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Attorney for the Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO

In re:

JOHN T. AND PEPPER R. BUJAK,  
  
Debtors.

Case No.: 10-03569-JDP

MOTION TO APPROVE COMPROMISE

Pursuant to Fed. R. Bankr. P. 9019, the Trustee, by and through his counsel of record, ANGSTMAN JOHNSON, hereby moves the Court for approval of a compromise between the Estate, Canyon County (a political subdivision of the State of Idaho) and the Canyon County Prosecuting Attorney's Office (both collectively referred to herein as the "County"). Through this compromise, upon the Court's approval, the Estate will settle and release all claims which it possesses (defined more particularly below) against the County, and the County will pay the estate the sum of \$20,000.00. In support of this Motion, the Trustee alleges the following:

**FACTS**

The Debtor, John Bujak ("Bujak"), was the Canyon County Prosecuting Attorney between January 2009 and September 2010. In 2009, while he was prosecuting attorney, Bujak (as Prosecuting Attorney) bid, and was awarded, a contract with the City of Nampa (the "City") to provide misdemeanor prosecution services for the City. Several amendments were later made to the prosecution contract (the contract, including its amendments, is referred to herein as the "Prosecution Contract"). Payments from the City pursuant to the Prosecution Contract were made directly to Bujak, who was to reimburse the County for certain expenses. Ultimately, a dispute arose between Bujak and the County regarding those reimbursement payments and the nature of the payments made by the City. Additionally, a private citizen, Bob Henry, pursued a public records request for Bujak's bank account records related to the funds from the City.

During the summer of 2010, a state court trial was held on Henry's public records request, wherein the trial judge ruled that the records were private records, not subject to production from a public records request. This decision rested, in part, on the judge's decision that the Prosecution Contract was a private contract between Bujak and the City. This decision was subsequently appealed by Henry.

In the fall of 2010, Bujak renewed the Prosecution Contract. This renewed contract was in Bujak's individual name (rather than the County or Prosecuting Attorney's office). Shortly after the renewal of the Prosecution Contract, Bujak resigned as prosecuting attorney, and assigned the new Prosecution Contract to the Prosecuting Attorney's Office. On November 1, 2010, Bujak (together with his wife, Pepper) filed a voluntary Chapter 7 Bankruptcy Petition. Within 90 days prior to the filing of his

1 bankruptcy petition (and prior to his resignation as prosecuting attorney), Bujak paid the  
2 County approximately \$171,000.00 related to the Prosecution Contract.

3 After his bankruptcy case was filed, Bujak filed, without the Trustee's knowledge,  
4 a "Notice of Tort Claim" (see *Exhibit A* attached hereto), alleging claims against the  
5 County for, among other things, extortion, libel, slander, racketeering, defamation,  
6 tortious interference with a contract, intentional infliction of emotional distress, and 14<sup>th</sup>  
7 Amendment due process violations. Many of these alleged tort claims arose from the  
8 pre-petition conduct of the County or County officers. Consequently, many, if not all, of  
9 these claims were pre-petition claims which became property of the Bujaks' bankruptcy  
10 estate upon the filing of their bankruptcy petition.

11 In July 2011, the Trustee pursued an adversary proceeding against the County,  
12 seeking to avoid and recover the \$171,000.00 in payments made by Bujak within 90 days  
13 of his bankruptcy filing, as well as avoiding the transfer of the Prosecution Contract done  
14 when he resigned. These claims were based on the Trustee's allegations that the  
15 Prosecution Contract was a personal contract between Bujak and the City – a position  
16 that had been taken by the County in the original Bob Henry litigation.

17 While the Trustee was pursuing the adversary proceeding, the Bob Henry  
18 litigation came before the Idaho Supreme Court for review. Oral argument in the Bob  
19 Henry case was held in December 2011. On January 5, 2012, the Idaho Supreme Court  
20 issued its opinion in the Bob Henry lawsuit, ruling that the contract was a public contract  
21 between the City and the County Prosecuting Attorney, not a private contract between the  
22 City and Bujak. See *Henry v. Taylor*, \_\_\_ Idaho \_\_\_, 267 P.3d 1270 (2012). This  
23 decision, of course, did not favor the Trustee's position in the adversary proceeding.

1 Additionally, the claims alleged in the Notice of Tort Claim were based, in large part, on  
2 the argument that the Prosecution Contract was a private contract – not a public contract.

3 In light of the Idaho Supreme Court’s decision, the Trustee entered into settlement  
4 negotiations with the County, and the parties agreed to the instant compromise. The  
5 essential terms of the compromise are that the Estate will receive \$20,000.00 from the  
6 County, in return for settling all claims which the Estate may have against the County.  
7 The claims that the Estate is settling with the County include the following:  
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- 9 • any claims as defined in the Bankruptcy Code;
- 10 • any claims of the Trustee that exist under the Bankruptcy Code, and  
11 whether available to the Trustee as a voiding action, or available to the  
12 Trustee as the successor-in-interest to John Thomas Bujak or Pepper Rae  
13 Bujak.  
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- 15 • any claims of the Trustee that do not exist under the Bankruptcy Code, but  
16 are available to the Trustee under state or federal or any other law,  
17 including claims available at equity and claims available at law.  
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- 19 • any claims of the Trustee alleged or which could have been alleged by the  
20 Trustee in the adversary case of Gugino v. Canyon County, et.al.,  
21 Adversary No. 11-06038-JDP, filed in the Bankruptcy Case.  
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- 23 • any claims of the Trustee represented by the Notice of Tort Claim attached  
24 hereto as ***Exhibit A***.  
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26 Additionally, the County and Prosecuting Attorney’s Office are releasing the  
27 Trustee and the Estate from any claims they may have related to any of the claims that  
28 the Estate is settling. The County will retain the Proof of Claim it filed in the bankruptcy  
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1 case (Claim No. 2), but agrees not to further amend that claim. It is the intention of the  
2 Trustee, the County and the Prosecuting Attorney's Office that the definition of "claims"  
3 being settled and released be as broad as possible, and includes any and all claims of any  
4 kind or nature which may exist as of the date of execution of the compromise.  
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### 6 7 **PROPOSED COMPROMISE**

8 Subject to Court approval, the Trustee asserts that the proposed settlement is a  
9 "fair and equitable" resolution of the disputes, based upon factors such as: the probability  
10 of successfully litigating the claims; difficulty in enforcement of a judgment; the  
11 complexity, expense and delay of the litigation; the risk of non-collection; and the  
12 paramount interest of creditors, as analyzed below. *See In re: Marples*, 266 B.R. 202,  
13 206, 01.3 I.B.C.R. 116, 118 (Bankr. D. Idaho, 2001); *Martin v. Kane (In re: A&C*  
14 *Properties)*, 784 F.2d 1377, 1381-83 (9<sup>th</sup> Cir., 1986).  
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### 18 **PROBABILITY OF SUCCESSFULLY LITIGATING THE CLAIM**

19 Most, if not all, of the Trustee's claims (both asserted in the adversary proceeding,  
20 and otherwise) were based on the argument that the Prosecution Contract was a private  
21 contract between Bujak and the City and the funds derived by Debtors from said contract  
22 were property of the Debtors. The Idaho Supreme Court's determination that the contract  
23 was a public contract between the City and the Prosecuting Attorney's Office makes it  
24 much more difficult for the Trustee to prevail on his claims against the County. In order  
25 to prove either a preference or fraudulent transfer claim, the Trustee must prove that the  
26 Debtor transferred an "interest of the debtor in property." See 11 U.S.C. §547(b); 11  
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1 U.S.C. §548(a)(1). If the Debtor did not have any private interest in the Prosecution  
2 Contract (as opposed to an interest as a public employee), it becomes very difficult for  
3 the Trustee to show a preference or fraudulent transfer occurred. Additionally, the claims  
4 asserted in the Notice of Tort Claim were based on alleged statements made by public  
5 officials related to the public nature of the Prosecution Contract. If, in fact, the contract  
6 was a public contract, then proving that those statements were defamatory, false,  
7 slanderous, or otherwise actionable also becomes difficult, if not impossible.  
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10 Accordingly, based on the Idaho Supreme Court's decision, the Trustee does not  
11 estimate a very high probability of successfully litigating the claims that are being settled.  
12 Accordingly, it would be in the best interest of the creditors to settle these claims for the  
13 amount described herein.  
14

#### 15 16 **DIFFICULTY IN ENFORCEMENT OF A JUDGMENT**

17 In the event the Trustee fully prosecuted the claims being settled, he would obtain  
18 a money judgment against the County. The Trustee does not anticipate that the County  
19 would refuse to comply with any judgment or order entered by this court. However, the  
20 Trustee is not aware of the County's current financial affairs, and takes no position as to  
21 whether the County has the assets potentially required to pay any judgment obtained by  
22 the Trustee.  
23

#### 24 25 **COMPLEXITY, EXPENSE AND DELAY OF THE LITIGATION**

26  
27 The Trustee currently holds approximately \$20,000.00 in the estate (which sum is  
28 itself the subject of a currently-pending compromise motion). This settlement would add  
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1 an additional \$20,000.00 to the Trustee's ability to repay creditors. If the Trustee were to  
2 pursue the claims to trial (both those being presently pursued in the adversary proceeding,  
3 and the other potential claims which could be pursued), it would undoubtedly take at least  
4 several months, if not over a year, to get a trial date. (Some of the claims are state law  
5 claims which would likely be pursued in either state court or federal district court.)  
6 Additionally, while Trustee's counsel is being paid on a contingent basis for the  
7 adversary proceeding, any other litigation pursued by counsel would be on an hourly  
8 basis. The attorney fees involved in pursuing the state law claims could easily consume  
9 the available assets of the estate. Other than the adversary proceeding with the County,  
10 the Trustee does not currently contemplate any further litigation in this case.  
11 Accordingly, provided this compromise is approved, the Trustee could quickly proceed to  
12 a closeout of this estate.  
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#### 16 17 **PARAMOUNT INTEREST OF CREDITORS**

18 The above compromise will allow the creditors in this case to receive what likely  
19 would be the maximum recovery possible. The current funds in the estate would not be  
20 further depleted through attorney fees and expenses pursuing other claims against the  
21 County, or through further expenses in the adversary proceeding. The compromise will  
22 allow the Estate to recover \$20,000.00 from the County, for settlement of claims which,  
23 in all likelihood, could net the estate nothing if pursued to trial. Simultaneous with this  
24 Motion, Trustee's counsel has filed an Application for Compensation, in the amount of  
25 approximately \$17,000.00. This means the Estate will net approximately \$3000.00 from  
26 this compromise. This amount is, of course, higher than what the Estate would  
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1 potentially receive from a negative verdict. In the judgment of the Trustee, this  
2 compromise is in the Creditors' best interest.

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5 **CONCLUSION**

6 For the above-stated reasons, the Trustee asserts that the Motion for Approval of  
7 Compromise is a fair and equitable resolution of the issues between the Estate, the  
8 County, and the Prosecuting Attorney's Office, and is, in his business judgment, in the  
9 best interests of the creditors. Based on the foregoing, the Trustee requests the Court  
10 enter an order granting the Motion and approving the Compromise.  
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12  
13 DATED this 9<sup>th</sup> day of March, 2012.

14  
15 /s/  
16 MATTHEW T. CHRISTENSEN  
17 Attorney for the Trustee  
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CERTIFICATE OF SERVICE

I hereby certify that on this date as indicated below, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the individual(s) so noted below.

*Electronic Notification* \_\_\_\_\_

US Trustee	ustp.region18.bs.ecf@usdoj.gov
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Others as noticed on the Court's ECF Notice.

DATED: March 9, 2012

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/s/  
Matthew T. Christensen