

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

RENDA GLOVER,	)	
	)	<b>IC 2008-033059</b>
Claimant,	)	<b>IC 2009-009182</b>
v.	)	
	)	
MELALEUCA, INC.,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSION OF LAW,</b>
Employer,	)	<b>AND RECOMMENDATION</b>
	)	
and	)	
	)	
HARTFORD INSURANCE COMPANY	)	FILED NOV 14 2011
OF THE MIDWEST,	)	
	)	
Surety,	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas Donohue, who conducted a hearing in Idaho Falls on December 13, 2010. Robert K. Beck represented Claimant. R. Daniel Bowen represented Defendants. The parties presented oral and documentary evidence. The parties submitted post-hearing briefs. This matter came under advisement on April 12, 2011. It is now ready for decision.

**ISSUE**

Having bifurcated the issues in this case, the sole issue to be decided is whether Claimant suffered an injury caused by an accident arising out of and in the course of her employment.

All other issues are reserved. Despite the presence of two docket numbers, this case does not involve two events. Claimant filed a complaint, withdrew it, and later filed a new

complaint. Both complaints relate to a single event allegedly occurring on September 17, 2008.

### **CONTENTIONS OF THE PARTIES**

Claimant contends that she injured her extreme low back, her “lower tailbone” lifting and carrying heavy garbage bags on stairs. Employer failed to investigate her report of an accident and fired her for making a workers’ compensation claim. Employer’s witnesses gave inconsistent testimony. Claimant believes they conspired to deny her benefits.

Defendants contend that Claimant’s work history shows a series of low back and other workers’ compensation claims in between felony prison sentences involving dishonesty to obtain drugs or money for drugs. Claimant’s claim of an unwitnessed accident which hurt her back is not credible.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The prehearing deposition of Claimant (also admitted as Defendants’ Exhibit 36);
2. The hearing testimony of Claimant, of coworker James K. Bell, of Claimant’s supervisors Bernadine Thurman, Courtney Grant and Clint Washburn, of Claimant’s daughter Stacey Harrison, and of Claimant’s ex-husband Mario Hill;
3. Claimant’s Exhibits 1-21 admitted at the hearing; and
4. Defendants’ Exhibits 1-36 admitted at the hearing.

Defendants’ Exhibit 2 contains a handwritten note signed by Angela Fowler. Because Ms. Fowler was not called to testify and Claimant was unable to cross-examine her, Ms. Fowler’s note receives no evidentiary weight. After having considered all the above evidence and briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

### **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 2**

## **FINDINGS OF FACT**

1. Having worked for Employer previously, Claimant began working for Employer on August 5, 2008. Her employment was interrupted, in part, by a conviction and imprisonment for forgery. She was paroled in May 2008 and began attending counseling and treatment for substance abuse and mental health issues on June 13, 2008.

2. She sought prescription medication for low back pain complaints very shortly before and after her date of hire.

3. Claimant reported that on September 17, 2008 she told a coworker, Mr. Bell, that she had hurt her back emptying a heavy garbage bag from the lab and that she reported the claim to her supervisor, Ms. Thurman, the next day.

4. Mr. Bell is a “lab tech for the QA Department.” He recalled generally at hearing that Claimant talked about her back problems, but he did not recall context or dates. He did not recall any discussion about a specific injury or event. He would consider it highly unusual but not impossible that a garbage bag from the lab might be as heavy as 80 pounds.

5. Ms. Thurman was a custodial coordinator when Claimant worked there in 2008. She recalled at hearing that she saw Claimant “moving funny” for about a week, and about September 17 or 18, 2008, she asked Claimant about it. Claimant said “she overdid it” working on kitchen cabinets at home. Ms. Thurman suggested Claimant see a doctor. Claimant visited a chiropractor. About September 24, 2008, Claimant called to report she would be late because of a chiropractor’s appointment. Claimant arrived at work about 11:00 a.m. Claimant wanted to work, but Ms. Thurman could not allow it because of a physician’s note releasing Claimant from work. After further discussion which included supervisor

Courtney Grant, Claimant went home. At that point, Ms. Thurman was unaware of any allegation of a work accident. She believed Claimant was still asserting that her back pain was unrelated to work. Ms. Thurman's handwritten note dated September 24 is consistent with her testimony.

6. Subsequently, Ms. Thurman discussed possible assistance and accommodations with Claimant as she recovered. At no time did Claimant tell Ms. Thurman her back complaints were related to a September 17, 2008 accident at work.

7. Company policy would require Claimant to report an accident to Ms. Thurman. Claimant did not do so. Claimant filed a report of injury on October 8, 2008. Eventually on various later occasions, other employees, including Ms. Grant, discussed with Claimant that Claimant was alleging a work accident and injury. Ms. Thurman's typed note dated October 8, 2008 is consistent with her testimony that she was unaware Claimant was alleging a work injury before that date.

8. Ms. Thurman left employment about December 8, 2008. These third-party conversations occurred between the October and December dates. Ms. Thurman did work occasionally, a few hours per week for about five weeks, on inventory and paperwork after December 8, 2008. About February 14, 2009, Ms. Thurman moved to the office. Her final day was in May 2009.

9. Ms. Thurman also recalled Claimant talking about an impending surgery for a tumor. Claimant said the tumor was the reason for her back problems. Ms. Thurman believes she left Employer before Claimant returned to work after the surgery.

10. Courtney Grant works as a facility supervisor of custodial staff and receptionists. She recalled the September 24, 2008 conversation about the written physician's release from

work with Claimant and Ms. Thurman. In it Claimant repeatedly stated she suffered a personal injury, not a work-related injury. Claimant's demeanor bothered Ms. Grant, so she typed a note about the conversation immediately afterward. Ms. Grant's note is consistent with her testimony, and with Ms. Thurman's note and testimony.

11. Ms. Grant first learned Claimant was alleging a work-related injury on or just after October 8, 2008. Ms. Grant also recalled a December 2008 conversation with Claimant in which Claimant discussed her impending surgery for tumor removal and her need for time off after surgery.

12. Ms. Grant recalled one conversation with Claimant after Claimant returned to work following surgery. Claimant said she felt better. Ms. Grant recalled no further contact with Claimant.

13. Clint Washburn works as HR manager for Employer. On October 8, 2008, Claimant reported to him that she had hurt her back at work on September 17, 2008. She alleged the accident was witnessed by Leo, James and Ann. Mr. Washburn completed an accident report and a Form 1 and directed her to a physician. Upon investigation, Mr. Washburn could find no employee who had heard Claimant allege a work injury before the date of her report to him. Some employees reported Claimant had alleged she had hurt herself at home. Mr. Washburn obtained written statements from them. Although at hearing he did not have an independent recollection of questioning Leo, James, and/or Ann as part of his investigation, Mr. Washburn was "positive" that he talked to them. "James" is Mr. Bell who testified. "Leo" and "Ann" did not testify.

14. Mr. Washburn recalled that Claimant was off work for a tumor surgery and afterward alleged her pain was due to the tumor and not to work. He recalled a

phone conversation in which Claimant offered to withdraw her workers' compensation claim. Mr. Washburn did not suggest it or attempt to influence Claimant's decision about withdrawing the claim.

15. Claimant returned to work after February 16, 2009. Employer documented she had returned to full-time work at \$8.00 per hour.

16. Claimant notified the Commission of her intent to withdraw her claim on February 19, 2009. Claimant entered in evidence at hearing a version of that notice. On it, she had added additional language which alleges that Clint Washburn forced her to write it and even dictated it.

17. Mr. Washburn became aware Claimant wanted to reopen her claim after she had been terminated.

### **Medical Care**

18. On September 18, 2008, Claimant sought medical care. The note of Brent W. Mueller, M.D., does not indicate that she reported an occurrence of any untoward event at work. Dr. Mueller did not note any exacerbation in her chronic low back pain complaints or clinical change upon examination. Dr. Mueller confirmed these aspects of his note in writing on March 25, 2010. However, by November 11, 2008, when he ordered an MRI, he noted "Dx: workmans comp back injury" and beside it, "per verbal".

19. On September 23, 2008, Claimant sought medical care with Wade K. Price, DC. His note is the first medically recorded description of the alleged event. Initially, he took her off work. On October 3, 2008, he provided a 10-pound lifting limitation and a release for light-duty. Claimant asked that this restriction be lifted and said Employer was forcing her to lift more anyway. He treated her through October 17, 2008.

20. On November 13, 2008, Claimant underwent an MRI. It was compared to an earlier study dated September 12, 2006. The major finding of the 2008 MRI was, “THERE HAS BEEN NO APPRECIABLE CHANGE IN THE APPEARANCE OF THE LUMBAR SPINE SINCE THE PREVIOUS EXAM OF 09/12/2006.” (all caps in original). The 2006 MRI showed “Prominent hypertrophic degenerative changes of the inferior facets and ligamentum flavum throughout the lumbar spine . . .” The 2008 MRI did reveal an unrelated tumor, not affecting her spine, for which surgical removal was soon scheduled.

21. Records of Mountain View Redicare show several visits between November 25, 2008 and March 29, 2009. Claimant’s symptoms and conservative treatment are consistent with other medical records within those dates.

22. Claimant underwent unrelated surgery on December 30, 2008. Her surgeon released her from work on December 2 and released her to return to work with a 50-pound lifting restriction effective February 16, 2009. A note dated January 19, 2009, shows Claimant was seeking narcotic analgesics. Her surgeon’s office reluctantly compromised both the type and number of pills prescribed and refused to allow refills.

23. On February 9, 2009, Dr. Mueller prescribed physical therapy upon a diagnosis of “Dx: Chronic back pain.” Claimant began receiving physical therapy treatment from Jay Ellis, P.T., D.P.T., on February 10, 2009. Treatment continued through March 23, 2009.

24. Claimant visited Holly Zoe, M.D., for pain management from February through April of 2009. Dr. Zoe treated Claimant with medication, an epidural steroid injection, and a TENS unit.

25. On March 25, 2008 [sic - 2009], Claimant documented her allegation that, on February 16, 2009, Clint Washburn demanded she withdraw her workers’ compensation claim

and have all lifting restrictions removed before returning to work.

26. On March 26, 2009, Patrick T. Mayo, D.C., imposed light-duty restrictions including a 10-pound lifting limitation. On April 8, 2009 he stated, “The condition of her back has deteriorated to the point that maximum medical improvement will still preclude an occupation requiring repetitive bending, lifting, or twisting, or any lifting over 20 pounds.” He opined she would be permanently disabled from custodial work.

27. On April 7, 2009, Claimant underwent an EMG/NCV of her upper extremities. Gary C. Walker, M.D., found evidence of bilateral carpal tunnel syndrome, but no cervical radiculopathy or brachial plexopathy. He examined her for lower back complaints on August 31, 2009. He commented on the November 2008 MRI and noted an absent left ankle reflex with subjective complaints and no other objective findings. He opined her to be a nonsurgical candidate and recommended an initial epidural steroid injection with additional conservative therapy. He told Claimant she could safely work albeit with some pain.

28. On April 13, 2009, Claimant sought counseling for substance abuse through Mental Wellness Centers, Inc. An intake note recorded, “Motivation is external – mostly legal – some assistance needed w/ case management issues.” Such counseling was a condition of Claimant’s probation. After several sessions, Claimant opted out of counseling in June for inpatient treatment at a mental hospital. Upon complications surrounding the inpatient treatment Claimant returned to Mental Wellness Centers, Inc., for counseling. Its last note of record, dated November 25, 2009, indicates counseling would continue.

29. On October 5, 2009, Robert E. Ward, D.C., M.D., performed an IME at Claimant’s request. He opined her complaints were causally related to an aggravation of her preexisting low back condition, which aggravation occurred in the alleged lifting incident

on September 17, 2008, at work. He opined that 30% of her PPI was caused by the accident, the remainder preexisting. This calculation yielded a 4% whole person PPI attributable to the work accident. He recommended a 5-pound lifting limit and other motion and position restrictions.

30. On January 12, 2010, Angie Seal “qualified professional,” completed a Work Capacity Evaluation (Mental). Insufficient foundation precludes the assignment of weight to her observations and opinions therein. Ms. Seal is affiliated with Mental Wellness Centers, Inc.

31. On May 6, 2010, Richard T. Knoebel, M.D., performed an IME at Defendants’ request. In addition to the usual information which was provided, Dr. Knoebel had previously performed an IME of Claimant nine years earlier. Upon examination, Dr. Knoebel noted no significant objective findings. He opined her symptoms were consistent with an ongoing preexisting low back condition. He noted a previous 5% PPI had been rated after an earlier accident. Claimant was medically stable without PPI related to the most recent industrial event. He rejected Dr. Ward’s opinions including his PPI rating of 12% apportioned to 4%. He recommended restrictions of lifting 35 pounds occasionally and 20 pounds frequently with motion and position restrictions, all related to her preexisting condition.

32. Since the accident Claimant has appeared at various locations, whether hospital emergency room or doctor’s office, with a variety of complaints. The usual treatment for these visits includes a short-term supply of narcotics.

33. Claimant has presented to doctors with complaints which have been diagnosed as bipolar disorder, anxiety, paranoia, and other mental conditions. Except to the extent that these conditions contribute to Claimant’s inability to provide a consistent and credible history, they are not relevant to the alleged accident or any subsequent course of treatment.

### **Some Relevant Prior Medical Care**

34. Claimant's September 18, 2008 visit to Dr. Mueller was not her first. On July 9, 2008, she visited him seeking (in her words), "medication for anxiety, back pain, inhaler, breathing, cough." On that date she was working for Deseret Industries and made arrangements for self-pay. Workers' compensation insurance was not mentioned. Claimant received narcotic medications and other prescription drugs.

35. An X-ray dated February 5, 1991, showed a degenerative condition in her lumbar spine. This represents the earliest medical evidence of her back condition. No earlier such records are in evidence to confirm or disprove how long before this date her degenerative lumbar condition began.

36. Erich Garland, M.D., treated Claimant and expressed concerns about narcotic abuse in 1993.

37. A November 3, 2000, MRI showed her degenerative condition was progressing at L4-5 and L5-S1. Dr. Walker treated her with an epidural steroid injection.

38. On February 22, 2001, Dan I. Dragotoiu, M.D., began treating Claimant. Since as early as June 2001, he treated her for lumbar disc disease. He regularly provided narcotic analgesics and other medications for this condition and other conditions.

39. On February 23, 2001, Steven Clinger, M.D., continued his regular treatment of Claimant. He diagnosed "Chronic low back pain due to discogenic pain." He and Claimant had a "discussion about use of medication." He refilled her prescription for Lortab 7. A telephone note from a Dr. Cach's office indicated, among other things, that Claimant was considered a "drug seeker". Dr. Cach again so described her in a note dated June 24, 2005. He refused to see or treat her thereafter.

40. On September 13, 2001, Dr. Knoebel performed an IME related to another workers' compensation claim. Then, he opined Claimant with PPI after a "permanent aggravation of pre-existing low back condition." He suggested restrictions including no lifting over 35 pounds occasionally, 20 pounds frequently, with motion and position restrictions.

41. Another lumbar MRI dated October 8, 2001, shows results consistent with earlier and later MRIs for a slowly-progressive degenerative condition.

42. On June 25, 2002, T. Joseph, M.D., evaluated Claimant concerning another workers' compensation claim. He evaluated her low back condition and rated her PPI at 20% of the whole person.

43. On March 30, 2007, Claimant was evaluated by Gerald R. Moress, M.D., by the defendants in another workers' compensation claim. He noted the uncertainties surrounding her allegation of an unwitnessed sudden increase in back pain at work. Nevertheless, taking that history at face value, he opined all pain and PPI was related to preexisting conditions and not to any accident.

44. Claimant admitted to longstanding drug and alcohol abuse. She admitted to both abuse of prescription drugs and illegal drugs. At hearing she denied any current issues involving addiction.

45. The medical records show a longstanding pattern in which Claimant obtains multiple prescriptions for narcotics from different doctors around the same time.

46. Employer and Claimant disagreed about the details of circumstances surrounding her termination in 2009, but agreed that these circumstances involved an attempt by her to purchase illegal drugs while at work.

47. The medical and other records dated prior to her accident make frequent reference

to drug-seeking behavior or otherwise recount incidents which are easily interpreted as actions consistent with drug-seeking behavior.

### **DISCUSSION AND FURTHER FINDINGS**

48. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). However, the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

49. Claimant is a poor historian. For example, on September 14, 2001, Claimant reported to Scott Huneycutt, M.D., that she "has never had back pain in her life until October 7, 2000, when she reports she was lifting at work and had a sudden onset of low back pain. . ." whereas the evidentiary record reveals multiple contradictory episodes beginning with complaints of low back pain as early as 1991. Therefore, where contemporaneously-made medical records are inconsistent with Claimant's memory and/or testimony at hearing, these medical records are afforded more evidentiary weight.

### **Accident**

50. "Accident" and "injury" are terms defined by statute. *Idaho Code*, § 72-102(18).

51. The claimant in a worker's compensation case has the burden of proving that an accident arising out of and in the course of employment occurred. *McGee v. J.D. Lumber*, 135 Idaho 328, 17 P.3d 272 (2000). The proof must establish a probable, not merely a possible, connection between cause and effect to support the contention that the claimant suffered a compensable accident. *Callantine v. Blue Ribbon Linen Supply*, 103 Idaho 734, 653 P.2d 455

(1982); *Vernon v. Omark Industries*, 115 Idaho 486, 767 P.2d 1261 (1989).

52. “If the claimant be engaged in his ordinary usual work and the strain of such labor becomes sufficient to overcome the resistance of the claimant’s body and causes an injury, the injury is compensable.” *Wynn v. J.R. Simplot Co.*, 105 Idaho 102, 666 P.2d 629 (1983). The Court recognizes that ordinary body movements connected with or growing out of the employment—even as mundane as standing from a seated position—can be an accident. *See, Page v. McCain Foods, Inc.*, 141 Idaho 342, 10 P.3d 1084 (2005). Here, Claimant’s version of events does not substantiate the occurrence of an accident or injury.

53. Claimant claimed that witnesses saw the alleged accident. Those who provided testimony do not support her claims. Claimant claimed she reported the accident. Those claims were not supported by the people to whom she alleged she reported the accident. Claimant alleged these witnesses were untruthful and conspired to cause her claim to be denied. Claimant’s mental state is documented to include paranoid delusion. The testimony among these witnesses was reasonably consistent and credible.

54. Claimant’s testimony is impeached. She has been convicted of a felony involving dishonesty. Moreover, the evidence shows she has been often untruthful with medical providers from 1991 through the date of the hearing.

55. Claimant failed to show it more likely than not that she suffered an accident or injury as she has alleged.

### **Causation**

56. The claimant in a worker's compensation case has the burden of proving an injury caused by an accident arising out of and in the course of employment. The proof must establish a probable, not merely a possible, connection between cause and effect to support the contention that the claimant suffered a compensable injury. *Callantine v. Blue Ribbon Linen*

*Supply*, 103 Idaho 734, 653 P.2d 455 (1982); *Vernon v. Omark Industries*, 115 Idaho 486, 767 P.2d 1261 (1989). Moreover, there must be medical testimony supporting the claim for compensation to a reasonable degree of medical probability. *Dean v. Dravo Corp.*, 95 Idaho 558, 511 P.2d 1334 (1973); *Bowman v. Twin Falls Construction Co., Inc.*, 99 Idaho 312, 581 P.2d 770 (1978). “Magic words” are not required. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000).

57. Assuming, *arguendo*, that an accident occurred, the following analysis of causation becomes relevant.

58. Since 1991, Claimant has intermittently experienced low back pain. She suffers from a chronic, degenerative condition.

59. The MRIs in 2006 and 2008, before and after the accident, showed no changes in Claimant’s longstanding degenerative low back condition.

60. The medical experts opined about whether Claimant suffered a permanent aggravation or exacerbation of her preexisting medical condition. The record is insufficient to find a treating physician opined that she suffered an injury which caused only temporary aggravation or exacerbation of her preexisting medical condition. Claimant has not made a *prima facie* case that she suffered a temporary aggravation or exacerbation of her preexisting medical condition.

61. The weight of medical opinion shows that to a reasonable medical probability, Claimant did not suffer an industrial injury. Similarly, she did not suffer a permanent aggravation or exacerbation of her preexisting medical condition.

62. To the extent that Claimant may allege her mental condition was adversely affected by the alleged accident, she has failed to prove that proposition to the standard

required by the Idaho Workers' Compensation Law. Claimant's mental health has been at issue since she was a teen. Her bipolar disorder and other conditions ebb and flow in severity. Clearly, the evidence shows she and her mental health physicians did not tie her mental condition to the alleged accident. Its closest link, at best, was that she had been fired. Claimant's termination from Employer was unrelated to the alleged accident or to her claim for medical and other benefits. The mental health records suggest that Claimant suffered anxiety and paranoia related to surrounding circumstances involving illegal drug activity.

63. Claimant failed to show to a reasonable medical probability that she suffered any injury – physical or mental – as a result of the alleged accident.

#### **CONCLUSION OF LAW**

Claimant failed to show she suffered a compensable industrial accident causing injury related to her employment.

#### **RECOMMENDATION**

Based upon the foregoing Findings of Fact, Conclusion of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this 4<sup>TH</sup> day of November, 2011.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Douglas A. Donohue, Referee

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

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	)	<b>IC 2008-033059</b>
v.	)	<b>IC 2009-009182</b>
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MELALEUCA, INC.,	)	
	)	<b>ORDER</b>
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	)	
Employer,	)	
	)	
and	)	
	)	FILED NOV 14 2011
	)	
HARTFORD INSURANCE COMPANY	)	
OF THE MIDWEST,	)	
	)	
	)	
	)	
Surety,	)	
Defendants.	)	
	)	

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusion of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant failed to show she suffered a compensable industrial accident causing injury related to her employment.

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 14<sup>TH</sup> day of NOVEMBER 2011.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Thomas E. Limbaugh, Chairman

/S/ \_\_\_\_\_  
Thomas P. Baskin, Commissioner

/S/ \_\_\_\_\_  
R. D. Maynard, Commissioner

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>TH</sup> day of NOVEMBER, 2011, a true and correct copy of **FINDINGS, CONCLUSION, AND ORDER** were served by regular United States Mail upon each of the following:

ROBERT K. BECK  
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IDAHO FALLS, ID 83406

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BOISE, ID 83701

db

/S/ \_\_\_\_\_