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

IDAHO LEGAL AID SERVICES, INC.,

Plaintiff,

v.

STATE OF IDAHO,

Defendant.

Case No. ^ CV01-20-09078

BRIEF IN SUPPORT OF MOTION FOR EXPEDITED DECLARATION AND PRELIMINARY INJUNCTION

The Idaho Constitution preserves the right to jury trial as it existed when our Constitution was adopted in 1889. Idaho's statutes in effect in 1889 made it clear that a jury trial was available in eviction cases. The Idaho Legislature amended those statutes in 1996, purporting to mandate bench trials in expedited evictions. I.C. § 6-311A. The Idaho Constitution, however, has never been amended, and still guarantees that "[t]he right of trial by jury shall remain inviolate." Idaho Const. art. I, § 7; *see also* IRCP 38(a) ("The right of trial by jury as declared by the Constitution

or as provided by a statute of the state of Idaho is preserved to the parties inviolate."). Idaho Code § 6-311A is therefore unconstitutional. The Court must issue a declaratory judgment and accompanying injunctive relief to protect the right to jury trial preserved by our Idaho Constitution.

STANDARDS

Because it is clear from the statutes in force when Idaho's Constitution was adopted that jury trial was then available in eviction actions, this motion presents only pure issues of law. This Court, of course, decides those issues of law—including the constitutional questions—without restriction by the Legislature or any other branch of government. *Miles v. Idaho Power Co.*, 116 Idaho 635, 640, 778 P.2d 757, 762 (1989) ("Passing on the constitutionality of statutory enactments, even enactments with political overtones, is a fundamental responsibility of the judiciary, and has been so since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1813).")

Declaratory relief is governed by IRCP 57 and I.C. §§ 10-1201 through 10-1217. A declaratory judgment is available even where there is another adequate remedy available. IRCP 57(a). The Court may order speedy hearing of a declaratory judgment motion. *Id.*

In addition to a declaration, the Court may also grant additional relief "whenever necessary or proper" based on the declaratory judgment. I.C. § 10-1208. The declaratory judgment procedure is remedial, and "its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other

legal relations, and is to be liberally construed and administered." I.C. § 10-1212.

A preliminary injunction is available is available for any of the five grounds listed at IRCP 65(e). Here, the Court can grant one on alternative grounds, both because under (e)(1) Legal Aid is entitled to the relief it seeks in the complaint and because under (e)(2) denying the constitutional jury right in Legal Aid's cases would cause irreparable injury.

ARGUMENT

The right to jury trial in eviction cases is plain. It was explicit in the territorial code when Idaho's Constitution was adopted. Therefore, because Article I, Section 7, of the Idaho Constitution preserves the right to jury trial as it existed at the time the Constitution was adopted, I.C. § 6-311A—which purports to deny jury trials in certain unlawful detainer cases—is unconstitutional. The Court should declare that the statute is unconstitutional, declare that jury trials are available in all unlawful detainer actions, and enter a preliminary injunction to effectuate its declaratory judgment.

I. The Right to Jury Trial in All Unlawful Detainer Actions is Clear.

Not only does I.C. § 6-313 make clear that "[w]henever an issue of fact is presented by the pleadings it must be tried by a jury" in unlawful detainer cases, but a jury is constitutionally guaranteed in those cases as well. The Idaho Supreme Court, the Idaho Attorney General, and the Sixth Judicial District Court, all agree. The Idaho Constitution, at Article I, Section 7, makes clear that "The right of trial by jury shall remain inviolate." "This provision's 'function is to preserve the right [to

a jury trial] as it existed at the date of the adoption of the Constitution.'" *Rudd v. Rudd*, 105 Idaho 112, 116, 666 P.2d 639, 643 (1983) (citing *Anderson v. Whipple*, 71 Idaho 112, 227 P.2d 351 (1951)). The right applies to all actions "so triable under the common law and territorial statutes in force at the date of the adoption of our Constitution." *Comish v. Smith*, 97 Idaho 89, 92, 540 P.2d 274, 277 (1975). The Idaho Rules of Civil Procedure, likewise, mandate that "[t]he right of trial by jury as declared by the Constitution or as provided by a statute of the state of Idaho is preserved to the parties inviolate." IRCP 38(a).

At the time of the adoption of the Idaho Constitution, in 1889, summary proceedings for obtaining possession of real property, the kind commenced in this case, were triable by a jury. Section 5103 of the Revised Statutes of Idaho Territory provided, exactly as I.C. § 6-313 does today, that "[w]henever an issue of fact is presented by the pleadings it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending." A true copy from those revised statutes, as in force June 1, 1887, (and in relevant respect still in force in 1889) is attached to this brief as "**Exhibit 1**." *Cf.* Idaho Const. art. XXI, § 2 ("All laws now in force in the territory of Idaho which are not repugnant to this Constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature.")

The Idaho Supreme Court confirmed the right to a jury trial in unlawful detainer actions in 1972. *Loughrey v. Weitzel*, 94 Idaho 833, 836, 498 P.2d 1306,

1309 (1972). Only in 1996 did the Idaho legislature first purport to prevent jury trial in certain summary proceedings for obtaining possession of real property, with 1996 Idaho Session Laws, ch. 169, § 1, codified at I.C. § 6-311A. A true copy of that act from the 1996 Session Laws volume is attached to this brief as "**Exhibit 2**."

Because unlawful detainer proceedings were triable by jury at the time that the Idaho Constitution was adopted, they must remain so today. *Comish*, 97 Idaho at 92. Idaho's Attorney General agrees. In a 2019 Attorney General Opinion, he concluded that "a tenant in an unlawful detainer action had a right to a jury trial," and that "the basis of the right is rooted in the constitution." Attorney General Opinion re: HB 138, at 5 (Mar. 4, 2019) [attached as "**Exhibit 3**"]. In particular, the Attorney General answered the question whether "the language in Idaho Code § 6-311A '. . . the action shall be tried to the court without a jury . . .' violate[s] provisions of the Idaho Constitution or the United States Constitution?" *Id.* at 2. The answer: "Yes," because "legislation cannot trump constitutional matters." *Id.* at 5 (citing *Loughery*, 94 Idaho at 836.

The Sixth Judicial District also agrees that jury trial is available in these cases. In a February 12, 2020, decision, that court held that, "despite that the overwhelming majority of all Title 6, Chapter 3 proceedings do not try with a jury, either side can have one if requested (upon a showing of a dispute of fact)." *South Idaho Properties v. Wallace*, No. CV03-19-4458, slip op. 3 (Idaho 6th Dist. Feb. 12, 2020) [attached as "**Exhibit 4**"].

Even if it were not clear from the Idaho Revised Statutes in force at the time of the Idaho Constitution's adoption, the United States Supreme Court has painstakingly traced the origins of modern summary eviction proceedings and found them to be descendants of the action at common law for ejectment. Considering the District of Columbia's summary eviction actions under the Seventh Amendment to the United States Constitution, the Court in *Pernell v. Southall Realty*, determined that those actions, "while a far cry in detail from the common-law action of ejectment, serve[] the same essential function—to permit the plaintiff to evict one who is wrongfully detaining possession and to regain possession himself." 416 U.S. 363, 375 (1974).

The ejectment action was an action at law in Idaho as well in 1889, and remains so today. As our own Idaho Supreme Court has acknowledged, actions "such as ejectment, or other actions where the right to possession is the paramount issue . . . . have always been regarded as within the province of the courts of law" and therefore triable by jury as of right. *Anderson v. Whipple*, 71 Idaho 112, 121, 227 P.2d 351, 356 (1951); *cf. David Steed & Assocs. v. Young*, 115 Idaho 247, 251 n.2, 766 P.2d 717, 721 n.2 (1988) (overruling *Anderson* to the extent that *Anderson* prevented jury trial in actions in equity with counter- or cross-claims at law).

Thus, both under statute and common law, defendants in proceedings of the kind the plaintiff has commenced in this action had a right to jury trial when the Idaho Constitution was adopted. Suggestion that following the Idaho Constitution's mandate would overly burden unlawful detainer plaintiffs or the courts that decide

unlawful detainer proceedings must yield to the constitution. As the United States Supreme Court noted in *Pernell*, in District of Columbia eviction actions "the right to trial by jury was recognized by statute for over a century from 1864 to 1970, and it does not appear to have posed any unmanageable problems during that period." 416 U.S. at 384 (footnote omitted). In Idaho, the right to trial by jury in these cases was recognized by statute for over a century as well, until 1996. *Cf., e.g., Criss v. Salvation Army Residences*, 173 W. Va. 634, 638, 319 S.E.2d 403, 407 (1984) (recognizing constitutional right to jury trial in eviction actions in West Virginia). The Court recognized in *Pernell*:

> Some delay, of course, is inherent in any fair-minded system of justice. A landlord-tenant dispute, like any other lawsuit, cannot be resolved with due process of law unless both parties have had a fair opportunity to present their cases. Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.

416 U.S. at 385.

There is a plain right to jury trial in all unlawful detainer actions in Idaho, because that right existed at the time Idaho's Constitution was adopted. Accordingly, I.C. § 6-311A is unconstitutional because it would abrogate that right.

II. Declaratory Judgment Is Appropriate.

Because there is a constitutional right to a jury trial in unlawful detainer actions, I.C. § 6-311A is plainly unconstitutional. Legal Aid is therefore entitled to a declaration that the statute is unconstitutional and that there is a right to jury trial in all unlawful detainer actions. "The purpose of the Declaratory Judgment Act is to

settle and afford relief for uncertainties with respect to rights. The plaintiff need only show that its position is jeopardized by the statute, and threats to enforce the statute are not necessary." *Sunshine Mining Co. v. Carver*, 41 F. Supp. 60, 63 (D. Idaho 1941); *cf.* I.C. § 10-1215 (requiring Idaho's Declaratory Judgment Act to be interpreted consistently with federal law regarding declaratory judgments).

Beyond the declaratory judgment, the Court may also grant additional relief based on the declaratory judgment "whenever necessary or proper" to effect the judgment. I.C. § 10-1208. The Court should grant injunctive relief to go along with its declaratory judgment to ensure that Idaho's form summons for expedited eviction actions and its Court-approved instructions and form Complaint and Answer for those proceedings effectuate the right to jury trial in eviction cases.

III. A Preliminary Injunction Is Also Appropriate.

Because I.C. § 6-311A is unconstitutional, a preliminary injunction is appropriate at this time. The preliminary injunction should both require the State and its Courts to allow jury trials in all unlawful detainer actions and also require Idaho's form summons and Court-approved instructions and Complaint and Answer forms for eviction cases to comport with the right to jury trial in those cases.

A. The Court Should Enjoin the State to Allow Jury Trial in All Unlawful Detainer Cases.

Under IRCP 65(e)(1), the Court may issue a preliminary injunction whenever it appears from the complaint that the plaintiff is entitled to the relief it seeks and the relief involves restraining the defendant. The Court may also issue a preliminary injunction whenever it appears from the complaint or declaration that

the continuance of an act would produce great or irreparable injury. IRCP 65(e)(2); *cf.* I.C. § 9-1406 (providing that a declaration under penalty of perjury has the same force and effect as an affidavit).

Here, both grounds apply. Legal Aid is entitled to the relief it seeks ensuring the right to jury trial in all unlawful detainer actions, as explained above, and the relief sought involves restraining the State from enforcing I.C. § 6-311A. Allowing eviction cases to proceed without respecting the rights of the parties to request jury trials would also produce great and irreparable injury. "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (internal citations omitted); *see also* 11A Fed. Prac. & Proc. Civ. § 2948.1 (3d ed.) ("When an alleged deprivation of a constitutional right is involved . . . no further showing of irreparable injury is necessary.") And without a declaration and injunction, Idaho Legal Aid Services will expend needless time and effort enforcing the constitutional jury trial right in magistrate courts across the state, needlessly diverting judicial resources and guaranteeing either duplicative or inconsistent rulings. (*See* Declaration of James A. Cook ¶¶ 19-22.)

Accordingly, the Court should enjoin the State from enforcing I.C. § 6-311A through its magistrate courts.

B. The Court Should Also Enjoin the State to Correct Its Instructions and Form Summons, Complaint, and Answer for Eviction Cases.

The official, Court-approved instructions, form Complaint, and form Answer

for eviction proceedings, distributed by the State's Court Assistance Offices around the state and relied on by self-represented litigants do not contain any place for parties to demand a jury trial.* Likewise, the form Summons for eviction proceedings is prescribed by IRCP 4(a)(3)(A), referring to the form Summons in Appendix B to the Rules. That form Summons, unlike to form for all other civil proceedings under IRCP 4(a)(3)(B), does not inform defendants that they may file a written response—it merely informs defendants that a trial will be held at a particular date and time. IRCP Appendix B. But to demand a jury, a party must file and serve a demand in writing. IRCP 38(b).

Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present

* The Court-approved form Complaint for unlawful detainer actions is available online at https://courtselfhelp.idaho.gov/docs/forms/CAO_UD_1-1.pdf, and the form Answer at https://courtselfhelp.idaho.gov/docs/forms/Answer-to-Complaint-for-Eviction-CARES-Act.pdf. The Court-approved instructions for these forms are online at https://courtselfhelp.idaho.gov/docs/forms/CAO_UD_Instr_1.pdf (see pages 3–4) and https://courtselfhelp.idaho.gov/docs/forms/CAO_UD_Instr_3-1.pdf (see page 2). The instructions for both prosecuting and defending an eviction for nonpayment of rent contain no reference to the right of either party to request a jury trial. The instructions instead clearly describe that the trial of the action will be by the court.

their objections." *Greene v. Lindsey,* 456 U.S. 444, 449–50 (1982) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). To satisfy due process, the notice must be calculated to address "unique information" about the particular circumstances in which notice is given. *Jones v. Flowers*, 547 U.S. 220, 230 (2006). A defective summons that prejudices the defendant, for instance, invalidates the summons's sufficiency. *Osrecovery, Inc. v. One Grp. Int'l, Inc.*, 234 F.R.D. 59, 60 (S.D.N.Y. 2005).

To determine whether the form Summons and Court-approved instructions and form pleadings for eviction proceedings afford parties due process, this Court must weigh the "interest of the individual, the risk of an erroneous deprivation of the individual's interest, and the interest of the government . . . ." *Lowder v. Minidoka County Joint Sch. Dist. No. 331*, 132 Idaho 834, 840, 979 P.2d 1192, 1198 (1999) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976)); *see also Connecticut v. Doehr*, 501 U.S. 1, 11 (1991). The individual interest here is grave and substantial: eviction defendants in the residential cases in which Idaho Legal Aid represents indigent tenants risk losing their only shelter. For "the law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to be violated with impunity." 4 Sir William Blackstone, Commentaries on the Laws of England 175 (Wayne Morrison ed., Cavendish 2001) (1769). The modern law in the United States, as well, recognizes that "[w]e have, after all, lived our whole national history with an understanding of 'the ancient adage that a man's house is his castle [to the

point that t]he poorest man may in his cottage bid defiance to all the forces of the Crown.'" *Georgia v. Randolph*, 547 U.S. 103, 115 (2006) (quoting *Miller v. United States*, 357 U.S. 301, 307 (1958). Indeed, a study of those displaced from their homes found in them a "grief response showing most of the characteristics of grief and mourning for a lost person" and noted that "relocation was a crisis with potential danger to mental health for many people." Marc Fried, *Grieving for a Lost Home: Psychological Costs of Relocation, in Urban Renewal: The Record and the Controversy* 359, 361, 377 (James Q. Wilson, ed., 1966). Accordingly, Idaho courts generally presume that "[n]o amount of money, it is said, can compensate for the loss of an unique tract of land." *Wood v. Simonson*, 108 Idaho 699, 702, 701 P.2d 319, 322 (Ct. App. 1985).

The government interest is aligned with the individual interest, because the societal importance of preserving safe shelter for these defendants and assuaging their need to access a taxpayer funded safety net to prevent homelessness and avoid the impact on families of sudden displacement is enormous compared to any additional burden of slight revisions to the form Summons and Court Assistance Office instructions and forms.

To effectuate and complement declaratory judgment in this case, the Court should therefore ensure that the instructions and forms afford due process by notifying defendants in eviction actions that they may file a written response and, in the Court Assistance Office forms, providing a place to demand a jury trial as is their constitutional right.

C. An Injunction Bond Is Inappropriate.

Bond under IRCP 65(c) is appropriately waived in this case. *See Planned Parenthood of Idaho, Inc. v. Kurtz*, No. CVOC0103909D, 2001 WL 34157539, at *16 (Idaho Dist. Aug. 17, 2001). "[T]o require a bond would have a negative impact on plaintiff's constitutional rights, as well as the constitutional rights of other members of the public affected . . . ." *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996). Additionally, there is no chance of harm to the State, which will merely be providing rights already guaranteed under the Idaho Constitution. *See Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). "[R]equiring a bond to issue before enjoining potentially unconstitutional conduct by a governmental entity simply seems inappropriate, because . . . protection of those rights should not be contingent upon an ability to pay." *Bible Club v. Placentia-Yorba Linda Sch. Dist.*, 573 F. Supp. 2d 1291, 1302 n.6 (C.D. Cal. 2008) (internal quotation marks omitted). A bond is neither appropriate nor necessary in this case.

CONCLUSION

For the reasons explained above, the Court should grant Legal Aid's motion for expedited declaration and preliminary injunction.

Dated: June 8, 2020

Respectfully submitted,

ACLU OF IDAHO FOUNDATION

/s/ Richard Eppink
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IDAHO LEGAL AID SERVICES, INC.

/s/ Howard A. Belodoff
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MARTIN HENDRICKSON

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EXHIBIT 1

REVISED STATUTES

OF

IDAHO TERRITORY.

ENACTED AT THE

FOURTEENTH SESSION OF THE LEGISLATIVE ASSEMBLY.

In Force June 1, 1887.

BOISE CITY, IDAHO:

PRINTED FOR THE TERRITORY.

1887.

have not any other estate now conveyed or concealed or in any way disposed of, with design to secure the same to my use, or to hinder, delay, or defraud my creditors, so help me God."

Order of discharge.

SEC. 5081. After administering the oath the Judge must issue a order that the prisoner be discharged from custody, and the officer upon the service of such order must discharge the prisoner forthwith, if he be imprisoned for no other cause.

If not discharged, prisoner may again apply, when.

SEC. 5082. If such Judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding thirty days, in the same manner as above provided, and the same proceedings must thereupon be had.

Discharge final.

SEC. 5083. The prisoner after being so discharged is forever exempted from arrest or imprisonment for the same debt, unless he be convicted of having willfully sworn falsely upon his examination before the Judge, or in taking the oath before prescribed.

Judgment remains in force.

SEC. 5084. The judgment against any prisoner who is discharged, remains in full force against any estate which may then or at any time afterward during the life of the judgment belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner in like manner as if he had never been committed.

Plaintiff may order discharge of prisoner, who shall not thereafter be liable, etc.

SEC. 5085. The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

Plaintiff to advance funds for support of prisoner.

SEC. 5086. Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent or attorney must advance to the jailer on such commitment, sufficient money for the board of the prisoner at the rate provided by law, for one week, and must make the like advance for every successive week of his imprisonment; and in case of failure to do so, the jailer must forthwith discharge such prisoner from custody, and such discharge has the same effect as if made by order of the creditor.

CHAPTER IV.

SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY.

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5092. Forcible detainer defined.
5093. Unlawful detainer defined.
5094. Service of notice.
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5105. Complaint must be amended in certain cases.
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5107. Verification of complaint and answer.
5108. Effect of appeal upon the judgment.
5109. Rules of practice. Appeals, how taken, etc.

Forcible entry defined.

SECTION 5091. Every person is guilty of a forcible entry who either:

1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or,

2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

Forcible detainer defined.

SEC. 5092. Every person is guilty of a forcible detainer who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps possession of any real property, whether the same was acquired peacefully or otherwise; or,

2. Who, in the night time, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to the former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

Unlawful detainer defined, amended.

SEC. 5093. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

1. When he continues in possession, in person or by sub-tenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code; *ante 2857*

Amended.

2. Where he continues in possession, in person or by sub-tenant, without permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant. Such notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand of possession or notice to quit by the landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year;

3. Where he continues in possession in person, or by sub-tenants, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant. Within three days after the service of the notice, the tenant, or any sub-tenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions

or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided if the covenants and conditions of the lease, violated by the lessee, cannot afterward be performed, then no notice, at last prescribed herein, need be given to said lessee or his sub-tenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of premises let to an undertenant, in case of his unlawful detention of the premises underlet to him.

4. A tenant or sub-tenant, assigning or sub-letting, or committing waste upon the demised premises, contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three days' notice to quit, upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this chapter.

"Brief" Service of notice." 75 Pac. 185.

Service of notice.

SEC. 5094. The notices required by the preceding section may be served, either:

1. By delivering a copy to the tenant personally; or,

2. If he be absent from his place of residence and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or, if such place of residence and business cannot be ascertained, or a person of suitable age or discretion cannot be found there, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a sub-tenant may be made in the same manner.

Courts have jurisdiction.

SEC. 5095. The District Court of the county in which the property or some part of it, is situated, has jurisdiction of proceedings under this chapter.

Jurisdiction of probate court under this chapter.

SEC. 5096. The Probate Court of the county in which the property, or some part of it, is situated, has jurisdiction of proceedings under this chapter when the whole amount of rent and damages claimed does not exceed five hundred dollars.

Jurisdiction of justices' courts under this chapter. Amended.

SEC. 5097. Justices' Courts have jurisdiction of proceedings under this chapter where the whole amount of rent and damages claimed does not exceed three hundred dollars.

Parties defendant. Amended.

SEC. 5098. No person other than the tenant of the premises, and sub-tenant, if there be one, in the actual occupation of the premises when the notice herein provided for was served, need be made parties defendant in the proceeding, nor shall any proceeding abate nor the plaintiff be nonsuited for the non-joinder of any persons who might have been made parties defendant; but when it appears that any of the parties served with process or appearing in the proceeding are guilty of the offense charged, judgment must be rendered against him. Any person who shall become a sub-tenant of the premises or any part thereof after the service of notice as provided in this chapter shall be bound by the judgment. In case a married woman be a

tenant or a sub-tenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader; and execution issued upon a personal judgment against her, can only be enforced against property on the premises at the commencement of the action.

Parties generally.

SEC. 5099. Except as provided in the preceding section the provisions of this Code, relating to parties to civil actions, are applicable to this proceeding.

The complaint.

SEC. 5100. The plaintiff in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon returnable as in other cases.

107 Cal. 112. 8 Cal. Dec. Eng. Enc. L. 150. Must allege demand. 75 Pac. 185. 41 Cal. 428.

Summons to issue.

Arrest.

SEC. 5101. If the complaint presented establishes, to the satisfaction of the Judge or Justice, fraud, force, or violence in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant.

Judgment by default.

SEC. 5102. If, at the time appointed, the defendant do not appear and defend, the court must enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.

77 Pac. 437.

Trial by jury.

SEC. 5103. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

Showing required of plaintiff, forcible entry on detainer of defendant.

SEC. 5104. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein, is not then ended or determined; and such showing is a bar to the proceedings.

Complaint must be amended in certain cases.

SEC. 5105. When upon the trial of any proceeding under this chapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, and other than the offense charged in the complaint, the Judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance shall be permitted upon account of such amendment, unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

Verdict and judgment.

SEC. 5106. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judg-

91 Cal. 598. § 4407 Pol. Code.

ment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint, and proved on the trial and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent, and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for three times the amount of the damages thus assessed, and of the rent found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any sub-tenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but, if payment, as here provided, be not made within the five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

Verification of complaint and answer.

SEC. 5107. The complaint and answer must be verified.

Effect of an appeal upon judgment.

SEC. 5108. An appeal taken by the defendant does not stay proceedings upon the judgment unless the court so directs.

Provisions applicable to proceedings under this chapter.

SEC. 5109. The provisions of this Code, relative to civil actions, appeals, and new trials, so far as they are not inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

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TITLE IV.

OF THE ENFORCEMENT OF LIENS.

SECTION		SECTION	
5125.	Liens of mechanics and others.	5133.	Time of continuance.
5126.	Sub-contractors and others.	5134.	Sub-contractors.
5127.	Liens for grading and filling lots.	5135.	Recovery by contractor.
5128.	Interest in the land.	5136.	Court to declare rank of liens.
5129.	Effect of liens.	5137.	Actions for separate liens.
5130.	Claim of lien.	5138.	Lien does not impair right to action.
5131.	Liens upon two or more pieces of property, each to be designated.	5139.	Rules of practice. New trials and appeals.
5132.	Claim to be recorded.		

What laborers, contractors, etc., may have liens upon.

SECTION 5125. Every person performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct, to create hydraulic power, or any other structure, or who performs labor in any mining claim, has a lien upon the same for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent, but the aggregate amount of such liens must not exceed the amount which the owner would be otherwise liable to pay.

Notice by sub-contractor, etc., and lien for amount due contractor.

SEC. 5126. Any sub-contractor, material man, laborer, or other person, performing labor or furnishing materials for a contractor who is entitled to a lien under the provisions of the last section, may, at any time, serve upon the owner, or his agent, or the person employing the contractor, written notice of the amount due him for such labor or materials, and such sub-contractor, material man, laborer, or other person, may have a lien for such amount, but not exceeding the amount then or thereafter due such contractor from such owner, or person employing him, under the contract. And any person furnishing materials, or performing labor for a sub-contractor, may by like notice to the contractor, be subrogated to the rights of such sub-contractor.

Liens for grading and filling lots and streets.

SEC. 5127. Any person who, at the request of the owner of any lot in any incorporated city or town, grades, fills in, or otherwise improves the same, or the street in front of or adjoining the same, has a lien upon such lot for his work done and materials furnished.

What interest in the land subject to the lien, amended.

SEC. 5128. The land upon which any building, improvement, or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, is also subject to the liens, if, at the time of the commencement of the work or of the furnishing of the materials for the same, the land belonged to the person who caused said building, improvement, or structure to be constructed; altered, or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

Effect of liens.

SEC. 5129. The liens provided for in this chapter are preferred to any lien, mortgage, or other incumbrance which may have attached subsequent to the time when the building, improvement, structure or work was commenced

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EXHIBIT 2

PTE[7
No. ..38)

AN ACT
AMENDING SECTION 18-1501, IDAHO CODE, THE STATUTE BY REMOVING AN INCOR-

of the State of Idaho:

-1501, Idaho Code, be, and the same is s:

. (1) Any person who, under circum- to produce great bodily harm or death, child to suffer, or inflicts thereon ental suffering, or having the care or causes or permits the person or health willfully causes or permits such child on that its person or health is endan- ment in the county jail not exceeding prison for not less than one (1) year

ircumstances or conditions other than bodily harm or death, willfully causes or inflicts thereon unjustifiable ring, or having the care or custody of r permits the person or health of such y causes or permits such child to be ts person or health may be endangered,

t or ardian who chooses for his iritual means alone shall not for that e violated the duty of care to such

PTER 168
No. 1339)

AN ACT
TERM OF IMPRISONMENT; AMENDING SECTION DE THAT THE COURT SHALL GIVE CREDIT IN OF INCARCERATION PRIOR TO ENTRY OF

of the State of Idaho:

8-309, Idaho Code, be, and the same is

hereby amended to read as follows:

18-309. COMPUTATION OF TERM OF IMPRISONMENT. In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

Approved March 12, 1996.

CHAPTER 169
(S.B. No. 1340)

AN ACT
RELATING TO FORCIBLE ENTRY AND UNLAWFUL DETAINER; AMENDING SECTION 6-311A, IDAHO CODE, TO PROVIDE THAT IN AN ACTION EXCLUSIVELY FOR THE POSSESSION OF LAND OF FIVE ACRES OR LESS FOR THE NONPAYMENT OF RENT THE ACTION SHALL BE TRIED BY THE COURT WITHOUT A JURY; AND REPEALING SECTION 6-311B, IDAHO CODE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 6-311A, Idaho Code, be, and the same is hereby amended to read as follows:

6-311A. JUDGMENT ON TRIAL BY COURT. In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent, ~~if~~ the action ~~is~~ shall be tried by the court without a jury. If, and after hearing the evidence ~~it~~ the court concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable. No provision of this law shall be construed to prevent the bringing of an action for damages.

SECTION 2. That Section 6-311B, Idaho Code, be, and the same is hereby repealed.

Approved March 12, 1996.

EXHIBIT 3

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

March 4, 2019

VIA HAND DELIVERY AND EMAIL

The Honorable John Gannon
House of Representatives
Idaho Statehouse
jgannon@house.idaho.gov

Re: HB 138

Dear Representative Gannon:

You requested legal analysis from the Attorney General's Office about the constitutionality of various portions of HB 138 and sections of Idaho's Forcible Entry and Unlawful Detainer Act. Specifically, you asked us to review six provisions either in HB 138 or existing law. The six provisions are set forth below

QUESTIONS PRESENTED

1. Do the notice provisions of Idaho Code § 6-303(3) violate provisions of the Idaho Constitution or the United States Constitution?

2. Does the language in HB 138, page 3, ll. 25-33, amending Idaho Code § 6-310(1)(c), change the meaning or application of the subparagraph?

3. Does the time limit in Idaho Code § 6-310(2) requiring the court to schedule a trial within twelve (12) days from the filing of the complaint and service of the summons violate provisions of the Idaho Constitution or the United States Constitution?

4. Does limiting the time allowed for a trial continuance to two days, as provided in Idaho Code § 6-311, violate provisions of the Idaho Constitution or the United States Constitution?

Consumer Protection Division
P.O. Box 83720, Boise, Idaho 83720-0010
Located at 954 W. Jefferson 2nd Floor
Telephone: (208) 334-2424, FAX: (208) 334-4151
(800) 432-3545, Toll Free in Idaho: TDD Accessible

5. Does the language in Idaho Code § 6-311A ". . . the action shall be tried by the court without a jury . . ." violate provisions of the Idaho Constitution or the United States Constitution?

6. Does the language in HB 138, p.5, l. 9-16, proposing to add provisions for damages in an expedited action violate provisions of the Idaho Constitution or the United States Constitution?

CONCLUSIONS

1. No. Idaho Code § 6-303 defines the situations where a landlord may bring an unlawful detainer action against a tenant or subtenant. This includes when a tenant violates the lease as outlined in subpart 3 of Idaho Code § 6-303, which reads, in part:

> A tenant of real property, for a term less than life, is guilty of an unlawful detainer:
>
> 3. Where he continues in possession in person, or by subtenants, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for payment of rent, and three (3) days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a subtenant in actual occupation of the premises, also upon such subtenant.

It is our understanding you question whether the three-day-notice requirement of subpart 3 of Idaho Code § 6-303 comports with procedural due process protections under state and federal constitutions. As with other notice requirements and time limits within title 6, chapter 3, Idaho Code, the three-day-notice provision of subpart 3 is constitutional.

The right to procedural due process is guaranteed under article I, § 13, of the Idaho Constitution, as well as the Fourteenth Amendment to the United States Constitution, and requires the state, before it may deprive a person of life, liberty, or property, to provide that person with meaningful notice and a meaningful opportunity to be heard. *State v. Blair*, 149 Idaho 720, 722, 239 P.3d 825, 827 (Ct. App. 2010); *Roos v. Belcher*, 79 Idaho 473, 479, 321 P.2d 210, 212 (1958) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) for the principle that the fundamental requisite of due process of law is the opportunity to be heard). "Procedural due process is not a rigid concept but, rather, it 'is flexible and calls for such procedural protections as the particular situation

demands.'" *State v. Blair*, 149 Idaho at 722, 239 P.3d at 827 (*quoting Aeschliman v. State*, 132 Idaho 397, 402, 973 P.2d 749, 754 (Ct. App. 1999)). [1]

In *Lindsey v. Normet*, 405 U.S. 56 (1971), the United States Supreme Court considered the constitutionality of Oregon's Forcible Entry and Wrongful Detainer Statute under the Due Process and Equal Protection clauses of the Fourteenth Amendment. Portland, Oregon tenants, facing eviction for unpaid rent, filed a declaratory action against their landlord, arguing Oregon's law was unconstitutional on its face. *Id.* at 59-61. The tenants contended the early trial provision of six days, the statute's limitation on litigable issues, and certain deposit requirements violated the Fourteenth Amendment. *Id.* at 64. The United States Supreme Court found the law, excluding a double-bond prerequisite to appeal, constitutional. *Id.* at 64-65.

In upholding Oregon's law, the court noted it protects "tenants as well as landlords" by providing "a speedy, judicially supervised proceeding" to peaceably resolve "possessory issue[s]." *Id.* at 71-72. The court continued:

> There are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants. The tenant is, by definition, in possession of the property of the landlord; unless a judicially supervised mechanism is provided for what would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights of income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else. Many expenses of the landlord continue to accrue whether a tenant pays his rent or not. Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss and the tenant to unmerited harassment and dispossession when his lease or rental agreement gives him the right to peaceful and undisturbed possession of the property. Holding over by the tenant beyond the term of his agreement or holding without payment of rent has proved a virulent source of friction and dispute. We think Oregon was well within its constitutional powers in providing for rapid and peaceful settlement of these disputes.
>
> . . .
>
> We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of . . . or any recognition of the right of a tenant to occupy the

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[1] We have used "the same analysis" here in judging due process claims under the Fourteenth Amendment of the United States Constitution and the Idaho Constitution. *Compare Maresh v. State, Dept. of Health and Welfare*, 132 Idaho 221, 227, 970 P.2d 14, 20 (1998).

> real property of his landlord beyond the term of his lease without the payment of rent or otherwise contrary to the terms of the relevant agreement. Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions. Nor should we forget that the Constitution expressly protects against confiscation of private property or the income therefrom.

Id. at 72-74.

Other courts have ruled similarly to how the United States Supreme Court did in *Lindsey*. The Washington Appellate Court in *Carlstrom v. Hanline*, 990 P.2d 986 (Wash. Ct. App. 2000) reviewed Seattle's unlawful detainer process in a tenant's appeal of his eviction from a rooming house after his lease expired. The tenant argued, among other things, the city's eviction procedure violated his due process rights because he had only six-days-notice before his hearing. *Id.* at 790. The Washington court concluded the six days gave the tenant enough time to prepare for the hearing. *Id. See also Butler v. Farner*, 704 P.2d 853, 857-858 (Colo. 1985) (holding the accelerated trial provisions of the state's forcible entry and detainer statute did not violate the due process rights of vendors) *Deal v. Municipal Court,* 157 Cal.3d 991, 994 (1984) (holding the five-day limit to answer an unlawful detainer complaint did not violate the due process or equal protection clauses of state or federal constitutions); *Brown v. Peters*, 360 A.2d 131, 133 (Conn. Ct. App. 1976) (agreeing with the United States Supreme Court's opinion in *Lindsey* that that the unique landlord-tenant relationship justifies "special statutory treatment.")

Forcible entry and unlawful detainer statutes are intended to provide an orderly, peaceful, and expeditious eviction process. The timing and notice requirements of Idaho's law, as presently codified, are similar to those of other states and localities, and, based on available case law, meet the basic elements of procedural due process.[2]

2. No. The proposed amendment of Idaho Code § 6-310(1)(c), does not change the meaning or application of the subparagraph. It appears the purpose of the amendment is simply to condense the extraneous language into the term "unlawful detainer," which is defined in Idaho Code § 6-303.

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[2] The Department of Housing and Urban Development completed a legal determination of whether title 6, chapter 3, Idaho Code, complied with state and federal due process protections. *See* HUD Legal Op. GCH-0022 (Dec. 3, 1991). It reviewed the three-day notice provision in Idaho Code § 6-303 and the time limits in Idaho Code § 6-310. In all cases, the Department found the statutes provide the basic elements of due process under Article I, §§ 1 and 13, of the Idaho Constitution and the Fourteenth Amendment. It is important to note, however, that federal law gives Section 8 tenants, except in certain cases, the right to an administrative hearing, thereby making title 6, chapter 3, Idaho Code, inapplicable.

3. No. Based on the cases discussed in response to Question 1, the 12-day time limit in Idaho Code § 6-310(2) does not violate state or federal procedural due process protections.

4. Not necessarily. As noted above, procedural due process requires that a party be "provided with notice and an opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 91, 982 P.2d 917, 926 (1999) (internal citations omitted). While we do not perceive the language cited herein as facially in violation of due process, given the new types of issues HB 138 seeks to include within the ambit of unlawful detainer actions, such as damages, see page 5, Ll. 3-16, we certainly could envision instances where a tenant under the Forcible Entry and Unlawful Detainer Act's short time frames—five days to prepare for and appear at trial—would claim that, as applied, his or her due process rights are violated in forcing the tenant to address such potentially factually complex claims in such a shortened manner.

5. Yes. In 1972, the Idaho Supreme Court held in *Loughery v. Weitzel*, 94 Idaho 833, 836, 498 P.2d 1306, 1309 (1972) that a tenant in an unlawful detainer action "had the right to a jury trial in the district court." The Court did not cite to Article I § 7 of the Idaho Constitution in making this declaration, but its footnote 7 does reference "the constitutional right to a jury in civil cases," indicating to us that the basis of the right is rooted in our Constitution. We note that Idaho Code § 6-311A was enacted in 1974, two years after *Loughery*, but legislation cannot trump constitutional matters.

6. Not necessarily. Our analysis for Question 4 applies here too.

If you have any questions or concerns about this letter or if you need further information about a particular issue, please feel free to call me at 334-4114 or Brian Kane at 334-4523.

Sincerely,

BRETT DELANGE
Deputy Attorney General
Consumer Protection Division

BTD/SNG/tt

EXHIBIT 4

Filed: 02/12/2020 15:33:49
Sixth Judicial District, Bannock County
Jason Dixon, Clerk of the Court
By: Deputy Clerk - Peck, Brandy

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND FOR THE COUNTY OF BANNOCK MAGISTRATES DIVISION

SOUTH IDAHO PROPERTIES LLC,	)	
	)	
Plaintiff,	)	Case No: CV03-19-4458
	)	
Vs.	)	MEMORANDUM DECISION AND ORDER
	)	
JACQUELYN WALLACE,	)	
	)	
Defendant.	)	
	)	

This matter came on for hearing on February 3, 2020 pursuant to Defendant Jacquelyn Wallace's *Motion to Dismiss*. Mr. Karl Lewies appeared on behalf of Ms. Wallace, and Ms. Wallace was not present in the courtroom. Mr. Alan Johnston appeared on behalf of Plaintiff, South Idaho Properties, LLC., via telephone.[1] The Court heard argument from counsel, and at the conclusion of the hearing, took the matter under advisement in order to review relevant statutory authority, binding case precedence, the pleadings filed, and the respective memoranda. Correspondingly, the Court rules as follows.

BRIEF PROCEDURAL HISTORY OF CASE

The instant case is instituted by South Idaho Properties, LLC. A complaint was filed by South Idaho on December 3, 2019. The complaint requests eviction of Ms. Wallace from a mobile home parcel that she rents from South Idaho. The legal basis for the complaint is I.C. § 6-301, *et.al.* The factual allegations are premised upon alleged various rules violations by Ms. Wallace in ~~conduction~~ connection with lease agreement. No jury trial has been requested. Service was effectuated upon Ms. Wallace on December 19, 2019. Ms. Wallace has not yet filed an Answer to the Complaint. However, she filed a Motion to Dismiss on January 2, 2020 based upon Idaho Rule of Procedure Rule 12(b)(8). South Idaho filed an objection thereto on January 28, 2020.

[1] Due to inclement snowy weather, Mr. Johnston sought pre-approval for attendance via telephone, and this was granted.

Germane to this analysis is another case, *Jacquelyn Wallace vs. South Idaho Properties, LLC, Melanie Marowitz, Amanda Richart, Rich Ewens, Bannock County Case # CV03-19-3406.* Ms. Wallace filed a complaint against the named defendants on September 11, 2019. The Complaint included a jury trial request[2] and money damages exceeding $10,000. Due to the damages allegation exceeding $10,000.00, the case has been assigned to District Court, and currently is pending before Judge Robert Naftz.[3] Mr. Lewies represents Ms. Wallace in this action, and Mr. Johnston represents all defendants. South Idaho, *et.al.* filed an Answer to the Complaint on October 3, 2019. The Answer also requests a trial by jury. It appears that a Joint Scheduling Order has been submitted to the Court to set the jury trial, but, according to the Court's register of actions, it has not yet been scheduled.

DISCUSSION

The instant action is brought pursuant to I.C. § 6-301, *et.al.* I.C. § 1-2208(1)(b) designates that "[p]roceedings in forcible entry, forcible detainer, and unlawful detainer[4]" are permissibly assigned to magistrates by the administrative judge in each judicial district. Idaho Sixth District Local Rule 2.1 states, "All matters designated in…§1-2208 Idaho Code, as being within the jurisdiction or assignable to attorney magistrates." This Court interprets Local Rule 2.1 to read that eviction matters (as referenced in I.C. § 1-2208(1)(b)) to be assigned to magistrates in nearly all cases.[5]

However, District Courts are created by virtue of the Idaho State Constitution, specifically Article V, § 11 thereto. Magistrate judicial positions were established by legislation as an arm of the District Court. *I.C. § 1-2201-2.*[6] This Court believes that a District Court is enabled with inalienable Constitutional authority to hear any case of original jurisdiction not specifically designated to the Idaho Supreme Court. Therefore, this Court finds that a District Court has the authority to preside over any case that a magistrate can. Further, even though

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[2] The Complaint requests a six person jury, but since it is pending in District Court, the jury likely would be composed of a 12 person constituency.
[3] Of note, the Prayer for Relief, specifically Paragraph 1 of such, requests that notice of termination is unenforceable.
[4] The Court will use the general nomenclature "evictions" to describe these actions in general, recognizing there are differences in the various categories of action.
[5] This is certainly not to be interpreted as being that District Court Judge is *incapable* of handling this type of case. Rather, by Rule, the District Court has elected to assign certain duties to accomplish judicial economy.
[6] In fact, Title 1, Chapter 22 is entitled "Magistrate Division *of the District Court.*" (emphasis added).

Local Rule 2.1 assigns eviction proceedings to magistrates, there is no *prohibition* to the District Court presiding over such actions.

I.C. § 6-313 is a rarely used component of Title 6, Chapter 3 cases. It states, "Whenever an issue of fact is presented by the *pleadings* it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending." (emphasis added). It should be noted that this statutory authority was initially passed in 1881, and last amended by Idaho State Legislature in 1919. This Court will avoid discussion regarding the logistical conundrum that would be caused by unlawful detainer cases that require expedited proceedings having a jury trial.[7] Nevertheless, the statute states what it states. If there is an issue of fact presented ***by the pleadings***, unless waived, the matter must be tried before a jury.[8] However, despite that the overwhelming majority of all Title 6, Chapter 3 proceedings do not try with a jury, either side can have one if requested (upon a showing of a dispute of fact). As such, no barrier to the case being before the District Court is created. The only true difference is that the jury would comprise of a 12 person pool rather than 6 persons in the magistrate division.

Ms. Wallace requests dismissal based upon Idaho Rule of Civil Procedure Rule 12(b)(8), which states that defenses can be raised by motion, one being "another action pending between the same parties for the same cause." Ms. Wallace asserts that due to her case pending in District Court, and the similarities thereto, she is entitled to dismissal. Thusly, South Idaho would have to file a counterclaim in the District Court proceedings if it continues to seek immediate eviction.

South Idaho counters that there are additional parties in the District Court proceedings, and because of such, dismissal is unwarranted. This argument fails. Although the additional defendants are sued in that case in their individual capacities, in reviewing the Complaint, (specifically Paragraphs 3-5), it alleges that each defendant was either an owner of, or a property manager for, South Idaho.[9] It appears that even though there are additional parties, they are all encompassed by the South Idaho employment umbrella. Broken down, the individual defendants

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[7] The Court is cognizant of the fact that most defendants never file responsive pleadings in expedited Title 6, Chapter 3 actions. Typically, if they contest, they simply show and present counter evidence to combat eviction.
[8] The Court notes that there has been no responsive pleading filed by Ms. Wallace in this case.
[9] This Court will not address or analyze vicarious liability of these defendants in the District Court proceeding, but they all appear to be agents of South Idaho. Further, it should be noted that Paragraph 3 is denied in South Idaho's Answer, but Paragraphs 4-5 are admitted.

are nothing more than South Idaho, and there is truly no difference between the District Court case and this one as it pertains to parties.

South Idaho further counters that the District Court case and the instant case are not for the same "cause." Ms. Wallace's District Court Complaint sets forth four independent causes of action:

1. BREACH OF DUTY OF GOOD FAITH, I.C. § 55-2002;

2. BREACH OF REQUIREMENT TO ENFORCE RULES FAIRLY AND UNIFORMLY, I.C. § 55-2008(3);

3. UNCONSCIONABLE METHOD, ACT, OR PRACTICE IN VOLATION OF I.C. §§ 48-603 AND 48-603C; AND

4. ATTORNEY'S FEES AND COSTS.

The prayer for relief sets forth what Ms. Wallace is requesting if she is successful in proving her causes of action. She seeks request that the "notice of termination"[10] be unenforceable, attorney's fees, and money damages from South Idaho. Ms. Wallace has sought no preliminary injunction from the District Court to prohibit South Idaho from moving forward with properly noticed eviction proceedings.

In brief review of Title 55, Chapter 20, which is the gravamen of causes of action one and two of Ms. Wallace's Complaint, the Court takes notice of I.C. § 55-2014, entitled "Resident action for damages—Specific Performance." This provision sets forth a proverbial laundry list of categories by which a resident can file suit against a landlord pursuant to this act. What is problematic for Ms. Wallace at this stage is that I.C. § 55-2014(2) sets forth a truncated schedule, in order to obtain specific performance, for effectuating the complaint, setting a trial within 12 days from the filing of the complaint. The Complaint in this case was filed in September, 2019. The 12 days have long since expired. Does this mean that Ms. Wallace is precluded from requesting specific performance under Title 55, Chapter 20? This is a question for the District

[10] The Notice of Termination of Tenancy and to Quit the Premises is dated August 15, 2019 and is attached as an Exhibit to the Complaint.

Court in that litigation. But, when determining whether there are like causes of actions, it is an analysis point.

The Court has also reviewed Title 48, Chapter 6, applicable to cause of action three in Ms. Wallace's complaint. This section allows for certain acts to be brought forth by the Idaho Attorney General's office, and a hybrid of private civil actions. The Court notes that injunctions are allowable, but is uncertain as to whether those are simply bestowed to the Attorney General, or whether they can be pursued by a private complainant. There are several references to monetary penalties. This is not an issue for this Court to resolve, rather, well within the purview of the District Court in that action. But, this Court must make a determination if the eviction proceedings and the action in District Court are a common or distinct cause.

South Idaho relies upon *Wing v. Amalgamated Sugar Company*, 106 Idaho 905 (Ct.App.1984) to support its argument that the causes are similar. Although *Wing* has been overruled on other issues, it does set forth a very helpful analysis to determine whether the "causes" are similar and the bounds of this Court's discretion in this regard.

The *Wing* Court stated:

> Accordingly, we hold that the determination of whether to proceed with a case, when a similar case is pending elsewhere and has not gone to judgment, is discretionary. This determination will not be overturned unless discretion has been abused. In exercising such discretion, **a trial court should evaluate the identity of the real parties in interest and the degree to which the claims or issues are similar. The court also may consider the occasionally competing objectives of judicial economy, minimizing costs and delay to the litigants, obtaining prompt and orderly disposition of each claim or issue, and avoiding potentially inconsistent judgments.**

Id. at 908. (emphasis added).

First, the Court believes that Ms. Wallace is correct, the claims are factually similar. South Idaho alleges rule violations, and Ms. Wallace, in the District Court claim, alleges various misconducts in application of these rules.

Second, delay cuts in the favor of South Idaho. If this matter were litigated in the District Court, eviction may not be accomplished for a year, or when the matter is set on the District

Court's trial calendar. As stated above, the matter has not yet been set for jury trial. By reviewing the Joint Information for Scheduling filed on November 4, 2019, the stipulated dates for trial are May 21-22, 2020, but then, it is in September 17-18, 2020 and January, 2021. This Court believes it highly unlikely that the case will try in May in the District Court. This Court can certainly accommodate a trial well prior to September 2020 or January 2021.

Third, judicial economy cuts in favor of both parties. Separating these claims will increase costs to both parties, as it will likely require two trials (potentially jury trials).

Fourth, there is possibility of inconsistent judgments. A jury (or the Court) could find that Ms. Wallace violated South Idaho's rules warranting eviction. A jury in District Court could find that South Idaho was arbitrary and capricious in enforcing its rules against Ms. Wallace and award monetary damages. The issue of whether this prohibits enforcement of eviction is unresolved -- whether that relief can even be achieved.

Ultimately, the Court compliments both counsel on excellent legal argument. This is a very difficult and close call. However, given the discretion embedded with the Court, this Court is going to find that, by weighing the suggested factors, that dismissal is warranted. These causes of action are too analogous, with too similar facts to be heard in two separate courts. There could potentially be two jury trials, at greater cost to both parties. This Court has great confidence that the District Court can address eviction, and perhaps an expedited calendar to accommodate South Idaho's issues – Ms. Wallace should not benefit from continued usage of South Idaho's property if it is proven that she violated contractual rules. But, this Court believes that the factors weigh mostly in favor of this being resolved in District Court.

WHEREFORE, IT IS HEREBY ORDERED:

1. Pursuant to Idaho Rule of Civil Procedure Rule 12(b)(8), the Complaint is hereby dismissed;

2. The Court finds that both parties pursued this motion in good faith with novel legal issues presented, and each party shall be responsible for their own attorney's fees and costs.

IT IS SO ORDERED.

DATED:
Signed: 2/12/2020 02:19 PM

AARON N THOMPSON
SIXTH DISTRICT MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I certify that on Signed: 2/12/2020 03:34 PM I served a true and correct copy of the foregoing **MEMORANDUM DECISION AND ORDER** on the person(s) listed below by hand-delivery or mail with correct postage.

Alan Johnston
Email

Karl Lewies
Email

Jason Dixon
Clerk of the District Court

By: Brandy Peck
Deputy Clerk