

6-5-2017

Medical Recovery Services, LLC v. Lopez Clerk's Record Dckt. 45019

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IN THE SUPREME COURT OF THE STATE OF IDAHO

MEDICAL RECOVERY SERVICES,)	
LLC, an Idaho limited liability)	
company,)	Clerk's Record on Appeal
)	
Petitioner-Appellant,)	Supreme Court Docket No. 45019
)	Lincoln County Court No. CV-2015-78
)	
vs.)	
)	
ROBERT W. LOPEZ,)	
)	
<u>Defendant-Respondent.</u>		

Appeal from the District Court of the 5th Judicial District of the State of
Idaho, in and for the County of Lincoln

HONORABLE John K Butler, DISTRICT JUDGE

Bryan N. Zollinger
Attorney for Appellant
PO Box 50731
Idaho Falls, ID 83405

Robert W. Lopez
Self-Represented Respondent
321 N. Main St.
Dietrich, ID 83324

Other Claims

Date		Judge
6/2/2015	New Case Filed - Other Claims	Mark A. Ingram
	Filing: A - All initial case filings in Magistrate Division of any type not listed in categories B,C,D,G and H(2) Paid by: Medical Recovery Services, LLC (plaintiff) Receipt number: 0000791 Dated: 6/2/2015 Amount: \$166.00 (Check) For: Medical Recovery Services, LLC (plaintiff)	Mark A. Ingram
	Complaint	Mark A. Ingram
	Summons: Document Service Issued: on 6/2/2015 to Robert W Lopez; Assigned to . Service Fee of \$0.00.	Mark A. Ingram
	Civil Disposition entered for: Lopez, Robert W, Defendant; Medical Recovery Services, LLC, Plaintiff. Filing date: 6/2/2015	Mark A. Ingram
	STATUS CHANGED: Closed	Mark A. Ingram
	Plaintiff: Medical Recovery Services, LLC Appearance Bryan N Zollinger	Mark A. Ingram
7/13/2015	Sheriffs Return of Service	Mark A. Ingram
	Summons: Document Returned Served on 7/5/2015 to Robert W Lopez; Assigned to . Service Fee of \$0.00.	Mark A. Ingram
8/11/2015	Application for Entry of Default	Mark A. Ingram
	Affidavit in Support of Application for Default Judgment	Mark A. Ingram
8/14/2015	Order Regarding Default	Mark A. Ingram
9/8/2015	Motion for Reconsideration	Mark A. Ingram
	Brief in Support of Motion for Reconsideration	Mark A. Ingram
9/9/2015	Amended Default Judgment	Mark A. Ingram
9/21/2015	Application for Order of Continuing Garnishment	Mark A. Ingram
	Affidavit in Support of Writ of Execution	Mark A. Ingram
9/25/2015	Writ: Document Service Issued: on 9/25/2015 to Robert W Lopez; Assigned to . Service Fee of \$0.00.	Mark A. Ingram
	Miscellaneous Payment: Writs Of Execution Paid by: Medical Recovery Services, LLC Receipt number: 0001458 Dated: 9/25/2015 Amount: \$2.00 (Check)	Mark A. Ingram
2/1/2016	Unsatisfied Return of Service	Mark A. Ingram
	Writ: Document Returned Served on 10/5/2015 to Robert W Lopez; Assigned to . Service Fee of \$0.00.	Mark A. Ingram
3/14/2016	Hearing Scheduled (Debtors Examination 06/03/2016 10:30 AM)	Mark A. Ingram
	STATUS CHANGED: Closed pending clerk action	Mark A. Ingram
	Notice Of Hearing	Mark A. Ingram
	Notice Of Hearing	Mark A. Ingram
3/21/2016	Application for Order of Examination	Mark A. Ingram
	Application for Order to Allow Telephonic Order of Examination	Mark A. Ingram
	Affidavit in Support of Application for Order to Allow Telephonic Order of Examination	Mark A. Ingram
3/25/2016	Order to Allow Telephonic Order of Examination	Mark A. Ingram
4/1/2016	Order of Examination	Mark A. Ingram

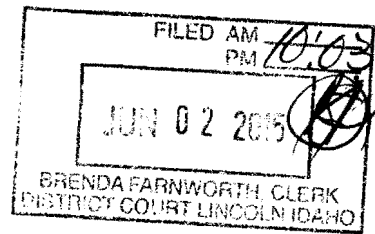
Other Claims

Date		Judge
6/3/2016	Minute Entry	Mark A. Ingram
	Hearing result for Debtors Examination scheduled on 06/03/2016 10:30 AM: Hearing Held	Mark A. Ingram
6/23/2016	STATUS CHANGED: closed	Mark A. Ingram
7/22/2016	Application for Order of Continuing Garnishment	Mark A. Ingram
	Affidavit in Support of Writ of Execution	Mark A. Ingram
	Writ: Document Service Issued: on 7/22/2016 to Robert W Lopez; Assigned to . Service Fee of \$0.00.	Mark A. Ingram
	Miscellaneous Payment: Writs Of Execution Paid by: Medical Recovery Services, LLC Receipt number: 0001017 Dated: 7/22/2016 Amount: \$2.00 (Check)	Mark A. Ingram
8/26/2016	Satisfied Return of Service	Mark A. Ingram
	Writ: Document Returned Served on 8/2/2016 to Robert W Lopez; Assigned to . Service Fee of \$0.00.	Mark A. Ingram
9/6/2016	Application for Award of Supplemental Attorney's Fees	Mark A. Ingram
	Affidavit of Bryan N. Zollinger in Support of Application for Award of Supplemental Attorney's Fees	Mark A. Ingram
	Memorandum of supplemental attorney's fees	Mark A. Ingram
	Notice of hearing	Mark A. Ingram
	Hearing Scheduled (Motion 09/30/2016 11:30 AM)	Mark A. Ingram
	STATUS CHANGED: Closed pending clerk action	Mark A. Ingram
	Notice Of Hearing	Mark A. Ingram
	Application for order to allow telephonic supplemental attorney fees	Mark A. Ingram
	Affidavit in support of application for order to allow telephonic supplemental attorney fees	Mark A. Ingram
9/9/2016	Order to Allow Telephonic Supplemental Attorney Fees	Mark A. Ingram
9/30/2016	Court Minutes	Mark A. Ingram
	Hearing type: Motion	
	Hearing date: 9/30/2016	
	Time: 11:37 am	
	Courtroom:	
	Court reporter:	
	Minutes Clerk: Deysi Garcia	
	Tape Number:	
	Hearing result for Motion scheduled on 09/30/2016 11:30 AM: Hearing Held	Mark A. Ingram
10/6/2016	STATUS CHANGED: closed	Mark A. Ingram
10/13/2016	Order on application for supplemental attorney's fees	Mark A. Ingram
11/23/2016	Notice of appeal	Mark A. Ingram
	Filing: L2 - Appeal, Magistrate Division to District Court Paid by: Zollinger, Bryan N (attorney for Medical Recovery Services, LLC) Receipt number: 0001579 Dated: 11/23/2016 Amount: \$81.00 (Credit card) For: Medical Recovery Services, LLC (plaintiff)	Mark A. Ingram

Other Claims

Date		Judge
11/23/2016	Filing: Technology Cost - CC Paid by: Zollinger, Bryan N (attorney for Medical Recovery Services, LLC) Receipt number: 0001579 Dated: 11/23/2016 Amount: \$3.00 (Credit card) For: Medical Recovery Services, LLC (plaintiff)	Mark A. Ingram
	Appeal Filed In District Court	Mark A. Ingram
	Change Assigned Judge	John K Butler
	STATUS CHANGED: Reopened	John K Butler
	Amended notice of appeal	John K Butler
11/29/2016	Procedural order governing civil appeal from Magistrate Division to District Court	John K Butler
12/5/2016	Transcript on appeal	John K Butler
	Notice of transcript lodged	John K Butler
	Notice of lodging of transcript and order fixing schedule for submission of briefs	John K Butler
1/10/2017	Brief on appeal	John K Butler
2/9/2017	Order re: Respondent's Brief	John K Butler
2/27/2017	Order Submitting Appeal for Decision Without Oral Argument	John K Butler
3/1/2017	Memorandum Decision on Appeal	John K Butler
	Change Assigned Judge	Mark A. Ingram
3/21/2017	Affidavit of Joseph F. Hurley in Support of Memorandum of Cost on Appeal	Mark A. Ingram
	Memorandum of Cost on Appeal	Mark A. Ingram
4/10/2017	Notice of Appeal	Mark A. Ingram
	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Smith, Discoll & Associates, PLLC Receipt number: 0000414 Dated: 4/10/2017 Amount: \$129.00 (Check) For: Medical Recovery Services, LLC (plaintiff)	Mark A. Ingram
	Clerk's Certificate of Appeal	Mark A. Ingram
	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Smith, Driscoll & Associates, PLLC Receipt number: 0000417 Dated: 4/10/2017 Amount: \$100.00 (Check)	Mark A. Ingram
4/17/2017	Order re: Cost on Appeal	John K Butler

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

COMPLAINT

Fee: \$166.00

**THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE**

COMES NOW plaintiff, Medical Recovery Services, LLC, and for a claim against
defendants, alleges as follows:

1. The plaintiff is an Idaho limited liability company qualified to do business in the State of Idaho.
2. The defendant, Robert Lopez, is an individual residing in the State of Idaho.
3. At all times mentioned herein the plaintiff was, and still is, a licensed and bonded collector under the laws of the State of Idaho, and before the commencement of this action the debt herein sued upon was assigned by Anthony J. Anderson M.D. to the plaintiff for the purpose of collection. The plaintiff is now the holder thereof for such purposes.

4. The defendant is indebted to the plaintiff by reason of the allegations herein and owe the plaintiff in the following stated amounts:

ANTHONY J. ANDERSON M.D.

Principal Amount Owing	\$ 215.85
Prejudgment Interest	<u>\$ 69.62</u>
Subtotal	\$ 285.47

TOTAL	\$ 285.47
--------------	------------------

5. The plaintiff is entitled to further prejudgment interest from the date the complaint is filed until judgment is entered.

6. Despite the plaintiff's requests and demands, and without offering any reason or objection to the bill, the defendant has failed to pay the indebtedness in full.

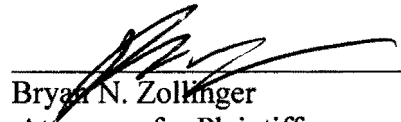
7. To obtain payment of the obligation due, the plaintiff has been required to retain the services of Smith, Driscoll & Associates PLLC, attorneys at law.

8. This action arises from an open account and/or from services provided and written demand for payment on the defendant has been made more than 20 days prior to commencing this action. Additionally, pursuant to Idaho Code § 12-120(1), 12-120(3), and I.R.C.P. 54(e)(1), the plaintiff is entitled to recover the plaintiff's attorney's fees incurred herein in the sum of \$285.47 if judgment is taken by default and such greater amount as may be evidenced to the court if this claim is contested. Pursuant to Idaho Rules of Civil procedure § 54(d)(1) the plaintiff is further entitled to recover the plaintiff's costs incurred herein.

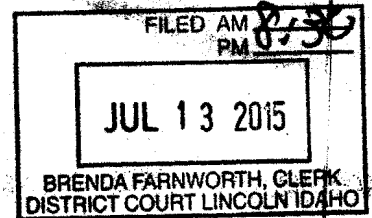
WHEREFORE, the plaintiff demands judgment against the defendant, for the principal sum of \$215.85, together with legal interest on said sum in the amount of \$69.62, the filing fee of \$166.00 and attorney's fees incurred herein in the sum of \$285.47, for a combined total of **\$736.94** plus the costs of suit to be proven to the court, and for such other and further relief as is equitable and just.

DATED this 27th day of May, 2015

SMITH, DRISCOLL & ASSOCIATES, PLLC



Bryan N. Zollinger
Attorneys for Plaintiff



LINCOLN COUNTY SHERIFF'S OFFICE
SHERIFF'S RETURN OF SERVICE

I, Kevin D Ellis, Sheriff of the County of Lincoln, State of Idaho, do hereby certify

that I received the within and hereto annexed

Summons/ Complaint CV-15-78
on the 18 day of June 2015, and that I personally served the same upon
Robert Lopez the within named Defendant
at 1758 hrs. at 321 N. Main in the County of Lincoln, on the 5
day of July 2015, by delivering to and leaving with said above-named, a copy of said
Summons/ Complaint

Medical Recovery Services
VS

Robert W. Lopez

Dated at Shoshone, Idaho this 6 day of July 2015.

Service \$ 20.00

Return \$ 20.00

Mileage

Other

Total \$

40.00
all
Thanks

Kevin D Ellis, Sheriff

R. King

Deputy Sheriff

R. Piper

LINCOLN COUNTY SHERIFF
111 West B Street Suite S
Shoshone, Idaho 83352

SCANNED

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

SUMMONS

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S).
THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER
NOTICE UNLESS YOU RESPOND WITHIN 30 DAYS. READ THE INFORMATION
BELOW.

TO: Robert Lopez
321 N Main St
Dietrich, ID 83324

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court within 30 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the plaintiff(s) in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

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

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

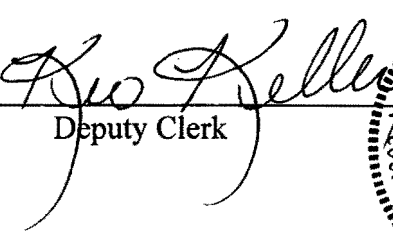
To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court at:

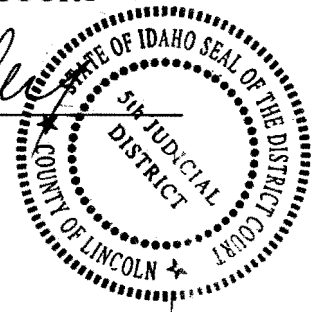
Lincoln County Clerk Civil Division
Lincoln County Courthouse
111 West B St
Shoshone, ID 83352
208-886-2173

DATED this 2 day of June, 20 15.

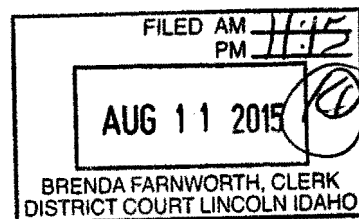
CLERK OF THE DISTRICT COURT

By


Deputy Clerk



Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

AFFIDAVIT IN SUPPORT OF
APPLICATION FOR DEFAULT
JUDGMENT

STATE OF IDAHO)

)ss:

County of Bonneville)

I, Bryan N. Zollinger, state and declare the following under oath:

1. I represent the plaintiff and have actual knowledge of the facts stated herein. I obtained a Juris Doctorate degree from the Florida Coastal School of Law in 2008 and have been actively practicing law since then.

2. The plaintiff filed a complaint against the Defendant on June 2, 2015.

3. My billing rate on the above-referenced matter is \$225.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, the nature and length of my professional relationship with my client,

awards in similar cases, my experience (particularly in the area of law involved in this case), and the rates charged by other attorneys with comparable experience in comparable cases in the southeastern Idaho area. The attorney's fees in this case have been incurred for preparing (1) the complaint and summons; (2) the application for entry of default; (3) the application for default judgment; (4) the affidavit in support of application for default judgment; (6) the default; (7) the order for default entry; (8) the default judgment and (9) for reviewing the affidavit of service.

4. The billing rate on the above-referenced matter for my paralegal is \$95.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, awards in similar cases, their experience (particularly in the area of law involved in this case), and the rates charged by other attorney paralegals with comparable experience in comparable cases in the southeastern Idaho area. The paralegal fees in this case have been incurred for time spent assigning the case a file number, running a conflict check for the account, calculating interest for the account, entering the account into the server in multiple programs, preparing a letter and check to the court clerk for filing the complaint, preparing letter to defendant, scanning and filing the complaint and summons, preparing a letter to process server, notarizing the affidavit(s) of service, issuing a check to the process server, preparing an invoice for client, notarizing affidavit in support of application for default judgment, preparing letter to court clerk and abstract of judgment with check for recorder, and preparing invoice for client.

5. Pursuant to Idaho Code § 28-22-104, interest has been calculated at 12% per year or the contractually agreed upon amount, and began accruing three months after the date the services were incurred.

6. The amount due from the Defendant is the sum certain of \$776.94, said amount being itemized as follows, to-wit:

Principal	\$215.85
Interest	\$69.62
Attorney's fee	\$285.47
Filing fee	\$166.00
Service fee	\$40.00
Amount Paid	\$-0.00
TOTAL	<hr/> \$776.94

7. The amount shown by the above accounting is justly due and owing, and no part of said balance has been paid except as otherwise shown; the disbursements sought to be taxed have been made in this action or will necessarily be made or incurred herein.

8. To the best of my knowledge the Defendant(s) is not an infant, incompetent person, nor is the defendant serving in the United States Military.

9. Accordingly, the plaintiff requests that the court enter a default judgment in the total amount of \$776.94 pursuant to the Application For Default Judgment on file herein.

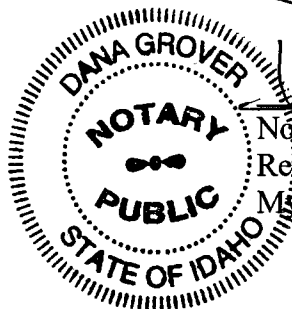
DATED this 6th day of August, 2015.

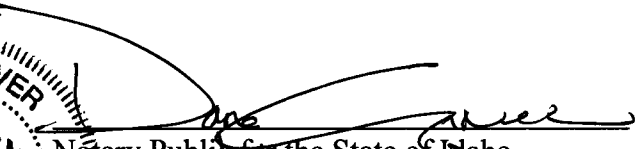
SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger

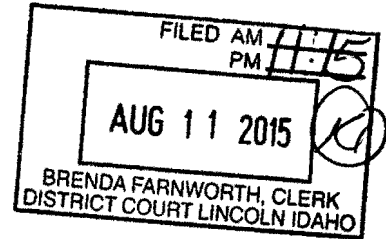
SUBSCRIBED AND SWORN TO before me this 6th day of August, 2015.

(SEAL)




Notary Public for the State of Idaho
Residing at: LaBelle, ID
My Commission Expires: 10/1/18

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

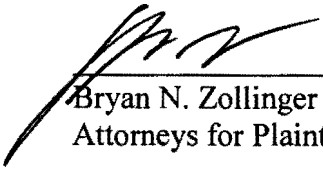
APPLICATION FOR ENTRY OF
DEFAULT

TO THE CLERK OF THE COURT:

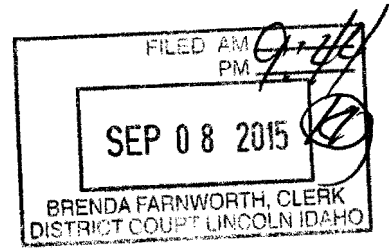
Plaintiff's complaint having been filed on June 2, 2015, and the Defendant, having been personally served on July 7, 2015, as more fully appears from the certificate of service on file herein, and the time for appearance having expired, you are requested to enter the default of the Defendant in favor of the plaintiff pursuant to Rule 55(a)(1).

DATED this 6th day of August, 2015.

SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger
Attorneys for Plaintiff

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

BRIEF IN SUPPORT OF MOTION FOR
RECONSIDERATION

I. INTRODUCTION.

This Court has denied entry of default for the reasons that plaintiff failed to comply with SCRA, failure to show party is not an infant, failure to show method of computation of claim, original instrument evidencing claim and sufficient proof of assignment of debt.

The plaintiff, Medical Recovery Services, ("MRS"), respectfully requests that this court reconsider its decision and enter default for MRS on the grounds that MRS has now provided proof of "original instrument" evidencing claim attached as exhibit A; Proof of assignment of debt is attached as exhibit B. The affidavit sent with default covers SCRA, Infant/Incompetent issue, and how claim is computed.

SCANNED

II. THIS MOTION FOR RECONSIDERATION IS TIMELY.

Pursuant to I.R.C.P. 11(a)(2)(B), a party may file a motion for reconsideration at any time within 14 days after entry of judgment. Since there has been no final judgment entered in this case, reconsideration is timely.

III. BECAUSE PLAINTIFF'S CLAIM IS FOR A SUM CERTAIN AND PLAINTIFF HAS PROVIDED AN ORIGINAL INSTRUMENT EVIDENCING THE CLAIM, THIS COURT SHALL ENTER JUDGMENT FOR THAT AMOUNT.

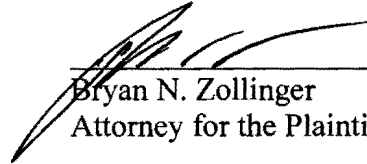
I.R.C.P. 55(b)(1) states in relevant part:

Default judgment by the court or clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the court or the clerk thereof, upon request of the plaintiff, and upon the filing of an affidavit of the amount due showing the method of computation, together with any original instrument evidencing the claim unless otherwise permitted by the court, shall enter judgment for that amount and costs against the defendant. (Emphasis added).

I.R.C.P. 55(b)(2) states in relevant part that *“[i]n all other cases...* in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.” (Emphasis added).

In this case, plaintiff's claim against the defendant is for a sum certain as evidenced by Exhibit “A” attached to the Affidavit of Bryan N. Zollinger filed concurrently herewith. Thus, only I.R.C.P. 55(b)(1) applies and not I.R.C.P. 55(b)(2) which would apply only to other cases where the court must determine the amount of damages.

Therefore, court should enter this default and default judgment against the defendant in the amount specified by the plaintiff.



Bryan N. Zollinger
Attorney for the Plaintiff

Exhibit “A”

R. Bret Campbell, DO & Assoc.
 1501 Hiland Avenue, Suite A
 Burley ID 83318-2688
 (208) 878-9432

THIS IS A STATEMENT OF YOUR ACCOUNT ON THE BELOW DATE. ANY CHARGES OR
 PAYMENTS MADE AFTER THIS DATE WILL APPEAR ON NEXT MONTH'S STATEMENT.

ACCOUNT NO
 5384

STATEMENT DATE
 08/25/15

A FINANCE CHARGE
 of _____ % PER MONTH

equal
to an

ANNUAL PERCENTAGE RATE
 of _____ % PER ANNUM

will be added to the unpaid balance of _____ days or more past due
 as of the billing date appearing on this statement. Payments and other credits are
 deducted from the Previous Balance before computing the FINANCE CHARGE.

Robert W Lopez
 321 N. Main St.
 DENTRICH ID 83324

DATE	DESCRIPTION	INSURANCE PORTION	PATIENT PORTION	CHARGES	PAYMENTS
09/18/12	New Incident (Robert Lopez)				
09/18/12	Cash Payment # (40.00)				40.00
09/18/12	N/P OFFICE VISIT		75.00	115.00	
09/18/12	BLOOD DRAW		15.00	15.00	
09/18/12	LIPID PANEL		30.00	30.00	
09/18/12	COMP METABOLIC PANEL		38.00	38.00	
09/18/12	TSH		40.00	40.00	
09/18/12	EKG PROCEDURE AND REPORT		50.00	50.00	
09/27/12	Insurance Sent (GWH-OIGNA PPO)				
01/02/13	Insurance Payment GWH-OIGNA PPO (0.00)				
09/18/12	Account Statement				
01/02/13	Account Statement				
01/31/13	Account Statement				
03/08/13	Account Statement				
04/15/13	Account Statement				
05/15/13	Finance Charge (1.50%)		3.72	3.72	
05/15/13	Account Statement with a Finance Charge of \$3.72				
07/09/13	Account Statement				

Your insurance has not paid because you have not sent in a questionnaire.

Your Balance Is 121+ Days Past Due

INSURANCE	PATIENT
0.00	251.72

Exhibit “B”

**MEDICAL RECOVERY SERVICES, LLC
430 SHOUP AVE
P.O. BOX 51178
BONDED COLLECTORS**

ASSIGNMENT OF ACCOUNT

WE HEREBY ASSIGN AND TRANSFER OUR CLAIM AND ALL CONTRACTUAL RIGHTS AND INTERST IN AND TO THE CLAIM AGAINST AND CONTRACT WITH Robert W. Lopez IN THE AMOUNT OF \$251.72 OVER TO **MEDICAL RECOVERY SERVICES, LLC.**, WITH FULL POWER AND AUTHORITY TO DO AND PERFORM ALL LEGAL ACTS NECESSARY FOR THE COLLECTION, SETTLEMENT, COMPROMISE OR SATISFACTION OF SAID CLAIM, EITHER IN THE NAME OF THE UNDERSIGNED OR IN THE NAME OF THE AGENCY. ASSIGNEE AGREES TO INDEMNIFY AND HOLD ASSIGNOR HARMLESS AGAINST AND FROM ANY CLAIMS, COUNTERCLAIMS OR SUITS BASED ON USURY, CHARGING EXCESSIVE INTEREST, OR VIOLATION OF ANY CONSUMER PROTECTION LAWS, INCLUDING BUT NOT LIMITED TO THE FEDERAL TRUTH IN LENDING ACT AND TITLE 28, IDAHO CODE, WHICH INCLUDES THE UNIFORM CONSUMER CREDIT CODE, WHICH MAY ARISE AS A RESULT OF ASSIGNOR'S CONDUCT, ACCOUNT COMPUTATION, BILLING AND COLLECTION EFFORTS DONE AND MADE IN CONNECTION WITH THE SUBJECT MATTER OF THIS ASSIGNMENT. IN THE EVENT OF ANY SUCH CLAIMS, SUITS OR COUNTERCLAIMS THE ASSIGNOR WILL DEFEND THE SAME OR PAY ALL COSTS AND ATTORNEY FEES INCURRED BY ASSIGNEE IN SUCH DEFENSE.

DATED: 08/21/2013

BY: 

OF: Anthony J Anderson M.D

**Copy of ORIGINAL
affidavit provided with
default.**

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

AFFIDAVIT IN SUPPORT OF
APPLICATION FOR DEFAULT
JUDGMENT

STATE OF IDAHO

)

)ss:

County of Bonneville

)

I, Bryan N. Zollinger, state and declare the following under oath:

1. I represent the plaintiff and have actual knowledge of the facts stated herein. I obtained a Juris Doctorate degree from the Florida Coastal School of Law in 2008 and have been actively practicing law since then.

2. The plaintiff filed a complaint against the Defendant on June 2, 2015.

3. My billing rate on the above-referenced matter is \$225.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, the nature and length of my professional relationship with my client,

awards in similar cases, my experience (particularly in the area of law involved in this case), and the rates charged by other attorneys with comparable experience in comparable cases in the southeastern Idaho area. The attorney's fees in this case have been incurred for preparing (1) the complaint and summons; (2) the application for entry of default; (3) the application for default judgment; (4) the affidavit in support of application for default judgment; (6) the default; (7) the order for default entry; (8) the default judgment and (9) for reviewing the affidavit of service.

4. The billing rate on the above-referenced matter for my paralegal is \$95.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, awards in similar cases, their experience (particularly in the area of law involved in this case), and the rates charged by other attorney paralegals with comparable experience in comparable cases in the southeastern Idaho area. The paralegal fees in this case have been incurred for time spent assigning the case a file number, running a conflict check for the account, calculating interest for the account, entering the account into the server in multiple programs, preparing a letter and check to the court clerk for filing the complaint, preparing letter to defendant, scanning and filing the complaint and summons, preparing a letter to process server, notarizing the affidavit(s) of service, issuing a check to the process server, preparing an invoice for client, notarizing affidavit in support of application for default judgment, preparing letter to court clerk and abstract of judgment with check for recorder, and preparing invoice for client.

5. Pursuant to Idaho Code § 28-22-104, interest has been calculated at 12% per year or the contractually agreed upon amount, and began accruing three months after the date the services were incurred.

6. The amount due from the Defendant is the sum certain of \$776.94, said amount being itemized as follows, to-wit:

Principal	\$215.85
Interest	\$69.62
Attorney's fee	\$285.47
Filing fee	\$166.00
Service fee	\$40.00
Amount Paid	\$-0.00
TOTAL	<hr/> \$776.94

7. The amount shown by the above accounting is justly due and owing, and no part of said balance has been paid except as otherwise shown; the disbursements sought to be taxed have been made in this action or will necessarily be made or incurred herein.

8. To the best of my knowledge the Defendant(s) is not an infant, incompetent person, nor is the defendant serving in the United States Military.

9. Accordingly, the plaintiff requests that the court enter a default judgment in the total amount of \$776.94 pursuant to the Application For Default Judgment on file herein.

DATED this 6th day of August, 2015.

SMITH, DRISCOLL & ASSOCIATES, PLLC

Bryan N. Zollinger

SUBSCRIBED AND SWORN TO before me this ____ day of August, 2015

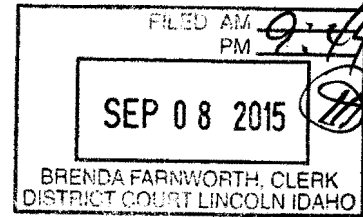
(SEAL)

Notary Public for the State of Idaho

Residing at: _____

My Commission Expires: _____

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, ID 83405-0731
Telephone: (208) 524-0731
Fax: (208) 529-4166



Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

MOTION FOR RECONSIDERATION

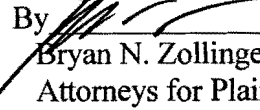
COMES NOW Bryan N. Zollinger, Esq., of the firm SMITH, DRISCOLL & ASSOCIATES, PLLC, attorneys of record for plaintiff, Medical Recovery Services, LLC, and hereby moves the Court pursuant to Idaho Rules of Civil Procedure 11(a)(2)(B) for reconsideration of its entry of judgment.

This motion is made on the grounds that pursuant to I.R.C.P. 55(b)(1) attached as exhibit "A" is a true and correct copy of an "original instrument" evidencing Plaintiff's claim; attached as exhibit "B" shows the assignment of debt to Medical Recovery Services.

This motion is based upon the attached Brief in Support of this Motion, the Amended Default Judgment, and on the Court's files and records.

DATED this 24th day of August, 2015.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By 
Bryan N. Zollinger
Attorneys for Plaintiff

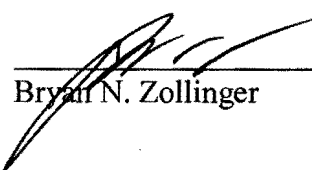
CERTIFICATE OF SERVICE

I hereby certify that I am the attorney for the plaintiff, and that on the 24th day of August, 2015, I served a true and correct copy of the foregoing **MOTION FOR RECONSIDERATION** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

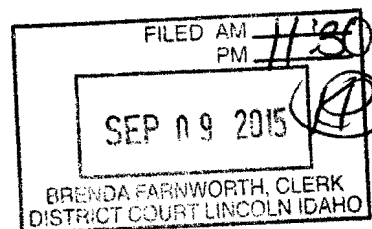
Persons Served:

Robert Lopez
321 N Main St
Dietrich, ID 83324

() Hand ☒ Mail


Bryan N. Zollinger

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, ID 83405-0731
Telephone: (208) 524-0731
Fax: (208) 529-4166



Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

AMENDED DEFAULT JUDGMENT

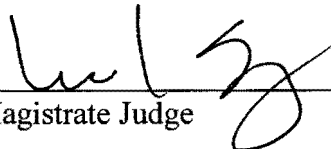
JUDGMENT IS ENTERED AS FOLLOWS:

The plaintiff recovers from the defendant the sum of \$776.94, said amount being
itemized as follows, to-wit:

Principal	\$215.85
Interest	\$69.62
Attorney's fee	\$285.47
Filing fee	\$166.00
Service fee	\$40.00
Amount Paid	\$-0
TOTAL	\$776.94

upon which sum interest shall accrue at the rate provided by law, and upon which judgment
execution may issue.

DATED this 9 day of September, 20 15.


Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I am the clerk of the above entitled court, and that on the 9 day of Sept, 20 15, I served a true and correct copy of the foregoing **AMENDED JUDGMENT** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

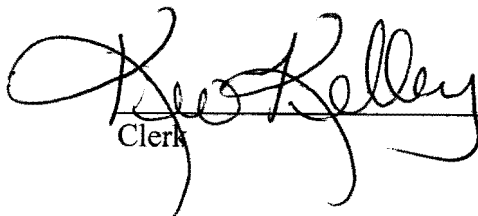
Persons Served:

Robert Lopez
321 N Main St
Dietrich, ID 83324

() Hand ☒ Mail

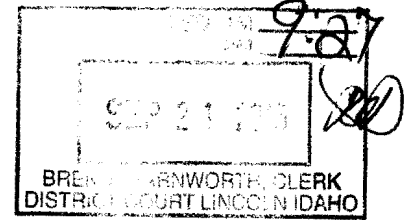
Bryan N. Zollinger
Smith Driscoll & Associates, PLLC
414 Shoup Ave.
Idaho Falls, ID 83405

() Hand ☒ Mail


Clerk

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

Attorneys for Plaintiff



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

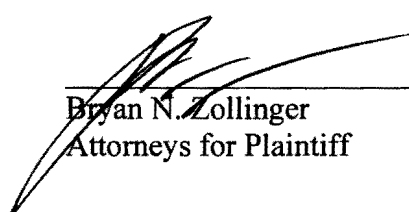
Case No. CV-15-78

APPLICATION FOR ORDER OF
CONTINUING GARNISHMENT

The Plaintiff hereby requests the issuance of an ORDER OF CONTINUING GARNISHMENT, "directing the employer-garnishee to pay to the Sheriff such future moneys coming due to [Robert Lopez] as may come due to said judgment debtor as a result of the judgment debtor's employment." See Idaho Code Section 8-509(b).

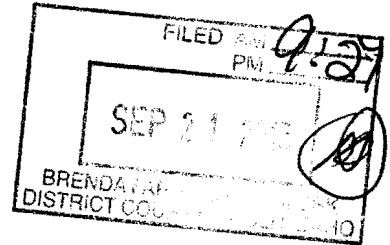
Dated September 15, 2015.

SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger
Attorneys for Plaintiff

SCANNED

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

Vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

AFFIDAVIT IN SUPPORT OF WRIT OF
EXECUTION

STATE OF IDAHO)

)ss:

County of Bonneville)

Bryan N. Zollinger, being first duly sworn, deposes and says:

1. I have personal knowledge of the facts stated herein as attorney for the plaintiff in the above entitled action.

2. Judgment was entered herein on September 9, 2015 in the sum of \$776.94. The cause of action arose after July 1, 1987, and therefore, the judgment thereon bears interest at the rate which is in effect on the date of entry of the judgment. (The rate changes July 1 of each year as provided by Idaho Code § 28-21-104 for all judgments declared during the succeeding 12 months.) The applicable rate for the judgment in this matter is 5.375% per annum.

SCANNED

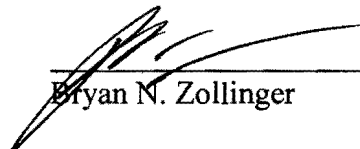
3. Therefore, the court should issue the writ in the amount of \$799.63 broken down as follows:

Unpaid Judgment	\$776.94
Accrued Interest	\$0.69
Recording Fee	\$20.00
Execution Fee(s)	\$2.00
Payments	<u>\$- 0.00</u>
TOTAL	\$799.63

4. The fees listed above were actually and necessarily incurred in the post-judgment collection of the judgment.

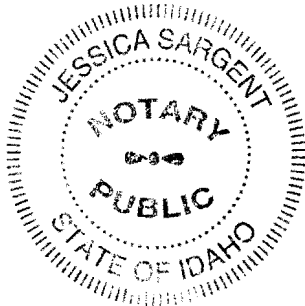
DATED: September 15, 2015.

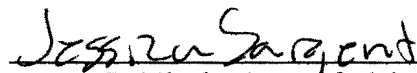
SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger

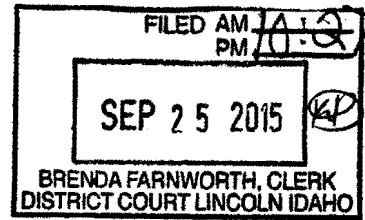
SUBSCRIBED AND SWORN to before me on 15 September, 2015.

(SEAL)




Notary Public for State of Idaho
Residing at : Idaho Falls
My commission expires: 1-15-21

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Original Sent as
Writ

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

WRIT OF EXECUTION AND ORDER
FOR CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF IDAHO: To the Sheriff of the County of Jerome:

WHEREAS, the plaintiff, **Medical Recovery Services, LLC**, recovered judgment in the said District Court, of LINCOLN County, against ROBERT W. LOPEZ on **September 9, 2015**, for the sum of **\$776.94**, with interest at the legal rate for judgments as prescribed by Idaho Code § 28-22-104 until paid, together with costs and disbursements at the date of said judgment and accruing costs as appear on record; and

WHEREAS the sum of \$776.94 with interest in the amount of \$0.69, plus costs of \$22.00, less payments of \$0.00 for a total of \$799.63 is now—as of September 15, 2015—actually due on said judgment, as follows:

SCANNED

Judgment	\$	776.94
Costs	\$	22.00
Interest	\$	0.69
Payments	\$	<u>0.00</u>
Total	\$	799.63

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter.

Pursuant to Idaho Code § 11-103 you may make return hereon not less than 10 nor more than 60 days after your receipt hereof, with what you have done endorsed thereon; and

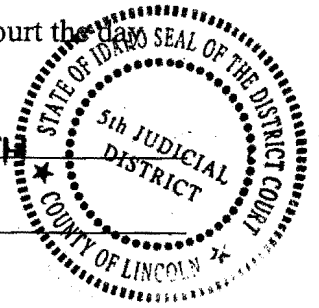
WHEREAS, the Plaintiff filed an application on September 15, 2015, entitled "APPLICATION FOR ORDER OF CONTINUING GARNISHMENT" against the employer of **ROBERT LOPEZ**, the Court hereby grants the application and ORDERS:

That the Sheriff of Jerome, Idaho shall continuously garnish the maximum amount of **Robert Lopez's** disposable earnings from Arlo G. Lott Trucking (257 S. 100 E., Jerome, ID 83338) at each disbursement interval until the JUDGMENT, plus interest, is paid in full.

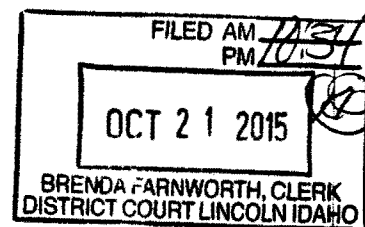
WITNESS HON. MARK INGRAM Judge
of the said District Court, at the Courthouse in the
County of LINCOLN, this 25 of
Sept, 20 15.

ATTEST my hand and seal of said Court the day
and year last above written.

BRENDA FARNWORTH
Clerk
Brenda Farnworth
Deputy Clerk



Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

ABSTRACT OF JUDGMENT

- | | |
|------------------------|--|
| 1. Judgment creditor: | MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company |
| 2. Judgment debtor: | ROBERT W. LOPEZ |
| 3. Date entered: | <u>9-9-15</u> |
| 4. Judgment roll: | Book _____, Page _____. |
| 5. Amount of judgment: | \$776.94 |

WITNESS my hand and the seal of said District Court this 21 day of Oct, 2015

BRENDA FARNWORTH

Clerk of the District Court

By: [Signature]
Deputy

Bryan N. Zollinger ISB #8008

SMITH, DRISCOLL & ASSOCIATES, PLLC

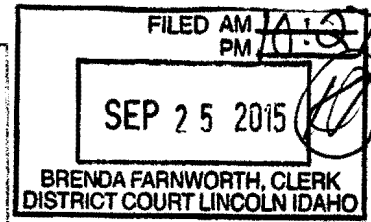
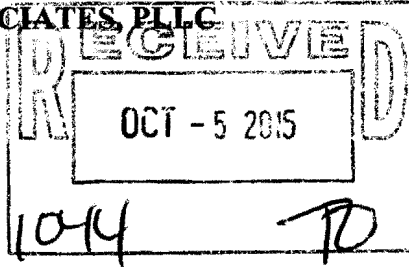
414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

Attorneys for Plaintiff



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

WRIT OF EXECUTION AND ORDER
FOR CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF IDAHO: To the Sheriff of the County of Jerome:

WHEREAS, the plaintiff, **Medical Recovery Services, LLC**, recovered judgment in the said District Court, of LINCOLN County, against ROBERT W. LOPEZ on **September 9, 2015**, for the sum of **\$776.94**, with interest at the legal rate for judgments as prescribed by Idaho Code § 28-22-104 until paid, together with costs and disbursements at the date of said judgment and accruing costs as appear on record; and

WHEREAS the sum of \$776.94 with interest in the amount of \$0.69, plus costs of \$22.00, less payments of \$0.00 for a total of \$799.63 is now—as of September 15, 2015—actually due on said judgment, as follows:

Judgment	\$	776.94
Costs	\$	22.00
Interest	\$	0.69
Payments	\$	<u>0.00</u>
Total	\$	799.63

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter.

Pursuant to Idaho Code § 11-103 you may make return hereon not less than 10 nor more than 60 days after your receipt hereof, with what you have done endorsed thereon; and

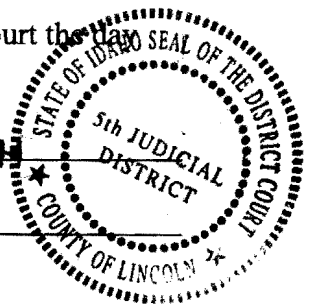
WHEREAS, the Plaintiff filed an application on September 15, 2015, entitled "APPLICATION FOR ORDER OF CONTINUING GARNISHMENT" against the employer of **ROBERT LOPEZ**, the Court hereby grants the application and ORDERS:

That the Sheriff of Jerome, Idaho shall continuously garnish the maximum amount of **Robert Lopez's** disposable earnings from Arlo G. Lott Trucking (257 S. 100 E., Jerome, ID 83338) at each disbursement interval until the JUDGMENT, plus interest, is paid in full.

WITNESS HON. MARK INGRAM Judge
of the said District Court, at the Courthouse in the
County of LINCOLN, this 25 of
Sept, 20 15.

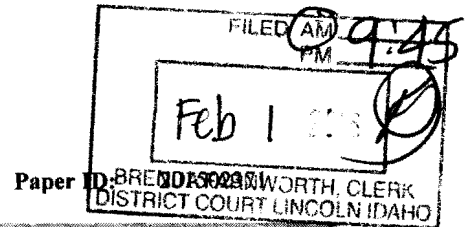
ATTEST my hand and seal of said Court this day
and year last above written.

BRENDA FARNWORTH
Clerk
Leo Kelly
Deputy Clerk



DOUG MCFALL
(208) 644-2770

JEROME COUNTY SHERIFF DEPARTMENT
300 N. LINCOLN
JEROME, ID 83338



UNSATISFIED RETURN OF SERVICE

MEDICAL RECOVERY SERVICES, LLC

-- VS --

PLAINTIFF(S)

COURT: LINCOLN MAGISTRATE

CASE NO: CV 15-78

ROBERT LOPEZ

DEFENDANT(S)

PAPER(S) SERVED:

NOTICE OF GARNISHMENT

WRIT OF EXECUTION

CONTINUING GARNISHMENT ORDER

EXEMPTIONS INSTRUCTIONS

CLAIM OF EXEMPTION FORM

EMPLOYER PACKET

I, DOUG MCFALL, SHERIFF OF JEROME COUNTY, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 5TH DAY OF OCTOBER 2015.

I HEREBY CERTIFY THAT, ON THE 5TH DAY OF OCTOBER 2015, AT 12:45 O'CLOCK A.M., I, TERESA ONEIDA, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER BY LEVYING ON ANY PROPERTY, MONEY AND EFFECTS BELONGING TO THE DEFENDANT IN THE POSSESSION OF

***** ARLO G LOTT TRUCKING *****

AT 100 E 257 SOUTH JEROME ID 83338/ VIA FAX

WITHIN THE COUNTY OF JEROME, STATE OF IDAHO, AND HAVING NOT SATISFIED THIS JUDGMENT, I AM RETURNING THE ABOVE DESCRIBED DOCUMENTS AS UNSATISFIED.

PAPERS SERVED OR MAILED TO THE DEFENDANT:

COMMENTS: NO LONGER WORKS FOR ARLO LOTT TRUCKING

CHARGES

JUDGMENT AMOUNT: 812.05
SHERIFF'S FEES: 57.18
TOTAL: 869.23

DATED THIS 28TH DAY OF JANUARY 2016.

DOUG MCFALL
SHERIFF

PAYMENTS

APPLIED TO JUDGMENT: 83.13
APPLIED TO FEES: 46.27
TOTAL COLLECTED TO DATE: 129.40
AMOUNT UNCOLLECTED: 739.83

BY

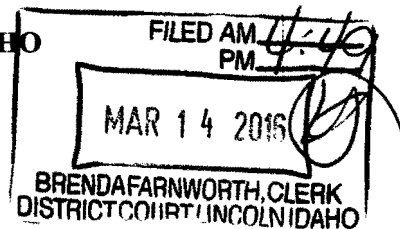
TERESA ONEIDA
SERVING OFFICER

BY

TERESA ONEIDA
RETURNING OFFICER

SCANNED

FIFTH JUDICIAL DISTRICT COURT, STATE OF IDAHO
AND FOR THE COUNTY OF LINCOLN
111 WEST B STREET SUITE C
SHOSHONE, IDAHO 83352-0800



Medical Recovery Services, LLC

vs.

Robert W Lopez

Case No: CV-2015-0000078

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Debtors Examination
Judge:

Friday, June 3, 2016
Mark A. Ingram

10:30 AM

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Monday, March 14, 2016.

Copy to: Bryan N Zollinger P.O. Box 50731, Shoshone, ID, 83405 (Plaintiff Attorney)

Faxed 529-4166

_____ Mailed _____ Hand Delivered _____ E-Mail

Dated: March 14th, 2016
Brenda Farnworth
Clerk Of The District Court

By:

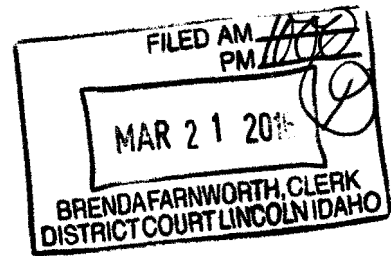
Kee M Kelley, Deputy Clerk

DOC22cv 7/96

SCANNED

NOTICE OF HEARING

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
Telephone: (208) 524-0731



Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,
vs.

ROBERT W. LOPEZ

Defendant

Case Number: CV-15-78


APPLICATION FOR ORDER OF
EXAMINATION

The Clerk of the Court issued a WRIT OF EXECUTION against the Defendant on the 1st day of October, 2015. The Sheriff of Jerome, Idaho, served the WRIT OF EXECUTION on Arlo G Lott Trucking on 5th day of November, 2015.

The Plaintiff received "UNSATISFIED RETURN" from the WRIT OF EXECUTION; therefore, the plaintiff respectfully requests an entry of an order pursuant to Idaho Code Section 11-501, requiring the defendant to "appear and answer upon oath concerning his property."

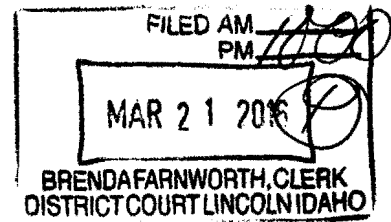
DATED: March 15, 2016

SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger
Attorney for Plaintiff

SCANNED

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL, & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

APPLICATION FOR ORDER TO ALLOW
TELEPHONIC ORDER OF
EXAMINATION

COMES NOW, the Plaintiff, Medical Recovery Services, LLC, by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm of Smith, Driscoll & Associates, PLLC, and applies to the court for an order to allow plaintiff to appear telephonically for its Order of Examination.

Consistent with the mandate contained in Idaho Rule of Civil Procedure 1(a) that "these rules shall be liberally construed to secure the just, speedy and *inexpensive* determination of every action and proceeding," and pursuant to Idaho Rule of Civil Procedure 7(b)(4) which allows for hearings to be held by telephone conference, the plaintiff asks that it be allowed to appear telephonically for its Order of Examination because the Order of Examination will be heard in Lincoln County, Idaho and plaintiff's own counsel resides in Bonneville County making

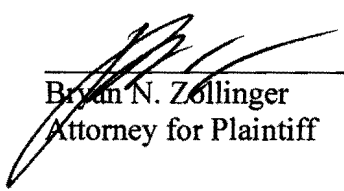
travel to Lincoln County very time consuming and therefore very expensive for plaintiff.

(Emphasis added).

This application is based on this Application for Order to Allow Telephonic Order of Examination, the Affidavit of Bryan N. Zollinger, and on the court's records and files.

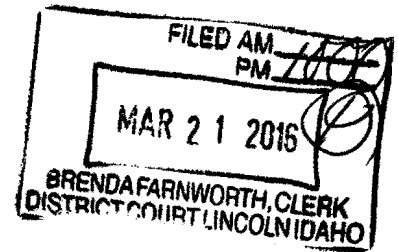
DATED this 15th day of March, 2016

SMITH, DRISCOLL, & ASSOCIATES, PLLC



Bryan N. Zollinger
Attorney for Plaintiff

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL, & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

AFFIDAVIT IN SUPPORT OF
APPLICATION FOR ORDER TO ALLOW
TELEPHONIC ORDER OF
EXAMINATION

STATE OF IDAHO
County of Bonneville

)
)ss:
)

I, Bryan N. Zollinger, state and declare the following under oath:

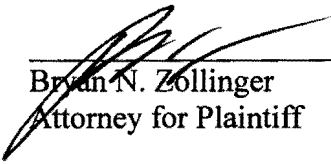
1. I am the attorney for the plaintiff and make this affidavit based on my own personal knowledge.
2. The plaintiff has filed for an Order of Examination.
3. In this regard, I reside in Idaho Falls and the Order of Examination will be held in Lincoln County. However, the Lincoln County courthouse is 2 1/2 hours from Idaho Falls (one way) thereby making travel to the Order of Examination very time consuming and therefore cost prohibitive for the plaintiff.

4. Accordingly, the plaintiff requests that the court allow the plaintiff to appear telephonically for the Order of Examination.

Further, your affiant sayeth naught.

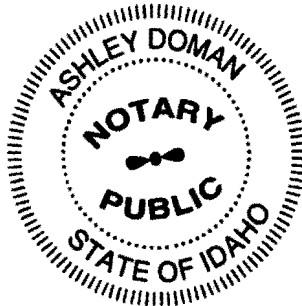
DATED this 15th day of March, 2016.

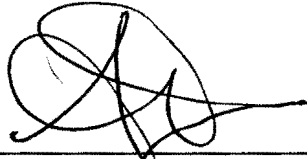
SMITH, DRISCOLL, & ASSOCIATES, PLLC


Bryan N. Zollinger
Attorney for Plaintiff

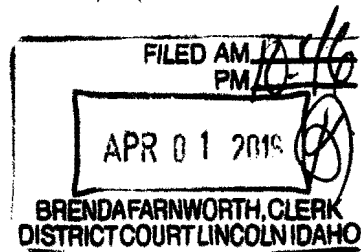
SUBSCRIBED AND SWORN TO before me this 15th day of March, 2016.

(SEAL)




Notary Public for the State of Idaho
Residing at: Idaho Falls
My Commission Expires: 8/13/20

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL, & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

ORDER TO ALLOW TELEPHONIC
ORDER OF EXAMINATION

Upon application of the plaintiff, Medical Recovery Services, LLC, and good cause appearing therefore, the court grants the Application to Allow Telephonic Order of Examination and hereby orders that plaintiff may appear telephonic for its Order of Examination scheduled on June 3, 2016 at 10:30 a.m..

X At the time of the hearing the Court will contact the Plaintiff at (208)524-0731 ext. 7

___ At the time of the hearing the Plaintiff will contact the Court at: _____

DATED this 25 day of March, 2016

[Signature]
Judge Ingram

CERTIFICATE OF SERVICE

I hereby certify that I am the clerk of the above-entitled court, and that on the April day of 5, 2016, I served a true and correct copy of the foregoing ORDER TO ALLOW TELEPHONIC ORDER OF EXAMINATION on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:

Bryan N. Zollinger
Smith, Driscoll, & Associates, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405

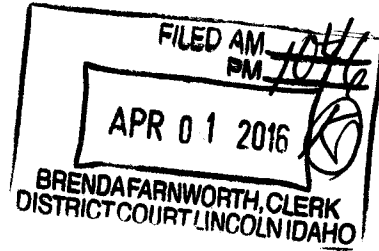
() Hand ☒ Mail

Robert Lopez
321 N Main St
Dietrich, ID 83324

() Hand ☒ Mail


Clerk

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant

Case Number: CV-15-78

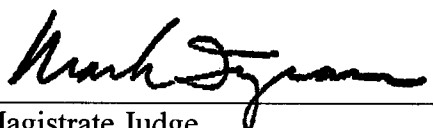
ORDER OF EXAMINATION

To: Robert Lopez, 321 N Main St, Dietrich, ID 83324

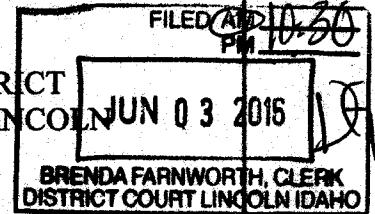
The plaintiff filed an application on the 15th day of March, 2016, entitled
“APPLICATION FOR ORDER OF EXAMINATION”. Based on the applicable law and good
cause appearing therefore, the court hereby grants the application and orders you to “appear and
answer upon oath concerning [your] property” pursuant to Idaho Code Section 11-501 at the
following address at 10:30 a.m. on Friday, June 3, 2016:

Lincoln County Courthouse 111W. B St. Shoshone, ID 83352.

FAILURE TO APPEAR AS DIRECTED by this ORDER will result in a contempt
proceeding being filed against you, and the Plaintiff seeking an arrest warrant whose execution
and return shall be in the same manner as a warrant of arrest in a criminal case.

DATED th 7 day of April, 2016 
Magistrate Judge

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION



CV-2015-0000137

Medical Recovery Service vs. Robert E Rogers

Hearing type: Debtors Examination

Hearing date: 6/3/2016

Time: 10:29 am

Judge: Mark A. Ingram

Minutes Clerk: Deysi Garcia

1030-Court introduces case.

Mr. Bryan Zollinger is present by phone

Mr. Robert Rogers is present

Mr. Robert W Lopez is not present

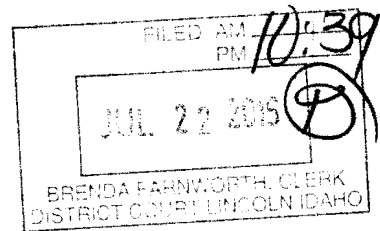
Deputy clerk administers oath to Robert Rogers for the purposes of testimony.

Court explains that the examination will be conducted in a different room.

Mr. Zollinger will file contempt charges for Mr. Lopez

SCANNED

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

Vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

AFFIDAVIT IN SUPPORT OF WRIT OF
EXECUTION

STATE OF IDAHO)

)ss:

County of Bonneville)

Bryan N. Zollinger, being first duly sworn, deposes and says:

1. I have personal knowledge of the facts stated herein as attorney for the plaintiff in the above entitled action.

2. Judgment was entered herein on September 9, 2015 in the sum of \$776.94. The cause of action arose after July 1, 1987, and therefore, the judgment thereon bears interest at the rate which is in effect on the date of entry of the judgment. (The rate changes July 1 of each year as provided by Idaho Code § 28-21-104 for all judgments declared during the succeeding 12 months.) The applicable rate for the judgment in this matter is 5.375% per annum.

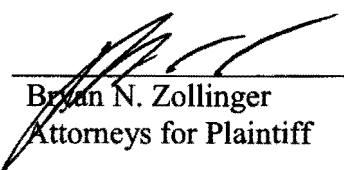
3. Therefore, the court should issue the writ in the amount of \$653.28 broken down as follows:

Unpaid Judgment	\$776.94
Accrued Interest	\$35.47
Recording Fee	\$22.00
Execution Fee(s)	\$2.00
Payments	<u>\$- 183.13</u>
TOTAL	\$653.28

4. The fees listed above were actually and necessarily incurred in the post-judgment collection of the judgment.

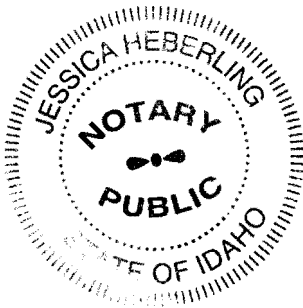
DATED: July 15, 2016.

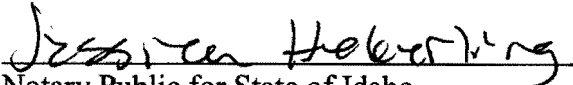
SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger
Attorneys for Plaintiff

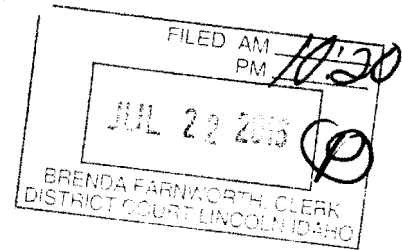
SUBSCRIBED AND SWORN to before me on 15 July, 2016.

(SEAL)




Notary Public for State of Idaho
Residing at : Idaho Falls
My commission expires: 1-15-21

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

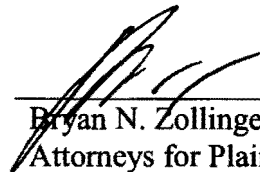
Case No. CV-15-78

APPLICATION FOR ORDER OF
CONTINUING GARNISHMENT

The Plaintiff hereby requests the issuance of an ORDER OF CONTINUING GARNISHMENT, "directing the employer-garnishee to pay to the Sheriff such future moneys coming due to [Robert Lopez] as may come due to said judgment debtor as a result of the judgment debtor's employment." See Idaho Code Section 8-509(b).

Dated July 15, 2016.

SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger
Attorneys for Plaintiff

SHERIFF ERIC SNARR
(208) 434-2324

MINIDOKA COUNTY SHERIFFS DEPARTMENT
P.O. BOX 368
RUPERT, ID 83350

Paper ID:

FILED	AM	PM
AUG 26 2016		
201601075		
BRENDA FARNWORTH, CLERK MIN IDAHO		

MEDICAL RECOVERY SERVICES, LLC

- VS -

PLAINTIFF(S)

COURT: LINCOLN

CASE NO: CV-15-78

ROBERT W LOPEZ

DEFENDANT(S)

PAPER(S) SERVED:

ORDER FOR CONTINUING GARNISHMENT

EXEMPTION PACKET

NOTICE OF GARNISHMENT & INTERROGATORIE

WRIT OF EXECUTION

I, SHERIFF ERIC SNARR, SHERIFF OF MINIDOKA COUNTY, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 1ST DAY OF AUGUST 2016.

I HEREBY CERTIFY THAT, ON THE 2ND DAY OF AUGUST 2016, AT 1:48 O'CLOCK P.M., I, GALYN SEVERE, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER BY LEVYING ON ANY PROPERTY, MONEY AND EFFECTS BELONGING TO THE DEFENDANT IN THE POSSESSION OF

***** B & H FARMING *****

AT 83 N 100 E RUPERT

WITHIN THE COUNTY OF MINIDOKA, STATE OF IDAHO, AND HAVING SATISFIED THIS JUDGMENT, I AM RETURNING THE ABOVE DESCRIBED DOCUMENTS AS SATISFIED.

PAPERS SERVED OR MAILED TO THE DEFENDANT:

CHARGES

JUDGMENT AMOUNT:	653.28
SHERIFF'S FEES:	51.07
TOTAL:	704.35

DATED THIS 23RD DAY OF AUGUST 2016.

SHERIFF ERIC SNARR
SHERIFF

SHERIFF'S FEES:	704.35
TOTAL COLLECTED TO DATE :	703.78
AMOUNT UNCOLLECTED:	0.00

BY

GALYN SEVERE
SERVING OFFICER

BY

DIANA WHEELER
RETURNING OFFICER

SCANNED

2016 AUG -1 PM 12:40

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

WRIT OF EXECUTION AND ORDER
FOR CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF IDAHO: To the Sheriff of the County of Minidoka:

WHEREAS, the plaintiff, **Medical Recovery Services, LLC**, recovered judgment in the said District Court, of LINCOLN County, against ROBERT W. LOPEZ on **September 9, 2015**, for the sum of **\$776.94**, with interest at the legal rate for judgments as prescribed by Idaho Code § 28-22-104 until paid, together with costs and disbursements at the date of said judgment and accruing costs as appear on record; and

WHEREAS the sum of \$776.94 with interest in the amount of \$35.47, plus costs of \$24.00, less payments of \$183.13 for a total of \$653.28 is now—as of July 15, 2016—actually due on said judgment, as follows:

Judgment	\$	776.94
Costs	\$	24.00
Interest	\$	35.47
Payments	\$	<u>183.13</u>
Total	\$	653.28

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter.

Pursuant to Idaho Code § 11-103 you may make return hereon not less than 10 nor more than 60 days after your receipt hereof, with what you have done endorsed thereon; and

WHEREAS, the Plaintiff filed an application on July 15, 2016, entitled "APPLICATION FOR ORDER OF CONTINUING GARNISHMENT" against the employer of **ROBERT LOPEZ**, the Court hereby grants the application and ORDERS:

That the Sheriff of Minidoka, Idaho shall continuously garnish the maximum amount of **Robert Lopez's** disposable earnings from B and H Farms (83 N. 100 E., Rupert, ID 83350) at each disbursement interval until the JUDGMENT, plus interest, is paid in full.

WITNESS *Brenda Farnworth* Judge
of the said District Court, at the Courthouse in the
County of LINCOLN, this 22 of

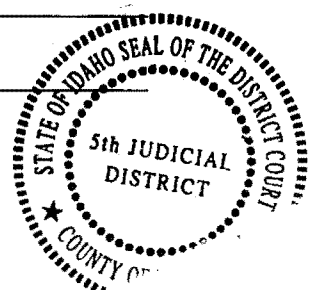
July, 20 16.

ATTEST my hand and seal of said Court the day
and year last above written.

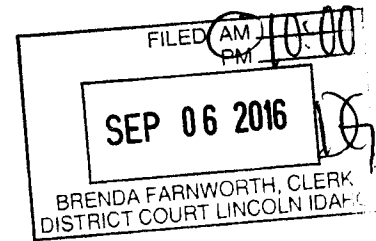
BRENDA FARNWORTH

Clerk

Scott Kelley
Deputy Clerk



Bryan N. Zollinger *ISB #8008*
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

**AFFIDAVIT OF BRYAN N.
ZOLLINGER IN SUPPORT OF
APPLICATION FOR AWARD OF
SUPPLEMENTAL ATTORNEY'S FEES**

STATE OF IDAHO)
) ss.
County of Bonneville)

BRYAN N. ZOLLINGER, Esq. of the firm Smith, Driscoll & Associates, PLLC,
being first duly sworn on oath, deposes and states as follows:

1. I am the attorney of record for Plaintiff in the above-styled action. I
obtained a Juris Doctorate degree from the Florida Coastal School of Law in 2008 and
have been actively practicing law since then.

2. I am licensed to practice law in the Courts of Idaho, and the United States
District Court for the District of Idaho. A substantial portion of my practice has been
devoted to civil litigation.

SCANNED

3. I submit this Affidavit in Support of Plaintiff's Application for Award of Supplemental Attorney's Fees and further in support of Plaintiff's Memorandum of Supplemental Attorney's Fees.

4. Judgment was entered herein on the 9th day of September, 2015 in the sum of \$776.94. The cause of action arose after July 1, 1987, and therefore, the judgment thereon bears interest at the rate which is in effect on the date of entry of the judgment. The applicable interest rate for the judgment in this matter is 5.375 percent per annum, the amount that has accrued to date is \$40.38. In an attempt to collect on the judgment plaintiff has incurred costs totaling \$54.00.

5. My rate of billing on the above-referenced matter is \$225.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, the nature and length of my professional relationship with my client, awards in similar cases, my experience (particularly in the area of law involved in this case), and the rates charged by other attorneys with comparable experience in comparable cases in the southeastern Idaho area.

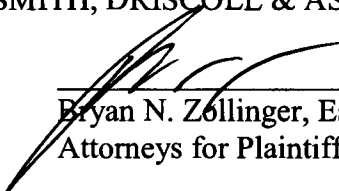
6. The rate of billing on the above-referenced matter for my paralegal is \$95.00 per hour. I believe that this hourly rate is reasonable, especially given the amount involved and the result obtained, the desirability of the case, awards in similar cases, and their experience (particularly in the area of law involved in this case).

7. After the court entered judgment in this case, my firm has spent time in an effort to collect on the judgment. The time spent is both reasonable and necessary to recover on the judgment. In this regard, the time I and my paralegal have spent is set forth in time entries into our firm billing system. These time entries record the time spent

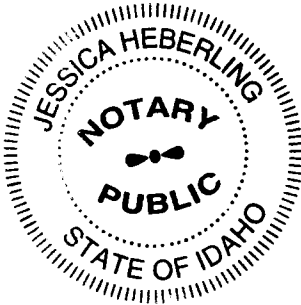
in recovering on the judgment. A true and correct copy of all these time entries are attached hereto and marked as Exhibit "A." My time entries are identified as BNZ entries. My paralegal's time entries are identified as PLT ("Paralegal Time") entries.

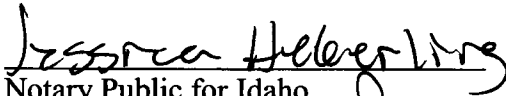
Further sayeth your affiant naught.

DATED this 31st day of August, 2016. SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger, Esq.
Attorneys for Plaintiff

SUBSCRIBED AND SWORN to before me this 31 day of August, 2016.



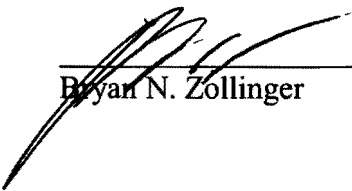

Notary Public for Idaho
Residing at: Idaho Falls
Commission Expires: 1-15-21

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2016, I caused a true and correct copy of the foregoing **AFFIDAVIT OF BRYAN N. ZOLLINGER IN SUPPORT OF APPLICATION FOR AWARD OF SUPPLEMENTAL ATTORNEY'S FEES** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, addressed to the following:

☒ U.S. Mail
☐ Facsimile

Robert Lopez
321 N Main St
Dietrich, Idaho 83324



Bryan N. Zollinger

Exhibit “A”

F:\CLIENTS\BDS\Collections\MRS\Files\7341.12773\Pleadings\160831 Supplemental Attorneys Fees.docx

Smith, Driscoll & Associates, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, ID 83405
TIN: 82-0518512
(208) 524-0731

Invoice Submitted to: **Medical Recovery Services, LLC**

Dated: August 31, 2016

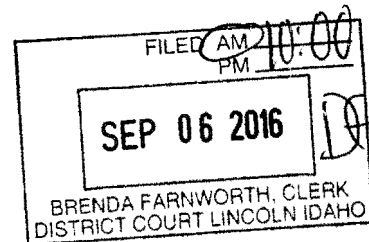
RE: MRS v. Robert Lopez Acct: 81049

Date	Professional Services Rendered	Hours	Amount
09/09/15	(PLT) Receipt and review of judgment (.10); calendar last day to renew judgment (.10);	0.20	\$ 19.00
09/15/15	(PLT) Prepare writ of execution (.10); Prepare order for continuing garnishment (.10); letter to court clerk (.10); issue check for writ (.10);	0.40	\$ 38.00
09/15/15	(BNZ) Prepare application for continuing garnishment (.25); Prepare affidavit in support of writ of execution (.25)	0.50	\$ 112.50
10/01/15	(PLT) Receipt and review of original writ of execution (.10); Prepare notice of continuing garnishment (.10) Prepare statutory interrogatories (.10); Prepare claim of exemption (.10); letter to sheriff (.10); issue check for garnishment (.10);	0.60	\$ 57.00
01/28/16	(PLT) Receipt and review of unsatisfied return of service from sheriff's office (.10);	0.10	\$ 9.50
03/15/16	(PLT) Schedule Order of Examination with the court, enter the Examination on firm calendar (.10) Prepare order of examination for defendant (.10); letter to court clerk (.10);	0.30	\$ 28.50
03/15/16	(BNZ) Prepare application for order of examination (.25);	0.25	\$ 56.25
04/12/16	(PLT) Receipt and processing of signed orders of examination (.10); letter to process server (.10); letter to defendants (.10);	0.30	\$ 28.50
04/22/16	(BNZ) Meet with defendant for order of examination (.50); prepare memo to the file (.10);	0.60	\$ 135.00
07/15/16	(PLT) Prepare writ of execution (.10); Prepare order for continuing garnishment (.10); letter to court clerk (.10); issue check for writ (.10);	0.40	\$ 38.00

07/15/16	(BNZ) Prepare application . . continuing garnishment (.25); Prepare affidavit in support of writ of execution (.25)	0.50	\$	112.50
07/27/16	(PLT) Receipt and review of original writ of execution (.10); Prepare notice of continuing garnishment (.10) Prepare statutory interrogatories (.10); Prepare claim of exemption (.10); letter to sheriff (.10); issue check for garnishment (.10);	0.60	\$	57.00
08/29/16	(PLT) Receipt and review of unsatisfied return of service from sheriff's office (.10);	0.10	\$	9.50
08/31/16	(PLT) Schedule hearing with clerk (.10); Letter to court clerk (.10); Prepare amended judgment (.10); Prepare order on application for supplemental attorney's fees (.10);	0.40	\$	38.00
08/31/16	(BNZ) Prepare application for award of supplemental attorney's fees (.25); Prepare affidavit in support of application for award of supplemental attorney's fees (.25); prepare memorandum of supplemental attorney's fees and costs (.25)	0.75	\$	168.75
For professional services rendered Balance Due:		6.00	\$	908.00

User Summary	Rate
Bryan N. Zollinger	\$ 225.00
Paralegal	\$ 95.00

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

**MEMORANDUM OF SUPPLEMENTAL
ATTORNEY'S FEES**

COMES NOW the above-named plaintiff, by and through undersigned counsel of record and pursuant to Idaho Rules of Civil Procedure, Rule 54(d)(5), and submits the following Cost Bill:

I. ATTORNEY'S FEES.

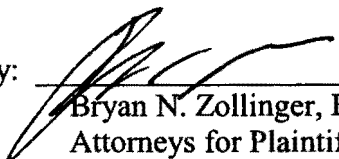
Plaintiff hereby claims as total attorney's fees: \$908.00

TOTAL FEES: \$908.00

SCANNED

DATED this 31st day of August, 2016.

SMITH, DRISCOLL & ASSOCIATES, PLLC

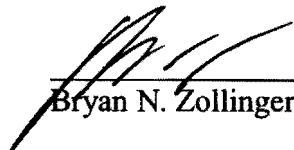
By: 
Bryan N. Zollinger, Esq.
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

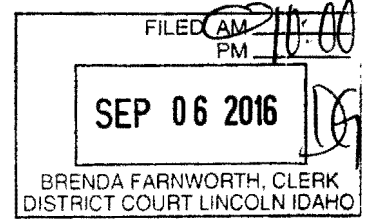
I HEREBY CERTIFY that on this 31st day of August, 2016, I caused a true and correct copy of the foregoing **MEMORANDUM OF SUPPLEMENTAL ATTORNEY'S FEES** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

☒ U.S. Mail
☐ Facsimile
☐ Overnight Delivery
☐ Hand Delivery

Robert Lopez
321 N Main St
Dietrich, Idaho 83324


Bryan N. Zollinger

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

**APPLICATION FOR AWARD OF
SUPPLEMENTAL ATTORNEY'S
FEES**

COMES NOW, plaintiff, Medical Recovery Services, LLC, by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm of Smith, Driscoll & Associates, PLLC, and applies to the court pursuant to Idaho Code Sections 12-120 (5) and (3), and I.R.C.P. 54(d)(1) for an award of supplemental attorney's fees.

The application is made upon the grounds that the plaintiff is a prevailing party and entitled to attorney's fees and that the plaintiff has incurred additional attorney's fees in collecting on the judgment since the date the judgment was entered.

This application for supplemental attorney's fees is based on this Application, the Memorandum of Supplemental Attorney's Fees, the Affidavit of Bryan N. Zollinger in

support of Application for Award of Supplemental Attorney's Fees, and on the court's records and files.

DATED this 31st day of August, 2016.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan N. Zollinger, Esq.
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

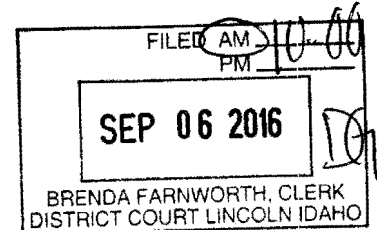
I HEREBY CERTIFY that on this 31st day of August, 2016, I caused a true and correct copy of the foregoing **APPLICATION FOR AWARD OF SUPPLEMENTAL ATTORNEY'S FEES** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

☒ U.S. Mail
☐ Facsimile Transmission
☐ Overnight Delivery
☐ Hand Delivery

Robert Lopez
321 N Main St
Dietrich, Idaho 83324


Bryan N. Zollinger

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

NOTICE OF HEARING

PLEASE TAKE NOTICE that plaintiff, Medical Recovery Services, LLC, by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC, will call up for hearing its APPLICATION FOR AWARD OF SUPPLEMENTAL ATTORNEY'S FEES on Friday, September 30, 2016 at 11:30 a.m.
DATED this 31st day of August, 2016.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: _____

Bryan N. Zollinger, Esq.
Attorneys for Plaintiff

SCANNED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2016, I caused a true and correct copy of the foregoing **NOTICE OF HEARING** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

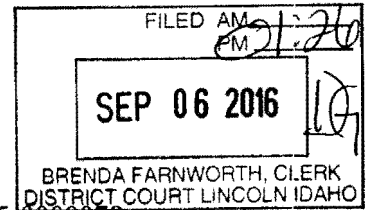
- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Overnight Delivery
- ☐ Hand Delivery

Robert Lopez
321 N Main St
Dietrich, Idaho 83324



Bryan N. Zollinger

FIFTH JUDICIAL DISTRICT COURT, STATE OF IDAHO
AND FOR THE COUNTY OF LINCOLN
111 WEST B STREET SUITE C
SHOSHONE, IDAHO 83352-0800



Medical Recovery Services, LLC

vs.

Robert W Lopez

Case No: CV-2015-0000078

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Motion
Judge:

Friday, September 30, 2016
Mark A. Ingram

11:30 AM

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Tuesday, September 6, 2016.

Copy to: Robert W Lopez(Defendant), 321 N. Main St, , Dietrich, ID, 83324 ; **Served by plaintiff**
Copy to: Bryan N Zollinger P.O. Box 50731, Idaho Falls, ID, 83405 (Plaintiff Attorney)**Faxed**

Dated: September 6th, 2016
Brenda Farnworth
Clerk Of The District Court

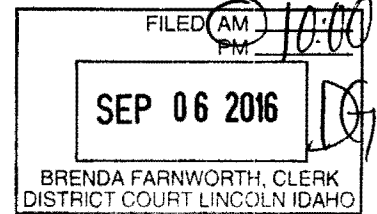
By: 
Deysi Garcia, Deputy Clerk

DOC22cv 7/96

SCANNED

NOTICE OF HEARING

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL, & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

APPLICATION FOR ORDER TO ALLOW
TELEPHONIC SUPPLEMENTAL
ATTORNEY FEES

COMES NOW, the Plaintiff, Medical Recovery Services, LLC, by and through its counsel of record, Bryan N. Zollinger, Esq., of the firm of Smith, Driscoll & Associates, PLLC, and applies to the court for an order to allow plaintiff to appear telephonically for its Supplemental Attorney Fees.

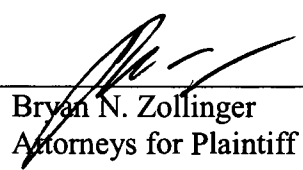
Consistent with the mandate contained in Idaho Rule of Civil Procedure 1(a) that “these rules shall be liberally construed to secure the just, speedy and *inexpensive* determination of every action and proceeding,” and pursuant to Idaho Rule of Civil Procedure 7(b)(4) which allows for hearings to be held by telephone conference, the plaintiff asks that it be allowed to appear telephonically for its Supplemental Attorney Fees because the Supplemental Attorney Fees will be heard in Lincoln County, Idaho and

plaintiff's own counsel resides in Bonneville County making travel to Lincoln County very time consuming and therefore very expensive for plaintiff. (Emphasis added).

This application is based on this Application for Order to Allow Telephonic Supplemental Attorney Fees, the Affidavit of Bryan N. Zollinger, and on the court's records and files.

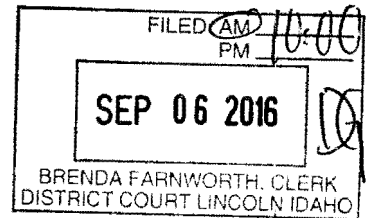
DATED: August 31, 2016

SMITH, DRISCOLL & ASSOCIATES, PLLC



Bryan N. Zollinger
Attorneys for Plaintiff

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL, & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

AFFIDAVIT IN SUPPORT OF
APPLICATION FOR ORDER TO ALLOW
TELEPHONIC SUPPLEMENTAL
ATTORNEY FEES

STATE OF IDAHO)

)ss:

County of Bonneville)

I, Bryan N. Zollinger, state and declare the following under oath:

1. I am the attorney for the plaintiff and make this affidavit based on my own personal knowledge.

2. The plaintiff has filed for an Supplemental Attorney Fees.

3. In this regard, I reside in Idaho Falls and the Supplemental Attorney Fees will be held in Lincoln County. However, the Lincoln County courthouse is 2-3 hours


from Idaho Falls (one way) thereby making travel to the Supplemental Attorney Fees very time consuming and therefore cost prohibitive for the plaintiff.

4. Accordingly, the plaintiff requests that the court allow the plaintiff to appear telephonically for the Supplemental Attorney Fees.

Further, your affiant sayeth naught.

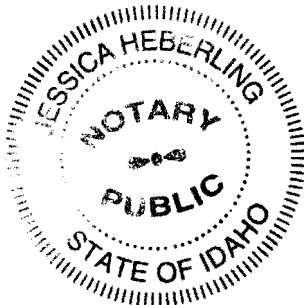
DATED: August 31, 2016

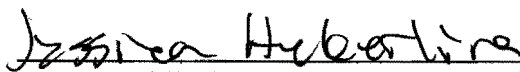
SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger
Attorneys for Plaintiff

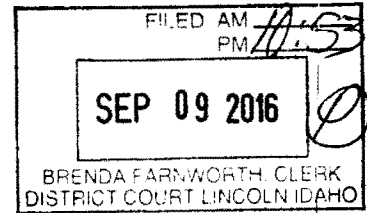
SUBSCRIBED AND SWORN TO before me this 31st day of August, 2016.

(SEAL)




Notary Public for the State of Idaho
Residing at: Idaho Falls
My Commission Expires: 1-15-21

Bryan N. Zollinger ISB # 8008
SMITH, DRISCOLL, & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

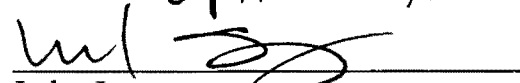
ORDER TO ALLOW TELEPHONIC
SUPPLEMENTAL ATTORNEY FEES

Upon application of the plaintiff, Medical Recovery Services, LLC, and good cause appearing therefore, the court grants the Application to Allow Telephonic Supplemental Attorney Fees and hereby orders that plaintiff may appear telephonic for its Supplemental Attorney Fees scheduled on September 30, 2016 at 11:30 a.m..

☒ At the time of the hearing the Court will contact the Plaintiff at (208)524-0731 ext. 7

☐ At the time of the hearing the Plaintiff will contact the Court at: _____

DATED this 9 day of Sept, 2016


Judge Ingram

CERTIFICATE OF SERVICE

I hereby certify that I am the clerk of the above-entitled court, and that on the 9 day of Sept, 2016, I served a true and correct copy of the foregoing ORDER TO ALLOW TELEPHONIC SUPPLEMENTAL ATTORNEY FEES on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:

Bryan N. Zollinger
Smith, Driscoll, & Associates, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405

☒ Hand ☒ Mail

Robert Lopez
321 N Main St
Dietrich, ID 83324

☐ Hand ☒ Mail

Kristy Kelly
Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

FILED AM	11:40
PM	
SEP 30 2016	
BRENDA FARNWORTH, CLERK	
DISTRICT COURT LINCOLN IDAHO	

CV-2015-0000078

Medical Recovery Services, LLC vs. Robert W Lopez

Hearing type: Motion

Hearing date: 9/30/2016

Time: 11:37 am

Judge: Mark A. Ingram

Minutes Clerk: Deysi Garcia

Mr. Zollinger is present by phone
Robert W Lopez

1138 Mr. Zollinger asks that the court grants the motion for supplemental attorney fees. Gives supportive argument.

1140 Mr. Lopez has tried to call Mr. Zollinger but his secretary did not allow him to talk to Mr. Zollinger.

Mr. Zollinger explains the reason of why he is asking for supplemental attorney fees.

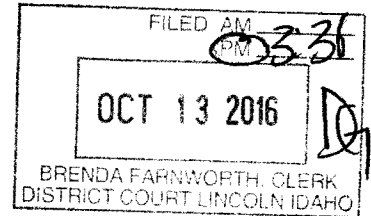
Court inquires from Mr. Zollinger. Court denies motion.

1144 Mr. Zollinger asks if the court will take it under advisement.

Court-No, under the circumstance the motion is denied.

SCANNED

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

ORDER ON APPLICATION FOR
SUPPLEMENTAL ATTORNEY'S FEES

THIS CAUSE having come up regularly, pursuant to plaintiff's application for award of supplemental attorney's fees, and plaintiff appearing by and through counsel of record Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC; and the Court having considered the records filed herein and having heard and considered oral argument from counsel, and otherwise being fully advised in the premises:

NOW, THEREFORE, it shall be the order of this Court and it is hereby ordered:

That plaintiff's Application for Supplemental Attorney's Fees is DENIED.

MADE AND ENTERED this 13 day of October 2016.

Mark Dyer

SCANNED

Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am the clerk of the above entitled court, and that on the 13 day of October 2016. I served a true and correct copy of the foregoing **ORDER ON APPLICATION FOR SUPPLEMENTAL ATTORNEY'S FEES** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:

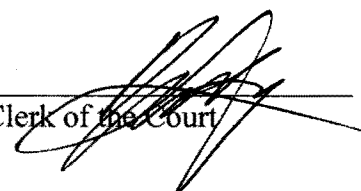
- ☐ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Hand Delivery
- ☐ Courthouse Box

Email

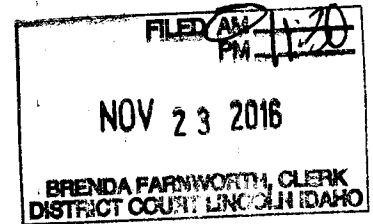
Bryan N. Zollinger, Esq.
SMITH, DRISCOLL & ASSOCIATES,
PLLC P.O. Box 50731
Idaho Falls, Idaho 83405

- ☐ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Hand Delivery
- ☐ Overnight Delivery

Robert Lopez
321 N Main St
Dietrich, ID 83324


Clerk of the Court

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

Vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

NOTICE OF APPEAL

TO THE ABOVE NAMED RESPONDENT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company, appeals against the above-named respondent, ROBERT W. LOPEZ, to the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Lincoln from the Order on Application for Supplemental Attorney's fees dated October 13, 2016 by Magistrate Judge Ingram, presiding over the Magistrate Court of the Fifth Judicial District of the State of Idaho, in and for the County of Lincoln filed with the Court October 13, 2016. Pursuant to I.A.R. 11, the appellant has attached a copy of this appealable decision, order, and/or judgment.

\\CLIENTS\BDS\Collections\MRS\Files\7341.12773\Pleadings\161122 Notice of Appeal.docx

2. Appellant has the right to appeal to the District Court, and the decisions, orders, and judgments described in paragraph 1 above are subject to appeal pursuant to Rule 11(a), Idaho Appellate Rules.

3. The issues which the appellant intends to assert in the appeal are the following:

a. Did the Magistrate court commit reversible error when it concluded that plaintiff's Application for Supplemental Attorney's Fees is DENIED?

b. Is Medical Recovery Services, LLC entitled to an award of attorney's fees under I.C. 12-120(1), (3) and (5) and I.A.R. 41?

4. There has been no order entered sealing any portion of the record in this case.

5. The appellant requests the transcript from the following hearings to be prepared on appeal: Motion for Interest and Fees, February 20, 2014

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules: The entire MAGISTRATE court file.

7. I certify:

(a) That a copy of this notice of appeal has been served on the reporter;

(b) That the appellate filing fee has been paid;

(c) That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 22nd day of November, 2016.

SMITH, DRISCOLL & ASSOCIATES, PLLC

F:\CLIENTS\BDS\Collections\MRS Files\734-J-12773\Pleadings\161122 Notice of Appeal.docx

By: Bryan N. Zollinger
Attorneys for Appellant**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of November, 2016, I caused a true and correct copy of the forgoing **NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

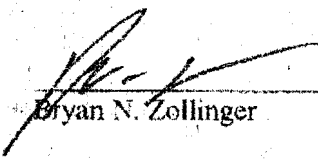
PARTIES SERVED:

- ☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Delivery

Robert Lopez
321 N Main St
Dietrich, ID 83324

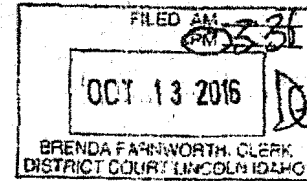
- ☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Delivery

Deysi Garcia
Lincoln County Clerk
Lincoln County Courthouse
111 West B St
Shoshone, Idaho 83352


Bryan N. Zollinger

RECEIVED OCT 13 2016

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

ORDER ON APPLICATION FOR
SUPPLEMENTAL ATTORNEY'S FEES

THIS CAUSE having come up regularly, pursuant to plaintiff's application for award of supplemental attorney's fees, and plaintiff appearing by and through counsel of record Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC; and the Court having considered the records filed herein and having heard and considered oral argument from counsel, and otherwise being fully advised in the premises:

NOW, THEREFORE, it shall be the order of this Court and it is hereby ordered:

That plaintiff's Application for Supplemental Attorney's Fees is DENIED.

MADE AND ENTERED this 13 day of October 2016.

SCANNED

Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am the clerk of the above entitled court, and that on the 13
day of October 20 16. I served a true and correct copy of the foregoing **ORDER ON**
APPLICATION FOR SUPPLEMENTAL ATTORNEY'S FEES on the persons listed below
by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:

- ☐ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Hand Delivery
- ☐ Courthouse Box

Email

Bryan N. Zollinger, Esq.
SMITH, DRISCOLL & ASSOCIATES,
PLLC P.O. Box 50731
Idaho Falls, Idaho 83405

- ☐ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Hand Delivery
- ☐ Overnight Delivery

Robert Lopez
321 N Main St
Dietrich, ID 83324


Clerk of the Court

LAW OFFICES OF
SMITH, DRISCOLL & ASSOCIATES, PLLC

BRYAN D. SMITH
B.J. DRISCOLL
BRYAN N. ZOLLINGER

414 SHOUP AVE.
POST OFFICE BOX 50731
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 524-0731
FAX (208) 529-4166
e-mail: info@idahoalaw.com

November 22, 2016

Lincoln County Clerk
Lincoln County Courthouse
111 West B St
Shoshone, Idaho 83352

RE: Medical Recovery Services, LLC v. Robert Lopez

Dear Clerk:

Enclosed please find the following:

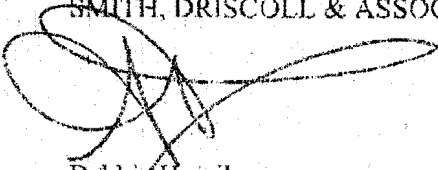
1. Original Notice of Appeal;
2. Check in the amount of \$81.00 for the appellate fee; and
3. A check in the amount of \$200.00 for the court reporter.

Please file the original with the courts. If you have any questions or concerns, please advise.

Thank you for your prompt assistance in this matter.

Sincerely,

SMITH, DRISCOLL & ASSOCIATES, PLLC

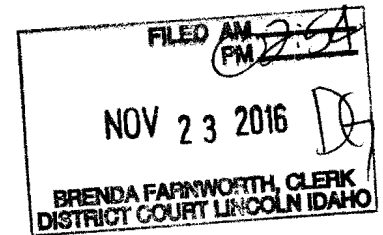


Debbie Hamilton
Legal Assistant to Bryan N. Zollinger

Enclosures

P:\CLIENTS\BDS\Collections\MRS\Files\7347.12773\Pleadings\161122 Notice of Appeal.docx

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

Vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

AMENDED NOTICE OF APPEAL

TO THE ABOVE NAMED RESPONDENT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company, appeals against the above-named respondent, ROBERT W. LOPEZ, to the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Lincoln from the Order on Application for Supplemental Attorney's fees dated October 13, 2016 by Magistrate Judge Ingram, presiding over the Magistrate Court of the Fifth Judicial District of the State of Idaho, in and for the County of Lincoln filed with the Court October 13, 2016. Pursuant to I.A.R. 11, the appellant has attached a copy of this appealable decision, order, and/or judgment.

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SCANNED

2. Appellant has the right to appeal to the District Court, and the decisions, orders, and judgments described in paragraph 1 above are subject to appeal pursuant to Rule 11(a), Idaho Appellate Rules.

3. The issues which the appellant intends to assert in the appeal are the following:

a. Did the Magistrate court commit reversible error when it concluded that plaintiff's Application for Supplemental Attorney's Fees is DENIED?

b. Is Medical Recovery Services, LLC entitled to an award of attorney's fees under I.C. 12-120(1), (3) and (5) and I.A.R. 41?

4. There has been no order entered sealing any portion of the record in this case.

5. The appellant requests the transcript from the following hearings to be prepared on appeal: Application for Award of Supplemental Attorney's Fees on September 30, 2016.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules: The entire MAGISTRATE court file.

7. I certify:

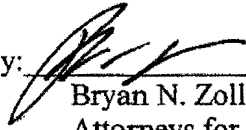
(a) That a copy of this notice of appeal has been served on the reporter;

(b) That the appellate filing fee has been paid;

(c) That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 23rd day of November, 2016.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 
Bryan N. Zollinger
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of November, 2016, I caused a true and correct copy of the forgoing **AMENDED NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

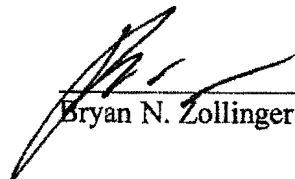
PARTIES SERVED:

- ☐ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

Robert Lopez
321 N Main St
Dietrich, ID 83324

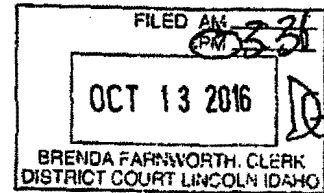
- ☐ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

Deysi Garcia
Lincoln County Clerk
Lincoln County Courthouse
111 West B St
Shoshone, Idaho 83352


Bryan N. Zollinger

RECEIVED OCT 13 2016

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

ORDER ON APPLICATION FOR
SUPPLEMENTAL ATTORNEY'S FEES

THIS CAUSE having come up regularly, pursuant to plaintiff's application for award of supplemental attorney's fees, and plaintiff appearing by and through counsel of record Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC; and the Court having considered the records filed herein and having heard and considered oral argument from counsel, and otherwise being fully advised in the premises:

NOW, THEREFORE, it shall be the order of this Court and it is hereby ordered:

That plaintiff's Application for Supplemental Attorney's Fees is DENIED.

MADE AND ENTERED this 13 day of October 2016.

Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am the clerk of the above entitled court, and that on the 13
day of October 20 16. I served a true and correct copy of the foregoing **ORDER ON**
APPLICATION FOR SUPPLEMENTAL ATTORNEY'S FEES on the persons listed below
by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:

- ☐ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Hand Delivery
- ☐ Courthouse Box

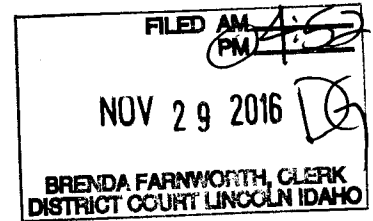
Email

Bryan N. Zollinger, Esq.
SMITH, DRISCOLL & ASSOCIATES,
PLLC P.O. Box 50731
Idaho Falls, Idaho 83405

- ☐ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Hand Delivery
- ☐ Overnight Delivery

Robert Lopez
321 N Main St
Dietrich, ID 83324


Clerk of the Court



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN**

Medical Recovery Services, LLC, an Idaho)
limited liability company,)

Plaintiff/Appellant,)

vs.)

Robert W. Lopez,)

Defendant/Respondent.)

Case No. CV-2015-0078

**PROCEDURAL ORDER
GOVERNING CIVIL APPEAL
FROM MAGISTRATE DIVISION
TO DISTRICT COURT**

A Notice of Appeal has been filed in the above-entitled District Court seeking appellate review of judgments or orders of the Magistrate Division. This Order, together with Rule 83, Idaho Rules of Civil Procedure, and applicable provisions of the Idaho Appellate Rules shall govern all further proceedings before this Court.

1. Notices of Appeal or Cross-Appeal; Filing Fees: The appellant's notice of appeal was filed November 23, 2016. A notice of cross-appeal has not been filed. If not already paid, all appellate filing fees must be paid within seven (7) days after filing of the notice of appeal or cross-appeal. Failure to timely pay any filing fee shall be grounds for dismissal without further notice.

2. Stays: All proceedings shall automatically be stayed for a period of fourteen (14) days following the filing of the notice of appeal. Thereafter, any stay shall be only by order of the Magistrate or this Court pursuant to I.R.C.P. 83(e) and I.A.R. 13. Any motion for the entry of a stay during pendency of the appeal shall first be made to the Magistrate from whose decision the appeal has been taken. Any party aggrieved by the Magistrate's decision granting or denying a stay may thereafter challenge such decision by motion to this Court. Notwithstanding pendency of the appeal, unless otherwise ordered, the Magistrate shall retain the jurisdictional authority specified in I.R.C.P. 83(e)(2) and I.A.R. 13(b).

3. Form of Appeal: Pursuant to I.R.C.P. 83(f)(1), this matter will proceed as an appeal on the record rather than as a trial de novo. It is the sole responsibility of the appellant (or cross-appellant, as the case may be) to arrange for the timely preparation and lodging of an appellate record sufficient to facilitate review.

4. Clerk's Record: Pursuant to I.R.C.P. 83(h), the clerk's record shall consist of the original file maintained by the Clerk of the Magistrate Division. No separately-bound clerk's record is required, but any party may submit an optional appendix or addendum containing important or frequently-referenced documents. It shall be the responsibility of the party relying upon the contents of the record to review the original clerk's file and confirm that all necessary materials were filed and are included in the clerk's record on appeal.

5. Transcript on Appeal: The Court requires the provision of a written transcript prepared from the recorded tapes of proceedings in the Magistrate Division. It is the responsibility of the appellant (or cross-appellant, as the case may be) to timely arrange and pay for the requested transcript which that party desires to support the record on appeal and to do so by specifying in writing those portions of the record to be transcribed and serving the same on the appellate clerk. Pursuant to I.R.C.P. 83(g), the responsible party shall contact the appellate clerk, determine the estimated cost of the transcript and, within fourteen (14) days after filing of the notice of appeal (or cross-appeal), pay such estimated cost to the appellate clerk. Any balance in excess of the estimate shall be payable upon completion of the transcript. The transcript will not be served upon the parties until all fees for preparation have been paid in full. Failure to timely remit the estimated and/or final preparation costs shall be grounds for dismissal of the ordering party's appeal or cross-appeal. Absent an order enlarging time, the transcript shall be lodged within thirty-five (35) days after payment of the estimated cost of preparation.

6. Augmentation of Record: Pursuant to I.R.C.P. 83(k), the clerk's record and/or transcript on appeal may be augmented in the manner prescribed by I.A.R. 30.

7. Appellate Briefs: The initial Appellant's Brief shall be filed with the clerk within thirty-five (35) days after lodging of the transcript, or, in cases in which no transcript is to be furnished, within thirty-five (35) days after filing of the notice of appeal. The Respondent's (and Cross-Appellant's) Brief shall be filed within twenty-eight (28) days after service of the Appellant's Brief. The appellant (or cross-appellant) may file a Reply (and Cross-Respondent's) Brief within twenty-one (21) days after service of the Respondent's (or Cross-Respondent's) Brief. The organization and content of briefs shall be governed by I.A.R. 35 and 36. In accordance with I.R.C.P. 83(o), only one signed original brief need be filed, and only one copy must be served upon each opposing party.

8. Extensions of Time: Motions to extend the time for filing an appellate brief shall be submitted in conformity with I.A.R. 34(e). All other requests for extension of time shall be submitted in conformity with I.A.R. 46.

9. Motions: All motions shall be submitted in conformity with I.A.R. 32, provided that only one original motion, affidavit or brief shall be filed, and further provided that all motions

shall be scheduled for hearing by the moving party on the court's regular civil law and motion calendar.

10. Oral Argument: After all briefs are filed (or the time for filing briefs has expired, either party may, within fourteen (14) days, contact the appellate clerk to request that the case be set for oral argument pursuant to I.R.C.P. 83(p). If neither party does so, the Court will deem oral argument waived, and the case will be decided on the briefs, transcript and record. If the case is set for oral argument, the form and order of argument shall be the same as that before the Idaho Supreme Court, and shall be governed by I.A.R. 37.

11. Appellate Decision: The Court's decision will be by written memorandum which shall constitute the appellate judgment required by I.R.C.P. 83(r)(1).

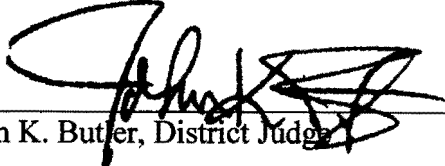
12. Petitions for Rehearing: A party desiring to file a petition for rehearing must do so within twenty-one (21) days after filing of the court's opinion, and must lodge a supporting brief within fourteen (14) days after filing the petition. Proceedings relating to petitions for rehearing shall be governed by I.A.R. 42.

13. Attorneys Fees and Costs on Appeal: Costs and attorneys fees on appeal shall be claimed, objected to and fixed in accordance with I.A.R. 40 and 41, provided that only one original signed claim, objection or supporting or opposing affidavit need be filed.

14. Remittitur to the Magistrate Division: If no notice of appeal to the Idaho Supreme Court is filed within forty-two (42) days after filing of the Court's written decision, the clerk shall issue a remittitur remanding the matter to the Magistrate Division as provided in I.R.C.P. 83(r)(1)(A).

15. Failure to Comply: Failure by either party to timely comply with the requirement of this Order or applicable provisions of the Idaho Rules of Civil Procedure or Idaho Appellate Rules shall be grounds for imposition of sanctions, including, but not limited to the allowance of attorneys fees, striking of briefs or dismissal of the appeal pursuant to I.R.C.P. 11 and 83(m) and I.A.R. 11.1 and 21.

DATED this 29 day of November, 2016.



John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY


I, undersigned, hereby certify that on the 29 day of November, 2016, a true and correct copy of the foregoing PROCEDURAL ORDER GOVERNING CIVIL APPEAL was mailed, postage paid, and/or hand-delivered to the following persons:

The Honorable Mark A. Ingram, Magistrate Judge

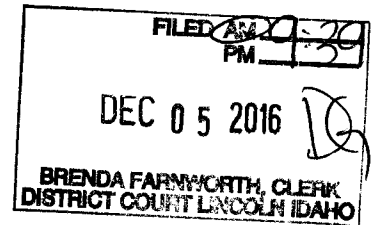
Bryan N. Zollinger, attorney for plaintiff/appellant

Robert W. Lopez, *pro se*

Deputy Clerk



TO: District Court
Lincoln County
111 West B, Ste C
Shoshone, Idaho 83352



MEDICAL RECOVERY SERVICES, LLC,)
an Idaho limited liability company,) CASE NO. CV-2015-0078
Plaintiff,)
vs.)
ROBERT W. LOPEZ,)
Defendant.)

NOTICE OF TRANSCRIPT LODGED

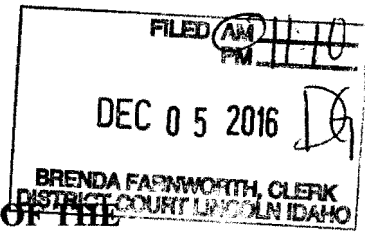
Notice is hereby given that on DECEMBER 2, 2016,
I lodged one transcript of 11 pages in length for the
above-referenced appeal with the District Court Clerk of
the County of Lincoln in the Fifth Judicial District.

Appeal transcript consisting of the following
transcript: 9/30/16 Motion for attorney fees.

Denise K. Schloder
(Signature of Reporter or Transcriber)

DENISE K. SCHLODER, CSR NO. 652

SCANNED



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN

MEDICAL RECOVERY SERVICES,)
LLC, an Idaho limited liability)
company,)
Plaintiff)

vs.)

ROBERT W. LOPEZ)
Defendant.)
_____)

Case No. CV-2015-78

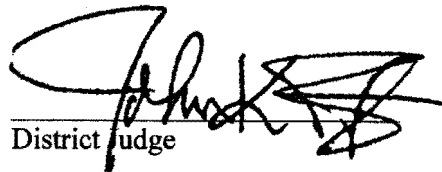
) NOTICE OF LODGING OF TRANSCRIPT
) AND ORDER FIXING SCHEDULE FOR
) SUBMISSION OF BRIEFS

Notice is hereby given that the Transcript of the proceedings before Magistrate Division were lodged with the Clerk of the District Court on December 5, 2016.

Pursuant to I.A.R 34 and the *General Procedural Order* previously entered by the Court, it is hereby ordered that briefs shall be filed as follows:

- Appellant's brief January 9 , 2017
- Respondent's brief February 6, 2017
- Appellant's Reply brief February 27,2017

DATED this 5 day of December, 2016.


District Judge

ORDER OF THE DISTRICT COURT

SCANNED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on the 5 day of December, 2016, I caused to be served a true and correct copy of the foregoing, by method indicated below:

Hon. Mark A. Ingram
Lincoln County Magistrate
Shoshone, Idaho

☐ Hand delivered
☒ Emailed
☐ Faxed to
☐ U.S. Postal Service

Brian N. Zollinger
Attorney at Law
P.O. Box 50731
Idaho Falls, ID 83405

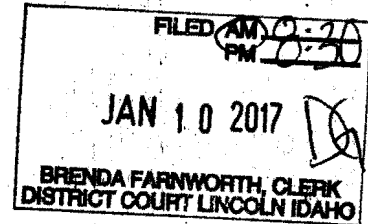
☐ Hand delivered
☒ Emailed
☐ Faxed to
☐ U.S. Postal Service

Robert W. Lopez
Defendant
321 N. Main St.
Dietrich, ID 83324

☐ Hand delivered
☐ Emailed
☐ Faxed
☒ U.S. Postal Service

By: 
Deysi Garcia, Deputy Clerk

Bryan N. Zollinger ISB #8008
 Joseph F. Hurley ISB #10149
SMITH, DRISCOLL & ASSOCIATES, PLLC
 414 Shoup Avenue
 P.O. Box 50731
 Idaho Falls, Idaho 83405
 (208) 524-0731



Attorneys for Appellant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
 IN AND FOR THE COUNTY OF LINCOLN

MEDICAL RECOVERY SERVICES, LLC,
 an Idaho limited liability company,

Plaintiff/Appellant,

vs.

ROBERT W. LOPEZ

Defendant/Respondent.

Case No. CV-15-78

BRIEF ON APPEAL

I. INTRODUCTION.

Appellant, MEDICAL RECOVERY SERVICES, LLC, ("MRS") appeals against the above-named respondent, ROBERT W. LOPEZ, ("defendant") to the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Lincoln from the Order on Application for Supplemental Attorney's Fees by Magistrate Judge Ingram, presiding over the Magistrate Court of the Fifth Judicial District of the State of Idaho, in and for the County of Lincoln filed with the Court October 13, 2016. This appeal addresses the Magistrate Court's denial of MRS' attorney's fees under Idaho Code Section 12-120(5).

BRIEF ON APPEAL – PAGE 1

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SCANNED

II. CHRONOLOGY OF EVENTS.

DATE	EVENT
August 31, 2016	Appellant files Application for Supplemental Attorney's Fees.
September 30, 2016	The Magistrate Court holds a hearing on the Motion for Attorney Fees.
October 13, 2016	The Magistrate Court denies the application for Supplemental Attorney's Fees.
November 23, 2016	Appellant files a Notice of Appeal.

III. ISSUES ON APPEAL.

- A. Did the Magistrate Court commit reversible error when it denied MRS's Application for Supplemental Fees?
- B. Is MRS entitled to an award of attorney's fees and costs on appeal under § 12-120(1), (3) and (5) and I.A.R. 40?

IV. STANDARD OF REVIEW.

Idaho Rule of Civil Procedure 83(u)(1) provides:

Upon an appeal from the magistrate's division of the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the appellate rules of the Supreme Court.

This case involves a decision to award attorney's fees under I.C. § 12-120(5). When reviewing the decision of a court to award attorney's fees, courts apply an abuse of discretion standard. *Contreras v. Rubley*, 142 Idaho 573 (2006). "When an award of attorney fees depends on the interpretation of a statute, the standard of review for statutory interpretation applies". *Action Collection Servs. Inc., v. Bigham 4*, 146 Idaho 286, 289 (Ct. App. 2008).

Statutory interpretation is a matter of law, so courts should exercise free review. *Id.* In this

BRIEF ON APPEAL – PAGE 2

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case, the Magistrate Court based its decision on an improper interpretation of the statute, and denied all of the attorney's fees. Therefore this Court should exercise free review.

V. ARGUMENT.

A. MRS Is Entitled To Reasonable Attorney's Fees For Its Necessary Efforts To Collect On The Judgment And The Court Has No Discretion Whether To Award The Fees.

The Magistrate Court erred when it denied MRS's motion for post-judgment attorney's fees in its Order on Application for Supplemental Attorney's Fees on October 13, 2016.¹ The Magistrate Court gave its reasoning for its decision during the hearing for the Application for Supplemental Attorney's Fees on September 30, 2016.² At the hearing, the Magistrate Court stated that it found the application for I.C. § 12-120(5) post-judgment attorney's fees was untimely because MRS filed the application after judgment was satisfied.³ The Magistrate Court also stated that the award of the attorney's fees are "ultimately a matter of discretion." In making that decision, the Magistrate Court ignored the statutory language of I.C. § 12-120(5) which states:

In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party *shall also be entitled to reasonable post judgment attorney's fees and costs incurred in attempting to collect on the judgment.* Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

I.C. § 12-120(5)(Emphasis added).

I.C. § 12-120(5) mandates the court to award post-judgment attorney's fees when the party incurs post-judgment attorney's fees and costs in attempting to collect on the judgment.

¹ See Order on Application for Supplemental Attorney's Fees, date October 13, 2016

² See Transcript on Appeal, September 30, 2016

³ See Transcript on Appeal, September 30, 2016, pgs. 7, 9.

Action Collection Servs., 146 Idaho at 291. When interpreting a statute, a Court must apply the plain meaning of a statute unless the expressed legislative intent is contrary to the plain meaning, or the plain meaning leads to absurd results. *Action Collection Servs.*, 146 Idaho at 289. Here the plain language of the statute states that a party "shall" be entitled to reasonable attorney's fees.

"The word *shall*, when used in a statute, is mandatory." *Paolini v. Albertson's Inc.*, 143 Idaho 547, 549 (2006). Here, the language of the statute is unambiguous, and the language unmistakably states that as long as a party can meet the other requirements of subsection (5), a court must award reasonable attorney's fees. Nevertheless, the Magistrate Court improperly determined that the award of attorney's fees was in its "discretion" despite the mandatory statutory language of I.C. § 12-120(5).

In this case, there is no dispute that MRS incurred reasonable attorney's fees in attempting to collect on the judgment. It took nearly one year from the date the judgment was entered against defendants until the judgment was satisfied. MRS prepared writs of execution for garnishments for the defendant, prepared an application for continuing garnishment, met with the defendant for an order of examination, and appeared in Court on several occasions. These were all reasonable steps that were incurred in attempting to collect on the judgment.

Furthermore, MRS satisfied the other requirements of obtaining an award of attorney's fees under I.C. § 12-120(5) because the Complaint alleges that "written demand for payment on the defendant has been made more than 20 days prior to commencing this action" and defendant failed to pay anything in response to the demand. MRS also satisfied the requirements of obtaining an award of attorney's fees under I.C. § 12-120(3) because the

Complaint alleges that "[t]his action arises from an open account and/or from services provided" Moreover, the Magistrate Court entered Default Judgment on the Complaint in which the court awarded attorney's fees as requested.

The Court in *Action Collection Servs.* determined that the plaintiff's similar steps incurred attempting to collect on a judgment were reasonable and that the plaintiff also met the other requirements in I.C. § 12-120(5). The Court overturned the lower court's decision denying post-judgment attorney's fees and awarded the plaintiff attorney's fees on appeal. *Action Collection Servs.*, 146 Idaho at 291.

Here, the Magistrate Court does not have any discretion whether to award attorney's fees under I.C. § 12-120(5). Instead, the Magistrate Court must award attorney's fees because MRS's post-judgment collection efforts were reasonable attempts to collect on the judgment, and MRS met the other requirements under I.C. § 12-120(5). Therefore, the Magistrate Court erred when it did not award MRS its attorney's fees, and this Court should overturn the Magistrate Court's decision on appeal.

B. MRS' Application For Supplemental Attorney's Fees Was Not Untimely Because There Is No Limitation On When An Application For I.C. § 12-120(5) Attorney's Fees Must Be Filed.

When the Magistrate Court denied MRS its post-judgment attorney's fees, it did so with no legal authority to support its legal conclusion. The plain language for I.C. § 12-120(5) mandates that post-judgment attorney's fees be awarded, and it provides for no limitation on when the application for fees must be filed. Nonetheless, the Magistrate Court in this case still denied MRS's application for post-judgment attorney's fees on the basis it was untimely.

because the judgment was already satisfied.⁴ The Magistrate Court did not provide any case law, or any other legal basis in deciding that I.C. § 12-120(5) had some limitation as to when an application for post-judgment attorney's fees must be brought before the court.

However, I.C. §12-120(5) states that a party "shall be entitled to reasonable post judgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing." There is nothing in the statute that states or suggests that a party must file an application for attorney's fees prior to full satisfaction of the judgment. The Magistrate Court has inserted language into the statute without any authority to do so.

The Magistrate Court's decision is that a party must submit an application to the trial court before judgment has been satisfied. However, the purpose of the statute is to reimburse a party for its attorney's fees spent on its attempts to collect on the judgment. But until judgment has been satisfied, there is no way to know the total amount of the attorney's fees incurred in collecting on the judgment. Any application for post-judgment attorney's fees prior to satisfaction of the judgment would be premature because there is no way for MRS to file an application for post-judgment attorney's fees until judgment is satisfied and all attempts to collect on the judgment cease.

For these reasons, it would be improper for any court to find that an application for attorney's fees under I.C. § 12-120(5) is untimely if it is filed after a judgment is satisfied. The

⁴⁴ See Transcript on Appeal, September 30, 2016, pgs. 7, 9.

only way for I.C. § 12-120(5) to have any logical or real effect is to find that an application under the statute is proper after judgment is satisfied.

C. MRS Is Entitled To Recover Its Reasonable Attorney's Fees And Costs On Appeal.

MRS is entitled to recover its reasonable attorney's fees and costs on appeal under I.C. §§ 12-120(1), (3), (5) and Idaho Appellate Rule 40. The Court in *Action Collection Servs.* also awarded the plaintiff attorney's fees on appeal under both I.C. §§ 12-120(1) and (3) because "the mandatory attorney fee provisions of I.C. § 12-120 govern on appeal as in the trial court," and "the statute applies if the appeal is concerned with the entitlement to an award below." *Action Collection Servs.*, 146 Idaho at 291. Since the plaintiff was the prevailing party on the appeal, the Court determined the plaintiff was also entitled attorney's fees pursuant to I.C. § 12-120(1) and 12-120(3). The Court also awarded the plaintiff attorney's fees on appeal under I.C. § 12-120(5) as the appeal was a "reasonable, post-judgment [attempt] to collect on the judgment." *Id.*

The facts of this case are similar to those of *Action Collection Servs.* In the underlying proceedings, MRS sought and was awarded costs and attorney's fees under § 12-120(1) and 12-120(3). MRS was forced to bring this appeal following an attempt to collect on its underlying judgment, and "the appeal is concerned with the entitlement to an award" in the below proceedings. Moreover, this appeal is a "reasonable, post-judgment attempt to collect on the judgment." Therefore, since MRS is the prevailing party, it is entitled to its attorney's fees on appeal under §§ 12-120(1), (3), and (5).

Rule 40 of the Idaho Appellate Rules further permits the award of costs to the prevailing party on appeal. Rule 40 states, "[c]osts shall be allowed as a matter of course to the prevailing

party unless otherwise provided by law or order of the Court." As the prevailing party on appeal, plaintiff is entitled to recover its costs pursuant to Rule 40. As such, MRS is entitled to recover its reasonable attorney's fees and costs.

VI. CONCLUSION.

For all the reasons set forth in this brief, MRS respectfully requests that this Court reverse the decision of the Magistrate Court and grant MRS' request for attorney's fees and costs pursuant to § 12-120(5). MRS also requests that this Court award MRS its fees and costs on appeal before this Court.

RESPECTFULLY SUBMITTED this 9th day of January, 2017.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Joseph F. Hurley
Attorneys for Appellant

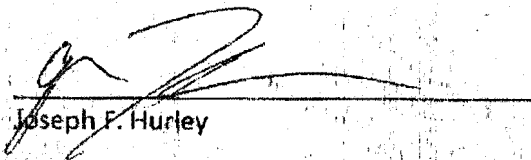
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 2017, I caused a true and correct copy of the forgoing **BRIEF ON APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

PARTIES SERVED:

- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

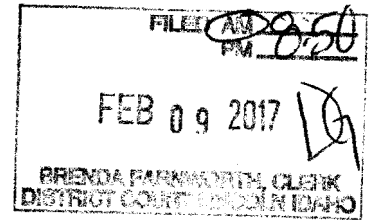
Robert Lopez
321 N Main St
Dietrich, ID 83324



Joseph F. Hurley

BRIEF ON APPEAL - PAGE 9

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

MEDICAL RECOVERY SERVICES,)
LLC, an Idaho limited liability)
company,)

Plaintiff/Appellant,)

vs.)

ROBERT W. LOPEZ,)

Defendant/Respondent.)

Case No. CV-2015-78

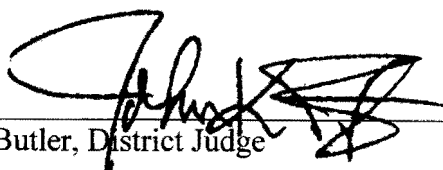
ORDER RE: RESPONDENT'S BRIEF

The Respondent's Brief was due to be filed on February 7, 2017 pursuant to the Briefing Schedule. Respondent has not filed a Brief nor has he requested an extension of time to file his Brief;

THEREFORE IT IS HEREBY ORDERED that the Respondent has fourteen (14) days from the date of service of this Order to file his Brief or request an extension of time to file a brief, and should he fail to do so the above-entitled appeal shall be deemed submitted for a decision without oral argument based on the record on appeal.

IT IS SO ORDERED.

DATED this 9 day of February, 2017


John K. Butler, District Judge

SCANNED

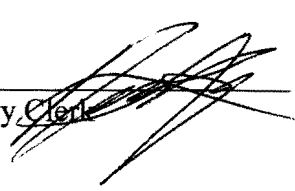
CERTIFICATE OF MAILING/DELIVERY

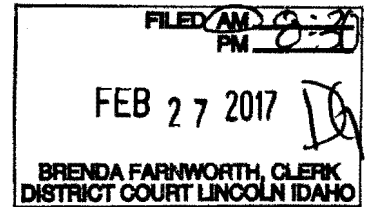
I, undersigned, hereby certify that on the 9 day of February, 2017 a true and correct copy of the foregoing ORDER RE: RESPONDENT'S BRIEF was mailed, postage paid, and/or hand-delivered to the following persons:

Attorney for Appellant:
Bryan N. Zollinger
P. O. Box 50731
Idaho Falls, 83405

Self-Represented Respondent:
Robert W. Lopez
321 N. Main St.
Dietrich, Idaho 83324

Deputy Clerk

A handwritten signature in black ink, consisting of several overlapping, stylized strokes, is written over the printed text "Deputy Clerk".



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

MEDICAL RECOVERY SERVICES,)
LLC, an Idaho limited liability)
company,)

Plaintiff/Appellant,)

vs.)

ROBERT W. LOPEZ,)

Defendant/Respondent.)

Case No. CV-2015-78

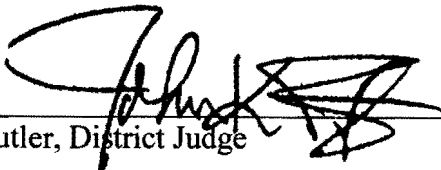
ORDER SUBMITTING APPEAL FOR DECISION WITHOUT ORAL ARGUMENT

The Court having previously entered its Order Re: Respondent's Brief directing the Respondent to file a Brief within 14 days and the time granted having expired and the Respondent having failed to file a Brief,

IT IS HEREBY ORDERED, that the appeal in the above-entitled matter is hereby submitted for decision without oral argument. A decision shall issue within 30 days of this Order.

IT IS SO ORDERED.

DATED this 27 day of February, 2017



John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 27 day of February, 2017 a true and correct copy of the foregoing ORDER SUBMITTING APPEAL FOR DECISION WITHOUT ORAL ARGUMENT was mailed, postage paid, and/or hand-delivered to the following persons:

Attorney for Appellant:

Bryan N. Zollinger

Joseph F. Hurley

P. O. Box 50731

Idaho Falls, 83405

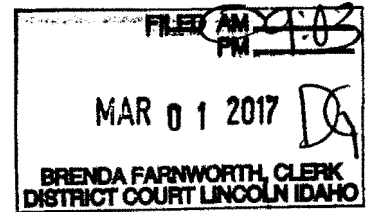
Self-Represented Respondent:

Robert W. Lopez

321 N. Main St.

Dietrich, Idaho 83324


Deputy Clerk



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN**

MEDICAL RECOVERY SERVICES,)
LLC, an Idaho limited liability)
company,)

Plaintiff/Appellant,)

vs.)

ROBERT W. LOPEZ,)

Defendant/Respondent.)

Case No. CV-2015-78

MEMORANDUM DECISION ON APPEAL

On February 27, 2017 the matter was submitted for decision without oral argument. Counsel, Joseph F. Hurley appeared and filed a Brief on behalf of the Appellant. The Respondent did not file a Brief.

The court having considered the transcript and record of the proceedings and the Appellant's Brief, took the matter under advisement for a written decision.

I.

FACTUAL AND PROCEDURAL BACKGROUND

On June 2, 2015 Medical Recovery Services, LLC (Appellant) filed a complaint against Robert W. Lopez (Respondent) seeking to collect on a debt. Ultimately the appellant applied for

and obtained an Amended Default Judgment in the sum of \$776.94 on September 9, 2015 which included an award of attorney fees. The appellant subsequently attempted to collect on the Judgment. There is no dispute that the respondent ultimately paid the judgment amount on or before August 23, 2016.¹

On September 6, 2016 the appellant filed an application for post-judgment attorney fees pursuant to I.C. § 12-120(5) in the amount of \$908.00. A hearing was conducted on the application on September 30, 2016. After hearing the arguments of the appellant and the respondent, the magistrate denied the award of post-judgment attorney fees on the basis that the application was untimely because it was filed after the judgment amount had been paid. (Tr. Pg. 7, L.15-21) and that it was unreasonable to seek the amount sought for attorney fees after the judgment amount had been paid. (Tr. Pg. 9, L. 15-20).² The Order denying the post-judgment attorney fees was entered October 13, 2016. The appellant filed a timely Notice of Appeal.

On appeal the appellant argues that the magistrate erred when it determined: (1) that it had the discretion not to make an award of attorney fees when such an award was mandatory pursuant to I.C. § 12-120(5) and (2) that the application for fees was untimely.

II.

STANDARD OF REVIEW

Upon an appeal from the magistrate court, the district court, sitting in its appellate capacity, applies the same standards of review and appellate rules as an appeal from the district court to the Supreme Court. I.R.C.P. 83(f)(1); *Pieper v. Pieper*, 125 Idaho 667, 873 P.2d 921 (Ct. App. 1994). Procedural issues are also a question of law over which this Court exercises free review. *Zenner v. Holcomb*, 147 Idaho 444, 451, 210 P.3d 552, 559 (2009) (citing *Blaser v.*

¹ The Sheriff's Return on the Garnishment Order dated August 23, 2016 shows no balance owing on the judgment.

² The magistrate further found that an "...amount of zero is the reasonable amount given the circumstances of this case." (Tr. Pg. 9, L. 10-12).

Cameron, 116 Idaho 453, 455, 776 P.2d 462, 464 (Ct.App.1989)). When an award of attorney fees depends on the interpretation of a statute, the standard of review for statutory interpretation applies. *Stout v. Key Training Corp.*, 144 Idaho 195, 196, 158 P.3d 971, 972 (2007). The interpretation of a statute is an issue of law over which the appellate court exercises free review. *Zener v. Velde*, 135 Idaho 352, 355, 17 P.3d 296, 299 (Ct.App.2000). If a party is entitled to an award of attorney fees by statute, the amount of such an award is a matter of discretion for the trial court based on the factors of I.R.C.P. 54(e)(3). *Action Collection Services, Inc. v. Bigham*, 146 Idaho 286, 290, 192 P.3d 1110, 1114 (Ct. App. 2008).

III.

ANALYSIS

The magistrate after hearing argument from counsel for the appellant and Mr. Lopez first determined that the application for attorney fees should be denied because it was not filed timely when it was filed after the judgment amount had been paid or “satisfied”. (Tr. Pg. 7, L. 15-21). Counsel then inquired if the court wanted to take the matter under advisement because an appeal could cause the respondent more fees. The magistrate then commented on the time and the fees incurred by the appellant in its collection efforts. (Tr. Pg. 8, L.4-14). The Court then commented on the reasonableness of the fees sought by the appellant. (Tr. Pg. 8, L.24- pg. 9, L. 5). Counsel for the appellant commented that an award is mandatory but that the amount to be awarded is discretionary and in response the magistrate stated: “...I am finding that the amount of zero is the reasonable amount given the circumstances of this case.” (Tr. Pg. 9, L.6-12) The magistrate ultimately entered his order denying post-judgment attorney fees.

A. The magistrate erred in his determination that the application was untimely.

Idaho Code section 12-120(5) provides as follows:

In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

“This section provides a basis for an award of reasonable attorney fees and costs incurred during post-judgment attempts to collect on the judgment if the party was entitled to attorney fees and costs under the statute in the underlying proceeding that resulted in the judgment.” *Action Collection Services, Inc. v. Bigham, supra.*, 146 Idaho at 290, 192 P.3d at 1114. To be entitled to an award of post-judgment attorney fees the party who obtained the judgment must have been awarded attorney fees in the original judgment pursuant to I.C. section 12-120 (1), (2), (3), or (4). In this case the appellant was awarded attorney fees in the original judgment and while the judgment does not identify the statutory basis for the award, this court may assume that the award was based on the prayer of the complaint which sought attorney fees pursuant to I.C. § 12-120(1) or (3). *Action Collection Services, Inc. v. Bigham, supra.*, 146 Idaho at 289-290, 192 P.3d at 1113-1114. Since it would appear that the appellant was awarded attorney fees as pursuant to I.C. § 12-120(1) or (3), the provisions of section 12-120(5) are mandatory that the appellant is entitled to obtain post-judgment attorney fees, since the statute provides that the appellant “...shall also be entitled to reasonable post-judgment attorney’s fee and costs incurred in attempting to collect on the judgment.”

The magistrate in part determined that the appellant was not entitled to post-judgment attorney fees because the application was filed after the judgment had been paid in full. Section 12-120(5) does not set forth any requirement that an application for post-judgment attorney fees be filed within any particular period of time.³ It stands to reason that an application for post-

³ The time requirements of Rule 54(f)(4) could not apply since they commence to run from entry of judgment.

judgment attorney fees could be filed at any time during the collection efforts on a judgment or within a reasonable period of time after the judgment has been paid in full. *See, Medical Recovery Services, LLC v. Olsen*, 160 Idaho 836, 379 P.3d 1106 (2016) (application for post judgment attorney fees was filed after the judgment was paid in full).

The appellant having been awarded attorney fees pursuant to I.C. § 12-120 in the judgment, it was also entitled to an award of attorney fees after the judgment was paid in full pursuant to I.C. § 12-120(5). The amount to be awarded would be a matter of discretion for the magistrate. The magistrate erred when he denied the application as untimely.

B. The magistrate erred to the extent he determined that he had the discretion to deny post-judgment attorney fees.

If a statute authorizing an award of attorney fees states that such fees “shall” be awarded to one of the parties, the authorization of attorney fees is mandatory and the trial court has no discretion to deny such fees. The appellant as a matter of law was entitled to an award of post-judgment attorney fees. The only discretion possessed by the trial court is the determination of the “amount” of fees to be awarded after consideration of the Rule 54(e)(3) factors. *Magleby v. Garn*, 154 Idaho 194, 296 P.3d 400 (2013); *Action Collection Services, Inc. v. Bigham*, 146 Idaho 286, 290, 192 P.3d 1110, 1114 (Ct. App. 2008).

The magistrate erred to the extent that he determined he had the discretion to deny any amount for attorney fees and therefore the matter should be remanded for a determination of a reasonable amount of post-judgment attorney fees.

C. Is the Appellant entitled to attorney fees on appeal?

The appellant seeks an award of attorney fees and costs on appeal pursuant to I.C. § 12-120 (1), (3), (5) and I.A.R. 40.

The appellant in its argument argues that attorney fees on appeal are allowed pursuant to I.C. § 12-120(1), (3) "...if the appeal is concerned with the entitlement to an award below." *Action Collection Services, Inc. v. Bigham, supra.*, 146 Idaho at 291, 192 P.3d at 1115. The appellant's reliance upon I.C. § 12-120(1) or (3) is misplaced as a basis for attorney fees on appeal because such a claim was overruled in *Credit Bureau of Eastern Idaho, Inc. v. Lecheminant*, 149 Idaho 467, 473, 235 P.3d 1188, 1194 (2010) which clearly held that section 12-120(5) is the exclusive provision for post-judgment attorney fees on appeal. At the time of the filing of the application for post-judgment attorney fees the judgment had been paid in full by the respondent. Since the fees sought were for the efforts of counsel to collect on the judgment, the provisions of I.C. § 12-120(1) or (3) are not a basis for an award of attorney fees on appeal.

As for I.C. § 12-120(5) the appellant argues that it is entitled to an award of attorney fees on appeal because this appeal is a "reasonable, post-judgment [attempt] to collect on the judgment." *Action Collection Services, Inc. v. Bigham, supra.* However, in *Magleby v. Garn*, 154 Idaho 194, 296 P.3d 400 (2013) the court denied an award of attorney fees on appeal pursuant to I.C. § 12-120(5) where the appellant had prevailed on the appeal of an award of post-judgment attorney fees. In that case the appellant had appealed the amount of the award of post-judgment attorney fees. The court held that the appellant was not entitled to fees pursuant to I.C. § 12-120(5) because "[T]his appeal cannot be reasonably characterized as an 'attempt to collect on the judgment'". *Id.*, 154 Idaho at 200, 296 P.3d at 406, fn. 4. Mr. Lopez prior to the filing of the application for post-judgment attorney fees had paid the judgment in full, so there was no longer any judgment to collect. Mr. Lopez did not participate in this appeal. The appeal was solely related to the entitlement to post-judgment attorney fees and this cannot be characterized as an attempt to collect on a judgment. Therefore, the appellant is not entitled to an award of

attorney fees on appeal pursuant to I.C. § 12-120(5).

The appellant's request for attorney fees on appeal is DENIED. Appellant is entitled to costs on appeal. I.A.R. 40.

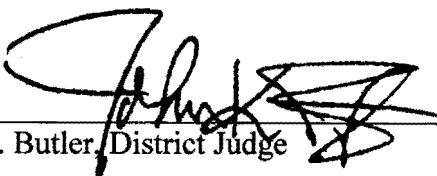
V.

CONCLUSION AND ORDER

The Order denying post-judgment attorney fees is REVERSED and this case is remanded back to magistrate court for further proceedings consistent with this opinion. The Appellant is awarded costs, but not attorney fees, on appeal.

IT IS SO ORDERED.

DATED this 1st day of March, 2017



John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 1 day of March, 2017 a true and correct copy of the foregoing MEMORANDUM DECISION ON APPEAL was mailed, postage paid, and/or hand-delivered to the following persons:


Attorneys for Appellant:

Bryan N. Zollinger
Joseph F. Hurley
P. O. Box 50731
Idaho Falls, 83405

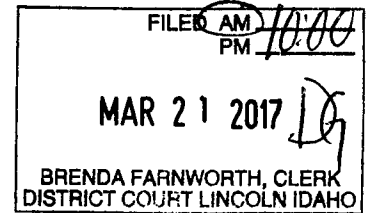
Self-Represented Respondent:

Robert W. Lopez
321 N. Main St.
Dietrich, Idaho 83324

Honorable Mark Ingram
Magistrate Judge


Deputy Clerk

Joseph F. Hurley ISB #10149
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
DISTRICT DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

**AFFIDAVIT OF JOSEPH F. HURLEY
IN SUPPORT OF MEMORANDUM OF
COSTS ON APPEAL**

STATE OF IDAHO)
) ss.
County of Bonneville)

I, Joseph F. Hurley, Esq. of the firm Smith, Driscoll & Associates, PLLC, being
first duly sworn on oath, deposes and states as follows:

1. I am the attorney of record for Plaintiff in the above-styled action. I
obtained a Juris Doctorate degree from the University of Idaho College of Law in 2015
and have been actively practicing law since October of 2016.

2. I am licensed to practice law in the Courts of Idaho, and have practiced
exclusively in civil litigation since becoming licensed. A substantial portion of my
practice has been devoted to civil litigation.

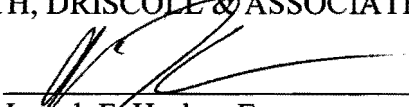
3. I submit this Affidavit in Support of Costs on Appeal and further in support of Plaintiff's Memorandum of Costs on Appeal.

4. The filing fee for the appeal was \$84.00. The cost of the Transcript was \$35.75, which was paid by the plaintiff to the court reporter.

5. The costs as set forth in this affidavit were and are necessarily and actually incurred in this action. Accordingly, these costs should in the interest of justice be assessed against the defendant in favor of plaintiff.

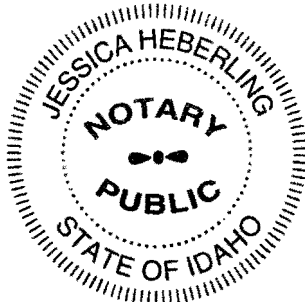
Further sayeth your affiant naught.

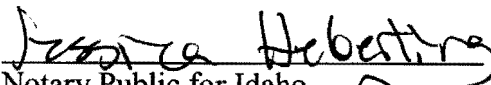
DATED this 14th day of March, 2017. SMITH, DRISCOLL & ASSOCIATES, PLLC



Joseph F. Hurley, Esq.
Attorneys for Plaintiff

SUBSCRIBED AND SWORN to before me this 14 day of March, 2017.





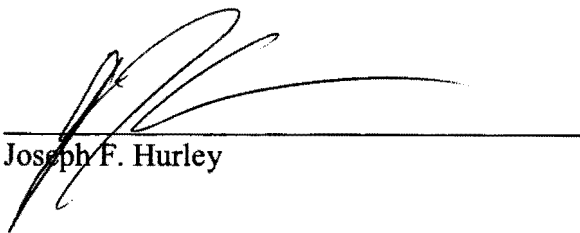
Notary Public for Idaho
Residing at: Idaho Falls
Commission Expires: 1-15-21

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2017, I caused a true and correct copy of the foregoing **AFFIDAVIT OF JOSEPH F. HURLEY IN SUPPORT OF MEMORANDUM OF COSTS ON APPEAL** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, addressed to the following:

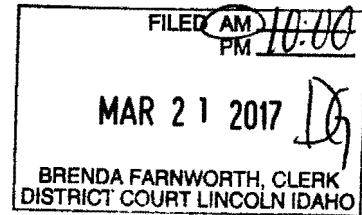
☒ U.S. Mail
☐ Facsimile

Robert Lopez
321 N Main St
Dietrich, Idaho 83324



Joseph F. Hurley

Joseph F. Hurley ISB #10149
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
DISTRICT DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

**MEMORANDUM OF COSTS ON
APPEAL**

COMES NOW the plaintiff, Medical Recovery Services, LLC (hereafter, "MRS"), by and through counsel of record, Joseph F. Hurley, of the firm Smith, Driscoll & Associates, PLLC, and pursuant to Idaho Appellate Rule 40, and Idaho Rules of Civil Procedure, Rule 54(d), and submits the following Memorandum of Costs:


I. COSTS.

Plaintiff hereby claims as total costs: \$119.75

TOTAL COSTS: \$119.75

DATED this 14th day of March, 2017.

SMITH, DRISCOLL & ASSOCIATES, PLLC

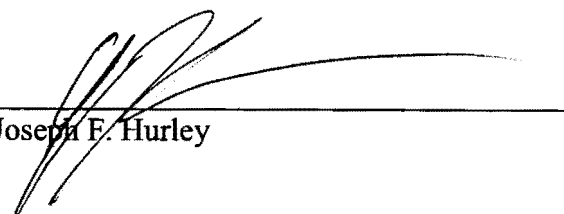
By: 
Joseph F. Hurley, Esq.
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

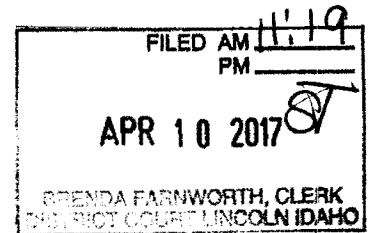
I HEREBY CERTIFY that on this 14th day of March, 2017, I caused a true and correct copy of the foregoing **MEMORANDUM OF COSTS ON APPEAL** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

☒ U.S. Mail
☐ Facsimile
☐ Overnight Delivery
☐ Hand Delivery

Robert Lopez
321 N Main St
Dietrich, Idaho 83324


Joseph F. Hurley

Bryan N. Zollinger *ISB # 8008*
Joseph F. Hurley *ISB #10149*
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

Vs.

ROBERT W. LOPEZ

Defendant.

Case No. CV-15-78

NOTICE OF APPEAL

TO THE ABOVE NAMED RESPONDENT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company, appeals against the above-named respondent, ROBERT W. LOPEZ, to the Idaho Supreme Court from the District Court's Memorandum Decision on Appeal dated March 1, 2017 by District Court Judge, John K. Butler, presiding in an appellate capacity, in the Fifth Judicial District of the State of Idaho, in and for the County of Lincoln, and from the the Order on Application for Supplemental Attorney's Fees dated October 13, 2016 by Magistrate Judge, Mark A. Ingram, presiding as the trial court judge in the Fifth Judicial District

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of the State of Idaho, in and for the County of Lincoln. Pursuant to I.A.R. 11, the appellant has attached a copy of this/these appealable decision(s), Order(s), and/or judgment(s).

2. Appellant has the right to appeal to the Idaho Supreme Court, and the decisions, orders, and judgments described in paragraph 1 above are subject to appeal pursuant to Rule 11(a), Idaho Appellate Rules.

3. The issues which the appellant intends to assert in the appeal are the following:

a. Did the District court commit reversible error when it concluded that Medical Recovery Services, LLC was not entitled to attorney's fees on appeal as the prevailing party?

b. Is Medical Recovery Services, LLC entitled to an award of attorney's fees on this appeal under I.C. 12-120(1), (3) and (5) and I.A.R. 41?

4. There has been no order entered sealing any portion of the record in this case.

5. The appellant does not request any transcripts to be prepared.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules: The entire MAGISTRATE court file.

7. I certify:

- (a) That a copy of this notice of appeal has been served on the reporter;
- (b) That the appellate filing fee has been paid;
- (c) That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 5th day of March, 2017.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: _____

Joseph F. Hurley
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 2017, I caused a true and correct copy of the forgoing **NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

PARTIES SERVED:

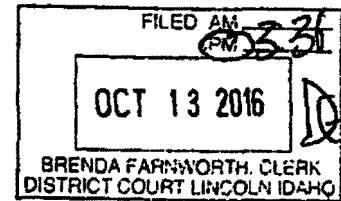
- ☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Delivery

Robert Lopez
321 N Main St
Dietrich, ID 83324

Joseph F. Hurley

RECEIVED OCT 13 2016

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

ROBERT W. LOPEZ,

Defendant.

Case No. CV-15-78

ORDER ON APPLICATION FOR
SUPPLEMENTAL ATTORNEY'S FEES

THIS CAUSE having come up regularly, pursuant to plaintiff's application for award of supplemental attorney's fees, and plaintiff appearing by and through counsel of record Bryan N. Zollinger, Esq., of the firm Smith, Driscoll & Associates, PLLC; and the Court having considered the records filed herein and having heard and considered oral argument from counsel, and otherwise being fully advised in the premises:

NOW, THEREFORE, it shall be the order of this Court and it is hereby ordered:

That plaintiff's Application for Supplemental Attorney's Fees is DENIED.

MADE AND ENTERED this 13 day of October 2016.

Mark Dyman

Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am the clerk of the above entitled court, and that on the 13
day of October 2016. I served a true and correct copy of the foregoing **ORDER ON**
APPLICATION FOR SUPPLEMENTAL ATTORNEY'S FEES on the persons listed below
by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Persons Served:

- ☐ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Hand Delivery
- ☐ Courthouse Box

Email

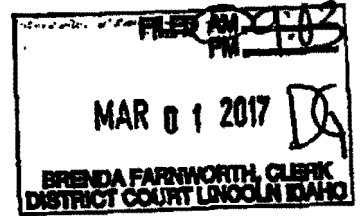
Bryan N. Zollinger, Esq.
SMITH, DRISCOLL & ASSOCIATES,
PLLC P.O. Box 50731
Idaho Falls, Idaho 83405

- ☐ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Hand Delivery
- ☐ Overnight Delivery

Robert Lopez
321 N Main St
Dietrich, ID 83324


Clerk of the Court

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

MEDICAL RECOVERY SERVICES,
LLC, an Idaho limited liability
company,

Plaintiff/Appellant,

vs.

ROBERT W. LOPEZ,

Defendant/Respondent.

Case No. CV-2015-78

MEMORANDUM DECISION ON APPEAL

On February 27, 2017 the matter was submitted for decision without oral argument. Counsel, Joseph F. Hurley appeared and filed a Brief on behalf of the Appellant. The Respondent did not file a Brief.

The court having considered the transcript and record of the proceedings and the Appellant's Brief, took the matter under advisement for a written decision.

I.

FACTUAL AND PROCEDURAL BACKGROUND

On June 2, 2015 Medical Recovery Services, LLC (Appellant) filed a complaint against Robert W. Lopez (Respondent) seeking to collect on a debt. Ultimately the appellant applied for

and obtained an Amended Default Judgment in the sum of \$776.94 on September 9, 2015 which included an award of attorney fees. The appellant subsequently attempted to collect on the Judgment. There is no dispute that the respondent ultimately paid the judgment amount on or before August 23, 2016.¹

On September 6, 2016 the appellant filed an application for post-judgment attorney fees pursuant to I.C. § 12-120(5) in the amount of \$908.00. A hearing was conducted on the application on September 30, 2016. After hearing the arguments of the appellant and the respondent, the magistrate denied the award of post-judgment attorney fees on the basis that the application was untimely because it was filed after the judgment amount had been paid. (Tr. Pg. 7, L.15-21) and that it was unreasonable to seek the amount sought for attorney fees after the judgment amount had been paid. (Tr. Pg. 9, L. 15-20).² The Order denying the post-judgment attorney fees was entered October 13, 2016. The appellant filed a timely Notice of Appeal.

On appeal the appellant argues that the magistrate erred when it determined: (1) that it had the discretion not to make an award of attorney fees when such an award was mandatory pursuant to I.C. § 12-120(5) and (2) that the application for fees was untimely.

II.

STANDARD OF REVIEW

Upon an appeal from the magistrate court, the district court, sitting in its appellate capacity, applies the same standards of review and appellate rules as an appeal from the district court to the Supreme Court. I.R.C.P. 83(f)(1); *Pieper v. Pieper*, 125 Idaho 667, 873 P.2d 921 (Ct. App. 1994). Procedural issues are also a question of law over which this Court exercises free review. *Zenner v. Holcomb*, 147 Idaho 444, 451, 210 P.3d 552, 559 (2009) (citing *Blaser v.*

¹ The Sheriff's Return on the Garnishment Order dated August 23, 2016 shows no balance owing on the judgment.

² The magistrate further found that an "...amount of zero is the reasonable amount given the circumstances of this case." (Tr. Pg. 9, L. 10-12).

Cameron, 116 Idaho 453, 455, 776 P.2d 462, 464 (Ct.App.1989)). When an award of attorney fees depends on the interpretation of a statute, the standard of review for statutory interpretation applies. *Stout v. Key Training Corp.*, 144 Idaho 195, 196, 158 P.3d 971, 972 (2007). The interpretation of a statute is an issue of law over which the appellate court exercises free review. *Zener v. Velde*, 135 Idaho 352, 355, 17 P.3d 296, 299 (Ct.App.2000). If a party is entitled to an award of attorney fees by statute, the amount of such an award is a matter of discretion for the trial court based on the factors of I.R.C.P. 54(e)(3). *Action Collection Services, Inc. v. Bigham*, 146 Idaho 286, 290, 192 P.3d 1110, 1114 (Ct. App. 2008).

III.

ANALYSIS

The magistrate after hearing argument from counsel for the appellant and Mr. Lopez first determined that the application for attorney fees should be denied because it was not filed timely when it was filed after the judgment amount had been paid or "satisfied". (Tr. Pg. 7, L. 15-21). Counsel then inquired if the court wanted to take the matter under advisement because an appeal could cause the respondent more fees. The magistrate then commented on the time and the fees incurred by the appellant in its collection efforts. (Tr. Pg. 8, L.4-14). The Court then commented on the reasonableness of the fees sought by the appellant. (Tr. Pg. 8, L.24- pg. 9, L. 5). Counsel for the appellant commented that an award is mandatory but that the amount to be awarded is discretionary and in response the magistrate stated: "...I am finding that the amount of zero is the reasonable amount given the circumstances of this case." (Tr. Pg. 9, L.6-12) The magistrate ultimately entered his order denying post-judgment attorney fees.

A. The magistrate erred in his determination that the application was untimely.

Idaho Code section 12-120(5) provides as follows:

In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

"This section provides a basis for an award of reasonable attorney fees and costs incurred during post-judgment attempts to collect on the judgment if the party was entitled to attorney fees and costs under the statute in the underlying proceeding that resulted in the judgment." *Action Collection Services, Inc. v. Bigham, supra.*, 146 Idaho at 290, 192 P.3d at 1114. To be entitled to an award of post-judgment attorney fees the party who obtained the judgment must have been awarded attorney fees in the original judgment pursuant to I.C. section 12-120 (1), (2), (3), or (4). In this case the appellant was awarded attorney fees in the original judgment and while the judgment does not identify the statutory basis for the award, this court may assume that the award was based on the prayer of the complaint which sought attorney fees pursuant to I.C. § 12-120(1) or (3). *Action Collection Services, Inc. v. Bigham, supra.*, 146 Idaho at 289-290, 192 P.3d at 1113-1114. Since it would appear that the appellant was awarded attorney fees as pursuant to I.C. § 12-120(1) or (3), the provisions of section 12-120(5) are mandatory that the appellant is entitled to obtain post-judgment attorney fees, since the statute provides that the appellant "...shall also be entitled to reasonable post-judgment attorney's fee and costs incurred in attempting to collect on the judgment."

The magistrate in part determined that the appellant was not entitled to post-judgment attorney fees because the application was filed after the judgment had been paid in full. Section 12-120(5) does not set forth any requirement that an application for post-judgment attorney fees be filed within any particular period of time.³ It stands to reason that an application for post-

³ The time requirements of Rule 54(f)(4) could not apply since they commence to run from entry of judgment.

judgment attorney fees could be filed at any time during the collection efforts on a judgment or within a reasonable period of time after the judgment has been paid in full. *See, Medical Recovery Services, LLC v. Olsen*, 160 Idaho 836, 379 P.3d 1106 (2016) (application for post judgment attorney fees was filed after the judgment was paid in full).

The appellant having been awarded attorney fees pursuant to I.C. § 12-120 in the judgment, it was also entitled to an award of attorney fees after the judgment was paid in full pursuant to I.C. § 12-120(5). The amount to be awarded would be a matter of discretion for the magistrate. The magistrate erred when he denied the application as untimely.

B. The magistrate erred to the extent he determined that he had the discretion to deny post-judgment attorney fees.

If a statute authorizing an award of attorney fees states that such fees “shall” be awarded to one of the parties, the authorization of attorney fees is mandatory and the trial court has no discretion to deny such fees. The appellant as a matter of law was entitled to an award of post-judgment attorney fees. The only discretion possessed by the trial court is the determination of the “amount” of fees to be awarded after consideration of the Rule 54(e)(3) factors. *Magleby v. Garn*, 154 Idaho 194, 296 P.3d 400 (2013); *Action Collection Services, Inc. v. Bigham*, 146 Idaho 286, 290, 192 P.3d 1110, 1114 (Ct. App. 2008).

The magistrate erred to the extent that he determined he had the discretion to deny any amount for attorney fees and therefore the matter should be remanded for a determination of a reasonable amount of post-judgment attorney fees.

C. Is the Appellant entitled to attorney fees on appeal?

The appellant seeks an award of attorney fees and costs on appeal pursuant to I.C. § 12-120 (1), (3), (5) and I.A.R. 40.

The appellant in its argument argues that attorney fees on appeal are allowed pursuant to I.C. § 12-120(1), (3) "...if the appeal is concerned with the entitlement to an award below." *Action Collection Services, Inc. v. Bigham, supra.*, 146 Idaho at 291, 192 P.3d at 1115. The appellant's reliance upon I.C. § 12-120(1) or (3) is misplaced as a basis for attorney fees on appeal because such a claim was overruled in *Credit Bureau of Eastern Idaho, Inc. v. Lecheminant*, 149 Idaho 467, 473, 235 P.3d 1188, 1194 (2010) which clearly held that section 12-120(5) is the exclusive provision for post-judgment attorney fees on appeal. At the time of the filing of the application for post-judgment attorney fees the judgment had been paid in full by the respondent. Since the fees sought were for the efforts of counsel to collect on the judgment, the provisions of I.C. § 12-120(1) or (3) are not a basis for an award of attorney fees on appeal.

As for I.C. § 12-120(5) the appellant argues that it is entitled to an award of attorney fees on appeal because this appeal is a "reasonable, post-judgment [attempt] to collect on the judgment." *Action Collection Services, Inc. v. Bigham, supra.* However, in *Magleby v. Garn*, 154 Idaho 194, 296 P.3d 400 (2013) the court denied an award of attorney fees on appeal pursuant to I.C. § 12-120(5) where the appellant had prevailed on the appeal of an award of post-judgment attorney fees. In that case the appellant had appealed the amount of the award of post-judgment attorney fees. The court held that the appellant was not entitled to fees pursuant to I.C. § 12-120(5) because "[T]his appeal cannot be reasonably characterized as an 'attempt to collect on the judgment'". *Id.*, 154 Idaho at 200, 296 P.3d at 406, fn. 4. Mr. Lopez prior to the filing of the application for post-judgment attorney fees had paid the judgment in full, so there was no longer any judgment to collect. Mr. Lopez did not participate in this appeal. The appeal was solely related to the entitlement to post-judgment attorney fees and this cannot be characterized as an attempt to collect on a judgment. Therefore, the appellant is not entitled to an award of

attorney fees on appeal pursuant to I.C. § 12-120(5).

The appellant's request for attorney fees on appeal is DENIED. Appellant is entitled to costs on appeal. I.A.R. 40.

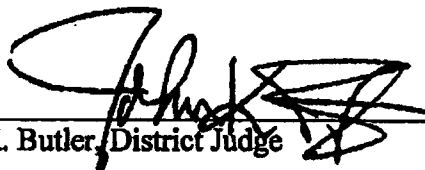
V.

CONCLUSION AND ORDER

The Order denying post-judgment attorney fees is REVERSED and this case is remanded back to magistrate court for further proceedings consistent with this opinion. The Appellant is awarded costs, but not attorney fees, on appeal.

IT IS SO ORDERED.

DATED this 1st day of March, 2017



John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 1 day of March, 2017 a true and correct copy of the foregoing MEMORANDUM DECISION ON APPEAL was mailed, postage paid, and/or hand-delivered to the following persons:


Attorneys for Appellant:

Bryan N. Zollinger
Joseph F. Hurley
P. O. Box 50731
Idaho Falls, 83405

Self-Represented Respondent:

Robert W. Lopez
321 N. Main St.
Dietrich, Idaho 83324

Honorable Mark Ingram
Magistrate Judge


Deputy Clerk

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

MEDICAL RECOVERY SERVICES,
LLC, an Idaho limited liability
Company
Plaintiff-Appellant

Vs.

ROBERT W. LOPEZ
Defendant-Respondent.

Supreme Court No. 45019
CLERK'S CERTIFICATE
OF APPEAL

2017 APR 13 AM 9:01

RECEIVED
DISTRICT COURT
CLERK'S OFFICE
APPEALS

Appeal from: Fifth Judicial District, Lincoln County.
Honorable District Judge John K. Butler, presiding.

Case number from court or agency: CV 2015-78

Order or judgment appealed from: Memorandum Decision on Appeal
dated March 1, 2017.

Attorney for Appellant: Joseph F. Hurley.

Attorney for Respondent: None—appearing pro se

Appealed by: Plaintiff-Medical Recovery Services

Appealed against: Defendant-Robert Lopez.

Notice of Appeal filed: April 10, 2017

Amended Notice of Appeal filed: N/A _____

Notice of Cross-Appeal filed: N/A _____

Amended Notice of Cross-Appeal filed: N/A _____

Appellate fee paid: \$129.00 filing fee paid

\$100.00 deposit for preparation of the Clerk's Record

Respondent or Cross-Respondent's request for additional record filed: N/A

Respondent or Cross-Respondent's request for additional reporter's
transcript filed: N/A _____

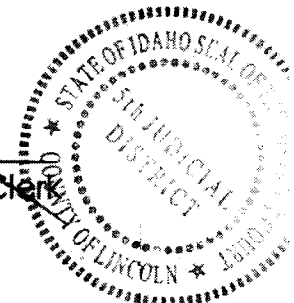
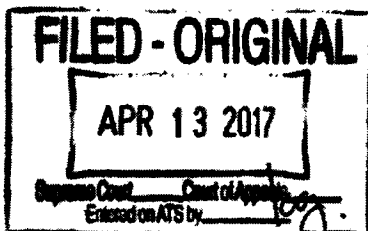
Was District Court Reporter's transcript requested? No _____

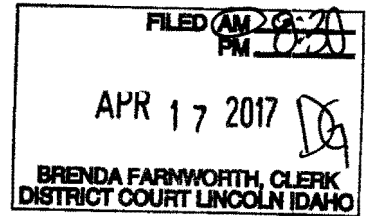
If so, name of reporter:

Dated: April 10, 2017
Clerk of the District Court

By: _____

Deys Garcia, Deputy Clerk





**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN**

MEDICAL RECOVERY SERVICES,)
LLC, an Idaho limited liability)
company,)

Plaintiff/Appellant,)

vs.)

ROBERT W. LOPEZ,)

Defendant/Respondent.)

Case No. CV-2015-78

ORDER RE: COSTS ON APPEAL

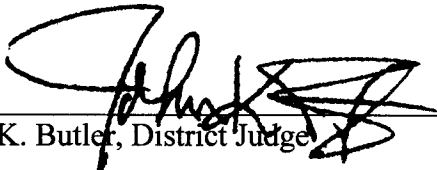
On March 1, 2017 the Court issued its Memorandum Decision on Appeal in the above-entitled matter. The Court awarded the appellant Costs on Appeal pursuant to I.A.R. Rule 40.¹ The appellant filed its memorandum of costs with the court and bears a file stamp of March 21, 2017. The Certificate of Mailing indicates that the memorandum of costs was mailed on March 14, 2017 (Tuesday), however the envelope in which it was mailed was postmarked on March 17, 2017 (Friday).

¹ Rule 40(c) requires that a party seeking costs on appeal must file within 14 days of the filing of the opinion on appeal a memorandum of costs. The Rule in part provides that "...A memorandum of costs mailed to the Court shall be deemed filed upon the date of mailing. Failure to file a memorandum of costs within the period prescribed by this rule shall be a waiver of the right to costs."

This court finds that the memorandum of costs was not mailed within 14 days of the filing of the opinion on appeal and therefore the Costs are hereby waived.

IT IS SO ORDERED.

DATED this 17 day of April, 2017



John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 17 day of April, 2017 a true and correct copy of the foregoing ORDER RE: COSTS ON APPEAL was mailed, postage paid, and/or hand-delivered to the following persons:

Attorney for Appellant:
Bryan N. Zollinger
P. O. Box 50731
Idaho Falls, 83405

Self-Represented Respondent:
Robert W. Lopez
321 N. Main St.
Dietrich, Idaho 83324

Honorable Mark Ingram
Magistrate Judge


Deputy Clerk

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

MEDICAL RECOVERY SERVICES,)
LLC, an Idaho limited liability)
Company,)
Petitioner-Appellant,)
vs)
ROBERT LOPEZ,)
Defendant-Respondent.)

CLERK'S CERTIFICATE

Supreme Court No. 45019
Lincoln County No. CV-2015-78

I, Deysi Garcia, Deputy Clerk of the District Court of the Fifth Judicial District, of the State of Idaho, in and for the County of Lincoln, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I, do further certify that all exhibits offered or admitted in the above entitled cause will be fully lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and the Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 7 day of June, 2017.

Clerk of the District Court

By: _____

Deysi Garcia
Chief Deputy Clerk

CLERK'S CERTIFICATE

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN

MEDICAL RECOVERY SERVICES,)
LLC, an Idaho limited liability)
Company,)
Petitioner-Appellant,)

vs)

ROBERT LOPEZ,)
Defendant-Respondent.)

CERTIFICATE OF SERVICE

Supreme Court No. 45019
Lincoln County No. CV-2015-78


I, Deysi Garcia, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Lincoln, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and the Court Reporter's Transcript, along with a copy of (the Pre-sentence Investigation or other evidentiary documents) and any Exhibits offered or admitted to each of the Attorneys of Record in this case as follows:

Bryan N. Zollinger
Attorney for Appellant
PO Box 50731
Idaho Falls, ID 83405

Robert W. Lopez
Self-Represented Respondent
321 N. Main St.
Dietrich, ID 83324

IN WITNESS WHEREOF, I have hereunto **set my hand and affixed the seal** of said Court this 7 day of June, 2017.

CLERK OF THE DISTRICT COURT

By:  Deysi Garcia, Chief Deputy Clerk

**FIFTH JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF LINCOLN**

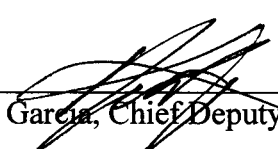
MEDICAL RECOVERY SERVICES,)	
LLC, an Idaho limited liability)	
company,)	Certificate of Exhibits
Petitioner-Appellant,)	
)	Supreme Court Docket No. 45019
)	Lincoln County Case Number CV-2015-78
vs.)	
)	
ROBERT W. LOPEZ,)	
Defendant-Respondent.)	

I, Deysi Garcia, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Lincoln, do hereby certify that the following is a list of exhibits that have been lodged with the Supreme Court.

*****NO EXHIBITS WERE LODGED*****

EXHIBIT NO.	DESCRIPTION	DATE FILED

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of Said Court on the 7 Day of June 2017.

By: 

Deysi Garcia, Chief Deputy Clerk

Brenda Farnworth
CLERK OF THE DISTRICT COURT