WITHERSPOON KELLEY

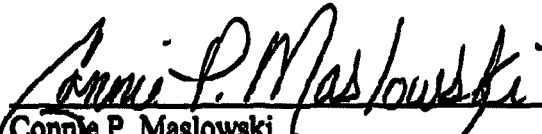
21
22 
23 Mark A. Ellingsen
24
25
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CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 22nd day of October, 2014, I caused a true and correct copy of the PLAINTIFF'S RESPONSE TO DEFENDANTS' EMERGENCY MOTION TO QUASH WRIT OF EXECUTION to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Paul W. Daugharty
Paul W. Daugharty P.A.
Attorney at Law
110 East Wallace Avenue
Coeur d'Alene, ID 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 666-0550


Connie P. Maslowski

PLAINTIFF'S RESPONSE TO DEFENDANTS' EMERGENCY MOTION TO QUASH WRITS OF
EXECUTION—PAGE 4

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STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 4/11/20

2014 OCT 31 PM 3:13

CLERK DISTRICT COURT

[Signature]
DEPUTY *dm*

PAUL W. DAUGHARTY
PAUL W. DAUGHARTY, P.A.
Attorney at Law
110 E. Wallace Avenue
Coeur d'Alene, ID 83814
Telephone No.: (208) 664-3799
Facsimile No.: (208) 666-0550
E-mail: paul@pdaughartylaw.com
ISB# 4520

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY**

ROBERT WOLFORD,

Plaintiff/Respondent

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY; and ABCO WOOD RECYCLING,
LLC, an Idaho limited liability company,

Defendants/Appellants.

CASE NO. CV-14-4713

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, ROBERT WOLFORD AND YOUR
ATTORNEY OF RECORD, MARK A. ELLINGSEN, AND THE CLERK OF THE ABOVE
ENTITLED COURT.

NOTICE IS GIVEN THAT:

1. The above named appellants, SHAWN MONTEE and HEATHER MONTEE, husband
and wife, SHAWN MONTEE, INC., an Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY, and ABCO WOOD RECYCLING, LLC, an Idaho limited liability company

NOTICE OF APPEAL - 1

(“Appellants”) appeal against the above named respondent to the Idaho Supreme Court from the MEMORANDUM DECISION AND ORDER entered in the above entitled action on the 19th day of September, 2014, and JUDGMENTS entered in the above entitled action on the 26th day of September, 2014, the Honorable John T. Mitchell presiding.

2. Appellants assert they have a right to appeal to the Idaho Supreme Court because the Judgments entered in the above entitled action on the 26th day of September, 2014 as described in paragraph 1 above are being treated as appealable judgments under and pursuant to I.A.R. 11(a)(1) and (3).

3. Appellants submit the following preliminary statement of issues on appeal:

a. Did the District Court err in denying Appellants’ Motion to Continue the hearing scheduled on Respondent’s Motion for Summary Judgment pursuant to I.R.C.P. 56(f) to allow for the depositions of respondent and other individuals having knowledge of the matters asserted in the above entitled action?

b. Did the District Court err in denying Appellants’ Motion for Examination of respondent pursuant to I.R.C.P. 35(a)?

c. Did the District Court err in granting Elizabeth Alvord’s Motion to Seal the Affidavit of Shawn Montee in Opposition to Plaintiff’s Motion for Summary Judgment pursuant to I.C.A.R. 32(i)?

d. Did the District Court err in determining that the Promissory Notes were “clear and unambiguous” and in determining that “it is uncontroverted that defendants are in default on valid, unambiguous notes” and granting Respondent’s Motion for Summary Judgment?

e. Did the District Court err in determining that the Promissory Note dated

February 16, 2010 did not replace the Promissory Note dated May 12, 2009?

f. Did the District Court err in not providing appellants with an offset against any outstanding balance claimed due and owing by respondent?

g. Did the District Court err in entering multiple judgments in the above entitled action (1) a Judgment in the total amount of \$2,305,160.71 against Appellants, SHAWN MONTEE and the marital community of SHAWN MONTEE and HEATHER MONTEE on the 26th day of September, 2014; and (2) a Judgment in the total amount of \$2,145,587.91 against Appellants, SHAWN MONTEE INC., an Idaho corporation d/b/a Shawn Montee Timber Company and ABCO WOOD RECYCLING, LLC, an Idaho limited liability company on the 26th day of September, 2014?

Appellants hereby reserve the right to assert additional issues on appeal.

4. Has an order been entered sealing all or a portion of the record? If so, what portion?

The District Court ordered the entire Affidavit of Shawn Montee in Opposition to Motion for Summary Judgment sealed.

5. Is a reporter's transcript requested? YES. Appellants request the preparation of the following portions of the reporter's transcript in both hard copy and electric format: The entire reporter's transcript made by Court Reporter, Julie Foland of the hearing held September 17, 2014 as defined by I.A.R. 25(a) and (c).

6. The appellants request the following documents to be included in the Clerk's record in addition to those automatically included under I.A.R. 28:

a. All Affidavits with attachments;

NOTICE OF APPEAL - 3

b. All briefs and/or memorandum; and

c. All pleadings filed and all correspondence by and between counsel and the District Court and all rulings by the District Court thereon.

7. I certify that:

a. A copy of this Notice of Appeal has been served upon Court Reporter, Julie Foland at 324 West Garden Avenue, Coeur d'Alene, Idaho 83816-9000.

b. The Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript pursuant to I.A.R. 24(c).


c. The Clerk of the District Court has been paid the estimated fee for preparation of the Clerk's record pursuant to I.A.R. 27(d).

d. The appellate filing fee has been paid.

e. Service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 31st day of October, 2014.

PAUL W. DAUGHARTY, P.A.

By: 

PAUL W. DAUGHARTY
Attorney for Defendants/Appellants

CERTIFICATE OF DELIVERY

I hereby certify that on this 31st day of October, 2014, I caused a true and correct copy of the foregoing to be delivered to:

Mark A. Ellingsen Jason M. Gray WITHERSPOON KELLEY Attorneys & Counselors 608 Northwest Blvd., Suite 300 Coeur d'Alene, ID 83814	<input type="checkbox"/> Via Mail, postage prepaid thereon <input checked="" type="checkbox"/> Via Facsimile: 208-667-8470 <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-Mail: mae@witherspoonkelley.com
Julie Foland, Court Reporter 324 W. Garden Avenue Coeur d'Alene, ID 83814	<input checked="" type="checkbox"/> Via Mail, postage prepaid thereon <input type="checkbox"/> Via Facsimile: <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-Mail:

PAUL W. DAUGHARTY, P.A.

By: 
PAUL W. DAUGHARTY

NOTICE OF APPEAL - 5

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED:

2014 NOV 10 PM 5:39

CLERK DISTRICT COURT
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470
Email: mae@witherspoonkelley.com

Attorneys for Robert Wolford

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWNN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho Limited Liability
Company,

Defendants.

Case No. CV-2014-4713

AMENDED JUDGMENT AGAINST
DEFENDANT SHAWN MONTEE AND
THE MARITAL COMMUNITY
COMPRISED OF SHAWN MONTEE
AND HEATHER MONTEE, HUSBAND
AND WIFE

JUDGMENT IS ENTERED AS FOLLOWS:

1. That Robert Wolford, be and is hereby awarded judgment against Defendant Shawn Montee and the marital community comprised of Shawn Montee and Heather Montee, husband and wife, as follows:

2. For the principal sum of \$1,483,641.00, plus prejudgment interest which has accrued on the unpaid principal sum at the rate of 12% per annum pursuant to Idaho Code § 28-22-104(2) in the amount of \$821,519.71 through the date of the original judgment,

AMENDED JUDGMENT AGAINST DEFENDANT SHAWN MONTEE AND THE MARITAL COMMUNITY COMPRISED OF SHAWN MONTEE AND HEATHER MONTEE, HUSBAND AND WIFE-PAGE 1

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1 September 26, 2014, with interest continuing to accrued on this total judgment amount at the
2 legal rate on judgments from the judgment date until paid in full.

3 3. For Plaintiff's reasonable attorney's fees in the sum of \$15,731.00 and costs in
4 the sum of \$146.00.

5
6 TOTAL AMOUNT OF JUDGMENT: \$2,321,037.71

7 DATED this 10th day of November, 2014.

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12 John T. Mitchell
13 District Judge
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RULE 54(b) CERTIFICATE

With respect to the issues determined by the above order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the Court has determined that there is no just reason for delay of the entry of a final judgment and that the Court has and does hereby direct that the above order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 10th day of November, 2014.


John T. Mitchell
District Judge

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 10 day of November, 2014, I caused a true and correct copy of the AMENDED JUDGMENT to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Mark A. Ellingsen
Witherspoon Kelley
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146

☐
☐
☐
☒

U.S. Mail
Overnight Delivery
Hand Delivered
Via Fax: (208) 667-8470

11/14/14
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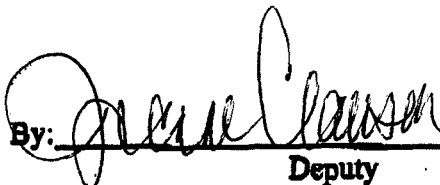
Paul W. Daugharty
Paul W. Daugharty, P.A.
Attorney at Law
110 East Wallace Avenue
Coeur d'Alene, ID 83814

☐
☐
☐
☒

U.S. Mail
Overnight Delivery
Hand Delivered
Via Fax: (208) 666-0550

#644

JIM BRANNON, Kootenai County
Clerk of District Court

By: 
Deputy

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2014 NOV 10 PM 5:39

CLERK DISTRICT COURT
[Signature]
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470
Email: mae@witherspoonkelley.com

Attorneys for Robert Wolford

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho Limited Liability
Company,

Defendants.

Case No. CV-2014-4713

AMENDED JUDGMENT AGAINST
DEFENDANTS SHAWN MONTEE,
INC., AN IDAHO CORPORATION DBA
SHAWN MONTEE TIMBER
COMPANY AND ABCO WOOD
RECYCLING, LLC, AN IDAHO
LIMITED LIABILITY COMPANY

JUDGMENT IS ENTERED AS FOLLOWS:

1. That Robert Wolford, be and is hereby awarded judgment against Defendant Shawn Montee, Inc., an Idaho corporation d/b/a Shawn Montee Timber Company and Abco Wood Recycling, LLC, an Idaho limited liability company, jointly and severally, as follows:

2. For the principal sum of \$1,483,641.00, plus prejudgment interest which has accrued on the unpaid principal sum at the rate of 10% per annum pursuant to the terms of the underlying Promissory Note in the amount of \$661,946.91 through the date of the original

AMENDED JUDGMENT AGAINST SHAWN MONTEE, INC., AN IDAHO CORPORATION DBA SHAWN MONTEE
TIMBER COMPANY AND ABCO WOOD RECYCLING, LLC, AN IDAHO LIMITED LIABILITY COMPANY-PAGE 1
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1 judgment, September 26, 2014, and with interest continuing to accrue on this total judgment
2 amount at the legal rate on judgments from the original judgment date until paid in full.

3 3. For Plaintiff's reasonable attorney's fees in the sum of \$15,731.00 and costs in
4 the sum of \$146.00.
5

6 TOTAL AMOUNT OF JUDGMENT: \$2,161,464.91

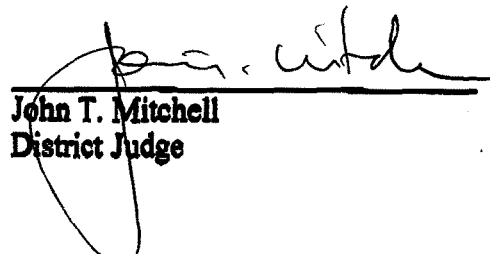
7 DATED this 10th day of November, 2014.
8
9

10
11 
12 John T. Mitchell
13 District Judge
14
15
16
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RULE 54(b) CERTIFICATE

With respect to the issues determined by the above order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the Court has determined that there is no just reason for delay of the entry of a final judgment and that the Court has and does hereby direct that the above order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 10th day of November, 2014.



John T. Mitchell
District Judge

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 10 day of November, 2014, I caused a true and correct copy of the AMENDED JUDGMENT to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Mark A. Ellingsen
Witherspoon Kelley
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146

☐
☐
☐
☒

U.S. Mail
Overnight Delivery
Hand Delivered
Via Fax: (208) 667-8470

11/14/14
#430
AHC

Paul W. Daugharty
Paul W. Daugharty, P.A.
Attorney at Law
110 E. Wallace Avenue
Coeur d'Alene, ID 83814

☐
☐
☐
☒

U.S. Mail
Overnight Delivery
Hand Delivered
Via Fax: (208) 666-0550

#644

JIM BRANNON, Kootenai County
Clerk of District Court

By: James Clausen

Deputy

State of Idaho
KOOTENAI CO SHERIFF'S OFFICE
Civil Division
COEUR D'ALENE, ID 83814

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2014 NOV 20 PM 3:49

Process Number: 14-7710

Court Number: CV144713

CLERK DISTRICT COURT

DEPUTY

I, BEN WOLFINGER, SHERIFF of Kootenai County do hereby certify that I received
the within and foregoing WRIT OF EXECUTION, \$5 CHECK, BANK SEARCH FEE, NOTICE,
JUDGEMENT on 14th day of October, 2014, with instructions I serve it on:

US BANK (Garnishee)
302 E SHERMAN AVE; BRANCH 11
COEUR D'ALENE, ID 83814
Served on: 24th day of October, 2014 at 10:00:00 by M.SKINDLOV
Served to: ETSUKO PEITE Garnishee
302 E SHERMAN AVE; BRANCH 11
COEUR D'ALENE, ID 83814

Comments:

DEFENDANT PACKET MAILED 10/27/14. RECEIVED ANSWER FROM BANK REGARDING BANK
ACCOUNT OF SHAWN & HEATHER MONTEE- NO ATTACHABLE ACCOUNTS. WRIT RETURNED TO
COURT UNSATISFIED.

Returned on the 19th day of November, 2014

I am a citizen of the United States over the age of 21 and not a party
of this action. I further certify the above information to be true and accurate
to the best of my knowledge.

Dated the 19th day of November, 2014

BEN WOLFINGER, SHERIFF

Caney L. Holcomb

BY: _____

Deputy

Civilian Employee

My commission expires:

Notary Public

FINAL RETURN

RECEIVED

14 OCT 14 AM 10:26

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470
E-mail: mae@witherspoonkelley.com

SHERIFF'S DEPARTMENT
KOOTENAI COUNTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

No. CV 2014-4713

Plaintiff,

WRIT OF EXECUTION FOR BANK
GARNISHMENT

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho Limited Liability
Company,

Defendants.

TO: THE SHERIFF OF KOOTENAI COUNTY

WHEREAS, on September 26, 2014, Plaintiff Robert Wolford recovered a judgment in the above-entitled action against Defendant Shawn Montee and the Marital Community Comprised of Shawn Montee and Heather Montee, Husband and Wife.

\$2,305,160.71	September 26, 2014 Judgment Amount as of October 9, 2014
\$ 4,207.58	Interest calculated at 5.125% (\$323.66 per diem) on the principal balance of the September 26, 2014 Judgment amount through October 9, 2014 (13 days).
\$ 2.00	Filing Fees and Costs
\$2,309,370.29	TOTAL

WRIT OF EXECUTION FOR BANK GARNISHMENT—PAGE 1

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ORIGINAL

1 Together with interest accruing thereon at the rate of 5.125% per annum on the principal
2 balance of \$2,305,160.71 with a per diem of \$323.66, hereafter, together with sheriff's costs and
3 fees.

4 NOW YOU, the said Sheriff, are hereby requested to satisfy said Judgment, with
5 interest as set out above, plus accruing costs and sheriff's fees, until this Judgment is fully
6 satisfied.

7 YOU ARE FURTHER DIRECTED to satisfy said Judgment, with interest as aforesaid,
8 and attorney's fees, from the money, equipment, inventory, accounts receivables, chattel paper,
9 instruments, negotiable documents of title, funds, and general intangibles, and any other
10 personal property which is kept by Defendant Shawn Montee and the Marital Community
11 Comprised of Shawn Montee and Heather Montee, Husband and Wife at **Washington Trust**
12 **Bank, Umpqua Bank, Mountain West Bank, Wells Fargo Bank, and US Bank** or if
13 sufficient proper personal property cannot be found then out of the real property in your county
14 belonging to the Defendant on the date upon which said judgment was docketed in Kootenai
15 County, or any time thereafter, and make return of the Writ within sixty (60) days after receipt
16 hereof, with what you have endorsed thereon.

17 ATTEST my hand and seal of said Court this 14 day of October, 2014.

18 JIM BRANNON, Kootenai County
19 Clerk of District Court

20 By: 
21 Deputy

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED

2014 NOV 24 PM 2:59

CLERK DISTRICT COURT

DEPUTY

1 Mark A. Ellingsen, ISB No. 4720
2 WITHERSPOON KELLEY
3 Attorneys & Counselors
4 The Spokesman Review Building
5 608 Northwest Boulevard, Suite 300
6 Coeur d'Alene, ID 83814
7 Telephone: (208) 667-4000
8 Facsimile: (208) 667-8470

Attorneys for Plaintiff

8 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
9 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD

No. CV-14-4713

Plaintiff,

MOTION FOR ORDER FOR
EXAMINATION OF JUDGMENT
DEBTORS

v.

14 SHAWN MONTEE and HEATHER MONTEE,
15 husband and wife; SHAWN MONTEE, INC., an
16 Idaho corporation dba SHAWN MONTEE
17 TIMBER COMPANY; and ABCO WOOD
18 RECYCLING, LLC, an Idaho limited liability
19 company,

Defendants.

20 Plaintiff, pursuant to Rule 69(c), Idaho Rules of Civil Procedure and Title 11, Chapter
21 5, Idaho Code, moves this Court for its order directed to Judgment Debtors Shawn Montee
22 and Heather Montee in the above-entitled action, to produce for inspection and copying all
23 documents in their possession, or reasonably available to them, which pertain or relate to the
24 acts, conduct, or property or to the liabilities and financial condition of the Judgment Debtors.
25 These documents include the documents which are identified in Exhibit A which is attached
26 hereto and incorporated by reference herein. In order to expedite the examination process,
27
28

MOTION FOR ORDER FOR EXAMINATION OF JUDGMENT DEBTORS—PAGE 1

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1 Plaintiff requests that this Court order the Judgment Debtors Shawn Montee and Heather
2 Montee to provide these documents to Plaintiff's counsel's office located at Witherspoon
3 Kelley, 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 in advance of the
4 examination and not later than December 11, 2014 which pertain or relate to their assets
5 and/or business transactions and to appear for a debtor's examination to be conducted under
6 oath, by counsel. Further, Plaintiff requests that Judgment Debtors be ordered to appear at the
7 firm of Witherspoon Kelley on the following dates and times to be examined under oath
8 concerning said Judgment Debtors' property and the means of paying said Judgment and why
9 any property not exempt from execution should not be ordered applied toward the satisfaction
10 of said Judgment. The dates and times of the requested exams are identified as follows:
11

12 (1) That Defendant Shawn Montee be ordered to appear at the offices of
13 Witherspoon Kelley located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho
14 83814 at the hour of 10:00 a.m., PST, on December 18, 2014, to make discovery under oath;
15 and
16

17 (2) That Defendant Heather Montee be ordered to appear at the offices of
18 Witherspoon Kelley located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho
19 83814 at the hour of 10:00 a.m., PST, on December 19, 2014 to make discovery under oath; .
20

21 This Motion is made and based upon the files and records of the above entitled action
22 and the Amended Judgments which were entered by this Court on November 10, 2014. Due
23
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28

1 to the fact that said Amended Judgments each contain a Rule 54(b) Certificate, Plaintiff may
2 now execute upon said judgment in any manner provided by law.

3 DATED this 24 day of November, 2014.

4 WITHERSPOON KELLEY

5 

6 Mark A. Ellingsen
7 Attorneys for Plaintiff
8
9

10 CERTIFICATE OF SERVICE

11 I certify that on this 24th day of November, 2014, I caused a true and correct copy of
12 the MOTION FOR ORDER FOR EXAMINATION OF JUDGMENT DEBTORS to be
13 forwarded, with all required charges prepaid, by the method(s) indicated below, to the following
14 person(s):
15

16 Paul W. Daugharty
17 Paul W. Daugharty, P.A.
18 110 E. Wallace Avenue
19 Coeur d'Alene, ID 83814

20 ☐ U.S. Mail
21 ☐ Hand Delivered
22 ☐ Overnight Mail
23 ☒ Via Fax: (208) 666-0550
24 ☐ Via Email:

25 
26 Connie P. Maslowski
27
28

Exhibit A**I. DEFINITIONS**

1. **Judgment Debtors.** The term "Judgment Debtors" referred to hereinafter shall include Shawn Montee, Heather Montee, Shawn Montee, Inc. dba Shawn Montee Timber Company, and ABCO Wood Recycling, LLC.
2. **Document.** "Document" or "documents" means the original (unless otherwise specified and copies when the original is not available), of each and every instrument, writing or thing useful for the purpose or having the effect of conveying, retaining, or transmitting information, thought or expression whether by mechanical, electronic, photographic or any other means. Each and every nonidentical copy of a document (whether different from the original because of stampings, notes or other marks made upon such copy or otherwise), is itself a separate document. This includes copies or duplicates of documents contemporaneously or subsequently created that have any nonconforming notes or other markings. This also includes any communications contained in or stored or represented on computer disk, diskette, magnetic tape, palm top device, computer memory, optical or digital disc, or other media that store information, text or data electronically, magnetically or mechanically.
3. **Conversation.** "Conversation" refers to any manner of oral communication regardless of the medium by which such communication occurred

II. INSTRUCTIONS

1. Documents responsive to these requests shall be produced as they are kept in the usual course of your business and shall be organized and labeled to correspond to the categories of requests. A copy of the means by which a document's source may be determined, for example, file tabs or labels, shall be produced along with any document responsive to these requests.
2. Documents attached or affixed to each other by means including, but not limited to, being stapled, clipped, bound together or included as part of a notebook of any kind shall not be separated, whether or not responsive to these requests.

DOCUMENTS REQUESTED

1. Copies of all Judgment Debtors tax return documents for the years 2011, 2012, and 2013 and any extensions related thereto, including without limitation all schedules, exhibits or notes.
2. Copies of all tax return documents for any and all other entities in which Judgment Debtors have an economic or controlling interest (other than publicly traded

companies), including without limitation all schedules, exhibits or notes thereto for the years 2011, 2012 and 2013.

3. Copies of all balance sheet documents for any and all other entities in which Judgment Debtors have an economic or controlling interest (other than publicly traded companies), complete with supporting detail and notes.

4. Copies of all documents related to any other judgments that have been entered against Judgment Debtors.

5. Copies of all documents where pertain to any payments Judgment Debtors have made in the past regarding any other judgments that may have been entered against Judgment Debtors.

6. Copies of all documents related to any settlement agreements or payment plans or other agreements which pertain or relate to the repayment of those judgment(s) described in Section 5 above.

7. Copies of all checks, wire transfers, or other documents which evidence any payments Judgment Debtors (or a third party) have made which pertain to those judgments described in Section 5 above.

8. Copies of all trust agreements and documents related thereto to which Judgment Debtors are a trustor, trustee and/or beneficiary.

9. Copies of current balance sheet, list of assets and any other documents related to and describing the corpus of the trust for any trust described in Section 8 above.

10. Copies of all monthly bank statements and brokerage account statements from January 1, 2011 to December 1, 2014 for all accounts in which Judgment Debtors or an entity (in which Judgment Debtors have an economic interest) or trust (in which Judgment Debtors are a trustor, trustee and/or beneficiary) have an interest.

11. Copies of all deeds, appraisals and documents related thereto for real property in which Judgment Debtors or an entity (in which Judgment Debtors have an economic interest) or trust (in which Judgment Debtors are a trustor, trustee and/or beneficiary) have an interest.

12. Copies of Judgment Debtors paystubs for the last three (3) months, if currently employed.

13. Copies of all loan documents and appraisals for real properties Judgment Debtors or an entity (in which Judgment Debtors have an economic interest) or trust (in which Judgment Debtors are a trustor, trustee and/or beneficiary) have purchased, including loans still outstanding as well as loans paid off, for the past five (5) years.

- 1 14. Copies of all loan documents evidencing loans Judgment Debtors have made to others,
2 including without limitation any collateral agreements, pledges of assets, assignment
3 of rents or other documents related thereto.
- 4 15. Copies of "Summary of Coverage" documents for each life insurance policy in which
5 Judgment Debtors are named as insured or beneficiary, with cash surrender, including
6 the applicable policy number(s).
- 7 16. Copies of any and all appraisal documents relating to collectible items such as guns
8 and coins, in which Judgment Debtors have an interest.
- 9 17. Copies of any and all appraisal documents relating to jewelry, artwork or other
10 valuable items of personal property, in which Judgment Debtors have an interest.
- 11 18. Produce a copy of all documents which pertain or relate to any financial statements
12 regarding Judgment Debtors from January 1, 2011 to December 1, 2014.
- 13 19. Produce a copy of all documents which pertain or relate to any financial statements
14 regarding any entity in which Judgment Debtors have an economic interest from
15 January 1, 2011 to December 1, 2014.
- 16 20. Copies of any and all appraisal documents relating to any real property in which
17 Judgment Debtors or an entity (in which Judgment Debtors have an economic interest)
18 or trust (in which Judgment Debtors are a trustor, trustee and/or beneficiary) have an
19 interest.
- 20 21. Copies of all articles of organization of all entities (in which Judgment Debtors have
21 an economic interest) or trust (in which Judgment Debtors are a trustor, trustee and/or
22 beneficiary) have an interest.
- 23 22. Copies of all certificates of title of all automobiles, vehicles, boats, airplanes, or other
24 titled vehicles/equipment which are owned by Judgment Debtors or by an entity in
25 which Judgment Debtors have an economic interest.
- 26 23. Original certificates of stock related to any stock which Judgment Debtors may own in
27 any limited liability company, corporation, partnership, limited partnership or any
28 other business entity.
- 24 24. Copies of all documents evidencing a transfer of funds from Shawn Montee to any
25 other party within the past 4 years.
- 26 25. Copies of all documents evidencing a transfer of funds from Shawn Montec, Inc. to
27 any other party within the past 4 years.

MOTION FOR ORDER FOR EXAMINATION OF JUDGMENT DEBTORS
EXHIBIT A—PAGE 3

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- 1 26. Copies of all documents evidencing a transfer of funds from Abco Wood Recycling, LLC to any other party within the past 4 years.
- 2
- 3 27. Copies of all documents evidencing a transfer of funds from Heather Montee to any other party within the past 4 years.
- 4
- 5 28. Copies of all documents evidencing a transfer of any asset from Shawn Montee to any other party within the past 4 years.
- 6
- 7 29. Copies of all documents evidencing a transfer of any asset from Abco Wood Recycling, LLC to any other party within the past 4 years.
- 8
- 9 30. Copies of all documents evidencing a transfer of any asset from Shawn Montee, Inc. to any other party within the past 4 years.
- 10
- 11 31. Copies of all documents evidencing a transfer of any asset from Heather Montee to any other party within the past 4 years.
- 12
- 13 32. Copies of all documents evidencing a transfer of any asset from Shawn Montee, Inc. to any other party within the past 4 years.
- 14
- 15 33. Copies of all documents which pertain or relate to the Inventory or Equipment of Judgment Debtors. This request includes, but is not necessarily limited to, documents which currently identify the personal property which constitutes Judgment Debtors Inventory or Equipment and any documents which pertain to the value of said Inventory or Equipment.. This request also seeks documents which pertain to the valuation of the inventory of Judgment Debtors from January 1, 2011 through December 1, 2014.
- 17
- 18 34. Copies of all documents which pertain or relate to the present and past financial/bank accounts of Judgment Debtors. This request includes a copy of all bank statements which pertain to an account held by Judgment Debtors in any financial institution from January 1, 2014 through December 1, 2014..
- 19
- 20
- 21 35. Copies of all documents which pertain or relate to Judgment Debtor's past purchase or sale of Inventory or Equipment from January 1, 2011 through December 1, 2014.
- 22
- 23 36. A complete copy of all financial statements which pertain to the Judgment Debtors from January 1, 2011 through December 1, 2014.
- 24
- 25 37. A complete copy of all loan applications made by Judgment Debtors from January 1, 2011 through December 1, 2014.
- 26
- 27 38. A complete copy of all lease agreements entered between Judgment Debtors and any third party which pertains to either Inventory or Equipment owned by Judgment Debtors. This request is limited to any such lease agreements between January 1, 2011 and December 1, 2014.
- 28

MOTION FOR ORDER FOR EXAMINATION OF JUDGMENT DEBTORS
EXHIBIT A—PAGE 4

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39. A copy of all documents which pertains or relates to the past and present financial transactions and condition of the Judgment Debtors from January 1, 2011 to December 1, 2014.—i.e. the "financial books" maintained by Judgment Debtors. This request would include a copy of all documents which contain records related to the Accounts Receivables, Accounts Payable, Balance Sheet, Inventory, General Ledger, Profit and Loss Statements of Judgment Debtors during this time frame.
40. A copy of all documents which relate to Accounts Receivables of Judgment Debtors from January 1, 2011 through December 1, 2014. This request includes documents related to the name, address, telephone number of all customers who have an account receivable with Debtor, copies of all documents which evidence the balance owed, copies of invoices related to said Accounts Receivables, and any and all correspondence related to said Accounts Receivable.
41. A copy of monthly Profit and Loss Statements of Judgment Debtors for the period January 1, 2011 through December 1, 2014.
42. Copies of all documents which pertain or relate to any withdrawal, payment of money and/or transfers of funds between the Judgment Debtors from January 1, 2011 through December 1, 2014. This request would include, but not necessarily be limited to, copies of checks evidencing these payments/transfers.
43. Copies of all documents which pertain or relate to any withdrawal, payment of money and/or transfers of funds between Judgment Debtors and any member of Judgment Debtors family(i.e. brother, sister, son, daughter, son-in-law, daughter-in-law, or grandchild) from January 1, 2011 through December 1, 2014. This request would include, but not necessarily be limited to, copies of checks evidencing these payments/transfers.
44. Copies of all documents which pertain or relate to the sale of any item of Equipment or Inventory of Judgment Debtors between January 1, 2011 and December 1, 2014. This request would include, but not necessarily limited to, copies of any and all bills of sale, contracts, or invoices related to said sale.
45. Copies of all correspondence between Judgment Debtors and any third party regarding a lease or sale of Debtors Business's Inventory or Equipment. This request is limited to such correspondence between January 1, 2011 and December 1, 2014.
47. A list of the names, addresses and telephone numbers of Judgment Debtors employees from January 1, 2011 through December 1, 2014.

2014 DEC - 1 PM 12:38

DISTRICT COURT
Paul L. Lamm

1 Mark A. Ellingsen, ISB No. 4720
2 WITHERSPOON KELLEY
3 Attorneys & Counselors
4 The Spokesman Review Building
5 608 Northwest Boulevard, Suite 300
6 Coeur d'Alene, Idaho 83815
7 Telephone: (208) 667-4000
8 Facsimile: (208) 667-8470

9 *Attorneys for Plaintiff*

10 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
11 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

12 ROBERT WOLFORD,

13 Plaintiff,

14 v.

15 SHAWN MONTEE and HEATHER MONTEE,
16 husband and wife; SHAWN MONTEE, INC., an
17 Idaho Corporation d/b/a SHAWN MONTEE
18 TIMBER COMPANY; and ABCO WOOD
19 RECYCLING, LLC, an Idaho

20 Defendants.

Case No. CV-14-4713

ORDER FOR EXAMINATION OF
JUDGMENT DEBTORS

21 Upon reading the Motion for an Order Requiring a Debtor's Examination and it
22 appearing from the files and records in the above matter that Plaintiff recovered a Judgment in
23 this action against Defendants Shawn Montee and Heather Montee on September 26, 2014,
24 which was later Amended on November 10, 2014 for the sum of \$2,321,037.71 and that
25 Plaintiff recovered a Judgment in this action against Defendants Shawn Montee Timber
26 Company and ABCO Wood Recycling, LLC on September 26, 2014, which was later
27 Amended on November 10, 2014 for the sum of \$2,161,464.91. Interest continues to accrue on

28 ORDER FOR EXAMINATION OF JUDGMENT DEBTORS—PAGE 1

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1 said judgments, together with accruing costs, and said Judgments remain unpaid as of the date
2 of this Motion;

3 IT IS HEREBY ORDERED that Shawn Montee, Judgment Debtor, appear at the
4 offices of Witherspoon Kelley, located at 608 Northwest Boulevard, Coeur d'Alene, Idaho
5 83814, on the 18th day of December, 2014, at the hour of 10:00 a.m., to make discovery on
6 oath.
7

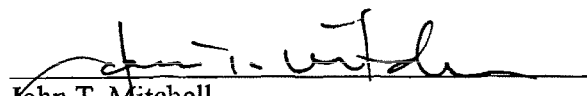
8 IT IS HEREBY ORDERED that Heather Montee, Judgment Debtor, appear at the
9 offices of Witherspoon Kelley, located at 608 Northwest Boulevard, Coeur d' Alene, Idaho
10 83814, on the 19th day of December, 2014, at the hour of 10:00 a.m., to make discovery on
11 oath.
12

13 IT IS HEREBY ORDERED that Judgment Debtors, also produce for inspection and
14 copying all documents in their possession, or reasonably available to them, which pertain or
15 relate to the acts, conduct, or property or to the liabilities and financial condition of the
16 Judgment Debtors. These documents include, but are not necessarily limited to the documents
17 which are attached hereto as Exhibit A and incorporated by reference herein. Judgment
18 Debtors are to provide these documents to Plaintiff's counsel's office located at Witherspoon
19 Kelley, 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 not later than
20 December 11, 2014.
21

22 NOTICE IS HEREBY GIVEN TO SHAWN MONTEE AND HEATHER MONTEE
23 THAT A FAILURE TO APPEAR ON THE DATE ABOVE SPECIFIED MAY SUBJECT
24 JUDGMENT DEBTOR(S) TO HAVING SAID COURT ISSUE A CONTEMPT OF COURT
25
26
27
28

1 CITATION AND/OR A WARRANT OF ARREST AGAINST THEM AS PROVIDED BY
2 IDAHO CODE § 11-508.

3 DATED this 29th day of November, 2014.

4
5
6 
7 John T. Mitchell
District Court Judge

8 CLERK'S CERTIFICATE OF SERVICE

9 I certify that on this 1 day of ~~November~~ ^{December}, 2014, I caused a true and correct copy of
10 the ORDER FOR EXAMINATION OF JUDGMENT DEBTORS to be forwarded, with all
11 required charges prepaid, by the method(s) indicated below, to the following person(s):

12 Paul W. Daugharty
13 Paul W. Daugharty, P.A.
14 110 East Wallace Avenue
Coeur d'Alene, ID 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 666-0550

15 Mark A. Ellingsen
16 Witherspoon Kelley
17 The Spokesman Review Building
608 Northwest Boulevard, Suite 300
18 Coeur d'Alene, ID 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 667-4000

19
20 JAMES BRANNON, Kootenai County
Clerk of District Court

21
22 By: 
23 Deputy

1
2
3 **Exhibit A**

4 **I. DEFINITIONS**

- 5 1. **Judgment Debtors.** The term "Judgment Debtors" referred to hereinafter shall include
6 Shawn Montee, Heather Montee, Shawn Montee, Inc. dba Shawn Montee Timber
7 Company, and ABCO Wood Recycling, LLC.
8
9 2. **Document.** "Document" or "documents" means the original (unless otherwise specified
10 and copies when the original is not available), of each and every instrument, writing or
11 thing useful for the purpose or having the effect of conveying, retaining, or transmitting
12 information, thought or expression whether by mechanical, electronic, photographic or
13 any other means. Each and every nonidentical copy of a document (whether different
14 from the original because of stampings, notes or other marks made upon such copy or
15 otherwise), is itself a separate document. This includes copies or duplicates of
16 documents contemporaneously or subsequently created that have any nonconforming
17 notes or other markings. This also includes any communications contained in or stored
18 or represented on computer disk, diskette, magnetic tape, palm top device, computer
19 memory, optical or digital disc, or other media that store information, text or data
20 electronically, magnetically or mechanically.
21
22 3. **Conversation.** "Conversation" refers to any manner of oral communication regardless
23 of the medium by which such communication occurred

24 **II. INSTRUCTIONS**

- 25 1. Documents responsive to these requests shall be produced as they are kept in the usual
26 course of your business and shall be organized and labeled to correspond to the
27 categories of requests. A copy of the means by which a document's source may be
28 determined, for example, file tabs or labels, shall be produced along with any document
responsive to these requests.
2
3 2. Documents attached or affixed to each other by means including, but not limited to,
being stapled, clipped, bound together or included as part of a notebook of any kind
shall not be separated, whether or not responsive to these requests.

4 **DOCUMENTS REQUESTED**

- 5 1. Copies of all Judgment Debtors tax return documents for the years 2011, 2012, and 2013
6 and any extensions related thereto, including without limitation all schedules, exhibits or
7 notes.
8
9 2. Copies of all tax return documents for any and all other entities in which Judgment
10 Debtors have an economic or controlling interest (other than publicly traded companies),
11 including without limitation all schedules, exhibits or notes thereto for the years 2011,
12 2012 and 2013.

13 ORDER FOR EXAMINATION OF JUDGMENT DEBTORS—
14 EXHIBIT A—PAGE 1

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- 1 3. Copies of all balance sheet documents for any and all other entities in which Judgment
2 Debtors have an economic or controlling interest (other than publicly traded companies),
3 complete with supporting detail and notes.
- 4 4. Copies of all documents related to any other judgments that have been entered against
5 Judgment Debtors.
- 6 5. Copies of all documents where pertain to any payments Judgment Debtors have made in
7 the past regarding any other judgments that may have been entered against Judgment
8 Debtors.
- 9 6. Copies of all documents related to any settlement agreements or payment plans or other
10 agreements which pertain or relate to the repayment of those judgment(s) described in
11 Section 5 above.
- 12 7. Copies of all checks, wire transfers, or other documents which evidence any payments
13 Judgment Debtors (or a third party) have made which pertain to those judgments
14 described in Section 5 above.
- 15 8. Copies of all trust agreements and documents related thereto to which Judgment Debtors
16 are a trustor, trustee and/or beneficiary.
- 17 9. Copies of current balance sheet, list of assets and any other documents related to and
18 describing the corpus of the trust for any trust described in Section 8 above.
- 19 10. Copies of all monthly bank statements and brokerage account statements from January
20 1, 2011 to December 1, 2014 for all accounts in which Judgment Debtors or an entity (in
21 which Judgment Debtors have an economic interest) or trust (in which Judgment
22 Debtors are a trustor, trustee and/or beneficiary) have an interest.
- 23 11. Copies of all deeds, appraisals and documents related thereto for real property in which
24 Judgment Debtors or an entity (in which Judgment Debtors have an economic interest)
25 or trust (in which Judgment Debtors are a trustor, trustee and/or beneficiary) have an
26 interest.
- 27 12. Copies of Judgment Debtors paystubs for the last three (3) months, if currently
28 employed.
13. Copies of all loan documents and appraisals for real properties Judgment Debtors or an
entity (in which Judgment Debtors have an economic interest) or trust (in which
Judgment Debtors are a trustor, trustee and/or beneficiary) have purchased, including
loans still outstanding as well as loans paid off, for the past five (5) years.

ORDER FOR EXAMINATION OF JUDGMENT DEBTORS—
EXHIBIT A—PAGE 2

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- 1 14. Copies of all loan documents evidencing loans Judgment Debtors have made to others,
2 including without limitation any collateral agreements, pledges of assets, assignment of
3 rents or other documents related thereto.
- 4 15. Copies of "Summary of Coverage" documents for each life insurance policy in which
5 Judgment Debtors are named as insured or beneficiary, with cash surrender, including
6 the applicable policy number(s).
- 7 16. Copies of any and all appraisal documents relating to collectible items such as guns and
8 coins, in which Judgment Debtors have an interest.
- 9 17. Copies of any and all appraisal documents relating to jewelry, artwork or other valuable
10 items of personal property, in which Judgment Debtors have an interest.
- 11 18. Produce a copy of all documents which pertain or relate to any financial statements
12 regarding Judgment Debtors from January 1, 2011 to December 1, 2014.
- 13 19. Produce a copy of all documents which pertain or relate to any financial statements
14 regarding any entity in which Judgment Debtors have an economic interest from January
15 1, 2011 to December 1, 2014.
- 16 20. Copies of any and all appraisal documents relating to any real property in which
17 Judgment Debtors or an entity (in which Judgment Debtors have an economic interest)
18 or trust (in which Judgment Debtors are a trustor, trustee and/or beneficiary) have an
19 interest.
- 20 21. Copies of all articles of organization of all entities (in which Judgment Debtors have an
21 economic interest) or trust (in which Judgment Debtors are a trustor, trustee and/or
22 beneficiary) have an interest.
- 23 22. Copies of all certificates of title of all automobiles, vehicles, boats, airplanes, or other
24 titled vehicles/equipment which are owned by Judgment Debtors or by an entity in
25 which Judgment Debtors have an economic interest.
- 26 23. Original certificates of stock related to any stock which Judgment Debtors may own in
27 any limited liability company, corporation, partnership, limited partnership or any other
28 business entity.
- 24 24. Copies of all documents evidencing a transfer of funds from Shawn Montee to any other
25 party within the past 4 years.
- 26 25. Copies of all documents evidencing a transfer of funds from Shawn Montee, Inc. to any
27 other party within the past 4 years.
- 28 26. Copies of all documents evidencing a transfer of funds from Abco Wood Recycling,
LLC to any other party within the past 4 years.

ORDER FOR EXAMINATION OF JUDGMENT DEBTORS—
EXHIBIT A—PAGE 3

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- 1 27. Copies of all documents evidencing a transfer of funds from Heather Montee to any
2 other party within the past 4 years.
- 3 28. Copies of all documents evidencing a transfer of any asset from Shawn Montee to any
4 other party within the past 4 years.
- 5 29. Copies of all documents evidencing a transfer of any asset from Abco Wood Recycling,
6 LLC to any other party within the past 4 years.
- 7 30. Copies of all documents evidencing a transfer of any asset from Shawn Montee, Inc. to
8 any other party within the past 4 years.
- 9 31. Copies of all documents evidencing a transfer of any asset from Heather Montee to any
10 other party within the past 4 years.
- 11 32. Copies of all documents evidencing a transfer of any asset from Shawn Montee, Inc. to
12 any other party within the past 4 years.
- 13 33. Copies of all documents which pertain or relate to the Inventory or Equipment of
14 Judgment Debtors. This request includes, but is not necessarily limited to, documents
15 which currently identify the personal property which constitutes Judgment Debtors
16 Inventory or Equipment and any documents which pertain to the value of said Inventory
17 or Equipment.. This request also seeks documents which pertain to the valuation of the
18 inventory of Judgment Debtors from January 1, 2011 through December 1, 2014.
- 19 34. Copies of all documents which pertain or relate to the present and past financial/bank
20 accounts of Judgment Debtors. This request includes a copy of all bank statements which
21 pertain to an account held by Judgment Debtors in any financial institution from January
22 1, 2014 through December 1, 2014..
- 23 35. Copies of all documents which pertain or relate to Judgment Debtor's past purchase or sale
24 of Inventory or Equipment from January 1, 2011 through December 1, 2014.
- 25 36. A complete copy of all financial statements which pertain to the Judgment Debtors from
26 January 1, 2011 through December 1, 2014.
- 27 37. A complete copy of all loan applications made by Judgment Debtors from January 1, 2011
28 through December 1, 2014.
38. A complete copy of all lease agreements entered between Judgment Debtors and any third
party which pertains to either Inventory or Equipment owned by Judgment Debtors. This
request is limited to any such lease agreements between January 1, 2011 and December 1,
2014.
39. A copy of all documents which pertains or relates to the past and present financial
transactions and condition of the Judgment Debtors from January 1, 2011 to December 1,

ORDER FOR EXAMINATION OF JUDGMENT DEBTORS—

EXHIBIT A—PAGE 4

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1 2014.—i.e. the "financial books" maintained by Judgment Debtors. This request would
2 include a copy of all documents which contain records related to the Accounts
3 Receivables, Accounts Payable, Balance Sheet, Inventory, General Ledger, Profit and
4 Loss Statements of Judgment Debtors during this time frame.

5 40. A copy of all documents which relate to Accounts Receivables of Judgment Debtors from
6 January 1, 2011 through December 1, 2014. This request includes documents related to
7 the name, address, telephone number of all customers who have an account receivable
8 with Debtor, copies of all documents which evidence the balance owed, copies of invoices
9 related to said Accounts Receivables, and any and all correspondence related to said
10 Accounts Receivable.

11 41. A copy of monthly Profit and Loss Statements of Judgment Debtors for the period January
12 1, 2011 through December 1, 2014.

13 42. Copies of all documents which pertain or relate to any withdrawal, payment of money
14 and/or transfers of funds between the Judgment Debtors from January 1, 2011 through
15 December 1, 2014. This request would include, but not necessarily be limited to, copies
16 of checks evidencing these payments/transfers.

17 43. Copies of all documents which pertain or relate to any withdrawal, payment of money
18 and/or transfers of funds between Judgment Debtors and any member of Judgment
19 Debtors family(i.e. brother, sister, son, daughter, son-in-law, daughter-in-law, or
20 grandchild) from January 1, 2011 through December 1, 2014. This request would include,
21 but not necessarily be limited to, copies of checks evidencing these payments/transfers.

22 44. Copies of all documents which pertain or relate to the sale of any item of Equipment or
23 Inventory of Judgment Debtors between January 1, 2011 and December 1, 2014. This
24 request would include, but not necessarily limited to, copies of any and all bills of sale,
25 contracts, or invoices related to said sale.

26 45. Copies of all correspondence between Judgment Debtors and any third party regarding a
27 lease or sale of Debtors Business's Inventory or Equipment. This request is limited to
28 such correspondence between January 1, 2011 and December 1, 2014.

47. A list of the names, addresses and telephone numbers of Judgment Debtors employees
from January 1, 2011 through December 1, 2014.

ORDER FOR EXAMINATION OF JUDGMENT DEBTORS—
EXHIBIT A—PAGE 5

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3. Attached hereto as Exhibit "A" is a true and correct copy of the opinion issued by the Idaho Supreme Court in *Reed v. Reed*, Supreme Court Docket No. 41013-2013, 2014 Opinion No. 128 (December 2, 2014).

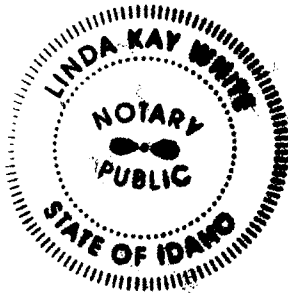
4. It is respectfully submitted that Plaintiff, Robert Wolford has knowingly failed to comply with the requirements of Idaho law, including but not otherwise limited to Idaho Rule of Civil Procedure 54(a), Idaho Code §11-501 and Idaho Code §11-502, and the Order issued by this Court on December 1, 2014 and based upon the Motion filed on or about November 24, 2014 should be quashed.

DATED this 10 day of December, 2014.

PAUL W. DAUGHARTY, P.A.

By: *P. W. Daugharty*
PAUL W. DAUGHARTY, Attorney for Defendants

SUBSCRIBED AND SWORN TO before me this 10 day of December, 2014.



Linda Kay White
NOTARY PUBLIC in and for the State of Idaho
Residing at: *Spirit Lake*
My Commission Expires: *4-7-2018*

AFFIDAVIT IN SUPPORT OF MOTION TO QUASH ORDER
FOR EXAMINATION OF JUDGMENT DEBTORS - 2

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be served a true and correct copy of the foregoing on this 10 day of December, 2014, to:

<p>Mark A. Ellingsen Jason M. Gray WITHERSPOON KELLEY Attorneys & Counselors 608 Northwest Blvd., Suite 300 Coeur d'Alene, ID 83814</p> <p>Honorable John T. Mitchell Kootenai County Courthouse 324 West Garden Avenue Coeur d'Alene, Idaho 83816</p>	<p><input type="checkbox"/> Via Mail, postage prepaid thereon <input type="checkbox"/> Via Facsimile: 208-667-8470 <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-Mail: mae@witherspoonkelley.com</p> <p><input checked="" type="checkbox"/> Chamber Copy Via Hand Delivery</p>
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PAUL W. DAUGHARTY

AFFIDAVIT IN SUPPORT OF MOTION TO QUASH ORDER
FOR EXAMINATION OF JUDGMENT DEBTORS - 3

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 41013-2013

STEPHANIE M. REED,)	
)	
Plaintiff-Respondent,	)	Coeur d'Alene, September 2014
	)	Term
v.)	
	)	2014 Opinion No. 128
SCOTT AVERY REED,)	
	)	Filed: December 2, 2014
Defendant-Appellant.)	
	)	Stephen W. Kenyon, Clerk

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for Kootenai County. Hon. Michael J. Griffin, District Judge; Hon. Scott L. Wayman, Magistrate Judge.

The judgment of the district court is affirmed in part and vacated in part.

Dan J. Rude, Coeur d'Alene, argued for appellant.¹

Suzanna L. Graham, Suzanna L. Graham Attorney At Law PC, Coeur d'Alene and Mark Alan Ellingsen, Witherspoon Kelly, Coeur d'Alene, argued for respondent.

EISMANN, Justice.

This is an appeal out of Kootenai County from the decision of the district court upholding the judgment of the magistrate court in a divorce action. We vacate four parts of the decision and remand for further proceedings. We affirm the other challenged provisions of the decision.

I.
Factual Background.

Scott Avery Reed (Father) and Stephanie M. Reed (Mother) were married in 1993, and during their marriage they had three children who were born between 1996 and 2004. On

¹ Michael G. Palmer, Coeur d'Alene, represented Father in this litigation until he withdrew on August 2, 2011. Mr. Rude appeared as counsel for Father on August 19, 2011.

Exhibit "A"

December 22, 2009, Mother filed for divorce. They agreed that there were irreconcilable differences between them that justified terminating their marriage. The remaining issues were tried in the magistrate court on January 13 and 14, 2011.

On February 24, 2011, the magistrate court entered a document titled “Judgment for Attorney’s Fees,” which stated that it granted Mother a judgment against Father in the sum of \$10,000 for attorney fees. On the same date, it also entered a document titled “Judgment for Equalization of Property Settlement,” which stated that it granted Mother a judgment against Father in the sum of \$198,642.00 to equalize the division of community property.²

On January 28, 2011, the court orally announced its findings of fact and conclusions of law on the record. On April 7, 2011, the court filed a document titled “Findings of Fact, Conclusions of Law and Final Decree of Divorce,” which stated that “[t]he attached Oral Pronouncement transcribed shall constitute the Findings of Fact, Conclusions of Law and Final Decree of Divorce.” Attached to the document was a transcript of the proceedings on January 28, 2011, during which the court orally announced its decision.³

Father filed motions asking the court to reconsider its findings and conclusions and to make additional findings. They were heard on April 22, 2011, and on May 11, 2011, the court entered its order modifying the custody schedule for spring break; refusing to modify the Father’s obligation to pay for health insurance on the children; specifying when Father’s child support obligation would commence; ordering the parties to sign all documents necessary to execute the property division and to sign quitclaim deeds to effectuate transfers of community property; and awarding Mother the current balances in specified accounts.

² Neither document constituted a judgment because they did not comply with Rule 54(a) of the Idaho Rules of Civil Procedure. That rule provides that a “judgment shall not contain . . . the record of prior proceedings.” I.R.C.P. 54(a) (2010). Both documents included the following recitation of prior proceedings:

This cause came on regularly for Trial before the undersigned District Judge, of the above-entitled Court on the 13th day of January, 2011, Decision hearing being held on the 28th day of January, 2011. Present was the Plaintiff, STEPHANIE M. REED, by and through her Attorney of Record, SUZANNA L. GRAHAM, and the Defendant, SCOTT AVERY REED, by and through his Attorney of Record, MICHAEL G. PALMER.

³ The document did not constitute a judgment because it did not comply with Rule 54(a) of the Idaho Rules of Civil Procedure. That rule provides that a “judgment shall not contain . . . the court’s legal reasoning, findings of fact, or conclusions of law.” I.R.C.P. 54(a)(2010). The attached transcript included not only a recitation of prior proceedings, the magistrate court’s legal reasoning on various issues, and its findings of fact and conclusions of law, but it also included the court’s dialogue with counsel and its comments to the parties.

On June 20, 2011, the magistrate court entered a document titled “Amended Final Decree of Divorce.” It incorporated by reference the court’s oral pronouncements on January 28, 2011, and the “Findings of Fact, Conclusions of Law and Final Decree of Divorce” entered on April 7, 2011. It then set forth that the parties were granted a divorce, the provisions for child support and custody, the real and personal property awarded to each party, the payment to be made by Father to equalize the division of the community property, and the award to Mother of attorney fees in the sum of \$10,000.⁴ On July 25, 2011, Father filed a notice of appeal from this purported judgment.

Mother obtained a writ of execution to enforce the purported judgment entered on February 24, 2011, in the sum of \$198,642.00, plus interest, and the purported judgment entered on the same date for \$10,000 in attorney fees, plus interest. She sought to execute upon the community property stock awarded to Father from the two corporations, but the writ was returned unsatisfied because the corporations had not issued any stock. The two corporations were Mountain Health Care, Inc., which owned the building in which Father practiced medicine, and Mountain Health Services, P.C., which was the medical practice for which Father worked. Mother sought an order requiring the corporations to issue stock to Father and to deliver the stock to the sheriff. After the matter was argued, the magistrate entered an order on September 9, 2011, granting the motion. On October 25, 2011, Father filed an amended notice of appeal adding the order as a matter he was appealing. He later filed three more amended notices of appeal, the last being on April 20, 2013.

The appeal was heard by the district court, and on April 5, 2013, it entered its decision on appeal. It affirmed all aspects of the magistrate court’s purported judgment except the dates of the qualified domestic relations orders. The district court held that the orders incorrectly listed the date of the parties’ divorce as June 20, 2011 (the date of the document titled “Amended Final Decree of Divorce”) and that the correct date was January 14, 2011 (the date the magistrate

⁴ The document did not constitute a judgment because it did not comply with Rule 54(a) of the Idaho Rules of Civil Procedure. It included a recitation of prior proceedings, and the magistrate court’s findings of fact and conclusions of law that were orally announced on January 28, 2011, were incorporated by reference. It also incorporated an attached schedule of property that included the parties’ contentions as to dates of acquisition and values of various items of property and the party to whom they wanted the property awarded.

orally stated that the parties would be deemed divorced based upon their stipulation at the close of the trial that they wanted to be divorced).⁵ Father then timely appealed to this Court.

II. Standard of Review.

In an appeal from a district court's determination of a case appealed to it from the magistrate court, we review the decision of the district court to determine whether it correctly applied the applicable standard of appellate review. *Peterson v. Peterson*, 156 Idaho 85, 88, 320 P.3d 1244, 1247 (2014).

III. Did the District Court Err in Affirming the Magistrate Court's Valuation and Award of the Shares of Stock in Mountain Health Care, Inc.?

a. Valuation of Mountain Health Care, Inc. Father had interests in two corporations—the professional corporation named Mountain Health Services, P.C., for which he practiced medicine and the corporation named Mountain Health Care, Inc., which owned the land, building, and some equipment leased to the professional corporation. Neither corporation had issued stock at the time of trial, but Father was entitled to 22.97% of the shares of stock in Mountain Health Care, Inc. His interest in both corporations was community property.

The market value of Mountain Health Care, Inc., was determined by deducting its liabilities from the market value of its assets. Father called an expert who testified as to the market value of the corporation and Father's interest in it. The expert prepared an exhibit listing the values of categories of assets, the amounts of categories of liabilities, and the net asset value. The magistrate court found this expert very credible. With respect to the value of the corporation's real property, the expert stated that he was not qualified to perform real estate appraisals, so he used the market value determined by the real estate appraiser called by Father, which was \$2,500,000. The real estate appraiser called by Mother testified that the value of the real property was \$4,850,000, which testimony the court found more credible. The expert called

⁵ An oral statement by the court or even a stipulation by the parties does not constitute the termination of the marriage. A marriage continues until the entry of a final judgment terminating it. *Suter v. Suter*, 97 Idaho 461, 466, 546 P.2d 1169, 1174 (1976); I.C. §§ 32-601, 32-602.

by Father testified on cross-examination that if the value of the real property was \$4,850,000, the value of the corporation would be \$2,795,147 and the value of Father's 22.97% interest would be \$642,045. The court found that the market value of Father's interest in the corporation was \$642,045.

On appeal to the district court, Father challenged the valuation of his interest in Mountain Health Care, Inc., and he makes several of the same challenges on this appeal. "A trial court's findings of fact will not be set aside on appeal unless they are clearly erroneous." *Camp v. East Fork Ditch Co., Ltd.*, 137 Idaho 850, 856, 55 P.3d 304, 310 (2002). In applying that principle, the appellate court cannot reweigh the evidence, judge the credibility of the witnesses, or substitute its view of the facts for that of the trial court. *Argosy Trust ex rel. Andrews v. Wininger*, 141 Idaho 570, 572, 114 P.3d 128, 130 (2005). It is the responsibility of the trial court to judge the credibility of witnesses and weigh conflicting evidence. *Bream v. Benscoter*, 139 Idaho 364, 367, 79 P.3d 723, 726 (2003). The appellate court's role is simply to determine whether there is evidence in the record that a reasonable trier of fact could accept and rely upon in making the factual finding that is challenged on appeal. *Miller v. Callear*, 140 Idaho 213, 216, 91 P.3d 1117, 1120 (2004). The district court on appeal reviewed the record and concluded that the magistrate court's valuation of the corporation was supported by substantial and competent evidence. Father contends that the district court erred in its analysis.

1. Valuation of real property. The primary asset of the corporation was the real property that it owned. Mother called a real estate appraiser to testify as to its market value. He had appraised the property in February 2009 on behalf of a bank, and he testified that as of February 2009, the market value of the real property was \$4,816,000. Mother also questioned him about the report prepared by the appraiser that Father intended to call as a witness, and he pointed out various criticisms as to that appraiser's analysis. On cross-examination, the appraiser called by Mother testified that the best way to obtain an opinion as to the current market value would be to do a new appraisal; that he was not retained to do a new appraisal; and that he could not say that the market value of the property at the time of trial was \$4.8 million. On redirect, he testified that in preparation for testifying he had pulled the data sheets used for appraisals done on other medical buildings sold during the period from October 2009 through December 2010 and that the value per square foot of those buildings was higher than the value per square foot of the corporation based upon his February 2009 appraisal. The real estate

appraiser called by Father testified that the market value of the corporation's real property was \$2,500,000. The appraisal report stated that the effective date of that appraisal was July 28, 2010.

The magistrate court held that the real estate appraiser called by Mother was more credible than the appraiser called by Father, primarily because of his demeanor during cross-examination and his use of only distressed sales in Shoshone county as comparable sales rather than considering sales between willing sellers and buyers in and around the region. The court found that the value of Father's interest in the corporation was \$642,045.

In a divorce action, the community property assets are to be valued as of the date of the divorce trial. *Suter*, 97 Idaho at 466, 546 P.2d at 1174.⁶ The court recognized that neither appraiser offered an opinion as to the market value as of the date of the divorce trial, but it correctly stated that it had to decide the case based upon the evidence it had.

Father argues that when the appraiser called by Mother performed his appraisal, there was a planned addition to the building and he based his appraisal on the addition being completed according to its plans. The proposed, two-story addition would add 7,595 square feet to the building, with 2,875 of the square feet being unfinished and used for records storage. However, the addition actually built contained 382 fewer square feet. Father argues that if the value per square foot of the proposed addition was calculated based upon the value of the proposed addition as determined by Mother's appraiser in 2009 and that value per square foot was multiplied by the reduced square footage, the value of the building should be reduced by \$70,505.70. No expert so testified, nor did any expert testify that every square foot of the addition had the same value.

Father next argues that the magistrate court erred in considering that the corporation had insured the building for \$3,750,000 after Father had received the appraisal report from his appraiser that the market value of the real property was \$2.5 million. The court found that the appraiser's opinion held little weight in light of the opinion of Mother's appraiser, whom the court found to be a very credible witness, and the amount of insurance purchased by the

⁶ There are exceptions to this rule. The parties may stipulate to an earlier valuation date, *Sword v. Sweet*, 140 Idaho 242, 253, 92 P.3d 492, 503 (2004); the valuation date will be before the trial if the trial court enters a partial final judgment terminating the marriage in order to expedite the later resolution of the property distribution issues, *Brinkmeyer v. Brinkmeyer*, 135 Idaho 596, 599-600, 21 P.3d 918, 921-22 (2001); and the trial court may retain jurisdiction to value retirement benefits after the actual date of divorce, *Hunt v. Hunt*, 137 Idaho 18, 21, 43 P.3d 777, 780 (2002).

corporation on the building. Father argues that the insurance policy shows that it was replacement cost insurance, which is not the measure of market value.

Although the magistrate court considered the amount of the insurance purchased on the building, it stated, “I find, based on the testimony here, that [Mother’s appraiser’s] appraised value is the most credible evidence that I have.” After discussing that appraiser’s testimony regarding reviewing the per-square-foot value of other medical buildings that had been sold in recent years, the court again stated, “based on the totality of the evidence,” that the opinion of Mother’s appraiser “regarding the value is still the most credible evidence that I have concerning the present fair market value, as of the date of the divorce, of the building.” The court concluded that it did not have information regarding how the corporation arrived at the amount of insurance to purchase, but it did have evidence as to how Mother’s appraiser arrived at his opinion as to value. The court then stated that “I still find that [Mother’s appraiser’s] valuation is the correct one and the most accurate one as of the date of divorce.”

The magistrate court based its valuation of the real property upon the testimony of the appraiser called by Mother. The court found that the opinion of Father’s appraiser was not credible and that the opinion of Mother’s appraiser was the most credible evidence it had. The court also noted that it had to decide the case based upon the evidence it had.

2. Valuation of equipment. Father called the clinic manager to testify regarding various issues unrelated to the value of the Mountain Health Care, Inc.’s equipment. During her testimony she stated that she was the records custodian for both that corporation and the professional corporation. Father told her there had been testimony about some equipment leases and that there had been an issue about some unidentified lease. She was then asked whether she knew what Father was talking about, and she answered, “No.” She then added that the corporation owns the x-ray equipment and leases it to the professional corporation. Father asked whether that lease had ever been challenged by a lender or other financier, and she replied that to her knowledge it had not.

On cross-examination, Mother asked, “Do you have any idea what the fair market value of the x-ray machine is?” to which the manager replied: “I’m gonna say probably they—I’m gonna say around 50,000 maybe. I don’t know for sure.” Mother then asked, “The only assets held by [Mountain Health Care,] Inc. [are] basically the building, the land and the x-ray machine?” to which the clinic manager answered, “Right.”

After the clinic manager testified, Father called the expert who would testify about the value of the corporation. As stated above, that expert had prepared an exhibit listing the values of categories of the corporation's assets and the amounts of its liabilities, and that exhibit was admitted into evidence. The categories of assets listed on that exhibit included "Office Equipment," "Medical Equipment," and "Total Equipment." The expert determined the corporation's assets and liabilities as reported in its financial statements dated December 31, 2009, and then in his November 11, 2010, report he estimated the values of those assets as being 70% of their book value. The book value of the office equipment was \$112,691, the book value of the medical equipment was \$235,393, and the estimated total value of both categories of equipment was \$243,659. The magistrate court found the expert's testimony to be credible and found that the market value of the corporation was as he testified based upon the exhibit, but with the market value of the real property being as testified by Mother's appraiser. Therefore, the court found that the corporation had office and medical equipment with a combined market value of \$243,659.

Father contends that the district court erred in finding that this value was supported by substantial and competent evidence. We disagree. Father called the expert to testify as to the market value of the corporation, based upon the values of the corporation's assets and the amounts of its liabilities. The clinic manager testified that the corporation currently insured the contents of the building for \$387,400, which she understood to be the value of the contents of the building. The various items that comprised the office equipment and medical equipment were not identified. Father did not offer any evidence that the corporation had disposed of its office equipment or any of its medical equipment since 2009, nor was there any evidence of a change in its business that would indicate that it had disposed of any equipment. The clinic manager's answer to Mother's question that the corporation's only assets were "basically" the land, the building, and the x-ray machine could have been construed to mean that they were the most valuable or significant individual assets. With respect to the value of the x-ray machine, the clinic manager stated that it was "around 50,000 maybe. I don't know for sure." There was conflicting evidence on this issue, and the magistrate court could weigh the evidence and consider reasonable inferences to conclude that the corporation had equipment with a market value of \$243,659.

3. Cash on hand and accounts receivables. The exhibit prepared by Father's expert listed the assets of the corporation as including "Cash & Cash Equivalents" with a value of \$125,590 and "Uncollected Accounts Receivable" with a value of \$5,637. Father argues that the evidence did not establish those values as of January 13 and 14, 2011. These values were in the expert's exhibit, which was admitted into evidence by stipulation of the parties. Although the values in the exhibit were determined as of December 31, 2009, Father did not offer any evidence showing that the values had decreased by the time of the trial. The magistrate court was entitled to make its decision on the evidence admitted during the trial, and it could reasonably infer that Father would have offered evidence of any material change in those values between December 31, 2009, and the trial.

4. Long-term debt. The exhibit prepared by the expert Father called to testify about the value of the corporation included a liability list titled "Long Term Debt," and it stated that such debt was \$2,383,252, based upon the corporation's financial statements dated December 31, 2009. In cross-examining the clinic manager, Mother raised the issue of the corporation's current long-term debt and asked: "How much is the current loan amount on the building? I hate to just throw that at you. I know there's an exhibit somewhere, but I know you can probably just tell us." The clinic manager answered, "It's about—it's 2.8 million." Mother then stated: "And that—you sent me [a] statement, I think, a month ago. So, that would be the most current; is that correct?" and the clinic manager answered: "Right. Yes." The magistrate court found that the long-term debt of the corporation was \$2,383,252.

In his motion for reconsideration, Father pointed out that the financial statements showed "the long term debt amount of \$2,383,282.00 was what was owed as of the end of 2009 and not as of the date of the trial" and that the clinic manager "testified that the current loan against the building was in the amount of \$2,800,000.00," which would reduce the market value of the real property. In denying the motion, the magistrate court simply stated that it "valued these assets based on the evidence that had been presented at trial by both sides" and that it found, "after reviewing the transcript and the record, that those values were supported by substantial evidence in the record." The magistrate court did not mention the testimony of the clinic manager or the fact that the long-term debt figure relied upon by the court was the amount owing about one year prior to trial.

On appeal to the district court, Father argued that the magistrate court erred in failing to value the property as of the date of the trial because it failed to take into account the uncontradicted evidence of the clinic manager. Father wrote in his brief:

The uncontradicted evidence introduced at trial established that Mountain Health Care, Inc., owed at least \$400,000.00 more as of the date of trial than the amount Judge Wayman found it owed. . . . The uncontradicted evidence at trial from Ms. Olson was that the only asset that Mountain Health Care, Inc., had other than the building and land was an x-ray machine worth \$50,000.00.

Although the district court did not expressly address this argument based upon the clinic manager's testimony, it upheld the magistrate court's valuation, stating, "The exact value of most of the parties' assets and debts as of the date of trial is impossible to establish with mathematical precision."

In determining the value of the corporation, the magistrate court relied upon testimony regarding the balance of the corporate debt owing on the real property as of December 31, 2009, which was over one year prior to the trial, even though there was testimony from the clinic manager, elicited by Mother, that the balance owing on the debt as of the date of trial was significantly greater. "This Court has held that the trial court must accept as true the positive, uncontradicted testimony of a credible witness, unless his testimony is inherently improbable or impeached." *Russ v. Brown*, 96 Idaho 369, 373, 529 P.2d 765, 769 (1974). The magistrate court made no findings regarding the credibility of the clinic manager. Therefore, the district court erred in affirming the magistrate court's findings as to the value of the corporation.

The case must be remanded to the magistrate to make a finding as to whether or not the clinic manager's testimony was credible. If so, then the court must adjust accordingly the value of the corporation and the debt owing by Father to equalize the division of community property and debts. The court may base its additional findings upon the evidence presented during the trial or, in its discretion, it may take such additional evidence as it deems necessary.

5. Discount of stock value the lack of a readily defined market and minority interest. Father contends that the magistrate court erred in failing to discount the value of Father's interest in the corporation to take into account the lack of marketability of the stock and his minority interest in the corporation. On appeal to the district court, Father argued that the magistrate court erred in failing to "discount the shares either because of the lack of a readily defined market for the shares nor [sic] because the shares represented a minority interest in the

corporation.” He admitted that “[n]o expert was called concerning the amount of the discount which should be applied to Mountain Health Care, Inc., stock,” but he argued that the court should have applied a discount that was consistent with the testimony of one of Father’s experts regarding the discount that should be applied to the value of the professional corporation’s stock. There was no evidence that the expert’s opinion as to the discounts in the value of the stock in the professional corporation should apply to both corporations. The district court did not err in failing to reverse the magistrate for failing to rule in Father’s favor regarding an issue on which no evidence was presented at the trial.

b. Award of the stock in Mountain Health Care, Inc., to Father. The magistrate court awarded the stock in Mountain Health Care, Inc., to Father and granted Mother a monetary judgment to equalize the division of the community property. The court found that the net value of the community estate was \$1,256,211, and it awarded the community interest in both corporations to Father as he was the party who would have the continued interest in the medical practice and building. The court found that “it would be incredibly wasteful to try and force a physician of his experience to try and sell that interest in a medical practice.” As a result of awarding Father those assets, it was necessary to grant Mother a monetary judgment against him in order to make the division of community property and debts substantially equal.

Father listed as an issue on appeal to the district court that the magistrate court erred in its “valuation and award” of the shares of stock in Mountain Health Care, Inc. In his brief, Father did not include any argument that the magistrate court abused its discretion in awarding him the stock in the corporation rather than ordering the stock sold and dividing the proceeds. He argued that the court’s valuation of the stock should be set aside because it was not accurate; that the substantial value of the shares also requires setting aside the monetary judgment; and that if on remand the magistrate court decides to award the stock to Father it should have a further evidentiary hearing to receive additional evidence as to the assets and debts of the corporation and the minority shareholder and lack of marketability discounts. He concluded by stating, “The holding in *Simplot* [v. *Simplot*, 96 Idaho 239, 526 P.2d 844 (1974)] would also not prohibit [the magistrate court] from ordering that the shares of stock be sold instead of holding a further hearing on the share value and this option should be left open for [the court].”

On appeal, the district court affirmed the award of the stock to Father with a monetary judgment to Mother, correctly stating, “Because of the nature of the parties’ community assets

and debts the court decided that it was not possible to divide the property without an equalization payment.”

On appeal to this Court, Father lists as an issue on appeal that the district court erred in affirming the magistrate court’s “valuation and award” of the stock. However, Father again does not make any argument that the magistrate court abused its discretion in awarding the stock to him. He again simply states that if the matter is remanded to the magistrate court to take further evidence as to the value of the corporation, the *Simplot* opinion would not prohibit the court from ordering the stock sold.

To the extent that Father contends that the magistrate court abused its discretion in awarding him the stock and granting Mother a monetary judgment to make the community property division substantially equal, he has waived that issue because he did not support it with argument and authority. *Bolognese v. Forte*, 153 Idaho 857, 866, 292 P.3d 248, 257 (2012).

IV.

Did the District Court Err in Affirming the Magistrate Court’s Valuation of the Commercial Lot in Pinehurst?

The parties owned a commercial lot in Pinehurst which the magistrate court valued at \$15,200 and awarded to Father. On appeal to the district court, Father contended that the value was not supported by any testimony and that Mother’s counsel admitted in open court that the value of the lot was \$10,000. The district court did not expressly address the issue on appeal, but it concluded that “[t]here was substantial competent evidence to support the trial court’s valuation of the parties’ real properties.”

On appeal to this Court, Father contends that Mother did not express an opinion as to the market value of this real property. His contention is incorrect.

At the beginning of the trial, Mother’s attorney provided the magistrate court with Court’s Exhibit 1, which was a Joint Inventory of Property, listing each party’s contention as to value of most of the items of property and to whom each item should be awarded. Before calling Mother to testify, her counsel stated: “And, Judge, we have agreed that she’s gonna go through the property list, and then Dr. Reed’s gonna go through the property list, and give their values and what they want the award to be.” Mother began testifying about her opinion of the values of the various items listed. Item No. 13 on the Joint Inventory of Property is the Pinehurst

commercial lot with a value listed by Mother as \$15,200.00. With respect to that property, Mother testified as follows:

MISS GRAHAM: Q. And item No. 13, what's that item?

MOTHER: A. That is a commercial lot right in the—at the one stop sign in Pinehurst um, that we bought with my mother-in-law and another couple. Um, so we're one—we are one-third owners of it. Um, we paid cash for it. It has since gone down significantly in value. And that number, I believe, we came up with just based on the tax assessments. There wasn't anything for our appraiser to uh, relate it to, compare it to.

MISS GRAHAM: Q. So, we just did the tax assessment notice and divided by three? So, that's just—

MOTHER: A. Yes.

MISS GRAHAM: Q. —the tax—

MOTHER: A. Yes.

MISS GRAHAM: Q. —assessed value—

MOTHER: A. Yes.

MISS GRAHAM: Q. —divided by three?

MOTHER: A. I believe so.

MISS GRAHAM: Q. Okay. And nothing's owed on that property?

MOTHER: A. No.

Mother's reference to "that number" was obviously the value listed on the Joint Inventory of Property for the Pinehurst property. In context, the magistrate court could reasonably interpret her testimony as stating that her opinion as to the market value of the property was the value listed on the Joint Inventory of Property.

Both Father and his attorney discussed Mother's testimony to the amount of \$15,200.00. During his direct examination, Father's attorney asked him, "She's valued [the Pinehurst Property] at 15,200. Do you disagree with that?" Father responded, "Um, I—to me it is not worth 15,200." This exchange supports the fact that the tax value of the property to which Mother testified was \$15,200.00.

"This Court has followed the rule that the owner of property is qualified to testify to its value." *Empire Lumber Co. v. Thermal-Dynamic Towers, Inc.*, 132 Idaho 295, 306, 971 P.2d 1119, 1130 (1998). Mother was an owner of the property. The magistrate court's factual finding as to the value of the property was based on substantial and competent evidence, and the district court did not err in affirming it.

Father also argues on appeal: "Ms. Reed, through Ms. Graham, admitted that the lot was worth \$10,000.00 and should be awarded to Dr. Reed at that value. This admission was accepted

by Dr. Reed. An admission made by an attorney at trial is binding on his or her client as a solemn admission.” This assertion by Father is factually incorrect, and Father does not include the entire verbal exchange in his brief on appeal.

The parties owned a one-third interest in the Pinehurst commercial property, and Father’s mother owned a one-third interest, as did another couple. During his direct examination, Father testified that he wanted the property awarded to Mother. As Father’s counsel continued to question him about the property, the following exchange occurred:

FATHER: A. And if I had to put a value on it, I would accept that piece of property at 10,000. I—if the Court were to say, well, the value’s \$10,000 and we can award it to Reed, I would be pleased with that. To me that’s what it’s worth.

MR. PALMER: Q. Okay.

MISS GRAHAM: We’ll stipulate to that, Judge.

THE COURT: Stipulate to what?

MISS GRAHAM: \$10,000 to Dr. Reed. We didn’t know what the value was.

FATHER: A. I did not—if I can state—make a statement that the Court was awarding that to me uh, we could—stipulate, I don’t mind stipulating the value at \$10,000. I hope we’re not stipulating that I desire that piece of property.

MISS GRAHAM: Oh, okay. Sounded like that, but I guess not.

In his brief on appeal, Father omitted Father’s and Miss Graham’s last statements quoted above. The stipulation was that the lot would be valued at \$10,000 if it was awarded to Father. He refused to accept the stipulation because he did not want the lot to be awarded to him. As the magistrate court noted during the hearing on the parties’ motions for reconsideration, “there was an offer through Miss Graham to stipulate that, that value be \$10,000. But it was never accepted by Dr. Reed or his attorney.” The district court did not err in affirming the magistrate court’s valuation of this property.

V.

Did the District Court Err in Affirming the Magistrate Court’s Determination of Mother’s Annual Income for Calculating Child Support?

At the time of trial, the parties had three minor children. The magistrate court awarded primary physical custody of the children to Mother and ordered Father to pay child support. Father challenges on appeal the district court’s affirmance of the magistrate court’s calculation of Mother’s annual income for calculating child support. Idaho has adopted Idaho Child Support

Guidelines. I.R.C.P. 6(c)(6). They “apply to determinations of child support obligations between parents in all judicial proceedings that address the issue of child support for children under the age of eighteen years or children pursuing high school education up to the age of nineteen years.” I.R.C.P. 6(c)(6) § 2. They provide that “[t]he basic child support obligation shall be based upon the Guideline Income of both parents, according to the rates set out in the schedules [set forth in the guidelines].” I.R.C.P. 6(c)(6) § 10(a).

After the parties separated, Mother went to work full time (three 12-hour shifts) as a labor and delivery nurse. She later voluntarily reduced her work hours to 24 hours per week because the hospital had changed the schedules for full-time labor and delivery nurses so that their shifts would not be consecutive and would rotate pursuant to a two-week schedule. She thought a more regular schedule would be better for the children.

The guidelines state, “If a parent is voluntarily unemployed or underemployed, child support shall be based on gross potential income” I.R.C.P. 6(c)(6) § 6(c)(1). As applicable to this case, “Determination of potential income shall be made according to any or all of the following methods, as appropriate: (A) Determine employment potential and probable earnings level based on the parent’s work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community.” *Id.* When a parent is voluntarily underemployed, the Guidelines do not give the trial court discretion not to impute potential income.⁷

The magistrate court found that Mother was voluntarily underemployed, so it was required to impute income to her. The parties had stipulated to the admission of an exhibit that showed that Mother’s annual income was \$41,042.56 when she worked 24 hours per week. However, the court misunderstood the testimony and thought that mother was only working 24 hours every two weeks. It stated: “For purposes of computing child support, I’m going to use the figure set forth on [the exhibit] and impute an additional \$20,514 of income for her for purposes of computing child support. So, her gross income for computing child support will [be] \$41,028.” Thus, after imputing \$20,514 of annual income to Mother, the court arrived at a figure that was less than her actual annual income.

⁷ The Guidelines do provide, “Ordinarily, a parent shall not be deemed underemployed if the parent is caring for a child not more than 6 months of age.” I.R.C.P. 6(c)(6), § (c)(1). None of the children in this case were under six months of age at the time of the trial.

On October 21, 2011, Father filed a motion for reconsideration raising various issues, including explaining how the magistrate court had miscalculated Mother's actual income. He argued that using the correct figures, Mother's annual income would be \$68,396.96 per year if she was working full time. The magistrate court denied the motion for reconsideration regarding child support.

On appeal to the district court, Father raised the issue and explained the error in the magistrate court's calculations. In her answering brief, Mother admitted that the testimony showed she was working 24 hours per week, that the magistrate court imputed income to her of \$20,514.00, and it then imputed this into her income for a total income of \$41,028.00." The district court did not specifically address the issue raised by Father. It merely stated: "In determining an appropriate amount of child support the trial court imputed income to both parties."⁸ The district court concluded, "There was substantial competent evidence to support the court's findings as to the amount of child support."

Because the magistrate court's valuation of Mother's guidelines income was incorrect, the district court erred in affirming it. This case will have to be remanded for recalculation of child support.

VI.

Did the District Court Err in Affirming the Magistrate Court's Award of Attorney Fees and Court Costs to Mother?

After orally stating its findings of fact and conclusions of law on the record, the magistrate court stated that it was going to make a partial award of attorney fees to Mother in the sum of \$10,000. It based its decision on Idaho Code section 32-704(3), which reads:

The court may from time to time after considering the financial resources of both parties and the factors set forth in section 32-705, Idaho Code, order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

⁸ The magistrate court also imputed income to Father, finding that he had voluntarily reduced his hours worked.

I.C. § 32-704(3). On February 24, 2011, the court entered a document purporting to be a judgment against Father for that amount.

On April 22, 2011, Father filed a motion for reconsideration asking that the magistrate court reconsider, among other things, the “Judgment for Attorney’s Fees.” After a hearing on the motion, the magistrate court entered an order on November 15, 2011, setting aside the prior purported judgments for attorney fees. The order added that Mother could pursue her claim for attorney fees by filing an appropriate memorandum of costs and fees within fourteen days of November 7, 2011.

On November 21, 2011, Mother submitted a “Memorandum of Costs and Fees,” requesting \$15,718.00 in attorney fees. Father filed an objection, and after the matter was argued the magistrate court entered a judgment on June 8, 2012, which awarded Mother attorney fees in the sum of \$10,000 and stated that it superseded and replaced any prior award of attorney fees by the court. On appeal to the district court, Father argued that the magistrate court erred in making the award because: (a) Mother failed to file a memorandum of costs within fourteen days after entry of the “Amended Final Decree of Divorce” filed on June 20, 2011; (b) the only attorney fee statute mentioned in Mother’s memorandum of costs was Idaho Code section 12-120(3), which is inapplicable; (c) the facts did not justify the award; (d) the magistrate court abused its discretion because it mistakenly believed that Mother’s annual income was only about \$20,000; and (e) Mother had the ability to pay her own attorney fees.

The district court affirmed the award, ruling that the magistrate court did not abuse its discretion in making the award, it was supported by substantial and competent evidence, the memorandum of costs was filed within the time frame stated by the district court, it was not necessary for Mother to be a prevailing party, and the statute was designed to insure that both parties in a divorce action had a fair opportunity to present their cases to the court. On appeal to this Court, Father repeats the arguments made to the district court.

a. Failure to timely file a memorandum of costs. The magistrate court ruled that if Mother desired to renew her request for an award of attorney fees, she had to file a memorandum of costs within fourteen days of November 7, 2011, and she did so on November 21, 2011. Father contends that the filing of the memorandum of costs was untimely under Rule 54(d)(5) of the Idaho Rules of Civil Procedure, which provides that a memorandum of costs “may not be filed later than fourteen (14) days after entry of judgment.” He states that “[t]he last judgment

(and the only final judgment from Dr. Reed's perspective) which was filed in the case was the Amended Decree of Divorce which was entered on June 20, 2011." Father's argument fails for two reasons. First, the document did not constitute a judgment.⁹ Second, Rule 54(d)(5) does not apply to the award of attorney fees under Idaho Code section 32-704. Rule 54(d) applies to the awarding of costs and attorney fees to the prevailing party or parties in a civil action. I.R.C.P. 54(d)(1), 54(e)(1). To be awarded attorney fees under section 32-704, a party need not be a prevailing party.

The statute allows a court to make an award of reasonable attorney fees "from time to time after considering the financial resources of both parties and the factors set forth in section 32-705, Idaho Code." Before making an award, the court may certainly require the party's attorney to submit a document providing a basis for estimating the attorney fees that will be incurred or substantiating the attorney fees that have been incurred, depending upon when the award is to be made. However, a memorandum of costs is not a requirement for making an award of attorney fees under the statute.

b. Mother's failure to cite Idaho Code section 32-704 in her memorandum of costs.

In Mother's memorandum of costs, her counsel stated that she had reviewed the entries set forth in an attached exhibit and that "to the best of my knowledge and belief the descriptions of the work performed and the fees attributed to the work performed are correct and in compliance with Idaho Code Section 12-120(3) and I.R.C.P. 54." Citing *KEB Enterprises, L.P. v. Smedley*, 140 Idaho 746, 754, 101 P.3d 690, 698 (2004), and *Bingham v. Montane Res. Assocs.*, 133 Idaho 420, 424, 987 P.2d 1035, 1039 (1999), Father argues the magistrate erred in awarding the attorney fees where Mother failed to cite section 32-704 in her memorandum of costs. *KEB Enterprises* relies upon *Bingham*, which relies upon *Curr v. Curr*, 124 Idaho 686, 864 P.2d 132 (1993). In *Curr* we stated: "Idaho Appellate Rule 35(a)(5) requires a statement of the basis for the claim for attorney fees on appeal to be included in the claimant's brief. This is necessary in order to allow the responding party a due process opportunity to challenge such claims." *Id.* at 694, 864 P.2d at 140.

Here, considering the history of the attorney fee awards, there is no contention that Father was unaware that the magistrate court would be awarding the fees under Idaho Code section 32-

⁹ See *supra* n. 4.

704 or that Mother filed the memorandum of costs to obtain an award under that statute. In his objection to the requested award, Father wrote: “Primarily, the Defendant has objected to an award of attorney fees and costs because the evidence at trial did not establish a basis for the award under this section when considering the factors set forth in I.C.32-705. The same objection is again made as to the basis for the award.” The magistrate did not err in awarding the fees merely because Mother cited the wrong statute in her memorandum of costs.

c. The facts do not support the award. Father argues that the magistrate court erred because “I.C.32-705(1)(b) requires the Court to consider whether or not the person seeking an award of attorney fees is unable to support himself or herself through employment.” This argument is incorrect.

Idaho Code section 32-704 makes two references to Idaho Code section 32-705.¹⁰ The first subsection of section 32-704 provides that a court in a divorce proceeding may order one spouse to pay temporary maintenance to the other “upon showing made in conformity with section 32-705.” I.C. § 32-704(1). The third subsection provides that a court in a divorce proceeding may order one party to pay reasonable attorney fees to the other, or to the other’s attorney, “after considering the financial resources of both parties and the factors set forth in section 32-705.” I.C. § 32-704(3). To award temporary maintenance, there must be a “*showing made in conformity with section 32-705,*” while an award of reasonable attorney fees may be made only after “*considering the factors set forth in section 32-705.*” (Emphases added.) The difference in language is significant.

Section 32-705 contains two subsections. The first one states: “Where a divorce is decreed, the court may grant a maintenance order if it *finds* that the spouse seeking maintenance:

¹⁰ The relevant portions of Idaho Code section 32-704 state:

1. While an action for divorce is pending, the court may, in its discretion, on the motion of either party and upon showing made in conformity with section 32-705 or section 32-706, Idaho Code, whichever be appropriate, order the payment of temporary maintenance of either spouse by the other or temporary support of a child of the marriage, in amounts and on terms just and proper under the circumstances.

....

3. The court may from time to time after considering the financial resources of both parties and the factors set forth in section 32-705, Idaho Code, order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney’s fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

(a) Lacks sufficient property to provide for his or her reasonable needs; and (b) Is unable to support himself or herself through employment.” I.C. § 32-705(1) (emphasis added). This subsection does not state factors to consider; it states mandatory factual findings for making the award. The award can be made only if the court “finds” those two factual circumstances exist. However, the second subsection of section 32-705 states that the order “shall be in such amounts and for such periods of time that the court deems just, *after considering all relevant factors* which may include [seven listed factors].” I.C. § 32-705(2) (emphasis added). This is the only reference to “factors” in section 32-705. The factors in the list are not factual circumstances that must be found to exist. They are factual circumstances that the court is to consider.

Thus, in *Jones v. Jones*, 117 Idaho 621, 790 P.2d 914, (1990), we held: “[T]he trial court need only consider the factors set forth in I. C. § 32–705 in considering whether to award costs and attorney’s fees to a party in a divorce action. Idaho Code § 32–705(2) lists the ‘relevant factors’ in subsections (a) through (f).” *Id.* at 626, 790 P.2d at 919. Consistent with *Jones*, in *Pelayo v. Pelayo*, 154 Idaho 855, 303 P.3d 214 (2013), we upheld a spouse’s award of attorney fees under section 32-704 even though there was no finding that she lacked sufficient property to provide for her reasonable needs and was unable to support herself through employment, which would have been required if section 32-705(1) was applicable. *Id.* at 865, 303 P.3d at 224. Likewise, in *McGriff v. McGriff*, 140 Idaho 642, 99 P.3d 111 (2004), we upheld an award of attorney fees based upon a disparity of income between the two parties. *Id.* at 653, 99 P.3d at 122.

d. Abuse of discretion. Finally, Father raises several issues which simply amount to questioning whether the magistrate court abused its discretion in awarding the fees. Idaho Code section 32-705(2) sets forth factors that the trial court must consider in determining whether to order one spouse to pay costs and attorney fees to the other in a divorce action. *Pelayo*, 154 Idaho at 864, 303 P.3d at 223. They are:

- (a) The financial resources of the spouse seeking maintenance, including the marital property apportioned to said spouse, and said spouse’s ability to meet his or her needs independently;
- (b) The time necessary to acquire sufficient education and training to enable the spouse seeking maintenance to find employment;
- (c) The duration of the marriage;
- (d) The age and the physical and emotional condition of the spouse seeking maintenance;

- (e) The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance;
- (f) The tax consequences to each spouse;
- (g) The fault of either party.

I.C. § 32-705(2).

These are factors that must be considered, but the weight to be given each of them is within the discretion of the trial court. Therefore, the decision to award attorney fees pursuant to Idaho Code section 32-704 is reviewed under an abuse of discretion standard. *Hoskinson v. Hoskinson*, 139 Idaho 448, 465, 80 P.3d 1049, 1066 (2003). To determine whether the trial court abused its discretion, this Court analyzes: “(1) whether the trial court correctly perceived the issue as discretionary; (2) whether the trial court acted within the boundaries of its discretion and consistent with the applicable legal standards; and (3) whether the trial court reached its determination through an exercise of reason.” *Campbell v. Kildew*, 141 Idaho 640, 650, 115 P.3d 731, 741 (2005).

Father argues that Mother received a net award of \$628,105.00 in property, which included the equalizing judgment; that it is not apparent from the record that the magistrate court considered the amount of the child support award; that Mother was able to make payments to her attorney and to pay \$10,000 to a consultant; and that the magistrate court was mistaken as to Mother’s annual income. None of these arguments show an abuse of discretion except the magistrate’s error regarding Mother’s annual income.

One of the significant factors relied upon by the magistrate court in deciding to award attorney fees to Mother was the disparity between the parties’ incomes. The court stated:

Here, looking at these factors I’ve got Mrs. Reed who’s a nurse, but she’s only working part-time, even though it was full-time. Her actual income is about \$20,000 per year. And she was basically a full-time stay-at-home mom for about 13 years prior to going back to work.

Dr. Reed is a physician working full-time. Has the capability of earning of [sic] \$164,000 a year. And there’s the—he’s got an interest in the medical practice corporation and the medical building corporation that may generate additional income.

In exercising its discretion, the court must have an accurate understanding of the factors it deems to be material. The court incorrectly believed that Mother had an annual income of about \$20,000 per year, when in reality her annual income was slightly over \$40,000 per year. We are

not holding that the difference in income should produce a different result. We would uphold the magistrate court's discretion to make the attorney fee award even if it had accurately understood the amount of Mother's income. However, it was apparent that the disparity in income was a significant factor in the court's decision to make the award. The court stated that "the net effect of this circumstance if I—would be to require Mrs. Reed to take part of her community property here and force liquidation of that in order to pay attorney fees, when I have this giant disparity of income between the two parties." It then concluded, "And so, I think it is appropriate, given all of the factors here, given that it was an 18 year marriage, given that the increased income that Dr. Reed has, that he be required to pay a portion of the litigation costs incurred by Mrs. Reed in this case." Although it is unlikely that the court would have declined to award attorney fees under section 32-704 had it understood that Mother's actual income was over \$40,000 per year, that decision is within the discretion of the magistrate court. We cannot exercise that discretion for it.

Therefore, we must hold that the district court erred in failing to find that the magistrate court did not abuse its discretion in making the award of attorney fees because it was based upon a misunderstanding of the facts upon which it relied. The award of attorney fees must be vacated and this case remanded to the magistrate court to exercise its discretion based upon an accurate view of the facts. Unfortunately, had Mother's attorney pointed out the magistrate court's error when it was addressing the issue, this remand would not have been necessary.

VII.

Did the District Court Err in Affirming the Magistrate Court's Order that Mountain Health Services, P.C., and Mountain Health Care, Inc., Issue Stock in the Amount of Father's Interest in the Respective Corporations and Deliver the Shares of Stock to the Sheriff?

On February 24, 2011, the magistrate court entered two purported judgments against Father, one in the amount of \$10,000 for Mother's award of attorney fees and one in the amount of \$198,642.00 to equalize Mother's award of community property. Neither document constituted a judgment for failure to comply with Rule 54(a) of the Idaho Rules of Civil Procedure.¹¹ On April 7, 2011, the court entered a document titled "Finding of Fact, Conclusion

¹¹ See *supra* n. 2.

of Law and Final Decree of Divorce,” which likewise did not constitute a judgment for failure to comply with Rule 54(a).¹² On June 20, 2011, the court entered a document titled “Amended Final Decree of Divorce,” which also did not constitute a judgment for failure to comply with Rule 54(a).¹³

On July 8, 2011, Mother obtained a writ of execution to enforce the two purported judgments entered on February 24, 2011. She wanted the sheriff to execute upon Father’s shares of stock in the two corporations, but the writ was returned unsatisfied because the corporation had not yet issued any stock. On July 18, 2011, she filed a motion requesting, among other things, an order requiring each of the corporations to issue shares of stock representing Father’s interest in that corporation and to deliver the shares of stock to the sheriff.

On September 16, 2011, Father filed an objection to the motion stating that “[o]n February 24, 2011, the Court entered two judgments”; “[n]either of these judgments resolved all of the claims and issues presented to the Court to decide [and] [n]either were certified as final under I.R.C.P.54 (b)”; and the “Amended Decree [entered on June 20, 2011,] effectively resolved all of the issues in the case and would constitute a final judgment as that term is defined in I.R.C.P. 54 (a).”¹⁴ Father also argued that “the two February judgments were merged into the June Amended Decree of Divorce and were no longer in force nor effect as of the date the writ was obtained.”

The magistrate court apparently granted the motion by order entered on September 30, 2012, but that order is not in the record. On October 23, 2012, Father’s shares of stock in Mountain Health Care, Inc., were sold by the sheriff at an execution sale to Mother for a credit bid of \$1.00. On the same date, Father’s shares of stock in Mountain Health Services, P.C., were sold to Frederick Haller for a cash bid of \$15,000.

Father made the same arguments summarized above on his appeal to the district court. In its decision on appeal, the court listed as an issue whether the magistrate court erred when it ordered Mountain Health Care, Inc., to issue stock to Father and to deliver that stock to the

¹² See *supra* n. 3.

¹³ See *supra* n. 4.

¹⁴ As stated above, this document did not constitute a judgment because it failed to comply with Rule 54(a).

sheriff. However, the court did not specifically address the issue in its decision. In the conclusion section of its decision, it did state: “The Magistrate reached his decisions on all other issues through reason and acted within the bounds of his discretion. There was substantial competent evidence to support those findings and conclusions.”

It is apparent from the above that neither the magistrate court nor the parties were familiar with the requirements of Rule 54(a) of the Idaho Rules of Civil Procedure and our decisions interpreting that rule. As stated above, the purported judgments issued on February 24, 2011, were not judgments, because they did not comply with the rule. *See Supra* nn. 2-4. Likewise, the “Finding of Fact, Conclusion of Law and Final Decree of Divorce” entered on April 7, 2011, and the “Amended Final Decree of Divorce” entered on June 20, 2011, were not judgments because they also did not comply with the rule. *Id.* A final judgment was not entered in this case until August 14, 2014, pursuant to an order from this Court conditionally dismissing the appeal unless a final judgment was entered. Therefore, the district court erred in affirming the magistrate court’s order that the corporations issue stock and deliver it to the sheriff so that Mother could execute upon the stock. A writ of execution could not be issued unless there was an appealable final judgment or a partial judgment certified as final under Rule 54(b) of the Idaho Rules of Civil Procedure. I.R.C.P. 69(a). Because the execution sales of the stock have already occurred, the parties will have to address this issue on remand to the magistrate court. The facts of this case amply illustrate why court and counsel should be aware of the requirements for a judgment under Rule 54(a).

VIII.

Is Mother Entitled to an Award of Attorney Fees on Appeal?

Mother requests an award of attorney fees on appeal pursuant to Idaho Code section 12-121. “In order to be eligible for an award of attorney fees under Idaho Code section 12-121, the party must be the prevailing party on appeal.” *Armand v. Opportunity Mgmt. Co., Inc.*, 155 Idaho 592, 602, 315 P.3d 245, 255 (2013). Both parties prevailed in part, so there is no prevailing party on appeal.

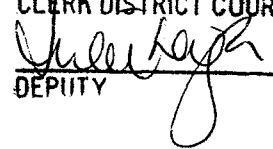
IX.
Conclusion.

We affirm the decision of the district court except its affirmance of the magistrate court's: (a) award of child support; (b) valuation of Mountain Health Care, Inc.; (c) award of attorney fees; and (d) order requiring delivery of the shares of stock to the sheriff. Upon remand to the district court, it shall enter an appropriate decision on appeal so that this case can be remanded to the magistrate court for further proceedings that are consistent with this opinion. Because both parties prevailed in part on appeal, we do not award costs or attorney fees on appeal.

Chief Justice BURDICK, Justices J. JONES, HORTON and Senior Justice Pro Tem WALTERS CONCUR.

2014 DEC 10 PM 3: 27

PAUL W. DAUGHARTY
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E-mail: paul@pdaughartylaw.com
ISB# 4520

CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY; and ABCO WOOD RECYCLING,
LLC, an Idaho limited liability company,

Defendants.

CASE NO. CV-14-4713

MOTION TO QUASH ORDER FOR
EXAMINATION OF JUDGMENT
DEBTORS

COMES NOW, the above-named Defendants, Shawn Montee and Heather Montee, by and through their attorney, Paul W. Daugharty of the Law Firm PAUL W. DAUGHARTY, P.A., and hereby move this Court for an Order quashing the Order For Examination Of Judgment Debtors entered by this Court on December 1, 2014. The grounds for this motion are as follows:

1. The motion filed by Plaintiff, Robert Wolford did not comply with the requirements of Idaho Code § 11-502. Specifically, Idaho Code § 11-502 provides in pertinent part that "after the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the court or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of

MOTION TO QUASH ORDER FOR EXAMINATION OF
JUDGMENT DEBTORS- 1

the judgment, such court or judge, by an order require the judgment debtor to appear at a specified time and place before such judge, or a referee appointed by him, to answer upon oath concerning the same.” There was no affidavit submitted by Plaintiff, Robert Wolford in support of the motion or proof, as required by Idaho Code § 11-502, provided in support of the motion;

2. It is respectfully submitted that the Court does not have authority under Idaho Code § 11-502 to require the judgment debtors to “produce for inspection and copying all documents in their possession, or reasonably available to them, which pertain or relate to the acts, conduct, or property or the liabilities and financial condition of the judgment debtors” and provide the same to the law offices of Witherspoon Kelley as set forth in the Order;

3. The motion filed by Plaintiff, Robert Wolford did not comply with the requirements of Idaho Code § 11-501. Specifically, Idaho Code § 11-501 provides that “when an execution against property of the judgment debtor or of any several debtors in the same judgment, issued to the sheriff of the county where he resides, or if he do [does] not reside in this state, to the sheriff of the county where the judgment roll is filed, **is returned unsatisfied in whole or in part**, the judgment creditor, **at any time after such return in made**, is entitled to an order from the judge of the court requiring such judgment creditor to appear and answer upon oath concerning his property, before such judge, or a referee appointed by him, . . .” (Emphasis Added). Upon information and belief the only writs returned as not satisfied were issued upon the Judgments entered on or about September 26, 2014 that did not comply with Idaho Rule of Civil Procedure 54(a). As stated by the Idaho Supreme Court in *Reed v. Reed*, Docket No. 41013-2013, 2014 Opinion No. 128 (December 2, 2014), citing I.R.C.P. 69(a), “a writ of execution could not be issued unless there was an appealable final judgment or a partial judgment certified as final under Rule 54(b) of the Idaho Rules of Civil Procedure.” In this case, any writ issued under the Judgments entered on or about September 26, 2014 are void and unenforceable.

MOTION TO QUASH ORDER FOR EXAMINATION OF
JUDGMENT DEBTORS- 2

This motion is made pursuant to Idaho Rules of Civil Procedure 7(b)(1), 7(b)(3), 54(a), 69 and 78, and is supported by the Affidavit of Paul W. Daugharty.

Defendants, Shawn Montee and Heather Montee request attorney's fees and costs pursuant to Idaho Code § 12-121 and pursuant to Rule 11(a)(1) and Rule 54 of the Idaho Rules of Civil Procedure.

Oral argument is hereby requested.

DATED this 10 day of December, 2014.

PAUL W. DAUGHARTY, P.A.

By: 

PAUL W. DAUGHARTY
Attorney for Defendants

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be served a true and correct copy of the foregoing on this 10 day of December, 2014, to:

<p>Mark A. Ellingsen Jason M. Gray WITHERSPOON KELLEY Attorneys & Counselors 608 Northwest Blvd., Suite 300 Coeur d'Alene, ID 83814</p> <p>Honorable John T. Mitchell Kootenai County Courthouse 324 West Garden Avenue Coeur d'Alene, Idaho 83816</p>	<p><input type="checkbox"/> Via Mail, postage prepaid thereon <input type="checkbox"/> Via Facsimile: 208-667-8470 <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-Mail: mae@witherspoonkelley.com</p> <p><input checked="" type="checkbox"/> Chamber Copy Via Hand Delivery</p>
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PAUL W. DAUGHARTY

MOTION TO QUASH ORDER FOR EXAMINATION OF
JUDGMENT DEBTORS- 3

PAUL W. DAUGHARTY
PAUL W. DAUGHARTY, P.A.
Attorney at Law
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E-mail: paul@pdaughartylaw.com
ISB# 4520

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
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2014 DEC 10 PM 2:18

CLERK DISTRICT COURT
DAVID MITCHELL
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY**

ROBERT WOLFORD,

Plaintiff/Respondent

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY; and ABCO WOOD RECYCLING,
LLC, an Idaho limited liability company,

Defendants/Appellants.

CASE NO. CV-14-4713

SECOND NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, ROBERT WOLFORD AND YOUR
ATTORNEY OF RECORD, MARK A. ELLINGSEN, AND THE CLERK OF THE ABOVE
ENTITLED COURT.

NOTICE IS GIVEN THAT:

1. The above named appellants, SHAWN MONTEE and HEATHER MONTEE, husband
and wife, SHAWN MONTEE, INC., an Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY, and ABCO WOOD RECYCLING, LLC, an Idaho limited liability company

SECOND NOTICE OF APPEAL - 1

(“Appellants”) appeal against the above named respondent to the Idaho Supreme Court from the MEMORANDUM DECISION AND ORDER entered in the above entitled action on the 9th day of September, 2014, and JUDGMENTS entered in the above entitled action on the 26th day of September, 2014, the Honorable John T. Mitchell presiding. Additionally, appellants appeal to the Idaho Supreme Court from the amended JUDGMENTS entered in the above entitled action on the 10th day of November, 2014, the Honorable John T. Mitchell presiding.

2. Appellants assert they have a right to appeal to the Idaho Supreme Court because the Judgments entered in the above entitled action on the 26th day of September, 2014 as described in paragraph 1 above are being treated as appealable judgments under and pursuant to I.A.R. 11(a)(1) and (3). Provided, further, appellants assert they have a right to appeal to the Idaho Supreme Court because the amended JUDGMENTS entered in the above entitled action on the 10th day of November, 2014 as described in paragraph 1 above are appealable under and pursuant to I.A.R. 11(a)(1) and (3).

3. Appellants submit the following preliminary statement of issues on appeal:

a. Did the District Court err in denying appellants’ Motion to Continue the hearing scheduled on respondent’s Motion for Summary Judgment pursuant to I.R.C.P. 56(f) to allow for the depositions of respondent and other individuals having knowledge of the matters asserted in the above entitled action?

b. Did the District Court err in denying appellants’ Motion for Examination of respondent pursuant to I.R.C.P. 35(a)?

c. Did the District Court err in granting Elizabeth Alvord’s Motion to Seal the Affidavit of Shawn Montee in Opposition to Plaintiff’s Motion for Summary Judgment pursuant

SECOND NOTICE OF APPEAL - 2

to I.C.A.R. 32(i)?

d. Did the District Court err in determining that the Promissory Notes were "clear and unambiguous" and in determining that "it is uncontroverted that defendants are in default on valid, unambiguous notes" and granting respondent's Motion for Summary Judgment?

e. Did the District Court err in determining that the Promissory Note dated February 16, 2010 did not replace the Promissory Note dated May 12, 2009?

f. Did the District Court err in not providing appellants with an offset against any outstanding balance claimed due and owing by respondent?

g. Did the District Court err in entering multiple judgments in the above entitled action (1) a Judgment in the total amount of \$2,305,160.71 against appellants, SHAWN MONTEE and the marital community of SHAWN MONTEE and HEATHER MONTEE on the 26th day of September, 2014; and (2) a Judgment in the total amount of \$2,145,587.91 against appellants, SHAWN MONTEE INC., an Idaho corporation d/b/a Shawn Montee Timber Company and ABCO WOOD RECYCLING, LLC, an Idaho limited liability company on the 26th day of September, 2014?

h. Did the District Court err in entering multiple amended judgments in the above entitled action (1) an amended Judgment in the total amount of \$2,322,037.71 against appellants, SHAWN MONTEE and the marital community of SHAWN MONTEE and HEATHER MONTEE on the 10th day of November, 2014; and (2) an amended Judgment in the total amount of \$2,161,464.91 against appellants, SHAWN MONTEE INC., an Idaho corporation d/b/a Shawn Montee Timber Company and ABCO WOOD RECYCLING, LLC, an Idaho limited liability company on the 10th day of November, 2014?

SECOND NOTICE OF APPEAL - 3

i. Did the District Court err in denying appellants' Motion to Amend or Alter Judgment; Motion to Prohibit Issuance of Writ of Execution; and Motion to Quash Writ of Execution?

j. Did the District Court err in granting respondent's attorney's fees and costs?
Appellants hereby reserve the right to assert additional issues on appeal.

4. Has an order been entered sealing all or a portion of the record? If so, what portion?

The District Court ordered the entire Affidavit of Shawn Montee in Opposition to Motion for Summary Judgment sealed.

5. Is a reporter's transcript requested? YES. Appellants request the preparation of the following portions of the reporter's transcript in both hard copy and electric format: The entire reporter's transcript made by Court Reporter, Julie Foland of the hearing held September 17, 2014 as defined by I.A.R. 25(a) and (c). Provided, further appellants request the preparation of the entire reporter's transcript made by Court Reporter, Julie Foland of the hearing held November 6, 2014 as defined by I.A.R. 25(a) and (c).

6. The appellants request the following documents to be included in the Clerk's record in addition to those automatically included under I.A.R. 28:

- a. All Affidavits with attachments;
- b. All briefs and/or memorandum; and
- c. All pleadings filed and all correspondence by and between counsel and the District Court and all rulings by the District Court thereon.

7. I certify that:

SECOND NOTICE OF APPEAL - 4

a. A copy of this Notice of Appeal has been served upon Court Reporter, Julie Foland at 324 West Garden Avenue, Coeur d'Alene, Idaho 83816-9000.

b. The Clerk of the District Court has previously been paid the estimated fee for preparation of the reporter's transcript pursuant to I.A.R. 24(c).

c. The Clerk of the District Court has previously been paid the estimated fee for preparation of the Clerk's record pursuant to I.A.R. 27(d).

d. The appellate filing fee has previously been paid.

e. Service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 10 day of December, 2014.

PAUL W. DAUGHARTY, P.A.

By: 

PAUL W. DAUGHARTY
Attorney for Defendants/Appellants

SECOND NOTICE OF APPEAL - 5

CERTIFICATE OF DELIVERY

I hereby certify that on this 12 day of December, 2014, I caused a true and correct copy of the foregoing to be delivered to:

<p>Mark A. Ellingsen Jason M. Gray WITHERSPOON KELLEY Attorneys & Counselors 608 Northwest Blvd., Suite 300 Coeur d'Alene, ID 83814</p> <p>Julie Foland, Court Reporter 324 W. Garden Avenue Coeur d'Alene, ID 83814</p>	<p><input type="checkbox"/> Via Mail, postage prepaid thereon <input type="checkbox"/> Via Facsimile: 208-667-8470 <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-Mail: mae@witherspoonkelley.com</p> <p><input type="checkbox"/> Via Mail, postage prepaid thereon <input type="checkbox"/> Via Facsimile: <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via E-Mail: Julie_foland@yahoo.com</p>
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PAUL W. DAUGHARTY, P.A.

By: 
PAUL W. DAUGHARTY

SECOND NOTICE OF APPEAL - 6

STATE OF IDAHO
COUNTY OF KOOTENAI } SS *AKC #12*
CLERK

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CLERK DISTRICT COURT
Shawnee
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, Idaho 83815
Telephone: (208) 667-4000
Facsimile: (208) 667-8470

Attorneys for Plaintiff Robert Wolford

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho Corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho limited liability
company,

Defendants.

Case No. CV-2014-4713

AFFIDAVIT OF MARK A. ELLINGSEN
IN SUPPORT OF MOTION FOR NON-
SUMMARY CONTEMPT
PROCEEDING/CHARGES OF
CONTEMPT AGAINST JUDGMENT
DEBTORS SHAWN T. MONTEE AND
HEATHER MONTEE

State of Idaho)
: ss.
County of Kootenai)

Mark A. Ellingsen, being first duly sworn on oath, deposes and says:

1. That I am the attorney for the Plaintiff above-named. That I am over the age of
eighteen years of age and am competent to testify in this matter.

2. On December 1, 2014, this Court entered an Order for Examination of
Judgment Debtors (hereinafter referred to as "Order") which required that Judgment Debtors,

AFFIDAVIT OF MARK A. ELLINGSEN IN SUPPORT OF MOTION FOR NON-SUMMARY CONTEMPT
PROCEEDINGS/CHARGES OF CONTEMPT AGAINST JUDGMENT DEBTORS SHAWN T. MONTEE AND
HEATHER MONTEE...PAGE 1

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Shawn Montee and Heather Montee produce for inspection and copying at Plaintiff's counsel's office located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 a variety of financial documents which were more particularly described in Exhibit A which was attached to the Order. These financial documents were required to be produced not later than December 11, 2014.

3. Judgment Debtors Shawn Montee and Heather Montee did not comply with this Court's order as referenced above and failed to produce for inspection and copying those financial documents at Plaintiff's counsel's office located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 by December 11, 2014. As of the date of this affidavit, Judgment Debtors Shawn Montee and Heather Montee still have failed to produce any financial documents for copying and inspection as required by the Order.

4. On December 1, 2014 this Court entered an Order for Examination of Judgment Debtors which required that Judgment Debtor Shawn Montee appear at the offices of Witherspoon Kelley, located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 on the 18th day of December, 2014, at the hour of 10:00 a.m. to make discovery under oath. Your affiant, along with a court reporter from M & M Court Reporting, was present at 10:00 a.m. at the offices of Witherspoon Kelley, located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 on the 18th day of December 2014, at the hour of 10:00 a.m. and was prepared to depose Shawn T. Montee pursuant to the Order. However, Judgment Debtor Shawn Montee failed to appear at the offices of Witherspoon Kelley, located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 on the 18th day of December 2014, at the hour of 10:00 a.m. to make discovery under oath as required by the Order.

AFFIDAVIT OF MARK A. ELLINGSEN IN SUPPORT OF MOTION FOR NON-SUMMARY CONTEMPT
PROCEEDINGS/CHARGES OF CONTEMPT AGAINST JUDGMENT DEBTORS SHAWN T. MONTEE AND
HEATHER MONTEE—PAGE 2

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1 5. On December 1, 2014 this Court entered an Order for Examination of Judgment
2 Debtors which required that Judgment Debtor Heather Montee appear at the offices of
3 Witherspoon Kelley, located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho
4 83814 on the 19th day of December, 2014, at the hour of 10:00 a.m. to make discovery under
5 oath. Your affiant, along with a court reporter from M & M Court Reporting, was present at
6 10:00 a.m. at the offices of Witherspoon Kelley, located at 608 Northwest Boulevard, Suite 300,
7 Coeur d'Alene, Idaho 83814 on the 19th day of December 2014, at the hour of 10:00 a.m. and
8 was prepared to depose Heather Montee pursuant to the Order. However, Judgment Debtor
9 Heather Montee failed to appear at the offices of Witherspoon Kelley, located at 608 Northwest
10 Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 on the 19th day of December, 2014, at the
11 hour of 10:00 a.m. to make discovery under oath as required by the Order.
12
13

14 6. At all times material, Judgment Debtors Shawn Montee and Heather Montee
15 have been represented by attorney Paul W. Daugharty. Paul W. Daugharty was served with a
16 copy of the Order via facsimile on December 1, 2014 as evidenced by the Certificate of Service
17 which is contained on page 3 of the Order. Furthermore, Judgment Debtor's Motion to Quash
18 Order for Examination of Judgment Debtors which was filed with this Court on December 10,
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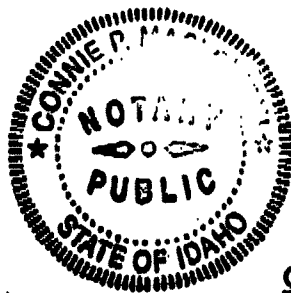
2014 by attorney Paul Daugharty clearly demonstrates that Judgment Debtors, and their counsel, received a copy of the Order.


DATED this 23 day of December, 2014.

WITHERSPOON, KELLEY


Mark A. Ellingsen

SUBSCRIBED AND SWORN TO before me this 23 day of December, 2014.




Notary Public for the State of Idaho
Residing at: Hayden
My commission expires: February 27, 2015

CLERK'S CERTIFICATE OF SERVICE

I certify that on this 23 day of December, 2014, I caused a true and correct copy of the AFFIDAVIT OF MARK A. ELLINGSEN IN SUPPORT OF MOTION FOR NON-SUMMARY CONTEMPT PROCEEDINGS/CHARGES OF CONTEMPT AGAINST JUDGMENT DEBTORS SHAWN T. MONTEE AND HEATHER MONTEE to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Paul W. Daugharty
Paul W. Daugharty, P.A.
Attorney at Law
110 East Wallace Avenue
Coeur d'Alene, ID 83814

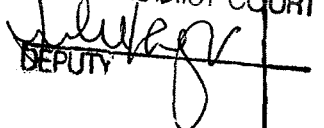
<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Via Fax: (208) 666-0550


Connie P. Maslowski

AFFIDAVIT OF MARK A. ELLINGSEN IN SUPPORT OF MOTION FOR NON-SUMMARY CONTEMPT PROCEEDINGS/CHARGES OF CONTEMPT AGAINST JUDGMENT DEBTORS SHAWN T. MONTEE AND HEATHER MONTEE—PAGE 4
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STATE OF IDAHO
COUNTY OF KOOTENAI } SS 57
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CLERK DISTRICT COURT
DEPUTY 

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470

Attorney for Plaintiff Robert Wolford

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD

No. CV-2014-4713

Plaintiff,

MOTION FOR INJUNCTIVE RELIEF

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho Corporation dba SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho limited liability
company,

Defendants.

COMES NOW the Plaintiff, by and through its attorneys of record, Mark A. Ellingsen of Witherspoon Kelley, and moves this Court pursuant to I.C. § 28-8-112 for an order from this Court granting injunctive relief which provides as follows:

(1) An order prohibiting Defendants Shawn Montee and Heather Montee husband and wife, from transferring, concealing, encumbering, selling, or in any way conveying to a third party, their interest in Shawn Montee, Inc., d/b/a Shawn Montee Timber Company, an Idaho corporation. The injunctive relief sought would include, but not necessarily be limited to, any interest Shawn Montee and Heather Montee have in stock, shares of stock, certified

MOTION FOR INJUNCTIVE RELIEF/GARNISHEE EXAM AND NOTICE OF HEARING—PAGE 1

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Wolford vs. Montee

Supreme Court Docket #42719

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1 securities, uncertified security or security entitlements related to Shawn Montee, Inc. d/b/a
2 Shawn Montee Timber Company, an Idaho corporation

3 (2) An order requiring Shawn Montee and Heather Montee husband and wife, to turn
4 over to the Sheriff of Kootenai County, within ten (10) days from the date of entry of this order,
5 all ownership interest that they have in Shawn Montee, Inc., d/b/a Shawn Montee Timber
6 Company, an Idaho corporation. The injunctive relief sought would include any stock, shares
7 of stock, certified securities, uncertified security or security entitlements related to Shawn
8 Montee, Inc., d/b/a Shawn Montee Timber Company, an Idaho corporation so that the Sheriff of
9 Kootenai County may execute upon and sell said interest in a manner provided by law pursuant
10 to a Writ of Execution issued by this Court.
11

12 (3) For an order from this Court for any further relief that this Court may deem just
13 and equitable pursuant to Idaho Code § 28-8-102 in order to satisfy Plaintiff's judgment as
14 against Shawn Montee and Heather Montee, husband and wife, regarding their ownership
15 interest in the above referenced entities.
16

17 This Motion is supported by the Affidavit of Mark A. Ellingsen and Memorandum
18 Supporting Motion for Injunctive Relief filed herewith, and the arguments to be presented at the
19 time set for hearing this Motion. Notice is given that Plaintiff intends to introduce oral
20 argument at the hearing on this Motion.
21

22 DATED this 27 day of December, 2014.

23 WITHERSPOON KELLEY

24 
25
26
27 Mark A. Ellingsen
28

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that a hearing on Wolford's Motion for Injunctive Relief will be held on the 7th day of January, 2015 at 11:30 a.m. or as soon thereafter as counsel may be heard, before the Honorable John T. Mitchell, District Judge, at the Kootenai County Courthouse, 324 W. Garden Avenue, Coeur d'Alene, Idaho 83814, or as soon thereafter as Petitioner's Motion may be heard.

DATED this 23 day of December, 2014.

WITHERSPOON KELLEY



Mark A. Ellingsen
Attorneys for Plaintiff/Petitioner

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 23rd day of December, 2014, I caused a true and correct copy of the MOTION FOR INJUNCTIVE RELIEF AND NOTICE OF HEARING to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Paul W. Daugharty
Paul W. Daugharty, P.A.
Attorney at Law
110 East Wallace Avenue
Coeur d' Alene, Idaho 83814

<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Via Fax: (208) 666-0550
<input type="checkbox"/>	Via Email:


Connie P. Maslowski

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2014 DEC 23 PM 1:01

CLERK DISTRICT COURT

DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470

Attorney for Plaintiff Robert Wolford

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho Corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC an Idaho limited liability
company,

Defendants.

No. CV-2014-4713

AFFIDAVIT OF MARK A. ELLINGSEN
FILED IN SUPPORT OF PLAINTIFF'S
MOTION FOR INJUNCTIVE RELIEF

STATE OF IDAHO)
) ss.
County of Kootenai)

MARK A. ELLINGSEN, being duly sworn on oath, deposes and says:

1. I am one of the attorneys of record in the above-entitled action; I am over the age of 18 years, duly competent to testify as to the facts stated herein and make this affidavit based upon my personal knowledge.

2. That an Amended Judgment was entered in favor of the Plaintiff in the above entitled action on or about November 10, 2014 against Defendants Shawn T. Montee and

AFFIDAVIT OF MARK A. ELLINGSEN FILED IN SUPPORT OF PLAINTIFF'S MOTION FOR
INJUNCTIVE RELIEF—PAGE 1

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Wolford vs. Montee

Supreme Court Docket #42719

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1 Heather Montee husband and wife, in the amount of \$2,321,037.71. To date, Defendants have
2 not made any payments toward satisfaction of this Judgment and a previously served writ of
3 execution upon a variety of banks proved unsuccessful in collecting funds which would satisfy
4 this outstanding Judgment.
5

6 3. Due to the unpaid Judgment and Plaintiff's unsuccessful attempts at a bank
7 garnishment, on November 24, 2014, Plaintiff filed with the Court a motion seeking a court
8 order requiring Defendants Shawn Montee and Heather Montee to attend a Debtor's
9 Examination. Ultimately, pursuant to Plaintiff's Motion, the Court entered an order which
10 required Defendant's Shawn Montee and Heather Montee to produce a variety of financial
11 records to Plaintiff's counsel's office not later than December 11, 2014. Further, the Court
12 ordered that Defendant Shawn Montee attend a debtor's examination set for December 18, 2014
13 at 10:00 a.m.
14

15 4. Despite the terms of this Court's order, Defendant Shawn Montee and Heather
16 Montee did not produce any financial documents to Plaintiff's counsel's office by December 11,
17 2014 as required. Further, Defendant Shawn Montee failed to attend the examination which was
18 set for Defendant Shawn Montee for December 18, 2014 at 10:00 a.m. via this Court's order.
19 Lastly, Defendant Heather Montee failed to attend the examination which was set for
20 December 19, 2014 at 10:00 a.m.
21

22 5. Despite Defendants efforts to delay/prevent a debtor's examination, your affiant
23 has reviewed a variety of documents which Defendant Shawn Montee filed with the Idaho
24 Secretary of State in respect to a business entity known as Shawn Montee, Inc. Attached hereto
25 as Exhibit 1 is a copy of the Articles of Incorporation for Shawn Montee, Inc. filed with the
26 Idaho Secretary of State. Attached hereto as Exhibit 2 is the Certificate of Incorporation filed
27
28

1 with the Idaho Secretary of State which pertains to Shawn Montee, Inc. Attached hereto as
2 Exhibit 3 is the most recent annual report of Shawn Montee, Inc. filed with the Idaho Secretary
3 of State.
4

5 6. Plaintiff will be obtaining a Writ of Execution from this Court in order to seize
6 and liquidate the stock interest that Defendant Shawn Montee and Heather Montee has in Shawn
7 Montee, Inc. However, the exact location of these shares of stock is uncertain. Furthermore,
8 based upon Defendant Shawn Montee's and Heather Montee's apparent ownership interest and
9 control of Shawn Montee, Inc. (the sole officers and directors as identified by the Articles of
10 Incorporation and Annual Report) and Defendants Shawn Montee's and Heather Montee's
11 efforts to thwart Plaintiff's collection efforts, your affiant is concerned that Defendants Shawn
12 Montee and Heather Montee may be in actual physical possession of said stock or may have
13 access to said stock in a way where Defendants Shawn Montee and Heather Montee could either
14 transfer, sell, encumber, or conceal said stock in order to prevent Plaintiff from satisfying his
15 judgment from these valuable assets. Further, your affiant is concerned that due to Defendants
16 Shawn Montee's and Heather Montee's ability to control Shawn Montee, Inc. as owners of the
17 company, that Defendants Shawn Montee and Heather Montee may simply direct Shawn
18 Montee, Inc. to disregard the Writ of Execution directed to Shawn Montee, Inc. for the turnover
19 of the stock.
20
21
22

23 7. That I.C. § 28-8-112(5) provides that:

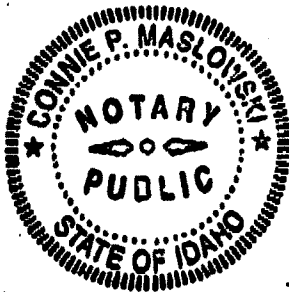
24 A creditor whose debtor is the owner of a certificated security, uncertificated
25 security or security entitlement is entitled to aid from a court of competent
26 jurisdiction, by injunction or otherwise, in reaching the certificated security,
27 uncertificated security, or security entitlement or in satisfying the claim by means
28 allowed at law or in equity in regard to property that cannot readily be reached by
other legal process.

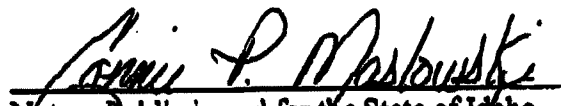
1 8. Based upon the foregoing, your affiant submits that good cause exists that
2 Plaintiff should be granted injunctive relief by this Court, such that Defendants Shawn Montee
3 and Heather Montee are enjoined from concealing, transferring, selling, or encumbering any of
4 Defendants' interest in the above referenced stock or shares of stock, or interest in shares of
5 stock. Furthermore, your affiant submits that good cause exists for this Court to further order
6 the Defendants Shawn Montee and Heather Montee to turn over and surrender to the Kootenai
7 County Sheriff their ownership interest in stock of Shawn Montee, Inc., so that said interest may
8 be sold pursuant to the Writ in order to satisfy, in whole or in part, the outstanding judgments,
9 owed by Defendants to Plaintiff.
10

11
12 DATED this 23 day of December, 2014.

13
14
15 
MARK A. ELLINGSEN

16 SUBSCRIBED AND SWORN to before me this 23rd day of December, 2014.




Notary Public in and for the State of Idaho
Residing at: Hayden
My commission expires: February 27, 2015

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 23rd day of December, 2014, I caused a true and correct copy of the AFFIDAVIT OF MARK A. ELLINGSEN FILED IN SUPPORT OF PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Paul W. Daugharty
Paul W. Daugharty, P.A.
Attorney at Law
110 East Wallace Avenue
Coeur d' Alene, ID 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 666-0550
☐ Via Email:


Connie P. Maslowski

Exhibit 1

RECEIVED
SEC. OF STATE
ARTICLES OF INCORPORATION
OF 33 JUN 25 AM 8 53

SHAWN MONTEE, INC.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned natural persons of lawful age and citizens of the United States, for the purpose of forming a corporation pursuant to the provisions of the Idaho Business Corporation Act (Title 30, Idaho Code) do hereby certify as follows:

FIRST

The name of the corporation is Shawn Montee, Inc.

SECOND

The corporation is to have perpetual existence.

THIRD

The purposes and objects for which the corporation is organized include logging, forestation, and transaction of any or all lawful business for which corporations may be incorporated under the Idaho Business Corporation Act (Title 30, Idaho Code).

FOURTH

The aggregate number of shares which the corporation shall have authority to issue is 100,000. Such shares are to consist of one class only. The par value of each of such shares shall be \$1.00 (One Dollar), which stocks shall not be issued until fully paid for, and once so issued shall be non-assessable.

FIFTH

All of the shares of stock issued shall be common stock, and all shares shall have equal value, without preferences, limitations or differences in relative rights with respect to other shares.

SIXTH

Stockholders of the corporation shall have pre-emptive and preferential rights of subscription to any shares of stock of the corporation, whether now or hereafter authorized, or to any obligations convertible into stock of the corporation, or to obligations of the corporation convertible into stock. Any stock or obligations issued by the corporation shall first be offered to the stockholders of the corporation.

IDAHO SECRETARY OF STATE
19930625 0900 03002 2
CH 01 2290 CUSTO 1
CORPORATED 10 60.00- 60.00

SEVENTH

The address of the initial registered office of the corporation is 4301 N. Ramsey, Sp. A1-13, Coeur d'Alene, ID 83814.

The name of the corporation's initial registered agent at such address is Heather Montee.

EIGHTH

The number of directors constituting the Initial Board of Directors is two.

The name and addresses of the persons who are to serve as Directors until the first annual meeting of shareholders or until their successors be elected and qualify are:

Bhawn Montee
4301 N. Ramsey, Sp. A1-13
Coeur d'Alene ID 83814

Heather Montee
4301 N. Ramsey, Sp. A1-13
Coeur d'Alene ID 83814

NINTH

The names and addresses of all incorporators are:

Shawn Montes
4301 N. Ramsey, Sp. A1-13
Coeur d'Alene ID 83814

Heather Montee
4301 N. Ramsey, Sp. A1-13
Coeur d'Alene ID 83814

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 23 day of June, 1993.

Shawn Montes, President

Heather Montee, Vice-President

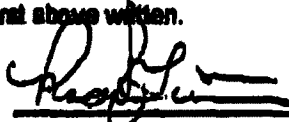
Heather Montee, Secretary-Treasurer

STATE OF IDAHO)
) ss.

County of Kootenai)

On this 23rd day of June, 1993, before me, the undersigned, a Notary Public in and for said state, personally appeared SHAWN MONTEE and HEATHER MONTEE, known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same, and that they were persons of lawful age and citizens of the United States of America.

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



Ralph J. Lincoln

Notary Public for Idaho

Residing at: Hayden Lake ID

My commission expires:

Exhibit 2

State of Idaho

Department of State

CERTIFICATE OF INCORPORATION OF

SHAWN MONTEE, INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Incorporation for the incorporation of the above named corporation, duly signed pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Incorporation and attach hereto a duplicate original of the Articles of Incorporation.

Dated: June 25, 1993



Pete T. Cenarrusa
SECRETARY OF STATE

By *Sheryl Reimer*

Exhibit 3

Annual Report for C 102554

Page 1 of 1

No. C 102554		Due no later than Jun 30, 2014		2. Registered Agent and Address (NO PO BOX)	
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		1. Mailing Address: Correct in this box if needed. SHAWN MONTEE, INC. PAUL W DAUGHARTY 110 E WALLACE AVE COEUR D ALENE ID 83814		PAUL W DAUGHARTY PA 110 E WALLACE AVE COEUR D'ALENE ID 83814	
				3. New Registered Agent Signature:*	
4. Corporations: Enter Names and Business Addresses of President, Secretary, and Directors. Treasurer (optional).					
Office Held	Name	Street or PO Address	City	State	Country Postal Code
PRESIDENT	SHAWN T. MONTEE	P.O. BOX 2028	COEUR D'ALENE	ID	USA 83816
5. Organized Under the Laws of: ID C 102554		6. Annual Report must be signed.* Signature: Paul W. Daugharty Name (type or print): Paul W. Daugharty Date: 04/17/2014 Title: Registered Agent			
Processed 04/17/2014		* Electronically provided signatures are accepted as original signatures.			

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
ID

2014 DEC 23 AM 11:18

CLERK DISTRICT COURT
[Signature]
DEPUTY

1
2 Mark A. Ellingsen, ISB No: 4720
3 WITHERSPOON KELLEY
4 Attorneys & Counselors
5 The Spokesman Review Building
6 608 Northwest Boulevard, Suite 300
7 Coeur d'Alene, Idaho 83815
8 Telephone: (208) 667-4000
9 Facsimile: (208) 667-8470

10 Attorneys for Plaintiff Robert Wolford

11 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
12 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

13 ROBERT WOLFORD,

14 Plaintiff,

15 v.

16 SHAWN MONTEE and HEATHER MONTEE,
17 husband and wife; SHAWN MONTEE, INC., an
18 Idaho Corporation d/b/a SHAWN MONTEE
19 TIMBER COMPANY; and ABCO WOOD
20 RECYCLING, LLC, an Idaho limited liability
21 company,

22 Defendants.

Case No. CV-2014-4713

APPLICATION FOR CHARGING
ORDER AND NOTICE OF HEARING

23 COMES NOW the Plaintiff above-named, by and through his attorney of record,
24 Mark A. Ellingsen of Witherspoon Kelley, and pursuant to Idaho Code § 30-6-503 herewith
25 applies for the entry of a Charging Order against the transferable interest of Defendant Shawn
26 Montee in S.M. Development, LLC, an Idaho limited liability company and ABCO Recycling,
27 LLC, an Idaho limited liability company for the unsatisfied amount of the Amended Judgment
28 entered herein. This application is supported by the Affidavit of Mark A. Ellingsen.

APPLICATION FOR A CHARGING ORDER AND NOTICE OF HEARING—PAGE 1

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1 Notice is hereby given that the Plaintiff intends to produce oral argument at the hearing
2 on this application.

3 DATED this 23 day of December, 2014.

4 WITHERSPOON KELLEY

5 

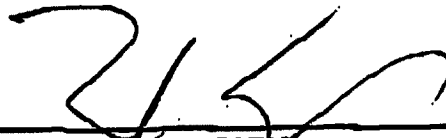
6
7 MARK A. ELLINGSEN
8 *Attorneys for Plaintiff*

9
10 **NOTICE OF HEARING**

11 YOU ARE HEREBY NOTIFIED that a hearing on Plaintiff's Application for a
12 Charging Order will be held at the Kootenai County Courthouse, 324 West Garden Avenue,
13 Coeur d'Alene, Idaho 83816 on January 7, 2015 at the hour of 11:30 a.m. before the Honorable
14 John T. Mitchell or as otherwise ordered by this Court.

15 DATED this 23 day of December, 2014.

16 WITHERSPOON KELLEY

17 

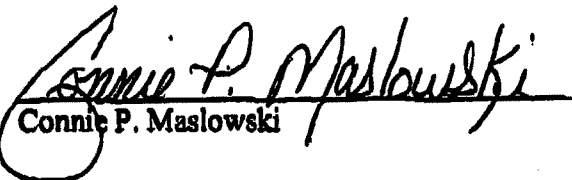
18
19 MARK A. ELLINGSEN
20 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

I certify that on this 23rd day of December, 2014, I caused a true and correct copy of the APPLICATION FOR A CHARGING ORDER AND NOTICE OF HEARING to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Paul W. Daugharty
Paul W. Daugharty, P.A.
Attorney at Law
110 East Wallace Avenue
Coeur d'Alene, ID 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 666-0550


Connie P. Maslowski

APPLICATION FOR A CHARGING ORDER AND NOTICE OF HEARING—PAGE 3

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STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2014 DEC 23 AM 11:18

CLERK DISTRICT COURT

DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, Idaho 83815
Telephone: (208) 667-4000
Facsimile: (208) 667-8470

Attorneys for Plaintiff Robert Wolford

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho Corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho limited liability
company,

Defendants.

Case No. CV-2014-4713

AFFIDAVIT OF MARK A. ELLINGSEN
IN SUPPORT OF APPLICATION FOR
CHARGING ORDER

State of Idaho)
: ss.
County of Kootenai)

Mark A. Ellingsen, being first duly sworn on oath, deposes and says:

1. That I am the attorney for the Plaintiff above-named. That I am over the age of
18 years of age and am competent to testify in this matter.

2. That I performed a search of business entities as maintained by the Idaho
Secretary of State. That attached hereto as Exhibit A is a true and correct copy of the Articles

AFFIDAVIT OF MARK A. ELLINGSEN IN SUPPORT OF APPLICATION FOR CHARGING ORDER—PAGE 1
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1 of Organization of S.M. Development, L.L.C. which lists Shawn Montee as a Member and
2 Paul Daugharty as the Registered Agent.

3 3. That attached hereto as Exhibit B is a true and correct copy of the Annual
4 Report Form filed by S.M. Development, L.L.C. for the year 2014 showing Shawn Montee as
5 a Member and Paul Daugharty as the Registered Agent.

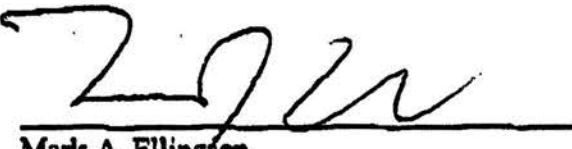
6 4. That attached hereto as Exhibit C is a true and correct copy of the Certificate of
7 Organization of ABCO Recycling, L.L.C. showing Shawn Montee as a Member and Paul
8 Daugharty as the Registered Agent.

9 5. That attached hereto as Exhibit D is the Annual Report Form for ABCO
10 Recycling, L.L.C. filed on November 26, 2014 showing Shawn Montee as a member and Paul
11 Daugharty as the Registered Agent.

12 6. That all of the foregoing exhibits were obtained by me from the Idaho Secretary
13 of State business entity website.


14 DATED this 23 day of December, 2014.

15 WITHERSPOON, KELLEY

16 
17 Mark A. Ellingsen

18 SUBSCRIBED AND SWORN TO before me this 23rd day of December, 2014.



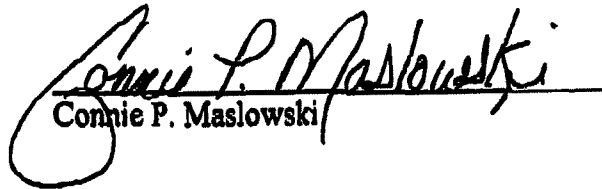

Notary Public for the State of Idaho
Residing at: Hayden
My commission expires: February 27, 2015

CLERK'S CERTIFICATE OF SERVICE

I certify that on this 23rd day of December, 2014, I caused a true and correct copy of the AFFIDAVIT OF MARK A. ELLINGSEN IN SUPPORT OF APPLICATION FOR CHARGING ORDER to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Paul W. Daugharty
Paul W. Daugharty, P.A.
Attorney at Law
110 East Wallace Avenue
Coeur d'Alene, ID 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 666-0550


Connie P. Maslowski

AFFIDAVIT OF MARK A. ELLINGSEN IN SUPPORT OF APPLICATION FOR CHARGING ORDER—PAGE 3
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EXHIBIT A

EXHIBIT A

Wolford vs. Montee

EXHIBIT A

Supreme Court Docket #42719

EXHIBIT A

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FILED**ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY**To the Secretary of State of Idaho
Corporations Division700 West Jefferson Room 203
P.O. Box 83720 • Boise, ID 83720-0080

DEC 20 PM 2:43



1. The name of the limited liability company is: S. M. DEVELOPMENT, L.L.C.
2. The address of the initial registered office is: 110 E. Wallace Avenue
(not a PO Box)
Coeur d'Alene, ID 83814 and the name of the initial registered agent at that address is: PAUL W. DAUGHARTY, P.A.
- Signature of registered agent: Paul W. Daugharty
3. The latest date certain on which the limited liability company will dissolve: January 1st, 2030
4. Is management of the limited liability company vested in a manager or managers?
☐ Yes ☒ No (check appropriate box)
5. If management is vested in one or more manager(s), list the name(s) and address(es) of at least one initial manager. If management is vested in the members, list the name(s) and address(es) of at least one initial member.
- | Name: | Address: |
|-----------------|--|
| SHAWN T. MONTEE | 6420 Seltice Way, Post Falls, ID 83854 |
| | |
| | |
| | |
6. Signature of at least one person listed in #5 above:

[Signature]

12/20/1999 09:00

12/20/1999 09:00
CR: 3361 CT: 7030 DI: 2738171 0 100.00 = 100.00 FROM LLC # 2
1 0 25.00 = 25.00 EXPLOSIVE C 0 3

W10485

EXHIBIT B

EXHIBIT B

Wolford vs. Montee

EXHIBIT B

Supreme Court Docket #42719

EXHIBIT B

292 of 332

No. W 10485		Due no later than Dec 31, 2014 Annual Report Form		2. Registered Agent and Address (NO PO BOX)	
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		1. Mailing Address: Correct in this box if needed. S.M. DEVELOPMENT, L.L.C. PAUL W DAUGHARTY PA 110 E WALLACE AVE COEUR D'ALENE ID 83814		PAUL W DAUGHARTY PA 110 E WALLACE AVE COEUR D'ALENE 83814	
				3. <u>New</u> Registered Agent Signature:*	
4. Limited Liability Companies: Enter Names and Addresses of at least one Member or Manager.					
Office Held	Name	Street or PO Address	City	State	Country
MEMBER	SHAWN T MONTEE	P.O. BOX 2028	COEUR D'ALENE	ID	USA
5. Organized Under the Laws of: ID W 10485		6. Annual Report must be signed.* Signature: Paul W. Daugharty Name (type or print): Paul W. Daugharty Date: 11/11/2014 Title: Registered Agent			
Processed 11/11/2014		* Electronically provided signatures are accepted as original signatures.			

EXHIBIT C

EXHIBIT C

Wolford vs. Montee

EXHIBIT C

Supreme Court Docket #42719

EXHIBIT C

294 of 332

FILED EFFECTIVE

201

2014 JAN 17 PM 4:12



CERTIFICATE OF ORGANIZATION LIMITED LIABILITY COMPANY

SECRETARY OF STATE
STATE OF IDAHO

(Instructions on back of application)

- The name of the limited liability company is:
ASCO RECYCLING, LLC.
- The complete street and mailing addresses of the initial designated office:
13403 North Government Way, Suite 206, Hayden, ID 83835
(Street Address)
P.O. Box 2028, Coeur d'Alene, ID 83814
(Mailing Address, if different than street address)
- The name and complete street address of the registered agent:
Paul W. Daugherty 110 E. Wallace Avenue, Coeur d'Alene, ID 83814
(Name) (Street Address)
- The name and address of at least one member or manager of the limited liability company:

Name	Address
<u>Shawn Montee</u>	<u>P.O. Box 2028, Coeur d'Alene, ID 83814</u>
_____	_____
_____	_____
_____	_____
_____	_____
- Mailing address for future correspondence (annual report notices):
110 E. Wallace Avenue, Coeur d'Alene, ID 83814
- Future effective date of filing (optional): _____

Signature of a manager, member or authorized person.

Signature: _____

Typed Name: Shawn Montee, Member

Signature: _____

Typed Name: _____

Secretary of State use only

IDAHO SECRETARY OF STATE
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W 133303

EXHIBIT D

EXHIBIT D

EXHIBIT D

EXHIBIT D

No. W 133303		Due no later than Jan 31, 2015 Annual Report Form		2. Registered Agent and Address (NO PO BOX)	
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		1. Mailing Address: Correct in this box if needed. ABCO RECYCLING, L.L.C. PAUL W DAUGHARTY 110 E WALLACE AVE COEUR D ALENE ID 83814		PAUL W DAUGHARTY 110 E WALLACE AVE COEUR D ALENE 83814	
				3. New Registered Agent Signature:*	
4. Limited Liability Companies: Enter Names and Addresses of at least one Member or Manager.					
Office Held	Name	Street or PO Address	City	State	Country
MEMBER	SHAWN T MONTEE	P.O. BOX 2028	COEUR D'ALENE	ID	USA
					Postal Code 83816
5. Organized Under the Laws of: ID W 133303		6. Annual Report must be signed.* Signature: Paul W. Daugharty Name (type or print): Paul W. Daugharty Date: 11/26/2014 Title: Registered Agent			
Processed 11/26/2014		* Electronically provided signatures are accepted as original signatures.			

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED

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CLERK DISTRICT COURT
John T. Mitchell
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d' Alene, Idaho 83815
Telephone: (208)667-4000
Facsimile: (208)667-8470

Attorneys for Plaintiff Robert Wolford

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife, SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho limited liability
company,

Defendants.

Case No. CV-2014-4713

MOTION/FOR NON-SUMMARY
CONTEMPT PROCEEDING/CHARGES
OF CONTEMPT AS AGAINST
JUDGMENT DEBTORS SHAWN T.
MONTEE AND HEATHER MONTEE,
AND NOTICE OF HEARING

Date: January 7, 2015

Time: 11:30 a.m.

Judge: John T. Mitchell

COMES NOW Robert Wolford, Plaintiff/Petitioner, by and through his attorneys of
record, Mark A. Ellingsen of Witherspoon Kelley, and moves this Court, pursuant to Idaho
Rule of Civil Procedure 75 and Idaho Code § 7-601, *et seq.*, for commencement of a non-
summary contempt proceedings. Plaintiff alleges the following Charges of Contempt
respecting Defendants/Respondents, Shawn Montee and Heather Montee Judgment Debtors.
This Motion/Charges of Contempt is supported by the Affidavit of Mark A. Ellingsen filed

MOTION FOR NON-SUMMARY CONTEMPT PROCEEDING
AND NOTICE OF HEARING—PAGE 1

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Wolford vs. Montee

herewith, the pleadings, motions and records filed in this matter, and the arguments to be made at the time set for hearing this Motion.

This motion for commencement of a non-summary contempt proceeding/Charges of Contempt respecting Defendants/Respondents, Shawn Montee and Heather Montee Judgment Debtors is based on the following undisputed facts which support two separate charges of contempt as against Judgment Debtors Shawn Montee and Heather Montee.

CONTEMPT CHARGE 1: JUDGMENT DEBTOR SHAWN MONTEE AND HEATHER MONTEE'S FAILURE TO PRODUCE FINANCIAL RECORDS AS REQUIRED PURSUANT TO THIS COURT'S DECEMBER 1, 2014 ORDER.

On December 1, 2014, this Court entered an Order for Examination of Judgment Debtors (hereinafter referred to as "Order") which required that Judgment Debtors, Shawn Montee and Heather Montee produce for inspection and copying at Plaintiff's counsel's office located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 a variety of financial documents which were more particularly described in Exhibit A which was attached to the Order. These financial documents were required to be produced not later than December 11, 2014. As identified in the Affidavit of Mark A. Ellingsen and the deposition transcripts which are filed and served concurrently with this motion, Judgment Debtor's Shawn Montee and Heather Montee did not comply with this Court's order as referenced above and failed to produce for inspection and copying those financial documents at Plaintiff's counsel's office located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 by December 11, 2014. As of the date of this motion, to date, Judgment Debtors Shawn Montee and Heather Montee still have failed to produce any financial documents for copying and inspection. Judgment Debtors Shawn Montee and Heather Montee should both be found in

1 contempt for their failure to comply with the Court's order regarding the production of these
2 financial documents.

3 **CONTEMPT CHARGE 2: JUDGMENT DEBTORS SHAWN MONTEE'S AND**
4 **HEATHER MONTEE'S FAILURE TO APPEAR AND PROVIDE TESTIMONY**
5 **AS REQUIRED BY DECEMBER 1, 2014 COURT ORDER.**

6 On December 1, 2014 this Court entered an Order for Examination of Judgment
7 Debtors which required that Judgment Debtor Shawn Montee appear at the offices of
8 Witherspoon Kelley, located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho
9 83814 on the 18th day of December, 2014, at the hour of 10:00 a.m. to make discovery under
10 oath, and that Judgment Debtor Heather Montee appear at the offices of Witherspoon Kelley,
11 located at 608 Northwest Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 on the 19th day of
12 December, 2014, at the hour of 10:00 a.m. to make discovery under oath. Judgment Debtor
13 Shawn Montee failed to appear at the offices of Witherspoon Kelley, located at 608 Northwest
14 Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 on the 18th day of December, 2014, at the
15 hour of 10:00 a.m. to make discovery under oath. Furthermore Judgment Debtor Heather
16 Montee failed to appear at the offices of Witherspoon Kelley, located at 608 Northwest
17 Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 on the 18th day of December, 2014, at the
18 hour of 10:00 a.m. to make discovery under oath. Judgment Debtors Shawn Montee and
19 Heather Montee should both be found in contempt for their failure to comply with the Court's
20 order requiring them to appear at the offices of Witherspoon Kelley, located at 608 Northwest
21 Boulevard, Suite 300, Coeur d'Alene, Idaho 83814 on the 18th day of December 2014, at the
22 hour of 10:00 a.m. to make discovery under oath.

**SERVICE OF COURT ORDER ON COUNSEL FOR JUDGMENT DEBTOR'S
SHAWN MONTEE AND HEATHER MONTEE.**

At all times material, Judgment Debtors Shawn Montee and Heather Montee have been represented by attorney Paul W. Daugharty. Paul W. Daugharty was served with a copy of the Order via facsimile by on December 1, 2014 as evidenced by the Certificate of Service which is contained on page 3 of the Order. Furthermore, Judgment Debtor's Motion to Quash Order for Examination of Judgment Debtors which was filed with this Court on December 10, 2014 by attorney Paul Daugharty clearly demonstrates that Judgment Debtors, and their counsel, received a copy of the Order.


REQUESTED RELIEF:

Plaintiff requests that this Court impose against Judgment Debtors Shawn Montee and Heather Montee those criminal and/or civil sanctions as provided by I.R.C.P. Rule 75 and Idaho Code § 7-601, *et seq.* as this Court deems just and equitable. Plaintiff submits that given the nature of the outstanding unpaid judgment which is due and owing in this case—an order for contempt by this Court which is limited to a civil (monetary) sanction will be ineffective in punishing the disobedience of the lawful Order which was committed by Judgment Debtors Shawn Montee and Heather Montee. Instead, this Court should fashion a sanction order which will accomplish what was required pursuant to the Order and adequately punish Judgment Debtors Shawn Montee and Heather Montee for their disregard of the Order. The Court should enter an order that Judgment Debtors Shawn Montee and Heather Montee produce those financial records which were required pursuant to the Order within five (5) days. Thereafter, Judgment Debtors Shawn Montee and Heather Montee should each be ordered incarcerated for five (5) days as provided by Idaho § 7-601, *et seq.* Furthermore, during this period of incarceration, this Court should order that Judgment Debtors Shawn Montee and Heather

1 Montee appear at the Kootenai County Jail Contact Room located in the Kootenai County Jail,
2 5500 North Government Way, Coeur d'Alene, Idaho 83815 to make discovery under oath as
3 previously required pursuant to this Court's Order. Further, Plaintiff requests an award of his
4 attorney's fees and costs as incurred in prosecuting this motion as provided by I.R.C.P. 75(m)
5 and Idaho Code § 7-610. Oral argument is requested on this motion.
6

7
8 DATED this 23 day of December, 2014.

9
10 WITHERSPOON KELLEY

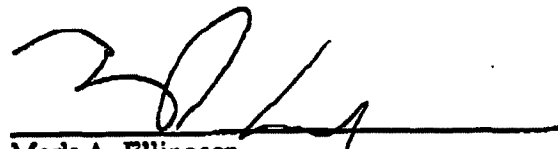
11 
12 _____
13 Mark A. Ellingsen
14 Attorneys for Plaintiff/Petitioner

15 **NOTICE OF HEARING**

16 YOU ARE HEREBY NOTIFIED that a hearing on Wolford's Motion for Non-summary
17 Contempt Proceedings/Charges of Contempt will be held on the 7th day of January, 2015 at
18 11:30 a.m. or as soon thereafter as counsel may be heard, before the Honorable John T.
19 Mitchell, District Judge, at the Kootenai County Courthouse, 324 W. Garden Avenue,
20 Coeur d'Alene, Idaho 83814, or as soon thereafter as Petitioner's Motion may be heard.
21

22 DATED this 23 day of December, 2014.

23
24 WITHERSPOON KELLEY

25 
26 _____
27 Mark A. Ellingsen
28 Attorneys for Plaintiff/Petitioner

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 23rd day of December, 2014, I caused a true and correct copy of the MOTION/FOR NON-SUMMARY CONTEMPT PROCEEDING/CHARGES OF CONTEMPT AS AGAINST JUDGMENT DEBTORS SHAWN T. MONTEE AND HEATHER MONTEE, AND NOTICE OF HEARING to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Paul W. Daugharty
Paul W. Daugharty, P.A.
Attorney at Law
110 East Wallace Avenue
Coeur d'Alene, ID 83814

☐
☐
☐
☒

U.S. Mail
Hand Delivered
Overnight Mail
Via Fax: (208) 666-0550

Connie P. Maslowski
Connie P. Maslowski

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
JED

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CLERK DISTRICT COURT
Shelley
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d' Alene, Idaho 83815
Telephone: (208) 667-4000
Facsimile: (208) 667-8470

Attorneys for Plaintiff Robert Wolford

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife, SHAWN MONTEE, IC., an
Idaho corporation dba SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho limited liability
company,

Defendants.

Case No. CV-2014-4713

MEMORANDUM IN SUPPORT OF
MOTION FOR NON-SUMMARY
CONTEMPT PROCEEDING/CHARGES
OF CONTEMPT AGAINST
JUDGMENT DEBTORS SHAWN T.
MONTEE AND HEATHER MONTEE

Petitioner/Plaintiff Robert Wolford (hereinafter referred to as "Wolford") has filed a
Motion for Non-Summary Contempt Proceedings/Charges of Contempt against Judgment
Debtors Shawn T. Montee and Heather Montee(hereinafter "Contempt Motion") Wolford
provides this Memorandum in Support of his Contempt Motion/Charges.

I. FACTS

Judgment was initially entered in favor of Wolford in this matter on September 26, 2014 as against Judgment Debtors Shawn T. Montee and Heather Montee (hereinafter collectively referred to as "the Montees") in the amount of \$2,305,160.71. On October 6, 2014, the Montees filed a motion with the Court to prohibit the issuance of a writ of execution and a motion to alter/amend the judgment. On October 14, 2014, a writ of execution was issued to garnish the funds which may have been held by the Montees at a variety of banks. Thereafter, on October 6, 2014, the Montees filed a motion to quash the writs of execution. On November 6, 2014 at a hearing on the matter, the Court ultimately denied the Montees' motion to quash the writs of execution. Instead, the Court simply granted the Montees' pending motion to amend the judgments and on November 10, 2014, entered an amended judgment in the sum of \$2,321,037.71. On November 21, 2014, the Sheriff of Kootenai County submitted a return on the outstanding writs of execution which reflected only that \$47.19 had been collected from the Montees' accounts from the bank garnishment. However, Wolford incurred the sum of \$364.81 in expenses charged by the Kootenai County Sheriff's office for service of the writ of execution.

At this point, Wolford was unaware of the nature, extent, or location of any accounts, personal property, or other assets of the Montees which could be successfully executed upon in order to satisfy the outstanding judgment. Therefore, on November 24, 2014 Wolford filed a motion with this Court seeking an order requiring the Montees to produce a variety of financial documents to counsel and to later appear at a deposition in order that Wolford's counsel could inquire about the nature and extent of the Montees' assets which could be executed upon. On November 24, 2014, the Court entered an Order for Examination of Judgment Debtors

1 (hereinafter referred to as "Order") which required the Montees to produce for inspection and
2 copying the requested financial documents not later than December 11, 2014 and for Montee to
3 appear for depositions which were scheduled for December 18, 2014 and December 19, 2014 at
4 10:00.am.

5
6 Despite this Order, the Montees failed to turn over any financial documents as required
7 by this Order. Furthermore, despite this Order, Shawn Montee and Heather Montee failed to
8 appear and submit to questioning under oath as required. Instead, on December 10, 2014 the
9 Montees filed a motion to quash the Order. In their motion, the Montees challenge the legality
10 of this Court's Order. Plaintiff submits that the challenge made by the Montees for the reasons
11 stated hereinafter are patently frivolous and have been interposed for the sole purpose of
12 delaying Woford's lawful right to obtain financial records and to depose the Montees about
13 assets which could be executed upon in order to satisfy the unpaid judgment.
14

15
16 Woford submits that the Montees' disregard of this Court's Order justifies the charges
17 of contempt which are sought by Woford and the relief which is requested in Woford's
18 motion/charges for contempt.

19 **1. NON-SUMMARY CONTEMPT PROCEEDINGS**

20 Pursuant to IRCP 75(c)(2), Woford may initiate a proceeding for contempt via a motion
21 and affidavit. The written charge of contempt or affidavit must allege the specific facts
22 constituting the contempt. IRCP 75(c)(3). Further, as in the case at hand, if the alleged
23 contempt is a violation of a court order, the written charge or affidavit must allege that either
24 the respondent or respondent's attorney was served with a copy of the order or had actual
25 knowledge of it. IRCP 75(c)(3). The written charge or affidavit need not allege facts showing
26 that the respondent's failure to comply with the court order was willful. IRCP 75(c)(3).
27
28

1 In this case, Wolford has set out in both his written charges/motion and supporting
2 affidavit those specific facts which support the contempt charges (i.e., Shawn Montee's and
3 Heather Montee's failure to appear for the Court Ordered Debtor's Examination and failure to
4 produce any financial documents as required by the Court Order). Furthermore, the court
5 record reflects, via Montee's Motion to Quash Order for Debtor's Exam, that Shawn Montee's
6 and Heather Montee's counsel obtained a copy of the Order.

8 Accordingly, this Court must proceed forward with the contempt proceedings against
9 Shawn Montee and Heather Montee as promulgated by IRCP 75(f), IRCP 75(g) and 75(i). This
10 would include giving the Montees their required advice at the initial appearance scheduled for
11 January 7, 2015 at 11:30 a.m., taking their respective pleas to the charges of contempt at this
12 initial hearing, and setting the matter for a trial if the Montees deny the charges of contempt.
13 Since Wolford is seeking incarceration as a penalty, the Court will have to advise Shawn
14 Montee and Heather Montee at this initial hearing of their right to counsel through this
15 contempt proceeding. IRCP 75(f)(3),

18 **2. MONTEE'S CHALLENGE TO THIS COURT'S ORDER IS WITHOUT**
19 **MERIT.**

20 There is simply no dispute that the Montees violated the Order by failing to appear for
21 the debtor's examination and by failing to produce any financial documents as required by the
22 Court order. Instead, the Montees claim that they were not required to comply with this Order
23 due to the arguments which they assert in their Motion to Quash which was filed on
24 December 1, 2014.

26 In this case, Wolford previously moved forward and executed upon the judgment he
27 obtained against Montee via the writ of execution. The writ of execution was returned
28 unsatisfied by the Kootenai County Sheriff's office and was filed with this Court on

1 November 21, 2014. In these returns, the Kootenai County Sheriff's Deputy Carey L. Holicek
2 executed a number of documents which certified that the writ of execution was being returned
3 to the Court unsatisfied—in that the writ process failed to obtain funds which would satisfy the
4 outstanding judgment.
5

6 Due to this unsuccessful execution, Wolford filed a motion with this Court seeking a
7 Court ordered debtor's examination. The motion was based upon I.R.C.P. 69(c) and Title 11,
8 Chapter 5, of the Idaho Code. I.R.C.P. 69(c) states:

9
10 In aid of the judgment or execution, the judgment creditor or successor in interest
11 when that interest appears of record, may obtain discovery from any person,
12 including the judgment debtor, as provided in these rules and may examine any
13 person, including the judgment debtor, in the manner provided by the practice of
14 this state.

15 Based upon the broad language provided by I.R.C.P. 69(c), Wolford has every right to
16 obtain a court order which would permit Wolford to examine Shawn Montee and Heather
17 Montee under oath about their assets and in a fashion which would aid in future executions
18 upon the underlying judgment—regardless of whether a writ of execution had been issued by
19 the Court and returned unsatisfied. Furthermore, due to the broad language provided by
20 I.R.C.P. 69(c), Wolford has the authority to compel the Montees to produce financial records
21 which, again, might aid in Wolford's future executions upon the underlying judgment.

22 Furthermore, Idaho Code § 11-501 (not Idaho Code § 11-502 as argued by the Montees
23 in their motion to quash) is the statute which pertains to the debtor's examination requested by
24 Wolford via his motion. Idaho Code § 11-501 states:

25 When an execution against property of the judgment debtor or of any of several
26 debtors in the same judgment, issued to the sheriff of the county where he
27 resides . . . is returned unsatisfied in whole or in part the judgment creditor, at any
28 time after such return is made, is entitled to an order from the judge of the court
requiring such judgment debtor to appear and answer upon oath concerning his

1 property, before such judge, or a referee appointed by him, at a time and place
2 specified in the order

3 In this case, it is an undisputed fact that a writ of execution had been issued by this court on the
4 judgment was returned unsatisfied by the Kootenai County Sheriff's Office. Given this fact,
5 Welford has a statutory right, pursuant to Idaho Code § 11-501, to seek a court order requiring
6 a debtor's exam so that assets might be identified which could ultimately result in another writ
7 of execution being successfully executed upon. In this case, the Montees challenge the Court's
8 ability to enter an order regarding a judgment debtor exam on the premise that the underlying
9 writ of execution was purportedly unlawful.
10

11 However, we have already dealt with the issue of the legality of this particular writ of
12 execution in previous arguments which the Montees made before this Court (*i.e.*, *see* Montees'
13 Motion to Quash the Writ of Execution). The Court has already considered these arguments in
14 the past and denied Montees' challenges to the writ of execution. Regardless, the purported
15 "legality" of the writ of execution should not be a factor when considering whether a court
16 ordered debtor's examination can occur pursuant to Idaho Code § 11-501. The purpose of
17 Idaho Code § 11-501 is to give a judgment creditor the authority to compel an examination of
18 the judgment debtor when the judgment creditor has attempted an execution on the judgment
19 and these actions ultimately failed to satisfy a judgment. The whole point of this statute is
20 when it is clear that a judgment creditor has unsuccessfully executed upon a judgment, then the
21 judgment creditor has the right to obtain a court order to depose the judgment debtor so that a
22 subsequent execution may be successful. There is nothing in this statute, or the case law
23 interpreting this particular statute, which states that a debtor's examination cannot be ordered
24 when there may have been some purported defect to an underlying writ of execution which was
25 returned unsatisfied.
26
27
28

CONCLUSION

As stated above, the Montees' challenge to this Court's Order is without merit. Instead, the Montees blatantly disregard this Court's order and unjustifiably block Wolford's lawful attempts to obtain information about assets which might be executed upon in order to satisfy the large judgment which is due and owing from the Montees to Wolford. Therefore, both Shawn Montee and Heather Montee must be found in contempt for their disregard of the Order. And, when the Court considers the sanction/penalty to be imposed upon the Montees, Wolford submits that incarceration must be utilized as the only effective sanction. In this case, the Montees already owe in excess of \$2 million to Wolford. An additional monetary/civil sanction against the Montees would essentially be a meaningless sanction to the Montees. Instead, this Court should fashion a sanction order which will accomplish what was required pursuant to the Order and adequately punish the Montees for their disregard of the Court's order. As such, Wolford proposes that the Montees be ordered to produce those financial records which were required pursuant to the Order within five (5) days. Thereafter, Shawn Montee and Heather Montee would be ordered incarcerated in jail for a period of five (5) days as a penalty for their contempt pursuant to Idaho Code § 7-601. During their incarceration period, Shawn Montee and Heather Montee would be required to appear at the Kootenai County Jail Contact Room located in the Kootenai County Jail to make discovery under oath as previously required pursuant to this Court's Order.

DATED this 23 day of December, 2014.

WITHERSPOON KELLEY


Mark A. Ellingsen
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 23rd day of December, 2014, I caused a true and correct copy of the MEMORANDUM IN SUPPORT OF MOTION/FOR NON-SUMMARY CONTEMPT PROCEEDING/CHARGES OF CONTEMPT AS AGAINST JUDGMENT DEBTORS SHAWN T. MONTEE AND HEATHER MONTEE, AND NOTICE OF HEARING to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Paul W. Daugharty
Paul W. Daugharty, P.A.
Attorney at Law
110 East Wallace Avenue
Cocur d'Alene, ID 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 666-0550


Connie P. Maslowski

STATE OF IDAHO
COUNTY OF KOOTENAI } SS

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CLERK DISTRICT COURT

DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470

Attorney for Plaintiff Robert Wolford

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD

No. CV-2014-4713

Plaintiff,

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
INJUNCTIVE RELIEF

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC an Idaho limited liability
company,

Defendants.

INTRODUCTION

Plaintiff brings this Motion for Injunctive Relief, pursuant to I.C. § 28-8-112(5), in order to reach Defendants Shawn Montee's and Heather Montee's stock/shareholder interest in Shawn Montee, Inc. an Idaho corporation and thereby satisfy the unpaid judgment which was entered by this Court in this case on November 10, 2014.

ARGUMENT

Plaintiff obtained a judgment against Defendant Shawn Montee and Heather Montee for the sum of \$2,161,464.91. Defendants have failed to make any payments toward satisfaction of

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF & GARNISHEE
EXAMINATION—PAGE 1

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Wolford vs. Montee

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1 the judgment and have disregarded this Court's order entered on December 1, 2014 which
2 required them to produce various financial records and to appear for an examination to testify
3 regarding their respective assets which might be executed upon to help satisfy the unpaid
4 balance of the judgment.
5

6 Defendants have shown that they will disregard the law in an effort to frustrate Plaintiff's
7 collections efforts. However, based upon the Articles of Incorporation which were filed with the
8 Secretary of State of Idaho, it would appear that Defendants Shawn Montee and Heather Montee
9 were the original incorporators and directors of Shawn Montee, Inc. Further, these Articles of
10 Incorporation also note that Shawn Montee is the President and Heather Montee is the Vice
11 President-Secretary/Treasurer of Shawn Montee, Inc. The Articles of Incorporation also note
12 that Shawn Montee, Inc. has authority to issue and deliver 100,000 shares of stock to its
13 shareholders. While the Articles of Incorporation do not identify the respective shareholders at
14 this time, presumably Defendants Shawn Montee and Heather Montee currently maintain some,
15 if not all, of the ownership interest in this stock.
16
17

18 We believe that Shawn Montee, Inc. is a business which is currently in operation, has
19 assets which Defendants have an interest via their shareholder interest, and that Shawn Montee
20 Inc. is generating income for both itself and ultimately for Defendants Shawn Montee and
21 Heather Montee. Furthermore, we believe that the sale of Shawn Montee's and Heather
22 Montee's shareholder interest in Shawn Montee, Inc. at a sheriff's sale via a writ of execution
23 will result in the partial satisfaction of the unpaid balance due and owing on the subject
24 judgment.
25

26 Plaintiff will be obtaining a second Writ of Execution directing the Kootenai County
27 Sheriff to satisfy Plaintiff's Judgments from the property of Defendant Shawn Montee and
28

1 Heather Montee. Defendants Shawn Montee's and Heather Montee's property includes stock
2 and other security interests in Shawn Montee, Inc. an Idaho corporation. While a Writ and
3 Notice of Attachment of Stock could be served upon Shawn Montee, Inc., it is uncertain whether
4 this entity has physical possession of Defendants' stock interest in the respective corporations or
5 if said stock is actually under the dominion and control of the Defendants. Furthermore, it is
6 doubtful that Shawn Montee, Inc. would even comply with service of a Writ and Notice of
7 Attachment since Shawn Montee and Heather Montee effectively control Shawn Montee, Inc.'s
8 actions and will undoubtedly do those acts necessary to prevent turning said stock over pursuant
9 to a Writ and Notice of Attachment.
10
11

12 As the Court can probably surmise, an asset such as an ownership interest in stock can
13 easily be transferred, hidden and concealed in order to frustrate and ultimately bar a creditor's
14 attempts to enforce a judgment against such a valuable asset. Due to this particular problem,
15 Idaho Code § 28-8-112(5) was enacted to specifically provide wide latitude of relief for a
16 creditor which, by the broad language included within this statute, can include:
17

18 (1) An order requiring Debtor to account for said stock;

19 (2) An order prohibiting the Debtor from transferring, selling, concealing, or
20 encumbering said stock; and
21

22 (3) An order requiring the Debtor to physically turn over his interest in said stock to
23 the Sheriff so that an outstanding Writ of Execution may be enforced.

24 Specifically, I.C. § 28-8-112(5) provides that "[a] creditor whose debtor is the owner of a
25 certificated security, uncertificated security or security entitlement is entitled to aid from a court
26 of competent jurisdiction, by injunction or otherwise, in reaching the certificated security,
27
28

1 uncertificated security, or security entitlement or in satisfying the claim by means allowed at law
2 or in equity in regard to property that cannot readily be reached by other legal process."

3 Due to Defendants' efforts to frustrate Plaintiff's collection efforts, Plaintiff submits that
4 good cause exists for an entry of an injunctive order related to this stock as requested in this
5 motion. This Court must enter an order enjoining Defendants Shawn Montee and Heather
6 Montee from concealing, transferring, selling, or encumbering any of their interest in stock
7 which they own of Shawn Montee, Inc. Further, pursuant to I.C. § 28-8-112(5), this Court must
8 enter an order requiring Defendants Shawn Montee and Heather Montee to do those acts
9 required to physically turn over and surrender to the Kootenai County Sheriff their ownership
10 interest in stock of Shawn Montee, Inc. so that said interest may be sold pursuant to a Writ of
11 Execution to be issued by this Court—in order to satisfy, in whole or in part, the outstanding
12 judgments, owed by Defendants to Plaintiff. Such relief is necessary to prevent irreparable harm
13 which Plaintiff might suffer by Defendants Shawn Montee's and Heather Montee's acts in
14 preventing said stock from being recovered and liquidated pursuant to an underlying Writ of
15 Execution.
16
17
18

19 CONCLUSION

20 For the reasons stated herein, and pursuant to I.C. § 28-8-112(5), Plaintiff should be
21 granted injunctive relief by this Court as articulated in the underlying Motion.
22

23 DATED this 23 day of December, 2014.

24 WITHERSPOON KELLEY

25 
26
27 Mark A. Ellingsen
28

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 23rd day of December, 2014, I caused a true and correct copy of the MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Paul W. Daugharty
Paul W. Daugharty, P.A.
Attorney at Law
110 East Wallace Avenue
Coeur d'Alene, ID 83814

<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Via Fax: (208) 666-0550
<input type="checkbox"/>	Via Email:


Connie P. Maslowski

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2015 JAN -5 AM 9:38

CLERK DISTRICT COURT
Stacy Clausen
DEPUTY

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, Idaho 83815
Telephone: (208) 667-4000
Facsimile: (208) 667-8470

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho Corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho

Defendants.

Case No. CV-14-4713

ORDER DENYING DEFENDANTS'
MOTION TO PROHIBIT ISSUANCE OF
WRIT OF EXECUTION AND DENYING
DEFENDANTS' MOTION TO QUASH
WRITS OF EXECUTION/ORDER
GRANTING DEFENDANTS' MOTION
TO ALTER/AMEND JUDGMENTS

This matter having come before the Court on November 6, 2014 on Defendants' Motion to Prohibit Issuance of Writ of Execution, Defendants' Motion to Quash Writs of Execution, and Defendants' Motion to Alter/Amend Judgments. After considering the above noted motions, the Affidavit of Paul W. Daugharty in Support of Motion to Prohibit Writ of Execution, the Affidavit of Paul W. Daugharty in Support of Motion to Alter and Amend Judgments, the Affidavit of Paul W. Daugharty in Support of Emergency to Quash Writs of

ORDER RE: DEFENDANTS' MOTION TO QUASH/PROHIBIT WRIT OF EXECUTION/
DEFENDANTS' MOTION TO ALTER/AMEND JUDGMENTS—PAGE 1
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1 Execution, Plaintiffs Response to Emergency Motion to Quash Writ of Execution, and the
2 pleadings and case file to date:

3 IT IS HEREBY ORDERED that Defendants' Motion to Prohibit Issuance of Writ of
4 Execution is denied.

5 IT IS HEREBY ORDERED that Defendants' Motion to Quash Writs of Execution is
6 denied.
7

8 IT IS HEREBY ORDERED that Defendants' Motion to Alter or Amend Judgments is
9 granted and that the Judgment entered by this Court on September 26, 2014 against Defendant
10 Shawn Montee and the Marital Community Comprised of Shawn Montee and Heather Montee,
11 husband and wife shall hereby be deemed amended to a form consistent with this Court's
12 Amended Judgment which was entered by this Court on November 10, 2014 as against
13 Defendant Shawn Montee and the Marital Community Comprised of Shawn Montee and
14 Heather Montee, husband and wife.
15

16 IT IS HEREBY ORDERED that Defendants Motion to Alter or Amend Judgments is
17 granted and that the Judgment entered by this Court on September 26, 2014 against Defendant
18 Shawn Montee, Inc. and Idaho corporation d/b/a Shawn Montee Timber Company and ABCO
19 Wood Recycling, LLC an Idaho limited liability company shall hereby be deemed amended to
20 a form consistent with this Court's Amended Judgment which was entered by this Court on
21 November 10, 2014 as against Defendant Shawn Montee, Inc. an Idaho corporation d/b/a
22
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ORDER RE: DEFENDANTS' MOTION TO QUASH/PROHIBIT WRIT OF EXECUTION/
DEFENDANTS' MOTION TO ALTER/AMEND JUDGMENTS—PAGE 2
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Shawn Montee Timber Company and ABCO Wood Recycling, LLC an Idaho limited liability company.

DATED this 31st day of December, 2014.


John T. Mitchell
District Court Judge

CLERK'S CERTIFICATE OF SERVICE

I certify that on this 5 day of ~~December, 2014~~ Jan. 2015, I caused a true and correct copy of the ORDER DENYING DEFENDANTS' MOTION TO PROHIBIT ISSUANCE OF WRIT OF EXECUTION AND DENYING DEFENDANTS' MOTION TO QUASH WRITS OF EXECUTION/ORDER GRANTING DEFENDANTS' MOTION TO ALTER/AMEND JUDGMENTS to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

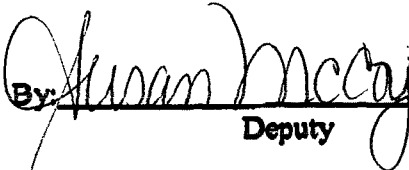
Mark A. Ellingsen
Witherspoon Kelley
Attorneys & Counselors
The Spokesman-Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814

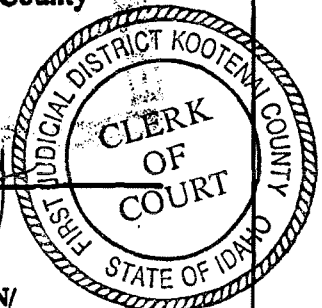
☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 667-4000 #448
667-8470

Paul W. Daugharty
Paul W. Daugharty, P.A.
110 East Wallace Avenue
Coeur d'Alene, ID 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Via Fax: (208) 666-0550 #449

JIM BRANNON, Kootenai County
Clerk of District Court

By: 
Deputy



ORDER RE: DEFENDANTS' MOTION TO QUASH/PROHIBIT WRIT OF EXECUTION/
DEFENDANTS' MOTION TO ALTER/AMEND JUDGMENTS—PAGE 3

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116
STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
JD

2015 JAN -7 AM 9: 09

CLERK DISTRICT COURT
[Signature]
DEPUTY

PAUL W. DAUGHARTY
PAUL W. DAUGHARTY, P.A.
Attorney at Law
110 E. Wallace Avenue
Coeur d'Alene, ID 83814
Telephone No.: (208) 664-3799
Facsimile No.: (208) 666-0550
E-mail: paul@pdaughartylaw.com
ISB# 4520

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation dba SHAWN MONTEE TIMBER
COMPANY; and ABCO WOOD RECYCLING,
LLC, an Idaho limited liability company,

Defendants.

CASE NO. CV-14-4713

WRITTEN APPEARANCE BY
COUNSEL, DENIAL OF
ALLEGATIONS OF CONTEMPT,
AFFIRMATIVE DEFENSES AND
REQUEST FOR TRIAL

COMES NOW, the above-named Defendants/Respondents, Shawn Montee and Heather Montee, by and through their attorney, Paul W. Daugharty of the Law Firm PAUL W. DAUGHARTY, P.A., and pursuant to Idaho Rule of Civil Procedure 75(f)(3) hereby appear and respond to the Motion For Non-Summary Contempt Proceedings/Charges filed by Plaintiff/Petitioner, Robert Wolford pursuant to Idaho Rule of Civil Procedure 75 and Idaho Code

WRITTEN APPEARANCE BY COUNSEL, DENIAL OF
ALLEGATIONS OF CONTEMPT, AFFIRMATIVE
DEFENSES AND REQUEST FOR TRIAL - 1

§ 7-601, *et seq.*, as follows:

1. Defendants/Respondents, Shawn Montee and Heather Montee (collectively "Montee") have been informed of the charges of contempt alleged by Plaintiff/Petitioner, Robert Wolford ("Wolford") and the possible criminal and/or civil sanctions. Montee **DENIES** each charge of contempt alleged by Wolford in the Motion for Non-Summary Contempt Proceedings, Memorandum In Support of Motion for Contempt and Affidavit of Mark A. Ellingsen filed in support of said motion.

2. This matter is scheduled for a formal admit/deny hearing on January 7, 2015 at 11:30 a.m., before the Honorable John T. Mitchell. Pursuant to Idaho Rule of Civil Procedure 75(g)(2), Montee requests that the matter be set for a 1-2 trial (by jury if applicable) after February 23, 2015.

3. Montee assert the following defenses:

(a.) The Motion for Order for Examination of Judgment Debtors filed by Wolford did not comply with Idaho Code § 11-501 and Idaho Code § 11-502.

Idaho Code § 11-501 provides that "when an execution against property of the judgment debtor or of any several debtors in the same judgment, issued to the sheriff of the county where he resides, or if he do [does] not reside in this state, to the sheriff of the county where the judgment roll is filed, is **returned unsatisfied in whole or in part**, the judgment creditor, **at any time after such return in made**, is entitled to an order from the judge of the court requiring such judgment creditor to appear and answer upon oath concerning his property, before such judge, or a referee appointed by him, . . ." (Emphasis Added). The only writs returned as not satisfied were issued upon the Judgments entered on or about September 26, 2014 that did not comply with Idaho Rule of Civil Procedure 54(a). As stated by the Idaho Supreme Court in *Reed v. Reed*, Docket No. 41013-2013, 2014 Opinion No. 128 (December 2, 2014), citing I.R.C.P. 69(a), "a writ of execution could not be issued unless there was an appealable final judgment or a partial judgment certified as final under Rule 54(b) of the Idaho Rules of Civil Procedure." The Idaho Supreme Court issued a similar conditional dismissal in this case which has been appealed under Supreme Court Docket No. 42719-2014. It is respectfully submitted that any writ issued under the original Judgments

**WRITTEN APPEARANCE BY COUNSEL, DENIAL OF
ALLEGATIONS OF CONTEMPT, AFFIRMATIVE
DEFENSES AND REQUEST FOR TRIAL - 2**

entered on or about September 26, 2014 are void.

Idaho Code § 11-502 provides in pertinent part that "after the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the court or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such court or judge, by an order require the judgment debtor to appear at a specified time and place before such judge, or a referee appointed by him, to answer upon oath concerning the same." There was no affidavit submitted by Plaintiff/Petitioner, Robert Wolford in support of the motion or proof, as required by Idaho Code § 11-502, provided in support of the motion. Furthermore and as stated in the Memorandum in Support of Motion for Contempt filed by on behalf of Wolford, by Mr. Ellingsen, no new writs of execution were obtained after the Court determined that the original Judgments entered on or about September 26, 2014 were not final judgments and did not comply with Idaho Rule of Civil Procedure 54(a). It is respectfully submitted that until new writs of execution are issued on the amended Judgment entered November 10, 2014 and returned unsatisfied, Wolford is not entitled (pursuant to Idaho law) to seek or obtain an order for examination of judgment debtor under either Idaho Code § 11-501 or § 11-502;

(b.) It is respectfully submitted that the Court did not have authority under Idaho Code § 11-501, Idaho Code § 11-502 or Idaho Rule of Civil Procedure 69 to require Montee to "Introduce for inspection and copying all documents in their possession, or reasonably available to them, which pertain or relate to the acts, conduct, or property or the liabilities and financial condition of the judgment debtors" and provide the same to the law offices of Witherspoon Kelley as set forth in the Order:

(c.) It is inequitable to bring contempt proceedings for events resulting from Wolford (or Wolford's counsel's) failure to comply with Idaho law;

(d.) These defenses may be supplemented after further discovery and review of the court file; and

(e.) Idaho Criminal Rule 48.

Montee requests the right to present oral argument, testimony and evidence and to cross-examine the other party, their witnesses and affiants at any hearing or trial. Attorney's fees are

**WRITTEN APPEARANCE BY COUNSEL, DENIAL OF
ALLEGATIONS OF CONTEMPT, AFFIRMATIVE
DEFENSES AND REQUEST FOR TRIAL - 3**

requested pursuant to Idaho Rule of Civil Procedure 75(m) and Idaho Code § 7-610.

DATED this 24th day of January, 2015.

PAUL W. DAUGHARTY, P.A.

By: Paul W. Daugharty

PAUL W. DAUGHARTY

Attorney for Defendants/Respondents

WRITTEN APPEARANCE BY COUNSEL, DENIAL OF
ALLEGATIONS OF CONTEMPT, AFFIRMATIVE
DEFENSES AND REQUEST FOR TRIAL - 4

CERTIFICATE OF DELIVERY

I hereby certify that I caused to be served a true and correct copy of the foregoing on this 7th day of January, 2015, to:

<p>Mark A. Ellingsen Jason M. Gray WITHERSPOON KELLEY Attorneys & Counselors 608 Northwest Blvd., Suite 300 Coeur d'Alene, ID 83814</p> <p>Honorable John T. Mitchell Kootenai County Courthouse 324 West Garden Avenue Coeur d'Alene, Idaho 83816</p>	<p><input type="checkbox"/> Via Mail, postage prepaid thereon <input type="checkbox"/> Via Facsimile: 208-667-8470 <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-Mail: mae@witherspoonkelley.com</p> <p><input checked="" type="checkbox"/> Copy Via Hand Delivery</p>
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PAUL W. DAUGHARTY

WRITTEN APPEARANCE BY COUNSEL, DENIAL OF
ALLEGATIONS OF CONTEMPT, AFFIRMATIVE
DEFENSES AND REQUEST FOR TRIAL - 5

2015 JAN 12 AM 9:44

CLERK DISTRICT COURT

Kurt W. Wolsley
DEPUTY *KW*

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470
E-mail: mae@witherspoonkelley.com

Counsel for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho limited liability
company,

Defendant.

No. CV 2014-4713

APPLICATION AND AFFIDAVIT IN
SUPPORT OF ISSUANCE OF WRIT OF
EXECUTION

STATE OF IDAHO)
: ss.
County of Kootenai)

MARK A. ELLINGSEN, being first duly sworn, deposes and says:

1. That I am a member of the firm of Witherspoon Kelley, and the attorney of record for Plaintiff Robert Wolford, and have personal knowledge of the files and records in this case and of the matters set forth herein.

2. That on September 26, 2014, Plaintiff Robert Wolford recovered a judgment in the above- entitled action for Plaintiff Robert Wolford and against Defendant Shawn Montee and the Marital Community Comprised of Shawn Montee and Heather Montee, Husband and Wife.

APPLICATION AND AFFIDAVIT IN SUPPORT OF ISSUANCE OF WRIT OF EXECUTION—PAGE 1

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Wolford vs. Montee

Supreme Court Docket #42719

325 of 332

ORIGINAL

1 Subsequently, on November 10, 2014 an Amended Judgment was rendered in the above action in
2 favor of Plaintiff Robert Wolford and against Defendant Shawn Montee and the Marital
3 Community Comprised of Shawn Montee and Heather Montee, Husband and Wife in the amount
4 of \$2,321,037.71. Said Amended Judgment included the following language: "For the principal
5 sum of \$1,483,641.00, plus prejudgment interest which has accrued on the unpaid principal sum
6 at the rate of 12% per annum pursuant to Idaho Code § 28-22-104(2) in the amount of
7 \$821,519.71 through the date of the original judgment, September 26, 2014, with interest
8 continuing to accrue on this total judgment amount at the legal rate on judgments from the
judgment date until paid in full."

9 3. That pursuant to Rule 69 of the Idaho Rules of Civil Procedure I have calculated
10 the interest due on the Amended Judgment entered in this action on November 10, 2014, based
11 on a base rate determined by the Idaho State Treasurer, which is 5.125% commencing
12 September 27, 2014 through and including January 9, 2015, which calculates out to be \$325.89
13 per diem.

14 4. That the calculated interest accrued on the Amended Judgment entered in this
15 action is at the rate of accruing interest of 5.125% per annum (\$325.89) from September 27,
16 2014 through and including January 9, 2015 (105 days) is \$34,218.45.

17 5. That execution costs to date in the sum of \$2.00 are due and owing from the
18 Defendant to the Plaintiff.

19 6. To date the Defendant has not made any payment on the above referenced
20 judgment.

21 7. That said Writ of Execution shows the correct amount of the Amended Judgment
22 due and owing by Defendant to Plaintiff, herein in the aggregate sum of \$2,355,258.16 as of
January 9, 2015.

23 Wherefore, the undersigned counsel for the above-named Plaintiff does hereby request
24 that a Writ of Execution be issued directing the Sheriff of Kootenai County to execute upon the
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1 personal property of the Defendant, or if insufficient personal property cannot be found, then out
2 of the real property belonging to the Defendant in order to satisfy the above noted judgment.

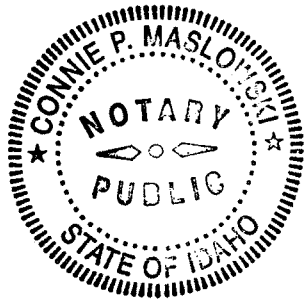
3 DATED this 9th day of January, 2015.

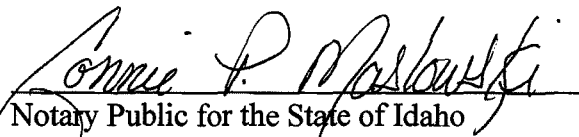
4 WITHERSPOON KELLEY

5 

6
7 Mark A. Ellingsen

8 SUBSCRIBED AND SWORN to before me this 9th day of January, 2015.




Notary Public for the State of Idaho
Residing at: Hayden
My commission expires: February 27, 2015

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: SS

2015 JAN 12 AM 9:49

CLERK DISTRICT COURT
Kate Woodley
DEPUTY KW

Mark A. Ellingsen, ISB No. 4720
WITHERSPOON KELLEY
Attorneys & Counselors
The Spokesman Review Building
608 Northwest Boulevard, Suite 300
Coeur d'Alene, ID 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470
E-mail: mae@witherspoonkelley.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD,

Plaintiff,

v.

SHAWN MONTEE and HEATHER MONTEE,
husband and wife; SHAWN MONTEE, INC., an
Idaho corporation d/b/a SHAWN MONTEE
TIMBER COMPANY; and ABCO WOOD
RECYCLING, LLC, an Idaho limited liability
company,

Defendants.

No. CV 2014-4713

WRIT OF EXECUTION

TO: THE SHERIFF OF KOOTENAI COUNTY

WHEREAS, on September 26, 2014, Plaintiff Robert Wolford recovered a judgment in the above-entitled action against Defendant Shawn Montee and the Marital Community Comprised of Shawn Montee and Heather Montee, Husband and Wife;

WHEREAS, on November 10, 2014, an Amended Judgment was entered in the above entitled action for Plaintiff Robert Wolford and against Defendant Shawn Montee and the Marital Community Comprised of Shawn Montee and Heather Montee, Husband and Wife. Said Amended Judgment included the following language: "For the principal sum of \$1,483,641.00, plus prejudgment interest which has accrued on the unpaid principal sum at the

COPY

1 rate of 12% per annum pursuant to Idaho Code § 28-22-104(2) in the amount of \$821,519.71
2 through the date of the original judgment, September 26, 2014, with interest continuing to
3 accrue on this total judgment amount at the legal rate on judgments from the judgment date
4 until paid in full."

\$2,321,037.71	November 10, 2014 Amended Judgment Amount as of January 9, 2015
\$ 34,218.45	Interest calculated at 5.125% (\$325.89 per diem) on the principal balance of the November 10, 2014 Amended Judgment amount from September 27, 2014 through January 9, 2015 (105 days).
\$ 2.00	Filing Fees and Costs
\$2,355,258.16	TOTAL

10 Together with interest accruing thereon at the rate of 5.125% per annum on the principal
11 balance of \$2,321,037.71 with a per diem of \$325.89, hereafter, together with sheriff's costs and
12 fees.

13 NOW YOU, the said Sheriff, are hereby required to make the said sum due on said
14 Amended Judgment, and costs, interest and accruing costs thereon, from the date thereof, plus
15 accruing costs and sheriff's fees out of the personal property of said Defendant, or if sufficient
16 personal property of said Defendant cannot be found, then out of the real property belonging to
the Defendant, and make return of this Writ, within sixty (60) days.

17 ATTEST my hand and seal of said Court this 12th day of January, 2015.

18 JIM BRANNON, Kootenai County
19 Clerk of District Court

20
21 **KATIE WOOSLEY**

22 By: _____
23 Deputy
24
25
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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ROBERT WOLFORD	)	SUPREME COURT NOS.
	)	42719
Plaintiff/ Respondent,)	
v.)	
	)	DISTRICT COURT
SHAWN MONTEE and HEATHER MONTEE,)	
husband and wife; SHAWN MONTEE, INC.,	)	CASE NO. CV 2014-4713
an Idaho corporation dba SHAWN MONTEE)	
TIMBER COMPANY; and ABCO WOOD)	
RECYCLING, LLC, an Idaho limited liability)	
company,)	
Defendant- Appellant,)	
_____)	

CLERK'S CERTIFICATE OF EXHIBITS

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court of Appeals.

I further certify that the following documents will be submitted as exhibits to the Record:

1. NONE

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 20 day of January, 2015.

Jim Brannon
Clerk of the District Court

Dawn Mitchell

Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

ROBERT WOLFORD,)	
	)	SUPREME COURT
PLAINTIFF/RESPONDENT,	)	CASE NO. 42719
)	
v.	)	DISTRICT CASE
	)	CV 2014-4713
SHAWN MONTEE and HEATHER)	
MONTEE, husband and wife; SHAWN)	
MONTEE, INC., an Idaho corporation dba)	
SHAWN MONTEE TIMBER COMPANY;)	
and ABCO WOOD RECYCLING, LLC,)	
an Idaho limited liability company,)	
)	
DEFENDANTS/RESPONDENTS.)	
_____)	

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I further certify that no exhibits were offered in this case.

I certify that the Attorneys for the Appellant and Respondent were notified that the Clerk's Record was complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail, postage prepaid on the 20TH day of January, 2015.

I do further certify that the Clerk's Record will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 20TH day January, 2015.

JIM BRANNON
Clerk of the District Court

By: **Dawn Mitchell**
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

ROBERT WOLFORD,)	
)	
PLAINTIFF/RESPONDENT,	)	SUPREME COURT
	)	CASE NO. 42719
)	
v.)	
)	
TREATY ROCK, INC., SHAWN	)	DISTRICT COURT CASE
MONTEE and HEATHER MONTEE,	)	CV 2014-4713
husband and wife; SHAWN MONTEE,)	
INC., an Idaho corporation dba SHAWN)	
MONTEE TIMBER COMPANY; and)	
ABCO WOOD RECYCLING, LLC, an)	
Idaho limited liability company,)	
)	
DEFENDANTS/APPELLANTS.)	

CLERK'S CERTIFICATE OF SERVICE

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record to each of the Attorneys of record in this cause as follows:

PAUL W. DAUGHARTY
110 E. WALLACE AVE.
COEUR D' ALENE, ID 83814

MARK A. ELLINGSEN
608 NORTHWEST BLVD., STE. 300
COEUR D' ALENE, ID 83814

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the said Court this 20TH day of January, 2015.

Jim Brannon
Clerk of District Court

By: Dawn Mitchell