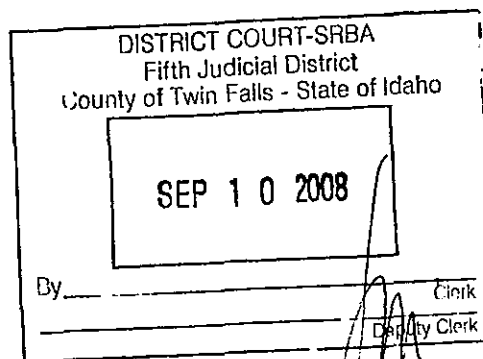


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Attorneys for Sarah Jane Smith

**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

Subcase No.: 63-7539

Case No. 39576

**SARAH JANE SMITH'S MOTION TO STRIKE
 CROSS-MOTION FOR SUMMARY
 JUDGMENT AND ALL SUPPORTING
 DOCUMENTS**

Pursuant to this Court's Order Vacating Trial and Setting Deadline for Filing of Dispositive Motions and Idaho Rules of Civil Procedures 11, 37(e) and 56, Claimant Sarah Jane Smith hereby moves this Court for an Order striking Objector Craig Whitted's Cross-Motion for Summary Judgment and all supporting documents filed September 10, 2008, including:

- (1) Cross-Motion for Summary Judgment;
- (2) Memorandum in Support of Cross-Motion for Summary Judgment;
- (3) Affidavit of Craig Whitted;
- (4) Affidavit of Sheilla Whitted;
- (5) Affidavit of Carrie Cusic-Moore;
- (6) Affidavit of Ava M. Race;
- (7) Affidavit of Alvin H. Race;
- (8) Notice of Hearing; and

**SARAH JANE SMITH'S MOTION TO STRIKE CROSS-MOTION
 FOR SUMMARY JUDGMENT AND ALL SUPPORTING DOCUMENTS - 1**

(9) Notice of Service.

Sarah Jane Smith further moves this Court for appropriate sanctions, including costs and attorneys' fees, caused by Objector Craig Whitted's violation of this Court's Order and untimely filing of his Cross-Motion for Summary Judgment which presents legal and factual issues that had not been previously disclosed in this matter and that contradict Whitted's previous representations and stipulations to this Court, made on the record at the July 1, 2008 pre-trial conference.

This Motion is made on the grounds and for the reasons that Whitted's clear violation of the Court's Order Vacating Trial and Setting Deadline for Filing of Dispositive Motions severely prejudices Sarah Jane Smith because it raises new issues after Sarah Jane Smith agreed to vacate the previously scheduled trial in this matter. Based upon Whitted's representation to the Court at the July 1, 2008 pre-trial conference, Sarah Jane Smith agreed to vacate the trial because it appeared there were no material questions of facts and the issues presented were purely legal questions that could be more appropriately addressed on summary judgment.

Sarah Jane Smith timely filed for Summary Judgment on July 31, 2008, based upon the facts and legal issues as had been framed at the July 1, 2008 Pre-Trial Conference. Sarah Jane Smith incurred substantial legal fees in preparing and filing her Motion for Summary Judgment.

On September 9, 2008, months after the Court's July 31, 2008 deadline for filing dispositive motions in this matter, Whitted served his current Cross-Motion for Summary Judgment supported by affidavits and briefing that raise new factual and legal issues. Not only do the materials contain new issues, but they are rife with inadmissible affidavit testimony based upon speculation and hearsay.

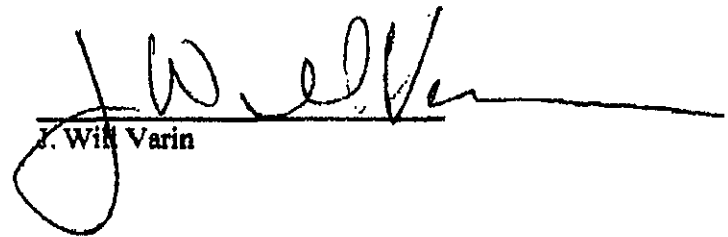
Whitted's untimely Motion should not be allowed by the Court and should be stricken from the record. If the Motion is allowed to stand, Sarah Jane Smith requests appropriate sanctions, including costs and attorneys' fees that were incurred based upon Whitted's representations to the Court and now his untimely filing of the current Cross-Motion for Summary Judgment.

Oral argument is requested.

In accordance with Rule 7(b)(3), a memorandum in support of this Motion may be filed.

Dated this 10th day of September, 2008.

GIVENS PURSLEY LLP

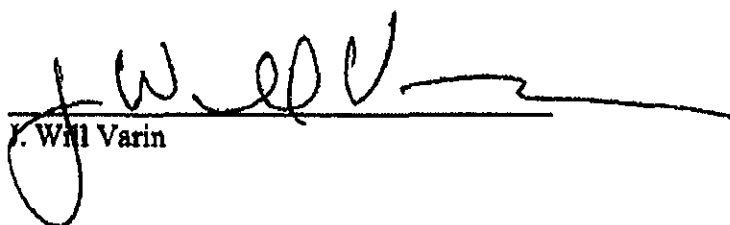

J. Will Varin

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Kimball D. Gourley
Trout Jones Gledhill Furhman, P.A.
225 N. 9th Street, Suite 820
PO Box 1097
Boise, ID 83701-1097

☐ U.S. Mail
☐ By hand
☐ Overnight
☒ Facsimile


J. Will Varin