

FILED _____

AT _____ O'Clock _____ M
CLERK OF DISTRICT COURT

Deputy

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

**GENE HYATT, successor trustee of the
HYATT REVOCABLE LIVING TRUST,**)

Plaintiff,)

vs.)

**JOHN W. HYATT, and SHIRLEY M. HYATT,) individually and as a marital community)
REBEKAH HYATT and JOHN DOE HYATT,) individually and as a marital community,
JOHN W. HYATT as the trustee of record)
for CHURCH ROAD TRUST,**)

Defendants.)

Case No. **CV 2010 6541**

**MEMORANDUM DECISION AND ORDER
DENYING DEFENDANT JOHN HYATT'S:
MOTION FOR A TEMPORARY ORDER
TO CANCEL SHERIFF'S SALE; MOTION
FOR RELIEF FROM JUDGMENT;
MOTION TO DISMISS FOR LACK OF
REAL PARTY IN INTEREST; MOTION
FOR CONTEMPT; MOTION TO DISMISS
FOR LACK OF JURISDICTION; MOTION
TO VACATE SUMMARY JUDGMENT;
AND PLEADING FILED APRIL 21, 2011;
AND ORDER GRANTING PLAINTIFF'S
MOTION TO CONTEST DEFENDANT'S
CLAIM OF EXEMPTION AND MOTION TO
STRIKE**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

The Court has now set forth the factual and procedural history of this case on two occasions. Most recently, in its Memorandum Decision and Order Granting Plaintiff's Motion for Summary Judgment, the Court wrote:

This Court has set forth the pertinent procedural and factual history in its January 14, 2011 "Memorandum Decision and Order Granting Plaintiff's Motions: 1) Plaintiff's Motion for Judicial Notice of Facts and Records, 2) Plaintiff's Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 and 3) Plaintiff's Motion to Strike Pleadings/Filings and/or Motion to Dismiss".

The Court will briefly discuss the two cases which have now been consolidated. The Court will discuss the two cases in the order in which they were filed. All three pending motions are filed in Kootenai County Case No. CV 2010 6541.

A. Kootenai County Case No. CV 2010 6541.

On July 30, 2010, judgment creditor Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust, against judgment debtor, John W. Hyatt, filed an “Affidavit Regarding Filing a Foreign Judgment” in Kootenai County Case No. CV 2010 6541, the case assigned to the undersigned, Judge John Mitchell. That Affidavit of Michael Ramsden, attorney for Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust, attached the April 29, 2010, California Superior Court in Los Angeles judgment (Order on Probate Code § 850 Petition for Return of Trust Property and Damages Filed by Gene Hyatt) requiring defendant John W. Hyatt to pay \$555,000.00 to Gene Hyatt as the successor trustee of the Hyatt Revocable Living Trust. The purpose of the Affidavit Regarding Filing a Foreign Judgment was to satisfy the requirements of Idaho Code § 10-1303 and for filing a foreign judgment in this matter. Affidavit Regarding Filing a Foreign Judgment, p. 2, ¶ 6. A Notice of Filing of Foreign Judgment was filed on July 30, 2010, as well. A Writ of Execution was issued and filed on August 12, 2010. On August 23, 2010, “John Walter Hyatt – Sui Juris and True Appointed Trustee – John Walter Hyatt” filed a “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt.” On September 16, 2010, Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust filed “Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”, and an “Affidavit of Michael E. Ramsden in Support of Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”. On September 23, 2010, this Court issued its “Memorandum Decision and Order on: ‘Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt.’” That decision, in its entirety reads:

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt”, filed August 23, 2010, and “Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment” filed on September 16, 2010. Neither party has noticed their motions for a hearing.

On July 30, 2010, plaintiffs filed their “Notice of Filing Foreign Judgment”. The foreign judgment is dated April 29, 2010, is from California Superior Court of Los Angeles, and is in the amount of \$555,000.00 in favor of Gene Hyatt as successor trustee on behalf of the (plaintiff herein) Hyatt Revocable Living trust, and is against defendant John Walter Hyatt (defendant herein). On August 23, 2010, defendant John Walter Hyatt *pro se* filed his the “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of

John Walter Hyatt”, in response to plaintiff’s Notice of Filing Foreign Judgment. On September 16, 2010, plaintiffs filed “Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”, and “Affidavit of Michael E. Ramsden in Support of Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”.

II. ANALYSIS.

In defendant John Walter Hyatt’s *pro se* “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt”, John Walter Hyatt recognizes that this Court has jurisdiction over both parties (Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt, p. 2, ¶2), and John Walter Hyatt makes various complaints about his family’s dynamics (*Id.*, pp. 2-4, ¶¶ 1-11), and makes various allegations about improprieties in the California proceeding (*Id.*, pp. 4-6, ¶¶ 12-20). John Walter Hyatt “demands a SHOW CAUSE HEARING...” (*Id.*, p. 7), but has failed to notice such up for a hearing. John Walter Hyatt sets forth his versions of the authority for jurisdiction and remedies this Court possesses. *Id.*, pp. 8-9. However, John Walter Hyatt fails to cite I.C. § 10-2304, and he fails realize that the only vehicle available to this Court for a stay of execution is I.C. § 10-2304. Under that statute, the only means for this Court to grant a stay is “if the judgment debtor shows the district court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted...” John Walter Hyatt has alleged none of these things in his Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt. Additionally, plaintiffs are correct that: John Walter Hyatt’s arguments are barred by *res judicata* (Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment, pp. 4-5); John Walter Hyatt has not been deprived due process (*Id.*, pp. 5-6); John Walter Hyatt’s pleading in this Idaho case is an unlawful collateral attack on the California proceeding and judgment (*Id.*, pp. 6-7); that John Walter Hyatt cannot assert a claim on behalf of others (*Id.*, pp. 7-8) and that John Walter Hyatt has failed to state a claim upon which relief can be granted. *Id.*, p. 7.

III. CONCLUSION AND ORDER.

For the reasons stated above, Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show

Cause Hearing Presented by Affidavit of John Walter Hyatt must be denied.

IT IS HEREBY ORDERED THE Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt is hereby DENIED.

Memorandum Decision and Order on: "Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt", pp. 1-3.

On October 19, 2010, "John Walter Hyatt – Sui Juris and True Appointed Trustee – John Walter Hyatt" filed a plethora of other filings were made which do not comport with the Idaho Rules of Civil Procedure. All of these pleadings are signed by John Walter Hyatt. It is in this case in which all three motions are pending.

On December 28, 2010, the undersigned, who was at all times assigned to Kootenai County Case No. CV 2010 6541, signed an order consolidating Judge Simpson's case (Kootenai County Case No. CV 2010 8180) into CV 2010 6541.

B. Kootenai County Case No. CV 2010 8180.

On September 22, 2010, plaintiff Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust, filed the Complaint in CV 2010 8180, the case assigned to Judge Benjamin Simpson. That Complaint alleged that defendant John W. Hyatt is a trustee of the defendant Church Road Trust, which owns four parcels of real property located in Kootenai County, Idaho. Complaint, p. 2. Shirley Hyatt is alleged to be John W. Hyatt's wife, and Rebekah A. Hyatt is their daughter and is also alleged to own these four parcels. *Id.*, pp. 2, 4. The Complaint alleges that on April 29, 2010, California Superior Court in Los Angeles entered a Judgment requiring defendant John W. Hyatt to pay \$555,000.00 to Gene Hyatt as the successor trustee of the Hyatt Revocable Living Trust and return various specific property of Dorothy Hyatt. *Id.*, p. 3. Defendant John W. Hyatt neither paid the Judgment nor did he return the property. *Id.* Plaintiff alleges the California Judgment establishes that defendants John W. Hyatt and Shirley Hyatt, in bad faith, intentionally and wrongfully stole Trust Assets from the Hyatt Revocable Living Trust and/or Dorothy Hyatt, and then John W. Hyatt and Shirley Hyatt used the stolen Trust Assets to acquire the Kootenai County real property. *Id.* Plaintiff Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust then domesticated the Judgment and recorded it in the Records of Kootenai County so that it is a lien on defendant John W. Hyatt's real property in Kootenai County. *Id.* Plaintiff claims John W. Hyatt and Shirley Hyatt owned these parcels as one single parcel, then deeded the parcel to John W. Hyatt as trustee for the Church Road Trust, and then John W. Hyatt as trustee for the Church Road Trust divided the parcel into four parcels, and then on September 9, 2009, John W. Hyatt as trustee for the Church Road Trust conveyed the four parcels to his daughter Rebekah Hyatt. Plaintiff gave notice to defendants of a *lis pendens* action and sues defendants on theories of fraudulent conveyance, unjust enrichment, and conversion. *Id.*,

pp. 5-7. Plaintiff seeks an order requiring the parcels be reconveyed to John W. Hyatt and then executed upon to satisfy the California Judgment. *Id.*, pp. 7-8. In the case originally before District Judge Ben Simpson, on October 21, 2010, John Walter Hyatt, Shirley Michelle Hyatt and Rebekah Ann Hyatt filed an “Answer, Counterclaim, Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt, Shirley Michelle Hyatt and Rebekah Ann Hyatt.” Only John W. Hyatt signed that pleading, and as discussed above, he cannot represent his wife or his daughter. The Answer primarily claims there was a fraud upon the California court. Also on October 21, 2010, a plethora of other filings were made which do not comport with the Idaho Rules of Civil Procedure. On December 28, 2010, upon plaintiff’s motion, Judge Simpson struck those pleadings and two others that were filed after October 21, 2010. Also, on December 28, 2010, the undersigned, who was at all times assigned to Kootenai County Case No. CV 2010 6541, signed an order consolidating Judge Simpson’s case (Kootenai County Case No. CV 2010 8180) into CV 2010 6541.

Memorandum Decision and Order Granting Plaintiff’s Motions: 1) Plaintiff’s Motion for Judicial Notice of Facts and Records, 2) Plaintiff’s Motion for Attorneys’ Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 and 3) Plaintiff’s Motion to Strike Pleadings/Filings and/or Motion to Dismiss, pp. 1-7. In that decision, this Court granted Plaintiff’s Motion for Judicial Notice of Facts and Records, granted Plaintiff’s Motion to Strike Pleadings/Filings and/or Motion to Dismiss, and granted Plaintiff’s Motion for Attorneys’ Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 as against John W. Hyatt only.

Memorandum Decision and Order Granting Plaintiff’s Motion for Summary Judgment, pp. 3-6. The Court filed its decision and Order granting plaintiff Gene Hyatt’s Motion for Summary Judgment on March 1, 2011. An Amended Partial Judgment and an I.R.C.P. 54(b) Certificate were entered on March 14, 2011. A Writ of Execution was issued by the clerk of the court on March 16, 2011. On April 7, 2011, plaintiff Gene Hyatt filed a “Motion to Contest the Defendants’ Claims of Exemption” to the Writ of Execution and memorandum in support of that motion. In that memorandum, plaintiff Gene Hyatt states on April 4, 2011, John Hyatt, Shirley Hyatt and Rebekah Hyatt, filed “By Necessity a Notice of Claim of Exemption.”

Defendant John Hyatt filed a litany of motions and “Judicial Notices” between February 15, 2011, and February 16, 2011, in his *pro se* capacity. John Hyatt seeks I.R.C.P. 60(b) relief, dismissal for lack of a real party in interest, contempt charges and

sanctions, dismissal for lack of jurisdiction, and vacating of the summary judgment “in the nature of a quiet title action”. In response, Gene Hyatt filed a motion to strike or dismiss the pleadings/filings by John Hyatt on April 11, 2011. Shirley and Rebekah Hyatt have not joined in John Hyatt’s motions.

On April 14, 2011, John Hyatt filed a pleading captioned “By Necessity, Suitor John Walter Hyatt’s Mandatory Notice of Void Judgment and Motion in Arrest of Judgment Per I.R.C.P. 60(b)(4) Void Judgment: Memorandum of Points and Authorities, Presented by Pronouncement of John Walter Hyatt”. This is a thirty-page memorandum and approximately one hundred pages of exhibits. Also on April 14, 2011, John Hyatt filed a pleading captioned “By Necessity a Emergency Injunction as a Motion for a Temporary Restraining Order to Cancel Sheriff’s Sale Scheduled for April 20, 2011, Per Idaho Code §11-203, and Judicial Notice Per Idaho Code §11-603 Property Exempt Without Limitation; Family Burial Plot. Presented by Pronouncement of John Walter Hyatt.” Shirley and Rebekah Hyatt have not joined in this motion of John Hyatt. On April 15, 2011, plaintiff Gene Hyatt filed Plaintiff’s Memorandum in Response to Defendant John W. Hyatt’s Motion for Emergency Injunction.

Oral argument on these motions was held on April 19, 2010. John Hyatt appeared and argued on his behalf. Shirley and Rebekah Hyatt attended the hearing, but presented no argument as they presented no motions. Due to the sheer volume of pleadings submitted by John Hyatt, the Court had not had the opportunity to read John Hyatt’s pleadings which were filed on April 14, 2011. Accordingly, all matters were taken under advisement.

II. STANDARD OF REVIEW.

When discretionary grounds of I.R.C.P. 60(b) are invoked, matters are reviewed under the abuse of discretion standard. *Knight Ins., Inc v. Knight*, `09 Idaho 56, 59, 704

P.2d 960, 963 (Ct.App. 1985). Where grounds for a motion are non-discretionary, such as in Rule 60(b)(4) motions, however, they are reviewed under the *de novo* standard. *Reinwald v. Eveland*, 119 Idaho 111, 112, 803 P.2d 1017, 1018 (Ct.App. 1991). Rule 17(a) requires actions to be prosecuted in the name of the real party in interest. I.R.C.P. 17(a). Liberal construction should be given to I.R.C.P. 17(a), especially where “the change is merely formal and in no way alter the original complaint’s factual allegations as to the events or participants.” *Hayward v. Valley Vista Care Corp.*, 136 Idaho 342, 349, 33 P.3d 816, 823 (2001), quoting *Advanced Magnetics, Inc. v. Bayfront Partners, Inc.*, 106 F.3d 11, 20 (2nd Cir. 1997). The language of the Rule prohibits dismissal of an action for failure to prosecute in the name of the real party in interest until a reasonable time has been allowed for ratification of the suit, joinder, or substitution. I.R.C.P. 17(a). Motions for sanctions pursuant to I.R.C.P. 11(a)(1) are reviewed under the abuse of discretion standard. *Lester v. Salvino*, 141 Idaho 937, 939, 120 P.3d 755, 757 (Ct.App. 2005). Similarly, sanctions or penalties under a contempt order are reviewed under an abuse of discretion standard. *Smith v. Smith*, 136 Idaho 120, 124, 29 P.3d 956, 960 (Ct.App. 2001).

On a motion to dismiss, the court looks only at the pleadings, and all inferences are viewed in favor of the non-moving party. *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002) (regarding 12(b)(6) motions); *Osborn v. United States*, 918 F.2d 724, 729 n. 6 (8th Cir.1990) (regarding 12(b)(1) motions raising facial challenges to jurisdiction^{FN1}). “[T]he question then is whether the non-movant has alleged sufficient facts in support of his claim which, if true, would entitle him to relief.” *Rincover v. State*, 128 Idaho 653, 656, 917 P.2d 1293, 1296 (1996) (regarding 12(b)(6) motions); *Serv. Emp. Intern. v. Idaho Dept. of H. & W.*, 106 Idaho 756, 758, 683 P.2d 404, 406 (1984) (regarding 12(b) challenges generally); *Osborn*, 918 F.2d at 729 n. 6 (regarding 12(b)(1) facial challenges). “[E]very reasonable intendment will be made to sustain a complaint against a motion to dismiss for failure to state a claim.” *Idaho Comm’n on Human Rights v. Campbell*, 95 Idaho 215, 217, 506 P.2d 112, 114 (1973). “The issue is not whether the plaintiff will ultimately prevail,

but whether the party is entitled to offer evidence to support the claims.”
Young, 137 Idaho at 104, 44 P.3d at 1159.

FN1. There is a distinction between 12(b)(1) *facial* challenges and 12(b)(1) *factual* challenges. *Osborn v. United States*, 918 F.2d 724, 729 n. 6 (8th Cir.1990); 5B WRIGHT & MILLER, *supra*, § 1350. Facial challenges provide the non-movant the same protections as under a 12(b)(6) motion. *Id.* Factual challenges, on the other hand, allow the court to go outside the pleadings without converting the motion into one for summary judgment. *Id.* Here, the Commission does not dispute the facts pled by the Claimants but rather only the legal conclusions reached within the four corners of the amended complaint. Therefore, the 12(b)(1) challenge is facial, and the standard of review mirrors that used under 12(b)(6).

Owsley v. Idaho Industrial Com'n, 141 Idaho 129, 133, 106 P.3d 455, 459 (2005).

Although there is no such thing as a “motion to vacate summary judgment in the nature of a quiet title action”, to the extent defendant John Hyatt refers to a motion to vacate or alter a judgment pursuant to I.R.C.P. 59(e), such a motion is reviewable on appeal under the abuse of discretion standard. *Lowe v. Lym*, 103 Idaho 259, 646 p.2d 1030 (Ct.App. 1982).

Procedural issues, such as questions involving claims of exemption, are issues of law over which reviewing courts exercise free review. *Zenner v. Holcomb*, 147 Idaho 444, 451, 210 P.3d 552, 559 (2009) (citing *Blaser v. Cameron*, 116 Idaho 453, 455, 776 P.2d 462, 464 (Ct.App. 1989)); *State Dept. of Health & Welfare v. Housel*, 140 Idaho 96, 100, 90 P.3d 321, 325 (2004) (citing *State, Dept. of Fin. Res. Serv., Co.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997)).

Finally, the Court may strike from any pleading “any redundant, immaterial, impertinent, or scandalous matter.” I.R.C.P. 12(f). The Rule’s “may” language indicates the Court has discretion with regard to motions to strike under Rule 12(f). A motion to strike pursuant to Rule 12(f) will not be granted if the defense pleaded raises genuine

questions of law or fact on its face. *Rosenberg v. Toetly*, 94 Idaho 413, 417, 489 P.2d 446, 450 (1971).

III. ANALYSIS.

A. Defendant John Hyatt's Motions.

At the April 19, 2011, oral argument on all motions, this Court first took up plaintiff's Motion to Strike or Dismiss John Hyatt's Pleadings/Findings, for the sole reason that this Court's decision on that motion might resolve most or all of defendant John Hyatt's motions. John Hyatt spent most of the time at oral argument on that motion arguing at length about the fraud involved in the California judgment. Plaintiff's Motion to Strike or Dismiss John Hyatt's Pleadings/Filings was, thus, taken under advisement and is discussed below. John Hyatt has subsequently taken umbrage with the order the Court heard the various motions on April 19, 2011. "By Necessity a Mandatory Judicial Notice of Judicial Errors, Judicial Bias and Judicial Impartiality Against John Walter Hyatt; Presented by Pronouncement of John Walter Hyatt", p. 3.

At the April 19, 2011, oral argument on all motions, John Hyatt stated that his "By Necessity a Emergency Injunction as a Motion for a Temporary Restraining Order to Cancel Sheriff's Sale Scheduled for April 20, 2011, Per Idaho Code §11-203, and Judicial Notice Per Idaho Code §11-603 Property Exempt Without Limitation; Family Burial Plot. Presented by Pronouncement of John Walter Hyatt", had to be given priority.

Again, as determined by the Court in its January 14, 2011, Memorandum Decision and Order, the pleadings and filings by John Hyatt are a sham. *See Goldstein v. Krause*, 2 Hasb. 294, 13 P. 232 (1887). The Court in *Goldstein* quoted Section 250 of the, then operating, Code of Civil Procedure and wrote:

Sham and irrelevant answers, and irrelevant and redundant matter inserted in a pleading, may be stricken out upon such terms as the court may in its discretion impose.

2 Has., 294, ___, 13 P. 232, 233. In its January 14, 2011, Decision and Order, this Court discussed the numerous pleadings which had then been filed by John Hyatt. As in the January 14, 2011, Order, this Court is again confronted with documents signed only by John Hyatt. Shirley and Rebekah Hyatt have not joined in any of the pleadings/filings by John Hyatt and have no motions now before the Court. See Memorandum Decision and Order Granting Plaintiff's Motions: 1) Plaintiff's Motion for Judicial Notice of Facts and Records, 2) Plaintiff's Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 and 3) Plaintiff's Motion to Strike Pleadings/Filings and/or Motion to Dismiss, pp. 7-8. The Court in that Decision wrote:

The Court has reviewed these pleadings and finds that they are appropriate to being stricken under I.R.C.P. 12(f) and 12(b). The Court finds such documents to be not only an attempt at harassment, but are in fact harassment. John W. Hyatt alleges felony crimes have been committed by a wide variety of people, including those attorneys presently representing the plaintiff in this Idaho action, which in Kootenai Case No. CV 2010 6541 (the case in which the motion to strike is pending before this Court) is simply an action to register a foreign judgment. John W. Hyatt provides no substance for those claims. John W. Hyatt's pleadings are a sham. The pleadings are not in accordance with the Idaho Rules of Civil Procedure.

Id.

In the materials currently before the Court filed by John Hyatt between February 15, 2011, and April 14, 2011, John Hyatt again makes numerous allegations. He claims: perjury, forgery and fraud upon the Court by Gene Hyatt, giving rise to the underlying California Judgment (*By Necessity a Motion for Relief of Judgment Under IRCP 60(b)(3), (4) & (6) Fraud, Void Judgment and Other Reasons for Relief*, pp. 5-7, *By Necessity a Motion to Dismiss for Lack of a Real Party in Interest Under IRCP 17(a)*, pp. 6-8); each defendant has superior title to the property at issue and Gene Hyatt had

no standing in the underlying case because of an alleged disinheritance (*Judicial Notice No. 15 Findings of Facts to be Noticed*, p. 4); the law firm representing Gene Hyatt has committed deceit, fraud, perjury, and U.S. Mail fraud, *inter alia* (*By Necessity a Motion for Contempt Charges Under Idaho Code § 7-601(3)& (4) and Sanctions under IRCP Rule 11(a)(1)*, p. 9); this Court has improperly focused its decisions in this matter on procedural issues and has therefore associated itself with criminal activity (presumably of the Plaintiff and Plaintiff's counsel) (*By Necessity a Motion to Dismiss for Lack of Jurisdiction Via IRCP Rule 12(b)(1), (2), (6)*, p. 7); none of the defendants have made a voluntary appearance in the instant matter and the Court lacks personal and subject-matter jurisdiction over the defendants (*By Necessity a Motion to Vacate Summary Judgment in the Nature of a Quiet Title Action*, pp. 6-7.); and the two judges involved in the underlying matters in California have engaged in fraud and have violated the Code of Judicial Ethics (*By Necessity a Notice of Void Judgment and Motion for Relief of Judgment Under IRCP 60(b)(4) Void Judgment; memorandum of points and Authorities*, p. 2) .

In response to the many filings of John Hyatt, Gene Hyatt filed a Motion to Strike or Dismiss John W. Hyatt's Pleadings/Filings and memorandum in support thereof on April 11, 2011. Gene Hyatt argues:

John W. Hyatt's seven filings/pleadings are nothing more than reiterations of the Defendants' previous filings that were already found by the Court to be insufficient defenses, immaterial, impertinent, scandalous and/or harassment and/or for the purpose of causing unnecessary delay. Once again the pleadings/filings are a sham and falsity upon this Court and furthermore are not in accordance with the Idaho Rules of Civil Procedure.

Memorandum in Opposition to Defendant John W. Hyatt's Pleadings/Filings and in Support of Plaintiff's Motion to Strike or Dismiss John W. Hyatt's Pleadings/Filings and Motion for Award of Fees, Costs and Sanctions, p. 2. Gene Hyatt pinpoints the very

reason John Hyatt's requests for relief from this Court must fail: the underlying California Judgment was not appealed and is entitled to full faith and credit by this Court; the relief John Hyatt now seeks is barred by *res judicata*. *Id.*, p. 4.

A final judgment by a court of competent jurisdiction is generally not subject to collateral attack. Accordingly, a valid judgment of a court of a sister state generally is not subject to collateral attack in a subsequent action in another state. Errors or procedural irregularities are subject to correction by the court which entered the judgment, or upon appeal, but do not provide a basis for collateral attack upon a judgment of another state.

30 AM.JUR. 2D *Executions, Etc.* § 694 (2011). On this issue, the Idaho Supreme Court has quoted the United States Supreme Court:

As was stated in *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78, 60 S.Ct. 44, 51, 84 L.Ed. 85 (1939), "One trial of an issue is enough. 'The principles of *res judicata* apply to questions of jurisdiction as well as to other issues,' as well to jurisdiction of the subject matter as of the parties."

Ramseyer v. Ramseyer, 98 Idaho 554, 557, 569 P.2d 358, 361 (1977). The Idaho Supreme Court has differentiated between cases in which an appellant chose not to appear and defend or challenge jurisdiction with those in which an appearance was made and an appellant was allowed to contest jurisdiction. *Soden Intern., Inc v. First Sec. Bank of Idaho, N.A.*, 108 Idaho 732, 734, 701 P.2d 1297, 1299 (1985). In the former, jurisdictional questions were held to have not been previously litigated and the local Court was deemed to have properly determined the jurisdictional basis for a Judgment in the foreign locale; in the latter, where an appellant was permitted to contest jurisdiction, the issue of jurisdiction became *res judicata*, and subject to appeal. *Soden*, 108 Idaho 732, 734, 701 P.2d 1297, 1299, quoting *Schwilling v. Horne*, 105 Idaho 294, 297, 669 P.2d 183, 186 (1983). Void judgments subject to collateral attack are "narrowly restricted in the sound interest of finality." *State v. Heyrend*, 129 Idaho 92568, 571, 929 P.2d 744, 747 (Ct.App. 1996) (citing *Gordon v. Gordon*, 118 Idaho

804, 807 800 P.2d 1018, 1021 (1990)). The *Heyrend* Court went on to quote MOORE'S FEDERAL PRACTICE AND PROCEDURE, writing:

[E]xcept for the rare case where power is plainly usurped, if a court has the general power to adjudicate the issues in the class of suits to which the case belongs then its interim order and final judgments, *whether right or wrong*, are not subject to collateral attack, so far as jurisdiction over the subject matter is concerned.

Id., quoting JAMES MOORE, MOORE'S FEDERAL PRACTICE AND PROCEDURE ¶ 60.25[2] at 60-229 to 230 (1990). (italics added).

Here, the [California] Order on Probate Code § 850 Petition for Return of Trust Property and Damages Filed by Gene Hyatt specifically states, "PLEASE TAKE NOTICE that the Petition in the above matter came on regularly for trial on December 10, 2009...John Walter Hyatt and Michelle Hyatt were physically present in pro per." Order on Probate Code § 850 Petition for Return of Trust Property and Damages Filed by Gene Hyatt, p. 1. The evidence before this Court is that John and Shirley Hyatt submitted to the jurisdiction of the California Court and at no point appealed issues of jurisdiction, which became *res judicata* upon the entry of Judgment on April 29, 2010, the filing date of the foreign judgment in the California Superior Court of Los Angeles.

There are several problems John Hyatt simply refuses to face. **First**, this Court does not have before it any credible evidence submitted by John Hyatt of John Hyatt's claims of fraud upon the California Court, fraud by the California Court, and his claims of corruption by the California Court. At the April 19, 2011, hearing, Counsel for plaintiff Gene Hyatt objected to the materials submitted by John Hyatt as being hearsay, not relevant, and lacking in foundation. The Court asked John Hyatt for argument as to why these documents were not hearsay. No legitimate argument was made. The extensive attachments to John Hyatt's pleadings filed April 14, 2011, are in fact,

hearsay. The Court has reviewed those documents in order to make that determination, but the documents themselves are hearsay and are not considered by the Court, other than in making that threshold evidentiary determination. **Second**, even if this Court were to consider the substance of the attachments to John Hyatt's pleadings, these documents do not prove John Hyatt's claims of fraud upon the California Court, fraud by the California Court, and corruption by the California Court. Essentially, John Hyatt makes the absurd argument that the pay given by the counties to these judges is a "bribe." **Third**, even if there were some evidence of fraud (there is not), that does not necessarily mean the California judgment is subject to collateral attack here in Idaho. As the above quote from MOORE'S FEDERAL PRACTICE AND PROCEDURE reads: "[E]xcept for the rare case where power is plainly usurped, if a court has the general power to adjudicate the issues in the class of suits to which the case belongs then its interim order and final judgments, whether right or wrong, are not subject to collateral attack, so far as jurisdiction over the subject matter is concerned." John Hyatt has not demonstrated any situation in California where "power is plainly usurped."

At all times, John Hyatt's only remedy is to contest the California judgment in the courts of California. All the pleadings John Hyatt has submitted before this Court in this case are a sham in light of that unchangeable fact.

B. Plaintiff's Motion to Contest Defendants' Claim of Exemption, and John Hyatt's Motion for a Temporary Restraining Order.

On March 8, 2011, the Clerk of the District Court for the County of Kootenai issued a writ of execution requiring the Sheriff to satisfy the \$555,000 Judgment against Defendants out of the defendants' property. Writ of Execution, p. 2. An Amended Writ of Execution, describing the real property at issue by its proper legal description, was

entered on March 16, 2011. Writ of Execution, p. 1. Defendants' Claims of Exemption are only before the Court as attachments to Gene Hyatt's Memorandum in Support of Plaintiff's Motion to Contest Defendants' Claim of Exemption. John Hyatt, Shirley Hyatt, and Rebekah Hyatt each submitted to the Kootenai County Sheriff's Department a pleading entitled, "By Necessity a Notice of Claim of Exemption." Only John Hyatt and Rebekah Hyatt dated their submissions; the date on which John and Rebekah Hyatt signed their Claims of Exemption is April 1, 2011. Each of the three Claims of Exemption were dated received by the Sheriff's Department on April 4, 2011.

Idaho Code § 11-203 permits a debtor to claim an exemption in property that has been levied upon by delivering or mailing a claim of exemption to the sheriff within fourteen days of service of the documents associated with the writ of execution. I.C. § 11-203(a). A creditor thereafter has five days to contest the claim of exemption. I.C. § 11-203(b). A hearing on the claim of exemption is to be held within twelve days of the contest being filed. *Id.* Costs may be awarded to the prevailing party in a hearing on a claim of exemption in accordance with the Idaho Rules of Civil Procedure. *Id.*

The Idaho Code requires a claim of exemption to be delivered or mailed to the sheriff within fourteen days of the date the sheriff hand delivers or mails the documents to be served. I.C. § 11-203(a). In the instant matter, it is unclear when precisely the writ of execution was hand-delivered *or mailed* to the defendants. The writ was issued on March 16, 2011, and, to the extent the writ was mailed to defendants on that date, defendants had fourteen days, or until March 30, 2011, to claim an exemption. I.C. § 11-203(a). Presumably, defendants mailed their claims of exemption to the sheriff; this mailing must have occurred so as to ensure receipt by the sheriff within fourteen days. *Id.* (Here, the fourteenth day did not fall upon a holiday or weekend, thus the third sentence of subsection (a) has no applicability.) The claims of exemption by the

defendants were received by the sheriff on April 4, 2011. As such, if the sheriff delivered or mailed the writ of execution-related documents to defendants on or before March 20, 2011, defendants claims of exemption would be untimely under the mandatory “shall” language of I.C. § 11-203(a). [the sheriff’s civil department stated the defendant’s packets were mailed on March 24, 2011, making the April 4, 2011 claim of exemption timely.] Similarly, I.C. § 11-203(b) sets forth a five-day deadline in which a plaintiff is to file a motion setting forth the grounds upon which an exemption claim is contested “after the date a copy of the claim is delivered or mailed to him by the sheriff.”

I.C. § 11-203(b). The claim, in turn, is to be mailed or delivered to the plaintiff within one day of receipt by the sheriff. I.C. § 11-203(a). Here, because the sheriff stamped the claim received on April 4, 2011, the sheriff was obligated to deliver or mail the claim to Gene Hyatt on or before April 5, 2011. Gene Hyatt’s April 7, 2011, motion to contest defendants’ claims of exemption is timely under the Idaho Code’s requirements; and the hearing, scheduled for twelve days following filing of the motion to contest is likewise timely under the Code.

Defendants John, Shirley and Rebekah Hyatt each claim exemption under I.C. §§ 11-203, 602, 603, 604 and 608. Gene Hyatt contests the defendants’ claims of exemption pursuant to I.C. § 11-607. Memorandum in Support of Plaintiff’s Motion to Contest Defendants’ Claim of Exemption, pp. 4, *et seq.* Gene Hyatt argues the claims of exemption are insufficient for the three properties without a residence and levy against an otherwise exempt property is proper here because he seeks to enforce a claim for a loan made for the express purpose of enabling an individual to purchase property and the loan was made for the purpose. *Id.*, p. 5. Idaho Code § 11-607(b)(1) authorizes a creditor to make a levy against the Order on Probate Code § 850 Petition for Return of Trust Property and Damages Filed by Gene Hyatt property to enforce a

claim for “[t]he purchase price of the property or a loan made for the express purpose of enabling an individual to purchase property and used for that purpose”. I.C. § 11-607(b)(1). Gene Hyatt argues the Judgment before the Court is “the Trust’s claim for the proceeds of the sham loan.” Memorandum in Support of Plaintiff’s Motion to Contest Defendants’ Claim of Exemption, p. 6. Gene Hyatt goes on to argue I.C. § 11-607(a)(4) is applicable, allowing him to enforce a claim for the defendants’ having obtained money or property by false pretenses. *Id.*

Defendant John Hyatt responds by seeking a preliminary injunction temporarily restraining the sheriff from conducting a sale of the real property and by characterizing the real property as a “family burial plot.” By Necessity a Motion for Temporary Restraining Order to Cancel Sheriff’s Sale Scheduled for April 20, 2011, per Idaho Code § 11-603 Property Exempt Without Limitation; Family Burial Plot, p. 2. To this filing by John Hyatt, Gene Hyatt replies by noting for the Court that Idaho Appellate Rule 13(a) automatically stays execution of the Court’s Judgment in light of defendants’ appeal of this matter to the Idaho Supreme Court. Plaintiff’s Memorandum in Response to Defendant John W. Hyatt’s Motion for Emergency Injunction, p. 2. The register of actions in this case shows John Hyatt filed a Notice of Appeal on April 11, 2011.

Although not properly noticed-up for hearing before the Court, defendant John Hyatt’s motion for preliminary injunction is, up to the time of the writing of this decision, moot. Idaho Appellate Rule 13 provides that upon filing of an appeal, execution of all judgments is automatically stayed for fourteen days. I.A.R. 13(a). Defendants may thereafter move this Court or the Idaho Supreme Court for an *additional* stay. *Id.* The automatic stay under I.A.R. 13(a) is in place until fourteen days after April 11, 2011. That period ends on April 25, 2011, the date of this opinion.

With regard to Gene Hyatt's contest of the claim for exemption, the second edition of AMERICAN JURISPRUDENCE states:

Exemption laws are intended to ameliorate the harsh common-law rule making all of a debtor's property liable to execution for the payments of his debts, by protecting specified property from forced sale. Exemption laws achieve this goal by preventing debtors from becoming completely deprived of the means of supporting their families and thereby becoming a burden on the public. There are five purposes exemption statutes serve:

- They provide a debtor with enough money to survive
- They protect a debtor's dignity and cultural and religious identity
- They afford a means of financial rehabilitation
- They protect the family unit from impoverishment
- They spread the burden of the debtor's support from society to the debtor's creditors

As such, exemption statutes are sometimes characterized as remedial legislation, with a humane and generous purpose. Exemption statutes preserve for debtors the prime necessities of life and furnish them with a nucleus with which to begin life anew. Although exemption rights are liberally interpreted in favor of the debtor, they are not intended to give the debtor what in common honesty does not belong to him, by exonerating the debtor from payment of just debts. Thus, only an honest debtor is guaranteed a fresh start in his economic life, with an assured means of livelihood, and an opportunity to become self-supporting.

31 AM.JUR.2D *Exemptions* § 3 (2011). The matter before the Court does not involve an "honest debtor". Rather, John Hyatt is seeking precisely what "in common honesty does not belong to [them]." The "may" language in I.C. § 11-607 indicates that whether the facts before the Court constitute a loan or claim for obtaining money by false pretenses remains an issue committed to the Court's discretion. In light of the California Judgment, which this Court gives full faith and credit, Gene Hyatt's argument (that this matter involves "claims for obtaining money or property by false pretenses") is well-taken. No exemption of any kind lies in favor of John Hyatt.

Specifically, this Court finds there is no exemption for a burial plot for the John Hyatt or his family, as is allowed under I.C. § 11-603, nor is there an exemption under

I.C. § 11-604 for property necessary for the support of John Hyatt or his family simply because no one in Hyatt's household is working.

This Court finds as a matter of law that burial plot exception is not intended to allow an individual to exempt property from execution simply because that individual *might* bury himself or some other family member on that property, or because he already has interred some family member on that property. John Hyatt writes:

Therefore, Pronouncer claims the exemptions the enacted law provides. Pronouncer has a Family Burial Plots on the land that Pronouncer and his family owns and has had the remains of immediate family members interred within the Hyatt Family Cemetery/Family Burial Plots since 2006.

“By Necessity a Emergency Injunction as a Motion for a Temporary Restraining Order to Cancel Sheriff's Sale Scheduled for April 20, 2011, Per Idaho Code §11-203, and Judicial Notice Per Idaho Code §11-603 Property Exempt Without Limitation; Family Burial Plot. Presented by Pronouncement of John Walter Hyatt”, p. 2. John Hyatt has produced no “evidence” that any family member at the present time is buried on any of these four parcels. As set forth above, all John Hyatt has done at present is make the bald claim that “...Pronouncer and his family owns and has had the remains of immediate family members interred within the Hyatt Family Cemetery/Family Burial Plots since 2006.” In making that claim John Hyatt fails to aver that these buried kin are even located *on the land in dispute*. No names are attached to these interred relatives. There is no evidence that these family members were properly laid to rest pursuant to I.C. § 19-4301(1)(a)-(c), I.C. § 31-2808 and I.C. § 39-268(3). Finally, even if there were evidence of actual buried Hyatts on this land, only a “part” of the land may be set apart as a family or private cemetery. *Stoker v. Brown*, 583 S.W.2d 765 (Tenn. 1979).

On April 21, 2011, John Hyatt filed “By Necessity a Mandatory Judicial Notice of Judicial Errors, Judicial Bias and Judicial Impartiality Against John Walter Hyatt; Presented by Pronouncement of John Walter Hyatt.” In that pleading, John Hyatt casts several aspersions against the undersigned and Judge Benjamin Simpson who was assigned to the companion litigation. While not meeting the requirements of a “motion” under I.R.C.P. 7(b)(1), John Hyatt’s pleading requests several actions be taken:

- 1) “The recusal of judge Simpson and judge Mitchell for Judicial Bias as per this notice”;
- 2) “An order from this Court that because this court does not have Personal Jurisdiction and Subject Matter Jurisdiction of the Divine Immortal Spirit expressed in Trust Number 983157-342158-103015, to the circumscribed Living Flesh known as John Walter Hyatt, that all cases, claims and charges or sanctions against John Walter Hyatt, Shirley Michelle Hyatt, Rebekah Ann Hyatt and their property, due to Judicial Bias and Judicial Impartiality against Pronouncer are to be dismissed with prejudice immediately”; 3) “An order from this Court that all orders and judgments pertaining to Case number CV 10-6541 and CV 10-8180 are VOID due to Judicial Bias and Judicial Impartiality”; 4) “An order from this Court that Case number CV 10-6541 and CV 10-8180 is/are dismissed with extreme prejudice”; 5) “An order from this court awarding to John Walter Hyatt and Shirley Michelle Hyatt all expenses, labor and costs incurred and compensation for all time lost because of the filing of the pleading, motion, or other papers and filings, including a reasonable attorney’s fee, per IRCP Rule 11(a)(1), for ‘The workman is worthy of his reward’ 1 Timothy 5:18” and 6) “Any other such relief as the LAW and this Court deems just and equitable. ‘Justice delayed is Justice denied.’” By Necessity a Mandatory Judicial Notice of Judicial Errors, Judicial Bias and Judicial Impartiality Against John Walter Hyatt; Presented by Pronouncement of John Walter Hyatt, p. 10. To the extent any of these requests are motions, they must be denied. John Hyatt has

not noticed up for hearing any of the requested relief in this pleading. Idaho Rule of Civil Procedure requires that the moving party indicate upon the face of the “motion” whether the party desires to present oral argument or file a brief within fourteen (14) days with the court in support of the motion. John Hyatt has failed to do either, he has failed to indicate oral argument is requested and failed to indicate the filing of a brief is requested. Thus, this Court may deny this motion without notice if this Court finds this motion to lack merit. This Court makes the finding that John Hyatt’s “By Necessity a Mandatory Judicial Notice of Judicial Errors, Judicial Bias and Judicial Impartiality Against John Walter Hyatt; Presented by Pronouncement of John Walter Hyatt” lacks merit. While John Hyatt rails against the judges involved in these two cases, John Hyatt makes no motion pursuant to I.R.C.P. 40(d). Such a motion would be untimely under I.R.C.P. 40(d)(1), and John Hyatt has not met the criteria under I.R.C.P. 40(d)(2).

IV. CONCLUSION AND ORDER.

For the reasons stated above, all of John Hyatt’s motions must be denied. Plaintiff Gene Hyatt’s motion for contesting the defendants’ claims of exemption must be granted, the claims of exemption made by John Hyatt, Shirley Hyatt and Rebekah Hyatt are each, without merit. John Hyatt’s “By Necessity a Emergency Injunction as a Motion for a Temporary Restraining Order to Cancel Sheriff’s Sale Scheduled for April 20, 2011, Per Idaho Code §11-203, and Judicial Notice Per Idaho Code §11-603 Property Exempt Without Limitation; Family Burial Plot. Presented by Pronouncement of John Walter Hyatt”, which relied on those claims of exemption, must be also be denied. Finally, John Hyatt’s “By Necessity a Mandatory Judicial Notice of Judicial Errors, Judicial Bias and Judicial Impartiality Against John Walter Hyatt; Presented by Pronouncement of John Walter Hyatt” must be denied.

IT IS HEREBY ORDERED that plaintiff Gene Hyatt's "Motion to Contest the Defendants' Claims of Exemption" to the Writ of Execution, is GRANTED and the Claims of Exemption ("By Necessity a Notice of Claim of Exemption") one filed by John Hyatt, one by Shirley Hyatt and one by Rebekah Hyatt, are without merit, and the Kootenai County Sheriff is to ignore each of them.

IT IS FURTHER ORDERED John Hyatt's "By Necessity, Suitor John Walter Hyatt's Mandatory Notice of Void Judgment and Motion in Arrest of Judgment Per I.R.C.P. 60(b)(4) Void Judgment: Memorandum of Points and Authorities, Presented by Pronouncement of John Walter Hyatt", to the extent it is a motion, is DENIED.

IT IS FURTHER ORDERED John Hyatt's "By Necessity a Emergency Injunction as a Motion for a Temporary Restraining Order to Cancel Sheriff's Sale Scheduled for April 20, 2011, Per Idaho Code §11-203, and Judicial Notice Per Idaho Code §11-603 Property Exempt Without Limitation; Family Burial Plot. Presented by Pronouncement of John Walter Hyatt" is DENIED.

IT IS FURTHER ORDERED plaintiff Gene Hyatt's "Motion to Strike or Dismiss John W. Hyatt's Pleadings/Filings" is GRANTED. John Hyatt's: 1) "Notice of Verified Claim, Notice of Understanding, Notice of Liability and Opportunity to Limit Your Exposure, Notice to Principal is Notice to Agent, Notice to Agent is Notice to Principal"; 2) "By Necessity a Motion for Contempt Charges Under Idaho Code § 7-601(3) and Sanctions Under IRCP rule 11(a)(1)"; 3) "By Necessity a Motion for Relief of Judgment Under IRCP 60(b)(3),(4) and (6) Fraud, Void Judgment and Other Reasons for Relief"; 4) "By Necessity a Motion to Dismiss for Lack of Jurisdiction Via IRCP Rule 12(b)(1), (2), (6)"; 5) "By Necessity a Motion to Dismiss for Lack of a Real Party in Interest Under IRCP Rule 17(a)"; 6) "By Necessity Judicial Notice, Judicial Notice No. 15 Findings of Fact to Be Noticed"; 7) "By Necessity a Motion to Vacate Summary Judgment in the Nature of a

Quite [sic] Title Action” and 8) “Motion for a New Trial or an Original Trial” are all STRICKEN under I.R.C.P. 12(f) as each are sham pleadings so clearly false that each fails in the presentation of real issues of fact, *Goldstein v. Krause*, 2 Idaho 294, 12 P. 232 (1887); and all are DISMISSED under I.R.C.P. 12(b), as each fails to state a claim upon which relief can be granted. The May 31, 2011, hearing noticed up for John Hyatt’s “Motion for a New Trial or an Original Trial” is VACATED. The only matter to be heard on May 31, 2011, will be plaintiff Gene Hyatt’s Supplemental Motion for Attorney’s Fees, Costs and Sanctions.

IT IS FURTHER ORDERED John Hyatt’s “By Necessity a Mandatory Judicial Notice of Judicial Errors, Judicial Bias and Judicial Impartiality Against John Walter Hyatt; Presented by Pronouncement of John Walter Hyatt” is DENIED.

Entered this 25th day of April, 2011.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of April, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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