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IN THE

**SUPREME COURT
OF THE
STATE OF IDAHO**

ISC #44583, 44584, 44585
Bonner #CV2009-1810

Valiant Idaho, LLC
Cross-Claimant/Respondent

vs.

**North Idaho Resorts
JV, LLC
VP Incorporated**
Cross-Defendants/Appellants

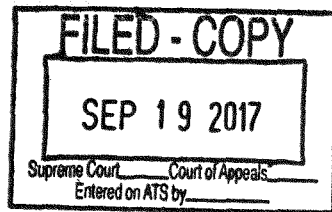
CLERK'S RECORD ON APPEAL

*Appealed from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Bonner*

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44583

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STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2016 AUG 10 P 4: 29

CLERK DISTRICT COURT


DEPUTY

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

GENESIS GOLF BUILDERS, INC.,
formerly known as
NATIONAL GOLF BUILDERS, INC.,
a Nevada corporation,

Plaintiff,

vs.

**PEND OREILLE BONNER
DEVELOPMENT, LLC,**
a Nevada limited liability company; *et al.*,

Defendants.

**AND RELATED COUNTER, CROSS
AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN.**

Case No. CV-09-1810

**DECLARATION OF
RICHARD L. STACEY IN SUPPORT OF
VALIANT IDAHO, LLC'S
MOTION FOR SANCTIONS
UNDER I.C. § 12-123 AND I.R.C.P. 11**

Honorable Barbara A. Buchanan

**Hearing:
August 17, 2016 – 10:30 a.m. PDST**

**DECLARATION OF RICHARD L. STACEY IN SUPPORT OF
VALIANT IDAHO, LLC'S MOTION FOR SANCTIONS
UNDER I.C. § 12-123 AND I.R.C.P. 11 | Page 1**
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Pursuant to Rule 7(d) of the Idaho Rules of Civil Procedure and Idaho Code § 9-1406,

Richard L. Stacey declares as follows:

1. I am an attorney at law duly licensed to practice before this Court, and all Courts in the State of Idaho. I am a member in the law firm of McConnell Wagner Sykes & Stacey PLLC, attorneys for Valiant Idaho, LLC (“Valiant”). I make this Declaration in support of Valiant’s Motion For Sanctions Under I.C. § 12-123 and I.R.C.P. 11 filed concurrently and upon my personal knowledge.

2. Valiant spent a total of 3,196.1 hours and incurred a total of \$726,313.50 in reasonable attorneys’ fees in this matter. Of those fees, 2,258 hours and \$523,991.50 were incurred in responding to the claims and defenses frivolously asserted by North Idaho Resorts, LLC (“NIR”), VP, Inc. (“VP”), and JV, L.L.C. (“JV”) (collectively “Defendants”).^{1/}

3. I have reviewed the attorneys’ fees incurred and separated them into categories allocating the amounts Valiant incurred based on Defendants’ specific frivolous conduct. The amounts allocated to each said Defendant or Defendants for the specific frivolous conduct are set forth on Exhibits A through J.

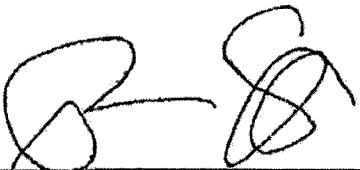
4. To the best of my knowledge and belief, the amounts attributable to each Defendant or Defendants were properly and fairly allocated.

^{1/} Although NIR and JV are technically cross-claimants and VP is technically a third-party defendant, these parties will be collectively referred to as the “Defendants” for purposes of this declaration.

5. All of these fees were identified and set forth in attachments to Valiant's Memorandum of Costs and Attorneys' Fees ("Memorandum of Costs"). As set forth in the Memorandum of Costs, to the best of my knowledge and belief, the amount of the attorneys' fees, paralegal fees and costs identified hereinabove and itemized within Exhibits A-J are accurate and in compliance with Rule 54 of the Idaho Rules of Civil Procedure.

I HEREBY CERTIFY AND DECLARE, under penalty of perjury pursuant to the laws of the State of Idaho, that the foregoing is true and correct.

DATED this 10th day of August 2016.



RICHARD L. STACEY

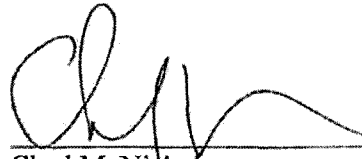
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of August 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

| | |
|---|--|
| Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i> | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail garyfinney@finneylaw.net |
| Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i> | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail sweeks@jvwlaw.net |

With two copies via United States Mail to:

Honorable Barbara A. Buchanan
Judge of the First Judicial District
Bonner County Courthouse
215 South First Avenue
Sandpoint, Idaho 83864



Chad M. Nicholson

EXHIBIT A
VALIANT FORECLOSURE
 Defendant Answers

| Trans Date | Atty | Rate | Hours to Bill | Amount | |
|------------|------|----------|---------------|------------|--|
| 09/03/2014 | 10 | \$270.00 | 1.3 | \$351.00 | Analyze email from G. Edson and attachments; draft and analyze email to G. Edson regarding documents from G. Finney; email client regarding same; draft, analyze and edit email to R. Lynskey; email client regarding same; analyze emails (3) from client; draft and analyze responses to same; confer with paralegal regarding status of summons and deadlines to answer complaint; analyze certificates of service |
| 09/04/2014 | 10 | \$270.00 | 0.8 | \$216.00 | Telephone conference with G. Finney regarding 7 day extension to answer complaint; analyze email from client and draft/analyze reply to same; analyze pleadings filed by North Idaho Resorts and HOA related to the motion to substitute Valiant as the real party in interest |
| 09/12/2014 | 10 | \$270.00 | 2.1 | \$567.00 | Analyze email from C. Dodson; draft/edit acceptance of service; analyze email from T. McLaughlin regarding issues with maintenance facility; telephone conference with G. Finney regarding status of JV, LLC answer and request extension on behalf of ACI; analyze letter from HOA and email client regarding same; analyze response from client; analyze pleadings filed by North Idaho Resorts; analyze email from R. Lynskey; analyze amended litigation guarantee; email client |
| 09/15/2014 | 10 | \$270.00 | 2.7 | \$729.00 | Compile and analyze real property records; draft, analyze and edit stipulation to dismiss RC Worst; analyze JV, LLC answer to foreclosure complaint |
| 09/17/2014 | 10 | \$270.00 | 2.7 | \$729.00 | Prepare for and participate in hearing to substitute Valiant as the real party in interest for Wells Fargo; analyze answer and counterclaim from Sage Holdings; analyze answer and counterclaim filed by JV, LLC; email client regarding Sage Holdings complaint; analyze response to same |
| 09/18/2014 | 10 | \$270.00 | 0.6 | \$162.00 | Analyze memorandum of fees/costs filed by JV, LLC; draft and analyze order for entry of stipulated judgment against RC Worst; email B. Anderson regarding stipulation to judgment and disclaimer of interest |
| 10/01/2014 | 10 | \$270.00 | 1.3 | \$351.00 | Analyze entry of default against TO Engineers; outline answer to JV, LLC complaint; email client and analyze responses related to same |
| 10/02/2014 | 15 | \$225.00 | 0.2 | \$45.00 | Analyze legal issue |
| 10/02/2014 | 10 | \$270.00 | 2.9 | \$783.00 | Analyze/draft/edit answer to JV, LLC complaint; analyze email from counsel for the HOA; analyze/draft/edit response to the same; analyze email from First American re: stipulation to judgment |
| 10/06/2014 | 10 | \$270.00 | 1.9 | \$513.00 | analyze emails from B. Haberman and respond to the same; analyze email from B. Kramer and respond to the same; /c B. Kramer; analyze email from H. Brooks and respond to the same; research golf course issues; analyze JV answer/cross claim |
| 10/07/2014 | 10 | \$270.00 | 3.1 | \$837.00 | Analyze/draft/edit affirmative defenses to JV cross claim; analyze/edit answer to JV, LLC claims; analyze motion filed by VP, LLC; /c J. Breaux re: golf course; /c and emails with client; confer w/ J. Sykes |
| 10/08/2014 | 6 | \$160.00 | 0.6 | \$96.00 | Strategy conference with R. Stacey |
| 11/11/2014 | 10 | \$270.00 | 4.1 | \$1,107.00 | Analyze emails from client; analyze loan documents; draft/analyze/edit email to client regarding same; analyze pleadings filed by HOA to dismiss JV, LLC's claims; analyze draft stipulation to dismiss; draft/edit stipulation to dismiss and email to counsel for HOA; telephone conference with W. Haberman; draft/edit Reeves affidavit |
| 11/14/2014 | 10 | \$270.00 | 0.5 | \$135.00 | Telephone conference with T. McLaughlin regarding changes to stipulated judgment; analyze pleadings filed by Panhandle Management to dismiss claims of JV, LLC; exchange email correspondence with client; analyze email from B. Anderson |
| 11/24/2014 | 10 | \$270.00 | 0.3 | \$81.00 | Draft/analyze motion to appear telephonically at hearing on HOA's and Panhandle's respective motions to dismiss claims of JV, LLC |
| 12/01/2014 | 6 | \$270.00 | 0.3 | \$81.00 | Telephone conference with G. Finney regarding JV answer to counterclaim, cross-claim and third party complaint |
| 12/02/2014 | 10 | \$270.00 | 0.6 | \$162.00 | Analyze exparte motion requesting extension; draft opposition stipulating to extension; analyze email from counsel for HOA regarding hearing on motion against JV, LLC |
| 12/09/2014 | 10 | \$270.00 | 3.7 | \$999.00 | Draft/analyze reply to JV, LLC's Special Appearance Contesting Jurisdiction; and JV, LLC's Answer to Valiant Idaho, LLC's Counterclaim, Cross-Claim and Third Party Complaint for Judicial Foreclosure; and JV, LLC's Cross-Claim; and JV, LLC's Third Party Complaint; email title company; email counsel for Sage Holding regarding status of stipulation; draft stipulation to judgment against Panhandle Management and the HOA; analyze email response from counsel for Sage Holdings; analyze litigation guarantee regarding Idaho Independent Mortgage and draft/analyze response to the same |
| 12/10/2014 | 10 | \$270.00 | 1.6 | \$432.00 | Analyze affirmative defenses; analyze/draft affirmative defenses; telephone conference with B. Anderson regarding status of Sage stip, litigation guarantee and appearance on behalf of HLT and Idaho Independent Mortgage; draft letter to court to withhold order for default against Idaho Independent |

Mortgage

Subtotal of Fees - JV 31.30 \$8,376.00

| Trans Date | Atty | Rate | Hours to Bill | Amount | |
|-------------------------------|------|----------|---------------|-----------------|---|
| 09/11/2014 | 10 | \$270.00 | 1.7 | \$459.00 | Analyze decision granting motion to substitute Valiant as the real party in interest; analyze email from W. Haberman; telephone conferences (2) with S. Weeks regarding acceptance of service; draft/edit acceptance of service; email client regarding extension to answer and status of service; email client responding to earlier email and requesting extension for NIR to answer. |
| Subtotal of Fees - NIR | | | 1.7 | \$459.00 | |

| Trans Date | Atty | Rate | Hours to Bill | Amount | |
|------------------------------|------|----------|---------------|-----------------|--|
| 12/12/2014 | 10 | \$270.00 | 2.7 | \$729.00 | Analyze VP answer; email clients regarding the same; analyze client emails; draft email to counsel for VP regarding basis for priority; forward the same to clients; analyze email from clients; confer with J. Sykes; analyze project documents; draft outlines |
| Subtotal of Fees - VP | | | 2.7 | \$729.00 | |

| DISCRETIONARY COSTS: | | | | | | |
|----------------------|------------|--|-----------------|-----------|--------------|--|
| Postage/FedEx | 08/15/2014 | | 10 | \$ | 45.30 | Postage expense |
| | 08/19/2014 | | 10 | \$ | 31.56 | Postage expense |
| | | | Subtotal | \$ | 76.86 | |
| Copy Charges | 10/14/2014 | | 10 | \$ | 16.30 | Attorney Gary W. Edson - Reproduction of documents related to JV |
| | | | Subtotal | \$ | 16.30 | |

| GRAND TOTALS: | | | | | | |
|------------------|---------------------|------------|--|--|-------------------|--|
| All Fees | | | | | \$9,564.00 | |
| | JV | \$8,376.00 | | | | |
| | NIR | \$459.00 | | | | |
| | VP | \$729.00 | | | | |
| All Costs | | | | | \$93.16 | |
| | Discretionary Costs | \$93.16 | | | | |

EXHIBIT B
VALIANT FORECLOSURE
Valiants First Motion for Summary
Judgment

| All Parties | | | | | |
|-------------|------|----------|---------------|------------|--|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 12/08/2014 | 6 | \$270.00 | 3.4 | \$918.00 | Study pleadings in prior cases related to summary judgment motions |
| 12/09/2014 | 6 | \$270.00 | 3.4 | \$918.00 | Begin preparation of statement of facts for summary judgment motion |
| 12/10/2014 | 6 | \$270.00 | 5.2 | \$1,404.00 | Study Reeves affidavit and pleadings; continue preparation of statement of facts |
| 12/11/2014 | 10 | \$270.00 | 2.6 | \$702.00 | Analyze project documents; outline summary judgment arguments; draft notice of appearance on behalf of HLT and Independent Mortgage; draft/analyze/edit stipulation to judgment against HOA and Panhandle Management |
| 12/11/2014 | 6 | \$270.00 | 3.1 | \$837.00 | Research legal arguments for summary judgment motion and supporting pleadings |
| 12/12/2014 | 6 | \$270.00 | 2.2 | \$594.00 | Begin preparation of summary judgment motion and supporting pleadings; legal arguments |
| 12/15/2014 | 6 | \$270.00 | 7.4 | \$1,998.00 | Continue preparation of summary judgment; revise statement of facts and legal argument |
| 12/16/2014 | 10 | \$270.00 | 2.4 | \$648.00 | Confer with J. Sykes; analyze project documents; analyze legal description |
| 12/16/2014 | 6 | \$270.00 | 2.1 | \$567.00 | Research issues related to summary judgment motion |
| 12/16/2014 | 6 | \$270.00 | 4.2 | \$1,134.00 | Study research memorandum and related regulations |
| 12/17/2014 | 6 | \$270.00 | 6 | \$1,620.00 | Continue preparation of summary judgment motion and supporting pleadings; telephone conference with J. Hamilton; study real property records |
| 12/22/2014 | 10 | \$270.00 | 0.6 | \$162.00 | Research motion for judgment on the pleadings |
| 12/30/2014 | 6 | \$270.00 | 3.4 | \$918.00 | Prepare declarations to support summary judgment memorandum |
| 12/30/2014 | 6 | \$270.00 | 3.2 | \$864.00 | Prepare interrogatories, requests for production and requests for admission to propound upon JV, North Idaho Resorts and VP |
| 01/05/2015 | 6 | \$270.00 | 0.9 | \$243.00 | Telephone conference with clients |
| 01/05/2015 | 6 | \$270.00 | 3.1 | \$837.00 | Continue preparation of summary judgment briefing |
| 01/05/2015 | 6 | \$270.00 | 1.2 | \$324.00 | Correspondence with client; research foreclosure sale issues |
| 01/06/2015 | 10 | \$270.00 | 0.4 | \$108.00 | Confer with J. Sykes |
| 01/09/2015 | 10 | \$270.00 | 0.4 | \$108.00 | Confer with J. Sykes regarding summary judgment issues |
| 01/09/2015 | 6 | \$270.00 | 3.9 | \$1,053.00 | Review and revise memorandum in support of motion for summary judgment |
| 01/12/2015 | 6 | \$270.00 | 5.2 | \$1,404.00 | Revise summary judgment memorandum; study Union Bank case |
| 01/12/2015 | 6 | \$270.00 | 0.3 | \$81.00 | Telephone conference with D. Shafer |
| 01/13/2015 | 6 | \$270.00 | 3.3 | \$891.00 | Continue drafting summary judgment memorandum and supporting pleadings |
| 01/14/2015 | 6 | \$270.00 | 5 | \$1,350.00 | Prepare summary judgment supporting declaration of counsel; revise summary judgment memorandum |
| 01/15/2015 | 6 | \$270.00 | 4.8 | \$1,296.00 | Revise summary judgment legal arguments; final declaration of counsel |
| 01/16/2015 | 6 | \$270.00 | 3.5 | \$945.00 | Telephone conference with client; final summary judgment pleadings |
| 01/16/2015 | 6 | \$250.00 | 2.9 | \$725.00 | Prepare documents requested by client |
| 01/20/2015 | 6 | \$250.00 | 3.2 | \$800.00 | Prepare discovery requests to propound upon JV, NIR and VP |
| 01/20/2015 | 6 | \$250.00 | 1.3 | \$325.00 | Outline argument for summary judgment hearing |
| 01/21/2015 | 6 | \$270.00 | 0.6 | \$162.00 | Telephone conference with D. Shafer |
| 01/21/2015 | 6 | \$250.00 | 2.7 | \$675.00 | Review and revise discovery requests to JV, NIR and VP |
| 01/22/2015 | 6 | \$250.00 | 0.5 | \$125.00 | Correspondence with clients |
| 01/23/2015 | 6 | \$250.00 | 2.5 | \$625.00 | Revise discovery requests [interrogatories, requests for production and requests for admission] to propound upon JV, NIR and VP |
| 01/26/2015 | 6 | \$250.00 | 2.7 | \$675.00 | Final discovery requests for service upon JV, NIR and VP |
| 02/03/2015 | 10 | \$270.00 | 0.4 | \$108.00 | Confer with J. Sykes regarding litigation |
| 02/04/2015 | 18 | \$100.00 | 4.1 | \$410.00 | Review case law; outline argument |
| 02/05/2015 | 10 | \$250.00 | 2.1 | \$525.00 | Review/analyze Summary Judgment responses |
| 02/05/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Email client regarding same |
| 02/05/2015 | 18 | \$100.00 | 3.9 | \$390.00 | Draft research memorandum |
| 02/06/2015 | 10 | \$270.00 | 0.6 | \$162.00 | Analyze emails from client and confer with J. Sykes regarding same |
| 02/09/2015 | 6 | \$250.00 | 0.9 | \$225.00 | Prepare stipulation to reschedule summary judgment hearing |
| 02/13/2015 | 6 | \$250.00 | 0.9 | \$225.00 | Correspondence with clients |
| 02/18/2015 | 6 | \$270.00 | 2.6 | \$702.00 | Correspondence with client; review plat map; telephone conference with D. Shafer |
| 02/19/2015 | 6 | \$270.00 | 1.1 | \$297.00 | Correspondence with D. Shafer regarding expert issues |
| 02/23/2015 | 10 | \$250.00 | 0.9 | \$225.00 | Review/analyze emails from client and analyze/draft responses to the same |
| 02/23/2015 | 10 | \$250.00 | 2.1 | \$525.00 | Review/analyze memorandums filed in opposition to client's motions for summary judgment |
| 02/24/2015 | 6 | \$250.00 | 4.2 | \$1,050.00 | Continue preparation of reply memoranda to summary judgment oppositions by JV, NIR and VP |
| 02/24/2015 | 6 | \$270.00 | 2.2 | \$594.00 | Prepare letter to Fidelity |
| 03/03/2015 | 6 | \$250.00 | 2.8 | \$700.00 | Prepare correspondence to Fidelity |
| 03/11/2015 | 6 | \$250.00 | 2.2 | \$550.00 | Begin preparation for hearing on summary judgment motions |
| 03/13/2015 | 6 | \$250.00 | 1.2 | \$300.00 | Telephone conference with B. Kramer and W. Haberman |
| 03/16/2015 | 6 | \$250.00 | 0.7 | \$175.00 | Continue preparation for hearing on summary judgment motions |
| 03/16/2015 | 6 | \$250.00 | 2 | \$500.00 | Appear for/attend hearing |
| 03/17/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Telephone conference with B. Anderson regarding status of hearing |
| 03/17/2015 | 6 | \$250.00 | 3.5 | \$875.00 | Travel to Spokane, Washington for summary judgment hearing |
| 03/18/2015 | 6 | \$250.00 | 6.5 | \$1,625.00 | Travel to Sandpoint, Idaho for summary judgment hearing and return |

| | | | | | |
|---------------------------------------|----|----------|---------------|--------------------|--|
| 03/18/2015 | 6 | \$250.00 | 3.2 | \$800.00 | to Spokane, Washington |
| 03/18/2015 | 6 | \$250.00 | 0.7 | \$175.00 | Prepare for summary judgment hearing |
| | | | | | Telephone conference with clients following summary judgment hearing |
| 03/18/2015 | 6 | \$250.00 | 3.5 | \$875.00 | Return to Boise, Idaho from Spokane, Washington |
| 03/19/2015 | 6 | \$250.00 | 0.2 | \$50.00 | Review and respond to correspondence from W. Haberman |
| 03/24/2015 | 6 | \$270.00 | 1.1 | \$297.00 | Correspondence with B. Kramer; telephone conference with S. Nieman |
| 04/15/2015 | 6 | \$250.00 | 1.1 | \$275.00 | Study summary judgment ruling |
| 04/16/2015 | 6 | \$250.00 | 0.3 | \$75.00 | Correspondence with client |
| 04/16/2015 | 10 | \$270.00 | 1.6 | \$432.00 | Analyze Summary Judgment decision; email client regarding the same and analyze responses |
| Subtotal of Fees - All Parties | | | 154.70 | \$39,303.00 | |

| JV's Opposition | | | | | |
|------------------------------|------|----------|---------------|-------------------|--|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 01/28/2015 | 10 | \$270.00 | 0.3 | \$81.00 | Telephone conference with G. Finney regarding motion for additional time, SJ response, and discovery responses (3) |
| 01/28/2015 | 10 | \$270.00 | 0.6 | \$162.00 | Confer with J. Sykes regarding summary judgment issues |
| 01/28/2015 | 6 | \$250.00 | 0.3 | \$75.00 | Correspondence with G. Finney, counsel for JV, regarding Rule 56(f) motion |
| 01/28/2015 | 6 | \$250.00 | 1 | \$250.00 | Review testimony set forth in Reeves affidavit and discovery requests |
| 01/28/2015 | 6 | \$250.00 | 0.4 | \$100.00 | Review IRCP 56(f) |
| 01/29/2015 | 6 | \$250.00 | 0.4 | \$100.00 | Telephone conference with with J. Finney regarding ACI |
| 02/04/2015 | 6 | \$250.00 | 0.5 | \$125.00 | Review JV's motion for continuance |
| 03/04/2015 | 6 | \$250.00 | 6.2 | \$1,550.00 | Continue preparation of reply memorandum to JV opposition |
| Subtotal of Fees - JV | | | 9.70 | \$2,443.00 | |

| JV's Continuance for Discovery and Discovery | | | | | |
|--|------|----------|---------------|-------------------|---|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 02/11/2015 | 6 | \$250.00 | 0.4 | \$100.00 | Telephone conference with G. Finney regarding discovery and depositions |
| 02/11/2015 | 6 | \$250.00 | 2.7 | \$675.00 | Analyze documents for production to JV |
| 02/12/2015 | 6 | \$250.00 | 0.2 | \$50.00 | Telephone conference with G. Finney regarding document production |
| 02/13/2015 | 6 | \$250.00 | 0.2 | \$50.00 | Telephone conference with G. Finney regarding discovery |
| 02/13/2015 | 6 | \$250.00 | 0.3 | \$75.00 | Correspondence with G. Edson regarding deposition of Bonner County Tax Assessor |
| 02/17/2015 | 6 | \$250.00 | 1.1 | \$275.00 | Correspondence with G. Finney regarding discovery and continuance |
| 02/18/2015 | 6 | \$250.00 | 0.2 | \$50.00 | Correspondence with J. Finney regarding document production |
| 02/23/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Review/analyze litigation strategy and timing for depositions of Berry and Villelli |
| 02/23/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Telephone conference with G. Finney regarding deposition scheduling |
| 02/23/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Analyze email from G. Edson regarding deposition scheduling |
| 02/23/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Telephone conference with G. Edson regarding deposition scheduling |
| 02/23/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Review/analyze litigation strategy and timing for depositions of Berry and Villelli |
| 02/23/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Telephone conference with G. Finney regarding deposition scheduling |
| 02/23/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Analyze email from G. Edson regarding deposition scheduling |
| 02/23/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Telephone conference with G. Edson regarding deposition scheduling |
| 02/24/2015 | 10 | \$270.00 | 0.3 | \$81.00 | Analyze default judgments obtained by JV |
| 03/02/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Telephone conference with G. Finney regarding depositions |
| 03/02/2015 | 10 | \$250.00 | 2.7 | \$675.00 | Analyze documents in preparation for deposition of R. Villelli |
| 03/03/2015 | 10 | \$250.00 | 2.3 | \$575.00 | Analyze documents and prepare for Berry deposition |
| 03/03/2015 | 10 | \$250.00 | 1.6 | \$400.00 | Compile and email documents requested by JV and telephone conference with counsel for JV regarding the same |
| 03/23/2015 | 6 | \$250.00 | 1.4 | \$350.00 | Study JV discovery responses |
| 03/24/2015 | 6 | \$250.00 | 0.9 | \$225.00 | Research JV complaint |
| Subtotal of Fees - JV | | | 17.50 | \$4,381.00 | |

| NIR and VP | | | | | |
|--------------------------------------|------|----------|---------------|-------------------|---|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 02/09/2015 | 6 | \$250.00 | 0.2 | \$50.00 | Telephone conference with S. Weeks regarding summary judgment hearing |
| 02/11/2015 | 6 | \$250.00 | 0.2 | \$50.00 | Telephone conference with S. Weeks |
| 02/23/2015 | 6 | \$250.00 | 4 | \$1,000.00 | Prepare reply memorandum to NIR/VP summary judgment opposition |
| 03/05/2015 | 6 | \$250.00 | 6.2 | \$1,550.00 | Continue preparation of reply memorandum to North Idaho Resorts and VP's opposition |
| 03/06/2015 | 6 | \$250.00 | 6.8 | \$1,700.00 | Continue preparation of summary judgment reply memoranda |
| 03/06/2015 | 18 | \$100.00 | 1.5 | \$150.00 | Research Equitable Servitude Requirements and Inquiry Notice |
| 03/07/2015 | 18 | \$100.00 | 2.2 | \$220.00 | Research Equitable Servitude Requirements and Inquiry Notice |
| 03/09/2015 | 6 | \$250.00 | 3.2 | \$800.00 | Revise summary judgment reply memoranda |
| 03/09/2015 | 6 | \$250.00 | 0.3 | \$75.00 | Correspondence with D. Shafer regarding legal description |
| 03/09/2015 | 6 | \$270.00 | 0.3 | \$81.00 | Correspondence with D. Shafer regarding expert issues |
| 03/10/2015 | 6 | \$250.00 | 5.7 | \$1,425.00 | Revisions to summary judgment reply memoranda |
| 03/10/2015 | 18 | \$100.00 | 6.1 | \$610.00 | Draft/Revise/Send Memo on Equitable Servitudes |
| Subtotal of Fees - NIR and VP | | | 36.70 | \$7,711.00 | |

COSTS AS A MATTER OF RIGHT:

| | | | | | |
|----------|------------|-----------------|-----------|--------------|-------------------------------|
| Research | 04/30/2015 | 10 | \$ | 30.92 | Westlaw online legal research |
| | | Subtotal | \$ | 30.92 | |

DISCRETIONARY COSTS:

| | | | | | |
|--------|------------|-----------------|-----------|---------------|---|
| Travel | 03/18/2015 | 10 | \$ | 914.20 | Travel expenses to attend Motion for Summary Judgment Hearing |
| | | Subtotal | \$ | 914.20 | |

GRAND TOTALS:

| | | | | |
|------------------|------|-------------------|-------------|--------------------|
| JV | 33% | 154.7 | \$39,303.00 | \$13,101.00 |
| | 100% | 9.70 | \$2,443.00 | \$2,443.00 |
| | 100% | 17.50 | \$4,381.00 | \$4,381.00 |
| | | JV Total: | | \$19,925.00 |
| NIR | 33% | 154.70 | \$39,303.00 | \$13,101.00 |
| | 50% | 36.70 | \$7,711.00 | \$3,855.50 |
| | | NIR Total: | | \$16,956.50 |
| VP | 33% | 154.70 | \$39,303.00 | \$13,101.00 |
| | 50% | 36.70 | \$7,711.00 | \$3,855.50 |
| | | VP Total: | | \$16,956.50 |
| All Fees | | | | \$53,838.00 |
| All Costs | | | | \$945.12 |

**EXHIBIT C
VALIANT FORECLOSURE**

Motions to Reconsider Priority

| All Parties | | | | | |
|---------------------------------------|------|----------|---------------|--------------------|---|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 06/22/2015 | 15 | \$195.00 | 2.8 | \$546.00 | Research motion to reconsider |
| 06/23/2015 | 15 | \$195.00 | 1.7 | \$331.50 | Research regarding standard of review for 11(a)(2)(B) motion |
| 06/24/2015 | 15 | \$195.00 | 0.9 | \$175.50 | Begin drafting memoranda in opposition to JV/VP/NIR motion to reconsider |
| 06/24/2015 | 15 | \$195.00 | 0.8 | \$156.00 | Research I.C. 55-806 |
| 06/24/2015 | 15 | \$195.00 | 1.4 | \$273.00 | Continue drafting memoranda in Opposition to JV/VP/NIR Motions to Reconsider |
| 06/24/2015 | 15 | \$195.00 | 0.5 | \$97.50 | Research standard of review |
| 06/24/2015 | 15 | \$195.00 | 1.3 | \$253.50 | Research standard of review |
| 06/25/2015 | 15 | \$195.00 | 3.2 | \$624.00 | Continue drafting memoranda in opposition to JV/VP/NIR Motions to Reconsider |
| 06/25/2015 | 15 | \$195.00 | 0.8 | \$156.00 | Review of Chuck Reeves deposition from Union Bank case |
| 06/25/2015 | 15 | \$195.00 | 1.2 | \$234.00 | Research submission of admissible evidence |
| 06/26/2015 | 15 | \$195.00 | 7.2 | \$1,404.00 | Continue Drafting memoranda in opposition to JV,VP/NIR Motions to reconsider |
| 06/26/2015 | 6 | \$250.00 | 1.5 | \$375.00 | Draft affidavits and motion in support of motions to reconsider |
| 06/26/2015 | 10 | \$250.00 | 0.5 | \$125.00 | Telephone conference with client |
| 06/29/2015 | 15 | \$195.00 | 1.6 | \$312.00 | Finish Drafting memoranda in opposition to JV/VP/NIR Motions to Reconsider |
| 06/29/2015 | 6 | \$250.00 | 1.9 | \$475.00 | Revise motions and affidavits in support of oppositions to motions to reconsider |
| 06/29/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Confer with J. Sykes and C. Nicholson |
| 06/30/2015 | 10 | \$270.00 | 0.4 | \$108.00 | Conference call with D. Shafer |
| 06/30/2015 | 10 | \$270.00 | 1 | \$270.00 | Research statute of frauds |
| 07/01/2015 | 10 | \$250.00 | 2.8 | \$700.00 | Analyze/draft/edit/finalize affidavits in support of memorandums in opposition to motions to reconsider |
| 07/02/2015 | 10 | \$270.00 | 0.3 | \$81.00 | Analyze emails from D. Shafer to R. Lynskey; email D. Shafer regarding the same |
| 07/04/2015 | 10 | \$270.00 | 0.1 | \$27.00 | Analyze email from B. Haberman |
| 07/06/2015 | 10 | \$270.00 | 2.4 | \$648.00 | Analyze site maps and other documents from D. Shafer; analyze multiple emails from D. Shafer; draft responses to same; (3) telephone conference with D. Shafer; email B. Haberman; analyze multiple emails from B. Haberman and respond to the same |
| 07/06/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Review/analyze issues with service of oppositions to motion to reconsider |
| 07/06/2015 | 10 | \$250.00 | 1.4 | \$350.00 | Draft/revise motion to vacate hearing date to serve opposition briefing |
| 07/07/2015 | 10 | \$250.00 | 3.1 | \$775.00 | Prepare for motion to reconsider |
| 07/07/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Telephone conference with court clerk regarding waiver of objection for untimely filing |
| 07/07/2015 | 10 | \$250.00 | 0.1 | \$25.00 | Analyze email from clerk regarding waiver of objection for untimely filing |
| 07/07/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Email client regarding status |
| 07/07/2015 | 6 | \$270.00 | 0.6 | \$162.00 | Confer with R. Stacey |
| 07/08/2015 | 6 | \$270.00 | 0.9 | \$243.00 | Research tax deeds; confer with R. Stacey regarding same |
| 07/08/2015 | 15 | \$225.00 | 0.2 | \$45.00 | Analysis of redemption deed statutes with J. Sykes |
| 07/08/2015 | 10 | \$270.00 | 0.6 | \$162.00 | Analyze emails from D. Shafer and respond to the same; analyze email from D. Staples; telephone conference with W. Haberman re same; analyze emails from W. Haberman |
| 07/08/2015 | 10 | \$250.00 | 9.7 | \$2,425.00 | Travel to and from Sandpoint, Idaho |
| 07/08/2015 | 10 | \$250.00 | 3.4 | \$850.00 | Prepare for and argue in opposition to NIR, VP and JV's motions to reconsider |
| 07/09/2015 | 10 | \$250.00 | 2.7 | \$675.00 | Analyze statutes recited by opposing counsel for first time at oral argument and caselaw related to the same |
| 07/09/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Analyze email from client |
| 07/09/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Draft/analyze response to client email |
| 07/22/2015 | 10 | \$250.00 | 2.9 | \$725.00 | Analyze decision denying motions to reconsider |
| 07/23/2015 | 10 | \$250.00 | 1.6 | \$400.00 | Analyze/draft/edit changes to the judgment per court's memorandum decision denying motion to reconsider. |
| 07/28/2015 | 6 | \$250.00 | 2.1 | \$525.00 | Prepare correspondence regarding decisions issued by court on motions for reconsideration |
| Subtotal of Fees - All Parties | | | 66.40 | \$15,434.00 | |

| NIR and VP's Motion to | | | | | |
|------------------------|------|----------|---------------|----------|--|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 05/27/2015 | 10 | \$270.00 | 3.7 | \$999.00 | Analyze defendants VP's and NIR's second motion for enlargement of time to file memorandum in support of motion for reconsideration; email client; prepare for and participate in conference call with clients and J. Sykes; confer with J. Sykes and C. Tipton regarding legal research |
| 05/27/2015 | 6 | \$270.00 | 1.2 | \$324.00 | Telephonic meeting with clients; correspondence with Fidelity |
| 06/17/2015 | 10 | \$250.00 | 1.3 | \$325.00 | Analyze motion to reconsider filed by VP and NIR |
| 06/17/2015 | 10 | \$250.00 | 2.9 | \$725.00 | Outline strategy and response to VP and NIR motion to reconsider |
| 07/06/2015 | 10 | \$250.00 | 0.9 | \$225.00 | Review/analyze motion to reconsider |
| 07/06/2015 | 10 | \$250.00 | 0.5 | \$125.00 | Analyze motion for enlargement of time filed by NIR and VP |
| 07/06/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Review/analyze email from opposing counsel regarding the same |

| | | | | | |
|--------------------------------------|----|----------|--------------|-------------------|---|
| 07/07/2015 | 10 | \$250.00 | 1.8 | \$450.00 | Analyze NIR objection |
| 07/07/2015 | 15 | \$225.00 | 0.6 | \$135.00 | Review and analysis of NIR/VP's reply in support of its motion for reconsideration and its objection to proposed final judgment (0.4); Review and analysis of JV's objection to proposed final judgment (0.2) |
| 07/07/2015 | 10 | \$270.00 | 2.3 | \$621.00 | Analyze emails from D. Shafer; draft/analyze responses to the same; telephone conference with D. Shafer; email client re: the same; email D. Shafer and B. Haberman regarding conference call; email R. Lynksey; analyze response; email D. Stapels |
| Subtotal of Fees - NIR and VP | | | 15.40 | \$3,979.00 | |

| JV | | | | | |
|------------------------------|------|----------|---------------|-------------------|---|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 06/16/2015 | 6 | \$270.00 | 0.6 | \$162.00 | Study motion to reconsider |
| 06/16/2015 | 15 | \$195.00 | 1.4 | \$273.00 | Review and analysis of JV, LLC's motion to reconsider and court's summary judgment decision |
| 06/16/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Telephone conference with G. Finney regarding hearing, mediation and motion to reconsider |
| 06/16/2015 | 10 | \$250.00 | 1.8 | \$400.00 | Analyze JV, LLC motion to reconsider |
| 06/16/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Email client |
| 06/16/2015 | 10 | \$250.00 | 2.3 | \$575.00 | Outline response to JV, LLC motion to reconsider |
| 06/16/2015 | 10 | \$250.00 | 0.1 | \$25.00 | Telephone conference with B. Kramer |
| 06/23/2015 | 10 | \$250.00 | 0.5 | \$125.00 | Analyze JV LLC motion that was improperly served in March 2015 |
| 07/07/2015 | 10 | \$250.00 | 1.9 | \$475.00 | Analyze JV objection |
| 07/16/2015 | 10 | \$250.00 | 2.6 | \$650.00 | Analyze/research motion to reconsider filed by JV |
| Subtotal of Fees - JV | | | 11.40 | \$2,785.00 | |

| COSTS AS A MATTER OF RIGHT: | | | | | |
|------------------------------------|------------|--|-----------------|-----------|-------------------------------|
| Research | 05/31/2015 | | 10 \$ | 2.24 | Westlaw online legal research |
| | | | Subtotal | \$ | 2.24 |

| DISCRETIONARY COSTS: | | | | | |
|-----------------------------|------------|--|-----------------|-----------|---------------------------------|
| Postage/FedEx | 05/19/2015 | | 10 \$ | 37.90 | FedEx: Susan P. Weeks, Esq. |
| | 05/19/2015 | | 10 \$ | 46.00 | FedEx: Finney Finney & Finney |
| | 05/19/2015 | | 10 \$ | 54.71 | FedEx: Bonner County Courthouse |
| | 05/26/2015 | | 10 \$ | 33.24 | FedEx: Bonner County Courthouse |
| | | | Subtotal | \$ | 171.85 |

| GRAND TOTALS: | | | | | |
|----------------------|------|-------|-------------------|--------------------|--|
| JV | 33% | 66.40 | \$15,434.00 | \$5,144.67 | |
| | 100% | 11.40 | \$2,785.00 | \$2,785.00 | |
| | | | JV Total: | \$7,929.67 | |
| NIR | 33% | 66.40 | \$15,434.00 | \$5,144.67 | |
| | 50% | 15.40 | \$3,979.00 | \$1,989.50 | |
| | | | NIR Total: | \$7,134.17 | |
| VP | 33% | 66.40 | \$15,434.00 | \$5,144.67 | |
| | 50% | 15.40 | \$3,979.00 | \$1,989.50 | |
| | | | VP Total: | \$7,134.17 | |
| All Fees | | | | \$22,198.00 | |
| All Costs | | | | \$174.09 | |

**EXHIBIT D
VALIANT FORECLOSURE
Entry of Judgment**

| All Parties | | | | |
|-------------|------|----------|---------------|------------|
| Trans Date | Atty | Rate | Hours to Bill | Amount |
| 03/12/2015 | 6 | \$250.00 | 0.3 | \$75.00 |
| 03/12/2015 | 6 | \$270.00 | 0.3 | \$81.00 |
| 03/16/2015 | 10 | \$250.00 | 0.6 | \$150.00 |
| 03/16/2015 | 10 | \$250.00 | 1.7 | \$425.00 |
| 03/16/2015 | 10 | \$250.00 | 0.6 | \$150.00 |
| 03/16/2015 | 6 | \$250.00 | 0.2 | \$50.00 |
| 03/16/2015 | 6 | \$250.00 | 0.5 | \$125.00 |
| 03/16/2015 | 10 | \$270.00 | 0.6 | \$162.00 |
| 03/16/2015 | 10 | \$270.00 | 1.7 | \$459.00 |
| 03/16/2015 | 10 | \$270.00 | 0.6 | \$162.00 |
| 03/16/2015 | 6 | \$270.00 | 0.2 | \$54.00 |
| 03/16/2015 | 6 | \$270.00 | 0.5 | \$135.00 |
| 03/23/2015 | 6 | \$250.00 | 2.1 | \$525.00 |
| 03/23/2015 | 6 | \$270.00 | 2.1 | \$567.00 |
| 03/24/2015 | 6 | \$270.00 | 1.8 | \$486.00 |
| 03/24/2015 | 6 | \$250.00 | 0.9 | \$225.00 |
| 03/24/2015 | 6 | \$250.00 | 0.6 | \$150.00 |
| 03/24/2015 | 6 | \$250.00 | 0.3 | \$75.00 |
| 03/25/2015 | 6 | \$250.00 | 0.2 | \$50.00 |
| 03/25/2015 | 6 | \$270.00 | 0.7 | \$189.00 |
| 03/25/2015 | 6 | \$270.00 | 0.2 | \$54.00 |
| 03/26/2015 | 6 | \$270.00 | 0.9 | \$243.00 |
| 03/26/2015 | 6 | \$250.00 | 1.3 | \$325.00 |
| 03/26/2015 | 6 | \$250.00 | 0.4 | \$100.00 |
| 03/26/2015 | 6 | \$250.00 | 0.4 | \$100.00 |
| 03/26/2015 | 6 | \$250.00 | 0.3 | \$75.00 |
| 03/26/2015 | 6 | \$250.00 | 0.2 | \$50.00 |
| 03/30/2015 | 10 | \$250.00 | 2.1 | \$525.00 |
| 03/30/2015 | 6 | \$250.00 | 0.6 | \$150.00 |
| 03/30/2015 | 6 | \$250.00 | 0.6 | \$150.00 |
| 03/30/2015 | 6 | \$250.00 | 0.4 | \$100.00 |
| 03/30/2015 | 10 | \$270.00 | 2.1 | \$567.00 |
| 03/30/2015 | 6 | \$270.00 | 1.6 | \$432.00 |
| 03/31/2015 | 6 | \$250.00 | 0.8 | \$200.00 |
| 03/31/2015 | 6 | \$270.00 | 0.8 | \$216.00 |
| 04/03/2015 | 6 | \$270.00 | 1.2 | \$324.00 |
| 04/03/2015 | 6 | \$270.00 | 0.6 | \$162.00 |
| 04/06/2015 | 6 | \$270.00 | 0.4 | \$108.00 |
| 04/06/2015 | 10 | \$270.00 | 2.7 | \$729.00 |
| 04/08/2015 | 6 | \$270.00 | 0.3 | \$81.00 |
| 04/10/2015 | 6 | \$270.00 | 0.9 | \$243.00 |
| 04/14/2015 | 6 | \$270.00 | 1.1 | \$297.00 |
| 04/15/2015 | 6 | \$270.00 | 0.2 | \$54.00 |
| 04/15/2015 | 6 | \$250.00 | 0.5 | \$125.00 |
| 04/17/2015 | 10 | \$270.00 | 1.6 | \$432.00 |
| 04/17/2015 | 6 | \$270.00 | 1.1 | \$297.00 |
| 04/21/2015 | 6 | \$250.00 | 0.4 | \$100.00 |
| 04/24/2015 | 10 | \$270.00 | 1.6 | \$432.00 |
| 04/24/2015 | 6 | \$270.00 | 1.3 | \$351.00 |
| 04/27/2015 | 10 | \$270.00 | 0.9 | \$243.00 |
| 05/06/2015 | 10 | \$270.00 | 3.3 | \$891.00 |
| 05/07/2015 | 10 | \$270.00 | 0.6 | \$162.00 |
| 05/08/2015 | 10 | \$270.00 | 3.6 | \$972.00 |
| 05/09/2015 | 10 | \$270.00 | 0.1 | \$27.00 |
| 05/11/2015 | 10 | \$270.00 | 4.1 | \$1,107.00 |
| 05/17/2015 | 15 | \$225.00 | 5.7 | \$1,282.50 |
| 06/17/2015 | 10 | \$270.00 | 0.6 | \$162.00 |
| 06/18/2015 | 15 | \$225.00 | 2.1 | \$472.50 |
| 06/22/2015 | 15 | \$195.00 | 1.9 | \$370.50 |
| 06/23/2015 | 6 | \$250.00 | 1.7 | \$425.00 |
| 06/23/2015 | 6 | \$250.00 | 0.2 | \$50.00 |
| 06/23/2015 | 10 | \$250.00 | 1 | \$250.00 |
| 06/23/2015 | 10 | \$250.00 | 0.4 | \$100.00 |
| 06/23/2015 | 15 | \$225.00 | 0.1 | \$22.50 |
| 06/23/2015 | 6 | \$270.00 | 1.2 | \$324.00 |

| | | | | | |
|---------------------------------------|----|----------|--------------|--------------------|--|
| 07/22/2015 | 10 | \$270.00 | 6.1 | \$1,647.00 | Outline changes to judgment and foreclosure decree per court's memorandum decision; analyze emails from C. Reeves and client; confer with C. Nicholson and J. Sykes regarding the same; draft/analyze multiple emails to clients regarding same; confer with local counsel regarding the same; analyze emails from client and C. Reeves; perform legal research re same; analyze documents from D. Shafer and forward same to client |
| 07/22/2015 | 10 | \$250.00 | 1 | \$250.00 | Email and telephone conferences (3) with client |
| 07/23/2015 | 10 | \$270.00 | 3.3 | \$891.00 | Analyze/draft/edit changes to the decree of foreclosure per court's memorandum decision; analyze litigation guarantee; request copies of recorded instruments from First American |
| 07/23/2015 | 6 | \$270.00 | 0.6 | \$162.00 | Review/analyze judgment and order of sale |
| 07/24/2015 | 6 | \$270.00 | 0.4 | \$108.00 | Review/analyze decree of foreclosure |
| Subtotal of Fees - All Parties | | | 82.00 | \$21,776.00 | |

| JV | | | | | |
|------------------------------|------|----------|---------------|-----------------|--|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 06/16/2015 | 15 | \$225.00 | 0.6 | \$135.00 | Telephone conference with G. Finney regarding Opposition to Motion for Entry of Final Judgment and mediation; |
| 06/16/2015 | 10 | \$270.00 | 1.7 | \$459.00 | confer with J. Sykes & R. Stacey Analyze email from D. Shafer; confer with C. Nicholson regarding hearing on motion for final judgment |
| Subtotal of Fees - JV | | | 2.30 | \$594.00 | |

| COSTS AS A MATTER OF RIGHT: | | | | | |
|-----------------------------|------------|--|-----------------|-----------------|---|
| Travel | | | | | |
| | 06/17/2015 | | 10 | \$571.23 | Out-of-town travel for Motion for Entry of Final Judgment |
| | | | Subtotal | \$571.23 | |

| GRAND TOTALS: | | | | | |
|------------------|------|-------|-------------------|--------------------|--|
| JV | 33% | 82.00 | \$21,776.00 | \$7,258.67 | |
| | 100% | 2.30 | \$594.00 | \$594.00 | |
| | | | JV Total: | \$7,852.67 | |
| NIR | 33% | 82.00 | \$21,776.00 | \$7,258.67 | |
| | | | NIR Total: | \$7,258.67 | |
| VP | 33% | 82.00 | \$21,776.00 | \$7,258.67 | |
| | | | VP Total: | \$7,258.67 | |
| All Fees | | | | \$22,370.00 | |
| All Costs | | | | \$459.00 | |

EXHIBIT E
VALIANT FORECLOSURE
JV's Motion to Reconsider Final
Judgment

| Trans | | Atty | Rate | Hours to Bill | Amount | |
|-------------------------------------|------------|-------|------------|------------------|-------------------|---|
| 07/30/2015 | 10 | | \$250.00 | 2.8 | \$700.00 | Analyze new motion to reconsider priority of JV, LLC |
| 07/30/2015 | 10 | | \$250.00 | 0.2 | \$50.00 | Analyze/outline response to the same; analyze/draft email to clients |
| 07/30/2015 | 10 | | \$250.00 | 0.1 | \$25.00 | Analyze responses to the same |
| 07/31/2015 | 6 | | \$250.00 | 1.1 | \$275.00 | Prepare correspondence to D. Krafets |
| 07/31/2015 | 10 | | \$250.00 | 2.1 | \$525.00 | Draft objection to expedited hearing date for 2nd JV motion to reconsider |
| 07/31/2015 | 6 | | \$250.00 | 1.5 | \$375.00 | Review/analyze file and pleadings |
| 07/31/2015 | 10 | | \$270.00 | 1.1 | \$297.00 | Analyze email from client and respond to same; |
| | | | | | | Telephone conference with court law clerk |
| 08/03/2015 | 10 | | \$250.00 | 2.7 | \$675.00 | Research objection to 2nd JV motion to reconsider |
| 08/03/2015 | 10 | | \$250.00 | 0.3 | \$75.00 | Telephone conference with court clerk regarding judge's decision to deny expedited hearing and discussing availability for Sept. 2 hearing date |
| 08/03/2015 | 10 | | \$250.00 | 0.3 | \$75.00 | Email client regarding the same |
| 08/04/2015 | 10 | | \$250.00 | 0.3 | \$75.00 | Analyze court order re-scheduling hearing of 2nd JV motion to reconsider |
| 08/04/2015 | 10 | | \$250.00 | 0.5 | \$150.00 | Review 2nd JV motion to reconsider |
| 08/04/2015 | 10 | | \$250.00 | 1.1 | \$275.00 | Review/analyze memoranda filed by JV |
| 08/04/2015 | 10 | | \$250.00 | 1.3 | \$325.00 | Outline arguments in opposition to the same |
| 08/12/2015 | 10 | | \$270.00 | 3.8 | \$1,026.00 | Research legal issues related to foreclosure; study JV motion to reconsider |
| Subtotal of Fees - JV | | | | 19.30 | \$4,923.00 | |
| COSTS (AS A MATTER OF RIGHT) | | | | | | |
| Research | | | | | | |
| | 06/30/2015 | 10 | \$ | 392.25 | | Westlaw online legal research |
| | 07/31/2015 | 10 | \$ | 8.01 | | Westlaw online legal research |
| | 07/31/2015 | 10 | \$ | 32.77 | | Westlaw online legal research |
| | | | | Subtotal | \$ | 433.03 |
| DISCRETIONARY COSTS | | | | | | |
| Postage/FedEx | | | | | | |
| | 08/30/2015 | 10 | \$ | 25.51 | | FedEx to Susan P. Weeks, Esq. |
| | 08/30/2015 | 10 | \$ | 27.93 | | FedEx to Gary A. Finney, Esq. |
| | 07/21/2015 | 10 | \$ | 40.36 | | FedEx to Clerk of the District Court |
| | 07/21/2015 | 10 | \$ | 35.59 | | FedEx to Susan P. Weeks, Esq. |
| | 07/21/2015 | 10 | \$ | 38.03 | | FedEx to Gary A. Finney, Esq. |
| | | | | Subtotal | \$ | 167.44 |
| GRAND TOTALS | | | | | | |
| JV | 100% | 19.30 | \$4,923.00 | \$4,923.00 | | |
| | | | | JV Total: | \$4,923.00 | |
| All Fees | | | | | \$4,923.00 | |
| All Costs | | | | | \$600.47 | |

**EXHIBIT F
VALIANT FORECLOSURE**

Order of Sale

| All Parties | | | | | |
|---------------------------------------|------------|----------|---------------|--------------------|---|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 07/09/2015 | 10 | \$270.00 | 3.9 | \$1,053.00 | Prepare for and participate in conference call with B. Haberman and D. Shafer; analyze multiple emails and attachments from D. Shafer and B. Haberman; analyze documents from D. Shafer; analyze property on Bonner County Assessor's website |
| 07/10/2015 | 10 | \$270.00 | 2.9 | \$783.00 | Legal research regarding order of sale; analyze emails and attachments from B. Haberman and U. Shafer |
| 07/13/2015 | 10 | \$270.00 | 4.3 | \$1,161.00 | Research permits and platting requirements; analyze emails to and from B. Haberman and D. Shafer; analyze exhibits emailed from B. Haberman; draft/analyze email to him regarding the same |
| 07/22/2015 | 6 | \$270.00 | 1.1 | \$297.00 | Review scheduling order; attend pretrial conference |
| 07/22/2015 | 15 | \$225.00 | 1.7 | \$382.50 | Research regarding water rights; telephone conference regarding same; |
| 07/24/2015 | 15 | \$225.00 | 1.4 | \$315.00 | Research water rights |
| 07/24/2015 | 10 | \$270.00 | 4.1 | \$1,107.00 | Analyze documents from B. Haberman; email D. Shafer; analyze emails from D. Shafer regarding same; verify accuracy of plats; research legal issues |
| 07/27/2015 | 10 | \$270.00 | 0.4 | \$108.00 | Analyze emails from B. Haberman and respond to the same; analyze email from R. Myers and respond to the same |
| 07/28/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Analyze emails from R. Meyers and B. Haberman |
| 07/29/2015 | 10 | \$270.00 | 1.6 | \$432.00 | Analyze email from R. Myers; analyze email from B. Haberman; analyze emails from B. Haberman to R. Myers; email B. Haberman; prepare for and telephone conference with B. Haberman; email title company; analyze court order vacating hearing on proposed order of sale and requesting Order for entry granting the same; telephone conference with (2) court clerk and advise of preference for hearing to proceed |
| 07/30/2015 | 10 | \$270.00 | 0.8 | \$216.00 | Email R. Myers regarding teleconference to discuss status of case; email B. Haberman regarding the same; analyze email from B. Haberman; leave voicemail for court clerk re: order vacating hearing on proposed order of sale; telephone conference with court clerk regarding the same |
| 07/31/2015 | 10 | \$250.00 | 2.4 | \$600.00 | Analyze documents from Bonner County Assessor |
| 08/03/2015 | 10 | \$270.00 | 1.6 | \$432.00 | Analyze utility easement documents |
| 08/04/2015 | 10 | \$270.00 | 3.4 | \$918.00 | Analyze motion for proposed order of sale; analyze Valiant memoranda and oppositions filed by NIR; research legal issues, outline oral arguments and prepare for hearing on the same |
| 08/05/2015 | 10 | \$270.00 | 11.6 | \$3,132.00 | Prepare for hearing; travel to Sandpoint, ID and back to Boise, ID; attend and argue in favor of motion at hearing; coordinate with court for execution of judgment; deliver and record judgment at Bonner County Recorder's Office; telephone conference with B. Kramer regarding outcome of hearing; B. Haberman regarding outcome of hearing |
| 08/06/2015 | 18 | \$100.00 | 6.1 | \$610.00 | Research foreclosure sales |
| 08/06/2015 | 15 | \$225.00 | 3.1 | \$697.50 | Research regarding foreclosure sales |
| 08/06/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Analyze email from Fidelity |
| 08/07/2015 | 18 | \$100.00 | 5.5 | \$550.00 | Research credit bidding |
| 08/07/2015 | 15 | \$225.00 | 1.1 | \$247.50 | Continue research regarding foreclosure sales |
| 08/10/2015 | 18 | \$100.00 | 2.8 | \$280.00 | Research credit bidding; confer regarding same |
| Subtotal of Fees - All Parties | | | 60.20 | \$13,421.50 | |
| VP | | | | | |
| 08/06/2015 | 10 | \$270.00 | 3.4 | \$918.00 | Analyze email from R. Meyers; draft response to the same; confer with C. Nicholson and C. Tipton ; analyze objection filed by VP and affidavit of Villelli in support of the same |
| 08/07/2015 | 10 | \$270.00 | 1.7 | \$459.00 | Telephone conference with R. Myers regarding status of case and conference call with R. Myers and H. Brooks regarding the same; analyze email from B. Haberman; analyze objection filed by VP and affidavit of Villelli in support of the same; leave voicemail for Bonner County Sheriff |
| Subtotal of Fees - VP | | | 5.10 | \$1,377.00 | |
| COSTS AS A MATTER OF RIGHT: | | | | | |
| Research | 08/31/2015 | | 10 \$ | 682.47 | Westlaw online legal research |
| Subtotal | | | \$ | 682.47 | |
| DISCRETIONARY COSTS: | | | | | |
| Travel | 08/05/2015 | | 10 \$ | 245.58 | Travel costs/advances for motion for order of sale |
| Subtotal | | | \$ | 245.58 | |
| GRAND TOTALS: | | | | | |
| JV | 33% | 60.20 | \$13,421.50 | \$4,473.83 | |

| | | | | |
|------------------|------|-------|-------------------|--------------------|
| | | | JV Total: | \$4,473.83 |
| NIR | 33% | 60.20 | \$13,421.50 | \$4,473.83 |
| | | | NIR Total: | \$4,473.83 |
| VP | 33% | 60.20 | \$13,421.50 | \$4,473.83 |
| | 100% | 5.10 | \$1,377.00 | \$1,377.00 |
| | | | VP Total: | \$5,850.83 |
| All Fees | | | | \$14,798.50 |
| All Costs | | | | \$928.05 |

EXHIBIT G
VALIANT FORECLOSURE
 Defendants Motions to Reconsider
 Order of Sale

| JV | | | | | |
|------------------------------|------|----------|---------------|--------------------|---|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 08/19/2015 | 15 | \$225.00 | 1.8 | \$405.00 | Research regarding Rule 60 standard; finalize memo; finalize motion |
| 08/19/2015 | 6 | \$250.00 | 1.4 | \$350.00 | Begin preparation for hearing on JV's second/third motions for reconsideration |
| 08/20/2015 | 10 | \$250.00 | 1.6 | \$400.00 | Analyze new motion to reconsider filed by JV, LLC |
| 08/20/2015 | 10 | \$250.00 | 2.1 | \$525.00 | Research new issues raised by the same and outline arguments in response to the same |
| 08/21/2015 | 10 | \$250.00 | 2.7 | \$675.00 | Legal research in support of opposition to motion to reconsider |
| 08/21/2015 | 10 | \$250.00 | 2.6 | \$650.00 | Begin analyze/drafting the same |
| 08/24/2015 | 10 | \$250.00 | 1.4 | \$350.00 | Outline responsive motion |
| 08/24/2015 | 10 | \$250.00 | 1.5 | \$375.00 | Analyze and compare JV's motion to its arguments in prior pleadings |
| 08/24/2015 | 10 | \$250.00 | 1 | \$250.00 | Analyze Valiant's responses to the same |
| 08/24/2015 | 15 | \$225.00 | 2.2 | \$495.00 | Analysis of JV Motion to Reconsider filed Aug. 18 |
| 08/25/2015 | 15 | \$225.00 | 3.8 | \$855.00 | Draft Memo, Opp JV's Motion for Reconsideration filed 8/18/15 |
| 08/25/2015 | 10 | \$250.00 | 8.2 | \$2,050.00 | Analyze/draft/edit opposition to JV's 3rd motion to reconsider |
| 08/26/2015 | 10 | \$250.00 | 4.7 | \$1,175.00 | Analyze/edit/draft/finalize opposition to JV's 3rd motion to reconsider |
| 08/26/2015 | 15 | \$225.00 | 1.2 | \$270.00 | Revise Memo Opp JV's Motion for Reconsideration filed 8/18/15 |
| 08/31/2015 | 10 | \$270.00 | 3.1 | \$637.00 | Analyze/edit reply memorandums; analyze JV's motions and supporting memoranda and Valiant's opposition memoranda in preparation for hearing |
| 08/31/2015 | 15 | \$225.00 | 0.5 | \$112.50 | Analysis of JV reply in support of its 3rd and 4th motions to reconsider; Analysis of JV Supplemental Motion to Reconsider |
| 08/31/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Review/analyze supplemental motion to reconsider, alter and amend filed on August 26 |
| 08/31/2015 | 10 | \$250.00 | 0.7 | \$175.00 | Outline strategy |
| 08/31/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Analyze reply to Valiant's opposition to JV's motion to alter, amend, and reconsider |
| 08/31/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Outline strategy |
| 09/01/2015 | 6 | \$250.00 | 3.8 | \$950.00 | Study pleadings in preparation for hearing on motion for reconsideration |
| 09/08/2015 | 10 | \$250.00 | 0.5 | \$125.00 | Analyze JV's request for hearing transcript |
| 09/08/2015 | 10 | \$250.00 | 1.3 | \$325.00 | Analyze court's memorandum decision and order granting JV's motion to reconsider in part and denying it in part |
| 09/09/2015 | 10 | \$250.00 | 2.4 | \$600.00 | Analyze court memorandum decision and pleadings for and against JV motion to reconsider |
| 09/09/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Email clients |
| 09/09/2015 | 10 | \$250.00 | 1.3 | \$325.00 | Analyze court decision |
| 09/15/2015 | 10 | \$250.00 | 3.1 | \$775.00 | Analyze/outline/draft opposition to JV's proposed judgment |
| 09/15/2015 | 10 | \$250.00 | 1.2 | \$300.00 | Analyze documents and pleadings related to the same |
| 09/16/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Finalize opposition to proposed JV judgment |
| Subtotal of Fees - JV | | | 59.10 | \$14,599.50 | |

| VP and NIR | | | | | |
|------------|------|----------|---------------|------------|---|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 08/04/2015 | 10 | \$270.00 | 3.4 | \$918.00 | Analyze motion for proposed order of sale; analyze Valiant memoranda and oppositions filed by NIR; research legal issues, outline oral arguments and prepare for hearing on the same |
| 08/07/2015 | 15 | \$225.00 | 1.1 | \$247.50 | Continue research regarding foreclosure sales |
| 08/10/2015 | 10 | \$270.00 | 3.1 | \$837.00 | Telephone conference with B. Haberman; prepare for and participate in conference call with R. Myers and H. Brooks; confer with C. Nicholson and C. Tipton regarding status of legal research |
| 08/10/2015 | 15 | \$225.00 | 6.4 | \$1,440.00 | Research regarding subrogation and redemption |
| 08/11/2015 | 18 | \$100.00 | 2.9 | \$290.00 | Review redemption research; confer with J. Sykes; research inverse alienation |
| 08/11/2015 | 10 | \$270.00 | 2.7 | \$729.00 | Research legal issues regarding priority; confer with J. Sykes regarding the same |
| 08/11/2015 | 15 | \$225.00 | 1.8 | \$405.00 | Research redemption and credit bidding |
| 08/11/2015 | 6 | \$270.00 | 1.2 | \$324.00 | Research foreclosure issue |
| 08/12/2015 | 18 | \$100.00 | 4.8 | \$480.00 | Research regarding order of sale, marshalling, and inverse alienation |
| 08/12/2015 | 15 | \$225.00 | 2.9 | \$652.50 | Continued research regarding marshalling of assets |
| 08/13/2015 | 18 | \$100.00 | 6.2 | \$620.00 | Research waiver and inverse alienation |
| 08/13/2015 | 10 | \$270.00 | 6.2 | \$1,674.00 | Analyze litigation guarantee and mortgages; analyze documents from Dean Shafer; multiple phone conversations with D. Shafer; confer with J. Sykes; confer with C. Nicholson and C. Tipton re legal research; telephone conference with B. Haberman; outline C. Reeves affidavit; analyze email from B. Haberman; draft outline of D. Shafer affidavit; compile documentation for R. Myers and H. Brooks; draft email to same regarding documentation; analyze email from D. Shafer; telephone conference with D. Shafer |
| 08/13/2015 | 15 | \$225.00 | 5.7 | \$1,282.50 | Continued research regarding marshalling of assets |
| 08/13/2015 | 6 | \$270.00 | 1.6 | \$432.00 | Confer with R. Stacey; conference call with R. Stacey and D. Shafer regarding properties |
| 08/16/2015 | 15 | \$225.00 | 12.3 | \$2,767.50 | Additional research & draft memo support motion reconsider order of sale |

| | | | | | |
|--------------------------------------|----|----------|--------------|--------------------|--|
| 08/17/2015 | 18 | \$100.00 | 9.5 | \$950.00 | Research and Draft Motions and Argument for Inverse Alienation Draft/analyze/edit motion and memorandum in support of motion to alter foreclosure decree; draft/analyze edit affidavits of C. Reeves and D. Shafer in support of motion to alter foreclosure decree and to reconsider the proposed order of sale; analyze multiple emails from D. Shafer and C. Reeves regarding the same; research legal issues in support of motion to reconsider order of sale and decree of foreclosure |
| 08/17/2015 | 10 | \$270.00 | 7.7 | \$2,079.00 | |
| 08/17/2015 | 15 | \$225.00 | 4.3 | \$967.50 | Revise memo supp reconsider order of sale; additional research regarding marshalling of assets |
| 08/17/2015 | 6 | \$270.00 | 1.1 | \$297.00 | Confer with R. Stacey regarding foreclosure procedure; study correspondence from D. Shafer |
| 08/18/2015 | 18 | \$100.00 | 2.5 | \$250.00 | Research marshalling of assets |
| 08/18/2015 | 10 | \$270.00 | 8.1 | \$2,187.00 | Analyze/edit draft memorandum in support of proposed order of sale; email C. Reeves and D. Shafer draft affidavits; analyze emails from C. Reeves and D. Shafer regarding the same; analyze/edit affidavits to reflect requested changes to the same; email C. Reeves and D. Shafer amended affidavits; telephone conference with Pioneer Title regarding Shafer affidavit; telephone conference with D. Shafer (2) regarding the same; analyze/edit affidavit of D. Shafer based upon the same; analyze motions and briefing in support of the same |
| 08/18/2015 | 15 | \$225.00 | 9.4 | \$2,115.00 | Continue draft Memo. Supp Motion Alter, Amend, Reconsider |
| 08/19/2015 | 10 | \$270.00 | 8.6 | \$2,322.00 | Analyze/draft/edit motion for proposed order for sale and to alter judgment; multiple telephone conferences with D. Shafer; edit memoranda; draft/analyze/edit declaration of D. Shafer; telephone conference with B. Haberman; analyze exhibits to declarations; analyze legals discussed by D. Shafer; analyze D. Shafer declarations, exhibits and other documents |
| 08/28/2015 | 15 | \$225.00 | 0.3 | \$67.50 | Review and Analysis of NIR/VP's response to motion to reconsider order of sale |
| 09/01/2015 | 10 | \$270.00 | 4.8 | \$1,296.00 | Analyze Valiant's motions and memoranda and JV and NIR's oppositions to motion alter/reconsider order of sale to the same in preparation for hearing; outline arguments, perform additional legal research and otherwise prepare for hearing in support of motion to alter order of sale; confer with J. Sykes |
| 09/14/2015 | 6 | \$250.00 | 0.4 | \$100.00 | Prepare meet and confer correspondence to S. Weeks |
| 09/30/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Analyze VP/NIR motions to reconsider |
| 09/30/2015 | 10 | \$250.00 | 2.8 | \$700.00 | Analyze/draft/edit opposition to VP/NIR's new motion to reconsider |
| 09/30/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Draft letter to S. Weeks regarding whether VP still intends to cancel the motions to reconsider |
| Subtotal of Fees - VP and NIR | | | 123.2 | \$26,780.00 | |

GRAND TOTALS:

| | | | | |
|-----------------|------|-------------------|-------------|--------------------|
| JV | 100% | 59.10 | \$14,599.50 | \$14,599.50 |
| | | JV Total: | | \$14,599.50 |
| NIR | 50% | 123.20 | \$26,780.00 | \$13,390.00 |
| | | NIR Total: | | \$13,390.00 |
| VP | 50% | 123.20 | \$26,780.00 | \$13,390.00 |
| | | VP Total: | | \$13,390.00 |
| All Fees | | | | \$41,379.50 |

**EXHIBIT H
VALIANT FORECLOSURE
Valiant Third Motion for Summary
Judgment**

| Trans Date | Atty | Rate | Hours to Bill | Amount | Description |
|------------|------|----------|---------------|------------|--|
| 09/10/2015 | 10 | \$250.00 | 6.5 | \$1,650.00 | Analyze Pensco and MF08 loan documents, real property records and other documents of record in this case in preparation for motion to reconsider and in support of motion for summary judgment and confer with C. Nicholson regarding the same |
| 09/14/2015 | 15 | \$195.00 | 1.8 | \$351.00 | Begin drafting Memo Supp. Motion to Reconsider the Courts 9-4-15 decision; confer with J. Sykes and R. Glacey |
| 09/14/2015 | 10 | \$250.00 | 1.4 | \$350.00 | Outline arguments for motion to reconsider |
| 09/14/2015 | 10 | \$250.00 | 2.4 | \$600.00 | Outline arguments for motion for summary judgment |
| 09/14/2015 | 10 | \$250.00 | 1.5 | \$375.00 | Meet to discuss motion to reconsider, summary judgment and objection to proposed judgment |
| 09/14/2015 | 6 | \$250.00 | 1.9 | \$475.00 | Outline issues for third summary judgment motion |
| 09/15/2015 | 15 | \$195.00 | 0.2 | \$39.00 | Discuss research project with C. Tibbon |
| 09/15/2015 | 15 | \$195.00 | 0.8 | \$156.00 | Review and analyze of MF08 Absolute Mortgage & Loan Agreement to prepare B. Ng Decl. |
| 09/15/2015 | 15 | \$195.00 | 0.8 | \$156.00 | Begin preparing Ng Decl. |
| 09/15/2015 | 18 | \$100.00 | 2.3 | \$360.00 | Discussion with C. Nicholson; Research regarding inconsistent declarations |
| 09/16/2015 | 18 | \$100.00 | 3.8 | \$380.00 | Discussion with C. Nicholson; Research regarding inconsistent declarations |
| 09/16/2015 | 15 | \$195.00 | 3.5 | \$682.50 | Draft Ramay Ng decl. |
| 09/17/2015 | 15 | \$195.00 | 0.2 | \$39.00 | Correspondence with W. Haberman |
| 09/17/2015 | 15 | \$195.00 | 0.3 | \$58.50 | Review and analyze: POBD mortgages with R.E. Loans, MF08 & Practices |
| 09/17/2015 | 15 | \$195.00 | 1.3 | \$253.50 | Review and analyze loan agreements between POBD and RE Loans/MF08 |
| 09/17/2015 | 15 | \$195.00 | 0.9 | \$175.50 | Review and analysis of notes between POBD & RE Loans, Pensco & MF08 |
| 09/17/2015 | 15 | \$195.00 | 0.6 | \$117.00 | Review and analysis of Pensco related documents received from B. Ng |
| 09/17/2015 | 15 | \$195.00 | 2.1 | \$409.50 | Review, analyze and compare Borrowers Funding Authorization & Analyze with Settlement Statement relied upon by VP/NIR/JV and other closing documents (check stub to POBD, CA disclosure form, etc.) |
| 09/17/2015 | 6 | \$250.00 | 3.2 | \$800.00 | Study second summary judgment motion and supporting pleadings |
| 09/17/2015 | 6 | \$250.00 | 0.9 | \$225.00 | Telephone conference with F. Elaeasser |
| 09/17/2015 | 6 | \$250.00 | 0.3 | \$75.00 | Telephone conference with W. Haberman |
| 09/17/2015 | 18 | \$100.00 | 4.5 | \$450.00 | Research/Draft Argument regarding inconsistent Decl. |
| 09/17/2015 | 6 | \$270.00 | 1.2 | \$324.00 | Telephone conference with F. Elaeasser regarding summary judgment motion; telephone conference with W. Haberman |
| 09/18/2015 | 15 | \$195.00 | 0.1 | \$19.50 | Review Notice regarding proposed Judgment between VP, NIR & JV, order vacating 8/5/15 Judgment, and order vacating 8/5/15 decree of foreclosure |
| 09/18/2015 | 18 | \$100.00 | 1.2 | \$120.00 | Research regarding inconsistent Decl. |
| 09/18/2015 | 15 | \$195.00 | 0.8 | \$156.00 | Telephone conference with J. Sykes, W. Haberman and E. Ford |
| 09/18/2015 | 15 | \$195.00 | 2.4 | \$468.00 | Continue drafting Ng Declaration |
| 09/18/2015 | 6 | \$250.00 | 1.4 | \$350.00 | Revise declaration of B. Ng |
| 09/18/2015 | 6 | \$250.00 | 0.3 | \$75.00 | Telephone conference with F. Elaeasser |
| 09/18/2015 | 15 | \$195.00 | 0.2 | \$39.00 | Correspondence with Jenni Robnett regarding representation of POBD in conjunction with closing of RE Loans, Pensco and MF08 loans |
| 09/20/2015 | 15 | \$195.00 | 1.3 | \$253.50 | Complete initial draft of Ng Decl. |
| 09/21/2015 | 15 | \$195.00 | 0.9 | \$175.50 | Prepare for and telephone conference with J. Sykes, W. Haberman and B. Ng |
| 09/21/2015 | 15 | \$195.00 | 0.3 | \$58.50 | Review correspondence from W. Haberman |
| 09/21/2015 | 15 | \$195.00 | 1.8 | \$351.00 | Revise Ng Decl. |
| 09/21/2015 | 15 | \$195.00 | 0.2 | \$39.00 | Draft Third Motion for Summary Judgment |
| 09/21/2015 | 15 | \$195.00 | 2 | \$390.00 | Begin Drafting Memo, Supp. 3rd Mot. for Summary Judgment |
| 09/21/2015 | 6 | \$250.00 | 1.2 | \$300.00 | Telephone conference with B. Ng |
| 09/21/2015 | 18 | \$100.00 | 6.2 | \$620.00 | Research/Draft Argument regarding inconsistent Decl. |
| 09/22/2015 | 18 | \$100.00 | 3.2 | \$320.00 | Research regarding inconsistent Decl. |
| 09/22/2015 | 6 | \$270.00 | 0.9 | \$243.00 | Correspondence with S. Raser |
| 09/22/2015 | 6 | \$270.00 | 1.1 | \$297.00 | Prepare documents for Raser review |
| 09/22/2015 | 15 | \$195.00 | 0.8 | \$156.00 | Finish revisions to second draft of Ng Declaration |
| 09/22/2015 | 15 | \$195.00 | 5.1 | \$994.50 | Continue draft Memo Supp 3rd MSJ |
| 09/22/2015 | 6 | \$250.00 | 0.7 | \$175.00 | Review and revise Declaration of B. Ng |
| 09/22/2015 | 6 | \$250.00 | 1.4 | \$350.00 | Correspondence with G. Finney regarding depositions of C. Reeves and First American |
| 09/22/2015 | 6 | \$250.00 | 0.8 | \$200.00 | Correspondence with W. Haberman |
| 09/22/2015 | 6 | \$250.00 | 0.3 | \$75.00 | Correspondence regarding Reeves deposition |
| 09/23/2015 | 15 | \$195.00 | 0.3 | \$58.50 | Continue draft Summary Judgment |
| 09/23/2015 | 15 | \$195.00 | 0.6 | \$117.00 | Strategy discussion with J. Sykes and C. Tibbon |
| 09/23/2015 | 18 | \$100.00 | 10.2 | \$1,020.00 | Draft Memo/Argument regarding Shafter Decl. |
| 09/24/2015 | 15 | \$195.00 | 6.1 | \$1,192.50 | Final drafting Memo Supp. 3rd Summary Judgment |
| 09/24/2015 | 6 | \$250.00 | 3.6 | \$975.00 | Review and revise summary judgment, memorandum and supporting pleadings |
| 09/25/2015 | 6 | \$250.00 | 0.2 | \$50.00 | Correspondence with S. Raser |
| 09/25/2015 | 10 | \$250.00 | 2.7 | \$675.00 | Outline discovery to NIR and JV, LLC |
| 09/25/2015 | 10 | \$250.00 | 0.7 | \$175.00 | Analyze scheduling order |
| 09/29/2015 | 10 | \$250.00 | 1.3 | \$325.00 | Outline deposition notices to C. Reeves and R. Vallet |
| 09/29/2015 | 6 | \$250.00 | 1.2 | \$300.00 | Outline issues regarding depositions, discovery and summary judgment motion |
| 10/01/2015 | 10 | \$250.00 | 3.8 | \$950.00 | Outline requests for admission and interrogatories to NIR, VP and JV |
| 10/01/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Telephone conference with client |
| 10/01/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Review/analyze prospect documents |
| 10/06/2015 | 10 | \$250.00 | 0.7 | \$175.00 | Analyze legal descriptions |
| 10/06/2015 | 10 | \$250.00 | 3.8 | \$950.00 | Review/analyze emails from D. Shafter |
| 10/06/2015 | 10 | \$250.00 | 0.5 | \$125.00 | Telephone conference with D. Shafter |
| 10/11/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Review/analyze email from client |
| 10/12/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Email clients |
| 10/12/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Analyze emails from client regarding the same |
| 10/13/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Email C. Reeves regarding availability for deposition |
| 10/14/2015 | 15 | \$195.00 | 0.7 | \$136.50 | Review and analyze of Ng Bankruptcy reed. |
| 10/14/2015 | 8 | \$250.00 | 1.1 | \$275.00 | Review/analyze pleadings filed by NIR, JV and VP |
| 10/14/2015 | 6 | \$250.00 | 1.1 | \$275.00 | Correspondence with client |
| 10/14/2015 | 10 | \$250.00 | 1.3 | \$325.00 | Analyze rules of civil procedure and other legal issues |
| 10/14/2015 | 10 | \$250.00 | 0.9 | \$225.00 | Telephone conference with B. Haberman |
| 10/14/2015 | 10 | \$250.00 | 0.4 | \$100.00 | Analyze emails from B. Haberman |
| 10/14/2015 | 10 | \$250.00 | 0.4 | \$100.00 | Analyze pleadings filed by B. Ng |
| 10/14/2015 | 8 | \$250.00 | 0.3 | \$75.00 | Draft notice for client to attend hearing telephonically |
| 10/15/2015 | 8 | \$250.00 | 1.9 | \$475.00 | Review/analyze correspondence from clients |
| 10/15/2015 | 10 | \$250.00 | 0.7 | \$175.00 | Telephone conference with B. Haberman and B. Kramer |
| 10/15/2015 | 10 | \$250.00 | 1.8 | \$450.00 | Outline response |
| 10/15/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Analyze emails from B. Haberman and B. Kramer |
| 10/15/2015 | 10 | \$250.00 | 0.8 | \$200.00 | Analyze add'l additional points |
| 10/15/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Telephone conference with B. Haberman |
| 10/15/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Analyze email from client |
| 10/15/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Telephone conference with M. Hathaway |
| 10/15/2015 | 10 | \$250.00 | 2.3 | \$575.00 | Complete documents and email the same to M. Hathaway |
| 10/15/2015 | 15 | \$195.00 | 1.8 | \$351.00 | Draft/AR Op/Decl SJ Motion or alternative Request for Extension of Time to reply and revise supporting Nicholson decl |
| 10/16/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Analyze emails from B. Haberman and B. Kramer |
| 10/16/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Complete documents and email engineer |
| 10/16/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Telephone conference with B. Haberman and B. Kramer |
| 10/16/2015 | 6 | \$270.00 | 1.9 | \$513.00 | Study FACTO site policies; draft correspondence to FATCO |

| | | | | | |
|------------|----|----------|-----|------------|--|
| 10/18/2015 | 15 | \$195.00 | 3.1 | \$604.50 | Research regarding breach of note loan agreement |
| 10/19/2015 | 15 | \$195.00 | 1.8 | \$361.00 | Research breach of note loan agreement |
| 10/19/2015 | 10 | \$250.00 | 1.7 | \$425.00 | Draft/analyze/ediit affidavit of B. Ng |
| 10/19/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Analyze documents related the foregoing reply pleadings |
| 10/20/2015 | 15 | \$195.00 | 1.1 | \$214.50 | Analysis of exhibits submitted by JV and NIR/VP in opp to 3rd SJ Motion |
| 10/20/2015 | 15 | \$195.00 | 0.2 | \$39.00 | Draft Nicholson Decl. Dated 10/20/15 |
| 10/20/2015 | 6 | \$250.00 | 0.3 | \$75.00 | Review/analyze second Ng declaration |
| 10/20/2015 | 6 | \$250.00 | 0.8 | \$200.00 | Prepare status update |
| 10/20/2015 | 6 | \$250.00 | 4.1 | \$1,025.00 | Begin preparation for hearings on motions for reconsideration and second summary judgment motion |
| 10/20/2015 | 10 | \$250.00 | 0.4 | \$100.00 | Analyze emails from client |
| 10/20/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Analyze/draft email to client |
| 10/20/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Analyze client responses |
| 10/20/2015 | 10 | \$250.00 | 0.7 | \$175.00 | Draft/analyze/ediit changes to B. Ng. Decl. |
| 10/20/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Email B. Ng |
| 10/20/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Telephone conference with B. Ng |
| 10/20/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Draft/analyze changes |
| 10/20/2015 | 10 | \$250.00 | 0.1 | \$25.00 | Email the modified agreement to B. Ng |
| 10/21/2015 | 15 | \$195.00 | 0.7 | \$196.50 | Research regarding residual exception to hearsay rule |
| 10/21/2015 | 15 | \$195.00 | 0.0 | \$176.50 | Research regarding admissibility and use of impeachment evidence |
| 10/21/2015 | 15 | \$195.00 | 0.5 | \$97.50 | Research regarding business record exception to hearsay rule |
| 10/21/2015 | 15 | \$195.00 | 0.7 | \$196.50 | Research regarding residual exception to hearsay rule |
| 10/21/2015 | 15 | \$195.00 | 0.9 | \$175.50 | Research regarding admissibility and use of impeachment evidence |
| 10/21/2015 | 15 | \$195.00 | 0.5 | \$97.50 | Research regarding business record exception to hearsay rule |
| 10/22/2015 | 6 | \$250.00 | 2.2 | \$556.00 | Continue preparation for hearings on motions for reconsideration and second summary judgment motion |
| 10/22/2015 | 8 | \$250.00 | 3 | \$750.00 | Travel to Sandpoint, Idaho |
| 10/22/2015 | 10 | \$250.00 | 5.1 | \$1,275.00 | Analyze briefing and prepare for hearing on motion for summary judgment |
| 10/22/2015 | 10 | \$250.00 | 2.9 | \$725.00 | Travel to Spokane, Washington |
| 10/23/2015 | 6 | \$250.00 | 5 | \$1,250.00 | Appear for/attend hearings on motions for reconsideration and second summary judgment motion |
| 10/23/2015 | 6 | \$250.00 | 1 | \$250.00 | Telephone conference with clients regarding outcome of hearings |
| 10/23/2015 | 6 | \$250.00 | 3 | \$750.00 | Return travel to Boise, Idaho |
| 10/23/2015 | 10 | \$250.00 | 7.5 | \$1,875.00 | Prepare for hearing and attend hearing and argue motion for summary judgment |
| 10/23/2015 | 10 | \$250.00 | 3 | \$750.00 | Travel to and from Spokane, WA to Sandpoint, ID |
| 10/24/2015 | 10 | \$250.00 | 3 | \$750.00 | Travel from Spokane, WA to Boise, ID |
| 10/28/2015 | 15 | \$195.00 | 0.9 | \$175.50 | Review mortgages |
| 10/28/2015 | 6 | \$250.00 | 2.9 | \$725.00 | Correspondence with D. Krefele |
| 10/28/2015 | 6 | \$250.00 | 0.4 | \$100.00 | Review/analyze additional discovery re: defendants |
| 10/28/2015 | 6 | \$250.00 | 0.9 | \$225.00 | Research issues regarding tax parcel sales |
| 10/28/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Analyze previously propounded rgs and rfs |
| 10/28/2015 | 10 | \$250.00 | 3.1 | \$775.00 | Draft/analyze/ediit rfs and rgs to defendants VP, NIR and JV |
| 10/28/2015 | 10 | \$250.00 | 0.8 | \$200.00 | Draft/analyze/ediit expert witness disclosures |
| 10/28/2015 | 10 | \$250.00 | 0.4 | \$100.00 | Coordinate resumes and other information from experts for expert disclosures |
| 10/28/2015 | 10 | \$250.00 | 0.4 | \$100.00 | Draft/analyze/ediit by witness disclosures |
| 10/28/2015 | 10 | \$279.00 | 3.6 | \$972.00 | Analyze email from M. Hathaway; telephone conference with M. Hathaway regarding expert witness duties; conference call with M. Hathaway and D. Shafer regarding the same; analyze Shafer exhibits in preparation for conference call; analyze multiple emails back and forth between M. Hathaway and D. Shafer |
| 10/27/2015 | 10 | \$279.00 | 1.1 | \$287.00 | Analyze email from counsel for First American; draft/analyze/ediit response to the same |
| 10/27/2015 | 15 | \$195.00 | 4.4 | \$658.00 | Analysis of documents produced by First American Title Co. |
| 10/27/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Draft/analyze notices of service for discovery to JV, NIR and VP |
| 10/27/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Draft/analyze email to counsel for First American re: deposition dates |
| 10/27/2015 | 10 | \$250.00 | 2.7 | \$675.00 | Analyze documents from Sandpoint Title |
| 10/28/2015 | 6 | \$250.00 | 1.2 | \$300.00 | Review correspondence to D. Krefele |
| 10/28/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Email First American regarding documents produced to JV and NIR |
| 10/28/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Analyze response to the same |
| 10/28/2015 | 10 | \$250.00 | 0.9 | \$225.00 | Analyze/draft/ediit emails to counsel for First American |
| 10/28/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Analyze responses to the same |
| 10/28/2015 | 10 | \$250.00 | 1.4 | \$350.00 | Compile documentation requested by First American and email the same to counsel for the same |
| 10/28/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Compile documentation for D. Shafer |
| 10/28/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Analyze email from court clerk |
| 10/29/2015 | 10 | \$250.00 | 1.6 | \$400.00 | Analyze emails from client and respond to the same |
| 10/29/2015 | 10 | \$250.00 | 0.0 | \$225.00 | Analyze emails (S) from M. Hathaway and D. Shafer |
| 10/29/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Prepare for conference call with M. Hathaway and D. Shafer |
| 10/29/2015 | 10 | \$250.00 | 0.0 | \$150.00 | Participate in conference call |
| 10/29/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Analyze email from G. Edson |
| 10/29/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Email G. Edson |
| 10/30/2015 | 15 | \$195.00 | 0.5 | \$97.50 | Review of Disclosure Statement for Joint Chapter 11 Plan of Reorganization filed in R.E. Loans Trusts bankruptcy |
| 10/30/2015 | 6 | \$250.00 | 0.8 | \$200.00 | Review and respond to correspondence from D. Krefele |
| 10/30/2015 | 10 | \$250.00 | 0.8 | \$200.00 | Analyze emails and voicemail from G. Edson and leave voicemail in response to the same |
| 11/02/2015 | 15 | \$195.00 | 2.1 | \$498.50 | Review/analyze R.E. Loans Bankruptcy filings |
| 11/02/2015 | 6 | \$250.00 | 1.6 | \$400.00 | Correspondence to D. Krefele |
| 11/02/2015 | 10 | \$250.00 | 0.8 | \$150.00 | Telephone conference with G. Edson |
| 11/02/2015 | 10 | \$250.00 | 0.4 | \$100.00 | Telephone conference and email with client |
| 11/03/2015 | 15 | \$195.00 | 0.3 | \$58.50 | Continue Review of RE Loans bankruptcy |
| 11/03/2015 | 10 | \$250.00 | 0.6 | \$150.00 | Analyze letter from G. Edson |
| 11/03/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Telephone conference and email with client |
| 11/03/2015 | 10 | \$270.00 | 1.2 | \$324.00 | Analyze emails from M. Hathaway; respond to same |
| 11/04/2015 | 10 | \$279.00 | 1.5 | \$405.00 | conference call with M. Hathaway and D. Shafer regarding same; Telephone conference with B. Haberman; telephone conference with Bonner County regarding tax parcel issues; draft/analyze email to B. Haberman |
| 11/05/2015 | 10 | \$250.00 | 0.9 | \$225.00 | Analyze availability and strategy for taking depositions and leave voicemail for D. Marice regarding deposition dates |
| 11/05/2015 | 10 | \$250.00 | 0.5 | \$125.00 | telephone conference with paralegal for Susan Weeks and G. Finney regarding deposition |
| 11/05/2015 | 10 | \$250.00 | 0.4 | \$100.00 | telephone conference with P. DeAngelis regarding scope of Lynskey testimony |
| 11/05/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Telephone conference with P. DeAngelis |
| 11/05/2015 | 10 | \$250.00 | 1.2 | \$300.00 | Analyze Sandpoint Title documents and email from M. Hathaway and telephone conference with Mr. Hathaway |
| 11/10/2015 | 6 | \$250.00 | 0.3 | \$75.00 | Review correspondence with Fidally |
| 11/10/2015 | 10 | \$250.00 | 3.7 | \$925.00 | Analyze FATCO documents and draft deposition outlines for the same |
| 11/11/2015 | 15 | \$195.00 | 1 | \$195.00 | Analysis of Court's Decision regarding 3rd MSJ and other motions heard on October 23, 2015 |
| 11/11/2015 | 6 | \$250.00 | 1.2 | \$300.00 | Study memorandum decision and order on summary judgment motion |
| 11/02/2015 | 6 | \$250.00 | 0.9 | \$225.00 | Review/analyze order on summary judgment motion |

Subtotal of Fees - All Parties 252.60 \$55,073.50

| Trans | | Rate | | Hours | | Amount | |
|------------|------|----------|--|---------|----------|--|--|
| Date | Atty | | | to Bill | | | |
| 10/13/2015 | 10 | \$250.00 | | 1.1 | \$275.00 | Analyze NIR and VP motion for additional time | |
| 10/13/2015 | 10 | \$250.00 | | 1.3 | \$325.00 | Outline objections to the same | |
| 10/13/2015 | 10 | \$250.00 | | 0.2 | \$50.00 | Email the same to client | |
| 10/13/2015 | 10 | \$250.00 | | 0.4 | \$100.00 | Telephone conference with client regarding the same | |
| 10/14/2015 | 10 | \$250.00 | | 1.5 | \$375.00 | Analyze VP and NIR's opposition to motion for summary judgment and supporting affidavits | |

| | | | | | |
|------------|----|----------|-----|------------|---|
| 10/15/2015 | 15 | \$195.00 | 2.1 | \$409.50 | Opp to NIR/VP's Rule 56(f) & Motion Extend Time under Rule 6(e)(1) |
| 10/15/2015 | 15 | \$195.00 | 2.9 | \$565.50 | Research regarding 56(f) requirements |
| 10/16/2015 | 15 | \$195.00 | 0.2 | \$39.00 | Analysis of NIR/VP app 3rd SJ Motion |
| 10/16/2015 | 15 | \$195.00 | 0.5 | \$97.50 | Analysis of NIR/VP app to Valiant's 3rd SJ |
| 10/16/2015 | 15 | \$195.00 | 2.6 | \$507.00 | Begin draft Reply to NIR/VP Opp to 3rd SJ Motion |
| 10/19/2015 | 15 | \$195.00 | 5.8 | \$1,092.00 | Begin drafting Reply in Response to NIR/VP's Opp to Third SJ Motion |
| 10/19/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Email S. Weeks regarding deposition of NIR and VP |
| 10/20/2015 | 15 | \$195.00 | 0.4 | \$78.00 | Research Re: 56(f) standards |
| 10/21/2015 | 15 | \$195.00 | 1.9 | \$370.50 | Reply to NIR-VP's Opp to Valiant's First Motion to Strike |
| 10/21/2015 | 10 | \$250.00 | 3.3 | \$825.00 | Analyze/draft/edi motions to strike and memoranda in support of the same |
| 10/21/2015 | 10 | \$250.00 | 0.5 | \$125.00 | Draft/analyze/finalize motions to strike and memoranda affidavits in support of the same |
| 10/27/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Analyze email from S. Weeks regarding deposition dates for NIR and VP |
| 10/28/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Analyze discovery requests from NIR and VP |
| 10/28/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Email the same to client |
| 11/02/2015 | 10 | \$250.00 | 0.5 | \$125.00 | Analyze email from S. Weeks and voicemail from the same regarding deposition dates and analyze/draft response to the same |
| 11/02/2015 | 10 | \$250.00 | 0.5 | \$125.00 | Analyze email from S. Weeks and voicemail from the same regarding deposition dates and analyze/draft response to the same |

Subtotal of Fees - NIR and VP 27.20 \$5,909.00

| NIR | | | | | |
|-------------------------------|------|----------|---------------|-------------|---|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 10/01/2015 | 10 | \$250.00 | 2.8 | \$700.00 | Draft/wisve requests for admission and interrogatories to NIR |
| 10/05/2015 | 10 | \$250.00 | 3.1 | \$775.00 | Analyze/draft/edi requests for admission and interrogatories to NIR |
| 10/05/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Review/analyze project documents and pleadings for discovery issues related to the same |
| 10/06/2015 | 10 | \$250.00 | 0.7 | \$175.00 | Finalize interrogatories to NIR |
| Subtotal of Fees - NIR | | | | 7.70 | \$1,925.00 |

| VP | | | | | |
|------------------------------|------|----------|---------------|-------------|---|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 10/06/2015 | 10 | \$250.00 | 1.4 | \$350.00 | Analyze/draft/edi interrogatories to VP |
| 10/06/2015 | 10 | \$250.00 | 2.8 | \$700.00 | Review/analyze project documents and pleadings for discovery issues related to VP |
| 10/07/2015 | 10 | \$250.00 | 1.9 | \$475.00 | Analyze/draft/finalize interrogatories to VP |
| Subtotal of Fees - VP | | | | 6.10 | \$1,525.00 |

| JV | | | | | |
|------------------------------|------|----------|---------------|--------------|--|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 10/07/2015 | 10 | \$250.00 | 1.6 | \$400.00 | Analyze/draft/edi interrogatories to JV, LLC |
| 10/07/2015 | 10 | \$250.00 | 3.1 | \$775.00 | Analyze project documents and pleadings for discovery issues related to JV |
| 10/08/2015 | 15 | \$195.00 | 1.7 | \$331.50 | Research use of deposition in other matter under Idaho and FRCP 32(a) |
| 10/08/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Analyze/draft/edi interrogatories to JV |
| 10/09/2015 | 10 | \$250.00 | 1.6 | \$400.00 | Finalize discovery requests to JV |
| 10/14/2015 | 10 | \$250.00 | 1.5 | \$375.00 | Analyze JV's motion for summary judgment and supporting affidavits |
| 10/16/2015 | 15 | \$195.00 | 0.2 | \$39.00 | Analysis of Finney Aff & JV's Motion to Vacate 10/23 hearing |
| 10/16/2015 | 15 | \$195.00 | 0.3 | \$58.50 | Analysis of Barry Aff'd Opp 3rd SJ Motion |
| 10/16/2015 | 15 | \$195.00 | 0.8 | \$156.00 | Analysis of JV's Opp to 3rd SJ Motion |
| 10/19/2015 | 10 | \$250.00 | 2.6 | \$650.00 | Analyze/draft/edi reply to objection filed by JV, LLC |
| 10/19/2015 | 10 | \$250.00 | 1.0 | \$250.00 | Draft/analyze/edi objection to motion for extension filed by JV, LLC |
| 10/19/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Email G. Finney regarding deposition of JV |
| 10/20/2015 | 15 | \$195.00 | 0.2 | \$39.00 | Draft Motion Shorten Time Re Second Motion to Strike |
| 10/20/2015 | 15 | \$195.00 | 3.4 | \$663.00 | Draft Reply to JV's Opp to Valiant's 3rd SJ Motion |
| 10/20/2015 | 15 | \$195.00 | 1.9 | \$370.50 | Draft Opp to JV's Motion to Vacate 3rd SJ Hearing |
| 10/20/2015 | 10 | \$250.00 | 2.4 | \$600.00 | Draft/analyze/edi/research reply to objection filed by JV, LLC |
| 10/20/2015 | 10 | \$250.00 | 1.7 | \$425.00 | Analyze purchase money mortgage |
| 10/20/2015 | 10 | \$250.00 | 1.1 | \$275.00 | Analyze possible statute of limitations issues |
| 10/21/2015 | 15 | \$195.00 | 1.2 | \$234.00 | Reply to JV's Opp to Valiant's First Motion to Strike |
| 10/21/2015 | 10 | \$250.00 | 1.9 | \$475.00 | Analyze last minute briefing filed by opposing counsel with affidavits and motions to shorten time |
| 10/21/2015 | 18 | \$100.00 | 1.1 | \$110.00 | Review Declarations for Motion To Strike regarding Business Record Exemption |
| 10/26/2015 | 15 | \$195.00 | 2.6 | \$507.00 | Analysis of JV discovery responses and draft meet and confer |
| 10/27/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Analyze email from G. Finney regarding deposition dates for JV |
| Subtotal of Fees - JV | | | | 34.30 | \$7,733.50 |

| DISCRETIONARY COSTS: | | | | | |
|----------------------|--|--|----|-----------|-----------------|
| Trans Date | | | | | |
| 10/24/2015 | | | 10 | \$ | 828.31 |
| 10/24/2015 | | | 10 | \$ | 572.41 |
| Subtotal | | | | \$ | 1,400.72 |

| GRAND TOTALS: | | | | | |
|-------------------|------|--------|-------------|--------------------|--|
| | | | | | |
| JV | 33% | 252.50 | \$55,073.50 | \$18,357.83 | |
| | 100% | 34.30 | \$7,733.50 | \$7,733.50 | |
| JV Total: | | | | \$26,091.33 | |
| NIR | 33% | 252.50 | \$55,073.50 | \$18,357.83 | |
| | 50% | 27.20 | \$5,909.00 | \$2,954.50 | |
| | 100% | 7.70 | \$1,925.00 | \$1,925.00 | |
| NIR Total: | | | | \$23,237.33 | |
| VP | 33% | 252.50 | \$55,073.50 | \$18,357.83 | |
| | 50% | 27.20 | \$5,909.00 | \$2,954.50 | |
| | 100% | 6.10 | \$1,525.00 | \$1,525.00 | |
| VP Total: | | | | \$22,837.33 | |
| All Fees | | | | \$72,168.00 | |
| All Costs | | | | \$1,400.72 | |

**EXHIBIT I
VALIANT FORECLOSURE**

Trial

| Trans Date | Atty | Rate | Hours to Bill | Amount | |
|------------|------|----------|---------------|------------|---|
| 11/11/2015 | 10 | \$250.00 | 1.3 | \$325.00 | Analyze FATCO documents |
| 11/11/2015 | 10 | \$270.00 | 0.2 | \$54.00 | Analyze letter from FATCO |
| 11/12/2015 | 10 | \$250.00 | 4.8 | \$1,200.00 | Analyze FATCO and documents; analyze emails from B. Ng. |
| 11/12/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Telephone conference with client |
| 11/13/2015 | 10 | \$250.00 | 3.1 | \$775.00 | Continue to analyze FATCO documents |
| 11/13/2015 | 10 | \$250.00 | 0.4 | \$100.00 | Analyze email from client |
| 11/13/2015 | 10 | \$270.00 | 0.6 | \$162.00 | Analyze emails from FATCO and Dean Shafer; telephone conference with D. Shafer |
| 11/16/2015 | 10 | \$270.00 | 0.3 | \$81.00 | Analyze emails from D. Shafer and respond to the same |
| 11/16/2015 | 15 | \$195.00 | 0.6 | \$117.00 | Review of JV Discovery responses to logs 13-23 and RFPs 7-20 (0.1); review of NIR Answers to logs 13-23 and RFPs 7-20 (0.1) |
| 11/16/2015 | 10 | \$250.00 | 1.6 | \$400.00 | Analyze Sandpoint Title documents; analyze emails from C. Reeves |
| 11/16/2015 | 10 | \$250.00 | 0.2 | \$50.00 | Email C. Reeves regarding deposition |
| 11/16/2015 | 10 | \$250.00 | 5.2 | \$1,300.00 | Analyze discovery responses from VP and JV, LLC; analyze documents from C. Reeves; confer with title company; analyze document from title company |
| 11/17/2015 | 10 | \$250.00 | 5.9 | \$1,475.00 | Analyze Sandpoint Title and C. Reeves documents |
| 11/18/2015 | 10 | \$250.00 | 4.1 | \$1,025.00 | Analyze C. Reeves documents |
| 11/18/2015 | 6 | \$250.00 | 0.5 | \$125.00 | Continue evaluation of possible mediation options |
| 11/18/2015 | 10 | \$270.00 | 2.3 | \$621.00 | Analyze complaint filed against interests of RE Loans, MF08 and Pensco Trust; draft email to First American; draft email to Fidelity; analyze emails from D. Shafer and M. Hathaway |
| 11/19/2015 | 10 | \$270.00 | 0.9 | \$243.00 | Analyze multiple emails from D. Shafer; telephone conference with D. Shafer regarding the same; analyze emails from FATCO regarding the same; analyze exhibit from D. Shafer |
| 11/20/2015 | 10 | \$250.00 | 2.6 | \$650.00 | Analyze agreements between Valiant and POBD/Reeves |
| 11/20/2015 | 10 | \$250.00 | 0.7 | \$175.00 | Draft/analyze/edit letter to Reeves |
| 11/23/2015 | 6 | \$250.00 | 1.7 | \$425.00 | Correspondence with D. Kreifels |
| 11/24/2015 | 10 | \$250.00 | 3.6 | \$900.00 | Compile documents to produce to opposing counsel |
| 11/25/2015 | 10 | \$250.00 | 1.5 | \$375.00 | Telephone conference with G. Finney and S. Weeks regarding depositions and mediation |
| 11/25/2015 | 10 | \$270.00 | 0.3 | \$81.00 | Draft/analyze/edit email First American regarding mediation |
| 11/30/2015 | 6 | \$250.00 | 0.9 | \$225.00 | Review/analyze trial witness disclosures and discovery responses |
| 12/01/2015 | 10 | \$250.00 | 4.1 | \$1,025.00 | Continue to analyze documents for confidential and privileged information; analyze email from D. Kreifels; telephone conference with D. Kreifels; coordinate document production with S. Sawyer |
| 12/01/2015 | 6 | \$250.00 | 2.1 | \$525.00 | Correspondence with D. Kreifels |
| 12/02/2015 | 10 | \$250.00 | 3.4 | \$850.00 | Draft/analyze/edit email to opposing counsel regarding discovery responses; draft/analyze and edit emails to C. Reeves and B. Ng regarding depositions; draft/analyze/edit email to D. Marfice regarding First American deposition; draft/analyze/edit protective order; email the same to opposing counsel |
| 12/14/2015 | 6 | \$250.00 | 0.7 | \$175.00 | Correspondence with D. Kreifels |
| 12/04/2015 | 10 | \$250.00 | 5.4 | \$1,350.00 | Analyze documents from client; analyze Fidelity correspondence; respond to the same; email S. Weeks and G. Finney regarding confidentiality agreement |
| 12/04/2015 | 10 | \$250.00 | 1.9 | \$475.00 | Email S. Weeks and G. Finney regarding deposition of C. Reeves; draft/analyze/edit deposition notice for C. Reeves; email C. Reeves regarding deposition; coordinate location of deposition with Reno law firm; email B. Ng regarding deposition |
| 12/07/2015 | 10 | \$270.00 | 1.6 | \$432.00 | Prepare for and participate in conference call with client; analyze client documents for production |
| 12/07/2015 | 6 | \$270.00 | 0.8 | \$216.00 | Telephone conference with clients |
| 12/07/2015 | 10 | \$250.00 | 0.8 | \$200.00 | Analyze email from client; email opposing counsel canceling deposition of C. Reeves; analyze email from G. finney regarding confidentiality agreement; analyze supplemental expert witness disclosure; telephone conference with S. Sawyer regarding documents; email S. Sawyer; analyze email from M. Hathaway and respond to same |
| 12/08/2015 | 10 | \$250.00 | 2.6 | \$650.00 | Analyze email from M. Hathaway; telephone conference with M. Hathaway; analyze client documents; telephone conference with S. Sawyer |
| 12/09/2015 | 10 | \$250.00 | 4.1 | \$1,025.00 | Draft/ analyze letter to opposing counsel regarding confidentiality agreement and Valiant documents (0.6); analyze/identify consulting agreement and consent to judgment (1.1); analyze email from client (0.3); analyze client documents (2.1) |
| 12/09/2015 | 6 | \$250.00 | 2.9 | \$725.00 | Correspondence and tel con with D. Penny; provide requested docs |
| 12/10/2015 | 10 | \$250.00 | 0.3 | \$75.00 | Analyze email from B. Haberman and email B. Haberman regarding the same |
| 12/11/2015 | 10 | \$250.00 | 3.3 | \$825.00 | Telephone conference with B. Haberman; analyze client documents |
| 12/11/2015 | 6 | \$250.00 | 0.3 | \$75.00 | Telephone conference with W. Haberman |
| 12/13/2015 | 10 | \$250.00 | 3.9 | \$975.00 | Analyze client emails/attachments |
| 12/14/2015 | 10 | \$250.00 | 2.9 | \$725.00 | Analyze client emails and coordinate production of non-confidential information; email B. Ng and C. Reeves requesting deposition availability; analyze email from Fidelity; analyze Sage Holdings' claims |

| | | | | | |
|------------|----|----------|------|------------|---|
| 12/14/2015 | 15 | \$195.00 | 7.6 | \$1,482.00 | Research regarding and draft Motions in Limine |
| 12/15/2015 | 15 | \$195.00 | 5 | \$975.00 | Revisions to Motions in Limine regarding VP and NIR; draft Nicholson Declaration in Support of Motions in Limine (1.4); draft Memorandum Support of Motion in Limine regarding JV (2.2); draft motion in Limine regarding NIR & VP (0.3); draft Motion in Limine regarding JV (0.2); draft Declaration of RLS |
| 12/16/2015 | 10 | \$250.00 | 5.2 | \$1,300.00 | Analyze First American documents |
| 12/18/2015 | 10 | \$250.00 | 3.1 | \$775.00 | Prepare for and attend pretrial conference telephonically; telephone conference with B. Haberman; confer with J. Sykes |
| 12/18/2015 | 6 | \$250.00 | 1.8 | \$450.00 | Correspondence and telephone conference with D. Penny; provide additional documents requested by D. Penny |
| 12/21/2015 | 10 | \$250.00 | 5.6 | \$1,400.00 | Calculate estimated attorney fees through trial and email the same to attorney for First American Title; confer with C. Nicholson regarding trial deadlines for briefing; compile FATCO documents; email the same to Streamline Imaging; email D Marfice regarding FATCO deposition; analyze filing deadlines for replies to oppositions to motions in Limine and rules regarding the same; analyze/identify/and compile trial exhibits; edit litigation outlines |
| 12/22/2015 | 10 | \$250.00 | 5.2 | \$1,300.00 | Analyze letter from First American; analyze/edit/draft email to clients; analyze client response; analyze C. Reeves documents; draft deposition notices for R. Lynskey and C. Linscott |
| 12/26/2015 | 10 | \$250.00 | 3.3 | \$825.00 | Confer with C. Nicholson regarding hearing; analyze email from client; respond to same; telephone conference with clients; emails to opposing counsel regarding availability of expert for deposition |
| 12/28/2015 | 15 | \$195.00 | 4.6 | \$897.00 | Finish drafting response in support of motion in Limine regarding VP/NIR (3.4); draft response in support of motion in Limine regarding JV (1.2) |
| 12/28/2015 | 6 | \$250.00 | 1.1 | \$275.00 | Review and revise motion in limine reply memoranda |
| 12/29/2015 | 10 | \$250.00 | 2.8 | \$700.00 | E-mail C. Reeves and B. Ng regarding depositions of the same; telephone conference with C. Reeves and B. Ng regarding the same; email First American regarding depositions of C. Linscott and R. Lynskey; analyze response to the same; draft deposition notices for C. Reeves and B. Ng; analyze/edit casemap outlines |
| 12/29/2015 | 15 | \$195.00 | 11 | \$2,145.00 | Preparation for (1.5), travel to/from (8.4, and attend (1.3) motion in Limine hearing |
| 12/30/2015 | 10 | \$250.00 | 6.7 | \$1,675.00 | Confer with J. Sykes regarding deposition availability; telephone conference with C. Reeves and B. Ng; edit deposition notices pursuant to the same; email S. Weeks and G. Finney regarding proposed deposition dates; analyze calendar and email S. Weeks availability for depositions through dates; emails to and from Streamline Imaging regarding document blowups and production of documents to opposing counsel; analyze FATCO documents and identify documents that need to be blown up for use at depositions and trial |
| 12/30/2015 | 6 | \$250.00 | 2.2 | \$550.00 | Review correspondence from D. Penny; begin trial preparation; research evidence issue; confer with R. Stacey regarding trial preparation |
| 12/31/2015 | 10 | \$250.00 | 5.2 | \$1,300.00 | Continue to identify FATCO documents that need to be blown up for trial; analyze/identify trial exhibits; draft/edit/analyze casemap outlines in preparation for trial; analyze court order regarding motions in limine; confer with C. Nicholson regarding the same |
| 01/04/2016 | 6 | \$250.00 | 0.6 | \$150.00 | Begin preparation for deposition of C. Reeves |
| 01/04/2016 | 10 | \$250.00 | 9.7 | \$2,425.00 | Analyze/draft/edit exhibit list and compile and analyze trial exhibits |
| 01/05/2016 | 6 | \$250.00 | 1.1 | \$275.00 | Review and revise trial exhibit list |
| 01/05/2016 | 10 | \$250.00 | 3.7 | \$925.00 | Analyze/identify/compile deposition exhibits; analyze/edit trial exhibit list |
| 01/06/2016 | 6 | \$250.00 | 1.2 | \$300.00 | Continue preparation for deposition of C. Reeves |
| 01/06/2016 | 10 | \$250.00 | 6.3 | \$1,575.00 | Outline questions and otherwise prepare for depositions of C. Linscott and R. Lynskey; telephone conference with clients |
| 01/07/2016 | 6 | \$250.00 | 0.4 | \$100.00 | Correspondence regarding property vesting deeds |
| 01/07/2016 | 6 | \$250.00 | 0.9 | \$225.00 | Multiple correspondence with C. Reeves |
| 01/07/2016 | 6 | \$250.00 | 1.9 | \$475.00 | Continue preparation for C. Reeves deposition |
| 01/07/2016 | 6 | \$250.00 | 0.9 | \$225.00 | Review amended notices of deposition of Reeves and Ng |
| 01/07/2016 | 10 | \$250.00 | 10.7 | \$2,675.00 | Travel to Sandpoint, Idaho (4.1); attend and participate in depositions of C. Linscott and R. Lynskey (5.3); travel to Spokane, WA, (1.3) |
| 01/08/2016 | 6 | \$250.00 | 4.2 | \$1,050.00 | Confer with R. Stacey regarding information needed from Ng and Reeves; prepare trial exhibits; prepare outline for Reeves deposition and trial testimony; telephone conference with C. Reeves regarding deposition |
| 01/08/2016 | 10 | \$250.00 | 10.9 | \$2,725.00 | Travel from Boise to Spokane; telephone conference with B. Ng; telephone conf with clients; multiple telephone conference with S. Weeks coordinating the rescheduling of depositions of C. Reeves and A. Brule; telephone conference with S. Weeks regarding same; analyze Ng depo topics; analyze and edit trial exhibit list and trial exhibits |
| 01/09/2016 | 10 | \$250.00 | 2.1 | \$525.00 | Research/analyze wrap mortgages |
| 01/10/2016 | 10 | \$250.00 | 5.7 | \$1,425.00 | Analyze exhibits and exhibit lists; analyze/identify all recorded documents to obtain certified copies; analyze exhibits and prepare for deposition of B. Ng |
| 01/11/2016 | 6 | \$250.00 | 6.2 | \$1,550.00 | Multiple telephone conferences with C. Reeves; telephone conference with S. Weeks regarding depositions; correspondence to counsel regarding deposition changes; study Valiant documents for Reeves deposition; prepare for Brule deposition; examine deeds from Pend Oreille Bonner Development Holdings, Inc. to Pend Oreille Bonner |

| Date | Hours | Rate | Hours | Amount | Description |
|------------|-------|----------|-------|------------|---|
| 01/11/2016 | 15 | \$195.00 | 3.2 | \$624.00 | Development for trial exhibits Begin drafting pre-trial memorandum; research holding in due course status |
| 01/11/2016 | 10 | \$250.00 | 11.7 | \$2,925.00 | Analyze supplemental expert disclosure; outline deposition questions; analyze documents and otherwise prepare for the deposition of B. Ng; edit/analyze exhibit list; travel to Oakland, CA, for deposition |
| 01/11/2016 | 18 | \$100.00 | 0.3 | \$30.00 | Pull Law Review Articles |
| 01/12/2016 | 15 | \$195.00 | 1.5 | \$292.50 | Discuss deposition A. Brule; |
| 01/12/2016 | 10 | \$250.00 | 11.6 | \$2,900.00 | Attend and participate in deposition of B. Ng; travel from Oakland, CA to Boise, Idaho; telephone conference with B. Haberman |
| 01/12/2016 | 18 | \$100.00 | 0.5 | \$50.00 | Pull Law Review Articles |
| 01/12/2016 | 18 | \$100.00 | 1.4 | \$140.00 | Research admission of certified docs; articles of org; and self-authentication; email regarding research |
| 01/12/2016 | 6 | \$250.00 | | \$0.00 | Continue preparing for A. Brule and C. Reeves depositions; travel to CDA Idaho |
| 01/13/2016 | 10 | \$250.00 | 4.8 | \$1,200.00 | Telephone conference with B. Haberman and B. Kramer; confer with J. Sykes; analyze depo exhibits for C. Reeves; compile additional exhibits for C. Reeves deposition; outline questions for A. Brule deposition and confer with J. Sykes regarding the same |
| 01/13/2016 | 18 | \$100.00 | 1.3 | \$130.00 | Research admission of certified documents; articles of origin; self-authentication; email regarding research |
| 01/13/2016 | 6 | \$250.00 | | \$0.00 | Continue prep for Brule deposition; continue prep; travel to Spokane; telephone conference with clients |
| 01/14/2016 | 10 | \$250.00 | 4.8 | \$1,200.00 | Telephone conference with D. Penny; draft/analyze letter to D. Penny and First American; draft/analyze trial subpoenas and letters to C. Linscott and R. Lynskey; draft/analyze letter to D. Marfice regarding the same; analyze/edit/finalize exhibit list; analyze trial exhibits for production; analyze/draft/edit witness list |
| 01/14/2016 | 18 | \$100.00 | 3.5 | \$350.00 | Research certification of business records |
| 01/14/2016 | 18 | \$100.00 | 2.5 | \$250.00 | Research certification of business records; email re same |
| 01/14/2016 | 6 | \$250.00 | 9.8 | \$2,450.00 | Attend deposition of Annette (Tony) Brule; prepare for Chuck Reeves for deposition; telephone conference with client |
| 01/15/2016 | 6 | \$250.00 | 11 | \$2,750.00 | Attend deposition of Chuck Reeves; travel to Spokane, WA; study deposition exhibits; telephone conference with R. Stacey |
| 01/16/2016 | 6 | \$250.00 | 4 | \$1,000.00 | Return to Boise |
| 01/16/2016 | 6 | \$250.00 | 1 | \$250.00 | Correspondence to obtain documents re insurance |
| 01/18/2016 | 15 | \$195.00 | 2.8 | \$546.00 | Continue drafting pre-trial brief and research regarding pre-trial brief |
| 01/19/2016 | 18 | \$100.00 | 2.9 | \$290.00 | E-mail regarding certification of Wells Fargo Records; Bonner county records; research regarding burden of proof/burden of evidence; telephone conference with Wells Fargo rep |
| 01/20/2016 | 10 | \$250.00 | 3.1 | \$775.00 | Analyze/finalize trial brief; analyze research; research hearsay exceptions |
| 01/20/2016 | 18 | \$100.00 | 3.5 | \$350.00 | Telephone conference with Wells Fargo; research regarding legally operative fact exception |
| 01/20/2016 | 6 | \$250.00 | 7.2 | \$1,800.00 | Letter to D. Penny; telephone conference with Chuck Reeves; review document from C. Reeves; update trial exhibits; revise trial brief; review JV Exhibit List and VP Exhibit List; telephone conference with Greenspan/Adjuster's International |
| 01/21/2016 | 10 | \$250.00 | 7.9 | \$1,975.00 | Meeting with J. Sykes; analyze documents and amend exhibit lists; analyze rules of evidence; analyze VP documents; telephone conference with D. Kreitman; confer w C. Tipton; email H. Spector; analyze response research untruthful acts subject to extrinsic evidence |
| 01/21/2016 | 18 | \$100.00 | 2.9 | \$290.00 | Research legally operative fact; research IRE 803(15); email/phone call regarding affidavit |
| 01/21/2016 | 6 | \$250.00 | 5.3 | \$1,325.00 | Review and revise documents; create new trial exhibits; revise trial brief |
| 01/22/2016 | 10 | \$250.00 | 6.6 | \$1,650.00 | Analyze deposition transcripts; compile documents/exhibit binders to ship to Sandpoint; identify equipment to ship to Sandpoint; confer with IT company regarding the same; analyze email from H. Spector; confer with C. Tipton; analyze deposition exhibits |
| 01/22/2016 | 6 | \$250.00 | 6.3 | \$1,575.00 | Continue preparing for trial; study trial exhibits; telephone conference with Chuck Reeves; conference with Adjuster's International; begin review of Brule and Reeves deposition transcripts |
| 01/24/2016 | 10 | \$250.00 | 6.7 | \$1,675.00 | Prepare for trial |
| 01/24/2016 | 18 | \$100.00 | 0.4 | \$40.00 | E-mail regarding cross complaint; follow-up records affidavit |
| 01/24/2016 | 6 | \$250.00 | 3.9 | \$975.00 | Trial preparation; prepare new exhibit 65; telephone conference with Chuck Reeves; prepare direct exam of Chuck Reeves |
| 01/25/2016 | 15 | \$195.00 | 0.7 | \$136.50 | Draft memoranda of law |
| 01/25/2016 | 10 | \$250.00 | 9.8 | \$2,450.00 | Prepare for trial |
| 01/25/2016 | 6 | \$250.00 | 4.2 | \$1,050.00 | Continue trial preparation; review Deeds of Trust; finalize Exhibit 65A; conference with P. DeAngeli |
| 01/26/2016 | 10 | \$250.00 | 13.1 | \$3,275.00 | Travel from Boise to Sandpoint; telephone conference with client; analyze exhibits and direct testimony; trial preparation |
| 01/26/2016 | 6 | \$250.00 | 14 | \$3,500.00 | Travel to Sandpoint, Idaho; trial preparation |
| 01/27/2016 | 15 | \$195.00 | | \$0.00 | Deal with original exhibit issues (1.4); review VP's Motion to Amend |
| 01/27/2016 | 10 | \$250.00 | 14.3 | \$3,575.00 | Meeting with B. Ng; meeting with C. Linscott; meet with client; otherwise prepare for trial |
| 01/27/2016 | 6 | \$250.00 | 10.5 | \$2,625.00 | Trial preparation; prepare trial examination; telephone call to witness identified by JV and VP; meet Bill Haberman |
| 01/28/2016 | 15 | \$195.00 | 3.4 | \$663.00 | Research and revise memoranda regarding depositions and res judicata effect; review loan documents |

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|------------|----|----------|------|------------|---|
| 01/28/2016 | 10 | \$250.00 | 14.7 | \$3,675.00 | Attend trial; argue opposition to motion to amend; prepare for opening statements; meet with witness; meet with witness; trial preparation |
| 01/28/2016 | 6 | \$250.00 | 12.5 | \$3,125.00 | Trial preparation for second day of trial |
| 01/29/2016 | 15 | \$195.00 | 1.5 | \$292.50 | Review documents; review Finney offer to purchase; telephone conference with and email to Phil DeAngeli |
| 01/29/2016 | 10 | \$250.00 | 9.8 | \$2,450.00 | Prepare for trial; attend trial; redirect examination of B. Ng; direct examination of C. Linscott; redirect examination of C. Linscott |
| 01/29/2016 | 6 | \$250.00 | 11 | \$2,750.00 | Second day of trial |
| 01/30/2016 | 10 | \$250.00 | 3.9 | \$975.00 | Box exhibits, documents, binders, etc and mail to Boise, ID; travel from Sandpoint to Boise, ID |
| 01/30/2016 | 6 | \$250.00 | 7 | \$1,750.00 | Meet with Bill Haberman; travel to Boise |
| 02/01/2016 | 10 | \$250.00 | 4.1 | \$1,025.00 | Analyze status of trial; telephone conference with D. Penny |
| 02/01/2016 | 6 | \$250.00 | 0.2 | \$50.00 | Telephone conference with D. Penny |
| 02/04/2016 | 10 | \$250.00 | 3.1 | \$775.00 | Analyze boxes from Sandpoint and verify everything was received from UPS |
| 02/05/2016 | 10 | \$250.00 | 2.1 | \$525.00 | Analyze email from client and respond to the same; analyze trial notice; outline issues for on redirect |
| 02/05/2016 | 6 | \$250.00 | 0.5 | \$125.00 | Correspondence with D. Penny; correspondence with court reporter and counsel regarding transcript |
| 02/08/2016 | 10 | \$250.00 | 2.1 | \$525.00 | Analyze pleadings for potential default issues; analyze email from client; draft/analyze response to same; confer with J. Sykes |
| 02/08/2016 | 6 | \$250.00 | 0.8 | \$200.00 | Correspondence regarding chain of title |
| 02/16/2016 | 10 | \$250.00 | 6.1 | \$1,525.00 | Analyze email from client; analyze email and letters from First American; analyze/draft email to P. DeAngeli; analyze response to same; analyze email from court reporter; analyze client documents; analyze Reeves documents |
| 02/18/2016 | 10 | \$250.00 | | \$0.00 | Analyze email from P. DeAngeli |
| 02/21/2016 | 10 | \$250.00 | 3.8 | \$950.00 | Prepare for conference calls with B. Haberman and C. Reeves; telephone conference with B. Haberman; telephone conference with C. Reeves; analyze Eagle Point documents; telephone conference with client; confer with J. Sykes |
| 02/23/2016 | 10 | \$250.00 | 5.1 | \$1,275.00 | Analyze exhibits |
| 02/29/2016 | 6 | \$250.00 | 4.4 | \$1,100.00 | Study Eagle Pointe deads |
| 03/01/2016 | 6 | \$250.00 | 4.2 | \$1,050.00 | Prepare trial testimony; correspondence with C. Reeves; correspondence to P. DeAngeli; review Eagle Pointe documents |
| 03/01/2016 | 10 | \$250.00 | 3.1 | \$775.00 | Analyze emails from client and respond to the same; analyze documents; analyze Eagle Pointe issues; analyze FATCO documents; analyze trial issues |
| 03/03/2016 | 6 | \$250.00 | 2.2 | \$550.00 | Telephone conference with client; continue preparation of trial testimony |
| 03/04/2016 | 6 | \$250.00 | 2.1 | \$525.00 | Prepare additional documents for review |
| 03/07/2016 | 6 | \$250.00 | 0.3 | \$75.00 | Review correspondence from client |
| 03/07/2016 | 10 | \$250.00 | 5.2 | \$1,300.00 | Prepare for trial |
| 03/08/2016 | 10 | \$250.00 | 2.9 | \$725.00 | Prepare for trial |
| 03/09/2016 | 18 | \$100.00 | 1.6 | \$160.00 | Research paying down of lien |
| 03/09/2016 | 10 | \$250.00 | 4.9 | \$1,225.00 | Prepare for trial |
| 03/10/2016 | 18 | \$100.00 | 2.1 | \$210.00 | Research pay down of lien |
| 03/10/2016 | 10 | \$250.00 | 5.7 | \$1,425.00 | Prepare for trial |
| 03/11/2016 | 10 | \$250.00 | 5.1 | \$1,275.00 | Prepare for trial |
| 03/12/2016 | 6 | \$250.00 | 2.1 | \$525.00 | Prepare for and attend telephone conference with C. Reeves |
| 03/12/2016 | 10 | \$250.00 | 4.3 | \$1,075.00 | Prepare for trial |
| 03/13/2016 | 10 | \$250.00 | 4.7 | \$1,175.00 | Prepare for trial |
| 03/14/2016 | 6 | \$250.00 | 1 | \$250.00 | Prepare materials for trial |
| 03/14/2016 | 18 | \$100.00 | 2.1 | \$210.00 | Research release of lots |
| 03/14/2016 | 10 | \$250.00 | 6.7 | \$1,675.00 | Prepare for trial |
| 03/15/2016 | 6 | \$250.00 | 12 | \$3,000.00 | Travel to Sandpoint and prepare for trial; interview C. Reeves |
| 03/15/2016 | 10 | \$250.00 | 14.1 | \$3,525.00 | Travel to Sandpoint, ID from Boise, ID; meet with B. Haberman; meet with C. Reeves; prepare for trial |
| 03/16/2016 | 6 | \$250.00 | 12 | \$3,000.00 | Attend trial; prepare for next day of trial |
| 03/16/2016 | 10 | \$250.00 | 13.4 | \$3,350.00 | Prepare for trial; attend trial; prepare for trial on following day |
| 03/17/2016 | 6 | \$250.00 | 11 | \$2,750.00 | Attend last day of trial; meet with client and witnesses |
| 03/17/2016 | 18 | \$100.00 | 0.8 | \$90.00 | Review Discovery to identify rebuttal exhibit |
| 03/17/2016 | 10 | \$250.00 | 11.1 | \$2,775.00 | Prepare for trial; attend trial; meeting with client |
| 03/17/2016 | 15 | \$195.00 | 0.7 | \$136.50 | Review loan documents |
| 03/18/2016 | 6 | \$250.00 | 6.5 | \$1,625.00 | Return to Boise from Sandpoint |
| 03/18/2016 | 10 | \$250.00 | 4.3 | \$1,075.00 | Travel to Boise, Idaho from Sandpoint, Idaho |
| 03/21/2016 | 10 | \$250.00 | 3.2 | \$800.00 | Analyze/outline trial testimony; confer with J. Sykes |
| 03/28/2016 | 6 | \$250.00 | 0.1 | \$25.00 | Telephone conference with D. Penny |
| 03/30/2016 | 6 | \$250.00 | 0.2 | \$50.00 | Correspondence with D. Penny |
| 04/01/2016 | 10 | \$250.00 | 1.6 | \$400.00 | Analyze/draft rough outline for closing argument |
| 04/04/2016 | 10 | \$250.00 | 6.4 | \$1,600.00 | Begin analysis of admitted exhibits for closing arguments; begin legal research in support of closing argument; begin outlining closing argument |
| 04/05/2016 | 10 | \$250.00 | 1.4 | \$350.00 | Continue analysis exhibits |
| 04/11/2016 | 10 | \$250.00 | 6.5 | \$1,625.00 | Analyze/edit/finalize written closing argument |
| 04/12/2016 | 10 | \$250.00 | 7.1 | \$1,775.00 | Draft/analyze/edit written closing argument; analyze admitted exhibits |
| 04/13/2016 | 10 | \$250.00 | 6.8 | \$1,700.00 | Draft/analyze/edit written closing argument; analyze admitted exhibits; research legal issues; analyze/draft/finalize affidavit of B. Haberman; analyze spreadsheets; analyze/draft email to client; analyze amended spreadsheets |
| 04/13/2016 | 15 | \$195.00 | 0.9 | \$175.50 | Review discovery responses in support of closing argument |
| 04/13/2016 | 18 | \$100.00 | 0.3 | \$30.00 | Research regarding Bonner County Local Rules |

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|------------|----|----------|-----|------------|--|
| 04/14/2016 | 10 | \$250.00 | 6.1 | \$1,525.00 | E-mail draft closing argument to client; analyze emails from client; draft/analyze/finalize written closing argument; analyze/finalize affidavit of B. Haberman |
| 04/21/2016 | 10 | \$250.00 | 2.4 | \$600.00 | Several emails to D. Shafer; analyze responses to same |
| 04/22/2016 | 10 | \$250.00 | 4.3 | \$1,075.00 | Analyze spreadsheet identifying lots; verify all lots described in Exhibit 30; email Bonner County tax assessor; analyze emails from D. Shafer |
| 04/25/2016 | 10 | \$250.00 | 3.1 | \$775.00 | Analyze information from D. Shafer; analyze trial exhibits; telephone conference with C. Piehl; email to C. Piehl; analyze response to same; analyze lit guarantee; analyze/draft email to C. Piehl; analyze notice from Supreme Ct. re: dates for Trestle Creek hearing; email same to clients |
| 04/26/2016 | 10 | \$250.00 | 1.9 | \$475.00 | Analyze email and attachments from C. Piehl; email D. Shafer; analyze email from D. Shafer; email D. Shafer; analyze email from B. Haberman |
| 04/27/2016 | 10 | \$250.00 | 2.9 | \$725.00 | Analyze emails from B. Haberman; respond to same; analyze motion to strike filed by VP, Inc.; analyze/draft email to client; outline response to VP and JV motions to strike; begin draft/analyze response to the same; analyze and respond to multiple emails from client |
| 04/28/2016 | 10 | \$250.00 | 0.8 | \$200.00 | Analyze email from D. Shafer; telephone conference with D. Shafer; analyze email from the court; email to client |
| 04/29/2016 | 10 | \$250.00 | 0.4 | \$100.00 | Analyze order from Court denying motions to strike Haberman affidavit and attachment; analyze email from client |
| 05/02/2016 | 10 | \$250.00 | 4.4 | \$1,100.00 | Prepare for drafting final judgment by analyzing properties subject to RE Loans, Pensco and MF08 mortgages; identify properties subject only to RE and the Redemption Deed, properties only subject to Pensco and the Redemption Deed; properties only subject to Pensco and MF08 and the Redemption Deed; analyze properties only subject to MF08 and the redemption deed |
| 05/03/2016 | 10 | \$250.00 | 3.3 | \$825.00 | Outline properties subject to the RE Loans, Pensco, MF08 mortgages and the Redemption Deed; draft/analyze email to D. Shafer |
| 05/04/2016 | 10 | \$250.00 | 1.9 | \$475.00 | Research issues for final judgment |
| 05/05/2016 | 10 | \$250.00 | 1.1 | \$275.00 | Analyze /draft/edit email to C. Piehl; analyze email from D. Shafer |
| 05/09/2016 | 10 | \$250.00 | 1.9 | \$475.00 | Analyze email from D. Shafer; analyze parcel spreadsheet and lot releases/partial lot releases; email D. Shafer |
| 05/10/2016 | 10 | \$250.00 | 3.7 | \$925.00 | Analyze email from D. Shafer; analyze/draft email to D. Shafer; analyze emails from D. Shafer and M. Hathaway |
| 05/11/2016 | 10 | \$250.00 | 0.6 | \$150.00 | Analyze email from client; telephone conference with client |
| 05/12/2016 | 6 | \$250.00 | 0.7 | \$175.00 | Review correspondence from W. Haberman |
| 05/13/2016 | 6 | \$250.00 | 3.3 | \$825.00 | Review closing arguments of JV and VP; research issues; correspondence from B. Kramer |
| 05/26/2016 | 6 | \$250.00 | 1.2 | \$300.00 | Correspondence to clients |
| 05/26/2016 | 10 | \$250.00 | 6.2 | \$1,550.00 | Analyze /edit/finalize rebuttal arguments; analyze emails from clients |
| 05/27/2016 | 6 | \$250.00 | 2.2 | \$550.00 | Review Court's Memorandum Decision; telephone conference with clients |
| 05/27/2016 | 10 | \$250.00 | 2.8 | \$700.00 | Analyze memorandum decision and order from Bonner County Court; confer with J. Sykes; telephone conference with clients; email D. Penny; analyze response |
| 05/31/2016 | 6 | \$250.00 | 0.5 | \$125.00 | Telephone conference with clients |
| 05/31/2016 | 10 | \$250.00 | 4.4 | \$1,100.00 | Analyze emails from clients; respond to same; research post-decision motions; draft judgment and order of sale |
| 6/8/2016 | 10 | \$250.00 | 0.4 | \$100.00 | Analyze email from client; respond to the same; confer with C. Tipton |
| 6/9/2016 | 10 | \$250.00 | 9.1 | \$2,275.00 | Draft/analyze/edit judgment and decree of foreclosure |
| 6/13/2016 | 10 | \$250.00 | 6.2 | \$1,550.00 | Finalize proposed judgment and foreclosure decree; outline motion for proposed order of sale; research marshaling doctrines; |
| 6/20/2016 | 10 | \$250.00 | 7.2 | \$1,800.00 | Analyze disaster clean-up issues; telephone conference with court clerk; analyze/edit/draft changes to judgment and foreclosure decree; forward the same to clients; continue research; draft/analyze/edit motion for proposed order of sale |
| 6/21/2016 | 10 | \$250.00 | 6.7 | \$1,675.00 | Analyze/draft/edit memorandum in support of motion for order of sale |
| 6/22/2016 | 10 | \$250.00 | 7.8 | \$1,950.00 | Analyze/edit/finalize memo/motion for proposed order of sale; analyze/draft/finalize proposed order of sale |

Subtotal of Fees - VP and JV 794.90 \$192,557.50

| VP | | | | | |
|------------|------|----------|---------------|------------|--|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 11/19/2015 | 10 | \$250.00 | 3.5 | \$875.00 | Analyze discovery responses from VP and NIR |
| 11/23/2015 | 10 | \$250.00 | 3.4 | \$850.00 | Outline responses to VP's discovery requests and draft/analyze emails to client requesting documents and responses to the same |
| 11/25/2015 | 10 | \$250.00 | 2.4 | \$600.00 | Analyze/draft/edit responses to VP requests for production and interrogatories |
| 11/30/2015 | 10 | \$250.00 | 8.7 | \$2,175.00 | Analyze/draft/finalize answers to VP rogs, rfas, and rfps; analyze documents from client; meet with S. Sawyer |
| 12/01/2015 | 15 | \$195.00 | 0.4 | \$78.00 | Draft meet and confer to Susan Weeks regarding expert disclosure of Annette Brule |
| 12/07/2015 | 15 | \$195.00 | 1 | \$195.00 | Analysis of VP's supplemental expert witness disclosure |
| 12/14/2015 | 10 | \$270.00 | 2.1 | \$567.00 | Analyze documents produced by NIR and VP in discovery |
| 12/17/2015 | 10 | \$250.00 | 2.9 | \$725.00 | Telephone conference with B. Haberman and B. Kramer; |

| | | | | | |
|------------|----|----------|-----|------------|---|
| 12/23/2015 | 10 | \$250.00 | 2.6 | \$650.00 | analyze NIR and VP documents |
| 12/27/2015 | 15 | \$195.00 | 6.1 | \$1,189.50 | Analyze Valiant/RE Loans/Pensco/MF08 documents; analyze NIR/VP's oppositions to Valiant's motions in limine; outline replies to the same; emails to and from D. Marfice regarding deposition locations |
| 01/15/2016 | 10 | \$250.00 | 5.9 | \$1,475.00 | Research regarding reply in support of motion in Limine regarding NIR/VP (3.2); begin drafting reply in support of motion in Limine regarding NIR/VP (2.9) |
| 01/19/2016 | 10 | \$250.00 | 7.9 | \$1,975.00 | Analyze VP witness list; analyze VP exhibit list; search Concordance database; telephone conference with J. Sykes; coordinate discussion with C. Reeves; telephone conference with client; telephone conference with D. Penny; prepare for trial |
| 01/19/2016 | 6 | \$250.00 | 3.4 | \$850.00 | Analyze/edit trial brief; analyze trial exhibits from VP; analyze research regarding admissibility of court documents |
| 03/31/2016 | 10 | \$250.00 | 4.8 | \$1,200.00 | Conference with S. Weeks regarding trial exhibits; multiple telephone conferences with Greenspan/Adjuster's International; telephone conference with Chuck Reeves; revise trial brief |
| 05/12/2016 | 10 | \$250.00 | 0.8 | \$200.00 | Analyze exhibits and exhibit lists; analyze email from client; draft/analyze email to S. Weeks withdrawing settlement offer; analyze/draft letter to S. Weeks explaining the same; review boxes, folders, notes, etc. to verify everything shipped properly; confer with J. Sykes |
| 05/16/2016 | 10 | \$250.00 | 6.4 | \$1,600.00 | Analyze email from S. Weeks requesting extension; confere with client regarding the same; respond to S. Weeks advising that client will not agree to analyze extension; analyze/draft/email to S. Shafer; analyze response to the same |
| | | | | | Draft Letter to counsel for VP requesting immediate production of closing argument; analyze emails from client; telephone conference with client; analyze closing argument filed by VP, Inc.; outline rebuttal; confer with J. Sykes |

Subtotal of Fees - VP 62.30 \$15,204.50

JV

| Trans Date | Atty | Rate | Hours to Bill | Amount | |
|------------|------|----------|---------------|------------|---|
| 11/24/2015 | 15 | \$195.00 | 0.9 | \$175.50 | Draft/revise Meet & Confer Letter to G. Finney to address JV's most recent discovery responses |
| 12/15/2015 | 10 | \$250.00 | 4.7 | \$1,175.00 | Analyze First American documents; analyze email from C. Reeves; analyze/draft/edit motions in limine and affidavit in support of the same; confer/Streamline Imaging regarding document production and coordinate the same; draft/analyze/edit responses to JV interrogatories |
| 12/24/2015 | 10 | \$250.00 | 5.3 | \$1,325.00 | Continue analyzing Valiant/Pensco/MF08 documents; analyze JV, LLC's opposition to Valiant's motions in limine; outline reply to the same |
| 01/18/2016 | 10 | \$250.00 | 8.2 | \$2,050.00 | Analyze trial exhibits from JV, LLC; prepare for trial; analyze research on admissibility of depositions; confer with C. Nicholson regarding research; email to B. Ng; analyze documents produced by C. Reeves; confer with J. Sykes regarding Reeves and Brule depositions; analyze deposition exhibits; otherwise prepare for trial |
| 01/23/2016 | 6 | \$250.00 | 3.6 | \$900.00 | Receive and review documents from Adjuster's International; correspondence to Adjuster's International; study JV trial brief |
| 04/18/2016 | 10 | \$250.00 | 0.6 | \$150.00 | Analyze motion/memo to strike Haberman affidavit by JV |
| 04/19/2016 | 10 | \$250.00 | 1.1 | \$275.00 | Outline response to JV motion to strike |
| 04/23/2016 | 10 | \$250.00 | 2.6 | \$650.00 | Analyze mails from B. Haberman and B. Kramer; analyze/draft response to the same; analyze emails from client; outline responses to motion to strike |
| 05/13/2016 | 10 | \$250.00 | 4.6 | \$1,150.00 | Analyze closing argument filed by JV, LLC; analyze exhibits cited by JV, LLC; outline rebuttal arguments; confer with J. Sykes |
| 05/16/2016 | 6 | \$250.00 | 3.2 | \$800.00 | Begin response to JV closing argument |
| 05/17/2016 | 6 | \$250.00 | 2.2 | \$550.00 | Continue response to JV closing argument |
| 05/17/2016 | 10 | \$250.00 | 0.9 | \$225.00 | Analyze /outline rebuttal arguments |
| 05/19/2016 | 6 | \$250.00 | 2.2 | \$550.00 | Continue preparation of response to JV closing argument |
| 05/19/2016 | 10 | \$250.00 | 3.8 | \$950.00 | Begin drafting/analyzing rebuttal arguments |
| 05/20/2016 | 6 | \$250.00 | 3 | \$750.00 | Continue preparation of response to JV closing argument |
| 05/20/2016 | 10 | \$250.00 | 5.6 | \$1,400.00 | Draft /analyze/edit rebuttal arguments |
| 05/23/2016 | 10 | \$250.00 | 7.1 | \$1,775.00 | Draft /analyze/edit legal arguments; research burden of proof; research affirmative defense of payment |
| 05/24/2016 | 6 | \$250.00 | 0.9 | \$225.00 | Revisions to JV closing argument |
| 05/24/2016 | 10 | \$250.00 | 8.6 | \$2,150.00 | Draft /analyze/edit legal arguments; research collateral assignment |
| 05/25/2016 | 6 | \$250.00 | 3.6 | \$900.00 | Revise response to JV closing argument |
| 05/25/2016 | 10 | \$250.00 | 8.9 | \$2,225.00 | Analyze draft/edit rebuttal arguments |

Subtotal of Fees - JV 81.60 \$20,350.50

COSTS AS A MATTER OF RIGHT:

| | | | | |
|-------|------------|----|----------|---|
| Trial | 01/14/2016 | 10 | \$20.30 | Mileage/ Witness fee [Linscott] |
| | 2/1/2016 | 10 | \$20.00 | Trial Witness: Barney Ng |
| | 1/29/2016 | 10 | \$500.00 | Streamline Imaging Invoice 2166 |
| | 01/08/2016 | 10 | \$6.50 | Secretary of State: California; certify records |
| | 01/08/2016 | 10 | \$6.50 | Secretary of State: California; certify records |

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|-------------------|---------------------------------|----|-------------------|--|
| | 01/19/2016 | 10 | \$145.50 | Bonner County Recorder: Certification Fees |
| | Subtotal | | \$698.80 | |
| Deposition Trans. | 02/29/2016 | 10 | \$2,888.27 | Court Reporting Invoice # 15545C1 |
| | 02/29/2016 | 10 | \$491.45 | Court Reporting Invoice # 15547C1 |
| | 02/29/2016 | 10 | \$436.12 | Court Reporting Invoice # 15551C1 |
| | 02/29/2016 | 10 | \$957.38 | Court Reporting Invoice # 15549C1 |
| | 02/29/2016 | 10 | \$1,870.58 | Court Reporting Invoice # 60645B5 |
| | 02/29/2016 | 10 | \$1,439.01 | Court Reporting Invoice # 3798B2 |
| | Subtotal | | \$7,882.61 | |
| | Subtotal/Costs as Right: | | \$8,581.61 | |

DISCRETIONARY COSTS:

| | | | | |
|------------------|--------------------------------|----|-------------------|--|
| Courier Services | 01/08/2016 | 10 | \$44.00 | Courier Service |
| | Subtotal | | \$44.00 | |
| Copy Charges | 03/01/2016 | 10 | \$100.00 | Research and copies from First American Title |
| | | 10 | \$588.55 | Streamline Imaging Invoice 2166 [\$1,088.55 less \$500.00 to G-5 = \$588.55] |
| | Subtotal | | \$688.55 | |
| Travel | 01/09/2016 | 10 | \$695.46 | Travel costs/advances Southwest Airlines for Linscott Deposition |
| | 01/20/2016 | 10 | \$277.10 | Travel costs/advances Alaska Airlines for trial |
| | 02/01/2016 | 10 | \$671.96 | Travel costs/advances for Barney Ng trial testimony |
| | | | | [\$691.96 less \$20.00 transferred to Costs as a Matter of Right = \$671.96] |
| | 02/01/2016 | 10 | \$367.26 | Travel costs/advances rental car for Barney Ng testimony |
| | 02/01/2016 | 10 | \$186.28 | Travel costs/advances hotel for Barney Ng testimony |
| | 02/01/2016 | 10 | \$143.13 | Travel costs/advances hotel for Barney Ng testimony |
| | 02/01/2016 | 10 | \$8.30 | Travel costs/advances BART transportation for Barney Ng testimony |
| | Subtotal | | \$2,349.49 | |
| | Subtotal/Discretionary: | | \$3,082.04 | |

GRAND TOTALS:

| | | | | |
|------------------|------|------------------|--------------|---------------------|
| JV | 50% | 794.90 | \$192,557.50 | \$96,278.75 |
| | 100% | 81.60 | \$20,350.50 | \$20,350.50 |
| | | JV Total: | | \$116,629.25 |
| VP | 50% | 794.90 | \$192,557.50 | \$96,278.75 |
| | 100% | 62.30 | \$15,204.50 | \$15,204.50 |
| | | VP Total: | | \$111,483.25 |
| All Fees | | | | \$228,112.50 |
| All Costs | | | | \$11,663.65 |

**EXHIBIT J
VALIANT FORECLOSURE**

Fees and Costs Memorandum

| All Parties | | | | | |
|-------------------------|------|------------|---------------|--------------------|--|
| Trans Date | Atty | Rate | Hours to Bill | Amount | |
| 6/23/2016 | 10 | \$250.00 | 5.6 | \$1,400.00 | Research fees/costs |
| 6/24/2016 | 10 | \$250.00 | 6.1 | \$1,525.00 | Continue researching fees/costs; outline motion for fees and costs; analyze fee/cost invoices; telephone conference with B. Haberman; confer with J. Sykes; compile invoices |
| 6/27/2016 | 10 | \$250.00 | 6.3 | \$1,575.00 | Analyze/draft/edit motion for fees/costs |
| 6/28/2016 | 10 | \$250.00 | 6.7 | \$1,675.00 | Continue to analyze/draft/edit motion for fees/costs |
| 6/29/2016 | 10 | \$250.00 | 7.3 | \$1,825.00 | Continue to analyze/draft/edit motion for fees/costs |
| 6/30/2016 | 10 | \$250.00 | 7.8 | \$1,950.00 | Continue to analyze/draft/edit motion for fees/costs |
| 7/1/2016 | 10 | \$250.00 | 0.5 | \$125.00 | Analyze email from client; draft changes to proposal; emails and telephone conference with client |
| 7/1/2016 | 17 | \$90.00 | 5.5 | \$90.00 | Compile spreadsheets and organize invoices in support of memorandum of costs and fees |
| 7/2/2016 | 17 | \$90.00 | 11 | \$90.00 | Segregate spreadsheets and organize invoices in support of memorandum of costs and fees |
| 7/3/2016 | 17 | \$90.00 | 8.75 | \$90.00 | Segregate spreadsheets and organize invoices in support of memorandum of costs and fees; incorporate data within memorandum |
| 7/4/2016 | 17 | \$90.00 | 11.75 | \$90.00 | Finalize spreadsheets and identification of invoices in support of memorandum of costs and fees |
| 7/5/2016 | 10 | \$250.00 | 7.1 | \$1,775.00 | Analyze/draft/finalize motion for fees/costs |
| 7/5/2016 | 17 | \$90.00 | 8 | \$720.00 | Finalize work in connection with exhibits to memorandum of costs |
| Subtotal of Fees | | | 92.40 | \$12,930.00 | |
| JV | | \$4,310.00 | | | |
| NIR | | \$4,310.00 | | | |
| VP | | \$4,310.00 | | | |

STATE OF IDAHO
County of Bonner } ss
FILED 8-10-16
AT 4:00 O'CLOCK P M
CLERK DB DISTRICT COURT
DEPUTY

Richard L. Stacey, ISB #6800
Jeff R. Sykes, ISB #5058
Chad M. Nicholson, ISB #7506
McCONNELL WAGNER SYKES & STACEY PLLC
827 East Park Boulevard, Suite 201
Boise, Idaho 83712
Telephone: 208.489.0100
Facsimile: 208.489.0110
stacey@mwsslawyers.com
sykes@mwsslawyers.com
nicholson@mwsslawyers.com

Attorneys For Valiant Idaho, LLC

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

GENESIS GOLF BUILDERS, INC.,
formerly known as
NATIONAL GOLF BUILDERS, INC.,
a Nevada corporation,

Plaintiff,

vs.

**PEND OREILLE BONNER
DEVELOPMENT, LLC,**
a Nevada limited liability company; *et al.*,

Defendants.

**AND RELATED COUNTER, CROSS
AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN.**

Case No. CV-09-1810

**DECLARATION OF JEFF R. SYKES IN
SUPPORT OF VALIANT IDAHO, LLC'S
MEMORANDUM IN OPPOSITION TO
VP, INC.'S MOTION FOR A NEW TRIAL**

Honorable Barbara A. Buchanan

Hearing:

August 17, 2016 – 10:30 a.m. PDST

**DECLARATION OF JEFF R. SYKES IN SUPPORT OF
VALIANT IDAHO, LLC'S MEMORANDUM IN OPPOSITION
TO VP, INC.'S MOTION FOR A NEW TRIAL | Page 1**
E:\1547.201\PLD\Post-Trial\VP New Trial-Sykes Dec 160808.doc

Pursuant to Rule 7(d) of the Idaho Rules of Civil Procedure and Idaho Code § 9-1406,

Jeff R. Sykes declares as follows:

1. I am an attorney at law duly licensed to practice before this Court, and all Courts in the State of Idaho. I am member of the law firm of McConnell Wagner Sykes & Stacey PLLC, attorneys for Defendant/Counter-Claimant/Cross-Claimant/Third Party Plaintiff Valiant Idaho, LLC (“Valiant”). I make this Declaration in support of Valiant’s Memorandum in Opposition to VP, Inc.’s Motion For A New Trial filed concurrently and upon my personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of an email sent March 14, 2016 to Susan Weeks, among others, attaching a copy of Plaintiff’s Trial Exhibit 110, which is a copy of Valiant’s Profit and Loss statement for January 2015 through December 2015.

3. Attached as Exhibit 2 is a true and correct copy of an email sent March 15, 2016 to Susan Weeks, among others, attaching copies of Plaintiff’s Trial Exhibits 111 and 112, both of which identify the costs Valiant incurred to remediate the diesel fuel leak on the Idaho Club Property.

4. The above documents were provided to Ms. Weeks and to Mr. Finney as soon as practicable.

5. Prior to the trial restarting on March 16, 2016, VP never requested to depose William Haberman on the issues related to Exhibits 110, 111 and/or 112, and did not cross-examine Mr. Haberman on these issues at trial.

////

////

I HEREBY CERTIFY AND DECLARE, under penalty of perjury pursuant to the laws of the State of Idaho, that the foregoing is true and correct.

DATED this 10th day of August 2016.


JEFF R. SYKES

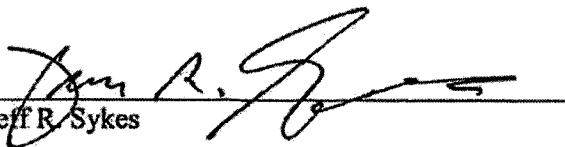
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of August 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

| | |
|---|--|
| Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i> | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail garyfinney@finneylaw.net |
| Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i> | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail sweeks@jvwlaw.net |

With two copies via U.S. Mail to:

Honorable Barbara A. Buchanan
Judge of the First Judicial District
Bonner County Courthouse
215 South First Avenue
Sandpoint, Idaho 83864


Jeff R. Sykes

Pamela Lemieux

From: Pamela Lemieux
Sent: Monday, March 14, 2016 11:01 AM
To: Susan Weeks; Christine; garyfinney@finneylaw.net; Finney Law; clerks@bonnercountyid.gov
Cc: Rick Stacey; Jeff Sykes
Subject: Valiant Idaho, LLC - Trial Exhibit

Attached is Vallant Idaho, LLC's Trial Exhibit 110 and an updated p. 5 of its exhibit list reflecting the same. This attachment is being sent simultaneously via facsimile; however, I believe the attached copy will be much clearer and easier to read. pal



Ex110.pdf

PAMELA A. LEMIEUX
LOCAL CONFIDENTIALARY
McCONNELL WAGNER SYKES + STACEY, PLLC
827 East Paul Boulevard, Suite 201
Boise, Idaho 83712
Phone/Fax: 208.489.0100
Cell: 208.489.0110



MWSSLAWYERS.COM

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VALIANT IDAHO, LLC
TRIAL EXHIBIT LIST

| EXHIBIT NO. | BATES | DATE | DESCRIPTION | DATE | BY STIP | OFFERED | ADMITTED | REFUSED | RESERVE RULING |
|-------------|-------------------|--------------------|---|------|---------|---------|----------|---------|----------------|
| 101 | Ng Depo Ex 101 | 8/1/2008-8/31/2008 | Wells Fargo Bank Statement identifying \$1,150,000.00 check was drawn from MF08's account | | | | | | |
| 102 | | 1/1/2002 | Certified copy by the California Secretary of State of RE Loans Articles of Organization | | | | | | |
| 103 | | 8/26/1975 | Certified copy by the California Secretary of State of the Articles of Incorporation of Bar K, Inc. | | | | | | |
| 104 | | | Certified copy by the Delaware Secretary of State of MF08 Formation Documents | | | | | | |
| 105 | REEVES001236 | 5/5/2010 | Pend Orelle Bonner Development, LLC - Loan Summary Through January 31, 2011 With Priorities | | | | | | |
| 106 | REEVES001232-1235 | 2011 | The Idaho Club - Buchanan Cash Flow For 2011 | | | | | | |
| 107 | REEVES001241-1252 | | The Idaho Club Financials - Overview and Assumptions | | | | | | |
| 108 | REEVES001237-1240 | 9/27/2010 | ML Cash Flow \$20 mm New Debt | | | | | | |
| 109 | REEVES1253-1391 | 6/31/14 | RE Loan Default Interest | | | | | | |
| 110 | | | The Idaho Club 2015 Profit and Loss Summary | | | | | | |
| 111 | | | | | | | | | |
| 112 | | | | | | | | | |
| 113 | | | | | | | | | |
| 114 | | | | | | | | | |
| 115 | | | | | | | | | |
| 116 | | | | | | | | | |
| 117 | | | | | | | | | |
| 118 | | | | | | | | | |
| 119 | | | | | | | | | |
| 120 | | | | | | | | | |

The Idaho Club
Profit and Loss
 January - December 2015

| | Total |
|---------------------------------|----------------------|
| Income | |
| Golf Shop Income | 147,043.48 |
| Merchandise | 16,678.98 |
| Snack Bar | 4.72 |
| Beverages | 883.82 |
| Food | 132.16 |
| Total Snack Bar | \$ 1,020.50 |
| Total Income | \$ 164,740.96 |
| Cost of Goods Sold | |
| Beverages | 689.78 |
| Discount | -74.82 |
| Inventory Expense | |
| Accessories | 1,841.16 |
| Gloves | 990.79 |
| Golf Bags | 604.50 |
| Golf Balls | 2,558.48 |
| Hats | 1,739.65 |
| Shoes | 1,906.10 |
| Softgoods | 7,913.63 |
| Total Inventory Expense | \$ 17,554.31 |
| Snacks | 125.78 |
| Total Cost of Goods Sold | \$ 18,275.26 |
| Gross Profit | \$ 146,465.71 |
| Expenses | |
| Bank Charges | 3.00 |
| Computer Expenses | 814.99 |
| Computer/Software Expense | 2,019.15 |
| Contract Labor | 1,200.00 |
| Credit Card Service Charge | 2,630.79 |
| Customer Relations | 37.50 |
| Dues & Subscriptions | 100.00 |
| Employee Relations | 681.35 |
| Equipment Rental | 9,084.00 |
| Fertilizer | 7,582.01 |
| Fungicides | 172.08 |
| Gas and Oil | 8,020.52 |
| Insurance | 8,401.80 |
| Lawn Care | 1,460.50 |
| Leased Equipment | |
| Carts | 2,250.00 |
| Total Leased Equipment | \$ 2,250.00 |



| | |
|---------------------------------------|-----------------------|
| Legal & Professional Fees | 180.80 |
| Licenses & Permits | 120.00 |
| Management Fee | 31,500.00 |
| Administration Fee | 6,525.00 |
| Total Management Fee | \$ 38,025.00 |
| Office Expenses | 629.22 |
| Over/Short | -82.91 |
| Payroll Expenses | 217,914.21 |
| Portable Restroom | 2,149.96 |
| Postage & Shipping | 394.57 |
| Range Expense | 4,370.70 |
| Repair & Maintenance | 2,450.00 |
| Building | 298.62 |
| Equipment | 11,506.49 |
| Irrigation | 4,795.19 |
| Total Repair & Maintenance | \$ 19,050.30 |
| Shop Supplies | 120.89 |
| Signs | 148.32 |
| Supplies | 8,617.71 |
| Topdress Sand | 3,386.00 |
| Travel | 8,623.39 |
| Travel Meals | 123.89 |
| Utilities | |
| Cable | 242.85 |
| Electric | 19,308.73 |
| Propane or Gas | 621.50 |
| Telephone | 2,295.25 |
| Trash | 301.10 |
| Total Utilities | \$ 22,769.43 |
| Worker's Compensation | 4,068.94 |
| Total Expenses | \$ 373,048.89 |
| Net Operating Income | -\$ 228,582.98 |
| Other Income | |
| Interest Earned | 0.15 |
| Total Other Income | \$ 0.15 |
| Other Expenses | |
| Miscellaneous | 211.05 |
| Total Other Expenses | \$ 211.05 |
| Net Other Income | -\$ 210.90 |
| Net Income | -\$ 228,793.88 |

Pamela Lemieux

From: Pamela Lemieux
Sent: Tuesday, March 15, 2016 10:55 AM
To: Susan Weeks; Christine; garyfinney@finneylaw.net; Finney Law; clerks@bonnercountyid.gov
Cc: Rick Stacey; Jeff Sykes
Subject: Valiant Idaho, LLC's Exhibits 111 and 112

Attached are Valiant Idaho, LLC's Trial Exhibits 111 and 112, and an updated p. 5 of its exhibit list reflecting the same. This attachment is being sent simultaneously via facsimile; however, I believe the attached will be much clearer and easier to read. pal



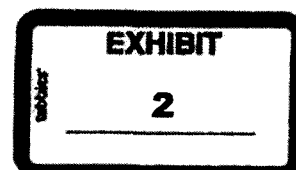
Ex111-12.pdf

PAMELA A. LEMIEUX
LEGAL SECRETARY
McCONNELL WAGNER SYKES + STACEY, PLLC
827 East Park Boulevard, Suite 201
Boise, Idaho 83712
Phone: (208) 489.0100
Fax: (208) 489.0110



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VALIANT IDAHO, LLC
TRIAL EXHIBIT LIST

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| 107 | REEVES001241-1252 | | The Idaho Club Financials - Overview and Assumptions | | | | | | |
| 108 | REEVES001237-1240 | 9/27/2010 | ML Cash Flow \$20 mm New Debt | | | | | | |
| 109 | REEVES1253-1391 | 6/31/14 | RE Loan Default Interest | | | | | | |
| 110 | | | The Idaho Club 2015 Profit and Loss Summary | | | | | | |
| 111 | | | Able Clean-up Technologies Inc. Invoice No. 20286 dated March 4, 2016 | | | | | | |
| 112 | | | Able Clean-up Technologies Inc. Invoice No. 20305 dated March 14, 2016 | | | | | | |
| 113 | | | | | | | | | |
| 114 | | | | | | | | | |
| 115 | | | | | | | | | |
| 116 | | | | | | | | | |
| 117 | | | | | | | | | |
| 118 | | | | | | | | | |
| 119 | | | | | | | | | |
| 120 | | | | | | | | | |



Able Clean-up Technologies Inc.

4117 E Nebraska Ave
 Spokane, WA 99217-6644
 Phone 509-466-5255 or Toll Free 866-466-5255
 Fax: 509-487-9810
 Email: ablecleanup@ablecleanup.com

Invoice

| | |
|----------|-----------|
| DATE | INVOICE # |
| 3/4/2016 | 20286 |
| TERMS | |
| Net 15 | |

| |
|---|
| BILL TO |
| Idaho Club 216 Clubhouse Way Sandpoint, ID 83864-9194 |

| |
|----------------|
| PROJECT |
| 16093 AST Leak |

| QUANTITY | DESCRIPTION | RATE | AMOUNT |
|-----------------------------------|--|--|-----------|
| | PROGRESS BILLING 2/29/16 - 3/04/16 | | |
| 40 | Cost of labor for one Project Manager to respond to a spill located at The Idaho Club, 216 Clubhouse Way, Sandpoint, ID | 90.00 | 3,600.00 |
| 17 | Cost of labor for one Project Manager at overtime rates to respond to a spill located at The Idaho Club, 216 Clubhouse Way, Sandpoint, ID | 135.00 | 2,295.00 |
| 77 | Cost of labor for two Hazardous Waste Technicians to respond to a spill located at The Idaho Club, 216 Club House Way, Sandpoint, ID | 65.00 | 5,005.00 |
| 27.5 | Cost of labor at overtime rates for Hazardous Waste Technicians to respond to a located at The Idaho Club, 216 Club House Way, Sandpoint, ID | 97.50 | 2,681.25 |
| 3 | Cost of labor for Hazardous Waste Technician to deliver supplies | 65.00 | 195.00 |
| 1 | Support Truck | 50.00 | 50.00 |
| 35.5 | Cost per hour for use of Vac Truck 3/01 - 3/03 (PD Vactor) | 185.00 | 6,567.50 |
| 21 | Cost per hour for use of Vac Truck 3/03 - 3/04 (Aquatech) | 185.00 | 3,885.00 |
| 10 | Cost of labor for Geologist to respond to a spill located at the Idaho Club, 216 Clubhouse Way, Sandpoint ID | 90.00 | 900.00 |
| 6 | Cost of labor for Geologist at overtime rates to respond to a spill located at The Idaho Club, 216 Clubhouse Way, Sandpoint, ID | 135.00 | 810.00 |
| 15 | Cost of per diem | 125.00 | 1,875.00 |
| TAX ID# 91-1977626, ABLE CUT013NJ | | Website: www.ablecleanup.com | Sales Tax |
| | | Total | |





Able Clean-up Technologies Inc.

4117 E Nebraska Ave
 Spokane, WA 99217-6644
 Phone 509-466-5255 or Toll Free 866-466-5255
 Fax: 509-487-9810
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Invoice

| | |
|----------|-----------|
| DATE | INVOICE # |
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| TERMS | |
| Net 15 | |

| |
|---|
| BILL TO |
| Idaho Club 216 Clubhouse Way Sandpoint, ID 83864-9194 |

| |
|----------------|
| PROJECT |
| 16093 AST Leak |

| QUANTITY | DESCRIPTION | RATE | AMOUNT |
|----------------------------------|--|--|------------------|
| 5 | Cost for Support Truck Dodge | 50.00 | 250.00 |
| 2 | Cost for Support Truck Ford | 50.00 | 100.00 |
| 1,216 | Cost for mileage to and from site | 1.25 | 1,520.00 |
| 5 | Cost for daily use of covered trailer. | 40.00 | 200.00 |
| 8 | Cost for two (2) - 2" Pumps | 75.00 | 600.00 |
| 1 | Cost for Excavator 315 - 316E L (one (1) week) | 2,543.44 | 2,543.44 |
| 1 | Cost for Box (one (1) week) | 504.00 | 504.00 |
| 1 | Cost for Zoom Boom (one (1) week) | 760.00 | 760.00 |
| | Cost for Filters | 8,688.00 | 8,688.00 |
| | Cost for Tanks | 2,868.00 | 2,868.00 |
| | Cost of analytical, water samples | 3,120.00 | 3,120.00 |
| 2 | Cost for Dump Trucks & Operators (Madsen) | 937.50 | 1,875.00 |
| 13.75 | Cost per hour for Dump Truck & Operator (ACT) | 100.00 | 1,375.00 |
| 152 | Cost for mileage (ACT) | 1.25 | 190.00 |
| | Disposal of contaminated soil (38.95 Tons) | 1,365.30 | 1,365.30 |
| 12 | Sand Bags | 6.00 | 72.00 |
| 3.05 | Tons of River Rock 1 1/2 Round | 23.82 | 72.65 |
| 15 | PPE's | 25.00 | 375.00 |
| 8 | Bales of Boom | 135.00 | 1,080.00 |
| 6 | Bales of Pads | 96.00 | 576.00 |
| TAX ID# 91-1977626, ABLECUT013NJ | | Website: www.ablecleanup.com | Sales Tax |
| | | | Total |



Able Clean-up Technologies Inc.

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 Spokane, WA 99217-6644
 Phone 509-466-5255 or Toll Free 866-466-5255
 Fax: 509-487-9810
 Email: ablecleanup@ablecleanup.com

Invoice

| | |
|----------|-----------|
| DATE | INVOICE # |
| 3/4/2016 | 20286 |
| TERMS | |
| Net 15 | |

| |
|---|
| BILL TO |
| Idaho Club 216 Clubhouse Way Sandpoint, ID 83864-9194 |

| |
|----------------|
| PROJECT |
| 16093 AST Leak |

| QUANTITY | DESCRIPTION | RATE | AMOUNT |
|----------------------------------|---------------|--|-------------------------|
| 5 | Cost of drums | 45.00 | 225.00 |
| TAX ID# 91-1977626, ABLECUTO13NJ | | Website: www.ablecleanup.com | Sales Tax \$0.00 |
| | | Total | \$56,223.14 |



Able Clean-up Technologies Inc.

4117 E Nebraska Ave
 Spokane, WA 99217-6644
 Phone 509-466-5255 or Toll Free 866-466-5255
 Fax: 509-487-9810
 Email: ablecleanup@ablecleanup.com

Invoice

| | |
|-----------|-----------|
| DATE | INVOICE # |
| 3/14/2016 | 20305 |
| TERMS | |
| Net 15 | |

| |
|---|
| BILL TO |
| Idaho Club 216 Clubhouse Way Sandpoint, ID 83864-9194 |

| |
|----------------|
| PROJECT |
| 16093 AST Leak |

| QUANTITY | DESCRIPTION | RATE | AMOUNT |
|----------------------------------|--|---------------------------------|-----------|
| | PROGRESS BILLING 3/05/16 - 3/11/16 | | |
| 34 | Cost of labor for one Project Manager to respond to a spill located at The Idaho Club, 216 Clubhouse Way, Sandpoint, ID | 90.00 | 3,060.00 |
| 7.5 | Cost of labor for one Project Manager at overtime rates to respond to a spill located at The Idaho Club, 216 Clubhouse Way, Sandpoint, ID | 135.00 | 1,012.50 |
| 22 | Cost of labor for one Project Manager at premium rates to respond to a spill located at The Idaho Club, 216 Clubhouse Way, Sandpoint, ID | 180.00 | 3,960.00 |
| 40 | Cost of labor for one Hazardous Waste Technician to respond to a spill located at The Idaho Club, 216 Club House Way, Sandpoint, ID | 65.00 | 2,600.00 |
| 12.5 | Cost of labor at overtime rates for Hazardous Waste Technician to respond to a spill located at The Idaho Club, 216 Club House Way, Sandpoint, ID | 97.50 | 1,218.75 |
| 22 | Cost of labor at premium rates for Hazardous Waste Technician to respond to a spill at located at The Idaho Club, 216 Clubhouse Way, Sandpoint, ID | 130.00 | 2,860.00 |
| 6 | Cost of labor for a Geologists to oversee spill at The Idaho Club, 216 Clubhouse Way, Sandpoint, ID | 90.00 | 540.00 |
| 5 | Cost for Administrator I | 55.00 | 275.00 |
| 56 | Cost per hour for use of Vac Truck (Aquatech) | 185.00 | 10,360.00 |
| 13 | Cost of per diem | 125.00 | 1,625.00 |
| 6 | Cost for Support Truck | 50.00 | 300.00 |
| TAX ID# 91-1977626, ABLECUT013NJ | | Website: www.ablecleanup.com | Sales Tax |
| | | Total | |





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 Phone 509-466-5255 or Toll Free 866-466-5255
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| |
|----------------|
| PROJECT |
| 16093 AST Leak |

| QUANTITY | DESCRIPTION | RATE | AMOUNT |
|----------------------------------|--------------------------------------|--|-------------------------|
| 228 | Cost for mileage to and from site | 1.25 | 285.00 |
| 7 | Cost for daily use of small trailer. | 40.00 | 280.00 |
| 14 | Cost for two (2) - 2" Pumps | 75.00 | 1,050.00 |
| 1 | Cost for Box (one (1) week) | 504.00 | 504.00 |
| | Cost for Filters | 144.00 | 144.00 |
| | Cost for Tanks | 756.00 | 756.00 |
| | Cost for 1550 Poly Tank per week | 300.00 | 300.00 |
| | Cost for GAC vessel per week | 288.00 | 288.00 |
| 18 | Cost for GAC filter socks | 18.00 | 324.00 |
| | Cost of analytical, water samples | 624.00 | 624.00 |
| | 2" Hose line per week | 150.00 | 150.00 |
| 3 | Bales of Boom | 135.00 | 405.00 |
| 3 | Bales of Pads | 96.00 | 288.00 |
| TAX ID# 91-1977626, ABLEOUT013NJ | | Website: www.ablecleanup.com | Sales Tax \$0.00 |
| | | Total | \$33,209.25 |

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2016 AUG 11 A 9:02

CLERK DISTRICT COURT


DEPUTY

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Attorneys For Valiant Idaho, LLC

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

GENESIS GOLF BUILDERS, INC.,
formerly known as
NATIONAL GOLF BUILDERS, INC.,
a Nevada corporation,

Plaintiff,

vs.

**PEND OREILLE BONNER
DEVELOPMENT, LLC,**
a Nevada limited liability company; *et al.*,

Defendants.

**AND RELATED COUNTER, CROSS
AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN.**

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S
MEMORANDUM IN OPPOSITION TO
JV, L.L.C.'S OBJECTION AND
MOTION TO DISALLOW
MEMORANDM OF COSTS
AND ATTORNEYS' FEES**

Honorable Barbara A. Buchanan

COMES NOW, Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and submits this Memorandum in Opposition to JV, L.L.C.’s Objection and Motion to Disallow Memorandum of Costs and Attorneys’ Fees (“Response Memo”).

I.
INTRODUCTION

Having successfully established the validity and priority of its mortgages, Valiant timely filed its Memorandum of Costs and Attorneys’ Fees (“Memo. Costs & Fees”) on July 6, 2016. Valiant seeks an award of fees and costs as the prevailing party under Idaho Rules of Civil Procedure (“Rule” or “Rules” as applicable) 54(d)(1)(B), 54(e)(1) and Idaho Code § 12-121. JV, L.L.C. (“JV”) continues its pattern of frivolous defenses by asserting, *inter alia*, that (1) there is no legal basis for awarding fees and costs to Valiant, (2) the Memo. Costs & Fees was untimely filed, (3) Valiant’s Counterclaim, Cross-Claim and Third Party Complaint For Judicial Foreclosure (“Counterclaim”) did not seek attorneys’ fees and costs against JV, and (4) JV is the prevailing party in this matter.

It cannot be reasonably disputed that Valiant is the prevailing party in this matter. Valiant prevailed on all of the claims set forth in its Counterclaim. Valiant obtained a judgment in the amount of \$21,485,212.26. Valiant adjudicated that the Valiant Mortgages^{1/} are prior in right, title and interest to any interest possessed by JV. As such, Valiant is entitled, as the prevailing party, to an award of attorneys’ fees and costs because JV’s defense of this action has been, and continues to be, frivolous, unreasonable and without any basis in fact or law.

^{1/} As defined in the Memo. Costs & Fees.

II.
STANDARD OF REVIEW

“An award of attorney fees rests in the sound discretion of the trial court and the burden is on the party disputing the award to show an abuse of discretion.” *Edwards v. Donart*, 116 Idaho 687, 688 (1989) (award under Idaho Code § 12-121); *Turner v. Willis*, 116 Idaho 682, 684 (1989) (“The trial court’s award of attorney fees will not be reversed absent a manifest abuse of discretion.”).

III.
RESPONSIVE ARGUMENT

Valiant is entitled to an award of attorneys’ fees and costs because (1) Valiant is unquestionably the prevailing party, and (2) JV’s defense of this suit was frivolous and without any basis in law or fact.

A. VALIANT MAY BE AWARDED FEES AND COSTS UNDER RULES 54(D)(1)(A) AND 54(E)(2), AND IDAHO CODE § 12-121.

JV initially argues that “[c]osts and attorney fees are only awarded when allowable by statute or contract. (IRCP 54(e)(1) and 5(e)(5) [sic]. There is no statute or contract as a basis to award to Valiant *any fees or costs* against JV.” Objection and Motion to Disallow Valiant’s Memorandum of Fees and Costs filed July 18, 2016 (“JV Objection”), p. 5 (emphasis added). This claim is patently frivolous and continues JV’s pattern of deliberately ignoring Idaho law. The plain language of the Idaho Rules of Civil Procedure, Idaho Code § 12-121 and longstanding Idaho Supreme Court precedent unambiguously allow district courts to award attorneys’ fees to the prevailing party based upon the frivolous conduct of the opposing party.

JV cannot plead ignorance as a defense to its frivolous argument. JV cites to Rules 54(d)(5) and 54(d)(6) in its Objection. JV cannot possibly cite to these subsections without having read Rule 54(d). Nonetheless, JV has the audacity to argue that there is no legal basis upon which this Court may award costs against JV. Rule 54(d)(1)(A) entitled “Parties Entitled to Costs,” unambiguously states that: “Except when otherwise limited by these rules, *costs are allowed as a matter of right to the prevailing party or parties, unless otherwise ordered by the court.*” (Emphasis added.) As such, JV’s argument that there is no legal basis upon which to award Valiant costs is frivolous and without any basis in fact or law.

Similarly, JV’s Objection cites to Rules 54(e)(1) and 54(e)(6), yet frivolously contends there is no legal basis to award fees to Valiant for JV’s frivolous conduct. In so doing, JV deliberately ignores the provisions of Rule 54(e)(2), which expressly states:

Pursuant to Idaho Code Section 12-121. *Attorney fees under Idaho Code Section 12-121 may be awarded by the court only when it finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation*, which finding must be in writing and include the basis and reasons for the award. No attorney fees may be awarded pursuant to Idaho Code Section 12-121 on a default judgment.

(Emphasis added.) Moreover, Idaho Code § 12-121, entitled “Attorney’s Fees,” further provides:

In any civil action, the judge may award reasonable attorney’s fees to the prevailing party or parties, provided that this section shall not alter, repeal or amend any statute which otherwise provides for the award of attorney’s fees. The term “party” or “parties” is defined to include any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

(Emphasis added.) JV's argument that there is no legal basis upon which to award Valiant fees is frivolous, unreasonable and without foundation. Finally, Rule 54(e)(2) and Idaho Code § 12-121 have long been read together by the Idaho Supreme Court to entitle the prevailing party an award of fees in any litigation in which the opposing party pursued or defended a case frivolously, unreasonably or without foundation. See, e.g., *Idaho Military Historical Socy, Inc., v. Mislen*, 156 Idaho 624 (2014); *McGrew v. McGrew*, 139 Idaho 551, 562 (2003); I.R.C.P. 54(e)(1); *Win of Mich., Inc. v. Yreka United, Inc.*, 137 Idaho 747, 754 (2002); *Bedke v. City of Oakley (In re SRBA)*, 149 Idaho 532, 544 (2010); *Sunshine Min. Co. v. Metro. Mines Corp.*, 111 Idaho 654, 659 (1986); *Chavez v. Barrus*, 146 Idaho 212, 225 (2008).

Valiant recognizes that JV is afforded the right to challenge Valiant's assertion that it is the prevailing party or that JV frivolously defended this suit so long as said arguments are grounded in fact or law.^{2/} However, JV is ethically prohibited from misrepresenting the state of the law to the Court. JV's claim that there is no legal basis upon which to award fees and costs to Valiant is an intentional misrepresentation of the state of the law to this Court. Moreover, its arguments in support of the same are frivolous, unreasonable and without foundation.

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^{2/} While Valiant recognizes this right, as set forth below, any such arguments are frivolous in and of themselves given that Valiant is unquestionably the prevailing party in this action and JV has unquestionably advanced frivolous arguments throughout this litigation.

B. VALIANT IS THE PREVAILING PARTY IN THIS MATTER.

JV argues it is the prevailing party in this action, believing it “was successful and prevail[ed] against all of Valiant’s various summary judgment motions” and, therefore, “JV was the prevailing party.” JV Objection, pp. 9-10. This argument is wholly preposterous. No one who is familiar with this case could reasonably conclude that JV prevailed in any fashion. Valiant is without question the prevailing party in the Genesis Suit and the Valiant Foreclosure.^{3/}

The Idaho Rules of Civil Procedure define “prevailing party” as follows:

Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion ***consider the final judgment or result of the action in relation to the relief sought by the respective parties.***

I.R.C.P. 54(d)(1)(B) (emphasis added).

When considering the result of the action in relation to the relief sought by JV, JV cannot possibly be the prevailing party. To the contrary, only Valiant prevailed. Valiant obtained the Judgment in the amount of \$21,074,526.88. Valiant obtained the Decree of Foreclosure authorizing the Bonner County Sheriff to sell 155 parcels comprising the Idaho Club golf course and residential development in order to payoff said Judgment. The Judgment and Decree of Foreclosure adjudicate that Valiant’s interest in these parcels is prior in right, title and interest to any interest possessed by JV.^{4/} Valiant prevailed on all issues in this case with the Court rejecting

^{3/} The Genesis Suit and the Valiant Foreclosure are defined in the Memo. Fees & Costs.

^{4/} JV obtained a Judgment against POBD in the amount of \$21,485,212.26; however, the dollar amount of this Judgment is not relevant to the Court’s consideration of the result of the action in relation to the relief sought by the parties. The parties in this case stipulated that JV is entitled to Judgment against POBD in said Judgment amount after the Court had already adjudicated on summary judgment that JV’s mortgage, which secures its Judgment, is junior in right, title and interest to the Valiant Mortgages. While it turns out that JV has a first priority lien against one parcel (Parcel 121), this is only because Valiant, not JV, brought this fact to the Court’s attention.

every affirmative defense raised by JV. Despite the fact that it lost to Valiant on every issue in this case, JV asserts that it is the prevailing party.

JV's assertion that it is the prevailing party is based upon its inexplicable belief that "JV was successful and prevail[ed] against all of Valiant's various summary judgment motions." JV Objection, pp. 9-10. As discussed above, when conducting the prevailing party analysis, the Court is to consider the result of "the action"—not the success of the parties at the summary judgment stage. I.R.C.P. 54(d)(1)(B). *See also, e.g., Sun Valley Shopping Ctr. v. Idaho Power Co.*, 119 Idaho 87, 90 (1991). Even if success at the summary judgment stage was part of the prevailing party analysis, Valiant is still the prevailing party in this action. JV's purported "success" at summary judgment was limited to misleading the Court into determining that a single issue of fact existed for trial.

Valiant, not JV, is the prevailing party in this action.

C. JV HAS FRIVOLOUSLY DEFENDED THIS SUIT AND CONTINUES TO ADVANCE FRIVOLOUS ARGUMENTS.

JV asserts that it presented a legitimate defense to this case and did not act frivolously, unreasonably or without foundation. These arguments are without merit.

JV expressly subordinated its interest to the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage through subordination agreements recorded in the Bonner County Recorder's Office on March 15, 2007 and August 6, 2008. *See* Plaintiff's [Trial] Exs. 6, 25. These subordination agreements were recorded years prior to initiation of the Valiant Foreclosure. Moreover, the express language of these subordination agreements make it clear that RE Loans, Pensco and MF08 each relied upon these subordination agreements in making their respective loans to Pend Oreille Bonner Development, LLC ("POBD"). Despite the

unquestionable fact that JV's interests are subordinate to those assigned to Valiant, JV has maintained throughout nearly eight (8) years of litigation that its interest is superior to that of Valiant.^{5/} The assertion that JV's interest is superior to Valiant is wholly frivolous, unreasonable and without foundation.

After failing to convince the Court that its subordination agreements should be disregarded, JV turned to a variety of other legal theories and arguments which were equally without basis in law or fact. Memo. Costs & Fees, pp. 11-19. JV repeatedly ignored Idaho Statutes and Supreme Court precedent arguing that its redemption of certain parcels from a tax deed somehow converted its fourth priority mortgage into a first position lien. Although the Court rejected JV's argument on no less than nine different occasions,^{6/} JV filed a proposed judgment with the Court on July 15, 2016, declaring that its redemption deed was adjudicated to have a first priority position. JV's proposed judgment was also rejected by this Court.^{7/} At no time has JV ever provided the Court with any new evidence or legal authority to justify the Court changing its original decision. JV's arguments with respect to this issue have not only been frivolous, unreasonable and without foundation, they have been verging on acting in contempt of the Court.

JV avoided entry of summary judgment, which would have disposed of this entire case, by misleading the Court into determining that a single genuine issue of fact remained for trial.

^{5/} On August 2, 2016, JV's Motion to Alter, Amend and Reconsider Re: 1. Memorandum Decision and Order 2. Judgment 3. Decree of Foreclosure 4. Order of Sale, and JV L.L.C.'s Memorandum in Support and Request For Hearing was filed, which continues to assert that JV's interests are superior to those of Valiant despite acknowledging JV's execution of these subordination agreements.

^{6/} JV has made some semblance of this argument in pleadings filed with this Court on February 2, 2015, April 8, 2015, July 7, 2015, July 30, 2015, August 18, 2015, August 26, 2015, October 13, 2015, January 22, 2016, May 12, 2016, and August 2, 2016.

^{7/} After the Court rejected JV's proposed judgment, JV filed a new motion to reconsider, again contending that its redemption deed creates a first position lien. This motion was filed on August 2, 2016.

JV repeatedly argued that a settlement statement (“Settlement Statement”) from the MF08 Loan closing established that the 2007 RE Loans Note and the Pensco Note were paid-off at the MF08 Loan closing. *See* Plaintiff’s Trial Exs. 11, 33; and Memorandum Decision and Order Re: Court Trial held on January 28 and 29, and March 16 and 17, 2016 entered May 27, 2016 (“Trial Decision”), pp. 2-3. JV’s arguments with respect to the Settlement Statement were disingenuous at best. JV participated in the MF08 Loan closing and received copies of all of the loan documents. JV received a partial payment of \$30,000.00 from First American Title (Plaintiff’s Trial Ex. 41) and executed the Third Amendment To Indebtedness and To Real Estate Security, and Subordination Agreement, whereby JV acknowledged and agreed that it would be behind \$25 Million in loans after the MF08 Loan closed (Plaintiff’s Trial Ex. 9). The MF08 Loan documents also make clear that a loan to RE Loans in the amount of \$6,172,325.18 would remain in a first place position, a loan to Pensco in the amount of \$2,700,000.00 would be in a second place position, and a loan from MF08 in the amount of \$2,975,000.00 would be made in a third place position. (Plaintiff’s Trial Exs. 17, 18, 19, and 21). Moreover, JV subordinated to the Pensco loan as part of the MF08 Loan closing. As an active participant in the loan closing, MF08 was fully aware that the 2007 RE Loans Note and the Pensco Note were not paid off as part of the MF08 Loan closing. JV did not merely ignore these known facts in response to Valiant’s original Motion For Summary Judgment filed on January 16, 2015, after losing on summary judgment, JV filed no less than five separate motions^{8/} asking the Court to reconsider its decision. Each of these motions continued to assert that the Settlement Statement establishes the RE Loans Note and

^{8/} *See* motions filed by JV dated April 28, 2015; July 7, 2015; July 30, 2015; August 18, 2015; and August 26, 2015.

Pensco Note were satisfied by the MF08 Loan. JV's arguments to defeat summary judgment and to manufacture an issue for trial were frivolous, unreasonable and without foundation.

Counsel for VP, Inc. ("VP") subpoenaed the First American Title Company ("FATCO") escrow file ("Escrow File") on September 18, 2015. At the time these documents were produced to JV, NIR and VP were working in concert with JV to defeat Valiant's Third Summary Judgment Motion ("3rd SJ Motion"). JV's counsel had access to the Escrow File and knew or should have known that it demonstrated it was mathematically impossible for the 2007 RE Loans Note and the Pensco Note to have been paid off at the MF08 Loan closing. See Plaintiff's Trial Exs. 36, 37, 38, 39, 41, 42, 43, 45, 47, 50, 51, 53, and 54. JV was obligated to apprise the Court that these documents nullified its arguments. JV's failure to so apprise the Court and its continued adherence to arguments that had no basis in fact or law was frivolous, unreasonable and without foundation.

At trial, despite the Court's advisement that it wanted to see and hear additional evidence on this issue, JV failed to present an iota of evidence in support of its contention that the 2007 RE Loans Note and Pensco Note had been satisfied. JV knew prior to trial that it could not, and would not, present evidence in support of its claim that these two notes had been paid, yet continued to advance this argument through trial. JV knew that its position was unquestionably refuted and without foundation based on its possession of the entire FATCO file and JV's participation in the depositions of FATCO's escrow officers on January 7, 2016. Advancement of arguments known to be unfounded is the definition of frivolous conduct.

At trial, JV repeatedly ignored the Court's admonishments that the trial was limited to the single issue of whether the RE Loans and Pensco Notes had been satisfied. Despite this limitation,

JV sought to admit evidence to support numerous theories that had been argued and rejected on summary judgment. Although the Court sustained numerous objections raised by Valiant in this regard, JV repeatedly ignored the Court's rulings. JV's attempts to introduce evidence outside the scope of the trial and in contravention to the repeated rulings was frivolous, unreasonable and without foundation.

Undeterred by its loss at trial, JV continues to make frivolous arguments in opposition to Valiant's request for attorneys' fees and costs. JV argues that Valiant's Memo. Costs & Fees should be disallowed because it was untimely filed. On July 6, 2016, the Court advised—in open court—that it would be vacating the Judgment entered on June 22, 2016 (“First Judgment”). The order vacating the First Judgment was entered on July 14, 2016—four days *before* the JV Objection was filed. Thus, when JV objected to the Memo. Costs & Fees as untimely, no judgment had been entered in this matter. As no judgment was entered, the 14-day deadline to file a memorandum of costs had not even been triggered, much less expired. *See* I.R.C.P. 54(d)(4). If anything, the Memo. Costs & Fees had been filed prematurely and therefore was timely. *Id.* (“A memorandum of costs prematurely filed is considered as timely.”). JV's timeliness objection is frivolous, unreasonable and without foundation given the Court's oral statements and the pleadings on file.

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JV's timeliness objection is also frivolous, unreasonable and without foundation given the plain language of Rule 2.2 which provides that time shall be computed as follows:

- (A) exclude the day of the event that triggers the period;
- (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

The event that triggered the 14-day deadline for Valiant to file its Memo. Costs & Fees is the filing of the Judgment. Assuming, for the sake of argument, that June 22, 2016 was the date triggering the 14-day deadline set forth in Rule 54(d)(4), the Memo. Costs & Fees was timely filed. In accordance with the plain language of Rule 2.2(a)(1)(A), June 22, 2016 is to be excluded from the time computation. Thus, June 23, 2016 is "day 1" of the 14-day deadline and "day 14" is July 6, 2016, which is included in the computation because it is the last day of the period. I.R.C.P. 2.2(a)(1)(B) & (C). Thus Valiant's Memo. Fees & Costs was timely filed.

JV also argues, again frivolously, unreasonably and without foundation, that Valiant is not entitled to fees and costs because "Valiant's action did not include seeking any attorney fees and costs against JV in its pleadings." JV Objection, p. 6. In making this argument, JV ignores Paragraph L of the *Prayer For Relief* of the Counterclaim, wherein Valiant prays for judgment "[f]or attorneys' fees and costs in the sum of not less than \$5,000.00 if judgment against POBD is entered by default, *and such further amounts against POBD and Defendants as this Court may find reasonable if this matter is contested[.]*" Counterclaim, p. 19 (emphasis added). "Defendants" was defined as referring to "[e]ach Counterdefendant, Cross-Defendant and Third Party Defendant identified in Paragraphs 2 through 28" of the Counterclaim. *Id.* at p. 7,

¶ 19. “Cross-Defendant JV, L.L.C.” was identified in Paragraph 8 of the Counterclaim. *Id.* at p. 4. JV was unquestionably put on notice that Valiant would seek attorneys’ fees and costs from JV if it contested this matter. JV’s claim that received no such notice is yet another example of JV’s selective reading, and unfounded and self-serving interpretation of documents.

It must be noted that this is not the first time JV has intentionally misrepresented facts and failed to advise the Court of the full truth. As the Court will recall, JV had in its possession the entire FATCO filed when it filed its Objection and Memorandum in Opposition to Valiant Idaho, LLC’s Third Motion For Summary Judgment and JV LLC’s Motion to Strike Valiant’s Third Motion For Summary and Notice of Hearing For October 23, 2015 at 1:30 p.m. (“JV Opp to 3rd SJ Motion”). In the JV Opp to 3rd SJ Motion, JV argued that, based upon the Settlement Statement, “there can be no reasonable doubt that the ‘First Loan – P0099’ was paid off.” JV Opp to 3rd SJ Motion at pp. 15-16. JV made this argument despite having full knowledge that the entirety of the documentation produced by FATCO shows that it was mathematically impossible for the RE Loans Note and the Pensco Note to have been paid-off at the MF08/Pensco loan closing. Plaintiff’s [Trial] Exs. 36, 37, 38, 39, 41, 42, 43, 45, 47, 50, 51, 53, and 54.

JV’s repeated and deliberate misinterpretation of documents, court rules and case law is conduct that is frivolous, unreasonable and without foundation, and should not be permitted by this Court.

D. JV, NORTH IDAHO RESORTS, LLC (“NIR”) AND VP ARE JOINTLY AND SEVERALLY LIABLE FOR VALIANT’S ATTORNEYS’ FEES BECAUSE EACH ENGAGED IN A FRIVOLOUS DEFENSE OF THIS LAWSUIT.

JV argues that it cannot be held jointly and severally liable for the costs and fees incurred by Valiant in this matter.^{9/} This argument is inaccurate.

In *Idaho Military Historical Soc’y, Inc. v. Maslen*, the district court awarded attorneys’ fees to the plaintiffs under Idaho Code § 12-121 and Rule 54(e)(1) despite the fact that the defendants had created a genuine issue of material fact for trial. 156 Idaho 624, 629 (2014). The defendants were held jointly liable for the attorneys’ fee award because their defense was deemed frivolous. *Id.* at 626. The Supreme Court affirmed this award. *Id.* at 633. Thus, Idaho Supreme Court precedent supports joint liability among defendants when those defendants have been found to have jointly engaged in frivolous conduct. As such, JV, NIR and VP may be held jointly and severally liable for Valiant’s attorneys’ fees.

Valiant respectfully requests and award of all fees and costs incurred in this matter (\$726,313.50) jointly and severally against Defendants.^{10/}

E. ALTERNATIVELY, THE COURT MAY APPORTION THE AWARD OF FEES AMONG DEFENDANTS BASED UPON THE AMOUNTS ATTRIBUTABLE TO EACH OF THEM.

Although there is legal authority to justify an award of fees jointly and severally against all Defendants, Valiant recognizes that the Court has discretion to apportion the fee award based upon the fees it believes were attributable to each of them. In the event the Court follows

^{9/} JV claims that Valiant seeks a fees and costs award against JV for fees and costs incurred in “all different actions.” This assertion is without merit, given that Valiant’s Memo. Costs & Fees expressly advised that Valiant only seeks recovery from JV for fees and costs incurred in the present suit, *i.e.*, the Genesis Suit and the Valiant Foreclosure. Memo. Costs & Fees, pp. 19, 33-38.

^{10/} Although NIR and JV are technically cross-claimants and VP is technically a third-party defendant, these parties will be collectively referred to as the “Defendants” for purposes of this Response Memo.

this methodology, this Response Memo and the Declaration of Richard L. Stacey in Support of Valiant Idaho's Memorandum Responses to VP, Inc.'s and JV, L.L.C.'s Objections and Motions to Disallow Memorandum of Costs and Attorneys' Fees ("Stacey Decl.") have allocated the amounts Valiant believes are directly attributable to each Defendant. Should the Court apportion the fees among Defendants separately, Valiant requests an award of fees against NIR in the amount of \$86,417.50, an award of fees against VP in the amount of \$214,561.25, and an award of fees against JV in the amount of \$223,012.75. Stacey Decl., ¶¶ 2-7 and Exs. A, B, C and D thereto.

1. **Valiant Should Be Awarded Fees in the Amount Of No Less Than \$223,012.75 Against JV.**

Valiant incurred fees in in the amount of \$223,012.75 attributable to JV. A description of the work counsel performed and the fees Valiant incurred for said work is set forth on Exhibit B to the Stacey Decl.

Some of these fees are directly attributable to JV. These fees are set forth in Subsection B-1 on Exhibit B to the Stacey Decl. and total \$68,863.50.

Some fees incurred are equally attributable to all Defendants. Valiant filed numerous motions against JV, VP and NIR jointly, including its motions for summary judgment. All of the parties participated at the hearings on these motions. Moreover, client communications and strategy meetings often dealt with the claims and defenses of all parties coextensively. Valiant incurred \$168,666.00 in fees based on conduct attributable to all Defendants for which JV, VP, and NIR are equally responsible. As such, Valiant should receive an award of 33.33% of these fees against JV and the remaining 66.66% should be split equally between VP and NIR. The amounts that may be apportioned to JV are set forth in Subsection B-4 of Exhibit B to the Stacey Decl. and total \$56,222.00.

After the Court's October 30, 2015 Memorandum Decision and Order Re: Motions heard on October 23, 2015 ("3rd SJ Decision), NIR did not participate in this matter until post-trial motion practice. After the 3rd SJ Decision only one issue left for trial and all work Valiant performed after that date preparing for and participating in the bifurcated trial (including preparing for and taking pretrial depositions, reviewing documents and identifying exhibits, and analyzing, researching and drafting closing arguments and associated post-trial briefing, and all associated pretrial and post-trial work) was prepared to prove Valiant's claims and defend against the defenses jointly alleged by JV and VP. JV and VP worked in concert throughout this period and all of the fees Valiant incurred are equally attributable to JV and VP. As such, Valiant should receive an award of 50% of the fees incurred during this timeframe against JV and the remaining 50% against VP. The amounts that may be apportioned to JV are set forth in Subsection B-2 of Exhibit B to the Stacey Decl. and total \$96,278.75.

Finally, some of these fees are equally attributable to JV and NIR. VP did not appear in this case until October 6, 2014. Prior to that date, certain of the work performed by Valiant should be apportioned equally between NIR and JV. Valiant should receive an award of 50% of these fees against JV and the remaining 50% against NIR. The amounts that may be apportioned to JV are set forth in Subsection B-3 of Exhibit B to the Stacey Decl. and total \$1,648.50.

2. **The Fees and Costs Sought By Valiant Are Reasonable.**

JV has not disputed the reasonableness of these fees or costs (other than travel), e.g., that the amount of time spent on any particular task was unreasonable or that the rate of fees charged was unreasonable. As such, JV has failed to carry its burden of establishing the unreasonableness of the fees and costs requested and the requested fees should be awarded. *Edwards v. Donart*, 116 Idaho 687, 688 (1989).

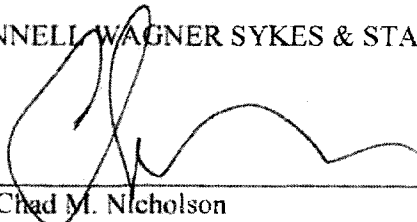
**IV.
CONCLUSION**

For the reasons set forth above, Valiant respectfully requests that JV'S Objection be **DENIED**, and further requests that Valiant be awarded the full amount of attorneys' fees and costs jointly and severally against JV, VP, and NIR. Alternatively, Valiant request that Valiant be awarded attorneys' fees against JV in the amount of \$223,012.75, as well as one third of the costs as a matter of right and discretionary costs awarded.

DATED this 10th day of August 2016.

McCONNELL WAGNER SYKES & STACEY^{PLLC}

BY:



Chad M. Nicholson
Attorneys For Valiant Idaho, LLC

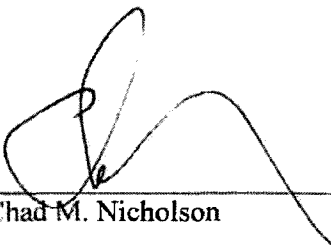
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of August 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

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With two copies via United States Mail to:

Honorable Barbara A. Buchanan
Judge of the First Judicial District
Bonner County Courthouse
215 South First Avenue
Sandpoint, Idaho 83864



Chad M. Nicholson

CLERK OF DISTRICT COURT
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

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

GENESIS GOLF BUILDERS, INC.,
formerly known as
NATIONAL GOLF BUILDERS, INC.,
a Nevada corporation,

Plaintiff,

vs.

**PEND OREILLE BONNER
DEVELOPMENT, LLC,**
a Nevada limited liability company; *et al.*,

Defendants.

**AND RELATED COUNTER, CROSS
AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN.**

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S
MEMORANDUM IN RESPONSE TO
VP, INC.'S OBJECTION AND
MOTION TO DISALLOW
MEMORANDUM OF COSTS AND
ATTORNEYS' FEES**

Honorable Barbara A. Buchanan

**Hearing:
August 17, 2016 – 10:30 a.m.**

**VALIANT IDAHO, LLC'S MEMORANDUM IN
OPPOSITION TO VP, INC.'S OBJECTION AND
MOTION TO DISALLOW MEMORANDUM OF
COSTS AND ATTORNEYS' FEES | Page 1**
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COMES NOW, Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and submits this Memorandum in Response to VP, Inc.’s Objection and Motion to Disallow Memorandum of Costs and Attorneys’ Fees (“Response Memo”).^{1/}

I. INTRODUCTION

Having successfully established the validity and priority of its mortgages, Valiant timely filed its Memorandum of Costs and Attorneys’ Fees (“Memo. Costs & Fees”) on July 6, 2016. Valiant has sought an award of costs and fees as the prevailing party under Idaho Rules of Civil Procedure (“Rule” or “Rules,” as applicable) 54(d)(1)(B), 54(e)(1) and Idaho Code § 12-121. On July 20, 2016, VP Inc.’s Opposition to Valiant Idaho’s Memorandum of Costs and Attorney Fees (“VP Objection”) was filed, presumably on behalf of both VP and NIR. The VP Objection asserts that Valiant is not entitled to an award of fees and costs on the grounds that NIR and VP presented non-frivolous defenses. For the reasons set forth in the Memo. Costs & Fees and below, NIR’s and VP’s arguments are without merit.^{2/}

^{1/} Valiant notes that the caption and opening paragraph of the objection filed by James, Vernon & Weeks, PA does not indicate it is filed on behalf of North Idaho Resorts, LLC (“NIR”) as well as VP, Inc. (“VP”). However, as the body of the objection advances arguments on behalf of NIR and VP, Valiant assumes that the Court will treat the objection as having been filed on behalf of both NIR and VP.

^{2/} NIR and VP spend several pages of their briefing arguing that Valiant is not entitled to an award of fees and costs against them for “other court cases.” See generally VP’s Objection. Valiant does not seek an award of fees and costs against VP and/or NIR for “other cases.” Valiant only seeks recovery from VP and NIR of fees and costs incurred in the present suit, *i.e.* the Genesis Suit and the Valiant Foreclosure. Memo. Costs & Fees at pp. 19, 33-38.

II.
STANDARD OF REVIEW

An award of attorneys' fees rests in the sound discretion of the trial court and the burden is on the party disputing the award to show an abuse of discretion." *Edwards v. Donart*, 116 Idaho 687, 688 (1989) (award under I.C. § 12-121); *Turner v. Willis*, 116 Idaho 682, 684 (1989) ("The trial court's award of attorney fees will not be reversed absent a manifest abuse of discretion.").

III.
RESPONSE ARGUMENT^{3/}

Valiant has only requested an award of fees/costs against Defendants^{4/} in the case at bar (*i.e.*, the Genesis Suit and the Valiant Foreclosure^{5/}). Valiant is entitled to an award of attorneys' fees and costs because (1) Valiant is unquestionably the prevailing party; and (2) NIR and VP's defense of this suit was frivolous and without any legitimate basis in law or fact.

^{3/} Rules 54(d)(5) and 54(e)(6) require a party to file a motion to disallow costs and fees within 14 days of the filing of a memorandum of costs and fees. Neither VP nor NIR have filed a motion to disallow and therefore the Court may, in its discretion, determine that NIR and VP have waived their objections. Valiant presumes, without waiving its right to assert that NIR and VP failed to comply with Rules 54(d)(5) and 54(e)(6), that the Court will address the substantive issues regarding Valiant's Memo. Costs & Fees and will not rule based strictly on procedural non-compliance.

^{4/} Although NIR and JV, L.L.C. ("JV") are technically cross-claimants and VP is technically a third-party defendant, these parties will be collectively referred to as the "Defendants" for purposes of this Response Memo.

^{5/} As defined in Valiant's Memo. Costs & Fees.

A. **VALIANT IS ENTITLED TO AN AWARD OF ATTORNEYS' FEES.**

1. **Valiant is the Prevailing Party.**

Rule 54(d)(1)(A) permits the Court to award costs to the prevailing party in an action. Rule 54(e)(1) and Idaho Code § 12-121 allow the Court award attorneys' fees to the prevailing party in an action. The Rules define "prevailing party" as follows:

Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion ***consider the final judgment or result of the action*** in relation to the relief sought by the respective parties.

I.R.C.P. 54(d)(1)(B) (emphasis added).

NIR and VP have conceded that Valiant is the prevailing party and, as noted by NIR and VP, "[a]t this point the sole question before the Court is whether VP and NIR ever presented 'a legitimate, triable issue of fact,' such that their involvement in this suit was not frivolous, unreasonable, or without foundation." VP Objection at 5.

2. **NIR and VP Frivolously Defended This Suit and Continue to Advance Frivolous Arguments.**

NIR and VP assert they did not frivolously defend this case and appear to base this argument on the fact that *VP* was able to survive summary judgment, albeit by the slimmest of margins. Like the other arguments NIR and VP have raised in this matter, this arguments is also without any basis in Idaho law.

a. **VP's Creation of a Triable Issue of Fact Does Not Immunize It From a Fees and Costs Award Based on Its Frivolous Defense.**

VP contends that litigants cannot be found to have behaved frivolously in any case in which they can create an issue of fact for trial. This argument is inconsistent with the cases cited by VP and NIR and has been expressly rejected by the Idaho Supreme Court.

i. **A Litigant Can Be Found to Have Acted Frivolously Regardless of Whether There is a Triable Issue of Fact.**

VP relies on *McGrew v. McGrew*, 139 Idaho 551 (2003) for the proposition that a party who survives summary judgment cannot be found to have frivolously defended a case. This argument is premised solely upon the following quotation, “[t]hus, if there is a legitimate, triable issue of fact, attorney fees may not be awarded under I.C. § 12-121 even though the losing party has asserted factual or legal claims that are frivolous, unreasonable, or without foundation.” *Id.* at 562. The *McGrew* decision cites to another Supreme Court decision from 2001 (*i.e.*, *Nampa & Meridian Irrigation Dist. v. Washington Fed. Savings*). *Id.* (citing *Nampa & Meridian Irrigation Dist.*, 135 Idaho 518 (2001)). VP’s argument both misconstrues the *McGrew* decision and has been expressly rejected by the Idaho Supreme Court.

In *Idaho Military Historical Soc’y, Inc. v. Maslen*, the district court awarded attorney fees to the plaintiffs under Idaho Code § 12-121 and Rule 54(e)(1) despite the defendants having created a genuine issue of material fact for trial. 156 Idaho 624, 629 (2014). On appeal, the Idaho Supreme Court addressed “the question of continued adherence to the strict limitation articulated in *Nampa Meridian* that attorney fees will not be assessed if there is ‘a *legitimate*, triable issue of fact’ even though a party has asserted claims that are frivolous, unreasonable, or without foundation.” *Id.* at 632 (emphasis added).

The Supreme Court first noted that the trial court's award of fees was supported by *O'Boskey v. First Fed. Savings & Loan Ass'n of Boise*, 112 Idaho, 1002, 1008-1010 (1987). *Maslen*, 156 Idaho at 632. The Court then turned to the continued validity of the *Nampa Meridian* standard:

Unfortunately, the standard articulated in *Nampa Meridian* can lead to the result that a party who makes claims or defenses that are clearly frivolous, unreasonable, or without foundation may avoid the consequences of that conduct and cast the burden of attorney fees on the other party, even if the overall view of the case establishes the unreasonableness of the conduct requiring the lawsuit. *Arguably, a single, triable issue of fact may excuse a party from the aggregate of misconduct that necessitates or dominates the conduct of the lawsuit. This Court does back away from and clarify the overly strict application of Idaho Code section 12-121 set forth in Nampa Meridian. Apportionment of attorney fees is appropriate for those elements of the case that were frivolous, unreasonable, and without foundation.* Apportionment of costs and fees is common even for district courts, and this step back from the language of *Nampa Meridian* is consistent with the general principles of apportioning costs and fees.

Id. (emphasis added).

VP claims it is excused from the entirety of its misconduct which dominated this lawsuit and created the need for a trial because it misled this Court into determining that there was a triable issue of fact. However, this argument has been rejected by the Idaho Supreme Court. Given the Supreme Court's recent rejection of this precise argument, VP's argument must be rejected. Moreover, given the Supreme Court's opinion in *Maslen*,

VP's argument that it can avoid a frivolous finding for creating a single triable issue is frivolous in and of itself, as it is without any basis in fact or law.

ii. **The Evidence Establishes That VP Failed to Manufacture a "Legitimate" Triable Issue of Fact.**

Furthermore, even if the Court were to hold that manufacturing a single *legitimate* triable issue precluded a fee award under Rule 54(e)(2) and Idaho Code § 12-121, VP failed to meet such standard. It is undisputed that VP and JV convinced the Court that there was an issue of fact for trial in this case. However, VP's and JV's collective inability to submit any evidence at trial that even reasonably supported their collective position establishes that VP and JV failed to manufacture a *legitimate* triable issue.

Prior to trial, VP argued and the Court determined that a single triable issue of fact remained for trial. This single issue was whether the 2007 RE Loans Note and the Pensco Note were satisfied by a third loan from MF08 that closed on August 8, 2008. Memorandum Decision & Order Re: Motions Heard on October 23, 2015 ("October Decision"), p. 18. The Court reached its decision based upon VP's dogged insistence that a settlement statement [Plaintiff's Trial Ex. 33] from the MF08 loan closing established that the 2007 RE Loans Note and the Pensco Note were paid-off. In denying summary judgment, the Court advised VP that summary judgment had been denied by the most tenuous of margins and admonished that "[a]t trial, the Court would like to see and hear additional evidence on the issue of whether or not these loans have been satisfied, including testimony from the title company that issued the Settlement Statements." Memorandum Decision and Order Granting in Part Reconsideration of the July 21, 2015 Memorandum Decision and Order, p. 3, filed September 4, 2015. Despite this

admonishment, VP failed to submit even an iota of evidence to support its pretrial position. To the contrary, the evidence submitted at trial conclusively established that it was mathematically impossible for the 2007 RE Loans Note and the Pensco Note to have been paid off by the MF08 Loan or at any time thereafter. VP's resolute failure to produce *any* evidence that the 2007 RE Loans Note and the Pensco Note were ever satisfied demonstrates that VP's allegations were entirely fallacious and not fairly debatable. As such, the single issue that VP manufactured for trial could not possibly be a *legitimate* triable issue of fact.

As discussed in the Memo. Cost & Fees, the frivolity of VP's position is further demonstrated by the fact that its counsel was fully aware there was not a *legitimate* triable issue of fact well in advance of trial. VP's counsel obtained First American Title Company's ("FATCO") entire escrow file ("Escrow File") before filing its opposition to Valiant's Third Motion for Summary Judgment ("Valiant's 3rd SJ Motion").^{6/} The Escrow File unequivocally establishes that it was mathematically impossible for the 2007 RE Loans Note and the Pensco Note to have been satisfied at MF08 loan closing. *See* Plaintiff's Trial Exs. 36, 37, 38, 39, 41, 42, 43, 45, 47, 50, 51, 53, and 54. Upon receipt of the Escrow File, VP did not advise the Court that, based upon the entirety of the Escrow File it now had in its position, the Settlement Statement could not reasonably be interpreted to establish that the 2007 RE Loans Note and the Pensco Note were satisfied by the MF08 Loan. To the contrary, VP continued to

^{6/} VP obtained these documents *via* a subpoena *duces tecum* served on FATCO on September 18, 2015. VP obtained the subpoenaed records from FATCO and attached several of them to the Declaration of Susan Weeks in Support of North Idaho Resort's and VP's Rule 56(f) Request For Additional Time to Conduct Discovery filed on or about October 9, 2015.

make the same fallacious arguments regarding the Settlement Statement that it had in made at all times prior to receiving the Escrow File.^{7/}

While VP's counsel takes umbrage with Valiant for bringing these facts to the Court's attention, noticeably absent from VP's briefing is any contention that Valiant's recitation of the facts regarding VP's possession and disclosure of the FATCO file is untrue. Instead, VP claims it had no obligation to disclose these facts to the Court until after it deposed FATCO's escrow officer. VP's argument is unbelievable and should be rejected for several reasons.

First, the entirety of the documentation produced by FATCO shows that it was mathematically impossible for the RE Loans Note and the Pensco Note to have been paid-off at the MF08/Pensco loan closing. See Plaintiff's Trial Exs. 36, 37, 38, 39, 41, 42, 43, 45, 47, 50, 51, 53, and 54. Even when viewed in the light most favorable to VP (and JV), these documents eliminate the possibility that a *genuine* issue of material fact remained for trial. VP (and JV) knew this and deliberately withheld the Escrow File from the Court and Valiant to create the appearance of a triable issue of fact. A *legitimate* triable issue of fact is created only where there are relevant facts and evidence that can be reasonably disputed. The Escrow File establishes that the Settlement Statement could not possibly have created a legitimate triable issue of fact in this case.

Second, even if the depositions of FATCO's escrow officers were somehow necessary for VP to verify the falsity of its arguments, those depositions were completed

^{7/} VP could not have believed that Valiant would bring this to the Court's attention as VP did not provide copies of the Escrow File to counsel for Valiant until minutes prior to the hearing on Valiant's 3rd SJ Motion.

on January 7, 2016—prior to trial. Upon completion of the January 7, 2016 depositions, the theory that the RE Loans Note and Pensco Note had not been paid was unquestionably refuted and shown to be wholly without foundation. Even under VP's argument, it had an ethical obligation to discontinue its nonsensical arguments at that time. Nonetheless, VP continued to advance these positions thru trial without an iota of supporting evidence. VP's misconduct has delayed the foreclosure of the Idaho Club properties for over eight months and caused the parties to unnecessarily incur thousands and thousands of dollars. VP cannot reasonably argue that a *legitimate* triable issue of fact existed with respect to the Settlement Statement. As such, Valiant should be awarded the fees it incurred in this matter based upon the frivolity of VP's defenses in this case.

iii. **The Testimony of Tom Williams Did Not Create a Legitimate Triable Issue of Fact.**

As the frivolity of VP's defenses were clearly established at trial, VP now attempts to engage in a revisionist history of its pretrial arguments to contend it presented a legitimate triable issue of fact. VP appears to contend there was a legitimate triable issue of fact because the interest owed to RE Loans was reduced by \$96,901.99 due to Tom Williams's testimony at trial. Like all of VP's other arguments, this argument fails for several reasons.

First, the \$96,901.99 reduction in the interest owed under the 2007 RE Loans Note was never contested by Valiant. As the Court will recall, upon introduction of evidence of this payment, Valiant immediately acknowledged the need for this reduction. Mr. Williams was called to testify by VP. VP was clearly aware of the subject matter to which it wanted Mr. Williams to testify prior to trial. Nonetheless, for unknown reasons, this subject matter

was never disclosed to Valiant and the documents Mr. Williams relied upon were not provided to Valiant prior to trial. Had VP disclosed this evidence prior to trial, Valiant would have immediately reduced the amount owed under the 2007 RE Loans Note. Stated differently, if the credit of \$96,901.99 that was owed to POBD because of the EaglePointe lot sale was the single issue for trial, this case would never have gone to trial. Thus, this issue cannot be deemed a *legitimate* triable issue.

Finally, VP claims that the EaglePointe sale reduced the judgment by “a significant amount given the size of the alleged debt” such that there was a legitimate triable issue of fact. VP’s Objection, p. 11. This is simply untrue. Valiant recovered a judgment in the amount of \$21,074,526.88. The testimony of Tom Williams reduced the total amount owed to Valiant by less than ½ of 1% of the total judgment amount. A reduction of this meager percentage cannot possibly render VP’s conduct in defense of this action non-frivolous. To the contrary, insisting that a case be tried to reduce the amount of interest accruing against the judgment by \$96,901.99 is itself frivolous conduct—particularly when the amount of prejudgment interest that will accrue against the principal amount owed will far exceed the amount of the “disputed” reduction.

In sum, VP is not immunized against its frivolous conduct because it misled the Court into denying Valiant’s motions for summary judgment. Moreover, even if the creation of a legitimate triable issue of fact did immunize a party from the consequences of mounting a frivolous defense, VP is not immunized because it failed to present a legitimate triable issue of fact in this case. Valiant should receive an award of all fees/costs incurred in this action against VP and NIR.

b. **NIR Did Not Establish a Legitimate, Triable Issue of Fact.**

NIR's defenses in this case were frivolous and without any basis in fact or law. Moreover, assuming, for the sake of argument, that creating a legitimate, triable issue of fact precludes a finding of frivolousness, this argument provides no support for NIR because it did not establish a legitimate triable issue of fact in this case. The Court found that Valiant's interests were senior to any interest of NIR because NIR's vendor's lien was deemed released and no longer valid prior to the filing on August 19, 2014 of Valiant's Counterclaim, Cross-Claim and Third Party Complaint For Judicial Foreclosure. Memorandum Decision & Order Granting [Valiant's] Motion For Summary Judgment Against [JV, NIR and VP] ("1st SJ Decision") filed April 14, 2015, pp. 14-15. Despite multiple motions for reconsideration, the Court never reversed this adjudication.

To be clear, Valiant is not asserting NIR should be deemed to have engaged in a frivolous defense simply because it lost at summary judgment. To the contrary, it is because the defenses raised by NIR were frivolous and without any bases in fact or law. NIR's frivolous conduct is demonstrated by the fact that NIR grounded its defense on a vendor's lien which it released on March 15, 2007—more than two years before this suit was initiated by Genesis Golf Builders, Inc. on October 13, 2009. Declaration of Jeff R. Sykes in Support of [Valiant's] [1st SJ Motion] filed January 20, 2015, Ex. 12. Until entry of the Court's October Decision, NIR continually asserted that its interest was superior to and had priority over Valiant's Mortgages. In other words, for over eight and a half (8 ½) years *after* it had voluntarily

released its vendor's lien, NIR continued assert that its vendor's lien remained valid and prior in right, title and interest to Valiant's Mortgages.

Moreover, NIR continued to assert the validity of its vender's lien *after* the lien was adjudicated in *Union Bank, N.A. v. Pend Oreille Bonner Development, LLC, et al.*, Bonner County Case No. CV 2011-135 ("*Union Bank Case*") as having no force or effect because it had been released. Judge Griffon's decision in the *Union Bank* case was issued on June 3, 2014. See Memorandum Decision and Order Re: (1) JV, LLC, North Idaho Resorts, LLC and VP, Incorporated's Motions to Reconsider; and (2) Valiant's Request For Entry of Proposed Final Judgment and Decree of Foreclosure ("1st Reconsider Order and 2nd SJ Decision") filed July 21, 2015, pp. 16-18. On September 19, 2014 – over three (3) months *after* its vendor lien was deemed invalid—NIR filed its Answer to Valiant Idaho, LLC's Counterclaim, Cross-Claim and Third-Party Complaint for Judicial Foreclosure ("NIR Answer") and asserted that: (1) NIR possessed an interest in the Idaho Club Property subject to the Valiant Mortgages; (2) denied that Valiant's Mortgages were superior to and prior in right, title and interest to the interest claimed by NIR; and (3) denied that Valiant was entitled to foreclose its Mortgages. NIR Answer at p. 5, ¶ 33, pp. 9-11.

On February 4, 2015—some eight (8) months *after* its alleged vendor's lien was adjudicated as invalid—NIR opposed Valiant's first motion for summary judgment on the basis that its vendor's lien was still valid and had priority over the Valiant Mortgages. Defendants [NIR] and [VP's] Memorandum in Opposition to [Valiant's] Motion For Summary Judgment, p. 2. Thereafter, NIR repeatedly asserted the validity and priority of its vendor's lien in multiple motions for reconsideration.

The pleadings filed by NIR demonstrate that its assertion of a valid priority interest was without foundation from the earliest stages of this lawsuit. Asserting that one has a valid priority interest because of a lien it knowingly released and that has already been adjudicated as invalid is the very definition of acting frivolously and without basis in fact or law. As such, Valiant is entitled to an award of the attorneys' fees it incurred against NIR.

Should the Court determine that NIR had valid legal arguments as to the validity of its vendor's lien when this suit was commenced on October 13, 2009 (a point that Valiant does *not* concede), this only affects an order of fees incurred by Valiant (or its predecessor-in-interest) in the Genesis Suit. NIR had no basis to continue to assert the validity of its vendor's lien after the *Union Bank* Decision was issued on June 3, 2014. Valiant's Counterclaim was filed on August 19, 2014—more than two months after the *Union Bank* decision. As such, at a minimum, Valiant should be awarded all of the fees it incurred after August 19, 2014 against NIR.

3. **NIR, VP and JV Are Jointly and Severally Liable For Valiant's Attorneys' Fees Because Each Engaged in a Frivolous Defense of This Lawsuit.**

NIR and VP assert “there is no Idaho case law that supports a Section 12-121 attorney fee award against multiple parties jointly and severally.” VP's Objection, pp. 8-9. VP and NIR are incorrect.

In *Idaho Military Historical Soc'y, Inc. v. Maslen*, the district court awarded attorneys' fees to the plaintiffs under Idaho Code § 12-121 and Rule 54(e)(1) despite the fact that the defendants had created a genuine issue of material fact for trial. 156 Idaho 624, 629 (2014). The defendants were held jointly liable for the attorneys' fee award because their defense was

deemed frivolous. *Id.* at 626. The Supreme Court affirmed this award. *Id.* at 633. Thus, Idaho Supreme Court case law supports joint liability among defendants when those defendants have been found to have jointly engaged in frivolous conduct. As such, Defendants may be held jointly and severally liable for all of the attorneys' fees Valiant incurred in the Genesis Suit and the Valiant Foreclosure.

Valiant respectfully requests an award of all attorneys' fees and costs incurred in this matter (\$726,313.50) jointly and severally against Defendants.

4. **Alternatively, The Court May Apportion the Award of Fees Among Defendants Based Upon The Amounts Attributable to Each of Them.**

Although there is legal authority to justify an award of fees jointly and severally against all Defendants, Valiant recognizes that the Court has discretion to apportion the fee award based upon the fees it believes were attributable to each of them. In the event the Court follows this methodology, this Response Memo and the Declaration of Richard L. Stacey in Support of [Valiant's] Memorandum Responses to [VP's] and [JV's] Objections and Motions to Disallow Memorandum of Costs and Attorneys' Fees ("Stacey Decl.") have allocated the amounts Valiant believes are directly attributable to each Defendant. Should the Court apportion the fees among Defendants separately, Valiant requests an award of fees against NIR in the amount of \$86,417.50, and award of fees against VP in the amount of \$214,561.25, and an award of fees against JV in the amount of \$223,012.75. Stacey Decl., ¶¶ 2-7 and Exs. A, B, C, and D thereto.

i. **Valiant Should Be Awarded Fees in the Amount of No Less Than \$214,561.25 Against VP.**

Valiant incurred fees in in the amount of \$214,561.25 that are attributable to VP. A description of the work counsel performed and the fees Valiant incurred for said work is set forth on Exhibit D to the Stacey Decl.

Some of these fees are directly attributable to VP. These fees are set forth in Subsection D-1 of Exhibit D to the Stacey Decl. and total \$39,594.50.

Certain of the fees Valiant incurred are equally attributable to VP and NIR. As this Court is aware, James, Vernon & Weeks, P.A (“Weeks Firm”) represented VP and NIR in this case. During the period from December 11, 2014 thru October 30, 2015^{8/}, 35 of 38 documents filed by the Weeks’ Firm were filed jointly on behalf of both VP and NIR. These motions include all of VP and NIR’s briefing filed in response to Valiant’s motions for summary judgment and every motion for reconsideration filed by the Weeks Firm prior to trial. As such, Valiant’s briefing generally responded to their arguments jointly as well. VP and NIR are equally responsible for the fees Valiant incurred as a consequence of their joint efforts during this period. As such, Valiant should receive an award of 50% of these fees against VP and the remaining 50% against NIR. The amounts that may be apportioned to VP are also set forth in Subsection D-3 of Exhibit D to the Stacey Decl. and total \$22,466.

After the Court’s October 30, 2015 Memorandum Decision and Order Re: Motions heard on October 23, 2015 (“3rd SJ Decision) NIR did not participate in this matter until post-trial motion practice. After the 3rd SJ Decision, only one issue was left for trial

^{8/} The Weeks Firm did not file any motions jointly on behalf of NIR and VP after October 30, 2015.

and all work Valiant performed after that date preparing for and participating in the bifurcated trial (including preparing for and taking pretrial depositions, reviewing documents and identifying exhibits, and analyzing, researching and drafting closing arguments and associated post-trial briefing, and all associated pretrial and post-trial work) was prepared to prove Valiant's claims and defend against the defenses jointly alleged by JV and VP. JV and VP worked in concert throughout this period and all of the fees Valiant incurred are equally attributable to JV and VP. As such, Valiant should receive an award of 50% of the fees incurred during this timeframe against JV and the remaining 50% against VP. The amounts that may be apportioned to VP are set forth in Subsection D-2 of Exhibit D to the Stacey Decl. and total \$96,278.75

Other of the fees incurred are equally attributable to all of the Defendants. Valiant filed numerous motions against VP, NIR and JV jointly, including its motions for summary judgment. All of the parties participated at the hearings on these motions. Moreover, client communications and strategy meetings often dealt with the claims and defenses of all parties coextensively. VP, NIR and JV are equally responsible for these fees Valiant incurred. As such, Valiant should receive an award of 33.33% of these fees against VP and the remaining 66.66% should be split equally between VP and JV. The amounts that may be apportioned to VP are set forth in Subsection D-4 of Exhibit D to the Stacey Decl. and total \$56,222.00.

- ii. **Valiant Should Be Awarded Fees in the Amount of No Less Than \$86,417.50 Against NIR.**

Valiant incurred fees in in the amount of \$86,417.50 that are attributable to NIR. A description of the work counsel performed and the fees Valiant incurred for said work is set forth on Exhibit C to the Stacey Decl.

Some of Valiant's fees are directly attributable to NIR. These fees are set forth in Subsection C-1 Exhibit C to the Stacey Decl. and total \$6,081.00.

Certain of these fees are equally attributable to NIR and VP. As explained hereinabove, the Weeks Firm jointly represented NIR and VP in this case from December 11, 2014 thru October 30, 2015^{9/}, it filed numerous pleadings on behalf of NIR and VP jointly and, *inter alia*, it argued on behalf of NIR and VP simultaneously at every hearing. NIR and VP are equally responsible for the fees Valiant incurred as a consequence of said joint representation. As such, Valiant should receive an award of 50% of these fees against NIR and the remaining 50% against VP. The amounts that may be apportioned to NIR are also set forth in Subsection C-2 of Exhibit C to the Stacey Decl. and total \$22,466.00.

Other of these fees are equally attributable to each Defendant. Valiant filed several motions against NIR, VP and JV jointly, including its motions for summary judgment. NIR, VP and JV are equally responsible for the fees Valiant incurred. As such, Valiant should receive an award of 33.33% of these fees against NIR and the remaining 66.66% should be split equally between VP and JV. The amounts that may be apportioned to NIR are set forth in Subsection C-4 of Exhibit C to the Stacey Decl. and total \$56,222.00.

Finally, some of these fees are equally attributable to NIR and JV. VP did not appear in this case until October 6, 2014. Prior to that date, certain of the work

^{9/} The Weeks Firm did not file any motions jointly on behalf of NIR and VP after October 30, 2015.

performed by Valiant should be apportioned equally between NIR and JV. Valiant should receive an award of 50% of these fees against NIR and the remaining 50% against JV. The amounts that may be apportioned to NIR are set forth in Subsection C-3 of Exhibit C to the Stacey Decl. and total \$1,648.50.

5. The Amount of Attorneys' Fees Sought by Valiant Are Reasonable.

NIR and VP assert that the amount of fees sought by Valiant are unreasonable because Valiant was assigned promissory notes and seeks recovery of fees from other cases. These claims are without merit.

Contrary to VP/NIR's argument, Valiant does not seek an award against NIR or VP for attorneys' fees and costs incurred in lawsuits other than this lawsuit (*i.e.*, the Genesis Suit and Valiant Foreclosure). Valiant is entitled to an award of all of the fees and costs that Valiant incurred in all of the lawsuits against POBD in accordance with the terms of the Valiant Mortgages. These amounts are secured by the Valiant Mortgages and are awardable pursuant to said agreements. Accordingly, Valiant seeks an award of fees incurred in all of the Idaho Club Lawsuits against POBD. VP and NIR fail to raise any valid objections as to why Valiant should not be awarded these fees against POBD or why this award should not be secured by the Valiant Mortgages.

A party seeking to disallow fees has the burden of establishing why the requested fees are unreasonable. NIR and VP merely assert that they are not jointly and severally liable for fees and that Valiant is not entitled to recover fees incurred in other lawsuits. The VP Objection does not assert that the amount of time spent on any particular task was unreasonable or that the rate of fees charged was unreasonable. As such, NIR and VP have failed to carry their burden of

establishing the unreasonableness of the fees requested and, upon determination they engaged in frivolous conduct, the Court should award Valiant the amount of fees requested.

As set forth in the Memo. Costs & Fees, legal authority exists supporting an award jointly and severally against NIR, VP and JV. Pursuant to this authority, Valiant seeks an award of all attorneys' fees/costs it incurred in this matter due to the collective frivolous conduct of NIR, VP and JV. These parties have acted in concert throughout this action to unnecessarily delay the foreclosure of the Idaho Club Property and to cause Valiant to needlessly incur litigation expense. As such, NIR, VP and JV should be jointly and severally liable for all of the fees/costs Valiant has incurred in the Genesis Suit and the Valiant Foreclosure. Valiant has incurred reasonable attorneys' fees in the amount of \$726,313.50 in these matters, which should be awarded to Valiant jointly and severally against NIR, VP and JV.

Valiant also acknowledges that other legal authority exists supporting an apportionment of the fees/costs incurred by Valiant among all Defendants. The Stacey Decl. sets forth amounts directly attributable to NIR, VP and JV separately. Valiant has incurred reasonable attorneys' fees directly attributable to: (a) NIR in the amount of \$86,417.50; and (b) VP in the amount of \$214,561.25.

B. VALIANT IS ENTITLED TO AN AWARD OF COSTS.

1. Valiant is Entitled to Costs Incurred in the Genesis Suit and the Valiant Foreclosure As A Matter of Right Against NIR and VP.

NIR and VP argue it would be inequitable for the Court to impose an award of costs as a matter of right against NIR and VP because it was POBD's interests which were being foreclosed in the foreclosure suit. This argument is without merit.

Unlike NIR and VP, POBD acknowledged its liability and stipulated to entry of Judgment on November 19, 2014. POBD did not force Valiant to, among other things, file three summary judgment motions, respond to numerous motions for reconsideration, attend numerous hearings, or prosecute this case through trial. As such, the vast the vast majority of costs incurred after November 19, 2014 were incurred because of the frivolous defenses asserted by NIR, VP and JV. As the prevailing party, Valiant submits that it is entitled to a joint and several award of costs as a matter of right as well as discretionary costs against NIR, VP and JV as rejected in the Memo. Costs & Fees. However, if the Court determines that each Defendant is only responsible for costs attributable to its own conduct, Valiant submits that a cost award should be as follows.

As the prevailing party Valiant is entitled to recover certain costs as a matter of right and submits that it is also entitled to an award of discretionary costs. Valiant submits that the costs incurred, as set forth in the Memo. Costs & Fees, prior to October 30, 2015 should be divided equally among the Defendants and further submits that the costs incurred after October 30, 2015 should be divided equally between JV and VP in light of their frivolous conduct and the unnecessary trial of this case. It is inequitable to allow NIR, VP and JV to escape the consequences of their frivolous conduct and equity demands that NIR and VP be responsible for the costs incurred by Valiant due to their frivolous defense of this action.^{10/}

2. **Valiant is Entitled to Discretionary Costs Incurred in the Genesis Suit and the Valiant Foreclosure.**

^{10/} Valiant would again note it is not seeking recovery from NIR and VP of costs incurred in suits other than the instant case. *i.e.*, the Genesis Suit and the Valiant Foreclosure. Memo. Costs & Fees. pp. 33-38. Thus, there is no need for Valiant to respond to NIR's and VP's arguments as to why they should not be responsible for the cost of a deposition in the *Union Bank Case*.

NIR and VP also claim that Valiant is not entitled to recover discretionary costs because none of the costs were “exceptional.”^{11/} This argument is without merit.

As discussed, NIR and VP’s defense of this lawsuit was frivolous. As such, all of the discretionary costs for which Valiant seeks recovery in the Valiant Foreclosure action (other than the litigation guarantee) should be deemed exceptional. It is the exceptional case in which a party acts frivolously. Therefore, once the Court finds that NIR and VP defended this case frivolously, it follows that all the costs incurred because of those frivolous defenses are exceptional and recoverable as discretionary costs. *See, e.g., Heitman v. Bear Lake W. Home Owners Ass’n Corp.*, 2007 U.S. Dist. LEXIS 86365 at *12 (D. Idaho 2007) citing *Barry v. Fowler*, 902 F.2d 770, 773 (9th Cir. 1990) (recognizing that under civil rights claims, attorneys’ fees should be awarded to a defendant only if the action was frivolous, unreasonable, or without foundation and that only “exceptional circumstances” justify a fee award in such cases).

3. **Defendants Are Jointly and Severally Liable For Attorneys’ Fees Incurred Through the Court’s Final Summary Judgment Order.**

As set forth above, Idaho Supreme Court case law supports joint liability among defendants who participate in frivolous conduct.

IV.
CONCLUSION

For the reasons set forth above, Valiant respectfully requests that VP’s Objection be **DENIED** and further requests that Valiant be awarded the full amount of attorneys’ fees and costs jointly and severally against JV, VP, and NIR. Alternatively, Valiant request that Valiant be

^{11/} NIR and VP have not asserted that any of the costs Valiant seeks to recover as discretionary costs were not necessary.

awarded attorneys' fees against VP in the amount of \$214,561.25 and against NIR in the amount of \$86,417.50.

DATED this 10th day of August 2016.

McCONNELL WAGNER SYKES & STACEY ^{PLLC}

BY:



Chad M. Nicholson
Attorneys For Valiant Idaho, LLC

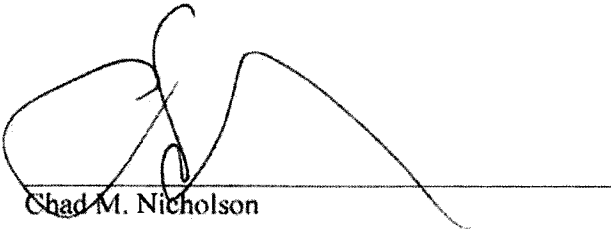
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of August 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

| | |
|---|--|
| Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i> | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail garyfinney@finneylaw.net |
| Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i> | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail sweeks@jvwlaw.net |

With two copies via United States Mail to:

Honorable Barbara A. Buchanan
Judge of the First Judicial District
Bonner County Courthouse
215 South First Avenue
Sandpoint, Idaho 83864


Chad M. Nicholson

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

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

GENESIS GOLF BUILDERS, INC.,
formerly known as
NATIONAL GOLF BUILDERS, INC.,
a Nevada corporation,

Plaintiff,

vs.

**PEND OREILLE BONNER
DEVELOPMENT, LLC,**
a Nevada limited liability company; *et al.*,

Defendants.

**AND RELATED COUNTER, CROSS
AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN.**

Case No. CV-09-1810

**VALIANT IDAHO, LLC'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SANCTIONS UNDER I.C.
§ 12-123 AND I.R.C.P. 11**

Honorable Barbara A. Buchanan

**Hearing:
August 17, 2016 – 10:30 a.m.**

COMES NOW, Valiant Idaho, LLC (“Valiant”), by and through its attorneys of record, McConnell Wagner Sykes & Stacey PLLC, and submits this Memorandum in Support of Motion for Sanctions under I.C. § 12-123 and I.R.C.P. 11 (“Sanction Motion”).

I.
INTRODUCTION

Idaho Code § 12-123 (“§ 12-123”) and Idaho Rule of Civil Procedure (“Rule” or “Rules” as applicable) 11(c)(1) permit an award of attorneys’ fees against both a party and counsel for frivolous conduct. As discussed below (and in prior briefing submitted by Valiant), JV, L.L.C. (“JV”), JV’s counsel Gary Finney (“Finney”), VP, Inc. (“VP”), North Idaho Resorts, LLC (“NIR”) and VP’s and NIR’s counsel, Susan Weeks (“Weeks”) have repeatedly engaged in frivolous conduct throughout this litigation. As such, this Court should impose an award of attorneys’ fees and costs jointly and severally against JV and Finney for their frivolous conduct and jointly and severally against VP, NIR and Weeks for their frivolous conduct.

II.
ARGUMENT

A. Attorneys’ Fees under Idaho Code § 12-123.

The decision to award attorneys’ fees under § 12-123 is a discretionary decision. *Urrutia v. Harrison*, 156 Idaho 677, 681-82 (2014).

§ 12-123(2)(a) provides, in part, that “the court may award reasonable attorney’s fees to any party to that action adversely affected by frivolous conduct.” The purpose of § 12-123 is to deter inappropriate conduct, as defined by § 12-123, through sanctions. *Urrutia v. Harrison*, 156 Idaho 677, 681 (2014). Sanctions under § 12-123 are “limited to an award of reasonable attorney fees and may be awarded against the offending party, that party’s counsel, or both.” *Merrill v. Gibson*, 142 Idaho 692, 697 (Ct. App. 2005) citing I.C. §§ 12-123(2)(c) & 12-123(2)(d).

“Conduct” is defined as “filing a civil action, asserting a claim, defense, or other position in connection with a civil action, or taking any other action in connection with a civil action.” I.C.

§ 12-123(1)(a). “Frivolous conduct” is defined as:

... conduct of a party to a civil action or of his counsel of record that satisfies either of the following:

- (i) It obviously serves merely to harass or maliciously injure another party to the civil action;
- (ii) It is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

I.C. § 12-123(1)(b). The Idaho Court of Appeals has recognized that “Idaho Code § 12-123 is written in the disjunctive, requiring *either* harassment or malicious injury *or* a lack of legal basis.” *Ackerman v. Bonneville Cnty.*, 140 Idaho 307, 314 (Ct. App. 2004) (emphasis in original).

The Idaho Court of Appeals decision in *Merrill v. Gibson*, 142 Idaho 692 (Ct. App. 2005), is instructive regarding an award under § 12-123(b)(i) based on conduct which only harassed and served to maliciously injure another party to the action. The *Merrill* decision summarized Gibson’s conduct as follows:

Further, this appeal bears every indicator of being just the latest in a long line of ***tactics bearing no purpose other than delay or harassment***. The district court’s initial judgment in favor of the Merrills, which ordered Gibson to remove himself and his personal property from the disputed real property, was entered in April 2002. Rather than complying with the judgment, Gibson took an appeal to the Idaho Supreme Court which that Court characterized as frivolous and for which the Supreme Court awarded attorney fees against Gibson. Gibson thereupon filed a petition asking the United States Supreme Court to grant certiorari on an issue that the Idaho Supreme Court had deemed frivolous. He also sought a stay of execution of the district court’s judgment pending a ruling on his petition for certiorari and, when that request was denied, repeatedly sought more time for compliance with the district court’s judgment without presenting the slightest evidence to support his counsel’s assertion that he was “earnestly engaged” in removing his personalty. From the time of the Idaho Supreme Court’s decision affirming the judgment requiring removal of Gibson’s property

from the Merrills' land, until the district court's September 16, 2004 order prohibiting Gibson's further entry on the real property, nearly seven months passed during which time Gibson did not comply with the judgment. Steps taken by Gibson that have delayed the Merrills' ability to experience "full access and peaceful and quiet enjoyment of the subject property" granted them by the July 31, 2002 judgment have culminated with the present appeal that presents no colorable basis for relief.

This appeal can be seen only as the most recent stage in a pattern of delays by Gibson and his attorney to avoid relinquishing the Merrills' real property to their unhindered possession. We conclude that Gibson and his counsel have interposed this appeal for an improper purpose, and this appeal therefore satisfies the standards for sanctions under both I.C. § 12-123 and I.A.R. 11.1. Accordingly, we impose sanctions against Gibson and his attorney jointly in the amount of reasonable attorney fees incurred by the Merrills for this appeal.

Id. at 697-698 (emphasis added).

As discussed in detail below, throughout the course of the Valiant Foreclosure¹, JV and Finney and VP, NIR, and Weeks have engaged in a pattern of delays and tactics bearing no purpose other than delay the inevitable foreclosure of the Idaho Club property or to intentionally harass Valiant. Sanctions for the conduct enumerated below should be imposed, jointly and severally, against (1) JV and Finney for their harassing conduct and attempts to maliciously injure Valiant through delay and (2) VP, NIR and Weeks for their harassing conduct and attempts to maliciously injure Valiant through delay. I.C. § 12-123(1)(b)(i).

Regarding an award of sanctions under § 12-123(b)(ii) for conduct which is unsupported by fact, law or a good faith argument for a change in the law, the Idaho Supreme Court's decision in *Urrutia v. Harrison*, 156 Idaho 677 (2014) is instructive. The trial court based award of sanction, in part, on the fact that the sanctioned parties and attorney, the appellants, had asserted

¹ As defined in Valiant's Memorandum of Fees & Costs ("Memo of Fees & Costs") filed with this Court on July 6, 2016.

that their lien had priority despite the fact that the lien, “with a priority date of 2008, could not conceivably be higher in priority than [the respondent]’s deed of trust, which was recorded in 2007.” *Urrutia*, 156 Idaho at 681. An additional basis for the sanction was that the appellants “knew the \$220,000 claimed in the Second Lien, like the First Lien, contained numerous items that did not constitute improvements to the arena property and were not lienable under the mechanic’s lien statutes.” *Id.* Other bases for the sanction were noted as defending summary judgment with arguments that had no basis in law or fact. *See id.* at 678-682. Based on these actions, the trial court imposed sanctions under § 12-123(b)(ii). *Id.* at 681.

The Idaho Supreme Court upheld the sanctions by stating that “[t]he district court acted well within its discretion in granting fees against Appellants and their attorney under Idaho Code section 12-123 and we therefore affirm the court’s judgment.” *Id.* at 682.

B. Attorneys’ Fees under Idaho Rule of Civil Procedure 11(a).

Rule 11(b) provides that:

By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, or submitting, or later advocating it, an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Upon determining that Rule 11 has been violated, ***“the court must impose an appropriate sanction*** on any attorney, law firm, or party that violated the rule or is responsible for the violation. A law firm may be held jointly responsible for a violation committed by its partner, associate, or employee.” I.R.C.P. 11(c)(1) (emphasis added). The Idaho Court of Appeals has characterized Rule 11 sanctions as “a court management tool” which should be exercised narrowly.” *Landvik v. Herbert*, 130 Idaho 54, 61, 936 P.2d 697, 704 (Ct. App. 1997) quoting *Conley v. Looney*, 117 Idaho 627, 631, 790 P.2d 920, 924 (Ct. App. 1990). As such, Rule 11 sanctions are to be awarded based on particular conduct, not “to make a ‘lump sum compensatory attorney fee award.’” *Landvik*, 130 Idaho at 61, 936 P.2d at 704 quoting *Conley*, 117 Idaho at 630, 790 P.2d at 923. Rule 11 sanctions “may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney’s fee.” I.R.C.P. 11(c)(4).

The decision to award attorneys’ fees and costs under Rule 11 is a matter reserved to the discretion of the trial court. *Sun Valley Shopping Ctr. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991). When considering a fee award under Rule 11, “the appropriate focus of the trial court should [be] whether [an attorney] ‘made a proper investigation upon reasonable inquiry.’” *Id.* at 95, 803 P.2d at 1001 at quoting *Durant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990).

C. JV and Finney engaged in frivolous conduct and should be subjected to sanctions under § 12-123 and Rule 11.

Valiant respectfully submits that the following conduct of JV and Finney was frivolous conduct under § 12-123 and/or violated Rule 11 and requests fees and costs incurred as a result of such conduct:

Valiant filed its Motion for Summary Judgment against JV on January 16, 2015 (“Valiant’s 1st SJ Motion”). Valiant’s 1st SJ Motion sought adjudication that the three mortgages assigned to Valiant (i.e., the 2007 RE Loans Mortgage, the Pensco Mortgage, and the MF08 Mortgage) (collectively the “Valiant Mortgages”) and a Redemption Deed that Valiant obtained from Bonner County were prior in right title and interest to any interest that JV claimed pursuant to its own mortgage and redemption deed. The 2007 RE Loans Mortgage was recorded on March 15, 2007. Plaintiff’s Trial Ex. 1. The Pensco Mortgage was recorded on August 6, 2008. Plaintiff’s Trial Ex. 16. The MF08 Mortgage was recorded minutes after the Pensco Mortgage on August 6, 2008. Plaintiff’s Trial Ex. 18. JV expressly subordinated to these mortgages via subordination agreements that were recorded in the Bonner County Recorder’s Office (collectively the “JV Subordination Agreements”). Plaintiff’s Trial Ex. 25. The loans that RE Loans, Pensco and MF08 made to POBD were contingent upon JV’s execution of these agreements. *Id.*

Moreover, Idaho law is clear that a redemption deed obtained from the county tax assessor’s office is incorporated into and becomes part of the underlying mortgage. *Hardy v. McGill*, 137 Idaho 280, 286 (2002). The caselaw governing this issue in the State of Idaho is clear and unambiguous as *Hardy* is directly on point with the facts of this case.

Despite Valiant’s Mortgages and Redemption Deed having clear priority over the JV mortgage and redemption deed by virtue of the JV Subordination Agreements, JV opposed Valiant’s 1st SJ Motion contending that the subordination agreements had no valid and legally binding effect. JV’s arguments were frivolous and lacked any basis in fact or law. As such, Valiant should receive an award of fees incurred against JV and Finney for having to respond and defend against these frivolous arguments.

Unfortunately, this was not the end of this issue for Valiant. After losing on summary judgment, JV filed no less than five separate motions² asking the Court to reconsider its decision on this issue. JV's motions to reconsider directed the Court to the same alleged facts and relied upon the same legal authority, if any, as cited in JV's original opposition to Valiant's 1st SJ Motion. The arguments JV made in support of these motions to reconsider were all frivolous arguments without any basis in fact or law. Although these motions were all made frivolously and without basis in fact or law, Valiant had to take each of these motions seriously and expended a tremendous amount of time and money responding to them. Valiant should receive an award of fees and costs against JV and Finney for having to respond and defend against these frivolous arguments.

After repeatedly filing motions to reconsider, JV (acting in concert with VP) convinced the Court that there was genuine issue of fact for trial. As such, the Court granted JV's motion to reconsider with respect to this single issue. As set forth in Valiant's briefing in support of its Memo of Fees & Costs, it is now clear that JV and VP manufactured and/or misled the Court into believing that this constituted a legitimate issue for trial. JV failed to submit an iota of evidence at trial to support its contention that the 2007 RE Loans Note and the Pensco Note were paid off at the MF08 Loan closing that took place on August 8, 2008. To the contrary, the evidence submitted at trial establishes that JV participated in the MF08 Loan closing, it recorded documents that would have been unnecessary and nonsensical if the RE Loans and Pensco Notes had been paid off at the MF08 Loan closing, it would not have mattered if the RE Loans and Pensco Notes had been paid off by the MF08 Loan since JV subordinated to the MF08 loan anyway (i.e., JV would have been subordinate to any amount that MF08 would have loaned to pay off the 2007 RE

² See the motions JV filed with this Court on April 28, 2015; July 7, 2015; July 30, 2015; August 18, 2015; and August 26, 2015.

Loans Note and the Pensco Note up to \$25 million), and it was mathematically impossible for the 2007 RE Loans Note and the Pensco Note to have been paid off at the MF08 Loan Closing. Additionally, JV and Finney were in possession of the escrow file from the MF08 Loan closing well in advance of trial. This escrow file unambiguously establishes that the 2007 RE Loans Note and the Pensco Note were not and could not possibly have been paid off at the MF08 Loan closing. Nonetheless, JV never conceded the existence of these documents at or before trial. The arguments that JV made to manufacture and/or mislead the Court into concluding that a question of fact existed for trial were frivolous and without any basis in fact or law. Based upon the clear lack of evidence to support JV's arguments, the only inference that may be reasonably drawn is that these arguments were made maliciously for the purpose of injuring Valiant and unnecessarily delaying the foreclosure of the Idaho Club properties. As such, Valiant is entitled to an award of all of the attorneys' fees and costs that Valiant incurred responding to these arguments.

Had JV or Finney at any time acknowledged the frivolity of their prior arguments this matter would have been disposed of on summary judgment and there would not have been any need for trial. As the Court is all too aware, this did not occur. As a direct consequence of JV's continued adherence to its frivolous arguments, Valiant incurred significant time and expense preparing for and participating in a bifurcated four-day trial. The preparatory work included but was not limited to preparing for and taking several depositions located in Oakland, California, Sandpoint, Idaho, and Coeur d' Alene, Idaho, reviewing real property records of Bonner County, analyzing and identifying trial exhibits; preparing pre-trial briefing and motions in limine; preparing witness and document outlines; and preparing written closing arguments. Valiant incurred significant time and expense preparing for and participating in the trial of this matter. All of these fees are the direct and proximate result of frivolous and malicious actions and arguments

made by JV and Finney while continuing to argue that the JV mortgage and redemption deed have priority over the Valiant Mortgages and Redemption Deed.

JV's conduct at trial was also frivolous, malicious and implemented in a manner so as to intentionally delay the proceedings and cost Valiant unnecessary expenses. The trial was supposed to be limited to a single issue of fact (i.e., were the 2007 RE Loans Note and the Pensco Note satisfied at the MF08 Loan closing). Despite this limitation, JV repeatedly attempted to expand the scope of the trial to unrelated issues that JV had already lost on summary judgment. Moreover, Finney repeatedly ignored admonishments from the Court to refrain from this improper behavior. Finney's actions caused the two-day trial to be expanded into a bifurcated four-day trial that was completed nearly two months later than it had been scheduled. Finney's actions were calculated to cause Valiant to incur additional unnecessary expenses and to delay the foreclosure of the Idaho Club properties. Valiant should receive an award of the fees it incurred as sanctions against JV and Finney because of Finney's improper and unethical conduct at trial.

JV's frivolous arguments and actions will likely continue well beyond the hearing on this motion for sanctions. Since the completion of the trial, JV has continued to assert that the JV Subordination Agreements have no legally binding effect and that the JV mortgage and redemption deed have priority over the Valiant Mortgages. JV even had the gall to file a proposed judgment with the Court that completely ignores the Court's Post-Trial Decision and Order. This proposed judgment actually contends that the Court adjudicated the JV's mortgage and redemption deed to have priority over the Valiant Mortgages. Moreover, JV has filed its sixth motion for reconsideration asking the Court to again reconsider the frivolous arguments that JV has made and the Court has rejected pursuant to its five prior motions to reconsider. These arguments are still frivolous and without any basis in fact or law. Valiant continues to incur additional legal expenses

and JV's and Finney's conduct continues to unnecessarily delay the foreclosure of the Idaho Club properties. Valiant should be awarded all fees and costs it incurs as a consequence of JV's and Finney's frivolous pleadings.

As set forth in the exhibits to the Declaration of Richard L. Stacey in Support of Valiant's Motion for Sanctions Under I.C. §12-123 and I.R.C.P. 11 ("Stacey Decl.") sets forth the attorneys' fees Valiant incurred in this matter as a direct and proximate result of JV's and Finney's intentionally frivolous, malicious and injurious conduct in this case. Valiant seeks and award of fees it incurred in this case in the amount of \$215,110.25 jointly and severally against JV and Finney as sanctions for their conduct in this case.

D. VP, NIR and Weeks engaged in frivolous conduct and should be subjected to sanctions under § 12-123 and Rule 11.

Valiant respectfully submits that the following conduct by VP, NIR and Weeks was frivolous conduct under § 12-123 and/or violated Rule 11 and requests fees and costs incurred as a result of such conduct.

VP, NIR and Weeks frivolous conduct also began with their response to Valiant's 1st SJ Motion. VP opposed said Motion contending that quitclaim deeds transferring four lots to VP in 2012 were prior in right, title and interest to the Valiant Mortgages that were recorded in 2007 and 2008. Plaintiff's Trial Exs. 1, 16 & 18. NIR also objected to said Valiant's 1st SJ Motion contending that a vendor's lien that it released on March 15, 2007 has priority over the Valiant Mortgages. Like the arguments raised by JV, these contentions are utterly without any basis in fact or law and were rejected by the Court. Valiant should receive an award of the fees it incurred responding to VP's, NIR's and Weeks' frivolous arguments.

Also like JV, the frivolous conduct of VP, NIR and Weeks did not end there. Said parties and counsel filed two motions asking the Court to reconsider its decision granting Valiant's 1st SJ Motion. VP's, NIR's and Weeks' motions to reconsider directed the Court to the same alleged facts and relied upon the same inapplicable legal authority, if any, as cited in VP's and NIR's original oppositions to Valiant's 1st SJ Motion. The arguments VP and NIR made in support of these motions to reconsider were frivolous and without any basis in fact or law. Although these motions were all made frivolously, Valiant had to take each of these motions seriously and expended a tremendous amount of time and money responding to them. Valiant should receive an award of fees and costs against VP, NIR and Weeks for having to respond and defend against these frivolous arguments.

After no less than seven motions to reconsider were collectively filed by JV, NIR, and VP, the Court determined that there remained a single issue of fact for trial. This decision was granted in large part due to Finney's and Weeks' dogged insistence that a settlement statement from the MF08 Loan closing established that the 2007 RE Loans Note and the Pensco Note were paid off at the MF08 Loan closing. As set forth in Valiant's briefing in support of its Memo of Fees & Costs, it is now clear that JV and VP manufactured and/or misled the Court into believing that this constituted a legitimate issue for trial. VP failed to submit an iota of evidence at trial to support its contention that the 2007 RE Loans Note and the Pensco Note were paid off at the MF08 Loan closing. To the contrary, the evidence submitted at trial established that VP and Weeks had known since at least October 13, 2016 that it was mathematically impossible for these Notes to have been paid off by the MF08 Loan closing. VP and Weeks subpoenaed and obtained the escrow file from First American Title on or before that date, which conclusively establish this fact. Nonetheless, VP and Weeks intentionally misrepresented these known facts to the Court and opposing counsel

during its oral argument in opposition to Valiant's Third Motion for Summary Judgment. Moreover, VP and Weeks have never conceded the existence or obvious effect of these documents at any time before, during or after trial. The arguments that VP made to manufacture and/or mislead the Court into concluding that a question of fact existed for trial were frivolous and without any basis in fact or law. Based upon VP's and Weeks material misrepresentations and the clear lack of evidence to support their arguments, the only inference that may be reasonably drawn is that these arguments were made maliciously for the purpose of injuring Valiant and unnecessarily delaying the foreclosure of the Idaho Club properties. As such, Valiant is entitled to an award of all of the attorneys' fees and costs that Valiant incurred preparing for trial and responding to these arguments.

Had VP at any time acknowledged the frivolity of its prior arguments or the clear effect of the escrow file upon the issue remaining for trial, this matter would have been disposed of on summary judgment and there would not have been any need for trial. As the Court is all too aware, this did not occur. As a direct consequence of VP's continued adherence to its frivolous arguments, Valiant incurred significant time and expense preparing for and participating in a bifurcated four-day trial. The preparatory work included but was not limited to preparing for and taking several depositions located in Oakland, California, Sandpoint, Idaho, and Coeur d' Alene, Idaho, reviewing real property records of Bonner County, analyzing and identifying trial exhibits; preparing pre-trial briefing and motions in limine; preparing witness and document outlines; and preparing written closing arguments. Valiant incurred significant time and expense preparing for and participating in the trial of this matter. All of these fees are the direct and proximate result of frivolous and malicious actions, misrepresentations and arguments made by VP and while continuing to assert that VP's quitclaim deeds have priority over the Valiant Mortgage.

VP's conduct at trial was also frivolous, malicious and implemented in a manner so as to intentionally delay the proceedings and cost Valiant unnecessary expenses. VP repeatedly attempted to introduce evidence that had not been disclosed prior to trial that ultimately proved to be of no relevance to the singular issue of fact that was being tried. Despite the limited scope of the trial, VP repeatedly attempted to expand this scope to unrelated issues that VP had already lost on summary judgment. Moreover, Weeks repeatedly cross-examined witness concerning tangential and irrelevant matters for exorbitant periods of time.³ Weeks' actions were calculated to cause Valiant to incur additional unnecessary expenses and to delay the trial, which would also have the effect of delaying the inevitable foreclosure of the Idaho Club properties. Valiant should receive an award of the fees it incurred as sanctions against VP and Weeks because of this improper and unethical conduct.

VP's frivolous arguments and actions have continued since the trial of this matter was concluded. VP has filed motions seeking: 1) to alter or amend the order of sale to better reflect VP's opinion of the order of sale that would be most equitable to JV; and 2) a new trial based upon VP's opinion that the evidence does not support the Court's determination that JV has a first priority lien against Parcel 121. VP has no standing to make these arguments. VP has absolutely "no dog in the fight" as to what order of sale would be most equitable to JV, or whether the evidence submitted at trial supports a determination that JV has a first priority lien against property that VP does not assert any interest in. With respect to the order of sale, JV did not file any objection to the proposed order of sale nor any motion to reconsider arguing that the order

³ For example, Valiant's direct examination of Barney Ng, including testimony laying the foundation concerning the Idaho Club and all of the loans which form the subject of this matter, lasted less than four hours. VP's cross-examination of Mr. Ng lasted nearly six hours.

approved by the Court is any way inequitable to JV. With respect to Parcel 121, VP has not asserted any claim of right, title or interest in or to this parcel. VP's recent motions are nothing more than new attempts to maliciously injure Valiant and unnecessarily delay the foreclosure of the Idaho Club properties. Valiant should be awarded all fees and costs it incurs as a consequence these frivolous pleadings.

The exhibits to the Stacey Decl. sets forth the attorneys' fees Valiant incurred in this matter as a direct and proximate result of NIR's, VP's and Weeks' intentionally frivolous, malicious and injurious conduct in this case. Valiant seeks and award of fees it incurred in this case in the amount of \$145,429.83 jointly and severally against NIR, VP and Weeks as sanctions for their conduct in this case. Likewise, as a direct and proximate result of VP's and Weeks' intentionally frivolous, malicious and injurious conduct in this case Valiant incurred attorneys' fees and costs as set forth in the exhibits to the Stacey Decl. Valiant seeks and award of fees it incurred in this case in the amount of \$115,793.25 jointly and severally against VP and Weeks as sanctions for their conduct in this case.

III. **CONCLUSION**

Valiant and its counsel recognize that an award of attorneys' fees and costs under § 12-123 and Rule 11(a) should be made only in egregious cases and neither Valiant nor its counsel take this filing of the present motion lightly. However, this is not a case in which a party or attorney filed one pleading or took a single act that could be deemed frivolous. On the contrary, throughout the course of the Valiant Foreclosure, JV, Finney, VP, NIR and Weeks have repeatedly and consistently engaged in conduct the only purpose of which was to harass and maliciously injure Valiant and to unnecessarily delay the foreclosure of the Idaho Club properties. During this entire

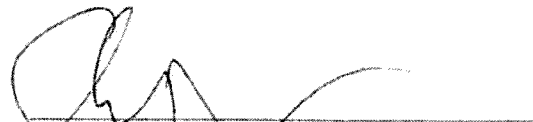
litigation JV, Finney, VP, NIR and Weeks have advanced arguments which are not supported by fact and, more often than not, JV, Finney, VP, NIR and Weeks knew of facts that directly refuted the arguments being made. These arguments were not supported by existing law nor supported by a good faith argument for an extension, modification or reversal of existing law.

In short, the conduct engaged in by JV, Finney, VP, NIR and Weeks is egregious conduct which justifies imposition of sanctions under both § 12-123 and Rule 11(a). For these reasons, and the reasons set forth above, Valiant respectfully requests that its Motion for Sanctions under I.C. § 12-123 and I.R.C.P. 11(a) be GRANTED.

DATED this 10th day of August 2016.

McCONNELL WAGNER SYKES & STACEY ^{PLLC}

BY:



Chad M. Nicholson
Attorneys For Valiant Idaho, LLC

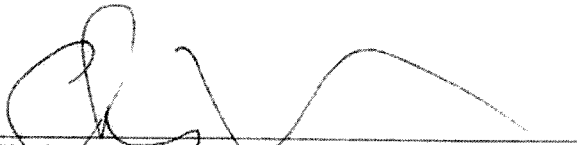
CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the 10th day of August 2016, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

| | |
|---|--|
| Gary A. Finney, Esq. Finney Finney & Finney, P.A. 120 East Lake Street, Suite 317 Sandpoint, Idaho 83864 Telephone: 208.263.7712 Facsimile: 208.263.8211 <i>Counsel For J.V., LLC</i> | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail garyfinney@finneylaw.net |
| Susan P. Weeks, Esq. James, Vernon & Weeks, PA 1626 Lincoln Way Coeur d'Alene, Idaho 83814 Telephone: 208.667.0683 Facsimile: 208.664.1684 <i>Counsel For VP Incorporated/North Idaho Resorts</i> | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Electronic Mail sweeks@jvwlaw.net |

With two copies via United States Mail to:

Honorable Barbara A. Buchanan
Judge of the First Judicial District
Bonner County Courthouse
215 South First Avenue
Sandpoint, Idaho 83864



Chad M. Nicholson

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STATE OF IDAHO
County of Bonner
FILED 8-15-16
AT 4:00 O'CLOCK P M
CLERK DISTRICT COURT
DEPUTY

Attorneys for Defendants North Idaho Resorts, LLC and VP, Incorporated

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

GENESIS GOLF BUILDERS, INC., formerly
known as NATIONAL GOLF BUILDERS,
INC., a Nevada corporation,

Plaintiff,

vs.

PEND OREILLE BONNER
DEVELOPMENT, LLC, a Nevada limited
liability company; et al.,

Defendants.

Case No. CV-2009-1810

REPLY MEMORANDUM TO VALIANT'S
OPPOSITION TO MOTION FOR NEW
TRIAL

AND RELATED COUNTER, CROSS
AND THIRD PARTY ACTIONS
PREVIOUSLY FILED HEREIN

COMES NOW VP, Inc. ("VP"), by and through its attorneys of record, James, Vernon &
Weeks, P.A., and submits the following memorandum in reply to Valiant's opposition to VP's
motion for new trial.

REPLY MEMORANDUM TO VALIANT'S OPPOSITION TO MOTION FOR NEW TRIAL: 1

ARGUMENT

The Idaho Rules of Civil Procedure allow the court to grant a new trial on all or some of the issues for several enumerated reasons. IRCP 59. Those reasons have been identified to the Court and will be reiterated here.

1. The Evidence and Testimony Presented At Trial Regarding the Diesel Leak Was a Surprise and Prejudicial to VP

Valiant's evidence and testimony at trial regarding the diesel leak was prejudicial to VP because it was not properly and timely disclosed, denying VP the opportunity to investigate and respond. The Idaho Rules of Civil Procedure allow the court to grant a new trial based on "accident or surprise, which ordinary prudence could not have guarded against." IRCP 59(a)(1)(D). VP has moved the Court for a new trial because of the surprise evidence and testimony Valiant presented in the second half of the bifurcated trial.

Valiant admits that its exhibits supporting its claim to expenses to clean a diesel spill were only provided **one and two days** before the second half of the bifurcated trial resumed. Dec. Jeff Sykes ¶¶ 2-3 (August 10, 2016). Yet somehow Valiant argues to this Court that this disclosure, literally on the eve of trial was not a "surprise." The rules of civil procedure do not define surprise, but it is a common term and easily understood. Surprise is often determined by context. This was the context of the parties returning to the second half of trial with the Court already determining the matter would be handled as an evidentiary hearing on a very narrow and limited issue.

Valiant's Cross Claim/Third Party Complaint never requested damages for maintaining or protecting the Idaho Club property. Discovery provided by Valiant never mentioned any entitlement or claim to damages to maintain or preserve the Idaho Club property. The Court's pretrial order required all trial exhibits to be disclosed at least fourteen (14) days before trial.

That same pretrial order required discovery to be finished and completely supplemented sixty (60) days before trial. On October 30, 2015, this Court entered an Order which ordered “[t]he only issue remaining for the court trial is whether the 2007 RE Loans Note (Loan No. P0099) and the Pensco Note (Loan No. P0106) have been satisfied.” On December 29, 2015, this Court entered an order granting Valiant’s motion precluding Defendants NIR, VP and VJ, LLC from presenting evidence at trial on any issue other than whether the 2007 R.E. Loans note and/or the Pensco Note had been satisfied.

With that context in mind the Court must determine whether disclosure of three new exhibits (Trial exhibits 110-112) and testimony regarding the same one and two days before the commencement of the second half of trial constitutes a “surprise.” The Court must also determine whether the subject of these exhibits and corresponding testimony alleged costs of clean-up, which would have been a surprise given the strict limitation the Court placed on the remaining issue for trial. Ordinary prudence could not have guarded against this surprise. The Court must determine that this constitutes a surprise. The only remaining question for the Court is whether this surprise was prejudicial to VP.

Prejudice is defined as “damage or detriment to one’s legal rights or claims.” *Black’s Law Dictionary* 1299 (Bryan A. Gardner ed., 9th ed., West 2009). VP had a right to fully participate at trial and protect its property interests in the property being foreclosed by Valiant. That right was damaged and denied in part. Trial Exhibits 110-112 were not provided to VP with any explanation of what they were and how they were going to be used at trial. Dec. Sykes ¶¶ 2-3, Exs. 1-2. VP was not provided adequate time for discovery or investigation of these exhibits. As mentioned above, the discovery cut off in the case expired months before. Yet Valiant’s opposition implies that VP neglected to take deposition or propound discovery on this

surprise issue. *Memo in Opposition to Motion for New Trial*, 6. Because VP was not able to engage in discovery or investigation it was unable to effectively cross-examine Mr. Haberman with respect to his testimony of this alleged spill and its clean-up costs; VP was never provided any meaningful notice of the existence of this issue and claim. This is the definition of "trial by ambush." VP did all it could when it objected to these exhibits and testimony, but the Court overruled the objection.

The Court in its discretion must determine that it was prejudicial to allow evidence and testimony that was undisclosed until the eve of trial. Valiant claims that VP has failed to provide the Court with any evidence that a new trial on the issue would change the result, but that is exactly the point. VP has not been provided the opportunity for the discovery and investigation that would yield that result. VP has represented through its counsel that it has performed preliminary investigation, done without the benefit of any discovery, which indicates the spill was not upon a lot which is covered by any of the mortgages herein. It was prejudicial for the Court to allow Valiant's late disclosed exhibits and testimony, and exhibits and testimony not related to the single issue remaining at trial, without allowing VP adequate time to investigate and prepare for that evidence.

What is even more prejudicial to VP is that the introduction of this evidence and testimony was in direct violation of this Court's multiple emphatic pronouncements that the sole issue at trial (or at the evidentiary hearing as the Court repeatedly termed it) was whether or not the 2007 RE Loans Note (Loan No. P0099) and the Pensco Note (Loan No. P0106) have been satisfied. Valiant's alleged diesel lead does not fall within that limited issue. Moreover, VP had no opportunity to prepare to address that issue. That was prejudicial to VP.

A clear example of that prejudice was graciously included in Valiant's Memorandum in Opposition. Valiant contends "The **uncontroverted testimony of Mr. Haberman** was that the fuel spill impacted the Idaho Club Property and that Valiant was required to incur significant expenses to remediate the fuel spill and to protect the Idaho Club Property. *Memo in Opposition to Motion for New Trial, 5* (emphasis added). VP was not provided meaningful notice of the alleged leak, the location of the leak, or the cost of clean-up for the leak before trial. Therefore, VP had no ability to rebut or refute the testimony of Mr. Haberman presented at trial. That is by definition prejudicial to VP.

2. It was an Irregularity for the Court to Allow Evidence and Testimony Outside of the Scope of the Trial

On October 30, 2015, this Court entered an Order which ordered "[t]he only issue remaining for the court trial is whether the 2007 RE Loans Note (Loan No. P0099) and the Pensco Note (Loan No. P0106) have been satisfied." For the Court to then ignore that scope and allow Valiant's evidence and testimony regarding an alleged fuel spill **during trial** was an irregularity. What is expected by the parties at trial is that the Court will abide by and enforce its prior orders regarding the scope and conduct of trial. That did not occur. VP objected to the introduction of that evidence and testimony and the Court overruled the objections. The Court's order limiting the scope of the trial was not worded as permissive, but was mandatory for the parties. The Court's failure to abide by that same order, overruling VP's objections was an abuse of discretion. That abuse of discretion resulted in depriving VP from participating in a fair trial.

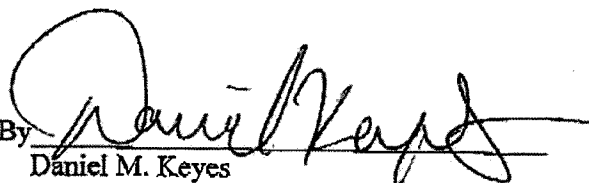
CONCLUSION

For the reasons stated above, VP respectfully requests the Court grant its motion for a

new trial to allow a fair and impartial presentation of evidence regarding the alleged diesel spill.

DATED this 15th day of August, 2016.

JAMES, VERNON & WEEKS, P.A.

By 
Daniel M. Keyes

CERTIFICATE OF SERVICE

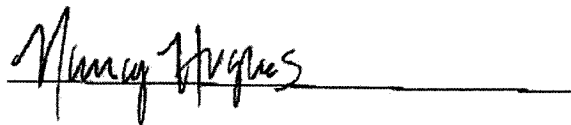
I hereby certify that a true and correct copy of the foregoing was served on the following persons in the manner indicated this 15 day of August, 2016:

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Richard Stacey
Jeff Sykes
McConnell Wagner Sykes & Stacey, PLLC
827 E. Park Blvd., Ste. 201
Boise, ID 83712



2016 AUG 16 AM 9:04

CLERK DISTRICT COURT

SR
DEPUTY

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

**GENESIS GOLF BUILDERS, INC., formerly)
known as NATIONAL GOLF BUILDERS,) CASE NO. CV-2009-0001810
INC., a Nevada corporation,)
Plaintiff,) MEMORANDUM DECISION AND
v.) ORDER DENYING JV, LLC'S AND
PEND OREILLE BONNER DEVELOPMENT,) VP, INCORPORATED'S MOTIONS
LLC, a Nevada limited liability company, *et al.*,) TO ALTER, AMEND AND
Defendants.) RECONSIDER

AND RELATED COUNTER, CROSS AND)
THIRD PARTY ACTIONS PREVIOUSLY)
FILED HEREIN)

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I. RELEVANT PROCEDURAL HISTORY

1. On August 2, 2016, JV, L.L.C. filed a "Motion to Alter, Amend and Reconsider re: 1. Memorandum Decision and Order 2. Judgment 3. Decree of Foreclosure 4. Order of Sale, and JV. L.L.C.'s Memorandum in Support and Request for Hearing." (hereafter, "JV's Motion to Alter and Amend").
2. On August 3, 2016, VP, Inc. filed a "Motion to Alter, Amend and Reconsider the Decree of Foreclosure and Judgment" (hereafter, "VP's Motion to Alter and Amend").
3. The Court denied JV and VP's requests for oral arguments, and instructed the parties to

file written memoranda in opposition, if they wish, within seven (7) days.

4. On August 10, 2016, Valiant Idaho, LLC (hereafter, "Valiant") filed a "Memorandum in Opposition to JV, L.L.C.'s Motion to Alter, Amend and Reconsider re: (1) Memorandum Decision and Order; (2) Judgment; (3) Decree of Foreclosure; and (4) Order of Sale."
5. On August 10, 2016, Valiant filed a "Memorandum in Opposition to VP, Inc.'s Motion to Alter, Amend and Reconsider the Decree of Foreclosure and Judgment."

WHEREFORE, upon consideration of the parties' written arguments in the submissions set forth above, the "Memorandum Decision and Order re: court trial held on January 26 and 29 and March 16 and 17, 2016," entered May 27, 2016 (hereafter, "Trial Decision"), and the evidence presented at trial, the Court issues the following Memorandum Decision and Order.

II. APPLICABLE RULES AND STANDARDS OF REVIEW

As authority for its motion, VP cited to Idaho Rule of Civil Procedure 11.2(b)(1) and 59(e), *VP's Motion to Alter and Amend*, at 1; and JV cited to Rules 59(e), 11(a)(2)(B), and 53(b), *JV's Motion to Alter and Amend*, at 2. [NOTE: Rule 11(a)(2)(b) has been amended to Rule 11.2(b); and Rule 53 deals with the appointment of special masters and is not applicable here].

A. Standard for Reconsideration

Idaho Rule of Civil Procedure 11.2(b) [formerly 11(a)(2)(B)] provides:

(b) Motion for Reconsideration.

(1) *In General.* A motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to or within 14 days after the entry of a final judgment.

(2) *Certain Orders Not Subject to Reconsideration.* No motion to reconsider an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b) may be made.

Van v. Portneuf Medical Center, 147 Idaho 552, 212 P.3d 982 (2009), provides:

A decision of whether to grant or deny a motion for reconsideration made pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B) is left to the sound

discretion of the trial court. *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust*, 145 Idaho 208, 212, 177 P.3d 955, 959 (2008).

Id. at 560, 212 P.3d at 990. (Emphasis supplied).

B. Standard to Alter and Amend

Idaho Rule of Civil Procedure 59(e) provides:

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment must be filed and served no later than 14 days after entry of the judgment.

Straub v. Smith, 145 Idaho 65, 175 P.3d 754 (2007), provides:

The Court reviews an order denying a motion to alter or amend judgment for abuse of discretion. *Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 707, 979 P.2d 107, 109 (1999). **Pursuant to I.R.C.P. 59(e), a district court can correct legal and factual errors occurring in proceedings before it.** *Id.*

Id. at 71, 175 P.3d at 760. (Emphasis supplied).

III. DISCUSSION

A. JV's Motion to Alter, Amend and Reconsider the Memorandum Decision and Order, Judgment, Decree of Foreclosure and Order of Sale¹ is denied.

With respect to each issue raised by JV in its Motion to Alter and Amend, the Court makes the following determinations:

1. Compound Interest

On January 29, 2016, on direct examination by Mr. Sykes, William Haberman testified that he had, to the best of his ability, calculated the remaining principal balance and the interest accrued, including late fees, on the RE Loans Note, Pensco Note and MF08 Note (collectively, "Notes"). To calculate interest, he testified that he had used the note rate of 12% and a default

¹ A hearing on Valiant's Motion for an Order of Sale of Real Property was held on July 6, 2016. Thereafter, the Judgment and the Decree of Foreclosure, entered June 22, 2016, were vacated. On July 14, 2016, an Order re: Order

rate of 17% (also, in the Notes), and that interest and late fees accrued each month and were added back to the principal, if not paid (also, pursuant to the Notes). Over objections by VP and JV, the Court admitted Plaintiff's Exhibits 96, 97 and 98, as illustrative of his testimony as to what he believed to be the total amounts owing under the RE Loans, Pensco and MF08 Notes, respectively. JV objected on the grounds, *inter alia*, that under JV's reading of the Notes, when the loan goes into default, the interest rate increases to 17%, but that it is simple interest each month, and that there is no authority in the Notes for compounding interest every month.

The Court has again reviewed the Notes, namely, Plaintiff's Exhibit No. 2, *Loan No. P0099 Note Secured by Mortgage*; Plaintiff's Exhibit No. 15, *Loan No. P0106 Note Secured by Mortgage*; and Plaintiff's Exhibit No. 17, *Loan No. P0107 All-Inclusive Note Secured by Mortgage*. The Court now makes the following findings:

- i. Each Note provides for a twelve (12) percent interest rate. Plaintiff's Ex. 2, p. 1; Ex. 15, p. 1; Ex. 17, p. 1.
- ii. Each Note provides for default interest rate of seventeen (17) percent. Plaintiff's Ex. 2, pp. 3-4; Ex. 15, p. 4; Ex. 17, p. 6.
- iii. Each Note also provides for the compounding of interest, as follows:

COMPOUNDING: Any interest or other charge which becomes due under this Note or the deed of trust, mortgage, or security agreement securing this Note which remains due for more than one month shall accrue interest as of the date the interest or other charge was otherwise due at the same rate and upon the same terms as the principal under this Note.

Plaintiff's Ex. 2, p. 3; Ex. 15, p. 3; Ex. 17, p. 6.

These "interest" provisions in the Notes are consistent with Mr. Haberman's testimony as to how he calculated the amounts owed under the RE Loans, Pensco and MF08 Notes, and with

of Sale of Real Property was entered. In accordance with that Order, Valiant included in the Decree of Foreclosure, entered July 20, 2016, the order of sale of the real property. Thus, no separate Order of Sale will be entered.

Plaintiff's Exhibits 96, 97 and 98, which were admitted as illustrative of his testimony.

The compounding provision in the Notes is plain and unambiguous, and was agreed to by Pend Oreille Bonner Development, LLC (hereafter, "POBD"), as mortgagor of the Idaho Club Property, and by RE Loans, Pensco and MF08, respectively, as mortgagee. Valiant, as the assignee of the three Notes, and mortgagee, is entitled to the benefit of the bargain made by the contracting parties.

Charles Reeves, the President of POBD, testified at trial on direct and cross-examination. No testimony was elicited from him by JV or VP showing that the compounding provision was invalid, and this Court shall not overturn a bargained-for contractual provision absent such a showing. Lastly, JV asserts that simple interest was used to determine the amount owed by POBD to JV. To this, the Court merely points out that there was no evidence admitted at trial showing that JV and POBD had bargained for the compounding of unpaid interest.

2. EaglePointe (or Shea) Lots

In its motion, JV argues that the three Shea seller/carryback notes/deeds of trust paid off the RE Loans Note in full. With regard to these three EaglePointe lots (referred to as Shea lots in JV's Motion to Alter and Amend), this Court ruled in its Trial Decision, as follows:

(d) Mr. Reeves Testimony re: Three EaglePointe Construction Lots

Mr. Reeves testified that three lots were purchased from POBD by EaglePointe Construction & Mgmt, Inc. ("EaglePointe"). The three paydowns from these lot sales are shown on the Final RE Invoice under 08/23/07. *Plaintiff's Ex. 65A*, p. REEVES001113. These paydowns correspond to the disbursement entries titled "Pay on Loan #P0099 to R.E. loans, LLC Bar K, Inc." on the Seller's Settlement Statements. *Plaintiff's Ex. 114* and *Ex. 115*. For each lot, EaglePointe paid a portion of the sales price in cash, and issued a carryback note to POBD for the remaining amount. POBD assigned the three notes to RE Loans. The payments on those notes (from EaglePointe to POBD) are shown as paydowns on the Final RE Invoice. Specifically, there were four payments made on those notes

(identified as P0102, P0103, P0104). *Plaintiff's Ex. 65A*, p. REEVES001134. Reeves testified that no other payments were made.

Trial Decision, at 17-18.

This Court further ruled that:

Sandpoint Title wired a payment to Wells Fargo in the amount of \$96,901.99 ("Sandpoint Title Payment") from the sale by EaglePointe of one of the lots it had purchased from POBD. Mr. Williams testified he does not know whether his office ever advised POBD or RE Loans of this payment. Nonetheless, the amount owed pursuant to the 2007 RE Loans Note should be reduced by \$96,901.99.

Trail Decision, at p. 25

The evidence at trial showed that the three payments made on the three carryback notes were used to pay down the RE Loans Note, and that no other payments were made. Additionally, this Court reduced the amount owed under the RE Loans Note by \$96,901.99, which was the amount paid to Wells Fargo from the sale by EaglePointe of one of the lots. There was absolutely no evidence presented at trial that, as JV claims, the three carryback notes paid the RE Loans Note in full. Valiant met its burden at trial of proving that the RE Loans Note had not been satisfied by the payments made on the carryback notes, or by anything else.

3. The Redemption Deeds

JV has, and continues to argue that "Valiant's redemption of RE's interest is invalid." *JV's Motion to Alter and Amend*, at 8. JV argues that "RE has no right of redemption because the debt to RE by POBD was fully paid" *Id.* However, this Court has previously held that Valiant's Redemption Deed has priority over JV, NIR and VP. Specifically, this Court held that:

... Valiant is entitled to include the amount paid to Bonner County to redeem the property with the amount due under the 2007 RE Loans Note and that amount is entitled to the priority date of the 2007 RE Loans Mortgage (i.e., March 15, 2007). As such, the amount paid by Valiant shall be deemed senior to any interest of JV, NIR and VP.

Memorandum Decision & Order Granting Valiant Idaho, LLC's Motion for Summary Judgment Against JV, LLC, North Idaho Resorts, LLC, and VP, Incorporated (filed April 14, 2015), at 16.

Subsequently, on JV's and VP's motions for reconsideration, this Court upheld the priority of Valiant's Redemption Deed. *Memorandum Decision and Order re: 1) JV, LLC, North Idaho Resorts. [sic] LLC, and VP, Incorporated's Motions to Reconsider 2) Valiant's Request for Entry of proposed Final Judgment and Decree of Foreclosure and Sale* (filed July 21, 2015), at 19-21.

Accordingly, the issue of the priority of Valiant's Redemption Deed has been fully and finally determined and shall not be relitigated here. The Court upholds its previous ruling.

4. JV's subordination to 2007 RE Loans Mortgage

JV argues that "JV's subordination to RE's 2007 mortgage was fully paid and JV is not subordinate to the 2007 mortgage to RE." *JV's Motion to Alter and Amend*, at 9. However, this Court has previously held that Valiant's right, title and interest in the Idaho Club Property are senior to any interest claimed by JV, NIR and VP. Specifically, this Court held that:

JV recorded the JV Mortgage against the Idaho Club Property on October 24, 1995, as Instrument No. 474746. However, on March 15, 2007 and August 6, 2008, JV executed and recorded second and third subordination agreements, which subordinated the JV Mortgage to the 2007 RE Loans Mortgage, Pensco Mortgage, and MF08 Mortgage.

Thus, it is undisputed that any rights retained by JV in the Idaho Club Property pursuant to the JV Mortgage are junior in right, title and interest to Valiant's interest in the Idaho Club Property.

Memorandum Decision & Order Granting Valiant Idaho, LLC's Motion for Summary Judgment Against JV, LLC, North Idaho Resorts, LLC, and VP, Incorporated (filed April 14, 2015), at 13.

Subsequently, on JV's and VP's motions for reconsideration, this Court upheld the priority of Valiant's liens over any interest of JV. *Memorandum Decision and Order re: 1) JV, LLC, North Idaho Resorts. [sic] LLC, and VP, Incorporated's Motions to Reconsider 2) Valiant's Request for Entry of proposed Final Judgment and Decree of Foreclosure and Sale*, (filed July 21, 2015), at 21-22.

Accordingly, the issue of JV's subordination to the RE Loans, Pensco and MF08 Mortgages (hereafter, "Valiant Mortgages") has been fully and finally determined and shall not be relitigated here. The Court upholds its previous ruling.

5. POBD's Money in Deposit Account

JV argues that "POBD's money in the Deposit Account was unaccounted for by RE, Pensco, MF08 and Mr. Eng [sic]." *JV's Motion to Alter and Amend*, at 12. According to JV, "[t]he money in the Deposit Account would have paid off any amount owed to RE, Pensco and MF08. They are 'paid'." *Id.* However, absolutely no evidence was presented at trial which supports this argument by JV. The argument lacks merit.

6. MF08's All-Inclusive Mortgage

JV argues that "Valiant and the Court never offered any explanation of the all-inclusive 2008 MF08 mortgage. JV explained it fully. Mr. Eng [sic] admitted on the stand that the MF08 Loan was intended to, and agreed to fund and pay-off both RE and Pensco." *JV's Motion to Alter and Amend*, at 12. In considering these arguments, the Court listened again to the audio recording of Mr. Ng's cross-examination by Mr. Finney. The Court also reread the transcript of Mr. Ng's testimony on direct and cross-examination.²

The Court has attached as Exhibit A to this decision, a draft transcript of the portion of Mr. Finney's cross-examination of Barney Ng dealing with the all-inclusive mortgage. The underlined portions of Exhibit A show that Mr. Ng never admitted, as JV claims, "that the MF08 Loan was intended to, and agreed to fund and pay-off both RE and Pensco, *id.*" Rather, Mr. Ng repeatedly testified that there were insufficient funds at the MF08 closing to pay off the RE

² After the trial, the Court had its court reporter prepare a draft transcript of Barney Ng's entire testimony.

Loans and Pensco Notes, and that the all-inclusive note includes the existing debt without paying it off.

In its Trial Decision, this Court ruled that:

Based on the ... testimony of Barney Ng, Casey Linscott, Charles Reeves, and William Haberman, which the Court finds credible and uncontroverted; and more importantly, based upon the documentary evidence consisting of the P0099, P0106 and P0107 Loan Documents, the closing documents for Loan P0107, and the various documents admitted into evidence and described above, **this Court finds that the 2007 RE Loans Note (Loan No. P0099) and the Pensco Note (Loan No. P0106) were not satisfied at the closing of the MF08 Note (Loan No. P0107), or any time thereafter.** The Court further finds that Valiant is entitled to the unpaid principal balance and interest that is owed on all three Notes.

Trial Decision, at 23-24. (Emphasis supplied). The Court upholds this ruling.

7. Insurance Proceeds

In its motion, JV argues that:

Only a portion of the insurance proceeds went to be applied to the RE Loans mortgage. The remaining \$3.0+ million did not go to paydown any mortgage. Both Mr. Reeves and Mr. Eng [*sic*] testified that Eng [*sic*] allowed Mr. Reeves/Idaho Club Management/POBD to retain insurance proceeds. ... Had all of the insurance proceeds been paid to the mortgages, RE/Pensco/MF08 would all be fully paid and discharged.

JV's Motion to Alter and Amend, at 13-14. (Emphasis in original).

With regard to the insurance proceeds from the clubhouse fire, this Court ruled in its Trial Decision, as follows:

(e) **Mr. Reeves Testimony re: Insurance Proceeds**

Mr. Reeves testified that the insurance proceeds for the clubhouse fire that occurred at the Idaho Club are shown as paydowns on the Final RE Invoice under 05/05/09 (\$966,416.64), 07/02/09 (\$2,640,474.03), 10/28/09 (\$984,098.56), and 11/23/09 (\$358,598.59). *Plaintiff's Ex. 65A*, p. REEVES001134, 001135. Mr. Reeves testified that insurance checks were not made out to POBD, but to entities which had a lien or security interest in the property. For example, a check for \$1,000,000.00 was issued by Greenspan Adjusters International, Inc. to Bar K on October 26, 2009. *Plaintiff's Ex. 65*, p. REEVES001385. This one million dollars is equal to the value of the two 11/1/09 entries of \$15,901.44 (interest) and

\$984,098.56 (principal) on the P0099 Payment History Detail. *Plaintiff's Ex. 66*, p. VAL000627. Also, the principal amount of \$984,098.56 is shown as paydown on 10/28/09 on the Final RE Invoice. *Plaintiff's Ex. 65A*, p. REEVES001135. Therefore, the Final RE Invoice shows the proceeds that were directed to Bar K to pay down the 2007 RE Loans Note.

Trial Decision, at 18.

The evidence presented at trial showed that the insurance proceeds received were used to pay down the RE Loans Note. The Court has gone back and listened to the testimony of Barney Ng and Charles Reeves on examination by Mr. Finney. No testimony was elicited from either gentleman that that Mr. Reeves/Idaho Club Management/POBD were allowed to retain insurance proceeds. Additionally, there was absolutely no evidence presented at trial to support JV's argument that the RE Loans, Pensco and MF08 Notes either were, or could have been satisfied with the insurance proceeds. The Court upholds its previous ruling.

8. The Water and Sewer Lots

Here, JV uses the same arguments that "JV is not subordinate to the 2007 mortgage to RE," *JV's Motion to Alter and Amend*, at 9, and that "Valiant's redemption of RE's interest is invalid," *id.*, at 8, to support its contention—which this Court is hearing for the first time—that "only JV has the priority mortgage/foreclosure lien on the water and sewer lots." *Id.*, at 13-14. For the same reasons already discussed, the Court finds that this argument lacks merit.

9. The Final Judgment

JV argues that it is improper for the Judgment, the Decree of Foreclosure, and the Order of Sale (not yet entered) to be three separate documents. *JV's Motion to Alter and Amend*, at 15. First, as a point of clarification, the order of sale of the real property has been incorporated into the Decree of Foreclosure, entered July 20, 2016; and no separate Order of Sale will be entered.

Second, with regards to the propriety of having the Judgment and the Decree of

Foreclosure separate, this Court is mindful of the statement by Idaho Supreme Court Justice Daniel T. Eismann that “[t]rial judges are ultimately responsible for issuing judgments that comply with the rules, even if they delegate the drafting of the judgments to counsel.” Hon. Daniel T. Eismann, *What is a Judgment* (August 13, 2014), at 8. In this case, this Court entered a separate Judgment on July 20, 2016, which complies with Idaho Rule of Civil Procedure 54(a)’s mandate that “[a] judgment must state the relief to which a party is entitled on one or more claims for relief in the action ...” I.R.C.P. 54(a)(1). The separate Decree of Foreclosure (inclusive of the Order of Sale) entered on July 20, 2016, is a mechanism by which the relief provided in the Judgment shall be effectuated, and by this Court’s reading, is not prohibited by the Rule. Therefore, this Court has fulfilled its responsibility of entering a final, appealable judgment in accordance with the Idaho Court Rules.

Lastly, JV also states that “[t]he Judgment, Decree of Foreclosure, Order of Sale (to be entered) all contain legal descriptions of real estate which have no testimony or basis in the record.” *JV’s Motion to Alter and Amend*, at 16. This statement is false, as evidenced by this Court’s ruling on Valiant’s Third Motion for Summary Judgment, which outlines the basis in the record for the legal descriptions of the property encumbered by Valiant’s Mortgages, to-wit:

Conversely, the motion is GRANTED to the extent that the Court finds there is no genuine issue of material fact as to the real property subject to the 2007 RE Loans Note/Mortgage, the Pensco Note/Mortgage, and the MF08 Note/Mortgage. Specifically, the Court finds that the Declarations submitted by C. Dean Shafer do not create a genuine issue of material fact regarding the legal description of the property subject to each mortgage.

The 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage contain legal descriptions of the property which secures each specific mortgage. No evidence has been presented that the legal descriptions of the property attached to these mortgages are inaccurate. Thus, the property subject to foreclosure under each mortgage is the property described in the legal description attached to each mortgage. There is no genuine issue of material fact on this issue. Additionally, the Court, at p. 13, of its July 21st Memorandum Decision and Order ruled that Mr. Shafer is qualified as an expert. Mr. Shafer has provided

expert testimony that sets forth the legal description of the property subject to the mortgages after reconveyances of portions of the property are taken into consideration. No party has challenged the accuracy of his testimony on this point, and therefore, there is no genuine issue of material fact on this issue.

In the first Declaration of C. Dean Shafer in Support of Valiant Idaho, LLC's Motion for Entry of Final Judgment, filed 5/20/15, he included five (5) exhibits. Exhibit 5 is the legal description that Mr. Shafer created based on his review of all three mortgages and the redemption deed. *First Shafer Declaration*, at p. 4, ¶ 4. This legal description combines the legal descriptions of all three mortgages, which have not been contested, to create a legal description for the entirety of the "Valiant Encumbrances." Exhibit 5 identifies a total of 186 lots that Valiant requests foreclosure on, but does not identify the individual mortgage encumbering each lot. *Id.*

The legal description provided in the second Declaration of C. Dean Shafer in Support of Valiant Idaho, LLC's Motion for an Order of Sale of Real Property, filed on 7/22/2015, is the same as the legal description provided in Mr. Shafer's first Declaration, but is simply renamed as the "Idaho Club's Legal Description." *Second Shafer Declaration*, at p. 2, ¶ 3. Like his first Declaration, Mr. Shafer's second Declaration identifies a total of 186 parcels on which Valiant is entitled to foreclose and provides the legal description for each individual lot. It does not specifically identify which mortgage encumbers each individual lot or parcel. *Id.* at pp. 2-3, ¶ 4.

The third Declaration of C. Dean Shafer in Support of Valiant Idaho, LLC's Motion to Alter, Amend and/or Reconsider Order for Sale of Real Property, filed 8/19/15, goes a step further by separately identifying which individual parcels are encumbered by each mortgage. *Third Shafer Declaration*, at p. 5, ¶ 9. This additional information does not change or alter Mr. Shafer's testimony, much less create an inconsistency among his declarations. Mr. Shafer's third Declaration is simply more specific than his first two Declarations.

Valiant contends that after reviewing the legal descriptions of the three mortgages, Mr. Shafer mistakenly advised Valiant's counsel that "each of said liens encumber all of the lots/parcels included within the legal description." *Third Shafer Declaration*, at p. 4, ¶ 7. Valiant's counsel relied on this representation in structuring Valiant's requested Order of Sale and in choosing to submit a single legal description for all of the property which Valiant seeks to foreclose on, instead of submitting three separate legal descriptions based on the three separate mortgages. Valiant asserts that while this miscommunication affected the Order of Sale requested by Valiant, it did not affect the accuracy of Mr. Shafer's testimony. Significantly, no evidence has been submitted to this Court to dispute the accuracy of the legal descriptions provided by Mr. Shafer. No evidence has been submitted to dispute Mr. Shafer's testimony that the RE Loans Mortgage covers 186 lots, the Pensco Mortgage covers 155 lots, and the MF08 Mortgage covers 155 lots. *Id.* at p. 5, ¶ 9. In the absent of contrary testimony, Mr. Shafer's third Declaration remains undisputed, and the fact that the third Declaration was more

specific than the previous Declarations does not create a genuine issue of material fact.

Memorandum Decision and Order re: Motions Heard on October 23, 2015 (filed October 30, 2015), at 15-18. (Footnote omitted).

Thus, Valiant's expert, C. Dean Shafer, filed three separate, sworn declarations with this Court identifying the property encumbered by the Valiant Mortgages. Despite repeated entreaties by this Court to JV and VP to not just argue that Mr. Shafer's descriptions were wrong, but to file opposing expert affidavits, no sworn opposition to Mr. Schafer's affidavit testimony was ever filed. *See Memorandum Decision and Order Granting in Part Reconsideration of the July 21, 2015, Memorandum Decision & Order* (filed September 4, 2015), at 4; and *Memorandum Decision and Order Granting Motion for Entry of Final Judgment* (filed June 23, 2015), at 5-6.³

³ On June 23, 2015, this Court stated:

The Court further finds that Valiant's supporting declarations fully apprised the defendants of the legal description that Valiant sought to include in its proposed Final Judgment. Specifically, in the Declaration of C. Dean Shafer, Mr. Shafer states that "[t]he real property legally described in Exhibit 5 accurately describes the real property described in the Valiant Encumbrances, subtracting the parcels released from the Valiant Encumbrances, and which Valiant is entitled to foreclose." *Declaration of C. Dean Shafer*, at p. 4, ¶ 4 (emphasis in original). Therefore, the oral arguments by the defendants' attorneys that they could not respond to the motion because they did not receive a copy of the proposed Final Judgment are disingenuous.

The attorneys for the defendants have been objecting to Valiant's right to foreclose, and to the legal description of the property upon which Valiant seeks to foreclose, ever since the hearing on Valiant's motion for summary judgment against JV, NIR and VP on March 18, 2015. Despite their vociferous protests in open court, however, JV never requested a hearing on its motion for reconsideration of the April 14th order granting summary judgment, as required by Rule 7(b)(3)(D); and NIR and VP, despite being granted additional time by this Court, never filed a supporting memorandum or a notice of hearing for their motion for reconsideration, as required by Rule 7(b)(3)(C) and (D). Moreover, JV, NIR and VP failed to file any briefs or affidavits in opposition to Valiant's motion for entry of final judgment, as required by Rule 7(b)(3)(B) and (E). If the defendants wanted to dispute the legal description set forth in the Declaration of C. Dean Shafer, the proper mechanism was to file an opposing affidavit setting forth facts to the contrary. Having failed to do so, the Declaration of C. Dean Shafer stands on the record uncontroverted as to the issue of the proper legal description.

Memorandum Decision and Order Granting Motion for Entry of Final Judgment (filed June 23, 2015), at 5-6 (Emphasis supplied).

Months later, on September 4, 2015, this Court stated again that:

At the July 6, 2016, hearing on Valiant's Motion for Order of Sale of Real Property, the issue of the property encumbered by JV's Mortgage was raised by VP in opposition to the Judgment and the Decree of Foreclosure that had been entered. As a result of the absence of a legal description of the property encumbered by JV's Mortgage in either document, the Court orally vacated both the Judgment and the Decree of Foreclosure that had been entered on June 22, 2016, and ordered counsel to each submit a proposed Judgment and proposed Decree of Foreclosure that included the properties encumbered by JV's mortgage in the legal description.⁴

In response to the Court's order, the following occurred:

- i. Valiant resubmitted a proposed Judgment and proposed Decree of Foreclosure, which included the legal descriptions of the properties secured by Valiant's Mortgages in Exhibits A, B and C to each document; as well as lot/block descriptions of the properties secured by JV's Mortgage in Exhibit D to each document.
- ii. VP submitted a proposed Judgment and Decree of Foreclosure, which had as its legal description for the JV properties, a copy of the metes and bounds legal description from JV's Mortgage.
- iii. JV submitted a document entitled "JV L.L.C.'s Proposed Judgment and Decree of Foreclosure and JV L.L.C.'s Request for Additional Time of at Least 14 Days." This document did not include any of the relief granted to Valiant or the legal descriptions of the properties encumbered by Valiant's Mortgages. For the legal description of the JV properties, Mr. Finney attached: (1) the entire JV Mortgage document containing a metes and bounds legal description (10 pages); (2) a computer printout of all lots for which there has been partial release (9 pages); and (3) a copy of the metes and bounds legal description in JV's Redemption Deed.

In this document, JV also stated that "[t]hrough *[sic]* counsel *[sic]* Valiant and JV discussed Valiant including JV's judgment on Valiant's proposed judgment. Valiant did not include JV's judgment wording as requested by JV's Counsel." *JV L.L.C.'s Proposed*

The defendants may offer testimony by any expert(s) in contravention of Mr. Shafer's opinion as to the legal description. However, the defendants are cautioned that if they will be disputing the accuracy of Mr. Shafer's legal description, they must comply fully with expert disclosure requirements in Rule 26(b)(4)(A) of the Idaho Rules of Civil Procedure.

Memorandum Decision and Order Granting in Part Reconsideration of the July 21, 2015, Memorandum Decision & Order (filed September 4, 2015), at 4. (Emphasis supplied).

⁴ These oral orders were reduced to writing as an Order Vacating Judgment, an Order Vacating Decree of Foreclosure *[sic]*, and an Order Requiring Submissions, all entered on July 14, 2016.

Judgment and Decree of Foreclosure and JV L.L.C's Request for Additional Time of At Least 14 days (filed July 15, 2016), at 5. JV failed to specify the wording in Valiant's proposed Judgment and proposed Decree of Foreclosure that it found objectionable.

Considering all three submissions, this Court selected Valiant's proposed Judgment and proposed Decree of Foreclosure for entry because: (1) it was the only submission in which the Order of Sale therein was in accord with this Court's Order re: Order of Sale of Real Property, entered July 14, 2016; (2) it was the only submission that set forth lot/block legal descriptions of the properties secured by JV's Mortgage; and (3) it was the only submission that fully set forth the relief granted to the parties and the mechanism by which that relief will be effectuated.

B. VP's Motion to Alter, Amend and Reconsider the Decree of Foreclosure and Judgment is denied.

With respect to each issue raised by VP in its Motion to Alter and Amend, the Court makes the following determinations:

1. Marshalling

VP argues that the Decree of Foreclosure improperly marshalls the junior lien holder's interests and fails to accurately reflect JV's interests. In determining the order of sale of the real property in this matter, the Court reviewed the two funds rule in the *Restatement (Third) of Property (Mortgages) § 8.6 Marshaling: Order of Foreclosure on Multiple Parcels* (1997), together with *Suchan v. Suchan*, 113 Idaho 102, 109, 741 P.2d 1289, 1296 (1986), and *Gaskill v. Neal*, 77 Idaho 428, 432, 293 P.2d 957, 960. The Court also recognized that:

Marshalling is an equitable accommodation to the junior interest holder. As such, it is applicable only when its operation will be equitable. It is a general guide to the courts, not an absolute rule. Thus, marshalling is not applied when it would be detrimental to the foreclosing mortgage or when its application would be unfair for other reasons.

Restatement (Third) of Property (Mortgages) § 8.6, Comments.

In other words, a court may order a sale of real property in such a manner that treats the junior parties equitably. Here, VP has not presented this Court with any evidence that the current order of sale is inequitable or that a new order of sale would in any way alter the outcome of the sale, or that the current order of sale is in any way detrimental or unfair to VP. Although VP makes the assertion that JV is not treated equitably based upon the order of sale, VP is not in the position to make arguments or motions for JV. JV has competent legal counsel and JV has not raised a similar objection in its own motion. There has been no evidence presented that JV is being treated inequitably. Accordingly, based on the evidence presented, the order of sale (in the Decree of Foreclosure) entered in this case *does* treat the junior parties equitably and is upheld.

2. Parcel 121

VP argues that the determination that Parcel 121 is only encumbered by JV's Mortgage is not supported by sufficient and competent evidence. To this argument, Valiant has replied thus:

VP argues that the Court's determination that Parcel 121 is only encumbered by JV's mortgage is not supported by competent evidence. VP argues that there was evidence presented that the 2007 RE Loans Mortgage was a first priority mortgage against Parcel 121 based upon the May 19, 2016 *[sic]*⁵ Declaration of C. Dean Shafer in Support of [Valiant's] Motion For Entry of Final Judgment filed May 20, 2015, but there is no evidence to establish that JV has a first priority interest in Parcel 121. VP's argument is incorrect.

Valiant is not claiming any interest in Parcel 121. Originally Valiant believed that the 2007 RE Loans Mortgage encumbered Parcel 121. That turned out to be incorrect; thus, Valiant is not seeking to sell and has no interest in Parcel 121. On the other hand, **at trial JV introduced into evidence its 1995 mortgage (JV's Trial Ex. A) which encumbers all of the Idaho Club Property south of Highway 200. It is uncontroverted that Parcel 121 is south of Highway 200. Therefore, once Valiant disclaimed any interest in Parcel 121, JV's interest was the only interest left that encumbered Parcel 121. JV's evidence presented at trial supports that conclusion and the evidence is not contested. Likewise, there is no evidence that VP has any interest in Parcel 121;** thus, one must wonder why VP even bothers to raise the issue.

Valiant Idaho, LLC's Memorandum in Opposition to VP, Inc.'s Motion to Alter, Amend and

⁵ This should be May 19, 2015.

Reconsider the Decree of Foreclosure and Judgment (filed August 10, 2016), at 5-6. (Emphasis supplied).

First, the Court agrees with Valiant on this issue. The uncontroverted evidence presented at trial supports the conclusion that Parcel 121 is encumbered only by JV's Mortgage. Second, the Court, like Valiant, is wondering why VP is raising this issue. VP is arguing that "[i]n fact, the evidence before the Court is that RE Loans has a first priority mortgage on this property." *Memorandum in Support of VP Inc.'s Motion to Alter, Amend, and Reconsider the Decree of Foreclosure and Judgment* (filed August 4, 2016), at 13.

Valiant, as the holder of the RE Loans Mortgage, has concluded that it has no interest in Parcel 121. Meanwhile, VP, who has no interest in Parcel 121, claims that Valiant *does* have an interest in the parcel. VP has presented no evidence to support this argument, claiming only that C. Dean Shafer, in his May 19, 2015, Declaration, included this parcel in his description of the property "which Valiant is entitled to foreclose." *Id.*, at 13. Valiant has now disclaimed any interest in Parcel 121. The Court does not find that Mr. Shafer's statement in his Declaration vitiates the uncontroverted evidence presented at trial that supports the conclusion that Parcel 121 is encumbered only by JV's Mortgage.

3. Overbreadness

VP argues that the Judgment and Decree of Foreclosure are too broad. Specifically, that:

[T]he Third Amended and Restated Real Property Purchase and Sale Agreement (hereinafter "PSA"), wherein the real property subject to this suit was sold to POBD's predecessor in interest ... excluded domestic water rights, including easements, and the lagoon from the property and interests ultimately transferred to POBD. Since POBD never received these rights and interests, they could not have been encumbered by any of the Valiant mortgages. Therefore, the Decree of Foreclosure is too broad and should be modified to account for these unencumbered interests of VP.

Memorandum in Support of VP Inc.'s Motion to Alter, Amend, and Reconsider the Decree of Foreclosure and Judgment (filed August 4, 2016), at 15.

This Court previously held that VP's claims of prescriptive easement and equitable servitude for infrastructure did not survive Valiant's summary judgment motion:

In VP's Answer to the Third Party Complaint it did not set forth any affirmative defenses, nor did it plead any counterclaims or cross-claims against Valiant for prescriptive easement or equitable servitude for infrastructure. VP, not having pled these claims in its pleadings, nor having raised them in its response to Valiant's motion for summary judgment, the Court finds that these claims did not survive Valiant's motion for summary judgment.

Memorandum Decision and Order re: 1) JV, LLC, North Idaho Resorts. [sic] LLC, and VP, Incorporated's Motions to Reconsider 2) Valiant's Request for Entry of proposed Final Judgment and Decree of Foreclosure and Sale (filed July 21, 2015), at 19.

Subsequently, on VP's motion for reconsideration, this Court addressed the substance of VP's claims, and upheld its previous dismissal of those claims for different reasons:

VP's prescriptive easements/equitable servitude claims fit within the definition of an affirmative defense set forth in *Fuhriman, supra*. The claims were raised for the first time in response to Valiant's January 20th motion for summary judgment. But did Valiant have time to present argument in opposition? Certainly not at the time of the first summary judgment motion filed January 20th; but as of the date of this decision, nearly nine months after NIR and VP raised the claims in their February 4th Memorandum in Opposition/Villelli Declaration, Valiant has had time to present opposing arguments. Therefore, the Court shall now make the determination as to whether VP's prescriptive easements/equitable servitude claims survive Valiant's Third Motion for Summary Judgment. Specifically, whether NIR and VP have presented sufficient evidence to establish a genuine issue of material fact for trial as to those claims?

...

NIR and VP have alleged that: "VP claims prescriptive easement claims for infrastructure and equitable servitudes for infrastructure." *Memorandum in Support of Renewed Motion for Reconsideration and Clarification* (filed June 18, 2015), at pp. 6-7. In evaluating the evidence presented by NIR and VP, the Court recognizes that a non-movant "may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(e). In their pleadings, NIR and VP characterized their evidence of VP's prescriptive easements/equitable servitude claims: ...

...

Third, Pend Oreille Bonner Development, LLC conveyed by Quitclaim Deeds to VP, Inc. certain property subject to the Valiant Mortgages. Said Quitclaim Deeds were recorded on May 20, 2014, as Instrument Nos. 859562, 859563, 859564 and 859565, in the records of Bonner County, Idaho. *See*

Declaration of Jeff R. Sykes in Support of Valiant Idaho, LLC's Motion for Summary Judgment Against JV, LLC, North Idaho Resorts, LLC, and VP, Incorporated (filed January 20, 2015), at Exhibits 16, 17, 18 and 19. At p. 4, ¶ 11 of the Villelli Declaration, Mr. Villelli states: "The deeds attached to Jeff Syke's [sic] Declaration as Exhibits 16, 17, 18 and 19 are the lots deeded to VP, Inc. in compliance with the Construction and Operation Agreement upon which lagoons, water towers or pumping stations are situated." However, VP's claimed interest in the property was conveyed and recorded after the 2007 RE Loans Mortgage, the Pensco Mortgage and the MF08 Mortgage were recorded. Therefore, VP's Quitclaim Deeds, as a matter of law, are junior to Valiant's Mortgages, and do not create a genuine issue of material fact.

Fourth, NIR and VP are relying on: (1) p. 4, ¶ 10, of the Villelli Declaration, where Mr. Villelli states, when referring to VP's Construction and Operation Agreement with POBD, which addressed construction by POBD of extensions to VP's existing water and sewer system: "[m]uch of this infrastructure has been in place for over 20 years"; and (2) a parenthetical clause within the Third Restated Purchase and Sale Agreement between NIR and POBD, which states that the term "Property" therein

exclude[es] domestic water rights which are retained by sewer and water company V.P. Inc. including easements for operation and delivery of said domestic water and sewer service including sewer lagoon and land application; Buyer may move lagoon and may alter land application sites, but must provide approved alternate application site and build adequate new lagoon all to DEQ's approval.

Declaration of Richard Villelli (filed February 4, 2015), at Exhibit A, p. 2.

Mr. Villelli's statement about the infrastructure having been around for 20 years is a conclusory statement that is unsupported by evidence. The Construction and Operation Agreement to which Mr. Villelli refers is not attached to the Villelli Declaration. This statement does not, therefore, create a genuine issue of material fact. Also, VP is not a party to the Third Restated Purchase and Sale Agreement, and thus, the clause therein does not create any legal rights in VP and does not create a genuine issue of fact as to VP's prescriptive easements/equitable servitude claims

In sum, after drawing the most probable inferences from the undisputed evidence properly before the Court, this Court finds there are no genuine issues of fact for trial on the issue of whether VP's claims of prescriptive easements and equitable servitudes are junior to Valiant's interest in the subject properties. Accordingly, the Court affirms its ruling in the July 21st Memorandum Decision and Order to deny NIR and VP's motion to reconsider this issue.

Memorandum Decision and Order re: Motions Heard on October 23, 2015 (filed October 30, 2015), at 10-14. (Emphasis supplied).

Accordingly, the issue of VP's claims of prescriptive easement and equitable servitude for infrastructure having been fully and finally determined shall not be relitigated here. The Court upholds its previous ruling.

One final point—this Court has entered a Decree of Foreclosure (inclusive of the Order of Sale) which treats any junior interest that VP might have in the three sanitary water facilities parcels and the lagoon parcel fairly, by ordering that these parcels be sold last, as follows:

- (i) The three (3) sanitary water facilities parcels, which are encumbered by all three Valiant mortgages, shall be sold together as one parcel (Parcel 2) with the RE Loans/Pensco/MF08 Collateral. Parcel 2 shall be the last parcel of the RE Loans/Pensco/MF08 Collateral sold at the sheriff's sale.
- (ii) The sewer lagoon parcel (Parcel 1), which is encumbered only by the RE Loans Mortgage, shall be sold with the RE Loans Collateral. Parcel 1 shall be the last parcel of the RE Loans Collateral sold at the sheriff's sale.

Order re: Order of Sale of Property (filed July 14, 2016), at 3.

4. Separate Documents

Finally, VP argues that the Judgment is improper because the Decree of Foreclosure needs to be incorporated into the Judgment under Idaho Rule of Civil Procedure 54(a)(1). *Memorandum in Support of VP Inc.'s Motion to Alter, Amend, and Reconsider the Decree of Foreclosure and Judgment* (filed August 4, 2016), at 16. This issue has already been addressed in this decision in response JV's similar argument, and VP's argument lacks merit for the same reasons earlier discussed. However, it bears repeating that the relief to which Valiant is entitled is set forth in the Judgment, including the priority of its rights over other parties, the amounts it is owed under the Notes subject to the Valiant Mortgages, and the fact that the properties which are subject to the Mortgages will be sold at a sheriff's sale as set forth in a separate Decree of Foreclosure. Under these circumstances, the entry of a separate Judgment and Decree of Foreclosure is the most clear and efficient way to set forth the relief granted (such as in the

Judgment) distinct from the manner in which that relief will be effectuated (such as in the Decree of Foreclosure). VP has not cited to any authority requiring the manner and method of execution and enforcement of the relief set forth in a judgment to be in the same document as said relief.

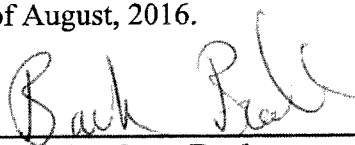
IV. CONCLUSION AND ORDER

NOW, THEREFORE, for the foregoing reasons, and in the exercise of this Court's discretion, IT IS HEREBY ORDERED THAT:

1. JV, LLC's Motion to Alter, Amend and Reconsider re: 1. Memorandum Decision and Order 2. Judgment 3. Decree of Foreclosure 4. Order of Sale is DENIED.
2. VP, Inc.'s Motion to Alter, Amend and Reconsider the Decree of Foreclosure and Judgment is DENIED.
3. This Court's Memorandum Decision and Order entered May 27, 2016, the Judgment entered July 20, 2016, and the Decree of Foreclosure (inclusive of Order of Sale) entered July 20, 2016, are AFFIRMED.

IT IS SO ORDERED.

DATED this 16 day of August, 2016.



Barbara Buchanan
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid **AND** a courtesy copies sent by electronic mail, this 16 day of August, 2016, to:

Gary A. Finney
FINNEY FINNEY & FINNEY, PA
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