

OCT 29 2014

By _____
DISTRICT OF THE _____
OF GOODING _____
Clerk
Deputy Clerk

) Case No. CV 2014-272

) **SCHEDULING ORDER,**
) **NOTICE OF TRIAL SETTING**
) **AND INITIAL PRETRIAL**
) **ORDER**

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b. MOTION PRACTICE: Before setting a motion for a hearing, a lawyer shall make a reasonable effort to resolve the issue without involving the Court. A lawyer who has no valid objection to an opponent's proposed motion must promptly make this position known to opposing counsel and the Court. After a hearing, a lawyer charged with preparing the proposed order shall draft it promptly, striving to fairly and accurately articulate the Court's ruling. Before submitting the proposed order to the Court, the lawyer shall provide a copy to opposing counsel who shall promptly voice any objections. If the lawyers cannot resolve all objections, the drafting lawyer shall promptly submit the proposed order to the Court, stating any unresolved objections.

c. PRETRIAL MOTIONS (other than summary judgment): The parties shall abide by the filing deadlines set forth in the *Stipulation for Scheduling and Planning* dated October 28, 2014. *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 has submitted discovery to another party and 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.

d. MOTIONS FOR SUMMARY JUDGMENT: The last day for filing motions for summary judgment is set forth in the parties' *Stipulation for Scheduling and Planning* dated October 28, 2014. There shall be served and filed with each motion for summary judgment a separate concise statement, together with references 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 references to the record, setting forth all material facts as to which it is contended there exist genuine issues necessitating litigation. 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.

e. **SCHEDULING HEARINGS ON MOTIONS:** All hearing dates and times must be arranged by contacting the Court's Clerk. **The Court's Clerk can be contacted at (208) 736-3011.** When making that request, an estimate of the amount of time needed must be given. A Notice of Hearing shall be filed and served in compliance with I.R.C.P. 7(b)(3)(A). Once a hearing date and time has been obtained from the Court's Clerk, no party may add additional hearings to that time set for hearing without obtaining the prior approval of the Court's Clerk.

f. **MOTION OR STIPULATION TO CONTINUE:** Continuances are discretionary with the Court and will be granted only under extraordinary circumstances, not within the control of the parties and not foreseeable. A hearing or trial may be continued only by the Court. Continuances will be granted sparingly and only in those circumstances where the obstacles to proceeding with the case cannot be resolved by any means other than granting a continuance. Continuances will not be granted solely because all parties agree to a continuance. In exercising its discretion to grant or deny a continuance, the Court may consider the following factors:

- Availability of alternative court dates.
- Age of the case and the nature of any previous continuances or delays attributable to either party.
- The proximity of the scheduled event.
- The availability of an earlier date for the event.
- Whether the continuance may be avoided by substitution of other counsel.
- The prejudice or inconvenience caused to the party not requesting the continuance.
- The diligence of counsel in attempting to avoid the continuance and in bringing it to the attention of the court and opposing counsel promptly.

The request for a continuance shall be in a motion signed by counsel and filed immediately upon discovering the need for a continuance. The motion should be supported by an affidavit stating: (1) when the need for a continuance arose; (2) the grounds for requesting the continuance; (3) that the request for a continuance has been discussed with the client and the client does not object; (4) the measures taken to avoid the necessity of a continuance; and (5) when, at the earliest, the parties can be ready to proceed. The affidavit should be accompanied by all documentation supporting the request.

2. **DISCOVERY DISPUTES:** Unless otherwise ordered, the Court will not entertain any discovery motion, except those brought by a person appearing *pro se* and 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 certification that the lawyer making the motion has in good faith conferred or attempted to confer with the opposing lawyer to reach agreement without court action, pursuant to I.R.C.P. 37(a)(2). 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.

3. **EXPERT WITNESSES:** The parties shall abide by the deadlines set forth in the *Stipulation for Scheduling and Planning* dated October 28, 2014 with respect to expert witness disclosures. Such disclosure shall consist of at least the information required to be disclosed pursuant to I.R.C.P. 26(b)(4)(A)(i). Notice of compliance of all disclosures shall be filed with the Clerk of the Court. 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.

4. **DISCLOSURE OF WITNESSES:** The parties shall abide by the deadlines set forth in the *Stipulation for Scheduling and Planning* dated October 28, 2014 with respect to lay witness disclosures. 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.

5. **EXHIBITS AND EXHIBIT LISTS:** No later than fourteen (14) days before trial, exhibit lists and copies of exhibits shall be exchanged between parties and the exhibit list filed with the Court's Clerk. Exhibits should be listed in the order that the party anticipates they will be offered. 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. Petitioner's exhibits shall be marked in numerical sequence. Respondents' exhibits shall be marked in alphabetical sequence. The civil action number of the case and the date of the trial shall also be placed on each exhibit label. 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 Court's Clerk. It is expected that each party will have a copy of all exhibits to be used at trial.

6. **JURY INSTRUCTIONS (if jury trial):** No later than **seven (7) days before trial**, jury instructions shall be prepared and exchanged between the parties and filed with the Court's Clerk. The Judge may have prepared stock jury instructions from the Idaho Jury Instructions. The parties shall meet in good faith to agree on a statement of claims instruction which shall be submitted to the Court with the other proposed instructions. Absent agreement, each party shall submit their own statement of claims instruction. All instructions shall be prepared in accordance with I.R.C.P. 51(a).

7. **TRIAL BRIEFS:** No later than **seven (7) days before trial**, trial briefs shall be prepared and exchanged between the parties and filed with the Court's Clerk (with copies to chambers).

8. **PROPOSED FINDINGS AND CONCLUSIONS (if court trial):** No later than **seven (7) days prior to a court trial**, each party shall file with the opposing parties and the Court (with copies to chambers) proposed Findings of Fact and Conclusions of Law supporting their position. An electronic version of the proposed findings and conclusions should be provided to the Court's Clerk as a Word document, this may be accomplished by email.

9. **TRIAL PRACTICE:** At least a week before trial, the lawyers shall meet and confer to discuss any stipulations that can be made at the beginning of trial and to identify exhibits which can be admitted by stipulation. Following this meeting, the parties shall immediately alert the Court to any matters that need to be taken up **before** the time scheduled for trial to begin.

10. **TRIAL DAY:** Call the Judge's Court Clerk for the start and finish times of trial dates that follow the first day of trial.

11. **MODIFICATION:** This 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 the Court to modify the terms of this Order, upon such terms and conditions as the Court deems fit. Any party may request mediation pursuant to I.R.C.P. 16(k).

12. **REQUEST TO VACATE TRIAL SETTING:** Paragraph 1.f above applies in its entirety. 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.

13. **SANCTIONS FOR NONCOMPLIANCE:** Failure to timely comply in all respects with the provisions of this order shall subject non-complying parties to sanctions pursuant to I.R.C.P. 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 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(f).

Notice is hereby given, pursuant to I.R.C.P. 40(d)(1)(G), that an alternate judge may be assigned to preside in this case.

IT IS FURTHER ORDERED that any party who brings in an additional party shall serve a copy of this Order upon that added party at the time the pleading adding the party is served on the added party, and proof of such service shall then be filed with the Court by the party adding an additional party.

IT IS SO ORDERED.

Dated October 29, 2014


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SCHEDULING ORDER / NOTICE OF TRIAL SETTING AND INITIAL PRETRIAL ORDER was mailed on October 29, 2014, with sufficient first-class postage to the following:

RANGEN INC

Represented by:
FRITZ X HAEMMERLE
PO BOX 1800
HAILEY, ID 83333
Phone: 208-578-0520

GARY SPACKMAN, IN HIS

Represented by:
GARRICK L BAXTER
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO - IDWR
PO BOX 83720
BOISE, ID 83720-0098
Phone: 208-287-4800

RANGEN INC

Represented by:
J JUSTIN MAY
1419 W WASHINGTON
BOISE, ID 83702
Phone: 208-429-0905

RANGEN INC

Represented by:
ROBYN M BRODY
BRODY LAW OFFICE, PLLC
PO BOX 554
RUPERT, ID 83350
Phone: 208-434-2778

IDAHO GROUND WATER

Represented by:
THOMAS J BUDGE
201 E CENTER ST
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

~~DIRECTOR OF IDWR~~

~~PO BOX 83720
BOISE, ID 83720-0098~~

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Deputy Clerk

