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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

Subcase Nos.: 21-10557 and 21-13013

**MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE PORTIONS OF
THE AFFIDAVIT OF KEITH BARNEY**

RLF I, LLC, RLF II, LLC, RLF III, LLC, and RLF IV, LLC ("RLF") and Del Kohtz ("Kohtz"), by and through their attorneys of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby submit this Memorandum in Support of Motion to Strike Portions of the Affidavit of Keith Barney.

In the context of a motion to strike affidavits offered to oppose or support a motion for summary judgment, the following standards are applicable:

Affidavits supporting or opposing a summary judgment motion must be made on personal knowledge, must set forth such facts as would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to the matters stated. Idaho Rule of Civil Procedure 56(e). These requirements "are not satisfied by an affidavit that is conclusory, based on hearsay, and not supported by personal knowledge."¹

¹ Posey v. Ford Motor Credit Co., 141 Idaho 477, 483, 111 P.3d 162, 168 (Ct. App. 2005) (citing to *State v. Shama Res. Ltd. P'ship*, 127 Idaho 267, 271, 899 P.2d 977, 981 (1995)).

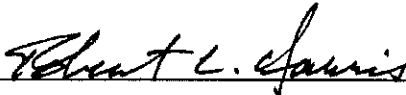
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Portions of the Affidavit of Keith Barney are conclusory, based on hearsay, are not supported by personal knowledge, and offer legal conclusions, all of which are inadmissible. The specific portions of the Chad Phillips Affidavit that must be stricken are:

Paragraph 4 (Second, third, and fourth sentences); Paragraph 7 in its entirety; Paragraph 8 in its entirety; Paragraph 9 in its entirety except for the first two sentences; and Paragraph 10 in its entirety.

Because the above portions of the Keith Barney Affidavit are inadmissible evidence, they should be stricken. To the extent these portions are relied upon by Plaintiffs in their Opposition to Motion for Summary Judgment, the arguments contained therein should be disregarded.

DATED this 21st day of January, 2008.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

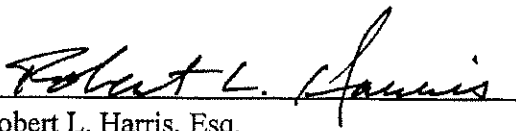
CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by mailing, with the correct postage thereon, a true and correct copy thereof on this 21st day of January, 2008.

**DOCUMENT SERVED: MEMORANDUM IN SUPPORT OF MOTION TO STRIKE
PORTIONS OF THE AFFIDAVIT OF KEITH BARNEY**

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