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Attorneys for Strider Construction Co., Inc.

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO. INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

PLAINTIFF'S MOTION TO STRIKE
PORTIONS OF DEFENDANT'S
MEMORANDUM AND REPLY

Plaintiff, Strider Construction Co., Inc. ("Strider"), by and through its counsel of record, Lindsay Watkins, Kristina Southwell and John Guin, hereby respectfully move the Court for entry of an order striking portions of Defendant's Memorandum in Support of Defendant's Motion to Order Return of State Property ("Memo") filed May 8, 2023 and Defendant's Reply in Support of Motion to Order Return of State Property ("Reply") filed June 7, 2023, which make factual assertions that are wholly unsupported by the record or citation to evidence (whether by affidavit, declaration, or other testimony).

Defendant's Memo and Reply contain numerous assertions as to what the Idaho Water Resource Board knew (or did not know) and Strider's mental state and/or motives that are not supported by any evidence or citation to the record. These assertions are mere speculation. Defendant's *only* supporting declarations are from Defendant's counsel discussing counsel's emails and conversation with Strider's counsel. Defendant filed no affidavits or declarations from witnesses and has taken no depositions. Defendant does not cite any discovery responses or document evidence.

Accordingly, the unsupported assertions in Defendant's Memo and Reply as to factual events and what Strider was thinking or its motives amount to improper testimony of counsel which should be stricken and not considered by the Court. The following unsupported factual assertions should be stricken:

- "At a time unknown, and without IWRB's knowledge or consent, Plaintiff determined examining the J-seals would be valuable in the litigation." Memo at p. 2.
- "Rather than follow the proper channels and seek an examination through formal discovery, Strider selected one of the J-seals, stole it from the worksite and apparently took it to his business." Memo at p. 2.
- "Plaintiff did not provide IWRB with advance notice of the removal, nor did Plaintiff or Plaintiff's counsel notify IWRB that such key evidence and State property was taken." Memo at p. 2.
- Strider used "surreptitious means to procure the J-seal." Memo at p. 7.
- Strider "wrongfully took" property from the worksite "just 48 hours before filing the instant litigation." Reply at p. 2, 5.
- Strider decided to remove the J-seal from the project site "knowing it would be initiating litigation in the following days." Reply at p. 2.
- Strider specifically took the J-seal sample "for purposes of the instant lawsuit." Reply at p. 5.

DATED: This 8th day of June, 2023.

AHLERS CRESSMAN & SLEIGHT PLLC

By: /s/ Lindsay Watkins
 Lindsay Watkins
 Attorneys for Strider Construction Co., Inc.

LAW OFFICE OF JOHN H. GUIN, PLLC

By: /s/ John H. Guin
 John H. Guin
 Attorneys for Strider Construction Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2023, a true and correct copy of the within and foregoing instrument was served upon:

Garrick L. Baxter, ISB #6301
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*Attorney for Defendant Idaho Water
Resource Board*

*Attorney for Defendant Idaho Water
Resource Board*

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

DATED: This 8th day of June, 2023.

/s/ John H. Guin

John H. Guin