

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

| | | |
|------------|---|--------------------|
| _____ , |) | |
| |) | CASE NO. CV- _____ |
| Plaintiff, |) | |
| |) | APPEAL ORDER |
| v. |) | |
| |) | |
| _____ , |) | |
| |) | |
| Defendant. |) | |
| _____) |) | |

Attached to this Order is a copy of Idaho Rules of Civil Procedure 81(o). This Rule together with all other applicable rules of the Idaho Rules of Civil Procedure will apply in this proceeding unless otherwise ordered.

1. TRIAL DATE. This case is set for a court trial on the date of _____20____, at the _____ County Courthouse at __:__.m.

MULTIPLE SET. This case is multiple set. That means there are other trials set for the same time. The parties should check with the Clerk the day before the trial to insure that this case will in fact be tried. This case will not be continued except upon an Order of the Court. If either party wishes to continue the case they may file a written applications. A copy of the application must be submitted to the opposing party. Such application must be made two (2) weeks prior to trial. Upon good cause the Court can continue the trial setting in this matter.

2. TRIAL DE NOVO. This appeal trial is called a "trial de novo." What that means is that this trial is a whole new trial just as though the original small claims trial never occurred. At this new trial, the plaintiff must establish his or her claim (the legal right to recover from the defendant) and the plaintiff must establish with reasonable certainty the amount of money owed.

The defendant can present any defenses he or she may have. Please note, however, that while the original small claims case was an informal trial, this trial is a formal civil trial and the formal rules of evidence and procedure apply. For instance, hearsay evidence, if objected to, will not be allowed. If you have any questions, talk to your attorney.

3. JURISDICTIONAL LIMITS. Because this is a trial de novo, and because it is a formal civil trial, and because the formal rules of evidence and procedure apply, and because each party has the right to be represented by an attorney, and because either party can have a jury trial if timely requested, and because the Court at this level is a court of record, the Idaho Supreme Court has held that in this type of a trial, all due process requirements have been met, and therefore the jurisdictional limit of \$4,000.00 which applies to an original small claims case does not apply to a small claims appeal. See Gilbert v. Moore, 108 Idaho 165, 697 P.2d 1179 (1985). If you have any questions, talk to your attorney.

4. PLEADINGS. Each party is required to file with the Court a short, concise statement of their claims and/or defenses (as is applicable). This statement shall be filed at least two (2) weeks before the trial date set in this case. A copy of the filed statement shall be provided to the opposing party at the address listed in this order.

5. DISCOVERY. In conjunction with the statement of each parties' claims/defenses as stated in paragraph 4 immediately above, each party shall submit to the Court a list of witnesses they anticipate calling at the trial in this matter. That list is to be submitted to the Court at least two (2) weeks before the trial date in this matter. A copy of that list is to be mailed to the opposing party at the address given below.

6. TRIAL COURT EXHIBITS. Exhibits used in the original Small Claims Court Case may or may not be in the Court's file. The exhibits may have been returned to the parties at the end of the original small claims trial. If the exhibits are still in the Clerk's file and the parties wish to retrieve those exhibits, they should contact the Clerk's Office. Only those exhibits submitted by the party will be returned to that party. Only the exhibits properly introduced into evidence

during the new trial in this case will be considered by the Court. Of course, a party may introduce new and additional exhibits not used in the original small claims case. It is the respective parties' responsibility to locate the exhibits, not the Clerk or the Court.

7. WITNESSES. Each party may subpoena witnesses to the trial but all subpoena service costs and witness fees shall be paid for by the party issuing the subpoenas to the witness and shall not be taxed as costs in the small claims proceeding over the amount of \$50.00. See I.R.C.P. 81(d)(2) and 81(p).

8. PRE-TRIAL HEARINGS. Pre-trial hearings shall be conducted pursuant to Motion and Notice as required by the Idaho Rules of Civil Procedure. The parties should check with the Clerk for available Court times to hear pre-trial matters.

9. DEFAULT. Failure by either party to appear at the trial shall subject that party to a Default Judgment if the party is the Defendant or a Dismissal with prejudice if the party is the Plaintiff.

10. SETTLEMENT. The parties are expected to discuss settlement. If the case is settled the parties are to notify the Clerk's Office immediately. Written proof of settlement should be filed.

11. ATTORNEYS. Attorneys are permitted to appear before the Court on Small Claims Appeal. Attorney fees the Court can award, however, are limited to \$25.00 to the prevailing party, (see Idaho Code §12311 and Idaho Rule of Civil Procedure 81(q)). The Idaho Supreme Court has consistently held that a party may represent themselves. However, the Supreme Court has also consistently held that when a party undertakes to represent himself or herself in a case in which that party is entitled to be represented by an attorney, that party is held to the same standards and to the same requirements as if the party were represented by an attorney. In other words, if you choose to represent yourself, it is no excuse that you are not a lawyer and that you may or may not know the applicable law and rules. You are held to the standard of an attorney. If you have any questions, please contact your attorney.

12. RIGHT TO TRIAL BY JURY. Please note and read that pursuant to Idaho Rule of Civil Procedure 81 (o) (7), you have the right to a trial by jury if timely requested. This Court requires

a demand for jury trial by you to be filed within fourteen (14) days of the date of this order. If you have any questions, please contact your attorney.

13. ADDRESSES. The Court files in this matter reflect the following addresses and phone numbers for the parties:

Plaintiff:

Phone # _____

Defendant:

Phone # _____

If either party's address or phone number is missing or incorrect or if the above address or phone number changes then that party shall immediately notify the Clerk's Office by filing a written statement with the Clerk's Office of the party's correct address and phone number. It is extremely important that the Court have current addresses and phone numbers of both parties in order to notify the parties of any changes in hearing dates.

14. FILING. All filings shall be submitted to the Clerk's Office with a heading similar to the heading on this Order. (.It is very important that the heading contain the case name and the case number.)

Dated:

Signed: _____
Magistrate Judge