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**Gilmore Affidavit - EXHIBIT “F”**

Daniel J. Treuden, Wis. Bar # 1052766  
The Bernhoft Law Firm, S.C.  
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RECEIVED

AUG 10 2009

OFFICE OF THE ATTORNEY GENERAL  
CIVIL LITIGATION DIVISION

*Pro Hac Vice* Appearance  
Appearing for the Plaintiff Daien

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO  
SOUTHERN DIVISION

DONALD N. DAIEN,

Plaintiff,

v.

BEN YSURSA, in his official  
capacity as Secretary of State of  
Idaho,

Defendant.

Civil Case No. 1:09-cv-00022-REB

**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S FIRST SET OF  
INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS  
(AND REQUESTS FOR ADMISSIONS)**

COMES NOW THE PLAINTIFF, Donald N. Daien ("Daien"), by and through his attorneys, The Bernhoft Law Firm, S.C., (Attorney Daniel J. Treuden, admitted *pro hac vice*), and respectfully responds to the Interrogatories, Requests for Production of Documents, and Requests for Admission. Daien's responses to the Interrogatories are filed separately.

**INTERROGATORIES**

**INTERROGATORY NO. 1:** Do you have any knowledge whether a non-resident petition circulated has ever violated State of local election laws in Idaho or in any other State

with which you are familiar? If so, please provide a brief narrative description of the time, place, and nature of the election law violation, including any details that you know about the person or persons who violated the election laws.

**RESPONSE TO INTERROGATORY NO. 1:** Please refer to Daien's Response to Defendant's First Set of Interrogatories.

**INTERROGATORY NO. 2:** Please describe your knowledge of any persons, if any, who have taken necessary steps under the Federal Election laws to register as candidate for President of the United States for the 2012 election by filing a Statement of Candidacy or other similar declaration. As to all such individuals, please state whether any of them are Independent candidates for whom you would be willing to circulate a petition to appear on the Idaho ballot if there were no legal impediments against your circulating such a petition.

---

**RESPONSE TO INTERROGATORY NO. 2:** I did search the Federal Election Commission's website and found only one person that has declared his candidacy for the 2012 election. That person is Warren Bruce Mosler and his campaign organization is Mosler for President 2012, Inc and he filed as a Democratic candidate.

**INTERROGATORY NO. 3:** Do you have know whether Ralph Nader has ever qualified for the ballot in the State of Idaho as a candidate for President of the United States as a candidate of a qualified political party in the State of Idaho? If so, please describe your knowledge of the circumstances.

**RESPONSE TO INTERROGATORY NO. 3:** Please refer to Daien's Response to Defendant's First Set of Interrogatories.

**INTERROGATORY NO. 4:** Please state any and all facts supporting your belief that Ralph Nader intends to attempt to qualify for the ballot as an Independent candidate for President of the United States for the 2012 election, rather than as the candidate of a political party.

**RESPONSE TO INTERROGATORY NO. 4:** After the 2008 election, Ralph Nader indicated in an interview that he may run for president in 2012.

**INTERROGATORY NO. 5:** Do you claim that a citizen of a State other than Idaho has any recognized legal interest in which candidates for President of the United States qualify for the ballot in Idaho or in any State other than the citizen's State of citizenship? If so, please state any and all facts that support that contention, as well as citations to statute(s), case law, and/or constitutional provisions that you assert establish that legal interest.

**RESPONSE TO INTERROGATORY NO. 5:** Please refer to Daiei's Response to Defendant's First Set of Interrogatories. Any other material in the hands of Daiei's lawyers is protected by the work-product privilege.

**INTERROGATORY NO. 6:** In Paragraph 7 of your Complaint in this matter, you state that "[m]ost supporters of independent candidates and petition circulators do not reside in the State of Idaho." Please state any and all facts that support the contention that "supporters of independent candidates and petition circulators [who] do not reside in the State of Idaho" and who are not qualified electors of the State of Idaho have any recognized legal interest in which candidates for President of the United States qualify for the ballot of Idaho, as well as citations to the statute(s), case law, and/or constitutional provisions that you assert establish that legal interest.

**RESPONSE TO INTERROGATORY NO. 6:** Please refer to Daien's Response to Defendant's First Set of Interrogatories. Any other material in the hands of Daien's lawyers is protected by the work-product privilege.

**INTERROGATORY NO. 7:** Please identify each and every individual you intend to call as a witness at the trial of this matter. With respect to each individual identified by you, please provide the following information: (1) his or her current contact information; (2) his or her employer, occupation, and job title; and (3) the substance of his or her expected testimony.

**RESPONSE TO INTERROGATORY NO. 7:** The information provided in Daien's initial disclosures has not changed. If that information changes, Daien will promptly supplement this response.

**INTERROGATORY NO. 8:** If you have denied the Requests for Admission set forth below, or responded with anything other than a full admission, please state the reasons and facts supporting the denial/s or partial denial/s.

**RESPONSE TO INTERROGATORY NO. 8:** No response is necessary.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury the foregoing responses to the Interrogatories are true and correct to the best of my information, knowledge, and belief.

Dated: August 4, 2009.

  
\_\_\_\_\_  
Daniel J. Treuden

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Please produce copies of any and all documents you anticipate utilizing as exhibits at the trial of this matter.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:** At this time, this case is likely to be resolved at summary judgment, and consequently, Daien does not anticipate producing any exhibits at the trial of this matter. If a factual issue survives summary judgment for trial, Daien anticipates that the issue will be narrow, and cannot anticipate what exhibits will be necessary to try that fact. Daien will supplement this response after summary judgment clears up the trial issues of this case.

**REQUEST FOR PRODUCTION NO. 2:** Please produce copies of any and all non-privileged documents identified in, or utilized by you in drafting your answers to, the Interrogatories set forth above and/or the Requests for Admissions set forth below.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** Document A is a pdf copy of an internet article that confirms that Ralph Nader might run for President in 2012. It was pulled from the internet on July 25, 2009 from the following web page address: <http://www.cnsnews.com/Public/Content/Article.aspx?rsrclid=38780>. This supported the response to Interrogatory No. 4 signed by Daniel Treuden.

Document B is a pdf copy of a Federal Election Commission web page identifying Warren Bruce Mosler as a candidate for the 2012 election. The pdf was pulled on July 25, 2009 from the following web page address: <http://query.nictusa.com/cgi-bin/dcdev/forms/C00459248/411240/>. This supported the response to Interrogatory No. 2 signed by Daniel Treuden.

### **REQUESTS FOR ADMISSIONS**

**REQUEST FOR ADMISSION NO. 1:** Please admit that if Plaintiff were to come to Idaho for the purpose of assisting in the qualification of an Independent candidate for President

of the United States for the Idaho ballot, Plaintiff could accompany an Idaho resident who was circulating a petition for such an Independent candidate without violating any of the Idaho laws that are the subject of Plaintiff's Complaint.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:** Admit:

**REQUEST FOR ADMISSION NO. 2:** Please admit that if Plaintiff were to come to Idaho for the purpose of assisting in the qualification of an Independent candidate for President of the United States for the Idaho ballot, Plaintiff could speak to any qualified Idaho elector who was willing to listen concerning Plaintiff's reasons for supporting an Independent candidate for President whose petition to qualify for the ballot in Idaho was being circulated by an Idaho resident without violating any of the Idaho laws that are the subject of Plaintiff's Complaint.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:** Admit:

**REQUEST FOR ADMISSION NO. 3:** Please admit that if an Independent candidate were to come to Idaho for the purpose of assisting in his or her qualification for the Idaho ballot as a candidate for President of the United States, that candidate could accompany an Idaho resident who was circulating a petition for the candidate without violating any of the Idaho laws that are the subject of Plaintiff's Complaint.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:** Admit.

**REQUEST FOR ADMISSION NO. 4:** Please admit that if an Independent candidate were to come to Idaho for the purpose of assisting in his or her qualification for the Idaho ballot as a candidate for President of the United States, that candidate could speak to any qualified Idaho elector who was willing to listen concerning the candidate's campaign without violating any of the Idaho laws that are the subject of Plaintiff's Complaint.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:** Admit.

Respectfully submitted on this the 4th day of August, 2009.

THE BERNHOFT LAW FIRM, S.C.  
Attorneys for the Plaintiff



---

Daniel J. Treuden, Esquire  
*Pro Hac Vice* Counsel

207 East Buffalo Street, Suite 600  
Milwaukee, Wisconsin 53202  
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[djtreuden@bernhoflaw.com](mailto:djtreuden@bernhoflaw.com)



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**Nader 'Maybe' Will Run for President in 2012**

Wednesday, November 05, 2008

By Jodiann Ryan, Staff Writer &amp; Nicholas Ballasy, Video Reporter

(CNSNews.com) - Independent presidential candidate Ralph Nader said on Tuesday that he may run for president again in 2012, adding that nothing will change in Washington whether Democrat Barack Obama or Republican John McCain becomes the next president.



Independent presidential candidate Ralph Nader (AP Photo)

Speaking at the National Press Club, Nader said he thinks Obama will win in a "landslide" and that Democrats will win a 60-seat-filibuster-proof majority in the Senate.

Nader's candidacy in the 2000 election, in which he received 2.74 percent of the popular vote, caused some analysts to say he attracted votes that otherwise would have gone to Democratic presidential candidate Al Gore and thus tilted the election in favor of George W. Bush.

But in this presidential race, Nader said he did not think his candidacy would hurt either the Democrats or the Republicans, although he thinks he is attracting some McCain voters.

"When my name is in the poll, McCain's name goes down, Obama's name stays the same," Nader explained when CNSNews.com asked him how it was possible that he was attracting more McCain voters than Obama voters, yet not assisting the Democratic Party in gaining the White House.

But "I don't conclude anything" from that, Nader said. "That's just what the polls say. They could be wrong."

Nader said he favored neither Obama nor McCain.

In the 2004 election Nader won 0.38 percent of the popular vote.

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- » Obama Leads McCain by Eight Points
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Nader May Run Again In 2012



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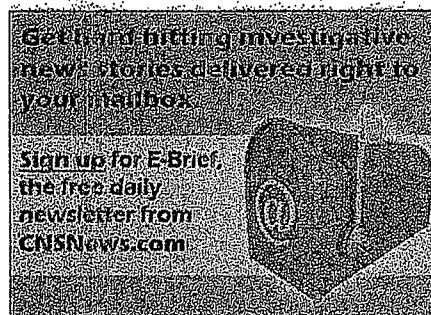
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## FEC FORM 2

### STATEMENT OF CANDIDACY

FILING FEC-411240

#### 1. WARREN BRUCE Bruce MOSLER

5000 ESTATE SOUTHGATE  
CHRISTIANSTED  
ST CROIX, VI 00820

2. Identification Number: P20001939

3. Party: Democratic Party

4. Office Sought: President

5-6. State & District of Candidate: \_\_\_\_ - 0

#### DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

7. I hereby designate the following named political committee as my Principal Campaign Committee for the 2012 election(s).

Mosler For President 2012, Inc.  
FEC ID #: C00459248

8295 North Military Trail, Suite C  
Palm Beach Gardens, FL 33410

## DESIGNATION OF OTHER AUTHORIZED COMMITTEES

8. I hereby designate the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy.

---

## DECLARATION OF INTENT TO EXPEND PERSONAL FUNDS (House or Senate Only)

9. I intend to expend personal funds exceeding the threshold amount (see 11 C.F.R. 400.9) by

9A. 0.00 for the primary election, and

9B. 0.00 for the general election

Signed as: WARREN BRUCE Bruce MOSLER

Signed by the candidate on: 04/07/2009

Filed: 04/07/2009

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(End FEC FORM 2)



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**Gilmore Affidavit - EXHIBIT “G”**

Daniel J. Treuden, Wis. Bar # 1052766  
The Bernhoft Law Firm, S.C.  
207 E. Buffalo Street, Suite 600  
Milwaukee, Wisconsin 53202  
(414) 276-3333 telephone  
(414) 276-2822 facsimile  
[djtreuden@bernhoftlaw.com](mailto:djtreuden@bernhoftlaw.com)

RECEIVED

AUG 10 2009

OFFICE OF THE ATTORNEY GENERAL  
CIVIL LITIGATION DIVISION

*Pro Hac Vice* Appearance  
Appearing for the Plaintiff Daien

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO  
SOUTHERN DIVISION

DONALD N. DAIEN,

Plaintiff,

v.

BEN YSURSA, in his official  
capacity as Secretary of State of  
Idaho,

Defendant.

Civil Case No. 1:09-cv-00022-REB

**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S FIRST SET OF  
INTERROGATORIES**

COMES NOW THE PLAINTIFF, Donald N. Daien ("Daien") to respond to the  
following Interrogatories.

**INTERROGATORIES**

**INTERROGATORY NO. 1:** Do you have any knowledge whether a non-resident  
petition circulated has ever violated State of local election laws in Idaho or in any other State  
with which you are familiar? If so, please provide a brief narrative description of the time, place,

and nature of the election law violation, including any details that you know about the person or persons who violated the election laws.

**RESPONSE TO INTERROGATORY NO. 1:** I have no personal knowledge of whether any non-resident petition circulator has ever violated State or local election laws in Idaho or any other state.

**INTERROGATORY NO. 2:** Please describe your knowledge of any persons, if any, who have taken necessary steps under the Federal Election laws to register as candidate for President of the United States for the 2012 election by filing a Statement of Candidacy or other similar declaration. As to all such individuals, please state whether any of them are Independent candidates for whom you would be willing to circulate a petition to appear on the Idaho ballot if there were no legal impediments against your circulating such a petition.

---

**RESPONSE TO INTERROGATORY NO. 2:** I have no personal knowledge of any person that has registered as a candidate for the 2012 election. My attorney did find that a Democrat named Warren Bruce Mosler has declared his candidacy for President in 2012. I am not interested in circulating a petition for Mr. Mosler.

**INTERROGATORY NO. 3:** Do you have know whether Ralph Nader has ever qualified for the ballot in the State of Idaho as a candidate for President of the United States as a candidate of a qualified political party in the State of Idaho? If so, please describe your knowledge of the circumstances.

**RESPONSE TO INTERROGATORY NO. 3:** I believe Nader was qualified as a member of the Green Party at one time.

**INTERROGATORY NO. 4:** Please state any and all facts supporting your belief that Ralph Nader intends to attempt to qualify for the ballot as an Independent candidate for President of the United States for the 2012 election, rather than as the candidate of a political party.

**RESPONSE TO INTERROGATORY NO. 4:** I have no personal knowledge as to Ralph Nader's intentions regarding the 2012 election.

**INTERROGATORY NO. 5:** Do you claim that a citizen of a State other than Idaho has any recognized legal interest in which candidates for President of the United States qualify for the ballot in Idaho or in any State other than the citizen's State of citizenship? If so, please state any and all facts that support that contention, as well as citations to statute(s), case law, and/or constitutional provisions that you assert establish that legal interest.

**RESPONSE TO INTERROGATORY NO. 5:** I believe that I have an interest in who qualifies for President in every state. I believe the First Amendment's Freedom of Association clause is a basis of this interest. I would point the Defendant to *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008) (*cert. denied*, March 9, 2009).

**INTERROGATORY NO. 6:** In Paragraph 7 of your Complaint in this matter, you state that "[m]ost supporters of independent candidates and petition circulators do not reside in the State of Idaho." Please state any and all facts that support the contention that "supporters of independent candidates and petition circulators [who] do not reside in the State of Idaho" and who are not qualified electors of the State of Idaho have any recognized legal interest in which candidates for President of the United States qualify for the ballot of Idaho, as well as citations to the statute(s), case law, and/or constitutional provisions that you assert establish that legal interest.



**RESPONSE TO INTERROGATORY NO. 6:** I am not a lawyer and have no personal knowledge of any statutes, case law, or constitutional provisions that would provide a legal interest, but I do believe that the First Amendment's Freedom of Association clause gives me the right to associate with others to bring about a common political goal, mainly to assist someone like Ralph Nader (or another similarly-minded person) to be President. Furthermore, I would point the Defendant to *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008) (*cert. denied*, March 9, 2009).

**INTERROGATORY NO. 7:** Please identify each and every individual you intend to call as a witness at the trial of this matter. With respect to each individual identified by you, please provide the following information: (1) his or her current contact information; (2) his or her employer, occupation, and job title; and (3) the substance of his or her expected testimony.

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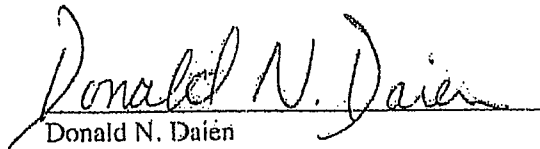
**RESPONSE TO INTERROGATORY NO. 7:** My attorney will handle this response.

**INTERROGATORY NO. 8:** If you have denied the Requests for Admission set forth below, or responded with anything other than a full admission, please state the reasons and facts supporting the denial/s or partial denial/s.

**RESPONSE TO INTERROGATORY NO. 8:** My attorney will handle this response.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: August 4, 2009.

  
Donald N. Daien

---

**Gilmore Affidavit - EXHIBIT “H-1”**

DANIEL L. SPICKLER  
Nez Perce County Prosecuting Attorney

Post Office Box 1267  
Lewiston, Idaho 83501  
Telephone: (208) 799-3073  
I.S.B.N. 2923

FILED

'04 JUL 21 AM 8 36

PATTY O. WEEKS

CLERK OF THE DISTRICT COURT

CLERK

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

CAROL E. JOHNSON,  
D.O.B.: 01/24/58,  
S.S.N.: 534-70-8604,

Defendant.

CASE NO. **CR04-06670**

COMPLAINT - CRIMINAL

STATE OF IDAHO )  
: ss.  
County of Nez Perce )

PERSONALLY APPEARED Before me this 21<sup>st</sup> day of July 2004, in the County of Nez Perce, DOUG McPherson, who, being first duly sworn, complains and says: that CAROL E. JOHNSON, did commit the following crime(s):

**COUNT I**  
**MAKING A FALSE AFFIDAVIT ON A PETITION, I.C. § 34-1818, 34-1822**  
**and 18-111, a felony**

That the Defendant, CAROL E. JOHNSON, on or about the 17th day of April 2004, in the County of Nez Perce, State of Idaho, did unlawfully make and/or sign a false affidavit on a Petition, allowing said Petition to be filed with the Nez Perce County Auditor's Office, knowing at the time that signatures affixed thereto had been forged, and/or that the Defendant, CAROL E. JOHNSON, falsely stated that each and every person who signed the Petition did so in Defendant's presence.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

---

**Gilmore Affidavit - EXHIBIT “H-2”**

FILED

04 JUL 21 AM 8 36

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

CAROL E. JOHNSON,

Defendant.

CASE NO.

CR04-06670


MAGISTRATE'S FINDING OF  
PROBABLE CAUSE UPON  
DEFENDANT'S APPEARANCE  
PURSUANT TO SUMMONS (ICR 4)

The undersigned Magistrate having examined the Affidavit of Peace Officer Doug M. Phensen, together with the documents attached thereto, and the undersigned Magistrate finding there is substantial evidence with a substantial basis for believing that there is a factual basis for the information furnished, the undersigned Magistrate hereby finds that probable cause exists to believe that an offense has been committed and that the defendant has committed the crime(s) of: **COUNT I - MAKING A FALSE AFFIDAVIT ON A PETITION, I.C. §34-1818, 34-1822 and 18-111, a felony;**

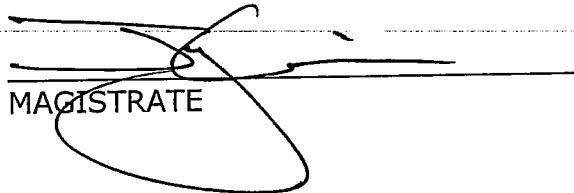
DATED this 21st day of July 2004.

MAGISTRATE

Said Complainant therefore prays that CAROL E. JOHNSON be dealt with according to law.



SUBSCRIBED and SWORN to before me this 21<sup>st</sup> day of July 2004.



MAGISTRATE

---

**Gilmore Affidavit - EXHIBIT “H-3”**

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2004 JUL 28 PM 4 15

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

PLAINTIFF,

V.

CAROL JOHNSON,

DEFENDANT.

CASE NO. CR04-006670

ORDER BINDING OVER

The defendant having **WAIVED** the Preliminary Hearing in the above entitled matter on this 28TH day of July, 2004, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that said defendant be and hereby is bound over to District Court for trial on the charge MAKING A FALSE AFFIDAVIT ON A PETITION, I.C. §34-1818, 34-1822 AND 18-111, ONE COUNT, A FELONY.

DATED this 28<sup>th</sup> day of July, 2004.

MAGISTRATE

THIS CASE HAS BEEN ASSIGNED TO:

JEFF M. BRUDIE, DISTRICT JUDGE



**Gilmore Affidavit - EXHIBIT “H-4”**

DANIEL L. SPICKLER  
Nez Perce County Prosecuting Attorney

CARMEL MCCURDY LEWIS  
Deputy Prosecuting Attorney  
Post Office Box 1267  
Lewiston, Idaho 83501  
Telephone: (208) 799-3073  
I.S.B.N. 5640

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2004 JUL 29 PM 4 33

PATTY O. WEEKS  
CLERK OF THE DISTRICT COURT  
*Carmel McCurdy Lewis*  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

CAROL E. JOHNSON,  
D.O.B.: 01/24/58,  
S.S.N.: 534-70-8604,

Defendant.

CASE NO. CR2004-0006670

INFORMATION

CARMEL MCCURDY LEWIS, Deputy Prosecuting Attorney, in and for the County of Nez Perce, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into the District Court of the County of Nez Perce, and states that CAROL E. JOHNSON is accused by this Information of the following crime:

**COUNT I**  
**MAKING A FALSE AFFIDAVIT ON A PETITION,**  
**I.C. §§ 34-1818, 34-1822 and 18-111, A FELONY**

That the Defendant, CAROL E. JOHNSON, on or about the 17th day of April 2004, in the County of Nez Perce, State of Idaho, did unlawfully make and/or sign a false affidavit on a Petition, allowing said Petition to be filed with the Nez Perce County Auditor's Office, knowing at the time that signatures affixed thereto had been forged, and/or that the Defendant, CAROL E. JOHNSON, falsely stated that each and every person who signed the Petition did so in Defendant's presence.

All of which is contrary to the form, force and effect of the statute in such cases and against the peace and dignity of the State of Idaho.

*Carmel McCurdy Lewis*  
CARMEL MCCURDY LEWIS  
Deputy Prosecuting Attorney

**Gilmore Affidavit - EXHIBIT “H-5”**

Robert J. Kwate  
Kwate Law Offices, PLLC  
1502 G Street  
Lewiston, Idaho 83501  
Telephone: (208) 746-7060  
Fax: (208) 746-2660  
Idaho State Bar #5362

Attorney for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2004-06670
	)	
Plaintiff,	)	
	)	
vs.	)	IDAHO CRIMINAL RULE 11
	)	PLEA AGREEMENT
Carol E. Johnson,	)	
	)	
Defendant.	)	

COME NOW the State of Idaho, by and through its attorney of record herein, Carmel McCurdy Lewis, Nez Perce County Deputy Prosecuting Attorney, and the defendant, Carol E. Johnson with her attorney of record herein, Robert J. Kwate of Kwate Law Offices, PLLC, and, pursuant to Rule 11(d)(1)(D) of the Idaho Criminal Rules, hereby submit the following plea agreement:

1. That the defendant is currently charged with MAKING A FALSE STATEMENT ON A PETITION, a felony in violation of Idaho Code § § 34-1818, 34-1822, and 18-111 and to which the defendant shall plead guilty.

IDAHO CRIMINAL  
RULE 11 PLEA AGREEMENT

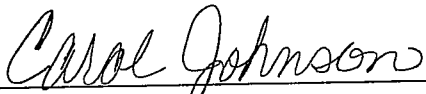
ORIGINAL

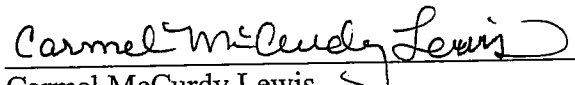
2. That, in exchange for the defendant's plea of guilty to said charge, the State agrees that the defendant's sentence shall be as follows:

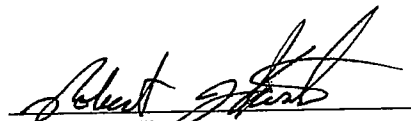
- a. The defendant shall receive a prison sentence of 1 - 2 years which sentence shall run concurrently with Nez Perce County Case No. CR 2001-02908 and CR 2002-83862, and the court shall retain jurisdiction. The defendant shall receive credit for all time served on all cases against the fixed portion of her sentences.
- b. All other matters shall be left to the discretion of the court.

3. The parties have entered into lengthy discussions regarding the disposition of the foregoing case and are of the joint opinion that the terms and conditions set forth above are in the interest of justice.

DATED this 11<sup>th</sup> day of August, 2004.

  
\_\_\_\_\_  
Carol E. Johnson  
Defendant

  
\_\_\_\_\_  
Carmel McCurdy Lewis  
Attorney for Plaintiff

  
\_\_\_\_\_  
Robert J. Kwate  
Attorney for Defendant

---

**Gilmore Affidavit - EXHIBIT “H-6”**

FILED

2004 AUG 11 P 1:01

RECEIVED  
CLERK OF DISTRICT COURT  
IDAHO COUNTY  
*Carol E. Johnson*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

State of Idaho,	)	Case No. CR 2004-06670
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	IDAHO CRIMINAL RULE 11
Carol E. Johnson,	)	ORDER
	)	
Defendant.	)	

Based upon the Idaho Criminal Rule 11 Plea Agreement entered into by the parties, and the Court finding good cause in these proceedings;

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the parties' plea agreement is accepted by the court.

DATED this 11 day of August, 2004.

*[Signature]*  
Judge

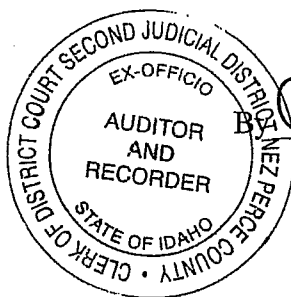
**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on this 11<sup>th</sup> day of August, 2004, I caused a true and correct copy of the foregoing to be delivered to the following:

Carmel McCurdy Lewis  
Nez Perce County Prosecutor's Office  
Post Office Box 1267  
Lewiston, Idaho 83501

Robert J. Kwate  
Kwate Law Offices, PLLC  
1502 G Street  
Lewiston, Idaho 83501

Patty O. Weeks,  
Clerk of the District Court



*[Signature]*  
Deputy Clerk



---

**Gilmore Affidavit - EXHIBIT “H-7”**

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

Carol E. Johnson

Defendant.

FILED

AUG 11 P M 04

CLERK OF THE DISTRICT COURT

CASE NO. 0304-010670

DEPUTY  
COMMITMENT

Carol E. Johnson

TO THE SHERIFF OF NEZ PERCE COUNTY, STATE OF IDAHO:

The above-named Defendant, appearing before this Court this day, being informed by the

Court of the nature of the charge against him (her) to wit:

Making False Affidavit on a Petition  
I.C. 34-1818

committed on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in said county,

and having been duly arraigned before the Court and having been duly found to be guilty and

having stated that no legal cause existed why judgment should not be pronounced against him (her)

and no sufficient cause appearing to the Court.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant is guilty of  
said crime and that he (she) be punished as follows: Imprisonment in the Idaho State Board of

Correction for a period of 1 to 2 years. Court retains

jurisdiction for 180 days.

NOW, THEREFORE, YOU, THE SAID SHERIFF OF NEZ PERCE COUNTY, STATE

OF IDAHO, are hereby commanded to receive the said Defendant and detain him (her) in the Idaho

State Board of Correction, until this sentence is complied with.

DONE IN OPEN COURT this 11th day of August, 2004.

Sentence to run

Concurrent with Sentences

in 0301-02908 + 0302-83862.

District Judge

**Gilmore Affidavit - EXHIBIT “H-8”**

FILED

7004 AUG 13 A 11:20

PATTY J. WEEKS  
CLERK OF THE DIST. COURT  
DEPUTY

*Carla Voppel*

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,

Plaintiff,

vs.

CAROL E. JOHNSON,

DOB: 01-24-58,

SSN: 534-70-8604,

Defendant.

CASE NO. CR 04-06670

JUDGMENT OF CONVICTION

The above-named defendant, on August 11, 2004, was present for sentencing represented by ROBERT KWATE, and the State was represented by CARMEL LEWIS, after having been previously arraigned in Court upon the charge of MAKING A FALSE AFFIDAVIT ON A PETITION, Idaho Code 34-1818, § 34-1822, and § 18-111, a felony, committed on or about April 17, 2004.

JUDGMENT OF CONVICTION

The defendant entered into a plea agreement pursuant to IDAHO CRIMINAL RULE 11 and the Court accepted the agreement and sentences the defendant in accordance with the agreement.

Defendant was duly informed by the Court of the nature of the charge and pled guilty thereto. At the time fixed for pronouncing judgment, the defendant was then asked if there existed any legal cause why judgment should not be pronounced, and Defendant replied that there was none. No sufficient cause being shown or appearing to the Court, the defendant was advised of the maximum and minimum punishment, right to a trial by jury, right to confront witnesses, the nature of the charge, whether the plea was a result of a plea bargaining and of what that agreement consisted, that the Court accepted the plea agreement pursuant to ICR 11.

The Court hereby finds that the defendant understands the nature of the offense, and the consequences of the plea of guilty; that there is a factual basis for the plea of guilty; that the guilty plea was freely and voluntarily made; and that the defendant freely and voluntarily waived these rights in the above-captioned matter.

THEREUPON, the Court rendered its judgment as follows:

WHEREAS, the defendant, was duly convicted of the above-mentioned crime, by Defendant's plea of guilty thereto;

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant is guilty of the Crime of MAKING A FALSE AFFIDAVIT ON A PETITION,

Idaho Code 34-1818, § 34-1822, and § 18-111, a felony, and that Defendant is SENTENCED to the custody of the IDAHO STATE BOARD OF CORRECTION, Boise, Idaho, for a period of not less than ONE (1) year, nor more than TWO (2) years, consisting of a minimum period of confinement of ONE (1) year during which the defendant shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct (except as provided by Section 20-101D, Idaho Code) and a subsequent indeterminate period of custody not exceeding ONE (1) year. This sentence shall run concurrent with the sentences in CR 01-02908 and CR 02-83862.

IT IS FURTHER ORDERED that jurisdiction be retained in this matter for a period of 180 days.

IT IS FURTHER ORDERED that Defendant shall make restitution to Nez Perce County for court costs in the sum of \$28.50, \$50.00 to the Victim's Crime Fund, Boise, Idaho, and \$10.00 to the Criminal Justice Fund, for a total of \$88.50. Restitution to be paid to Clerk of the Court, P.O. Box 896, Lewiston, Idaho 83501.

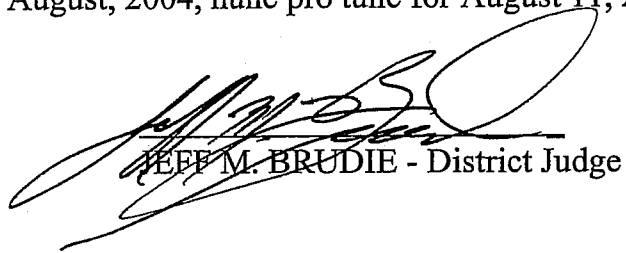
## **ORDER FOR TRANSPORT**

IT IS HEREBY ORDERED that Defendant shall be returned to Court for further proceedings following completion of the retained jurisdiction program and upon the court receiving the report from the Idaho Department of Corrections following the retained jurisdiction program. The defendant is to be returned to the Idaho State Department of Correction upon completion of hearing, if so directed by the Court.

## NOTICE OF RIGHT TO APPEAL

YOU, **CAROL E. JOHNSON**, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within the time provided by law.

DATED this 13 day of August, 2004, nunc pro tunc for August 11, 2004.



JEFF M. BRUDIE - District Judge

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**Gilmore Affidavit - EXHIBIT “H-9”**



FILED  
2005 FEB 4 PM 1 37  
PATTY O. WEEKS  
CLERK OF THE DIST. COURT  
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,

Plaintiff,

v.

CAROL E. JOHNSON,

DOB: 01-24-58,

SS#: 534-70-8604,

Defendant.

CASE NO. CR 04-06670

ORDER SUSPENDING SENTENCE  
AND ORDER OF PROBATION

The above-named defendant was found guilty of the crime of MAKING A FALSE AFFIDAVIT ON A PETITION, Idaho Code § 34-1818, § 34-1822, and § 18-111, a felony, and was sentenced to the custody of the IDAHO STATE BOARD OF CORRECTION, and the Court retained jurisdiction for a period of 180 days.

The defendant was present on February 2, 2005, being represented by ROBERT KWATE, and the Court being fully advised in the premises;

NOW THEREFORE, in consideration of the premises and good cause appearing,

ORDER SUSPENDING SENTENCE  
AND ORDER OF PROBATION

IT IS HEREBY ORDERED that the remainder of the sentence is SUSPENDED, and that the defendant is placed on probation for TWO (2) years beginning August 11, 1004. This probation shall run concurrent with the probation in CR 01-02908 and CR 02-83862. Probation is under the following conditions, to wit:

1. That the probation is granted to and accepted by the probationer with the understanding that the Court may at any time, in case of the violation of the terms of the probation, cause the probationer to be returned to the Court for the imposition of sentence as prescribed by law; and,

2. That the probationer shall be under the legal custody and control of the IDAHO STATE BOARD OF CORRECTION through its Department of Probation and Parole and the District Court subject to the rules of probation as prescribed by the Board of Correction and the District Court; and,

3. That the probationer, if placed on probation to a destination outside the State of Idaho, or leaves the confines of the State of Idaho with or without permission of the Director of Probation and Parole, does hereby waive extradition to the State of Idaho, and also agrees that the probationer will not contest any effort by any state to return the probationer to the State of Idaho; and,

4. That the probationer shall meet with Defendant's probation officer promptly at the time and place appointed by Defendant's probation officer; and,

5. That Defendant shall make complete and honest written monthly reports to Defendant's probation officer on or before the last day of each and every month during Defendant's probation upon forms provided by the probation officer; and,

6. That Defendant shall have no law violations other than a traffic infraction as defined by the State of Idaho; and,

7. That Defendant shall not: (a) leave the State of Idaho, (b) change Defendant's residence, or (c) undergo any substantial life changes, without the prior written permission of Defendant's probation officer; and,

8. That Defendant shall obtain full time employment and shall not change Defendant's employment without the prior written permission of Defendant's probation officer; and,

9. That Defendant shall not possess or consume any alcohol; and,

10. That Defendant shall not possess or consume any controlled substances without a prescription; and,

11. That Defendant shall not enter into any establishment where alcohol is served as the primary source of income; and,

12. That Defendant shall submit, at such times and places as Defendant's probation officer requires, to the taking of body fluid samples, and shall sign such releases as the agency taking such samples requires; and,

13. That Defendant shall consent to searches required by Defendant's probation officer upon Defendant; and/or Defendant's residence; and/or Defendant's personal effects and/or Defendant's automobile; and,

14. That Defendant shall obtain any type of evaluations as ordered by Defendant's probation officer; and,

15. That Defendant shall enroll in any type of treatment or counseling as ordered by Defendant's probation officer, and shall continue so long as Defendant's probation officer and/or counselor deem necessary, and until being released in writing; and,

16. That Defendant shall not have a checking account; and,

17. That Defendant shall not enter into any credit arrangements or credit accounts without prior written permission from Defendant's probation officer; and,

18. That Defendant shall, after having made full restitution to the victim(s) in this matter, make restitution to Nez Perce County for court costs as previously ordered in the sum of \$88.50. Monies owed to the Court to be paid the first month following payment in full on CR 01-02908 and CR 02-83862. That payments shall be mailed to Clerk of the Court, P.O. Box 896, Lewiston, Idaho 83501; and,

19. That Defendant shall obey each and every provision which Defendant's Agreement of Probation sets forth.

## NOTICE OF RIGHT TO APPEAL

YOU, CAROL E. JOHNSON, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within the time provided by law.

DATED THIS 4 day of February, 2005, nunc pro tunc for February 2, 2005.

  
JEFF M. BRUDIE - District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER SUSPENDING SENTENCE AND ORDER OF PROBATION was:

\_\_\_\_\_ Faxed, or

☒ hand delivered via court basket, or

☒ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 4<sup>th</sup> day of February, 2005, to:

Mia Bautista  
PO Box 1267  
Lewiston, ID 83501

Rob Kwate  
1502 G Street  
Lewiston, ID 83501

Dept of Correction, Records  
Pat Ogden (mailed)  
1299 N Orchard St., 110  
Boise, ID 83706

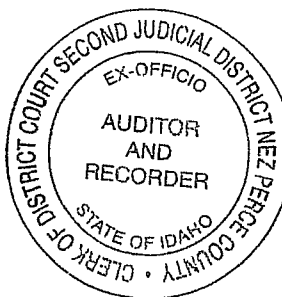
Probation & Parole  
Lewiston, ID 83501

Nez Perce County Jail  
Lewiston, ID 83501

~~Lewiston Police Dept  
Lewiston, ID 83501~~

PATTY O. WEEKS, CLERK

By: [Signature]  
Deputy



ORDER SUSPENDING SENTENCE  
AND ORDER OF PROBATION

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**Gilmore Affidavit - EXHIBIT “H-10”**

ORIGINAL

**IDAHO DEPARTMENT OF CORRECTION  
DIVISION OF COMMUNITY CORRECTIONS**

Probation and Parole, District 2  
908 Idaho Street  
Lewiston, Idaho 83501  
(208) 799-5030

FILED

2005 MAR 2 PM 3 46

**REPORT OF PROBATION VIOLATION**

BATTY O. WEEKS  
CLERK OF THE DIST. COURT

DEPUTY

DATE: February 28, 2005

TO: Honorable Jeff M. Brudie  
District Judge  
Nez Perce County Courthouse  
Lewiston, ID 83501

NAME: CAROL JOHNSON

COURT CASE: CR04-6670

ADDRESS: Unknown

OFFENSE: MAKING A FALSE AFFIDAVIT ON A PETITION

DATE OF SENTENCE: August 11, 2004

SENTENCE: 2 years

DATE OF PROBATION: February 2, 2005

COUNTY: Nez Perce

JUDICIAL DISTRICT: Second

**RULE VIOLATED**

COURT ORDER CONDITION #4, which states: That the probationer shall meet with Defendant's probation officer promptly at the time and place appointed by Defendant's probation officer.

**SUMMARY #1:** On February 10, 2005, Ms. Johnson was ordered to report to Probation and Parole on February 16, 2005, at 2:00 p.m. for a follow up appointment. Ms. Johnson did not show for this appointment.

**INTERMEDIATE SANCTIONS:** None, no contact since sign-up.

**RECOMMENDATION:** On February 25, 2005, Sr. Probation Officer Clint Hoiland contacted Linda Hastings, manager at the Ho Hum Motel, where Ms. Johnson was staying. According to Ms. Hastings, Ms. Johnson's last day at the motel was February 13, 2005. On February 28, 2005, I received information that Ms. Johnson was not happy with Probation and Parole and stated she was leaving. Ms. Johnson made mention of going to Boise, however, this is unknown. I contacted Ms. Johnson's son, whom thought his mother was still at the Ho Hum Motel. It appears that Ms. Johnson has **absconded** supervision. Based on the original recommendation by the Pre-Sentence Investigator, Ms. Johnson's history of lying, her victimizing others and her immediate non-compliance, it is requested that a **Bench Warrant** be issued for her arrest. It appears she is not interested in abiding by the terms set by the Court,

REPORT OF VIOLATION  
RE: Johnson, Carol  
DATE: February 28, 2005  
IDOC: 71289

Page 2

therefore, it is recommended, that if Ms. Johnson is found in violation, that her probation be revoked and the original sentence imposed.

Respectfully submitted,

Renee Behrens  
Renee Behrens  
Sr. Probation/Parole Officer

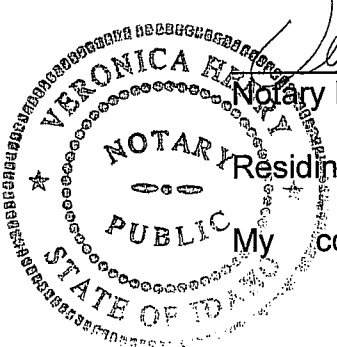
APPROVED: Susan Storm  
Susan Storm, District Manager  
Community Corrections, District #2

THE ABOVE DOCUMENTED INFORMATION, WHICH IS IN WRITING, IS KNOWN BY ME TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Renee Behrens  
Renee Behrens

SWORN AND SUBSCRIBED TO BEFORE ME, A NOTARY PUBLIC FOR THE STATE OF IDAHO, ON THIS 1<sup>st</sup> DAY OF March, 2005.

Veronica Henry  
Notary Public  
Residing at Jewiston, Idaho  
My commission expires 07/31/09

A circular notary seal for Veronica Henry, Notary Public, State of Idaho. The seal contains the text "VERONICA HENRY", "NOTARY PUBLIC", and "STATE OF IDAHO" around a central star.



**Gilmore Affidavit - EXHIBIT “H-11”**

