

2-5-2016

Green River Ranches v. Silva Land Co. Clerk's Record Dckt. 43547

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Green River Ranches v. Silva Land Co. Clerk's Record Dckt. 43547" (2016). *Idaho Supreme Court Records & Briefs, All*. 6270.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/6270

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

GREEN RIVER RANCHES, LLC,)
Idaho Limited Liability Company,)

Plaintiff/Respondent,)

vs.)

SILVA LAND COMPANY, LLC, an)
Idaho Limited Liability Company;)

Defendant.)

JACK MCCALL,)

Plaintiff/Respondent,)

vs.)

SILVA DAIRY, LLC, an Idaho Limited)
Liability Company,)

Defendant/Appellant,)

and)

MAX SILVA, an Individual,)

Defendant.)

GREEN RIVER RANCHES, LLC, an)
Idaho Limited Liability Company,)

Plaintiff/Counterdefendant,)

vs.)

SILVA LAND COMPANY, LLC, et al.,)

SUPREME COURT NO. 43547-2015
43548-2015
DISTRICT COURT CASE NO. CV 13-1263
CV 13-3154
CV 13-4732

Defendants/Counterclaimants.))
JACK MCCALL,)
)
Plaintiff/Respondent,)
)
vs.)
)
MAX SILVA, an individual,)
)
Defendant/Appellant,)
)
and)
)
SILVA DAIRY, LLC, an Idaho Limited Liability Company,)
)
Defendant.)
Defendant.)
JACK MCCALL,)
)
Plaintiff/Respondent,)
)
vs.)
)
SILVA LAND COMPANY, LLC, et al.,)
)
Defendant/Appellant,)
Defendant/Appellant,)
JACK MCCALL, an Individual and d/b/a JT LIVESTOCK,)
)
Plaintiff/Respondent,)
)
vs.)
)
MAX SILVA,)
)
Defendant/Appellant.)
Defendant/Appellant.)

CLERK'S LIMITED RECORD ON APPEAL

**Appeal from the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of Twin Falls**

**HONORABLE RANDY J. STOKER
District Judge**

**Nathan Olsen
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, ID 83402**

**Bradley Dixon
GIVENS PURSLEY
601 W. Bannock Street
P. O. Box 2720
Boise, ID 83701-2720**

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

CASE SUMMARY

CASE NO. CV-2013-1263

Green River Ranches, LLC, Jack McCall
 vs.
 Silva Land Company, LLC, Manuel M Silva, Maria O
 Silva, Anthony Silva, Lindsi Silva, Alberto John Silva,
 Heilo Silva, Lori Silva, Maximaino Silva, Mona Charice
 West-Silva, Max Silva, Silva Dairy, LLC

Ü
 Ü
 Ü
 Ü
 Ü

Location: **Twin Falls County District
 Court**
 Judicial Officer: **Stoker, Randy J.**
 Filed on: **03/27/2013**
 Appellate Case Number: **43547
 42886**

CASE INFORMATION

Related Cases

CV-2013-3154 (Default - Conversion)
 CV-2013-4728 (Consolidated Case)
 CV-2013-4732 (Default - Conversion)

Case Type: **AA- All Initial District Court
 Filings (Not E, F, and H1)**

Statistical Closures

09/10/2014 Closed

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	CV-2013-1263
Court	Twin Falls County District Court
Date Assigned	03/27/2013
Judicial Officer	Stoker, Randy J.

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Green River Ranches, LLC	Dixon, Bradley James <i>Retained</i> 208-338-1200(W)
	McCall, Jack	Dixon, Bradley James <i>Retained</i> 208-338-1200(W)
Defendant	Silva Dairy, LLC	Taggart, Steven Lyle <i>Retained</i> 208-552-6442(W)
	Silva Land Company, LLC	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Alberto John	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Anthony	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Heilo	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Lindsi	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Lori	Olsen, Nathan Miles <i>Retained</i>

CASE SUMMARY

CASE No. CV-2013-1263

		208-523-4650(W)
	Silva, Manuel M	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Maria O	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Max	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Maximaino	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	West-Silva, Mona Charice	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
Counter Claimant	Silva Land Company, LLC	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Alberto John	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Anthony	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Heilo	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Lindsi	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Lori	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Manuel M	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Maria O	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	Silva, Maximaino	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)
	West-Silva, Mona Charice	Olsen, Nathan Miles <i>Retained</i> 208-523-4650(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
03/27/2013	New Case Filed Other Claims <i>New Case Filed-Other Claims</i>	
03/27/2013	Notice of Appearance	

CASE SUMMARY
CASE NO. CV-2013-1263

Plaintiff: Green River Ranches, LLC Appearance Bradley J Dixon

03/27/2013 Miscellaneous
Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Stoel Rives Receipt number: 1308128 Dated: 3/27/2013 Amount: \$96.00 (Check) For: Green River Ranches, LLC (plaintiff)

03/27/2013 Complaint Filed
Complaint Filed

03/27/2013 Summons Issued
Summons Issued

04/11/2013 Affidavit of Service
Affidavit Of Service Alberto Silva 4/1/13

04/11/2013 Summons Returned
Summons Returned

04/11/2013 Affidavit of Service
Affidavit Of Service Manuel Silva 4/1/13

04/11/2013 Affidavit of Service
Affidavit Of Service Lindsi Silva 4/3/13

04/11/2013 Summons Returned
Summons Returned

04/11/2013 Affidavit of Service
Affidavit Of Service Mona Charice West-Silva w/ Maximaino 4/1/13

04/11/2013 Affidavit of Service
Affidavit Of Service Silva Land Compant LLC 4/1/13

04/11/2013 Summons Returned
Summons Returned

04/11/2013 Affidavit of Service
Affidavit Of Service Maximaino Silva 4/1/13

04/11/2013 Summons Returned
Summons Returned

04/11/2013 Affidavit of Service
Affidavit Of Service Maria O Silva w/ Manuel Silva 4/1/13

04/11/2013 Summons Returned
Summons Returned

04/11/2013 Affidavit of Service
Affidavit Of Service Lori Silva w/ Helio Silva 4/1/13

04/11/2013 Affidavit of Service
Affidavit Of Service Helio Silva 4/1/13

04/11/2013 Summons Returned
Summons Returned

04/16/2013 Affidavit of Service
Affidavit Of Service, Anthony Silva, 04/11/2013

CASE SUMMARY
CASE NO. CV-2013-1263

04/24/2013	Miscellaneous <i>Filing: II - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Petersen, Moss & Hall Receipt number: 1310711 Dated: 4/24/2013 Amount: \$66.00 (Check) For: Silva Land Company, LLC (defendant), Silva, Alberto John (defendant), Silva, Anthony (defendant), Silva, Heilo (defendant), Silva, Lindsi (defendant), Silva, Lori (defendant), Silva, Manuel M. (defendant), Silva, Maria O. (defendant), Silva, Maximaino (defendant) and West-Silva, Mona Charice (defendant)</i>
04/24/2013	Notice of Appearance <i>Notice Of Appearance</i>
04/24/2013	Notice of Appearance <i>Defendant: Silva Land Company, LLC Appearance Nathan M Olsen</i>
04/24/2013	Notice of Appearance <i>Defendant: Silva, Manuel M. Appearance Nathan M Olsen</i>
04/24/2013	Notice of Appearance <i>Defendant: Silva, Maria O. Appearance Nathan M Olsen</i>
04/24/2013	Notice of Appearance <i>Defendant: Silva, Anthony Appearance Nathan M Olsen</i>
04/24/2013	Notice of Appearance <i>Defendant: Silva, Lindsi Appearance Nathan M Olsen</i>
04/24/2013	Notice of Appearance <i>Defendant: Silva, Alberto John Appearance Nathan M Olsen</i>
04/24/2013	Notice of Appearance <i>Defendant: Silva, Heilo Appearance Nathan M Olsen</i>
04/24/2013	Notice of Appearance <i>Defendant: Silva, Lori Appearance Nathan M Olsen</i>
04/24/2013	Notice of Appearance <i>Defendant: Silva, Maximaino Appearance Nathan M Olsen</i>
04/24/2013	Notice of Appearance <i>Defendant: West-Silva, Mona Charice Appearance Nathan M Olsen</i>
05/02/2013	Notice <i>Notice Of Intent to Take Default</i>
05/06/2013	Answer <i>Answer and Counterclaim</i>
05/13/2013	Notice of Service <i>Notice Of Service</i>
05/22/2013	Answer <i>Answer To Counterclaim</i>
05/24/2013	Notice of Hearing <i>Notice Of Hearing on Plaintiff's Motion for Prejudgment Writ of Attachment</i>
05/24/2013	Motion <i>Motion for Prejudgement Writ of Attachment</i>
05/24/2013	Hearing Scheduled <i>Hearing Scheduled (Motion 06/17/2013 10:00 AM) Motion for Pre-Judgment Writ</i>

CASE SUMMARY
CASE NO. CV-2013-1263

06/10/2013 Objection
Objection to Prejudgment Writ of Attachment

06/10/2013 Affidavit
Affidavit of Counsel in Support of Objection to Prejudgment Writ of Attachment

06/11/2013 Notice of Service
Notice Of Service

06/14/2013 Hearing Vacated
Hearing result for Motion scheduled on 06/17/2013 10:00 AM: Hearing Vacated Motion for Pre-Judgment Writ

06/14/2013 Hearing Scheduled
Hearing Scheduled (Motion 07/29/2013 10:00 AM) Motion for Pre-Judgment Writ

06/14/2013 Notice of Hearing
Amended Notice Of Hearing

06/17/2013 **Motion Hearing (10:00 AM)** (Judicial Officer: Stoker, Randy J.)
Motion for Pre-Judgment Writ Hearing result for Motion scheduled on 06/17/2013 10:00 AM: Hearing Vacated

07/01/2013 Notice of Hearing
Notice Of Hearing Re Plaintiff's Motion for Summary Judgment

07/01/2013 Motion for Summary Judgment
Plaintiff's Motion For Summary Judgment

07/01/2013 Memorandum
Memorandum in Support of Plaintiff's Motion for Summary Judgment

07/01/2013 Affidavit
Affidavit of James McCall in Support of Motion for Summary Judgment and Prejudgment Attachment

07/15/2013 Notice of Hearing
Notice Of Hearing

07/15/2013 Motion to Compel
Defendants' Motion To Compel Discovery

07/15/2013 Motion
Defendants' Motion to Strike Certain Portions of the Affidavit of James McCall in Support of Motion for Summary Judgment and Prejudgment Attachment

07/15/2013 Response
Response in Opposition to Plaintiff's Motion for Summary Judgment

07/15/2013 Affidavit
Affidavit of Counsel in Support of Response in Opposition to Plaintiff's Motion for Summary Judgment

07/15/2013 Affidavit
Affidavit of Steven L. Taggart, Esq. in Support of Response in Opposition to Plaintiff's Motion for Summary Judgment

07/15/2013 Affidavit
Affidavit of Max Silva

TWIN FALLS COUNTY DISTRICT COURT

CASE SUMMARY
CASE NO. CV-2013-1263

07/15/2013	Motion <i>Defendants' Motion to Deem Admissions Admitted</i>
07/15/2013	Affidavit <i>Affidavit of Counsel in Support of Motion to Deem Admissions Admitted and Motion to Compel Discovery</i>
07/22/2013	Objection <i>Plaintiff's Objection to Defendants' (1) Motion to Compel; (2) Motion to Deem Requests for Admissions Admitted; and (3) Motion to Strike Certain Portions of James McCall's Affidavit in Support of Summary Judgment</i>
07/23/2013	Reply <i>Plaintiff's Reply to Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment</i>
07/23/2013	Affidavit <i>Affidavit of Bradley J. Dixon in Support of Plaintiff's Reply to Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment</i>
07/23/2013	Order <i>Civil Pre-Trial Order</i>
07/24/2013	Reply <i>Defendants' Reply in Support of (1) Motion to Compel (2) Motion to Deem Requests for Admissions Admitted; and (3) Motion to Strike Certain Portions of James McCall's Affidavit</i>
07/24/2013	Motion <i>Defendants' Motion to Strike the Affidavit of Bradley J. Dixon in Support of Plaintiff's Reply to Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment</i>
07/29/2013	DC Hearing Held: Court Reporter: # of Pages: <i>Hearing result for Motion scheduled on 07/29/2013 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Motion for Pre-Judgment Writ- Also Motion for Summary Judgment</i>
07/29/2013	Court Minutes <i>Court Minutes</i>
07/29/2013	Motion Hearing (10:00 AM) (Judicial Officer: Stoker, Randy J.) <i>Motion for Pre-Judgment Writ- Also Motion for Summary Judgment Hearing result for Motion scheduled on 07/29/2013 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:</i>
08/01/2013	Complaint Filed <i>Complaint for Claim and Delivery and for Damages (Copy from CV13-3154)</i>
08/01/2013	Petition <i>Petition For Order to Show Cause (Copy from CV13-3154)</i>
08/02/2013	Order <i>Order to Show Cause Issued - Retained (Copy from CV13-3154)</i>
08/12/2013	Notice of Service <i>Notice Of Service</i>
08/12/2013	Affidavit of Service <i>Affidavit Of Service (Copy from CV13-3154)</i>
08/12/2013	Court Minutes <i>Court Minutes (Copy from CV13-3154)</i>

CASE SUMMARY
CASE NO. CV-2013-1263

08/12/2013 Order
Order Quashing Order to Show Cause (Copy from CV13-3154)

08/15/2013 Motion
Stipulated Motion for Protective Order

08/16/2013 Order
Order Granting Stipulation Motion for Protective Order

08/16/2013 Order
Order Re (1) Plaintiff's Motion for Summary Judgment; (2) Motion for Prejudgment Attachment; (3) Motion to Deem Requests for Admissions Admitted (4) Motion to Strike Certain Portions of James McCall's Affidavit of Summary Judgment; and (5) Motion to Compel

09/05/2013 Hearing Scheduled
Hearing Scheduled (Scheduling Conference 11/04/2013 10:00 AM)

09/05/2013 Order
Civil Pre-Trial Order

09/05/2013 Order
Order for Scheduling Conference Civil Cases

09/06/2013 Answer
Answer, Counter-Claim and Third Party Complaint (Copy from CV13-3154)

09/23/2013 Affidavit
Affidavit (Copy from CV13-3154)

09/23/2013 Return of Service
Sheriff's Return, Terry Hollifield, 09/10/2013 (Copy from CV13-3154)

09/23/2013 Return of Service
Sheriff's Return, Jean McCall, 09/11/2013 (Copy from CV13-3154)

09/23/2013 Return of Service
Sheriff's Return, Jack McCall for JT Livestock, 09/10/2013 (Copy from CV13-3154)

09/23/2013 Return of Service
Sheriff's Return, Hiram Finney for Green River Ranches, 09/09/2013 (Copy from CV13-3154)

10/01/2013 Answer
Third-Party Defendant's Green River Ranches LLC's Answer To Third-Party Complaint (Copy from CV13-3154)

10/02/2013 Note of Issue & Request for Trial
Note Of Issue And Request For Trial Setting (Copy from CV13-3154)

10/02/2013 Order
Order for Scheduling Conference-Civil Cases (Copy from CV13-3154)

10/02/2013 Order
Civil Pre-Trial Order (Copy from CV13-3154)

10/03/2013 Reply to Counterclaim
Jack McCall, Jean McCall And JT Livestock's Reply To Counterclaim And Answer To Third Party Complaint (Copy from CV13-3154)

10/03/2013 Notice of Appearance

TWIN FALLS COUNTY DISTRICT COURT

CASE SUMMARY
CASE NO. CV-2013-1263

Notice Of Appearance (Copy from CV13-3154)

10/07/2013 Response to Request for Trial Setting
Response To Note Of Issue and Request For Trial Setting (Copy from CV13-3154)

10/08/2013 Notice of Hearing
Notice Of Hearing

10/08/2013 Motion to Consolidate
Motion to Consolidate Cases and Intervene

10/16/2013 Answer
Terry Hollifield's Answer to Third Party Complaint (Copy from CV13-3154)

10/17/2013 Miscellaneous
Joinder to Motion to Consolidate

10/28/2013 Miscellaneous
Plaintiff's Opposition to Defendants' Motion to consolidate Cases and Intervene

10/30/2013 Letter
Letter from Mr. Olsen

10/31/2013 Continued (Judicial Officer: Stoker, Randy J.)
Continued (Scheduling Conference 11/18/2013 10:00 AM) Motion to Consolidate and Intervene

11/04/2013 Affidavit
Affidavit of Jack McCall in Support of Objection to Motion to Consolidate/Joinder (Copy from CV13-3154)

11/04/2013 Miscellaneous
Opposition to Motion to Consolidate/ Joinder (Copy from CV13-3154)

11/15/2013 Complaint Filed
Complaint For Damages (Copy from CV13-4732)

11/18/2013 Notice of Hearing
Notice Of Hearing on Plaintiff's Renewed Motion for Summary Judgment

11/18/2013 Motion to Renew Judgment
Plaintiff's Renewed Motion for Summary Judgment

11/18/2013 Memorandum
Memorandum in Support of Plaintiff's Renewed Motion for Summary Judgment

11/18/2013 Affidavit
Affidavit of Kersti H. Kennedy in Support of Memorandum in Support of Plaintiff's Renewed Motion for Summary Judgment

11/18/2013 Reply
Reply in Support of Motion to Consolidate Cases and Intervene

11/18/2013 Affidavit
Affidavit of Counsel in Support of Motion to Consolidate Cases and Intervene

11/18/2013 DC Hearing Held: Court Reporter: # of Pages:
Hearing result for Scheduling Conference scheduled on 11/18/2013 10:00 AM: District Court Hearing Held Court Reporter: Trac Barksdale Number of Transcript Pages for this hearing estimated: Motion to Consolidate and Intervene, Scheduling Conference

CASE SUMMARY
CASE NO. CV-2013-1263

11/18/2013 Court Minutes
Court Minutes

11/18/2013 Hearing Scheduled
Hearing Scheduled (Motion for Summary Judgment 12/16/2013 10:00 AM)

11/18/2013 **Scheduling Conference (10:00 AM)** (Judicial Officer: Stoker, Randy J.)
Motion to Consolidate and Intervene, Scheduling Conference Hearing result for Scheduling Conference scheduled on 11/18/2013 10:00 AM: District Court Hearing Held Court Reporter: Trac Barksdale Number of Transcript Pages for this hearing estimated:

12/02/2013 Continued (Judicial Officer: Stoker, Randy J.)
Continued (Motion for Summary Judgment 01/21/2014 10:00 AM)

12/03/2013 Notice of Hearing
Amended Notice of Hearing on Plaintiff's Renewed Motion for Summary Judgment

12/03/2013 Continued (Judicial Officer: Stoker, Randy J.)
Continued (Motion for Summary Judgment 02/03/2014 10:00 AM)

12/09/2013 Transcript Filed
Transcript Filed

12/18/2013 Transcript Filed
Reporter's Transcript

12/30/2013 Notice of Appearance
Notice Of Appearance (Copy from CV13-4732)

01/02/2014 Notice of Taking Deposition
Notice of Deposition Duces Tecum of Jack McCall

01/02/2014 Notice of Taking Deposition
Notice of Deposition of Scott E. Plew

01/03/2014 Notice of Taking Deposition
Amended Notice of Deposition Duces Tecum of Jack McCall

01/07/2014 Order
Order to Consolidate Cases and Intervene

01/07/2014 Notice of Appearance
Plaintiff: McCall, Jack Appearance James C. Meservy

01/07/2014 Notice of Appearance
Defendant: Silva, Max Appearance Nathan M Olsen

01/07/2014 Notice of Appearance
Defendant: Silva Dairy, LLC Appearance Robert John Maynes

01/07/2014 Notice of Service
Notice Of Service (Copy from CV13-4732)

01/07/2014 Notice of Service
Notice Of Service (Copy from CV13-3154)

01/08/2014 Affidavit of Service
Affidavit Of Service, Max Silva for Silva Land Company, LLC., 12/10/2013 (Copy from CV13-4732)

01/15/2014 Continued (Judicial Officer: Stoker, Randy J.)

CASE SUMMARY

CASE NO. CV-2013-1263

Continued (Motion for Summary Judgment 02/21/2014 10:00 AM)

01/15/2014	Hearing Held <i>Hearing Held</i>
01/15/2014	Court Minutes <i>Court Minutes</i>
01/15/2014	Notice of Taking Deposition <i>Amended Notice of Deposition Duces Tecum of Scott E. Plew</i>
01/15/2014	Continued (Judicial Officer: Stoker, Randy J.) <i>Continued (Motion for Summary Judgment 02/21/2014 09:30 AM)</i>
01/15/2014	Miscellaneous <i>Notice Of Hearing</i>
01/17/2014	Notice <i>Notice Vacating the Depositions of Jack McCall and Scott Plew</i>
01/21/2014	Notice <i>Notice Of Filing (Copy from CV13-3154)</i>
02/06/2014	Notice of Hearing <i>Notice Of Hearing on Motion to Dismiss Pursuant to I.R.C.P. 17(a)</i>
02/06/2014	Motion to Dismiss Case <i>Motion To Dismiss Pursuant to I.R.C.P. 17(a)</i>
02/06/2014	Memorandum <i>Memorandum in Support of Motion to Dismiss Pursuant to I.R.C.P. 17(a)</i>
02/07/2014	Notice <i>Notice of Deposit</i>
02/10/2014	Response <i>Response in Opposition to Plaintiff's Renewed Motion for Summary Judgment</i>
02/10/2014	Affidavit <i>Affidavit of Nathan M. Olsen</i>
02/10/2014	Affidavit <i>Affidavit of Max Silva</i>
02/10/2014	Notice <i>Notice of Compliance (Copy from CV13-4732)</i>
02/13/2014	Notice of Hearing <i>Notice Of Hearing (Copy from CV13-4732)</i>
02/13/2014	Motion for Summary Judgment <i>Defendant's Motion For Summary Judgment (Copy from CV13-4732)</i>
02/13/2014	Memorandum <i>Memorandum in Support of Defendant's Motion for Summary Judgment (Copy from CV13-4732)</i>
02/13/2014	Affidavit <i>Affidavit of Max Silva (Copy from CV13-4732)</i>
02/13/2014	

CASE SUMMARY
CASE NO. CV-2013-1263

Affidavit
Affidavit of Nathan M. Olsen (Copy from CV13-4732)

02/13/2014 Affidavit
Affidavit of Scott Plew (Copy from CV13-4732)

02/21/2014 DC Hearing Held: Court Reporter: # of Pages:
*Hearing result for Motion for Summary Judgment scheduled on 02/21/2014 09:30 AM:
District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this
hearing estimated: Ptf Motion to Dismiss*

02/21/2014 Court Minutes
Court Minutes

02/21/2014 **Motion for Summary Judgment (9:30 AM)** (Judicial Officer: Stoker, Randy J.)
*Ptf Motion to Dismiss Hearing result for Motion for Summary Judgment scheduled on
02/21/2014 09:30 AM: District Court Hearing Held Court Reporter: Barksdale Number of
Transcript Pages for this hearing estimated:*

02/27/2014 Notice
Notice Re Withdrawal of Motion to Modify Confirmed Plan

03/07/2014 Decision or Opinion
Memorandum Opinion Re Motion for Summary Judgment and Motion to Dismiss

03/13/2014 Motion
Motion to Reconsider

03/24/2014 Letter
Letter with Attached Exhibits "A" and "B" (Copy from CV13-4732)

03/27/2014 Notice of Hearing
Notice Of Hearing

03/27/2014 Memorandum
Memorandum in Support of Defendants' Motion to Reconsider

03/27/2014 Hearing Scheduled
Hearing Scheduled (Motion 04/28/2014 10:00 AM) Motion to Reconsider

03/31/2014 Affidavit
*Affidavit of Jack McCall in Opposition to Defendant's Motion for Summary Judgment and in
Support of Motion to Continue Hearing on Motion for Summary Judgment (Copy from CV13-
4732)*

03/31/2014 Affidavit
*Affidavit of Counsel in Opposition to Defendant's Motion for Summary Judgment and in
Support of Motion to Continue Hearing on Motion for Summary Judgment (Copy from CV13-
4732)*

03/31/2014 Motion
Motion to Strike Affidavit of Scott Plew (Copy from CV13-4732)

03/31/2014 Motion to Continue
*Motion To Continue Hearing on Defendant's Motion for Summary Judgment (Copy from
CV13-4732)*

04/14/2014 Motion
Silva Dairy, LLC's Joinder in Silva Land Company LLC's Motion to Reconsider

04/21/2014 Miscellaneous

CASE SUMMARY
CASE NO. CV-2013-1263

Green River Ranches, LLC's Opposition to Defendants' Motion to Reconsider

04/22/2014 Notice
Notice of Deposit

04/23/2014 Reply
Reply in Support of Defendant's Motion for Summary Judgment (Copy from CV13-4732)

04/23/2014 Memorandum
Plaintiff's Memorandum in Response to Reply in Support of Defendant's Motion for Summary Judgment

04/28/2014 DC Hearing Held: Court Reporter: # of Pages:
Hearing result for Motion scheduled on 04/28/2014 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Motion to Reconsider

04/28/2014 Order
Order Re Motion to Reconsider Summary Judgment Ruling

04/28/2014 Court Minutes
Court Minutes

04/28/2014 Court Minutes
Court Minutes (Copy from CV13-4732)

04/28/2014 **Motion Hearing (10:00 AM)** (Judicial Officer: Stoker, Randy J.)
Motion to Reconsider Hearing result for Motion scheduled on 04/28/2014 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:

04/29/2014 Hearing Scheduled
Hearing Scheduled (Pretrial Conference 06/09/2014 09:00 AM)

04/29/2014 Hearing Scheduled
Hearing Scheduled (Court Trial 06/26/2014 08:30 AM)

04/29/2014 Miscellaneous
Notice Of Hearing

04/29/2014 Notice of Hearing
Notice Of Hearing (copy from CV13-4732)

05/02/2014 Order
Order Denying Defendant's Motion for Summary Judgment and Order of Consolidation

05/09/2014 Motion
Ex Parte Motion for Telephonic Hearing

05/12/2014 Order
Order for Telephonic Hearing

05/23/2014 Memorandum
Memorandum In Support of Motion in Limine

05/23/2014 Motion
Motion In Limine

05/23/2014 Notice of Hearing
Notice Of Hearing RE: Motion In Limine

CASE SUMMARY
CASE NO. CV-2013-1263

05/29/2014	Notice <i>Notice of Taking Deposition of Eilo Silva</i>
05/29/2014	Notice <i>Notice of Taking Deposition of Tony Silva</i>
05/29/2014	Notice <i>Notice of Taking Deposition of Max Silva</i>
05/29/2014	Objection <i>Objection to Motion to Quash and for Protection Order</i>
05/29/2014	Affidavit <i>Affidavit of Counsel in Support of Objection to Motion to Quash and for Protection order</i>
05/30/2014	Notice of Hearing <i>Notice Of Hearing</i>
05/30/2014	Motion <i>Motion to Quash and for Protective Order</i>
05/30/2014	Affidavit <i>Affidavit of Nathan M. Olsen</i>
06/02/2014	Objection <i>Objection and Response in Opposition to Green River Ranches' Motion in Limine</i>
06/02/2014	Brief Filed <i>Defendants' Joint Pre-Trial Brief</i>
06/03/2014	Affidavit of Service <i>Affidavit Of Service, Tony Silva, 05/27/2014</i>
06/03/2014	Affidavit of Service <i>Affidavit Of Service, Max Silva, 05/27/2014</i>
06/03/2014	Affidavit of Service <i>Affidavit Of Service, Eilo Silva, 05/27/2014</i>
06/04/2014	Reply <i>Reply to Objection and Response in Opposition to Green River Ranches' Motion in Limine</i>
06/04/2014	Notice of Service <i>Notice Of Service of Plaintiff's Second Supplemental Responses to Defendants' First Set of Discovery Requests to Plaintiff</i>
06/04/2014	Affidavit <i>Affidavit of Nathan M. Olsen in Support of Motion to Quash and for Protective Order</i>
06/05/2014	Miscellaneous <i>Jack McCall's Exhibit and Disclosure</i>
06/06/2014	Miscellaneous <i>Notice of Deposit</i>
06/09/2014	DC Hearing Held: Court Reporter: # of Pages: <i>Hearing result for Pretrial Conference scheduled on 06/09/2014 09:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: also Motion in Limine & Motion to Quash Motion in Limine</i>
06/09/2014	Court Minutes

CASE SUMMARY
CASE NO. CV-2013-1263

Court Minutes

06/09/2014 Witness List
Plaintiff and Counterdefendants' Witness List

06/09/2014 Miscellaneous
Plaintiff and Counterdefendants' Trial Exhibit List

06/09/2014 Notice of Hearing
Notice Of Hearing

06/09/2014 Motion
Motion To Amend Complaint or in the Alternative, Motion to Substitute Named Defendants for John Does

06/09/2014 Affidavit
Affidavit of Jack McCall

06/09/2014 **Pre-trial Conference (9:00 AM) (Judicial Officer: Stoker, Randy J.)**
also Motion in Limine & Motion to Quash Motion in Limine Hearing result for Pretrial Conference scheduled on 06/09/2014 09:00 AM: District Court Hearing Held Court Reporter: Cmin Number of Transcript Pages for this hearing estimated:

06/10/2014 Order
Order on Motion in Limine and Pre-Trial Order

06/11/2014 Complaint Filed
Amended Complaint For Damages

06/11/2014 Summons Issued
Another Summons Issued

06/12/2014 Findings of Fact and Conclusions of Law
Green River Ranches, LLC's Proposed Findings Of Fact And Conclusions Of Law

06/13/2014 Notice of Hearing
Notice Of Hearing

06/13/2014 Motion
Joint Motion to Strike and for Clarification of Certain Issues in the Court's June 10, 2014, Pre-Trial Order

06/13/2014 Notice of Hearing
Notice Of Hearing on Motion to Quash Subpoena and for Protective Order

06/13/2014 Miscellaneous
Defendants' and Counterclaimants' Joint Amended Exhibit List

06/13/2014 Memorandum
Trial Memorandum and Memorandum in Opposition to Motion to Quash

06/13/2014 Findings of Fact and Conclusions of Law
McCall's Proposed Findings of Fact and Conclusions of Law

06/16/2014 Motion
Motion to Quash Subpoena and for Protective Order

06/17/2014 Witness List
Plaintiff and Counterdefendants' Amended Witness List

06/18/2014 Affidavit of Service

CASE SUMMARY
CASE NO. CV-2013-1263

Affidavit Of Service, Heather Eames, 06/17/2014

06/18/2014	Memorandum <i>Memorandum in Opposition to Defendant Jack McCall's Motion to Amend Complaint</i>
06/18/2014	Brief Filed <i>Pretrial Brief and Supplemental Memorandum on Motion to Quash</i>
06/19/2014	Miscellaneous <i>Plaintiff and Counter-Defendants' Amended Trial Exhibit List</i>
06/19/2014	Miscellaneous <i>Green River Ranches, LLC's Joinder to Jack McCall's Opposition to Motion to Quash Subpoena and for Protective Order</i>
06/20/2014	Affidavit of Service <i>Affidavit Of Service, Heather Eames, 06/17/2014</i>
06/20/2014	Reply <i>Reply to Memorandum in Opposition of McCall's Motion to Amend Complaint</i>
06/20/2014	Notice of Hearing <i>Notice Of Hearing on Request for Judicial Notice</i>
06/20/2014	Request <i>Request for Judicial Notice</i>
06/20/2014	Reply <i>Reply in Opposition to Joint Motion to Strike and for Clarification of Certain Issues in the Court's June 10, 2014, Pre-Trial Order</i>
06/24/2014	Motion <i>Motion to Quash Subpoena and for Protective Order</i>
06/24/2014	Notice <i>Notice of Deposit</i>
06/24/2014	Miscellaneous <i>Defendants' and Counterclaimants' Supplement to Joint Amended Exhibit List</i>
06/26/2014	DC Hearing Held: Court Reporter: # of Pages: <i>Hearing result for Court Trial scheduled on 06/26/2014 08:30 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Motion to Amend</i>
06/26/2014	Court Trial (8:30 AM) (Judicial Officer: Stoker, Randy J.) 06/26/2014-06/27/2014 <i>Motion to Amend Hearing result for Court Trial scheduled on 06/26/2014 08:30 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:</i>
06/27/2014	Miscellaneous <i>Pages Estimate</i>
06/27/2014	Court Minutes <i>Court Minutes</i>
06/30/2014	Miscellaneous <i>Pages Estimate</i>
06/30/2014	Witness List

CASE SUMMARY

CASE NO. CV-2013-1263

Court Trial Witness List

07/03/2014	Miscellaneous <i>Defendant's Exhibit List</i>
07/03/2014	Miscellaneous <i>Defendant-Counterclaimant's Exhibit List</i>
07/03/2014	Miscellaneous <i>Plaintiff-Counterdefendant's Exhibit List</i>
07/03/2014	Miscellaneous <i>Plaintiff's Exhibit List</i>
07/14/2014	Transcript Filed <i>Reporter's Transcript Filed</i>
07/14/2014	Transcript Filed <i>Reporter's Transcript Filed</i>
07/24/2014	Stipulation <i>Stipulation to Extend Time to File Post-Trial Briefs</i>
07/25/2014	Order <i>Order Extending Time to File Post-Trial Briefs</i>
07/28/2014	Brief Filed <i>McCall's Post-Trial Brief</i>
08/11/2014	Brief Filed <i>Green River Ranches, LLC's Closing Brief</i>
08/11/2014	Brief Filed <i>Defendants' Post-Trial Brief</i>
08/14/2014	Decision or Opinion <i>Memorandum Opinion</i>
08/22/2014	Hearing Scheduled <i>Hearing Scheduled (Court Trial 11/20/2014 08:30 AM)</i>
08/22/2014	Hearing Scheduled <i>Hearing Scheduled (Pretrial Conference 10/14/2014 09:00 AM)</i>
08/22/2014	Miscellaneous <i>Notice Of Hearing</i>
08/22/2014	Notice of Hearing <i>Notice Of Hearing (Copy from CV13-3154)</i>
08/22/2014	Notice of Hearing <i>Notice Of Hearing (Copy from CV13-4732)</i>
08/25/2014	Memorandum <i>Memorandum of Fees</i>
08/28/2014	Notice of Service <i>Notice Of Service</i>
08/28/2014	Petition

CASE SUMMARY
CASE NO. CV-2013-1263

Petition for Attorneys' Fees and Costs

08/28/2014	Affidavit <i>Affidavit of Bradley J. Dixon in Support of Petition for Attorneys' Fees and Costs</i>
09/03/2014	Notice of Service <i>Notice Of Service</i>
09/03/2014	Affidavit <i>Affidavit of Bradley J. Dixon in Support of Proposed Judgment</i>
09/04/2014	Miscellaneous <i>Jack McCall's Witness Disclosure</i>
09/04/2014	Miscellaneous <i>Jack McCall's Exhibit List</i>
09/08/2014	Judgment <i>Judgment and Order Dismissing Party Defendant with Prejudice - Terry Hollifield</i>
09/09/2014	Motion <i>Motion to Disallow</i>
09/10/2014	Judgment <i>Judgment</i>
09/10/2014	Civil Disposition Entered <i>Civil Disposition/Judgment entered: entered for: Silva Dairy, LLC, Defendant; Silva Land Company, LLC, Defendant; Silva, Alberto John, Defendant; Silva, Anthony, Defendant; Silva, Heilo, Defendant; Silva, Lindsi, Defendant; Silva, Lori, Defendant; Silva, Manuel M., Defendant; Silva, Maria O., Defendant; Silva, Max, Defendant; Silva, Maximaino, Defendant; West-Silva, Mona Charice, Defendant; Green River Ranches, LLC, Plaintiff; McCall, Jack, Plaintiff. Filing date: 9/10/2014</i>
09/10/2014	Notice of Service <i>Notice Of Service</i>
09/10/2014	Notice of Hearing <i>Notice Of Hearing</i>
09/10/2014	Hearing Scheduled <i>Hearing Scheduled (Motion 10/14/2014 10:00 AM) Motion to Disallow Fees</i>
09/10/2014	Objection <i>Objection to Memorandum of Fees</i>
09/10/2014	Judgment (Disposed through Conversion) Converted Disposition: \$145,742.48 Party (Silva Dairy, LLC) Party (Green River Ranches, LLC) Party (Silva Land Company, LLC) Party (Silva, Manuel M) Party (Silva, Maria O) Party (Silva, Anthony) Party (Silva, Lindsi) Party (Silva, Alberto John) Party (Silva, Heilo) Party (Silva, Lori) Party (Silva, Maximaino) Party (West-Silva, Mona Charice)

CASE SUMMARY
CASE NO. CV-2013-1263

	Party (McCall, Jack)
	Party (Silva, Max)
09/15/2014	Miscellaneous <i>Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Stoel Rives, LLP Receipt number: 1423187 Dated: 9/15/2014 Amount: \$1.50 (Check)</i>
09/15/2014	Miscellaneous <i>Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Stoel Rives, LLP Receipt number: 1423187 Dated: 9/15/2014 Amount: \$1.00 (Check)</i>
09/16/2014	Notice of Service <i>Notice Of Service of Judgment Creditors' Interrogatories and Requests for Production in Aid of Execution to Judgment Debtors</i>
09/18/2014	Miscellaneous <i>Jack McCall's First Supplemental Witness Disclosure</i>
09/18/2014	Notice of Service <i>Notice Of Service</i>
09/25/2014	Memorandum <i>Memorandum in Support of Motion to Disallow</i>
10/02/2014	Notice of Taking Deposition <i>Notice Of Taking Deposition of Max Silva</i>
10/02/2014	Notice of Taking Deposition <i>Notice Of Taking Deposition of Max Silva</i>
10/02/2014	Miscellaneous <i>Jack McCall's Second Supplemental Witness Disclosure</i>
10/07/2014	Miscellaneous <i>Opposition to Motion to Disallow Fees</i>
10/08/2014	Application <i>Application and Affidavit of Kersti H. Kennedy in Support of Issuance of Writ of Execution and Continuing Garnishment</i>
10/09/2014	Affidavit <i>Affidavit of Bradley J. Dixon in Support of Plaintiff/Counterdefendant's Opposition to the Motion to Disallow Costs</i>
10/14/2014	Notice <i>Notice of Compliance</i>
10/14/2014	DC Hearing Held: Court Reporter: # of Pages: <i>Hearing result for Pretrial Conference scheduled on 10/14/2014 09:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:</i>
10/14/2014	DC Hearing Held: Court Reporter: # of Pages: <i>Hearing result for Motion scheduled on 10/14/2014 10:00 AM: District Court Hearing Held Court Reporter: Barakdale Number of Transcript Pages for this hearing estimated: Motion to Disallow Fees</i>
10/14/2014	Hearing Vacated <i>Hearing result for Court Trial scheduled on 11/20/2014 08:30 AM: Hearing Vacated</i>
10/14/2014	Court Minutes

CASE SUMMARY
CASE NO. CV-2013-1263

Court Minutes

- 10/14/2014 Court Minutes
Court Minutes (Copy from CV13-3154 & CV13-4732)
- 10/14/2014 **Pre-trial Conference (9:00 AM)** (Judicial Officer: Stoker, Randy J.)
- 10/14/2014 **Motion Hearing (10:00 AM)** (Judicial Officer: Stoker, Randy J.)
*Motion to Disallow Fees Hearing result for Motion scheduled on 10/14/2014 10:00 AM:
District Court Hearing Held Court Reporter: Baraksdale Number of Transcript Pages for this
hearing estimated:*
- 10/16/2014 Notice
Notice of Compliance
- 10/21/2014 Motion to Compel
Motion To Compel
- 10/24/2014 Notice of Hearing
*Notice Of Hearing Re: Motion to Compel Judgment Debtors to Provide Full and Complete
Answers to Plaintiff's Judgment Creditors' Interrogatories and Requests for Production in Aid
of Execution to Judgment Debtor Served on Judgment Debtor on September 16, 2014*
- 10/24/2014 Notice
Notice of Debtor's Exam - Silva Land Company, LLC
- 10/24/2014 Notice
*Notice of Debtor's Exam - Maximaino "Max" Silva, as Managing Member of Silva Land, and
as an Individual*
- 10/24/2014 Notice
Notice of Debtor's Exam - Anthony "Tony" Silva
- 10/27/2014 Hearing Scheduled
Hearing Scheduled (Debtors Examination 11/10/2014 10:00 AM) 13-3154 (4)
- 10/28/2014 Notice
Notice of Debtor's Exam- Lori Silva
- 10/28/2014 Notice
Notice of Debtor's Exam- Lindsi Silva
- 10/28/2014 Notice
Notice of Debtor's Exam- Manuel M Silva
- 10/28/2014 Notice
Notice of Debtor's Exam- Heilo Silva
- 10/28/2014 Hearing Scheduled
Hearing Scheduled (Debtors Examination 12/08/2014 10:00 AM)
- 10/28/2014 Notice of Hearing
*Notice Of Hearing on Motion to Exclude David M. Cooper as an Expert Witness for Jack
McCall*
- 10/28/2014 Notice
Notice of Debtor's Exam - Mona-Charise West Silva aka Charle Silva
- 10/28/2014 Notice
Notice of Debtor's Exam - Alberto John Silva aka John Silva

CASE SUMMARY
CASE NO. CV-2013-1263

10/28/2014	Notice <i>Notice of Debtor's Exam - Maria O. "Olinda" Silva aka Olinda Silva</i>
10/29/2014	Hearing Scheduled <i>Hearing Scheduled (Motion 12/08/2014 10:00 AM) Motion to Exclude Expert Witness</i>
10/29/2014	Notice of Hearing <i>Notice Of Hearing</i>
10/29/2014	Motion <i>Motion for Stay of Judgment</i>
10/29/2014	Affidavit <i>Affidavit of Nathan M. Olsen in Support of Motion for Stay of Judgment</i>
10/29/2014	Motion <i>Motion to Exclude David M. Cooper as an Expert Witness for Jack McCall</i>
10/29/2014	Affidavit <i>Affidavit of Steven L. Taggart</i>
10/30/2014	Reply <i>Reply in support of motion to Disallow</i>
10/30/2014	Affidavit <i>Affidavit Of Nathan M. Olsen In Support of Reply In Support of Motion to Disallow</i>
11/03/2014	Objection <i>Objection to Motion to Compel</i>
11/04/2014	Memorandum <i>Memorandum in Opposition to Motion for Stay of Judgment</i>
11/04/2014	Response <i>Plaintiff/Counterdefendant's Response to Defendants' Reply in Support of Their Motion to Disallow</i>
11/07/2014	Notice of Hearing <i>Notice Of Hearing</i>
11/07/2014	Motion for Summary Judgment <i>Motion For Summary Judgment</i>
11/07/2014	Memorandum <i>Memorandum in Support of Motion for Summary Judgment</i>
11/07/2014	Affidavit <i>Affidavit of Jack McCall in Support of Motion for Summary Judgment</i>
11/07/2014	Affidavit <i>Affidavit of Gregory C. Garatea in Support of Motion for Summary Judgment</i>
11/07/2014	Affidavit <i>Affidavit of Ray Broner in Support of Motion for Summary Judgment</i>
11/07/2014	Objection <i>Objection to Motion to Exclude David M. Cooper as an Expert Witness and Memorandum in Support of Objection</i>
11/07/2014	Affidavit <i>Affidavit of David M. Cooper</i>

TWIN FALLS COUNTY DISTRICT COURT

CASE SUMMARY

CASE NO. CV-2013-1263

11/07/2014 **Hearing Scheduled**
Hearing Scheduled (Motion for Summary Judgment 02/16/2015 10:00 AM)

11/10/2014 **DC Hearing Held: Court Reporter: # of Pages:**
Hearing result for Debtors Examination scheduled on 11/10/2014 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Motion to Compel Judgment Debtors to Provide Full & Complete Answers

11/10/2014 **Court Minutes**
Court Minutes

11/10/2014 **Order**
Order on Plaintiff's Motion to Compel and Defendant's Motion for Stay of Judgment

11/10/2014 **Decision or Opinion**
Memorandum Opinion Awarding Costs and Attorney Fees

11/10/2014 **Debtor Exam (10:00 AM) (Judicial Officer: Stoker, Randy J.)**
Motion to Compel Judgment Debtors to Provide Full & Complete Answers Hearing result for Debtors Examination scheduled on 11/10/2014 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:

11/12/2014 **Notice**
Notice of Vacating Debtor's Exams

11/13/2014 **Hearing Vacated**
Hearing result for Debtors Examination scheduled on 12/08/2014 10:00 AM: Hearing Vacated

11/13/2014 **Judgment**
Amended Judgment

11/13/2014 **Notice of Hearing**
Amended Notice Of Hearing

11/14/2014 **Notice of Hearing**
Amended Notice of Hearing on Motion to Exclude David M. Cooper as an Expert Witness for Jack McCall

11/14/2014 **Continued (Judicial Officer: Stoker, Randy J.)**
Continued (Motion 02/09/2015 10:00 AM) Motion to Exclude Expert Witness

11/17/2014 **Judgment**
Final Judgment - Jack McCall vs Silva Land

11/17/2014 **Judgment**
Final Judgment - Jack McCall vs Max Silva

11/20/2014 **Miscellaneous**
Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Stoel Rives LLP Receipt number: 1428426 Dated: 11/20/2014 Amount: \$1.50 (Combination)

11/20/2014 **Miscellaneous**
Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Stoel Rives LLP Receipt number: 1428426 Dated: 11/20/2014 Amount: \$1.00 (Combination)

11/20/2014 **Court Trial (8:30 AM) (Judicial Officer: Stoker, Randy J.)**
11/20/2014-11/21/2014

CASE SUMMARY
CASE NO. CV-2013-1263

11/24/2014	Advisement of Rights <i>Memorandum Of Costs and Attorneys' Fees and Affidavit of Attorney</i>
12/01/2014	Notice of Service <i>Notice Of Service of Amended Judgment Creditors' Interrogatories and Requests for Production in Aid of Execution to Judgment Debtors</i>
12/02/2014	Objection <i>Objection to Silva Land company, LLC.'s and "Silva's Individually" Memorandum of Costs and Attorney Fees</i>
12/08/2014	Debtor Exam (10:00 AM) (Judicial Officer: Stoker, Randy J.)
12/19/2014	Memorandum <i>Memorandum in Support of McCall's Objection to Silva Land Company, LLC.'s and "Silva's Individually" Memorandum of Costs and Attorneys Fees</i>
12/19/2014	Notice of Service <i>Notice Of Service of Amended Judgment Creditors' Interrogatories and Requests for Production in Aid of Execution to Silva Land Company, LLC</i>
12/19/2014	Notice of Hearing <i>Notice Of Hearing</i>
12/19/2014	Objection <i>Response and Objection to Notice of Waiver of Objection to Silva's Memorandum of Fees and Costs and Proposed Judgment</i>
12/19/2014	Notice <i>Notice Of Waiver Of Objection To Silva's Memorandum Of Fees And Costs</i>
12/22/2014	Notice of Hearing <i>Amended Notice Of Hearing</i>
12/24/2014	Miscellaneous <i>Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Petersen, Moss & Hall Receipt number: 1430989 Dated: 12/24/2014 Amount: \$129.00 (Check) For: Silva Land Company, LLC (defendant), Silva, Alberto John (defendant), Silva, Anthony (defendant), Silva, Heilo (defendant), Silva, Lindsy (defendant), Silva, Lori (defendant), Silva, Manuel M. (defendant), Silva, Maria O. (defendant), Silva, Max (defendant), Silva, Maximaino (defendant) and West-Silva, Mona Charice (defendant)</i>
12/24/2014	Miscellaneous <i>Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Petersen, Moss & Hall Receipt number: 1430991 Dated: 12/24/2014 Amount: \$100.00 (Check)</i>
12/24/2014	Notice of Appeal NOTICE OF APPEAL
12/24/2014	Appeal Filed in Supreme Court <i>Appealed To The Supreme Court</i>
01/05/2015	Request <i>Request for Additional Record on Appeal</i>
01/05/2015	Notice of Hearing <i>Notice Of Hearing</i>
01/05/2015	Notice of Hearing <i>Amended Notice Of Hearing</i>

CASE SUMMARY

CASE NO. CV-2013-1263

01/05/2015	Motion for Summary Judgment <i>Motion For Summary Judgment</i>
01/05/2015	Memorandum <i>Memorandum in Support of Motion for Summary Judgment</i>
01/09/2015	Clerk's Certificate of Appeal <i>Clerk's Certificate Of Appeal</i>
01/21/2015	Notice <i>Notice of Compliance</i>
01/26/2015	Notice of Hearing <i>Notice Of Hearing</i>
01/26/2015	Motion for Reconsideration <i>Motion to Reconsider</i>
01/26/2015	Response <i>Response in Opposition to Jack McCall's Motion for Summary Judgment Against Max Silva</i>
01/26/2015	Affidavit <i>Affidavit of Max Silva in Support of Response in Opposition to McCall's Motion for Summary Judgment and in Support of Motion to Reconsider</i>
01/26/2015	Response <i>Response in Opposition to McCall's Motion for Summary Judgment</i>
01/26/2015	Affidavit <i>Affidavit of Steven L. Taggart in Support of Response in Opposition to McCall's Motion for summary Judgment</i>
01/29/2015	Petition <i>Petition Requesting Trial Setting for McCall V. Max Silva and Severance, if Necessary; Petition Seeking Clarification on Counsel's Association and Whether Same May Continue</i>
01/29/2015	Motion <i>Motion to Shorten Time</i>
01/30/2015	Reply <i>McCall's Reply to Silva Dairy's Response in Opposition to McCall's Motion for Summary Judgment</i>
01/30/2015	Reply <i>McCall's Reply to Max Silva's Response in Opposition to McCall's Motion for Summary Judgment, and Response to Motion to Reconsider</i>
02/02/2015	Notice of Hearing <i>Notice Of Hearing</i>
02/02/2015	Reply <i>Reply in Support of Notice of Waiver of Objection to Silva's Memorandum of Fees and Costs</i>
02/02/2015	Response <i>Silva's Response to McCall's "Objection to Silva Land Company, LLC.'s and 'Silva's Individually' Memorandum of costs and Attorneys' Fees</i>
02/03/2015	Reply <i>Surreply in Opposition to McCall's Motion for Summary Judgment</i>
02/04/2015	Certificate of Service

CASE SUMMARY

CASE NO. CV-2013-1263

Amended Certificate Of Service

02/04/2015	Notice of Hearing <i>Notice Of Hearing</i>
02/04/2015	Motion <i>Motion to Shorten Time for Hearing</i>
02/04/2015	Motion <i>Motion for Sanctions Under IRCP 11</i>
02/04/2015	Memorandum <i>Memorandum in Support of Motion for Sanctions Under IRCP 11</i>
02/04/2015	Affidavit <i>Affidavit of Nathan M. Olsen in Support of Motion for Sanctions Under IRCP 11</i>
02/05/2015	Affidavit <i>Affidavit of James C. Meservy in Response to Motion for Sanctions</i>
02/05/2015	Order <i>Order to Shorten Time</i>
02/06/2015	Reply <i>Reply Affidavit of Nathan M. Olsen in Support of Motion for Sanctions Under IRCP 11</i>
02/09/2015	DC Hearing Held: Court Reporter: # of Pages: <i>Hearing result for Motion for Summary Judgment scheduled on 02/09/2015 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:</i>
02/09/2015	DC Hearing Held: Court Reporter: # of Pages: <i>Hearing result for Motion scheduled on 02/09/2015 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Motion to Exclude Expert Witness, Objection to Memorandum of Costs and Attorney's Fees</i>
02/09/2015	Court Minutes <i>Court Minutes</i>
02/09/2015	Motion Hearing (10:00 AM) (Judicial Officer: Stoker, Randy J.) <i>Motion to Exclude Expert Witness, Objection to Memorandum of Costs and Attorney's Fees Hearing result for Motion scheduled on 02/09/2015 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:</i>
02/09/2015	Motion for Summary Judgment (10:00 AM) (Judicial Officer: Stoker, Randy J.)
02/10/2015	Order <i>Order on Pending Motions and Petitions and Pre-Trial Order</i>
02/10/2015	Hearing Scheduled <i>Hearing Scheduled (Pretrial Conference 05/18/2015 09:00 AM)</i>
02/10/2015	Hearing Scheduled <i>Hearing Scheduled (Court Trial 06/24/2015 08:30 AM)</i>
02/10/2015	Miscellaneous <i>Notice Of Hearing</i>
02/10/2015	Order <i>Order Re Fees and Costs (Copy From CV13-3154 & CV13-4732)</i>

CASE SUMMARY

CASE NO. CV-2013-1263

02/13/2015	Transcript Filed <i>Transcript Filed</i>
02/17/2015	Supreme Court Document Filed-Misc <i>Supreme Court Filed Notice of Appeal Clerk's Record and Reporter's Transcript Due 4-17-2015</i>
02/18/2015	Judgment <i>Judgment (Copy From CV13-3154 & CV13-4732)</i>
02/20/2015	Notice <i>Notice of Compliance</i>
02/23/2015	Notice of Service <i>Notice Of Service</i>
02/23/2015	Notice <i>Notice of Position</i>
02/24/2015	Application <i>Application for Charging Order Pursuant to Idaho Code 30-6-503 RE: Silva Land Company, LLC</i>
02/24/2015	Affidavit <i>Affidavit of Kersti H. Kennedy In Support of Plaintiff's Application for Charging Order Pursuant to Idaho Code 30-6-503 RE: Silva Land Company, LLC</i>
02/24/2015	Application <i>Application for Charging Order Pursuant to Idaho Code 30-6-503 RE: Silva Dairy, LLC</i>
02/24/2015	Affidavit <i>Affidavit of Kersti H. Kennedy In Support of Plaintiff's Application for Charging Order Pursuant to Idaho Code 30-6-503 RE: Silva Dairy, LLC</i>
03/02/2015	Order <i>Supplemental Order</i>
03/05/2015	Notice <i>Notice of Balance Due on Clerk's Record</i>
03/10/2015	Notice <i>Notice of Compliance</i>
03/10/2015	Supreme Court Document Filed-Misc <i>Supreme Court -- Filed Notice of Balance Due on Clerk's Record (\$146.90); Appellant Must Pay Fees for Preparation of Clerk's Record within Seven (7) days or Thursday 03-12-15</i>
03/11/2015	Miscellaneous <i>Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Peterson Moss & Hall Receipt number: 1506572 Dated: 3/11/2015 Amount: \$146.90 (Check)</i>
03/16/2015	Application <i>Application and Affidavit of Bradley J. Dixon in Support of Issuance of Writ of Execution and Garnishment to Nathan Olsen</i>
03/16/2015	Miscellaneous <i>Miscellaneous Payment: Writs Of Execution Paid by: Stoel rives Receipt number: 1506962 Dated: 3/16/2015 Amount: \$2.00 (Check)</i>
03/16/2015	Writ Issued <i>Writ Issued Bonneville</i>

CASE SUMMARY
CASE NO. CV-2013-1263

03/23/2015 Motion to Compel
Motion To Compel Discovery

03/30/2015 Supreme Court Document Filed-Misc
Supreme Court Note Received Receipt from District Court Clerk that Fees Were Paid (Peterson Moss & Hall) \$146.90. No Transcripts Requested in Notice of Appeal; Therefore Due Date Reset For Clerk's Record (Only) 05-13-2015

04/06/2015 Return of Service
Sheriff's Return, Petersen Moss Hall & Olsen, 03/23/2015

04/06/2015 Writ Returned
Writ Returned

04/07/2015 Notice of Hearing
Notice Of Hearing on Applications for Charging Orders

04/09/2015 Notice of Hearing
Notice Of Telephonic Hearing

04/09/2015 Motion
Ex Parte Stipulated Motion to Appear by Telephone

04/13/2015 Order
Order Allowing Parties to Appear by Telephone

04/15/2015 Notice
Notice of Compliance

04/15/2015 Miscellaneous
Idaho Rule of Civil Procedure 26 (b)(4)(A) Disclosure of Experts

04/17/2015 Affidavit
Affidavit of Nathan M. Olsen in Opposition to Plaintiff Jack McCall's Motion to Compel

04/20/2015 Hearing Held
Hearing Held

04/20/2015 Court Minutes
Court Minutes

04/20/2015 Order
Order Re: Motion to Compel Discovery

04/24/2015 Order
Order Re: Motion to Compel Discovery

04/27/2015 Notice
Notice of Compliance

05/01/2015 Notice of Service
Notice Of Service of Defendant Silva Dairy, LLC's Second Set of Interrogatories and Requests for Production

05/04/2015 Notice of Hearing
Notice Of Hearing

05/04/2015 Motion
Motion in Limine

CASE SUMMARY
CASE NO. CV-2013-1263

05/04/2015 Memorandum
Memorandum in Support of Max Silva's Motion in Limine

05/06/2015 Hearing Scheduled
Hearing Scheduled (Motion in Limine 05/18/2015 10:00 AM)

05/11/2015 Response
Response in Opposition to Green River Ranches, LLC's "Application for Charging Order Pursuant to Idaho Code 30-6-503 Re: Silva Land Company, LLC"

05/14/2015 Reply
Reply to Opposition to Green River Ranches, LLC's "Application for Charging Order Pursuant to Idaho Code 30-6-503 Re: Silva Land Company, LLC"

05/14/2015 Affidavit
Affidavit of Kersti H. Kennedy in Support of Green River Ranches, LL's Reply to Defendant's Opposition to Green River Ranches, LLC's "Application for Charging Order Pursuant to Idaho Code 30-6-503 Re: Silva Land Company, LLC"

05/14/2015 Objection
Objection to Request for Charging Order Against Silva Dairy, LLC

05/15/2015 Stipulation
Stipulation to Appear by Telephone for Hearing on Application for Charging Order

05/18/2015 DC Hearing Held: Court Reporter: # of Pages:
Hearing result for Motion in Limine scheduled on 05/18/2015 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:

05/18/2015 DC Hearing Held: Court Reporter: # of Pages:
Hearing result for Pretrial Conference scheduled on 05/18/2015 09:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:

05/18/2015 Court Minutes
Court Minutes

05/18/2015 **Pre-trial Conference (9:00 AM)** (Judicial Officer: Stoker, Randy J.)

05/18/2015 **Motion in Limine (10:00 AM)** (Judicial Officer: Stoker, Randy J.)

05/20/2015 Order
Final Pretrial Order

05/21/2015 Notice of Taking Deposition
Notice Of Taking Deposition of Terry Hollifield

05/21/2015 Notice of Taking Deposition
Notice Of Taking Deposition of Rick Onaindia

05/21/2015 Notice of Taking Deposition
Notice Of Taking Deposition Gregory C Garatea

05/21/2015 Notice of Taking Deposition
Notice Of Taking Deposition of John Reitsma

05/22/2015 Order
Order for Continuing Garnishment of Silva Dairy LLC Distributions

05/22/2015 Order
















CASE SUMMARY
CASE NO. CV-2013-1263

Charging Order Re: Silva Land Company LLC











05/22/2015	Notice <i>Notice of Compliance</i>
05/22/2015	Notice <i>Notice of Compliance</i>
05/22/2015	Notice of Taking Deposition <i>Notice Of Taking Deposition of Ray Broner</i>
05/27/2015	Notice of Taking Deposition <i>Notice Of Taking Deposition of Jack McCall</i>
05/28/2015	Notice <i>Notice of Compliance</i>
05/28/2015	Miscellaneous <i>Supplemental Idaho Rule of Civil Procedure 26 (b)(4)(A) Disclosure of Experts</i>
05/28/2015	Notice of Taking Deposition <i>Amended Notice of Taking Deposition of Ray Broner</i>
05/28/2015	Notice <i>Notice of Compliance</i>
05/28/2015	Notice of Taking Deposition <i>Notice Of Taking Deposition of Gregory C Garatea</i>
05/29/2015	Miscellaneous <i>Second Supplemental Idaho Rule of Civil Procedure 26 (b)(4)(A) Disclosure of Experts</i>
06/01/2015	Notice <i>Notice of Compliance</i>
06/01/2015	Notice <i>Notice of Compliance</i>
06/01/2015	Notice <i>Notice of Compliance</i>
06/01/2015	Supreme Court Document Filed-Misc <i>Supreme Court -- Clerk's Record Filed</i>
06/02/2015	Motion <i>Motion to Consolidate Cases and Intervene</i>
06/04/2015	Writ Issued <i>Writ Issued Bonneville</i>
06/04/2015	Miscellaneous <i>Miscellaneous Payment: Writs Of Execution Paid by: Stoel Rives Receipt number: 1513959 Dated: 6/4/2015 Amount: \$2.00 (Check)</i>
06/04/2015	Application <i>Application and Affidavit of Kersti H. Kennedy in Support of Issuance of Writ of Execution and Garnishment to Nathan Olsen</i>
06/16/2015	Notice of Hearing <i>Notice Of Hearing</i>

CASE SUMMARY

CASE NO. CV-2013-1263
















- 06/18/2015 Miscellaneous
Max Silva's Witness and Exhibit Disclosure To The Court
- 06/18/2015 Miscellaneous
Jack McCall's Third Supplemental Witness Disclosure and Exhibit Disclosure
- 06/19/2015  Memorandum
Plaintiff's Pretrial
- 06/19/2015  Brief Filed
Defendants/Counterclaimants' Joint Pre-Trial Brief
- 06/19/2015  Stipulation
to Consolidate
- 06/19/2015  Stipulation
of the Parties as to Admission of Exhibits
- 06/19/2015  Witness List
Silva Dairy, LLC's Disclosure of Witnesses and Exhibits
- 06/22/2015  Sheriff's Return
Nathan C/O Petersen Mos Olsen
- 06/22/2015  Writ Returned
Bonneville County
- 06/24/2015 **Court Trial (8:30 AM) (Judicial Officer: Stoker, Randy J.)**
- 06/24/2015  Affidavit
Affidavit of Nonsignature
- 06/24/2015  Court Minutes
- 06/24/2015 Court Trial Started
- 06/24/2015  Miscellaneous
Pages Estimate
- 06/25/2015  **Court Trial (8:30 AM) (Judicial Officer: Stoker, Randy J.)**
- 06/25/2015  Court Minutes
- 06/26/2015 **Court Trial (8:00 AM) (Judicial Officer: Stoker, Randy J.)**
- 06/26/2015  Miscellaneous
Pages Estimate for June 25, 2015, 224 pages
- 06/26/2015  Miscellaneous
Pages Estimate for June 26, 2015, 203 pages
- 06/26/2015  Witness List

CASE SUMMARY
CASE NO. CV-2013-1263

- 06/26/2015  Court Minutes
- 07/01/2015 **Oral Argument** (1:30 PM) (Judicial Officer: Stoker, Randy J.)
- 07/01/2015  Court Minutes
- 07/06/2015  Affidavit
of Counsel to Correct Certain Post-Trial Remarks
- 07/14/2015  Memorandum
Supplemental Memorandum
- 07/15/2015  Motion
Motion to Foreclose Charging Order Pursuant to Idaho Code Section 30-25-503
- 07/15/2015  Memorandum
Memorandum in Support of Motion to Foreclose Charging Order Pursuant to Idaho Code Section 30-25-503
- 07/16/2015  Exhibit List
- 07/16/2015  Decision or Opinion
Memorandum Opinion
- 07/16/2015  Judgment
- 07/16/2015 **Dismissed With Prejudice** (Judicial Officer: Stoker, Randy J.)
Party (Silva Dairy, LLC; McCall, Jack)
Silva Dairy's claims against Jack McCall DISMISSED WITH PREJUDICE
- 07/16/2015 **Dismissed With Prejudice** (Judicial Officer: Stoker, Randy J.)
Party (Silva Dairy, LLC; McCall, Jack)
Jack McCall's claims against Silva Dairy, LLC DISMISSED WITH PREJUDICE
- 07/16/2015 **Final Judgment** (Judicial Officer: Stoker, Randy J.)
Monetary/Property Award
In Favor Of: McCall, Jack
Against: Silva, Max
Entered Date: 07/16/2015
Current Judgment Status:
Status: Active
Status Date: 02/09/2015
Monetary Award:
Amount: \$104,770.55
Comment: Jack McCall against Max Silva, individually for \$104,770.55
nunc pro tunc 2/9/15 - all other claims against Max Silva DISMISSED
WITH PREJUDICE
- 07/16/2015 **Dismissed With Prejudice** (Judicial Officer: Stoker, Randy J.)
Party (McCall, Jack; Silva, Max)
All other claims against Max Silva are DISMISSED WITH PREJUDICE
- 07/16/2015 Civil Disposition Entered
- 07/17/2015  Notice of Hearing

CASE SUMMARY
CASE NO. CV-2013-1263

Notice of Hearing on Motion to Foreclose Charging Order Pursuant to Idaho Code Section 30-25-503

- 08/24/2015 **CANCELED Motion Hearing - Civil (10:00 AM)** (Judicial Officer: Stoker, Randy J.)
Vacated
- 08/27/2015  Notice of Appeal
- 08/27/2015 Appeal Filed in Supreme Court
- 09/02/2015  Supreme Court Document Filed-Misc
Remittitur
- 09/04/2015  Supreme Court Document Filed-Misc
*Filed Appellants' Voluntary Motion to Dismiss Appeal With Prejudice ** All Due Dates Vacated - Dismissal / Remittitur Pending*
- 09/04/2015  Supreme Court Document Filed-Misc
Entered Order Granting Appellants' Voluntary Dismissal -- Filed Dismissal Remittitur
- 09/04/2015  Supreme Court Document Filed-Misc
Order Granting Motion to Dismiss
- 09/16/2015  Sheriff's Return
Silva Dairy, 10/23/2015
- 09/16/2015  Writ Returned
TF
- 09/30/2015  Notice of Appearance
- 10/01/2015  Substitution of Counsel
- 10/14/2015  Supreme Court Document Filed-Misc
Filed Notice(s) of Appeal in Docket Nos. 43547 and 43548 Transcript Requested Entered Order Consolidating Appeal Nos. 43547 and 43548 for Purposes of Record and Transcripts Only Set Due Date - Reporter's Transcripts (Lodging Date 11-02-15) and Clerk's Record Due 12-07-15
- 10/14/2015  Supreme Court Document Filed-Misc
Order Consolidating Appeal Nos 43547 and 43548 for Purposes of Record and Transcripts Only
- 10/30/2015  Notice of Substitution of Counsel
- 11/10/2015  Supreme Court Document Filed-Misc
Filed Notice of Sustitution of Counsel
- 11/10/2015  Notice
of Lodging T. Barksdale June 24, 2015 Court Trial Day One, June 25, 2015 Court Trial Day Two, June 26, 2015 Court Trial Day Three by email
- 11/10/2015  Supreme Court Document Filed-Misc

CASE SUMMARY
CASE NO. CV-2013-1263

Filed Notice of Transcript Lodged - By T. Barksdale (718 pages)

11/10/2015	Notice <i>of Lodging T. Barksdale June 26, 2014 Court Trial Day One, June 27, 2014 Court Trial Day One, Motions for Summary Judgment - Arguments and Orders dated February 9, 2015</i>
11/10/2015	Supreme Court Document Filed-Misc <i>Filed Notice of Transcript Lodged - By T. Barksdale (604 pages)</i>
12/04/2015	Application <i>Application and Affidavit of Kersti H. Kennedy in Support of Issuance of Writ of Execution and Continuing Garnishment</i>
12/07/2015	Writ Issued <i>Twin Falls, Maximaino Silva</i>
12/10/2015	Supreme Court Document Filed-Misc <i>Entered Order to Augment Prior Appeal No. 42886 (same Order entered 43547) Transcripts and Clerk's Rcord Shall be Srvd on Counsel by 12-18-15 and Thereafter Filed with this Court by 1-22-16</i>
12/10/2015	Supreme Court Document Filed-Misc <i>Order to Augment Prior Appeal No. 42886</i>
12/10/2015	Supreme Court Document Filed-Misc <i>Entered Order to Augment Prior Appeal No. 42886 (same Order entered 43548) Transcripts and Clerk's Rcord Shall be Srvd on Counsel by 12-18-15 and Thereafter Filed with this Court by 1-22-16</i>
12/10/2015	Supreme Court Document Filed-Misc <i>Order to Augment Prior Appeal No. 42886</i>
12/10/2015	Notice <i>of Balance Due on Clerk's Record</i>
12/18/2015	Notice <i>Amended Notice of Balance Due on Clerk's Record</i>
01/04/2016	Supreme Court Document Filed-Misc <i>Amended Notice of Balance Due (146.25) for Preparation of the Clerk's Record</i>
02/03/2016	Supreme Court Document Filed-Misc <i>Note: District Court Advised that Balance Due (146.25 was Paid on 12-31-2015 **Reset Due Date - Transcript and Clerk's Record now Due 03-11-16</i>

DATE

FINANCIAL INFORMATION

Defendant Silva, Alberto John	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 2/3/2016	0.00
Defendant Silva, Anthony	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 2/3/2016	0.00

CASE SUMMARY

CASE NO. CV-2013-1263

Defendant Silva, Lori	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 2/3/2016	0.00
Defendant Silva, Manuel M	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 2/3/2016	0.00
Defendant West-Silva, Mona Charice	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 2/3/2016	0.00
Counter Claimant Silva Land Company, LLC	
Total Charges	570.90
Total Payments and Credits	570.90
Balance Due as of 2/3/2016	0.00
Counter Claimant Silva, Heilo	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 2/3/2016	0.00
Counter Claimant Silva, Lindsi	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 2/3/2016	0.00
Counter Claimant Silva, Maria O	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 2/3/2016	0.00
Defendant Silva, Max	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 2/3/2016	0.00
Counter Claimant Silva, Maximaino	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 2/3/2016	0.00
Other Party Unknown Payor	
Total Charges	5.00
Total Payments and Credits	5.00
Balance Due as of 2/3/2016	0.00
Plaintiff Green River Ranches, LLC	
Total Charges	100.00
Total Payments and Credits	100.00
Balance Due as of 2/3/2016	0.00
Plaintiff McCall, Jack	
Total Charges	2.00
Total Payments and Credits	2.00
Balance Due as of 2/3/2016	0.00

FEB 10 2015

By _____ 10:00 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

GREEN RIVER RANCHES, LLC, an Idaho
limited liability company,

Plaintiff,

vs.

SILVA LAND COMPANY, LLC, a limited
liability company, et al.,

Defendants.

JACK MCCALL, an individual

Plaintiff,

vs.

MAX SILVA, an individual, and SILVA DAIRY,
LLC, an Idaho limited liability company,

Defendants.

JACK MCCALL an individual and d/b/a/ JT
LIVESTOCK,

Plaintiff,

vs.

SILVA LAND COMPANY, LLC, an Idaho
limited liability company, et al.,

Defendants.

Case Nos. CV-2013-1263
CV-2013-3154
CV-2013-4732

**ORDER ON PENDING MOTIONS
AND PETITIONS AND PRE-TRIAL
ORDER**

This matter came before the Court for hearing on various motions and petitions as itemized below. Following argument by the parties, and for the reasons stated on the record, IT IS HEREBY ORDERED as follows:

(A) Defendant Max Silva's Motion to Reconsider this Court's Memorandum Opinion, entered on August 14, 2014, is DENIED; and Silva Land Company, LLC and the individual Silvas are entitled to costs and attorney fees with respect to the issues resolved by the Court's August 14, 2014 Memorandum Decision. The amount of costs and fees to be awarded is deemed under advisement as of the date of this Order.

(B) McCall's Petition Seeking Clarification on Counsel's Association and Whether Same May Continue is DENIED.

(C) Silva Dairy, LLC's Motion to Exclude David M. Cooper as an Expert Witness for McCall is DENIED.

(D) McCall's Motion for Summary Judgment is GRANTED as to the amount of Silva's liability for purchases of 101 head of cows and 15 head of cows, plus prejudgment interest at 12% on both of those purchases. Judgment shall enter in the amount of \$85,408.22 as of October 31, 2014 for the 101 head of cows plus interest at 12%, and in the amount of \$19,362.33 as of October 31, 2014 for the 15 head of cows plus interest at 12%. McCall's Motion for Summary Judgment is DENIED as to the damages incurred relating to the pasture rental agreement entered into by McCall and Silva. Further, McCall's Motion for Summary Judgment is DENIED as to the herd management fee claim of Silva Dairy, LLC.

(E) The Motion of Silva Land Company, LLC and the individual Silvas for Sanctions Under I.R.C.P. 11 is DENIED.

IT IS HEREBY FURTHER ORDERED that all remaining issues shall be tried to the Court on June 24 through 26, 2015. The issues to be tried at that time are:

(1) The amount owed by McCall to Silva Dairy, LLC for Silva Dairy, LLC's herd management claim;

(2) The amount owed by Silva to McCall for pasture rent; and


(3) Liability regarding and the amount, if any, of McCall's herd mismanagement and conversion of feed claims against Silva Dairy, LLC.

In addition, a fourth potential issue to be tried in this case is a claim by McCall as to a milk loss to his herd as a result of the alleged mismanagement of his herd by Silva Dairy, LLC. As to this potential issue, Mr. Meservey shall file a position statement by February 20, 2015 regarding whether McCall plans to pursue such a claim at trial, either as an affirmative or offset claim.

(F) Any expert witnesses to be called at trial by any party shall be disclosed by April 15, 2015, including full and complete disclosure of the opinions held by such experts in accordance with I.R.C.P. 26(b)(4)(A). Thereafter, the parties shall have until May 31, 2015 to conduct depositions of disclosed expert witnesses and to complete all discovery in this case.

IT IS SO ORDERED.

DATED this 10th day of February 2015.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of February 2015, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

James C. Meservy
Attorney at Law
P.O. Box 168
Jerome, ID 83338

U.S. Mail
 Hand delivered
 Faxed
 Court Folder

Robert J. Maynes
Steven L. Taggart
Attorneys at Law
P.O. Box 3005
Idaho Falls, ID 83402

U.S. Mail
 Hand delivered
 Faxed
 Court Folder

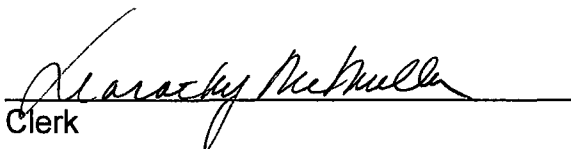
Nathan M. Olsen
Attorney at Law
485 E Street
Idaho Falls, ID 83402

U.S. Mail
 Hand delivered
 Faxed
 Court Folder

Courtesy Copy:

Bradley J. Dixon
Kersti H. Kennedy
Attorneys at Law
101 S Capitol Blvd, Ste 1900
Boise, ID 83702

U.S. Mail
 Hand delivered
 Faxed
 Court Folder


Clerk

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 18 2015

By _____ 4:00 PM
Clerk
_____ d Deputy Clerk

Nathan M. Olsen, Esq., ISB # 7373
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, Idaho 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
Attorneys for Silva Land Company LLC and Max Silva

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

GREEN RIVER RANCHES, LLC, an
Idaho limited liability company,)

Plaintiff-Counterdefendant,)

vs.)

SILVA LAND COMPANY, LLC, et al.,)

Defendants-Counterclaimants.)

JACK McCALL,

Plaintiff,

vs.)

MAX SILVA, an individual; and SILVA
DAIRY, LLC an Idaho limited liability
company,)

Defendants.)

Case Nos. CV-2013-4732
CV-2013-3154

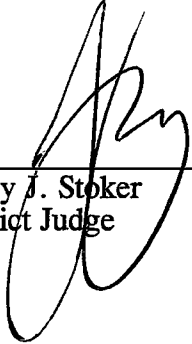
JUDGMENT

JACK McCALL,
Plaintiff,
vs.
SILVA LAND COMPANY, LLC, et al.
Defendants.

JUDGMENT IS HEREBY ENTERED as follows:

1. Defendants Silva Land Company, LLC and Max Silva are awarded \$141.17 in costs as a matter of right against Jack McCall.
2. Defendant, Silva Land Company, LLC, is awarded attorney fees against Jack McCall in the sum of \$25,000 for the defense of CV-2013-4732.

DATED this 18 day of February, 2015.



Randy J. Stoker
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of February, 2015, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

James C. Meservy, Esq.
WILLIAMS, MESERVY & LOTHSPREICH, LLP
153 E. Main St.
P.O. Box 168
Jerome, Idaho 83338-0168
jcmeservy@cablone.net
FAX: (208) 324-3135

Method of Service:

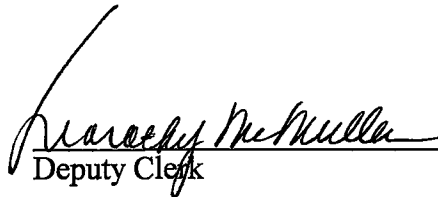
mail () hand () fax () email
Attorneys for Jack McCall

Robert J. Maynes, Esq.
Steven L. Taggart, Esq.
MAYNES TAGGART, PLLC
525 Park Ave., Ste, 2E
P.O. Box 3005
Idaho Falls, Idaho 83403
staggart101@gmail.com
mayneslaw@hotmail.com
FAX: (208) 524-6095

mail () hand () fax () email
Attorneys for Silva Dairy, LLC

Nathan M. Olsen, Esq.
PETERSEN MOSS HALL & OLSEN
485 "E" St.
Idaho Falls, Idaho 83402
nolsen@pmholaw.com
FAX: (208) 524-3391

mail () hand () fax () email
*Attorneys for Silva Land Company, LLC
and Max Silva*


Deputy Clerk

MAY 20 2015

By _____ 9:00 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

JACK MCALL,

Plaintiff,

vs.

MAX SILVA AND SILVA DAIRY, LLC ,

Defendants.

Case No. CV 2013-1263

FINAL PRETRIAL ORDER

1. Trial to the Court shall commence on 24, 2015 at 8:30 A.M.
2. McCall's herd mismanagement claim has been withdrawn.
3. The issues for trial are: a) What is the amount, if any, owed by McCall to Silva Dairy, LLC for a herd management fee? b) Has Silva Dairy converted some of the dairy feed supplied by McCall, and if so, what is the value of that? c) Has McCall made payments to or for the benefit of Silva Dairy (in an amount near \$55,000 that should be offset against Silva Dairy's herd management fee? d) What is the total amount of monies owed by Max Silva for pasturing cattle on McCall's property?
4. The order of proof at trial shall be as follows: Because McCall's claims against Silva Dairy may not exceed Silva Dairy's herd management fee, its

claim shall be tried first. Thereafter, McCall may present his claim for offsets and then his claim against Max Silva.

5. All discovery, including depositions, must be completed by May 31, 2015.
6. All parties shall disclose their proposed exhibits and final witness list by June 12, 2015 and thereafter file the actual proposed exhibits and witness lists with the court by 5 p.m. June 19, 2015. IN ADDITION, each party shall file a statement by this latter deadline stating which of the opposing parties' exhibits may be admitted by stipulation.
7. Silva Dairy has indicated that they may seek a pretrial order concerning whether McCall's designated experts are in fact experts. This motion, if filed, SHALL be heard at 10:00 A.M. on June 15, 2015 and timely filed and noticed as required by the rules. Other than this motion the Court will not entertain any other pretrial motions.

DATED this 20th day of May, 2015.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of May 2015, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

James Meservy
P.O. Box 168
Jerome, Idaho 83338

U.S. Mail
 Hand delivered
 Faxed
 Court Folder

Steven Taggart
P.O. Box 3005
Idaho Falls, Idaho 83402

U.S. Mail
 Hand delivered
 Faxed
 Court Folder

Nathan Olsen
485 E. Street
Idaho Falls, Idaho 83402

U.S. Mail
 Hand delivered
 Faxed
 Court Folder


Clerk

132

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2015 JUN 19 PM 4:43

JAMES C. MESERVY
WILLIAMS, MESERVY & LOTHSPREICH, LLP
Attorneys at Law
153 East Main Street
P. O. Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Facsimile: (208) 324-3135
Idaho State Bar No. 2460

BY _____ CLERK
 sl DEPUTY.

Attorney for Jack McCall

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

<p>GREEN RIVER RANCHES, LLC, an Idaho Limited Liability Company,</p> <p>Plaintiff-Counterdefendant,</p> <p>v.</p> <p>SILVA LAND COMPANY, LLC, et al.,</p> <p>Defendants-Counterclaimants.</p>	<p>Case No. CV-2013-1263 Consolidated Cases CV 2013-3154, CV 2013-4732</p> <p>PLAINTIFF'S PRETRIAL MEMORANDUM</p>
<p>JACK McCALL,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MAX SILVA, an individual; and SILVA DAIRY, LLC an Idaho limited liability company,</p> <p>Defendants.</p>	

PLAINTIFF'S PRETRIAL MEMORANDUM - 1

COMES NOW, Jack McCall, by and through his counsel of record, James C. Meservy of the law firm Williams, Meservy & Lothspeich, LLP, who submits the following Pretrial Memorandum for consideration by this Court.

UNJUST ENRICHMENT

This court in its Memorandum Decision dated 14 August 2014 indicated that "Silva Dairy has an unjust enrichment claim for its services." Footnote 7, p. 16. The amount of the Silva Dairy "herd management claim" is to be determined at this trial. Memorandum Decision, Para. 1, p. 20, Memorandum Decision. At the last pretrial conference, the court indicated, again, that the claim of Silva Dairy was for Unjust Enrichment.

The doctrine of unjust enrichment sounds in implied in law contract or quasi contract. *Beco Construction Co., Inc. Bannock Paving Company, Inc.*, 118 Idaho 463, 797 P. 2d 863 (1990) A "contract implied in law is not a contract at all, but an obligation imposed by law for the purpose of bringing about justice and equity without reference to the intent or the agreement of the parties and, in some cases, in spite of an agreement between the parties. " 118 Idaho at 466, 797 P.2d at 866, citing *Hixon v. Allphin*, 76 Idaho 327, 281 P.2d 1042 (1955); *McShane v. Quillin*, 47 Idaho 542, 277 P. 554 (1929).

The case of *Hertz v. Fiscus*, further states:

The essence of the quasi-contractual theory of unjust enrichment is that the defendant has received a benefit which would be inequitable to retain at least without compensating the plaintiff to the extent that retention is unjust. *Continental Forest Products v. Chandler*, supra; *Bair v. Barron*, 97 Idaho 26, 539 P.2d 578 (1975). Cf. *Bastian v. Gifford*, 98 Idaho 324, 563 P.2d 48 (1077). *Id.* at 457, 567 P.2d at 2. *Buck*, supra. *Gillette v. Storm Circle Ranch*, 101 Idaho 663, 619 P.2d 1116 (1980) adds, Unjust enrichment is an equitable doctrine and is inapplicable where the plaintiff in an action fails to provide the proof necessary to establish the VALUE OF THE BENEFIT CONFERRED upon the defendant. *Id.*

PLAINTIFF'S PRETRIAL MEMORANDUM - 2

at 667, 619 P.2d at 1120 (emphasis added). See also, *Brown v. Yacht Club of Coeur d'Alene Ltd.*, 111 Idaho 195, 722 P.2d 1062 (Ct. App. 1986).

Hertz v. Fiscus, 98 Idaho 456, 567 P.2d 1 (1977)

The court in *In the Matter of the Estate of Kenneth N. Boyd* stated:

In order to establish a prima facie case for an implied-in-law contract, the plaintiff must show that there was (1) a benefit conferred upon the defendant by the Plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit without payment to the plaintiff OF THE VALUE THEREOF. *Idaho Lumber, Inc.* 109 Idaho at 745, 710 P.2d at 655. The services must be rendered under such circumstances as to indicate that the person rendering them expected to be paid, and that the recipient expected, or should have expected to pay for them. 42 C.J.S. Implied Contracts Section 26 (1991). The actual intent of the party upon whom the benefit is conferred is immaterial, so long as a reasonable person in the same circumstances would have understood that a benefit had been conferred and that the conferring party did so in reasonable expectation of payment.

Kennedy v. Forest, 129 Idaho 584, 587, 930 P.2d 1026, 1029 (1997) (emphasis added).

In 2011 the Supreme Court decided *Harris, Inc., v. FoxHollow Construction & Trucking, Inc.*, 151 Idaho 761, 264 P.3d 400. The elements of unjust enrichment: 1. Benefit conferred 2. Defendant appreciates the benefit and 3. Inequitable for defendant to accept the benefit. *Citing Teton Peaks Inv. Co., LLC v. Ohme*, 146 Idaho 394, 398, 195 P.3d 1207, 1211 (2008). The court went on to note: "Because this is an equitable claim, we note: "The maxim, 'HE WHO COMES INTO EQUITY MUST COME WITH CLEAN HANDS,' imposes itself alike upon him who defends, and upon him who prosecutes, a suit in equity." *Witthoft v. Commercial Dev. & Inv. Co.*, 46 Idaho 313, 324, 268 P.31, 34 (1928) (emphasis added).

SILVA DAIRY IS NOT ENTITLED TO PREJUDGMENT INTEREST ON ITS UNJUST ENRICHMENT CLAIM

In *Bouten Construction Company, v. H.F. Magnuson Company*, 133 Idaho 756 , 992 P.2d 751 (1999) stated: "It is settled law in Idaho that pre-judgment interest is available only when damages are liquidated or ascertainable by mere mathematical process. *Doolittle v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 805, 814, 919 P.2d 334, 343 (1996); *Pocatello Auto Color, Inc. v. Akzo Coatings, Inc.*, 127 Idaho 41, 46, 896 P.2d 949, 954, (1995); *Ervin Constr. Co. v. Van Orden*, 125 Idaho 695, 704, 874 P.2d 506, 515 (1993); *Barber v. Honorof*, 116 Idaho 767, 770,

PLAINTIFF'S PRETRIAL MEMORANDUM - 3

780 P.2d 89, 92 (1989). 133 Idaho at 762, 992 P.2d 757.

In *Bouten*, changes in a construction contract brought a suit claiming damages, (compensation for increased costs). Upon remand, the district court determined which of the claimed increased costs were reasonable. The appellate court noted that "Until the district court ruled on which of the costs were proven reasonable, the amount of Bouten's damages was not readily ascertainable. This court has held that when damages are not readily "ascertainable prior to the proceedings on remand," they are not liquidated. *Long v. Hendricks*, 117 Idaho 1051, 1054, 793 P.2d 1223, 1226 (1980) Id. at 763, 758.

In *Ervin* cited above, the parties entered into a contract to build a log home. The trial courts prejudgment interest award was reversed where,

At the time of the Van Ordens' breach of the contract, the net contract amount was readily ascertainable but the value of materials installed was not. The trial court found that the numerous defects existed not only in the construction of the home, but in some of the material used. These defects would affect the value of the installed materials. We therefore find that the principal amount of liability at the time of the Van Ordens' breach was not mathematically and definitely ascertainable.

Ervin Constr. Co. v. Van Orden, 125 Idaho at 704, 874 P.2d at 515.

In 2007, the Court of Appeals decided *Ross v. Ross*, 145 Idaho 274, 178 P.3d 639. The plaintiff was the son of the defendant, his widowed mother. The plaintiff complained that the defendant had been unjustly enriched by the plaintiff's contributions on, to, or for and in behalf of a ranch property located in Idaho County. Title had been taken in the parents' name. Use was enjoyed by all family members until the defendant banned the plaintiff from the property.

The court noted the previously enunciated principle that prejudgment interest is only allowed where the claim is liquidated or readily ascertainable by mathematical process. (citations omitted). Accordingly, if the claim is liquidated or capable of mere mathematical

PLAINTIFF'S PRETRIAL MEMORANDUM - 4

ascertainment prejudgment interest may be awarded (citations omitted).

"...damages are unascertainable where some factor necessary to calculate the amount of damages must be determined by a trier of fact. Conversely: A claim is liquidated if the evidence furnishes data which, if believed, make it possible to compute the amount with exactness, without reliance upon opinion or discretion. Examples are claims upon promises to pay a fixed sum, claims for money had and received, claims for money paid out, and claims for goods or services to be paid for at an agreed rate. *Seubert Excavators, Inc. v. Eucon Corp.*, 125 Idaho 744, 750 n.2, 874 P.2d 555, 561 n.2 (Ct. App. 1993), *aff'd*, 125 Idaho 409, 871 P.2d 826 (1994).

Ross v. Ross, 145 Idaho at 277, 178 P.3d 642.

The district court found that the plaintiff (*Ross*) had provided three checks in specified amounts, made a liquidated payment toward the construction of a new house, monies certain paid for heating and air and he asked for compensation for his labor. The plaintiff agreed that he was not entitled to prejudgment interest on the labor since the trial court would have to find the numbers of hours worked and a reasonable rate of compensation.

This should end the matter in the case at bar. Here the amount of unjust enrichment will largely depend on the benefit conferred from services provided, equipment provided etc. Like *Ross*, the trial court would have to determine reasonable rates, benefit conferred from services provided etc. *Silva Dairy* is not entitled to prejudgment interest on its unjust enrichment claim.

The *Ross* court did not stop there. Although the checks and liquidated amounts were readily ascertainable, prejudgment interest was not awarded. The court stated, however,


[P]rejudgment interest is precluded where the amount awardable on one party's claim for a liquidated amount cannot be ascertained because of the other party's unliquidated claim. This will occur, for instance, in cases where the unliquidated claim challenges the value of the performance forming the basis of the liquidated claim. *Pocatello Auto Color, Inc. v. Akzo Coatings, Inc.*, 127 Idaho 41, 47, 896 P.2d 949, 955 (1955)

Ross v. Ross, 145 Idaho at 278, 178 P.3d 644.

PLAINTIFF'S PRETRIAL MEMORANDUM - 5

In this case, the amount of the claim is not liquidated. It is not capable of mere mathematical ascertainment.

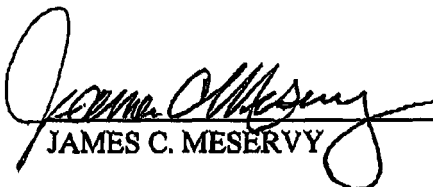
DATED this 19 day of June, 2015.


JAMES C. MESERVY
Williams, Meservy & Lothspeich
Attorneys for Jack McCall

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 19 day of June, 2015, I caused the foregoing document to be served as follows:

Robert J. Maynes Steven L. Taggart Maynes Taggart PLLC P. O. Box 3005 Idaho Falls, ID 83405	<input type="checkbox"/> Via US Mail, Postage Paid <input checked="" type="checkbox"/> Via Facsimile - (208) 524-6095 <input type="checkbox"/> Hand-Delivered - Court Folder <input type="checkbox"/> Other _____
Nathan M. Olsen Petersen Moss Hall & Olsen 485 E Street Idaho Falls, ID 83402	<input type="checkbox"/> Via US Mail, Postage Paid <input checked="" type="checkbox"/> Via Facsimile - (208) 524-3391 <input type="checkbox"/> Hand-Delivered - Court Folder <input type="checkbox"/> Other _____


JAMES C. MESERVY

132

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2015 JUN 19 PM 2:49

Nathan M. Olsen, Esq.
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, Idaho 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391

BY _____ CLERK
 DEPUTY

Attorneys for Defendants-Counterclaimants, and Defendant, Max Silva

Robert J. Maynes, ISB No. 6905
Steven L. Taggart, ISB No. 8551
MAYNES TAGGART PLLC
P. O. Box 3005
Idaho Falls, ID 83403
Telephone: (208) 552-6442
Facsimile: (208) 524-6095
Email: mayneslaw@hotmail.com
Email: staggart101@gmail.com

Attorneys for Defendants-Counterclaimant Silva Dairy, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

GREEN RIVER RANCHES, LLC,

Plaintiff,

vs.

SILVA LAND COMPANY, LLC, et al.,

Defendants.

Consolidated Case No. CV-2013-1263

**DEFENDANTS/COUNTERCLAIMANTS'
JOINT PRE-TRIAL BRIEF**

JACK McCALL,

Plaintiff,

vs.

MAX SILVA, an individual; and SILVA
DAIRY, LLC, an Idaho limited liability
company,

Defendants.

JACK McCALL,

Plaintiff,

vs.

SILVA LAND COMPANY, LLC, et al,

Defendants.

Defendants/Counterclaimants, Silva Dairy, LLC, ("Silva Dairy") and Max Silva ("Mr. Silva"), through counsel of record, provide the following Pretrial Brief outlining the matters that will be determined by the Court during its trial set for June 24-26, 2015.

Last June, the Court determined that Mr. McCall was liable for the 30 month management of his dairy herd from April 2010 through August of 2012. The amount, if any, was set for this trial. Mr. McCall has raised various offsets and asserted that Max Silva owes for pasture usage. Also, the Court will consider the matter of the \$10,000 check from Mr. McCall to Mr. Silva.

The Court's Final Pre-trial Order (dated May 20, 2015) specifies the following issues for trial:

- 1) What is the amount, if any, owed by McCall to Silva Dairy, LLC for a herd management fee?
- 2) Has Silva Dairy converted some of the dairy feed supplied by McCall, and if so, what is the value of that?
- 3) Has McCall made payments to or for the benefit of Silva Dairy (in an amount near \$55,000 that should be offset against Silva Dairy's herd management herd?
- 4) What is the total amount of monies owed by Max Silva for pasturing cattle on McCall's property?

The Court has also asked to consolidate in the issue with respect to the \$10,000 check that Mr. McCall provided to Mr. Silva.

This brief addresses the various issues that the Court will consider at trial issue by issue by providing the relevant law and an overview of the testimony and evidence that will be offered at trial by Silva Dairy and Mr. Silva.

ISSUE #1: What is the amount, if any, owed by McCall to Silva Dairy, LLC for a herd management fee?

A. Summary of Issue

From April of 2010 to August of 2012, Silva Dairy, LLC managed Mr. McCall's dairy herd that varied from 22 head to nearly 300. Management of the McCall herd included substantial labor, providing of farm machinery, fuel, various kinds of feed and additional services. Mr. McCall paid for facility rent for the dairy facility he leased but has not paid for these items.

B. Applicable Law

The oft cited Idaho Supreme Court case of *Peavey v. Pellandini*, 551 P.2d 610, 97 Idaho 655 (1976) actually addresses a very similar situation in that the parties had not agreed upon a price for the defendant's "feeding" of plaintiff's cattle. Under *Peavey*, the Court held that a lack of an agreed upon price was not fatal to the contract, but rather enforced under an "implied-in-fact" contract, also referred to as "quantum meruit." Citing *AmJur* the Court held that:

If there is no special agreement as to the amount of compensation and the services are not intended to be gratuitous, the law implies a promise by the employer to pay what services reasonably are worth, which is determined largely by the nature of the work and the customary rate of pay for such work in the community and at the time the work was performed. These are matters for the jury to determine, under proper evidence and instructions.

Id. 97 Idaho at 659, 551 P.2d 555.

The Court has two potential common law remedies available to determine the management fee, "quantum meruit," and "unjust enrichment," each of which has a different

approach on the valuation of the fee.

1. *Quantum Meruit*

The *Peavey* court indicates that quantum meruit provides an appropriate recovery under a contract “implied in fact.” 97 Idaho at 658, 551 P.2d at 613.

A contract implied in fact exists where there is no express agreement but the parties' conduct evidences an agreement.

Id.

The justification for quantum meruit is further explained in *Baker v. Boren*, 934 P.2d 951, 129 Idaho 885 (Idaho App. 1997):

The remedy of quantum meruit is based upon the principle that one who provides services should receive the compensation he or she deserves. It is used to compensate a person who has performed services at the request of another, and recovery is based on an implied-in-fact contract.

Id. 129 Idaho at 994, 934 P.2d at 960.

The determination of recovery under quantum meruit is explained as follows:

The measure for recovery under quantum meruit is the reasonable value of services rendered, not the actual benefit realized and retained... Determining the reasonable value of service under quantum meruit is an objective measure and is proven by evidence demonstrating the nature of the work and the customary rate of pay for such work in the community at the time the work was performed.

Farrell v. Whiteman, 152 Idaho 190, 195, 268 P.3d 458, 463 (2012)(citations omitted)

2. *Unjust Enrichment*

Unjust enrichment is another equitable theory that can be applied even where there is no implied in fact agreement. As explained by the Idaho Supreme Court:

Unjust enrichment, as a fictional promise or obligation implied by law, allows recovery where the defendant has received a benefit from the plaintiff that would be inequitable for the defendant to retain without compensating the plaintiff for the value of the benefit.

Great Plains Equipment, Inc. v. Northwest Pipeline Corp., 132 Idaho 754, 767, 979 P.2d 627, 640 (1999).

Idaho distinguishes the calculation of the recovery under unjust enrichment from that of quantum meruit:

Though some courts do not differentiate between the measure of recovery under unjust enrichment and quantum meruit, this Court has carefully done so... Recovery under a quantum meruit theory is measured by the reasonable value of the services rendered or of goods received, regardless of whether the defendant was enriched. Recovery under an unjust enrichment theory, on the other hand, is limited to the amount by which the defendant was unjustly enriched.

Barry v. Pacific West Const., Inc., 140 Idaho 827, 834, 103 P.3d 440, 447 (2004)(citations omitted).

3. *Prejudgment Interest Available*

In Idaho, prejudgment interest is available when the amount of liability can be calculated by a mathematical process. As stated by the Idaho Court of Appeals:

It is well settled law in Idaho that prejudgment interest may be awarded where the amount of liability is liquidated or capable of ascertainment by a mere mathematical process. *Bouten Const. Co. v. H.F. Magnuson Co.*, 133 Idaho 756, 762, 992 P.2d 751, 757 (1999); *Farm Development Corp. v. Hernandez*, 93 Idaho 918, 920, 478 P.2d 298, 300 (1970). Idaho Code § 28-22-104 allows for an award of prejudgment interest for money due by express contract or when it becomes due. In a breach of contract action, interest may be awarded from the date of the breach when the amount upon which the interest is to be based is mathematically and definitely ascertainable. *Ervin Constr. Co. v. Van Orden*, 125 Idaho 695, 704, 874 P.2d 506, 515 (1993); *Barber v. Honorof*, 116 Idaho 767, 770, 780 P.2d 89, 92 (1989).

Sainsbury Const. Co., Inc. v. Quinn, 137 Idaho 269, 47 P.3d 772, 777-78 (Idaho App., 2002) (emphasis added).

The language of Idaho Code § 28-22-104 is instructive:

28-22-104. LEGAL RATE OF INTEREST. (1) When there is no express contract in writing fixing a different rate of interest, interest is allowed at the rate of twelve cents (12¢) on the hundred by the year on:

1. Money due by express contract.
2. Money after the same becomes due.
3. Money lent.
4. Money received to the use of another and retained beyond a reasonable time without the owner's consent, express or implied.
5. Money due on the settlement of mutual accounts from the date the balance is ascertained.

6. Money due upon open accounts after three (3) months from the date of the last item.

....
(emphasis added).

C. Evidence & Testimony at Trial

At trial, Silva Dairy, LLC will provide evidence as to what was done to manage the McCall herd, including what labor was provided, what equipment was utilized, what expenses were incurred and the basis of the calculations included in Mr. Plew's report. Mr. Plew's report shows that the management services in the amount of \$359,986.59 were delivered in relationship to the McCall herd over the 30 month period, with prejudgment interest of \$132,065.24, for a total amount requested of \$492,051.83.

Such is justified in that Silva Dairy, LLC provided dairy herd management services, including labor, equipment, some feed and additional services, "at the request" of Jack McCall. Having provided such services, i.e. through an "implied-in-fact contract", Silva Dairy is therefore "entitled" to compensation for such services. Under this theory, Silvas are entitled to the "reasonable value" of their services depending on the "nature of the work" and the then "customary rate for pay for such work in the community." This value will be shown at trial. In the alternative, the Court could find that Mr. McCall was unjustly enriched by the value of services for which he did not pay.

ISSUE #2: Has Silva Dairy converted some of the dairy feed supplied by McCall, and if so, what is the value of that?

A. Summary

Mr. McCall has asserted that Silva Dairy, LLC converted some of his feed. Silva Dairy hotly disputes this assertion.

B. Applicable Law

"Generally, conversion is defined as a distinct act of dominion wrongfully asserted over another's personal property in denial of or inconsistent with [his] rights therein." *Carpenter v. Turrell*, 148 Idaho 645, 650, 227 P.3d 575, 580 (2010) (quoting *Peasley Transfer & Storage Co. v. Smith*, 132 Idaho 732, 743, 979 P.2d 605, 616 (1999)).

There are three elements to make out a claim of conversion: "(1) that the charged party wrongfully gained dominion of property; (2) that property is owned or possessed by plaintiff at the time of possession; and (3) the property in question is personal property." *Taylor v. McNichols*, 149 Idaho 826, 846, 243 P.3d 642, 662 (2010).

C. Evidence & Testimony at Trial

The key issues here are factors #1 and #2. There is no evidence that Silva Dairy, LLC ever wrongfully gained dominion over any of Mr. McCall's feed. Moreover, there is a question of whether Mr. McCall ever had any excess feed in the first place. Such issues will be clarified at trial.

ISSUE #3: Has McCall made payments to or for the benefit of Silva Dairy (in an amount near \$55,000 that should be offset against Silva Dairy's herd management herd?)

A. Summary

Mr. McCall is asserting an offset for expenses related to various dairy facility repairs on the facility he leased and feed that he paid for, allegedly for the benefit of Silva Dairy, LLC.

B. Applicable Law

"An 'offset' may be defined as a claim that serves to counterbalance or to compensate for another claim." *Steinmeyer v. Warner Cons. Corp.*, 116 Cal.Rptr. 57, 42 Cal.App.3d 515 (Cal. App. 1 Dist., 1974) citing Webster's (unabr.) New Int. Dict. (3d ed. 1967) p. 1567; *Lalime v. Desbiens* (1947) 115 Vt. 165, 168, 55 A.2d 121, 123; *Leonard v. Charter Oak Life Ins. Co.* (1895) 65 Conn. 529, 537, 33 A. 511, 513.).

C. Evidence & Testimony at Trial

Mr. McCall asserts that he can offset Silva Dairy, LLC's herd management fees by requesting reimbursement for various expenses he paid. The evidence will show that Mr. McCall's asserted expenses are more than offset by amounts paid by Silva Dairy, LLC separate from the herd management fees.

ISSUE #4: What is the total amount of monies owed by Max Silva for pasturing cattle on McCall's property?

A. Summary

The Court has previously determined that Max Silva is personally liable for the pasturing of heifers on subleased property referred to as the "Snyder Winery." At the previous trial held in this matter, Silva claimed that Silva Dairy's heifers were pastured for four months, and Mr. McCall has claimed cows branded "MS" were Max Silva's cows and were pastured on the Snyder property for six months. There was never any agreement on the amount of the pasture fee. After trial, relying entirely upon some hand written notes of a Ray Broner McCall has now claimed that Silva owes him nearly \$70,000 in grazing fees from 2011 and 2012. The Court has indicated that it will consider at trial whether Max Silva is liable for these alleged additional fees. As will be shown at trial, at best, McCall is owed less than \$1,000 in pasture rent.

B. Applicable Law

The elements of an "implied in fact" contract are described as follows in Idaho Jury

Instructions:

An implied-in-fact contract is a contract where the terms and existence of the contract are demonstrated by the conduct of the parties, with the request of one party and the performance by the other often being inferred from the circumstances attending the performance. To find an implied-in-fact contract, the facts must be such that the intent of the parties to make a contract can be inferred from their conduct. An implied-in-fact contract is given the same legal effect as any other contract.

To establish an implied-in-fact contract, the plaintiff has the burden of proof on each of the following propositions:

1. The circumstances imply a request by the defendant for performance by plaintiff; and
2. The circumstances imply a promise by the defendant to compensate the plaintiff for such performance; and
3. The plaintiff performed as requested.

C. Evidence & Testimony at Trial

1. McCall cannot prove that Silva owes any of the alleged "additional" pasture fee claims.

McCall offers only the handwritten notes of his hired hand Ray Broner to suggest that Silva owes him in upwards of nearly \$70,000 in grazing fees. However, upon review the so called Broner notes are nothing more than scribbles on various pieces of note paper that at best indicate a particular day Silva Dairy's cows were on a couple of McCall's properties. There is no indication of duration, number of cows, rates, or any other pertinent information that resembles a pasture agreement. There is admittedly nothing in the Broner notes pertaining to the Snyder Winery agreement, which Mr. Broner had nothing to do with. In addition, Ray Broner admits that he did not know whether the brand "MS" represents "Max Silva Livestock" or something else. As he has consistently testified, Silva will provide indisputable evidence that "MS" in fact stands for "Manuel Silva & Sons" which is a dba for "Silva Dairy, LLC." Further, Jack McCall was provided a brand inspection sheet indicating as such, and further indicating that Max Silva is an "agent" for Silva Dairy, LLC. Further, Silva will present evidence that the bank considered the MS cows to be collateral for Silva Dairy's loans. Simply put, the "MS" branded cows have nor will ever be Max Silva's cows. "Max Silva Livestock" doesn't exist, and is a fiction created by Mr. McCall.

In truth, a document entitled "Silva Dairy 2012 Grazing Summary" created by McCall's entity "Clear Creek Properties, Inc." suggests that in fact Silva Dairy owed nothing on a grazing fee, and in fact, McCall may owe the dairy. (Silva Exhibit O) The document calculates the

grazing fee to be 15 cents per cow per day, with a 70% "weight adjustment." The "total bill owed" as of August 28, 2012 (the day that McCall pulled his dairy herd from Silva's facility) was \$10,555.76. However, Silva Dairy is provided a \$12,041.76 "Credit for spreading compost at Green River Ranches" of \$12,041.76. It then suggests that McCall *paid* for this custom work by Silvas in part with the grazing offset and a check. There is a listed "amount owed" of \$1,156. But it is not clear whether that "amount owed" is McCall's for the custom work or Silvas for a grazing fee. However, it is much more likely that it is what McCall owed in that the "total bill owed" for grazing was more than offset by the custom work. In short, at the very least Silva Dairy owed McCall nothing on a grazing fee in August 28, 2012, when the parties essentially terminated their relationship.

What is particularly troubling is that McCall has purposefully withheld this key document from the Court. In so doing, he has acted in bad faith and misled Court. Clearly, McCall has no foundation or support for his \$70,000 pasture claim. As such, Silva fully intends to move for his fees and costs under IC § 12-123 at the close of trial.

2. The amount Silva owes on the Snyder Winery lease is minimal at best.

Given the bad faith demonstrated by McCall, the Court should reconsider whether Silva should be individually liable for the Snyder Winery sublease. In addition, the evidence will clearly suggest that the cows do not belong to "Max Silva Livestock" which doesn't even exist. Nevertheless, the amount owed on the sublease is minimal, well under \$1,000. McCall entered into a lease with Snyder Winery for 33 acres of pasture on May 1, 2012 through December 31, 2012. (Silva Exhibit H) The amount of the lease for entire duration was \$4,950, or \$618.75 per month. The pasture was divided into equally sized "middle" and "north pastures." McCall's heifers were pastured on one of the pastures, and Silvas' on the other pasture. McCall and Silva never agreed to the "amount" of the pasture rent. However, such amount can easily be inferred

based on the Snyder Winery lease. Silva in effect entered into a "sublease" for half of the Snyder pasture. Thus, this fee would be half of the monthly total, or \$309.38 per month.

Silva and McCall disagree on the amount of time that Silvas' heifers were on the pasture. However, again that amount of time can be inferred from the conduct of the parties. As is undisputed, McCall terminated his relationship with Silvas when he removed his cows from the dairy at the end of August, 2012. Thus, *at best* Silvas' cows would have been on the Snyder Winery for four months. Thus, at the very most the pasture rent would be \$1,237.52 (over the four months).

However, the Court should also consider the services that Silvas' provided at the Snyder Winery pasture as an offset or as payment toward the pasture rent. The Silvas managed both pastures at the Snyder Winery, including the pasture with McCall's heifers. Such management included the following:

- 1½ hour *each day* of the lease wherein one of the Silvas visited the pasture to turn the water on.
- 3 hours per month to gather herds for vaccination (paid for by Silvas).
- 3 hours spreading fertilizer on the pasture (one time.)
- \$25 cost to rent chutes.

Thus, over a four month period, Silvas provided no less than 129 hours of labor on the pasture. Even at minimum wage, this is \$935.35. Silvas also incurred \$25 cost, as well as fuel and vaccination expenses (the trip to the pasture was a 4 mile drive each way). It is entirely possible that the labor and costs incurred in taking care of the pasture, even divided in half to account for McCall's portion, well exceeded the amount of the sublease. If the Court were to conservatively calculate those costs to be \$1,200 (\$600 of which would be allocated to McCall), McCall is owed a grand total of \$637.35 for pasture rent.

This minimal amount that McCall is owed at best for pasture rent is a far cry from the nearly \$70,000 that he is now claiming and which he has provided virtually no factual support. This is yet another example of the frivolousness of McCall's claims. Silva intends to pursue his fees and costs under IC § 12-123 for having to defend against these foundation-less claims.

ISSUE #5: What is the validity of Jack McCall's claim against Max Silva on the \$10,000 check?

A. Summary

Jack McCall filed an action in the magistrate court claiming that Max Silva owed him \$10,000 which McCall had provided to Silva in August of 2010 to pay for Silva Dairy's retainer to Harry DeHaan to handle the dairy's Chapter 12 Bankruptcy. Pursuant to this Court's May 28, 2015, Memorandum Decision on appeal, the Court has determined that Silva is personally responsible for repayment of the \$10,000, but there remains a question as to whether there was an implied agreement that the \$10,000 was to applied to or "repaid" via what McCall owed for facility rent or as a management fee. After Silva filed his Motion to Consolidate this case with the others, McCall's counsel Jim Meservy e-mailed the Court on June 5, 2015, consenting to the consolidation. As explained below, the overwhelming evidence will show that McCall counted the \$10,000 payment as part of the facility rent for 2010, and yet again McCall has in bad faith misled both this Court and the magistrate court.

B. Applicable Law

Again, the Court will consider whether there is an "implied in fact" contract. The elements of an "implied in fact" contract are described as follows in Idaho Jury Instructions:

An implied-in-fact contract is a contract where the terms and existence of the contract are demonstrated by the conduct of the parties, with the request of one party and the performance by the other often being inferred from the circumstances attending the performance. To find an implied-in-fact contract, the facts must be such that the intent of the parties to make a contract can be inferred from their conduct. An implied-in-fact contract is given the same legal effect as any other contract.

To establish an implied-in-fact contract, the plaintiff has the burden of proof on each of the following propositions:

1. The circumstances imply a request by the defendant for performance by plaintiff; and
2. The circumstances imply a promise by the defendant to compensate the plaintiff for such performance; and
3. The plaintiff performed as requested.

C. Evidence & Testimony at Trial

In April of 2010, McCall and Silva Land, LLC entered into an agreement wherein McCall agreed to rent Silva Land's facility for his dairy herd at no less than \$10 per month per milking cow.¹ In August of 2010, Silva approached McCall about obtaining \$10,000 so the dairy could retain Harry DeHaan to file a Chapter 12 bankruptcy. There was never any discussion about the repayment terms of this payment. However, the check given to Max Silva indicated "facility rent" in the memo line, and was booked as facility rent.

In August of 2010, McCall owed Silva Land \$5,880 in rent. By the end of 2010, McCall owed Silva Land \$14,220 in rent. McCall prepared a "Profit & Loss" statement for his 2010 taxes which indicates that by the end of 2010 McCall had paid \$12,500 in "facility rent" *including the \$10,000 check to Max Silva*. Thus, even including the \$10,000 payment, McCall was still \$1,750 short on the facility rent in 2010. Additionally, McCall testified at the previous trial that he had fully paid facility rent to Silvas. However, that statement is only true if the \$10,000 payment was counted toward the facility rent.

Unquestionably, the \$10,000 payment to Silva was labeled, identified and treated as facility rent by Mr. McCall in 2010. It was virtually the only facility rent paid in 2010 with the exception of a \$2,200 payment in December of 2010. At the time McCall made the payment, it

¹ McCall actually testified that he thought the agreement was \$10.50 per cow per month, as reflected in the "Lease Agreement" that he signed.

trial that he had fully paid facility rent to Silvas. However, that statement is only true if the \$10,000 payment was counted toward the facility rent.

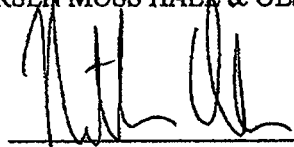
Unquestionably, the \$10,000 payment to Silva was labeled, identified and treated as facility rent by Mr. McCall in 2010. It was virtually the only facility rent paid in 2010 with the exception of a \$2,200 payment in December of 2010. At the time McCall made the payment, it covered \$5,880 then due. By the end of November of that year, it covered the remaining amount owed. McCall made no other payments for facility rent that year, thus further reinforcing the intent that the payment was to be allocated toward facility rent.

It is very troubling that at the same time McCall was claiming he had paid his facility rent in the District Court case – which included the \$10,000 payment to Silva – he had also filed a separate lawsuit in the magistrate court claiming that he was “owed” the \$10,000 payment plus statutory interest. This is nothing short of duplicitous conduct by McCall. As such, Silva will move for attorneys fees and costs under IC § 12-123 at the close of trial.

PETERSEN MOSS HALL & OLSEN

Date:

6/19/2015

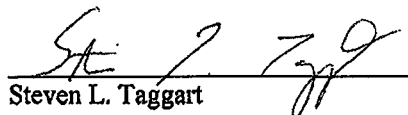


Nathan M. Olsen

MAYNES TAGGART PLLC

Date:

6/19/2015



Steven L. Taggart

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 19, 2015, I faxed a true and correct copy of the foregoing document to the designated parties as follows:

James C. Meservy, Esq.
Williams, Meservy & Lothspeich, LLP
P.O. Box 168
Jerome, ID 83338
Fax No. 208-324-3135

Clerk of the Twin Falls County Court
425 Shoshone St. N.
Twin Falls, ID 83301
Fax No. 208-736-4155

Nathan M. Olsen, Esq.
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83402
Fax No. 208-524-3391

BY: Rosalie Wanlass
Rosalie Wanlass

132

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2015 JUN 19 PM 3:09

Robert J. Maynes, ISB No. 6905
Steven L. Taggart, ISB No. 8551
MAYNES TAGGART PLLC
P. O. Box 3005
Idaho Falls, ID 83403
Telephone: (208) 552-6442
Facsimile: (208) 524-6095
Email: mayneslaw@hotmail.com
Email: staggart101@gmail.com

BY _____ CLERK
_____ DEPUTY

Attorneys for Defendants-Counterclaimant Silva Dairy, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

<p>GREEN RIVER RANCHES, LLC,</p> <p>Plaintiff,</p> <p>vs.</p> <p>SILVA LAND COMPANY, LLC, et al.,</p> <p>Defendants.</p> <hr/> <p>JACK McCALL,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MAX SILVA, an individual; and SILVA DAIRY, LLC, an Idaho limited liability company,</p> <p>Defendants.</p> <hr/> <p>JACK McCALL,</p> <p>Plaintiff,</p> <p>vs.</p> <p>SILVA LAND COMPANY, LLC, et al,</p> <p>Defendants.</p>
--

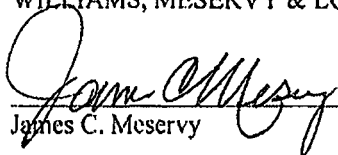
Consolidated Case No. CV-2013-1263

**STIPULATION OF THE PARTIES
AS TO ADMISSION OF EXHIBITS**

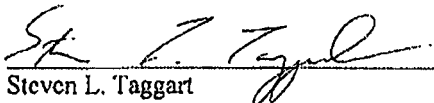
Jack McCall, Silva Dairy, LLC and Max Silva, by and through counsel, after consultation, hereby stipulate to the authenticity and admission of the exhibits proposed by all parties. But, all parties expressly preserve the right to challenge the foundation, the weight and the relevance of any exhibit.

DATE: June 19, 2015


WILLIAMS, MESERVY & LOTHISPEICH, LLP


James C. Meservy

MAYNES TAGGART PLLC


Steven L. Taggart

PETERSEN MOSS HALL & OLSEN


Nathan M. Olsen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 19, 2015, I faxed a true and correct copy of the foregoing document to the designated parties as follows:

James C. Meservy, Esq.
Williams, Meservy & Lothspeich, LLP
P.O. Box 168
Jerome, ID 83338
Fax No. 208-324-3135

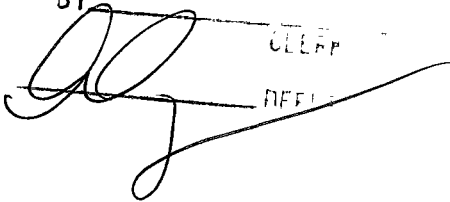
Clerk of the Twin Falls County Court
425 Shoshone St. N.
Twin Falls, ID 83301
Fax No. 208-736-4155

Nathan M. Olsen, Esq.
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83402
Fax No. 208-524-3391

BY: Rosalie Wanlass
Rosalie Wanlass

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2015 JUL 16 PM 3:16

BY  CLERP
RFF

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

JACK MCCALL,
Plaintiff and Counderdefendant,

vs.

MAX SILVA AND SILVA DAIRY LLC,
Defendants and
Counterclaimants.

Case No. CV 2013-1263 (consolidated)
Case No. CV 2013-4728 (consolidated)

MEMORANDUM OPINION

INTRODUCTION

This matter came before the Court for trial on June 24-26, 2015 in the consolidated cases in CV 2013-1263 and in the consolidated case of CV 2013-4728. Closing argument was presented to the Court on July 1, 2015 orally and the cases were taken under advisement as of that date. This memorandum constitutes the Court's Findings of Fact and Conclusions of Law pursuant to I.R.C.P. 52.

The Court has previously entered Findings and Conclusions in a Memorandum filed in August 2014 in the first trial between some of these parties. With certain exceptions, which will be noted herein, the Court adheres to and adopts those findings in this trial. This trial was limited to four issues:

1. Was there an agreement between Jack McCall and Max Silva whereby Max Silva agreed to repay McCall \$10,000?
2. Has Silva Dairy converted some of McCall's dairy feed and if so, in what amount?
3. What is the amount owed by McCall to Silva dairy for a herd management fee, less any offsets for payments made by McCall and the amount of his conversion claim?
4. What is the amount of money owed by Max Silva to McCall for pasture rent?

CLAIMS AND UNDISPUTED FACTS

Certain facts in this case are undisputed. McCall rented the Silva Dairy #1 facility from Silva Land, LLC, an entity owned by all of the Silva family, for his milking herd. There is no claim in this case that McCall owes any monies for this rental. McCall employed Silva Dairy, LLC to manage his herd of milking cows and Silva Dairy, LLC did in fact manage the herd at the Silva Dairy #1 complex between late April or early May 2010 thru August 2012. Silva Dairy claims that it is owed a management fee for this time period. There is not written agreement between the parties concerning the management fee, nor for that matter, any other business relation between the parties. However it is undisputed that McCall was required to provide the feed for his cattle. He claims that Silva Dairy converted some of that feed by using it to feed some of its cattle who were also at the dairy. Silva Dairy admits that some of McCall's feed was in fact fed to its cattle. McCall knew that this was occurring. Silva Dairy claims that it used its own feed to replace that feed belonging to McCall and also fed some of McCall's cattle with feed that McCall did not provide for himself.

Cattle were placed on pasture owned by McCall, Clear Creek mortgage (of which he was a principal) and on some rented ground known as the Snyder Winery property. McCall claims that the cattle belonged to Max Silva, individually and that he has not been paid for these services. Max Silva contends that they belonged to Silva Dairy and any monies owed are the Dairy's responsibility. It is undisputed that McCall loaned \$10,000 by check written to Max Silva to be used by Silva Dairy to hire a bankruptcy attorney. McCall also claims that he expended over \$55,000 for the benefit of Silva or Silva Dairy for which he is entitled to reimbursement.

Silva Dairy filed a Chapter 12 bankruptcy proceeding in August 2010. The parties agree that this Court may determine whether Silva Dairy's claim exceeds that of McCall's claims and also agree that there can be no affirmative relief awarded against Silva Dairy because of the bankruptcy filing. The parties further agree that their business relationships terminated in August 2012 that McCall removed his cattle and remaining feed from the dairy and the pastured cattle of Silva were returned to the Silva dairy.

ANALYSIS OF CLAIMS

1. The management fee claim.

There is no doubt that Silva Dairy is entitled to a management fee from McCall. McCall admits that. The parties never agreed upon the amount of that fee, *albeit* there was testimony that it was discussed. Silva Dairy asserts that the fee should be \$359,986.59.¹ The Court finds that Silva Dairy performed the following services

¹ Interestingly this claim ballooned from \$245,682.45, the amount claimed in Silva Dairy, LLC's bankruptcy schedules as of May 6, 2013, to the current figure of \$359,986.59, some \$115,000, plus prejudgment interest. No party offered any explanation of how the claim could increase nearly 47% as this litigation progressed. .

benefiting McCall: general oversight of cows; feeding milking, close-up, dry cows and hospital cows; feeding calves; providing some breeding services; administering medicine; consulting with the nutritionist; hoof trimming; preg checking; monitoring milkers; inputting computer information into the DHI program; performing some repairs to the barn and fences, and scraping and harrowing corals. It also provided a feed truck and corral cleaning equipment.

Over the 28 month period the number of milking cows owned by McCall and managed by Silva Dairy ranged from 147 to 307 with an average number of 275. Silva Dairy claims that it incurred fuel and maintenance costs over the 28 months and that it is entitled to reimbursement for these sums. It contends that it is reasonable to apportion approximately 1/3 of those costs to McCall's cattle, and the remaining 2/3 to the Silva Dairy cattle on the property.² Their accountant computed the daily "value" per cow for these costs by taking the total fuel costs and maintenance of the entire Silva operation (both dairies and Silva land) and dividing those sums by the average number of cows milked each day. The total fuel costs claimed are nearly \$79,000. The share of fuels costs attributable to McCall under Silva dairy's theory of the case is therefore slightly over \$26,000. The Court finds that the total fuel costs are attributable to both of Silva's dairy operations and to that of Silva Land. The Court also finds that the claim for fuel costs has no factual support for the actual costs of tending to McCall's herd.

The claim for repair costs attributable to McCall's herd exceeds \$41,000. There was no precise explanation in the record how this figure was derived. The Court infers that it was derived in the same manner as the fuel cost claim, *i.e.* by taking the gross

² The ratio was actually computed for each of the 28 months and is the percentage of McCall cattle on the property.

repairs from the combined statements of Silva Land and Silva Dairy and apportioning that calculation against the percentage of McCall's cows, in the same manner as the fuel costs were calculated.

Over the relevant time period the Silva brothers took draws of \$13,200 per month, totaling \$369,600. Again, Silva Dairy attributes approximately 1/3 of this sum to managing McCall's cattle. This sum is exclusive of calf raising charges. The total of prorated fuel labor costs equals \$188,408.94 for the 28 month period. In addition, Silva Dairy seeks prejudgment interest at 12% calculated on a monthly basis thru out the period of 28 months. The Court heard testimony that all of the Silva brothers worked on Silva Dairy #1 during the period, but that was been no testimony presented as to the **actual** hours spend by each brother over the 28 month period (*albeit* they testified that they worked "long hours, seven days per week").

Silva Dairy fed McCall's calves for 17,200 days (April 2010 to August 2012 X number of calves) at a claimed cost of \$2.25 per day. This claim totals \$38,700 and according to Silva Dairy was not paid by McCall. The evidence is disputed as to whether this is a reasonable sum. McCall asserts that because he provided calf hutches, and because he was paying rent to Silva Land for the facility, that a "custom rate" of \$2.25 is unreasonable.³ The Court agrees. The Court finds that \$1.75 per calf day, or \$30,100 is the reasonable value of these services.

Silva Dairy claims it spent \$60,957.75 of its own feed to feed McCall's "close-up" cows and \$71,919.90 to feed McCall's "dry cows." Silva Dairy claims these costs were

³ As will be discussed *infra*, it is totally unclear whether the parties contemplated what the management fee would include. McCall does dispute that Silva Dairy cared for the calves, but argues that the rate charged is unreasonable. The Court concludes that a reasonable "general" management fee does not include the time and expenses, if any, relating to calf raising.

not paid by McCall. McCall testified that he in fact provided the feed for these cows. Silva Dairy's claims are supported by Scott Plew's testimony that a charge of \$4.75/day for feeding close-up cows and \$2.75/day for feeding dry cows. These figures are supported by his knowledge of dairy operations based upon actual costs. Silva Dairy also claims prejudgment interest on these sums.

McCall asserts that a reasonable fee is \$1000 per month, or \$28,000 (May 2010 to August 2012, 28 months X \$1,000). This claim is based upon some testimony (which Silva disputes) of a conversation "agreeing" on this fee, and testimony of two experienced dairy operators (Onaindia and Rietsma) that one herdsman paid \$3000 per month could have reasonably performed all of the services necessary for a herd of less than 300 milking cows. Thus, he claims 1/3 of that labor fee is more appropriate. McCall asserts that by using custom rates for calves and dry cows and close-up cows that Silva is "doubling up" on their fuel and labor charges. The Court agrees with this general assertion. Custom charges should reflect variable costs such as feed and labor. However, as indicated supra, the question is "what does the general management fee cover—Silva's labor time for all of the herd, or their labor time and expenses, exclusive of calf raising?".

Silva Dairy has the burden of proving its damages. This Court has not been supplied with the actual labor relating to any of the milking cows, the actual fuel or repair costs attributable to McCall's herd, and any net figures adjusting the custom rates for feed for the close-up and dry cows. The Court has been supplied reasonable calculations related to its claim for the calves, subject to the adjustments described above. The fuel and repair claims have not been proven. The labor cost of

approximately \$4400 per month has not been proven. Based upon the testimony of Onaindia and Rietsma, the Court finds that \$1500/mo. X 28, or \$42,000 is a reasonable labor charge and that \$30,100 is a reasonable charge for the calves which should be awarded in addition to the \$1500 per month "general" labor charges.

Although it is a close question as to the believability of Silva and McCall as to who supplied the feed for the close-up and dry cows, the Court finds that Silva is in a better position to state the source of the feed inasmuch as Tony Silva actually fed the cattle. The Court will find in favor of Silva on this issue. The Court will also find that \$60,957.75 to feed McCall's "close-up" cows and \$71,919.90 to feed his dry cows is reasonable and supported by the evidence.

These four sums, \$204,977.65 will be awarded to Silva Dairy. The Court will not award prejudgment interest on this sum. Although this sum is a "fixed" sum, there was no agreement to pay any monies on a monthly basis, no agreement as to the amount of the management fee, and no evidence that these parties ever contemplated paying interest for Silva Dairy's services. Silva Dairy never billed McCall for any of these sums. In fact, as McCall put it, they would "settle up on the back end." This fixed sum has not been determined until this time. The Court finds that prejudgment interest should not and shall not be awarded under the facts of this case.

2. The Pasture Claim.

McCall claims that he is owed \$52,386.90 for pasture rent for the period of June 2011 thru September 2012. Here again the parties had no agreement as to the value of pasturing animals. In its findings in the August 2014 Memorandum the Court found that Max Silva personally contracted to place certain heifers on property controlled or

owned by McCall. This finding was based on the testimony presented at that time that the “MS” brand was on the cattle, leading this Court to find that those cattle belonged to Max Silva, personally.

Having now heard additional testimony, the Court reverses that finding. The “MS” brand stands for “Manuel Silva and Sons” and is the brand used on Silva Dairy cattle. A brand is presumptive, but not conclusive, proof of ownership. At the last trial there was limited evidence about the source and number of the heifers. At this trial it is uncontroverted that the pastured cattle came from the Silva Dairy herd and McCall knew that fact. Detailed evidence was presented concerning the dates of arrival of the cattle to McCall (Ray Broner’s testimony). McCall provided detailed testimony about his damage calculation. The Court finds that testimony credible. The Court further finds that this claim is against Silva Dairy, not Max Silva individually. There are several reasons why the Court reaches this conclusion. First, as noted, the brand has been explained—*i.e.* it does not stand for “Max Silva.” Second, there is clear testimony that the cattle came from the Silva Dairy herd. Third, some of the cattle were pastured on Clear Creek’s property and that company offset a bill for Silva Dairy (spreading compost) against the pasture obligation. McCall, as a principal in Clear Creek, reimbursed that company with full knowledge of the Silva Dairy offset, leaving this Court to conclude that the pasture agreement was truly with the Dairy, not Max Silva.

In summary, the Court finds that the pasture obligation is that of Silva Dairy. The claim of \$52,386.90 is reasonable and should be offset against Silva Dairy’s management claim. Prejudgment interest shall not be awarded for the same reasons given regarding Silva Dairy’s management fee claim.

3. The \$10,000 loan issue.

On August 18, 2010 McCall's wife wrote a check to Max Silva for \$10,000 to be used as a retainer for a bankruptcy attorney for Silva Dairy. The memo line on the check references "facility rent." McCall sued Max Silva individually in Magistrate Court in CV 13-4728 for \$10,000 plus interest claiming the monies had not been repaid. The Magistrate found on cross motions for summary judgment that this was a loan to Max Silva but that there was no contract between the parties because there was never a time for repayment of the loan. The Court nevertheless awarded judgment against Silva on an unpled unjust enrichment theory, and awarded prejudgment interest of approximately \$4600 and attorney fees and costs of approximately \$6,000, finding that this was a commercial transaction. Silva appealed to this court which reversed and remanded that decision, determining that Idaho law permitted a court to find a contract when no time for repayment is specified finding that the magistrate should consider the reasonable time for repayment. After that opinion issued, the parties stipulated that the magistrate case should be consolidated with this case.

This Court agrees with the Magistrate that this check represents a loan to Max Silva, individually. McCall knew that Silva Dairy would be filing a bankruptcy and it would be unreasonable to expect repayment from a bankrupt entity. The Court also finds that there was a contract for repayment. That term is implied given the relationship of the parties. McCall testified in this trial that he thought the money "would be paid back in 5-10 years and that he didn't intend it as a gift."

Regardless, the Court finds that the actual conduct of the parties resolves this issue. McCall leased Silva Dairy No. 1, owned by Silva Land and owed rent for that.

The notation on the check—“facility rent”—is clear evidence that the parties intended that the \$10,000 be repaid as an offset from monies owed by McCall to Silva Dairy. McCall’s own records support this conclusion. His JT Livestock ledger (Max Silva Ex. B) confirms that the check was for rent. His profit loss statement—(Max Silva Exhibit C)—shows a rent deduction in 2010 for \$10,000. His ledger entitled “Max Silva (JT) Payments”, McCall Exhibit 125, Beta 1176, likewise shows that the \$10,000 advance was treated as facility rent. It is irrelevant whether the loan was actually made for the benefit of Max Silva, Silva Dairy or even Silva Land because that loan has been repaid. The Court finds that the loan was offset by McCall against McCall’s lease obligation to Silva Dairy and therefore he cannot recover. Because the loan has been repaid McCall is not entitled to prejudgment interest.⁴

The Court agrees with the Magistrate that this was a commercial transaction and therefore Max Silva may be entitled to an award of attorney fees for defending this matter. However, this subject will be further discussed in the Attorney Fee section of this Memorandum.

5. McCall’s \$55,000 claim.

McCall asserts a claim of \$55,207.28 (McCall Exhibit 125) for monies paid on behalf of Silva. This claim is for repairs, monies paid for Silva feed, or a pasture “setoff.” McCall leased Dairy No. 1. The property should have been a fully functional facility to milk cows and care for related cattle. It was not. Thereafter, the expense of maintaining the facility belonged to McCall. McCall agreed to supply all of the feed

⁴ There is no claim in this case that McCall owes rent to Silva Land. Such a claim would not in any event be before the Court because Silva Land is not part of this case at this juncture. It is absolutely clear to the Court that even if McCall owes additional rent that the \$10,000 obligation itself was paid by the end of 2010.

necessary for his cattle and to pay for the milkers. Silva Dairy agreed to provide general supervision of the herd and perform the tasks identified in subsection 1 of this opinion. McCall did not agree to provide any feed for Silva Dairy's herd.

McCall spent \$3000 to fix holding corals when he first moved cattle to the premises. There is no evidence in this record upon which the Court can conclude that this was an obligation of Silva Dairy. Rather, the Court finds that it was an obligation of Silva Land. Since Silva Land is no longer a party in this action, this claim is denied.

McCall spent \$6,000, \$12,275.90, \$13,416.57 and \$8,375.40 (totaling \$40,067.87) for feed for Silva Dairy's herd. It is truly unclear why McCall paid these sums inasmuch as he claims that he purchased other feed for his cattle in addition to these sums. He explained this in part at trial stating that if Silva Dairy didn't "survive" then he would have no one to care for his cattle. Regardless of whether this claim is analyzed as an implied contract for repayment, unjust enrichment, or quantum meruit, the value to Silva Dairy is the same. Payment of these monies were not a gift and the acquired feed certainly benefited Silva Dairy. The Court finds that Silva Dairy owes McCall \$40,067.87 for this feed which directly benefited the Silva Dairy herd.

McCall expended monies to Automated Dairy Systems between July and December 2010 to repair the milking barn. McCall concedes that monies spent in October and November were not an obligation of Silva Dairy. The monies spend in July and August 2010 were either for repairs or supplies. McCall has not proven to this Court that any of these payments were the obligation of Silva Dairy. All of the Automated Dairy claims are denied.

Silva Dairy spread compost on property belonging to Clear Creek Mortgage in 2011. Some of Silva Dairy's cattle were pastured on some of Clear Creek Mortgage's property and it charged McCall a "yardage" fee. McCall claims Silva Dairy owes McCall \$6,531 for ½ of this fee. Here again, the parties never agreed on these charges or even discussed them. There is no doubt that McCall believed he had an obligation to repay Clear Creek, but the Court can find no evidence in this record that Silva Dairy knew of this arrangement until this lawsuit began. Certainly Silva Dairy benefited from McCall's payment of a potential obligation for pasture rent, but the Court denies this claim for the simple reason that McCall "volunteered" this payment and that equity does not justify reimbursement in this case.⁵

In summary, McCall is awarded \$40,067.87 for this category of claims which shall be offset against the management fee award to Silva Dairy.

6. McCall's Conversion Claim.

It is undisputed that neither McCall nor Silva Dairy had any obligation to provide feed for each other's cattle. However, it is also undisputed that feed was intermixed between the herds. Tony Silva, who fed the cattle, admitted this. Mike Vander Pol, Silva Dairy's nutritionist, candidly stated that they intentionally intermixed feed to achieve the right "balance" of nutrients. This was necessary, in part, because of Silva's claim that the McCall hay was "inferior." McCall himself acknowledges that Silva Dairy was using his feed for its cattle. This issue came to a head in the Spring of 2012 when McCall observed that his feed costs were exorbitant. Nevertheless, Silva Dairy

⁵ As a collateral matter, Silva and Silva Dairy have argued that the pasture claim was "settled" when Clear Creek sent a check to Silva Dairy to \$2,642.48 on July 3, 2012. See Max Silva Ex. M. The Court disagrees. There is nothing about this transaction establishing that the parties treated this as an accord and satisfaction, a compromise, a settlement of mutual accounts, or for that matter a settlement of any kind.

continued to feed McCall's herd, and McCall continued to supply feed, into August 2012 when the business relationship finally ended.

McCall claims that Silva Dairy "converted" several hundred thousand dollars of his feed. Silva Dairy denies this allegation and asserts that McCall's methodology in computing this claim is factually erroneous, and that Silva Dairy in fact used some of its feed grown on the Silva Land farm to feed McCall's cattle. The parties spent an substantial amount of time in this trial attempting to prove their claims by resorting to theoretical calculations of what cattle should have eaten, what they should have been fed, and what the feed was worth over the 28 months that this relationship existed (without providing clear testimony of the market value of feed during any given month). Unfortunately, there is little, if any, hard evidence of the amount of McCall's feed consumed by Silva Dairy cattle, and vice versa. That fact, however, does not preclude the Court from determining whether there is merit to McCall's claim.

At the outset it is important to note that McCall's claim is not truly one of conversion. Technically, conversion requires proof that a defendant took or kept a plaintiff's property without a right to do so. Silva Dairy did not do that. Rather, McCall's claim is that Silva Dairy "failed to return borrowed property." This is a form of conversion that would support McCall's damage claim if proved.

McCall's conversion claim is supported by testimony of McCall himself and witness Onaindia. Both witnesses' approach involves taking the total purchases of feed as shown on McCall's general ledger, determining what the cattle should have eaten either based upon what a nutritionist has recommended (or in Onaindia's case based upon his opinion of what an animal "should" eat (with appropriate market values applied

to the various commodities), and subtracting that number from the total purchases. This sum, they claim, represents the “missing feed” which arguably was misappropriated by Silva Dairy. McCall’s calculations are summarized in McCall Ex. 132. As the Court understands it, McCall himself claims that \$1,267,911 of feed was converted. However, his calculations show that \$386,047 of feed remained at the dairy at the termination of the business relationship. Therefore, if the Court were to accept his calculations, his net claim is the difference between these figures, or \$881,864.

There are several problems with McCall’s methodology. First, it is clear that his assumption about “what should have been fed” was based upon an erroneous interpretation of the nutritionist’s recommendations. Mr. Vanderpols’ rebuttal testimony clearly pointed out that the figures used by McCall were not correct. Second, because commodity prices varied over the 28 months at issue, the damage calculation should be based upon the value of feed converted based upon the actual cost of that feed, not based upon values of the commodities as of September 2012. However, the Court finds that although commodity prices varied and the feed projections were technically erroneous, that those differences would certainly not have exceeded 50%. Damages of this type must be proved with reasonable certainty. Recognizing that there are in fact errors in McCall’s methodology, the Court nevertheless finds as a fact that Silva Dairy converted **at least** \$440,000 of McCall’s feed during this period **according to McCall’s calculations** (applying a 50% error).

Onaindia’s approach is similar to that of McCall. He examined the actual profit and loss ledgers and spot checked invoices, concluding that during the relevant period that McCall spend \$2.4 to \$2.5 million on feed. He then determined based upon his

knowledge of the industry and an examination of the nutritionist recommendations that it should have cost approximately \$1.6 million to feed the cattle during this period, leaving an unexplained “gap” of \$800,000 to \$900,000. He then went further and examined Silva’s financial documents and concluded the reported cost of feeding its cattle was **understated** by approximately the same number. As he explained, even though it is difficult to precisely reconcile all of these numbers, the fact that these figures are in the same ballpark gives credence to his own calculations. The Court finds that Onaindia’s testimony is **extremely credible**. Silva Dairy asserts that his testimony is not credible because his associated company (Bettencourt Dairy) borrowed money thru McCall’s company. That fact does not disqualify him from giving credible evidence. The Court does not find that this business relationship affects his credibility. Mr. Onaindia is an experienced banker and dairyman and this Court accepts his opinion as factual and accurate. After deducting the ending inventory--\$386,047—and using his lower number--\$800,000—the Court finds that Silva Dairy converted **at least** \$413,953 of McCall’s feed.

The Court recognizes that Silva Dairy asserts that these calculations are faulty because McCall had other cattle during this period and that some of the claimed gross feed expenditures were for those cattle. (See Silva Dairy Ex. 25, p. 89) McCall unequivocally testified to the contrary and stated that his feed purchases were only for the cattle at Silva Dairy. Even if the Court were to find that some of the \$2.6 million feed purchases were for other cattle, that expenditure is de minimus and would not change the Court’s findings. The amount of the conversion claim--\$413,953-- shall be offset against Silva Dairy’s management fee claim.

CONCLUSION

McCall has established that Silva Dairy converted some of his feed and owes money for pasture and purchase of feed for Silva Dairy. As stated, the Court finds that the conversion claim is in the neighborhood of \$400,000, the pasture claim is \$52,386.90 and the remaining claims total \$40,067.87. McCall's total claims against Silva Dairy are therefore at least \$492,464.77. The Court has found that the management fee claim is \$204,977.65. Because McCall's claims exceed those of Silva Dairy by nearly \$287,487.12, Silva Dairy cannot recover against McCall and its claim shall be dismissed with prejudice.⁶ Moreover, even though McCall would otherwise be entitled to a judgment against Silva Dairy for \$287,487.12, because Silva Dairy is in a confirmed Chapter 12 bankruptcy case, this Court has no power to enter such a judgment. Therefore McCall's claims against Silva Dairy shall be dismissed with prejudice.

McCall has not proven his claim against Max Silva regarding the \$10,000 loan inasmuch as the Court has found that that loan has been paid. Case CV 2013-4728 shall be dismissed with prejudice.

The Court previously granted Summary Judgment to McCall on his claims against Max Silva pursuant to an order dated February 10, 2015. That Order directed Judgment for \$85,408.22 as of October 31, 2014 plus interest to the date of the Order at 12% per annum and for \$19,362.33 as of October 31, 2014 plus interest to the date of the Order.⁷ No judgment was ever entered. Judgment shall now issue in favor of McCall

⁶ Even if this Court were to accept 100% of Silva Dairy's claim--\$359,986.59—McCall's offset claim still exceeds that of Silva Dairy and thus it still is not entitled to any recovery.

⁷ Technically the Order does not specify interest at 12% from October 31, 2014 to date of Judgment. But at oral argument McCall stated that he did not expect Silva to pay interest at 12% after the date of oral

against Max Silva for \$104,770.55 plus 12% interest from October 31, 2014 to February 9, 2015, *nunc pro tunc*.

ATTORNEY FEES AND COSTS

All of the claims involved in these cases are commercial transactions within the meaning of I.C. 12-120(3). All parties have requested attorney fees and costs in their pleadings. By its Order dated February 10, 2015 the Court reserved its ruling on the fee claim of McCall against Max Silva. In CV 2013-4728 the Court in its appellate capacity reversed the award of attorney fees to McCall. Presumably all parties will request attorney fees and costs in these various cases. Accordingly the Court elects to address the parties' entitlement to those fees and costs at this time.

A prevailing party is entitled to an award of attorney fees and costs of right if a statute so provides. The only statutory basis for an award of fees in this case is I.C. 12-120(3). The Court's determination of whether a party is a prevailing party is governed by I.R.C.P. 54(d)(1)(B) and applicable case law. In this case the Court finds that no party is entitled to attorney fees or costs.

Silva Dairy, LLC proved entitlement to some of its claim, but that claim was more than offset against McCall's claims. Thus Silva Dairy obtained no relief and is not a prevailing party.

McCall proved a portion of his conversion, pasture, and miscellaneous claims but obtained no judgment against Silva Dairy, LLC. He did not factually prevail on Silva Dairy's claim and knew that he could never prevail against Silva Dairy on his affirmative

argument, but rather at the judgment rate. Therefore the Court will enter Judgment *nunc pro tunc* to February 9, 2014 and the judgment will bear interest at the statutory rate from that time.

claims (except to the point of offset). The Court finds in its discretion that he is not a prevailing party.

Max Silva is a prevailing party in CV 2013-4728 because the claim against him was dismissed. Clearly, McCall is not a prevailing party in that case. McCall is a prevailing party in his claim for the sale of cattle. Max Silva is not. All of these claims were consolidated. The rule provides that the Court “may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.” (Emphasis added). Because these cases were consolidated for trial, the action includes ALL of these cases. The claims and defenses in these matters were so intermixed that it would be virtually impossible to attempt to reasonably apportion fees to Max Silva in the \$10,000 loan case and McCall in the \$104,770.55 case. The amount of money involved is not determinative of the true nature of these parties’ claims. Indeed, McCall did not recover what he originally sought in either case.

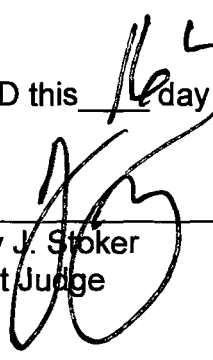
The Court is mindful that it must determine “who prevailed in the action.” In its discretion the Court determines that even though McCall obtained a judgment, that the fees he might be awarded would be offset by the fees incurred by Silva in defending the \$10,000 loan case and the pasture and other claims made against him. Therefore, McCall and Silva will bear their own costs and fees in these two cases.

Further, the Court finds for these same reasons an apportionment or award of costs of right is inappropriate. Both Silva Dairy and McCall employed experts in this case. Assuming that either party files a claim for discretionary costs, the Court would find that such expenditures were necessary in this case, but not exceptional. This type

of expert testimony would be expected in a commercial case of this nature. Therefore all parties will bear their own costs and attorney fees.

An appropriate judgment shall enter.

DATED this 16th day of July, 2015.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of July 2015, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

James Meservy
P.O. Box 168
Jerome, Idaho 83338

- U.S. Mail
- Hand delivered
- Faxed
- Court Folder

Steven Taggart
P.O. Box 3005
Idaho Falls, Idaho 83402

- U.S. Mail
- Hand delivered
- Faxed
- Court Folder

Nathan Olsen
485 E. Street
Idaho Falls, Idaho 83402

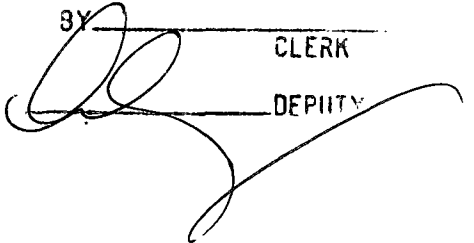
- U.S. Mail
- Hand delivered
- Faxed
- Court Folder

Brad Dixon
101 S. Capitol Blvd, Ste. 1900
Boise, Idaho 83702
(Courtesy copy)

- U.S. Mail
- Hand delivered
- Faxed
- Court Folder


Clerk

2015 JUL 16 PM 3:16

BY  _____
CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

JACK MCCALL,
Plaintiff and Counterdefendant,

vs.

SILVA DAIRY LLC AND MAX SILVA,
Defendants and
Counterclaimants.

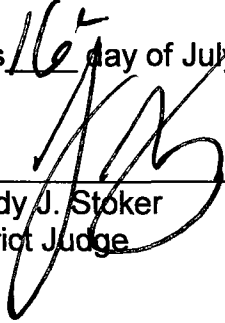
Case No. CV 2013-1263 (Consolidated)
CV 2013-4728 (Consolidated)

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. Silva Dairy's claims against Jack McCall are DISMISSED WITH PREJUDICE.
2. Jack McCall's claims against Silva Dairy, LLC are DISMISSED WITH PREJUDICE.
3. Jack McCall shall have judgment against Max Silva, individually, for the sum of \$104,770.55 *nunc pro tunc* to February 9, 2015. This Judgment shall bear interest at the statutory rate for judgments as of that date. All other claims against Max Silva are DISMISSED WITH PREJUDICE.
4. All parties in this action shall bear their own costs and attorney fees.

DATED this 16th day of July, 2015.



Randy J. Stoker
District Judge

JUDGMENT

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of July 2015, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

James Meservy
P.O. Box 168
Jerome, Idaho 83338

- U.S. Mail
- Hand delivered
- Faxed
- Court Folder

Steven Taggart
P.O. Box 3005
Idaho Falls, Idaho 83402

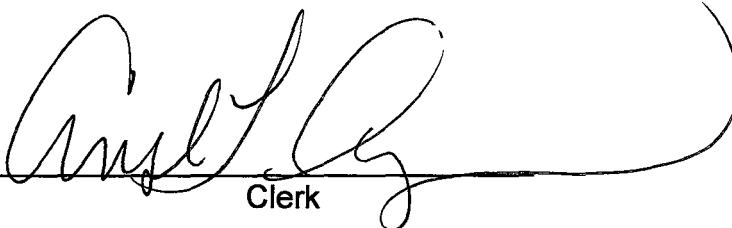
- U.S. Mail
- Hand delivered
- Faxed
- Court Folder

Nathan Olsen
485 E. Street
Idaho Falls, Idaho 83402

- U.S. Mail
- Hand delivered
- Faxed
- Court Folder

Brad Dixon
101 S. Capitol Blvd. Ste. 1900
Boise, Idaho 83702
(Courtesy copy)

- U.S. Mail
- Hand delivered
- Faxed
- Court Folder


Clerk

JUDGMENT

Steven L. Taggart, ISB No. 8551
MAYNES TAGGART PLLC
P. O. Box 3005
Idaho Falls, ID 83403
Telephone: (208) 552-6442
Facsimile: (208) 524-6095
Email: staggart101@gmail.com

Attorneys for D Silva Dairy, LLC

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2015 AUG 27 PM 2: 06

BY _____ CLERK

M DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

GREEN RIVER RANCHES, LLC,

Plaintiff,

vs.

SILVA LAND COMPANY, LLC, et al.,

Defendants.

JACK McCALL,

Plaintiff,

vs.

MAX SILVA, an individual; and SILVA
DAIRY, LLC, an Idaho limited liability
company,

Defendants.

JACK McCALL,

Plaintiff,

vs.

SILVA LAND COMPANY, LLC, et al,

Defendants.

Consolidated Case No. CV-2013-1263

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT JACK MCCALL AND
THE CLERK OF THE COURT FOR THE FIFTH JUDICIAL DISTRICT



NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Silva Dairy, LLC, appeals against the above-named respondent, Jack McCall, to the Idaho Supreme Court from the Judgment rendered by the Honorable District Judge Randy J. Stoker in the above entitled action on July 16, 2015.

2. Appellant has a right to appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is appealable under and pursuant to Rule 11(a)(1), I.A.R.

3. The preliminary statement of the issues on appeal is as follows:

A. Did the district court error in entering judgment against appellant in favor of Mr. McCall in the amount of \$40,067.87 for feed in respect to Mr. McCall's \$55,000 claim?

B. Did the district court error in entering judgment against appellant in favor of Mr. McCall in the amount of \$413,953 for conversion of his feed?

C. Did the district court error in not awarding Silva Dairy, LLC its attorney fees and costs against Mr. McCall?

4. Has an order been entered sealing all or any portion of the record? No

5. Is a reporter's transcript requested? Yes, for the following trial dates:
June 24-26, 2015

6. In that the above described action involves a number of consolidated cases and their multiple parties and claims, the appellant limits its requests to the following documents to be included in the clerk's record pertaining to the issues on appeal:

Twin Falls County Case No. CV-2013-1263 (consolidated)

01/07/2014 Order to Consolidate Cases and Intervene

06/09/2014 Motion to Amend Complaint or in the Alternative, to Substitute named Defendants for John Does

06/12/2014 McCall's Proposed Findings of Fact and Conclusions of Law

06/18/2014 Memorandum in Opposition to Defendant Jack McCall's Motion to Amend Complaint

06/18/2014 Pretrial Brief and Supplemental Memorandum on Motion to Quash

06/20/2014 Reply to Memorandum in Opposition of McCall's Motion to Amend Complaint

08/14/2014 Memorandum Opinion

02/10/2015 Order on Pending Motions and Petitions and Pre-Trial Order

05/20/2015 Final Pretrial Order

06/19/2015 Stipulation of the Parties as to Admission of Exhibits

06/19/2015 Defendants/Counterclaimants' Joint Pre-Trial Brief

06/19/2015 Plaintiff's Pretrial Memorandum

07/16/2015 Memorandum Opinion

07/16/2015 Judgment

Twin Falls County Case No. CV-2013-3154 (consolidated into CV-2013-1263)

08/01/2013 Complaint for Claim and Delivery and for Damages

09/06/2013 Answer, Counter-Claim and Third Party Complaint

10/02/2013 Jack McCall, Jean McCall and JT Livestock's Reply to Counterclaim and Answer to Third Party Complaint

7. The appellant requests the following documents offered or admitted as exhibits to be copied and sent to the Supreme Court:

June 24-26, 2015 Trial
 SD07 – 2011 Financial Statement
 SD 08 – 2012 Financial Statement
 SD15 – Self Raised Feed Invoices
 SD 17 – Vander Pol Feed Rations for JT Livestock
 SD22 – Clint Van Biezen Email
 SD23 – The Scolar Company Checks

SD 24 – McCall 2010 Tax Return
SD 25 – McCall 2011 Tax Return
SD 26 – McCall 2012 Tax Return
SD 27 – McCall 2010 Feed Invoices
SD 28 – McCall 2011 Feed Invoices
SD 29 – McCall 2012 Feed Invoices
SD 30 – 2010 McCall Feed Invoices Summary
SD 31 – 2011 McCall Feed Invoices Summary
SD 32 – 2012 McCall Feed Invoices Summary
SD 33 – 2010-2012 Grand Total McCall Feed Invoices
SD 34 – McCall’s Expert Disclosure
SD 39 – 2010 Profit & Loss for JT Livestock
SD 40 – 2011 Profit & Loss for JT Livestock
SD 41 – 2012 Profit & Loss for JT Livestock
McCall 132 – Bates Nos. 1509-1544 – Feed Conversion Analysis and Summary

8. I certify:

A. That a copy of this notice of appeal has been served on the reporter of

whom a transcript has been requested as named below at the address set out below:

Tracy E. Barksdale
P.O. Box 126
Twin Falls, ID 83303-0126
tbarksdale@co.twin-falls.id.us

B. That a transcript has been requested and the clerk of the district court has been paid the estimated fee for preparation of the reporter’s transcript.

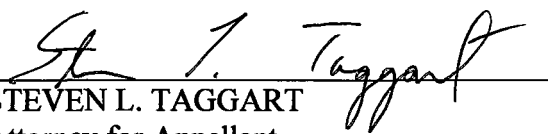
C. That the estimated fee for preparation of the clerk’s record has been paid.

D. That the appellate filing fee has been paid.

E. That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATE: August 27, 2015

MAYNES TAGGART PLLC


STEVEN L. TAGGART
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 27, 2015, I mailed a true and correct copy of the foregoing document to the designated parties as follows:

Via U.S. Mail First Class Prepaid

James C. Meservy, Esq.
Williams, Meservy & Lothspeich, LLP
P.O. Box 168
Jerome, ID 83338

Via Hand Delivery

Clerk of the Twin Falls County Court
425 Shoshone St. N.
Twin Falls, ID 83301

Via U.S. Mail First Class Prepaid

Nathan M. Olsen, Esq.
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83402

Via U.S. Mail First Class Prepaid

Tracy E. Barksdale
P.O. Box 126
Twin Falls, ID 83303-0126

BY: Rosalie J. Wanlass
Rosalie Wanlass

In the Supreme Court of the State of Idaho

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED
2015 OCT 14 AM 8:38

GREEN RIVER RANCHES, LLC, _____)

Plaintiff,)

v.)

SILVA LAND COMPANY, LLC, et al.,)

Defendant.)

-----)
JACK MCCALL,)

Plaintiff-Respondent,)

v.)

SILVA DAIRY, LLC, an Idaho limited liability company,)

Defendant-Appellant,)

and)

MAX SILVA, an individual,)

Defendant.)

-----)
GREEN RIVER RANCHES, LLC, an Idaho Limited liability company,)

Plaintiff-Counterdefendant,)

v.)

SILVA LAND COMPANY, LLC, et al.,)

Defendants-Counterclaimants.)


-----)
JACK MCCALL,)

Plaintiff-Respondent,)

v.)

MAX SILVA, an individual;)

Defendant-Appellant,)

BY _____)
)
CLERK)
DEPUTY)

ORDER CONSOLIDATING APPEAL
NOS. 43547 AND 43548 FOR
PURPOSES OF RECORD AND
TRANSCRIPTS *ONLY*

Supreme Court Docket No. 43547-2015
Twin Falls County No. CV-2013-1263

Supreme Court Docket No. 43548-2015
Twin Falls County No. CV-2013-1263

Twin Falls County No. CV-2013-3154

and)
)
SILVA DAIRY, LLC, an Idaho limited)
liability company,)
)
Defendant.)

-----)
JACK MCCALL,)
)
Plaintiff-Respondent,)

Twin Falls County No. CV-2013-4728

v.)
)
SILVA LAND COMPANY, LLC, et al.,)
)
Defendant-Appellant.)

-----)
JACK MCCALL, an individual and doing)
business as JT LIVESTOCK,)
)
Plaintiff-Respondent,)

Twin Falls County No. CV-2013-4732

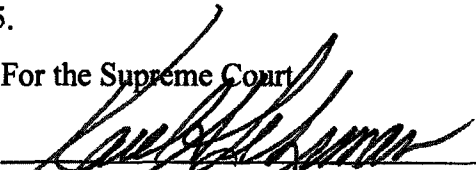
v.)
)
MAX SILVA,)
)
Defendant-Appellant.)

WHEREAS, it appearing that the above entitled appeals should be consolidated for preparation of the Clerk's Record and Reporter's Transcripts *only*; therefore,

IT HEREBY IS ORDERED that appeal Nos. 43547 and 43548 shall be CONSOLIDATED *ONLY* for preparation of the Clerk's Record and Reporter's Transcripts under appeal No. 43547.

IT FURTHER IS ORDERED that the District Court Clerk shall prepare a CLERK'S RECORD, which shall include the documents requested in these Notices of Appeal, together with a copy of this Order. Furthermore, the Court Reporter shall prepare the REPORTER'S TRANSCRIPTS, which shall include the transcripts requested in these Notices of Appeal.

DATED this 5th day of October, 2015.

For the Supreme Court

Karel A. Lehrman, Chief Deputy Clerk for
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter
District Judge Randy J. Stoker

Entered on JSI
By: kg

IN THE SUPREME COURT OF THE STATE OF IDAHO

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

NOV 10 AM 8:12
43547
43548

GREEN RIVER RANCHES, LLC, an)
Idaho limited liability company,)

Supreme Court

Plaintiff,)

BY

vs.)

Consolidated Case No.

Twin Falls CV-2013-1263

CLERK

DEPUTY

SILVA LAND COMPANY, LLC, et al.,)

NOTICE OF LODGING

Defendants.)

JACK McCALL,)

Plaintiff,)

vs.)

MAX SILVA, an individual; and)
SILVA DAIRY, LLC, an Idaho)
limited liability company,)

Defendants.)

JACK McCALL, an individual and)
doing business as JT LIVESTOCK,)

Plaintiff,)

vs.)

MAX SILVA, an individual,)

Defendants.)

To: THE CLERK OF THE IDAHO SUPREME COURT

NOTICE IS HEREBY GIVEN that on November 2, 2015, I
lodged a transcript of 604 pages in length for the
above-referenced appeal with the District Court Clerk of Twin
Falls County in the Fifth Judicial District. The transcript
includes: Court trial (day one) dated June 26, 2014; Court
trial (day one) dated June 27, 2014; Motions for Summary
Judgment - Arguments and Orders dated February 9, 2015.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A PDF copy of the transcript will be emailed to
sctfilings@idcourts.net.

TRACY E. BARKSDALE, RPR, CSR 999

IN THE SUPREME COURT OF THE STATE OF IDAHO

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

GREEN RIVER RANCHES, LLC, an)
Idaho limited liability company,)

Supreme Court 43547
43548

NOV 10 AM 8:12

Plaintiff,)

BY

) Consolidated Case No.

vs.)

) Twin Falls CV-2013-1263

CLERK

SILVA LAND COMPANY, LLC, et al.,)

NOTICE OF LODGING

DEPUTY

Defendants.)

JACK McCALL,)

Plaintiff,)

vs.)

MAX SILVA, an individual; and)
SILVA DAIRY, LLC, an Idaho)
limited liability company,)

Defendants.)

JACK McCALL, an individual and)
doing business as JT LIVESTOCK,)

Plaintiff,)

vs.)

MAX SILVA, an individual,)

Defendants.)

To: THE CLERK OF THE IDAHO SUPREME COURT

NOTICE IS HEREBY GIVEN that on November 2, 2015, I
lodged a transcript of 718 pages in length for the
above-referenced appeal with the District Court Clerk of Twin
Falls County in the Fifth Judicial District. The transcript
includes: Court trial (day one) dated Wednesday, June 24,
2015; court trial (day two) dated Thursday, June 25, 2015;
court trial (day three) dated Friday, June 26, 2015.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A PDF copy of the transcript will be emailed to
sctfilings@idcourts.net.

TRACY E. BARKSDALE, RPR, CSR 999

In the Supreme Court of the State of Idaho

CLERK OF DISTRICT COURT
TWIN FALLS COUNTY, IDAHO

2015 DEC 10 PM 4:49

BY _____
CLERK
DEPUTY

GREEN RIVER RANCHES, LLC, _____)
)
Plaintiff,)
)
v.)
)
SILVA LAND COMPANY, LLC, et al.,)
)
Defendant.)
-----)
JACK MCCALL,)
)
Plaintiff-Respondent,)
v.)
)
SILVA DAIRY, LLC, an Idaho limited)
liability company,)
)
Defendant-Appellant,)
)
and)
)
MAX SILVA, an individual,)
)
Defendant.)

ORDER TO AUGMENT PRIOR
APPEAL NO. 42886

Supreme Court Docket No. 43547-2015
Twin Falls County No. CV-2013-1263
(consolidated Twin Falls County Nos.
CV-2013-3154 / CV-2013-4728 /
CV-2013-4732)

A Clerk's Record was filed *electronically* with this Court in prior appeal No. 42886, *Green River Ranches, LLC v. Silva Land Company, LLC* (Twin Falls County Nos. CV-2013-1263, CV-2013-4732 and CV- 2013-3154); therefore,

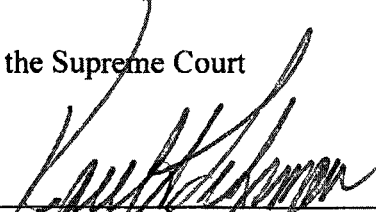
IT HEREBY IS ORDERED that the above entitled appeal shall be AUGMENTED to include the Clerk's Record filed *electronically* with this Court in prior appeal No. 42886, *Green River Ranches, LLC v. Silva Land Company, LLC* (Twin Falls County Nos. CV-2013-1263, CV-2013-4732 and CV- 2013-3154).

IT FURTHER IS ORDERED that the District Court Clerk shall prepare and file a LIMITED CLERK'S RECORD with this Court, which shall contain the documents requested in these Notice(s) of Appeal, together with a copy of this Order, but shall not duplicate any documents filed in prior appeal No. 42886.

IT FURTHER IS ORDERED that the Court Reporter shall prepare and lodge the REPORTER'S TRANSCRIPTS, which shall include the proceedings requested in the Notice of Appeal in this case. The CLERK'S RECORD AND REPORTER'S TRANSCRIPTS shall be filed with this Court after the settlement period expires.

DATED this 9th day of December, 2015.

For the Supreme Court


Karel A. Lehrman, Chief Deputy Clerk for
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter Tracy Barksdale
District Judge Randy J. Stoker

Entered on JSI

By: kg.

In the Supreme Court of the State of Idaho

DISTRICT COURT
TWIN FALLS COUNTY, IDAHO

2015 DEC 10 PM 1:49

BY _____

CLERK

DEPUTY

GREEN RIVER RANCHES, LLC, an Idaho)
Limited liability company,)

Plaintiff-Counterdefendant,)

v.)

SILVA LAND COMPANY, LLC, et al.,)

Defendants-Counterclaimants.)

-----)
JACK MCCALL,)

Plaintiff-Respondent,)

v.)

MAX SILVA, an individual;)

Defendant-Appellant,)

and)

SILVA DAIRY, LLC, an Idaho limited)
liability company,)

Defendant.)

-----)
JACK MCCALL,)

Plaintiff,)

v.)

SILVA LAND COMPANY, LLC, et al.,)

Defendants.)

-----)
JACK MCCALL, an individual and doing)
business as JT LIVESTOCK,)

Plaintiff-Respondent,)

v.)

MAX SILVA,)

Defendant-Appellant.)

ORDER TO AUGMENT PRIOR
APPEAL NO. 42886

Supreme Court Docket No. 43548-2015
Twin Falls County No. CV-2013-1263

Twin Falls County No. CV-2013-3154

Twin Falls County No. CV-2013-4728

Twin Falls County No. CV-2013-4732

A Clerk's Record was filed *electronically* with this Court in prior appeal No. 42886, *Green River Ranches, LLC v. Silva Land Company, LLC* (Twin Falls County Nos. CV-2013-1263, CV-2013-4732 and CV- 2013-3154); therefore,

IT HEREBY IS ORDERED that the above entitled appeal shall be AUGMENTED to include the Clerk's Record filed *electronically* with this Court in prior appeal No. 42886, *Green River Ranches, LLC v. Silva Land Company, LLC* (Twin Falls County Nos. CV-2013-1263, CV-2013-4732 and CV- 2013-3154).

IT FURTHER IS ORDERED that the District Court Clerk shall prepare and file a LIMITED CLERK'S RECORD with this Court, which shall contain the documents requested in this Notice of Appeal, together with a copy of this Order, but shall not duplicate any documents filed in prior appeal No. 42886.

IT FURTHER IS ORDERED that the Court Reporter shall prepare and *lodge* the REPORTER'S TRANSCRIPTS, which shall include the proceedings requested in the Notice of Appeal in this case. The CLERK'S RECORD AND REPORTER'S TRANSCRIPTS shall be filed with this Court after the settlement period expires.

DATED this 9th day of December, 2015.

For the Supreme Court



Karel A. Lehrman, Chief Deputy Clerk for
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter Tracy Barksdale
District Judge Randy J. Stoker

Entered on JSI
By: kg.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

GREEN RIVER RANCHES, LLC,)
Idaho Limited Liability Company,)

Plaintiff/Respondent,)

vs.)

SILVA LAND COMPANY, LLC, an)
Idaho Limited Liability Company;)

Defendant.)

JACK MCCALL,)

Plaintiff/Respondent,)

vs.)

SILVA DAIRY, LLC, an Idaho Limited)
Liability Company,)

Defendant/Appellant,)

and)

MAX SILVA, an Individual,)

Defendant.)

GREEN RIVER RANCHES, LLC, an)
Idaho Limited Liability Company,)

Plaintiff/Counterdefendant,)

vs.)

SILVA LAND COMPANY, LLC, et al.,)

SUPREME COURT NO. 43547-2015
43548-2015
DISTRICT COURT CASE NO. CV 13-1263
CV 13-3154
CV 13-4732

CLERK'S CERTIFICATE

_____ Defendants/Counterclaimants.)
)
 JACK MCCALL,)
)
 Plaintiff/Respondent,)
)
 vs.)
)
 MAX SILVA, an individual,)
)
 Defendant/Appellant,)
)
 and)
)
 SILVA DAIRY, LLC, an Idaho Limited)
 Liability Company,)
)
 Defendant. _____)
)
 JACK MCCALL,)
)
 Plaintiff/Respondent,)
)
 vs.)
)
 SILVA LAND COMPANY, LLC, et al.,)
)
 Defendant/Appellant. _____)
)
 JACK MCCALL, an Individual and)
 d/b/a JT LIVESTOCK,)
)
 Plaintiff/Respondent,)
)
 vs.)
)
 MAX SILVA,)
)
 Defendant/Appellant. _____)

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that the foregoing CLERK'S RECORD on Appeal in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court.

WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 5th day of February, 2016.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

GREEN RIVER RANCHES, LLC,)
Idaho Limited Liability Company,)
)
Plaintiff/Respondent,)

vs.)

SILVA LAND COMPANY, LLC, an)
Idaho Limited Liability Company;)
)
Defendant.)

JACK MCCALL,)
)
Plaintiff/Respondent,)

vs.)

SILVA DAIRY, LLC, an Idaho Limited)
Liability Company,)
)
Defendant/Appellant,)

and)

MAX SILVA, an Individual,)
)
Defendant.)

GREEN RIVER RANCHES, LLC, an)
Idaho Limited Liability Company,)
)
Plaintiff/Counterdefendant,)

vs.)

SILVA LAND COMPANY, LLC, et al.,)

SUPREME COURT NO. 43547-2015
43548-2015
DISTRICT COURT CASE NO. CV 13-1263
CV 13-3154
CV 13-4732

CERTIFICATE OF EXHIBITS

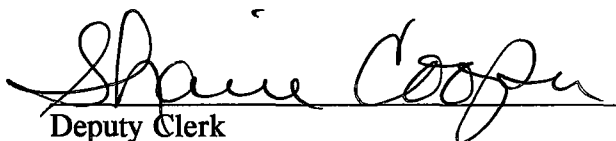
)
<u>Defendants/Counterclaimants.)</u>)
JACK MCCALL,)
)
Plaintiff/Respondent,)
)
vs.)
)
MAX SILVA, an individual,)
)
Defendant/Appellant,)
)
and)
)
SILVA DAIRY, LLC, an Idaho Limited)
Liability Company,)
)
<u>Defendant.</u>)
)
JACK MCCALL,)
)
Plaintiff/Respondent,)
)
vs.)
)
SILVA LAND COMPANY, LLC, et al.,)
)
<u>Defendant/Appellant,</u>)
)
JACK MCCALL, an Individual and)
d/b/a JT LIVESTOCK,)
)
Plaintiff/Respondent,)
)
vs.)
)
MAX SILVA,)
)
<u>Defendant/Appellant.</u>)

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify:

SD07 - 2011 Financial Statement
SD 08 - 2012 Financial Statement
SD15- Self Raised Feed Invoices
SD 17- Vander Pol Feed Rations for JT Livestock
SD22 - Clint Van Biezen Email
SD23 - The Sclar Company Checks
SD 24- McCall2010 Tax Return
SD 25- McCall2011 Tax Return
SD 26- McCall2012 Tax Return
SD 27- McCall2010 Feed Invoices
SD 28 -McCall 2011 Feed Invoices
SD 29- McCall 2012 Feed Invoices
SD 30-2010 McCall Feed Invoices Summary
SD 31-2011 McCall Feed Invoices Summary
SD 32-2012 McCall Feed Invoices Summary
SD 33-2010-2012 Grand Total McCall Feed Invoices
SD 34 - McCall's Expert Disclosure
SD 39-2010 Profit & Loss for IT Livestock
SD 40 - 2011 Profit & Loss for IT Livestock
SD 41-2012 Profit & Loss for IT Livestock
McCall132- Bates Nos. 1509-1544- Feed Conversion Analysis and Summary

In WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 3rd day of February, 2016.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

GREEN RIVER RANCHES, LLC,)
Idaho Limited Liability Company,)
)
Plaintiff/Respondent,)
)

vs.)
)

SILVA LAND COMPANY, LLC, an)
Idaho Limited Liability Company;)
)
Defendant.)
_____)

JACK MCCALL,)
)
Plaintiff/Respondent,)
)

vs.)
)

SILVA DAIRY, LLC, an Idaho Limited)
Liability Company,)
)
Defendant/Appellant,)
)

and)
)

MAX SILVA, an Individual,)
)
Defendant.)
_____)

GREEN RIVER RANCHES, LLC, an)
Idaho Limited Liability Company,)
)
Plaintiff/Counterdefendant,)
)

vs.)
)

SUPREME COURT NO. 43547-2015
43548-2015
DISTRICT COURT CASE NO. CV 13-1263
CV 13-3154
CV 13-4732

CERTIFICATE OF SERVICE

SILVA LAND COMPANY, LLC, et al.,)
)
Defendants/Counterclaimants.)
)
 JACK MCCALL,)
)
 Plaintiff/Respondent,)
)
 vs.)
)
 MAX SILVA, an individual,)
)
 Defendant/Appellant,)
)
 and)
)
 SILVA DAIRY, LLC, an Idaho Limited)
 Liability Company,)
)
Defendant.)
)
 JACK MCCALL,)
)
 Plaintiff/Respondent,)
)
 vs.)
)
 SILVA LAND COMPANY, LLC, et al.,)
)
Defendant/Appellant,)
)
 JACK MCCALL, an Individual and)
 d/b/a JT LIVESTOCK,)
)
 Plaintiff/Respondent,)
)
 vs.)
)
 MAX SILVA,)
)
Defendant/Appellant.)

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District
 of the State of Idaho, in and for the County of Twin Falls, do hereby certify that I have
 personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD

and REPORTER'S TRANSCRIPTS to each of the Attorneys of Record in this cause as follows:

Nathan Olsen
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, ID 83402

Bradley Dixon
GIVENS PURSLEY
601 W. Bannock Street
P. O. Box 2720
Boise, ID 83701-2720

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said this 5th day of February, 2016.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk