

respectively of this Pretrial Order. Motions *in limine* concerning designated witnesses and exhibits shall be submitted in writing **at least seven (7) days before trial**. Motions *in limine* concerning any designated exhibit shall attach copies of the exhibit in issue. Motions *in limine* regarding designated witnesses shall attach copies of the discovery requests claimed to require the earlier disclosure, and a representation by counsel regarding the absence of a prior response from the party to whom the discovery was directed. The fact that a party, which has submitted discovery to another party, has not filed motions to compel in advance of trial does not, in and of itself, waive an objection by that party as to the timeliness of disclosure of witnesses and exhibits by the other party as required by this order.

2. **MOTIONS FOR SUMMARY JUDGMENT:** There shall be served and filed with each motion for summary judgment a separate concise statement, together with a reference to the record, of each of the material facts as to which the moving party contends there are no genuine issues of dispute. Any party opposing the motion shall, **not later than fourteen (14) days prior to the date of the hearing**, serve and file a separate concise statement, together with a reference to the record, setting forth all material facts as to which it is contended there exist genuine issues necessary to be litigated. In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy, except and to the extent that such facts are asserted to be actually in good faith controverted by a statement filed in opposition to the motion.

3. **BRIEFS AND MEMORANDA:** In addition to any original brief or memorandum filed with the Clerk of the Court, a chambers' copy shall be provided to the Court. To the extent counsel rely on legal authorities not contained in the **Idaho Reports**, a copy of

each case or authority cited shall be attached to the Court's copy of the brief or memorandum.

4. **DISCOVERY DISPUTES:** Unless otherwise ordered, the Court will not entertain any discovery motion, except those brought pursuant to *I.R.C.P. 26(c)* by a person who is not a party, unless counsel for the moving party files with the Court, at the time of filing the motion, a statement showing that the lawyer making the motion has made a reasonable effort to reach agreement with opposing counsel on the matters set forth in the motion. The motion shall not refer the Court to other documents in the file. For example, if the sufficiency of an answer to an interrogatory is in issue, the motion shall contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated. In the absence of a showing of good cause as to why the discovery was not initiated so that timely responses were due **at least thirty (30) days before trial**, the Court will not hear motions to compel discovery **after twenty-one (21) days before trial**.

5. **EXPERT WITNESSES:** Not later than **one hundred eighty (180) days before trial**, plaintiff(s) shall disclose all experts to be called at trial. Not later than **one hundred fifty (150) days before trial**, defendant(s) shall disclose all experts to be called at trial. Such disclosure shall consist of at least the subject matter upon which the expert is expected to testify and the substance of any opinions to which the expert is expected to testify. The disclosure shall be contemporaneously filed with the Court.

Each party shall, **at least twenty-eight (28) days before trial**, file with the Court and serve all parties with a supplemental disclosure for each expert witness which shall identify the underlying facts and data upon which the opinions of each expert are based, to the extent such information is required to be disclosed pursuant to *I.R.C.P.*

26(b)(4)(A)(i). Absent good cause, an expert may not testify to matters not included in the disclosure. A party may comply with the disclosure by referencing expert witness depositions, without restating the deposition testimony in the disclosure report.

6. **REQUEST FOR PRIORITY SETTING: Sixty (60) days prior to the trial date,** counsel will advise the Court by letter to the Judge at chambers, and serve all counsel and pro se parties with a copy of the letter, as to whether counsel is requesting a priority setting; the status of settlement negotiations, and whether any demands or offers have been exchanged (without disclosing the specifics of any settlement offers or demands); whether any mediation has occurred or is scheduled; and, any other matters counsel believes pertinent to a priority setting, such as any need for advance notice for travel arrangements of witnesses or for expert witnesses. The participation of a party in mediation will be considered as a reason for granting a party's request for a priority setting.

7. **DISCLOSURE OF WITNESSES:** Each party shall prepare and exchange between the parties and file with the Clerk **at least fourteen (14) days before trial** a list of witnesses, with current addresses and telephone numbers, setting forth a brief statement identifying the general subject matter about which the witness may be asked to testify, (exclusive of impeachment witnesses). Each party shall provide opposing parties with a list of the party's witnesses and shall provide the Court with two copies of each list of witnesses.

8. **EXHIBITS AND EXHIBIT LISTS:** Using the attached form, each party shall prepare a list of exhibits it expects to offer. Exhibits should be listed in the order that the party anticipates they will be offered. Exhibit labels can be obtained from the court clerk. Each party shall affix labels to their exhibits before trial. After the labels are marked and

attached to the original exhibit, copies should be made. Plaintiff's exhibits should be marked in numerical sequence. Defendant's exhibits should be marked in alphabetical sequence. The civil action number of the case and the date of the trial should also be placed on each of the exhibit labels. Exhibit lists and copies of exhibits shall be exchanged between parties and the exhibit list filed with the Clerk **at least fourteen (14) days before trial**. The original exhibits and a Judge's copy of the exhibits should be filed with the Clerk at the time of trial. Two copies of the exhibit list are to be filed with the Clerk. It is expected that each party will have a copy of all exhibits to be used at trial.

9. **JURY INSTRUCTIONS:** Jury instructions shall be prepared and exchanged between the parties and filed with the Clerk (with copies delivered to chambers) **at least seven (7) days before trial**. The Court has prepared stock instructions covering the following Idaho Jury Instructions: 2-1, 100, 101, 104, 108, 109, 110, 112, 120, 121, 122, 123, 124, 125, 140, 141, 144, and 900. Copies of the Court's stock instructions may be obtained from the Court. All instructions shall be prepared in accordance with *I.R.C.P. 51(a)*. A party objecting to any requested jury instruction shall file at the time of trial, **written objections to jury instructions**.

10. **TRIAL BRIEFS:** Trial briefs shall be prepared and exchanged between the parties and filed with the Clerk (with copies to chambers) **at least seven (7) days before trial**.

11. **PROPOSED FINDINGS AND CONCLUSIONS:** If the trial is to the Court, each party shall **at least seven (7) days prior to trial** file with the opposing parties and the Court (with copies to chambers) proposed Findings of Fact and Conclusions of Law supporting their position.

12. **TRIAL DAY:** After the first day of trial, all subsequent trial days will be on an

8:30 a.m. to 1:30 p.m. schedule.

13. **MODIFICATION:** This Pretrial Order may be modified by stipulation of the parties upon entry of an order by the Court approving such stipulation. Any party may, upon motion and for good cause shown, seek leave of Court modifying the terms of this order, upon such terms and conditions as the Court deems fit. Any party may request a pretrial conference pursuant to *I.R.C.P. 16* or mediation pursuant to *I.R.C.P. 16(k)*.

14. **REQUEST TO VACATE TRIAL SETTING:** Any party moving or stipulating to vacate a trial setting shall set forth the reasons for the request and include a representation by counsel that these reasons have been discussed with the client and that the client has no objection to vacating the trial date.

Any vacation or continuance of the trial day shall not change or alter the time frames for the deadlines set forth herein, but the dates for such deadlines will change to the new dates as are established by the date of the new trial setting. Any party may, upon motion and for good cause shown, request different discovery and disclosure dates upon vacation or continuance of the trial date.

15. **SANCTIONS FOR NONCOMPLIANCE:** Failure to timely comply in all respects with the provisions of this order shall subject noncomplying parties to sanctions pursuant to *I.R.C.P. Rule 16(i)*, which may include:

(A) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence;

(B) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(C) In lieu of any of the foregoing orders or in addition thereto, an order treating as contempt of court the failure to comply;

(D) In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing such party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

IT IS FURTHER ORDERED that no party may rely upon any deadline set forth in this pretrial order as a reason for failing to timely respond to discovery or to timely supplement discovery responses pursuant to *I.R.C.P. 26(c)*.

