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16 UNITED STATES BANKRUPTCY COURT
17 FOR THE DISTRICT OF IDAHO
18

19 In re: JOHN THOMAS BUJAK AND
20 PEPPER RAE BUJAK,

21 Debtors.

Case No.: 10-03569-JDP

Adversary No: _____

COMPLAINT

22 JEREMY GUGINO, solely in his capacity as
23 the Chapter 7 Trustee of the above-named
24 Debtor's bankruptcy estate,

Plaintiff,

25
26 vs.
27
28
29

CANYON COUNTY, a political subdivision
of the State of Idaho, CANYON COUNTY
PROSECUTING ATTORNEY'S OFFICE, a
public agency, and DOES 1-100,

Defendants.

**COMPLAINT OF THE TRUSTEE TO AVOID AND RECOVER PRE-
PETITION TRANSFERS RECEIVED BY DEFENDANTS PURSUANT TO 11
U.S.C. §§544, 547, 548 and 550 AND STATE STATUTORY AND COMMON LAW
CAUSES OF ACTION, INCLUDING THE IDAHO UNIFORM FRAUDULENT
TRANSFER ACT; FOR TURNOVER OF ESTATE PROPERTY PURSUANT TO
11 U.S.C. §542; FOR COSTS, ATTORNEY FEES AND OTHER RELIEF**

COMES NOW Jeremy Gugino, the duly appointed and acting Chapter 7 Trustee
of the Debtor herein ("Plaintiff" or "Trustee"), by and through his counsel of record,
ANGSTMAN JOHNSON, and pursuant to Fed. R. Bankr. Proc. 7001 brings this
Complaint against the Defendants:

JURISDICTION AND PARTIES

1. This Court has jurisdiction over this adversary proceeding pursuant to the
provisions of 11 U.S.C. Sections 105, 541, 542, 28 U.S.C. Sections 157 and 1334 and
pendent jurisdiction over related state law claims hereinafter set forth, all pursuant to the
standard order of reference entered in this district.

2. This adversary proceeding arises under Title 11 of the United States Code
and arises in or is related to the captioned Chapter 7 case now pending in the United
States Bankruptcy Court for the District of Idaho as Case Number 10-03569-JDP.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

1 4. On or about November 1, 2010, John and Pepper Bujak (the “Debtors”)
2 filed a voluntary petition under Chapter 7 of Title 11 of the United States Code. Plaintiff
3 is the duly appointed and acting Trustee of the bankruptcy estate.
4

5 5. Canyon County is now, and was at all times material to this action, a
6 political subdivision of the State of Idaho.

7 6. The Canyon County Prosecuting Attorney’s Office is now, and was at all
8 times material to this action, a public agency located within the State of Idaho.
9

10 7. Defendants Does 1-100 are currently unknown individuals or entities
11 which received monetary transfers from Canyon County, entities controlled by Canyon
12 County, or entities acting on Canyon County’s behalf. At such time as the true identity of
13 these unknown individuals or entities becomes known, the Plaintiff reserves the right to
14 amend this Complaint to properly name those individuals or entities.
15

16 **GENERAL ALLEGATIONS**

17 ***BUJAK ELECTED AS COUNTY PROSECUTOR***

18 8. In 2008, at a regularly scheduled budget meeting, the Canyon County
19 Commissioners fixed the salary for the Canyon County Prosecutor at \$104,000.00 per
20 year. That salary was for the scope of work defined by Idaho Code 31-2604, but not
21 including any city prosecutions, i.e. “violations for state misdemeanors and infractions
22 and violations of county or city ordinances committed within the municipal limits of that
23 city when the arresting or charging officer is a city employee.”
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1 9. In November 2008, John Bujak (“Bujak”) was elected to the position of
2 Canyon County Prosecuting Attorney. Bujak took office in January of 2009.

3 ***BUJAK PURSUES NAMPA PROSECUTION CONTRACT***
4

5 10. In March 2009 the City of Nampa requested proposals for the handling of
6 its city prosecutions.

7 11. Bujak had no duty or obligation to pursue the City of Nampa’s requested
8 proposal for city prosecutions. However, Bujak, by his own initiative, asked the Canyon
9 County Commissioners for permission to bid for the contract with the City of Nampa.
10

11 12. In April 2009, the Canyon County Commissioners adopted a resolution
12 authorizing Bujak to submit a proposal to the City of Nampa (“April 2009 Resolution”).

13 13. The April 2009 Resolution does not expand the scope of duties of or
14 increase the salary for the Canyon County Prosecuting Attorney.

15 14. After receiving Canyon County authorization, Bujak submitted a proposal
16 that the City of Nampa accepted.
17

18 15. On July 6, 2009 a written “Prosecution Services Term Agreement” (“City
19 Prosecution Agreement”)¹ was signed by Bujak, the Canyon County Commissioners, the
20 City of Nampa, and the City of Nampa Police Department. (A true and correct copy is
21 attached as Exhibit 1).
22

23 16. The City Prosecution Agreement:
24

25 a. Imposes no duties or obligations on Canyon County;
26

26 ¹ The term “City Prosecution Agreement” shall include all amendments to the original agreement that are
27 in effect at relevant times.
28
29

- b. Requires the City of Nampa to review Bujak's work and provide Bujak access to relevant records, police officers, code enforcement, clerical staff and other employees for purposes of furtherance of cases, and to provide office space, work surfaces, telephones and computers to facilitate such work;
 - c. Requires Bujak to perform professional services for criminal and infraction prosecution for the City of Nampa, and to be responsible for costs of affiliated discovery responses;
 - d. Makes Bujak responsible for all costs relating to staff, discovery responses, office supplies and copying, licensing, insurance and other expenses related to office operations;
 - e. Agrees to pay "TO [Bujak]" and "in consideration for [Bujak's] performance of prosecutorial services" the sum of \$598,357.88 per year, in monthly installments of \$49,863.15. Payments were to be deposited with the Canyon County Auditor;
 - f. States it is the entire agreement between Bujak and the City of Nampa, and provides for amendment only by a written agreement between Bujak and the City of Nampa; and
 - g. Has an initial term from July 6, 2009 through September 30, 2009.
17. In order to compensate Canyon County for the use of County resources in the prosecution services provided under the City Prosecution Agreement, Canyon

1 County and Bujak agreed that Canyon County would bill Bujak the cost of
2 resources actually devoted to prosecution of Nampa misdemeanors and
3 infractions. This agreement was subsequently memorialized and/or ratified by
4 resolution executed on October 6, 2009 by the County Commissioners.
5

6 18. Commencing July 9, 2009, the City of Nampa paid monthly installments to
7 Bujak in the amount of \$49,863.15. (The first payment was slightly less than the
8 contract amount).
9

10 19. Commencing in August of 2009, Canyon County began billing Bujak, on a bi-
11 weekly basis, for the cost of county resources devoted to the prosecution of
12 Nampa misdemeanors and infractions. These billings amounted to
13 approximately \$9600.00 for each bi-weekly period. Bujak promptly paid these
14 bills on a monthly basis.
15

16 20. The City of Nampa has issued IRS Form 1099's to Bujak for payments under
17 the City Prosecution Agreement.
18

19 21. On September 8, 2009, Bujak and the City of Nampa signed a written
20 "Amendment to Prosecution Services Term Agreement" ("First City
21 Prosecution Amendment"). (A true and correct copy is attached as Exhibit 2).
22

23 22. The First City Prosecution Amendment amends the payment terms to provide
24 that the City of Nampa will pay directly to Bujak the sum of \$598,357.88 per
25 year, in monthly installments of \$49,863.15, in consideration of Bujak's
26 prosecutorial services.
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1 23. On October 6, 2009, Canyon County issued a written resolution:

- 2 a. authorizing Bujak to contract with any city within the county to prosecute
3 non-conflicting misdemeanors and infractions;
4
5 b. stating that Canyon County would bill the “Nampa prosecuting attorney”
6 for any county resources actually devoted to prosecution of Nampa
7 misdemeanors and infractions.

8
9 24. On November 4, 2009, Bujak and the City of Nampa signed a written “Second
10 Amendment to Prosecution Services Term Agreement” (“Second City
11 Prosecution Amendment”). (A true and correct copy is attached as Exhibit 3).

12 25. The Second City Prosecution Amendment extended the term of the City
13 Prosecution Agreement to include October 1, 2009 through September 30, 2010.

14 26. Bujak successfully managed the City Prosecution Agreement and generated a
15 profit.
16

17 ***PRIOR LITIGATION REGARDING NAMPA PROSECUTION CONTRACT***

18 27. In March and April of 2010 a third party individual, Bob Henry (“Henry”),
19 made three public records requests regarding Bujak’s prosecution services:
20

- 21 a. Henry made a first request to the Canyon County Clerk for any original
22 and amended contracts and copies of “bill, invoices etc. sent to Nampa by
23 the County for Prosecuting Svc.” It also contained questions regarding
24 how prosecution service funds were handled.
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1 b. Henry made a second request to the Prosecuting Attorney, (attaching the
2 first request) and included a request for ledger, bank statements and
3 “source documents” for the flow of payments from the City of Nampa “to
4 any intermediary accounts and finally to the County Treasurer” for the
5 period of July 2009 through February 2010.
6

7 c. Henry made a third request, by letter to the Canyon County Board of
8 Commissioners that contained requests for various documents including
9 ledgers, bank statements, checks and other documents for funds paid into
10 and out of a “non-county account” or other accounts.
11

12 28. Henry was dissatisfied with the responses he received to his public record
13 requests. On May 21, 2010 Henry filed a petition to compel public records
14 against Bujak, the Canyon County Prosecuting Attorney’s Office, and Canyon
15 County in the Third Judicial District of the State of Idaho, in and for Canyon
16 County (the “Records Request Case”).
17

18 29. In the Records Request Case, Canyon County was represented by separate
19 independent counsel – not Bujak or the Canyon County Prosecuting Attorney’s
20 Office.
21

22 30. In the Records Request Case, Canyon County, the Canyon County Prosecuting
23 Attorney’s Office, and Bujak took the position that the City Prosecution
24 Agreement was an agreement between Bujak, as an individual, and the City of
25 Nampa.
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1 31. In the Records Request Case, Canyon County, the Canyon County Prosecuting
2 Attorney's Office, and Bujak also took the position that money being directly
3 paid to Bujak pursuant to the City Prosecution Agreement was Bujak's
4 property, and Canyon County has no legal interest in such funds.
5

6 32. In the Records Request Case, Canyon County moved for dismissal and
7 specifically asserted the defense that it did not have authority, custody, control
8 or authorized access to the bank accounts in which Bujak deposited the funds he
9 received from the City of Nampa pursuant to the City Prosecution Agreement.
10 Canyon County further supported its motion by submitting the affidavit
11 testimony of Canyon County Commission Chairman David Ferdinand testifying
12 in support of this defense.
13
14

15 33. On July 22, 2010, the Honorable Kathryn A. Sticklen issued a memorandum
16 decision and order denying Henry's petition. (The "Sticklen Decision"). (A
17 true and correct copy of the Sticklen Decision is attached as Exhibit 4.)
18

19 34. In the Sticklen Decision, that court:

20 a. Concluded, as a matter of law, that Idaho Code §31-3113, which governs
21 contracts between county prosecuting attorneys and municipalities,
22 provides that only a prosecuting attorney (as opposed to a county) may
23 enter a contract with a municipality to provide prosecution services.
24

25 b. Concluded that records relating to the bank account in which Bujak
26 deposited funds he received from the City of Nampa pursuant to the City
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1 Prosecution Agreement were not public records. This conclusion was
2 based upon the determination that the funds from the City Prosecution
3 Agreement were funds received by Bujak in his capacity as a private
4 individual for the performance of obligations not relating to the duties of
5 the Canyon County Prosecuting Attorney.
6

7 35. Henry has appealed the Sticklen Decision to the Idaho Supreme Court. As of the
8 date of this complaint, the Idaho Supreme Court has not issued a decision.
9

10 36. In defense of the appeal, Canyon County, and the Canyon County Prosecuting
11 Attorney's Office²:

- 12 a. maintain that "Judge Sticklen accurately characterized Canyon County's
13 position in her Memorandum Decision;"
14
15 b. continue to advance the position that Idaho Code 31-3113, the statute
16 central to the Sticklen Decision, states only that "prosecuting attorneys
17 may enter contracts with a city to prosecute nonconflicting misdemeanors
18 and infractions", and that the statute "does not say that counties may enter
19 into such agreements."
20

21 37. Canyon County and the Canyon County Prosecutor's Office are now judicially
22 estopped, and/or precluded (pursuant to either claim preclusion or issue
23

24
25 ² The respondents to the appeal also include Mr. Brian Taylor. Mr. Taylor has been appointed to fill the
26 remaining months of Mr. Bujak's term as prosecuting attorney. Mr. Taylor claims to have been substituted
27 as a party in Mr. Bujak's place pursuant to Rule 25(d) of the Idaho Rules of Civil Procedure. However, as
28 to the rights of Mr. Bujak, no party to the appeal has sought or received relief from the automatic stay
29 under 11 USC 362.

1 preclusion) from claiming that they had any interest in the City Prosecution
2 Agreement or its proceeds.

3
4 38. Canyon County and the Canyon County Prosecutor's Office are now judicially
5 estopped, and/or precluded (pursuant to either claim preclusion or issue
6 preclusion) from disputing the fact that only Bujak had any interest in the City
7 Prosecution Agreement or its proceeds.

8
9 ***COUNTY RENEGOTIATES WITH BUJAK***

10 39. In May or June of 2010, certain Canyon County Commissioners, told Bujak,
11 directly, and outside of any public meeting, that they wanted to renegotiate the
12 compensation agreement with Bujak so that the County would get more money.

13 40. The Canyon County Commissioners and Canyon County controller wanted
14 Bujak to change the compensation agreement so that, in addition to the cost of
15 resources actually devoted to prosecution of Nampa misdemeanors and
16 infractions, Bujak would also pay the cost of all county resources (exclusive of
17 salaries and deducting asset forfeiture proceeds) devoted to county prosecutions
18 ("County Prosecution Costs").
19

20
21 41. After several discussions with the Canyon County Controller and Canyon
22 County Commissioners, Bujak told the County Commissioners, on June 14,
23 2010, that he would also retroactively pay the actual County Prosecution Costs
24 for both the time period of July 1, 2009 to June 30, 2010, and going forward,
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1 would pay actual County Prosecution Costs, on a monthly basis, as they were
2 incurred.

3
4 42. On June 24, 2010 Canyon County invoiced Bujak for \$322,540.28. That
5 invoice, for the first time, included charges identified as County Prosecution
6 Costs. ("June 24, 2010 Invoice").³ The County Prosecution Costs included in
7 that invoice were for the time period July 10, 2009 through May 31, 2010.

8
9 43. The County Prosecution Costs historically range from \$135,000 to \$185,000 per
10 year.

11 44. The County Prosecution Costs incurred between July 1, 2009 and June 30, 2010
12 were extraordinary because the Canyon County Prosecutors Office invested in a
13 technology upgrade to become a "paperless" office. Consequently, the actual
14 County Prosecution Costs for the July 1, 2009 to June 30, 2010 time period (less
15 asset forfeiture proceeds) totaled approximately \$285,000.⁴

16
17 45. On or about June 14, 2010, Canyon County did not give anything to Bujak in
18 exchange for his promise to pay the County Prosecution Costs.

19
20 ***SECOND NAMPA PROSECUTION AGREEMENT***

21 46. On August 6, 2010, after entry of the Sticklen Decision, the Canyon County
22 Commissioners unanimously executed and sent a letter to the City of Nampa
23
24

25 ³ The June 24, 2010 include both actual and estimated County Prosecution Costs.

26 ⁴ The June 24, 2010 invoice, by comparison, did not include chages for the month of June, 2010. It
27 did include actual charges of \$74, 643.70 for July, August and September of 2009 and "estimated" charges
28 of \$230,664.00 for October 2009 through May 2010.
29

1 regarding prosecution services provided by Bujak (“Prosecution Services
2 Letter”). (A true and correct copy is attached as Exhibit 5.)

3
4 47. In the Prosecution Services Letter, Canyon County:

5 a. Confirmed and extended its consent and authority for all payments under
6 the City Prosecution Agreement to be made “directly to ‘John T. Bujak;’”

7 b. Gave permission to the City of Nampa and Bujak to make whatever
8 contractual provisions pertaining to payment that those parties wished to
9 make; and

10 c. States that Canyon County and Bujak had separate arrangements
11 providing that Bujak would compensate the county for “any County
12 resources used in the performance of his contractual duties with the City
13 of Nampa.”
14

15
16 48. On September 7, 2010, the City of Nampa and Bujak entered a new prosecution
17 services contract (the “Second City Prosecution Agreement”). (A true and
18 correct copy of that document is attached as Exhibit 6.)

19
20 49. On or about September 7, 2010 the Second City Prosecution Agreement was
21 duly approved and ratified by the Nampa City Council pursuant to motion, with
22 unanimous approval.

23 50. The Second City Prosecution Agreement:

24 a. Imposes no duties or obligations on Canyon County;
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- b. Requires the City of Nampa to provide Bujak office space, work surfaces, related facilitate prosecution services, and insurance coverage for Bujak and his staff while providing prosecutorial services to the City of Nampa, under an endorsement to the City's insurance policy;
- c. Requires Bujak to perform professional services for criminal and infraction prosecution for the City of Nampa;
- d. Agrees to pay "TO [Bujak]" and "in consideration for [Bujak's] performance of prosecutorial services" the sum of \$598,357.88 per year, in monthly installments of \$49,863.15;
- e. Specifically states that Bujak is to pay and be responsible for all taxes due for compensation under the contract, and specifically requires that the City of Nampa issue an IRS Form 1099 to Bujak for all payments made under the contract;
- f. States it is the entire agreement between Bujak and the City of Nampa, and provides for amendment only by a written agreement between Bujak and the City of Nampa; and
- g. Has a two year, three month, and seven day term, commencing October 1, 2010 and continuing through January 7, 2013.

51. To the extent Bujak was obligated, on September 7, 2010, to pay Canyon County for County Prosecution Costs, Bujak incurred additional indebtedness to Canyon County equal to the amount of those costs for the term of the Second

1 City Prosecution Agreement, in an undiscounted amount of not less than
2 approximately \$283,000.00.

3 ***CASH PAYMENTS BY BUJAK TO CANYON COUNTY***
4

5 52. From August 16, 2009 through June 24, 2010 Canyon County billed, on a bi-
6 weekly basis, the cost of resources devoted to prosecution of Nampa
7 misdemeanors and infractions.

8 53. From August 16, 2009 through June 24, 2010 Bujak paid, in full, on a monthly
9 basis, the billed cost of Canyon County resources devoted to prosecution of
10 Nampa misdemeanors and infractions.

11 54. Bujak made no payments between June 24, 2010 and August 18, 2010.

12 55. Following Bujak's last payment on June 24, 2010, Canyon County submitted
13 both the June 24, 2010 Invoice⁵, and an invoice dated August 4, 2010 for
14 \$81,336.72. ("August 4, 2010 Invoice").
15

16 56. The August 4, 2010 invoice included both cost of Canyon County resources
17 devoted to prosecution of Nampa misdemeanors and infractions, and also the
18 County Prosecution Costs for the time period of July 1, 2010 through July 31,
19 2010.
20

21 57. On August 19, 2010, Bujak Law, PLLC held at least \$100,000 for the benefit of
22 Bujak. Bujak Law PLLC delivered \$100,000 to Bank of the Cascades. In
23 return, Bank of the Cascades provided a cashier's check in the amount of
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27 ⁵ For reference, the face amount of that invoice is \$322,540.28.
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29

1 approximately \$100,000 payable to Canyon County. Bujak then delivered the
2 \$100,000 cashier's check to Canyon County. ("100K Payment").

3
4 58. Canyon County deposited the 100K Payment.

5 59. On September 2, 2010, Canyon County submitted an invoice for \$29,751.51.
6 ("September 2, 2010 Invoice").

7 60. The September, 2010 invoice included both cost of Canyon County resources
8 devoted to prosecution of Nampa misdemeanors and infractions, and also the
9 County Prosecution Costs for the time period of August 1, 2010 through August
10 31, 2010.

11
12 61. On September 29, 2010, Bujak Law, PLLC held at least \$71,000 for the benefit
13 of Bujak. Bujak Law PLLC wrote a check in that amount payable to Canyon
14 County. Bujak then delivered the \$71,000 check to Canyon County. ("71K
15 Payment").
16

17 62. Canyon County cashed the 71K Payment.

18 ***BUJAK'S TRANSFER OF PROSECUTION AGREEMENT PROCEEDS AND THE***
19
20 ***SECOND CITY PROSECUTION AGREEMENT***

21 63. Under the City Prosecution Agreement, Bujak had incurred monthly expenses
22 of approximately \$20,000 per month attributable to the prosecution of Nampa
23 misdemeanors and infractions.

24 64. The cost to perform the Second City Prosecution Agreement is the same as the
25 cost to perform the initial City Prosecution Agreement. The income under the
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1 Second City Prosecution Agreement is the sum of \$598,357.88 per year, in
2 monthly installments of \$49,863.15.

3
4 65. The value of the Second City Prosecution Agreement is the difference between
5 the total income and total cost to perform the agreement, (approximately
6 \$783,000.00, undiscounted) or such other amount as may be determined by the
7 evidence and findings of the Court at trial of this matter.

8
9 66. On September 30, 2010, Canyon County (through counsel) made written
10 demand upon Bujak for the sum of \$288,589.34. ("Demand Letter").

11 67. On September 30, 2010, in response to the Demand Letter, Bujak assigned all
12 sums due and owing to him under the City Prosecution Agreement and/or
13 Second City Prosecution Agreement to Canyon County ("Assignment of
14 Proceeds"). The value of the assigned proceeds is of such amount as may be
15 determined by the evidence and findings of the Court at trial of this matter.
16

17 68. In response to the Demand letter, and pursuant to acceptance and ratification by
18 the Nampa City Council during the regular City Council meeting on October 4,
19 2010 that date, Bujak assigned and transferred all of Bujak's interest in the
20 Second City Prosecution Agreement to Canyon County and the Canyon County
21 Prosecuting Attorney's Office. ("Assignment of Contract"). (A true and correct
22 copy of the written agreement memorializing the transfer is attached as Exhibit
23 7.)
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1 69. The assets transferred to Canyon County pursuant to the 100K Payment, 71K
2 Payment, Assignment of Proceeds, and/or Assignment of Contract were all
3 property of Bujak.
4

5 **COUNT ONE – 11 U.S.C. § 547 PREFERENCE TRANSFERS**

6 70. All prior allegations are incorporated by reference and realleged in this count.

7 71. To the extent this Court finds that Canyon County has any legal claim to any
8 indebtedness by the Debtors, then Canyon County is and was a creditor of the
9 Debtors.
10

11 72. To the extent this Court finds that Canyon County has any legal claim to any
12 indebtedness by the Debtors, the 100K Payment, 71K Payment, Assignment of
13 Proceeds, and/or Assignment of Contract, were on account of an antecedent
14 debt owed by Bujak before such transfers were made.
15

16 73. On or about August 19, 2010, Bujak had total indebtedness of approximately
17 \$992,466.00. (This amount does not include the sum that Canyon County
18 Claims, or any additional indebtedness arising by virtue of the Second City
19 Prosecution Agreement).
20

21 74. On or about August 19, 2010, Bujak had assets, including sums held on his
22 behalf by third parties, with combined value of approximately \$697,358.36.
23 (This amount does not include the value of the Second City Prosecution
24 Agreement, but does include the assets the Debtors claim as exempt).
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1 75. The 100K Payment, 71K Payment, Assignment of Proceeds, and/or Assignment
2 of Contract were all made within 90 days before the date of the filing of the
3 Debtor's bankruptcy Petition.
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5 76. On the date(s) of the 100K Payment, 71K Payment, Assignment of Proceeds,
6 and/or Assignment of Contract, the Debtors were insolvent.

7 77. Upon information and belief, the Debtors have unsecured creditors (other than
8 Canyon County) that hold nonpriority claims totaling at least \$379,125.33.
9

10 78. Upon information and belief, the Debtors have lien creditors that are
11 undersecured by approximately \$99,000.

12 79. Upon information and belief, the Debtors have unsecured priority claims in
13 excess of \$14,000.00.
14

15 80. Upon information and belief, other than the 100K Payment, the 71K Payment,
16 Assignment of Proceed and Assignment of Contract, Debtors only have non-
17 exempt assets of nominal value with which to satisfy Debtors unsecured debts.

18 81. To the extent this Court finds that Canyon County has any legal claim to any
19 indebtedness by the Debtors, Canyon County received more as a result of the
20 100K Payment, 71K Payment, Assignment of Proceeds, and/or Assignment of
21 Contract than it would have, otherwise, in Chapter 7 liquidation.
22

23 82. As a direct and proximate result of the foregoing, and pursuant to 11 U.S.C.
24 §§547 and 550, the Trustee is entitled to avoid and recover all transfers, or the
25 value of the transfers, from the Defendants for the benefit of the Debtor's estate.
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COUNT TWO – ALTERNATIVE CLAIM: 11 U.S.C. §548(a)

FRAUDULENT TRANSFERS

83. All prior allegations are incorporated by reference and realleged in this count.

84. This count is in addition to, or in the alternative to Count One: (a) to the extent the Court finds that Debtors were not indebted to Canyon County at the time of the 100K Payment, 71K Payment, Assignment of Proceeds, and/or Assignment of Contract; (b) to the extent the Court finds that the 100K Payment, 71K Payment, Assignment of Proceeds, and/or Assignment of Contract resulted in overpayment of the amount of any indebtedness of Debtors to Canyon County; or (c) to the extent Bujak transferred property to the Canyon County Prosecuting Attorney's Office.

85. In exchange for the 100K Payment, 71K Payment, Assignment of Proceeds, and/or Assignment of Contract, Bujak received either no value, or less than reasonably equivalent value.

86. On the date(s) of the 100K Payment, 71K Payment, Assignment of Proceeds, and/or Assignment of Contract, Bujak was insolvent, or became insolvent as a result of such transfer(s).

87. 11 U.S.C. §§548 and 550 deem the 100K Payment, 71K Payment, Assignment of Proceeds and/or Assignment of Contract to be fraudulent and permits the Trustee to avoid and recover all such transfers for the bankruptcy estate of the Debtors for the benefit of all creditors.

1 88. Based on the foregoing, the Trustee requests that the Court determine, pursuant
2 to 11 U.S.C. §§548 and 550, that the 100K Payment, 71K Payment, Assignment
3 of Proceeds and/or Assignment of Contract are void, and that a judgment be
4 rendered allowing the trustee to recover the transferred assets, or, alternatively,
5 requiring the Defendants to repay the full amount of the transfers.
6

7 **COUNT THREE – ALTERNATIVE CLAIM: 11 U.S.C. §544 AND IDAHO**

8 **STATE LAW FRAUDULENT TRANSFERS**

9
10 89. All prior allegations, and particularly those allegations of Count Two, are
11 incorporated by reference and realleged in this count.

12 90. This count is in addition to, or in the alternative to Count One: (a) to the extent
13 the Court finds that Debtors were not indebted to Canyon County at the time of
14 the 100K Payment, 71K Payment, Assignment of Proceeds, and/or Assignment
15 of Contract; (b) to the extent the Court finds that the 100K Payment, 71K
16 Payment, Assignment of Proceeds, and/or Assignment of Contract resulted in
17 overpayment of the amount of any indebtedness of Debtors to Canyon County;
18 or (c) to the extent Bujak transferred property to the Canyon County
19 Prosecuting Attorney's Office.
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22 91. The applicable state law, for purposes of 11 USC §544(b) is the law of the State
23 of Idaho.
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1 92. Under Idaho Law, fraudulent transfers are governed by the Unlawful Transfer
2 Statute, Idaho Code 55-901 through 55-909, and the Uniform Fraudulent
3 Transfer Act, Idaho Code 55-910 through 55-921.

4
5 93. In exchange for the 100K Payment, 71K Payment, Assignment of Proceeds,
6 and/or Assignment of Contract, Bujak received either no value, or less than
7 reasonably equivalent value.

8
9 94. On the date(s) of the 100K Payment, 71K Payment, Assignment of Proceeds,
10 and/or Assignment of Contract, Bujak was insolvent, or became insolvent as a
11 result of such transfer(s).

12 95. The Debtors list a multitude of unsecured creditors on Schedule F in their
13 bankruptcy case. Upon information and belief, any one of these creditors would
14 possess the standing to bring a state cause of action to avoid the transfers
15 described above pursuant to Idaho Code §§55-913 and 55-914, or other
16 applicable Idaho law.

17
18 96. Idaho Code §§ 55-913 and 55-914 (or other applicable Idaho law) deem the
19 100K Payment, 71K Payment, Assignment of Proceeds and/or Assignment of
20 Contract to be fraudulent as to the Trustee. Accordingly, pursuant to 11 USC
21 §544 and Idaho Code § 55-916 (or other applicable Idaho law), the Trustee may
22 avoid the transfers deemed fraudulent under Idaho Code §§ 55-913 and 55-914
23 (or other applicable Idaho law) and recover said transfers into the bankruptcy
24 estate of the Debtors.
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COSTS, ATTORNEY FEES

AND OTHER RELIEF

97. The Trustee incorporates by reference and realleges all of the foregoing paragraphs.

98. The Trustee is entitled to recover from the Defendants the costs and expenses incurred in connection with bringing this adversary proceeding, including all reasonable attorney fees as well as any other relief, legal or equitable, that this Court determines is appropriate.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, based upon the foregoing paragraphs, demands judgment against the Defendants on his claims for relief as follows:

1. On the Plaintiff's **First Claim for Relief**, for an Order avoiding and recovering for the estate the property transferred to the Defendant Canyon County. Alternatively, for an Order avoiding and recovering for the estate from the Defendant Canyon County so much as is found to be the total amount of all transfers, and requiring the Defendants to pay to the Plaintiff pursuant to 11 U.S.C. §§547 and 550 said amount or so much thereof as the Court finds to be preferential and not subject to any valid defense;
2. On the Plaintiff's **Second Claim for Relief**, for an Order avoiding and recovering for the estate the property transferred to the Defendants. Alternatively, for an Order avoiding and recovering for the estate from the

1 Defendants so much as is found to be the total amount of all transfers, and
2 requiring the Defendants to pay to the Plaintiff pursuant to 11 U.S.C.
3 §§548 and 550 said amount or so much thereof as the Court finds to be a
4 fraudulent transfer(s) and not subject to any valid defense;
5

- 6 3. On the Plaintiff's **Third Claim for Relief**, for an Order avoiding and
7 recovering for the estate the property transferred to the Defendants.
8 Alternatively, for an Order avoiding and recovering for the estate from the
9 Defendants so much as is found to be the total amount of all transfers, and
10 requiring the Defendants to pay to the Plaintiff pursuant to 11 U.S.C.
11 §§544(a), 544(b) and 550, and Idaho Code §55-913 , 55-914 and 55-916;
12
13 4. For costs and expenses, including attorney's fees, associated with bringing
14 and prosecuting this adversary proceeding; and
15
16 5. For such further and other legal and equitable relief to which this Court
17 determines the Plaintiff is entitled.
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19
20 DATED this 7th day of July, 2011.

21
22 /s/ Wyatt Johnson
23 WYATT JOHNSON
24 Attorney for the Trustee
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