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CLERK DISTRICT COURT

DEPUTY

JOHN F. MAGNUSON
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, ID 83814
Phone: (208) 667-0100
Fax: (208) 667-0500
ISB #04270

Attorney for Respondent Jai Nelson

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

In re:

KOOTENAI COUNTY, IDAHO, an
Idaho political subdivision,

Petitioner.

CASE NO. CV-14-5205

**ANSWER OF RESPONDENT JAI
NELSON**

Fee Category: I.1

Fee: \$136

COMES NOW Jai Nelson, an owner of property in Kootenai County, a Kootenai County taxpayer, and a Kootenai County elector, by and through her attorney of record, John F. Magnuson, and hereby answers the "Petition for Judicial Confirmation" filed by or on behalf of Kootenai County on June 26, 2014. This Answer is made pursuant to law, including but not limited to I.C. §7-1307.

I. ANSWER.

1. By way of answer to the allegations contained in Paragraph I, this answering Defendant states that said allegations state matters of law to which no answer is required. To the

extent that the allegations contained in Paragraph I of the Petition allege matters of fact, said allegations are denied upon a lack of information or belief.

2. By way of answer to the allegations contained in Paragraph II, this answering Defendant admits that Kootenai County is a “political subdivision” within the definition contained in I.C. §7-1303(6); that Petitioner is generally authorized to institute a judicial confirmation proceeding pursuant to I.C. §7-1304; that a majority of Petitioner’s body has adopted a resolution authorizing the filing of this Petition; and that notice has been published in compliance with Idaho Code §7-1306(2). Defendant affirmatively denies that Plaintiff has stated a cognizable or substantive claim that would support the granting of the requested petition for judicial confirmation. Defendant further affirmatively alleges that the subject Lease (in the form attached to the Petition as Exhibit A), if entered into, would violate Article 8, Section 3 of the Idaho Constitution and other applicable law. To the extent not otherwise admitted, the allegations contained in Paragraph II are denied.

3. By way of answer to the allegations contained in Paragraph III, Defendant admits that the provisions of Idaho Code §§20-601 and 31-807 speak for themselves. To the extent that Petitioner alleges facts or matters contrary to the provisions of said statutory authorities, through the allegations contained in Paragraph III, said allegations are denied.

4. By way of answer to the allegations contained in Paragraph IV, this answering Defendant admits that Kootenai County Commissioners Tondee and Green approved a resolution which seeks judicial approval so as to allow Kootenai County to enter into the “rental agreement” in the form attached to the Petition as Exhibit A. Defendant affirmatively denies that the execution of the “rental agreement” will comply with the provisions of Article 8, Section 3 of the Idaho Constitution or that the execution of the subject “rental agreement” is otherwise in accordance with

Idaho law. The execution of the subject "rental agreement," in practical fact and practice, will cause the incurrence of indebtedness and liability in excess of the income and revenue of Kootenai County in future years, without the requisite assent of two-thirds (2/3) of the qualified electors voting at an election to be held for that purpose. Accordingly, the proposed "rental agreement" will cause the incurrence of an indebtedness or liability that is void under the terms of Article 8, Section 3 of the Idaho Constitution. To the extent not otherwise admitted, the allegations contained in Paragraph IV are denied.

5. By way of answer to the allegations contained in Paragraph V, Defendant admits that the terms of Article 8, Section 3 of the Idaho Constitution speak for themselves. To the extent that the allegations contained in Paragraph V allege to the contrary, said allegations are denied. Defendant affirmatively alleges that the proposed "rental agreement" will cause the incurrence of indebtedness or liability that is void under Article 8, Section 3 of the Idaho Constitution and that execution and entry into the subject "rental agreement" will constitute an unconstitutional act on the part of Kootenai County.

6. By way of answer to allegations contained in Paragraph VI, this answer Defendant admits that Commissioners Green and Tondee, acting on behalf of the Kootenai County Board of Commissioners, by a vote of two-to-one, have made the determinations described in Paragraph VI. Defendant affirmatively alleges that she has, as a Kootenai Commissioner, voted against proceeding with this petition for judicial confirmation and has also voted against Kootenai County entering into the subject "rental agreement." The subject "rental agreement" will create an indebtedness or liability contrary to the provisions of Article 8, Section 3 of the Idaho Constitution. To the extent not otherwise admitted, the allegations contained in Paragraph VI are denied.

7. By way of answer to the allegations contained in Paragraph VII, this answering Defendant admits the Petitioner has sought a petition as described but denies the legal viability or constitutionality of the same. To the extent not otherwise admitted, the allegations contained in Paragraph VII are denied.

8. By way of answer to the allegations contained in Paragraph VIII, this answering Defendant admits that judicial examination and denial of the Petition would serve an important public interest and purpose by precluding Kootenai County from entering into a “rental agreement” that violates Idaho law, including but not limited to Article 8, Section 3 of the Idaho Constitution. To the extent not otherwise admitted, the allegations contained in Paragraph VIII are denied.

9. Pursuant to Idaho Code §7-1307, Respondent Jai Nelson has statutory standing to oppose this petition, and to move for its dismissal, as an owner of property, a taxpayer, and an elector of Kootenai County. Respondent Nelson has owned property in Kootenai County since 1999, consisting of AIN 105455 (Kootenai County Parcel No. 48N04W-05-3200). In addition, Respondent Nelson has standing as a sitting and duly-elected Commissioner of Kootenai County.

II. AFFIRMATIVE DEFENSES.

By way of additional answer and affirmative defense, Respondent Nelson avers and alleges as set forth below:

10. Respondent Nelson incorporates herein as though set forth in full, as affirmative defenses, the admissions and denials contained in Paragraphs 1 through 9 above.

11. Kootenai County has failed to state a claim upon which relief can be granted.

12. Article 8, Section 3 of the Idaho Constitution provides in pertinent part:

No county ... shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it

for such year, without the assent of two-thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constituting a sinking fund for the payment of the principal thereof, within thirty (30) years from the time of contracting the same.

The Kootenai County Commissioners have previously requested, on three (3) separate occasions, that the qualified electors of Kootenai County, by a two-thirds (2/3) super majority, approve the construction of facilities encompassed by the subject "rental agreement." All such bond votes have failed. The subject petition is an attempted end-run around the super majority requirements of the Idaho Constitution, and seeks to disenfranchise the Kootenai County electorate of its rights to approve the incurrence of indebtedness in excess of the income and revenue of Kootenai County for future years.

13. The subject "rental agreement" calls for the leasing of a privately-owned jail facility that will increase the available prisoner bed count from 325 to 625. The annual increase in costs and expenses to Kootenai County, as a result of the obligations created by the subject "rental agreement," are estimated at between \$7,893,833 per year and \$9,975,219 per year. There is no demonstrable offsetting income or tax source sufficient to fund the entirety of the expenses and, consequently, the subject "rental agreement" will create an indebtedness violative of the Idaho Constitution.

14. The subject "rental agreement" requires the affirmative assent of two-thirds (2/3) of the Kootenai County electorate at an election specifically held for the purposes of approving the execution and entry into the subject "rental agreement."

III. ADDITIONAL REQUESTS FOR RELIEF.

COMES NOW Respondent Jai Nelson, and by way of additional and affirmative request for

relief, and states as follows:

15. Pursuant to Idaho case law, Boise v. Frazier, 143 Idaho 1, 137 P.3d 388 (2006), a Respondent or interested party under Idaho Code §7-1307 has a right to engage in discovery and to a full evidentiary hearing of the merits of the proposed "Petition for Judicial Confirmation." Respondent Nelson requests leave to conduct discovery and for a duly-scheduled evidentiary hearing following a full and fair opportunity to complete said discovery. Idaho Code §7-1308 authorizes the Court as follows:

If an order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or establish the truth of any averment by evidence or make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper.

See I.C. §7-1308.

16. To the extent necessary, Respondent moves to dismiss the Petition pursuant to I.C. §7-1307, based upon the sworn averments contained herein, and otherwise requests leave to conduct discovery in the event the Court deems the same just and proper.

IV. PRAYER FOR RELIEF.

WHEREFORE, Respondent/Interest Party Jai Nelson respectfully requests that the Court enter relief as follows:

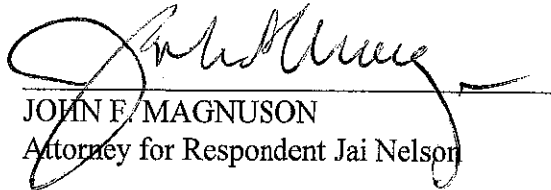
1. For entry of an Order dismissing the "Petition for Judicial Confirmation" with prejudice;
2. For entry of an Order determining that the proposed "Rental Agreement," in the form attached as Exhibit A to the "Petition for Judicial Confirmation," shall be and the same hereby is determined to be unconstitutional, on the facts, as violative of Article 8, Section 3 of the Idaho Constitution;

3. For entry of an order granting leave to conduct discovery and for a full evidentiary hearing as to the bona fides or merits (or lack thereof) of Petitioner's "Petition for Judicial Confirmation."

4. For an award of reasonable attorney fees and costs as incurred herein by Respondent, pursuant to I.C. §7-1313; and

5. For such other and further relief as the Court deems just and equitable.

DATED this 25th day of August, 2014.

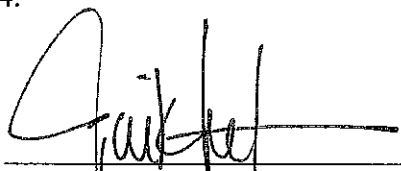

JOHN F. MAGNUSON
Attorney for Respondent Jai Nelson

VERIFICATION

STATE OF IDAHO)
) ss.
COUNTY OF KOOTENAI)

I, JAI NELSON, being first duly sworn upon oath, deposes and state that I have read the foregoing Answer of Jai Nelson, have personal knowledge of the matters set forth therein, and believe the same to be true and correct and so state.

DATED this 25th day of August, 2014.

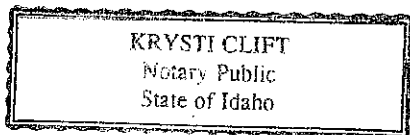


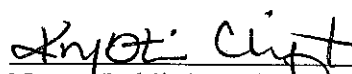
JAI NELSON

STATE OF IDAHO)
) ss:
COUNTY OF KOOTENAI)

On this 25th day of August, 2014, before me, the undersigned, a Notary Public in and for the said State and County, personally appeared **Jai Nelson**, known or identified to me to be the person whose name is subscribed to the within instrument and who acknowledged that she executed the same.

WITNESS my hand and official seal.





Notary Public in and for the State of Idaho
Residing at: Coeur d'Alene
My commission expires: 11/13/14

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2014, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Stephanie J. Bonney

Moore Smith Buxton & Turcke, Chartered

950 W. Bannock Street, Suite 520

Boise, ID 83702

U.S. MAIL

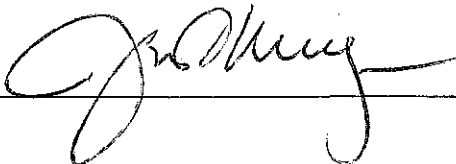
HAND DELIVERED

OVERNIGHT MAIL

FACSIMILE

(208)331-1202

E-MAIL: sjb@msbtlaw.com



KOOTENAI COUNTY JAIL.ANSWER.wpd