Notice(s) of Violation

Alcohol & Marijuana Control Office
550 W. 7th Ave, Suite 1600
Anchorage, AK 99501

Date: 2-23-17
Case Number:AB 17-0089

Notice of Violation

(3AAC 306.805)

Licensee	License Number	Type of License
John Collette	10489	Limited Marijuana Cultivation
D.B.A.	How Delivered	Law Enforcement Agency
Ester Horticulture & Research	Via email to gnordic@acsalaska.net	Alaska State Troopers
Street or P.O. Box	City, State	Zip
2960 Ester Dome Road	Fairbanks, AK	99709

This is a notice to you as licensee that an alleged violation has occurred. If the Marijuana Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

Note: This is not an accusation or a criminal complaint.

VIOLATION: During your initial inspection on February 15, 2017 it was discovered there were 33 flowering plants approximately 4-5 feet tall in your facility. According to licensing records, you did not receive Fire Marshal Approval until 1-25-17, your Marijuana Handler's Permit until 2-1-17, and credentialed into METRC until 2-2-17. METRC shows once you were credentialed into the system on 2-2-17, you backdated the plants and entered them in flowering stage on 1-18-17; skipping the clone/seed and vegetative stages in the system.

Your Attention is directed to: 3 AAC 306.400 Marijuana cultivation facility license required; 3 AAC 306.425 Marijuana Handler Permit required; 3 AAC 306.730 Marijuana inventory tracking system.

You are directed to respond to the Director of the Marijuana Control Board in writing to this Notice of Violation within 10 days of receipt to explain what action you have taken to prevent a reoccurrence of this violation. FAILURE TO RESPOND TO THIS NOTICE OF VIOLATION WITHIN 10 DAYS WILL RESULT IN YOUR APPEARANCE, EITHER IN PERSON OR TELEPHONICALLY, BEFORE THE MARIJUANA CONTROL BOARD AT THEIR NEXT REGULARLY SCHEDULED BOARD MEETING.

***Please include your Marijuana Establishment License Number in your response.**

Alcohol & Marijuana Control Office
ATTN: Enforcement Unit
550 W. 7th Ave, Suite 1600
Anchorage, Alaska 99501

A Response is Required

3 AAC 306.805 provides that upon receipt of a Notice of Violation, a licensee may request to appear before the board and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice. A Licensee shall respond, either orally or in writing, to the Notice.

Receipt:	Violation Observed By: Amanda Stonecipher
Filed By: Amanda Stonecipher	Title: Investigator III

John Collette
3221 Ester Dome Road
Fairbanks, AK 99709
907-479-0706
gnordic@acsalaska.net
Lic. No. 10489

Defense for AMCO violation case number AB17-0089 of Feb. 23, 2017

This Communication is Confidential and should, under no circumstances be made public. Many of the issues discussed are in litigation in Superior Court.

Director and Board:

While this is a definitive defense for the alleged acts contained in the Notice of Violation, I first address the recent threat to the emerging Alaska Marijuana industry by the Trump administration's recent announcement of its intent to enforce federal law over those states with recreational marijuana.

Our Alaska Attorney General Jahna Lindemuth publically opined: "The Feds couldn't overturn the state's pot laws." Based on my intimate familiarity with how the Feds do things, Lindemuth is living in a bubble. If AG Sessions choses to move against Alaska's new industry it won't be done with a genteel legal attack on Constitutional grounds.

Fed behavior is to invoke the Supremacy Clause and start hauling people off to jail, while filing civil forfeiture actions against property. If Sessions moves against the new industry, I will be among the first arrested and my property will be, once more, taken by civil forfeiture.

Of the Notice of Violation, I invoke a necessity defense. After having learned on January 5th the State Fire Marshal's office had somehow mislaid my application mailed to them on October 12th, I was faced with one more interminable delay in getting plants planted.

The plants were the result of over two years of work in selecting strains, learning their growth characteristics and crafting a planting and harvesting schedule. The schedule was of overwhelming importance due to many forced delays and many unexpected costs associated with creating a new growing environment and setting up a business. In case the new Director and the MCB has failed to understand by now, the fundamentals of the new industry, TIMING IS EVERYTHING! The grower must grow three generations of plants ahead simultaneously. Getting timing precisely right is the difference between success and failure.

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I was faced with having the carefully tended first crop either planted or destroyed. To destroy the plants meant a very long delay to first revenue: Awaiting newly cloned plants to reach a suitable size meant pushing the boundaries of bankruptcy. The delay meant at least another two months to first revenue. This follows the attempt to recover from the doubling, (at least) of the projected cost of the new enterprise. Much of the costs were unforeseeable.

As it turned out, the timing for the crucial piece of the regulatory chain, the necessary Fire Marshal premises review was also unforeseeable.

After numerous phone calls with the Fire Marshal's office, talking with Jessica Reed, and finding that AMCO had provided the Fire Marshal will electronic copies of the pertinent pages of the premises application, Jessica informed me her office does no printing; everything must be submitted on paper. This application package was done over two days work, taken to the post office and sent to the DPS office on Tudor Road. The address included a bold "Attention Jessica Reed."

Jessica was then undergoing a name change from Faulkner to Reed. On Nov. 14th, her e-mail name was Faulkner and by January it was Reed.

I talked with Jessica Faulkner/Reed in early late October, and was informed I needed an access review from the local fire station. I contacted the local fire chief and he wrote me an e-mail stating he had no access issues. That was forwarded to Jessica on Nov. 14. See below.

Limited Marijuana grow review, Ester Horticulture and Research

john collette

Sent: Monday, November 14, 2016 at 9:34 AM

To: jessica.faulkner@alaska.gov

: DEC & Fire Notification.pdf (551.8 KB); 20161108092524353.pdf (52.9 KB) Preview All

Jessica,

Here is the Access Review by the local fire department to add to my package.

Long expecting a final action from the Fire Marshal, I was more than perplexed to receive her next e-mail of Jan. 9th.

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RE: DEC & Fire Notification-Ester Horticulture and Research # 10489

Reed, Jessica R (DPS)

Sent: Monday, January 9, 2017 at 2:43 PM
To: john collette
Cc: Parks, Diana C (DPS)

From: "Reed, Jessica R (DPS)" <jessica.reed@alaska.gov>
Date: Thu, 5 Jan 2017 22:09:30 +0000
To: john collette <gnordic@acsalaska.net>
Cc: "Parks, Diana C (DPS)" <diana.parks@alaska.gov>, "Marijuana Licensing (CED sponsored)" <marijuana.licensing@alaska.gov>
Subject: RE: DEC & Fire Notification-Ester Horticulture and Research # 10489

John –

We have not yet received a submittal from you regarding your proposed marijuana establishment. Please provide an update as to when we should be receiving your submittal.

Take care.

Jessica Reed (Faulkner)
Office Assistant II
Plan Review Bureau
p. 907.269.2004
f. 907.269.0098

This was a bolt out of the blue. My response follows:

From: john collette [mailto:gnordic@acsalaska.net] **Sent:** Sunday, January 08, 2017 1:37 PM **To:** Reed, Jessica R (DPS) **Subject:** Re: DEC & Fire Notification-Ester Horticulture and Research # 10489

Jessica,

I've dredged through my records, mental and electronic, and came up with the following chain of events concerning my application.

Via telephone, in October, you told me I had to file a paper application for plan review. I printed everything forwarded to you from AMCO, filled out the forms, and sent them to your office, to your Tudor Road address. I included on the address "Attention Jessica Reed."

You informed me I needed an access review from the local fire department. The letter is included above in case I failed to forward it to you. (I asked the fire chief to copy you, and don't know whether he did.)

However, I have not received a letter from you assigning a plan review number.

It is pretty late in the game to be put on hold as everything else in this elaborate scheme is painfully coming together. Let me know how to proceed.

Regards,

John Collette
Ester Horticulture and Research
907-479-0706

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Jessica next informed me that her department head, Diana Parks, would be in Fairbanks the next morning and I could submit another application to her. I instantly went to work, recreating the thirty-page October effort, met Diana at the DPS office in Fairbanks and personally handed it to her.

In conversation with Parks I learned Jessica had failed to inform me that the application must include much greater detail than originally required. The next six hours were spent at the computer with the added details sent the following day, January 11th. On January 20th Jessica e-mailed that my review was 9th in line for review.

The heart of anything horticulture is always the plant. In this case, my plants were overgrown, root bound, and had been trimmed back from growing too tall at least six times. The plants were at their limit; based on the inescapable fact that marijuana plants with great complexity (due to repeated pruning) leads to a low quality product with vastly increased labor and expense. I finally was forced to plant on January 18th. The Fire Marshal review was finally completed January 25th. On January 28th AMCO moved my license to active status. (At least the AMCO staff was prompt.)

At that stage, the plants had been planted for ten days. To prevent overgrowth, a short day cycle was set only five days after planting. By the time the Investigator saw the plants on February 15th, the plants, naturally, were in the flowering cycle.

My timeline for planting was based on two precursors: My timely application for Fire Marshal plan review of Oct. 12th and the Board awarding my grow license at their early November meeting. I fully expected to plant with proper METRC registration, on or about the first week of December. That turned out to be a pipe dream.

The long January medical leave of the Fairbanks AMCO investigator added further complication and time. Investigator Amanda Stonecipher was unavailable to issue my handler's license until her return from medical leave on February 1st. She informed me she would then be in Anchorage the following week for METRC training, setting back the initial inspection to February 15th.

I was forced to delay planting until January 18, 2017, the latest date to expect a quality yield. The plants cannot be put on hold for long: "Sorry girls, you must stop growing for x number of months." Had I waited for the last regulatory issues to be resolved, the Investigator's return, and METRC tags delivered, the earliest planting date would have been pushed to February 7- 10, with more than two months added to the expected schedule.

My central question is: How did the Fire Marshal's office manage to lose a properly addressed mailing of a large envelope with "Attention" to the very person I'd been talking to? And: Why did the Fire Marshal's office fail to inform me of the missing application until January?

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The issue of postal performance was a central issue in a civil case brought by me against the Federal government over the forfeiture of everything my family owned. After a long day of testimony from four postal officials about whether I'd been properly noticed in the many forfeitures, the answer was clear. The Court and I were duly impressed with the accuracy of our mail system. We've been delivering mail for a long time.

In all likelihood, my mailed Fire Marshal application made it to its intended place. If it had been undeliverable it would have been returned to me. It wasn't.

The question I've been trained to ask is whether the serious delay imposed on me was innocent or nefarious?

Weighing on the side of innocence is that the Fire Marshal's plan review office is undergoing major changes. Dept. head Diana Parks is facing forced retirement in June, while the staff is undergoing reductions and reassignments, as are many offices in our state government. In such conditions errors are more likely.

I cannot discount the delay being deliberate: It won't be the first time I've been dramatically harmed by simple office procedures. 25 years after a federal marijuana prosecution against my family, unfortunately, my name is still widely remembered. My entry into the new industry has, apparently, provided new opportunities for my opponents to cause harm.

Pushbacks and obstructions can come from any direction. Even simple acts by a lowly official may promulgate disaster; those who handle mail in official offices have great sway over whether the right people get the right things at the right time. No area is more sensitive to getting it right than within the legal system.

Fighting the Feds

In my civil action against the Feds over taking my property unlawfully, (Case No. 3:00-CV-00254, 9th Cir. Case No. 05-36110) after eight years of litigation the government was losing badly. After a simple court filing, the Federal clerk of court informed me that the case had been closed. This was news to me. I was still owed hundreds of thousands of dollars.

In recreating the reason why the Judge, Hon. Ralph Beistline, had issued a final order in the case, bringing my long effort to a premature ending, I was forced to dig deeply.

As it turned out, a copy of the final order had not been provided me. The motion by the government requesting the final order also had not been sent.

I instantly raised hell and the government, of course, came up with a docket entry from the clerk of court showing that I'd been properly served.

However, after computer searches and obtaining a password to a system that had been denied me due to my non-lawyer status before the court, I found a second

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official court docket. Two sets of books, the official map to the most sensitive and far-reaching legal issues facing our state.

A two-inch by two-inch screen shot of the second docket entry graphically proved the clerk of court had failed to send me, the Plaintiff, a copy of the Court's final order. The Court quickly reversed itself.

The discovery revealed that the clerk of court maintained duplicate, but not exact court dockets. The clerk of court falsified one docket entry showing I'd been copied, but failed to falsify both. This made a prima facie case of collusion between the United States Department of Justice and the Federal clerk of court. The screen shot of the second docket entry was worth $50,000 per square inch.

Rather than pursuing felony obstruction of justice charges against the clerk and the Assistant US Attorney in question, after much soul searching, I avoided my civic duty and chose to convert the revelation into cash. (Within the parameters of a lawsuit extortion is perfectly legal.) I received compensation far in excess of what I was legitimately due. I still question that choice-- but my family's safety was paramount.

As result of my long legal effort to right the many wrongs committed in the forfeiture of all that my family owned, many people within the federal government, and the others within the Fed's broad sphere in Alaska, might still wince when my name is mentioned. This became apparent during my first attempt to enter the new industry.

(I include a filing from that Federal case your staff attorney may find amusing.)

<u>My Initial Attempt at Joining the New Industry</u> (Also under the category of, "You can't make this stuff up.")

Given my current circumstances, I regret not following the evidence I gathered against my Federal opponents in their desperate attempt to avoid the headline, "Court Says Feds Must Give Collette Hundreds of Thousands of Dollars." At end of the case when I could have pursued criminal charges against a number of federal officials but I chose to set it aside, due to extreme exhaustion. That was in error.

Our first plan in building a new business around a limited grow was well planned, properly executed, with sufficient funds in hand to cover the high costs. The planting date was to be the end of July 2016. This date would have put me near the front of the industry. The plants grown to meet that date have long since been destroyed.

We rented a large aircraft hanger to build a state-of-the-art growing chamber starting in September 2015. We found building inside was comfortable and quick. As the 24 by 40 foot building was nearing completion in mid April of 2016, and after we had cleared two acres of land by hand earlier in April to receive the building, the landlord of the rented hanger took possession of our building, moved it outdoors

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and dumped it in the mud and snow. He claimed we had violated the 9-month lease. The Troopers, as expected, viewed it as a civil action.

The land chosen for the new building was near perfect. It was leased from my long-term girlfriend, my brother lived 100 feet away as a close caretaker, and the parcel was properly zoned. But numerous entreaties to the Superior court made it clear the landlord's drastic action was, at least, temporarily, within the scope of Alaska's archaic landlord/tenant laws and we could not expect the building's return anytime soon.

Alaska is alone in not adopting the Uniform Landlord Tenant Act as it applies to commercial leases; giving Alaskan landlords the same rights afforded the landed gentry in England, circa 1650. Alaskan Common Law allows a landlord to unilaterally proclaim possession over a renter's property if a renter fails to pay the rent. If the rent is not paid, the law allows the landlord to sell the property. This archaic system prevented the Court from ordering the building returned to me, although no claim was made that I had breached the lease contract in any way. My sole option was to sue.

The upshot was this: Late in the winter a friend of the landlord's came by the hanger and learned from an employee that the building project was intended to grow pot. The landlord quickly flew back from vacation in Costa Rica and started a two month long campaign of harassment. We lost control over our workspace and our progress dramatically slowed, with the landlord leaving the building unsecured on six different occasions, while I was contractually bound to guarantee the hanger's good condition.

When finally dragged before a Superior Court judge, the landlord told the court when questioned, "I took the building because Collette was going to grow pot." The Judge replied in astonishment, "Nobody cares about pot anymore." That exchange goes the heart of the societal progress we have been charged with advancing.

A court cannot shorten the process of a lawsuit; the many rules must be tediously followed. Knowing we were unable to use our building designed and built for a particular place, meeting all legal and practical criteria, we were forced to look for a new location. By this time it was early June.

A parcel of land close to my home became available and had the proper zoning. The land was the site of my greenhouse business taken from my family in 1992. By paying double its worth, we started the long process addressing the junkheap it had become. When it was seized by the Feds it had 30,000 sq. ft. of productive greenhouses producing 25 tons of greenhouse tomatoes, 8 tons of cucumbers, and 100,000 long stemmed roses. It provided employment for 10 people.

While the lawsuit to reclaim my new building proceeded, (the building itself was sitting in mud in one of the wettest summers on record,) it became clear the landlord, (hereafter the "defendant") intended to advance a defense based on his moral superiority.

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Knowing nothing of law, blissfully unaware the marijuana laws had been radically changed, the defendant relied on the court eventually agreeing with his illegal actions due to the Plaintiff, (me) being an, "ongoing danger to the community." Had the defendant prevailed with this ruse, he firmly believed he would also be awarded the ownership of my building, worth about $50,000.

Not being the sharpest sandwich at the picnic, he needed some help. He found it from someone currently in the federal government. The defendant was given eleven boxes of raw evidence accumulated in the prosecution of my family and me from 1992. The boxes contained 35,000 pieces of paper, through which he poured and excised the nastiest things gathered against us. He reported to the court in a massive filing, that with every discovery of an alleged illegal act from 25 years ago, he followed up with a trooper report against me. The unnamed federal official providing the documents told the defendant, "Collette has been a thorn in our side."

The defendant's stated attempt was to destroy my reputation before the court, as well as to warn society of my ultimate nefariousness. All this, past and present, civil and criminal, emerged from a federal prosecution over my growing 18 marijuana plants.

The current lawsuit will, most probably, go downhill for the defendant, but the whole exercise has caused me massive expense and has long delayed my entry into the new industry. This is a reminder, (as if we needed more,) that the ignorance and prejudices deeply ingrained in our society from 80 years of marijuana prohibition will not be reversed overnight.

Conclusion

Whether the above trials and tribulations in getting a new business started justified me in planting a few days early, is entirely up to the judgment of the Board. If the Board finds the industry will benefit from making me an example and imposing a large fine, there is, at least, great joy in facing a civil sanction, rather than criminal. We are blessed.

Whether someone within the Fire Marshal's office had erred, innocently or with malice, will probably never be learned. Although more than curious, I will not pursue the issue. Interrogatories and depositions are costly and time consuming, and would be cruel if the only thing they discovered was some person, recognizing my name as being a potential "danger to the community" decided to take matters into their own hands.

I take great pleasure in knowing that I will probably sleep far better tonight than AG Sessions.

Regards,

John Collette

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John Collette
3221 Ester Dome Road
Fairbanks, AK 99709
907-479-0706

IN THE DISTRICT COURT
FOR THE STATE OF ALASKA
Fourth Judicial District at Fairbanks

JOHN COLLETTE, Plaintiff V. Leslie Paul Zerbe Defendant	COMPLAINT/ BREACH OF LEASE AGREEMENT Case Number 4FA-16-01836 CI

Plaintiff appearing pro-se, hereby brings this action for compensation for the damage and expense caused by the breach of a commercial lease agreement for an industrial aircraft hanger owned by defendant, and subsequent acts committed by him. The Plaintiff seeks compensation for damage to private property, breach of contract, loss of productivity, legal costs, including punitive damages (AS 09.17.020), and the immediate return of personal property. Currently, the foreseeable damages are approximately $90,000, plus any damages the Court deems proper to address defendant's outrageous conduct, including acts done with malice and with reckless indifference to the interest of another.

Background

On September 11, 2015 Petitioner and Leslie Zerbe signed a lease agreement for the use of an aircraft hanger, owned by Zerbe at 2397 Tamara Ave., Fairbanks. The purpose of the lease was for the construction of a modular home of 24 ft. by 40 ft. dimension, in two halves, to be moved to a permanent location in June 2016. The duration of the lease was from October 15, 2015 to June 15, 2016. Lease document at Exhibit A.

On April 25th, without, notice, warning or formal eviction process, Zerbe removed the new building from the hanger, causing considerable damage, and placing it on a vacant lot next to the hanger, also owned by Zerbe. Petitioner called the State Troopers but was

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told they viewed the removal as a civil landlord/tenant action outside their purview. Trooper Sgt. Josh Moore observed the removal. Trooper Report No. 2016-017270-0. See Exhibit B, Letter from Robert Fox Jr, attesting to the building removal and knowledge of the lease duration.

Zerbe informed Plaintif the removal was done to advance the sale of the hanger, and to provide access for removal of his equipment. The sale, administered by Fox Realty, is due for closing on June 20, 2016. That date was chosen by the buyer and realtor to accommodate the lease termination date of June 15th. The rent for the following month was delivered to Zerbe's Denali Statebank account on April 15, 2016. See Exhibit E Bank Transfer record for rents to April 15, 2016.

Since the building's removal Petitioner has covered the building with plastic sheeting, inspected it daily, and has been preparing the permanent building site, the completion of which is subject to the lifting of highway load restrictions. As of May 24th the move has been interrupted by Zerbe by his placement of No Trespassing Signs on the building, and blocking access by two trucks. Most recently, Zerbe has placed a for sale sign on the property where the modular building is currently located. Zerbe is apparently claiming possession of private property without legal basis. This action seeks immediate pre-judgment return of the property, and compensation for damage caused by breach of contract and damage and loss to private property. See Picture of site: Exhibit C Petitioner estimates the building's intact value at $45,000.

THE CONTRACT BETWEEN PARTIES

The contract period was between October 15, 2106 and June 15, 2016. The lease duration was necessary to build a modular building for placement on a new building site. Plaintiff's intent was to substantially complete the building in a protected environment, minus roof covering. The contract conclusion date of June 15th was chosen by the parties to allow site preparation and the lifting of highway load restriction, necessary to protect highways during spring breakup.

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The contract, written by Zerbe, and signed by him on September 11, 2015, was for a nine-month period at a rental rate of $1000.00 per month. The contract was for the premises located at 2397 Tamara Ave, Fairbanks. Of note, nowhere in the contract is it stipulated the tenant would be limited to a particular floor space or percentage of the premises. No floor space limitation was negotiated or agreed upon by either party either informally and was certainly not a contract provision.

Plaintiff was in full compliance with the agreed upon stipulations within the contract between the parties, in their entirety. Plaintiff received from defendant no official notice of change of rents, or change in contract stipulation, or any other demand through the agreed upon method. Contract, Para 25:

> **"Notice. Any notice required or permitted under this lease or under state law shall be deemed sufficiently given or served if sent by United States mail, return receipt requested, addressed as follows:" (addresses follow)**

Agreed Upon Contract Provisions

The contract includes stipulations that would lead to potential breach of contract. They are:

1. Non-payment of rents. Para 2. Rent was current.
2. Use of premises, Para 5, complying with laws and ordinances. No illegal activity was present in the building
3. Alterations and Improvements, Para 8. No alterations were made to the building.
4. Maintenance and Repair, Para 12. Plaintiff maintained the building in a clean and safe manner.
5. Hazardous materials. Para 10. Plaintiff did not employ nor store hazardous materials. It was a simple building project.
6. Para 7, Assignment and Subletting: Plaintiff did not let the premises during the time period.

IT IS ALLEGED THAT:

1. Defendant unilaterally evicted Plaintiff while all contract provisions were being met by Plaintiff. See Exhibit D, Affidavit of John Collette.

2. Defendant did damage and take to himself the personal possessions built and owned by Plaintiff.

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3. Defendant did, unilaterally, after the fact, demand higher rents, without negotiation or notice.

4. Defendant did trespass repeatedly on the rented premises.

5. Defendant did fail to secure the building after visits on six occasions, leaving the building, tools and materials open to tampering and theft.

6. Did threaten, through his building agent, to forcibly dismantle the modular building and remove it from the premises, while the lease contract was in full force. The agent also harassed and threated Plaintiff's employees on numerous occasions.

7. Did advertise the hanger with a sign prior to 45 days of the end of the lease, in violation of state law and contract provision. (Contract para 14) This caused the Plaintiff to greet those interested in the building on numerous occasions taking time away from productive work and invited trespass and vandalism.

8. Defendant did cause substantial damage to the building while moving the building outdoors.

9. Defendant did fail to provide adequate protection for the building once exposed to the elements. The building was placed on the wet ground without protection, and is subject to serious deterioration from water infiltration, theft and tampering. See Exhibit C.

10. Defendant did place Plaintiff's enterprise in jeopardy by evicting him prior to the completion of the project.

11. Defendant did jeopardize the economics of Plaintiff's project, causing delay, lost building time and future rents.

12. Defendant has offered the modular building for sale, while not owned by him, in violation of law.

CONCLUSION

This action is brought for money damages, punitive damages, and the immediate return of personal property.

Respectfully Submitted on the 15th day of June, 2016, by

_____

John Collette, Plaintiff, pro-se

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John Collette
3221 Ester Dome Road
Fairbanks, AK 99709

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOHN COLLETTE, Plaintiff v. DRUG ENFORCEMENT ADMINISTRATION, UNITED STATES MARSHALS SERVICE, UNITED STATES OF AMERICA, Defendants	Case no. 3:00-CV-00254 (RRB), 9th Cir. Case No. 05-36110 PLAINTIFF'S RESPONSE TO DEFENDANT'S REPLY TO MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiff, John Collette appearing pro-per, hereby replies to the Government's comments on Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

The government has little to say in response. It reiterates that it has but one stance: The notion that the losing party, can, on an ex parte basis, determine what is equitable compensation in a civil rights action. Considering that government has admitted to unlawfully destroying the record and that it is unable to contribute to further factual development, it cannot argue for the traditional approach requiring the court to establish proper compensation based on a thorough finding of the facts.

As stated, Plaintiff's position, supported by the Supreme Court, is that the court has jurisdiction over the res from seizure to final resolution. The Court's exercise of its equitable jurisdiction requires full development of the facts, including the Plaintiff's right

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to establish the value of his losses and the right to government records in establishing the circumstances of seizure and sale. Only after determination of full value can the court reach an equitable finding.

Plaintiff, all in all, is being generous in limiting his demands. When the government sought appraisals of his seized property as required by law, it seriously undervalued many things. In the majority of instances, Plaintiff is willing to accept the professional appraisals. The exceptions are the two aircraft, the Achilles raft, and the 40 horsepower Yamaha outboard motor.

However, if the court finds the original government appraisals reflect fair market value, and, further, is willing to assure full compensation to Plaintiff for his costs for ten years of active litigation, then, Plaintiff is willing to drop his demands for further fact-finding. Plaintiff is willing to forego maximum benefits in exchange for ending the litigation here and now.

In his response to the government's motion, Plaintiff alleges that during the course of this litigation government engaged in a program of coercion and intimidation against himself and his family. This included an unlawful jailing of Mr. Collette, an eviction attempt prompted by a federal official, an attempt to jail Mr. Collette's son also prompted by a federal official, the introduction of falsified documents to the court, and offering perjured testimony in open court. Added to these corrupt acts is the destruction of the government's record.

During the course of his investigation in this case Plaintiff has discovered serious criminal acts associated with the taking of his properties. Among them is the theft of the proceeds of Mr. Collette's seized business, Happy Creek Greenhouses. When the

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Marshals seized Mr. Collette's business, it was owed considerable sums from it vendors, such as Safeway, Market Basket, Fred Meyer and others. The Marshals operated the business following the October 1992 seizure by hiring Mr. Collette's former employees. A bank account was opened to manage the business giving signatory rights to three Deputy United States Marshals. However, on review of the Marshals' bank records, which Plaintiff has in his possession, it is clear that no deposits were made from the proceeds of the business until the following summer. Unaccounted for is between $16,000 and $24,000.

Also missing from the record are numerous items, some of great value, which never saw the light of day following the seizures. From the records in Plaintiff's possession, along with his knowledge of events, it is clear that wholesale theft of properties seized and controlled by the government took place.

Based on the government's own record (made available to Plaintiff in June 2003), it became clear to Plaintiff that individuals having access to and control over Plaintiff's property had generously helped themselves. The very same people who controlled Plaintiff's property also had access to the government record.

When this case was granted life by the Court in March of 2003, instant action was taken against Plaintiff and his family, and we now know, the entire case record was destroyed.

Given the above, the government now argues that the record's destruction is moot due to government's ex parte decision to compensate Plaintiff based only on its scant remaining records. It admits that even the professional appraisals have been destroyed.

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This admission establishes government has failed to preserve records required by statute, upon which the court may make an informed decision on just compensation.

The loss of records makes court review impossible. Also, most conveniently, is the loss of the record of individual theft, and the taking and disposal of hundreds of valuable items not formally moved against, and for which there is now no available record. Plaintiff has included claims for many of these missing items in his current complaint.

What the government dismisses as "vitriol" in Plaintiff's Response are allegations of serious obstruction of justice. One incident will be explored in detail here and evidence attached.

Two days following the receipt of the Magistrate's report in this case recommending the government's motion for summary judgment be denied, Mr. Collette, who was then completing his fifth month of a six month stay at Northstar Center, a half-way house, he was jailed on the allegation of drug use. See Exhibit 1.

Mr. Collette's status at the halfway house included the provision that upon successful completion of the halfway house process, he would be awarded a year off from his criminal sentence. Any proof of drug use would return Mr. Collette to federal prison for a year or more.

On a Thursday Mr. Collette was overjoyed at winning the summary judgment motion, on Saturday, he was in jail, paying a high penalty for his success. He requested a retest on the urine sample, but the request was denied, against federal Bureau of Prison policy. Using the power of subpoena engendered by this action, with the aid of local Fairbanks lawyer, he formally demanded the urine sample be forwarded to an

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independent testing laboratory. Mr. Collette was informed the sample had been destroyed.

BOP policy requires a hearing on an allegation within two weeks of an incident report. Mr. Collette was not afforded this due process and lingered in jail for 40 days.

He was eventually returned to the halfway house. His criminal sentence was arbitrarily extended by 40 days.

The next ploy used against Mr. Collette was in denying him the opportunity for employment. In a two-week period he was forced to obtain seven offers of employment, all denied as unacceptable by the Northstar staff. As employment was a requirement for continued good status at the halfway house, Mr. Collette could be returned to prison due to his inability to find work. After denying Mr. Collette employment at the same workplace where four other Federal halfway house residents worked, the farce was evident and the staff finally relented, only after being threatened with an independent law suit.

Upon his eventual release, Mr. Collette obtained a state-of-the-art drug test using hair samples. The samples were taken by the same agency used by the United States Probation Dept. and firmly established no drug use during the previous nine months. See the Analysis Requisition form at Exhibit 2, and the test results at Exhibit 3.

This hair analysis made clear that the attack on Mr. Collette was either rigged by the substitution of urine samples, or was the result of serious error, for which Mr. Collette paid dearly. DNA testing of the urine sample, as attempted by Mr. Collette, would have identified criminal wrongdoing if had been present. As the sample was destroyed upon

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the testing laboratory's receipt of Mr. Collette's subpoena, this information is lost. See Mr. Collette's Affidavit at Exhibit 4.

This incident was the beginning a long and damaging series of attacks undertaken by the federal government against Mr. Collette and his family. The government did not relent until faced with formal action from the court. Docket No. 240, Fts. 5-9.

As the Court is required to find a means to further this litigation, it has before it the alternatives of: 1. Granting the government's summary judgment motion, after which Plaintiff will be forced to appeal once more; 2. Find that the law requires the court establish just compensation in a case of constitutional deprivation, as *all* precedent dictates; 3. Order an evidentiary hearing to establish the appraised values, the sale prices obtained by the government, and the circumstances of sale, as Plunk was allowed before Judge Sedwick; 4. Fault the government for its failure to preserve the record and award Plaintiff all he would have been awarded had the record supported his claims; 5. Fine the government an amount equal to the maximum Plaintiff would have won had not government malfeasance made further fact-finding impossible and/or; 6. Appoint a special prosecutor to investigate Plaintiff's allegation of obstruction of justice, including the circumstances of the destruction of the government's record.

Respectfully submitted on the 7th day of August, 2009, by

_____

John Collette, Plaintiff

Certification of Service

I declare under penalty of perjury that a true and correct copy of the foregoing with attachments was sent to Mr. James Barkeley, Assistant US Attorney, 222 West Seventh Ave., Rm. 253, #9, Anchorage, AK 99513 on the 7th day of August, 2009, via first class mail.

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