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Boise, ID 83702
Telephone: (208) 472-0066

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

DECLARATION OF LINDSAY WATKINS
IN SUPPORT OF PLAINTIFF'S
RESPONSE TO MOTION TO COMPEL
STRIDER TO PRODUCE PHYSICAL
EVIDENCE IN RESPONSE TO
DEFENDANT'S SECOND SET OF
REQUESTS FOR PRODUCTION

I, Lindsay Watkins, state and declare as follows:

1. I am the lead counsel of record for Plaintiff Strider Construction Co., Inc. ("Strider") in the above captioned matter. I am over the age of eighteen, competent to testify, and have personal knowledge of the matters herein.

2. To avoid duplication, below is a true and correct excerpt of Strider’s July 18, 2023 response to the Idaho Water Resource Board’s (“IWRB”) second set discovery requests (highlight added):

RESPONSE: Strider objects to Request for Production No. 19 on the basis that it is vague, overbroad, and fails to describe with reasonable particularity each item or category of items to be inspected other than the sample of old J-seal and new J-seal. Aside from the J-seal material, the request asks for “all physical evidence” which is overbroad and lacks sufficient detail for Strider to understand what is being requested. Strider further objects to the request to the extent that it demands the material be produced at the law offices of Kirton McConkie. Subject to the foregoing objections, Strider responds that it will make the old J-seal and new J-seal material samples available for inspection by IWRB under supervision of Strider at Strider’s Wenatchee offices, or its representatives at a mutually agreeable time at Meuleman Law Group, PLLC in Boise, Idaho.

A complete copy of Strider’s Response is attached as Exhibit C to the Declaration of Jennifer Reinhardt-Tessmer in support of IWRB’s Motion to Compel.

3. To avoid duplication, below is a true and correct excerpt of Ms. Reinhardt-Tessmer’s August 16, 2023 email (highlight added):

From: [Jennifer Reinhardt-Tessmer](#)
To: [Lindsay Watkins](#)
Cc: [Ammon Hansen](#); [Wade Woodard](#); [Shannon Menard](#); [Madison Hyland](#); [Nicholas Korst](#); [Carter, Meghan](#); [Joe Meuleman](#); [Carolyn McCutchan](#)
Subject: RE: Expert disclosure deadlines and request for depo. dates
Date: Wednesday, August 16, 2023 3:05:00 PM
Attachments: [image003.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)

Lindsay –

We plan to take the 30(b)(6) and the Gebhardts’ depositions in Boise. We will try to arrange for 9/20-21. We also request the evidence be available in that timeframe for inspection (we can discuss specifics as the date approaches).

A complete copy of the email is attached as Exhibit D to Ms. Reinhardt-Tessmer's Declaration. No specific reference to the J-Seal is included in this email nor is there any request that any inspection take place in Boise. Strider did not assert an objection with respect to the J Seals because no specific request was made which warranted an objection.

4. It was not until close of business (4:38 PM PST) on August 24, 2023, in an email that excluded Strider's co-counsel Nicholas Korst, that IWRB **first** asked if the J-Seal was available on September 13 in Boise. To avoid duplication, a copy of Ms. Reinhardt-Tessmer's first request that the J-Seals be produced in Boise on a date certain (September 13) is attached to Ms. Reinhardt-Tessmer's declaration at Exhibit E.

5. I was traveling on August 25, 2023 as well as during the next week for the Labor Day holiday. Despite traveling, I and Strider attempted to identify if there was an opportunity to bring the J-Seal to Boise in early September. Given the short timeframe, there was no travel planned to Boise and would, therefore, require significant expense. I planned on communicating this to Ms. Reinhardt-Tessmer during business hours when I returned to the office.

6. On September 4, 2023, the Labor Day holiday, I received another email from Ms. Reinhardt-Tessmer that her expert was booking travel to Boise for September 13, 2023. I immediately responded that despite inquiry, the September 13, 2023 date would not work in Boise but indicated it was available in Wenatchee on that date or, in the alternative, proposed that it be inspected during the site inspection. I also reiterated Strider's objection that it be inspected without Strider supervision, consistent with the discovery response. A true and correct excerpt of my response is below with the full copy included as Exhibit G to Ms. Reinhardt-Tessmer's Declaration.

From: [Lindsay Watkins](#)
To: [Jennifer Reinhardt-Tessmer](#); [Joe Meuleman](#)
Cc: [Madison Hyland](#)
Subject: RE: strider evidence
Date: Monday, September 4, 2023 12:55:33 PM
Attachments: [image001.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

CAUTION: EXTERNAL

Jennifer,

I was looking 9/13 but that date does not work for Strider. If you want to review it on that date, it is available in Wenatchee, WA as stated in the discovery responses. My recommendation is that the J-Seal be reviewed during the site inspection in November. Do you have a response to my previous email on that topic? We also do not agree to it be taken off site.

7. Ms. Reinhardt-Tessmer responded, asserting my response was somehow inconsistent with Strider’s discovery responses, which I disputed. An excerpt of my response is below with a full copy at Ms. Reinhardt-Tessmer’s Declaration at Exhibit H.

From: Lindsay Watkins <lindsay.watkins@acslawyers.com>
Sent: Monday, September 4, 2023 2:45 PM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Joe Meuleman <jmeuleman@meulemanlaw.com>
Cc: Madison Hyland <mhyland@kmclaw.com>; Steven Andersen <sandersen@kmclaw.com>; David Gardner <dgardner@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>
Subject: RE: strider evidence

CAUTION: EXTERNAL

Jennifer,

I disagree with the contentions in your email below.

As you quote, the discovery response provides that the J seal would be available at a mutually agreeable time at either the Wenatchee office or the Boise office. You just recently requested that they be made available on a single date in Boise. That date in Boise is **not** a mutually agreeable time for Strider. That date can occur, however, in Wenatchee. This response is entirely consistent with the discovery responses and Strider’s obligations. You indicate your expert is flying, you have provided no basis for why the inspection cannot occur in Wenatchee. If the inspection must occur in Boise, I will review with Strider and provide some available dates. I am not aware of a mutually agreeable date before the deposition. We can discuss some additional dates for the deposition if that is an issue. If you need to inspect before the deposition, the J Seal is available in Wenatchee.

It should be noted that the email strings as sent by IWRB’s counsel includes emails out of chronological order.

8. I emailed Ms. Reinhardt-Tessmer again on September 8, 2023, again providing availability in Wenatchee and providing an additional option in Boise. A true and correct copy of this email and the subsequent string is attached hereto as **Exhibit A** with an excerpt below:

Jennifer,

As I indicated in my earlier email, there is not a mutually agreeable date in Boise for the J Seal inspection prior to the scheduled dep. Again, however, it has been and is available for inspection in Wenatchee prior to the noted depositions. Let me know if there is a date that works for you to confirm.

We do intend to submit a motion for partial summary judgment to be heard November 8 at 4pm, so provided that date is not modified, that would be a mutually agreeable date for inspection in Boise or as previously proposed, during the site visit. If you want to move the depositions until after that I can check on availability. Also, I have yet to hear back on my email regarding the site inspection. When will you be providing an update and additional detail as to the site inspection?

Lindsay Watkins

Exhibit A provides IWRB's response to the above, asserting Strider had not provided specifics. I responded, asking for further clarification on what specifics were needed as it had already been disclosed that the J-Seal was in Boise but could be in Boise on a later date. An excerpt of that response (attached in Exhibit A in full) is below:

From: Lindsay Watkins
Sent: Monday, September 11, 2023 4:48 PM
To: Jennifer Reinhardt-Tessmer
Cc: Joe Meuleman; Madison Hyland; Steven Andersen; David Gardner; Nicholas Korst; Ashton Ruff
Subject: RE: strider evidence

Jennifer,

Your attempts to misrepresent my email correspondence and what has occurred is inappropriate and unproductive. When you requested one specific date in Boise to inspect the J Seal, we were looking into options to make that possible. Unfortunately, those did not come to fruition. When you inquired to confirm, I immediately informed you that the date in Boise was not a mutually agreeable date (consistent with the discovery responses), but the material would be available in Wenatchee on that same date. In addition, I have both (a) continued to inform you that it is ready and available in Wenatchee and (b) have offered available dates in Boise. What other specifics do you need? It is a physical piece of evidence. It is currently in Wenatchee at Strider's offices but Strider is willing to agree on a mutually agreeable date to bring it to Boise (and has offered multiple options). Let me know what additional questions you have or specifics you would like to know.

Ms. Reinhardt-Tessmer did not respond to that email, did not call to confer, and, instead, filed the Motion to Compel. To date, the only date that has been proposed by IWRB for inspection was September 13, 2023, a date I indicted was not a mutually agreeable date.

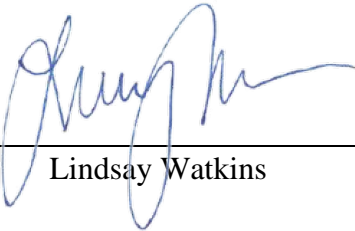
9. On September 11, 2023, IWRB filed and served Notices it was vacating the depositions it had noted for September 19 and 20, 2023. I have requested multiple times additional dates IWRB is proposing for depositions, but IWRB's counsel has not responded to that request.

10. From my discussions with Strider, no Strider representative has traveled to Boise since IWRB first requested to inspect the J-Seal in Boise on August 24, 2023.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: This 27th day of September, 2023, in Seattle, Washington.

By: _____



Lindsay Watkins

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2023, a true and correct copy of the within and foregoing instrument was served upon:

Garrick L. Baxter, ISB #6301
Garrick.baxter@idwr.idaho.gov
Meghan M. Carter, ISB #8863
Meghan.carter@idwr.idaho.gov

Steven B. Andersen, 2618
sandersen@kmclaw.com
Jennifer Reinhardt-Tessmer, #7432
jtessmer@kmclaw.com

*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 27th day of September, 2023.

/s/ Joe Meuleman

WATKINS

EXHIBIT A

Lindsay Watkins

From: Lindsay Watkins
Sent: Monday, September 11, 2023 4:48 PM
To: Jennifer Reinhardt-Tessmer
Cc: Joe Meuleman; Madison Hyland; Steven Andersen; David Gardner; Nicholas Korst; Ashton Ruff
Subject: RE: strider evidence

Jennifer,

Your attempts to misrepresent my email correspondence and what has occurred is inappropriate and unproductive. When you requested one specific date in Boise to inspect the J Seal, we were looking into options to make that possible. Unfortunately, those did not come to fruition. When you inquired to confirm, I immediately informed you that the date in Boise was not a mutually agreeable date (consistent with the discovery responses), but the material would be available in Wenatchee on that same date. In addition, I have both (a) continued to inform you that it is ready and available in Wenatchee and (b) have offered available dates in Boise. What other specifics do you need? It is a physical piece of evidence. It is currently in Wenatchee at Strider's offices but Strider is willing to agree on a mutually agreeable date to bring it to Boise (and has offered multiple options). Let me know what additional questions you have or specifics you would like to know.

For the depositions, I had hoped we would come to a reasonable resolution. I also had hoped that there would be an additional date from the Court. I cannot control the Court's availability, and despite follow up and additional requests, as confirmed by the Court, that was the sole time and date available. If you would like to proceed via zoom, we can proceed and avoid the need for the hearing/additional briefing all together. If not, please provide proposed dates.

For the dam inspection, the lack of detail in your response indicates that the Board is failing to take any urgency with the inspection and resolution of this matter – as I am sure you recall, when we were told the Board would be seeking a continuance so that it could perform an inspection in November, our previous objection, in addition to the continued hardship on Strider, was that the Board has had ample time to schedule this inspection, but failed to do so. Strider does oppose any request to continue the trial or move the current stipulated dates. Finally, for the detail, it is still unclear what will be done to allow the inspection and in what location? Will a cofferdam be installed? In what location? The length of the dam or just a portion? Will the area be completely dewatered or only dewatered to a certain water level? Our experts will inspect to the extent possible given the conditions. Additional detail from the Board, given the Board is directing the Contractor as to what will be performed, would not only be helpful but is necessary to provide any more detail from our side.



Lindsay Watkins
lindsay.watkins@acslawyers.com

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From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Sent: Monday, September 11, 2023 9:06 AM
To: Lindsay Watkins <lindsay.watkins@acslawyers.com>
Cc: Joe Meuleman <jmeuleman@meulemanlaw.com>; Madison Hyland <mhyland@kmclaw.com>; Steven Andersen <sandersen@kmclaw.com>; David Gardner <dgardner@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>; Ashton Ruff <aruff@kmclaw.com>
Subject: RE: strider evidence

Lindsay –

You have still not provided any specifics regarding when the evidence will be available. As you know, you sought and were granted, a discovery extension to our formal discovery request back in July to inspect the physical evidence, on the basis that you were retaining local Boise counsel and that would impact your answer to the pending discovery request. You then provided a discovery request stating it would be available in Wenatchee or Boise with your newly retained Boise counsel, Joe Meuleman. Nearly a month ago, I emailed you advising I wanted to inspect the evidence in Boise ahead of the September depositions in Boise. This request went unanswered despite my numerous follow up emails until close to depositions, where now you are advising you will not make it available in Boise until sometime in November. You state it is available in Wenatchee but provide no specifics. Your offers as to when and where the evidence will be available is a moving target, and it's causing unreasonable delay. Additionally, your filing of a motion for protective order to move the depositions to a different state so closely to the scheduled depositions (and sending a notice for hearing *the day before* the scheduled depositions) makes it logistically impossible to proceed with the depositions without knowing with certainty how the court will rule – although we are confident the law is on our side and the judge will rule accordingly. As such, we are forced to vacate the depositions and will reschedule for a later date when these issues can be resolved.

As to the dam inspection, we are waiting on details from the new contractor who is charged with creating the new schedule, but I am told it will be in late December. As to your question of “what is possible” – I’m not exactly sure what you mean by that. If your expert(s) have any tests or inspections they wish to conduct at the dam, please advise immediately and we will request with the new contractor.

Jennifer

KIRTON M'CONKIE
Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

c 208.957.3939

From: Lindsay Watkins <lindsay.watkins@acslawyers.com>
Sent: Friday, September 8, 2023 4:26 PM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Cc: Joe Meuleman <jmeuleman@meulemanlaw.com>; Madison Hyland <mhyland@kmclaw.com>; Steven Andersen <sandersen@kmclaw.com>; David Gardner <dgardner@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>
Subject: Re: strider evidence

CAUTION: EXTERNAL

Jennifer,

As I indicated in my earlier email, there is not a mutually agreeable date in Boise for the J Seal inspection prior to the scheduled dep. Again, however, it has been and is available for inspection in Wenatchee prior to the noted deps. Let me know if there is a date that works for you to confirm.

We do intend to submit a motion for partial summary judgment to be heard November 8 at 4pm, so provided that date is not modified, that would be a mutually agreeable date for inspection in Boise or as previously proposed, during the site visit. If you want to move the depositions until after that I can check on availability. Also, I have yet to hear back on my email regarding the site inspection. When will you be providing an update and additional detail as to the site inspection?

Lindsay Watkins

lindsay.watkins@acslawyers.com

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On Sep 4, 2023, at 4:16 PM, Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com> wrote:

Lindsay,

Please provide dates when the evidence will be Joe's office in Boise in Sept. before the scheduled depositions on 9/20.

<image001.png>

Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

c 208.957.3939

From: Lindsay Watkins <lindsay.watkins@acslawyers.com>

Sent: Monday, September 4, 2023 2:45 PM

To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Joe Meuleman <jmeuleman@meulemanlaw.com>

Cc: Madison Hyland <mhyland@kmclaw.com>; Steven Andersen <sandersen@kmclaw.com>; David Gardner <dgardner@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>

Subject: RE: strider evidence

CAUTION: EXTERNAL

Jennifer,

I disagree with the contentions in your email below.

As you quote, the discovery response provides that the J seal would be available at a mutually agreeable time at either the Wenatchee office or the Boise office. You just recently requested that they be made available on a single date in Boise. That date in Boise is **not** a mutually agreeable time for Strider. That date can occur, however, in Wenatchee. This response is entirely consistent with the discovery responses and Strider's obligations. You indicate your expert is flying, you have provided no basis for why the inspection cannot occur in Wenatchee. If the inspection must occur in Boise, I will review with Strider and provide some available dates. I am not aware of a mutually agreeable date before the deposition. We can discuss some additional dates for the deposition if that is an issue. If you need to inspect before the deposition, the J Seal is available in Wenatchee.

As you recall the Judge also indicated that there is likely additional J seal located at the disposal site. If you need that location, I can get that information as well.

Strider does object to you taking the seal out of Strider's possession especially with no detail or basis as to the intent. Is it now your position that Strider is not able to be present for the site inspection? What is your authority for that position?

Strider is not the party that continues to create discovery disputes, corroborated by the denial of the Board's initial, improper motion on this issue. The board has been well aware the J Seal is located in Wenatchee, while we were amenable to finding a mutually agreeable date (i.e., a date that works for *both* Strider and the Board), the one date you proposed is not that.

Also, please keep Nick Korst on emails in this matter. As was previously explained, he substituted for Ms. Southwell who is currently on leave dealing with a family medical issue.

[<image002.png>](#)

[<image003.png>](#)

Lindsay Watkins

lindsay.watkins@acslawyers.com

[<image003.png>](#)

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From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>

Sent: Monday, September 4, 2023 12:45 PM

To: Lindsay Watkins <lindsay.watkins@acslawyers.com>; Joe Meuleman <jmeuleman@meulemanlaw.com>

Cc: Madison Hyland <mhyland@kmclaw.com>; Steven Andersen <sandersen@kmclaw.com>; David Gardner <dgardner@kmclaw.com>

Subject: RE: strider evidence

Lindsay,

This is my attempt to formally meet and confer with you on this topic prior to filing a motion to compel production in Boise. As you know, you previously refused to produce the evidence for physical inspection outside of formal discovery, which we served. You then sought an extension on that formal discovery on the basis that you were in the process of retaining Boise counsel, and you wanted to incorporate that Boise counsel into your discovery response. We granted that extension. Your discovery response provided as follows:

<image004.png>

Knowing that the depositions of your clients are approaching, I have reached out to schedule the inspections. I requested the evidence be available for inspection in Boise on 8/16. I emailed three times total about this and only now, nearly three weeks later after several exchanges, are you denying the request and without any justification and insisting again we travel to Winatchee. Not only in this unreasonable, it's inconsistent with your own discovery response. Further, the Striders' availability for my experts to inspect evidence is irrelevant. This is not a mutual exam. You have no right to "supervise" or observe our expert's non-destructive examination, nor do you have a right to witness our expert's exam on-site at the dam. Your pattern of fighting every stage of discovery is a disservice to your clients and only serves to increase costs and delay proceedings. Please advise by tomorrow if the evidence will be made available with your local counsel where your client filed this action or if a motion to compel production will be required. Please note we will need to delay depositions to accommodate the motion and examination of evidence.

Jennifer

From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Sent: Monday, September 4, 2023 11:18 AM
To: Joe Meuleman <jmeuleman@meulemanlaw.com>
Cc: Lindsay Watkins <lindsay.watkins@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>
Subject: RE: strider evidence

Joe and Lindsay –

Our expert has booked his travel for the evidence inspection. To confirm your discovery response is still accurate, the physical evidence in your possession consists only of old and new J-seal material. Please let me know asap if this is incorrect so he can plan accordingly. Thank you.

Jennifer

<image001.png>

Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

c 208.957.3939

From: Jennifer Reinhardt-Tessmer
Sent: Thursday, August 24, 2023 5:38 PM
To: Joe Meuleman <jmeuleman@meulemanlaw.com>

Cc: Lindsay Watkins <lindsay.watkins@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>
Subject: strider evidence

Hi Joe –

Our expert will be here Sept. 13th to inspect the evidence. It's my understanding it's being kept at your office. Can I plan to pick it up the evening of 9/12 or morning of 9/13 and return it at the end of the day? Thanks.

<image005.png>

Boise Office
1100 W. Idaho St. #930
Boise, ID 83702
kmclaw.com

Jennifer Reinhardt-Tessmer
Shareholder

d 208.370.3323
c 208.957.3939
jtessmer@kmclaw.com

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<image001.png>

Jennifer Reinhardt-Tessmer
Shareholder

d 208.370.3323
c 208.957.3939

From: Lindsay Watkins <lindsay.watkins@acslawyers.com>
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To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Joe Meuleman <jmeuleman@meulemanlaw.com>
Cc: Madison Hyland <mhyland@kmclaw.com>
Subject: RE: strider evidence

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<[image002.png](#)>
<image003.png>

Lindsay Watkins
lindsay.watkins@acslawyers.com

<image003.png>

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From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Sent: Monday, September 4, 2023 11:18 AM
To: Joe Meuleman <jmeuleman@meulemanlaw.com>
Cc: Lindsay Watkins <lindsay.watkins@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>
Subject: RE: strider evidence

Joe and Lindsay –

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Jennifer

<image001.png>

Jennifer Reinhardt-Tessmer
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c 208.957.3939

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To: Joe Meuleman <jmeuleman@meulemanlaw.com>
Cc: Lindsay Watkins <lindsay.watkins@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>
Subject: strider evidence

Hi Joe –

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<image005.png>

Boise Office
1100 W. Idaho St. #930

Jennifer Reinhardt-Tessmer
Shareholder
d 208.370.3323

Boise, ID 83702
kmclaw.com

c 208.957.3939
jtessmer@kmclaw.com

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