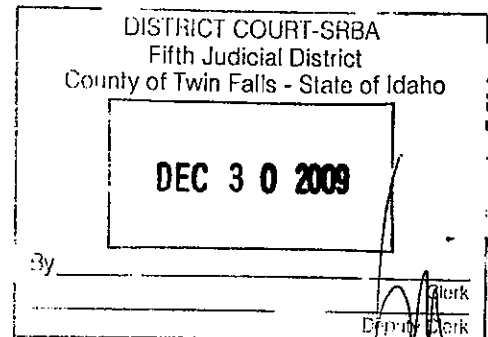


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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 37-296A, 37-717, 37-1216
	)	and 37-7854
	)	
Case 39576	)	INDIAN CREEK RANCH OWNERS
	)	ASSOCIATION, INC.'S MOTION TO
	)	EXTEND DEADLINES AND RENEWED
	)	MOTION FOR FEES AND COSTS

The Indian Creek Ranch Owners Association, Inc. ("ICROA") moves this Court for an Order, pursuant to Rules 6(b), 16(b) and 37 of the Idaho Rules of Civil Procedure, extending the deadlines in this case to join parties or amend pleadings (from 5:00 p.m., January 4, 2010 to 5:00 p.m., March 1, 2010); to consolidate (from 5:00 p.m.,

INDIAN CREEK RANCH OWNERS ASSOCIATION, INC.'s MOTION TO EXTEND
 DEADLINES AND RENEWED MOTION FOR FEES AND COSTS -- 1

January 4, 2010 to 5:00 p.m., March 1, 2010); to complete discovery (to March 1, 2010); and, to move for summary judgment (from 5:00 p.m., January 11, 2010 to 5:00 p.m., February 22, 2010). In conjunction with these requests, ICROA also moves this Court for an Order resetting the Summary Judgment Hearing/Status Conference (from 1:30 p.m., February 8, 2010 to 1:30 p.m., March 22, 2010).

Finally, ICROA asks the Court to now award it its attorney fees and costs for the effects upon it of City of Hailey's original failure to Answer and Respond to, or communicate about, ICROA's Discovery Requests, which required a Motion to Compel to remedy; for the effects upon it of City of Hailey's subsequent failure to Answer and Respond to, or communicate about, ICROA's Discovery Requests within the extended Answer and Response period subsequently ordered by the Court (and beyond); and, for the additional effect upon it of City of Hailey's delays, seen now in the additional expenditures ICROA must make in asking the Court to extend deadlines. This Motion is supported by, and incorporates, the Affidavits of Dana L. Hofstetter and Michael B. Schwarzkopf filed contemporaneously herewith. It is also supported by, and incorporates, ICROA's November 4, 2009 Motion to Compel and Affidavit of Dana L. Hofstetter in support thereof.

I. ARGUMENT

As the Court may recall, ICROA served its First Set of Interrogatories and its First Requests for Production of Documents ("Discovery Requests"), in each of the above-listed subcases, by facsimile on September 15, 2009. *Affidavit of Dana L. Hofstetter in*

Support of ICROA's November 4, 2009 Motion to Compel. Answers and Responses were due on October 15, 2009. No Answers or Responses were received by that time, and City of Hailey's counsel never made a request for an extension of the discovery response time. *Id.* Moreover, Claimant's counsel never would give ICROA any definite date assurance as to when Claimant would answer ICROA's Discovery Requests. *Id.* And, he avoided ICROA's efforts to meet and confer about those matters. *Id.*

The Court's original Trial Scheduling Order, of September 24, 2009, required that discovery in this case be completed by January 4, 2010. ICROA required timely Answers and Responses to its Discovery Requests so that it could complete discovery and prepare for trial, particularly given the scheduling constraints of the holiday season.

ICROA was forced to file a Motion to Compel City of Hailey's Answers and Responses on November 4, 2009. It requested an Order directing City of Hailey to Answer and Respond to the Discovery Requests forthwith and asked, pursuant to Rule 37(a)(4) of the Idaho Rules of Civil Procedure, that City of Hailey be required to pay ICROA's reasonable costs and attorney fees incurred in preparing and prosecuting that Motion.

At the Motion to Compel hearing, on November 18, 2009, the Court received City of Hailey's firm assurance that it would be able to Answer and Respond to ICROA's Discovery Requests by December 11, 2009, and the Court so ordered. The Court also vacated the January 4, 2010 discovery completion deadline on the record at that time.

The Court held in abeyance its decision on ICROA's parallel requests for attorney fees and costs.

City of Hailey did not Answer and Respond to ICROA's Discovery Requests by the Court-ordered date of December 11, 2009. *Affidavits of Dana L. Hofstetter and Michael B. Schwarzkopf*. Nor did it alert ICROA or the Court in advance that it would not be able to do so. *Id.* Nor did it initiate any communication with ICROA about the status of its Answers and Responses *after* the Court-ordered date passed. *Id.* Indeed, it was only after counsel for ICROA made inquiry by email to counsel for City of Hailey on December 15, 2009 (*Affidavit of Michael B. Schwarzkopf, Ex.1*), and then followed it up by phone message the following day, that counsel for City of Hailey, on December 17, 2009 finally undertook a communication about the two month overdue Answers and Responses. *Id.* In the course of that phone call, counsel for City of Hailey gave no explanation for the continuing delay and refused to give ICROA his availability for an effort to address the discovery and scheduling issues with the Court by telephone, before the Christmas holiday (as the Court had encouraged the parties to do during the Motion to Compel hearing). *Id.*

ICROA followed this conversation up with a letter later that same day, December 17, 2009, confirming that City of Hailey counsel had committed in the phone call to serve the Answers/Responses on Monday, December 21, 2009 (*Affidavit of Michael B. Schwarzkopf, Ex.2*). The letter also asked that he serve them by courier to avoid further delay, and asked that he communicate if courier was not possible, so that

counsel for ICROA could try again to arrange an informal conference call with the Court about discovery and scheduling matters before the Christmas holiday. *Id.* City of Hailey did not serve ICROA until Wednesday, December 23, 2009 (the result of which was that ICROA didn't receive the Answers/Responses as served by U.S. mail until late in the afternoon of Christmas Eve) (*Affidavit of Dana L. Hofstetter*); and, did not give ICROA the courtesy of the call it asked for if the Answers/Responses weren't actually going to be in ICROA's hands three days earlier as requested. *Affidavits of Dana L. Hofstetter and Michael B. Schwarzkopf*. This made it nearly impossible for ICROA to treat the rescheduling of deadlines issue informally, and brought on the necessity of filing this Motion. *Id.*

City of Hailey's failures are the continuation of a lack of respect by it for ICROA, for the Rules of Civil Procedure and for this Court. ICROA was sympathetic to City of Hailey's proffered justification for its failures the first time (though not for its lack of civility in failing to communicate with ICROA about it), but it is now struck by the feeling that City of Hailey's continuing failures to meet Court-ordered deadlines and promises to opposing counsel, and to communicate in good faith, unmask its underlying and widespread disrespect.

ICROA considered very seriously asking the Court to issue harsh sanctions against City of Hailey and its counsel at this time. It does not do so now out of its desire still to get along, if at all possible. It cannot abide, however, the extra costs and fees it has been put to by City of Hailey's failures. It asks for its fees and costs now for the original

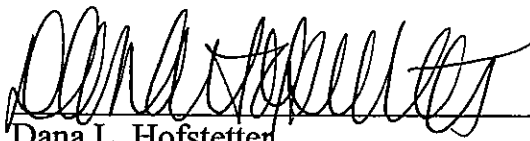
Motion to Compel; for the follow-up occasioned by City of Hailey's failure to communicate and meet the December 11, 2009 Court-ordered deadline; and, for necessitating the instant Motions at bar.

As an aside, because ICROA only received City of Hailey's Answers and Responses late in the afternoon of Christmas Eve, it has been unable to devote the time yet for a complete review of those Answers/Responses. ICROA, thus, reserves the right to seek additional attorney fees and costs, and sanctions, for deficiencies in those Answers/Responses.

For all of these reasons, ICROA respectfully asks the Court for these extensions of deadlines and for attorney fees and costs.

ICROA requests oral argument on this Motion.

DATED this 30th day of December, 2009.


Dana L. Hofstetter
Attorney for ICROA

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document (including any attachments) this 30th day of December, 2009, by the pre-paid method(s) indicated below to:

IDWR

Document Depository

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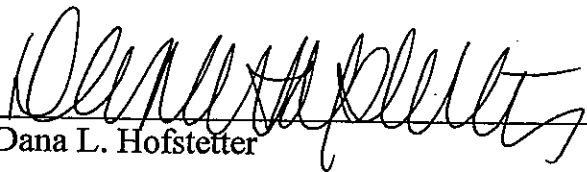
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