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

STATE OF IDAHO, Plaintiff, v. FULL CAPS CORPORATE NAME, Defendant, Upper and Lower Case True Name, *tertius interveniens, real party in interest* Citizens of Idaho (U1777), *tertius interveniens, real party in interest.*	)	Case No. CR-2012- Special Appearance *de bene esse* DEMAND FOR JURY OF TWELVE

COMES NOW, Upper and Lower Case True Name, a living soul, with clean hands, with

standing, and hereby makes this Special Appearance *de bene esse* and this DEMAND FOR JURY OF TWELVE.

The details of the origins of the Common Law Jury are lost in the mists of antiquity, Blackstone, 4 Commentaries 365, quotes Cokes who stated: 'Pausanias relates, that at the trial of Mars, for murder, in the court denominated Areopagus from that incident, he was acquitted by a jury composed of twelve pagan deities, and Dr. Hickes, who attributes the introduction of this number to the Normans, tells us that among the inhabitants of Norway, from whom the Normans as well as the Danes were descended, a great veneration was paid to the number twelve: 'nihil sanctius, nihil antiqwuis fuit; ac in ipso hoc numero secreta quaedomm esset religio.' Even before there is a record of the jury system in England, the tribes of Northern Europe had developed traditions which formed the foundations of the Common Law jury system. In Normandy, before the conquest of England by the Normans, the trial by Jury of twelve men was the usual trial among the Normans in most suits, especially in assizes, et juris uturm." 1 Hale's History of the Common Law, 218, 219. Crabbe said: "It cannot be denied that the practice of submitting causes to the decision of twelve men was universal among all the northern tribes (of Europe) from the very remotest antiquity." Crabbe's History of the English Law, p. 32. Also, a Professor Scott wrote: "At the beginning of the thirteenth century twelve was indeed the usual but not the invariable number. But by the middle of the fourteenth century the requirement of twelve had probably become definitely fixed. Indeed this number finally came to be regarded with

something like superstitious reverence." A. Scott, Fundamentals of Procedure in Actions at Law, 75-76 (1922) Ranulph De Glanville, writing in the twelfth Century, stated: "By means of such Writs, the Tenant may protect him self, and may put himself upon the Assize, until his Adversary, appearing in Court, pray another Writ, in order that four lawful Knights of the County, and of the Vicinage, who should say, upon their oaths, which of the litigating parties, have the greater right to the land in question. "The Election of the twelve Knights having been made, they should be summoned to appear in Court, prepared upon their oaths to declare, which of them, namely, whether the Tenant, or the Demandant, posses the greater right to the property in question. "When the Assize proceeds to make the Recognition, the right will be well known either to all jurors, or some may know it, and some not, or all may be alike ignorant concerning it. If none of them are acquainted with the truth of the matter, and this be testified upon their oaths in Court, recourse must be had to others, until such can be found who do know of the truth of it.

Should it, however, happen that some of them know the truth of the matter, and some not, the latter are to be rejected and others summoned to Court, until twelve, at least, can be found who are unanimous. "

The Magna Carta, signed by King John of England in June, 1215, contains the following sentence:

"Nullus liber homo capiatur, vel imprisonetur, aut utlagetur, aut exuletur aut alique modo destrvatur; nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terrae." One translation of this passage is by Lysander Spooner in his book entitled, "An Essay on the Trial by Jury," published in Boston by John P. Jewett & Company in 1852, and reads as follows: "No freeman shall be arrested, or imprisoned, or deprived of his freehold, or his liberties, or free customs, or be outlawed, or exiled, or in any manner destroyed, nor will we proceed against him, nor send anyone against him, by force or arms, unless according to the sentence of his peers, and of the Common Law of England. There is some disagreement as to the translation of "vel" in the last phrase of the quotation. However, Justice Black (concurring) in Duncan v. Louisiana, 391 U. S. 169, agrees with the translation by Spooner. Black translated the passage as follows: "No freeman shall be taken, outlawed, banished or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land." The phrase, "according to the sentence of his peers," or according to Justice Black's, "except by the lawful judgment of his peers," refers to the Common Law jury of the time who were authorized and impaneled to try and sentence a freeman. Magna Carta does not specify the number of men who were to comprise a jury. This is certainly understandable, because at the time of the Magna Carta, the fact that a jury was composed of twelve men was so firmly embedded in English tradition that it was not necessary to specify the size of

a Common Law jury.

Magna Carta was ratified again by Henry III, in 1216, and again several times later. These re-ratifications of the Magna Carta, in essentially an unchanged form, were continued by Henry's successors for at least two hundred years. Coke stated: " .... And it seemeth to me, that the law in this case delighteth herself in the number of twelve; for there must not only be twelve jurors for the matters of fact, but twelve judges of ancient time for trial of matters of law in the exchequer chamber. Also for matters of state there were in ancient time twelve counsellors of state. He that wageth his law must have eleven others with him, which think he says true. And that number of twelve is much respected in holy writ, as twelve apostles, twelve stones, twelve tribes, etc. "He that is of a jury must be a liber homo, that is, not only a freeman and not bond, but also one that hath such freedom of mind as he stands indifferent as he stands unsworn. Secondly, he must be legalis. And by law, every juror that is returned for the trial of any issue or cause, ought to have three properties. "First, he ought to be dwelling most near to the place where the question is moved. "Secondly, he ought to be most sufficient both for understanding, and competency of estate. "Thirdly, he ought to be least suspicious, that is, to be indifferent as he stands unsworn: and then he is accounted in law liber et legalis homo; otherwise he may be challenged, and not suffered to be sworn." 3 Coke's Institutes by Thomas, 459 In regard to civil juries, Blackstone stated: "Then therefore on issue is joined, by these words, 'and this the said A. prays may be

inquired of by the country,' or 'and of this he puts himself upon the country,---and the said B. does the like,' the court awards a writ of venire facias upon the role or record, commanding the sheriff 'that the cause to come here on such a day, twelve free and lawful men, libros et legales homines, of the body of his country, by whom the truth of the matter may be better known, and who are neither of kin to the aforesaid A., nor the Aforesaid B., to recognize the truth of the issue between the parties." Blackstone 3 Commentaries 351.

In regard to criminal actions, he stated: "The antiquity and excellence of this trial for the settling of civil property, has before been explained at large. And it will hold much stronger in criminal cases; ... " Blackstone, supra.

The first Continental Congress, in the Declaration of Rights adopted October 14, l774, resolved unanimously: "That the respective colonies are entitled to the Common Law of England, and more specifically to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law." 1 Journals of Congress 28. In the historic case of Thompson v. Utah, the United States Supreme Court stated: "Assuming then that the provisions of the Constitution relating to trials for crimes and to criminal prosecutions apply to the Territories of the United States, the next inquiry is whether the jury referred to in the original Constitution and in the Sixth Amendment is a jury constituted, as it was at common law, of twelve persons, neither more nor less. This

question must be answered in the affirmative. When Magna Carta declared that no freeman should be deprived of life, etc., 'but by the judgment of his peers or by the law of the land,' it referred to a trial by twelve jurors." In another case, the Supreme Court stated: "Trial by jury in the primary and usual sense of the term at the common law and in the American constitutions is not merely a trial by a jury of twelve men before an officer vested with authority to cause them to be empanelled, to administer oaths to them and to the constable in charge, and to enter judgment and issue execution on their verdict; but it is a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to instruct them on the law and to advise them on the facts." Capital Traction Company v. Hof, l74 US 1. This same number has been reiterated in another case where the high court stated: "That a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment to the Federal Constitution, there can be no doubt." Maxwell v. Dow, 176 U.S. 581, 586.

Again, it said: "The constitutional requirement that 'the trial of all crimes, except in cases of impeachment, shall be by jury' means, as this court has adjudged, a trial by the historical, common law jury of twelve persons, and applies to all crimes against the United States ... " Rassmussen v. United States, 197 U.S. 516, 529. And finally, they stated: " .... we must first inquire what is embraced by the phrase 'trial by jury.' That it means trial by jury as understood and applied at common law, and includes all the essential elements as they were

recognized in this country and England when the Constitution was adopted, is not open to question. Those elements were --- (1) that the jury should consist of twelve men, neither more or less; (2) that the trial should be in the presence and under the superintendence of a judge having power to instruct them as to the law and advise them in respect of the facts; and (3) that the verdict should be unanimous." Patton et al v. United States, 281 U.S. 276. It can be seen from the foregoing that the concept of the common law jury of twelve men has been our heritage since pre Magna Carta days. The colonists brought the concept of the common law jury to this country and it was firmly embedded in our jurisprudence at the time of our revolution. The Supreme Court of the United States has affirmed and reaffirmed the elements of the common law jury, as specified in Patton supra, so that the elements which constitute a common law jury are beyond all questions or doubt. In spite of the overwhelming evidence supporting the concept of the common law jury as outlined in Patton supra, some people have claimed that the Supreme Court has, in their decision in Williams v. Florida, 399 U.S. 78, put an end to the requirement for a twelve man jury. Nothing could be further from the truth. The Court merely ruled that the Defendant's Fourteenth Amendment rights were not violated by the Florida decision to provide a six man, rather than a twelve man jury. The question of what constitutes a common law jury was neither asked nor answered. It would be difficult to formulate a better discussion of the advantages of the common law jury than that given by Blackstone when he states: "Here therefore a competent number of sensible and upright, chosen by lot from among those of

the middle rank, will be found the best investigators of truth, and the surest guardians of public justice. For the most powerful individual in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent men, not appointed till the hour of trial; and that, when once the fact is ascertained, the law must of course redress it. This therefore preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens. Every new tribunal, erected for the decision of facts, without the intervention of a jury (whether composed of justices of the peace, commissioners of the revenue, judges of a court of conscience, or any other standing magistrates), is a step towards establishing aristocracy, the most oppressive of absolute governments. " .... It is, therefore, upon the whole, a duty which every man owes to his country, his friends, his posterity, and himself, to maintain to the utmost of his power this valuable constitution in all its rights; to restore it to its ancient dignity, if at all impaired by the different value of property, or otherwise deviated from its first institution; to amend it, wherever it is defective; and, above all, to guard with the most jealous circumspection against the introduction of new and arbitrary methods of trial, which, under a variety of possible pretenses, may in time imperceptibly undermine this best preservation of English liberty. "Upon these accounts, the trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. And if it has so great an advantage over others in regulating

civil property, how much must that advantage be heightened, when it is applied in criminal cases! ... it is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbors and equals. A constitution, that I may venture to affirm has, under Providence, secured the just liberties of this nation for a long succession of ages. And therefore a celebrated French writer, who concluded, that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury." Blackstone, supra. The Accused reminds the Court that this Free and Natural Person has never entered a plea before the Court, has not granted jurisdiction over this Person, and continually challenges the jurisdiction of the Court over the subject matter and its capability to effect a remedy in this case. In addition, if the Court fails to timely notify this person of "Rights" Sua Sponte or those declared or demanded by this Person, the Court on its own volition denies itself jurisdiction. Although the Accused denies the Court jurisdiction, the Accused readily recognizes certain powers of the Court that the Court can and does exercise whether jurisdiction is valid or not.

The Accused also recognizes that the Court will proceed regardless of proper jurisdiction and, therefore, the Accused has no other alternative but to defend against the loss of Life, Liberty, and Property. The Accused has always demanded his rights under the Constitution

of the United States and the Common Law and has never waived them. The Accused, therefore, demands, as a matter of right, a common law jury of twelve men to try all issues of fact, law, evidence, and to impose sentencing in accordance with established procedures of the common law.

CERTIFICATE OF SERVICE

I, the undersigned, HEREBY CERTIFY that on this _____ day of the _____ month in the year of Our Lord, AD twenty twelve, a true, complete and correct copy of the DEMAND FOR PUBLIC PROSECUTOR was sent postage pre-paid by the method indicated below to the following individual(s) at the following address(es):

[NAME AND ADDRESS OF DEFENDANT(S) AND/OR ATTORNEY(S)]

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