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Mark Hilty, ISB #5282
Aaron Seable, ISB # 7191
HAMILTON MICHAELSON & HILTY LLP
1303 12th Avenue Road
P.O. Box 65
Nampa, Idaho 83653-0065
Telephone: (208) 467-4479
Facsimile: (208) 467-3058

Paul J. Augustine, ISB #4608
Curtis D. McKenzie, ISB #5591
Craig Atkinson, ISB #8125
AUGUSTINE & MCKENZIE PLLC
1004 W. Fort Street
Boise, Idaho 83702
Telephone: (208) 367-9400
Facsimile: (208) 947-0014

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

CITY of CALDWELL, IDAHO, an Idaho municipal corporation, URBAN RENEWAL AGENCY OF THE CITY OF CALDWELL, IDAHO, an independent public body corporate and politic, BAKER DEVELOPMENT, LLC, an Idaho limited liability company, BB TWO, LLC, an Idaho limited liability company, DMB DEVELOPMENT, LLC, an Idaho limited liability company, CALDWELL 94, LLC, an Idaho limited liability company, GREAT SKY DEVELOPMENT, INC., an Idaho corporation, SAWGRASS COMMERCIAL, LLC, an Idaho limited liability company,

Plaintiffs,

Case No. CV-09-4261

**AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR
JURY TRIAL**

Fee Category: U
Fee: Exempt per I.C. § 67-2301

COPY

v.

PIONEER IRRIGATION DISTRICT;
MOFFATT THOMAS BARRETT, ROCK &
FIELDS, CHTD., and SCOTT CAMPBELL

Defendants.

CLASS ACTION COMPLAINT

Plaintiffs, individually and on behalf of others similarly situated, complain against defendant Pioneer Irrigation District (“PID”), Moffatt, Thomas, Barrett, Rock & Fields, Chtd. (“Moffatt”), and Scott Campbell (“Campbell”) upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigation made by their attorneys, as follows:

I. PRELIMINARY STATEMENT

1. PID, Moffatt, and Campbell (collectively “Defendants”) engaged in a scheme to improperly obtain attorney’s fees, property, services, and other financial consideration from persons seeking to alter, access, cross, or encroach upon PID’s claimed easements or rights-of-way.

2. Plaintiffs bring this action individually and on behalf of a class of persons who were injured by Defendants’ wrongful acts and practices.

3. The proposed class consists of persons who sought to alter, access, cross, or encroach upon one or more of PID’s claimed easements or rights-of-way, and:

- a) were forced to pay attorney fees or costs directly or indirectly to Moffatt or Campbell as a precondition for obtaining written permission of PID; or
- b) were required by PID to grant property interests, improvements or other value not

specifically related to whether the alteration, access, crossing or encroachment would unreasonably or materially interfere with PID's use or enjoyment of the easement or right-of-way.

4. As alleged herein, Defendants' actions give rise to Plaintiffs' class claims for: (1) Declaratory Relief pursuant to Idaho Code §§ 10-1201 and 48-608, (2) violation of the Idaho Consumer Protection Act, and (3) unjust enrichment.

II. PARTIES

5. THE CITY OF CALDWELL, IDAHO is, and at all times relevant hereto has been, a municipal corporation organized and existing under the laws of the State of Idaho and located wholly within Canyon County, Idaho.

6. URBAN RENEWAL AGENCY OF THE CITY OF CALDWELL, IDAHO, is, and at all times relevant hereto has been, an independent public body corporate and politic, the boundaries of which are located wholly within Canyon County, Idaho, organized and existing under and by virtue of the laws of the State of Idaho.

7. BAKER DEVELOPMENT, LLC, is, and at all times relevant hereto has been, an Idaho limited liability company doing business in Canyon County, Idaho.

8. BB TWO, LLC, is, and at all times relevant hereto has been, an Idaho limited liability company doing business in Canyon County, Idaho.

9. DMB DEVELOPMENT, LLC, is, and at all times relevant hereto has been, an Idaho limited liability company doing business in Canyon County, Idaho.

10. CALDWELL 94, LLC, is, and at all times relevant hereto has been, an Idaho limited liability company doing business in Canyon County, Idaho.

11. GREAT SKY DEVELOPMENT, INC., is, and at all times relevant hereto has been, an Idaho corporation, doing business in Canyon County, Idaho.

12. SAWGRASS COMMERCIAL, LLC is, and at all times relevant hereto has been, an Idaho limited liability company with its principal place of business in Eagle, Idaho.

13. PIONEER IRRIGATION DISTRICT is, and at all times relevant hereto has represented itself to be an irrigation district of the state of Idaho, located primarily within Canyon County, Idaho, organized and existing under and by virtue of the laws of the State of Idaho.

14. MOFFAT THOMAS BARRETT ROCK & FIELDS, CHTD. is, and at all times relevant hereto has been, a professional association corporation providing legal services, organized and existing under and by virtue of the laws of the State of Idaho with its principal place of business in Boise, Idaho.

15. SCOTT CAMPBELL is an individual who is, and at all times relevant hereto has been, a partner with Moffatt.

III. JURISDICTION AND VENUE

16. Jurisdiction and venue are proper in this matter pursuant to Idaho Code §§ 1-705, 5-404 and I.R.C.P. Rule 13(a). Further, the events giving rise to this dispute occurred primarily in Canyon County, PID resides and maintains its principal places of business in Canyon County and its geographic boundaries are primarily located within Canyon County, the wrongful actions of PID and Campbell impacted Plaintiffs and others within Canyon County, and most of PID's claimed easements and rights-of-way are located in Canyon County.

17. The amount in controversy in this matter exceeds \$10,000.

IV. FACTUAL ALLEGATIONS

18. PID claims rights to canals, drains, and other facilities that run across property and property rights owned by other persons, including Plaintiffs.

19. PID claims an interest in canals, drains, and other facilities on property owned by other persons, including within and near the corporate city limits of Caldwell.

20. PID's interest and claim to many or all of the canals, drains, and other facilities is, at most, based on alleged rights associated with prescriptive easements or easements improperly exacted from class members pursuant to license agreements as hereinafter alleged. On information and belief, PID does not own or hold proper fee title to the land underlying PID's claimed canals, drains, easements, or rights-of-way.

21. Property owners such as Plaintiffs interact with PID regarding the construction of roads and other projects in the vicinity of PID's facilities. As such, Plaintiffs and other persons are engaged in trade or commerce with PID in obtaining licenses. PID is in the business of negotiating, selling, and offering for sale licenses related to its claimed canals, drains, easements, or rights-of-way. PID operates in trade or commerce by taking other actions related to the delivery of water and other benefits to its district residents.

22. Moffatt and Campbell have been engaged as attorneys for PID at all times relevant to this complaint.

23. Moffatt and Campbell have engaged in trade or commerce with respect to PID and persons forced to pay fees or costs directly to Moffatt or Campbell for legal services as a condition to obtaining a license from PID.

24. Idaho Code § 42-1209, enacted in 2004, relates to easements or rights-of-way

held by irrigation districts such as PID. Section 42-1209 provides, in pertinent part, as follows:

[N]o person or entity shall cause or permit any encroachment onto the easements or rights-of-way, including any public or private roads, utilities, fences, gates, pipelines, structures, or other construction or placement of objects, without the written permission of the irrigation district...owning the easement or right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way....

25. Section 42-1209 imposes no requirement for payment of attorneys fees or engineering fees as a precondition for obtaining the written permission of the irrigation district, and does not permit the irrigation district to demand terms or conditions unrelated to whether the encroachment will unreasonably or materially interfere with PID's use and enjoyment of the easement or right-of-way.

26. PID owes Plaintiffs, and other property owners or persons accessing its facilities, a duty to exercise PID's legal rights and duties with reasonable care and in accordance with the law. Defendants do not have the right to demand fees or other concessions from Plaintiffs or others not related to an unreasonable or material interference with PID's use or enjoyment of an easement or right-of-way.

27. Acting knowingly and willfully, in bad faith, and with malicious intent, Defendants engage in an unfair scheme to exact attorney fees, other compensation, and/or concessions from persons and entities, including Plaintiffs, that need access to or across, or alteration of, one of PID's facilities to complete public or private development projects and activities. Defendants threaten legal action unless a license is obtained and then refuse to grant a license unless attorney fees and other costs are paid directly to Moffatt and/or Campbell. With bad intent, Defendants use threats of legal action and require a license as leverage to force the

requesting party to enter into unfair and one-sided attorney fee agreements with PID's attorneys, Moffatt and Campbell, and to obtain other wrongful compensation. PID knowingly gives Moffatt and Campbell the unrestrained ability to demand attorneys' fees from persons seeking to alter, access, cross, or encroach upon PID's claimed easements or rights-of-way. PID does not review, monitor, or control Moffatt and Campbell's actions relating to the incurring and collection of attorneys fees from persons seeking a license

28. Defendants require the payment of attorneys fees, even when the supposed encroachment would not unreasonably or materially interfere with any rights held by PID. Specifically, Defendants inform the requesting party that a license will be required and that the cost of obtaining the license will increase if the requesting party hires its own attorney. Then, Defendants force the requesting party to enter into a retainer agreement with Moffatt and Campbell, even though those attorneys will, ostensibly, be solely representing PID. The requesting party is then forced to pay a retainer to Moffatt and Campbell, and to replenish the retainer whenever demanded by those attorneys. The requesting party is then required to pay all legal fees charged by Moffatt and Campbell, regardless of the need for the work, regardless of the cause of the claimed need for the work, regardless of the amount of the legal work, regardless of the quality of the legal work, and regardless of the fact that the fees charged primarily benefit Moffatt and Campbell and not the requesting party.

29. Plaintiffs and other persons have been forced by Defendants to enter into these coercive agreements with Moffatt and Campbell and have been forced to pay attorneys' fees and to make other concessions demanded by Defendants.

30. On information and belief, the actions of Moffatt and Campbell are wrongful in

that they violate applicable rules of professional conduct, including, but not limited to, the following:

- Idaho Rule 1.5 (Reasonableness of Fee and Expenses)
- Idaho Rule 4.1 (Truthfulness in Statements to Others)
- Idaho Rule 4.3 (Dealing with Unrepresented Persons)
- Idaho Rule 4.4 (Respect for the Rights of Third Persons)
- Idaho Rule 8.4(a), (b) and (c) (Misconduct)

V. CLASS ACTION ALLEGATIONS

A. Definition of the Class

31. Plaintiffs bring claims herein as class claims pursuant to Idaho Rule of Civil Procedure (“I.R.C.P.”) 23. The requirements of I.R.C.P. 23(a), (b)(2) and (b)(3) are met with respect to the class defined below, of which Plaintiffs are a member (the “Class”):

Persons who sought to alter, access, cross, or encroach upon one or more of PID’s claimed easements or rights-of-way, and:

- a) were forced to pay attorney fees or costs directly or indirectly to Moffatt or Campbell as a precondition for obtaining written permission of PID; or
- b) were required by PID to grant property interests, improvements or other value not specifically related to whether the alteration, access, crossing or encroachment would unreasonably or materially interfere with PID’s use or enjoyment of an easement or right-of-way.

B. Numerosity

32. At this time, Plaintiffs do not know the exact size of the Class; however, due to

the nature of the trade and commerce involved, Plaintiffs believe that Class members are so numerous that joinder of all members is impracticable. The number of class members can be determined through appropriate discovery.

C. Commonality

33. There are questions of law or fact common to the Class, including at least the following:

- a) Whether Defendants improperly forced Class members to pay attorney fees or costs directly or indirectly to Moffatt or Campbell as a precondition for obtaining written permission of PID;
- b) Whether PID has the right to refuse to grant permission for accessing, crossing, altering or otherwise encroaching onto its claimed easements or rights-of-way unless and until attorney fees and/or other compensation is paid;
- c) Whether Defendants improperly required the requesting party to enter into a retainer agreement with Moffatt and/or Campbell, even though those attorneys ostensibly represented only PID;
- d) Whether Defendants have a right, under statute or otherwise, to impose requirements unrelated to whether a proposed encroachment unreasonably or materially interferes with the use and enjoyment of PID's easement;
- e) Whether declaratory relief is appropriate; and
- f) Whether Plaintiffs and the Class have been damaged and, if so, the proper measure of such damages.

D. Typicality

34. Plaintiffs have the same interests in this matter as all other members of the Class, and their claims are typical of all members of the Class.

E. Adequacy

35. Plaintiffs are committed to pursuing this action and have retained competent counsel with experience in the prosecution of consumer class actions. Plaintiffs will fairly and adequately represent the interests of Class members and do not have interests adverse to the Class.

F. The Prerequisites of I.R.C.P 23(b)(2) are Satisfied

36. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to I.R.C.P. 23(b)(2) exist as Defendants have acted or refused to act on grounds generally applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole.

37. The prosecution of separate actions by members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. For example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not illegal. Individual actions may, as a practical matter, be dispositive of the interest of the Class, who would not be parties to those actions.

38. Defendants' actions are generally applicable to the Class as a whole, and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole.

39. Defendants' systemic policy and practices make declaratory relief with respect to the Class as a whole appropriate.

G. The Prerequisites of I.R.C.P. 23(b)(3) are Satisfied

40. This case satisfies the prerequisites of I.R.C.P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class defined above.

VI. CLAIMS

COUNT ONE
(DECLARATORY JUDGMENT)

41. Plaintiffs reassert and re-allege all of the allegations set forth in the foregoing paragraphs as if set forth in their entirety.

42. At issue in this lawsuit is the interpretation and application of Idaho statutory and common law regarding the legitimacy of the scheme pursuant to which Defendants improperly demand attorneys fees, improvements, and other concessions.

43. Plaintiffs and Class members are entitled pursuant to Idaho Code Chapter 12, Title 10 to have the Court render a judicial determination that:

- a. Defendants' practice of forcing Class members to pay attorney fees or costs directly or indirectly to Moffatt or Campbell as a precondition for obtaining written permission of PID is improper;
- b. PID has no right to demand a condition or term that is unrelated to whether a proposed alteration, access, crossing or encroachment unreasonably or materially interferes with PID's use and enjoyment of an easement or right-of-way as a precondition to PID granting permission to alter, access, cross or encroach upon the claimed easement or right-of-way;

- c. Idaho Code § 42-1209 does not require persons to sign an open-ended retainer agreement with Moffatt and Campbell requiring Plaintiffs or other persons to pay and replenish a retainer to Moffatt and Campbell and be responsible, without limitation, for all costs and fees charged by Moffatt and Campbell;
- d. any license agreement entered into between PID and Plaintiffs, or any Class member, as a consequence of or in connection with Defendants' wrongful conduct be declared voidable by the wronged Class member,
- e. attorney fees imposed by Defendants in connection with attempts to alter, access, cross or encroach upon PID's claimed easements or rights-of-way were imposed unlawfully; and
- f. Defendants must repay all such attorney fees paid by Plaintiffs and Class members.

44. This is a dispute between parties concerning actual, existing facts.

45. A declaratory judgment generally addressing the relative rights of Defendants, Plaintiffs and Class members will clarify and settle the legal rights at issue in this case. A declaratory judgment issued in this action will provide relief from uncertainty and an existing controversy.

46. Plaintiffs, Class members, and Defendants have an interest in determining their relative rights and legal relations, and Plaintiffs and other Class members are entitled to have the same clarified by this court pursuant to Idaho Code § 10-1202.

COUNT TWO
UNFAIR TRADE PRACTICES

47. Plaintiffs hereby re-allege and incorporate by reference herein all of the allegations contained in the foregoing paragraphs as if set forth in their entirety.

48. At all times relevant hereto, there was in full force and effect the Idaho Consumer Protection Act, Idaho Code § 48-601 et seq. (the "ICPA"), which holds, in pertinent part: "unfair

methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Idaho Code § 48-603.

49. The issuance of licenses to persons seeking access to or across PID’s claimed easements or rights-of-way are acts or practices in the conduct of trade or commerce.

50. The provision of legal services by Defendants related to the issuance of licenses to persons seeking access to or across alteration of, or other encroachment onto PID’s claimed easements or rights-of-way are acts or practices in the conduct of trade or commerce.

51. PID owes Plaintiffs and other persons a duty to perform statutory, regulatory, and operational functions with ordinary care and in accordance with the law.

52. PID knowingly and with bad intent breached that duty by, among other things, imposing conditions and requirements not authorized by law.

53. Defendants further breached that duty by, among other things, unlawfully requiring that all parties seeking access onto or across, alteration of, or encroachment upon PID’s alleged easements or rights-of-way agree, in advance of any negotiations, to pay a retainer to Moffatt and Campbell and to be responsible for all Moffatt and Campbell’s fees and costs at their sole discretion. The agreement is coerced, one-sided, and unfair to the requesting party. Defendants use the requesting party’s need for access, crossing, alteration or encroachment, as well as the corresponding specter of costly project delays, to control negotiations unfairly, to extract unjustified concessions, and to run up attorney fees to the benefit of Moffatt and Campbell. Defendants have set up a scheme by which parties are penalized for engaging legal representation, asserting their legal rights or negotiating the terms of license agreements with Defendants.

54. Even when the requested access will not unreasonably or materially interfere with PID's use and enjoyment of an easement or right-of-way, it wrongfully withholds permission in order to extract property interests, improvements and other concessions.

55. By wrongfully withholding permission, and by threatening increased costs if a requesting party engages a separate attorney, Defendants have acted in bad faith. Defendants have extracted or have attempted to extract from Plaintiffs and other persons payment of attorney fees and other compensation. Defendants have committed deceptive acts or practices within the meaning of the ICPA by engaging in the acts and practices alleged herein.

56. Defendants have knowingly, or with reason to know, induced Plaintiffs and other persons to enter into transactions that were excessively one-sided in favor of PID, Moffatt and/or Campbell.

57. Defendants' conduct and pattern of conduct is outrageous and offensive to the public conscience.

58. Plaintiffs and the Class suffered an economic injury as a direct and proximate result of Defendants' conduct and are entitled to recover all damages caused by Defendants.

59. In addition to paying damages, Moffatt and Campbell should be required to make restitution of all attorney fees Plaintiffs and other persons have been improperly forced to pay Moffatt and Campbell.

60. Because the outcome of this claim will benefit others, Plaintiffs request that they recover their costs and attorney fees incurred in bringing this action under the private attorney general doctrine.

COUNT THREE
UNJUST ENRICHMENT

61. Plaintiffs hereby re-allege and incorporate by reference herein all of the allegations contained in the foregoing paragraphs as if set forth in their entirety.

62. Defendants improperly coerced Plaintiffs and other persons to provide benefits to Defendants in the form of attorney fees, costs and/or other concessions.

63. Defendants appreciated the benefit conferred by Plaintiffs and other persons.

64. It would be inequitable for Defendants to accept the benefits conferred by Plaintiffs and other persons without payment of the value of the benefit.

65. Defendants improperly coerced Plaintiffs and other persons to provide benefits to PID in the form of property rights, improvements, and/or other concessions.

66. Defendants appreciated the benefits conferred by Plaintiffs and other persons.

67. It would be inequitable for Defendants to accept the benefits conferred upon them without payment of the value of the benefits.

RESERVATION OF CLAIMS

68. Plaintiffs have not completed their investigation of this matter and have not completed discovery. Plaintiffs therefore expressly reserve the right, and give Defendants notice, that Plaintiffs may amend this complaint to state all other necessary claims and causes of action that come to light during the course of discovery in this matter.

CLAIM FOR ATTORNEY'S FEES

69. Plaintiffs have retained the law offices of Hamilton, Michaelson & Hilty, LLP and the law firm of Augustine & McKenzie PLLC duly licensed and practicing attorneys in the state of Idaho, to institute and prosecute this action. Plaintiffs are entitled to recover reasonable

attorneys fees and costs from Defendants pursuant to the private attorney general doctrine, Idaho Code §§ 10-1210, 12-117, 12-120, 12-121, 12-123, 48-608 and/or other provision of Idaho law.

DEMAND FOR JURY TRIAL

70. Pursuant to I.R.C.P. 38, Plaintiffs hereby demand a trial by a jury of not less than twelve (12) persons on all issues triable by a jury.

PRAYER FOR RELIEF

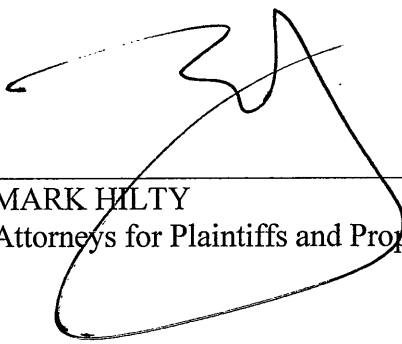
WHEREFORE, Plaintiffs, individually and on behalf of the Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the Class defined herein;
- B. Designating Plaintiffs as representatives of the Class and its counsel as Class counsel;
- C. A judicial declaration that:
 1. Defendants' practice of forcing Class members to pay attorney fees or costs directly or indirectly to Moffatt or Campbell as a precondition for obtaining written permission of PID is improper;
 2. PID has no right to demand a condition or term that is unrelated to whether a proposed alteration, access, crossing or encroachment unreasonably or materially interferes with PID's use and enjoyment of an easement or right-of-way as a precondition to PID granting permission to alter, access, cross or encroach upon the claimed easement or right-of-way;
 3. Idaho Code § 42-1209 does not require persons to sign an open-ended retainer agreement with Moffatt and Campbell requiring Plaintiffs or other persons to pay and replenish a retainer to Moffatt and Campbell and be responsible, without limitation, for all costs and fees charged by Moffatt and Campbell;

4. any license agreement entered into between PID and Plaintiffs, or any Class member, as a consequence of or in connection with Defendants' wrongful conduct be declared voidable by the wronged Class member.
 5. attorney fees imposed by Defendants in connection with attempts to alter, access, cross or encroach upon PID's claimed easements or rights-of-way were imposed unlawfully; and
 6. Defendants must repay all such attorney fees paid by Plaintiffs and Class members.
- D. Entering judgment in favor of Plaintiffs and the Class and against Defendants;
- E. Awarding Plaintiffs and Class members their individual damages including restitution of monies paid, or \$1,000 each, whichever is greater, and attorneys' fees and allowing costs, including interest thereon, pursuant to Idaho Code § 48-608 and other applicable statutes;
- F. That Plaintiffs be awarded reasonable attorney's fees and costs incurred herein; and
- G. Granting such further relief as the Court deems just.

DATED this 25th day of September, 2009.

HAMILTON, MICHAELSON & HILTY, LLP



MARK HILTY
Attorneys for Plaintiffs and Proposed Class