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SCOTT J. SMITH
LISA A. WOOD, CPA

CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: sjs@racinelaw.net

BOISE OFFICE

CONRAD J. AIKEN
THEODORE C. PETERS
DEBORAH L. LEHOSIT

101 SOUTH CAPITOL
BOULEVARD
U.S. BANK PLAZA, SUITE 202
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

November 8, 2002

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Attention: Mr. Allen B. Ruberry
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

RE: Evidence of Priority Dates for Water Right Claim Nos. A29-04406, A29-04408,
A29-04411, A29-04422, A29-04423, A29-04424, 29-11524 and A29-12055

Dear Mr. Ruberry:

At the request of our client, Arimo Corp., we are submitting this letter and the enclosed evidentiary materials in response to your letter dated July 15th, 2002, requesting evidence of priority for the above referenced water right claims.

The following documents are submitted herewith as evidence in support of the priority dates claimed in the above referenced water right claims: (1) Affidavit of Blanche J. Taylor; (2) Affidavit of Persis Thomas with attached history; (3) Affidavit of Christopher F. Robinson with attached map; (4) Notice of Water Right dated March 1, 1889; (5) Notice of Water Right dated May 21, 1889; and (6) Notice of Water Right dated June 17, 1902. These documents provide the basis for the following discussion regarding the priority dates for the claimed water rights.

The direct evidence provided in these documents proves that the water claimed in the above-listed water rights was being diverted and applied to beneficial use earlier than 1944. This is based upon Blanche Taylor's eyewitness report of the status of this water when she purchased the property on which the water is located. *See* Affidavit of Blanche J. Taylor. However, the circumstantial evidence discussed in the documents submitted herewith proves that much of the water claimed in the above-listed water rights was actually being diverted and applied to beneficial use prior to January 1, 1880. It would be impossible to obtain an eyewitness report of water use prior to that date. Thus, the circumstantial evidence, which will be discussed below, provides paramount proof of the appropriate priority dates for the above-listed water right claims.

Claim Nos. A29-04406, A29-04408, A29-04411, A29-04423, A29-04424 and A29-12055

Arimo Corp., the current owner and operator of the Arimo Ranch, claims a priority date of **January 1, 1880** for Water Right Claim Nos. A29-04406, A29-04408, A29-04411, A29-04423, A29-04424 and A29-12055 (hereinafter the "Spring Water Claims"). The Spring Water Claims assert a claim to water that is diverted from several small springs located within the Arimo Ranch (hereinafter the "Ranch"). This priority date of January 1, 1880, is established by reference to the date on which the predecessor in interest to Arimo Corp. first began diverting and using for beneficial purposes the water now claimed in the Spring Water Claims.

The Ranch was first amassed and operated for farming and livestock by a man named Meyers Cohn in 1867. Meyers Cohn had a son named Max D. Cohn, who was raised on the Ranch. The Ranch was later sold to Blanche Taylor, her husband Leavitt, and to the Robinson brothers. Blanche remained a close acquaintance of Max Cohn after the sale. According to Blanche's recollection of the history of the ranch, Meyers Cohn first diverted the water now claimed under the Spring Water Claims for irrigation and stockwater purposes on the Ranch prior, when operations on the Ranch first began. There are a number of historical facts that readily support Max Cohn's statement.

First, the springs now claimed in the Spring Water Claims are located very near to the Homestead Cabins which were constructed on the Ranch on or about the same time that farming and livestock operations began in 1867. Water would have been necessary for irrigation and livestock on the Ranch in 1867. Because of the close proximity of the springs to the Homestead Cabins, Meyers Cohn undoubtedly first diverted and used these springs for irrigation and stockwater use when operations began on the Ranch.

Second, the springs now claimed in the Spring Water Claims were, and are, easily diverted and put to beneficial use for irrigation and stockwater on the Ranch by the use of earthen ditches. Because of the ease of diversion and use, Meyers Cohn undoubtedly diverted and used the spring water before developing more difficult and expensive means of obtaining water for the Ranch. Meyers Cohn would have developed these inexpensive sources of water before expending additional time and money in developing other sources. This is made clear from the fact that Meyers Cohn waited 13 years after starting the Ranch to begin diverting water from Garden Creek (1880) from a point not too far distant from the Ranch. And it wasn't until nine years later (1889) that he began diverting water from the Portneuf River, which required an even greater expense of constructing approximately 20 miles of canal to bring the water to his Ranch. It would be unreasonable to believe that Meyers Cohn did not develop the inexpensive springs now claimed by the Spring Water Claims before developing more difficult and expensive sources of water for the Ranch, this is even more true given the fact that the springs were located so close to the Homestead Cabin Sites.

Third, Meyers Cohn would have followed the 19th century custom of farmers and ranchers diverting and using water without filing a water right claim when the point of diversion and place of use were located wholly upon their respective properties. When the water diversion was not located on their respective properties or when there was a fear that someone could readily get at the water, farmers and ranchers were known to file water right claims. The same was true for Meyers Cohn. For example, he filed Notices of Water Rights in 1889 on water he was diverting from Garden Creek (sometimes referred to as "Gordon Creek") and the Portneuf River because the diversion points for these waters were not located on his property and were readily accessible by other people. Meyers Cohn filed another Notice of Water Right in 1902 on certain springs because they were located along the northwestern-most boundary of his property and were therefore readily accessible by other people. Because of the risk that other people would have access to these waters, Meyers Cohn justifiably had reason to file water right claims. Unlike the water for which Meyers Cohn filed water right claims, the springs now claimed by the Spring Water Claims were wholly contained within the interior of the Ranch. Moreover, the water from these springs was also put to beneficial use within the Ranch. There was much less risk that anyone would trespass upon his property to get at the water from these springs. Thus, there was little reason under the customs in 1867 for Meyers Cohn to have filed a water right claim for the springs now claimed by the Spring Water Claims.

Blanche Taylor's understanding that Meyers Cohn first diverted the spring water in the same manner and for the same purposes as claimed under the Spring Water Claims when operations on the Ranch first began is fully supported by the historical facts surrounding the settlement and initial operations of the Ranch. Therefore, Arimo Corp, the current owner and manager of the Ranch, claims a priority date for the Spring Water Claims of January 1, 1880.

Claim No. A29-04422

In addition, Arimo Corp. claims a priority date of **January 1, 1902**, for Water Right Claim No. A29-04422. The water claimed under this claim is diverted from a spring located in the northwestern-most section of Arimo Ranch. Its priority date is established by Blanche Taylor's recollection of the history of the ranch and by reference to its location.

As mentioned above, Meyers Cohn filed a Notice of Water Right in 1902 on certain springs located in the northwestern-most boundary of his property. Meyers undoubtedly filed the Notice of Water Right due to the fact that these springs were located in the boundary line to his property and were readily accessible by other people.

Although located in the same general vicinity as the other springs claimed in 1902, the spring now claimed in Claim No. A29-04422 is not located on the boundary line and not readily accessible by other people. Moreover, the water from the spring is consumed entirely upon the Ranch. Meyers Cohn would have had little reason under the custom at the time to file a Notice of Water Right as

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to the spring now claimed in Claim No. A29-04422. As discussed above, the mere fact that the spring now claimed in Claim No. A29-04422 was not included in the 1902 Notice of Water Right filed by Meyers Cohn is a result of the custom of the day.

Therefore, Arimo Corp claims a priority date for the Spring Water Claims of January 1, 1902 for Water Right Claim No. A29-04422.

Claim No. 29-11524

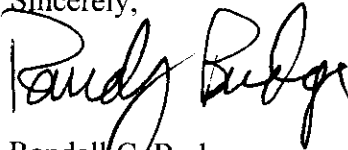
Lastly, Arimo Corp. claims a priority date of **March 1, 1917**, for Water Right Claim No. A29-04422. The water claimed under this claim is diverted from a well located on the Arimo Ranch near the House built there in 1917.

Max Cohn indicated to Blanche Taylor that the well water was first diverted for domestic, irrigation and stockwater use when the House was built in 1917. In fact, the 1917 House is still supplied by water from the well claimed under Claim No. 29-11524. The well continues to also be used for irrigation and stockwater use.

Therefore, Arimo Corp claims a priority date for the Spring Water Claims of March 1, 1917, for Water Right Claim No. 29-11524.

If you are in need of additional information or evidence regarding the above-described water right claims, please do not hesitate to contact our office. Christopher F. Robinson from Arimo Corp. is looking forward to assisting in any way with a field exam of the Arimo Ranch.

Sincerely,



Randall C. Budge
Attorney at Law

RCB/sjs
Enclosure(s)

AFFIDAVIT OF PERSIS THOMAS

STATE OF IDAHO)
 : ss.
COUNTY OF BANNOCK)

Persis Thomas, being first duly sworn upon his oath, deposes and says:

1. I am 85 years of age and am currently a resident of the Village of Arimo, Bannock County, Idaho. I was born in Arimo, Idaho, and have lived here my whole life.
2. I am the member of the Arimo Historical Society and am very familiar with the history of the Cohn Ranch (now known as the Arimo Ranch), where my now deceased husband, Con Thomas, and I have spent a great deal of time over the years. The Cohn Ranch is located not more than a couple of miles north of Arimo.
3. I personally knew Max D. Cohn, the son of Meyers Cohn who founded the Cohn Ranch. In July of 1955, Max provided Winnefred Henderson, a long time resident of Arimo who is now 97 years old, with a written history of his father's life. I received the written history from Winnefred. A true and correct copy of the written history is attached hereto as Exhibit "A."
4. From this history, discussions with Max Cohn and other information that I have in my possession, Meyers Cohn settled the Cohn Ranch (present day Arimo Ranch) in 1867 and began farming and raising livestock. At that same time, Meyers Cohn constructed Homestead Cabins. In 1917, another house was built, which still exists on the Ranch. The location of the Homestead Cabin Sites and the 1917 House are correctly shown on the map attached to the Affidavit of Christopher F. Robinson.
5. I have reviewed the following water right claims, together with the priority dates shown thereon: A29-04406, A29-04408, A29-04411, A29-04422, A29-04423, A29-04424, and

A29-12055. The sources of water for these claims are a number of springs located upon the Cohn Ranch (present day Arimo Ranch). I can remember these same springs being diverted and applied to beneficial use for irrigation and stockwater as early as 1862.

6. Notably, the springs claimed above all originate directly upon the Cohn Ranch and are easily diverted, having required only simple diversion works consisting mainly of earthen ditches. It is my understanding that Meyers Cohn diverted these springs for beneficial use shortly after he began operating the Ranch in 1867.

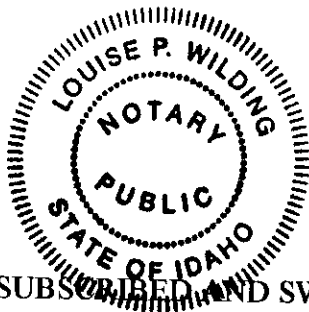
7. At the time that Meyers Cohn began operating the Ranch it was common practice for a farmer or rancher to divert and use water from springs located on his property without filing a water rights claim. This practice was common due to the fact that no one other than the property owner himself would have had access to the spring or its water. Because no other person could entered upon the land and physically diverted the water from the springs, there was no need at that time to file a water rights claim.

8. It is well known that Meyers Cohn aggressively and actively developed water resources that were located miles from his ranch as early as 1880 and that he built mile upon mile of irrigation ditches to bring that water to his Ranch. In fact, he was the first to divert water from the upper Portneuf River, filing a Notice of Water User Claim in 1889..

9. Meyers Cohn would not have sought to develop more expensive and difficult water resources such as the Portneuf River without first developing the easier and more accessible water located directly upon his land. Thus, Meyers Cohn undoubtedly diverted and applied the water from the springs located on his property to beneficial use prior to developing any other water resource when he began operating the Ranch in 1867. This fact becomes even

clearer when one considers how close the springs were to the Homestead Cabin sites on the Ranch. Therefore, a priority date for the above-mentioned water right claims of January 1, 1880, is in my belief very conservative.

DATED this 7th day of November, 2002.



Persis Thomas
Persis Thomas

SUBSCRIBED AND SWORN to before me this 7th day of November, 2002.

Louise P. Wilding
Notary Public

Meyers Cohn

NOTICE OF WATER RIGHT

Dated: March 1, 1889.

Filed: March 8, 1889 at 10:30 AM.

Recorded: Book 1 Water Loc. 254.

Notice given that Meyers Cohn citizen of United States over age of 21 years do claim all water flowing from certain springs arising along and near channel of Gorden Creek (stream flowing into Marsh Creek in northern part of Marsh Valley Bingham County Idaho) at and along said channel about $1\frac{1}{2}$ miles from where said stream empties into Marsh Creek water flowing from said springs being about 200 inches of water measured under 4 inch pressure. Said water will be diverted from channel of said stream at point about $1\frac{1}{4}$ miles above and West of fence on western boundary enclosing lands of said Meyers Cohn and nearly opposite residence of William Marley by means of dam placed in channel and ditch from said dam to and upon lands of said Cohn 4 feet wide 18 inches deep and 1 inch fall to rod. And also at point about $1\frac{1}{2}$ mile below first described dam by means of another dam placed in channel of said creek and ditch of about same dimensions of above described ditch running from said dam to and upon above described premises. Said water will be used for agricultural purposes for irrigating lands of said Meyers Cohn lying below and East said dam now enclosed and under cultivation.

Meyers Cohn

Bingham County, Idaho, Territory.

CERTIFICATE

Certify that I did post copy of above notice at points described in said notice where said water is to be diverted from channel of Gorden Creek in conspicuous places at each point on March 7, 1889.

Meyers Cohn.

Transcribed from Book "B" of Water Locations page 247, Records of Bingham County, Idaho.

Lee Wright, Thos Jenkins
Meyers Cohn

NOTICE OF WATER RIGHT

Dated May 21, 1889.

Filed: May 22, 1889 at 9:30 AM.

Recorded: Book 1 Water Loc. 291.

Notice given that undersigned citizens of United States over age of 21 years have this day located under Revised Statutes of Idaho Title 1X Chapt 11 2000 inches of water measured under 4 inch pressure of waters of Portneuf River said water will be diverted by us from main channel of said stream by means of dam placed in said main channel at point about 100 rods East of Mile Post No. 186 of OSL RR in Bingham County, Idaho. And by means of ditch 12 feet wide and 3 feet deep constructed from said dam with fall of 1/4 inch to rod.

Said water will be diverted and used for agricultural purposes and will be used for irrigating lands situated North and near Town of Oneida in said County and Territory.

Lee Wright, Thos Jenkins, Meyers Cohn

Bingham County, Idaho Territory

CERTIFICATE

That I posted true copy of above and foregoing notice of Water Location at point of diversion therein named. At point on Portneuf River in Bingham County, Idaho opposite point on OSL Railroad 100 rods East of Mile Post No. 186 of said RR on May 21, 1889.

Meyers Cohn

Transcribed from Book "C" of Water Locations page 15, records of Bingham County, Idaho.

Meyers Cohn,

NOTICE OF WATER RIGHT

Dated: June 17, 1902.

Filed: June 19, 1902 at 3:21 PM.

Recorded: Book 2 Water Locations
141.

Notice given that Meyers Cohn hereby claims use of waters of numerous un-named springs arising on,

NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34 in Township 9 South of Range 36 East Boise Meridian,

to extent or amount of 1 cubic foot per second of time to be diverted at point where waters from said springs come together and being near center on

North boundary line of NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34 in Township 9 South of Range 36 E.B.M.,

at which said point copy of this notice is posted. Said waters are intended to be used for agricultural and domestic purposes upon following described lands,

NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 34, Lots 5 and 6 and SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35 in Township 9 South of Range 36 East Boise Meridian in Idaho and containing 153.50 acres.

It is intended to divert said waters by means of ditch running from above described point of diversion in general Southeasterly direction and conduct same to and upon above described lands ditch being about 1 mile in length and having its terminus in, Lot Numbered 6, above described.

It is intended to have works for diversion and distribution of above described waters fully completed within one year from date hereto.

Meyers Cohn

Bannock County, Idaho.

AFFIDAVIT

That he is of lawful age and claimant of Water right mentioned in foregoing notice and whose name is subscribed thereto. That statements in said notice contained are true and that original notice of which foregoing is true copy was posted in conspicuous place at point of diversion therein described on June 17, 1902 at 12:30 PM.

Meyers Cohn

Subscribed and sworn to me my presence by said Meyers Cohn and by him sworn to before me this June 19, 1902.

Fred G. Caldwell, Notary Public.

(Seal)

HISTORY OF MEYERS COHN

Meyers Cohn came to Salt Lake from Germany in 1865. He was 21 years old.

Mrs. Sarah Gumpert Cohn being the oldest of a family of three sisters and one brother having talked of coming to America from early childhood, and when she reached the age of seventeen, finally persuaded her parents to consent to fulfill her wish and dream, even though a most difficult decision for her parents to make, as she was the oldest of the family, and in the course of a short period preparations were made for her to leave her native land, loved ones, playmates and friends in Knockle, Germany and sail for the promised land.

Only because her Aunt Betta Cohn was coming to America was she permitted to come along with her, and after many days upon the ocean they arrived in Providence, Rhode Island.

After staying in Providence for some three months she and her aunt decided to come West visiting in Salt Lake City for a few days and then on to Virginia City, Nevada. Mrs. Sarah Cohn remained in Virginia City for approximately two years, and by this time she had learned to speak the English language very well and returned to Salt Lake City where she then made her home with her cousins, Mr. and Mrs. Minnie Jacobs.

Mrs. Sarah Cohn was often spoken of and considered a very beautiful girl with a pleasing personality and made many friends and was invited to most of the young folks parties and socials.

It just so happened a Mr. Meyers Cohn, a young man living in a small town called Malad City, Idaho, went to Salt Lake City on business and pleasure, was fortunate in meeting Mrs. Cohn, and apparently fell in love with her at first sight because he continued to visit Salt Lake often after this first meeting, and in the course of a few months they became engaged. After Mr. Meyers Cohn had won the love and endorsement of this charming lady to become his life mate and companion, he returned to Malad

to look after his general merchandising and farming activities, and provide living accommodations for he and his intended wife's future life.

While it is said by those who were well acquainted with Mr. Cohn he did not appear to let love and social activities interfere too much with his goal to become financially independent in paying his obligations and financial success, he was sure he had found the one girl with whom their future happiness and success rested, and taking no chances, set an early date for the wedding.

After the wedding date was set much preparation was made by relatives and friends to make sure the newly-weds Mr. and Mrs. Cohn would have a grand and glorious wedding long to be remembered by the Bride and Groom, relatives and friends.

When the date, time and hour (May 11, 1876) arrived for the ceremony, acting Rabbi I. Watters along with many relatives and friends were present in the home at the St James Hotel. The Bride and Groom came into the living room marching to the tune of soft music and in a few minutes they were tied together not only by the Rabbi, but by love and affection that only death could and did undo. Judging from the pictures taken of the Bride and Groom at this time, it must be true as often told, they were the most beautiful couple ever married in Salt Lake City. Mrs. Sarah Cohn was then 20 years old.

After a short honeymoon they returned to Malad City, Idaho, to make their future home, and as Mr. and Mrs. Cohn have often repeated many times, the grandest folks on earth.

After arriving in the little town of Malad, those wonderful hospitable Welsh people made them feel welcome and happy and contented, and as they were not naturalized, Mr. Cohn having come to the United States from Germany while a boy of tender age, and in due time those good Malad citizens made Mr. and Mrs. Movers Cohn (in the old Court House on the hill) United States Citizens, which seemed to be one of the great events in their lives.

Mrs. Cohn was a very charitable and kind hearted person, and Mr. Cohn was civic minded and they entered into all activities both social and charitable and in a short time they were active in every thing that took place. Old timers who live in Malad have often said the people who live in and about Malad were fortunate in having such far-sighted and open minded people as Mr. and Mrs. Cohn join with them and help build the community.

During their residence in Malad City of some seventeen years they reared a family of four children; Ida, Emma, Max, and Jerome. They attended the little red school house on the hill and Sunday School in the same place.

During Mr. and Mrs. Cohn's residence in Malad and along with their store acquired considerable farming land and engaged to some extent in the cattle business, and during the fall months when it was necessary to bring the cattle from the range into the feeding grounds for winter, Mr. Cohn would ride the mountains and valleys to gather his cattle which would wander some twenty or thirty miles, and in order to find all his stock it would be necessary for him to ride over a range of mountains some thirty miles distant into a valley still known as Marsh Valley, having visited this fine grazing land many times it seemed to appeal to him as a fine place to raise and produce cattle, after some thought and

consideration he secured a fine place to raise arid range cattle, after some thought and consideration he secured a small land holding, which was adjacent to the Fort Hall Indian Reservation (year, 1867) and operated this cattle ranch from his home in Malad.

As time went on and his cattle operations became more extensive it required more of his time and attention, and as there was a high range of mountains between Malad and Marsh Valley and the mode of transportation at this time was only by horse-back or team and the severe winter's storms and snow, he found it necessary to give up his residence in Malad and move his family to his ranch in Marsh Valley then known as Oneida Post Office (year, 1885).

After giving up their home in Malad and moving to Marsh Valley, the country was very thinly settled, in fact the only families living within three or four miles of the Cohn ranch were the Thomas Jenkins family, John Evans family, and possibly one or two more.

The country was open to homestead settlement and the Cohns filed upon homestead land also desert claim land. As it was necessary to irrigate most of these lands, the first waters taken from the Portneuf river for irrigation was diverted by canal with these early settlers.

As time went on the Cohns developed and added more land to their holdings, and even the prices were low for their stock and produce and money was very difficult to secure, they had faith in the land, government, and future, and by hard work, extreme economy, paid their obligations and educated their family even though the children received their early education in a one room log cabin two miles from home.

In due time the land being of good fertile soil found new families moving in and joining the old settlers, and the valley began to settle. Among those first few families coming to the valley were the Woodlands and Hendersons. They were thrifty, honest, hardworking, and capable and their being part of the community with interest, much progress was made in improvements, civic conditions, and social enjoyment.

Mr. Cohn was a man who took much interest in public affairs, and the neighbors and public in general respected his good judgment, broad vision and honesty, and at various times during his life he served the state and county. He was County Commissioner, Justice of the Peace, School Trustee, President of Canal Co, and many other minor appointments.

After some 65 years continuous residence at (Oneida) Arimo, Mr. Cohn passed (1927) away at the age of 83 years, and was laid away in the family plot in Salt Lake City.

Mr. Cohn's two sons, Max and Jerome who after finishing their education became associated with their father and were active partners in the business, after their father passed away continued on with the business, During the year 1930 Jerome passed away and Max continued the business with the association of his mother and sister Emma.

During the year 1945 the Cohns sold their entire cattle and ranch holdings, even though it was rather difficult to give up the old homestead which had sheltered, fed, and given so much pleasure and satisfaction in having been successful, and too, the ties of old friends, neighbors, and associates down through the many past years was a tie not easily broken or forgotten.

The Cohn's on leaving Arimo moved to Pocatello where they felt it advisable to be close to their many business interests, and also in touch with their many friends, and after living in Pocatello for two years, Mother Cohn expressed the desire to see more of her grandchildren, daughters and other relatives who are living in Salt Lake City and be more closely associated with them, so she and her daughter Emma moved to Salt Lake City where they purchased a comfortable home.

Mrs. Sarah Cohn has now passed her 99th birthday and able to take her meals on the dining room table with the rest of the family, and enjoying reasonable good health, and says she is going to return to Idaho this next summer and have a good visit with her many long time friends.

MAX D. COHN
July, 1955

It was because of his relationship to Fred Auerbach that Meyers Cohn came to Salt Lake. Fred Auerbach had owned a store in San Francisco which had been destroyed by fire. He had loaded the remains of his merchandise in a wagon and had come to Salt Lake. He spent his first night on the outskirts of Salt Lake with a Mormon family. They took him the following morning to Brigham Young who showed him a site upon which to build his store. The site of the present day Auerbachs. This was reported to me by Emma Cohn.